



Bridging
PARTNERSHIPS
Small Business Symposium

April 15-16, 2015

TRAC-6600 Burden Blvd., Pasco, WA 99301-Tri-Cities, WA

Surviving & Succeeding on a Government Contract

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WITH THE GOVERNMENT, THE PROCESS IS ALMOST AS IMPORTANT AS THE PRODUCT

The Government wants the product delivered on time, within budget and meeting all technical requirements; however they also require that you meet all of the process requirements as well. The former is not enough to satisfy the Government client without the latter. How you are proceeding, that you meet all reporting requirements and give all required notices, i.e., completing all “paper work”, is critical to survival.



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BE SURE TO KNOW THE AUTHORITY OF THE INDIVIDUAL WITH WHOM YOU ARE DEALING

In the Government contracting world, all authority flows from the Contracting Officer. He or she is the only individual that can speak officially on behalf of the Government. The Contracting Officer may have authorized representatives for specific activities, but these delegations must be in writing and should be provided to you. It is not out of place to request these delegations early in the job and will protect you from being placed in a position of taking direction from an unauthorized individual during the contract. If you believe that work efforts are being directed by someone without authority, a letter, e-mail, visit to, or at a minimum, a telephone call to the Contracting Officer to confirm is good practice.



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VERY OPEN AND COMPLETE COMMUNICATION WITH THE GOVERNMENT IS ESSENTIAL

Remember that what the Government is not aware of can hurt you. Also, remember that most of the individuals that you are dealing with have to answer questions from their superiors about what you are accomplishing. If you communicate openly and completely, they are able to respond and look better and more efficient to these superiors. In relationship-building on the job, this can be a big plus. Often an alignment session early in the project is a good way to facilitate this communication.



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READ THE CONTRACT

Read and have a copy of the contract readily available. This is especially true of those portions that effect your performance. It is critical that you read and understand the contract requirements. The Government often has different or unusual technical requirements. Never assume that the “usual” way of accomplishing a task is what the contract requires or what the Government will accept. If you do, it is entirely possible that you will have to tear out work or correct performance to meet what the contract clearly requires. If you believe that there is a better way to accomplish the work, you MUST get the appropriate Change in the contract requirements.



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THE TERMS IN THE CONTRACT GOVERN

This single statement seems obvious on its face. However, what do you do if the contract says one thing and the Government personnel, even the Contracting Officer, does or says something else; especially if it is more advantageous to you? Though it might be easier to simply be quiet, it is not the right course of action. Past practice and precedent cannot change the terms of the contract. Reviews conducted by the Defense Contract Audit Agency, Inspector General, or Government Accountability Office may find that the actions were in violation of the contract or, worse yet, the law. What you thought was a “done deal” might come back to haunt you.



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WHAT YOU SEE MAY NOT BE ALL YOU GET

Getting more than you expected is not always good if it relates to Government requirements; then again, it could be. Certain Government clauses and statutory requirements will be read into a contract, even if not physically included or incorporated by reference. Under the “Christian Doctrine” (G. L. Christian & Assoc. v U.S.), a mandatory contract clause that expresses a significant or deeply ingrained strand of public procurement policy is considered to be included in a contract by operation of law. Prime contractors, should not presume that the clause will be read into subcontracts; however, recent case law, (*UPMC BRADDOCK v. Seth D. HARRIS, Acting Secretary, United States Department of Labor*), may change that position .



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DOCUMENTATION IS CRITICAL TO SATISFYING THE GOVERNMENT REQUIREMENTS

Performance and actions can be open for review for many years after contract completion as well as during execution; thus it is essential that you document all required activities and critical conditions. A multitude of reports and forms will be required, such as daily reports, inspection reports, QC reports, etc. Though at times these may seem redundant and a waste of time, they are critical to create the proper record of how you performed, conditions on the job, and other critical facts. These documents are the official record and must be completed accurately. If a daily report says nothing happened on a given day that might be the basis for a Change, it is difficult to say later that there was such an event.

IF YOU CANNOT COPY IT, IT DOES NOT EXIST

In the Government marketplace, documentation is critical. “Handshake” agreements are a beginning, but they must be confirmed in writing if they are to have value. While a confirming e-mail or letter is of value, make sure that you have proof that it was received by the other party. Better yet, have the person with authority from the Government sign their acknowledgement of receipt and agreement. If they will not at least sign that document, you know that there is a problem.



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WHAT YOU PUT INTO WRITING TO THE GOVERNMENT MAY SHOW UP IN THE NEWSPAPER

The Freedom of Information Act (FOIA) does not generally open your files to the public. However, many of the documents provided to the Government may be readable under FOIA. This can cause a great deal of embarrassment when comments are made in correspondence or attachments. Additionally, proprietary data may be accidentally released if not properly marked in accordance with the Contract provisions. Care must always be taken with any outside correspondence, but with FOIA, you might be front-page news.



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THE ONLY THING THAT IS CONSTANT IS CHANGE

Though this is true in many aspects of life, it is no more applicable than on a Government contract. The change process and the Government's unilateral right to make changes is an integral and accepted part of the Government contracting arena. In *quid pro quo* for the Government's right to make changes is the contractor's entitlement to an equitable adjustment in price and time of performance. The rules that must be followed to establish that right are rather strictly enforced and must be understood and followed by the contractor. The Government expects requests for equitable adjustment based upon changes and the contractor should never hesitate to make a supportable assertion and request. Due to the complexity of the Government Change management process, documentation, and requirements, it is best to seek expert support as soon as possible.



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WHEN THEY SAY “20 DAYS”, THEY MEAN “20 DAYS”

Throughout the contract, time frames will be inserted within which the contractor must take action. These may be stated as being from the occurrence of a specific event, notice from the Government, or from the end of another activity. However, it is stated that time is always of the essence on a Government contract. Failure to meet an activity deadline can result in waiver of rights; failure to be paid; poor performance rating; or worst of all, default. Whatever the consequence, it is never good. Always be aware of the deadlines as set out in the contract. Have an established system to assure that they are never forgotten or missed.



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SOCIAL CHANGE BY CONTRACT

As the country's largest consumer, the requirements which the Government puts into its contracts can have tremendous impact on social change. Whether it be requirements for utilization of specific types of subcontractors/vendors, such as Small Business, or pay standards, such as the Davis Bacon Act and the Service Contract Act, or material sources, such as the Buy American Act, Government contracts can drive change. While the Government will pay the premiums needed for these programs, they expect the contractor to comply and will impose fines and other negative consequences on those who do not. Though such programs sometimes seem burdensome and confusing, the strong Government contractors know the program requirements and actually can benefit from them.



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THE BEGINNING OF THE END

Close out of a Government contract is always a concern. The collecting of all the documents and information required is especially difficult on multi-year jobs that have had multi-staffs. The best practice is to establish a “Close Out” file the first day of the contract. Once the items that will be required for close out are identified, before they are created, they will be much easier to collect. Since the close out process is both a contractor activity, as well as a Government required activity, be sure both parties’ requirements are identified. Remember, the end of the contract begins the day the contract is signed.



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FIND AND RELY UPON YOUR RESOURCES

Not everyone needs or wants to be an expert in contracting with the Government. It is an area of expertise based upon training, study, and experience. Your resources for execution of Government contracts may be the same in some areas of technical performance, but will generally be different for the administrative areas of performance. You must understand the distinction and rely upon the appropriate experts.