

# THE SMALL BUSINESS AS SUBCONTRACTOR

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# The Small Business as Subcontractor

- Value to Prime Contractor.
- Important Clauses to Protect Subcontractor's Rights.
- Cost Elements Reasonable vs. Unreasonable for Sub to Absorb.
- Relevant FAR and DFAR Clauses.

# Value to Prime Contractor

- **SUBCONTRACTOR BRINGS SIGNIFICANT VALUE TO PROPOSAL AND CONTRACT**
  - Unique technology.
  - Highly skilled staff.
  - More price competitive than Prime.
  - Helping Prime meet solicitation's and/or corporate small business requirements.

# Important Clauses to Protect Subcontractor's Rights

- **Termination for Convenience**
  - apply only if customer terminates subcontractor's portion of the work.
- **Data Rights**
  - List all proprietary technical data and software in proposal and specify what data rights clauses apply.
  - Ensure that appropriate data rights clauses, including those allowing Subcontractor the right to retain patent rights, are included in Subcontract.

# Important Clauses to Protect Subcontractor's Rights

- **Intellectual Property**
  - Ensure that appropriate clauses are included to protect Subcontractor's patent, copyright and trade secret information.
    - Confidentiality clause.
    - Retention of patent rights by Subcontractor if invented solely by Subcontractor.
    - Avoid conflicting “works for hire” clauses that give all rights to Prime unless acceptable for work being performed.

# Reasonable vs. Unreasonable Subcontractor Costs

- **Reasonable**
  - Accounting and financial reporting requirements that do not involve additional Subcontractor investment.
  - Insurance requirements that are no more than what Subcontractor carries on standard basis.
  - Fee application that is in line with specific contract type.

# Reasonable vs. Unreasonable Subcontractor Costs

- **Unreasonable costs for Subcontractor to absorb:**
  - Investment to change accounting system or pay for consulting services to meet Prime Contractor's accounting or financial reporting requirements – Prime Contractor should amend requirements or Prime or Customer should finance such changes.
  - Customer should pay for unusual insurance requirements.
  - Prime Contractor's load on Subcontractor should be reasonable so as to allow the team to be competitive.

# Relevant FAR and DFAR Clauses

- **Termination for Convenience Clauses**
  - FAR 52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).
  - FAR 52.249-2 Termination for Convenience of the Government (Fixed-Price).
  - FAR 52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).
  - FAR 52.249-4 Termination for Convenience of the Government (Services) (Short Form).



# Relevant FAR and DFAR Clauses

- **Termination for Convenience Clauses**
  - FAR 52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).
  - FAR 52.249-6 Termination (Cost Reimbursement).
  - FAR 52.249-7 Termination (Fixed-Price Architect-Engineer).
  - FAR 52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).
  - FAR 52.249-12 Termination (Personal Services).

# Relevant FAR and DFAR Clauses

- **FAR Data Rights Clauses**

- FAR 52.227-11 Patent Rights - Retention by the Contractor (Short Form).
- FAR 52.227-12 Patent Rights – Retention by the Contractor (Long Form).
- FAR 52.227-14 Rights in Data – General.
- FAR 52.227-15 Representation of Limited Rights Data and Restricted Computer Software.
- FAR 52.227-19 Commercial Computer Software – Restricted Rights.
- FAR 52.227-20 Rights in Data – SBIR Program.

# Relevant FAR and DFAR Clauses

- **DFAR Data Rights Clauses**
  - DFAR 252.227-7013 Rights in Technical Data – Noncommercial Items.
  - DFAR 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
  - DFAR 252.227-7015 Technical Data – Commercial Items.
  - DFAR 252.227-7016 Rights in Bid or Proposal Information.

# Relevant FAR and DFAR Clauses

- **DFAR Data Rights Clauses**
  - DFAR 252.227-7018 Rights in Noncommercial Technical Data and Computer Software – Small Business Innovative Research (SBIR) Program.
  - DFAR 252.227-7019 Validation of Asserted Restrictions – Computer Software.
  - DFAR 252.227-7034 Patents – Subcontracts (must be included if 52.227.11 is included in the subcontract).
  - DFAR 252.227-7037 Validation of Restrictive Markings in Technical Data.
  - DFAR 252.227-7102 Commercial Items, Components or Processes.