Five Burning Questions for Technology Companies Entering the Federal Market

The federal government market can provide tremendous opportunities for technology companies looking to expand and diversify their business. Now more than ever before, federal agencies are open to exploring how they can leverage innovative technology from the private sector to better perform their missions. But entering the federal market for the first time can be daunting. Below are answers to five frequent questions that technology companies have about becoming a government contractor.

1. How do I get started?

The basic requirements are straightforward. To submit a proposal for a government contract, a company must (i) obtain a Dun & Bradstreet (DUNS) number, (ii) obtain a Commercial and Government Entity (CAGE) code for the company seeking government contracts (as well as the company's immediate and highest-level parent entities), and (iii) register the company in the System for Award Management (SAM). These requirements are not mandatory for subcontractors, but all companies should complete these basic steps if they want to compete in the federal market.

Depending on the size and ownership structure of your company, you may also be eligible for benefits under some of the U.S. Small Business Administration's (SBA) government contracting programs.

2. What contract opportunities are available?

Most companies initially enter the federal market as a subcontractor to an established prime contractor. Although technically a commercial contract between private parties, subcontracts allow companies to learn more about the federal contracting process and build a record of past performance on government projects.

Prime contract opportunities are subject to strict competition requirements and are publicized on www.fedbizopps.gov. Many federal agencies purchase commercial technology products and services through multiple-award Governmentwide Acquisition Contracts (GWACs). You must be a GWAC holder to compete for task or delivery orders issued under a GWAC. Agencies can award sole source contracts in limited circumstances, such as when the supplies or services required are available from only one responsible source.

In recent years, federal agencies have increasingly used "nontraditional" vehicles to contract with innovative technology companies, including grants, cooperative agreements, and challenge competitions. Some agencies are also using their authority to enter into other transactions agreements (OTAs) to facilitate research and development (R&D) and prototype projects with commercial companies. OTAs can be awarded with limited competition, contain fewer government-unique terms and conditions, and can lead to lucrative sole-source production contracts.

3. What price(s) can I charge?

This obviously depends on the unique circumstances of your product/service and the nature of the contract. Generally, however, there are no specific limitations on the price charged under a government contract. The overarching requirement is that the government or prime contractor must determine that your price is fair and reasonable. A price is automatically considered reasonable if it is based on adequate competition. If there is not adequate competition, the government or prime contractor must rely on other information to establish the reasonableness of your proposed price, such as the company's established catalogue prices, market prices, or commercial sales. Cost data can also be requested as a last resort.

It is not uncommon during price negotiations for the government or a prime contractor to immediately resort to requesting information about a company's actual costs. You should push back on this if you think you can establish the reasonableness of your pricing through other means. At a minimum, if you are providing a commercial product or service to the government, you should never agree to provide certified cost or pricing data.

4. How do I protect my intellectual property?

For many technology companies, protecting intellectual property is their paramount concern when contracting with the federal government. The rules governing data rights under government contracts are complex and unforgiving. The basic rule is that the government will obtain rights in intellectual property developed using government funds. To protect your previously existing intellectual property, you must specifically identify it during contract negotiations as having been developed at private expense and mark it with the appropriate legend if it is delivered to the government during performance. Plans to expand upon existing intellectual property using government funding should be discussed with the government beforehand so all parties agree on the state of that intellectual property before government funds are involved.

5. Will I be subject to any government-unique requirements?

Yes. Government contracting requirements are imposed on contractors principally through standard clauses incorporated into solicitations and contracts. Prime contractors flow down many of these same clauses to their subcontractors. The clauses included in a particular government contract or subcontract will vary depending on a number of factors, including, among other things, the type of product or service being procured, the dollar value of the contract, and the identity of the contracting agency.

Contracts for commercial items, or items customarily sold to the general public for non-governmental purposes, typically include fewer government-unique provisions, as commercial item contracts are supposed to include only those terms and conditions that are either consistent with standard commercial practice or mandated by law or executive order. Additional exceptions from government-unique requirements also exist for commercially available off-the-shelf (COTS) items. Even government contracts for COTS items include government-unique terms, however, such as the Equal Opportunity clause (FAR 52.222-26).

Companies new to the federal market should be aware that prime contractors often attempt to flow down standard clauses that are not mandatory for every subcontract. Although you may have limited leverage in some cases, you should attempt to delete nonmandatory clauses if possible to limit your exposure to government-unique requirements.

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For more information about these and other issues facing technology companies entering the federal market, please contact

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