



Developing the Procurement--- Requirements Articulation, Contract Type, Source Selection Strategy, Small Business Considerations, and FAR Provisions

Tidewater Government Industry Council

FY 2019 Training Program

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www.tasc-tgic.org



Using and Applying Market Research

- Use the results of your Market Research to—
 - Refine technical specifications and performance-based work statements including standards for performance (Section C)
 - Determine useful deliverables and realistic delivery schedules (Section F)
 - Determine appropriate technical evaluation factors and their relative importance and overall relationship to price (FAR Part 15&Section M)
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Using and Applying Market Research

- Maximize competition (FAR Parts 5 & 6)
 - Assist in the development of the Independent Government Cost Estimate (IGCE)
 - Determine optimum contract type (FAR Part 16)
 - Identify potential socio-economic set-asides (FAR Parts 6 and 19)
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The Federal Acquisition Regulation, etc.

A highly recommended source of up-to-date acquisition regulations and supplements applicable to most Defense and Federal Departments and Agencies is:

www.farsite.hill.af.mil



Requirements Articulation

Preference for Commercial “Items”

Specifications (Prescriptive/What)

Government “How”

Performance Based (Descriptive)

Performance Requirements/Outcomes

Contractor “How”

Standards/Measures

Deliverables and Schedule/PoP



Acquisition of Commercial Items

- 12.101 -- Policy.
 - Agencies shall --
 - (a) Conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements;
 - (b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and
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Acquisition of Commercial Items (cont)

(c) **Require prime contractors and subcontractors** at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.



Describing Agency Needs/Selecting and Developing Requirements Documents FAR 11

- (a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, **consistent with the following order of precedence:**
 - (1) Documents mandated for use by law.
 - (2) Performance-oriented documents (e.g., a PWS or SOO).
 - (3) Detailed design-oriented documents.
 - Brand Name or Equal Purchase Descriptions
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Publicizing Contract Actions (FAR Part 5)

Public Synopsis as a backstop, safety net, or supplement to Market Research---

Most often FedBiz Ops,

Generally a \$25,000.00 threshold,

Posted a minimum of 15 days before a solicitation can be issued, and

Thirty (30) days before opening (Sealed Bid)
or closing (negotiated procurement, RFP)

As a contractor, what are the real benefits of this synopsis?



Extent of Competition

In all cases, supported by procurement history and updated by more recent Market Research---

Full and Open Competition,

Full and Open Competition After Exclusion of Sources, or

Other Than Full and Open Competition



Full and Open Competition (FAR Part 6.1)

Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently.

Sealed Bids

Competitive Proposals

Combinations, e.g., Two-Step Sealed Bids



Full and Open Competition After Exclusion of Sources (FAR 6.2)

Providing for full and open competition after excluding one or more sources.

Section 8(a) qualified small, disadvantaged business(es)

Historically Underutilized Business (HUB) Zone small businesses

Service Disabled Veteran-Owned small businesses

Economically Disadvantaged Woman-Owned small businesses

Woman-owned small businesses

Local firms during major disasters or emergencies



Other Than Full and Open Competition (FAR 6.3)

Policies, procedures, and the statutory authorities, for contracting without providing for full and open competition.

- Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting without providing for full and open competition shall not be justified on the basis of --
- A lack of advance planning by the requiring activity or



Other Than Full and Open Competition (FAR 6.3) (cont)

- Concerns related to the amount of funds available (e.g., funds will expire) to the agency or activity for the acquisition of supplies or services.
- When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.



Other Than Full and Open Competition (FAR 6.3) (cont)
Only one responsible source and none other will satisfy the requirement

Must have been synopsisized

Follow-on requirements under certain circumstances

Limited rights in data, patent rights, copyrights

Utility services



Other Than Full and Open Competition (FAR 6.3) (cont)

Unusual and Compelling Urgency

The Government would be seriously injured unless the agency is permitted to limit the number of sources.

Delay in award of a contract would result in serious injury, financial or other, to the Government.



Other Than Full and Open Competition (FAR 6.3) (cont)

Unusual and Compelling Urgency (cont)

Public Synopsis not required

Period of Performance

The total period of performance of a contract awarded or modified using this authority may not exceed the time necessary —



Other Than Full and Open Competition (FAR 6.3) (cont)

(cont)

May not exceed the time necessary (cont) —

To meet the unusual and compelling requirements of the work to be performed under the contract; and

For the agency to enter into another contract for the required goods and services through the use of competitive procedures; and

May not exceed one year, including all options...



Other Than Full and Open Competition (FAR 6.3) (cont)

**Industrial mobilization; Engineering,
Developmental, or Research
Capability; Expert Services**

International Agreement

Authorized, Required by Statute

National Security

Public Interest



Source Selection Processes and Techniques

The Best Value Continuum (FAR 15.101)

Relative importance of cost or price may vary.

Where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection.

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.



FAR 15.101-1 -- Tradeoff Process

- 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.

When using a tradeoff process---

- (1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and
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FAR 15.101-1 -- Tradeoff Process

- (2) 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.

This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file



15.101-2 -- Lowest Price Technically Acceptable

LPTA is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

When using the lowest price technically acceptable process, the following apply:

- (1) ...Evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors.



15.101-2 -- Lowest Price Technically Acceptable (cont)

If the contracting officer documents the file, past performance need not be an evaluation factor in lowest price technically acceptable source selections. If the contracting officer elects to consider past performance as an evaluation factor, it shall be evaluated... however, the comparative assessment does not apply.



15.101-2 -- Lowest Price Technically Acceptable (cont)

If the contracting officer determines that a small business' past performance is not acceptable, the matter shall be referred to the Small Business Administration for a Certificate of Competency determination.

- (2) Tradeoffs are not permitted.
 - (3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.
 - (4) Exchanges may occur.
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What Is A Contract? My Definition.

A contract is a shared risk arrangement that considers technical, schedule, and cost risks that reflect directly on the intended contract instrument's performance requirements and sources, capabilities, and previous contract experience identified during the required Market Research phase.



The Spectrum of Contract Types

Government policy is to shift maximum risk to the contractor for technical, schedule, and cost performance.

Maximum risk is placed on the contractor with firm-fixed-price contracts where risk shifts increasingly to the Government under cost-reimbursement contracts.



The Spectrum of Contract Types

Firm Fixed Price, FFP w/EPA, FP Incentive, FP w/Prospective Price Redetermination, Fixed Ceiling Price w/Retroactive Price Redetermination, FFP Level of Effort Term...

Cost (no fee), Cost Sharing, Cost Plus Incentive Fee, Cost Plus Award Fee, **Cost Plus Fixed Fee**

(Labor Hour and Time & Materials contracts are not fixed price and their use is discouraged. Cost Plus a Percentage of Cost contracts are illegal.)



Basic Contract Forms

Completion: Requires performance to a specified outcome and defined result

Level-of Effort (LOE Term): Requires contractor's best effort up to a specified quantity of hours

Labor Hour and Time & Materials contracts are not fixed price nor desirable. They are LOE contracts with fixed billing rates.



Factors in Selecting Contract Types (FAR 16.104)

- (a) *Price competition*. Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.
 - (b) *Price analysis*. Price analysis, with or without competition, may provide a basis for selecting the contract type.
 - (c) *Cost analysis*. In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.
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Factors in Selecting Contract Types (FAR 16.104)

- (d) Type and complexity of the requirement. Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.
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Factors in Selecting Contract Types (FAR 16.104)

- (e) *Combining contract types.* If the entire contract cannot be firm-fixed-price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.
 - (f) *Urgency of the requirement.* If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives tailored to performance outcomes to ensure timely contract performance.
 - (g) *Period of performance or length of production run..*
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Factors in Selecting Contract Types (FAR 16.104)

- (h) *Contractor's technical capability and financial responsibility.*
 - (i) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type.
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Factors in Selecting Contract Types (FAR 16.104)

- (j) Concurrent contracts. If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.
 - (k) Extent and nature of proposed subcontracting. If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.
 - (l) Acquisition history. Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.
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Firm-Fixed-Price Contracts (FAR 16.202)

- A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.
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FFP Applicability

- Suitable for acquiring commercial items or other supplies or services on the basis of reasonably definite functional or detailed specifications when the contracting officer can establish fair and reasonable prices...when --
 - (a) There is adequate price competition;
 - (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid certified cost or pricing data;
 - (c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or
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FFP Applicability

(d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

While placing maximum risk on the contractor, what factors above could shift considerable responsibility toward the Government???



Cost Reimbursement Contracts (FAR 16.301)

- Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.



Application of Cost Reimbursement Contracts

- (a) The contracting officer shall use cost-reimbursement contracts only when—
 - (1) Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract, or
 - (2) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.
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Indefinite Delivery Contracts

Three types of Indefinite Delivery (ID) contracts ---

Definite Quantity (IDDDQ)

Indefinite Quantity (IDIQ)

Requirements Types

Single-Award versus Multiple Award with
preference for MACs

Task Order – Services

Delivery Order - Supplies



Small Business Considerations (FAR 19)

Setting acquisitions aside for exclusive competitive participation by small business concerns:

8(a) participants

HUBZone

Service-Disabled Veteran-Owned (SDVOSB)

Economically Disadvantaged Women-
Owned (EDWOSB)

Women-Owned Small Business (WOSB)



Full and Open Competition After Exclusion of Sources

No order of precedence among 8(a), HubZone, SDVOSB, EDWOSB, and WOSB unless requirement is already reserved by SBA under the 8(a) program.

All of the above to be considered before pursuing a Small Business Set-Aside (SBSA)

Specific small business strategy to be determined based on results of **Market Research**.



Solicitation Provisions & Contract Clauses (FAR Part 52)

From the beginning, be familiar with the FAR by reviewing and becoming familiar with its table of contents.

In the end, scan FAR Part 52 which provides the full text of general provisions found in solicitations that carryover to become part of the resultant contract.

And in between, all FAR Parts refer to particular FAR Part 52 clauses and when they should be used. So very conveniently, FAR 52 then provides cross references back to the particular FAR Part that recommended that use of a particular provision or clause.



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NCMA CEU/CL Certificates

Don't forget your certificate provided today by the Norfolk Chapter of the National Contract Management Association. Contact Ms. Audree Hughes about more information and joining the Chapter.



Remaining Opportunities in This Year's Triad Series

March 26 at TCC-ATC

- Monthly Training---“Developing the Procurement---Requirements Articulation, Contract Type, Source Selection Strategy, Small Business Considerations, SBA Rules, and FAR Clauses
 - April 24 Reverse Industry Day at ODU Darden Center
 - Reverse Industry Day---“Industry’s Perspective on Pre-Proposal Issues and Protests and How They Can Be Avoided or Minimized During the Acquisition Planning and Solicitation Phases”
 - May 28 at Reed and June 25 at TCC-ATC
 - Monthly Training---“Financial Aspects, Cost and Price Evaluation and Technical Proposal Evaluation to Avoid Protests—Financial Responsibility, Cost & Pricing Development, Cost & Price Analysis, Technical Proposal Evaluation, Cost Realism, and Price Reasonableness”
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 - July 31 at ODU Darden Center
 - Reverse Industry Day---"How the Source Selection Process and Post-Award Debriefings Affect the Number and Nature of Award Protests”
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Questions?

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