

The ABCs of the UCF: A Look at Sections L and M

J. Leotta
June 2016

Outline

- ▶ Background
- ▶ Contract Award Process
- ▶ Federal Acquisition Oversight
- ▶ Uniform Contract Format (UCF)
- ▶ Cost Analyst's Role
 - Section L
 - Section M
- ▶ Conclusion

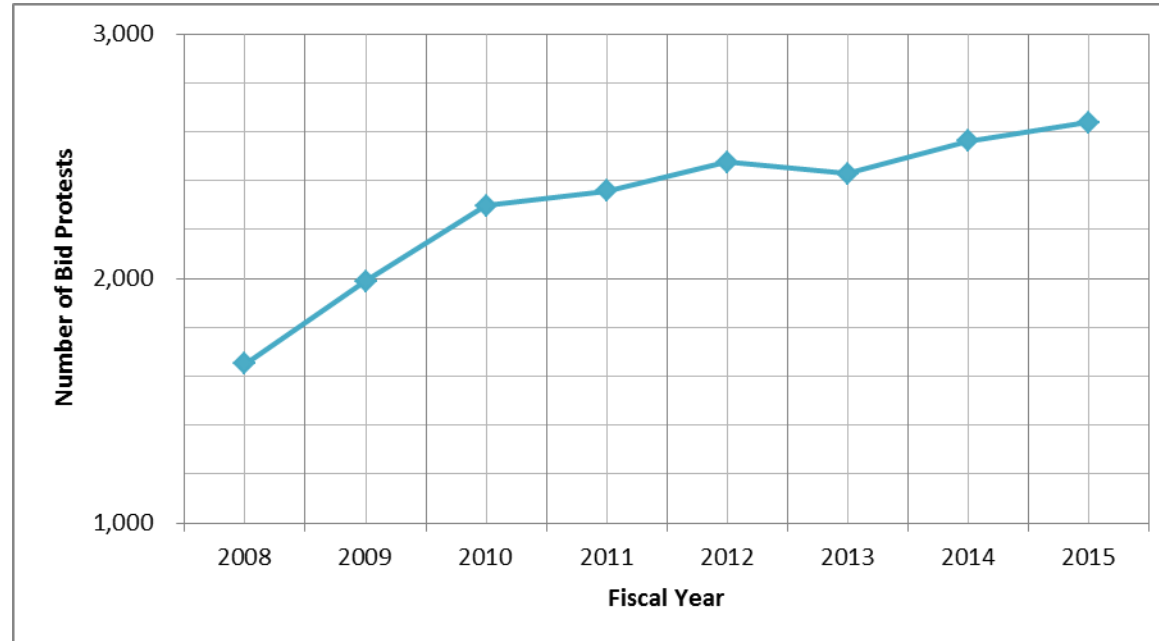


Background

- ▶ The federal acquisition process has many rules and regulations to ensure fairness and traceability
- ▶ When a contractor believes that the contract award process has been unfair, they can enact a bid protest
- ▶ Bid protests typically occur based on
 - The terms of a solicitation
 - Cancellation of a solicitation
 - Award or proposed award of a contract

Background

Bid Protests



- ▶ The total number of bid protests heard by GAO increased from 1,652 in FY2008 to 2,639 in FY2015
 - Increase of 60% over seven years
- ▶ GAO upheld 12% of the protests in FY2015. The most prevalent reasons for sustaining protests were:
 - Unreasonable cost or price evaluation
 - Unreasonable past performance evaluation
 - Failure to follow evaluation criteria
 - Inadequate documentation of the record
 - Unreasonable technical evaluation

Contract Award Process

Key Roles

- A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

Contracting Officer (CO)



- Assists in planning for and acquiring the goods and services needed so that agencies can accomplish their mission

Contract Specialist



- Responsible for ensuring that there are funds available for the contract

Budget Analyst



- The government customer who needs to acquire/contract for goods or services

Program Office (PO)



- Develops the Independent Government Cost Estimate (IGCE), writes cost criteria for the solicitation, leads or advises the cost or price evaluation of the contract.

Cost/Price Analyst



- Serves as the chief advisor for other government personnel in the contract award process

Office of General Council (OGC)



- A business or corporation under contract to provide materials or labor to another entity

Contractors



Contract Award Process (cont.)



- ▶ A simple overview of the contract award process
 - This is focused on FAR section 15: contracting by negotiation

Federal Acquisition Oversight

- ▶ All federal acquisition is governed by the Federal Acquisition Regulation (FAR)
 - Why a FAR?: for the codification and publication of uniform policies and procedures for acquisition for all executive agencies
 - Purpose: to deliver on a timely basis the best value, product, or service to the customer while maintaining the public's trust and fulfilling public policy objectives
- ▶ Typically, there is also agency specific policy and guidance to supplement the FAR

Federal Acquisition Oversight

FAR Definitions

- ▶ **Cost Analysis**
 - **Definition**: review and evaluation of any separate cost elements and profit or fee in an offeror's or contractor's proposal, as needed to determine a fair and reasonable price or to determine cost realism
 - **When Used**: to evaluate the reasonableness of individual cost elements when certified cost or pricing data are required
- ▶ **Price Analysis**
 - **Definition**: the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit
 - **When Used**: For commercial and non-commercial items. Shall also be used when certified cost or pricing data are not required in order to verify that the overall price offered is fair and reasonable

FAR 15.404, Proposal Analysis Techniques

Federal Acquisition Oversight

Realism and Reasonableness

► Cost Realism

- **Definition:** The process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements:
 - Are realistic for the work performed
 - Reflect a clear understanding of the requirements, and
 - Are consistent with the unique methods of performance and materials described in the technical proposal

► Reasonableness

- **Definition:** A cost is reasonable if it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. This can depend on a variety of circumstances:
 - Type of Contract
 - Generally accepted business practices, arm's length bargaining, and Federal and State laws and regulations
 - Contractor's responsibilities to the Government, other customers, etc.
 - Any significant deviations from the contractor's established practices

Federal Acquisition Oversight

Additional Guidance

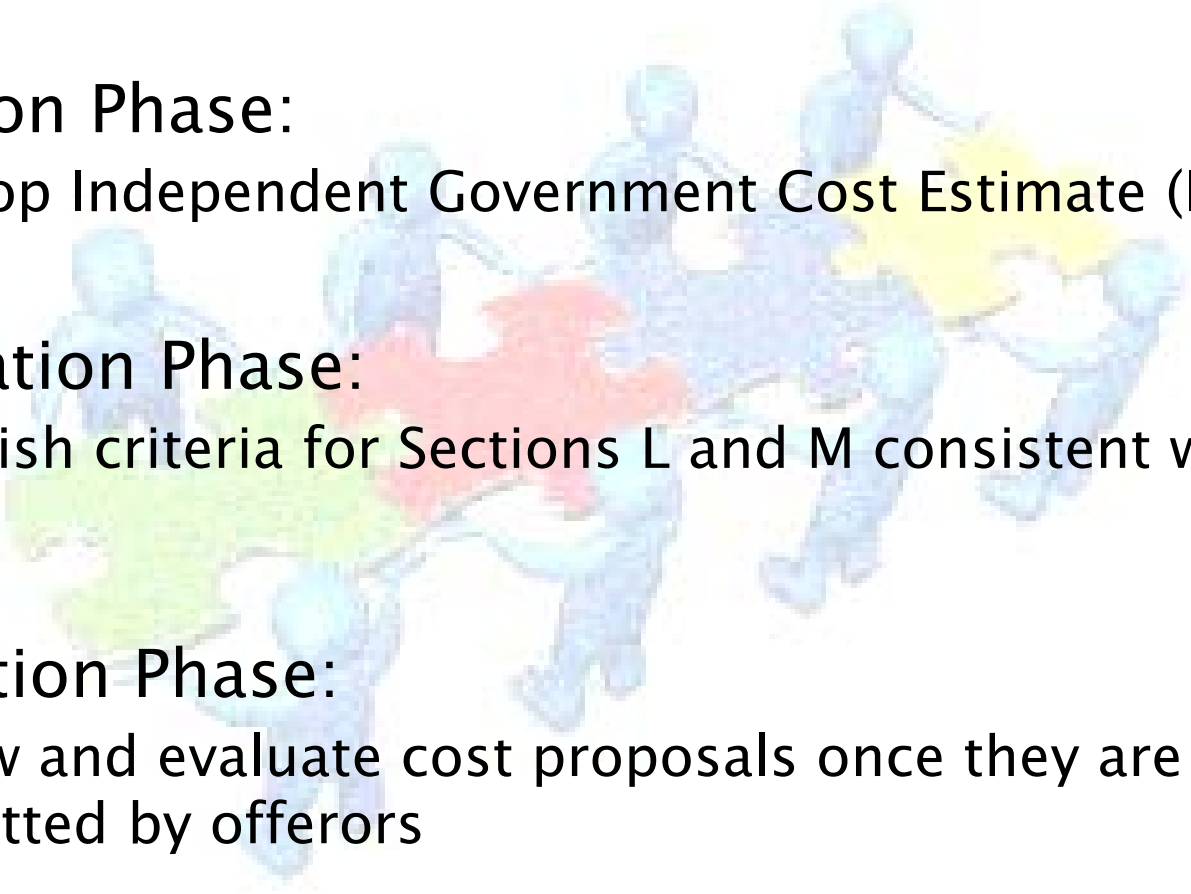


Volume 1: Price Analysis	<ul style="list-style-type: none">• Introduction to contract pricing• Conduct market research for price analysis• Maximize price competition• etc.
Volume 2: Quantitative Techniques	<ul style="list-style-type: none">• Using price index numbers• Using cost-volume-profit analysis• Using statistical analysis• etc.
Volume 3: Cost Analysis	<ul style="list-style-type: none">• Defining costs and cost analysis• Obtaining offeror information for cost analysis• Identifying considerations affecting cost allowability• etc.
Volume 4: Advanced Issues in Contract Pricing	<ul style="list-style-type: none">• Establishing and monitoring contract type• Evaluating indirect costs• Reviewing the contractor's pricing and accounting practices• etc.
Volume 5: Federal Contract Negotiation Techniques	<ul style="list-style-type: none">• Introduction to negotiations• Exchanges prior to negotiation• Negotiation preparation• etc.

Uniform Contract Format (UCF)

Section	Description
A	Solicitation/Contract form
B	Supplies or services and prices
C	Description/Specification
D	Packaging and Marking
E	Inspection and Acceptance
F	Deliveries or Performance
G	Contract Administration Data
H	Special Contract Requirements
I	Contract Clauses
J	Lists of documents, exhibits, and other attachments
K	Representations, certifications, and other statements of bidders
L	Instructions, conditions, and notices to bidders
M	Evaluation factors for award

Cost Analyst's Role

- 
- ▶ **Initiation Phase:**
 - Develop Independent Government Cost Estimate (IGCE)
 - ▶ **Solicitation Phase:**
 - Establish criteria for Sections L and M consistent with the FAR
 - ▶ **Evaluation Phase:**
 - Review and evaluate cost proposals once they are submitted by offerors

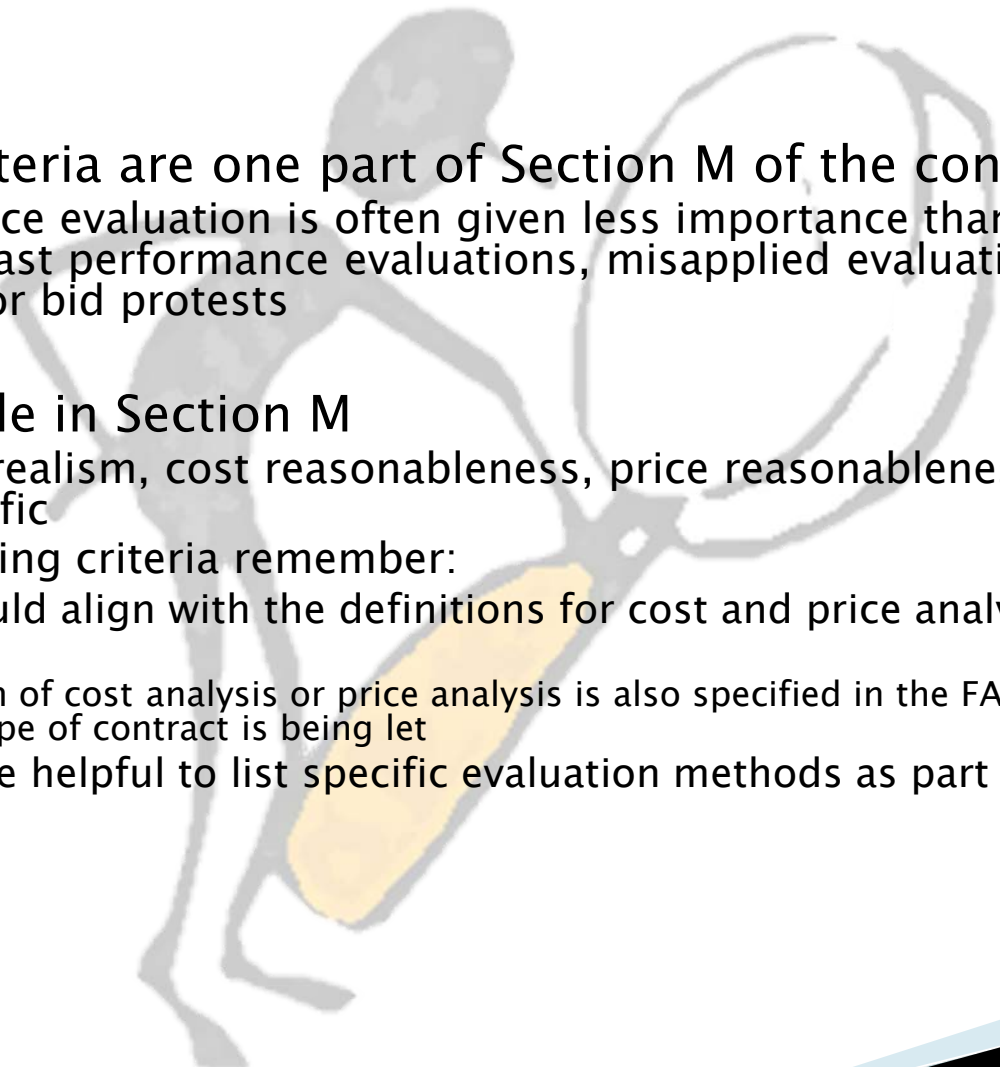
Cost Analyst's Role

Section L: Instructions to Offerors

- ▶ Cost Instructions are one part of Section L of the contract.
 - If a cost analyst will be part of the evaluation phase of the acquisition process, they should also write a set of cost instructions for Section L that:
 - Ensure all the information needed to perform the evaluation is requested from offerors so that the evaluation factors are properly applied during contract award
- ▶ What to include in Section L
 - Contract Proposal Pricing Sheet
 - Overview
 - Cost Summary
 - Basis of Estimate (labor hour, material dollars, and other direct costs (ODC) substantiation as required by the procurement)
 - Rates and Factors
 - Details regarding Government Furnished Equipment, Facilities, and Information
- ▶ Tailor Section L based on the type of acquisition
 - For example, a complex weapon system will require more detailed instructions than a services contract

Cost Analyst's Role

Section M: Evaluation Factors for Award

- 
- ▶ Cost/price criteria are one part of Section M of the contract
 - While cost/price evaluation is often given less importance than the technical or past performance evaluations, misapplied evaluations provide opportunity for bid protests
 - ▶ What to include in Section M
 - Criteria (cost realism, cost reasonableness, price reasonableness) will be contract specific
 - When developing criteria remember:
 - Criteria should align with the definitions for cost and price analysis included in the FAR
 - Application of cost analysis or price analysis is also specified in the FAR and depends on what type of contract is being let
 - It can also be helpful to list specific evaluation methods as part of Section M

Conclusion

- ▶ A thorough understanding the FAR, agency specific, and contract specific requirements and guidance are key to a successful acquisition
- ▶ All parties involved in the acquisition process need to be aware of their role and help ensure that there are open lines of communication
- ▶ Early involvement of evaluators could help decrease opportunity for bid protests and allow the contract award process to run more smoothly

Back-up



Federal Acquisition Oversight

Cost and Price Reviews

Cost Analysis	Price Analysis
Verification of cost or pricing data and evaluation of cost elements. This includes evaluating (a) the necessity for and reasonableness of proposed costs including allowances for contingencies, (b) projection of the offerors' cost trends on the basis of current and historical cost or pricing data, (c) reasonableness and estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships, and (d) the application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors	Preferred: Comparison of the proposed prices to historical prices paid (with no significant time lapse adjusted for differing terms, conditions, quantities, and market and economic conditions), whether by the government or other than the government, for the same or similar items.
Evaluating the effect of the offeror's current practices on future costs	Preferred: Comparison of proposed prices received in response to solicitation



[More](#)

[Return](#)

Federal Acquisition Oversight

Cost and Price Reviews (cont.)

Cost Analysis	Price Analysis
Comparison of costs proposed by the offeror for individual cost elements with (a) actual costs previously incurred by the same offeror, (b) previous cost estimates from the offeror or from other offerors for the same or similar items, (c) other cost estimates received in response to the government's request, and (d) IGCE created by technical personnel, and forecasts of planned expenditures	Use of parametric estimating methods to highlight significant inconsistencies that warrant additional pricing inquiry
Analysis of the results of any make-or-buy program reviews in evaluating subcontractor costs	Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements
	Comparison of proposed prices with IGCEs
	Comparison of proposed prices with prices obtained through market research for the same or similar items
	Analysis of data other than certified pricing data provided by the offeror