Subcontracting Challenges

An Executive Q&A with Barbara Doherty

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Introduction

Doing business with the federal government requires a unique skillset. It not only necessitates a thorough understanding of complex regulations and demonstrable program performance, but also pure grit to navigate the crowded landscape of companies vying for the billions of dollars of addressable opportunity. Subcontracting under a prime contractor is one way that small businesses can grow in the market, building experience and positioning themselves with less financial risk. However, subcontracting, either as the prime or the subcontractor, does not come without its own set of challenges.

In this Expert Q&A, Barbara Doherty, a former government contracting officer and current vice president of contracts and procurement at Akima, shares her insights on how subs and primes can build successful, long-term relationships to deliver increased value to their government customers.

Let's start by looking at what's going on in the industry. What are some of the key issues or trends you see today that are impacting both prime and subcontractors working with the federal government?

The two biggest trends I see impacting government contractors today–no matter their size–are 1) The Buy American Act; and 2) Changes that are coming as it relates to our nation's supply chain.

In late January 2021, President Biden signed an executive order strengthening the rules outlined by the Buy American Act. Passed by Congress in 1933, the Buy American Act created a national preference for the government to procure only domestic materials used for public construction unless a waiver had been granted. Goods or products were qualified as being domestic when they were 100% manufactured in the United States with at least 50% domestic content. However, the act had several ambiguities depending on the material, the amount of the purchase, and what qualifies as "American made." Biden's executive order makes things much clearer. It updates how domestic content is defined and measured, as well as increases the required threshold. The order also creates a new senior position at the Office of Management and Budget (OMB) responsible for overseeing the waiver process with a goal of reducing the overall number of future waivers that are granted.

The second key trend impacting contractors is the government's desire to increase the efficiency, integrity, and security of our nation's supply chain. By definition, a supply chain is "the sequence of processes involved in the production and distribution of a commodity." However, it is a little more complex than simply getting materials from point A to point B. Commercial businesses operating supply chains select their distribution facilities based on several key demographic factors, often leveraging just-in-time delivery to drive down costs and increase productivity. However, the way in which the government procures goods is quite different and affects all tiers of the supply chain. Agencies typically outline the how, what, and where of the buying for their contractor partners—but things don't always go as planned. Take the global pandemic for instance: When the pandemic hit, manufacturers were temporarily forced to shut down their operations and the impacts to the supply chain were far reaching.

Government buyers and contractors alike were left scrambling, not only to obtain products, but also to maintain government compliance in pursuit of those products. And it's not just pandemics we need to prepare for. There are increasing biological threats, cyber attacks, geopolitical competition, and extreme weather events that can severely impact the availability and integrity of goods and services if steps aren't taken to improve resiliency in the near- and long-term. The government is taking a serious look at this, and President Biden signed an executive order in February 2021 establishing a 100-day review of America's supply chain. The review will take an in depth look at our supply chain's risks, vulnerabilities, preparedness, and more. The result of that report, I'm sure, will bring about sweeping changes that contractors must be prepared for—both in terms of investments they will be required to make, as well as the overall way in which they do business.

Two other notable items related to the supply chain that primes and subs should read up on sooner rather than later, are the new cybersecurity requirements known as the Cyber Maturity Model Certification (CMMC) and restrictions on the use of products made by Huawei and others as required by Section 889(a)(1)(B) of the 2019 National Defense Authorization Act (NDAA). In the very near future, companies will be required to demonstrate continuous cyber and supply chain security as a core component of their operations.

Akima is already taking steps to prepare for these significant changes—and I recommend subcontractors do the same if they want to remain competitive.

What are some of the most common challenges you see related to subcontracting?

One of the things that any responsible prime contractor must do is create a program plan. That plan should include not only how to win the work, but also a realistic plan for operations once the work is won. If you look at PMP training from the Project Management Institute (or any other market guidelines really) there is always a big section on resource management. Vendors and subcontractors are an important part of that resource management. Sure, you have the labor you'll deliver, but you also need to manage the resources and personnel you will bring in from subcontractors and other vendors. It is critical that your program plan clearly articulates how success will be determined during performance so that you are spending wisely and getting a good return to hand off to the government. So, when thinking about this, there are several key areas that often break down between primes and subs.

Price Analysis & Rates

When working on a bid, primes often come up with a rate ceiling or "target" rate passed down to the sub. But that rate doesn't always take into consideration all key factors and jeopardizes the sub's ability to arrive at its price independently. Is the prime being too aggressive in their solutioning? Not aggressive enough?

Does the sub bring a solution to the table that might justify higher (or lower) rates? I strongly encourage collaboration on pricing between the prime and the sub from the start. That way both parties go into the solutioning with their eyes wide open, developing their prices appropriately and adequately justifying their pricing to the end customer. A good price volume within a proposal should do more than just outline rates. It should sell the methodology behind those rates. It is an opportunity to tell not only how you established your indirect costs, but also why the way you've structured the pricing for the work is better than anybody else's solution. Contractors must sell their "best value"—the sub must sell it to the prime, and in turn, the prime must sell it to the government. While the government is moving away from Lowest Price Technically Acceptable (LPTA), many procurements have a technically acceptable review and then a pricing review where the best value is often determined to be the lowest price. However, if we can demonstrate pricing that has mitigated all risk, and the proposal is a market leading, solidly built offering (almost like a technical narrative but for pricing), the contracting officer has the information they need to perform a technical trade-off and can see the true business value of the offer.

Another important point regarding subcontracting is subs must show value above and beyond incumbency or small business credits. Subs need to talk about what their value is as a team member and how the team is in the best interest of the government. For example, if the sub is recognized in the market for site support services but can also deliver IT infrastructure as part of the solution to the customer, incorporating those details will give the customer additional information if they so choose. Pricing and the value chain of the sub is also important. The prime is required to document the use of its subs, particularly in a non-competitive environment. We, as an industry, do not do a good job of selling team value to the government.

Flow Down of Terms & Conditions

For the most part, flow downs are straight forward and clearly identified in the FAR and agency requirements. However, where primes and subs may have a concern, is when flowdowns are omitted either accidentally or because they were determined to be not applicable, when in fact they are.

Frequently, it seems easier to cut and paste flowdowns from the prime agreement to the sub agreement, but that isn't a best practice. Why? Take 52.219-9 - Small Business Subcontracting Plan, for instance. Even when the prime is a small business, the clause should still be flowed down to the subcontractors because, if they are large and planning to subcontract to a lower tier, they must comply. Another example would be 52.222-6 - Construction Wage Rates, which should be flowed down even if the scope of subcontractor work does not include applicable tasks. In a construction effort or a contract for base operations, the possibility of work to move to Construction Wage Rate requirements is highly likely.

With all the advances in technology and artificial intelligence (AI), Akima is evaluating tools that would help sift through the thousands of clauses and identify the correct flow downs from prime to sub. The important take away is that if you fail to flow down a clause, the prime takes full responsibility for whatever the issue is and can be held accountable for the subs failure to comply. This is a key risk management and compliance factor.

Communication

Having open and honest communication between primes and subs cannot be understated. Internally most companies hold a Program Management Review (PMR) at standard intervals. Why not also set one up with subs, monthly or quarterly? We need those opportunities to review performance and operations as a team. Akima is doing what is called "operation readiness" for all our project kickoffs.

We go through and document what has changed, what hasn't, and anything else that we need to capture so that we can support change requests to get new items added, fix the baseline, and stay aligned with the customer. Primes should have regular reviews with their subcontractors to ensure that performance and processes remain aligned with the prime performance and processes. If we are not aligned, performance will be impacted, and the prime will be held accountable. It is important to have an someone in operations partnered with the Subcontract Manager to review performance and compliance. This person assists with acquisition strategy, basic administration (like funding), resource management, and reports, as well as flowing changes from the prime operations to the subcontractor. Operations oversight is key to successful team performance.

Supply Chain Issues

The best advice I can give for primes and subs is to plan, plan, and then plan again. Every time you add another tier, you lose direct oversight and privity of contract. And if something is delayed, it can have a ripple effect throughout the contract. As a sub, make sure you have a certified accounting system, certified purchasing system (if possible), and have proven ability to perform with strong Service Level Agreements (SLAs). Primes will be asking these questions and looking at how many times you met a certain SLA, and what your references say about your ability. It is very important to look at the full contract relationship and understand where your risks are as a subcontractor. What do you need to eventually prime or to use for past performance for the next contract?

What advice would you offer to companies looking to subcontract with larger companies to win new work?

The biggest piece of advice that I can offer to companies looking to team is to find a way for you to demonstrate your value early on.

I'll be honest: it can be challenging to be a sub. You have no privity of contract with the government which means much of the partnership with the client and management of the scope of work is out of your direct control. The subcontractor is at the "mercy" of the prime within certain boundaries. It is vital that you carve out a specific workstream for your business—more than just securing a few full-time employees on the contract. It will allow you to have documented past performance as well as adding base to your financial structure. You also need to be willing to directly address some of the typical challenges outlined earlier. Be responsive and a good communicator. Demonstrate expertise in key areas of the performance work statement (PWS). And most importantly, ensure your business is seen as more than a "check the box" by the prime for small business credits by fulfilling your responsibilities and offering more value as part of your services, if possible. If you can demonstrate that performance mindset with a proven product or service to sell, you can build a beautiful partnership—for both your teammate(s) and the end customer.

How does Akima approach subcontracting?

As an Alaska Native Corporation, Akima is comprised of more than three dozen companies that compete as small disadvantaged businesses. We also have the advantage that, regardless of our size in the NAICS code, we qualify as a small disadvantaged business when a subcontractor to a large business. That, coupled with our very diverse portfolio, makes us quite attractive as a partner. We deliver everything from facilities, maintenance, and repair services, to high end information technology and advanced systems engineering. But no matter whether we are teaming with a prime or looking for a sub to help us win new work, the number one thing to focus on is delivering increased value to the end customer and the mission.

To learn more about doing business with Akima, visit **WWW.AKIMA.COM**.