**Subcontracting Reform – Ethical Fulfillment of Subcontracting Plans**

**Solution**

Every federal Request for Proposal shall include a clause that prohibits prime contractors from terminating a subcontract at any time during the entire contract life cycle and then performing the work of the terminated subcontract with its own workforce or the workforce of an affiliate. The only justification for a subcontract to be discontinued is if the prime contractor has adequately supported the subcontractor’s success but the subcontractor has failed to perform. In this case, the contracting officer must approve the cancellation of the subcontract and approve the new small business to replace the former small business. Additionally, if the subcontracting small business is acquired by a large firm during the contract life cycle, the small firm shall remain on the contract for six months, while an adequate small business replacement is placed on the contract.

If a small business subcontractor is terminated from a contract for legitimate reasons, the prime contractor must make good faith efforts to replace that small business subcontractor with another small business subcontractor that must be approved by the contracting officer.

**Benefits**

* Consistency in the implementation of ethical business practices
* The agency and prime contractor will be meeting the letter and the spirit of the law.
* Small business will have the ability to plan effectively in performing the subcontract without having the present threat of being terminated or downsized at the whim of the prime contractor.

**Background and Discussion**

Throughout our nation and on a consistent basis, large businesses have consistently displayed business practices that take advantage of the fact that the government does not protect small businesses in the federal marketplace in order to ensure prime contractor accountability for honoring subcontracting and teaming agreements. Large businesses realize that given current regulations, they can depend on the fact that it is nearly impossible for a small business subcontractor to file a lawsuit against a large business for violation of a teaming agreement or subcontract with any hope of success. This is particularly true since the federal government hides behind the cover of contract privity and refuses to make agencies and prime contractors accountable for their actions.

It is our opinion that present regulations are designed to favor large businesses. For decades, the SBA has demonstrated no meaningful leadership nor has it paid any meaningful attention to the plight of small business federal contractors. This has created the perception in the small business federal contractor community that the SBA does not care to change the status quo. It is remarkable that the SBA could take such an approach, when at any given conference of small business federal contractors anywhere in the nation, it is no difficult task to find a small business willing to recount at least one story of disappointment as a result of poor conduct by large businesses.

It is troublesome and sad that in our nation, over a period of nearly three decades, it has become generally known and accepted that the federal government’s subcontracting program has consistently lacked good business practices. There is, in the small business community, the strong perception that there is a serious lack of ethical business conduct towards fulfilling the spirit and letter of teaming agreements and subcontracting agreements.

This solution is aimed at stopping an unethical practice that is frequently used by large prime contractors abusing their size to exploit small businesses. Often, prime contractors use the credentials, past performance, or other unique capabilities of small business subcontractors to help them win a federal contract. However, after the federal government awards the contract to the large business prime, the prime contractor fails to provide the small business subcontractor with any actual work or does not use the small business subcontractor throughout the life of the contract. Ahead of contract award, prime contractors often form teaming agreements with small business subcontractors, which are supposed to ensure that if the prime wins the contract, the subcontractors that were part of the proposal process will get the work that was assigned to them at the time. Unfortunately, these agreements do little to bind the prime contractors to their ethical and legal obligation of utilizing the small business subcontractors, who helped in preparing the proposal.

Too often, prime contractors talk to and work with these small business subcontractors in order to increase their chances of securing the contract award by taking advantage of key discriminators of small businesses or their past performance. Then, the small firms spend significant resources on industry analysis and capture strategy development and implementation, in order to be on the initial contract bid teams. Unfortunately, many of the small business subcontractors are eliminated by the large business prime from the contract, once the prime contractor wins the contract. In most cases, the small firms are not even informed by the prime contractor why they are not being called to perform the work. This bait and switch tactic contributes to the perceived unethical practices used by large businesses in the federal contracting industry.