SELECTING A RESPONSIBLE CONTRACTOR

ML TAYLOR, C.P.M.
OCTOBER 2014
WWW.MLTWEB.COM
Before we start ...

SAFETY AS A PRINCIPLE

- Personal responsibility ...
- Our visitors &
- Our family &
- Our friends &
- Ourselves

LANGUAGE

- Buyer =
  - Contract Administrator
  - Contracting Officer
  - Supply Chain Manager

- Contract =
  - Purchase Order
  - Service Agreement
OBJECTIVES

- Discuss rationale for evaluating a contractor’s capabilities, experience and background
- Review a sample responsibility checklist to use when preparing to award contracts
- Locate resources which can be used to evaluate offerors
- Preclude awarding a problem-prone contract
If you only seek reasons to accept a proposal, you will never find any reason to reject it.
DEFINITION: EXPERIENCED BUYER

Someone who has been around long enough to...

➤ Imagine everything that can go wrong in a contract
  and...

➤ Knows that things **will** go wrong
  and...

➤ Is wise enough to avoid or mitigate the problems before they arise
EXPERIENCED BUYERS...

- Challenge what they see and hear
  - business name, key personnel, customers, products, licenses, patents, labor relations, equipment, delivery promises,
- Verify when prudent
- Get help when appropriate
- Weight risks before proceeding
- Mitigate potential problems
BUYER’S RESPONSIBILITY

ENSURE CONTRACTORS ARE ..........

- Responsive to our requirements
  - Technical, administrative, pricing,
- Qualified
  - Licensed, experience, SB classification, debarred
- Responsible
  - Financial, accountable, reliable, dependable, ethical
- And most importantly....

Successful
RESPONSIBILITY DETERMINATION
FAR 9.103

(a) ... contracts shall be awarded to, responsible prospective contractors only.

(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility.

SBA help for small business determination

(c) ...While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.
OUR NEW PUMP SUPPLIER (OR NOT)
WARNING FLAGS

- Inconsistencies in proposal documents
- Omissions in provided data
- Vague details
- Depends on assumptions
- Lack of business knowledge
- Obscured identities of principle personnel
- Sparse qualification & experience description
- Talks about the competition rather than himself
WARNING FLAGS

- Inconsistencies in public records
- Uses undocumented workers
- Counterfeit products
- Shoddy workmanship
- No warranty or pride in workmanship
- Known polluter
- Unstable business
- Impropriety in conduct & relationships
- Uses bribes or leverage to get business
WHERE DO WE START?

- Weigh the risks
  - No contract vs. unsuccessful contractor
  - Claims disputes, legal proceedings
  - Liability for contractor’s mistakes & errors
  - Company image and reputation
- Are we making invalid assumptions?
- Have we asked the right questions?
- Have we done our due diligence?
- Can we defend our decision?
SOLICITATION LANGUAGE

➢ An opportunity for contractors to:
  ➢ demonstrate added value & expertise
  ➢ validate reliability and capability
  ➢ assist in the process
  ➢ earn a long-term relationship

  Contractors who can not –
  will not be considered for award

Good contractors will appreciate it
Poor contractors will balk and complain
CONCERNS

INVESTIGATE, MITIGATE OR REJECT?

➢ Will more information help?
  ➢ Submittals, references, independent verification

➢ Can the risks be mitigated in the contract?
  ➢ E.g. source inspections, hold points, withholding $

➢ Are the ambiguities such that we must reject?

Some actions require top-level decisions:

➢ Should we take the risk anyhow?

Describe your concerns based on risks
JUSTIFICATION TO REJECT

- GAO decision B-406625
- "....In this regard, with respect to the price realism analysis, the RFP provided that the agency could: [r]eject any proposal, at any time during the evaluation, which is unrealistic in terms of performance commitments or based on unrealistically high or low price. **Such proposals may be deemed to reflect a lack of technical competence, a lack of understanding of the requirements, an inability to perceive the complexity of the requirement, or a lack of sound business judgment....**"
- "...The fundamental purpose of discussions is to afford offerors the opportunity to improve their proposals "to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation."

Accept nothing less
The goal is to determine whether financial "Impairments" and/or "Impediments" exist which could adversely affect a contractor’s ability to perform the contract.
PERFORMANCE

WHAT DOES IT TAKE?

How much does it cost to perform?

1. G & A - overhead costs of running a business
2. Labor to do the work, payroll & fringe benefits
3. Materials, equipment, tools
4. Financing & cost of money
5. Govt. documentation & rules (e.g.: e-verify)
6. Hanford rqmts. (e.g.: training, badging)
7. Subcontractor payments
8. Taxes, insurance, licenses, permits
Impairments

- Liabilities exceed assets
- Credit is impaired from payment history
- Liens or lawsuits
- Bankruptcy

Data Sources

- D&B report
- Web Search (contractor Name News)
- Review of audit reports
- Review of financial statements.
Impediments

- Insufficient capital
- Non compliant accounting system
- Labor disputes or expiring union agreements

Data Sources

- History of recently & successfully completing similar contracts under similar circumstances
- Bonding Capacity determination
- Review of audit reports
- Review of financial statements.
PROPOSAL DEMONSTRATES SOUNDBUSINESS JUDGMENT

- Understands solicitation requirements
- Realistic delivery and pricing
  - Doesn’t have to be profitable
- Rational and coherent work description
- Capable personnel
  - or a plan to obtain them
- Related and positive business history
- Adequate accounting system
- Interested in success
  - not just getting the contract
DISCUSSIONS & CLARIFICATIONS

➢ Raise responsibility questions
➢ Provide offerors an opportunity to
  ➢ “Improve” the proposal
  ➢ Clear and convincing evidence of qualifications
➢ Negotiate an assurance
  ➢ SB certification
  ➢ Bond
  ➢ Retention
  ➢ Incentive
GAO Case B-406990, Kollsman Inc., Oct 2012

- ... the source selection decision did not discuss the past performance evaluation...
- ...Given the lack of documentation and support... we find no basis to conclude the agency reasonably evaluated....
- ...protest... is sustained where the record does not support the...rating...
U.S. Federal Claims Court 01-634C, Orlosky Inc. v. U.S. Navy

“...For their part the Navy witnesses were marginal, at best. At one point the court was constrained to advise defense counsel that the Navy’s (now fortuitously retired) Contract Manager, Mr. Smith, was showing himself insufficiently coherent to be allowed to continue to testify. The court could not credit Mr. Smith with being other than derelict in contract coordination duties. ..”

Determinations & decisions based on facts
## USE A CHECKLIST

### CONTRACTOR RESPONSIBILITY DETERMINATIONS

#### 1. INTRODUCTION

#### 10. MANDATORY CRITERIA

<table>
<thead>
<tr>
<th>Item</th>
<th>Satisfactory Y/N</th>
<th>Criteria</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td>Legal Business Name</td>
<td>Contractor name and address matches registration information and information on search.</td>
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</table>

#### 11. FINANCIAL & BUSINESS OPERATIONS

<table>
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<tr>
<th>Item</th>
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<th>Criteria/Evaluation</th>
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<td>Third party business references</td>
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<td>Accounting System Review</td>
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<td>3.</td>
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<td>Bankruptcy/Reorganization Fillings</td>
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<td>4.</td>
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<td>Bonding Capacity</td>
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<td>CAS Compliance</td>
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<td>6.</td>
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<td>Contract Suspension or Termination for cause</td>
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<td>Credit Rating</td>
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<td>8.</td>
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<td>Criminal Investigation or Indictments</td>
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<td>9.</td>
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<td>Criminal Judgments/Convictions</td>
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<tr>
<td>10.</td>
<td></td>
<td>DCAA Audit Reports</td>
<td></td>
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<tr>
<td>11.</td>
<td></td>
<td>Financial Statements to show assets, liabilities, etc.</td>
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<tr>
<td>12.</td>
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<td>Insurance Coverage</td>
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<td>13.</td>
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<td>Liabilities exceed assets</td>
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<tr>
<td>14.</td>
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<td>Liens or lawsuits</td>
<td>Web search for business name and keywords such as lawsuit, judgment, civil fine.</td>
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D & B (DNB.COM)

BUSINESS & FINANCIAL INFORMATION

Build Business Credit
CreditBuilder™ - Monitor and build your business credit.
Get Started

How To Travel Well
Hassle-free travel makes business trips less stressful and can increase the productivity of workers. One way to achieve this is by improving travel policies, which can reduce turnover and potentially save money. Read More

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If "Non-revenue" appears after Tax Registration Number, the account is not registered with the Department. However, it may be registered with other agencies in the state.

Washington State Department of Revenue
State Business Records Database Detail

TAX REGISTRATION NO: 602992730
UBI: 602992730
ENTIY NAME: TRUVISION SOLUTIONS LLC
BUSINESS NAME:

MAILING ADDRESS:
4 BLUE STAR CT
PASCO, WA 99301-3287

BUSINESS LOCATION:
4 BLUE STAR CT
PASCO, WA 99301-3287

ENTITY TYPE: LIMITED LIABILITY

NAICS CODE: 541330
NAICS DEFINITION: ENGINEERING SERVICES (PT)

ACCOUNT OPENED: 02/01/2010 12:00:00 AM
ACCOUNT CLOSED: OPEN

RESELLER PERMIT NO: A26 9377 14
PERMIT EFFECTIVE: 10/05/2012
PERMIT EXPIRES: 10/04/2014
Key People & Organizations for Enron Access Corporation

Enron Access Corporation

Houston, TX

D&B Company Report

7 Inactive Members Found

Key roles for Enron Access Corporation

- Lance W. Schneier
  President, President, Director, President

- Kurt S. Huneke
  Treasurer, Vice President, Treasurer

- Peggy B. Menchaca
  Secretary, Vice President, Secretary
SEC.GOV - SEARCH EDGAR

PUBLIC DISCLOSURES

Search the Next-Generation EDGAR System

You can search information collected by the SEC several ways:

- Company or fund name, ticker symbol, CIK (central Index Key), file number, state, country, or SIC (Standard Industrial Classification)
- Most recent filings
- Full text (past five years)
- Boolean and advanced searching, including addresses
- Key mutual fund disclosures
- Mutual fund voting records
- Mutual fund name, ticker, or SEC key (since Feb. 2006)
- Variable insurance products (since Feb. 2006)

Custom searches:

- Confidential treatment orders
- Effectiveness notices
- SEC Central Index Key (CIK)
- Daily filings

Other Resources:

- Researching Public Companies Through EDGAR: A Guide for Investors

Sign up for RSS Feeds
Beginners' Guide to Financial Statements

The Basics

If you can read a nutrition label or a baseball box score, you can learn to read basic financial statements. If you can follow a recipe or apply for a loan, you can learn basic accounting. The basics aren't difficult and they aren't rocket science.

This brochure is designed to help you gain a basic understanding of how to read financial statements. Just as a CPR class teaches you how to perform the basics of cardiac pulmonary resuscitation, this brochure will explain how to read the basic parts of a financial statement. It will not train you to be an accountant (just as a CPR course will not make you a cardiac doctor), but it should give you the confidence to be able to look at a set of financial statements and make sense of them.

Let's begin by looking at what financial statements do.

“Show me the money!”

We all remember Cuba Gooding Jr.’s immortal line from the movie Jerry Maguire, “Show me the money!” Well, that’s what financial statements do. They show you the money. They show you where a company’s money came from, where it went, and where it is now.

There are four main financial statements. They are: (1) balance sheets; (2) income statements; (3) cash flow statements; and (4) statements of shareholders’ equity. Balance sheets show what a company owns and what it owes at a fixed point in time. Income statements show how much money a company made and spent over a period of time. Cash flow statements show the exchange of money between a company and the outside world also over a period of time. The fourth financial statement, called a “statement of,
REPORTED PROBLEMS

Better Business Bureau®
Start With Trust®

Search For: Business Name, URL, Phone, City and State, Postal Code

Search BBB Business Reviews
Use BBB’s search to check out businesses and charities from our comprehensive database of BBB Reviews. You can search by:
- Business or Charity Name
- Type of Business
- Type of Charity
- Website URL
- Phone Number
- Email Address

Use a location to center your search around a specific region, “City” and “State” or “Postal Code” is required to search by type of business.

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WORKERS COMP COVERAGE

About Verifying Workers' Comp Coverage

Does your contractor or other employer have a paid-up workers' comp account?

Verify that employers and building trades contractors are registered as a business in Washington and in good standing with L&I by using these online services.

Employers
- Verify that an employer's workers' comp coverage is paid up.

Building trades
- Verify that a building trades contractor is registered, bonded and insured to work in Washington.
- Check L&I's list of infractions issued to building trades contractors and plumbers.
- Verify that an employer or independent contractor's Department of Revenue tax registration account is active (www.dor.wa.gov).

Did you know...

Under Washington State law, you or your business could be liable for the unpaid workers' compensation (industrial insurance) premiums of any business you hire or contract with. More... (RCW 51.12.070)
### Compliance Enforcement

#### Search Results (All Programs) - 40 Facilities Returned

- Information on the enforcement process is available on the FAQ page.
- Gray text in this report indicates information that is not required to be reported to EPA. These data, typically regarding non-major or smaller facilities, are often incomplete.

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<th>Inspections (5 yrs)</th>
<th>Ctrs in Non Compliance (5 yrs)</th>
<th># Efficient Exceedances (5 yrs)</th>
<th>Alleged Current Significant Violations</th>
<th>Informal Enforcement Actions/NOVs (5 yrs)</th>
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WEB SEARCH TIPS

- Google and BING
- Search by phone number “800 869 4499”
- Search by key name "Joseph J. Hazelwood“
- Search by address “"P.O. Box 7500 Trenton, NJ“
- Search in Linked-in, Facebook, You Tube
- WHOIS.COM: check web site ownership
- SearchWord suggestions:
  Name, company, lawsuit, judgment, license, DUNS number, key personnel, product, bankruptcy, liens,

Google & Bing will display different results
Commercial Business Intelligence Inc

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Experian® gives agencies confidence throughout the contractor evaluation process. From preaward due diligence on suppliers to postaward monitoring and supplier portfolio management, we help you combat procurement fraud, waste, and abuse.

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Experian helps you accurately vet contractors and suppliers by leveraging:
- Only unbiased, third-party-verified data — we do not accept self-reported data
- Insight on more than 27 million businesses, including small businesses
- The industry’s strongest commercial collections data, from exclusive sources
- In-depth visibility into a business owner’s business interests

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- Business Profile Report
- Business Owner Profile
- Business Owner Background Report
- Corporate Linkage

Experian Press Releases
HTTP://DPA.DAU.MIL/AAP/

DEFENSE ACQUISITION UNIVERSITY

Ask A Professor

Filter Search Results  Show Count

Any Time
Past Week
Past Month
Past 6 Months
Past Year
Past 3 Years
Custom Range...

All Subject Areas
Auditing
Better Buying Power
Business
Contracting
Facilities Engineering
Industrial and Contract Property Management
Information Technology
Life Cycle Logistics
Production, Quality, and Manufacturing
Program Management
Purchasing
Program Systems Engineering
Science and Technology Management
Systems Engineering
Test and Evaluation
Other

Search Results  Any Time  All Subject Areas

1 - 10 of 173 Questions and Answers on "Responsibility Determination"

Is a Determination of Responsibility needed when exercising an option?
Is a Determination of Responsibility needed when exercising an option or is it unnecessary since...
Before making a determination of responsibility, the contracting officer shall possess or...
https://dpa.dau.mil/aap/pages/q/details.aspx?cSubjectAreaId=2&cQuestionId=21232

Contractor Responsibility Determination 2116:## Contracting - General Charles Hargrett 09/07/2007 WALL Documents and reports supporting a determination of responsibility or nonresponsibility. A determination of non-responsibility, however, does require documentation as stated in the https://dpa.dau.mil/aap/pages/q/details.aspx?cSubjectAreaId=3&cQuestionId=21116

Responsibility Determination for Afghan Native Contractors  Posted On: 09/26/2012
Responsibility Determination for Afghan Native Contractors 115271:## Contracting - General ##
to be relevant to your inquiry: Pre-award Determinations & Memorandums Responsible
To aid the COO in contractor's responsibility research, a listing of already annotated...
https://dpa.dau.mil/aap/pages/q/details.aspx?cSubjectAreaId=32&cQuestionId=115271

proof for responsibility determination for FAR 52.219-14  Posted On: 09/07/2012
proof for responsibility determination for FAR 52.219-14 113259:## Contracting - General Michael Ku
https://dpa.dau.mil/aap/pages/q/details.aspx?cSubjectAreaId=3&cQuestionId=113259

 Determination of Responsibility  Posted On: 09/16/2011
 Determination of Responsibility 110124:## Contracting - General Richard Hansen Richard Hansen 09/05/2011 Lesi
Is a determination of responsibility (DOR) required when issuing task orders off a multiple...
Yes, a determination of responsibility is required for all those awards.
https://dpa.dau.mil/aap/pages/q/details.aspx?cSubjectAreaId=3&cQuestionId=110124

 Determination of responsibility  Posted On: 09/27/2019
 Determination of responsibility 107117:## Contracting - General Richard Hansen 09/24/2010 DAU 09/27/2019 09
During the evaluation of offers, the question of responsibility arises.
Is this determination of responsibility considered clarifications or must we go to discussions?
https://dpa.dau.mil/aap/pages/q/details.aspx?cSubjectAreaId=3&cQuestionId=107117
### Legal Decisions

GAO’s Office of General Counsel issues legal decisions, opinions, and reports on bid protests, appropriations law, and other issues of federal law.

#### Bid Protest Decisions

- View recent | Search | Bid Protest FAQs | Search Docket | See all Bid Protest content

GAO does not post routine dismissals, and protected decisions must be redacted before they can be published. For more information, see Bid Protest FAQs.

#### Appropriations Decisions and Opinions

- View recent | Search | Appropriations FAQs | Get Red Book | See all Appropriations Law content

#### Other Resources

- View Other Decisions | Contract Appeals Board | Federal Vacancies Act | Congressional Review Act
REFERENCES

- Responsibility Checklist & references
  mltweb.com/tools/articles/resp_checklist.pdf

- GAO Case Study:
  mltweb.com/tools/articles/responsible.htm

- GAO Case: Buyer Loses in Court
  mltweb.com/news/news1202.htm

- Evaluating Past Performance
  mltweb.com/tools/articles/pastperform.htm

- Plug and Play Negotiations

- Mltweb.com/handouts/
REFERENCES

- DAU – Ask a Professor
- GAO Legal Decisions
- DOE Acquisition Guide – Chapter 9.4
  Contractor Responsibility Determinations