



# Basics of Contracting with the Federal Government

Wisconsin Procurement Institute  
B2G Connect  
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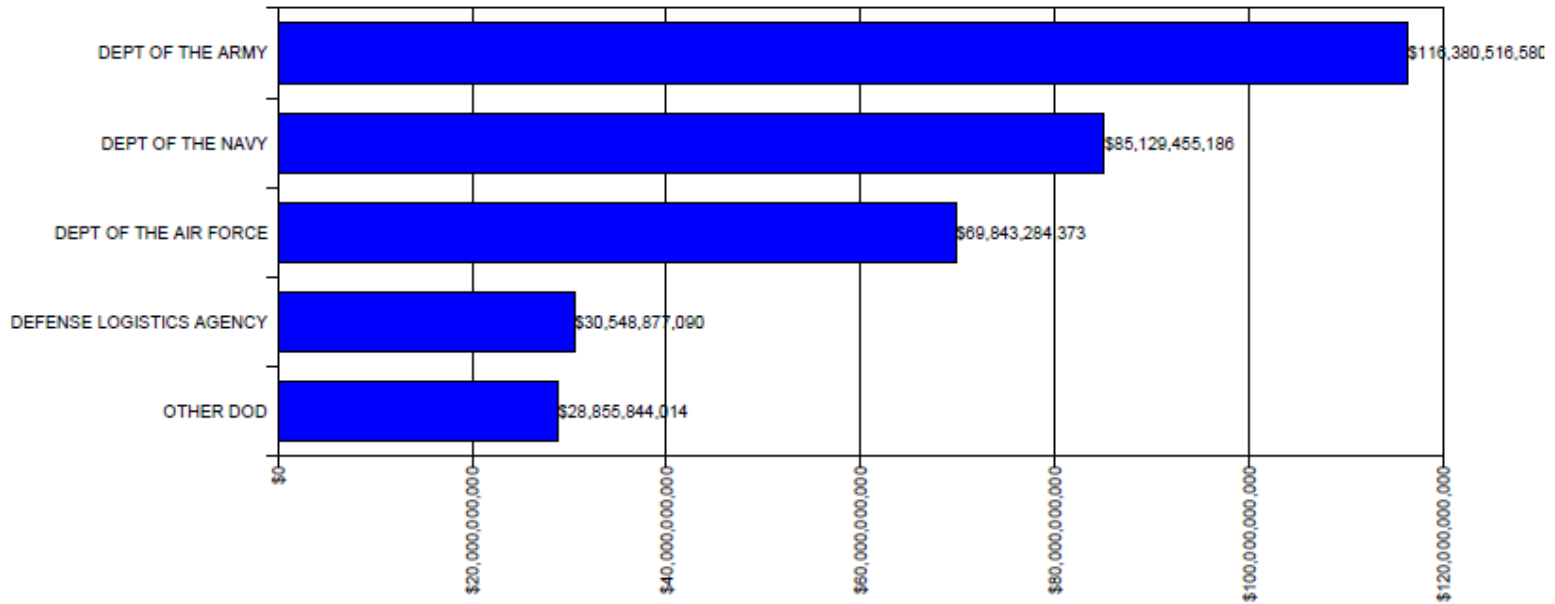
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# Workshop Summary:

- Presentation will discuss Contracting with the Federal Government
  - The US Federal Government is the world's largest buyer of supplies and services.
    - ~60 Federal Government Agencies.
    - Department of Defense (DOD) is the largest single source of contract awards for the Government.

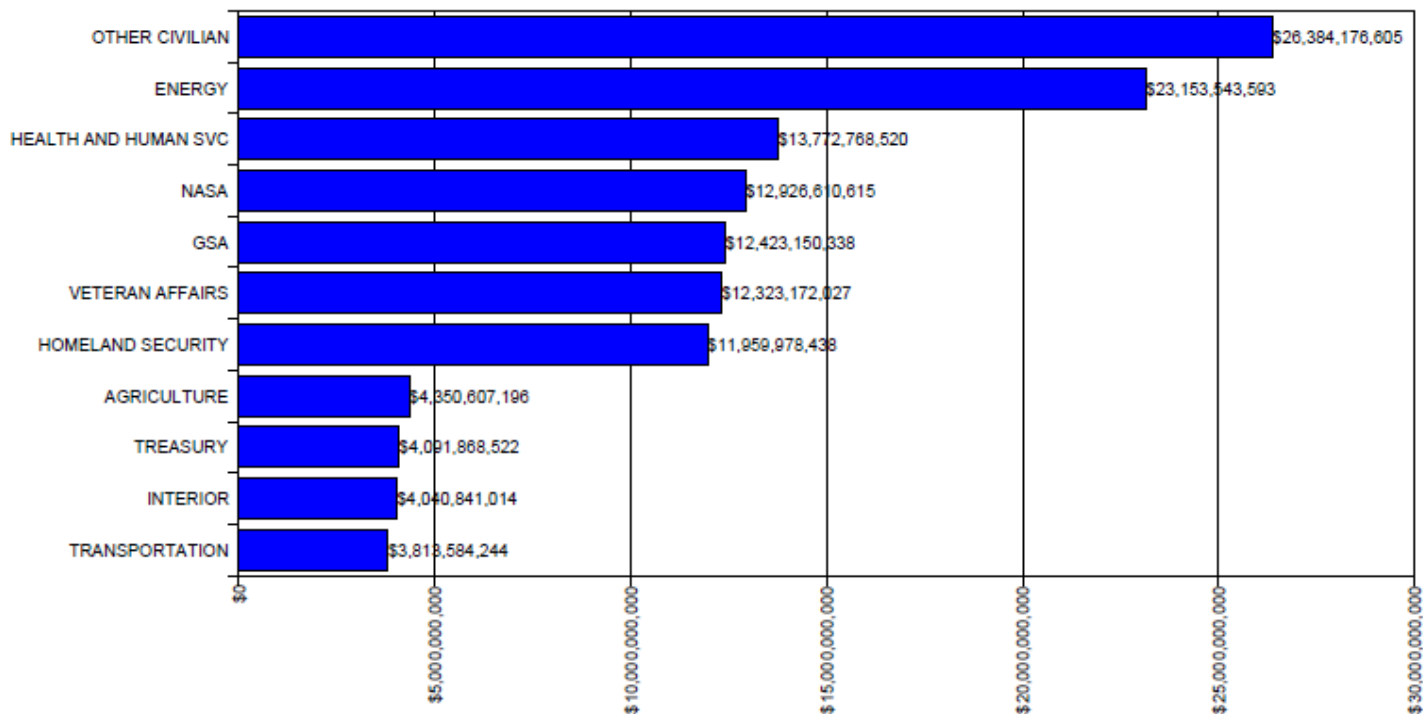
# 2007 – Federal DOD Spending

DEPARTMENT OF DEFENSE  
TOTAL DOLLARS \$330,757,977,244



# 2007- Federal Other Spending

CIVILIAN AGENCIES  
TOTAL DOLLARS \$129,240,301,113



# Federal Government Spending FY2010

- Government Spending in the United States for Fiscal Year 2010
  - \$1.0 trillion - Govt Pensions
  - \$1.1 trillion - Govt Health Care
  - \$1.0 trillion - Govt Education
  - \$0.9 trillion - National Defense
  - \$0.8 trillion - Govt Welfare
  - \$1.6 trillion - All Other Spending
  
  - \$6.5 trillion - Total Government Spending
  
  - Federal Deficit + \$1.6 trillion
  
  - Source = [www.usgovernmentspending.com](http://www.usgovernmentspending.com)

# Distinctions between Commercial and Federal Contracting

- Commercial Contracting:
  - Private Money
  - Governed mainly by local and State law, and subject to Uniform Commercial Code (UCC)
  - Price normally determined by the market
  - No audit

# Distinctions between Commercial and Federal Contracting

- Federal Contracting

- Uses Public Money, not Private
  - Special financing options available
- Governed by Law/Statute and Regulations (FAR)
  - Very Specific Terminology to be aware of
- Special Rules of Conduct: Mandatory Terms
  - Some Commercial practices disallowed in Govt Contracting
  - Specific Terms must be flowed to lower tier vendors
- Government Buyer has Sovereign Immunity
  - Changes
  - Terminations

# Distinctions between Commercial and Federal Contracting

- Federal Contracting ( Continued)
  - Cost Accounting Standards
  - Quality Assurance:
    - Contractor must establish specified levels of QA
  - Requirements for Certifications & Representations
  - Subject to Government agency audits
    - Contractor records, rates, pricing, QA
  - Enforcement and Consequences:
    - Government has broad enforcement powers and can impose consequences for contract and business conduct violations.

# Governance of Federal Contracting

- All Federal Contracting is authorized by Statutory Law: Office of Federal Procurement Policy Act, 41 U.S.C. 401 et seq.
  - Federal Acquisition Regulation (FAR)
  - Defense Federal Acquisition Regulation (DFAR)

# Federal Acquisition Regulations

- The Federal Acquisition Regulations (FAR)
  - Code of Federal Regulations (CFR) Title 48 authorizes the FAR.
  - Codification of uniform policies for Fed Govt. purchases.
  - FAR 1.102(a): “The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives.”
  - FAR is applicable to Federal Contracting with appropriated funding.
    - FAR is not Applicable to Grants, Cooperative Agreements or Non-appropriated Fund (NAF) activities.
  - FAR is applicable to Sub-Contracts through Flow-down requirements, although ‘Privity’ is between the Prime and the Sub-Contractor, not the Government and Subcontractor
  - Christian Doctrine: From “G.L. Christian & Associates v. US 1963” Contract Clauses that express deeply significant public policy are ‘read into’ a contract even in the case where it is omitted from the written document. For Example: Termination for convenience

# Appropriated Funds

- One Major Difference between Government Contracting and Commercial Contracting is the use of Appropriated Funds:
  - Government procurements use funds budgeted by the “Executive Branch”, and approved by the “Legislative Branch”
  - Anti-Deficiency Act requires the Government to have approved funding ‘in hand’ for all contract actions. (FAR 52.232-20 Limitation of Cost Clause)

# Government Sovereignty

- The Concept of Federal Government Sovereignty is another major difference between Commercial and Government Contracting:
  - The Government has legislated requirements for contracting with it that would require specific negotiation in Commercial contracting:
    - Changes Clause
    - Terminations

# Government Sovereignty – Changes Clause

- Changes Clause: FAR 52.243
  - Allows Government to make unilateral changes within the general scope of the contract.
    - Designs/Specifications; Method of Work, Method of Shipment; Place of delivery
    - Description of service; Time or Place of performance
  - Equitable adjustment may be negotiated
    - Price and / or schedule

# Government Sovereignty - Terminations

- Termination: FAR 52.249
  - Allows the Government to ‘walk away’ whenever they deem necessary.
    - Can be Full or Partial Termination
    - Termination for Convenience
      - When in the Government’s best interest
    - Termination for Default
      - default if the contractor fails to:
        - Make delivery of the supplies or perform the services within the time specified in the contract,
        - Perform any other provision of the contract, or
        - Make progress and that failure endangers performance of the contract.

# Government Sovereignty - Terminations

- Effect of Terminations:
  - Termination for Convenience
    - Requirement goes away
    - Contractor is reimbursed for fair and reasonable costs incurred (allowable, applicable and allocable) and appropriate share of fee
    - Product and Material need to be dispositioned in settlement process
    - No negative effect on Contractor's past performance record

# Government Sovereignty - Terminations

- Effect of Terminations:
  - Termination for Default
    - Government is not liable for the contractor's costs on undelivered work and is entitled to the repayment of advance and progress payments
    - The contractor is liable to the Government for any excess costs incurred in acquiring supplies and services similar to those terminated for default
    - Default becomes part of the contractor's past performance record which will harm the contractor's ability to compete on future contracts.
      - Depending on reason for default, could be cause for debarment from future Government contracts.

# Who can bind the Government

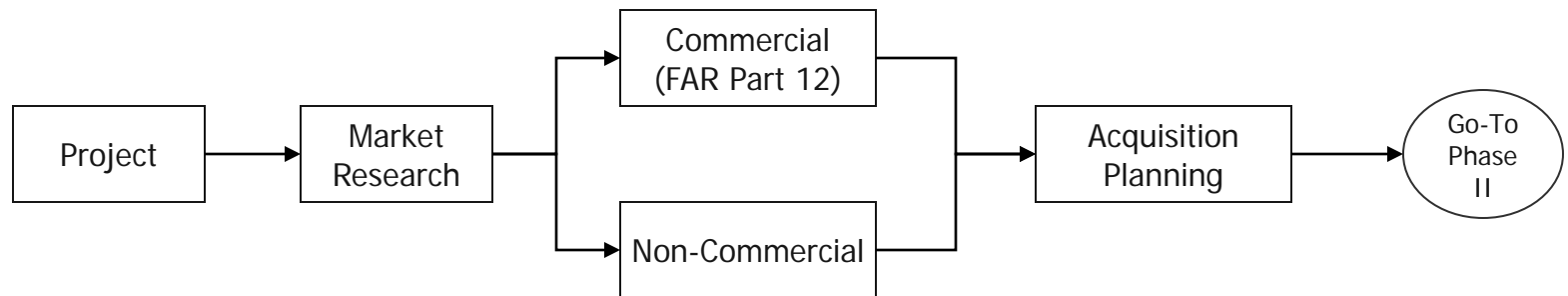
- Only an agent of the Government who is within the scope of their authority can bind the government to a contract.
  - Contracting Officers are provided Warrants that define the Authority delegated to them from the Head of the Contracting Activity. They can bind the Government:
    - Procuring Contracting Officer: (PCO)
    - Administrative Contracting Officer (ACO)
    - Termination Contracting Officer (TCO)
  - Other Government Officials such as Contracting Officer Technical Rep (COTR) or Quality Assurance Rep (QAR) are not authorized to bind the government and can therefore not change the scope of contracts

# Basic Acquisition Process

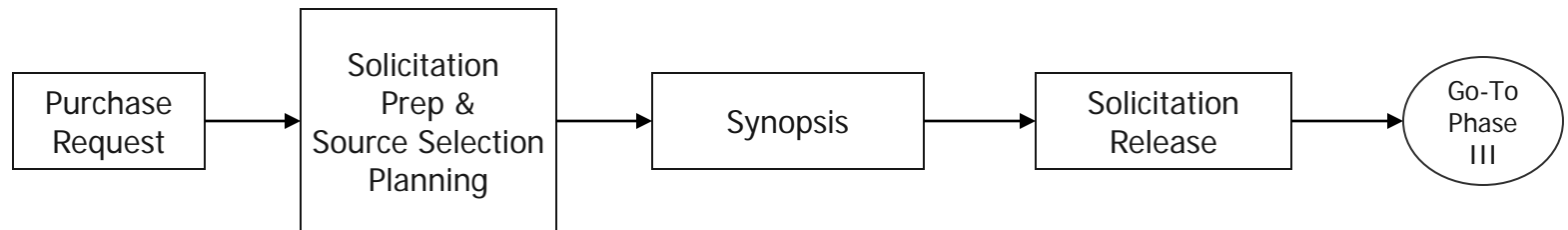
- Define Need
- Analyze Requirement
- Source Selection
- Solicit: IFB, RFQ, RFP
- Evaluate
  - (Clarifications, Down-selects, Negotiate, Certify)
- AWARD
- Perform Effort
  - Modifications / Changes
- Completion & Close Out
  - Fulfilled Requirements or Terminations

# Government Source Selection Road Map

- Phase 1: Pre-solicitation Planning

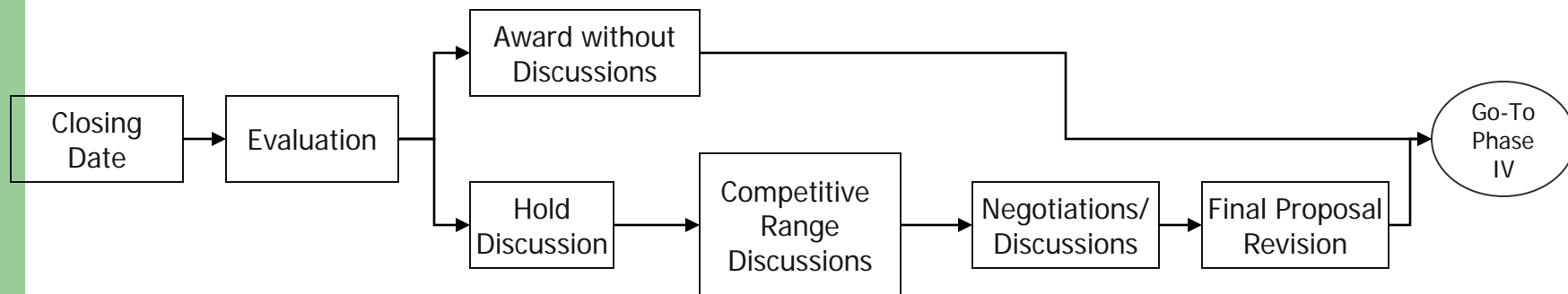


- Phase 2: Solicitation Prep and Release

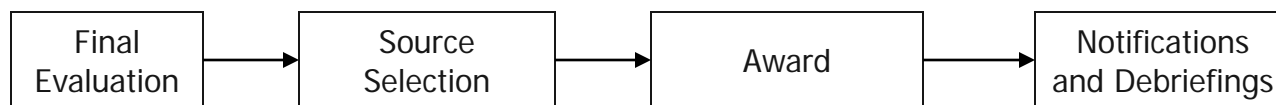


# Government Source Selection Road Map

- Phase 3: Proposal Evaluation/Negotiation



- Phase 4: Source Selection & Award



# Considerations for Contracting Officers Making Federal Procurements

- Socioeconomic Programs / Requirements:
  - Small/Disadvantaged Set-asides
    - (Minority, Woman-owned, Veteran, Handicapped)
  - Maintaining or Mobilization of nations capacity (2<sup>nd</sup> Source issues)
- Full and Open Competition
  - All reasonable sources are permitted to compete
  - Sealed Bidding
  - Negotiation
- Sole Source or Limited Source

# Intermission:

- End of Part one
  - ???Questions???
  
- PART 2
  - Methods for Government procurements
  - Contract Types

# Types of Procurements

- General Services Administration (GSA) Schedules: FAR Part 8
- Commercial Items: FAR Part 12
- Simplified Acquisitions: FAR Part 13
- Sealed Bidding: FAR Part 14
- Negotiated Contracts: FAR Part 15
- Special Contracting Methods: FAR Part 17
- Emergency Acquisitions: FAR Part 18

# FAR 8.4 Federal Supply Schedule

- A.k.a. GSA Schedules
  - Directed and managed by General Services Administration (GSA)
  - Provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying.
  - Requires contractor to publish an “Authorized Federal Supply Schedule Pricelist” (pricelist)
    - Pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number.

# FAR Part 12: Commercial Items

- Scope: “This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government’s preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.”
- FAR 2.101 Defines “Commercial Items”
  - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and
    - (i) Has been sold, leased, or licensed to the general public; or,
    - (ii) Has been offered for sale, lease, or license to the general public;
  - Sub-paragraphs (2) – (8) provide additional discussion and definition of what can be accepted as a “Commercial” item

# FAR Part 13: Simplified Acquisition Procedures

- The purpose of this part is to prescribe simplified acquisition procedures in order to—
  - Reduce administrative costs
  - Improve opportunities for small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns to obtain a fair proportion of Government contracts
  - Promote efficiency and economy in contracting; and
  - Avoid unnecessary burdens for agencies and contractors
- For the acquisition of supplies and services, the aggregate amount of which does not exceed the simplified acquisition threshold. Generally the SAP threshold means \$100,000 (Exceptions allow up to \$5,000,000 using SAP)
  - Special rules for Micro-Purchases (Normally below \$3,000)
- Reduces requirements to comply with specified laws, provisions and clauses

# FAR Part 14: Sealed Bidding

- Sealed bidding is how the government contracts competitively when its requirements are clear, accurate and complete.
  - An Invitation For Bid (IFB) is the method used for the sealed bid process. Typically, an IFB includes a description of the product or service to be acquired, instructions for preparing a bid, the conditions for purchase, packaging, delivery, shipping and payment, contract clauses to be included and the deadline for submitting bids.
  - Each sealed bid is opened in public at the purchasing office at the time designated in the invitation. All bids are read aloud and recorded. A contract is then awarded by the agency to the low bidder who is determined to be responsive to the government's needs.
  - Government-wide IFBs are available daily for review at [www.FedBizOpps.gov](http://www.FedBizOpps.gov). This electronic government service also provides a direct link to the invitation.
- Two-Step Sealed Bidding process is allowed.

# FAR Part 15: Negotiated Procurements

- A contract awarded using other than sealed bidding procedures is a negotiated contract (15.001)
- Types of Negotiated Acquisitions (15.002)
  - Sole Source Acquisitions - Only one available source
  - Competitive Acquisitions - Two or more available sources
- Government Acquisition Strategies
  - Best Value Continuum – Government options
    - Tradeoff Process
      - Appropriate when the Government should consider other-than the lowest priced offeror or the highest technically rated offeror.
    - Lowest Price Technically Acceptable Source

# FAR Part 17: Special Contracting Methods

- Multi-Year Contracting
- Options
- Leader Company Subcontracting
- Interagency Acquisitions
- Management and Operating Contracts

# FAR PART 18: Emergency Acquisitions

- New Part Added to the FAR in October 2008
- Details the Governments “Flexibilities” available when there is a need for an Emergency Acquisition
  - In support of a contingency operation
  - To facilitate the defense against or recovery from nuclear, biological, chemical or radiological attack
  - When the President declares an incident of national significance, emergency declaration, or major disaster

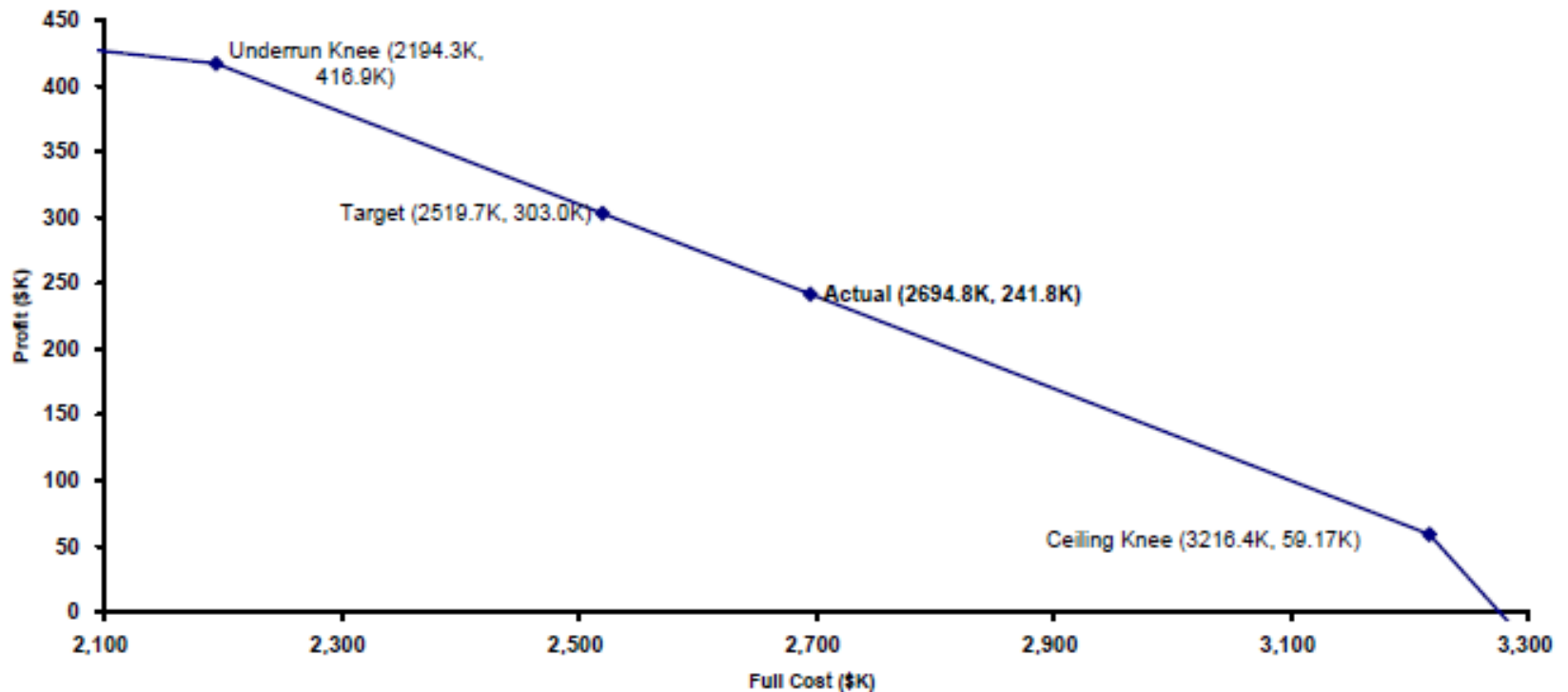
# Types of Contracts – FAR Part 16

- FAR allows several contract types:
  - Contract Types
    - Fixed Price
    - Cost Reimbursement
    - Indefinite Delivery
    - Labor Effort and Time and Material
    - Letter Contracts
    - Agreements
  - FAR prohibits “cost plus percentage of cost contracts”

# Types of Contracts – FAR Part 16

- FAR allows several fee arrangements:
  - Fee Arrangements
    - Fixed Fee
    - Incentive Fee
      - Cost incentives
      - Performance Incentives
      - Delivery Incentives
    - Award Fee
      - Used when other incentives are not specifically measurable
      - Award Fee Board must be established

# Example: Incentive Fee – Cost Based



# Types of Contracts – FAR Part 16

- Fixed Price

- Agreed to Scope of Work Must be accomplished.
- Firm Fixed Price: Price agreed to by parties is the price to be paid, regardless of performance.
- Fixed Price with other than Fixed Fee
  - Target Cost is agreed to and a formula is used based on contract performance to determine the final payment. (Incentive Fee, Award Fee, Economic Price Adjustment, Prospective Price Re-determination).

# Types of Contracts – FAR Part 16

- Reimbursement Contracts/Cost Contracts
  - Requires Good-Faith Effort toward goal.
  - Can be ended at any time by the Government.
  - Contractor has no requirement or authorization to go beyond the funding limit established by Government.
  - Cost Types:
    - Cost Sharing
    - Cost Plus Incentive Fee
    - Cost Plus Award Fee
    - Cost Plus Fixed Fee

# Types of Contracts – FAR Part 16

- Time and Material (T&M)
  - Direct Labor Hours at a negotiated fixed rate per hour.
  - Non-Labor
    - Materials are charged at cost (raw cost + allocable handling costs)
    - Travel & Per Diem (Other): raw cost
- Labor Hour
  - Similar to T&M but no materials are necessary.

# Types of Contracts – FAR Part 16

- Agreements

- Basic agreement: written instrument of understanding that contemplates separate future contracts. Often allows for several contracting groups to place contracts referencing it.
- Basic Ordering Agreement (BOA): Similar to the Basic Agreement, authorizes orders to be placed referencing the T&C's, but may require pricing to be provided/negotiated for the material/ services at the time required.


# Types of Contracts – FAR Part 16

- Indefinite Delivery Contracts
  - Provides for upfront negotiation of Terms & Conditions, Prices, estimated quantities and effective timeframe without obligating the Government.
  - Types Include
    - Definite quantity: A specified qty will be ordered
    - Requirements: If authorized, the definitized order will be placed.
    - Indefinite Qty (IDIQ): Government may order, within limitations of the contract, items as required.

# Types of Contracts – FAR Part 16

- Letter Contracts
  - Written preliminary contractual instrument that authorizes the contractor to begin performing immediately
  - Allows effort to commence while final contract is definitized
  - Must contain maximum liability of the Government (not to exceed price)

# Contracting Theory: Contract Type by Risk



<b>Govt. Risk</b>	<b>High Risk</b>						<b>Low Risk</b>
<b>Contractor Risk</b>	<b>Low Risk</b>						<b>High Risk</b>
<b>Requirement Definition</b>	Loosely Defined						Highly Defined
<b>Production Stages</b>	Concept Studies / Basic Research	Exploratory Development	Test Demonstration	Full Scale Development	Full Production	Follow-on Production	
<b>Contract Type</b>	Various Cost Reimbursement Contracts	CPFF CPAF	CPIF, CPAF, FPIF	CPIF, FPIF or FFP	FFP, FPIF or FPEPA	FFP, FPIF or FPEPA	

# Useful Web Information:

- Federal Acquisition Regulations
  - <http://farsite.hill.af.mil>
- Acquisition Reform Network
  - [www.arnet.gov](http://www.arnet.gov)
- General Services Administration
  - [www.gsa.gov](http://www.gsa.gov)
- Federal Procurement Data Center
  - <http://fpdc.gov>
- Where in Federal Contracting
  - [www.wifcon.com](http://www.wifcon.com)

# Training Options:

- Wisconsin Procurement Institute: [www.wispro.org](http://www.wispro.org)
- National Contract Management Association (NCMA): [www.ncmahq.org](http://www.ncmahq.org)
- ESI International (w/George Washington University): [www.esi-intl.com](http://www.esi-intl.com)
- Federal Publications Seminars: [www.fedpubseminars.com](http://www.fedpubseminars.com)
- Where in Federal Contracting: (Training link) <http://www.wifcon.com/training.htm>