



***NCMA BOSTON CHAPTER'S
54th MARCH WORKSHOP
MARCH 11, 2015***

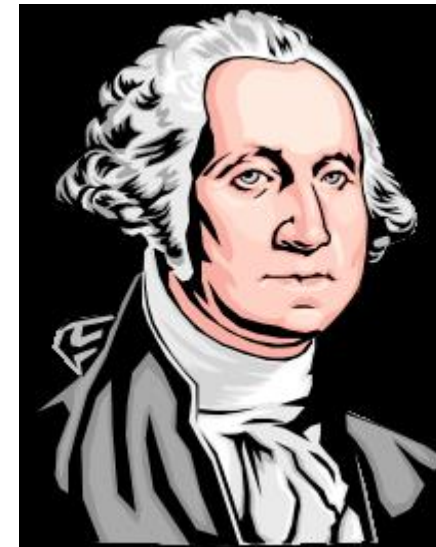
**ESSENTIALS OF GOVERNMENT CONTRACTING – PART 1
PRE-AWARD TO CONTRACT AWARD**

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DISCLAIMER

THE VIEWS EXPRESSED IN THIS PRESENTATION ARE THOSE OF THE INSTRUCTORS AND MAY NOT REFLECT THE OFFICIAL POLICY OR POSITION OF THE NCMA, THE BOSTON CHAPTER, OR OUR FORMER EMPLOYERS



AGENDA

- **Characteristics of the federal marketplace**
- **Acquisition Process**
- **Acquisition Planning**
- **Source Selection**
- **Request for Proposal (RFP)**
- **Proposal Evaluation Process**
- **Sole Source Acquisitions**

FAR DEFINITION

- A “Contract” is:
 - ...a mutually binding legal relationship,
 - obligating the seller to furnish the supplies or services (including construction), and
 - the buyer to pay for them.
- It includes all types of commitments that obligate the Government to an expenditure of appropriated funds....

FAR 2.101



Characteristics of the Federal Marketplace

- The United States Federal Government is the largest buyer of goods and services in the world



Source: www.usaspending.gov

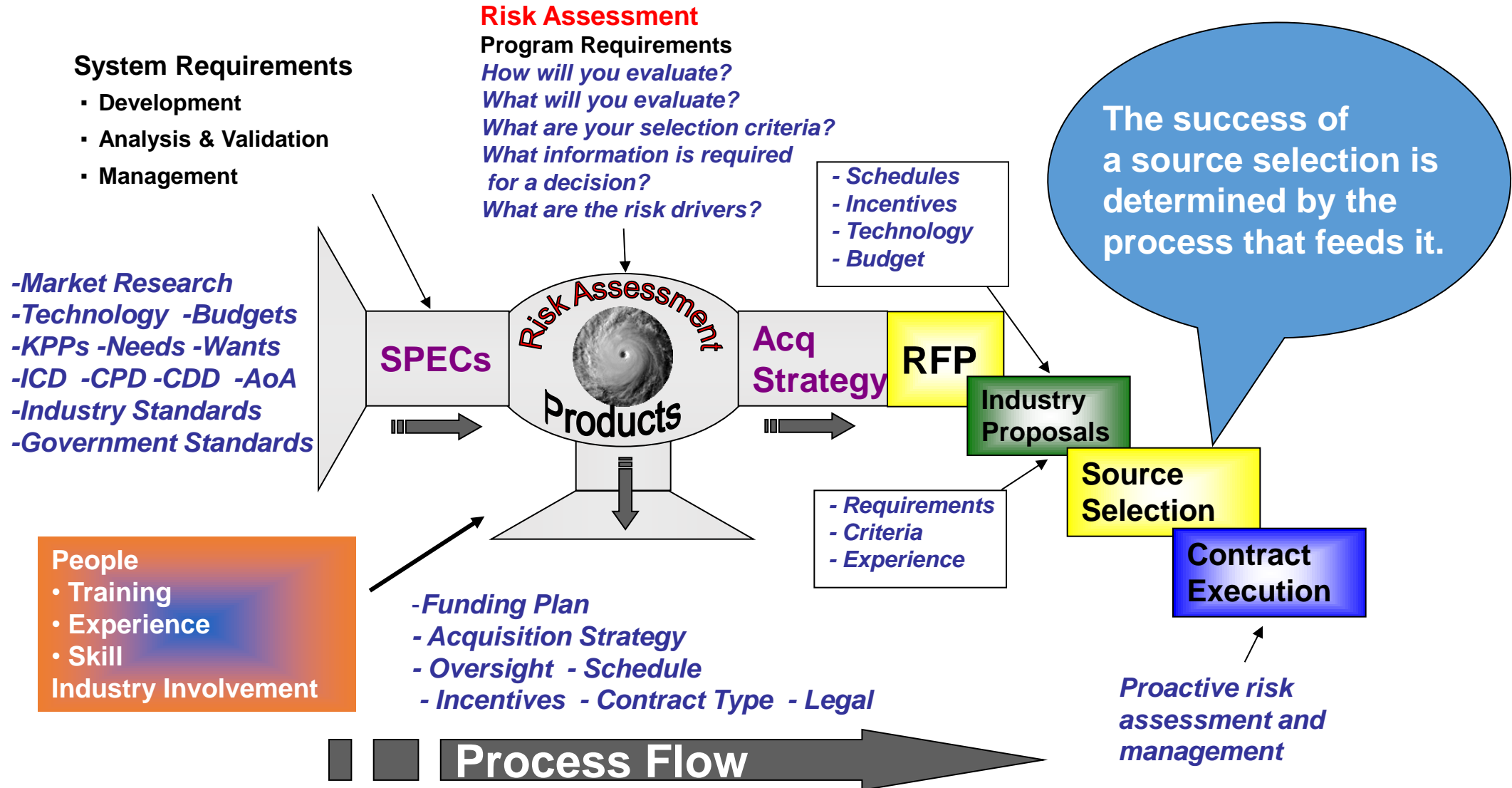
▶ Department of Defense Spending

Total Dollars: \$211,173,952,910	Number of Transactions: 969,911	Total Sub-Award Dollars: \$18,908,424,342	Number of Sub-Award Reports: 38,391
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Source: www.usaspending.gov

- ▶ FY2014 - Third in spending of all U.S. agencies behind Social Security Administration (\$827B) and Health & Human Services (\$826B)

OVERALL ACQUISITION PROCESS



ACQUISITION PLANNING

- **Defining Requirements**
- **Market Research**
- **Risk**
- **Procedures and Documents**
- **Contracting Methods, Types, Structures**



ACQUISITION PLANNING

- **Key to successful procurement, and required by FAR Part 7**
- **Purpose – ensure Gov meets its needs in the most effective, economical and timely manner**
 - **Promote and provide for acquisition of commercial or non-developmental items to the maximum extent possible**
 - **Per statute and FAR Part 6, use full and open competition to the maximum extent possible**
- **Basically, looking at:**
 - **What are we buying? What does the user of the requirement need?**
 - **Which contracting method makes most sense to use to obtain the requirement?**
 - **What does market research tell us about contractors that are available in the market place to furnish the product or the service? Will this be competitive or sole source?**
 - **How much risk is involved and which contract type is most suitable? Fixed Price or Cost Type?**
 - **How are we going to pay for it? Do we have the right type of funds (“color of money”)**
 - **How are we going to maintain and support a product after it is delivered?**
 - **Are we adhering to laws and regulations and following all the rules?**
 - **Do we need any special terms and conditions (i.e., warranties, data rights, options)?**
- **Stakeholders: program management, contracting, finance, logistics, test, legal, configuration management, users, industry**



ACQUISITION PLANNING

DEFINING REQUIREMENTS

- **Know Your Requirement**
 - What does the User Need?
 - What does the User Want?
- **Requirements that are not fully known can lead to:**
 - Scope Creep
 - Cost Overruns
 - Schedule Delays
- **All acquisitions must start with a description of the Government's needs, stated sufficiently to conduct market research.**
- **What are we buying? General Categories of Gov Contracts:**
 - Supplies
 - Services
 - Research and Development (R&D)
 - Construction/Architect and Engineering

ACQUISITION PLANNING

DEFINING REQUIREMENTS: EXAMPLE - DEVELOPING A RADAR SYSTEM

- **Performance and capability requirements**
 - **Basic capability and thresholds of performance - What kind of radar do we want and with what capabilities? Does it need to be interoperable with other systems?**
 - **Modes (what kind of images?)**
 - **Conditions of use (does it need to be all-weather, withstand high winds?)**
 - **Weight and distribution requirements to fit our platform (are there size and weight restrictions?)**
- **Cost considerations (short and long term)**
 - **Initial costs**
 - **Cost creep/delays and replacement costs**
- **Delivery and schedule requirements (need date)**
- **Trade-offs**
 - **Cost (if we want it tamper-resistant, what are we willing to pay?)**
 - **Performance (are we willing to have fewer modes for lighter weight?)**
 - **Schedule (when do we need it complete, and do we want to try to get it earlier?)**
- **Risks**
 - **Availability of technology, manpower (correct mix of expertise), diminishing mfging sources (DMS)**



ACQUISITION PLANNING

MARKET RESEARCH

- **What is Market Research?**
 - Market research is an on-going, objective collection and analysis of data about a target market, competition, and/or environment
- **Mandated by FAR 10.001**
 - Market Research is required on all acquisitions
 - Document Market Research in a manner appropriate to the size and complexity of the acquisition
- **Types of Market Research actions:**
 - Interview the User
 - What are other Agencies doing?
 - What is Industry doing? (Internet Research, Trade Journals and Publications, phone calls)
 - Can do Requests for Information or Qualification Packages, Sources Sought Synopses, One on One meetings and Industry Days
 - Are there currently Commercial products available that meet this need?
 - If not, can a similar commercial product be modified to meet the need?
 - Can your need be modified?



ACQUISITION PLANNING RISK

- Risk is a measure of future uncertainties in achieving program technical performance goals within defined cost and schedule constraints.
- Risk has 3 components
 - A future risk root cause,
 - A probability (or likelihood) of that future risk root cause occurring, and
 - The consequences (or effect) of that future occurrence.
- Risk management is a continuous process that is accomplished throughout the life cycle of a system, utilizing tools like formal risk assessments or analyses
 - Risk assessment is a tool that is used to identify and assess all potential risk areas
 - Risk analysis characterizes each risk's likelihood of occurrence and severity of consequences
 - Risk mitigation are actions that lower or eliminate risk: transfer, avoidance, reduction, assumption and sharing



ACQUISITION PLANNING

MARKET RESEARCH AND RISK ASSESSMENTS

- **Data from Market Research and Risk Assessments/Analyses are used to:**
 - **Shape the acquisition strategy and develop a plan of action**
 - **Contract Type**
 - **Competition to maximum extent possible**
 - **Commercial/Non-Commercial**
 - **Small Business Capabilities**
 - **Help formulate content of the Statement of Work/Statement of Objectives/Performance Work Statement**
 - **Help develop the support strategy**
 - **Determine what Terms and Conditions should be incorporated into the contract**
 - **Identify the evaluation factors used for source selection**



ACQUISITION PLANNING PROCEDURES AND DOCUMENTATION

- **Agencies vary on required procedures and documentation , but frequently use:**
 - **Acquisition Plans or Life Cycle Management Plans or similar**
 - **Early planning meetings, such as a Quick PASS, or Pre-Acquisition Strategy Panels, formal risk assessments**
 - **Acquisition Strategy Panels (ASPs) or similar**
 - **Early Industry Involvement and Input**
 - **Requests for Information**
 - **Sources Sought Synopses**
 - **One on one meetings**
 - **Industry Days**
 - **Pre-Solicitation Conferences/Pre-proposal conferences**
 - **Draft Requests for Proposals**



ACQUISITION PLANNING CONTRACTING METHODS

- **FAR Part 8 Required Sources of Supplies and Services**
- **FAR Part 12 Acquisition of Commercial Items**
- **FAR Part 14 Sealed Bidding**
- **FAR Part 15 Contracting by Negotiations**



ACQUISITION PLANNING

CONTRACTING METHODS

FAR PART 8 : PRIORITIES FOR USE OF GOVERNMENT SUPPLY SOURCES

- Deals with the acquisition of supplies and services from or through Government supply sources.
- Agencies shall satisfy requirements for supplies and services from or through sources and publications stated in FAR Part 8
- **Supplies: Examples**
 - Agency inventories
 - Excess from other agencies (Subpart 8.1)
 - Federal Prison Industries, Inc. (Subpart 8.6)
 - Supplies which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (Subpart 8.7)
 - Mandatory and Optional use Federal Supply Schedules (Subpart 8.4)
- **Services: Examples**
 - Services which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (Subpart 8.7)
 - Mandatory and Optional Use Federal Supply Schedules (Subpart 8.4)
 - Federal Prison Industries, Inc. (Subpart 8.6), or commercial sources (including educational and nonprofit institutions)



ACQUISITION PLANNING

CONTRACTING METHODS

FAR PART 12: ACQUISITION OF COMMERCIAL ITEMS (CI) SUPPLIES

- Government has a preference for acquiring commercial items
- Contracting officers must determine if a requirement can be satisfied via a commercial item.
- Part 12 is used in conjunction with other contracting methods – FAR Parts 13, 14 and 15
- Reduces the number of and complexity of FAR clauses, has streamlined acquisition methodologies and formats
- What is the definition of a commercial item?
 - Any Item OF A TYPE Used for Non-Governmental Purposes That Has Been Sold, Leased, or Licensed to the General Public or OFFERED to the General Public
 - Any Item That EVOLVED From an Item Described Above
 - Not Yet Available, but Will Be in Time to Meet Our Needs
 - Modifications OF A TYPE Customarily Available in the Marketplace
 - Minor Government Unique Modifications



ACQUISITION PLANNING CONTRACTING METHODS

FAR PART 12 ACQUISITION OF COMMERCIAL ITEMS (SERVICES)

- **What is the definition of commercial services?**
 - **Seller Offers Such Services to General Public**
 - **Seller Offers to Use Commercial Workforce**
 - **Is providing a service in support of a commercial item**
- **OR**
- **Services OF A TYPE**
 - **Sold Competitively in Marketplace in Substantial Quantity**
 - **Based on Established Catalog or Market Price**
- **What is the definition of non-developmental item?**
 - **Developed exclusively at private expense and sold in substantial quantities, on a competitive basis to multiple State and Local Governments**

ACQUISITION PLANNING CONTRACT METHODS FAR PARTS 14 VS 15

PART 14 SEALED BIDS	PART 15 CONTRACTING BY NEGOTIATION
<ul style="list-style-type: none"> • Service/Product requirement is well defined • Adequate competition and time • Contract award based solely on price and price related issues • No discussions, public bid opening • Invitations for Bid (IFB) required • FFP or FFP with EPA 	<ul style="list-style-type: none"> • Service/Product requirement is not well defined • Competition or Sole Source • Contract award based on eval criteria, best value • Discussions/negotiation required • Requests for Proposal (RFP) req'd • Any contract type

ACQUISITION PLANNING

CONTRACT TYPES

- **Two key overall categories of basic contract types:**
 - **Fixed Price type contracts**
 - **Cost type contracts**
- **Decision as to which type to use is a result of assessing degree of risk to the Government and the Contractor**
 - **Fixed Price is riskier to the contractor**
 - **Cost type is riskier to the Government**
 - **Firmer requirements lend themselves to fixed type**
 - **Less firm requirements, for example research and development requirements, lend themselves to cost type contracts**



ACQUISITION PLANNING CONTRACT TYPES

Profile in Contract Risk

Cost-Plus-Fixed-Fee (CPFF) _____

Cost-Plus-Award-Fee (CPAF) _____

Cost-Plus-Incentive-Fee (CPIF) _____

Cost-Sharing (CS) _____

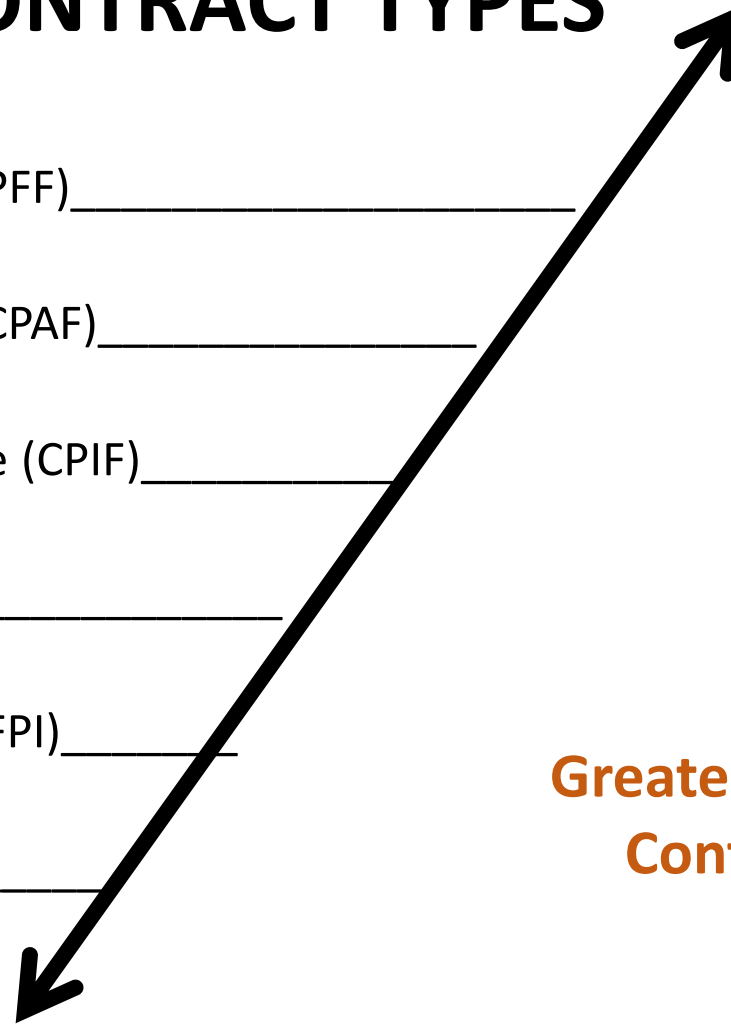
Fixed-Price-Incentive (FPI) _____

Firm-Fixed-Price (FFP) _____

**Greatest Risk on
Government**

Sharing Risk

**Greatest Risk on
Contractor**



ACQUISITION PLANNING

CHARACTERISTICS OF CONTRACT TYPES

	Fixed-Price	Cost
Promise	Deliver product	Best effort
Contractor Risk	High	Low
Gov't Risk	Low	High
Cash Flow	Progress Payments plus on delivery	Costs paid as incurred/billed
Profit/Fee	Profit included in price	Max 6-15%
Gov't Admin	Minimal	High Surveillance*

**NOTE: For cost type*

(1) Contractor's accounting system must be adequate for determining costs

(2) Government must have appropriate surveillance during performance

ACQUISITION PLANNING

FP AND CR CONTRACT TYPES

• **FIXED PRICE TYPES**

- Firm Fixed Price – price not subject to adjustment
- Firm Fixed Price with EPA – upward or downward adj based on specified contingencies
- Firm Fixed Price Level of Effort – payment based on effort expended rather than results achieved
- Fixed Price Incentive Firm Target – profit rate adjusts based on cost performance
- Fixed Price Incentive Successive Target – negotiate initial targets/profit rate adjusts based on cost performance; at production point, negotiate firm targets or FFP
- Fixed Price Prospective Redetermination – FFP initially, redetermine price during future performance
- Fixed Price Retroactive Redetermination – Fixed ceiling price, price redetermined after completion of contract

• **COST REIMBURSEMENT TYPES**

- Cost – costs are reimbursed with no fee
- Cost Sharing – costs are reimbursed only for agreed-upon portion of allowable costs, no fee
- Cost Plus Incentive Fee – fee rate adjusts based on cost performance
- Cost Plus Award Fee – costs are reimbursed, base fee; rest of fee is earned based on various criteria (technical, schedule and cost)
- Cost Plus Fixed Fee – costs are reimbursed, contractor entitled to fixed fee

ACQUISITION PLANNING

OTHER CONTRACT TYPES

- **Time & Materials**
 - Provides for acquiring supplies or services on the basis of:
 - Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
 - Materials at cost, including, if appropriate, material handling costs as part of material costs
- **Labor-Hour**
 - Variation of the time-and-materials contract, differing only in that materials are not supplied
- **May be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.**



ACQUISITION PLANNING CONTRACT STRUCTURE

Individual pieces and parts of a contract, as prescribed in FAR Part 15

- **Part I (The Schedule): Sections A-H**
- **Part II (Contract Clauses): Section I**
- **Part III (List of Documents, Exhibits, and Attachments): Section J**

Additionally, the Request for Proposal will include the model contract (Sections A-J) plus:

- **Part IV (Representations and Instructions): Sections K-M**

Order of Precedence

- **The Contract Schedule takes precedence over contract clauses**
- **Contract clauses take precedence over other documents, exhibits and attachments**
- **Other documents, exhibits and attachments take precedence over the specifications**

ACQUISITION PLANNING CONTRACT STRUCTURE

- **Section A: Solicitation/Contract Form includes**
 - Contract number and amount
 - Name and address of issuing office, admin. contracts office, contractor and paying office
 - Signature blocks for contractor and Contracting Officer
- **Section B: Supplies or Services and Prices/Costs includes**
Contract Line Item Numbers (CLINs) and SubClins
 - Brief description of the supplies or services to include item numbers, nouns, and quantities
 - Period of performance (service CLINs only)
 - Price/cost
 - Contract type

ACQUISITION PLANNING CONTRACT STRUCTURE

- **Section C: Description/Specification/Work Statement**
 - Description or specification in addition to section B
 - Often cited by reference and full text is in Section J
- **Section D: Packaging and Marking**
 - Provides Requirements for Packaging, Packing, Preservation, and Marking
- **Section E: Inspection and Acceptance**
 - Provides for Requirements for Inspection, Acceptance, Quality Assurance, and Reliability



ACQUISITION PLANNING CONTRACT STRUCTURE

- **Section F: Deliveries or Performance**
 - Specify the Requirements for Time, Place, and Method of Delivery or Performance
- **Section G: Contract Administration Data**
 - Accounting and appropriation data
 - Contract administration information or instructions other than that on solicitation
- **Section H: Special Contract Requirements**
 - Include a Clear Statement of Any Special Contract Requirements Not Included in Section I or Other Sections
- **Section I: Contract Clauses**
 - Include Clauses Required by Law and Any Others Which are Not Part of Another Section
 - Reference vs Full Text



ACQUISITION PLANNING CONTRACT STRUCTURE

- **Section J: List of Attachments**
- **Include Title, Date, and Number of Pages for Each Attached Document or Exhibit**
- **Enacted into the Contract (Legally Enforceable)**
- **Common Types of Attachments/Exhibits:**
 - **Statement of Work/Statement of Objectives/Performance Work Statement**
 - **Technical Requirements Documents or Specifications**
 - **Government Furnished Property (GFP) list**
 - **Small Business Subcontracting Plan**
 - **Documentation requirements (i.e., Contract Data Requirements List [CDRL])**
 - **Security requirements (i.e., Security Classification Guide)**

WHY HAVE A SOURCE SELECTION?

- **Competitive negotiated acquisitions**
- **Source Selection Procedures are addressed in FAR Part 15 - Contracting by Negotiation, along with Agency Supplements (i.e., DFARS, AFFARS supplements)**
- **FAR Part 15.002(b) - Competitive procedures are intended to:**
 - **Minimize complexity of the solicitation, evaluation, and the SS decision**
 - **Foster an impartial and comprehensive proposal evaluation**
 - **Lead to selection of the proposal representing the best value to the Government**
- **Purpose: An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches**
 - **Different types of acquisitions, the relative importance of cost or price may vary.**
 - **The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.**

REQUEST FOR PROPOSAL

- Request for Proposal (RFP) Content
 - Model Contract (Sections A – J)

- **Representations & Certifications (Section K)**
- **Instructions to Offerors (Section L)**
- **Evaluation Criteria (Section M)**

REQUEST FOR PROPOSAL CONTENT

- **Section K:** Representations, Certifications, and other statements of offerors are found in this section for solicitation provisions that require representations, certifications, or the submission of other information by offerors.
 - **Prospective contractors will generally be required to complete an electronic annual Reps/Certs and update as necessary to ensure they are kept current, accurate, and complete on System for Award Management (SAM) (<https://www.acquisition.gov>)**
- **Section L:** Instructions to Offerors (or Instructions For Proposal Preparation) provide instructions on how to structure the proposal and what information is required to evaluate the Offeror's factors/subfactors specified in Section M
 - Section L should request **all the data and only the data** that will be evaluated in accordance with Section M
 - **Specifies volumes requested, formats, number of copies, page limitations, and specific instructions on information to be included for each volume needs to be followed**
 - **Do a cross-matrix, even if the Gov't doesn't, to ensure compliance with Section L & M!**

REQUEST FOR PROPOSAL CONTENT

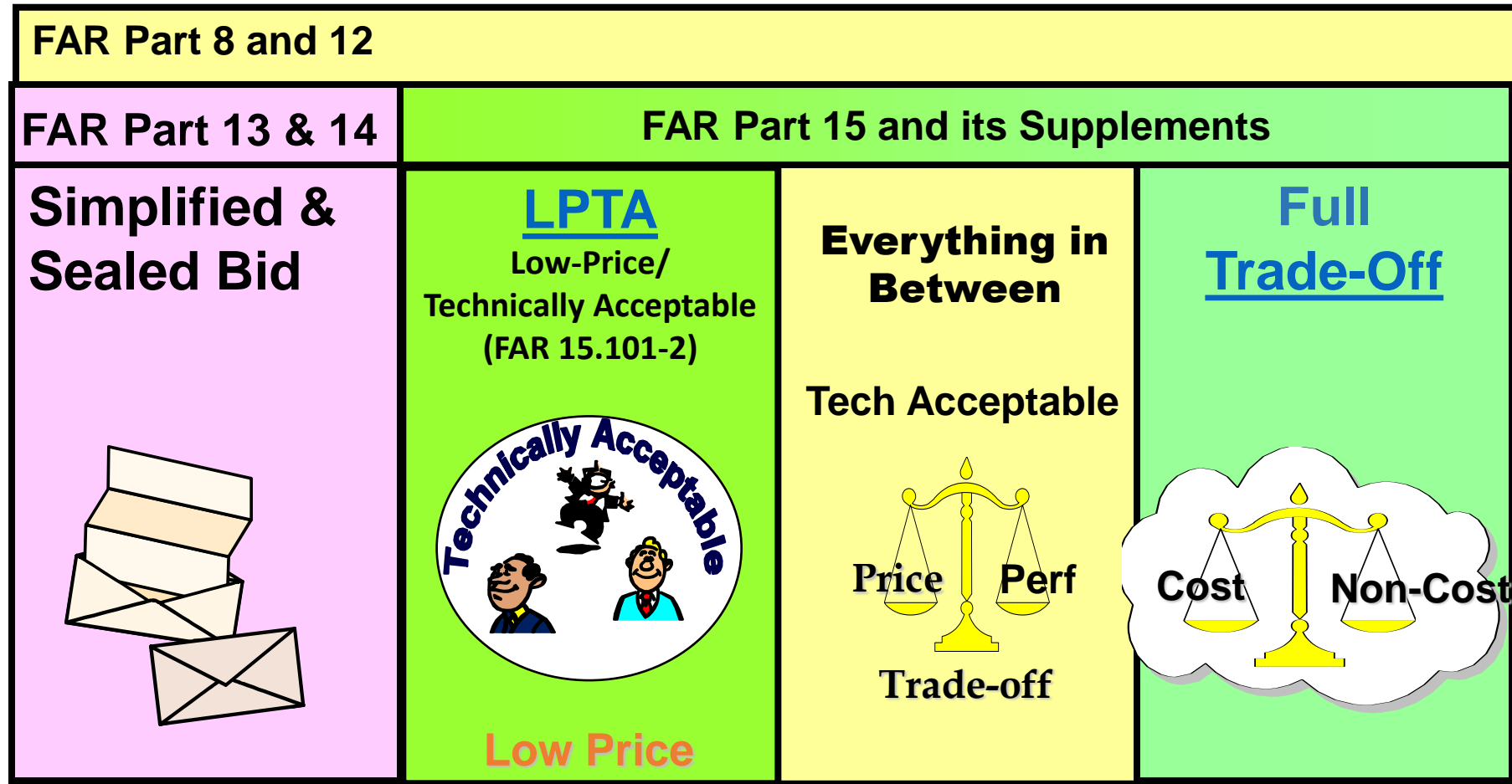
- **Section M: Evaluation Factors for Award** **is the only section that communicates to Offerors the criteria** for selection
 - **In the final analysis, the only Section M that matters is the one that is published in the RFP, so read it!**
- **The Source Selection Authority (SSA) is bound by the criteria in Section M**
 - **Most important, most difficult to develop** generally and often changes many times before it is a “final version” ready for incorporation in the RFP
- **Rules of selection -- forms a pact with Offerors:**
 - **“Say what you are going to do in Sec M; then, during source selection, do what you said you were going to do.”**
 - **The Reality: Failure to follow what an Agency said it was what it was going to do in Section M is one of the leading causes of sustained protests**



EVALUATION FACTORS/SUBFACTORS

- Evaluation factors and significant subfactors must:
 - Represent the key areas of importance and emphasis to be considered in the source selection decision
 - Support meaningful comparison and discrimination between and among competing proposals.
- Factors/subfactors that apply to an acquisition and **their relative importance are within the broad discretion of agency acquisition officials**, subject to the following requirements:
 - **Price or cost** to the Gov't shall be **evaluated in every source selection** (10 U.S.C. 2305(a)(3)(A) (ii) and 41 U.S.C. 253a(c)(1)(B), and also Part 36 for Architect-Engineer Contracts);
 - **Quality** of the product or service shall be addressed **in every source selection** through consideration of one or more non-cost evaluation factors, and
 - **Past performance** shall be **evaluated in all source selections** for negotiated competitives **expected to exceed the Simplified Acquisition threshold, unless** otherwise excepted in FAR 15.304(c)(3)(i) or (c)(3)(iii) and an Agency's supplements

BEST VALUE CONTINUUM





LOWEST PRICE TECHNICALLY ACCEPTABLE (LPTA) SOURCE SELECTION PROCESSES

- **When using the LPTA process:**
 - The evaluation factors/significant subfactors establish the requirements of acceptability and exchanges may occur with Offerors
 - Proposals are evaluated for acceptability – but not ranked using non-cost/price factors;
 - Tradeoffs are not permitted
 - **Past Performance doesn't have to be an evaluation factor**
 - **Award will be made on the basis to lowest evaluated price of proposals meeting all minimum mandatory criteria** or exceeding the acceptability standards for non-cost factors

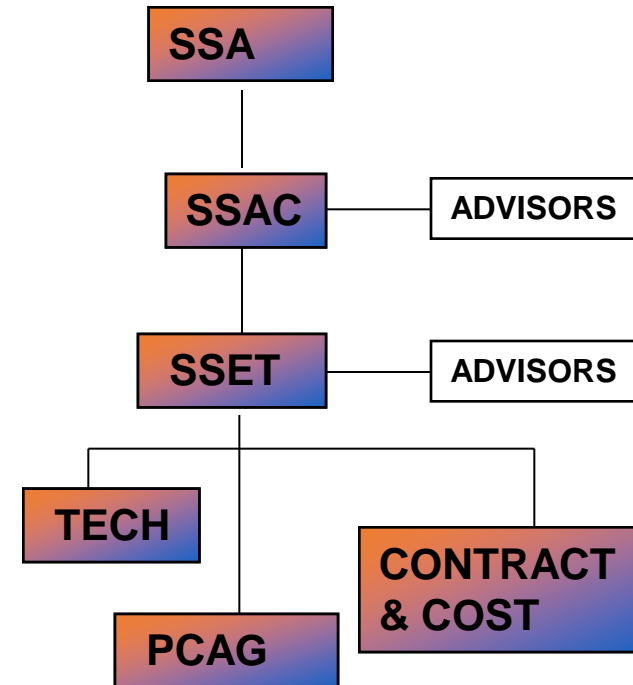
FULL TRADEOFF

- **A tradeoff process is appropriate when:**
 - It may be in the best interest of the Government to consider award to other than the lowest priced Offeror or
 - Other than the highest technically rated Offeror
- All evaluation factors/significant subfactors that affect contract award and their relative importance shall be clearly stated in the solicitation; and
- The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

Permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced offer

TYPICAL SOURCE SELECTION ORGANIZATION (DOD)

- **Source Selection Authority (SSA)**
 - Official designated to direct the source selection process and make the source selection decision.
- **Source Selection Advisory Council (SSAC)**
 - Senior Government personnel who provide counsel during the source selection process and prepare a comparative analysis of the source selection evaluation team's evaluation results
 - SSAC required to make an award recommendation for SSA's consideration
 - If SSAC not required, some organizations use informal group of Key Advisors
- **Source Selection Evaluation Team (SSET)**
 - Group of Government and, if needed, approved non-Government personnel representing the various functional disciplines relevant to the acquisition
 - SSET evaluates each proposal individually against the RFP and evaluation criteria and reports its evaluation to the SSA/SSAC
 - Prepares Proposal Analysis Report (PAR)
 - SSET Chairperson makes award recommendation for SSA, if no SSAC is used
 - PCAG has sole responsibility for evaluation of past performance
 - PCAG is Government only – no FFRDC or other A&AS



PROPOSAL EVALUATION

- **Evaluation of technical proposals will generally result in a rating and proposal risk assessment**
 - **Color or Adjectival/Numeric rating:** Based on the strengths, uncertainties, and deficiencies of the proposal
 - **Risk (proposal risk):** Based on the weaknesses and significant weaknesses of the proposal
 - **Not in comparison to another Offeror;** ultimate decision on color/adjectival/ numeric ratings, risk, strengths, weaknesses, etc. is a group consensus against Section M criteria
- **Evaluation of cost proposals will generally result in an assessment of realism, reasonableness, and completeness of the proposed costs, for other than FFP contracts**
 - **Realism:** Are the resources adequate for the approach?
 - **Reasonableness:** Is the methodology used to develop costs appropriate?
 - **Completeness:** Are all aspects covered and is the level of detail appropriate?
 - **TIP:** Ensure figures roll up to the final total values – errors in addition/subtraction will result in questions about your proposal AND MAY LOWER YOUR OVERALL RATING/PROPOSAL RISK!!!!
- **Past Performance Assessment team or “Performance Confidence Assessment Group (PCAG)” evaluates past performance information submitted by Offerors and any other relevant performance, they can identify themselves, against relevancy, recency, quality of past work**
 - **Evaluation results in “Confidence Assessment”** at Past Performance factor level, based upon Section M criteria
 - **Tip:** Be sure to submit as many examples of Past Performance as you can – for you and your partner(s)/subcontractor(s)



PROCESS: DISCUSSIONS TO AWARD

- Discussions/Exchanges **are only done after a Competitive Range determination** is made by SSA and PCO
 - Discussions are exchanges with Offerors done with the intent of allowing a revision of Offeror's proposal
 - If conducted, SSET will discuss all deficiencies, inadequacies, and weaknesses they have identified
 - Contracting Officer decides scope, content, and extent and method
 - Offerors are permitted to revise their proposals as necessary to address weaknesses, inadequacies and deficiencies and capture strengths
- Briefing charts are updated to reflect revisions and updated briefing charts are released to Offerors at request for Final Proposal Revisions (FPR)
- After FPR receipt, the team finalizes their evaluation, updates charts, and completes a Proposal Analysis Report (PAR)
- Information is presented to SSA in a Decision Briefing
- After SSA's decision is made, a Source Selection Decision Document (SSDD) is prepared
 - A single summary document supporting selection of the Offeror's proposal consistent with the stated evaluation criteria
 - Reflects the SSA's integrated assessment and decision
- Contract Award is made to the successful Offeror(s) after the culmination of internal reviews of final contract files to include review of all supporting documentation, evaluations, PARs, etc., as well as notifications to Congress prior to announcement, as necessary



PROPOSAL EVALUATION: DEBRIEFINGS

- For an unsuccessful Offeror, there are various methods used to provide them their evaluation results, either after a Competitive Range Determination has eliminated an Offeror or if contract award has been made
- Debriefings can be oral, in writing, in person (e.g., at Offeror's or Gov't's facility), over the phone, etc.
- **At a minimum**, the debriefing information shall include –
 - (1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;
 - (2) The overall evaluated cost or price (including unit prices), and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;
 - (3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;
 - (4) A summary of the rationale for award;
 - (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and
 - (6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.
- **To be timely, the Offeror must request, in writing, a preaward debriefing or post award debriefing within 3 days after receipt of notice of exclusion from competition or contract award**
 - If the Offeror isn't timely, it may affect whether the PCO decides to debrief the Offeror or not at that point of request and may affect the timeliness of any protest filed subsequent to a debriefing
- **The PCO will make every effort to debrief** an unsuccessful Offeror as soon as practicable, **but may refuse the request at times for compelling reasons** that are in the best interests of the Gov't at the time
- **Debriefings will not include point-by-point comparisons** of the debriefed Offeror's proposal with those of other offerors, including the successful Offeror; nor will it reveal any information prohibited from disclosure to include: (1) Freedom of Information Act (5 USC 552 and FAR 24.202); (2) Trade Secrets; (3) Privileged or confidential manufacturing processes and techniques; (4) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit/fee, in direct cost rates, and similar information; and (5) The names of individuals providing reference information about Offeror's past performance
- **Basic purpose of any debriefing is to provide information to make the Offeror's proposal better – the next time**



PROPOSAL EVALUATION: PROTESTS

- “Protest” means a written objection by an interested party to any of the following: (1) A solicitation or other request by an agency for offers for a contract for the procurement of property or services; (2) The cancellation of the solicitation or other request; (3) An award or proposed award of the contract; and (4) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.
- Protests can be filed with the Agency, the Government Accountability Office, or the U.S. Court of Federal Claims (COFC) only
- **Protests based on alleged apparent improprieties in a solicitation need to be filed before bid opening or the closing date for receipt of proposals**
- **In all other cases, protests shall be filed no later than 10 days after the basis of protest is known or should have been known**, whichever is earlier
 - **The clock generally begins for filing a timely protest within 10 days after contract award or within 5 days after a debriefing date** offered to the protester under a timely debriefing request
 - Depending on when the protest is filed, will determine whether an automatic stay to performance in the awarded contract will be required or is overcome by urgent and compelling reasons that requires performance to continue in the face of the protest
- An Agency, for good cause shown, or where it determines that a protest raises issues significant to the Agency’s acquisition system, may consider the merits of any protest which is not timely filed.
- Protests at the GAO) or Court of Federal Claims
 - **General timeline of a GAO Protest – 100 days from filing to decision; if an Agency doesn’t decide to take corrective action**
 - If there is a corrective action – GAO will dismiss the protest pending corrective action taking place; the Agency will start from the beginning, scratch the RFP entirely, re-evaluate all submitted proposals with a new technical/cost team, re-open competition, etc.
 - GAO generally less costly than COFC, will not substitute (generally) its judgment for that of the SSET/SSAC/SSA
 - **For the COFC -- Timeline is very variable due to the dependence** upon extent of review (*de novo* or limited), amount of discovery, complexity of issues, etc.
 - Costly in terms of time, attorney fees, consultants, lost business opportunities

SOLE SOURCE ACQUISITIONS

COMPETITION AND JUSTIFYING SOLE SOURCE

- **FAR Part 6 Competition based on Competition in Contracting Act (CICA)**
 - **Allows for 7 Circumstances Allowing for Other than Full and Open Competition**
 1. **Only One Responsible Source**
 2. **Unusual and Compelling Urgency**
 3. **Industrial Mobilization; Engineering, Developmental or Research Capability; or Expert Services**
 4. **International Agreement**
 5. **Authorized or Required by Statute**
 6. **National Security**
 7. **Public Interest**
 - **Must document rationale for applying one of these circumstances via a “Justification and Approval” Document; various thresholds apply**
 - **Once approved, Government has the go-ahead to use sole source procedures, governed by FAR Part 15.4, Contract Pricing**



SOLE SOURCE ACQUISITIONS FAIR AND REASONABLE/PRICE ANALYSIS

- **Concept of Fair and Reasonable**
 - Purchase supplies and services from responsible sources at fair and reasonable prices.
 - Price each contract separately and independently
 - Use proposal analysis techniques like price analysis and cost analysis
- **Price Analysis: Process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit or fee.**
- **Examples include, but are not limited to the following:**
 - Comparison of proposed prices received in response to the solicitation
 - Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items
 - Use of parametric estimating methods/application of rough yardsticks
 - Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements
 - Comparison of proposed prices with independent Government cost estimates
 - Comparison of proposed prices with prices obtained through market research for the same or similar items
 - Analysis of pricing information provided by the offeror



SOLE SOURCE ACQUISITIONS COST ANALYSIS

- **Review and evaluation of the separate cost elements and profit or fee in an offeror's or contractor's proposal**
 - **Application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency**
- **Examples include:**
 - **Verification of cost or pricing data and evaluation of cost elements**
 - **Evaluating the effect of the offeror's current practices on future costs**
 - **Comparison of costs proposed by the offeror for individual cost elements with:**
 - **Actual costs previously incurred, previous cost estimates, other cost estimates received, independent Government cost estimates, and forecasts of planned expenditures**
 - **Verification that the offeror's cost submissions are in accordance with Cost Accounting Standards**
 - **Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor**
 - **Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs**



SOLE SOURCE ACQUISITIONS PROFIT/FEE

- It is in the Government's interest to offer contractors opportunities for financial rewards sufficient to:
 - Stimulate efficient contract performance
 - Attract the best capabilities of qualified large and small business concerns to Government contracts, and
 - Maintain a viable industrial base
- Statutory limitations: fee cannot exceed:
 - 15% for experimental, developmental, or research work performed under a cost-plus-fixed-fee contract
 - 6% for architect-engineer services for public works or utilities
 - 10% for other cost-plus-fixed-fee contracts
- Different agency tools for assessing reasonable profit/fee, i.e., DoD's Weighted Guidelines
- Common Profit analysis factors:
 - Contractor effort – measure of the complexity of the work and the resources required for contract performance
 - Contract cost risk - measures the degree of cost responsibility and associated risk that the prospective contractor will assume
 - Federal socioeconomic programs - measures the degree of support to Federal socioeconomic programs
 - Capital investments - contribution of contractor investments to efficient and economical contract performance
 - Cost-control and other past accomplishments and independent development



SOLE SOURCE ACQUISITIONS COST OR PRICING DATA

- **TRUTH IN NEGOTIATIONS ACT (TINA)**
 - Requires Contractor to submit cost or pricing data that are accurate, current and complete at the time of agreement on price
 - Provides for a “level playing field” for the Contractor and Government
 - Contractor provides a Certificate of Current Cost or Pricing Data upon completion of negotiations
 - Provides for a contract price reduction when contractor fails to comply with TINA – defective pricing
- **WHAT IS COST OR PRICING DATA?**
 - “All facts that as of the date of price negotiations, or, if applicable, an earlier date agreed upon, between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly.”
- **IT IS FACTUAL, NOT JUDGMENTAL, AND VERIFIABLE**
- **FAR 15.406-2 CONTRACTOR MUST CERTIFY THAT:**
 - “[T]o the best of its knowledge and belief, the cost or pricing data were **accurate, complete, and current** as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.”



SOLE SOURCE NEGOTIATIONS COST OR PRICING DATA

- **Threshold for obtaining cost or pricing data is \$700,000 (TINA)**
- **Required, unless an exception applies, before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:**
 - **The award of any negotiated contract (except for undefinitized actions such as letter contracts)**
 - **The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to furnish cost or pricing data**
 - **The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered above**
- **Not required when acquisition is at or below the simplified acquisition threshold, or:**
 - **To support any action when determined that prices agreed upon are:**
 - **Based on adequate price competition,**
 - **Based on prices set by law or regulation,**
 - **When a commercial item is being acquired,**
 - **When a waiver has been granted,**
 - **When modifying a contract or subcontract for commercial items**



FINAL PRE-AWARD PROCESS REVIEWS

- **Contract File Reviews by PCO and Senior Management**
- **Legal Reviews**
- **Business and Contract Clearance Reviews**
- **Includes:**
 - **Funding Documents**
 - **Contract Document**
 - **Statement of Work (SOW)/Statement of Objectives (SOO)/Performance Work Statement (PWS)**
 - **Price Negotiation Memorandum (PNM)**
 - **Technical Evaluation**
 - **Audits**
 - **If competitive, the source selection documentation, including proposals, the evaluation and all correspondence**
 - **Other Contract File Documentation**



WRAP-UP

- **Government Contracts and Government Contracting Are:**
 - **Driven by Statutes, Regulations, Policy, and Politics**
 - **Within the Country and the World Outside**
 - **Complex and sometimes hard to understand due to so many procedural considerations**
 - **Always in a changing environment because of all of the above**
- **But the bottom line is:**
- **It's important to the Nation to learn as much about both to bring our citizens the best of our capabilities and our mutual work within the country and the world outside**
- **ANY FUTHER QUESTIONS???**
- **THANK YOU FOR YOUR ATTENTION**



CONTACT INFORMATION

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Appendix A – Elements of a Contract

WHAT IS A GOVERNMENT CONTRACT?

- **Offer, Acceptance, Consideration...**
 - **Government is a party (of course)**
 - **Specialized statutes, regulations, and case law**
 - **Many differences from common law: e.g., socioeconomic policy, contract changes, contract terminations, etc....**

ELEMENTS OF A CONTRACT

- **Offer**
- **Acceptance**
- **Consideration**
- **Competency of Parties**
- **Legality of Purpose**
- **Certainty of Terms**

OFFER

- An offer is a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract.
- The offer indicates an intention to be bound to an agreement
- Submitted in the form of “Bids” or “Proposals”
- Either party can make “offers”
- Distinction between *offer* and *advertisement*
 - Advertisements are generally construed to be *invitations for offers*.
 - **IFB, RFP, RFQ are advertisements**. The contractor’s bid constitutes an offer that may or may not be accepted by the Government.

ACCEPTANCE

- Acceptance is an unequivocal communication to the offeror indicating the intention to be bound to the exact terms of the offer.
- An unequivocal response to an offer is one that is certain, decided, and doubtless.
- A conditional response or one that hedges, procrastinates, or leaves the offeror in doubt does not constitute an acceptance.
- For an acceptance to occur there must be no question that the offeree intends to be bound to the exact terms of the offer.
 - Acceptance must be clearly communicated to the offeror to become effective.

CONSIDERATION

- **Something of value that one party of a contract gives to the other contract party in exchange for something else of value.**
- **Sufficiency vs. adequacy**
 - **Sufficient consideration is when the consideration has some value that induces the other party to perform.**
 - **Adequacy relates to whether the exchange is a *fair* bargain**
 - **The law will not look to the adequacy of the consideration.**
 - **If a party makes a bad deal, the court will lend no assistance**

COMPETENCY OF PARTIES

- **Parties to a contract must have the competency to enter into an agreement**
 - If a person does not have the mental capacity to formulate the requisite intent to be bound, there can be no meeting of the minds and there can be no contract.
- **In Government Contracting**, the issue of whether a corporation is competent will generally be whether it is legally entitled to enter into the agreement.
 - The corporation may be acting outside its charter (stockholders may have the power to rescind the contract).
 - Those who act on behalf of a company must have the authority to act!
 - **GENERALLY, APPARENT OR IMPLIED AUTHORITY WILL BE RECOGNIZED**

GOVERNMENT AUTHORITY

- **GENERAL RULE: Only someone with Actual Authority may bind the Government – unlike commercial transactions, no apparent authority exists in Government contracting!**
 - Agency Heads (FAR 1.601)
 - By virtue of their positions (e.g., SecAF, SecArmy, SecNavy)
 - Delegated down to a Senior Center Contracting Official (SCCO)
 - **CONTRACTING OFFICER**
 - “Warrant Officers” per FAR 1.602
 - Head of Contracting Activities appoint COs **IN WRITING (WARRANT)**
 - **Warrant must be posted (no secrets!)**
 - **May include further limitations (e.g., dollar limits (like authority for less than \$25 M or less than \$5 M; unlimited; simplified acquisition threshold limits (less than \$150,000), operational contracting versus systems, etc.)**
- **THERE IS NO APPARENT OR IMPLIED AUTHORITY FOR GOV’T PERSONNEL**
 - **THE CONTRACTING OFFICER IS THE ONLY ONE WHO HAS THE VESTED AUTHORITY TO BIND THE GOV’T!**

LEGALITY OF PURPOSE

- **Violation of statute**
 - Certain conduct may be expressly prohibited by statute
 - A contract that imposes a duty to perform such conduct is also illegal and will not be enforced
- **Violation of public policy**
 - Public policy applies to matters of public morals, health, safety, and welfare
 - Cannot do what has a tendency to be injurious to the public or against the public good

CERTAINTY OF TERMS

- Lack of clear certainty of the terms and conditions may *render an agreement unenforceable*
- **The General “Rules of Construction” as applied by courts are:**
 - **The contract must be read and interpreted as a whole**
 - The ordinary meaning generally given to words applies
 - Technical terms/words are given their technical meaning unless clearly indicated otherwise
 - Specific terms control over general terms when in conflict will be used
 - **Ambiguities are interpreted against the drafter of the contract!**
 - **Best evidence of the parties’ intention is in the written contract**
 - **“Four Corners of the Contract”**
 - Purpose is to bar oral evidence that contradicts, adds to, or otherwise varies the terms of the written contract