



*United States Department of*

**Health & Human Services**

Office of the Assistant Secretary for Preparedness and Response



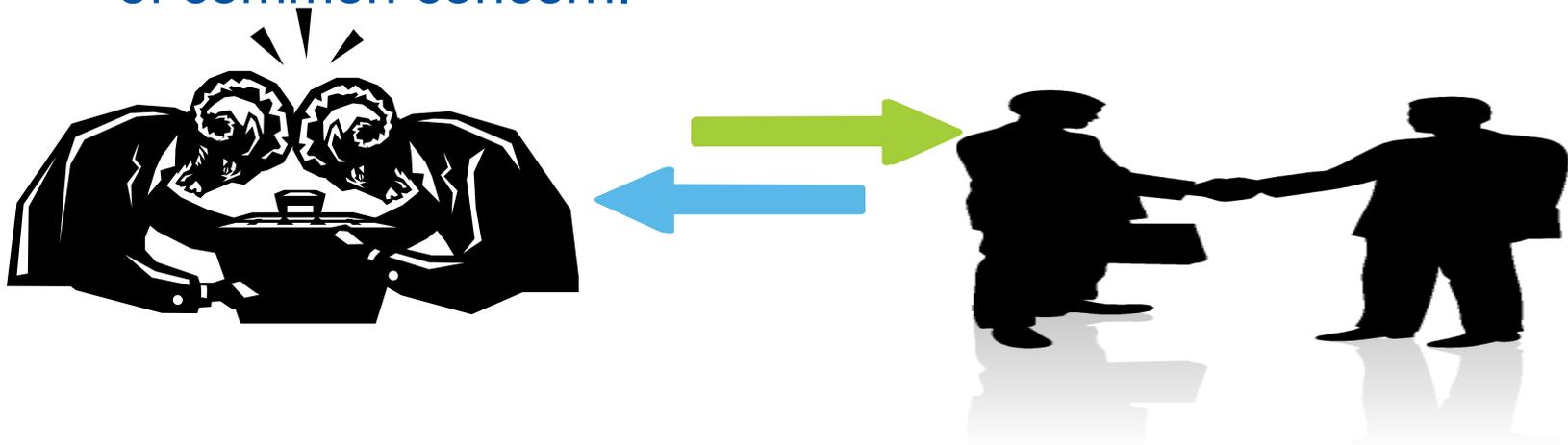
# **BARDA Industry Day Washington, D.C.**

## **INTRODUCTION TO NEGOTIATIONS**

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October 31, 2012**

# What is Negotiation?

- Back-and-forth communication with the goal of reaching an agreement
- Commonly excepted definition:
  - Negotiation is process of communication by which two or more parties each with it's own view point and objectives, attempt to reach a mutually satisfactory result on a matter of common concern.





# What Do We Negotiate Over in Government Acquisition?



- Scope

- Price



- Quality

- Delivery

All to meet the United States Government requirement

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



# 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))



# What is NEGOTIATION?



- A method of contracting that uses either competitive or other-than competitive procedures that permits **BARGAINING** with the offerors after receipt of **PROPOSALS**
- The government normally anticipates that bargaining will occur in competitive as well as noncompetitive negotiations.



# Government Contracting Negotiations, cont'd



- In competitive acquisitions, negotiations take place after establishment of the competitive range (RFP only).
- 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

Discussions



# Clarifications



- A government communication with an offeror on a competitively negotiated procurement that is a limited exchange, between the government and an offeror when Award on Initial Proposals is contemplated. FAR 15.306(a)
- Clarifications may be used to resolve minor errors
- 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 explored 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



# Discussions



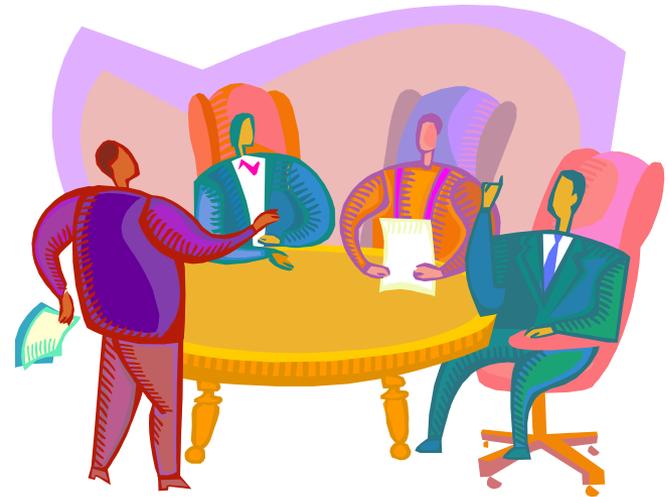
- Exchanges, in a procurement using COMPETITIVE PROPOSALS procedures, between the government and an offeror in the COMPETITIVE RANGE undertaken with the intent of allowing the offeror to revise its proposal.
- Objective of the government obtaining the best value



# 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*

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



# Negotiation Objectives

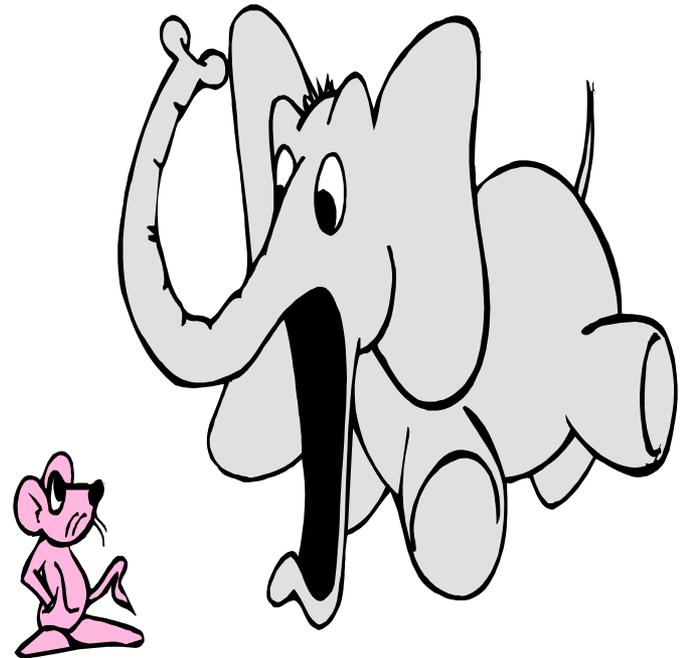


Primary Objective is obtaining best value based on the contractor's proposal:

- Satisfies the government requirement
- Has a FAIR AND REASONABLE PRICE (not necessarily the lowest price)
- Risk is FAIRLY apportioned between the government and the contractor
- Satisfies the government socioeconomic goals

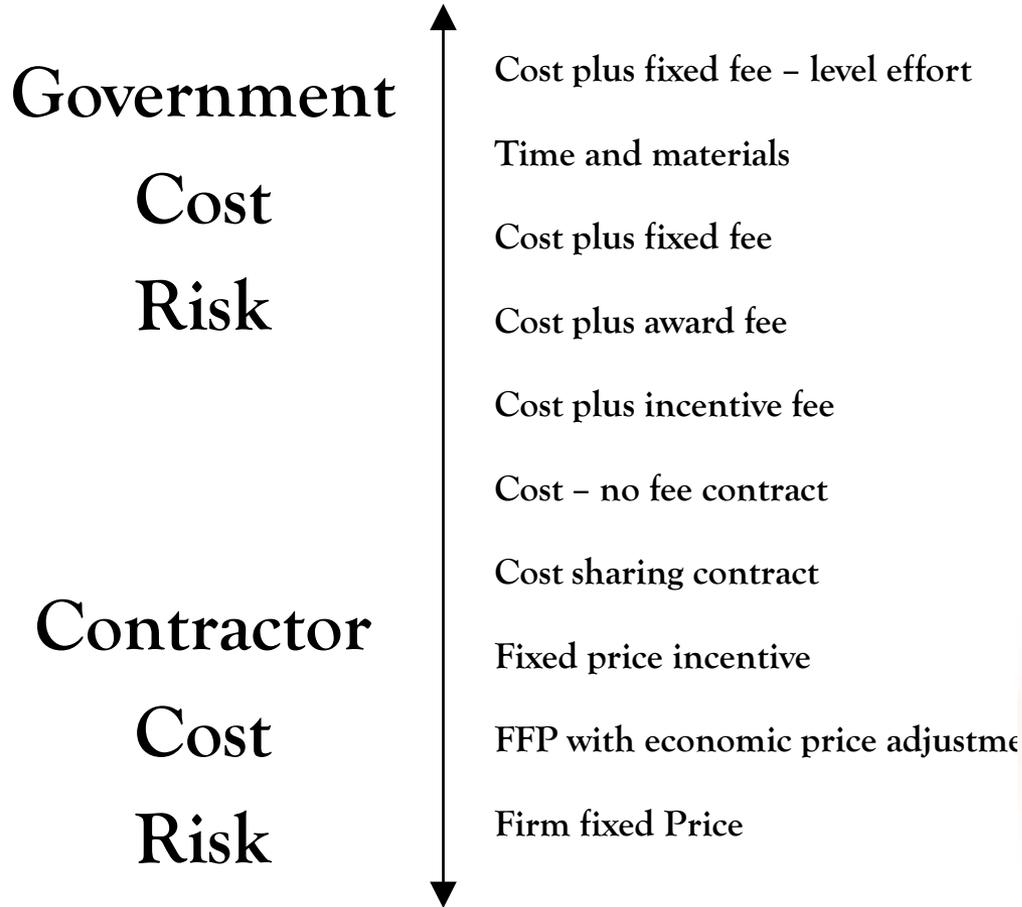
# Bargaining Power and Perception

- 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





# Price Negotiation Memorandum



- FAR 15.406-3
- At the close of Negotiation
  - Sometimes called “Summary of Negotiations”
- Summarized the Principle elements of the contract negotiation.



# Recommendation: Focus on Interests not Positions



- Interests = desires and concerns that underlie positions
- Prepare for negotiation
  - Clarify Interests
  - Understand the interests of the other side
- Focus the negotiation discussion on Interests not positions



# Contact Information



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