

Supplier Diversity in the Federal Market Is a Win- Win

By Jon Williams and John Shoraka

The federal government is the largest procurer of goods and services in the world, spending upwards of \$400 billion annually. Like many firms in the commercial sector, the federal government has several supplier diversity programs geared toward maximizing small business participation in the federal market. One such program, the Section 8(d) subcontracting program, seeks to ensure that large federal contractors establish and fulfill supplier diversity goals when performing on federal contracts. In a nutshell, the Section 8(d) subcontracting program requires large prime contractors to subcontract a certain amount of their federal work to diverse suppliers. In exchange, the large prime contractors are rated favorably based on their utilization of diverse suppliers. In these ways, the Section 8(d) subcontracting program creates a win-win opportunity for large and small businesses in the federal contracting ecosystem.

This article provides an overview of federal supplier diversity programs and what both large and small businesses need to know to participate. If you currently participate in the federal market, or are thinking of doing so, read on to find out how you can take advantage of these key

programs.

Background

Congress has recognized the importance of maximizing small and diverse business participation in federal procurements. In service of this worthy objective, the Small Business Act, together with implementing rules and contractual provisions in the Federal Acquisition Regulation, require most federal contracts in excess of \$700,000 (or \$1.5 million for construction contracts) awarded to large businesses to include a subcontracting plan. A subcontracting plan establishes the large prime contractor's goals to spend a certain portion of its subcontract dollars on small and diverse suppliers. Prime contractors are evaluated based on how well they achieve these goals, and are subject to penalties if they do not make a good faith effort to comply with their plan. Thus, the subcontracting plan is a meaningful tool to foster partnerships between large and small contractors on federal procurements.

A subcontracting plan must contain spending goals for several types of diverse suppliers. In general, each federal agency must ensure that roughly 35% of the value of subcontracts under its applicable prime contracts goes to small businesses. The baseline subcontracting goals



are further subcategorized into specific types of small businesses, as follows: 5% for women-owned small businesses ("WOSB"); 5% for small disadvantaged businesses ("SDB"), which include firms certified in the U.S. Small Business Administration's ("SBA") Section 8(a) Program; 3% for service-disabled veteran-owned small businesses ("SDVOSB"); and 3% for small businesses certified in SBA's Historically Underutilized Business Zones ("HUBZone") program. From this starting point, federal agencies negotiate specific goals for each



prime contract required to have a subcontracting plan.

How Large Contractors Benefit from Supplier Diversity

Large federal contractors can significantly benefit from the inclusion of small and diverse companies in their supply chain. These companies can bring uncommon innovation, expertise, and flexibility to respond to the changing needs of the ultimate customer (i.e., the federal government). Furthermore, large businesses that maximize participation of small business subcontractors will receive higher marks in proposal evaluations and better ratings of their past performance, a critical measuring stick when pursuing work with the federal government. Taking full advantage of small business subcontractors also creates a competitive advantage for large businesses because such firms will be audit-ready and avoid costly penalties their less-prepared

competitors may face.

However, for businesses having to comply with negotiated subcontracting plans, implementation and tracking can be a complex and daunting exercise. Most often, the largest businesses will have entire departments responsible for their supplier diversity program. The departments help to identify, vet, and track the performance of small businesses within their supply chain, and can usually comply with the federal reporting requirements with respect to performance against negotiated goals. But even with entire departments, personnel, and systems, the largest firms can run afoul of the complex compliance and reporting requirements. Questions can arise with respect to the legitimacy of the firms within their supply chain: Are they really small? Are they really women-owned? Can the large business rely on self-certification? What types of documents must be on file to ensure

some level of due diligence?

Subcontracting plans are subject to an audit by SBA and DCMA. In addition to reviewing whether the negotiated subcontracting goals were met, the auditors will focus on outreach efforts to locate diverse suppliers and whether the large business made a good faith effort to comply with its subcontracting plan.

This can be a complex undertaking for one large contract, now imagine managing hundreds of large prime contracts. As difficult as this may be for the largest firms, it is even more difficult for medium-sized firms that may not have the same robust in-house staffing and systems. Additionally, a firm that grows from a small business to a large business on a federal contract may be asked to implement a subcontracting plan for that contract mid-stream. Therefore, it is critical for large (and soon-to-be large) contractors to devote time and resources to prepare a meaningful but achievable subcontracting plan, establish processes to track compliance

internally and satisfy government reporting obligations, and be audit-ready.

Advantages for Diverse Suppliers

Federal prime contract requirements are becoming larger, consolidated, and more complex. Often times, small businesses find it difficult to bid on, win, and successfully implement large prime contracts. Entering the federal market place as part of the supply chain of a larger company is often times the best way small businesses can enter this lucrative marketplace.

As a subcontractor to a large firm, a small business can build the necessary relationships, understand the federal procurement process, and build corporate qualifications. However, entering the federal market place, even as a subcontractor, can be a time consuming and unfamiliar exercise. The pipeline for federal opportunities is incredibly different than private sector opportunities. Identifying your



ultimate customers can be difficult and finding a large prime partner that you can work with and trust can be nearly impossible. Small businesses need to do their homework, use the free resources that are available not only from SBA, but at each federal agency, and attend teaming fairs and industry days to find bidding partners.

Diverse suppliers should also create profiles in federal contractor databases, such as SAM.gov, which reflect their capabilities and socioeconomic status(es). In today's competitive landscape, small businesses need to differentiate what they have to offer and how their socioeconomic status(es) provides added benefit to potential customers. Large businesses and federal agencies will search these databases looking for diverse suppliers, so it is critical for small businesses to turn up in their searches.

It is also important for small businesses to understand the requirements for each socioeconomic status before registering in federal contractor databases or submitting contract proposals under those status(es). The rules can be complicated and the penalties are potentially steep for misrepresenting small and socioeconomic business status. Therefore, as a small business contractor, you have to be sure you are who you say you are.

New Opportunities

Over the last several years, Congress has implemented significant legislation to level the playing field for small businesses in the federal market place. Between 2010 and 2016, over 20 provisions have been enacted to help small businesses play a larger role in federal contracts.

In particular, Congress directed SBA in 2010 to create a new mentor-protégé program open to all small businesses. This new program, which opened in October 2016, allows small businesses to enter a formal relationship that works to expand the capabilities and qualifications of the protégé firm, but also allows the mentor-protégé team to pursue set-aside opportunities. This is a win-win relationship, where the protégé firm receives technical and business development assistance to allow it to grow and become more competitive while the mentor is allowed to participate in and benefit from set-aside federal contract opportunities.

Additionally, Congress has recently enhanced the significance of subcontracting performance in the grading of agencies' small business performance. Each year, SBA monitors agencies' contracting goals and grades the agencies on their small business contracting performance. Historically, the weight assigned to subcontracting performance was only 10% of the

total grade assigned to an agency, which is far outweighed by the prime contract performance. This forced agencies to focus only on small businesses that worked as prime contractors and not within the supply chain of larger firms. However, with the recent grading change, the weight assigned to subcontracting increased to 20%. This change highlights the importance of supplier diversity programs within large firms and raises the visibility of the supplier diversity programs across all federal agencies.

Conclusion

One of the key elements to entering and thriving in the federal marketplace is to take advantage of partnership opportunities through the federal supplier diversity programs. Understanding the requirements of these programs and the current landscape will help you maximize your potential in working with the federal government. Recent legislative changes have created and expanded opportunities for large businesses as well as small businesses working in their supply chains to partner and pursue government business. Furthermore, Republican administrations have historically expanded both military spending and outsourcing of administrative and support functions within both the department of defense and civilian agencies. For these reasons, this is an excellent time for large and small firms to use federal supplier diversity programs to gain a competitive edge.

Jon Williams is a partner with PilieroMazza PLLC, focusing on government contracting and small business issues, he may be reached at (202) 857-1000 or jwilliams@pilieromazza.com. John Shoraka is managing director of PilieroMazza Advisory Services, LLC and he may be reached at 202-912-9255 ajshoraka@pmadivoryllc.com.