



Set-Aside AlertTM

www.setasidealert.com

Vol. 20, No. 23

Your source for Federal set-aside and small business contracting news since 1992

Dec. 7, 2012

Closing out a government contract

By Pamela Mazza and
Megan Connor

There never seems to be a convenient time to think about closing out a government contract. At the time of award, contractors are often too thrilled with the win to think about the end. During performance, the job at hand requires all the focus and energy. However, in this time of uncertainty, the best practice is preparation. Whether a contract expires, an option is not exercised, or a contract scope is reduced, contractors should consider the following at the beginning, middle and end of each contract:

1. Notify staff of closeout. At the time of contract closeout, contractors should send a written notice to the staff assigned to the project that the contract is completed. This notice should instruct staff not to perform any additional work or incur any additional costs.

2. Return GFP/GFE. If the contract included the use of Government-furnished property or equipment, this property or equipment must be returned to the Government (unless the contract provides otherwise). If the property is damaged beyond normal wear and tear, the Government may require you to repair or replace the property or even reimburse the Government for it.

3. Familiarize yourself with the Government's closeout requirements. Pursuant to FAR 4.804-5, the agency's contract administration office is responsible for initiating administrative closeout of the contract after receiving evidence of its physical completion. While some of the following administrative closeout procedures the agency must complete under FAR 4.804-5 may be inapplicable to your contract, it is helpful to review the agency's obligations so you can anticipate additional requests the agency may have during the closeout process:

a. Disposition of classified material is completed.

"There never seems to be a convenient time to think about closing out a government contract."

- b. Final patent report is cleared.
- c. Final royalty report is cleared.
- d. There is no outstanding value engineering change proposal.
- e. Plant clearance report is received.
- f. Property clearance is received.
- g. All interim or disallowed costs are settled.
- h. Price revision is completed.
- i. Subcontracts are settled by the prime contractor.
- j. Prior year indirect cost rates are settled.
- k. Termination docket is completed.
- l. Contract audit is completed.
- m. Contractor's closing statement is completed.
- n. Contractor's final invoice has been submitted.
- o. Contract funds review is completed and excess funds deobligated.

4. Analyze the Contract. You should review the contract terms and conditions to confirm you have fulfilled all contract requirements, including preparing any necessary reports and a final invoice. In addition, some agencies include specific clauses related to contract closeout in their contracts. You should analyze these specific provisions and ensure you have fulfilled all their requirements.

5. Closeout any subcontracts. Review the terms and conditions of any open subcontracts and proceed with closing them out.

6. Prepare a Voucher Schedule. A voucher (invoice) schedule is a spreadsheet of total costs billed and paid under the contract. All contract payments are listed on the

spreadsheet by cost element (e.g., direct labor, overhead, G&A, etc.) and subtotaled by fiscal year. Although the Government will likely prepare its own voucher schedule, in the event there is a discrepancy or dispute, it will be helpful for the contractor to have its own.

7. Review your contract correspondence file. Ensure the file is complete and accurate. Moreover, confirm that any contracting officer notices that could be the subject of a request for equitable adjustment or claim (for instance, a change in scope) have already been raised with the contracting officer in a request for equitable adjustment or claim.

8. Confirm all claims have been presented to the contracting officer. Generally, the Government will only pay a contractor the final amount due under a contract if the contractor signs a release waiving all claims the contractor has against the Government except for "claims in stated amounts." Thus, a contractor should confirm that it has submitted all claims under the contract to the contracting officer prior to signing a release for final payment. Once you confirm you have provided written notice to the contracting officer of all outstanding claims, including an amount (or your best estimate) for each, you should identify these claims and their amounts as exempt in the final payment release.

Pamela Mazza is the managing partner of PilieroMazza PLLC in Washington, DC. Megan Connor is an associate specializing in government contracts law and litigation. For over 25 years, PilieroMazza has helped small and mid-sized businesses to successfully navigate a diverse array of legal matters, with a primary focus on government contracting and the SBA's procurement programs. For more information, please visit www.pilieromazza.com.