

Breaking Defense

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Q&A: Protecting Yourself as a Small Business Contractor with the Department of Defense

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Frederick Lisy is president of Orbital Research Inc., which conducts research on and product development of medical devices and military weapons technology. Founded in 1991, this small company of 16 employees has been contracting with the Department of Defense for more than 20 years, mainly with the U.S. Army, U.S. Navy and U.S. Air Force.



“You can’t be risk averse and work with DoD,” he says, which is one reason he maintains about 30 to 50 percent of company revenue in commercial as opposed to government ventures. That being said, he’s also quick to note the best way to protect one’s self as a small business is to keep learning and asking questions. The more you know, the safer you’ll be.

We recently sat down with Dr. Lisy to get his take on ways in which small businesses might be more vulnerable on DoD contracts and how they can be more proactive in protecting their assets.

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What are the biggest challenges small businesses face in working with the DoD?

First, is pre-award. When you’re trying to win a government contract, you have to beat out the competition. The reviewers know companies such as Lockheed Martin, but they don’t know Orbital Research. They tend to fund large companies. This makes it difficult to compete on a level playing field.

Second, once you get the award, the government requires work to be done first; *then* you get paid. In the meantime, we've already paid suppliers and are floating loans to the government during the development process.

What's riskier: working as a prime on a DoD contract or as a sub?

Working as the prime is preferable, but we run into the problem of name recognition. Sometimes we're on the project as the sub. Then, the prime wants to own the technology we're developing for them. We try to patent our technology first.

We protect ourselves from the bureaucracy and legal issues by having our attorney review every agreement we sign. To help shoulder the expense of legal counsel, we shop him out to four other tech companies, meaning he performs contract work, similar to what he does for us, for other firms, and we bill them for his time.

As a small company without a large legal department, how do you stay on top of constantly changing federal guidelines and regulations?

We hire an outside person to do our accounting and bookkeeping. Her expertise is in regulation and reporting requirements. She stays on top of all the documentation and reporting requirements necessary to mitigate delays in receiving payments.

Have you faced an audit from a regulatory/inspector general's office in DoD? What are the potential problems here, and how do you handle them?

We follow all government policies because audits scare me. I rely on my lawyers and accountants to make sure we are doing everything right. You can get a disgruntled employee who reports you, and then you have FBI auditors coming to your employees' houses. We were in that situation once. It took four years to resolve.

You also run into being audited on projects that have long been completed; audits can come in years later. Then you are sitting there waiting for the final payment.

My advice is to have great lawyers and accountants. My accountant goes to all the conferences to keep abreast of regulations and requirements. It's also important to build rapport with the Defense Contract Audit Agency (DCAA), but those auditors change all the time, so it's hard. Don't be afraid to ask questions to make sure you're following the policies.

Are you more vulnerable to having intellectual property or data rights taken from you as a small business? How do you protect yourself?

We try to patent upfront. But that also means disclosing what you're doing to the public when the patent is processed. Primes often don't consider the value of the "know-how" behind intellectual property. We have to convince the prime that our know-how is even more valuable than the patents.

Thus, we only disclose what we need to and keep the "secret sauce" private. That's how you protect yourself. We have to divulge more than the high-level elevator pitch, but avoid divulging trade secrets. Small companies are afraid big companies will steal, and they *may*. Let those big companies know you're willing to take them to court.

And when you enter into a proprietary information agreement (PIA), be aware of what gives the prime or the agency the upper hand. Don't be afraid to negotiate changes to the PIA, and go through it line by line.

Is it safer to apply for work with the DoD through the Small Business Innovation Research (SBIR) program?

We use SBIRs to innovate, but you may have greater challenges commercializing these awards because big companies don't respect or understand SBIR data rights. Plus, the SBIR program is significantly underfunded and doesn't have enough money to bring a product to maturity or to market.

What makes for a more positive contract experience with DoD, and why?

We seek to bring the primes and DoD into the development process early on. In addition, we strive to make the sub-system closer to a stand-alone product to minimize future integration challenges. Most importantly, deliverables with specific measurable milestones are agreed upon at the beginning of the process with frequent meetings to update any changes as a result of the technology development and testing.

We are currently involved in such a development effort, and the process seems to be working. Even though the sub-system has not transitioned to the military, all parties know what is expected, and we've encountered fewer hurdles.

Topics: Lake Whillans, Litigation, Litigation Finance, small business
