

On the Road to Connect Business and Government!

By: Edward T. DeLisle and Maria L. Panichelli

We recently hit the road with Onvia, a leading government market intelligence company that was just acquired by Deltek. The combination of Onvia and Deltek's [GovWin IQ](#) provides enterprise, mid-market, and small business customers with the most comprehensive set of federal, state, and local government contracting leads and market intelligence.

We have partnered with Onvia many times before, including for our "[Legal Landscape](#)" series, but we were especially honored and excited to be asked to participate in the "Onvia On Tour" roadshow as part of a panel of government contracting practitioners. The roadshow was a nationwide tour designed to provide government contractors with the information, advice, and business development tools necessary to grow their success in selling to the government, featuring [educational sessions, success stories and more](#). On tour, we were lucky enough to be interviewed as part of expert government contracting panel. We shared a little bit about us, about our experience working with federal contractors, and our advice for how to succeed in the challenging government contracting industry.

Below is a summary of the advice we shared with the government contractor attendees:

Moderator: Can you tell us a bit about your current role(s) and the kinds of clients you work with?

Ed: I am the co-chair of Cohen Seglias' Federal Contracting Group and sit on the Firm's board of directors. Maria is our group's newest partner.

Cohen Seglias is a law firm headquartered in Philadelphia with 60 attorneys across nine offices. As partners in the Federal Contracting Group, Maria and I split our time between the Philadelphia and DC offices. We represent a nationwide base of federal prime contractors and subcontractors and assist them throughout the entire lifecycle of a government contract. From the pre-award stage where proposal issues and protests can pop up, through contract performance and close-out, to the REA and claims stage, we are there guiding and counseling our clients to maximize their chance of success.

Maria: We also have substantial experience with all federal small business programs and assist our clients with eligibility and certification issues, size/status protests, teaming, joint venturing, and mentor-protégé programs.

Our approach is unique because we recognize that our clients have to make decisions based not only on legal considerations but what is best from a **business** perspective. We know our job is to advise our clients – give them the information and tools necessary – so that *they* can make the best business decisions and navigate any legal dispute in ways that are consistent with their long-term business goals. Prior to joining Cohen Seglias, several of our attorneys used to litigate government contracting disputes on the other side as attorneys for Government agencies. That experience – "on the dark side", as we like to joke – helps us not only litigate disputes but also advise clients on how to avoid them in the first place. We strive to provide comprehensive business solutions, not just reactive dispute representation.

Ed: Maria and I are also involved in a number of industry interest groups and regularly present government contracting-related educational content. For example, we have contributed legal content to resources such as VetLikeMe, Targetgov, and Onvia, and we are faculty members at the Government Contracting Institute. We have both been involved with APTAC, and Maria also works with numerous local Procurement Technical Assistance Centers. Maria is a community partner at Govology, a CLE-

presenter for Lawline, as well as a frequent speaker at the VA's annual National Veterans Small Business Engagement. She has also spoken many times at NVSBC's VETS Symposium and the Department of Energy's Small Business Expo.

I am heavily involved with the Associated General Contractors of American (AGC) and the National 8(a) Association. I sit on the FAR council for AGC and frequently present for 8(a). I have also testified on small business issues before Congress on a number of occasions. This involvement allows us to stay in the loop and keep on top of everything going on in the federal contracting industry.

Moderator: What is the single most important thing that everyone in the audience should know about selling to federal government agencies?

Maria: I think the key with the federal government is to really know the rules. The federal procurement process is governed by the Federal Acquisition Regulation – the FAR – and that is kind of the bible that guides everything. It dictates what bases you have for a bid protest, how you should react - or go after compensation - when something unexpected happens during contract performance, and how you can file a claim or appeal a termination. All roads lead to the FAR and the various agencies' supplemental regulations.

Ed: Of course, an understanding of the small business program regulations is vital, too, if you are a small business competing for small business set-aside contracts. In today's market, more and more contracts are set-asides, so familiarity with these regulations has become increasingly critical to maximizing contract opportunities. These regulations control eligibility for the various small business programs and their respective set-aside contracts, size and status protests, as well as teaming, joint venturing, and the mentor-protégé programs. These regulations have been in almost-constant flux the last few years, so it is imperative for contractors to consult a legal professional who has been keeping up with the changes. If you're pursuing business with the federal government, I encourage following [our blog](#) where we closely monitor these changes and all legal developments relating to government contracting and small business procurement and provide practical advisory updates to the industry.

Maria: The thing to remember about the regulations is that they don't only govern your, the contractor's, behavior. The government is bound by the regulations too. The better you know the rules that govern the procurement process, the better you know about your rights and how to protect them, and how to get the contracts, and money, you deserve.

Moderator: There is more focus within government now than ever before on directing contracting dollars towards historically underrepresented groups – through set-aside requirements and other eligibility criteria. How do businesses find out about these opportunities and take advantage of them?

Ed: So true! There are more and more set-asides happening now. The government has set goals for each of the small business programs and is making a big effort to ensure those goals are met. The best way to take advantage of these contracting opportunities depends on what type of business you are.

If you are a small business, the key is to know which small business programs you are eligible for, and to confirm that you are certified, etc. Then, you need to be on the lookout for the set-aside opportunities that you are eligible for. You can always check FedBizOpps, DIBBS, etc., but you should also network and take advantage of all of the other small business assistance that is out there. Finally, make sure you reply to sources sought and get your name and capability statements out there.

Maria: Right. Many federal agencies have small business liaisons whose job is to facilitate small business contracting with the agency. There are also a ton of small business conferences – like the National

Veterans Small Business Engagement and the Department of Energy Small Business Expo – that are great. I have attended or spoken at both, and I think most contractors would say they are definitely worth it – major ROI. Conferences like these can be great places to get your company out in front of agency decision makers. This can help you with another great opportunity for small businesses – sole source contracts.

You should also be aware of how to challenge an agency that is not properly conducting market research or not setting aside enough of its contracts. The recent Supreme Court [Kingdomware decision](#) – that mandates the VA to strive to set aside contracts for SDVOSBs if at least two potential capable offerors exist – was a landmark case in this area. Since then, we have handled a number of “rule of two” protests challenging agency decisions not to set aside contracts. This can be a very important tool for small businesses trying to get access to more contracts.

Ed: It really can! So far, Maria has focused on small businesses, but they are not the only ones that can take advantage of set-aside opportunities. If you are a large business, the key is to master the art of teaming and joint venturing. Market intelligence solutions like GovWin + Onvia can help you identify qualified teaming partners and help you expand the number of projects your company may be eligible for, effectively increasing your government business development pipelines. In order to use these strategies to your advantage, though, you have to make sure you understand the differences between teaming and joint ventures, your roles and obligations under each, and how to properly structure an agreement without endangering your partner’s small business eligibility - thereby destroying your access to the set-aside contracts you are going after. There are a lot of potential pitfalls in regard to affiliation and control. You also have to understand when and how to use the mentor protégé program. The benefits of a teaming or JV relationship are great, but do it incorrectly, and the consequences can be dangerous. Maria and I help clients navigate this tricky area practically every day. For our clients, the results have been tremendous.

Moderator: What are some of the top things you see people forget to do as they seek to do business with the government, either as a prime or subcontractor?

Maria: For primes, I think the biggest thing I see companies forget to do is comply with notice provisions. The FAR imposes a whole host of obligations on contractors – whereby they have to notify the government when certain issues arise or waive their right to claim compensation for that issue later. It is really important not to forget to give this notice. A legal professional can help advise you on when and how you need to give notice to preserve your rights.

Another big one is protest deadlines. They are very short and very strict. Many contractors are not aware of how quickly they need to act after a debriefing. If you think you have a protest, you should really reach out to a lawyer ASAP to ensure you do not miss the deadline.

Ed: I agree with all of that. In federal contracting, timing is crucial.

For subcontractors, the biggest thing we see them forget about relates to flow-down provisions. Without seeing the agreement between the prime and the government, many subs sign off on agreements that require them to be bound to the prime to the same extent that the prime is bound to the government! I cannot stress enough how important it is to hash out the **specifics** regarding which of the prime contractor’s obligations flow down to you. Otherwise, you could agree to a whole host of things you did not even know about.

Moderator: As we know, a good response to a bid or RFP makes a big difference. Any tips on how businesses can prepare the best response possible?

Ed: Be responsive! If the RFP asks for three past performance projects of at least a certain price magnitude within a certain amount of years, give them that. Do not give them a project of a lower dollar amount or outside the year range for which they asked. Your proposal will get thrown out as non-responsive if you try to get “creative” about fulfilling the solicitation requirements.

Maria: Yeah, responsiveness is definitely key. The other thing I would add is that you should be familiar with what *type* of procurement you are going after. This could impact the type of evaluation factors at play and which of those factors are the most important to the ranking of various offerors or bidders. If you know this, you can prioritize knocking it out of the park with respect to those evaluation factors. This will put you in the best position for a contract award.

Moderator: What trends do you see happening right now in federal government procurement?

Ed: Well, you already mentioned the increasing use of set-asides contracts and, that is a big one. Also, Multiple Award Contracts (MACs or MATOCs) are increasingly common. They can complicate proposals and pre-award issues. Lowest Price Technically Acceptable (LPTA) is another trend that seems to be spreading. LPTA is a weird hybrid in which an offeror needs to meet a technical threshold but also have the lowest price of all offerors that met that threshold. It can make it difficult to strategize about proposal priorities. It is not clear yet whether some recent legal developments constraining the use of LPTA will decrease their frequency.

Maria: Another trend to watch is the use of Government Wide Acquisition Contracts (GWACs). Generally speaking, GWACs are when one agency issues the umbrella contract and other agencies can then issue task orders under that agency’s umbrella. GWACs are used in a variety of contexts, including the Department of Energy’s ESPC program. They can be super complicated, and the protest issues involved in them are tricky, to say the least. We have had a couple of GWACs in the last few years, and I think they are going to pick up in the future. I always enjoy those cases because they are unique. There has also been some talk about the VA using them in the future, and it will be interesting to see how that interplays with the “rule of two” set-aside requirements under *Kingdomware*.

Moderator: Finally, is there anything that we did not ask that you think federal contractors need to know?

Ed: Sure. I won’t sugarcoat it – federal contracting can be sophisticated and complex, making it intimidating for some contractors. But you should not let that stop you from trying to succeed in this industry. The US Government is the largest buyer of goods and services **in the world!** It needs things even in times of recession when other business dries up. In 2008 and 2009, the Government was still buying and building things even though others were not. In other words, there are always federal contract opportunities available for contractors who are willing to work for them. While there are certainly challenges to doing business with the federal government, it is, for most contractors, totally worth it. You can do it!

Maria: Exactly. It might seem like a steep learning curve, but you can get there. The key is to learn the rules as well as you can and to know when to ask for help, whether it be from an accountant, a lawyer, your SBA rep, your local PTAC, or your friendly GovWin + Onvia advisor.

And if you missed us at “Onvia On Tour” but you would like more advice on government contracting, you are in luck as the highlights, success stories from businesses selling to the government, and educational sessions from the event are available online for free.

[Click here to view the highlights from Onvia On Tour](#) and gain access to an [on-demand video](#) compiling some of the best advice shared during the “Insights from Government Procurement Experts” panel that took place at each stop on the tour – featuring both of us here at Cohen Seglias!