ARTICLES

# The Ups and Downs of Government Contracts

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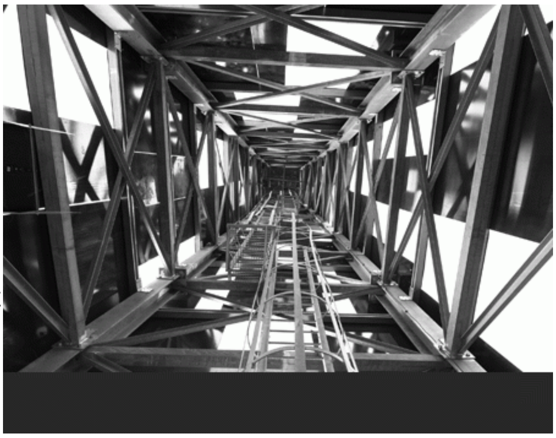

For small, minority-owned firms looking to build their project portfolio and grow their business, securing a government contract can seem like the Holy Grail. After all, government contracts for architect and engineering (A&E) jobs often pay well and can lead to more work down the road for a recurring revenue stream.

Firms certified as a Minority Business Enterprise (MBE) – at least 51 percent owned, operated and controlled on a daily basis by someone belonging to an ethnic minority – have an advantage in winning government contracts because a percentage of federal, state and municipal government contracts are reserved for MBEs. Similar designations exist for Women's Business Enterprises (WBE), Disabled Business Enterprises (DBE) and Service-Disabled Veteran Owned Businesses (DVBE). There's an obvious social need for governmental entities to encourage diversity by giving MBEs a leg-up into the process, but we tell all our clients to go in with their eyes open and their coverage buttoned up, as this access can be a double-edged sword.

Governmental projects – whether federal, state or municipal – almost always have a standard liability requirement that's higher than non-government contracts of comparable scope. Municipal projects in Chicago, for example, require a standard $5 million liability limit on projects that might require $2 million in the private sector. If you're working on an airport, or anywhere near a runway, those requirements can be even higher.

For a smaller firm, or someone just starting out, a $5 million policy can be prohibitively expensive. To add to the difficulty, insurers don't like putting up big limits for untested A&Es. Sometimes it's necessary to work with multiple insurers in order to reach the $5 million requirement. And that can be a costly way to go.  Optimally, we like to find a way to get to the $5 million limit with one insurer, as that is usually more cost effective.

If you're a new firm looking for government work, but you don't have a lot of revenue yet, it's important to be positioned in a way where you can find coverage as cost effectively as possible. Sometimes the initial lower cost option becomes more expensive if that insurer is not willing or able to give you the limits you require.

Another problem with government contracts is that they are almost impossible to negotiate. In our last blog, we talked about consequential loss exposure and how A&E professionals can find themselves on the hook for extraneous costs if the completion of a project is delayed.

For example, if you're working on a school and it isn't finished on time, the school district might have to rent additional space to accommodate students for the start of school. As the design professional, you might be liable for the per-day cost of rent, which can add up fast and cut into profits.

While many firms won't sign contracts without a waiver of consequential damages, firms that take on government contracts often don't have a choice. Because you can't control the contract terms, you'll have to accept that at times you might be taking on some exposure that you can't insure.

Governments are stewards of the tax payer dollars and they have an obligation to make the best financial decisions for their constituencies. They also have an obligation to make sure that the diversity of their constituency is fairly reflected in the contracts they award. That's both good and bad news for MBE, WBE, DBE and DVBE A&E firms. You might win the contract, but you'll have to jump through more hoops to make sure you're properly covered and accept difficult contract provisions.

For help in navigating government contracts, contact us at mwelbel@risk-strategies.com or dcrow@risk-strategies.com.

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