

Doing Business With the Government

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Government Business and Financial Reporting

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Overview

The Enron fiasco and its impact on public accounting, stock values and campaign financing continues to be in the news. Because of accounting abuses, subjects like off-balance sheet accounting, write-offs and limited partnership earnings, have received a lot of attention. Those who have responsibility for dealing with these areas have a renewed interest to make sure they get it right. According to Fortune Magazine, 2/3rds of large companies have pressured their people to misrepresent their reported profits. Others estimate that 80% of public companies have shaded their numbers and hyped their financials. Although there are knee-deep piles of rules and guidelines on how to account for things, the ability to still manipulate the system is all too easy. When companies routinely show dozens of consecutive quarters of increasing earnings per share, something other than good management is involved. As long as management rewards, employees retirement plans and stock analysts bonuses are tied to stock prices, the incentive to be "too creative an accountant" may be hard to resist.

This brings us around to the subject of government contracts. A mind set and environment based on creative accounting in the commercial world will invariably lead to a loose interpretation of rules as applied to dealing with others, including the Federal Government and working on government contracts. The government has far less tolerance for these practices than business in general. Companies coming from the commercial world should be forewarned if they are planning to do business with the government. Although you may only plan to have a small percent of your business with the government, you need to be aware of what is involved. Most of our clients are not currently doing government contracts.

Alphabet Soup

The principal government agencies where contracts are granted are the departments of Defense (DOD), State (DOS), Commerce (DOC), Treasury (DOT) and Justice (DOJ), although there are a plethora of agencies and departments within agencies. Many staffing firms may be attracted to government contracts, as a result of the additional funds earmarked for defense. Thus our thrust will be geared towards this area. Some of the main government regulations one should be aware of are another set of alphabet soups: ITAR (International Traffic in Arms Regulations), EAR (Export Administration Regulations), Economic Embargo Regulations

(prohibiting trade with countries, including: Iraq, Iran, North Korea, Libya, Sudan and Cuba. NISP (National Industrial Security Program) and FAR (Federal Acquisition Regulation) and not adhering to illegal anti-boycott requirements.

Violations

Some of the penalties involved for being in violation of government rules here are: the seizure of product, imprisonment up to 10 years, loss of export privileges, disbarment from government contracting and fines of up to \$1 million per violation, or 5 times annual product or service value. Of particular interest is the export violation inclusion. The concern here is the disclosure or transferring of restricted technical data to foreign persons. Technical data includes: software, intellectual property, information and other materials that can be applied to development, manufacture, maintenance, or modification of restricted or classified articles. Areas of risk for staffing companies include: temp contractors or employees working on-site or even remote facilities on: contracts, software projects, web sites, proposals, engineering projects, documentation, and related areas. This might even include so-called dual use technology.

Contract Award

The government generally contracts with the lowest cost bidder. However, this applies only to qualified bidders. If a company is not approved, their bid may be pre-empted and another party may receive the contract. As with commercial business, being the successful bidder is not always black and white. Some of the laws and elements regarding qualification and compliance are: civil rights act, age discrimination laws, affirmative action, wage and labor laws, fair employment, family and medical leave act, immigration reform and control act, competitive and workforce improvement acts, certification of safety and health standards, safe drinking water and toxic enforcement compliance, business licenses, government cost accounting standards, minimum levels of: employee benefits, anti-kickback compliance, liability insurance and bond coverage, previous performance and work history. Interestingly, the Freedom of Information Act, provides important data and facts on government contracts, which may be both a source of market intelligence about ones competitors, as well as, basic information about your company for others.

Terms and Conditions

As with doing business with any customer, one needs to be mindful of the terms and conditions involved. These terms may be a bit more involved with the government and one should carefully check out his commitments regarding: allowable billing rates and overhead charges, billable vs. non-billable hours, schedule and scope of services provided, testing and

certification, submission procedure for invoices, expense reporting procedures, ancillary reports, documentation and validation of costs, overtime charges and provisions, grounds for termination of services, completion requirements under force majeure, payment terms, per diem expenses, security clearances, limitations to filing law suits, inspection and audit procedures and process for payment adjustment, ethical standards of conduct compliance, earned discounts, incentive payments and penalties, implementation procedures, amendment and adjustment procedures.

Variations

What may be good news for many staffing companies is the government's variance policy for small and disadvantaged businesses, which includes minority, handicapped and woman owned businesses. These companies may win awards through set asides and provisions to subcontract out a portion of the work to these firms even though they may lack certain requirements that other firms must adhere to. There is also a mentoring program where approved vendors are encouraged to help disadvantaged companies qualify.

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