

NEWSLETTER

December 2023



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TIP OF THE MONTH

What is “Unbalanced Pricing” in Federal Contracting?

Imagine that the federal government issues a solicitation seeking certain services for a one-year base period and up to four option years, for a total of five years. The solicitation states that pricing will be evaluated on a firm, fixed, lump sum basis across all five years.

Two offerors submit proposals. The first, Offeror A, proposes a price of \$2 million in the base year and \$2 million in each option year, for a total of \$10 million. The second, Offeror B, proposes a price of \$7 million in the first year and \$500,000 in each option year, for a total of \$9 million. Which offeror presents the best value to the government?

At first blush, the answer is simple: Offeror B, whose total proposed price is \$1 million lower. However, Offeror B has “frontloaded” their pricing, proposing an overstated rate for the base year and understated rates for the option years. Options, of course, are optional – the government need not award option years. Should the government overpay Offeror B in Year 1 to obtain the possibility of underpaying in Years 2 through 5?

The Federal Acquisition Regulation has a name for pricing proposed by Offeror B: “unbalanced.” [FAR 15.404-1\(g\)](#) says that unbalanced pricing “exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated.”

When an offeror’s pricing is unbalanced, the government is not required to reject the offeror’s proposal but must consider “the risks to the Government associated with the unbalanced pricing” and “whether award of the contract will result in paying unreasonably high prices for contract performance.” If the government believes that the unbalanced pricing is too risky, the government may reject the proposal.

In our hypothetical example, the agency might accept Offeror B's unbalanced offer in hopes of obtaining a lower total price, or it might reject the offer because the agency is essentially guaranteed to overpay in the first year while the cost savings in the option years might never materialize. In other words, Offeror B's pricing strategy does not automatically render its proposal unacceptable; however, Offeror B runs the risk that the government will decide that its unbalanced pricing does not represent the best value to the government.

It's important to note that while frontloaded pricing like that proposed by Offeror B is a common circumstance in which offerors may propose unbalanced pricing, unbalanced pricing can also occur in other situations. In fact, FAR 15.404-1(g) instructs agencies to analyze "all offers with separately priced line items or subline items" for the potential of unbalanced pricing.

As a contractor, it can be tempting to submit an offer like that proposed by Offeror B. After all, why not take the "sure thing" of an overpayment in the base year and worry about the option years later? But while unbalanced pricing can be a viable strategy in the right circumstances, offerors must tread carefully because the FAR directs agencies to identify unbalanced pricing and assess the risks of accepting a materially unbalanced proposal.

NICC APEX ACCELERATOR NEWS YOU CAN USE

SBA Office of Inspector General Sounds Alarm on Self-Certified SDBs

As the government's goal for awarding contracts to Small Disadvantaged Businesses increases to 13% in the current fiscal year, the SBA's Office of Inspector General has raised questions about whether the government is correctly claiming credit for self-certified SDBs. The SBA's OIG calls SDB self-certification "inherently risky" and suggests that some firms certifying as SDB in SAM may not meet the eligibility criteria. Read more about [the SBA OIG's concerns here](#).

Your SAM certifications are very important, but you don't have to go through the SAM registration or re-registration process alone! Your APEX Accelerator can help you determine whether you qualify to self-certify as an SDB and how to best complete other certifications in your SAM profile. Contact your APEX Accelerator counselor to arrange an appointment.

APEX ACCELERATOR EVENTS

Project Spectrum: Your Cybersecurity Journey

Date: December 12, 2023

Time: 8:00 AM PST – 9:00 AM PST, 10:00 AM CT – 11:00 AM CT

Format: Online

[Click here to register](#)

Learn about the state-of-the-art cybersecurity tools and training available at no charge to help your company improve your overall cyber hygiene and meet the requirements for government contracts, including DoD requirements. Project Spectrum is a DoD-supported initiative through the Office of Small Business Programs that offers cybersecurity related products and services at no cost.

Topics include:

- Current Cyber Threat Landscape
- Why Small Business are Lucrative Targets
- Government Guidance, Mandates, and Requirements (NIST, CMMC, DFARS, etc)
- Project Spectrum Cyber Advisory Services

- Project Spectrum Training Courses
- Project Spectrum Proprietary Cybersecurity Tool Development



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Free Registration Link: <https://register.gotowebinar.com/register/9113326750033399129>

Webinar Co-Sponsors include:

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Arkansas APEX Accelerator

Contract Opportunities Center APEX Accelerator

Del Mar College APEX Accelerator

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Native American Development Corporation APEX Accelerator

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Northwest Louisiana APEX Accelerator

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Oklahoma APEX Accelerator

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GOVOLOGY WEBINARS

Please use the new code **20NICC23** when registering for Govology webinars.



An Introduction to Winning Business in the Government Marketplace

Date: December 5, 2023

Time: 1:00 p.m. EST

Presenter: Carroll Bernard, Govology

[Click Here to Learn More](#)



2023 Government Contracting Year in Review

Date: December 7, 2023

Time: 1:00 p.m. EST

Presenter: Nicole Pottroff and Shane McCall, Koprince McCall Pottroff LLC

[Click Here to Learn More](#)

RECOMMENDED READINGS

DOL Increases Hourly Minimum Wage to \$17.20 for Federal Contractors

Beginning January 1, 2024, the Department of Labor is raising the minimum wage for covered service and construction workers performing work on federal projects. Read more about the [increase and how it could impact your business here](#).

OHA: JV Violates Two-Year Rule, Loses Award

The SBA's so-called "two-year" rule for joint ventures says that the joint venture's members will be deemed affiliated if the joint venture bids on a contract more than two years after receiving its first award. While the rule is easy to circumvent by forming a new joint venture entity, a recent SBA Office of Hearings and Appeals case demonstrates that violating the rule can cost a joint venture a contract. Read more about [the case and the two-year rule here](#).

Ultima Services Corporation Files Reply Brief for Injunction Against 8(a) Contracts

The *Ultima* federal court case has already shaken up the 8(a) Program by preventing the SBA from applying a presumption of social disadvantage in evaluating applications. Now, the original *Ultima* plaintiff is back in court, asking the judge to expand the scope of the injunction against the SBA, including by outright prohibiting 8(a) contracts in certain industries. Read more about [the plaintiff's request here](#).

SPECIAL INTEREST

This section highlights items of special interest and importance to the Department of Defense Office of Small Business Programs (DOD OSBP). Please take a moment to visit the sites listed below for additional information. We also suggest that you read the latest edition of the [DOD's Small Business Digest](#) if you want to do business with the DOD.

Cybersecurity Maturity Model Certification (CMMC)/Cybersecurity Compliance Resources

[DOD CMMC Resource Page](#) – Resources to assist government contractors with understanding and complying with CMMC/cybersecurity requirements.

[Project Spectrum](#) – Project Spectrum is working with APEX Accelerators to assist small businesses in achieving compliance with CMMC/cybersecurity requirements.

Foreign Ownership, Control, and Influence (FOCI) Resources

[FOCI Frequently Asked Questions](#) – FOCI is a status or situation in which a contractor with access to classified information has some foreign investment or association with foreign interest. Learn more about the federal government's requirements relating to FOCI.

<https://business.defense.gov/> – The official website of DOD OSBP. It contains additional information, news, events, and other items for those interested in doing business (or currently engaged) with the DOD.

CMMC & FOCI News of Note

FAR Cyber Threat and Incident Reporting and Information Sharing Rule

The FAR Council has released two new proposed cybersecurity rules. (No, this isn't CMMC – these are separate rules!) One of these rules, if adopted as proposed, would require contractors to report cybersecurity incidents within eight hours. Read more about these [major new proposals here](#).

Fingers Crossed: DOD's CMMC Lead Anxious for November Release

The proposed CMMC rule is scheduled to be released in November for public comment. As the release day nears, CMMC leaders say that the new rule is critical to maintaining national security but that they wish to work with small businesses to reduce the burdens of the rule. To that end, DOD “ is also working on a pilot program to create an environment that small businesses could plug into that would bring them into compliance with CMMC.”

[Read the update here.](#)

The Corporate Transparency Act: A Primer for “Small” Businesses

The Corporate Transparency Act takes effect on January 1, 2024. Under the CTA, certain entities will be required to provide ownership information to the Financial Crimes Enforcement Network. The CTA is expected to enhance enforcement efforts in several areas, including FOCl. [Read more about the Corporate Transparency Act here.](#)

About Nebraska Indian Community College APEX Accelerator:

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(Coverage Area: Omaha Indian Reservation)

Address (Santee Campus):

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(Coverage Area: Santee Sioux Indian Reservation)

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