



Monitoring Subcontracts

Agenda

- Gain an understanding on what a contractor should know about subcontracting
- Discuss the responsibilities of a prime contractor or higher-tier subcontractor
- Regulations impacting Subcontracting
- Cost and Price Analysis

Prime Contractor Due Diligence

- Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors
 - Subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility.
 - A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

Responsible Contractor Requirements

- Per FAR 9.104-1 must-
 - Be able to meet contract terms
 - Have satisfactory performance record
 - Have or able to obtain necessary financial resources, business / technical skills, and equipment/facilities needed to perform the contract.
 - Be qualified and eligible to receive Government awards.

Subcontracts Clause

FAR 44.204(a) -- The contracting officer shall insert the clause at 52.244-2, Subcontracts in solicitations and contracts when contemplating—

- A cost -reimbursement contract
- A letter contract that exceeds the simplified acquisition threshold
- A time-and-materials contract that exceeds the simplified acquisition threshold
- A labor-hour contract that exceeds the simplified acquisition threshold.
- A fixed -price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated;

Consent to Subcontract

- Contractors are not always free to automatically subcontract out to anyone they want.
- The inclusion of the FAR 52.2442, Subcontracts clause in a solicitation or contract provides the requirements relating to obtaining consent to subcontract.

Review of Purchasing System

FAR 52.244-2(c) & (d)

- If the Contractor does not have an approved purchasing system, consent to subcontract is required for certain subcontracts (cost reimbursement, time and materials, fixed price over a certain dollar amount, etc.)
- If the contractor has an approved purchasing system, the contracting officer may still require consent for certain subcontracts

Notification to Requirements

FAR 52.244-2(e)(1)

- Requires the Contractor to notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required including the following information:
 - A description of the supplies or services to be subcontracted.
 - Identification of the type of subcontract to be used.
 - Identification of the proposed subcontractor.
 - the proposed subcontract price.
 - A negotiation memorandum

Designation of Subcontractors

- Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clauses at FAR 52.244-2.

Acceptability and Allowability

- FAR 52.244-2(f)

Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination –

- (1) Of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract; or
- (3) To relieve the Contractor of any responsibility for performing this contract.

Purchasing System

- DoD solicitations or contracts which include the Subcontracts clause should also include the DFARS 252-244-7001, Contractor Purchasing System Administration clause.
- This clause requires a Contractor establish and maintain an acceptable purchasing system.
- DFARS 252.244-7001(c) provides 24 criteria a contractor shall comply with to have an “acceptable purchasing system.”

Purchase System Requirements

- Policies, procedures, and purchasing practices that comply with FAR and DFARS
- Purchase orders and subcontracts that contain all flow down clauses and terms and conditions
- Purchase orders based on authorized requisitions
- Complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files
- Consistent make-or-buy policy that is in the best interest of the Government
- Timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- Subcontract surveillance to ensure timely delivery of an acceptable product
- Procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price
- Notify the Government of the award of all subcontracts that contain the FAR and DFARS flow down clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts
- Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort.

Proposal Responsibilities

The prime contractor or subcontractor shall-

- Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices and include the results of these analyses in the price proposal;
- When required by FAR 15.404-3(c), submit or cause the subcontractor to submit the subcontractor's certified cost or pricing data to the Government as part of its own certified cost or pricing data.
- Include support for commercial item determinations and the basis for establishing the commerciality and price reasonableness

Price Analysis

- Per FAR 15.404-1(b)(2), price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.
- Price analysis, without additional cost analysis, is used when certified cost or pricing data are not required.
- Price analysis should be used to verify that the overall price offered is fair and reasonable.

Examples of Price Analysis Techniques

- Comparison of proposed prices received in response to the solicitation**
- Comparison of proposed prices to historical prices**
- Use of parametric estimating methods/application
- Comparison with competitive published price lists, published market prices of commodities, etc.
- Comparison of proposed prices with independent Govt. cost estimates
- Comparison of proposed prices with prices obtained through market research
- Analysis of data other than certified cost or pricing data (as defined at 2.101) provided by the offeror

** Preferred methods

Cost Analysis

- Per FAR 15.404-1(c), cost analysis is the review and evaluation of any of the separate cost elements and profit or fee in an offeror's or contractor's proposal.
- Cost analysis is used to evaluate the reasonableness of individual cost elements when certified cost or pricing data are required.
- Cost analysis should be combined with price analysis when certified cost or pricing data are required.

Examples of Cost Analysis

Techniques

- Verification of cost data or pricing data and evaluation of cost elements
- Evaluating the effect of the offeror's current practices on future costs
- Comparison of costs proposed by the offeror for individual cost elements
- Verification that the offeror's cost submissions are in accordance with FAR and CAS (if applicable)

Denial of Access to Records

What happens if the subcontractor denies you access needed to perform a cost analysis?

- Perform the price analysis;
- Perform a cost analysis on the elements of the proposal you can; and
- Seek assistance from your ACO.

Examples of Inadequate Subcontract Analysis Procedures

- No cost or price analysis completed/documented
- Failure to support the degree of competition or basis for establishing the source selection or price reasonableness
- Failure to perform commercial item determination or price reasonableness
- No documentation on attempts to perform analysis and seek Government assistance when denied access to subcontractor's records

Subcontract Analysis

Inadequate Analysis Possible Impacts:

- Estimating System Noncompliance
- Increased audit time and support costs
- Negotiation delays

Incurred Cost

Subcontract Responsibilities

- The prime contractor is responsible for managing its subcontracts which includes responsibility for subcontract award, technical and financial performance, monitoring, and payment to the subcontractor for the work accomplished under subcontract terms.
- The Allowable Cost and Payment clause (FAR 52.216 -7) makes the prime contractor responsible for billing costs to the Government in accordance with FAR 31.2.
- The prime contractor is responsible for settling subcontractor amounts and rates prior to submitting the final voucher for the prime contract (FAR 52.216-7(d)(5))

Incurred Cost

Compliance with FAR

- Comply with first-tier subcontract reporting requirements required by the Reporting Executive Compensation and First-Tier Subcontract Awards clause (FAR 52.204-10)
- Report subcontract costs as part of the prime contractor's final indirect rate cost proposal as required by the Allowable Cost and Payment clause (FAR 52.216-7)

Incurred Cost Submissions

Schedule J

FAR 52.216-7 (d)(2)(iii)(J) Requires a contractor to include a schedule as part of final indirect cost rate proposal identifying a listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor

Schedule J Contains:

- Prime and subcontract numbers
- Subcontract value and award type
- Amount claimed during the fiscal year
- Subcontractor name, address, and point of contract information

Common Prime or Higher Tier Subcontract Noncompliances

- Failure to notify the ACO, and obtain approval, to subcontract.
- Failure to perform appropriate cost or price analyses.
- Failure to appropriately monitor subcontract effort.
- Failure to request a denial of access and notify the ACO when the subcontractor refuses access.

Additional Examples of Noncompliance

- Failure to verify the subcontractor has an adequate accounting system.
- Failure to include the appropriate contract clauses in the agreement with the subcontractor.
- Failure to evaluate if subcontract billings are accurate and compliant with subcontract terms.
- Failure to obtain an adequate incurred cost submission from subcontractor when it was included as a requirements in the subcontract terms

Subcontracting Summary

- Know contract requirements regarding subcontracting clauses.
- Do not assume that you can subcontract.
- If you are a subcontractor know what is required of the prime.

DCAA Internet Resources

- Guidance

- Audit Process Overview – Information for Contractors Manual
 - Directory of Audit Programs
 - Contract Audit Manual
 - Select Area of Cost Guidebook (FAR 31.205 Cost Principles)
 - Links to Acquisition Regulations



- Checklists and Tools

- Cost of Money Rates
 - Incurred Cost Electronically (ICE) Model
 - Contractor Submission Portal
 - Adequacy Checklists - Preaward Accounting System, Contract Pricing Proposal, Forward Pricing Rate Proposal, Incurred Cost Submission, Termination Settlement Proposal.

- Frequently Asked Questions For Contracting Officers, Contractors and COVID-19

Small Business Outreach Survey

We would love to hear about your recent experience with the DCAA Small Business Program, as we are committed to providing the best guidance possible and strengthening our nation's Defense Industrial Base. By participating in our survey, you will help us improve our courses, content and provide you with even better support as we continue to grow our program.



Questions/Comments



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