

Why Not Having a Subcontracting Plan Can Hurt You

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INTRODUCTION. Subcontracting is taking on a new importance in the era of consolidated (“bundled”) contracts and increased emphasis on using minority- and women-owned businesses (M/WBEs). Most supplier diversity programs include a M/WBE subcontracting requirement. For example, all contracts with the Federal government exceeding \$500,000 require subcontracting plans. Many major corporations have similar requirements. Another reason is the typical major contract has 60% of its dollars going to subcontractors.

Subcontracting makes good sense since smaller companies usually can better focus on a particular niche area. It is also impractical for a company to try and be all things to all people.

DEFINITIONS. Corporate and government supplier diversity program typically define the terms as indicated below:

- Tier 1 (Prime Supplier) Submits invoices to the final customer, e.g., major corporation or government agency.
- Tier 2 (Subcontractor) Submits invoices to the prime supplier.
- Minority Business Enterprise (MBE). At least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals.
- Woman Business Enterprise (WBE). At least 51% owned by one or more women; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

CUSTOMER REQUIREMENTS. For government contracts, Part 19 of the Federal Acquisition Regulation (FAR) provides a comprehensive set of requirements for M/WBE subcontracting for contracts valued at \$500,000 and up. This requirement is also “flowed down” to other subcontracts exceeding \$500,000. The FAR requires tier 1 suppliers provide a subcontracting which provides a breakout of

- which proposed subcontractors are MBE and WBE
- anticipated dollar spend for each M/WBE subcontractor
- the type of work each M/WBE subcontractor will perform

If not addressed in their bid or proposal a tier 1 supplier's offer could be deemed non-responsive. This eliminates them from any further consideration from getting the contract.

In selected instances, the FAR allows large business tier 1 suppliers to submit a “blanket” subcontracting plan. This helps where large number of similar subcontracts are involved.

BEST PRACTICES. There are several best practices associated M/WBE subcontracting programs. They are:

- Benchmarking. Reviewing historical use of M/WBE suppliers to determine what types and level of goals should be used. Benchmarking also indicates the types of work that should be subcontracted.
- Pre-Sourcing. Determining potential areas for M/WBE participation and locating potential suppliers to meet them.
- Multi-Year Contracts. Using multi-year contracts allows M/WBE firms to make the necessary investments in staff, technology and infrastructure. This helps them move from tier 2 to tier 1.
- Award Fee Incentives. The FAR allows the use of award fee contracts to provide flexible and targeted incentives to tier 1 suppliers. Increased and non-traditional use of M/WBE subcontractors could be an award fee factor.
- Mentor-Protégé Programs. Some government agencies have programs where their tier 1 suppliers can provide targeted assistance to their tier 2 suppliers. In the corporate world, this is referred to as supplier development or mentoring.
- Enforcement. Assigning someone to be review tier 1 subcontracting plans and their performance during the term of the contract helps ensure actual results are achieved.

Tier 1 suppliers who cannot meet all buying organization subcontracting goals may seek to phased subcontracting plan. This allows them to develop a subcontracting program and gradually improve their performance over the term of the contract.

SUMMARY. Not having a good subcontracting plan can make the difference between getting the business and getting nowhere. Subcontracting programs are becoming more important since fewer tier 1 opportunities exist due to contract bundling. Having an effective subcontracting program can help improve a prime supplier's competitive position since it can be a tie-breaker in the contract award decision. Success in subcontracting is no accident. It requires planning and creativity to ensure success. Good luck!

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