



KNOW BEFORE YOU BID

PILIEROMAZZA WEBINAR

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PRESENTERS

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OVERVIEW

- Why this matters
- Set-aside issues
- Considerations for joint ventures
- Solicitation Defects
- Wage and hour concerns
- Prevailing wage laws

WHAT DOES LEGAL HAVE TO DO WITH IT?

- Protests
- Contract Disputes
- Equitable Adjustments
- Wage and Hour Complaints
- Other Investigations

VERIFICATION OF SIZE AND STATUS

- Conduct an internal review that goes beyond checking tax returns and employee headcount
 - Treat it like a mock size determination and complete the SBA Form 355, Application for Small Business Size Determination
 - Thorough affiliation analysis requires a review of financial statements, corporate documents, current contracts, revenue breakdown by customer, outside interests by owners and officers, recent M&A activity, etc.

VERIFICATION OF SIZE AND STATUS (CONT'D)

- Develop and implement company policy and procedures for verifying size and status
 - Spell out size/status verification procedures for each bid (e.g., check SAM, confirm revenue or headcount, determine if any “triggering events” have occurred, document review)
 - Review by outside advisors: periodic and for triggering events
- Critical to understanding SBA’s affiliation rules

VERIFICATION OF SIZE AND STATUS (CONT'D)

- Examples of triggering events:
 - Changes in ownership or management
 - Mergers, acquisitions, and spin-offs
 - Joint ventures
 - Involvement with businesses owned by family members
 - Performance of a significant # of contracts over time with one firm that accounts for a high % of your revenue
- Perform a risk analysis: for new projects and new business partners
- Be careful what you advertise
- Presumed loss rule considerations

TEAMING AND JOINT VENTURING

- Teaming agreement
 - Roles and responsibilities of prime contractor must be clearly defined
 - Roles and responsibilities of each teaming partner must be clearly defined
- WARNING: the ostensible subcontractor rule
 - Subcontractor performs “primary and vital requirements” of a contract or order or
 - Prime contractor is unusually reliant on subcontractor
- Rule does not apply to a “similarly situated entity”

TEAMING AND JOINT VENTURING

- Joint venture agreement
 - Required written agreement of arrangement and responsibilities of the parties
 - Uniform requirements for all small business programs regarding size and content of JV agreement
- Agencies must consider past performance of JV partners when considering past performance of a JV entity
- Tax ID, DUNS, SAM registration, etc.
- What does the solicitation say?

CORRECTING SOLICITATION DEFECTS

- Scenario: you are interested in submitting a proposal, but there are provisions that are confusing or problematic
- Options:
 - Write a letter to the contracting officer
 - File an agency level protest
 - File a protest at the Government Accountability Office (GAO) or Court of Federal Claims (COFC)
- Common solicitation improprieties

WAGE AND HOUR

- Employee Classification under the FLSA
- State laws
vacation, sick, meals and rest breaks, etc.
- Hidden Wage and Hour Costs
- Based on what employees actually do, not what the solicitation said they would/should do

SERVICE CONTRACT ACT AND DAVIS BACON ACT

- Look for
 - Contract FAR Clauses
 - Wage Determination (or sufficient reference)
 - Ask Questions (Refer to Solicitation Defects)
 - Classification risks
- Seniority of Incumbent Employees
- Sick Leave
- Non-displacement rules and costs
- Price Adjustments

UNION WORKFORCES

- Usually on SCA contracts
- Be aware of costs
- Only subject to wages and fringe benefits in the base year
- Negotiation Costs

ANY QUESTIONS?

Thank you for joining us today.

If you would like to speak with Nichole Atallah or Peter Ford about today's webinar, please contact as follows:

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ABOUT PILIEROMAZZA

PilieroMazza PLLC is a full-service law firm with offices in Washington, DC and Boulder, CO. We are most well known as a government contracting firm and for 25 years we have helped our clients navigate the complexities of doing business with the federal government. We also provide a full range of legal services including advice on corporate, labor and employment, SBA procurement programs, and litigation matters. Our clients value the diverse array of legal guidance they receive from us and our responsiveness as we guide their growth and secure their success.

Our primary practice areas are:

- Government Contracting
- Small Business Programs & Advisory Services
- Labor & Employment
- Business & Corporate
- Litigation
- Intellectual Property & Technology Rights

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