

Small Business Reporting Math Errors Cost Contractor

Written by Nick Sanders
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From time to time Apogee Consulting, Inc. is asked to assist a contractor in the development of its first small business plan. For those who don't know, most government contracts awarded to large businesses require those large prime contractors to subcontract certain portions of the contract work to "socioeconomically disadvantaged" small businesses. The large prime commits to making a good faith effort to subcontract certain percentages of its contract work to various categories of small businesses. Periodically the contractor has to report the actual percentages it has awarded to each small business category. (See FAR Part 19 and associated contract clauses for more details.)

In a recent [ASBCA decision](#), BAE Systems Southeast Shipyards Mayport LLC ("BAE Systems") learned that math errors made in calculating its subcontract award percentages cost it more than \$1 million dollars of lost award and incentive fees in its naval maintenance and repair contracts.

BAE Systems was dealing with more than the "normal" small business requirements. In order to attain its full amount of award and incentive fees, BAE Systems was required to subcontract out "at least 40 percent of the direct costs of the contract to small business concerns during each fee evaluation period." If BAE Systems failed to meet its 40 percent goal, then its award and incentive fees would be adjusted downwards.

The issue here was that Atlantic Marine Florida (AMF), a large business, had the only available certified dry-dock suitable for the types of vessels that would be worked on. Thus, if AMF was included in the amount of subcontracted work, then it would be nearly impossible to reach the required 40 percent small business subcontract goal. This issue was raised by multiple offerors during the solicitation phase and the Navy responded by telling all bidders that "offerors will be allowed to exclude the use of the AMF dry-docking facility from the 40% small business subcontracting requirement."

In the sixth award fee evaluation period, BAE Systems reported subcontracting 40.32 percent to small businesses. However, government reviewers noted errors in the math. BAE System agreed that it had "double-counted" certain costs and revised its calculations.

The revisions included:

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Reduced small business subcontracted cost by \$1.13 million to remove costs subcontracted to AMF.

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Reduced total direct contract cost by \$3.4 million to remove costs incurred by AMF.

The government didn't care for this math. As Judge Woodrow, writing for the Board, noted:

In calculating the small business utilization for the USS San Jacinto job, appellant excluded the \$1,132,854 from the contract cost (the denominator in the formula) but left that amount in the small business cost (the numerator in the formula). This adjustment resulted in a small business utilization percentage of 235.46 percent for the USS San Jacinto job. After these adjustments, appellant calculated its composite small business utilization percentage for all of the jobs included in AFEP 6 to be 44.68 percent. In contrast, the government calculated appellant's composite small business utilization percentage to be 25.96 percent.

(Internal citations omitted.)

The government's position was summarized as follows:

The government makes two challenges to appellant's calculation of the small business utilization percentage. First, the government contends that appellant should have subtracted the AMF costs from both the numerator and denominator of the fraction. Similarly, in its answer, the government argues that, if appellant is permitted to subtract the AMF costs from the contract cost in the denominator, it also must exclude from the numerator the corresponding costs of second-tier small business subcontractors who performed work for AMF. The government also makes this argument in the COFD, where it states that the subcontracting dollars in the numerator must have a 'direct correlation and be attributed to the 'direct costs related to production work' as contained within the denominator.

(Internal citations omitted.)

The Board agreed with the government's argument. If BAE Systems excluded AMF costs from the amount of direct contract work, then it must also exclude AMF's own small business subcontracting dollars from the numerator.

Granted, this was a complicated situation. Most contractors do not count their subcontractors' subcontract award dollars in their reports. (But that day is coming.)

The point here is that small business plans need to be more than paper. Hitting the commitment amounts involves more than simply attending one or two "outreach" events per year. In order to successfully implement your plan, it needs to be "owned" by somebody in your organization with authority to make it happen, and there needs to be policies and procedures that describe how it will work. Those policies and procedures must be cross-functional, in that everybody who makes a decision regarding which entities receive work must be aware of the overall organizational commitments.

Too often we have seen "paper" plans with no ownership, with no accountability or responsibility or authority, and with little or no policies and procedures that describe their workings. When we encounter such situations, we can say, with a high degree of confidence, that those plans will never be successful.

When we work with contractors to develop their first small business plans, we emphasize the need for organizational accountability and cross-functional "buy-in"—and we urge our clients to develop appropriate policies and procedures to make those plans successful.

It's the right thing to do.

