Past Performance:
3 Ways for New Businesses to Improve Their Scores

By Steven J. Koprince

Past performance is an important evaluation factor in almost every competitive set-aside solicitation, and the past performance requirement presents a conundrum for many new small businesses: it can be difficult to obtain contracts without relevant past performance, but impossible to build a past performance record without first getting government contracts. The question then becomes: how can new small businesses escape this vicious cycle?

One way for a new business to bolster its past performance record is through teaming arrangements with more experienced businesses. FAR 15.305 directs agencies to consider past performance information from an offeror's predecessor companies and proposed major subcontractors. Thus, under the FAR, a new small business can enter into a joint venture, prime/ subcontractor or other teaming relationship with an experienced business and take advantage of that business's past performance history for purposes of a given solicitation.

Given this allowance in the FAR, teaming arrangements can be a highly effective means of quickly building a new small business's past performance record. However, small businesses considering a teaming relationship should always do their homework before signing on the dotted line.

Two considerations are paramount: first, does the solicitation in question permit the evaluators to consider the past performance of teammates? Despite the general rule in FAR 15.305, the GAO has held that an agency need not evaluate such information if the solicitation expressly states that teammates' past performance information will not be considered. Second, does the proposed teaming relationship comport with the solicitation's size standard? Under the SBA's affiliation rules, teaming with another business, even in a prime/ subcontractor relationship, can cause the two businesses to be deemed affiliates. This, in turn, could cause the offeror to exceed the solicitation's size standard. Both of these considerations should be thoroughly investigated before a small business begins a teaming relationship.

While teaming can be a powerful asset to an emerging small business, it is not the only way for a new small business to compete in the past performance arena. FAR 15.305 also directs agencies to consider the past performance information of "key personnel who have relevant experience." Even if a new small business has minimal relevant experience, it may receive past performance credit for the key employees it proposes to use in the performance of the contract.

Even if a small business's own permanent employees lack significant relevant experience, the business may be able to take advantage of the experience of its proposed key personnel. In many industries it is common practice for multiple offerors to seek letters of commitment from key incumbent personnel, such as project managers, and propose that those personnel continue their roles under the new contract. Such an arrangement is often suggested to ease the government's potential concerns over contract transition, but can also provide a major boost to the offeror's past performance score. However, as with teaming arrangements, an individual solicitation may alter the baseline FAR rule that the experience of key personnel may be considered. It is important, then, to carefully read the solicitation before relying on key personnel to meet past performance requirements.

A third way a new small business can build a strong past performance record is by obtaining and performing sole-source contracts. While under federal law, most government contracts must be awarded competitively, certain small disadvantaged businesses—such as 8(a) businesses, service-disabled veteran-owned businesses and HUBZone businesses may be awarded contracts on a sole-source basis. Performing sole-source contracts allows a small business to build a strong past performance history, which can lead to stronger scores on future competitive procurements.

It is important to remember that each of the small disadvantaged business programs carries its own requirements and certification process. In order for small businesses to certify under these programs, they may have to expend some additional resources in the form of time or money to make sure it is done correctly. Regardless, the benefits inherent in the ability to obtain sole-source contracts can far outweigh the time and resources it takes to apply to a program. For this reason, it is wise for any new small business to consider whether it could qualify for participation in one or more of these programs and, if so, take steps to gain entry.

In the end, past performance requirements don't have to be a burden on new small businesses. By entering into teaming arrangements, using the experience of key employees, or gaining admittance to a program that awards sole-source contracts, new businesses can quickly develop a record of past successes.

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