

Practical Tips & Considerations For Subcontract Negotiations: A Subcontractor's Perspective

08.01.2003

During the negotiation of subcontracts, the prime contractor typically provides a prospective subcontractor with a form agreement containing standard clauses and requests the subcontractor's authorized representative to sign the document. The standard form agreements normally leave little room for negotiation, the parties are anxious to sign the paperwork and, in any event, because the parties are still in the "honeymoon" stage, the subcontractor frequently will sign the standard form agreement with little real negotiation and without a full appreciation for the implications of the standard form terms.

This article address this everyday reality and focuses on some of the key issues that arise (or should arise)—from the perspective of the subcontractor under a Federal Government contract—during the subcontract negotiations with the prime contractor. Specifically, the article discusses (a) mandatory and necessary flow-down clauses, (b) issues and concerns that arise in connection with the negotiation of subcontract intellectual property and disputes provisions, (c) the "battle of the forms" problem, (d) matters related to subcontract warranty and most favored customer provisions, and (e) steps subcontractors can take to ensure their continued participation throughout the life of a long-term federal acquisition effort such as a major defense program.