



BARDA Industry Day Boston

Introduction to Negotiations

Darrick A. Early, M.P.M., PMP®

Section Chief, CBRN Contracts

October 18, 2011

ASPR: Resilient People. Healthy Communities. A Nation Prepared.



When do we negotiate?



Every day of ours lives

Home

- Continuing negotiation with family
- Personal commerce

Work

- Terms of our current employment



What is Negotiation?



- Back-and-forth communication to reach an agreement
- A means of getting what you want from others
- An attempt to resolve differences
- Commonly excepted definition:
 - Negotiation is process of communication by which two parties each with it's own view point and objectives, attempt to reach a mutually satisfactory result on a matter of common concern.



Why do we negotiate?



- Because we want or need:
 - Something others have
 - Someone to do something



Importance of Negotiation



- *Personal*

- Homes, cars, everything you buy
- Your job, salary, working conditions
- Your spouse and kids

- *Professional*

- Clients
- Design teams
- Subcontractors
- Suppliers
- Employees



What Do We Negotiate Over in Government Acquisition?



- Scope

- Price

- Quality

- Delivery



Government Contracting Negotiations



- Two types of contract awards
 - *Negotiated Contracts*
 - *Sealed Bidding*
 - Anything that is not a sealed bid is a negotiated contract (FAR 14.101(d), 15.00, and 52.215-1)
- In Government Contracting negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offerors to revise its proposal. (FAR 15.306(d))



Government Contracting Negotiations, cont'd



- These negotiations may include bargaining.
- The government normally anticipates that bargaining will occur in competitive as well as noncompetitive negotiations.
- In competitive acquisitions, negotiations take place after establishment of the competitive range.
- In non competitive acquisitions negotiations can take place anytime.



Exchanges prior to negotiations



Exchange is any dialogue between the government and the offeror after receipt of proposals (FAR 15.306).

Type of Exchanges

Clarifications
Communications



Clarifications



- Limited exchanges, between the government and contractors when the government expects to make award without discussions
- Examples
 - Relevance of past performance
 - Clerical errors



Communications



- Exchanges between the parties leading to the establishment of the competitive range
- Only authorized when the contractor is not clearly in or out of the competitive range
- Addresses issues that must be explore to determine whether a proposal should be placed in the competitive range



Communications



- *Communication must:*
 - Address adverse past performance
 - Ambiguities in the proposal
- *Communications must not:*
 - Permit the contractor to cure proposal deficiencies
 - Materially alter the technical or business proposal or otherwise revise the proposal



Government Negotiation Team



- Always led by the CO
- Tailored by the CO to fit the situation
- Members may include
 - Technical analyst
 - Pricing/Cost analyst
 - Legal Counsel



Negotiation Issues



Issues are areas about which the government and contractor disagree and basis for negotiations.

Sources of Issues

- ❖ Field Pricing Report
- ❖ Audit Report
- ❖ Technical Analysis
- ❖ Cost/Price Analysis
- ❖ Etc.



Negotiation Objectives



Primary Objective is obtaining best value based on the contractor's proposal:

- Satisfies the government requirement
- Has a fair and reasonable price
- Risk is fairly apportioned between the government and the contractor
- Satisfies the government socioeconomic goals



Identifying the Offeror's Approach



Locating information sources

- Market Research
- Previous proposals
- Technical experts
- 10Ks and other publicly available financial information



Bargaining Power and Perception



- FAR 31.201-3(a)
- Competition – availability or lack of it
- Knowledge – “Knowledge is power”
- Time Constraints
- Negotiation skill
- Importance of Contract to each part
- Contract Risk



Contract Allocation of Cost Risk



Government

Cost

Risk

Cost plus fixed fee – level effort

Time and materials

Cost plus fixed fee

Cost plus award fee

Cost plus incentive fee

Cost – no fee contract

Cost sharing contract

Contractor

Cost

Risk

Fixed price incentive

FFP with economic price adjustment

Firm fixed Price



Tradeoffs



- Nonnegotiable issues – must points
- Issues open to concessions – give points
- Issues to avoid – avoid points
- Issues open to bargaining – bargaining points



Pre-negotiation Memo



- Objective Position
- Minimum Position
- Maximum Position
- Identify Potential Concessions
- Gain management support



Price Negotiation Memorandum



- FAR 15.406-3
- At the close of Negotiation
- Summarized the Principle elements of the contract negotiation.



Contact Information



Darrick A. Early, M.P.M., PMP®

Section Chief, CBRN Contracts

U.S. Department of Health & Human Services (DHHS)
Acquisition Management, Contracts and Grants (AMCG)

330 Independence Ave, SW, Room G640
Washington, D.C. 20201 (mailing address)

Email: darrick.early@hhs.gov