



# AF Life Cycle Management Center



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## Subcontract Pricing

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# Overview



- **Intro to Subcontracts**
- **Pertinent Thresholds**
- **PCO & Prime Responsibilities**
- **Prime Analysis & Troubleshooting**
- **DCAA Assistance**
- **Special Topics – Proposal Adequacy Checklist, Make vs. Buy, Excessive Pass-Through, Commercial, TINA Waivers, Financing, Documentation**
- **Summary**



# Intro to Subcontracts



- **Subcontract: any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.**
  - Includes but is not limited to purchase orders, and changes and modifications to purchase orders
  - Governed by FAR Part 44
- **Usually a direct charge**
  - CO is responsible for the determination of price reasonableness for the prime contract, including subcontractor costs (FAR 15.404-3)



# Pertinent Thresholds



- **TINA Threshold: \$700,000 or greater**
  - Subcontractor shall submit certified cost and pricing data to the prime (subject to TINA) unless exception applies (FAR 15.403-1)
    - Adequate price competition
    - Commercial items
    - TINA Waivers (heavily restricted)
    - Prices set by law or regulation
    - Modifying a contract/subcontract for commercial items
  - Threshold applies to all tiers of sub



# Pertinent Thresholds (cont.)



- **TINA Threshold (cont.)**
  - Prime shall conduct cost analysis and submit to government as part of proposal (Reference FAR 15.404-3(b) and Table 15-2)
    - Immediately check proposal to see if analysis is included to avoid delays in the future
    - Analysis requirement applies to subcontractors as well



# Pertinent Thresholds (cont.)



- **FAR Threshold for submission of subcontractor data to Government:**
  - $\geq \$12.5M$  or  $\geq \$700,000$  and 10% of prime proposal price**
    - Prime must submit sub's cost or pricing data to the government (unless determined unnecessary by the PCO)
      - If the sub is not comfortable with supplying proprietary data to the prime (e.g. competitors) they have the option to send the data directly to the PCO
      - Government also has right to obtain sub's data under the threshold when determined necessary by the PCO



# PCO Responsibility



- **Ultimately responsible for determination of price reasonableness**
  - Consider whether prime has approved purchasing system, has conducted appropriate analysis, has negotiated with sub
  - Negotiated does not by definition make something fair and reasonable
  - PCO responsible to analyze submission of subcontract costs



# Prime's Responsibility



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- **Comply with TINA and obtain certified cost or pricing data when required**
- **Conduct appropriate cost or price analyses to establish reasonableness of proposed subcontract prices (FAR 15.404-3)**
  - **Cost analysis shall be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. (FAR 15.404-1)**
  - **Price analysis shall be used when cost or pricing data are not required (FAR 15.404-1)**
    - **Price analysis should be used to verify that the overall price offered is fair and reasonable.**
- **Include results of analysis in price proposal (FAR 15.404-3 & FAR Table 15-2)**



# Prime's Analysis



- **Required to be submitted with proposal**
  - If not provided, prime should provide schedule for completion
- **Desktop Analysis not enough depth**
  - Cost analysis should be by cost element, should include technical evaluation of hours, analysis of material, etc.
- **Decrementals, as only form of analysis, not acceptable if certified data is required**
- **Needs early attention to avoid becoming “long pole in the tent” during the clearance process**
  - **USG should include cost analysis requirements in the RFP language**
    - Prime should consider flowing down language to their subcontractors as appropriate.



# Analysis Troubleshooting



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- **Don't agree that it's acceptable for analyses to be completed after prime/government negotiations**
  - It's a FAR requirement - we don't have the authority to waive it
  - While the prime may offer to do the analysis prior to sub negotiations, the government won't receive the benefit
- **Have the prime submit a schedule for analysis completion early on and periodically review schedule**
  - Any deviations from the schedule should be closely reviewed and contractor should be held accountable to schedule
  - Enlist help of program management regarding delays



- **Enlist help of DCAA/DCMA**
  - **DCAA may flag lack of analysis in Audit Report**
    - **Can lead to an adverse opinion**
  - **DCAA can issue a deficiency report regarding recurring problems within contractor's business systems**
  - **DCMA reviews and approves purchasing systems per FAR 44.302**



- **Remember it's the prime's responsibility**
  - We don't have the resources/time to do their jobs for them
    - One exception would be proprietary data, but this would more heavily involve DCAA
- **If you are in negotiations and still have outstanding analyses**
  - Apply an appropriate decrement to sub proposals that have not been evaluated
  - Reduce the prime's profit/fee (IG5315.404-3)



# DCAA Assistance



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- **Could be a subcontractor assist audit or agreed-upon procedures**
- **Cognizant prime's DCAA will request and coordinate assist audits when they are auditing the prime's proposal**
  - **CO may request if deemed necessary**
  - **May be requested through the Administrative Contracting Officer (ACO)**
- **Assists in determining if prime analysis is adequate and if the sub's proposal is TINA compliant**
- **Timing is important to support prime's negotiation schedule**
  - **Need to ensure that the request is made immediately following receipt of proposal.**



# DCAA Assistance (cont.)



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- **When audit may be most helpful**
  - **Interdivisional Work Authorizations**
    - **Normally IWA's are proposed at cost**
      - **If commercial, profit/fee can be included (FAR 31.205-26)**
  - **Large dollar subs**
  - **Ktr estimating system has deficiencies in area of subcontract pricing**



# DCAA Assistance (cont.)



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- **When audit may be most helpful (cont.)**
  - **Sub denies prime access to records**
  - **Sub has estimating system deficiencies**
  - **Special concerns such as Foreign Subcontractors**
  - **Prime/Sub relationship is not conducive to independence and objectivity**
  - **Prime is sole source and the sub represents a large portion of the contract**



# DCAA Assistance (cont.)



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- **Subcontract Reviews could include**
  - **Material**
  - **Labor**
  - **ODC's**
  - **Rates (direct and indirect), Cost Estimating Relationships**
  - **Proposed T's & C's**
  - **Historical pattern of reductions from quotes**
  - **Commercial Sales Data**
  - **Verification of Adequate Price Competition**



# Proposal Adequacy Checklist



- **Added to the DFARS in March 2013**
  - 215.408(5)
- **Requires the inclusion of DFARS 252.215-7009 in solicitations requiring the submission of certified cost or pricing data.**
  - Checklist included within the provision
- **Requires Contractors to complete the checklist and submit it with their proposal.**
- **Checklist was established to ensure Contractor's are providing adequate proposals that are compliant with FAR 15.408 Table 15-2**



# Proposal Adequacy Checklist (cont.)



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- **Checklist items for subcontracts**
  - **Identify subcontractor proposals, for which the contracting officer has initiated or may need to request field pricing analysis (Ref. DFARS 215-404-3)**
  - **Per the thresholds of FAR 15.404-3(c), include a copy of the applicable subcontractor's certified cost or pricing data**
  - **Submit price/cost analysis for each of the proposed subcontracts included in the proposal**
  - **For commercial subcontract items, submit an exception to the submission of certified cost or pricing data IAW 52.215-20**



# Proposal Adequacy Checklist (cont.)



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- **Checklist items for subcontracts (cont.)**
  - For adequate price competition, submit data showing degree of competition and basis for establishing source and reasonableness of price
  - Identify any subcontracts that exceed 70% of the total cost of the work to be performed and submit supplemental information to address limitations on pass-through charges.



# Commercial Subcontracts



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- **Responsibilities**
  - **Prime: provides written commercial item determination (CID) and conducts price analysis**

**DFARS 244.402 Policy requirements.**

**(a) Contractors shall determine whether a particular subcontract item meets the definition of a commercial item. This requirement does not affect the contracting officer's responsibilities or determinations made under FAR 15.403-1(c)(3). Contractors are expected to exercise reasonable business judgment in making such determinations, consistent with the guidelines for conducting market research in FAR Part 10.**

- **Most large companies have established practices for commercial item determinations**



# Commercial Subcontracts (cont.)



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- **Responsibilities**

- **PCO: responsible for reviewing Prime determination and making own determination, price reasonableness, reporting Commercial Items over \$15M (ultimately goes to Congress)**
  - **DFARS 215.403-1(c)(3)**
  - **\$15M reporting threshold applies to sum of subcontractor's commercial items**

## **DFARS PGI 212.102**

**Contracting Officers shall document CIDs over \$1M and ensure contract files fully and adequately document market research and rationale supporting a conclusion the definition has been satisfied. For “of a type” modifications where item has been offered and not sold, documentation must clearly detail particulars of modifications and sales offers.**



- **Responsibilities**
  - **Price Analyst (or PCO/Buyer):** responsible for reviewing **Prime Price Analysis (evaluating and documenting reasonableness)** and
    - May provide advice to PCO regarding definition, however, remember it's a PCO determination
    - Conduct market research in context of price reasonableness when appropriate

## **DFARS PGI 212.102**

**For “of a type” modifications where item has been offered and not sold – when such items lack sufficient market pricing histories, additional diligence must be given to determinations that prices are fair and reasonable.**



# Make vs. Buy



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- **SAF/AQ Memo dtd 7 Sep 04**
- **Letter from the Under Secretary of Defense dtd 12 Jul 04**
- **Life Cycle Management Plans (LCMPs) for ACAT I-II shall address make-or-buy programs per FAR 7.105(b)(12)**
  - **Purpose: To establish and maintain access to competitive suppliers**
- **If a make-or-buy plan is in our best interest, the RFP should require offerors to submit a plan IAW FAR 15.407-2**
  - **If the prime is not competing the sub work it must explain why this is in the best interest of the Gov't**
- **Gov't should review the plan to ensure a fair competition can be conducted**
  - **We are not to act as a source selection official or to approve the selection**



# Make vs. Buy (cont.)



- **If a plan demonstrates that an offeror will show bias then the plan should be revised**
  - **If the bias cannot be removed then consider the Gov't procuring the item and provide to the prime as GFE**
    - **This is a last resort because of the adverse impact of GFE on the total system responsibility assumed by the prime.**
- **DCMA is available to review make-or-buy plans**
- **Use of incentives should be considered when structuring contracts to foster sub-level competition**
  - **Credit should be given for effective use of competition**
    - **Management/Cost control in WGL is an appropriate place to assign credit**
- **Review of the subcontractor source selection process can be conducted after contract award IWA FAR 44.2, "Consent to Subcontracts"**



# Excessive Pass-Through Costs



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- **FAR 15.408(n)**
- **Does not apply to FFP or FPIF competitive contracts, commercial contracts, or contracts below cost and pricing data threshold**
- **Requires contractors (prime and sub) to identify % of work that will be subcontracted and if work exceeds 70%, to identify**
  - **Amount of the offeror's indirect costs and profit applicable to the work to be performed by the subcontractor(s)**
  - **Description of the value added by the offeror as related to the work to be performed by the subcontractor(s)**
- **Prime also required to provide same info at the sub level if a subcontractor is going to subcontract more than 70% of their costs**



# Excessive Pass-Through Costs (cont.)



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- **The Government shall not pay excessive pass-through charges**
- **PCO makes determination as to whether excessive pass-through charges exist by examining contractor value added**
  - **Excessive pass-through charge, with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit on work performed by a subcontractor (other than charges for the costs of managing subcontracts and applicable indirect costs and profit based on such costs).**
- **Also applies after contract has been issued**
  - **FAR 52.215-23(c)**
  - **Provides auditing rights**
  - **Disallowance of costs/price reduction depending on contract type**



# TINA Waivers at Sub Level



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- **Prime cannot grant TINA Waiver!!**
  - Only HCA (PEO) can grant TINA Waivers
- **Be aware of latest policy**
  - **DFARS PGI 215.403-1(c)(4)(A)**
    - Standard for granting waiver is very high
    - TINA Waivers should not be granted to contractor business segments that normally perform Government contracts subject to TINA
    - Waiver should not be granted simply because the waiver could allow the parties to execute the contract at an earlier date than if TINA was applied
    - By November 30<sup>th</sup> of each year, departments and agencies shall provide a report to the Director of DPAP of all waivers granted under FAR 15.403-1(b)(4) during the previous year.



# TINA Waivers at Sub Level (cont.)



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- **Be aware of latest policy (cont.)**
  - **AFFARS MP 5315.403-1(c)(5)(A)**
    - **PCO must notify SAF/AQCP when planning on Waiver and include discussion of how criteria for Waiver will be met**
    - **Signed Waivers must be provided to SAF/AQCP within 30 days of signature**



# Subcontractor Financing



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- **Noncommercial**
  - PCO should look at sub financing arrangement for reasonableness, e.g. Performance-based Payments financing to subcontractor with advance payments not acceptable
- **Commercial**
  - PCO should look and make sure advance payments don't exceed 15% statutory limitation



# PNM Documentation for Subs



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- **Normally group material in same manner as prime contractor, such as General Material, Purchased Parts, Subcontracts, Raw Material etc.**
- **For each grouping, separately identify each subcontractor  $\geq$  \$700,000 TINA threshold**
- **Explain proposed, Air Force Objective, and negotiated rationale for each subcontractor**
- **Remaining material/subcontracts may be grouped and explained appropriately**



- **IWAs**
  - Identify proposed, Air Force Objective, and negotiated amounts
  - Explain how hours were evaluated, identify Forward Pricing Rate Agreements/ Recommendations, identify major subcontracts, results of audit assistance, etc.



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# Summary



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**Subcontracts are a growing part of contract proposals and it's the Air Force's responsibility to insure the taxpayer's interest are protected**



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# Questions



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