Basic Contract Principles—Part 1

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Topics

• Best Value Continuum

• Multiple Incentive Trap

• Capturing the Nature of the Deal

• Cost, Schedule, and Performance Relationship
Best Value Continuum

FAR 2.201 Definition:
“Best value” means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.

FAR 15.101-1 Tradeoff Process
(a) 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.

(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal.
Best Value Continuum (cont.)


(a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

- Evaluation factors and significant subfactors set forth in RFP
- Tradeoffs are not permitted
- Proposals evaluated for acceptability, but not ranked
- Exchanges between Offerors and Gov’t may occur for clarification
Best Value Continuum (cont.)
(Example from Actual RFP Section M)

• Evaluation Factors for Award
  – Factor 1 Affordability
    • Subfactor 1: Platform
    • Subfactor 2: Logistics
    • Subfactor 3: Life Cycle Cost
      – All three Subfactors of equal importance
  – Factor 2 Development
    • Subfactor 1: Technical
    • Subfactor 2: Management
    • Subfactor 3: Cost
      – Technical and Management Subfactors of equal importance; both more important than Cost Subfactor
  – Factor 3 Past Performance (no Subfactors)
  – All Factors are of equal importance
Best Value Continuum
(Proposal Evaluation Summary w/Tradeoffs)

Factor 1: Affordability
- Subfactor 1: Platform
  - Proposal Rating/Risk: Offeror A: H, Offeror B: M
- Subfactor 2: Logistics
  - Proposal Rating/Risk: Offeror A: M, Offeror B: L
  - Unit Cost: $13.0M, $13.75M
  - Other Ops & Sustainment Cost: $2.4M, $2.5M
- Subfactor 3: Life Cycle Cost

Factor 2: Development
- Subfactor 1: Technical
  - Proposal Rating/Risk: Offeror A: M, Offeror B: L
- Subfactor 2: Management
  - Proposal Rating/Risk: Offeror A: L, Offeror B: L
- Subfactor 3: Cost

Factor 3: Past Performance
- Very Good, Satisfactory
# Best Value Continuum

(“What If” Proposal Evaluation Summary using LPTA)

<table>
<thead>
<tr>
<th>Factor 1: Affordability</th>
<th>Offeror A</th>
<th>Offeror B</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subfactor 1: Platform</strong></td>
<td>Proposal Rating/Risk</td>
<td>TA</td>
</tr>
<tr>
<td><strong>Subfactor 2: Logistics</strong></td>
<td>Proposal Rating/Risk</td>
<td>TA</td>
</tr>
<tr>
<td><strong>Subfactor 3: Life Cycle Cost</strong></td>
<td>Unit Cost</td>
<td>$13.0M</td>
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<tr>
<td></td>
<td>Other Ops &amp; Sustainment Cost</td>
<td>$2.4M</td>
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</table>

<table>
<thead>
<tr>
<th>Factor 2: Development</th>
<th>Offeror A</th>
<th>Offeror B</th>
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</thead>
<tbody>
<tr>
<td><strong>Subfactor 1: Technical</strong></td>
<td>Proposal Rating/Risk</td>
<td>TA</td>
</tr>
<tr>
<td><strong>Subfactor 2: Management</strong></td>
<td>Proposal Rating/Risk</td>
<td>TA</td>
</tr>
<tr>
<td><strong>Subfactor 3: Cost</strong></td>
<td>Proposal Rating/Risk</td>
<td>$8.17B</td>
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<thead>
<tr>
<th>Factor 3: Past Performance</th>
<th>Offeror A</th>
<th>Offeror B</th>
</tr>
</thead>
<tbody>
<tr>
<td>If evaluated, no comparison allowed</td>
<td>Acceptable</td>
<td>Acceptable</td>
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</table>
“It's *unwise to pay too much, but it's worse to pay too little*. When you pay too much, you lose a little money - that's all. When you pay too little, you sometimes lose everything, because the thing you bought was incapable of doing the thing it was bought to do. The common law of business balance prohibits paying a little and getting a lot - it can't be done. If you deal with the lowest bidder, it is well to add something for the risk you run, and if you do that you will have enough to pay for something better.”

*John Ruskin*

*18th Century English Poet/Writer*
Multiple Incentive Trap

- Know what behavior(s) the Gov’t wants to incentivize
- Ensure any incentive fee structure drives and rewards those behavior(s)
- If misaligned, say something!!
- Multiple incentives will normally require the contractor to do a "Vulcan Mind Meld"

--- Common misalignment example: CPIF/AF contract
  --- Cost Incentive rewards cost control and cost reductions
  --- Cost Incentive motivates contractor to use smaller staff and less effort
  --- Award Fee rewards responsiveness and quick fixes
  --- Award Fee motivates the Contractor to hire more people
  --- Depending on the severity of the misalignment, a revenue analysis will determine the “sweet spot”
Capturing the Nature of the Deal

- Identify and understand the desired outcomes, achievements, results, or deliverables
- Complexity of the procurement
- Amount of Gov’t oversight, insight, or engagement
- Level of Contractor autonomy
- What incentives are useful and appropriate—cost, responsiveness, performance, schedule adherence, etc.?
Capturing the Nature of the Deal

- Cost-Plus-Fixed-Fee (CPFF)
- Cost-Plus-Award-Fee (CPAF)
- Cost-Plus-Incentive-Fee (CPIF)
- Other Transaction Agreement (OTA)
- Cost-Sharing (CS)
- Fixed-Price-Incentive (FPI)
- Firm-Fixed-Price (FFP)

Sharing Risk

- Greatest Cost Risk on Government
- Greatest Cost Risk on Contractor

Best effort

Guaranteed Performance
Cost, Schedule, and Performance Relationship

Assumption: properly negotiated contract
Closing Thoughts

• Ask questions, especially “Why? and “How?””
  -- Understand how “best value” will be determined before writing a proposal
  -- Understand any incentive arrangements and how they impact your contract execution behavior and finances
  -- Understand the “nature of the deal” captured in the contract
  -- Understand the relationship between cost, schedule, and performance—easy, but complex