What does the FAR Really say?

John N Ford
Senior Consultant
Cherry, Bekaert and Holland
jford@cbh.com
Huh?

• 26 U.S.C. §509(a), in describing what is a “private foundation” states in part “For purposes of Paragraph (3), an organization described in Paragraph (2) shall be deemed to include an organization described in Section 501( c) (4), (5), or (6) which would be described in Paragraph (2) if it were an organization described in Section 501(c)(3).”
Service Contract Act

• If an option is exercised under an SCA covered contract “[t]he contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor’s actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of” a new wage determination, an increase under a CBA or a change in the minimum wage. (FAR 52.222-43)

• By what do you multiply the actual increase or decrease in applicable wages and fringe benefits?
Contract Value

- Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options. (FAR 1.108(c))

- What is the value of a multiple award IDIQ contract, a single award IDIQ contract and a requirements contract?
Contract Value

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• To ensure that an IDIQ contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order. (FAR 16.504)
Contract Value

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• For the information of offerors and contractors, the contracting officer shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered. (FAR 16.503)
What is a CAS Covered Contract?

• Full coverage applies to contractor business units that—
  – (1) Receive a single CAS-covered contract award of $50 million or more; or
  – (2) Received $50 million or more in net CAS-covered awards during its preceding cost accounting period.
• Modified CAS coverage applies to non-exempt contracts that are not subject to full CAS coverage.
• Contracts for commercial items are exempt from CAS requirements.
What is a CAS Covered Contract?

- Contractor A is a large business and receives a sole source negotiated FFP contract with a total value of $75M. Of the $75M, $30M relates to non-commercial items and $45M relates to commercial items. The contract has CLINs for the non-commercial items and commercial items. It also contains the clauses for FFP supply contracts and contracts for commercial items. Is the contract subject to full CAS coverage? Would the fact that the contractor was only required to certify cost or pricing data relating to the CLINs for non-commercial items impact your answer?
Providing Commercial Items Under Cost Reimbursement Contracts

- When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract.

- Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred. However, allowance may be price when:
  - (1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control; and
  - (2) The item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable. (FAR 31.205-26)
Providing Commercial Items Under Cost Reimbursement Contracts

• How would you bill for commercial items that are not purchased from a third party or transferred from one contractor division to another, i.e., commercial items that the contractor produces?
Providing Commercial Items Under Cost Reimbursement Contracts

• How would you bill for commercial items that are not purchased from a third party or transferred from one contractor division to another?
• Section 31.205 does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related selected items. (FAR 31.204(d))
Providing Commercial Items Under Cost Reimbursement Contracts

• How would you bill for commercial items that are not purchased from a third party or transferred from one contractor division to another?

• If the Contractor furnishes its own materials that meet the definition of a commercial item at 2.101, the price to be paid for such materials shall not exceed the Contractor’s established catalog or market price. (FAR 52.232-7)
Title to Contractor Acquired Property Under Cost Sharing Contracts

• Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property. (FAR 52.245-1)
Title to Contractor Acquired Property Under Cost Sharing Contracts

- Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

- If this contract is terminated or the estimated cost is not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each. (FAR 52.232-20(h))
Evaluation of Past Performance

- DoD Deviation 99-o0002 to FAR 15.304(c) states:
  - (3) (i) Except as set forth in paragraph (c) (3) (ii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions.
  - (iii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.
  - FAR 15.304(c)(3)(ii) reads For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).
Promulgation of the FAR

- No procurement policy, (including amendments or modifications) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, or (2) a significant cost or administrative impact on contractors or offerors, may take effect until 60 days after the procurement policy, is published for public comment in the Federal Register.

- The 60-day time frame may be reduced in compelling circumstances but cannot be less that 30-days. (41 U.S.C. §1707)
Promulgation of the FAR

• FAR 1.502 -- Unsolicited Proposed Revisions. Consideration shall also be given to unsolicited recommendations for revisions that have been submitted in writing with sufficient data and rationale to permit their evaluation.