Government Contracting Topics

» Current developments and focus on the following key Contract Management Issues:

- Federal Acquisition Streamlining
- Commercial Items
- Intellectual Property
- Contractor Business Systems
- Constructive changes.
An Introduction to ViaSat

ViaSat At A Glance

31 Years  $\sim 4B$ Enterprise Value
4 Satellites $1.5B+$ Investment in Satellite Broadband
659,000+ Subscribers  4,000+ Employees

And, MORE bandwidth than anyone else in the satellite industry...
Financial Strength

FY17 Highlights
» Record revenue
  › $1.6B
» Record Adjusted EBITDA
  › $340B
» New awards
  › $1.7B
» Backlog
  › $1.024B

Locations

Offices
- Austin, Texas
- Atlanta, Georgia
- Arlington, Virginia
- Baltimore, Maryland
- Boston, Massachusetts
- San Diego, California
- Cleveland, Ohio
- College Station, Bryan, Texas
- Denver, Colorado
- Germantown, Maryland
- Tempe, Arizona
- San Jose, California
- Tampa, Florida
- Australia:
  - Canberra
  - Melbourne
  - Sydney
- China:
  - Beijing
- India:
  - Chennai
- Switzerland:
  - Lausanne
- UK:
  - Farnborough
THE START-UP THAT NEVER GROWS UP

Bldg 12 Atrium Day View From El Camino Real
Solving Critical Market Problems

» Broadband and mobility
  › High-performing, more competitive consumer, government, enterprise services

» Efficient, high-capacity, IP satcom
  › Total visibility, situational awareness

» Cybersecurity for networks and data

» Custom engineering and design
  › Advancing all types of communication & RF systems
  › Semiconductors, cloud systems, wireless,

Ka-band Fleet

ANIK-F2
US Ka Beams
~2 Gbps
~6900 kg

WildBlue-1
~7 Gbps
~4700 kg

ViaSat-1
~144+ Gbps
~6700 kg

ViaSat-2 Launched June 2017 – Another Performance Breakthrough
  › 7x the coverage of ViaSat-1
  › 2x the bandwidth economics advantage

ViaSat
ViaSat Ka Customers
Rest of Industry
**ViaSat-2**

- Coverage Area
  - 7x the coverage area
  - 2x the capacity economics

**Government Contracting Topics**

- Current developments and focus on the following key topics:
  1. Federal Acquisition Streamlining
  2. Commercial Items
  3. Intellectual Property
  4. Contractor Business Systems
  5. Constructive changes
Acquisition Streamlining

Who is interested in Acquisition Streamlining?

» DoD
  › Better Buying Power 3.0 Initiatives

» Congress
  › Creation NDAA Section 809 Panel

» President
  › Executive Order - Jan 30, 2017 “Presidential Executive Order on Reducing Regulation and Controlling Regulatory costs”

» Industry
  › Draft policy comments

Congress Wants Acq Streamlining

» Congress Created Committee to Review Acquisition Reform NDAA Section 809 panel goals:
  › Fy 16 National Defense Authorization Act (NDAA) established it, 11 teams website headed by Dee Lee

  › Broad charter to look at regulations and rules that:
    › Are obsolete or hinder completion
    › Promote speedier and easier acquisitions

  › Met with over 200 government and industry representatives

  › Panel Brief Today in D.C.
Congress Wants Acq Streamlining, con’

» Section 809 Panel Interim Report released in June 2017
  › “The US ability to maintain technological, military, and economic superiority is being challenged” as our adversaries are recognizing our vulnerabilities and modernizing their forces in response.
  › Recommends improvements in the following areas:
    › Improve the Adaptability of the Acquisition System
    › Improve DoD-Commercial Customer Relationships
    › Improve Allocation of Resources
    › Simplify the Acquisition Procedure Empower DoD’s Workforce.

DoD Wants Acq Streamlining

» Better Buying Power 3.0 addresses Acq Streamlining
» BBP 3.0: Remove Barriers to commercial technology utilization Initiative
  › Tech refresh of commercial technology faster than that of a major weapons systems
  › Goal to access and employ more commercial technologies
    › Adversaries already doing this
  › Eliminate barriers to use commercial technology and products
  › Expand OTAs, CRADAs and SBIR programs
    › Promotes easier and faster contracting
President and Industry Want Acq Streamlining

» President Recognizes there is a Problem
› Jan 30 2017 President Trump announces his “Presidential Executive Order on Reducing Regulation and Controlling Regulatory costs”
   › Eliminate two regulations for every new one proposed

» Industry Recognizes there is a Problem
› Barriers to entry into the federal contracting marketplace
› Speed of DoD 5000 can’t keep up with technology turns
› Contractor IP and profit challenges for commercial items

» Will significant change occur soon?

Commercial Items

» Concept
› companies pay for development of new commercial products/service and the government buys based on market prices.

» Issues
› What if the Buyer later determines it to be noncommercial?
› Pricing - will cost data be requested anyway?

» Definition Excerpt
› Any item that is of a type customarily used by the public, and
   › Has been offered or sold, leased, or licensed to the general public; Includes
      ▪ Modifications of a type customarily available in the commercial marketplace; or
      ▪ Minor modifications of a type not customarily available in the commercial marketplace
Commercial Items

» Definition too Broad?
  › On February 24, 2017 DoD issued a draft update of its “Guidebook for Acquisition of Commercial Items”
    › Provides additional guidance
    › Focus is on procurement specialist who might not have experience with Commercial Item Determinations (CID) and pricing in the absence of competition
    › DMCA Centers also now involved CID
  › Section 809 Panel on Barriers to Entry-
    › Why do commercial companies avoid Government contracting?

» Policy Inconsistencies?
  › Government goal to bring in more commercial companies to leverage their technology is counter to OSD policy on CID and the demand for cost data

Intellectual Property

› DoD is still asking for too many rights to use IP
› Tension between government and private interests.
  › The Government strives for competition in procurement.
    ▪ Ability to disclose technology of an existing prime contractor to competitors in a follow-on procurement.
    › This creates an obvious tension between the private and public interests, since the private entity has invested and believes it is entitled to use its innovations to block its competitors.
    › Therefore, the Government is not actually achieving the savings goals or improving access to better technology.
› Is the traditional model broke?
  › Just because the government pays for some development, it takes Government Purpose Rights or Unlimited Rights.
  › Seeing solicitations that request priced options for unlimited rights and make this offering part of the evaluation criteria
Contractor Business Systems

» Why are Business Systems important?
  › The first line of defense against waste, fraud, and abuse
  › Weak internal control systems increase the risk of unallowable and unreasonable costs on Government Contracts

» Six contractor business systems are critical to ensure success.
  › Audited by DCAA:
    › Accounting
    › Estimating
    › Material Mgmt and Accounting Systems (MMAS)
  › The other three are subject to “review” by DCMA
    › Purchasing
    › Government Property
    › Earned Value

Contractor Business Systems

» Approval of these systems has broad value
  › Winning and executing contracts

» Alternatively, compliance issues can be costly
  › Contracting officers may withhold payments until the deficiencies are remedied to the government's satisfaction.
  › Two or more are capped at 10% of contract payments

» Approaches to obtain and maintain approved systems
  › Sufficient policies and procedures
  › Audit guidance
  › Hire and maintain competent staff
  › Conduct self-assessments –
  › Listen to and consider DCAA/DCMA Feedback
Constructive Changes

» Have you seen these changes?
  › 1. A change to a contract resulting from conduct by the buyer that has the effect of requiring the contractor to perform work different from that presented in the contract.
  › 2. An act or failure to act by the buyer or the engineer that is not a directed change, but which has the effect of requiring the contractor to accomplish work different from that required by the existing contract documents.

» Government Contract professionals provide value add to companies in assisting in identifying and pursuing changes in support of program execution and margins.
  › Duty to Notify
  › A Request for Equitable Adjustment (REA) for a constructive change is based on actual impact to modify the price and schedule to compensate for the impact
View from the Top: Executive Issues in Contract Administration

Jack Pellegrino, CPCM, NCMA Fellow
Director, Purchasing & Contracting
County of San Diego

November 2017

Discussion Topics
Are You a Wise Buyer?

• Requirements Definition
• Market Research
• Proper Solicitation techniques
• Fair and Reasonable Pricing
• Wise Buying Decisions
Effective Contracting

Wise Buyers start with 4 essential steps:

1. Developing and defining clear requirements …
   • What is needed; By When; What does successful performance/completion look like?
2. Market Research & Procurement Planning …
   • What types of products & services available?
   • Marketplace dynamics – # of suppliers; capability, availability; which meet your needs
3. Implement best procurement approach for marketplace conditions
4. Use Comparative Analysis to make a fair & reasonable and Best Value determinations

Procurement Planning Key Questions & Requirements Definition

• Change existing contract; Re-compete; or New procurement?
• Customer’s needs & timing
• Contractor’s performance; capability; and availability
• Current marketplace conditions
Questions To Ask for Each Procurement Action

• Are products or services common or unique?
• What Products or Service Providers are available in marketplace?
• Are there new technologies; products; or services available in marketplace that should be considered?
• Are your procurement actions reaching appropriate number of potential providers?
• Where does your current provider stand in the marketplace?
Market Research

- Process of linking information about Contractors, Customers, and End Users
- Use current market information to make procurement decisions for Customer’s best interests
- Market Research considerations should be done on every new procurement
  - Hosting Outreach Events; Attending Product Expos; RFIs

Ensures integrity of the procurement process and best results for your Customers

Marketplace Structures

<table>
<thead>
<tr>
<th>Nature of Products or Services</th>
<th>Pure (Perfect) Competition</th>
<th>Monopolistic Competition</th>
<th>Oligopoly</th>
<th>Monopoly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of Products or Services</td>
<td>Same or very similar; function/result</td>
<td>Somewhat similar but differences</td>
<td>Differentiated products or services</td>
<td>Single product or service; only one provider</td>
</tr>
<tr>
<td># of Providers, Buyers &amp; Choices</td>
<td>Many</td>
<td>Several</td>
<td>Few</td>
<td>One</td>
</tr>
<tr>
<td>Type of Competition</td>
<td>Price</td>
<td>Primarily Price</td>
<td>Other Factors &amp; Price; negotiations</td>
<td>Limited Negotiations</td>
</tr>
<tr>
<td>Buyer Market Characteristics</td>
<td>Buyers have significant pricing leverage</td>
<td>Buyers have choices - substitutes</td>
<td>Buyers consider trade-off differences vs. price &amp; negotiate</td>
<td>Buyer has little leverage</td>
</tr>
<tr>
<td>Examples</td>
<td>Common Products/Services</td>
<td>Name Brands – distributor discounts</td>
<td>Customized product or service</td>
<td>Microsoft; Apple</td>
</tr>
</tbody>
</table>
Proper Solicitation Techniques

- Two major considerations for solicitation type:
  - Requirements
  - Current Market
- Competition is ALWAYS best
- Contract Type & Reimbursement terms are dependent on your requirements; and amount of performance risk you are willing to accept
- Use RFIs and Pre-solicitation conferences to seek feedback from marketplace on new products/services and new solutions or terms

Contract Risk Continuum

SELLER | BUYER
---|---
Well Defined | Vague
Scope/Requirements

Contract Type

- Fixed Price
- FP Level of Effort
- T&M
- Cost Reimbursement

Contract Clauses
Proper Solicitation Techniques

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  – Requirements
  – Current Market
• Competition is ALWAYS best
• Contract Type & Reimbursement terms are dependent on your requirements; and amount of performance risk you are willing to accept
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Fair and Reasonable Pricing

Definition

• Fair and Reasonable Price - price that a prudent businessperson would pay for a good/service under competitive market conditions; with a reasonable knowledge of the marketplace and a definitive Spec or SOW that describes what the buyer wishes to buy; and consequently what the contractor is interesting in selling
• Does not mean necessarily the lowest price obtainable anywhere
• Pricing appropriately reflects risk of performance & harnesses profit motive to incentivize cost control and performance, while efficiently meeting needs
Fair & Reasonableness Determination

- Price and/or Cost Analysis required on EVERY procurement to determine Fair & Reasonableness (F&R)
  - FAR 15.404-1(a)(1)
  - County of San Diego Board Policy A-87 Competition
- Each procurement requires some level of review
- Analysis need not be overly complex
- Use current knowledge and reasonable judgements
- Document analysis & conclusions
- Type of procurement and market considerations will establish appropriate evaluation technique
- Competitive procurements easiest to evaluate
- Market conditions may require additional evaluation

Definitions

Price and Cost Analysis

- **Price** - means total Cost plus any Fee/Profit
- **Price analysis** - refers to the process of examining and evaluating proposed price without evaluating its separate cost elements and proposed Fee/Profit
- **Cost analysis** - is systematic review and analysis of individual elements of costs; judgmental factors applied to determine costs; and amount of Fee/Profit applied. Costs should accurately reflect what contract performance *should* cost, given reasonable contractor economy and efficiency
1st - Price Analysis Based on Competition:
- Competitive solicited bids/proposals prices, in a open and non-restricted market condition
  - Can conclude Price is F&R based upon market pricing
  - Even if only one offer is received, provided Offeror was not aware that only one response was expected
    - Requires your current knowledge of market conditions
- Price Analysis is sufficient for F&R when *multiple* responsive bids/proposals are received

2nd - Cost Analysis
- Review elements of costs that comprise price
  - Proposed effort (labor categories, rates, and other direct costs) are they reflective contract scope and expectations of SOW/Spec performance
  - Indirect costs are properly allocated to this contract
  - Does not include “unallowable” or contingency costs
- Bids/Proposal responses that can not be reasonably compared on a Price Analysis
  - Can be reviewed at cost summary level (e.g. Labor; Materials; Travel; Other Direct Costs; Profit)
Order of Preference
Price OR Cost Analysis (cont.)

3rd - **Historical Competitive Pricing** - comparison of current pricing to prior historical competitive pricing previously determined to be F&R

4th - **Independent Government Estimates (IGEs)** - comparison to independent estimate of costs of performance estimated by qualified and knowledgeable Department staff
  - Department IGE provided to DPC for file documentation
  - *Using Seller’s pricing is NOT* an independent estimate

5th - **Parametric models** – cost estimates generated comparative pricing tools

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Comparative Analysis
Definition

The item-by-item comparison of two or more comparable alternatives, processes, products, qualifications, sets of data, systems, or the like.

Read more:
[http://www.businessdictionary.com/definition/comparative-analysis.html](http://www.businessdictionary.com/definition/comparative-analysis.html)
Comparative Analysis Often Called “Best Value”

- Considerations may be qualitative and quantitative factors
- Requirements can be pre-established in solicitations (RFQ or RFP)
- Analysis can still be used with loosely defined solicitations: Statement of Objectives (SOO); Performance Work Statement (PWS)
- Add narrative & charts to document choices; analysis; tradeoffs; and decisions

Comparative Analysis Often Called “Best Value” (cont.)

- Charts can clearly highlight key features; differences; advantages; and tradeoffs
- Use for simple and complex tradeoffs
- Add narrative to document choices; analysis; tradeoffs; and decisions

See Next Page Examples
Comparative Analysis Evaluation Methods

- Start with clearly defined requirements in solicitation
  - Mandatory; Desired; Optional
- Establish factor weighting
  - Descending; equal; or assigned points
- Establish a Rubric scale for rating
  - Adjective or Point Scale (100 points common)

Sample - Comparison Chart
Price with Other Factors
(Required/Desired/Additional Features)

<table>
<thead>
<tr>
<th>Features</th>
<th>Product 1</th>
<th>Product 2</th>
<th>Product 3</th>
<th>Product 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$$$$</td>
</tr>
<tr>
<td>Required Features (R)</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>R Feature 1</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>R Feature 2</td>
<td>✔</td>
<td>-</td>
<td>-</td>
<td>✔</td>
</tr>
<tr>
<td>Desired Feature (D)</td>
<td>-</td>
<td>✔</td>
<td>-</td>
<td>✔</td>
</tr>
<tr>
<td>D Feature 1</td>
<td>-</td>
<td>✔</td>
<td>-</td>
<td>✔</td>
</tr>
<tr>
<td>D Feature 2</td>
<td>✔</td>
<td>✔</td>
<td>-</td>
<td>✔</td>
</tr>
<tr>
<td>Additional Features Offered (AF)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Warranty</td>
<td>None</td>
<td>90 days</td>
<td>1 Year</td>
<td>5 years</td>
</tr>
<tr>
<td>Phone Support</td>
<td>7 – 24</td>
<td>None</td>
<td>None</td>
<td>M-F 8 to 5</td>
</tr>
</tbody>
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Sample - Comparison Chart
Price with Other Factors
(Best Value Determination using adjective ratings)

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<td></td>
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<td></td>
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<tr>
<td>R Feature 1</td>
<td>Met</td>
<td>Met</td>
<td>Met</td>
<td>Met</td>
</tr>
<tr>
<td>R Feature 2</td>
<td>Met</td>
<td>Met</td>
<td>Deficiency</td>
<td>Exceeded</td>
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<tr>
<td>Desired Feature (D)</td>
<td></td>
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<td>Met</td>
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<td>Exceeded</td>
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Procurement’s Mission
Customer/Clients want Procurement to:
- Acquire the Right quality goods and services ...
- At the Right time (when they need it)
- At the Right Price (Fair & Reasonable)

While meeting all procurement & legal regulations
Applying Knowledge, Expertise, & Tools
Some Helpful Tools
Rate Comparisons

• Use the following tools to consider comparable prices and rates
  – https://smartprocure.us/
  – https://calc.gsa.gov/
  – https://www.bls.gov/bls/blswage.htm
  – http://www.salary.com/