



FEDERAL ACQUISITION REGULATION (FAR) IN A NUTSHELL

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With You Today



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Learning Objectives

- ▶ Evaluate differences between contract types, as well as identify the proper cognizant agency in a government contract.
- ▶ Examine the process of negotiating with the United States Government, and the primary triggers for that negotiation.
- ▶ Differentiate between small business programs set asides as well as employ the FSS (aka GSA Schedule) for future business and recognize allowable versus unallowable costs as well as direct versus indirect costs.
- ▶ Identify the requirements of subcontracting for government contracts, including vehicles for subcontracting such as teaming agreements, and which clauses can be negotiated or are mandatory to flow down.



AGENDA FOR TODAY

FAR Structure

- 1 FAR Part 2 Definitions
- 2 FAR Part 12 Acquisition of Commercial Items
- 3 FAR Part 15 Contracting By Negotiation
- 4 FAR Part 16 Types of Contracts
- 5 FAR Part 19 Small Business Programs
- 6 FAR Part 31 Contract Cost Principles and Procedures
- 7 FAR Part 38 Federal Supply Schedule Contracting
- 8 FAR Part 44 Subcontracting Policies and Procedures
- 9 FAR Part 52 Solicitation Provisions and Contract Clauses



FAR Part 2 Definitions



PART 2

Definitions of Words and Terms

- ▶ **Cognizant Federal Agency:** “the agency with the largest dollar amount of negotiated contracts, including options.”
- ▶ **Commercial Item:** “Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes.”
- ▶ **Certified Cost or Pricing Data:** “all facts that...prudent buyers and sellers would reasonably expect to affect price negotiations significantly.”
- ▶ **Cost or Pricing Data:** “all facts that, as of the date of price agreement, 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.”
- ▶ **Direct Cost:** “any cost that is identified specifically with a particular final cost objective.”



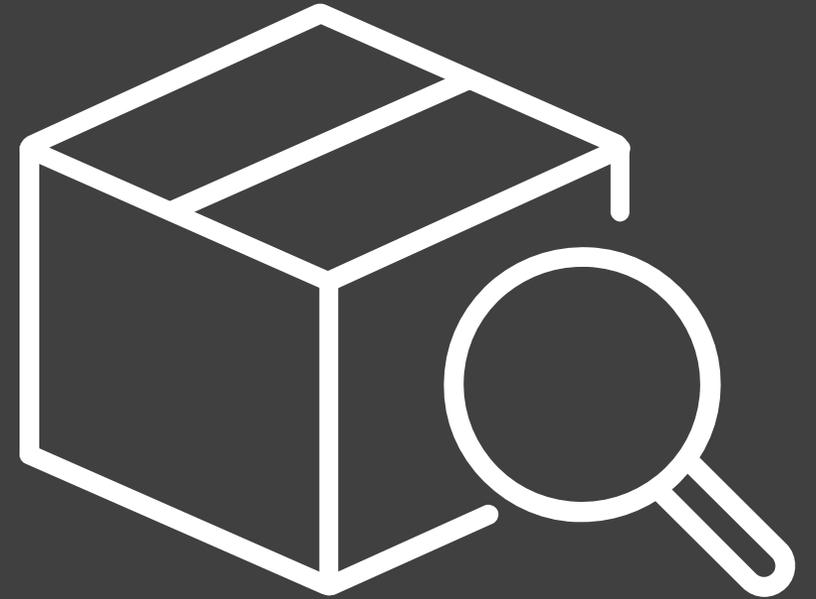
PART 2

Definitions of Words and Terms

- ▶ **Indirect Cost:** “any cost not directly identified with a single final cost objective but identified with two or more final cost objectives or with at least one intermediate cost objective.”
- ▶ **Unallowable Cost:** “any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.”
- ▶ **General and Administrative (G&A) Expense:** “any management, financial, and other expense which is incurred by or allocated to a business unit, and which is for the general management and administration of the business unit as a whole.”
- ▶ **Final Indirect Cost Rate:** “the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change.”



FAR Part 12 Acquisition of Commercial Items

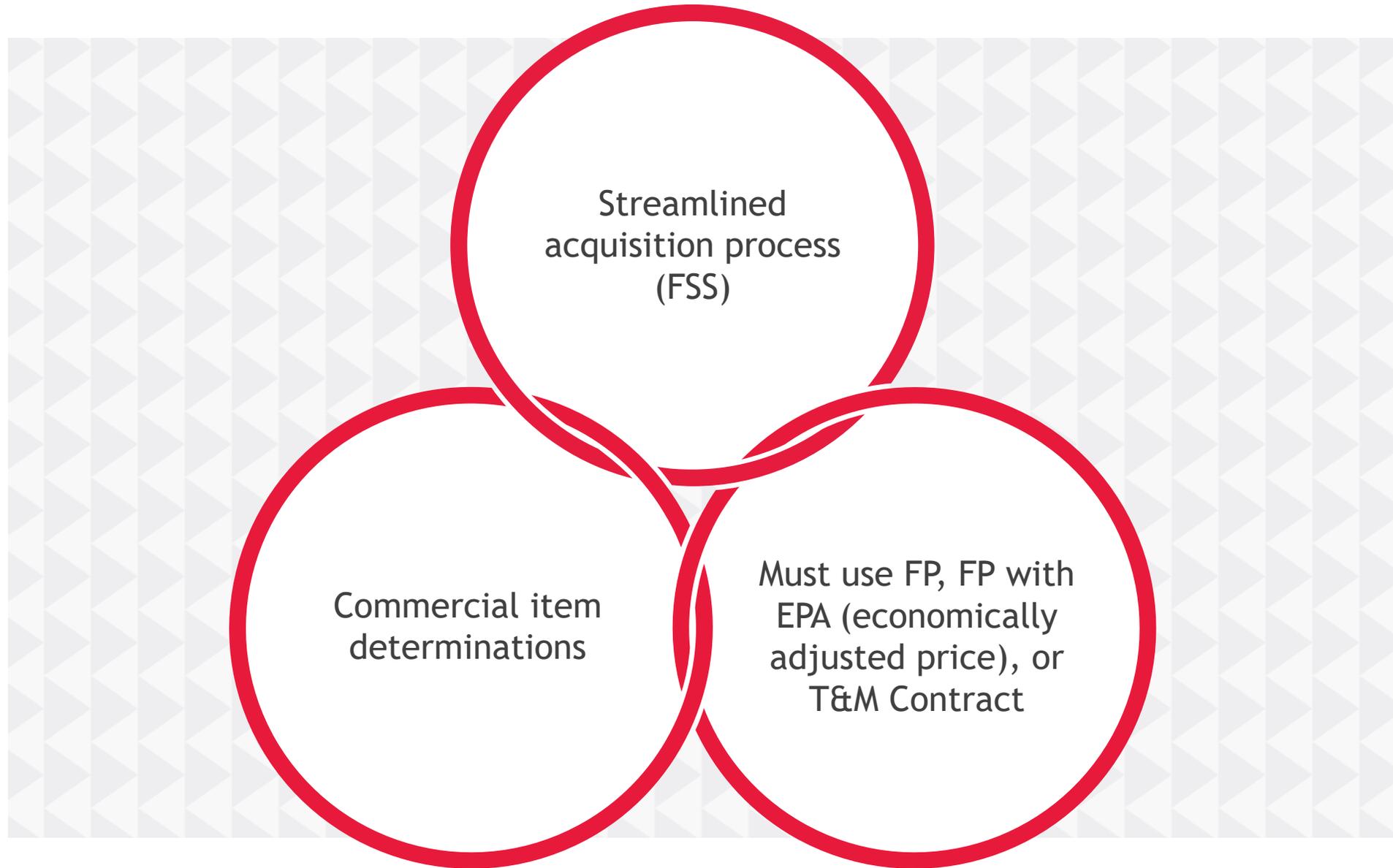


Commercial Item Definition

- ▶ Any item, other than real property, that is of a type customarily used for non-governmental purposes, and that has been sold (or offered for sale), leased, or licensed to the general public;
- ▶ Any item that evolved from an item described in 1), and will be available from the commercial marketplace;
- ▶ Any item that would satisfy a criterion in 1) or 2) but for “modifications”;
- ▶ Any combination of items meeting requirements of 1), 2), or 3);
- ▶ Installation, maintenance or training services to support 1) thru 4);
- ▶ Services of a type offered and sold competitively in substantial quantities in the commercial marketplace...not including those sold on hourly rates;
- ▶ Any item, or combination of items or services in 1) thru 6)
- ▶ A non-developmental item, if the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis to state & local governments.



Acquisition of Commercial Items



FAR Part 15 Contracting by Negotiation



Contracting by Negotiation

Two Types of Negotiated Acquisitions

- ▶ Competitive
- ▶ Sole Source

Best Value Continuum

- ▶ Cost/price may play a large role in source selection
 - Requirement is clearly definable Minimal risk of unsuccessful contract performance
- ▶ Technical or past performance considerations may play a larger role in source selection
 - Less definitive requirements
 - More development work
 - Greater performance risk



Obtain best value by using any one or a combination of source selection approaches

Evaluation Factors

Award Decisions are Based Off of Evaluation Factors, Significant Subfactors

- ▶ Represent key areas of importance
- ▶ Support meaningful comparisons between competing proposals
 - Price or Cost
 - Other than Price or Cost
 - Past performance
 - Compliance with requirements
 - Technical excellence
 - Management capability
 - Personnel qualifications
 - Small business subcontracting opportunity
- ▶ The solicitation shall state whether all evaluation factors other than cost or price, when combined, are
 - Significantly more important than cost or price;
 - Approximately equal to cost or price; or
 - Significantly less important than cost or price

Negotiations Communications

▶ Clarifications

- Limited Exchanges to Clarify (Not Revise) Proposal

▶ Competitive Range

- Group of Offerors with whom USG intends to conduct discussions
- Most highly rated proposals after initial evaluation

▶ Discussions

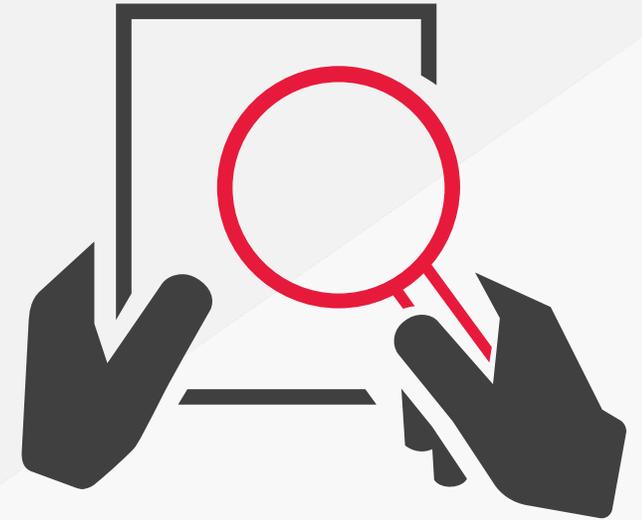
- Exchanges between USG and Offeror with intent of allowing offeror opportunity to revise proposal
- To maximize the USG ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation
- Must discuss significant weaknesses and deficiencies

▶ Negotiated Procurement without Discussions

- Solicitation may say award without discussions
- If RFP says no discussions, no discussions allowed

Proposal Evaluation

- ▶ Internal process to USG - Goal: fair and reasonable prices
- ▶ Must evaluate proposals in accordance with evaluation criteria stated in solicitation
 - Section M of solicitation
- ▶ Best value
 - Not necessarily lowest price
 - Weighs price against non-price factors
- ▶ Best value continuum
 - Lowest price technically acceptable
 - Tradeoff process
 - Appropriate when it is in the USG best interest to consider award to other than the lowest priced offeror or the highest technically rated offeror



Truth in Negotiations Act

(TINA)

- ▶ Law Passed in 1963
- ▶ **Purpose** - Level Playing Field During Price Negotiations
- ▶ **Requirement** - Disclosure of Certified Cost or Pricing Data, must use paragraph in 15-406.2
- ▶ **Application** - Negotiated Procurements Over Statutory Dollar Threshold, Unless Exception Applies

TINA CERTIFICATION

“This is to certify that, to the best of my knowledge and belief, the cost or pricing data . . . submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer’s representative in support of _____ are accurate, complete, and current as of _____.”

(FAR 15.406-2)

What Is Cost or Pricing Data

All Facts that Prudent Buyers and Sellers Would Reasonably Expect to Affect Price Negotiations

- ▶ Vendor Quotes
- ▶ Nonrecurring Costs
- ▶ Changes in Production Methods, Purchasing Volume
- ▶ Projections of Business Prospects and Related Costs
- ▶ Unit-cost Trends, Such as Labor Efficiency
- ▶ Make-or-buy Decisions
- ▶ Estimated Resources to Attain Business Goals
- ▶ Management Decisions Affecting Costs
- ▶ New vs. Refurbished, Remanufactured or Repaired



- ▶ Does Not Include Estimates or Judgments
- ▶ FAR requires structured approach to profit analysis

Defective Pricing

Government Has Right to Reduce Prices if Cost or Pricing Data Is “Defective”

- ▶ If Not Current, Accurate and Complete
 - Cost or Pricing Data Existed
 - Data was Reasonably Available
 - Data was Not Submitted
 - Government Relied on Defective Data
 - Reliance Caused Increase in Contract Price
- ▶ Dollar for Dollar Reduction in Price
 - Reduced by Any Offsetting Amounts
- ▶ Interest and Penalty



- ▶ Applies to Prime Contractors and Subcontractors
- ▶ Defective Pricing Disputes Have Also Resulted in False Claims Lawsuits

FAR Part 16

Types of Contracts



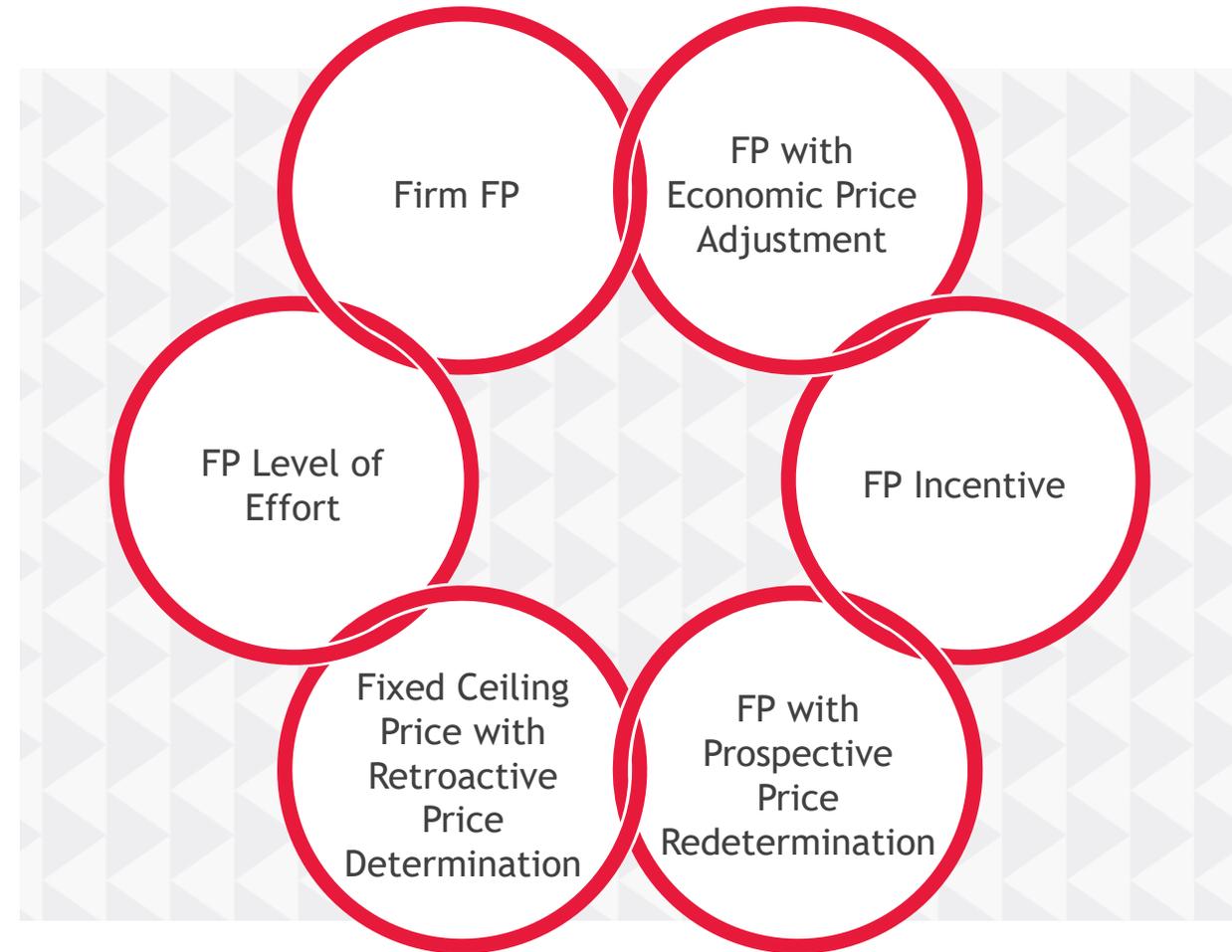
Contract Types

The USG Procures Products and Services through Various Contract Types

Type	Description	\$ Risk	Compliance Risk	Admin. Burden
Firm Fixed Price (FFP)	Price is inclusive of all costs and profit and not subject to adjustment	High	Low	Low
Time And Material (T&M), Fixed Price Labor Hour (FPLH)	Fixed hourly rates for direct labor inclusive of direct costs, indirect costs, and profit	Med	Med	Med
Cost Plus (CPFF, CPAF)	Contractor reimbursed for actual costs plus negotiated fixed fee and/or award fee based on performance	Low	High	High

Fixed Price (FP) Contracts

- ▶ Contractor is paid a fixed price for a specific description of supplies or services
- ▶ Price (Revenue) is the same regardless of actual cost during performance
- ▶ Use When
 - Specifications and/or Statement of Work is clear and definite
 - Accurate cost estimate available
 - Technical risk is low



Cost Type Contracts

CPFF, CPIF, CPAF

- ▶ Contractor is paid allowable cost plus a fee
 - **Cost Plus Fixed Fee (CPFF):** Fee is set prior to contract signing, based on cost estimate
- ▶ Contract will contain Not-to-Exceed (NTE) ceiling dollar amount
 - Contractor not required to continue working beyond NTE
 - Customer not required to fund work beyond NTE
- ▶ Use when
 - Technical and cost risk (e.g., research and development)
 - Customer wants best price on risky work
 - Do not need to mitigate cost risk in price because costs are paid
- ▶ **Cost Plus Incentive Fee (CPIF):** Cost-reimbursement contract that provides for an initially negotiated fee
- ▶ **Cost Plus Award Fee (CPAF):** Cost-reimbursement contract that provides a fee consisting of (1) Base amount (fixed) or (2) Award amount (based on Government evaluation)

T&M and Labor Hour Contracts

TIME AND MATERIALS (T&M)

- ▶ Provides for acquiring supplies or services on the basis of
 - Direct labor hours at specific fixed hourly rates
 - Includes wages, overhead, G&A expenses, profit
 - Actual cost for materials
- ▶ A time and materials contract is used when it is not possible to estimate the duration of work or anticipate costs with confidence (at the time of placing the contract)
 - No positive profit incentive to the contractor for efficiency or cost, so Government surveillance of performance is required

LABOR HOUR

- ▶ Variation of a time-and-materials contract, differing only in that materials are not supplied by the contractor

Other Contract Types

Indefinite Delivery

- ▶ Definite Quantity
- ▶ Requirements
- ▶ Indefinite Quantity (ID/IQ)

Basic Ordering Agreement (BOA)

- ▶ Written instrument of understanding between an agency, contracting activity, or contracting office and a contractor

Long-lead Funding (Advance Acquisition Contract)

- ▶ Not-to-Exceed contract for cost of materials/parts that must be started ahead of full contracting process in order to meet delivery schedule

Undefinitized Contractual Action (UCA, Letter Contract)

- ▶ Contract without agreement on terms, such as:
 - Price
 - Contract clauses
 - Delivery schedule

FAR Part 19 Small Business Programs



The Small Business Administration

- ▶ Created in 1953, the U.S. Small Business Administration (SBA) helps small business owners and entrepreneurs start, grow, expand or recover.
- ▶ The SBA is the only cabinet-level federal agency fully dedicated to small business and provides counseling, capital, and contracting expertise as the nation's only go-to resource and voice for small businesses.
- ▶ The SBA works with federal agencies in order to award 23 percent of prime government contract dollars to eligible small businesses.



SIZE STANDARDS

What Makes a Small Business?

- ▶ Based on NAICS codes
 - Department of Commerce identifies industries
 - SBA determines “size standard” for each industry
 - CO selects NAICS code that best fits principal purpose of contract
- ▶ To be an SBC, an entity must be
 - “Small” - Annual revenues/employees < NAICS size standard
 - Be a for-profit business of any legal structure
 - Be independently owned and operated
 - Not be nationally dominant in its field
 - Be physically located and operate in the U.S. or its territories

(See <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>)



Set Aside Programs

SET ASIDES

- ▶ To help provide a level playing field for small businesses, the government limits competition for certain contracts to small businesses.
- ▶ Those contracts are called “small business set-asides,” and they help small businesses compete for and win federal contracts.
- ▶ There are two kinds of set-aside contracts: competitive set-asides and sole-source set-asides.

COMPETITIVE SET-ASIDE CONTRACTS

- ▶ When at least two small businesses could perform the work or provide the products being purchased, the government sets aside the contract exclusively for small business.
 - With few exceptions, this happens automatically for all government contracts under simplified acquisition threshold (\$250,000).

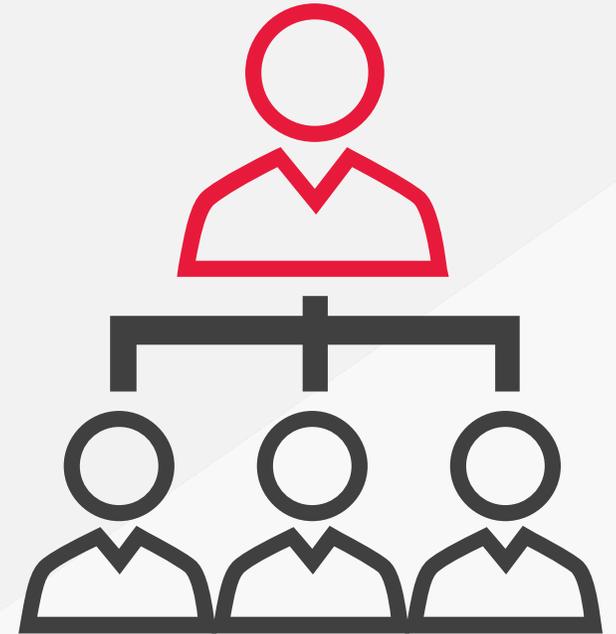
8(a) Set Aside

- ▶ The purpose of the 8(a) BD program is to assist eligible small disadvantaged business concerns compete in the American economy through business development.
- ▶ A Participant receives a program term of nine years from the date of SBA's approval letter certifying the concern's admission to the program.
- ▶ The Participant must maintain its program eligibility during its tenure in the program and must inform SBA of any changes that would adversely affect its program eligibility.
- ▶ The nine-year program term may be shortened only by termination, early graduation (including voluntary early graduation) or voluntary withdrawal as provided for in this subpart.



8(a) Set Aside

- ▶ Must be in business in its primary industry classification for at least two full years immediately prior to the date of its 8(a) BD application, unless a waiver for this requirement is granted
- ▶ 8(a) Set Aside Qualification
 - Not already have participated in the 8(a) program
 - Be at least 51 % owned and controlled by U.S. citizens who are economically and socially disadvantaged
 - Be owned by someone whose personal net worth is \$850K or less and average adjusted gross income for three years is \$400K or less
 - Be owned by someone with \$6.5M or less in assets
 - Have the owner manage day-to-day operations & long-term decisions
 - Have all its principals demonstrate good character
 - Show potential for success and be able to perform successfully
 - Have 9 years in the program - work towards “graduation”



Other Set Asides

HUBZone

- ▶ 51% Owned by U.S. Citizen
- ▶ Principal office in HUBZone
- ▶ 35% Employees in HUBZone
- ▶ Certified by SBA

Service-Disabled/ Veteran-Owned

- ▶ Small business
- ▶ 51% Owned & controlled by SD/V
- ▶ SD/V as day-to-day management with long term decision making
- ▶ Certified by SBA

Small Disadvantaged

- ▶ 51% Owned and controlled by “socially & economically disadvantaged” person
- ▶ Net worth less than \$850K
- ▶ \$400K AGI average over 3 years

Women-Owned

- ▶ 51% Owned & controlled by at least one woman
- ▶ Women as day-to-day management with long term decision making
- ▶ Economically disadvantaged WO:
 - Net worth less than \$850K
 - Each owner \$450K AGI average over 3 years
 - Each owner less than \$6.5M in assets
- ▶ SBA self or SBA approved

FAR Part 31 Contract Cost Principles and Procedures



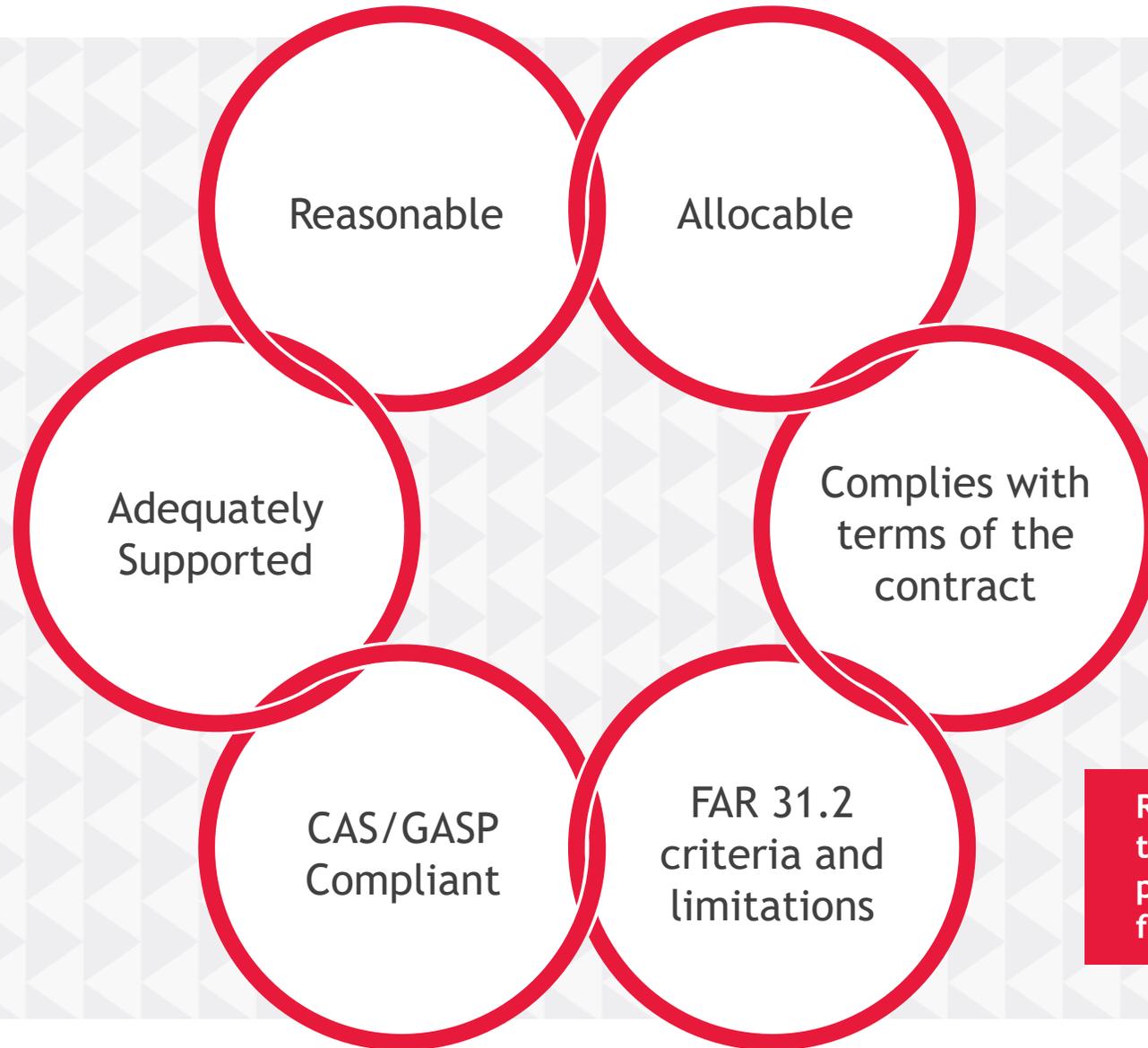
Contract Cost Principles and Procedures

This part contains cost principles and procedures for the **pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed**; and the determination, negotiation, or allowance of costs when required by a contract clause.



Cost Allowability Criteria

- ▶ A cost is allowable only when it complies with all of the following requirements



Risks of double and triple damages, plus interest for failure to comply

Reasonableness

A cost is reasonable “if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business...” [FAR 31.201-3]

- ▶ *Reasonableness will not be assumed, and it is up to the contractor to establish that a cost is reasonable if that cost is challenged
 - “burden of proof” is on contractor
- ▶ Factors to be considered
 - Whether the cost is the type generally recognized as ordinary and necessary for the contractor’s type of business, or to perform the contract
 - Whether the cost complies with accepted and sound business practices, relevant laws and applicable regulations
 - The contractor’s responsibilities to all parties involved, and the public at large
 - Significant deviations from established practices



Allocability

A cost is allocable if there is a relationship between the cost incurred and the performance of the contract [FAR 31.201-4]. A relationship between the cost and contract includes

- ▶ A cost specifically incurred for the performance of the contract (direct cost).
- ▶ Costs incurred for the specific contract as well as for other work being performed, and the costs can be distributed to the work in a reasonable proportion to the benefit received (indirect cost - such as overhead).
- ▶ A cost incurred as necessary for the overall operation of the business, although no direct relationship can be shown (indirect cost - such as G&A).



Directly Associated Costs

- ▶ “Directly associated cost” means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred. [FAR 31.001]
- ▶ Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. [FAR 31.201-6(a)]
- ▶ Cost associated with an Unallowable activity are also Unallowable.
- ▶ Example: An employee represents the company at an unallowable trade show
 - The employee’s labor is unallowable
 - Travel for the trip is unallowable
 - Any other costs directly associated with the activity is also unallowable (shipping of booth, etc.)



Limited Allowability

PART 1

The Following Types of Costs are Allowable on a Limited Basis

- ▶ Public relations and advertising costs
- ▶ Compensation for personal services (subject to compensation limit)
- ▶ Contingencies
- ▶ Cost of money
- ▶ Depreciation
- ▶ Employee morale
- ▶ Gains or losses on disposition or impairment of depreciable property or other capital assets
- ▶ Independent research and development and bid and proposal costs
- ▶ Idle facilities and idle capacity costs
- ▶ Insurance and indemnification



Limited Allowability

The Following Types of Costs are Allowable on a Limited Basis

- ▶ Manufacturing and production engineering cost
- ▶ Patent costs
- ▶ Plant reconversion costs
- ▶ Royalties and other costs for use of patents
- ▶ Relocation costs
- ▶ Service and Warranty costs
- ▶ Special tooling and special test equipment costs
- ▶ Selling costs
- ▶ Special tooling and special test equipment costs
- ▶ Selling costs
- ▶ Taxes
- ▶ Termination costs
- ▶ Travel costs
- ▶ Costs related to legal and other proceedings
- ▶ Research and development costs



Travel Costs

(FAR 31.205-46)

AIRFARE

- ▶ Business class, first class, and upgraded seats are unallowable in excess of coach/economy
- ▶ Circuitous routing, travel at unreasonable hours, prolonged travel can be allowable given the conditions are documented and justified
- ▶ Physical or medical needs could warrant the purchase of airfare above coach fare; however, those needs must be supported with evidence
- ▶ The GSA City Pairs Program (CPP) provides base fares for one-way routes in the United States (some international)
- ▶ Allowable baggage cost for checked bag is detailed by carrier. Excess could result in unallowable cost

LODGING

- ▶ Hotel “GOV” rates might be different than the federal per diem rate
- ▶ Reviewers should ensure that nightly cost is within the per diem threshold for month/year the cost is incurred, state, and zip code of the hotel
- ▶ Lodging and M&IE per diems can not be mixed and matched
- ▶ Lodging taxes in the United States are excluded from the per diem allowance (taxes would not push an employee over the per diem nightly rate)

Travel Costs

(FAR 31.205-46)

MEALS

- ▶ M&IE rates are for a single calendar day of travel when that day is neither the first nor last day of travel. Travel expense reviewers must be conscious that the first and last day are calculated at 75% of the per diem rate
- ▶ Cost incurred by a spouse (or family) at a business event are not allowable
- ▶ Employees are responsible for reporting if breakfast, lunch, or dinner were provided by the company or hotel
- ▶ Incidentals include transportation between places of lodging or business and places where the meals are taken

OTHER TRAVEL COSTS

- ▶ Rental cars must be the least expensive compact car available unless an exception for another class of vehicle is approved
- ▶ Personally Owned Vehicle (POV) Mileage is reimbursed at the IRS rate of \$0.655 (2023)
- ▶ Relocation Costs are allowable given per diem rates and itemized support is provided. House hunting trips are unallowable if the intent is to persuade an employee to permanently move
- ▶ Uber/Lyft/Taxi costs are allowable given they are supported with invoice/receipt, business purpose, and route itinerary

FAR Part 38 Federal Supply Schedule Contracting



Overview of GSA FSS Program

- ▶ Federal Supply Schedules exist to provide a simplified purchasing process for the Government to purchase commercial items at prices that reflect the Government's buying power (your best priced deal anywhere)
- ▶ Objective of the FSS program is to maximize the use of Government dollars - get the most for their money (your and my taxes)
- ▶ Federal Supply Schedule (FSS) contracts used to buy commercial items at established prices and delivery terms
- ▶ Provides reduced administrative burden for Government customers
- ▶ For Government purchaser, requirement for competition in procurement still exists - Exceptions permitted (one source, urgent/compelling need, or national security)
- ▶ Authorized users of FSS contracts include all Federal agencies and activities in the legislative, executive and judicial branches.



Overview of GSA FSS Program

- ▶ Mandatory, optional and “other authorized” users
 - VA has designated FSS agreements as “mandatory” use for its facilities
 - Other agencies may consider FSS to be “optional” source
 - Companies performing cost-reimbursement contracts as “other authorized” user
- ▶ Unique aspects of the FSS
 - Require level of disclosure and administration not found in commercial world
 - Government contracts are governed by federal procurement statutes and regulations (not UCC)
 - Audit rights and record retention obligations



Key Objectives of FSS Contracts

Variety of policies and programs to achieve objective of purchasing recurring needs at advantageous prices

- ▶ Most favored customer pricing
- ▶ Subcontracting requirements - promotes utilization of SBC
- ▶ Audits & Certification of data for accuracy
- ▶ Record retention and accessibility requirements
- ▶ Other socio-economic programs (EEO-1, etc.)



Most Favored Customer Pricing

- ▶ Negotiation objective of GSA is
 - “to obtain the offeror’s best price (the best price given to the most favored customer). However, the government recognizes that the terms and conditions of commercial sales vary and that there may be legitimate reasons why the best price is not achieved.”
- ▶ Can vary from this only under certain conditions
 - For “fair and reasonable” negotiated prices
 - If award is otherwise in Government’s best interest
- ▶ FSS negotiations still require the disclosure of substantial pricing data
 - Commercial Sales Practices sheet (CSP-1)
- ▶ CSP disclosures must be current, accurate and complete
 - All pricing equal to or better than that offered to Government
 - Disclosures must be updated throughout negotiations
- ▶ Faulty disclosures constitute defective pricing
 - Can result in retroactive price reductions, civil or criminal penalties

Most Favored Customer Pricing

- ▶ Disclose prices for actual sales at transactional level
 - Discounts, sales volume, FOB terms and any other concessions
- ▶ Can use CSP sheets or other format that communicates the same information
- ▶ Data submitted on the CSP is subject to both pre- and post-award reviews
- ▶ Data is required to be current, accurate and complete to the best of the offeror's knowledge and belief as of 60 days of the date of the offer

Commercial Sales Practices Format Asks

“Are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions [other than to authorized government contract users]?”

YES

Complete the CSP for the “customer(s) who receives your best discount”

NO

Explain why you are not providing the Gov't your best price (e.g., different terms or conditions)

Negotiations

- ▶ Contracting Officer (CO) will consider:
 - Length of contract, volume, warranties, training, maintenance, etc.
 - Ordering info, delivery practices, etc.
 - Were terms enforced by vendor and met by the customer?
- ▶ CO will seek offeror's best price
- ▶ Contractor must disclose any changes to price list, discounts or discounts which occur after the offer is submitted but before the close of negotiations
- ▶ Prices that have expired or are set to expire within 90 days of contract award are generally not used to establish FSS price
- ▶ Maintain written record of discussions throughout negotiation process (GSA CO is writing a memo to the file, so should you)



Price Reductions

In accordance with FAR 552.238-81 Price Reductions in the GSA FAR Supplement (the Price Reductions Clause) the contractor and USG will select discounted pricing provided to a customer or category of customers as the Basis of Award Customer. The contractor and Government agree to preserve the price position negotiated by the Government relative to the BoA Customer pricing for the life of the GSA contract.

- ▶ Negotiate for a BoA customer that is truly comparable in terms of products or services offered to the Government
- ▶ Negotiate for a BoA customer that is easy to track
- ▶ Communicate throughout your organization who that customer is and what it means to the people responsible for that customer
- ▶ The BoA customer is not always the customer that gets the contractor's best pricing (due to a different situation or terms)



Price Reductions

The Price Reduction Clause (PRC) requires the daily monitoring of pricing activity for the Basis of Award Customer and notification to the CO within 15 days of any potential price reduction.

- ▶ Must preserve the ratio established at the time of award
- ▶ Reduction is immediately applicable to Government customers
- ▶ Track pricing, terms and conditions of the Basis of Award Customer for the term of the contract
- ▶ Monitoring activities and resulting action/inaction must be documented

To meet the monitoring requirements under the PRC the contractor must

- ▶ Accurately identify the class of customer for each order
- ▶ Implement a prevention and/or detection approach to identify each price reduction
- ▶ Give prompt and proper consideration to rebates, credit memos and favorable payment terms

Reporting

- ▶ In addition to the key disclosure and price monitoring requirements, FSS contracts contain a variety of other reporting obligations
 - Sales - Socio-economic - Subcontracting
- ▶ Quarterly Sales
 - Report all sales made pursuant to FSS agreement by Special Item Numbers (SIN)
- ▶ Quarterly Industrial Funding Fee
 - 0.75% of all sales made under the FSS contract
 - Paid directly to GSA or VA with sales report submission via GSA/VA portal



Subcontracting Requirements

- ▶ GSA FSS contractors that do not qualify as a small business are required to maintain a defined Small Business Subcontracting Plan with specific dollars and/or percentages.
- ▶ Must comply with semi-annual small business subcontracting reporting requirements.
- ▶ Subcontracting Plans are required for all FSS contracts on an annual basis
- ▶ Debarred subcontractor
 - Do NOT enter into any subcontract in excess of \$35,000 with a contractor that is debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so (FAR 9.409 & FAR 52.209-6)
 - Notify the CO, in writing, before entering into any subcontract with a party that is debarred, suspended, or proposed for debarment
- ▶ Key Subcontracting Requirements
 - Require all subcontractors to disclose, in writing, whether they are or are not a small, small disadvantaged, veteran-owned, service-disabled veteran-owned, HUBZone, or women-owned small business concern. (FAR 19.703 & FAR 52.219-8(d))

FAR Part 44 Subcontracting Policies and Procedures



Consent to Subcontracts

IF THE CONTRACTOR HAS AN APPROVED PURCHASING SYSTEM

- ▶ Consent is required for subcontracts specifically identified by the contracting officer
- ▶ The contracting officer may require consent to subcontract if the contracting officer has determined that an individual consent action is required to protect the Government adequately because of the subcontract type, complexity, or value

IF THE CONTRACTOR DOES NOT HAVE AN APPROVED PURCHASING SYSTEM

- ▶ Consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold

Contractors' Purchasing Systems Reviews

(CPSR)

OBJECTIVE

- ▶ Evaluate efficiency & effectiveness with which the contractor spends funds and complies with policy when subcontracting
- ▶ Provides administrative contracting officer (ACO) a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system

REQUIREMENTS

- ▶ ACO determines a need for CPSR based on
 - Past performance of contractor
 - Volume, complexity, dollar value of subcontracts
- ▶ Once initial determination is made, every three years the ACO will determine whether a purchasing system review is necessary

Small Business Contracting and Subcontracting Opportunities



Federal small business procurement goals are set by Congress, which requires that the Federal government shall direct a percentage of spending dollars to small business concerns (SBCs), and certain socioeconomic categories of small businesses.

Subcontracting Opportunities

- ▶ SubNet is a database of subcontracting opportunities posted by large contractors looking for small businesses to serve as subcontractors.
 - The SBA maintains a directory of federal government prime contractors with subcontracting plans.
- ▶ The GSA publishes a subcontracting directory for small businesses that are looking for subcontracting opportunities with prime contractors. The directory lists large business prime contractors that are required to establish plans and goals for subcontracting with small businesses.
- ▶ The U.S. Department of Defense (DoD) maintains a similar directory of large prime contractors that small businesses can use to find subcontracting opportunities

Contractor Teaming Agreement

- ▶ What's a Teaming Agreement?
 - A teaming agreement consist of a prime contractor and another company that acts as a subcontractor. Both come together to pursue government contracts. This type of agreement can work especially well for smaller companies that want access to contracts they may not be able to obtain alone. The prime contractor is in charge of the overall project and must ensure the project's completion. Contractors and subcontractors remain independent instead of operating as a partnership.
- ▶ Contractor Teaming Arrangement (CTA)
 - Two or more companies form a partnership or JV to act as a potential prime contractor
 - A “potential prime contractor agrees” to use a subcontractor(s) for a specific program (FAR 9.601)
- ▶ Allows the contractor team members to complement each other's unique capabilities.
- ▶ Offer the government the best combination of performance, cost and delivery for the system or product being acquired

Teaming

ADVANTAGES

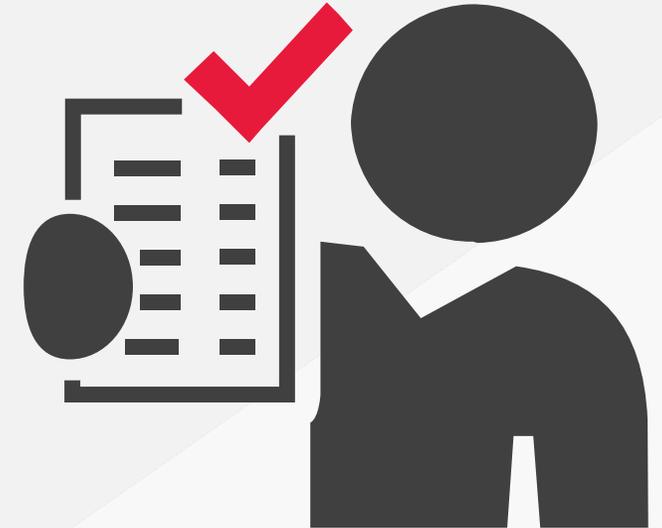
- ▶ Parties have limited obligation to one another
- ▶ Shared financial risks
- ▶ The ability to enter new markets
- ▶ Better proposals due to the combined capabilities of the parties involved

DISADVANTAGES

- ▶ Having to renegotiate every solicitation
- ▶ Prime contractor is fully responsible for the completion of the project
- ▶ Possibility of not agreeing on subcontract terms
- ▶ Subcontractor doesn't have privity of contract
- ▶ Reduced profits due to sharing of profits
- ▶ Unanticipated liabilities and commitments

Prime Contractor Responsibilities

- ▶ Oversight of subcontractors has become a source of increased audit scrutiny by DCAA
- ▶ Primes often held responsible for ensuring compliance of all aspects of their subs, including all cost, pricing and contract administration
 - FAR 42.202(e)(2) states that prime contractors are responsible for “managing” subcontracts
 - New DCAA interpretation of “managing”: Presumes that prime contractors are responsible for “auditing” subcontractors
 - DCMA Instruction 2501-07, section 12.2 states that for cost type contracts, prime contractors are responsible for closing subcontracts using procedures similar to those used by the government
- ▶ Adequacy of subcontractor proposals can be important factor in award decisions and in administering the contract once an award is made
- ▶ Failure to ensure the compliance of subcontractors may jeopardize the adequacy of the prime’ Government Business Systems



FAR Part 52 Solicitation Provisions and Contract Clauses



Contract Flowdowns

Once the subcontract award is documented, flow downs must be applied

- ▶ What is a Flowdown?
- ▶ Prime contract clauses incorporated into a subcontract
 - Subcontract clauses “flowdown” responsibilities of prime to subcontractor
 - Can significantly impact the obligations and risk of performing a subcontract
 - If you are the prime contractor and you do not have proper flow-down clauses, then your subcontractor can force you into a default situation with your Government customer
- ▶ Flowdowns can turn any company into a government contractor
- ▶ Flowing down more clauses to a subcontractor than necessary could lead to unintended requirements or obligations being placed on the Subcontractor



What Clauses Should Be Flowed Down?

MANDATORY FLOWDOWNS

- ▶ Specifically require the prime to include them in subcontracts
- ▶ Not negotiable

DISCRETIONARY FLOWDOWNS

- ▶ Used to protect the prime contractor
- ▶ Prime contract does not explicitly require the prime to include these in subcontracts
- ▶ Prime must ensure subcontractor compliance to ensure compliance with the prime contract

SPECIAL CLAUSES

- ▶ FAR or non-FAR
- ▶ Can be mandatory or non-mandatory

Mandatory Flowdown COMMERCIAL ITEMS

- ▶ Thirteen mandatory flowdowns in subcontracts for commercial items (FAR 52.244-6(c)(1))
- ▶ Most triggered at specific value (specified in each clause)
- ▶ Prime can flow down “minimal number” of additional clauses to satisfy contract obligations

Title	Clause
Contractor Code of Business Ethics and Conduct	52.203-13
Whistleblower Protections Under the American Recovery	52.203-15
Utilization of Small Business Concerns	52.219-8
Prohibition of Segregated Facilities	52.222-21
Equal Opportunity	52.222-26
Equal Opportunity for Veterans	52.222-35
Affirmative Action for Workers with Disabilities	52.222-36
Notification of Employee Rights Under the National Labor Relations Act	52.222-40
Combating Trafficking in Persons	52.222-50
Minimum Wages under Executive Order 13658	52.222-55
Contractors Performing Private Security Functions Outside the U.S.	52.225-26
Providing Accelerated Payments to Small Business Subcontractors	52.232-40
Preference for Privately Owned U.S.-Flag Commercial Vessels	52.247-64

Q&A



Thank You





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