

So, you want to be a government contractor?

By John W. Chierichella

For those newly drawn to the federal marketplace — whether by the lure of homeland security dollars, the purported “commercialization” of government contracting or simply the sheer size of the customer’s budget — the sea is unfamiliar and the shoals often uncharted.

This column is designed for (a) companies poised to set sail in the federal market and (b) those that, having cast off, are striving to get their bearings. Here is a clearly inexhaustible list of do’s and don’ts in the world of government contracting:

1. Do recognize that the government is the most powerful customer on earth.

It enacts the laws that govern the process and drafts the implementing regulations. It can and will bring its force to bear against you through a multiplicity of enforcement agencies and the courts.

2. Do remember that those who draft the relevant laws, regulations and contracts, as well as those who apply them in negotiating, administering and auditing your contracts, work for the government, not you.

Never underestimate their ability to seek or assert an advantage.

3. Do be prepared to become an instrument of social policy.

The government views its buying power as a vehicle for forcing socioeconomic obligations on its contractors. With these obligations come form after form, often accompanied by certifications of compliance that, if erroneous, can serve as a predicate for a governmental allegation of “fraud.”

4. Do remember that the government wants your intellectual property.

The rules in this area are byzantine and trap-laden. If your economic future lies in your ability to control your technology, learn the applicable rules before you accept your first contract. Waiting could prove fatal. See Rule 2 above.

5. Do become familiar with Part 12 of the Federal Acquisition Regulation, which deals with “commercial” items and services.

Part 12 relieves “commercial item” contractors, particularly commercial item subcontractors, of many federal contract requirements. The burden is on you, however, to claim “commercial item” status and to push back against government contracting officers who do not seem to remember — until reminded — that Part 12 exists.

6. Don’t think, for a moment, that a subcontractor is not a “government contractor.”

Even a commercial item subcontractor has some “federal” responsibilities, and as subcontracts move away from commercial items and escalate in complexity and price, the full array of federal clauses, certifications and forms comes increasingly into play. With these federal requirements arises the need for a skilled administrative and compliance infrastructure.

7. Don’t treat the “multiple award schedule” as a commercial contract.

The MAS program expends tens of billions of dollars annually to buy the same commercial products we all buy on a daily basis — pens, paper clips, computers, paper products of all kinds, office furniture, hardware — but MAS contracts are not standard commercial contracts. If not

properly understood, an MAS contract can easily be a financial — and legal — disaster.

8. Don’t take the client to lunch.

In the federal sphere, many of the customary business development activities and some normal courtesies (“Can I give you a lift to the airport?”) are not only inappropriate. They can earn you frequent guest privileges at the Allenwood Federal Penitentiary.

9. Don’t have your contract administrative and compliance functions report through the sales function.

If you allow the generation of revenue to override an informed approach to the different rules that apply in the federal world, your Allenwood guest privileges (see Rule No. 8 above) will accrue at an accelerated rate.

10. Don’t ever take an audit by the federal government lightly.

There will be many audits, and before long you will feel like a frog in Biology 101. Get used to it. Know how to prepare for them; prepare for them thoroughly; know the rules; abide by them; and insist that the auditors do so as well.

If any of these do’s and don’ts strikes you as irrelevant or unimportant, you may not be ready to enter the government contracts marketplace.

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