



# 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

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- 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

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- 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

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- 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

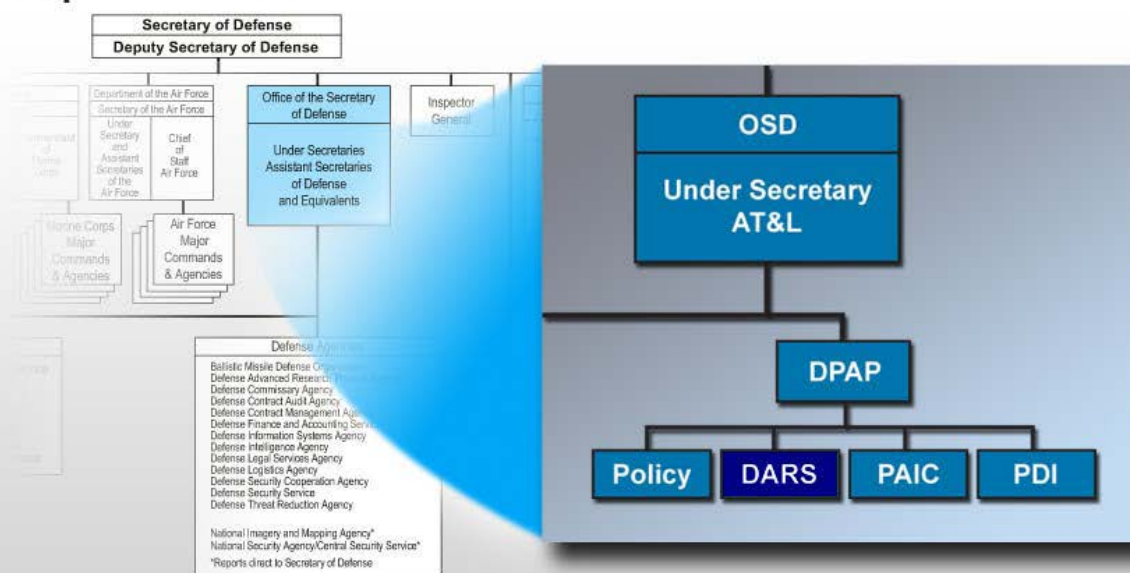
## DPAP-Defense Procurement Acquisition Policy

- Responsible for all Contracting and Procurement Policy Matters in DoD

## DARS-Defense Acquisition Regulation Systems

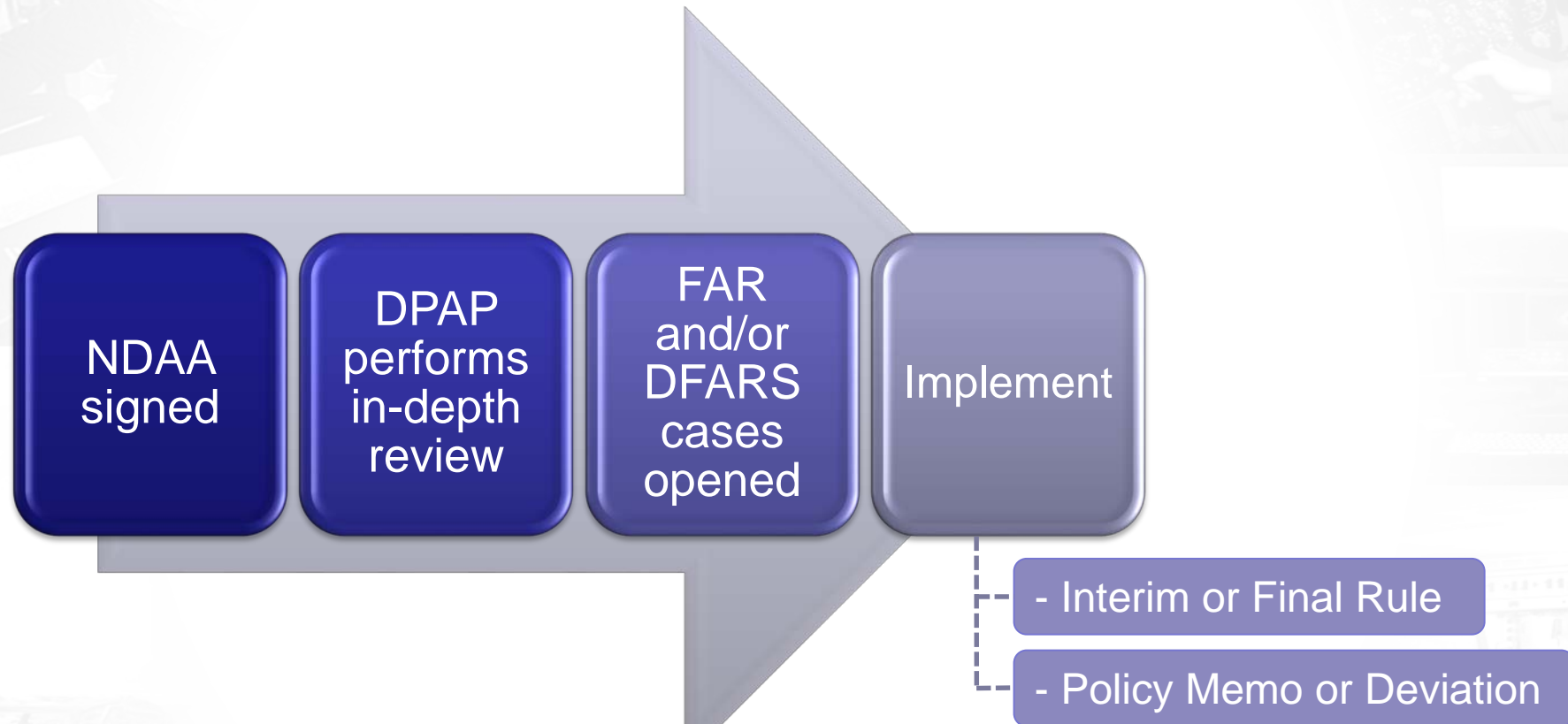
- Implements statutes/policies/procedures/guidance in FAR, DFARS-PGI

## Department of Defense



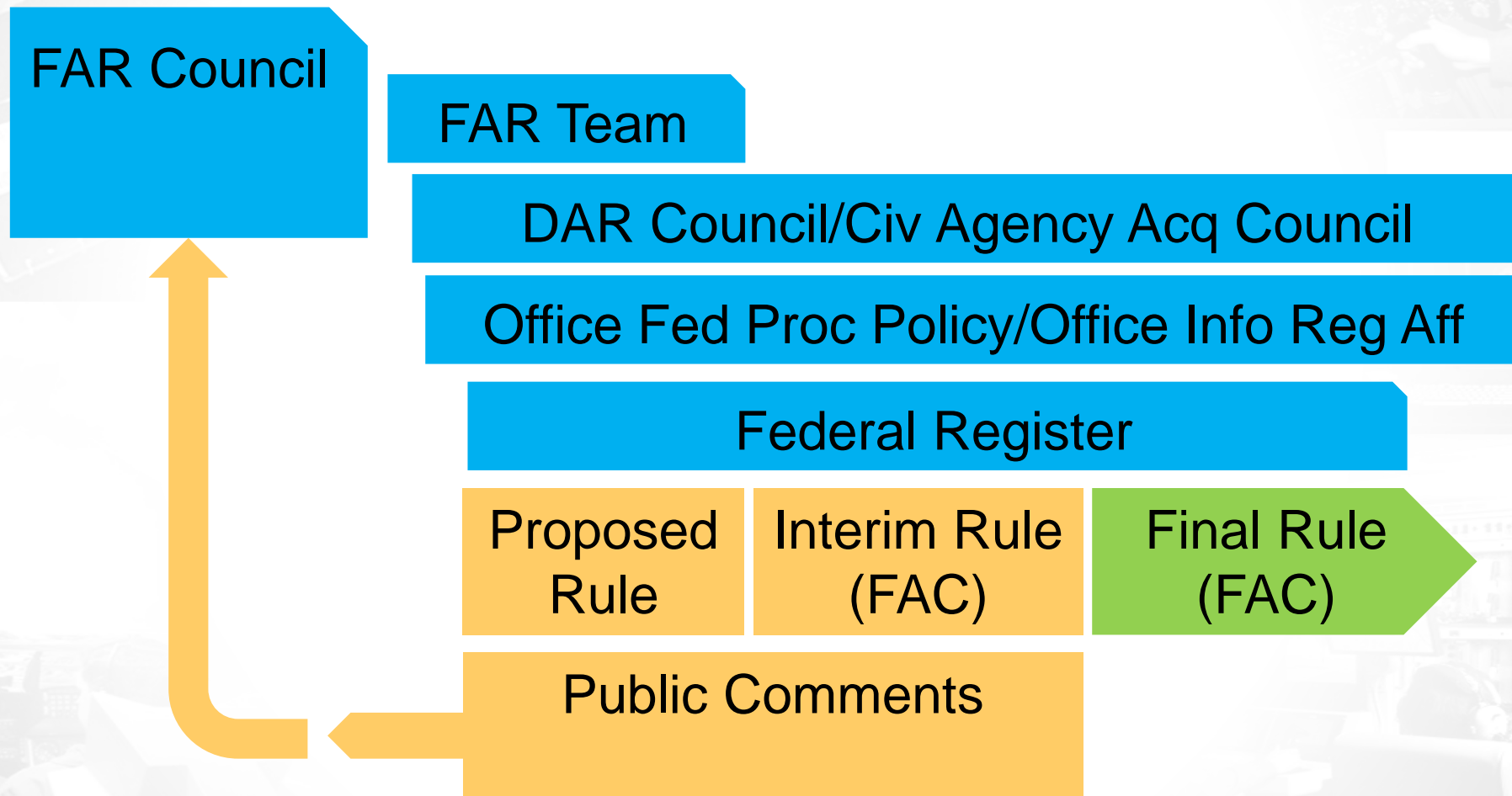


# Steps to Implementation



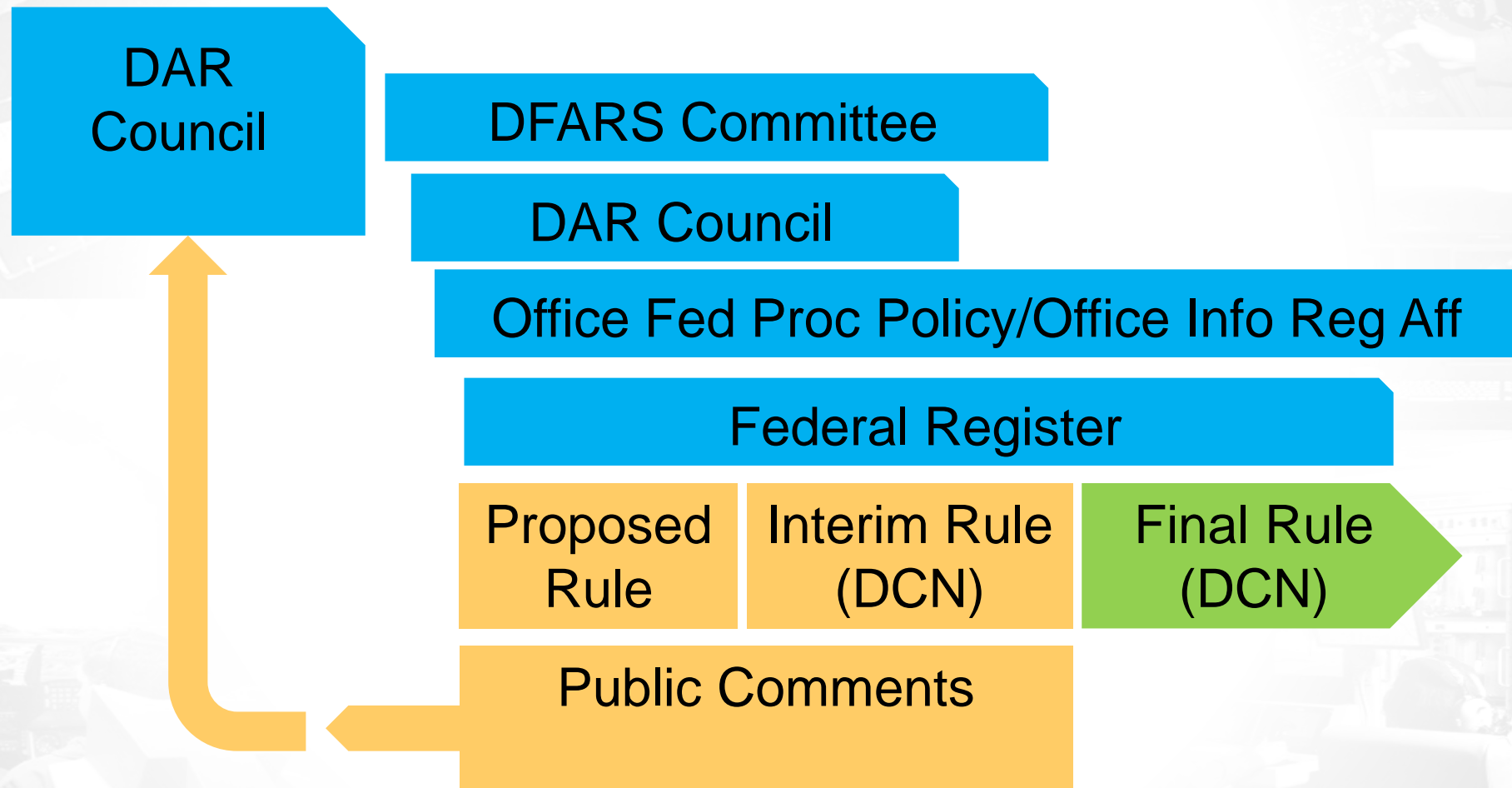
- **Average time to complete a case resulting in final rule**
  - FAR: 16 months
  - DFARS: 12 months

# FAR Change Process





# DFARS Change Process





# Additional Implementation Challenges

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- 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





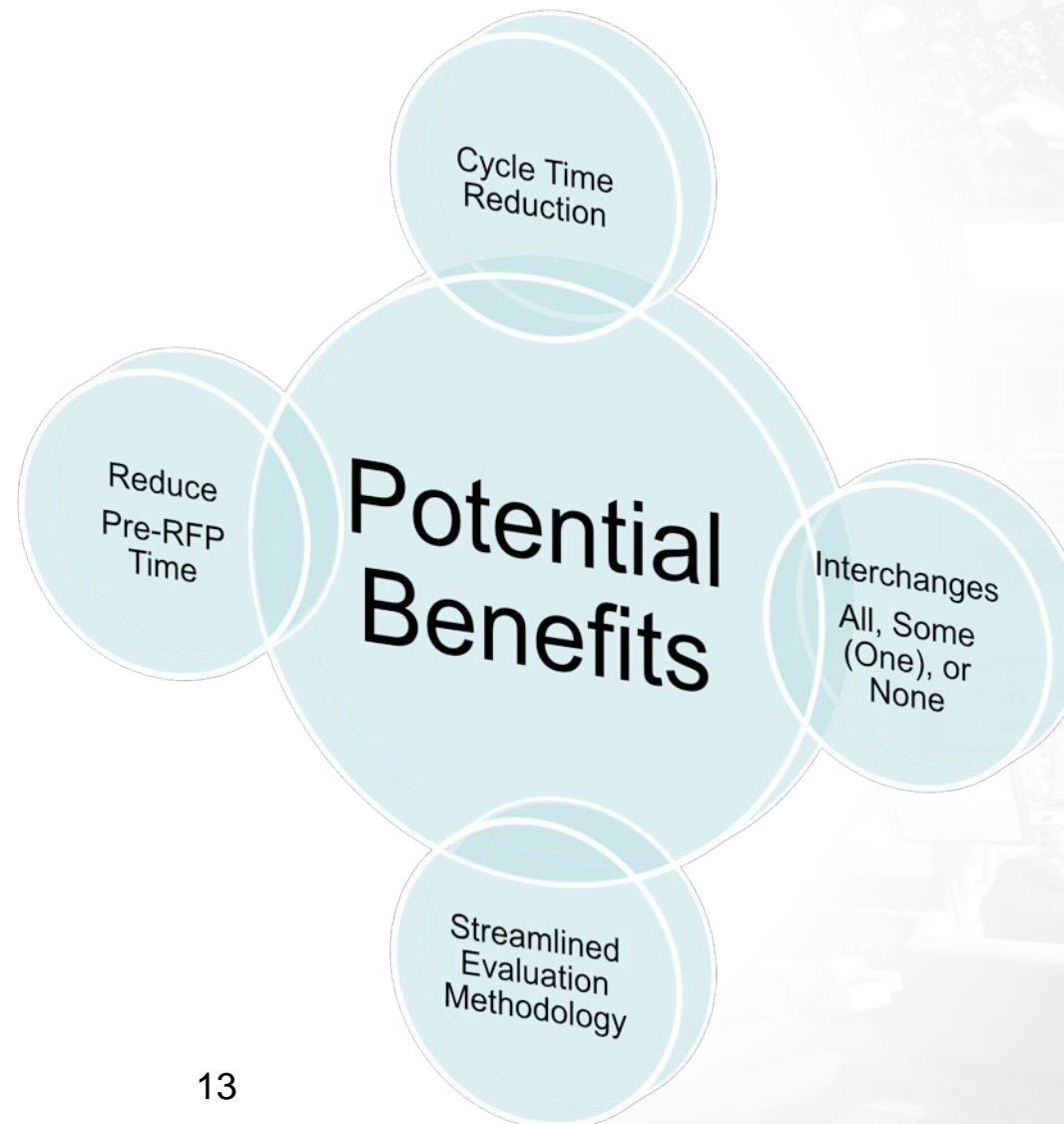
# DoD Source Selection Procedures

- 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

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- 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

## FAR 15

vs.

## FAR 16

- Mandatory use of rating definitions established in DoD Source Selection Procedures
  - Must do competitive range determination to engage in discussions
  - FAR 15.306 describes specific policy for clarifications, communications/discussions
    - Must be held with all in competitive range
- Can create tailored rating definitions for specific use on fair opportunity order
  - No requirement to establish a formal competitive range to interact with offerors
    - Interchanges/Exchanges allowed
  - FAR 16.5 does not have specific policy for interchanges with offerors
    - Fair Opportunity competition may allow interchanges with all, some or none if process described in IDIQ or FOPR

# FAR 16 Opportunities

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## FAR 15

vs.

## FAR 16

- Must request Final Proposal Revisions (FPR) after discussions
  - Evaluation Notice
  - Analysis of all offerors against evaluation criteria, followed by a comparative analysis
- No requirement for FPR after interchanges/exchanges with offerors
  - Interchange Notice
  - No evaluation process is dictated by FAR 16.5
    - Immediate comparison of responses received is allowed

# FAR 16 Opportunities

## FAR 15

vs.

## FAR 16

- 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

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- 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?

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- 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?

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- 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 2<sup>nd</sup> tier supplier data and analyses, refusals to provide historical cost data, etc.)
  - Lack of details of competed subcontractor portion

# How can Industry help?

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- 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

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- 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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## FAR 15

vs.

## FAR 16

- Clarifications, Communications, Discussions
- Evaluation Notice (EN)
- Request for Proposal (RFP)
- Source Selection Authority

- Interchanges
- Interchange Notice (IN)
- Fair Opportunity Proposal Request (FOPR)
- Decision Authority