



**CONTRACT
ADMINISTRATION
OF UNPOPULATED
LLCS—**

**Managing
the Contract,
Performance
Reporting, and
Compliance**

**The business of doing
business with the U.S.
government in the
absence of any
employees.**

**BY BRUCE BOWLAND
AND J. MICHAEL FOLEY**

**FEDERAL
GOVERNMENT
CONTRACTORS ARE
EXPERIENCING A
HIGH INCIDENCE OF
LARGE, “BUNDLED”
PROCUREMENT
ACTIONS.**

Contractors have responded by joining together in a team relationship in some cases by creating a new business entity for the specific purpose of pursuing the “bundled” procurement, often in the form of limited liability corporations (LLCs). This business formation offers the government a “best value” solution by providing streamlined contract management (a single contract privity approach) at reduced cost (best value) as compared to the traditional “tiered” prime/subcontractor relationships.

In the furtherance of “best value” thinking, it is now becoming more common for the LLC to not have W-2 employees (the concept of the “unpopulated” LLC) and in so doing, the founding members/partners also enter into subcontract agreements with the LLC to fulfill the contract requirements by providing labor or performance of specific tasks.

The challenge for unpopulated LLCs then becomes one of how to perform all of the necessary and traditional back-office business functions such as job cost accounting, contract/subcontract management, change management, internal/external performance reporting, compliance report-

ing, etc. of a normal populated business, while controlling and limiting the flow of proprietary data between the members. How does the unpopulated LLC still provide the same transparency, accountability, and reportability (TAR) of data to the government, all in the absence of having any employees? The solution lies in outsourcing the contract management, performance reporting, and compliance responsibilities to a third party—i.e., an independent business services integrator (BSI). The external TAR compliance and “firewalling” of the internal business sensitive and proprietary data flow between the member companies is managed and controlled by the BSI.

**Unpopulated LLCs—
The Business of Doing Business
with the Government in the
Absence of any Employees**

The absence of any W-2 employees is neither an excuse nor an exemption for an unpopulated LLC to alleviate it from having to perform the usual and customary contract administration functions of a “populated” company. Neither is it exempt from the *Federal Acquisition Regulation (FAR)*, generally accepted accounting principles, Cost Accounting Standards (CAS), earned-value management, and other government TAR requirements. Quite the contrary, the unpopulated LLC has the added burden of



contract terminated, all payments have been made, and any open contract matters are closed. As such, proper contract administration constitutes that primary component of the procurement process that assures the government gets what it paid for and the contractor is fairly compensated.

The specific nature and extent of contract administration varies from contract to contract. It can range from the minimum acceptance of a single delivery and payment to extensive involvement by government program, audit, and procurement officials throughout the contract term. Factors influencing the degree of contract administration include the nature of the work; the type of contract (e.g., firm-fixed-price, time & materials, indefinite delivery/indefinite quantity, labor-hour, etc.); or combination of contract types, value, and the experience and commitment of the personnel involved. Contract administration starts with developing a clear, concise, performance-based understanding of the statement(s) of work to the maximum extent possible, and preparing a contract administration plan (CAP) that cost-effectively measures performance, tracks all deliverables, and provides supportable documentation for payment.

The well-developed CAP should be designed to facilitate effective and

efficient management with due consideration given to:

- Level of contract surveillance;
- Terms and conditions related to administration;
- Performance milestones and deliverables;
- Reporting procedures, requirements, and protocols;
- Quality requirements; and
- Compliance requirements.

The CAP should also define the positions and identify the individuals responsible for developing a strong working relationship with both the contracting officer and contracting officer's technical representative in order to establish and achieve mutually acceptable and measurable contract objectives. The contracting officer and contracting officer's technical representative are tasked and warranted with the authority and responsibility for ensuring that the contracting process is successful from the government's perspective. The unpopulated LLC must identify its contracting officer/contracting officer's technical requirements counterparts and manage a positive relationship with them.

having to: 1) protect the individual member company's business sensitive and proprietary data from one another because they are competitors outside the LLC; and 2) still provide the seamless external TAR.

The unpopulated LLC must still find a way to collect and integrate its contract administration and performance and compliance reporting functions seamlessly in order to comply with the TAR requirements in its contract with the government while preventing the sharing of any member company proprietary information between the member companies. Remember, the members are only temporary "captured clients" while party to the unpopulated LLC but will eventually emerge as competitors when the "deal is done" and the contract work has been completed.

Contract Administration

Contract administration involves those activities that are necessary after a contract has been awarded to ensure the unpopulated LLC performance complies with the requirements of the contract. Contract administration encompasses any dealings between the government and the unpopulated LLC from the time the contract is awarded until the work has been completed and accepted or the



With the unpopulated LLC, contract work is performed by the member subcontractors and lower tier subcontractors via subcontracts from the LLC. Since actual contract performance is thereby one step removed from the contracting entity (privity of contract), the BSI provides for the development and administration of the CAP, but with a stronger emphasis on flowing the CAP measurement, quality, and reporting protocol requirements down through the multiple subcontractor tiers in accordance with the unpopulated LLC operating agreement and contract provisions. The BSI works directly with, and at the direction of, the unpopulated LLC general manager and project manager designated by the member subcontractors in order to foster unity and communication between the government and the unpopulated LLC, the unpopulated LLC and its member subcontractors, and the member subcontractors and their respective lower-tier subcontractors.

Performance Reporting

During contract performance, actual performance must be observed, information collected, and progress measured. These activities are essential to effective management and control. It can require a variety of resources dedicated to these tasks and techniques to be effective. On large contracts, the government may require the use and possible certification of an earned value management system (EVMS) to ensure that all aspects of schedule, cost, and technical performance are effectively integrated and successfully implemented.¹ Cost and schedule information must be captured at the member subcontractor and the lower subcontractor tiers to allow consistency in reporting of the unpopulated LLC performance data to the government. This may require the establishment and management of a standardized work breakdown structure, along with policies and procedures, vertically through the multi-tiered subcontractor structure (i.e., member and lower tiers) in order to support the performance reporting and project control requirements.

The BSI serves a central role in EVMS performance measurement and reporting by establishing and maintaining the processes, procedures, and systems for, and the administration and management of, the project control, cost and schedule, performance, and data collection and reporting.

The lower-tier subcontractors must also maintain their respective EVMS data and ultimately provide it to the BSI for consolidation within the unpopulated LLC for subsequent reporting to the government. While each subcontractor within each tier must have the resources to support the EVMS functionality for its respective organization, the unpopulated LLC does not because its EVMS functions and reporting to the government is provided by the BSI. Additionally, the BSI can accomplish its performance reporting function in a virtual and secure distributed platform environment as a central repository and processor, thereby eliminating the necessity to be resident at a particular project location.

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Compliance Reporting

Depending on the type of contract or combination of contract types, complexity, and value, the unpopulated LLC can be subjected to a variety of compliance reporting requirements specific to the contract or by reference to *FAR*, *CAS*, and/or generally accepted accounting principles provisions in the contract.

For example, *FAR* 52.216-7, “Allowable Cost and Payment,” found in flexibly priced contracts (i.e., cost and time and materials types), requires the annual submission of an incurred cost proposal. Because this compliance reporting requirement requires the submission of historical direct and indirect costs at a very granular level, compliance can be daunting if proper job cost accounting architecture, policies, and procedures aren’t in place at the onset of the contract to capture the direct and indirect cost data at the level of reporting required. Similarly, *CAS*-covered contracts require the filing of a *CAS DS-1* Form for compliance with *CAS* and must be revised whenever an accounting change is anticipated. Therefore, proper compliance planning is essential at the

onset of any contract to ensure that the unpopulated LLC and its lower-tier subcontractors conform to all of the rules, statutes, and regulations, where applicable.

The BSI serves a very pivotal hands-on management role with respect to contract, statutory, and regulatory compliance. The BSI, as the “gatekeeper” for restricting the flow of business sensitive and proprietary financial data between the unpopulated LLC subcontract members, and the “disseminator” of this same information to the government, must design and implement the architecture and policies and procedures necessary to restrict the flow of sensitive data within the unpopulated LLC member companies but still comply with the required levels of granularity for compliance reporting. Therefore, the BSI must provide a system for complete *TAR* compliance to the government, but limit *TAR* of the unpopulated LLC member companies to only their respective data.

The system established by the BSI for meeting the compliance reporting requirements must also serve to support proper invoic-

ing requirements in order to ensure timely, accurate payment by the government. The government expects the contractor to meet all contract requirements for quality, quantity, and timeliness. The unpopulated LLC expects no less of the government in meeting its obligation to timely, accurate payment for supplies and services received. The BSI system design must provide for near seamless processes and procedures for quickly and efficiently meeting this obligation.

The BSI also serves as the communication link on matters of compliance reporting between the unpopulated LLC and the government. An important aspect of timely voucher (invoice) review, approval, and payment is good communication between the government contracting officer and contracting officer’s technical representative and the unpopulated LLC finance official to ensure that payment is made on time.

Conclusion

In the performance of the contract, contract administration, compliance, and performance reporting requirements are appli-

cable to the contracting entity irrespective of the business formation. The unpopulated LLC is still held to the same standards of compliance, reporting, and execution as any other “populated” business. **CM**

ABOUT THE AUTHOR

BRUCE BOWLAND is Executive Vice President and Director of Government Contractor Services for Gate 6 Solutions, Inc.

J. MICHAEL FOLEY is the President and CEO of Gate 6 Solutions, Inc.

Send comments about this article to cm@ncmahq.org.

ENDNOTES

1. ANSI/EIA- 748, DOE Order 4234.3A.



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