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**MINDING THE GAPS
BETWEEN THE
PRIME CONTRACT AND SUBCONTRACT(S)**


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The concepts expressed herein are solely my own and do not necessarily reflect the views or policies of my employer

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WHY MIND THE GAP?

1. **Statutory Implications**
2. **Regulatory Compliance**
3. **Financial Governance**
4. **Competitive Discriminator**
5. **Ethical Standards**
6. **Government and Commercial Best Practices**
 - Highly Trained Professional Workforce
 - Uniform Treatment of Customers and Suppliers
7. **Operational Execution Issues**

3

COMMON GAPS

- **Customer Requirements vs. Business System Regulatory**
- **Prime Contract vs. Subcontract**
- **Business Objectives vs. Regulatory Timelines**
- **UCC vs. FAR**
- **Sole Source vs. Competitive**
 - Sole Source Prime → Competitive Subs
 - Competitive Prime → Sole Source Subs
- **Cost Reimbursement Prime vs. FFP Subcontract**
- **Failed “Flow Down”**

4

WHO IS “MINDING” THE GAPS IN YOUR COMPANY?

- Where Is Contracts Reporting?
- Where Is Procurement Reporting?
- Who Is Accountable For The Gap?
- Where Is The Expertise?
- Who Is Watching The Entire Acquisition Process?

5

THE 1ST GAP

- “The Customer and DCMA Have Different Objectives”
 - Business Systems Requirements Slow Programs Down
 - 100% Compliance With The Business Systems Would Prevent Placement Of Most Subcontracts in a Timely Manner
 - Compliance Is Expensive and Customers Do Not Always Support The Funding

Solution: Comply and Execute!

Do Not Take Shortcuts

It's The Role Of The Gap Minder(s)

6

THE 2ND GAP

- **“There Is No Privity of Contract Between The Government and The Subcontractor”**
 - Who Really Believes This?
 - CPSR
 - CARs/PARs
 - Small Business Subcontracting Plans
 - Sole Source Justifications
 - Commercial Item Determinations
 - Subcontracting Notifications
 - The Government Creates Implied Privity Through Their Governance and Flowdown/Approval/Audit Requirements

Solution: Comply and Execute!

Do Not Take Shortcuts

It's the Role of the Gap Minder(s)

7

THE 3RD GAP

- **Business Objectives Often In Conflict With Regulatory Timelines**
 - Average Subcontract Proposal Timeline for FAR Part 15 is 45 Days Minimum
 - Few Subcontractors have the Expertise and Systems for Full FAR Part 15 “Checklist” Compliance
 - Subcontract Certifications, Documents, Government Notifications, Reviews, Audits, Documentation, and Approvals Significantly Add Schedule to Proposals and External Award Dates
 - Government Reviews are Extremely Lengthy Due to their Internal Compliance Regimes

Solution: Comply and Execute!

Do Not Take Shortcuts

It's The Role Of The Gap Minder(s)

8

THE 4TH GAP

- **Government Acquisitions Neither Favor Nor Support UCC Contracting**

- Heavy Burden to Support Commerciality
- Huge Regulatory Burden on Commercial Companies Forced into FAR Part 15 due to Technicalities
- Insistence on Cost & Pricing Data Regardless of Commercial History
- FAR Part 12 is a High Hurdle for Many Commercial Companies and Riddled with Subjectivity
- Government C.O.'s Use Conservative "Shotgun" Approach to "Flowdown" Requirements Beyond Promulgation of Law or Executive Order

Solution: Comply and Execute!

Do Not Take Shortcuts

It's The Role Of The Gap Minder(s)

9

THE 5TH GAP

- **Lack of Alignment and Risk Due to "Flowdown" Abuses**

- The "Old Copy the Prime Contract" Trick
- Heavy-handed Prime Contractor Provisions
- Inapplicable Clauses and Certifications
- Poor Guidance from Contracts to Subcontracts Personnel
- Failure to Understand and Document Intellectual Property Rights in an Appropriate Manner
- Inappropriate Contract and Subcontract Types
- Misaligned Acceptance and Payment Terms
- FAR Part 15 Prime with FAR Part 12 Sub

Solution: ELIMINATE THE ABUSES

THROUGH COMPETENT GAP MINDER(S)

10

SUMMARY

- **One of the Greatest Risks in Executing Government Contracts is the Failure to Adequately Manage Subcontractors Where There is NO PRIVACY**
- **Approximately 60% of All Acquisition Dollars Are Spent With Subcontractors**
- **The Most Successful Companies Have Created Strategic Supplier Management Leaders to Achieve Business Objectives While Meeting Compliance Requirements**
- **The Ability to “Mind The Gap” is a Skillset and Competency Not Defined in Any Regulation or Policy**
- **It is a Leadership Role Best Filled by Leaders Who Understand Both Worlds of Government Prime Contracts and Subcontracts**

11

Questions?

12