

MARTIN & ASSOCIATES

Relationship and Organizational Strategic Consulting

Foreign / Domestic Business, Government Contracting

Licensing, Joint-Ventures, Business Contracts, Terms & Conditions

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How to Successfully Do Business with the US Government A Primer

I. SUCCESS PREREQUISITES

- A. **COMMITMENT:** The single most important requirement to engage in successfully doing business with the US Government (or any other government or government prime contractor, for that matter) is commitment to the process and persistence in executing the process. Doing business with any government is easy so long as you understand that they make the rules and you have to follow them.
1. **RESOURCES:** Dealing with a government agency is not a “casual” or part-time matter. Budgets (i.e. dollars and people’s time) must be established before any serious work is begun to provide a realistic basis for the company’s expectations. There is a learning curve associated in learning the vocabulary, approach, procedures, and requirements of the government. To establish a realistic budget and schedule, the following factors should be considered:
 - a. Engineered product vs. off-the-shelf commodity product;
 - b. Employee committed to government business vs. consultant;
 - c. Train existing employee vs. hiring new employee w/ government experience;
 - d. Project (i.e. one large contract) vs. on-going government business;
 - e. Accounting and HR systems in place to deal with government requirements; and,
 - f. Acceptability of government terms and conditions.
 2. **PARTICIPATION:** Successful contracting with a government agency requires the active participation of an executive-level manager who has:
 - a. Ability to commit budget & provide resources;
 - b. Ability to coordinate intra- and inter- department efforts;
 - c. Ability to resolve conflicts;
 - d. Ability to provide incentives and rewards/recognition for success; and,
 - e. Ability (and desire) to deal with high-level government officials.

3. **SPECIFIC ASSIGNMENTS:** Personnel must be given, and willing to make, long-term assignments to pursue and exploit government business and to accomplish:
 - a. Training reinforced by experience over time;
 - b. Professional development by membership in professional societies;
 - c. Network contacts within government agencies; and,
 - d. Exercise responsibilities, authorities, accountabilities.

B. **SETTING GOALS:** Realistic goals (i.e. proposals made, contracts awarded, dollar amount shipped and invoiced) over time (usually in one year increments) must be made to provide the basis for measurable metrics to stay on track and to be able to report progress to sponsoring management and the company's leadership. Prepare by accomplishing:

1. Research information related government contracts by attending briefings and trade shows;
2. Become familiar with various government web sites and support organizations;
3. Prepare a business plan for Government Business which includes an operating budget; and,
4. Subject the budget to a realistic third-party review (i.e. consultant, SBDC, Regional SBA, peer company, etc.).

II. **GETTING STARTED**

A. **Staffing / Training:** There is no "casual way" to deal with any government agency; to be successful, there is only the government's way of doing things. Understanding details, conforming to procedures and processes, and utilizing proper presentation formats are vital to gain acceptance by government personnel and to perform successfully after a contract is earned. Staff must learn the government way of doing business in a positive manner (i.e. not as a point of complaining, but as a point of understanding).

1. Based on budgetary considerations and the size of present staff, either hire an experienced government sales or contract administration person; or,
2. Develop in-house talent as a potential promotion by training, seminars, and professional membership.
 - a. SBDCs (Small Business Development Center) offer training in how to market to the US Government as well as courses on contract administration and government terms and conditions. These courses are usually free or nominally priced and the hand-out materials are uniformly outstanding.
 - i. <http://www.sba.gov/about-offices-content/1/700> for general policy
 - ii. <http://www.pasbde.org/> for complete listing of SBDC centers in US
 - iii. <http://www.sba.gov/sba-learning-center#> an excellent source of information

- b. Regional SBA (Small Business Administration) offices offer excellent advice and assistance to small businesses, particularly those seeking set-aside status (i.e. women-owned, minority-owned, veteran-owned, etc.)
 - i. <http://www.sba.gov/> (click on “Local Assistance” to find the offices nearest you)
- c. NCMA (National Contracts Management Association) is an exceptionally well-known and highly respected professional organization for training, professional certification, and peer recognition. It is equally recognized by government and contractor employees and is an accepted route to recognition in government contracting circles. Membership by its employees is a significant benefit for companies wanting to be taken seriously as government contractors.
 - i. <http://www.ncmahq.org/> for membership and national headquarters resources
- d. PRIME CONTRACTOR SMALL BUSINESS TRAINING COURSES through the Prime Contractor’s Small Business Advocate program is an often overlooked, mostly free, source of information and introductions to key buying personnel. Beginning a company’s government business experience as a vendor or subcontractor is a time-honored way of breaking into the business. Prime Contractors are required, by law, to spend a certain percentage of their government contract purchases with small or minority businesses as a form of set-aside.
 - i. <http://defense.about.com/od/contractopps/a/Federal-Government-Small-Business-Set-Aside-Programs.htm> to find out specific information on the set-aside programs
 - ii. <http://www.sba.gov/content/sub-net> for a listing of sub-contracting with Prime Contractor opportunities & general procedures/resources.
- e. CONSULTANT COACHING by a consulting firm experienced in government business will accelerate the process of training the designated government business employee. There are many highly qualified government consulting and coaching firms that are in the Washington DC area that operate through webinars and Internet support; however, they often are expensive and not focused on training the employee but rather on getting the assignment to do the work on a contract basis. There are often local consultants, such as MARTIN & ASSOCIATES, who can be found through NCMA chapters or through the local SBDC who can assist the designated government business employee learn in a “hands-on” manner and who will be available locally for follow-up problem solving and further coaching.

B. Selecting the Agency/Product:

- 1. Research the market for your technology, processes, products, or services to make sure that there is a “fit” between what you do and what the government purchases. This is one of the benefits of making contact with a local SBDC organization or with a local government business consultant early in your government business search since they already have access to government data bases and have experience in using them to answer client questions. Various sources (free to the public) are as listed below. Using typical search methods will lead to other useful web sites based on your specific interest.

- a. The best resource in the beginning will be FedBizOps (<https://www.fbo.gov/>) which lists pretty nearly every procurement over \$25,000 and allows you to obtain reports on prior business placements by government schedule or code.
 - b. The General Services Administration (i.e. “GSA”) is also a very good source of information about what the government is buying and who it bought from in the past. The GSA Portal is <http://www.gsa.gov/portal/content/105221> . Keep in mind that most government contracts will end up being public information and available to anyone skilled in using government search engines.
 - c. A general listing of contacts throughout the US Government (called the government “jump-start” site) that allows you to drill down to any government agency to find specific functions and to find the name and title of contact persons with addresses, and, in many cases, e-mail addresses (<http://www.thecre.com/fedlaw/legal25/procref.htm>) can be very helpful, but is time-consuming to use.
 - d. There are several organizations that market commodity type products to military agencies that offer a very good way to make an entry into government business indirectly to make sure that the Company’s products are needed. This approach can be so successful as to preclude direct sales by the company – particularly in the area of consumer goods.
 - i. AAFES (Army Air Force Exchange Service); or,
 - ii. U.S. Patriot (a veteran-owned distributor); and,
 - iii. NXCOCOM (Navy Exchange Service Command).
2. Once a branch of the government having a need for your technology, products, services, or processes has been located, make every effort to contact personnel at that agency, whether it is by e-mail, letter, or phone call. Here again, an SBDC or industry consultant can be a big help in setting up contacts at a specific agency. In conjunction with these contacts, pursue attending seminars, trade shows that are either sponsored by, or attended by, the “target” government agency. There is no better way to get “inside” information than by meeting someone at a seminar or trade show who has an interest in whatever it is that your company does. Another great benefit of making a personal contact, you then have access to an “insider” who can help you through the many pitfalls that await a first-time government sales person or contract administrator.
 3. Research and Development projects are usually best handled by locating an appropriate Small Business Innovative Research (“SBIR”) request for proposal that is specifically focused on your technical area of interest. There is an abundance of source materials and consulting services aimed at locating and proposing on SBIR projects. These projects are very competitive and demanding, but the results for being successful in an SBIR sponsored technology project are normally very positive.
 - a. A great starting point for SBIR projects is: <http://www.sbir.gov/>.
 - b. The GSA Portal site is also a good starting point: <http://www.gsa.gov/portal/content/105221>

- c. In Pennsylvania (and possibly in other states there may be similar programs) be sure to visit www.innovationpartnership.net which provides a free mini-review of your proposal to make sure you do not make any obvious errors which might disqualify you. In certain instances, it may offer a small grant to fund use of a qualified consultant to help with the drafting of your proposal. A contact well-worth making.
 - d. Another source of government funding to assist companies move technology out of the Research and Development arena into the commercial marketplace is (oddly enough) in the US Department of Agriculture, Rural Development Branch, which directly funds and also guarantees bank loans for infrastructure projects and guarantees commercialization and manufacturing start-up projects but which are limited to job creation in “rural” areas, as defined by the US Census Bureau and USDA criteria (<http://www.rurdev.usda.gov/Home.html>). Proposals to the USDA almost always require some professional assistance in preparation and proper submission.
4. Production and commodity requirements are usually discovered by searching the SBA web site or by direct contact with the prospective government using agency. To participate in any government performance contract, you must be familiar with government terms and conditions. In addition to the training/education web sites mentioned above, a summary discussion of the key areas follows.
- a. “Rights In Data” clauses are vital to be understood before disclosing any proprietary or confidential technology that is not patented. All can be “lost” by a single inappropriate disclosure. The good news is that the US Government is actually one of the most conscientious and successful protectors of proprietary data if the vendor makes use of the government regulations regarding such disclosures.
 - b. Government contract clauses are, for the most part, self-explanatory and not difficult to understand, but never should be accepted on the basis of the title alone. Contract clauses are constantly being updated, changed, and revised so it is mandatory that every single page of a government contract be carefully read! They are among the most “lawyered” clauses in the world and are binding in most cases whether or not you read them or understood them. Here again, an SBDC contact or a government business consultant may prove helpful and/or vital. It may be helpful to refer to the author’s other white paper: “Reviewing & Accepting Terms,” shown on the web site <http://www.martingilliganconsulting.com> under the “What’s New” tab.
 - c. Prior to bidding on a government Request For Proposal (“RFP”) or Request For Quote (“RFQ”) or Invitation To Bid (“IFB”) you should understand the implications of each type of bidding method and should have a contract administration function in place to deal with government terms if awarded the contract.
 - i. The definitions for RFP, RFQ, and IFB are not interchangeable. An RFP usually addresses the specific design of a product or process to meet a specification which is negotiable as to price and delivery, whereas an RFQ addresses quoting on an existing or replacement product and has very limited negotiable aspects. An IFB is often a sealed bid which will be awarded to the low-bidder under specific project terms. An excellent discussion of these terms can be found on various SBDC web sites or at: <http://www.querycat.com/question/89da50085a777f5ea6ede1ae0bf36a76>; or at: [http://en.wikipedia.org/wiki/Proposal_\(business\)](http://en.wikipedia.org/wiki/Proposal_(business)).

- ii. You also should have a proprietary rights policy in place at your company for engineered or customized products or for proprietary technologies or proprietary processes. Technologies that are not protected by patents or copyrights on a global basis can be vulnerable to being misappropriated if not protected by proper disclosure methods. Proprietary technology or data can be in the form of know-how and/or Trade Secrets (as defined by the Uniform Trade Secrets Act) for production processes, designs, software, materials, vendor sources, customer lists, etc.. A good overview discussion can be found at: http://en.wikipedia.org/wiki/Trade_secret; or, http://www.law.cornell.edu/wex/trade_secret .
- iii. Patents, Copyrights, and registered Trade Marks are best protected with the help of a qualified Intellectual Property (“IP”) attorney or consultant (see the US Patent & Trademark Office web site at: <http://www.uspto.gov/>), especially when dealing with Prime Contractors who are bidding on, or have received, a government contract. This is a significant area of contracting law and very large sums of money (both in terms of legal expense and loss of profit due to loss of IP rights) can be at risk if done incorrectly.
- iv. Understand and make effective use of the relatively new concept of “Commercial Off-The-Shelf (i.e. “COTS”) product designation in selling to government agencies and/or Prime Contractors (<http://www.gsa.gov/portal/category/100000> or at http://en.wikipedia.org/wiki/Commercial_off-the-shelf). If qualified as providing COTS products or services, you may be able to avoid many onerous provisions of government contracting. In short a COTS product is one which is being manufactured and sold into the commercial/industrial market and which has the same configuration (i.e. size, performance, specification, weight, etc.) as is the product required by the government.

III. **SUCCESSFUL CONTRACT ADMINISTRATION – STAYING THE COURSE** As stated earlier, persistence and resolute competence are the two most important traits to successfully (i.e. profitably) deal with government contracts at any level. The general roles a vendor may play are outlined below.

A. **Subcontracting:** As mentioned earlier, unless your technology/products/processes are both proprietary and recognized as outstanding, your chances of success in government business are greatly enhanced if you can gain the “nuts-&-bolts” experience as a subcontractor by dealing with the flow-down requirements of a Prime Contractor. The SBA manager within each Prime Contractor will be helpful in obtaining training, understanding requirements, helping resolve performance difficulties and other mundane tasks. The SBDC and NCMA organizations have courses and materials that are prepared by experts and which address the administrative side of government contracts, plus there are many government business consultants available to help the earnest subcontractor.

1. Subcontracts are generally smaller and more restricted in scope than Prime Contracts and, therefore, tend to carry less risk in the event that performance or administrative difficulties are encountered, especially if your Prime Contractor perceives you as being an “expert” or a good source of competition, product quality, and on-time delivery.
2. Government contracting, generally speaking, has as an over-riding objective of on-time delivery; especially since many government programs are plagued by specification changes and technology

interruptions. All things being equal, cost and technical performance problems will be more susceptible to negotiation than delivery problems.

3. Subcontracts will normally be of the Firm Fixed Price variety where the total risk of non-performance falls on the Subcontractor. This is why terms, specifications, schedules, and costs must be carefully examined during the proposal phase. Better to lose the contract than to lose your proverbial shirt!
 - a. The mantra of government contracting is document, document, document – and do it on a timely basis, not after the fact, especially if there is a problem that has been caused (even indirectly) by the Prime Contractor and/or the government.
 - b. Read, know, and enforce the Prime Contractor’s terms “against” the Prime Contractor by knowing them better than your Prime Contractor or Government buyer or engineer contact. Due to the difference in organization structure, the Subcontractor normally should have the timing and reaction advantage in dealing with problems but that advantage can only be taken prospectively, not in hindsight.
 - c. Take advantage of every Prime Contractor status briefing and technical seminar to understand and grasp the government market that you are interested in and to set up your eventual entry into dealing directly with government buyers/engineers in that or a supporting market.

B. Prime Contracting: Making the leap into dealing directly with the government as a Prime Contractor is both simple and complicated. Know your company’s capabilities and its ability to comfortably “fit” in the government contracting environment. This is where some prior experience as a Subcontractor will be very helpful. In being a successful Prime Contractor, size is not the determinant – knowledge and experience is. The ability to know what to pursue and what to ignore and what to dispute/negotiate will, more often than not, affect the outcome (i.e. profitability) of your government business more than anything else. A small business may be able to get waivers or changes to requirements in the specifications, contract terms, or applicability of government regulations that are not available to large companies. Generally speaking, you can only take advantage of that ability at the front-end of the contract negotiation and award process or during the performance process. After that, it becomes a default explanation issue.

1. To become a Prime Contractor, you must obtain a DUN’s number (<http://fedgov.dnb.com/webform>) and then register your company with the System For Award Management (“SAM”), previously known as Central Contractor Registration (“CCR”), with details and registration available at: <https://www.uscontractorregistration.com/>. Your SAM registration will conclude with an ORCA registration (On-Line Representations and Certification Application) where you, in effect, make all of the representations and certifications required to get a government contract.
2. Commodity (COTS) products or services generally lend themselves to a GSA Schedule Contract. See <http://www.gsa.gov/portal/category/100000> for detailed guidance. The various links included on the GSA site, especially <http://www.gsa.gov/portal/content/105347>, “Getting Started with GSA,” are excellent and include detailed instructions about obtaining encrypted signature certificates and various training programs. Almost all GSA sales are conducted through the GSA Advantage web site https://vsc.gsa.gov/sipuser/startup_kit.cfm .

3. There have been great improvements in dealing with the government through internet resources; but because of the number of companies seeking government business through GSA has dramatically increased the last several years, the lead time to obtain a GSA Schedule Contract has increased from several months to 6-8 months to a year or more in some cases.

C. **Audits & Reviews:** One of the burdens that accompanies obtaining a government prime contract is the potential of being audited or reviewed during the proposal, performance, or close-out cycles associated with government contracts. Such audits normally will be concerned with direct and indirect (overhead) bid rates, compliance with pricing and employment regulations, and other administrative facets of the government contracts (another reason to carefully read every page before you sign). This is an area where expert help is mandatory and you should make sure that your CPA or Consultant is well-versed in Government Accounting practices and requirements.

D. **Follow-On Contracts:** The best way to capture follow-on business from the government is to have a great track record of performance and compliance with applicable regulations. Performance counts in dealing with the government – especially in terms of on-time delivery. Obviously, the service/product must do what it is promised to do (notice, I said “promised” not “expected”). The key is to perform against your contract (by knowing what you are required to do) and to make increased expectations (on the part of the Government) the subject of a changes proposal or to be used in a documented trade-off against something that is of value to you.

1. At the completion of a successful prime contract, be sure to involve your local Federal Representative so that there is an awareness on his/her part about your success and the number of people you employ. This can become an invaluable asset when bidding on follow-on contracts or new contracts. Strong support from your local Representative never hurts.
2. If you are unsuccessful in bidding a Federal contract requirement, always ask for a debriefing so that you know how it was scored and why you did not get the award. Unless it is a sealed bid, most agencies will willingly give you such feedback (not including non-public pricing information, of course) and in many cases you have the right to such a debriefing.