

1. Call your Contracting Officer early in the Contracting Process;
2. Think competitive, don't think it takes any longer to invite competitive bid solicitations, that it is more expensive or it does not get you better ideas;
3. Establish bid evaluation and contractor selection procedures that will meet the client's needs and expectations - don't be limited by anything but your imagination and good sense while ensuring integrity in the contracting process;
4. Let the Contracting Officer do the negotiations - don't undermine the negotiations by having pre-negotiations on contractual terms and conditions and pricing arrangements that the Contracting Officer could not support based on government procurement policies;
5. The Contracting Officer is there to help the client manage the contract - don't get into trouble by amending verbally the contract without authorization.

## **5. EMPLOYER-EMPLOYEE RELATIONSHIP**

Special care must be taken to avoid slipping into an employer/employee relationship on contracts for services.

There are significant legal distinctions flowing from the relationship between an owner (or contracting authority) and the contractor as opposed to an employer and its employee. For one, a contractor is liable for its own negligence whereas an employer is generally liable for the negligence of an employee. Another distinction is that it is incumbent on an employer to make numerous pay deductions and provide benefits which do not arise between an owner and its contractor.

It is therefore important for the parties in any work situation to determine which relationship they desire to create. Unfortunately, this can be made difficult because under the common law, whether a person is an employee or a contractor depends exclusively on the facts of the day-to-day work conditions and not the wording of the contract. A worker who was intended to be a contractor and may have signed an agreement explicitly stating this, may be found by a Court to be an employee instead. Notwithstanding intentions or contractual statements, an employer/employee relationship will be found to exist in circumstances where the employer can specify when, where, how and under what conditions work will be performed.