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What commercial companies should know before pursuing government awards

Forensic & Integrity Services

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Recent legislation, such as the Infrastructure Investment and Jobs Act (IIJA), CHIPS and Science Act (CHIPS Act), and Inflation Reduction Act (IRA), has presented commercial entities with tremendous opportunities in the form of government funding designed to address critical national needs and evolving domestic priorities.

These acts, much like other pieces of infrastructure and stimulus legislation that have preceded them, include trillions of dollars in new federal government spending focused on a wide variety of initiatives, including manufacturing, supply chains, national security, health care, science, technology, workforce development, roads, bridges, ports, railways, e-mobility infrastructure, broadband, clean water and environmental resilience. They provide commercial entities with accelerated access to significant funding to advance domestic manufacturing capabilities and rapidly progress research and funding. Successful pursuit of public awards requires an understanding of the application process and adherence to applicable regulations and statutes that are unique to federally funded programs.



Understand compliance requirements

Whether funded directly by federal entities or through pass-through state and local awards, these government awards impose complex cost-recovery, cost-share, procurement and oversight requirements. For example, they may include cost allowability rules, that determine which costs can and cannot be reimbursed under a specific program. They may include provisions such as the Buy America and Trade Agreements Act, which restrict where products and underlying components are developed. They may include prevailing wage requirements for individuals in the services and construction industries. These are just a few of the hundreds of requirements included within these programs. Additionally, these programs are governed by federal, state and local False Claims Act provisions, which can impose significant financial penalties and damages for misrepresentations of compliance with contract requirements.

Commercial companies that are inexperienced in working with the government in any significant manner may not be equipped to follow these and other rules of their awards. As a result, they may inadvertently place themselves at risk of financial and reputational damage. Therefore, it is imperative for entities to understand what they are applying for and the terms under which they are expected to operate. To appropriately evaluate award obligations, prospective applicants must understand the full scope of the requirements prior to submitting their bids. This enables a proper evaluation of risks and rewards of federal programs when making the bid-no-bid decisions. It also minimizes the risk of misrepresentations as part of the application process. Waiting until after an award is made may be too late to appropriately evaluate the investment of resources necessary to successfully pursue and perform the awards. Finally, understanding requirements of an award during the application process allows organization the ability to recover costs of compliance (i.e., system, process, resources) through their awards.

New legislation presents unprecedented opportunities for commercial entities to obtain funding in the form of government contracts, grants and agreements.

Implement effective controls

Even organizations that have experience contracting with the government are likely to find that the awards contemplated under recent legislation contain requirements to which they have previously not been subject. This may be a result of receiving different types of awards for the first time (e.g., receiving a federal grant vs. a contract vs. a cooperative agreement or a cost-type award vs. a fixed-priced award). Unfamiliarity may also be a result of receiving awards from agencies with which they are not accustomed to working; or divisions of the business receiving federal awards for the first time.

More significantly, commercial companies – whether experienced with the government or not – find adapting operations to adhere to public policy priorities to be one of the greatest challenges when pursuing federal awards. With a greater emphasis on areas such as domestic preference (Buy America), supply chain resiliency, labor compliance (contract-specific prevailing wage requirements) and Cybersecurity Maturity Model Certification (CMMC), commercial companies must often adapt their operations to address these and other areas.

Upon evaluating award requirements, should an entity decide to continue to pursue a federal award, it is imperative that operations are expanded to include effective controls and systems. These are often prerequisites for award eligibility. In some situations, successful pursuit of an award is contingent upon the ability to demonstrate system and control requirements. Once implemented, effective systems and controls provide organizations with greater efficiencies in government operations – eliminating redundancies and managing risks through a clear delineation and assignment of requirements to organizational functions, processes and roles. To prevent the risk of financial penalties, reputational damage and potential preclusion from receiving funds from the government in the future, entities must take steps before, during and after applying for awards.

Key takeaway

Recent legislation adds unprecedented opportunities to obtain federal government funding to advance capabilities. Market leaders pursuing these awards must make sure they are equipped to abide by the rules, regulations and provisions outlined.

Enterprises looking to pursue government awards must have an **appropriate governance and operating structure**, including processes, controls and procedures.

Now

It is imperative that companies bidding on federal awards understand the systems, controls and processes to address award requirements. This requires an infrastructure and regulatory framework that comply with these requirements:

- Obtain clarification by having pre-bid discussions with government entities.
- Seek qualified resources to advise you and make sure that the representations you submit are accurate and complete.

Next

Understand the cost of compliance:

- Initially, these investments may seem to exceed the benefits of the awards. A value proposition needs to be considered as part of the decision to pursue the award.
- Understand the impact to the larger organization and formalize a decision-making process.
- Evaluate opportunities to recover the cost of compliance as part of the awards.

Beyond

If you receive an award, ensure that you have the processes and controls in place to comply:

- Quickly establish immediate compliance needs.
- Identify strategies to manage and track funds.
- Develop mandatory reporting structures and processes.
- Prepare for post-award oversight.
- Implement a comprehensive compliance governance structure.

Key contacts

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