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Who Wants What and the Procurement Process

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The SBDC and APTAC

- Our roles
- Preface to Introductions

CHAPTER 35, South Carolina Consolidated Procurement Code

SECTION 11-35-20. Purpose and policies.

The underlying purposes and policies of this code are:

[underscore and bold added for emphasis]

a) to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds... [underscore added for emphasis]

SECTION 11-35-20. Purpose and policies.

- (b) to foster **effective broad-based competition** for public procurement within the free enterprise system;
- (c) **to develop procurement capability** responsive to appropriate user needs;
- (d) to consolidate, clarify, and modernize the law governing procurement in this State and permit the continued development of explicit and thoroughly considered procurement policies and practices;

SECTION 11-35-20. Purpose and policies.

- (e) to require the **adoption of competitive procurement laws and practices** by units of state and local governments;
- (f) **to ensure the fair and equitable treatment of all persons** who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;
- (g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process; and
- (h) to develop an efficient and effective means of delegating roles and responsibilities to the various government procurement officers.

Fair and Reasonable Pricing

- (2) When certified cost or pricing data are not required by 15.403-4, shall obtain data other than certified cost or pricing data as necessary to establish a fair and reasonable price, generally using the following order of preference in determining the type of data required:
 - (i) No additional data from the offeror, if the price is based on adequate price competition, except as provided by 15.403-3(b).
 - *Source: FAR, 15.402*

Competition

- SC State and US Federal procurement regulations both prescribe fair and reasonable pricing determined through, preferably, broad-based competition.
- Furthermore, they call for the fair and equitable treatment of all persons and the fulfillment of public policy objectives (SC Section 11-35-5210 and FAR 1.102(b)(4))

Trickle-Down Effect

- Federal → State → County/City
- What's happening at the federal level (and why)?

2017 NDAA

- Agency OSDBU's will review all subcontracting plans.
 - Large primes will be in breach of contract if they fail to provide adequate assurance of intent.
 - Creates a pilot program for documenting past performance ratings to small business subcontractors
- DOD is moving away from LPTA (limiting its use to 6 criteria)
- Establishes a preference for fixed-price contracts

SBA All Small Business Mentor-Protégé program (launched 10/16)

- JV requirements: Profit must be split by work share (not % of ownership)

Ethics and Contracting Compliance

- Rules of Affiliation
- Ostensible Subcontracting Rule

Caught in the Middle

- SBS → CO ← PM (Tech. Reps/End Users)
 - The Small Business Specialist tends to advocate on behalf of small businesses to the Contracting Officer and, by the same token, the end users want to ensure that contractors awarded contracts are capable and can hit the ground running.
 - All parties prefer to work with people that they know and trust

Caught at the bottom

- Subcontractor → Prime → CO
 - Subcontractors are hired by the primes. The prime contractor has the government contract. The CO deals with the prime and, rarely, with the sub.
 - The prime must remain cost competitive to win contracts and maintain profitability
 - The prime contractor is, ultimately, accountable for poor subcontractor work

Hypothesis:

- For a host of reasons—at all levels of government--contracting officers seek to “maximize to the fullest extent practicable the purchasing values of funds” with a focus on the prime contracting community. In order to ensure fair and reasonable pricing, they rely heavily on competition. In turn, primes learn to rely heavily on top performing, low cost contractors that they know and trust. The net result is that “fostering broad-based competition” at the subcontractor level consistently falls short of the mark.

Introduction:

- Jennifer Powers: President, J.D. Powers LLC
- Florence Ogburu, President, Florence Ogburu Enterprises LLC
- Drew Weston, Director of Sales and Marketing, CodeLynx, Inc.

(After their brief presentations, the audience is invited to ask questions in order to test the validity of the hypothesis)