



Department of Veterans Affairs
Acquisition Academy



The Changing Face of Procurement Policy

An innovative approach to competing requirements

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May 13, 2010





Variation of an Old Game

- Navigating the 'minefield' of procurement policy to obtain the goods and services of the customer
- 1990's – Military shifts focus from support to customer based
- Moving to a different environment can create 'culture shock'
 - You don't know what you think you know
- My days in England
 - Language
 - Sports
- Entering Government contracting from the business world





New Type of Government

- Origins
 - Monarchies and dictatorships
 - Abuse of power over the people
- New Government
 - Focus on limited power
 - Fair interaction with the people
 - Checks and Balances
- Constitution
 - Law of the Land
 - Structured Government to split its power among three branches
 - Bill of Rights
 - Rights of the people in relations with the Government





Branches of Government

- Each branch has specific powers
 - Ensures one branch does not obtain imbalance of power
 - “Any powers not explicitly given to the Federal Government by the Constitution remain the power of the individual states”
- Legislative Branch
 - Passing all Federal Laws
 - Appropriating funds for any government spending
- Executive Branch
 - Sign legislation into law
 - Commander and Chief of the Armed Forces
 - Manage the operation of government functions
- Judicial Branch
 - Interpreting laws (how do they apply to a specific situation)
 - Judgment/resolution when law is violated
 - Set precedence for future action





Government vs. Private Contracting

■ Contract

- Agreement between parties that can be enforced by a government body
- Elements
 - Between two or more legal entities, individuals or businesses
 - Competent Parties (Parties able to legally enter into a contract)
 - Consideration (exchange of value)
 - Equitable exchange
 - Substance of contract must be legal (no illegal activity involved)
- If one party creates a 'Breach of Contract', the other party can be awarded damages from a governing body





Government vs. Private Contracting

■ Private Contracting

- Can choose another company to contract with for any reason
- Salesmanship/ Wine & Dine the client is allowed
- Any change must be bilateral
- Cannot break a contract without bilateral consent (subject to breach of contract)
- Both parties can decide the terms of the contract and have the other party sign to show consent

■ Government Contracting

- All offerors must have a fair and equal chance of winning the contract
- Government Official cannot benefit from his/her position (cannot accept gifts)
- Certain unilateral changes on the Government's part allowed
- Government can end a contract for its convenience
- Certain terms and conditions must be in a government contract





Sources of Acquisition Rules

■ Executive Branch

- Policies and Orders
- Office of the President directs agencies
 - OMB, OFPP, Presidents approach to management
- Change in Presidents
 - Political environment
 - Degree of difference in belief between incoming and outgoing Presidents
- Agencies
 - Mission
 - Need for specific products (industry standards)
 - FAR Supplements, IL, directives, handbooks
 - Dual Reporting





Sources of Acquisition Rules

■ Legislative Branch

- Passes Laws
 - Often enacts laws that affect its interaction with the people quicker than between private companies/people
- Number of laws address fairness in the process
- Control of money for acquisition
 - Constitution – “No money will be spent by the Government that is not appropriated by Congress”
 - Federal Budget process
 - Determine how much money each agency receives
 - Earmarks
- Legislation influenced by outside factors
 - Current events in society
 - Political influence of Special Interests
 - The ‘TV affect’





Sources of Acquisition Rules

- Affect on current laws often not addressed
- Vague language to allow application to various conditions
- Judicial Branch
 - Common Law
 - Practices and court rulings
 - Precedence for future cases
 - Decision closely followed due to affect on policy and practices
 - Types of Decisions
 - Law ruled unconstitutional
 - Claim of unfair treatment of a vendor during the procurement process





Protests and Disputes

- Each branch addresses disputes
- Executive Branch Agencies
 - Protest to the CO(KO in DoD) or one level above
 - Decision
 - Valid Protest – Agency can overturn CO or CO can decided to re-solicit.
 - Dismiss Protest
 - Civilian Board of Contract Appeals (CBCA)/(ASBCA)
 - Current court structure for government contracting claims
 - Established by section 847 of National Defense Authorization Act for 2006
 - Continuation of the authority to hear disputes between individuals and executive agencies
 - Contract Disputes Act of 1978





Protests and Disputes

■ Legislative Branch

- Government Accountability Office (GAO)
 - Nonpartisan group that reports to Congress
 - Recommends an action to the agency
 - Agency is not bound to follow recommendations
 - Congress does follow-up with why the agency did not follow recommendations

■ Judicial Branch

- Hears complaints through the court system
- Rules on claims in favor of the company or the Government
 - Normally with damages if the company wins
 - Issues a legal opinion with decision
- Court of Federal Claims
 - Place a suit for damages
- Legal Opinions are watched by agencies as an indicator of how the court will rule on future cases
 - Procedures often adjusted based on outcomes





History of Procurement Policy

- Government purchase of goods and services go back to founding of this country
- Government = largest buyer of goods and services in a market.
 - Potential for abuse of power
- Purpose of procurement laws
 - Protect people doing business with the Government
 - Receive best value for taxpayers
- Policies throughout history
 - Pre-WWI
 - Post WWI
 - Current





History of Procurement Policy

- Pre-WWI
 - Most needs were defense related
 - Advertising and Sealed Bids (1842)
 - Antifraud Act (1862)
- Post WWI (mostly before and after WWII)
 - Economy Act (1921)
 - Davis-Bacon Act (1931)
 - Armed Services Act (1947)
- Recent History (Modern Contracting)
 - Commission on Government Procurement (1970)
 - A study on how Government procures goods and services.
 - Took back much of the CO discretion granted under the War Powers Act
 - Competition in Contracting Act (CICA) (1984)
 - Requires open competition and Fair Treatment of Contractors
 - Concept of a 'level playing field'





History of Procurement Policy

- Recent History (Modern Contracting)
 - FAR developed
 - Set policy for all parties participating in federal procurement
 - Packard Commission (1996)
 - Starts a shift toward leveraging 'commercial' best practices
 - Addressing issues business have in doing business with Government
 - Federal Acquisition Streamlining Act (1994)
 - Remove some bureaucracy when procuring commercial items
- Most Recent
 - Service Acquisition Reform Act Final Report (2007)
 - American Recovery and Reinvestment Act (2009)
 - Transparency and reporting





Contracting Environment

Oversight and Guidance

Executive Branch

President
Executive Orders

OMB

A-11
A-76

OFPP

Policies

DoD

Guidebooks

Directives

5000 Series

Source Selection Guidance

Defense Acquisition Deskbook

ASPA (1947)

ASPR

DAR (1978)

FPASA (1949)

FPR

FAR (1984)

DFARS

Service Supplements
to FAR/DFARS

Buying Activity
Supplements

FASA (1994)

FARA (1995)

Clinger-Cohen (1996)

SARA (2003)

AIAA (2007)

Army

Navy

Air Force

Congress

Laws

GAO

Audits

Protests

Decisions

Stay Provisions

Courts

Claims

Protests

ASBCA

Claims





Conflicts in Guidance

- Different Forces/Responsibilities
 - Economies of Scale vs. Socioeconomic goals
 - Small Business Act vs. Competition in Contracting Act
 - Government responsibility to improve socioeconomic groups
 - Fiduciary responsibility to spend the taxpayer's money wisely
 - CICA vs. 'Green' businesses
 - Rarity of green technology might = sole sources
 - Socioeconomic programs vs. Value Added
 - 'Pass through' organizations
 - Changing order of priority of socioeconomic groups
 - Competition of groups in special interest groups





Conflicts in Guidance

- Fixed Price vs. Cost-based
 - Shifting risks
 - Accurate Estimate
 - Commercial and non-commercial after enough production runs
 - Varied Estimates
 - Construction
 - Services
 - Different site conditions
 - Changes in Wage determinations
- Contract Administration
 - Success hinges on administration (especially service contracts)
 - Focus is on PALT
- Source Selection
 - Continuity of Service vs. Quality of Service
 - Executive order to give first hire option to incumbent's employees
 - Quality problem with contractors' employees





Approaches

■ Current

- FAR Council (currently happening)
 - Proposed rules open to comment
 - Changes can be made to different parts at different times
 - Different authors
 - Legislation trumps policy
- Use of Thresholds
- Opening to broader competition – left to agency

■ Legislative

- Open laws to comment prior to vote on final law (similar to FAR process)

■ Focus on training and accountability at CO level

- Allow more judgment calls at the CO level
- Clear Chain of Command





Approaches – Contacting Office Level

■ FAR Guiding Principles

- If not addressed in the FAR, but in the best interest of the government and not prohibited by law, Executive order or other regulation – it is allowed

■ Recurring needs

– Option Years

- Useful in long term requirements with little price change
- Not as useful in areas where pricing drops rapidly (i.e. Technology)

– IDIQ

- Streamline – one full competition for multiple future requirements
- Works better with commercial items than construction, services and large quantities for small businesses
 - Customized services can affect pricing

– MATOC

- Currently used with construction
- Can easily be adapted to services
- Uses a 'Seed' project or fictional task order for evaluation





Approaches – Contacting Office Level

- Performance Based
 - Private industry best practice
 - Focus on result
 - Get what you ask for
- Cradle to Grave (C2G) vs. ACO
 - Administration critical in services
 - C2G problems
 - Focus on PALT time, admin suffers
 - Original CO no longer with organization
 - ACO problems
 - ACO did not write the contract
 - Often a different location
 - Adapted ACO model
 - An ACO in contracting shop at the base level
 - Works only on contracts out of that shop
 - Can conference with COs who awarded





Approaches – Contacting Office Level

- Economies of Scale (strategic sourcing) vs. Small business
 - Better pricing due to large volume
 - Bundling eliminates most small businesses
 - Alternatives
 - Encourage teaming – multiple companies ban together as joint ventures
 - Agencies set up regional Multiple Award IDIQs (mini-schedules)
 - Communicate availability of GWACs for these purposes
- Quality Services
 - ‘first hire’ choice to incumbent employees vs. poor performance
 - Minimize disruption of services
 - Report poor performance, instead of ‘giving a pass’ just to finish the project
 - PPIRS
 - Expand reporting level to individuals
 - If government reported on individual performance, contractor relieved of need for ‘first hire’





Conclusion

- Operating in complex environment
- Juggling requirements is an art form
- Innovative ideas are encouraged
- Risk management not risk adverse





Questions?????

