

Federal Government Contracting Contract Types

December 8, 2011

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Workshop Summary:

- Basic Background Information - Federal Government Contracting Contract Types
 - Fixed Price
 - Firm Fixed Price
 - Fixed Price Other than fixed fee
 - Cost Reimbursable
 - Time & Material
 - Others

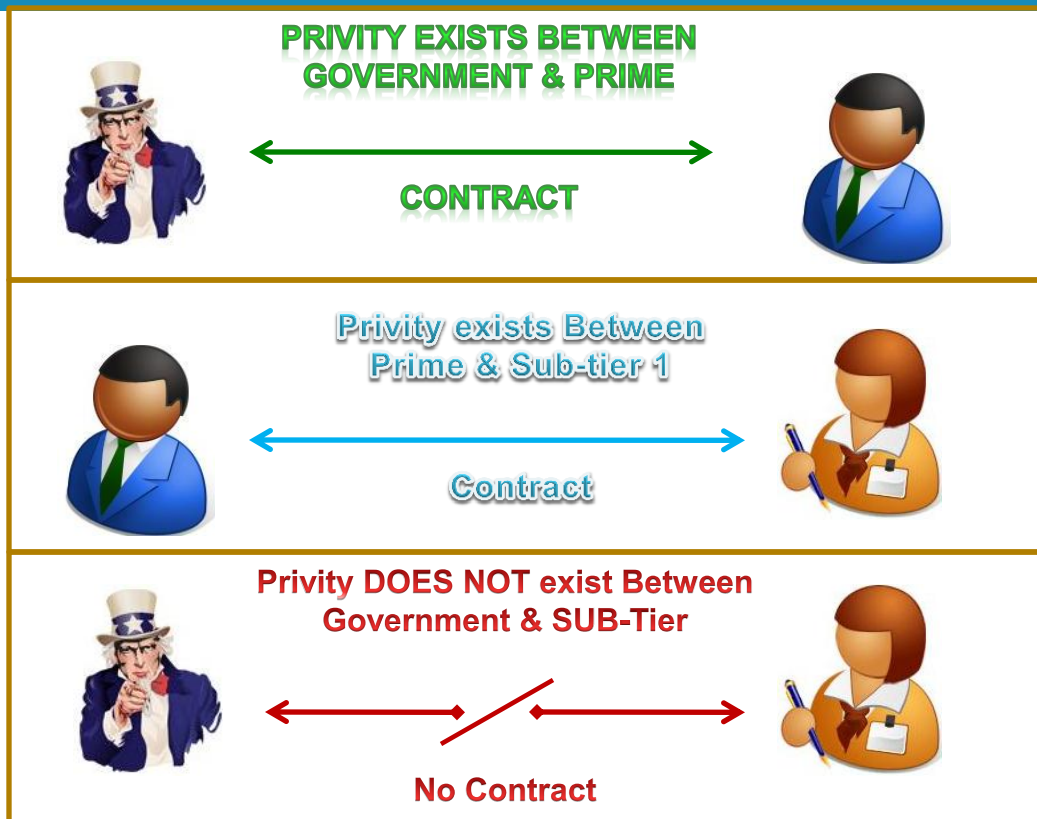
Definition: What is a Contract?

- A Promise or set of Promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.
- An agreement between two or more competent parties in which an offer is made and accepted, and each party benefits. The agreement can be formal, informal, written, oral or just plain understood.
- Voluntary, deliberate, and legally enforceable (binding) agreement between two or more competent parties, evidenced by:
 - (1) an offer,
 - (2) acceptance of the offer, and a
 - (3) valid (legal and valuable) consideration.

Required Elements of a Contract

- **Capacity:**
 - The parties must have the capacity/authority to enter into a contract
- **Mutual Assent:**
 - Parties must mutually assent to be bound to the contract terms by both having an “Offer” and “Acceptance” of offer.
- **Consideration:**
 - Parties must provide consideration/value to each other (Perform ‘x’ for ‘y’)
- **Lawful Purpose:**
 - A contract must be for a lawful purpose.
- **Terms:**
 - The terms must be certain and clear.
- **Form:**
 - The formation of the contract must be of a type permitted by law.

Privity Of Contract



Appropriated Funds

- One Major Difference between Government Contracting and Commercial Contracting is the use of Appropriated Funds:
 - Government procurements use funds budgeted by the “Executive Branch”, and approved by the “Legislative Branch”
 - Anti-Deficiency Act requires the Government to have approved funding ‘in hand’ for all contract actions. (FAR 52.232-20 Limitation of Cost Clause)

Who can bind the Government?

- Only an agent of the Government who is within the scope of their authority can bind the government to a contract.
 - Contracting Officers are provided Warrants that define the Authority delegated to them from the Head of the Contracting Activity. They can bind the Government:
 - Procuring Contracting Officer: (PCO)
 - Administrative Contracting Officer (ACO)
 - Termination Contracting Officer (TCO)
 - Other Government Officials such as Contracting Officer Technical Rep (COTR) or Quality Assurance Rep (QAR) are not authorized to bind the government and can therefore not change the scope of contracts

Types of Federal Procurements

- General Services Administration (GSA) Schedules: FAR Part 8
- Commercial Items: FAR Part 12
- Simplified Acquisitions: FAR Part 13
- Sealed Bidding: FAR Part 14
- Negotiated Contracts: FAR Part 15
- Special Contracting Methods: FAR Part 17
- Emergency Acquisitions: FAR Part 18

Types of Contracts – FAR Part 16

- FAR allows several contract types:
 - Financial set-up:
 - Fixed Price : Cost Reimbursement : Labor Hour/Time & Material
 - Administrative set-up options:
 - Indefinite Delivery – Indefinite Quantity
 - Letter Contracts
 - Agreements
- FAR allows several fee arrangements:
 - Fee Arrangements
 - Fixed Fee : Incentive Fee : Award Fee
- FAR prohibits “cost plus percentage of cost” arrangements

Types of Contracts – FAR Part 16

Financial Considerations

- Fee Arrangements
 - Fixed Fee (Formula is Target cost * agreed to fee%)
 - Incentive Fee
 - Cost incentives
 - Performance Incentives
 - Delivery Incentives
 - Award Fee
 - Used when other incentives are not specifically measurable
 - Award Fee Board must be established

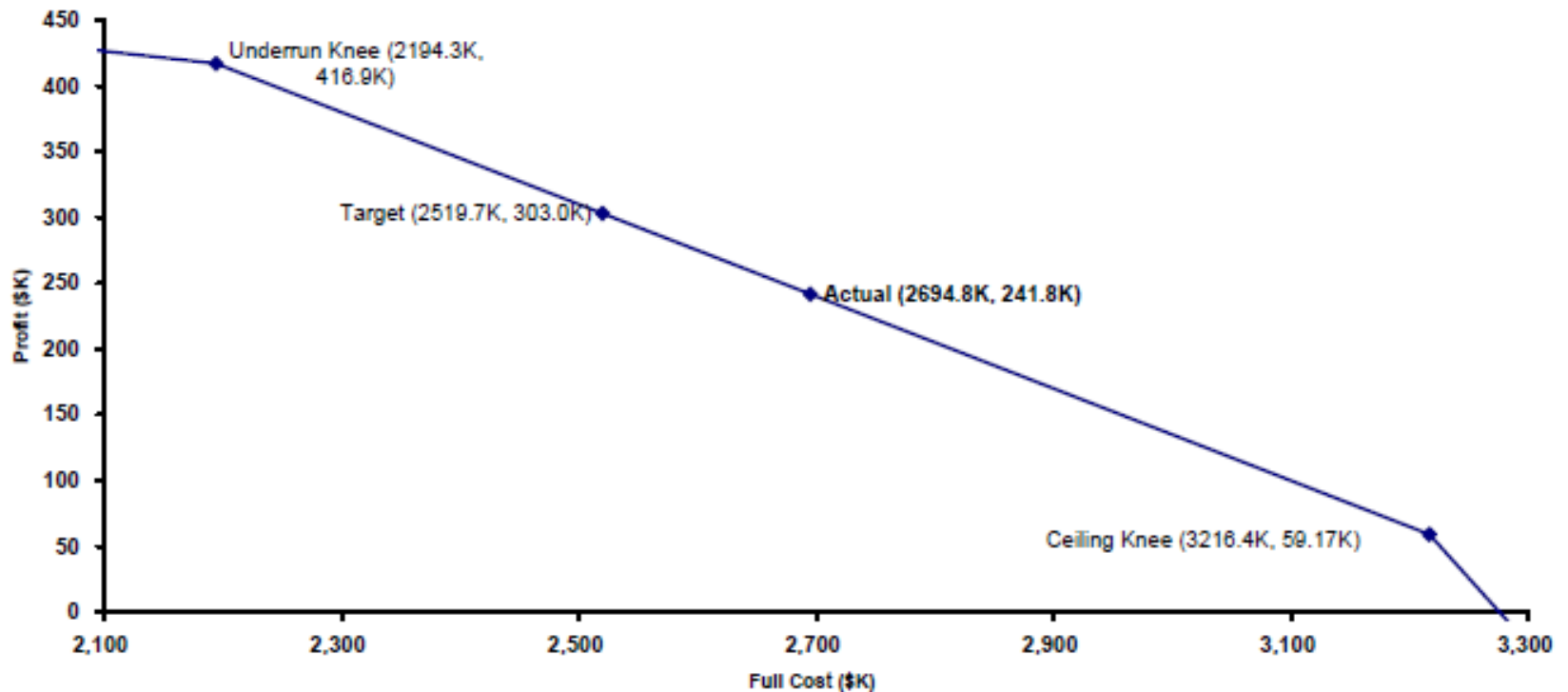
Types of Contracts – FAR Part 16

Financial Considerations

- Fixed Price

- Firm Fixed Price: Price agreed to by parties is the price to be paid, regardless of cost performance.
- Fixed Price with other than Fixed Fee
 - Target Cost is agreed to and a formula is used based on contract performance to determine the final payment. (Incentive Fee, Award Fee, Economic Price Adjustment, Prospective Price Re-determination).
- Agreed to Scope of Work Must be accomplished regardless of cost performance.

Example: Incentive Fee – Cost Based



Types of Contracts – FAR Part 16

Financial Considerations

- Reimbursement Contracts/Cost Contracts
 - Payment of incurred Cost (Direct, G&A, OH) + Fee
 - Requires Good-Faith Effort toward goal
 - ‘Statement of Objectives’ verses ‘Statement of Work’
 - Can be ended at any time by the Government.
 - Contractor has no requirement OR authorization to go beyond the funding limit established by Government.
 - Types:
 - Cost Sharing
 - Cost Plus Incentive Fee (CPIF)
 - Cost Plus Award Fee (CPAF)
 - Cost Plus Fixed Fee (CPFF)

Types of Contracts – FAR Part 16

Financial Considerations

- Time and Material (T&M)
 - Direct Labor Hours at a negotiated fixed rate per hour.
 - Non-Labor
 - Materials are charged at cost (raw cost + allocable handling costs)
 - Travel & Per Diem (Other): raw cost
- Labor Hour
 - Similar to T&M but no materials are necessary.

Federal View of Contract Types

- **Fixed Price:**
 - Favored type of contracting method. (Especially FFP)
 - Other than FFP requires an approved accounting system.
 - Allows planning for dollar expenditures
 - Allows for Government to ensure receipt of requirement
- **Cost Reimbursable:**
 - Target of Politicians from both parties
 - Contractors are seen as unable to control spending
 - Govt. sometimes doesn't get a finished product
- **Time & Material:**
 - Least Favored contract type
 - Very close to “cost plus percentage of cost” without strict oversight

Contracting Theory: Contract Type by Risk

Government Risk	<p>High Risk ←————→ Low Risk</p>					
Contractor Risk	<p>Low Risk ←————→ High Risk</p>					
Requirement Definition	<p>Loosely Defined ←————→ Highly Defined</p>					
Production Stages	Concept Studies / Basic Research	Exploratory Development	Test Demonstration	Full Scale Development	Full Production	Follow-on Production
Contract Type	Various Cost Reimbursement Contracts	CPFF CPAF	CPIF, CPAF, FPIF	CPIF, FPIF or FFP	FFP, FPIF or FPEPA	FFP, FPIF or FPEPA

Types of Contracts – FAR Part 16

Administrative Considerations

- **Refresher: Elements of a ‘Contract’**
 - Capacity: Mutual Assent: Consideration: Lawful Purpose: Terms: Form:
- **IF there are compelling needs dictating that not all of these elements can come together immediately, OR it is in the best interest of the Government to have several elements in place before getting into final negotiations, the Government can put into place special types of “Contract” documents:**
 - Agreements
 - Indefinite delivery
 - Letter Contracts
- **Must be of the lawful contract financial types discussed earlier**
 - FP, CR, T&M

Types of Contracts – FAR Part 16

Administrative Considerations

- Agreements
 - Basic agreement: written instrument of understanding that contemplates separate future contracts/delivery orders. Often allows for several contracting groups to place contracts referencing it.
 - Basic Ordering Agreement (BOA): Similar to the Basic Agreement, authorizes orders to be placed referencing the T&C's, but may require pricing to be provided/negotiated for the material/ services at the time required.

Types of Contracts – FAR Part 16

Administrative Considerations

- Indefinite Delivery Contracts
 - Provides for upfront negotiation of Terms & Conditions, Prices, estimated quantities and effective timeframe without obligating the Government.
 - Types Include
 - Definite quantity: A specified qty will be ordered
 - Requirements: If authorized, the definitized order will be placed.
 - Indefinite Qty (IDIQ): Government may order, within limitations of the contract, items as required.

Types of Contracts – FAR Part 16

Administrative Considerations

- Letter Contracts
 - Written preliminary contractual instrument that authorizes the contractor to begin performing immediately
 - Allows effort to commence while final contract is definitized
 - Must contain maximum liability of the Government (not to exceed price)

End of Presentation:

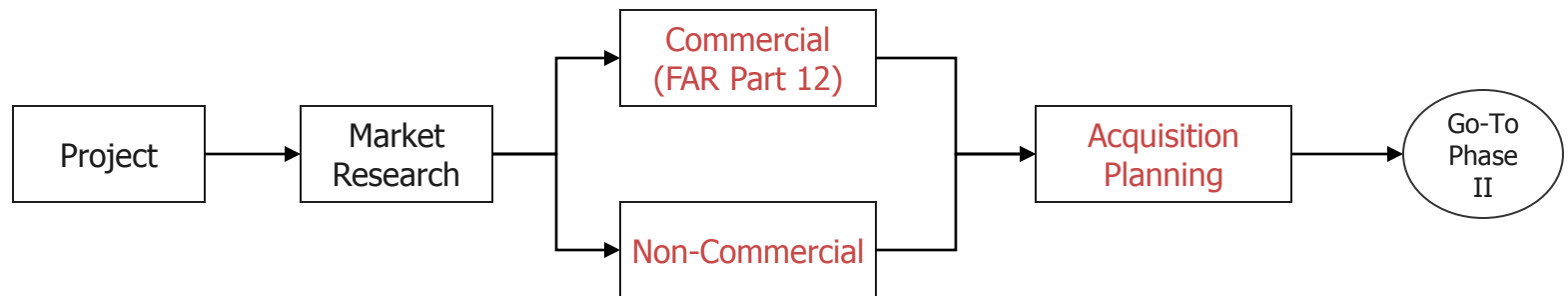
- Questions?

Basic Acquisition Process

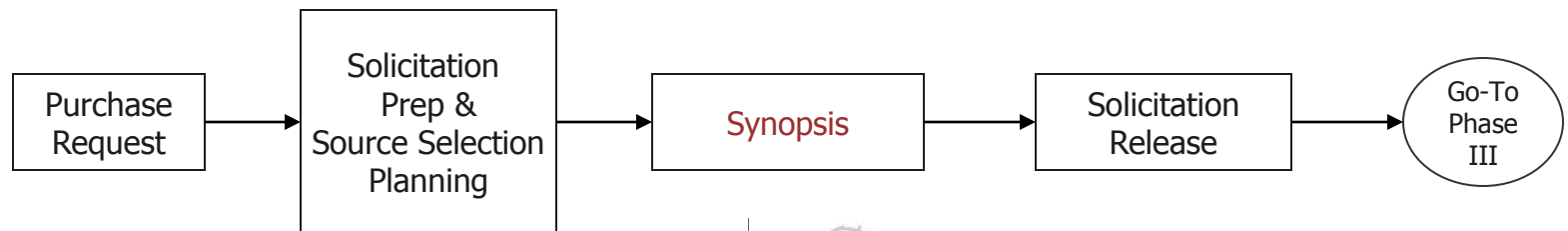
- Define Need
- Analyze Requirement
- Source Selection
- Solicit: IFB, RFQ, RFP
- Evaluate
 - (Clarifications, Down-selects, Negotiate, Certify)
- AWARD
- Perform Effort
 - Modifications / Changes
- Completion & Close Out
 - Fulfilled Requirements or Terminations

Government Source Selection Road Map

- Phase 1: Pre-solicitation Planning

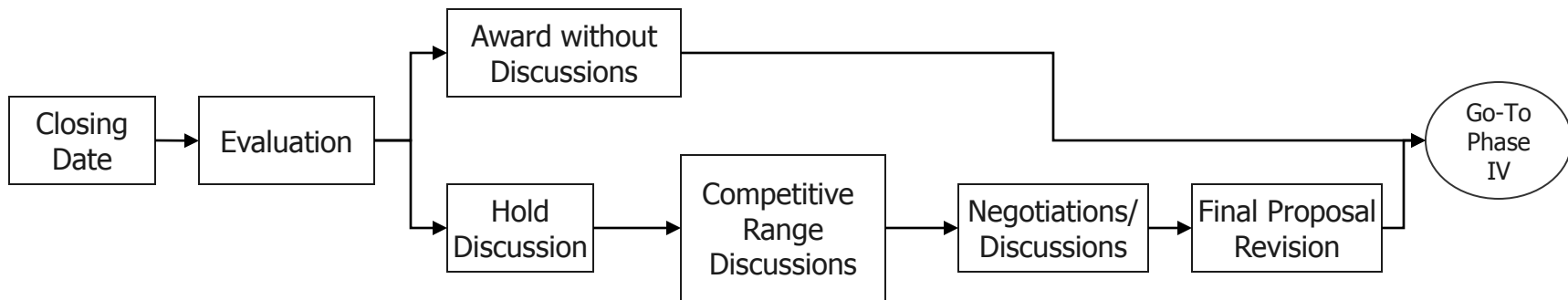


- Phase 2: Solicitation Prep and Release

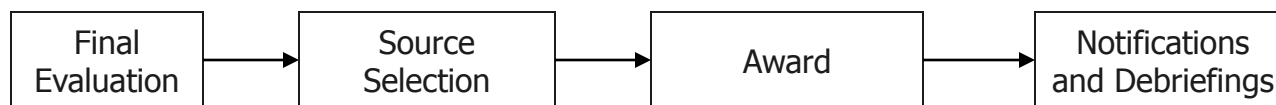


Government Source Selection Road Map

- Phase 3: Proposal Evaluation/Negotiation



- Phase 4: Source Selection & Award



Considerations for Contracting Officers Making Federal Procurements

- Socioeconomic Programs / Requirements:
 - Small/Disadvantaged Set-asides
 - (Minority, Woman-owned, Veteran, Handicapped)
 - Maintaining or Mobilization of nations capacity (2nd Source issues)
- Full and Open Competition
 - All reasonable sources are permitted to compete
 - Sealed Bidding
 - Negotiation
- Sole Source or Limited Source