

## **LOCATING FEDERAL CONSTRUCTION PROJECTS**

### **Federal Basics and Advanced Information**

Where are the construction projects? Large construction contractors engaged in a shrinking private market are looking for alternative opportunities to maintain their companies. Small contractors also need construction work, and the competition for the few available private construction projects has all but destroyed rational profit margins. Who has construction projects, and the resources to pay for those services? The answer is simple – the Federal Government.

The Federal Government spent over \$119,000,000,000 on construction projects last year. A rough breakdown follows: (All amounts are approximates)

<a href="#"><u>US Army Corps of Engineers</u></a>	\$ 5,175,500,000
Military Construction (Corps & NAVFAC)	\$24,580,200,000
<a href="#"><u>Department of Transportation</u></a>	\$57,026,500,000
<a href="#"><u>Department of Veterans Affairs</u></a>	\$ 1,839,900,000
<a href="#"><u>General Services Administration</u></a>	\$ 1,438,700,000

So why haven't more general contractors jumped on the Federal construction bandwagon? Many private contractors have negative preconceived notions of providing construction services to the federal agencies. Examples include extensive and complicated rules and regulations, exhaustive paperwork, small profit margins, overly complicated payment procedures, convoluted operating procedures, intrusive safety, labor and employment rules, unknown regulatory agencies, ad infinitum. In other words, it's just too much trouble. Are they right? The answer is different for each construction company.

For a complimentary explanatory guide to contracting with the federal government, please [click here](#).

The Federal government has an enormous amount of construction work available, although not enough to accommodate all large contractors. Of course, with the private construction market down, more and more contractors are bidding or proposing on Federal work, which increases competition and drives down profit margins. Competition is good – until it gets to the point where contractors are

actually bidding below cost just to get jobs, which creates performance and completion problems for the Owner. It is natural for the Owner to want a better price for their construction project, but the cost of quality and issues of timely completion must be balanced against the initial low price.

Government contracting in the United States has been marked by openness, fairness, economy, and accountability. It has been the envy of the world, and the hallmark of open competition that the U.S. encourages other countries to follow. Contractors in the U.S. have had the opportunity to bid or propose on jobs, secure in the knowledge that they have a fair chance of winning against their peers, and comfortable that the money to pay for their services will be forthcoming in a timely fashion. This forum is intended to look at these processes and explain how the Federal Agencies select the winning contractor.

While it has seemingly endless rules and regulations, the Federal Acquisition Regulations (FAR) provide contractors with a roadmap of the parameters of the given procurement. It publicly provides rules to address many Federal contract situations, and any contractor has access to those rules at any time. This consistency is intended to provide contractors nationwide the opportunity to bid and propose without fear that they have to learn and perform to local rules and regulations. This, in return, provides a benefit to the Government in lower priced bids and proposals. The FAR is available online at [www.acquisition.gov/Far](http://www.acquisition.gov/Far).

Pursuant to the [Competition in Contracting Act](#) (CICA), the Federal Agencies are required to use full and open competitive procurement to secure the services the Government needs ([10 U.S.C. 2304](#) and [41 U.S.C. 253](#)). These Federal contracts must be properly advertised to the public to promote maximum competition, which will hopefully result in the best value and price to the Federal government, and thus the taxpayers. Federal contracting opportunities are listed daily in the Federal business website known as the Federal Business Opportunities ([www.fbo.gov](http://www.fbo.gov)).

### **The Small Business Act (SBA)**

No current discussion of Federal Contracting is complete without an understanding of how the SBA affects Federal procurement policy and decisions. While the Government stated in CICA that the Federal agencies are required to use Full and open competition, there are exceptions to this rule, and the Federal Agencies can set aside construction projects from full and open competition subject to the exceptions found at [FAR § 6.302](#). The exceptions include: (1) Only

one responsible source and no other supplies or services will satisfy agency requirements; (2) Unusual or compelling urgency; (3) Industrial mobilization, engineering, developmental, or research capability, or expert services; (4) International agreement; (5) Authorized or required by statute; (6) National security; and (7) Public interest.

It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small businesses. Small business set-asides fall under the statutory exception (#5 above), and the exact statute must be identified. These projects can be either set aside for small business competition or sole sourced, in which case the contracting officer will negotiate directly with the sole source contractor they have identified. The four most common small business preferences are: [8\(a\)'s](#), [Historically Underutilized Business Zones \(HUBZones\)](#), [Service Disabled Veteran Owned Small Businesses \(SDVOSB's\)](#), and [American Native Corporations \(ANC's\)](#).

In today's economy, small business contractors are having trouble locating required bonding, or providing required experience. Large and small contractors have something to gain from working together for these projects. Additionally, the Federal government has various requirements which mandate that large contractors subcontract to small businesses.

Large contractors wishing to propose on small business set-asides can only do so under limited circumstances. Two examples include Mentor/Protégé relationships and Teaming as a subcontractor. First, a large business can mentor a small business in certain agencies, creating what is known as a Mentor/Protégé relationship. This business entity must be formally created, then reviewed and approved by the Federal agency soliciting the project. Second, by what is known as teaming, a large business may act as a subcontractor on the project to the small prime contractor, as long as it does not actually control the project.

Where both prime contractors are small business entities, they may join together for purposes of performing a set-aside contract. This is called a joint venture, which is typically defined as a partnership for a one-time or limited purpose. Joint ventures are common when one small prime contractor has the proper credentials for the set-aside, but for some reason cannot perform the federal project alone. Examples include: the small prime contractor is unable to obtain bonding; or does not have the required experience or manpower; or the project is too far from the small prime contractor's home office location.

There are benefits and pitfalls to any of these arrangements, and contractors must be aware of, and perform pursuant to, all Federal regulations.

## CONCLUSION

This is merely the beginning of our journey into Federal Contracting. Following articles will target specific Federal contracting issues, including:

- Federal Filings – [CCR](#); [ORCA](#); [Vetbiz Registry](#);
- Federal Websites – [FedBizOpps](#);
- [NAICS Codes](#) for contractors ;
- Small Business Matters for all Sizes of Contractors;
- Mentor-Protégé, Teaming Agreements, and Joint Ventures
- Federal Representations and Certifications;
- Bidding vs. Proposing for Federal projects;
- Marketing concepts;
- Federal Business Practices and Ethical Responsibilities Requirements;
- Rules and Regulations – the [Federal Acquisition Regulations](#) (FAR);
- Federal Contract Compliance;
- Federal debriefings and [protests](#).

Finally, I will be including important links to Federal agencies, late breaking information, and both Federal contracting basics and advanced concepts over the next few months. These articles are not intended to provide legal representation, but to introduce topics in Federal Construction. I look forward to you following these articles. And, I also invite you to join me at the monthly meetings of the Federal Contractors Forum, presented in association with the [Association of General Contractors of Greater Florida](#) (AGCFL) and the [National Contract Management Association](#) (NCMA). These breakfast meetings are held at the University Club in Jacksonville from 7-9:00 am, typically on the 4th Thursday of each month.

Each monthly meeting will feature a presentation in an open meeting format, which will allow you, as a participant, to ask questions, raise issues, and present situational examples to discuss. There is only a \$25.00 registration fee for each of these meetings which includes a full breakfast. For information about our next meeting, [click here](#).

Also, do not hesitate to [contact me](#) with any questions.

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