Before the Ink Dries……

Army Small Business Conference
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For Government Use Only

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Before the Ink Dries….
THE COMPETITIVE MARKET SPACE

Financial Markets
For Capital
Publicly Traded Corporations

Prime Contractor

Other Primes for Government Contracts

Subcontractors
Before the Ink Dries….

BUSINESS AND CONTRACT FLOWS

BUSINESS BENEFIT FLOW

Program

Prime Contractor

Subcontractor

Army

CONTRACT FLOW

Federal Government

Prime Contractor

Subcontractor

There are some legal protections built into the FARS and DFARS such as The Prompt Payment Act, Christian Doctrine
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CONSIDERATIONS

- Take into consideration the corporation’s:
  - Current financial situation and the future projections
  - Relative competitive position in the industry sector
  - Exposure to macro and micro economic market movements
  - Cost of debt and its debt structure
  - Current and pending legal actions and the impact on their financial condition
  - Financial and legal relationships between it and the entity with which you are contracting (i.e. wholly owned subsidiary, independent business unit, joint venture, etc.)
  - Corporate and program management, structure, composition and competencies.
  - Revenue model on this contract in relation to core business and competency.
  - Strategic direction and focus and how this contract fits or doesn’t fit into it.
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HUMANS AND ENTITIES

• Good humans can make bad decisions. When humans make a bad decision, the resolution is between the entities who are parties to the contract rather than between people.

• And people have a fiduciary duty to their respective entities to do what is best in the interest of their entities.

They (corporations) cannot commit treason, nor be outlawed nor excommunicated, for they have no souls.

Sir Edward Coke (1552 - 1634)
Case of Sutton’s Hospital, 10 Rep. 32.
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CONTRACTS

• Contracts, if done properly, have two purposes:

• the *first and most important purpose* is to allow the parties to establish the rights, obligations, duties and expectations for all involved so that breach can be avoided.

• the *second purpose* is to enforce in the event of breach

_There will always be times when it is good business sense to breach a contract because it is less expensive than meeting the obligations of the contract, hence the reason for liquidated damages._
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BASICS

• A Few Basics
  • Do the Business Case
    • Calculate in: opportunity costs, resource requirements, cash flow, contract financing (if any), etc.
  • Structure an agreement that addresses each party’s needs
    • Equitable, win-win transactions last; inequitable, win-lose contracts fail
  • Strike a balance between time to negotiate and desired specificity
  • Obtain a clear definition of terms
    • Ambiguity leads to conflict and misunderstanding
  • Pay close attention to contract term and termination clauses
  • What are the payment terms - cash flow is king.
  • Hire outside counsel who specializes government contracts
  • Protect your intellectual property