

THE BDO GOVCON WEEK AHEAD - MARCH 2020

March 2020



March 30, 2020

Feds Turn to Contractors to Help with Wide Array Of COVID-19 Needs: Federal spending often increases in a time of crisis. The federal government's reaction to the novel coronavirus (COVID-19) pandemic is no exception. Congress has passed a total of three stimulus bills. While some money is very specifically targeted at medical supplies or for individual help, agencies have discretion on how to spend a certain amount of the new dollars. At the same time, contractors can expect new competitors as companies that traditionally do most of their business in the commercial sector, turn to government to pick up the slack. While experienced contractors likely have an edge, federal customers do like looking at new entries, especially if they are innovative or have a size status the agency needs. A special consideration now is a great way to reach your federal customer. It's important to note that many prospects have new rounds of internal Continuity of Operations Planning (COOP) sessions to ensure that their agencies continue to function. This takes away time for discussions with contractors. Virtual meetings have replaced in-person gatherings. Make sure your system can handle a good, uninterrupted discussion. Also, make sure that you and your surroundings look as professional as they should during a virtual meeting. The Office of Management and Budget has issued guidelines for contractors already working on projects. By being familiar with these guidelines, so you can work them into presentations on new deals is also important. The government is open for business and there are significant opportunities. How you reach new opportunities might have changed a little but being adaptable and focused could position your company for success. Check out the story on OMB guidance now.

GSA, VA Open Schedules to State and Local Use Amid Crisis: State and local governments are now able to buy directly from any Schedule contract from a contractor that has opted in to the Cooperative Purchasing program. The General Services Administration has invoked the disaster preparedness and relief feature of its Schedule contracts, while the VA has opened its Schedules pursuant to its authority under the Stafford Act. Companies that have chosen to make their Schedule contracts available to state and local customers should anticipate a potential increase in activity. This is especially true for pharmaceuticals and medical equipment but may also include tents that can be used as triage areas, supplies such as toilet paper, or technology services related to ensuring security on networks that are now being widely accessed from remote locations. Schedule contractors must have systems in place to properly identify a Schedule order and should be ready to lead an

inexperienced customer through the Schedule buying process. Confusion over whether a state buy, for example, is a Cooperative Purchasing action can lead to compliance problems for contractors. Contractors collect and remit the applicable Schedules Industrial Funding Fee for all Cooperative Purchasing Schedule orders, just as they would for any other order. Some state and local governments will likely embrace this new ability on their own. Contractors may have to alert their customers to this new capability and should be prepared to promote a Schedules solution to state and local government customers.

Families First Coronavirus Response Act (FFCRA) – New Compliance Requirements & Hurdles During COVID-19: President Trump signed the Families First Coronavirus Response Act (FFCRA) into law on March 18th. The law expands family and medical leave and guarantees paid sick leave for some workers – particularly those who work at private businesses with fewer than 500 employees, including government contractors. The new provisions are adding additional compliance and communication hurdles, as well as monetary burdens for companies that sell to the government. Many questions remain regarding the overlap of traditional FMLA leave and the expanded provisions under the FFCRA's guidance. Among these are how paid sick leave should be used in states where accrued paid sick leave is already mandated, and which employers may qualify for an exemption. While many in the industry are calling on the Department of Labor (DOL) to provide additional guidance and clarifications, this may not come for some time. Employers should not wait to act. US workers employed by companies with 500 or fewer employees are allowed to take up to 12 weeks of job-protected leave under the new law if they are unable to work or telework due to a need to care for a child under 18 years of age where the child's school/care is no longer available due to the novel coronavirus (COVID-19). Under these circumstances, the first 10 days of leave could be unpaid, but every day after that must be paid. Employers with 500 or fewer employees must provide paid sick time to workers if the worker is sick with, or has been quarantined, due to COVID-19, is caring for a child in the event their school/care is no longer available, and other such situations. The law requires full-time employees to be eligible for up to 80 hours of paid sick leave and part-time employees to be eligible to the average number of hours they work over a two-week period. The employer cannot require the employee to find a replacement to cover the hours they will take off as paid leave. Affected government contractors need to take quick action to ensure that employees who are eligible for the expanded FMLA leave and paid sick leave are identified internally and that processes are put in place to ensure compliance. Employers must also publicly post a notice to employees informing them of the paid sick time available. The DOL is expected to create a model notice and make it available to employers no later than March 25. While the employers are currently responsible for the payouts that would be required, they will be eligible for additional tax credits, likely not coming until 2021, to help.

March 19, 2020

Inside The \$8.3b Coronavirus Bill: The President signed an \$8.3 billion emergency funding measure to fight the spread of the novel coronavirus (COVID-19) last week. The measure funds vaccines, test kits, and related treatments. The measure also includes significant money for state and local government prevention efforts, as well as \$7 billion in loans to small businesses impacted by the virus. Contractors in healthcare-related fields should contact their federal and state government customers. States may have additional money to spend if they have appropriated their own funds. The federal money should be available soon, if not already. Contractors with work underway may be able to augment their spending with a portion of the federal funds. Even those not directly in health fields may see a benefit. IT service firms that can assist with related research could also see increased opportunities. Congress did not rule out additional measures should the depth and breadth of the COVID-19 outbreak worsen. While the new funding may translate into new business, Congress is also taking steps to ensure that companies don't exploit the situation for unfettered financial gain. The funding legislation contains language designed to protect against potential price gouging by drug manufacturers for vaccines and other medicines developed with taxpayer funds. Many companies will pursue the opportunities, so make sure your solutions stand out. See this article for more information.

Coronavirus Changes How We Do Business: Conferences cancelled, customers working from home, and the uncertainty of what will come next, are all impacting the pace of federal business. The novel coronavirus (COVID-19), and the fear that surrounds it, has contractors and federal customers wondering how to conduct the necessary business of government, while still acknowledging appropriate health-related concerns. The federal market is in flux while still being very much open for business. It is difficult to estimate how many consumable items an agency should order when sizeable portions of the workforce may be working remotely for several weeks. We have received calls asking if there are any federal prohibitions on the acquisition of individually-sized hand sanitizer containers (remarkably, some agencies do have guidance on this). Contractors providing on-site services to federal agencies may have to find other locations for their workers to perform their jobs. Depending on the requirement, an unsecure location may not be an answer. "Facts over fear" is a commonly heard refrain, and it's a good one to keep in mind. Constant communication with federal clients is another. Applying common sense via consistent communication reduces distractions and enables more focus on the work to be done. Trying to develop new business? Technology can be your friend. A recent webinar with an agency was held where three different locations came together. There was no impact on the ability to get the contractor's message across, nor on the ability to have a good discussion. Fire up your webinars and stay in communication with clients. Check out the article for more information.

A Quick Refresher on Federal Customer Gift Giving: Contractors may be thinking about providing current and prospective federal customers with small gifts, such as hand sanitizer, masks, or disinfectant spray, to help prevent the spread of the novel coronavirus (COVID-19). While the intention of these is to send the message that contractors care, even a well-intentioned gift could backfire if federal rules aren't followed. It's essential to check with any federal customer on their specific gift policy before you show up with goodies. While the general federal rule is that an employee may accept something of up to \$20 in value from a covered source per occasion (contractors are a covered source) some agencies have adopted a zero-tolerance gift policy. This applies to many senior level employees, especially political appointees. Even if an office abides by the \$20 per occasion rule, there is also the accompanying rule that caps gift giving at \$50 in any one year from a specific source. A gift of six boxes of \$10 hand sanitizer would potentially be over the limit, if the gift was for one specific person. Don't rely on your federal customer to know or follow gift-giving rules. People are people and like to accept even small gifts. Make sure you know and follow the rules and avoid trouble for your customer or yourself.

March 9, 2020

Coronavirus Starting to Impact Federal Business: Although the Coronavirus has spread to New York, Seattle, and other major metropolitan areas, there has yet to be a confirmed case in the Washington, D.C. area. The Department of Defense is taking no chances, and recently announced that it is restricting base access, travel, and exercises in response to the virus. The Department of Homeland Security has closed at least one Washington state facility. Other agencies may follow suit. There is no central policy from the Office of Personnel Management, but contractors and their customers must look at these developments as creating a market that is something other than "business as usual."

Most government agencies are still open for work and new opportunities are developing for contractors. As situations at specific agency locations may change, contractors should check in with their customers to see what the status of their office is. In-person meetings may have to be moved to teleconferences or webinars.

The Department of Health and Human Services is already re-programming more than \$135 million to spend on virus prevention, vaccination, and other healthcare-related actions. The Administration has requested \$125 billion in new spending. Every company from pharmaceutical

firms, to mask suppliers, data analytics companies, and organizational experts may see an increase in demand for products and services – so long as their supply lines haven't been overly impacted by the virus' spread in other countries.

A common-sense approach is likely the best one for contractors. Take proper precautions. Anticipate smaller crowds at events and perhaps some decrease in the pace of business. See the story here for more.

Impact of HHS' Closure of Program Support Center Still Being Felt: The sudden decision to close the Program Support Center (PSC) in the Department of Health and Human Services (HHS) last year is still having a negative impact on government and industry. More than \$1 billion in contracts are at risk, with agencies unable to get answers about where obligated work is in the pipeline and contractors not getting paid. Assisted acquisition service organizations, such as PSC had been when it was operational, are a popular way for contractors and agencies to often receive complex procurements done by specially-focused acquisition and program management experts. An agency will typically turn to these fee-for-service organizations, housed in several federal agencies, for special projects or when their internal acquisition resources are focused on other obligations. Contractors typically like assisted acquisition service organizations, as well, because they conduct acquisitions in a timely manner and usually have experience in specific areas, making the process streamlined. The PSC was a smaller assisted acquisition organization than many of those operated out of GSA regions or by the Department of Interior's Interior Business Center. It had a positive reputation, though, for working on smaller or mid-size projects, particularly in IT. Some industry professionals believe that the shutdown was political in nature. Regardless of the reason, contractors should exercise caution when recommending an assisted acquisition solution to their federal clients. Long-time contractors know that issues with assisted acquisitions do occasionally occur. Make this a part of your market research. Check out the story for more information.

Data Analytics Is A Tool, Not A Substitute for Interaction: Use of data analytics is a multi-million dollar component of the government contracting industry. Mining data to find the best upcoming opportunities, right people, and preferred acquisition methods is a legitimate part of the business development process. Data is a tool and, like any tool, how well it's used depends on who is wielding it. Rely too heavily on your tools, and you lose essential skills, in this case the ability to connect with people. How many times have you seen data misapplied? One obvious scenario is the last time you shopped online for a car. You were bombarded with online ads. Those ads didn't stop after you made a purchase, right? If the people knew you, they would have known that you had purchased a car and moved on. Data can only get you so much information on a potential customer. Information can also narrow your focus to the point where the opportunity to make other relationships is minimized. We always support a focused business development approach, but remember that the federal business space is a small one. People move from company to company and from agency to agency. That person today who may not seem like an important contact, could connect you to a great opportunity at their next job. Data won't tell you that. Only attending government contracting events and staying in front of people will provide you with important information. Data analytics certainly has its place, and unless you're selling to a Star Trek character, that place shouldn't supplant personal interaction.

March 2, 2020

DOD's New Adaptive Acquisition Framework Means No More One Size Fits All Approach: The Department of Defense (DOD) is implementing its new Adaptive Acquisition Framework this year. Over the next several months the department will issue eight new overarching policies that will guide acquisitions on everything from service to software to defense business systems and more. New interim guidance, in fact, is already out on software acquisition. The goal of these new directives is to empower acquisition and program officials in DOD to use the best acquisition approach for what they are buying. At least one DOD official pointed out that every program manager in the agency is trained

on how to buy a submarine, but that almost no one buys submarines. For services, new directives will be largely targeted on how to buy varying “as a service” offerings. All service acquisition guidance is being re-written. DOD is bringing in two new people to assist specifically in this area. In addition to flexibility, the intent of the Adaptive Acquisition Framework is to protect the defense industrial base. Interestingly, no mention is being made of whether, or to what extent, these changes were influenced by the Section 809 panel acquisition reform effort. The new changes are expected out prior to the end of the calendar year. Contractors should be familiar with the new frameworks and how to work with their customers to take advantage of the intended flexibilities. The policies and other information, can be found here:

Changes to Section 889 Subsection B May Not Come This Year: Congress-watchers are skeptical that the body will take action this year to lessen the impact on Section 889 of the FY’18 Defense Authorization Act. That provision bars contractors from using prohibited IT and telecommunications equipment anywhere in their enterprise, regardless of whether it’s used in relation to the fulfillment of a government contract. A proposed rule is expected out in March on Subsection B and industry is bracing itself for the potential impact. While some in Congress have indicated that the intent of the legislation isn’t as far-reaching as a strict reading of the statute may suggest, that’s no real defense for any contractor that finds itself the target of an investigation or whistle-blower suit. Security cameras, smart phones, desk phones, and routers used in employee home-offices could all be covered. While the original provision was included in the defense bill and DOD acquisitions will be the first to be covered, the issue isn’t just a defense matter, some say. Any legislative fix would likely cross multiple Congressional committee jurisdictions. And the politically-charged nature of the topic, means that industry and government will have to speak with one voice to get changes made and, there may have to be one or more significant events to get the Hill to move. Contractors must begin developing a risk assessment matrix to ensure that their exposure is understood, managed, and reduced.

Does Your Business Strategy Match Your Compliance Strategy? Successful companies build strategies and execute business plans designed to expand their federal footprint. It would be bad, though, if a government agency came in and took some of that money away, though, right? That’s just what happens to companies that focus only on growth and not on ensuring contract compliance. Smart contractors have strategic plans for both business growth and contract compliance. When was the last time your company had mandatory training on the do’s and don’ts of federal business? What is the process for handling an internal complaint or question? Your company is at risk if you answered “I don’t know” to either of these questions. Some companies play the odds and believe they won’t get audited. Most compliance cases are filed by whistleblowers; either disgruntled employees or competitors. There are also professional whistleblowers and, while their claims might be less substantial, your company will still have to invest in legal and other outside help to defend itself. That’s costly and a huge distraction. Compliance programs are like an extra-strength flu shot. They can keep you from getting sick and make any incident less harmful. Like flu shots, compliance programs are comparatively less expensive than getting the flu and don’t tie up nearly as much time as an audit or investigation can when you’re not prepared. Investing in business growth and compliance saves your company time and ensures that you will keep more of the money you make.
