

Contracts Management - Overview

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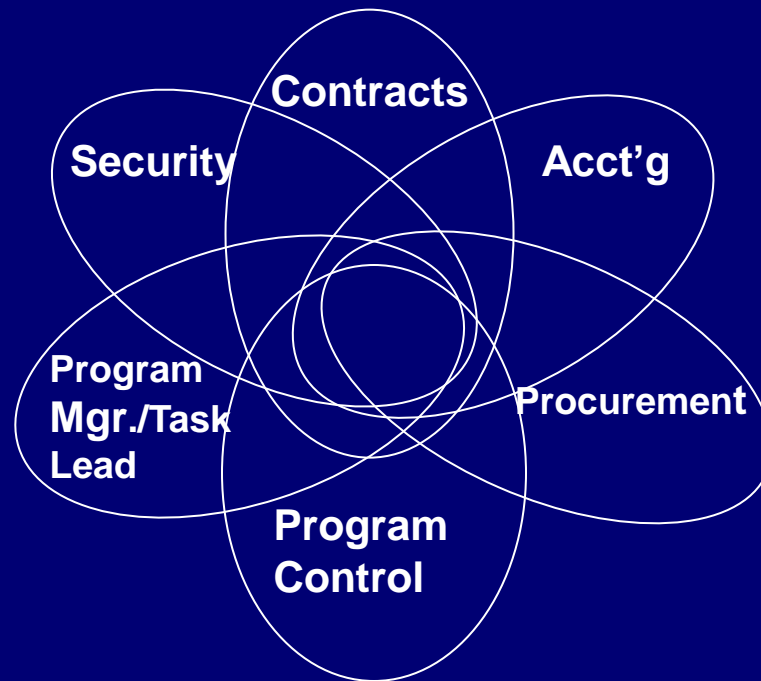


Contracts Management from an Industry Point of View

- Contract Managers often perform numerous roles with their organization.
- Large Business vs Small Business
Contract Management expectations may differ.

Industry Internal Relationships

Contract Administrator or Business Manager?



Contracts Administrator, Business Manager or Risk Manager?

- RFP – Review and Bid or No-Bid Decisions
- Proposal – Strategy (Completion of Volumes i.e., Contracts, Cost, Exec. Summary, Past Performance etc.)
- Contract Negotiation
- Financial Management
- Risk Assessment
- Contract Administration
- Contract Close-Out
- Teacher/Mentor

A Communication Must!

Silence is NEVER the answer!!!

Establish clear lines of communication among your entity, your customer and your subcontractors/vendors.

Business Development (Industry Perspective) – Risk Planning & Assessment

- Conferences
- Networking
- Presentations to potential teammates (Both Prime and Subcontractors)
- Non-Disclosure Agreements and Teaming Agreements
- FOIA Request

Request for Proposals (RFP) /Solicitations

- Contracts Administrators/Managers should....
 - Fully review all RFP's before Bid or No-Bid Decisions are made
 - Is there an Organizational Conflict of Interest? ...Actual, potential or perceived?
 - If there is an OCI issue, can you mitigate? If so, discuss possible mitigation plans
 - Analyze availability of Bid and Proposal Resources (Financial and Human Resources)
 - How will company be affected by win? By loss?
 - Analysis of Solicitation
 - Do you "fit" under the NAICS code
 - Participate in building a Competitive Analysis Report
 - Co-ordinate with Procurement for issuance of RFPs to Subcontractors and Vendors
- Challenges: time constraints, man-power available to compile response

Proposals & Risk Management

- Contract Administrators may also be responsible for ...
 - RFP Compliance Matrix
 - Color Team Reviews
 - Working with Executive Management, Business Development, Program Manager and Subcontract Administrator to establish Small Business Subcontracting Plan or Small Business Participation Plan
 - Input in Technical (Functional Approach), Executive Summary, and Past Performance Volumes of Proposal Response
 - Completion of Contract Volumes and Cost Volumes
 - Oral Presentations
 - OCI Plan and Resolution (Mitigation) Plans
 - Insurance Requirements (Cybersecurity, etc.)

Contract Negotiation

- Contracts Administrators should set or assist in setting the Company's Agenda before contract negotiation begins.
 - Establish Negotiation Team Lead
 - Establish Negotiation Strategy
 - Establish Negotiation Tactics
 - What terms and conditions must the company have in the contract to be successful?
 - What fee percentage can the company live with?
 - What are obligations to the stakeholders?



Contract Administrators as Financial/Risk Managers

- Review contract types and revenue formulas by project/contract is critical to success of company
- Contract Administrators work in conjunction with Finance/Accounting Departments to review revenue recognition
- Job costing – is cost being tracked correctly for each project?
- FAR Part 31, Contract Cost Principles and Procedures
- Upcoming RFP's: estimate time and dollars required to participate in solicitation.
 - Are the funding and manpower required available?
 - How will the effort effect completion of contracts in-house?
- How will a new contract win affect the company?
- DCAA and DCMA liaison

Contract Administration (Seller)

- Enforce the contractual document within the context of the FAR, laws and statutes
- Compliance with Agency FAR supplements
- General Services Administration Regulations
- Small Business Administration Regulations
- UCC Compliance
- Work with Program Managers to ensure successful performance of contract requirements to include deliverables
- Establish and Maintain Internal Performance Measurements



Contract Administration

- Terms and Conditions of Contracts, Special Contract Clauses, etc.
- Modifications
- Incremental Funding
- Limitation of Funds and Limitation of Cost Notices
- Reports: Financial, Property, Patent/New Technology, etc.
- Invoicing and Payments
- Contract Briefs

Facets of Contract Administration

- Subcontract Administration including, Negotiation of Subcontract Agreements, Contractor Purchasing System Review, Sole Source Justifications etc.
- Purchasing
- Forecasting/Budgeting
- Export Control/Technology Transfer issues or questions

FAR 1.102 The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives.

Contract Administration

- Government Property
- Troubleshooting problems/issues during performance of contract.
- Profit/Fee Analysis
- Self-Assessment/Performance Evaluations
- At Risk Decisions



Contract Close-Out

- Close-Out of Subcontracts and Consulting Agreements
- Final Review of revenue calculations and invoices
- Close-Out Documentation Completion
 - Release of Claims
 - DD250, DD 882 and DD 1662
 - Completion of Final Invoices
 - Are Quick Close-Out Agreements applicable? If not, have final indirect rates been audited?

Contract Management Take- Aways

- Comminate, Communicate, Communicate!
- Build a strong relationship with your customer.
- Read the entire RFP & Contract, review all referenced clauses in full text.
- Make sure the contract deliverables are fully understood by your entire team.
- Confirm customer's "intent".
- Ask questions.
- Be a Contracts Manager regardless of your title.

Subcontract Administration

FAR 44.101 - Subcontracting Policies and Procedures; Definitions

“**Subcontract**” means any contract as defined in subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“**Subcontractor**” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Subcontract Administration

Subpart 44.2 - Consent to Subcontracts

- If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified in the subcontracts clause of the contract.
 - Typically required when to protect the Government adequately because of the subcontract type, complexity, or because the subcontract needs special surveillance
- If the contractor does NOT have an approved purchasing system, consent to subcontract is required for cost-reimbursement, T&M, labor-hour, letter contracts, and unpriced actions that exceed the simplified acquisition threshold, for:
 - Cost-reimbursement, T&M, or labor-hour subcontracts; and
 - Fixed-price subcontracts that exceed the greater of the simplified acquisition threshold or 5% of the total estimated cost of the contract (for DoD, Coast Guard, and NASA)

Subcontract Administration

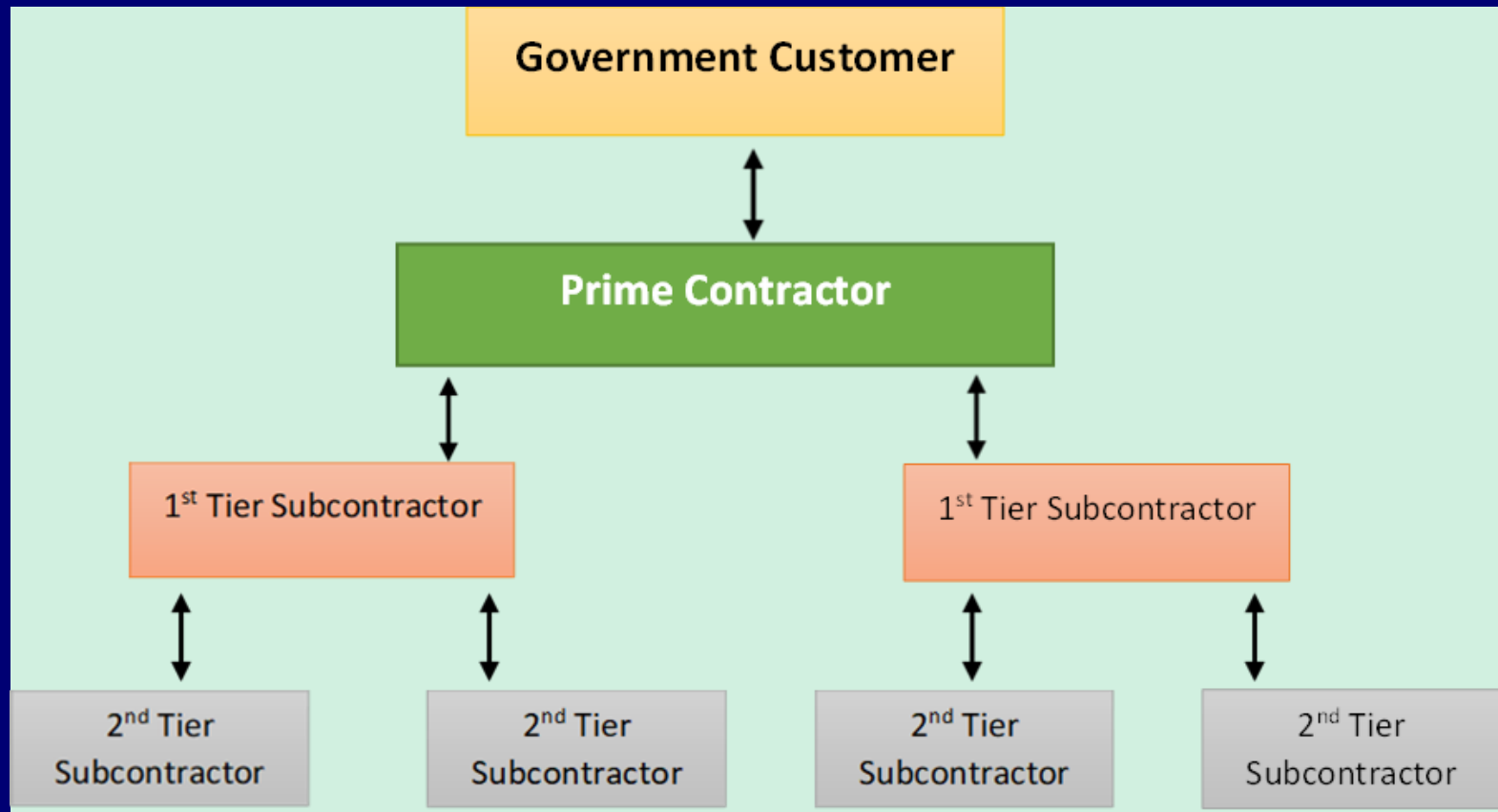
- Risk Mitigation
 - Government transfers risk to prime contractor
 - Prime contractor transfers risk to its subcontractors
 - 1st tier subcontractors transfer risk to lower tier subcontractors
 - And so on.....

Subcontract Administration

- Privity of Contract
 - Principle that contracts should not give rights or obligations to entities other than those who are parties to the contract
 - Doctrine derives from common law
- Subcontractors have no privity to deal directly with the Government
 - Parallel terms in prime/subcontract that are largely dictated by the Government do not effect privity

Subcontract Administration

Privity of Contract



Subcontract Administration

- Policies & Procedures
 - Contractors should implement policies and procedures to successfully manage their subcontractors
 - Key Features
 - Written policies/manuals
 - Subcontract Management Plan
 - Contractor Procurement System
 - Small Business Subcontracting Plan
 - Training on Subcontract Administration
- Have a system in place, and follow it!

Subcontract Administration

- Competition in Subcontracting
 - FAR 52.244-5 requires the contractor to select subcontractors (including suppliers) on a competitive basis to the maximum practical extent.
 - Adequate competition helps to ensure that “fair and reasonable” pricing is achieved.

Subcontract Administration

- Subcontractor Selection Criteria

Criteria	Key Considerations
Responsibility	Compliance with laws & regulations
Past Performance	Quality services and/or products
Technical Capability	Skills and equipment
Financial	Stable financial status
Price	Best value
Diversity Status	Large business or certified in a designated diversity category

Subcontract Administration

- **Methods to Ensure Compliance**
 - Due diligence
 - Standard templates and Terms & Conditions (Ts & Cs)
 - Subcontract compliance checklist and review process
 - Legal review
 - Management review and approval process
 - Training
 - “Compliance with law” clause

Subcontract Administration

- Negotiating Subcontracts
 - Start the process early
 - As early as possible while “honeymoon” atmosphere exists
 - After the teaming agreement is executed
 - Complete negotiations prior to commencement of work
 - Know when to take exception
 - It is sometimes better not to have fought, than to have fought and lost.
 - Is a particular clause a “deal breaker”?

Subcontract Administration

- Negotiating Subcontracts (continued)
 - Object only to clauses that can be deleted or changed
 - Some flowdown clauses are “mandatory” or “necessary”
 - “Mandatory” clauses are required by law
 - “Necessary” clauses are required to enable a prime contractor to fulfill its obligations to the Government customer
 - Contractor should always flow down termination for default (T4D) and termination for convenience (T4C) clauses. They may be tailored to give the Contractor the right to terminate its subcontractor(s) independent of Government rights.

Subcontract Administration

- Internal Negotiation Controls
 - Identify authorized negotiators
 - Maintain detailed negotiation records
 - Contemporaneous records may be heavily persuasive in litigation
 - People leave, memories fade – but written records are invaluable
 - Keep records where they can be reasonably retrieved, even after closeout

Subcontract Administration

- Impacts of Subcontractor's Performance
 - Subcontractors can affect the contractor's past performance rating, including:
 - Quality or product
 - Quality of service
 - Schedule
 - Cost control
 - Business relationship
 - Management of key personnel

Subcontract Administration

- Take-aways

- Read and understand the top-level requirements from the Government customer
- Identify what should be flowed down to subcontractors to ensure compliance and mitigate risk
- Follow your company's written policies and procedures
- Communicate clearly and regularly with your subcontractors
- DOCUMENT! DOCUMENT! DOCUMENT!!!!

Communication

Silence is NEVER the answer!!!

Risk Mitigation

- To some extent, every decision made while managing a contractual effort involves risks.
- Ways to Help Mitigate Risk
 - Knowledge of your profession
 - Professional Networking
 - Mentors
 - Continuing Education

Points of Contact info

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National Contract Management Association

NCMA National website:

www.ncmahq.org

NCMA Huntsville Chapter website:

www.ncmahsv.org

The Society of Research Administrators-
International (SRAI)

<https://www.srainternational.org/home>