

High-Tech Government Contracts Program Shows Promise, but Long Term Success Uncertain

By Glenn Sweatt

Following an initial kickoff that had a slow start and mixed results, the Defense Innovation Unit (Experimental) (DIUx) relaunched in May 2016 as DIUx 2.0 and quickly awarded \$36 million in contracts. Despite uncertainty under the new administration, DIUx presents a viable option for companies to break into the U.S. government market.

- Following its re-organization, DIUx 2.0 awarded more than \$36 million in new contracts in FY 2016, and is currently evaluating 20 more awards.
- However, the group is not currently reviewing solicitations and does not expect to review any new commercial solution opening proposals until mid-March 2017.
- Despite these fits and starts of activity, DIUx should still be of interest for tech companies seeking to do business with the U.S. government.

The U.S. government is the world's largest purchaser of goods and services. Despite this buying power, many companies eschew government work, citing the slow pace and high cost of acquisition, the administration that many startups do not have the time to navigate, and the regulatory burdens that come with actually winning work. The Department of Defense, through DIUx, is attempting to break that pattern, by awarding work through a Commercial Solution Opening (CSO) – an agreement that eliminates traditional government terms and conditions from the Federal Acquisition Regulations (FAR) in favor of traditional commercial terms. Contracts can be awarded within 60 days, with limited or no competition, to companies presenting viable technologies that address solutions to stated government problems. DIUx now awards work using a co-investment model, combining roughly 25 percent of DIUx funding with 75 percent of end user funding to leverage a larger award than would have been available previously.

DIUx has the following six priority areas and is looking for solutions to problems specifically brought to DIUx by DOD component end users, or that address these specific priority areas of interest:

1. Bio and Life Sciences: technologies that provide physiological advances to warfighters
2. Cyber (Defensive): technologies that protecting critical networks
3. Precision Navigation & Tracking: next-gen alternatives to existing GPS technology
4. Artificial Intelligence and Deep Machine Learning: man/machine collaboration
5. Big Data Architecture/Analytics: Identifying capabilities that produce actionable intel
6. New Space: public-private collaboration on new technologies for space exploration

The DIUx business model is described as a three step process as follows:

1. DoD Customer Identifies Problem; works with DIUx to elaborate the “problem to solve” and secures co-funding in year of execution
2. DIUx prototypes/Pilots Solutions: a venture team co-funds the project and leads evaluation efforts (focusing on speed, with a goal of fewer than 60 days to contract award)
3. DOD/DIUx work to transition the CSO, which can be used for follow-on sole source procurement

The early results under DIUx 2.0 are encouraging. In addition to the \$36.3 million for contracts awarded in 2016, DIUx officials are reviewing 20 more proposals, with a stated goal of awarding \$65 million annually. However, DIUx may already be suffering from its own success, as its website states that the unit is not currently accepting solution briefs, and according to DIUx officials, it does not anticipate reviewing any additional proposals until March 2017.

At a recent DIUx awareness and informational event sponsored by Congresswoman Jackie Speier, some attendees expressed frustration. While 12 contracts awarded and 20 under review is a promising start, the fact that the government is not looking at any new proposals for more than 90 days is concerning, attendees said, especially for a unit that is trying to sell speed of acquisition as its strength, and whose website touts that “Most agreements will be awarded within 30 days of submission of a full proposal.” That 30 day window is illusory if the agency is not actually accepting any proposal submissions.

The delay notwithstanding, companies should keep up hope. While a 90 day hiatus in accepting new solution briefs may seem lengthy in the commercial world, given the context of the delay and the progress of the unit thus far, DIUx may be suffering a bit from its own success. There is reason for continued optimism. DIUx has opened two new offices in Boston and Austin, and with the new co-investment model, they are able to leverage DOD end user’s budgets as well, to effectively award contracts that are three to four times larger than they would be able to using only their own budget. The potential for revenue is real; while half of the contracts were for less than \$1 million each, two of the 12 awards made this year exceeded \$12 million each. The more CSOs that are evaluated and awarded, the more contractors and end users alike will become more efficient in their proposal and execution efforts with DIUx.

Concern lingers over whether the DIUx will continue to be supported and funded under the Trump administration. However, with continued success, DIUx may see increased funding and continued refinement of its business model to provide additional flexibility for accessing new technology with a minimal amount of traditional government administration. Companies interested in gaining access to the DOD market should be patient, while diligently working to identify and develop their commercial solution proposal, so that it may be one of the first proposals considered when DIUx resumes review of new proposals in the next couple of months.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the attorneys below.

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