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Last year Apogee Consulting, Inc. was asked to help a pharmaceutical manufacturer develop its first Small Business Subcontracting Master Plan. There were lots of interesting aspects of pharmaceutical manufacturing that impacted the plan, including the fact that certain aspects of the manufacturing process were strictly controlled by the FDA—such that it was difficult to change suppliers once they were approved. Other suppliers were the only known source for certain products and/or technology. Consequently, the ability to develop opportunities for small and small disadvantaged businesses to receive subcontract awards was very limited.

Nonetheless, the company was able to identify certain opportunities to award work to the various socioeconomic business categories. Many of the opportunities were found in the areas of indirect spending and in capital projects. The company also committed to starting the process to identify and quality second sources were feasible. The company fully intended to make a good faith effort to attain its small business plan commitments.

The real question, though, was what those commitments should be. Given the limited opportunities to make small and small disadvantage business subcontract awards in the near future, how much “stretch” should the company put into its goals?

When Apogee Consulting, Inc. submitted its (successful) proposal to provide support to the company, we were careful to identify this critical area right up front. We told the company—

The final Plan, and supporting policies and procedures, will seek to strike the appropriate balance between what can be achieved (given the Division’s supplier base, history, and trends) and what is desired by [the company’s] Government customers. This approach recognizes that while aggressive socioeconomic goals can give rise to a competitive advantage in the marketplace, goals that are unreasonably aggressive (and which lead to failure) ultimately undercut any competitive advantage.

The company appreciated our candid acknowledgement of the tension between what the Government customers desired, in terms of percentage goals by socioeconomic category, and what was possible for the company to achieve, given its circumstances. Thus, together we embarked on a journey of several months' duration, as we reviewed the company’s procurement spending history and interviewed various managers, in order to determine what the history was and how much improvement from that baseline might be reasonably attainable.

At the same time, we identified the expectations of the government customers. The primary customer had very specific goals that it expected all of its prime contractors to commit to achieving. As it turned out, those goals were dramatically higher than either the company's procurement history or what the company thought it might reasonably achieve through more focused efforts. We had to find a balance between what was expected and what was achievable. By the end of the project, we were fairly certain that we had found that balance.

Not every company finds that balancing point. Some companies set goals that are too far below customer expectations, and they get marked down for it in competitions. Other companies set goals that are too high and never come close to achieving them. For those contractors, the question then becomes whether they exercised "good faith efforts" and diligence. If the companies tried hard but missed the goal that is usually an acceptable result. But for companies that cannot provide evidence of diligence, then the government reviewers may well think that the companies don't take the goals seriously enough. In extreme cases, a company may be liable tor damages if it failed to meet its commitments and cannot prove good faith efforts.

Recently the GAO denied a protest in which a company was excluded from the competitive range because it consistently failed to meet its subcontracting goals. The GAO bid protest, filed by Graybar, can be found **here** .

Bidders were evaluated as follows—

Award was to be made to the offeror whose proposal represented the best value to the government considering the following factors: past performance; technical merit, including subfactors (in descending order of importance) for product sourcing, distribution/delivery, and socioeconomic objectives; and price. Past performance was more important than technical merit, while the non-price factors combined were significantly more important than price.

With respect to past performance, "the agency's consideration of contractor performance was to include the degree to which the offeror met the terms of delivery, quality standards and socioeconomic goals, and was able to achieve customer satisfaction." In the Government's Pre-Negotiation Memorandum, Graybar received an "Outstanding" rating for the Socioeconomic Objectives evaluation subfactor. However, Graybar was excluded from the competitive range and the contract was awarded to another bidder.

The GAO explained that “the evaluators reviewed Graybar’s CPAR reports for each of the three referenced contracts and found a consistent failure to meet certain small business and socioeconomic contracting goals.” Going a bit deeper, the GAO wrote—

… with regard to Graybar’s first referenced contract (Southwest Region), CPAR reports for the prior three years all reflected a failure to meet the goals for utilizing small disadvantaged businesses and service-disabled veteran-owned small businesses. … The two most recent CPAR reports for this contract also showed a failure to meet historically underutilized business zone (HUBZone) goals. … Similarly, with regard to Graybar’s second referenced contract (Northeast Region), CPAR reports for the prior three years reflected a failure to meet the goals for utilizing women-owned small businesses, small disadvantaged businesses, and service-disabled veteran-owned small businesses for at least two of the three years. Finally, with regard to Graybar’s third referenced contract (South Central Region), CPAR reports for the prior three years reflected a failure to meet the goals for women-owned small businesses and small disadvantaged businesses in all three years. … Graybar has pointed to nothing in this CPAR data regarding socioeconomic subcontracting which warranted a higher past performance rating than satisfactory confidence.

Graybar raised other arguments, which were rebutted by the GAO in its dismissal of the protest. It was clear that the company had problems in meeting its small business subcontracting goals, and that failure led to a downgrade in the company's past performance assessment. Although the goals were aggressive and looked good at first blush (and helped the company with one evaluation criterion), the company’s consistent failure to meet those aggressive goals ultimately undermined its competitive position.

A contractor’s focus is (rightly) on delivering high-quality goods and services on time and within budget, but a really top-notch contractor keeps many other factors in sight as well. Among those other factors is compliance with the small business subcontracting plan goals. As the lesson of Graybar illustrates, a consistent failure to meet those goals can erode a company’s competitive position in the marketplace. On the other hand, a company’s consistent success in meeting its goals can enhance its competitive position.