

Subcontractor Management

Written by Nick Sanders
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Here we go again: another blog article about managing subcontractors.

It's not like we haven't beaten this drum already, many times. We've asserted, over and over, that effective subcontractor management is the key to effective prime contractor performance. We've asserted, over and over, that the prime will be held responsible for contract execution, even if the cause of nonperformance is buried deep in the program supply chain. (For example:

[here](#)

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We've [reviewed](#) FAR 42.202(e)(2) and "plainly invalid" DCAA audit findings regarding its views on what a prime contractor's duties are with respect to its subcontractors. We've reviewed subcontractor risk management and [T&M misbilling](#) allegations and contract types. We've talked about this issue to death, and readers might justifiably be wondering *what the heck is there left to talk about*?

Well, let's try this one.

Let's say you are performing due diligence activities on a contractor, and you want to assess its management of its subcontractors. How would you go about making that assessment? What would you do? What areas would you examine?

1.

Source selection and award. Don't bother looking at "depth of competition"—which is a phrase created by CPSR reviewers that lacks substantive meaning. (Adequate competition and adequate price competition are terms already defined in the FAR. Either you have 'em or you don't. It's a pass/fail thing. Having more competition than you need to have isn't better, and it's often counterproductive.) But do look at the solicitations. Do they list clear evaluation criteria? Do bidders get a reasonable amount of time in which to respond? Are the same sources being sought each time, or is the contractor trying to find new sources? (If there are sole source justifications, do they look legitimate?) Also look at the amount of "lead time" the buyers get to evaluate bidders and to make an award. Is it reasonable, or is it so short that the people involved will rush through their procedures and make mistakes?

2.

Corruption. Don't forget to check to see if the same buyer makes an award to the same bidder, over and over. That's an indication that there may be more to the relationship than there should be.

3.

Subcontract type. Remember that the subcontract type has to be appropriate. If every subcontract is FFP, that's not necessarily a good thing, especially in a development environment. You can usually tell if the contract type was appropriate by looking at post-award change order activity. If you see a lot of activity, chances are it's because the wrong subcontract type was selected.

4.

Subcontractor business systems. Smart prime contractors know that the DFARS Business System Administration contract clause is not a mandatory flowdown clause. However, they also know that their subcontractors must have sufficient sophistication (in terms of business systems) to be able to comply with contract terms. If the Davis-Bacon Act or the Service Contract Act is involved, then subcontractors must be able to comply with those onerous rules. If a T&M subcontract is awarded, then the subcontractor must be able to bill labor hours accurately in the right labor categories. If a cost-type subcontract is awarded, then the subcontractor must be able to comply with FAR 52.216-7 ("Allowable Cost and Payment"). Smart subcontractors check these things before making an award; dumb ones don't. Check the subcontract file to see whether your due diligence target is smart or dumb.

5.

Subcontractor risk management. When things go south, more often than not a subcontractor was involved. Quality escapes that go undetected for too long, counterfeit electronic parts, failure to comply with contract terms. These are a few of our favorite things. (*Sorry, couldn't resist.*)

) The best prime contractors think about the risks ahead of time and then think about risk mitigation, and then they actually deploy their risk mitigation strategies. They budget for subcontractor risk mitigation because they know that it's cheaper in the long run to have risk mitigation that you didn't end up needing rather than experience hugely problematic subcontractor incidents that could have been avoided, had somebody done something proactively. Other prime contractors talk about saving pennies while

[risking the loss](#) of billions of dollars. Which one are you dealing with?

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6.

Subcontractor close-out. Many (most?) prime contractors don't think that subcontract close-out is part of subcontractor management. They think their job is over when the subcontractor makes its final delivery. They are *so*, *so* wrong about that. There is a ton of paperwork to execute, from patent/royalty certifications to property certifications to security certifications. For cost-type or incentive type or T&M type subcontracts, there is a final "true-up" of costs and fee to be made, often (but certainly not necessarily) based on a government audit report that is issued years later. Check the files for evidence that the contractor performs subcontract close-out as a *routine* part of its subcontract management activities. If you don't see what you're looking for, then chances are you will inherit a labor-intensive, very difficult, long-overdue task if you decide to acquire the company.

Just some thoughts about subcontractor management on this winter's morning. If you are performing due diligence, you may want to consider them.

And even if you are not performing due diligence—even if you are just a government contractor going about its business, managing its subcontractors—perhaps you may want to consider them as well.