Acquisition Reform Issue

Second Acquisition Reform Event
July 29, 2014
Issue Area & Problem Statement

• The Government does not effectively encourage, use, or manage Incentive Contracts

• Incentive Contracts are valuable procurement vehicles that can, when used effectively:
  – Fairly apportion contract risk between the Government and contractors
  – Increase competition for contracts
  – Incentivize contractor performance
  – Reward superior contract performance
  – Promote cost savings

These are working papers and do not necessarily represent the views of NDIA, its staff, or members.
Concise Root Cause Analysis

• The Government and contractors are reluctant to use or pursue Incentive Contracts due to challenges in structuring, administering, and competing for the contracts.

• The restrictions of the current FAR regulations, the lack of subject-matter expertise in the Government acquisition force, and the reluctance of contractors to zealously lobby for the use of Incentive Contracts limits their use and effectiveness throughout the Government.
Concise Solution Proposal(s)

• Promote more effective and efficient use of Incentive Contracts via FAR and policy changes
  – Allow Incentive Contract use without head of contracting agency activity approval
  – Train the Government’s acquisition force to effectively implement and administer Incentive Contracts
  – Disclose Award Fee Plans during solicitation phase
  – Revise Award Fee metrics to objectively quantify fees and effectively reward performance
Adverse Consequences

• Failure to encourage the use of Incentive Contracts throughout the Government will continue to deprive the Government and contractors of a mutually beneficial procurement vehicle that can produce:
  – Effective risk sharing
  – Increased competition
  – Incentivized contractors
  – Appropriate rewards for superior contract performance
  – Cost savings

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Prior Studies

• Guidance on Award Fees Has Led to Better Practices But is Not Consistently Applied, GAO-09-630 (May 29, 2009)
• Application of OMB Guidance Can Improve Use of Award Fee Contracts, GAO-09-839T (Aug. 3, 2009)
• Use of Award Fees for Achieving Program Outcomes Should Be Improved, GAO-07-58 (Jan 17, 2007)
• DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes, GAO-06-66 (Dec. 19, 2005)
Current Regulation, Guidance, or Policy

- FAR 16.402(d) – Requires approval and justification by the head of contracting activity that use of incentive and award-fee contracts is in the best interest of Government
- FAR 16.401(e)(2) – The methodology for determining the award fee is a unilateral decision of the Government and payment of the award fee is prohibited if contractor’s performance is below Satisfactory
- FAR 16.401(e)(3) – Requires the creation of an Award-Fee Board to make fee determinations
- FAR 16.401(e)(4) – Prohibits the rollover of unearned award fees

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Legislative, Regulatory, or Other Action

- Revise FAR 16.402(d) to delete the requirement that the head of a contracting activity must approve the use of Incentive Contracts. This decision should be made at the Contracting Officer level to more effectively encourage the use of Incentive Contracts.

- Revise FAR 16.401(e)(2) to require the disclosure of the Award Fee Plan at the solicitation stage and to implement quantifiable metrics for administering the plan.

- Revise FAR 16.401(e)(3) to delete the Award Fee Board requirement.

- Revise FAR 16.401(e)(4) to permit the use of rollover award fees, which is equitable and beneficial to contractors.

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Questions?

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