

SubCon

TRAINING WORKSHOPS
MARCH 30-31, 2017 • DULLES, VA



Just What Are All of Those Flow Down Clauses?

Thursday, March 30 at 3:30-5:00pm

Michael Shingledecker, C.P.M., Director of Procurement, Alion Science and Technology Corporation

Heather Dallara, CFCM, Fellow, Vice President, Contracts, General Dynamics Information Technology, Inc.

Michelle Currier, CPCM, CFCM, Professor of Contract Management, Defense Acquisition University

Agenda

- Subcontract Terms – Why are there so many terms & conditions?
- The “Kitchen Sink” Approach by Prime Contracts
- A Closer look at Clauses– Practical Lessons
- Negotiation Tactics

Subcontract Terms & Conditions – Why so many?

- Prime contractor responsible for flowing mandatory provisions from prime contract; and
- Other material provisions to ensure compliance with terms of the prime contract and ensure timely satisfaction of requirements for which consideration (payment) has been made; and
- The prime contract may include other terms required of the prime contractor – quasi commercial contract.

“There is a government-wide perception that better (government) buying power depends upon better subcontract management.”

The Kitchen Sink Approach

- One Size Fits All Set of Flow Downs for all subcontracts regardless of subcontract type, value or company;
- Use Terms like “Self-Deleting;”
- Clauses may or may not be in the Prime Contract;
- Puts Onus on Subcontractor to map flowdowns to Prime Contracts

Clauses – A Closer Look

- **Mandatory Flowdowns**
 - FAR 52.222-50 Combating Trafficking in Persons
 - DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System
 - DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting
 - Executive Compensation
 - FFATA
- **Other Compliance Areas**
 - Incremental funding by the Government
 - Timely billing by subcontractors
 - Communications between the parties
 - Subcontracting by primes
 - Increase in number of subcontractors on a contract
 - Small business subcontracting requirements (FAR 52.219-9)

Negotiation – Tips & Tricks

- Best Practices;
- Only accept clauses that apply to the prime contract and the work being performed;
- Where they stated requirements in the RFP?
 - Are they mandatory?

THANK YOU