Contracting
A Government Perspective

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Disclaimer: The information provided herein represents the Government’s best understanding of the procurement as of the presentation date. This information should be considered preliminary and subject to change.
Overview

• Update on FY17 National Defense Authorization Act (NDAA) Implementation
  – Changes to DoD Contracting
  – Rule Making Process

• FAR 16.5 Fair Opportunity Competitions
  – Potential Flexibility / Streamlining Opportunities

• Proposal Observations
  – How can Industry help?
FY17 NDAA

• BLUF
  – FY17 NDAA
    • Signed 23 Dec 2016
  – Largest number of acquisition policy provisions ever in one bill: 200+
  – Awaiting implementation guidance
    • Except Statutory
    • Sec 835. Protection of Task Order Competition
      – DoD multiple award task order value threshold at which protests are authorized
      – Raised GAO jurisdictional threshold from $10M to $25M (in excess of)
FY17 NDAA Interest Item Summary

- Data rights
- Undefinitized Contractual Actions (UCAs)
- Lowest Price Technically Acceptable Source Selections
- Small business subcontracting
- Competition in subcontracting
- Intellectual property/IR&D
- Cost or pricing data requirements
- Contract type/payments
- Business system requirements
- Commercial items
- Commercial or Non-government standards
FY17 NDAA Interest Items

• Sec 811. UCA profit and cost risk; 90 day performance periods; FMS definitization within 180 days

• Sec 813. LPTA Source Selection Process
  – Avoid using LPTA in circumstances that would deny the Dept the benefits of cost and technical tradeoffs in source selection process
  – To the maximum extent practicable….shall be avoided for…

• Sec 829. Preference for fixed-price contracts – approval for cost-type contracts:$50M+ in Oct 18; $25M+ in Oct ‘19

• Sec 830. Requires use of FFP contracts for FMS -- unless country selects different contract type or Sec Def waiver authority
Rule Making Process

DPAP-Defense Procurement Acquisition Policy
- Responsible for all Contracting and Procurement Policy Matters in DoD

DARS-Defense Acquisition Regulation Systems
- Implements statutes/policies/procedures/guidance in FAR, DFARS-PGI
Steps to Implementation

- NDAA signed
- DPAP performs in-depth review
- FAR and/or DFARS cases opened
- Implement

- Interim or Final Rule
- Policy Memo or Deviation

• Average time to complete a case resulting in final rule
  - FAR: 16 months
  - DFARS: 12 months
DFARS Change Process

Additional Implementation Challenges

• Presidential Memorandum - 20 Jan 17
  – Regulatory Freeze Pending Review

• Presidential Executive Order - 30 Jan 17
  – Reducing Regulation and Controlling Regulatory Costs

• Ongoing discussions-DAR Council & OMB

• Cases being worked up to the point of publication pending further guidance
FAR 16.5 Fair Opportunity Competitions

Potential Flexibility / Streamlining Opportunities
DoD Source Selection Procedures

• Summarized Applicability
  – All acquisitions conducted as part of a Major Systems Acquisition Program
  – All competitively negotiated FAR 15 actions >$10M
    • AFFARS MP5315.3 directs use on all FAR 15 competitive negotiated acquisitions, regardless of dollar value
  – Exception (aka not mandated) for FAR 16.505(b)(1)
    • Orders under multiple award contracts—Fair Opportunity
  – Shall consider for orders under multiple award >$10M

TSA III orders may use FAR 15 or 16 procedures
Multiple Award IDIQ Flexibility

- FAR 16.505(b)(1)
  “...may exercise broad discretion in developing appropriate order placement procedures... contracting officers may use streamlined procedures...”
Streamlining Opportunities: Evaluation Criteria

- Request minimum amount of info from offerors
  - To demonstrate offeror understands requirement
  - Allows Government to discern best offer

- Cost/Price shall always be considered

- Streamlined Evaluation Methodology
  - Plus & minus (+ & -)
  - Narrative statements
  - Acceptable/Unacceptable (Go/No Go)
  - Immediate Comparison
## FAR 16 Opportunities

<table>
<thead>
<tr>
<th>FAR 15</th>
<th>vs.</th>
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<tbody>
<tr>
<td>• Mandatory use of rating definitions established in DoD Source Selection Procedures</td>
<td></td>
<td>• Can create tailored rating definitions for specific use on fair opportunity order</td>
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<tr>
<td>• Must do competitive range determination to engage in discussions</td>
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<td>• No requirement to establish a formal competitive range to interact with offerors</td>
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<td>• FAR 15.306 describes specific policy for clarifications, communications/discussions</td>
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<tr>
<td>– Must be held with all in competitive range</td>
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<td></td>
<td></td>
<td>• FAR 16.5 does not have specific policy for interchanges with offerors</td>
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<td></td>
<td></td>
<td>– Fair Opportunity competition may allow interchanges with all, some or none if process described in IDIQ or FOPR</td>
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<td>• Must request Final Proposal Revisions (FPR) after discussions</td>
<td></td>
<td>• No requirement for FPR after interchanges/exchanges with offerors</td>
</tr>
<tr>
<td>• Evaluation Notice</td>
<td></td>
<td>• Interchange Notice</td>
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<tr>
<td>• Analysis of all offerors against evaluation criteria, followed by a comparative analysis</td>
<td></td>
<td>• No evaluation process is dictated by FAR 16.5</td>
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<td></td>
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<td>– Immediate comparison of responses received is allowed</td>
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| • Source Selection type from FAR 15.3 Best Value Continuum  
  - Must evaluate cost/price, tech quality, past performance & SB  
  - Typically use standardized rating tables | | • PCO “broad discretion” to develop appropriate ordering procedures  
  - Require minimum necessary info in proposal: page limitations and use only meaningful evaluation criteria  
  - Consider cost/price; no add’l mandatory eval factors  
  - Pre-priced supplies/services in IDIQ can negate need to establish any evaluation criteria  
  - If eval’d, consider limiting past performance to prior IDIQ orders |
Additional Information

• Pending FAR 16 Opportunity
  – KC-135 BOSS Training Devices
  – Draft Proposal Request Forthcoming

• Important to understand
  – Proposal Request
  – Instruction to Offerors
  – Evaluation Factors For Award

TSA III orders may use FAR 15 or 16 procedures
Proposal Observations
How Can Industry Help?
How can Industry help?

- **Draft Documents / Draft RFPs**
  - Take them seriously
  - Review, provide feedback, ask questions

- **Proposal/Price Volume Issues**
  - Quality & Timeliness of Prime’s Subcontract Cost/Price Analysis
  - Lack of insight into subcontractor(s) cost proposals
  - Perform quality reviews on proposals to include interdivisional work and subcontracts
  - Challenge subcontractor restrictions on prime review of CoPD
    - Difficult negotiations for prime; unnecessary assist audits for AF
  - Provide usable cost models
How can Industry help?

• Limited Prime price/cost analyses performed
  – Analysis at too high or too simplistic a level
  – Incomplete information provided by suppliers
  – Lack of proposal adequacy reviews on interdivisional proposed work

• Examples
  – Escalating previous prices paid
  – Detailed focus only on hours
  – Analysis severely qualified due to supplier propriety claims (i.e. missing 2nd tier supplier data and analyses, refusals to provide historical cost data, etc.)
  – Lack of details of competed subcontractor portion
How can Industry help?

• Commercial Items
  – Prime to assess subcontractor’s commerciality assertion
  – Lacking support for price reasonableness
  – Recent commercial sales data for same/similar items with like terms and conditions
  – USG will rely on DCMA MOAs to the extent practicable; however, still CO responsibility to determine price reasonableness

• Examples
  – Sales of a low quantity to support proposed pricing yet USG purchasing significantly more
  – Terms and conditions on commercial sales often not comparable to USG terms and conditions
Concluding Remarks

• Continue taking advantage of
  – Industry Days
  – Site Visits
  – Oral Evaluation Notices
  – Oral Interchanges

• Thanks for your support
  – Fact-finding thoroughness and timeliness
  – Accelerated efforts
  – Professionalism
Questions?
## Backup chart: Lexicon

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<td>• Interchanges</td>
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<td>Evaluation Notice (EN)</td>
<td>• Interchange Notice (IN)</td>
<td></td>
</tr>
<tr>
<td>Request for Proposal (RFP)</td>
<td>• Fair Opportunity Proposal Request (FOPR)</td>
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<tr>
<td>Source Selection Authority</td>
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