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14 Tips for the Truly Clueless Contractor

[A Government Contracting Alert from the Office of Jon W. van Horne.]¹

Vern Edwards, in his blog on wifcon.com, tells a sad tale about a government contracting situation that went very bad for the contractor, but which could have been prevented if the contractor had understood the significant differences between government and commercial contracting. [You can read the whole story at <http://tinyurl.com/244dtv5>.] At the end of this blog entry, Vern lists 14 tips “for the Truly Clueless Would-Be Government Contractor.”

Of course, none of my clients fall into the “truly clueless” category (among many other reasons, because they are my clients). Nevertheless, the 14 tips are a great basis for considering how we deal with government customers. The 14 tips would be absolutely priceless to a new government contractor and they aren't all obvious even to an experienced government contractor. There are several that anyone would do well to think about, especially #5 and #8. Of course, I really like #14. Feel free to keep my phone number and email address handy. For those of you in the business for a while, some of the tips should be worth a chuckle or two.

Although this is not news to my clients, I would note that new contractors often confuse dealing with government customers and dealing with commercial customers. Commercial purchases can be very subjective and personal relationships can be very important. With the government, the customer is not an individual but a bureaucracy that is obligated to follow very specific rules in the purchasing process. Filing a claim or a bid protest can be necessary to keep the bureaucracy focused on following the rules. It's not personal and can always be

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handled professionally to minimize personal animosity. While you may not want your company to get a reputation for going to court at the drop of a hat, getting a reputation for never standing up for your legal rights is much worse. The impersonal bureaucracy can hardly resist taking advantage of that.

So here are Vern's 14 tips. Enjoy.

Here are 14 tips for the Truly Clueless Would-Be Government Contractors who think that winning a government contract is the yellow brick road to riches:

1. If you are thinking of competing for a government contract, hire good professional help to negotiate and manage the contract, and listen to them.
2. Your technical and marketing employees are the ones who are going to get you into trouble on a government contract. Keep them on a leash.
3. Buy first-rate training for all of the people who will be involved with government contracts. If you will not invest in training you have no business doing business with the government.
4. Don't compete for a government contract if you are not sure that you can do the job to the government's satisfaction. Make sure that you know what it will take to satisfy the government before you submit a bid or proposal.
5. Don't assume that the government's representatives know what they're talking about when they explain rules, specifications, and the contract clauses. In my experience, most of them don't.
6. READ THE SOLICITATION. THE WHOLE THING.
7. If you win the contract, take a firm, formal, arm's-length, businesslike approach to all aspects of the deal. Comply strictly with all contract terms and insist that the government do

the same. Know all of your contractual deadlines and meet them. Know all of the government's contractual deadlines and notify them in writing the moment that they are late. The very moment. Neither ask for nor grant exceptions except through formal processes, such as engineering change proposals, formal waivers, and change orders. Know your obligations and fulfill them. Know your rights and insist upon them. When you truly believe that the government owes you something, ask for it in writing. If you don't get favorable action within a reasonable period of time, submit a claim in accordance with the contract Disputes clause and FAR Subpart 31.2. If the contracting officer does not make a decision within the deadlines set by the Disputes clause, hire an attorney and appeal to a board of contract appeals or to the Court of Federal Claims, unless you are willing to let the government keep what you think is yours.

8. Never yield to threats from a contracting officer or a contracting officer's representative. If you do, things will only get worse. When you insist upon your rights and the contracting officer's representative says: That cuts both ways, just say: Yes, and we can live with that.

9. Don't rely on personal relationships with government personnel. Good personal relations are important and desirable; but, in the end, it's a dog-eat-dog world. Never consider a government representative to be your "friend." Remember that government personnel are not business persons. They are government officials with limited authority, limited knowledge, a heavy workload, and lots of people looking over their shoulders. They will not (and should not) stick their necks out for you. If they do they are either stupid or dishonest and cannot be trusted. Some will make an extra effort for you, which is okay, but many will not. Assume from day one that you are on your own.

10. Keep good records. Document every telephone call and meeting. EACH AND EVERY ONE. Write down who, what, when, where, why, and how, and make your people do it as well. Check to see that they do. File every email and letter. EACH AND EVERY ONE. He or she who does not document or who skimps on documentation is a fool.

11. Promptly follow up on oral understandings and agreements in writing. Send crucially important communications by certified mail, return receipt requested, including confirmation of emailed and oral understandings and agreements.

12. It's business, not personal. When speaking with and corresponding with government personnel, always be calm and polite, no matter how badly they have behaved or how angry about it you are, but always be determined and firm.

13. Remember the 999/1,000 rule: You can do things wrongly 999 times out of 1,000 and nothing bad will happen. It's the 1,000th time that will do you in.

14. Make sure that you have the telephone number, email address, and street address of a good government contracts attorney and a good government contracts accountant. If you can't afford that kind of help, stay away from government contracts.