

A large-scale construction site under a cloudy sky. In the foreground, a concrete pump truck's long, articulated boom extends from the top right towards the center. The ground is a mix of dirt, gravel, and rebar structures. Several workers in orange safety vests are visible in the middle ground. In the background, there is a line of tall, thin trees and some white buildings. The overall scene is one of active construction.

**GEN 020**  
**Subcontracting**  
**Officer**  
**Technical**  
**Representative**  
**Training**

**JLab Procurement Department**

# SOTR Training Agenda

- Part 1- SOTR Program Overview
- Part 2- Standard of Conduct
- Part 3- Acquisition Planning
- Part 4- Formulating Technical Requirements
- Part 5- The Solicitation Process
- Part 6- Contract Management & Oversight
- Open Book Test-

# Part 1

# SOTR Overview

- ❑ SOTR's Top Priority
- ❑ Training Objectives
- ❑ Benefits of a Trained SOTR
- ❑ Prerequisites for SOTR Certification
- ❑ When is a Certified SOTR Required?
- ❑ SOTR Responsibilities
- ❑ The Acquisition Process
- ❑ Subcontracting Officer Role and Authority
- ❑ Primary Types of Subcontracts Used by JLab



# Make Safety Your Top Priority!

4

*"Jefferson Lab considers no activity to be so urgent or important that we will compromise our standards for environmental protection, safety or health."*

*Mont*



Hugh Montgomery

# Training Objectives

5



- Understand important ethical and legal issues governing acquisition of supplies and services
- Understand essential requirements for soliciting goods and services
- Understand the essential elements of contract administration, ensuring safety, quality, and timeliness

# Benefits of a Trained SOTR



6

- Safer work processes and environmental awareness
- Better planned and executed acquisitions
- Informed decision-making that enhances efficiency, saves dollars, and mitigates risks
- Better quality of product and services
- Enhanced relationships that serve the best interests of JLab, Government, and our business community
- Compliance with our DOE Contract

# Prerequisites for SOTR Certification

7



- SOTR's will be "Certified" after
  - ▣ Completing this SOTR training, and completion of..
    - GEN101 Standards of Conduct Training
    - GEN035 Suspect/Counterfeit Parts Awareness training
  - ▣ Passing a 20-question "open book" test
- Current SOTRs have a one year grace period to complete above training requirements
- A list of "Certified" SOTR's is maintained on Procurement Dept website

# When is a Certified SOTR Required?



8

- ❑ Construction, installation, or fabrication work on site
- ❑ Services performed at JLab with unmitigated Risk Code 2 or higher
- ❑ Procurements estimated  $> \$100K$  using JLab specifications
- ❑ When deemed necessary by the Subcontracting Officer (SO)

# The Acquisition Process

9

## PRE-SOLICITATION

### **Develop Technical Requirements**

- Coordinate with ESH&Q
- Obtain Vendor Information
- Develop Cost Estimate
- Issue Purchase Requisition

### **Develop Solicitation**

- Develop Approach
- Develop Source List
- Develop Specific Source Selection Plan

## SOLICITATION & RECEIPT OF PROPOSALS

### **Issue Solicitation**

- Perform QA Audits
- Conduct Discussions
- Request BAFO's
- Complete Final Evaluation
- Issue Selection Decision

### **Prepare Award**

- Audit Cost & Pricing Data
- Complete Proposal Analysis Report (PAR)
- Obtain Necessary Management & DOE Approvals

### **Award Subcontract**

- Debrief Offerors

## ADMINISTRATION

### **Manage Contractor Performance**

- Pre performance Briefing
- Issue Notice to Proceed
- Review & Approve Submittals
- Process Changes Through Procurement

### **Evaluate Vendor Claims**

- Inspect & Accept Work
- Complete Vendor Survey
- Administer Warranties

### **Subcontract Closeout**

- Complete pricing audit
- Approve final invoice
- Complete vendor survey

# General SOTR Responsibilities



10

- Oversees technical aspects of the acquisition process (See next slide)
  - ▣ Serves as SO's technical lead to process the solicitation
    - Generates all pre-solicitation technical and funding documents
    - Guides technical processes through contract award
  - ▣ Provides technical oversight of the subcontract
    - Reviews and approves submittals and contractor changes
    - Performs inspections and tests
    - Accepts final work products and services

# Subcontracting Officer (SO) Role and Authority

11

- JLab's business point of contact
  - ▣ Leads solicitation process and vendor negotiations
    - Issues notice of contract award
  - ▣ Point of contact for contract business issues and changes
    - Directs and negotiates contract changes
    - Directs and notifies contractor to mitigate and/or correct performance issues
    - Communicates acceptance to contractor
    - Enforces warranty and termination provisions

# Part 2 Ethics and Standard of Conduct



## Part 2 Applies to All JLab Staff

- JLab's Code of Ethics and Standard of Conduct
- Conflict of Interest
- Organizational Conflict of Interest
- Gratuities
- Kickbacks
- General Ethical Do's and Don'ts

# JLab Code of Ethics and Standard of Conduct

13

- Jefferson Lab's fundamental ethical principles:
  - ▣ Each of us is responsible for the propriety and consequences of our actions
  - ▣ Each of us must conduct all aspects of JLab business in an ethical and lawful manner
  - ▣ Each of us must hold ourselves to high standards of honesty, integrity and fairness in relationship to others

# Conflict of Interest (CI)



14

- A CI (or apparent CI) occurs when you have personal/business interests that may adversely affect JSA's/DOE's mission
  - ▣ **Avoid** situations that might involve a conflict of interest or even the appearance of a conflict of interest
  - ▣ **Disclose** any apparent/actual conflict of interest!
- JLab Policy (Admin Manual Section 208.03) covers full details and guidance on CI

# Conflict of Interest (CI) – Discussion over Lunch – I have a requisition for maintenance of the plants at JLAB!!

15



# Organizational Conflict of Interest (OCI)

16

- Be vigilant to avoid OCI situations

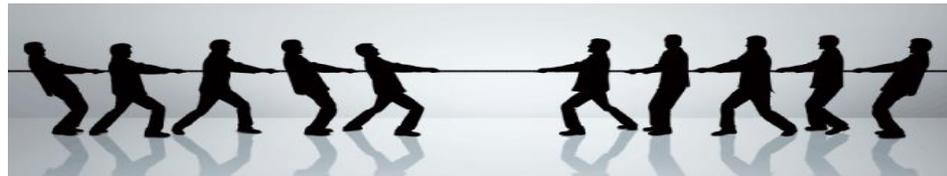
- OCI may exist when:

1. There are conflicting roles that might bias a contractor's judgment in relation to its work

Can occur when a fiduciary relationship exists between a company responsible for construction of a building & another inspecting the work

2. The contractor is given an unfair competitive advantage based on the performance of the contract

Can occur when contractors responsible for developing specifications are also bidding on the work package



# Gratuities



17

- A gift, meal, or entertainment offered to obtain a contract or favored treatment under a contract
  - ▣ Do not accept a gratuity from vendors or other interested parties
  - ▣ Do not offer a gratuity to a Government official
- See JLab Administration Manual Section 208.03 C6 for limitations and exclusions to Policy, e.g.,
  - ▣ Individual gift, meal etc. <\$25 is considered de minimis and acceptable under JLab policy (\$50 yearly aggregate)

# Kickbacks



18

- Federal Law (Anti-Kickback Act) prohibits persons from—
  1. Providing or attempting to provide or offering to provide any kickback;
  2. Soliciting, accepting, or attempting to accept any kickback; or
  3. Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor

# Gratuities/Kickbacks – Paid to Coalition Provisional Authorities (CPA) in Iraq by Phil Bloom



19



# General Ethical Do's and Don'ts

20

## Do's



- ✓ Report suspected violations of the Anti-Kickback Act
- ✓ Report all instances of Fraud, Waste, and/or Abuse
- ✓ Be vigilant to mitigate and/or avoid conflict of interest or OCI situations
- ✓ Be fair and impartial in all business transactions

## Don'ts



- ✗ Discuss offers of employment when involved in a procurement involving the contractor, or encourage contractor employees to join JLab
- ✗ Disclose “privileged” information
- ✗ Make commitments with regard to price, quantity, quality, or delivery without delegated authority from Procurement

# BREAK

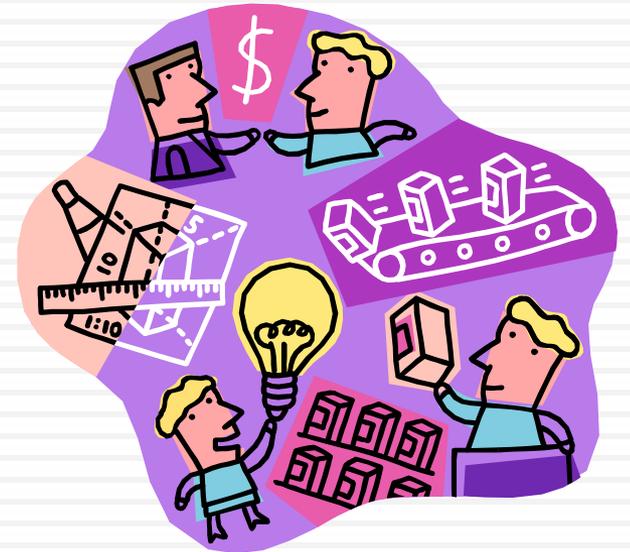
21



- PLEASE RETURN  
PROMPTLY

# Part 3 Acquisition Planning

- When You Need to Plan
- Consequences of Poor Planning
- Planning Considerations



# When is Planning Needed?



23

- Most non-standard requirements  $> \$100K$ , e.g.,
  - ▣ When using “Best Value” to select a contractor
  - ▣ When DOE approval is required or procurement will involve a foreign source
  - ▣ Time critical (e.g., items on the critical path)
- Formal Advanced Procurement Plan required for complex requirements  $> \$500K$
- When in doubt contact the Procurement Dept.

# Consequences of Poor Planning

24

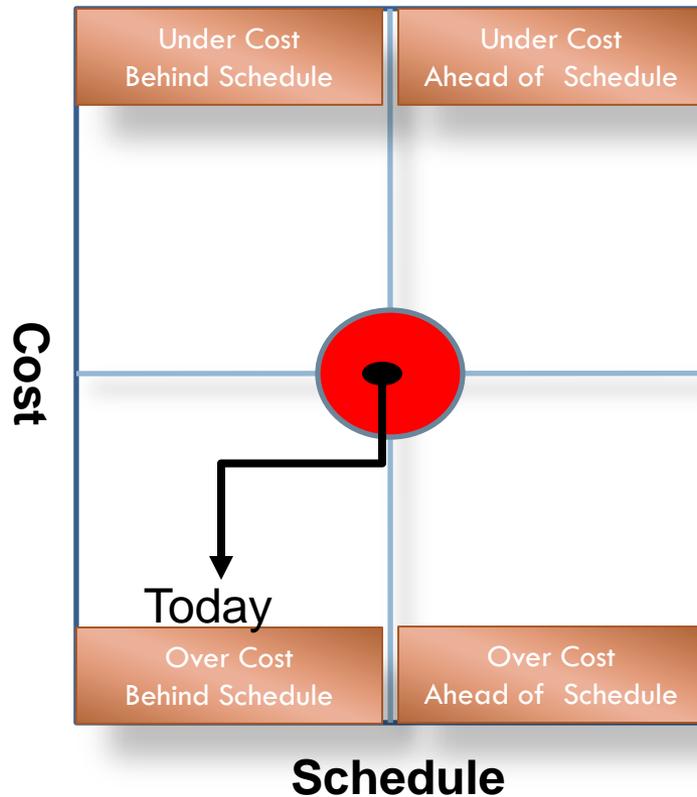
- Common failures resulting from poor (or no) planning:
  - ▣ Inferior quality or performance deficiencies
  - ▣ Rework
  - ▣ Late delivery and missed milestones
  - ▣ Higher prices
  - ▣ Missed opportunities
  - ▣ Increased claims from vendors
  - ▣ Negative impact on vendor relationships
  - ▣ Reduced participation of small business firms



# Personal Consequence of Poor Planning

25

## Cost/Schedule Performance Index



**Project Mgr. taking corrective action with the responsible Control Account Mgr. (CAM)**

# Types of [Sub]contracts Used by JLab



26

- Fixed Price (FP) places greatest risk on vendor
- Cost Type “Best Efforts”- No performance guarantee
- Time-and-materials uses burdened labor rates and actual material cost as basis of billing
- Labor hour for personal services
- Memorandum PO used with other DOE Labs- (Cash transfer not a contract)

# Planning Considerations- Technical Requirements

27

- Develop Understanding of Technical Requirements
  - ▣ Technical specifications must be complete prior to issuing the requirement for bid/proposals
    - Specifications involving work with unmitigated risk level  $\geq 2$ , or fabrication work requiring Class A or B welding or brazing requires QA review/concurrence to proceed
    - Statement of Work must be included with PR for risk level  $\geq 2$  for ESH&Q to properly evaluate
  - ▣ Contact Procurement if vendor information is needed to complete technical requirements
    - Vendor budgetary quotes or price estimates cannot be used as the basis for awarding contracts

# Planning Considerations- Develop Sources

28

- “Competition” requires at least two sources that can meet stated requirements
  - ▣ Actions <\$3K exempted
- Ideal number of sources depends on the nature of requirement.
- Develop sources through-
  - ▣ JLab Vendor Portal (new and past vendors)  
<https://misportal.jlab.org/bidderportal/>
  - ▣ Sources Sought or Expression of Interest notices
    - JLab Solicitation Board and/or Fed Biz Ops
    - Direct mailing to known industry contacts
    - Advertising in trade papers, magazines, etc.

# Planning Considerations- Vendor Information

29



- Involve industry to assist planning
  - Draft Request for Proposal (RFP) or Request for Information (RFI's) can help clarify/define requirements
    - Determine vendor capability and availability
    - Identify design flaws and inconsistencies
    - Responses can be used to support JLab cost estimate
  - Include as much information on project that is known
    - Draft specifications/statements of work
    - Planned quantities and delivery requirements
    - Released data must be available to all interested parties

# Planning Considerations- Small Business Sources

30

- Procurement may establish Small Business (SB) Set-aside when there are “adequate” number of SB to provide the requirement
- Mandatory Set-asides
  - Supplies and services <\$100K
  - Construction <\$3M
- Optional set-asides to Disabled Vets and Hub Zone
  - <\$5M Manufacturing, <\$3M Non-Manufacturing
    - Must have two available sources to set-aside

# Planning Considerations- Buy American



Made in USA

31

- Fed Law gives preference to Domestic End Products
  1. Article must be manufactured in the U.S., and
  2. Total cost of the domestic components must exceed 50% of the finished item
- Foreign purchase acceptable when:
  - Domestic item not available (requires Procurement/DOE Approval)
  - Domestic price is unreasonable
    - >6% if large business or >12% if small business
- SOTR's must be vigilant to ensure received materials comply with Buy American Act
  - Contact SO if received items are suspected of violating Buy American Act requirements

# Planning Considerations- Sole Source

32

- A sole source means no other source will reasonably satisfy the Lab's requirements, i.e.,
  - ▣ Unusual and compelling urgency
    - Urgency does not cover events that could have been avoided with proper planning
  - ▣ Unique attribute/capability
    - Price is not a basis for sole source (we can compete)
- We can sole source to a Small Business for <\$100K if no other small business firms are available

# Planning Considerations- Acquisition Cycle Time

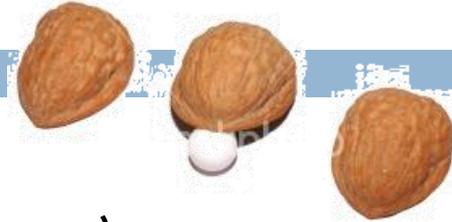
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- Allow reasonable time to process the solicitation
  - ▣ Processing time is based on complete documentation in Procurement, does not include RFI's, sources sought, etc.
  - ▣ Rule of Thumb processing times
    - Commercial Grade Requirements (off-the-shelf)
      - <\$3K            2-5 work days
      - <\$100K        5-15 work days
      - >\$100K        30-45 work days
    - Non-commercial (JLab-generated specifications)
      - <\$100K        30-90 work days
      - >\$100K        75-270 work days (based on selection method)
      - Allow a minimum of 90 days for Best Value selections



# Planning Considerations- Selection Strategy

34



- Three approaches to selecting a contractor
  1. Award based on lowest price (fastest to process)
  2. Award based on technical acceptability and price
    - Lowest priced offer meeting technical standards is selected
    - If low offer(s) determined not acceptable, must document what made low offer(s) technically unacceptable
  3. Award based on Best Value
    - Predominant method for large complex procurements
    - Provides more flexibility but requires the most time to process
    - Uses tradeoffs of technical factors and price to make selection decision
    - Biggest advantage: select the best value contractor (not necessarily the lowest price) to perform work
  
- Method of selection affects procurement time

# Planning Considerations- Source Selection Plan

35

- Source Selection Plan Required for Best Value Selections
- Establishes framework for the selection process
  - Establishes evaluation criteria and rating plan (next slide)
    - Criteria must be consistent with the RFP
  - Names Technical Evaluation Team (TET) members
    - Technical Chair coordinates activities of the technical team
      - Documents events and writes technical evaluation report
    - SO responsible for evaluation of the business proposal
    - Source Selection Official (SSO) responsible for overall selection
    - May include subject matter experts as advisors, e.g., External technical, QA, Legal, Safety, and others as appropriate

# Sample Best Value Rating Plans

36

- **LOCAR (Level of Confidence Assessment Rating)**- Evaluators assign a number between 0-1 to assess offeror's evaluated risk of success-failure  
0 = No chance of success;                      1 = 100% chance of success
- **Color/Adjectival Ratings**
  - 9 - 10 (BLUE – SUPERIOR)** Offeror's proposal demonstrates excellent understanding of requirements, and significantly exceeds JLab's mini capability and/or performance standards. Proposal has exceptional strengths that provide a high degree of benefit to JLab and/or considerably less than average risk.
  - 7 - 8 (GREEN - NOTABLY ABOVE AVERAGE)** Offeror's proposal demonstrates good understanding of requirements, and exceeds JLab's min capability and/or performance standards. Proposal has one or more strengths that provide some degree of benefit to JLab; and there are few, if any, minor deficiencies that result in less than average risk.
  - 5 - 6 (WHITE – AVERAGE)** Offeror's proposal demonstrates acceptable understanding of requirements, and meets JLab's min capability and/or performance standards. The proposal provides few or no strengths; and may have minor deficiencies that result in an average risk to satisfactory performance.
  - 3 - 4 (YELLOW – MARGINAL)** Offeror's proposal demonstrates shallow understanding of requirements, and only marginally meets capability and/or performance standards. Proposal has a number of minor deficiencies, or one or more major deficiencies that could impact offeror's capability to provide acceptable performance, and cause JLab to undertake considerable risk.
  - 0 - 2 (RED – POOR)** Offeror's proposal fails to meet capability and/or performance standards. Proposal has a gross deficiency (ies) or numerous other deficiencies which causes the Offeror's proposal to be non-compliant in one or more area(s) and could cause JLab to undertake unreasonably high risks.

# BREAK

37

- PLEASE RETURN  
PROMPTLY



## Part 4

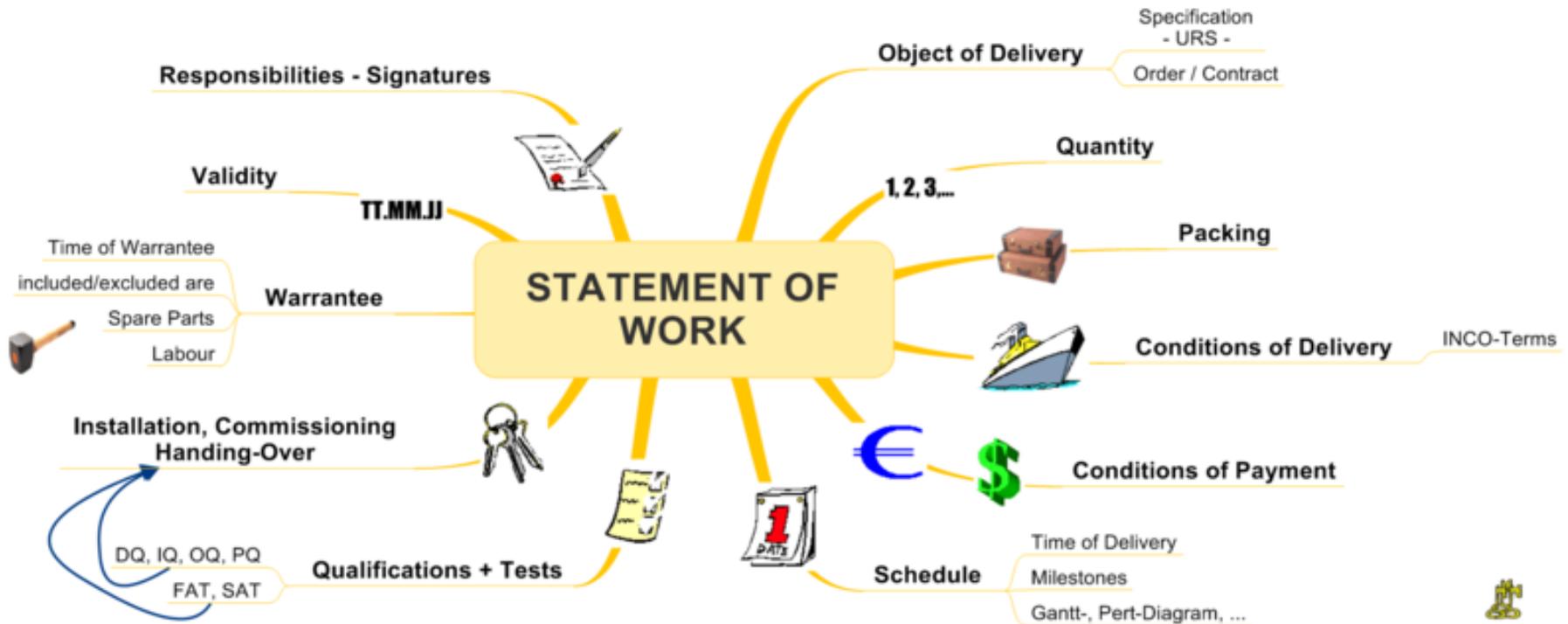
# Formulating Technical Requirements

- Creating the Statement of Work
- Type of Specification Affects Risk
- Specification Cost Drivers
- Determine Need for Warranty Protection
- Furnishing Government Equipment/Property
- Inspection and Acceptance Requirements
- Purchasing Quality Significant Items
- Applicable Industry Codes
- Important ESH&Q References



# Creating the Statement of Work (SOW)

39



- SOW is the foundation of the procurement action

# The Type of the Specification Affects Risk

40

High

Jlab Risk

Low

## ■ Design Specification-

- Prescriptive, has precise measurements and materials
  - JLab has liability for errors, omissions, and results
  - Contractor can recover damages for additional costs incurred

## ■ Performance Specification-

- Describes work in terms of final outcomes-output/function/operation
  - Allows contractor to exercise discretion to achieve results
  - We must be careful not to direct “means” and/or “methods”

## ■ Product description- (“brand name or equal”)

- “Or equal” must describe salient characteristics/features

# SOW Must Be Sufficiently Detailed

41

- Details must be sufficient to ensure a “meeting of the minds” of the contractual parties
  - Include sufficient narrative to describe the requirement
  - Include applicable industry standards to ensure quality
  - Include standards to measure progress and results
  - Include criteria to create measurable acceptance
  
- Lack of required details increases risk to JLab
  - ▣ May not be able to compete on a fixed price basis
  - ▣ Gives greater latitude to the contractor
    - Greater likelihood for a dispute
    - Greater potential for increased cost

# Specification Cost Drivers



42

- Minimize contractor's risk to reduce cost, i.e.,
  - ▣ Avoid unrealistic or over-restrictive requirements
  - ▣ Avoid/mitigate volatile market conditions
  - ▣ Structure requirements around industry practice
    - Specify "Commercial Grade" items when possible
    - Align funding availability with normal work processes
  - ▣ Limit use of liquidated damages to critical situations
  - ▣ Evaluate need for warranty based on risk/cost to Lab
  
- Specify minimum needs only
  - ▣ Unnecessary extras increase cost

# Determine Need for Warranty Protection

43

- Use of a JLab warranty provision is not mandatory
  - The SO and SOTR should jointly decide the appropriate use of warranty provisions
    - The decision should be based on the nature, use, complexity and cost of item vs. the risk to JLab/Government to self-insure
  - We use vendor warranty for commercial grade (off-the-shelf) items



# Furnishing Gov't Equip./Property (GFE/GFP)

44

- Determine if GFE/GFP Will Be Provided
  - ▣ Must be identified in the procurement documents
  - ▣ Must be coordinated with JLab's Property Office
  - ▣ Contractor may have responsibility for loss/damage
- Pro's
  - ▣ May lower cost and expedite schedule
  - ▣ JLab has greater control over quality
- Con's
  - ▣ JLab liable for defects and late delivery of GFE/GFP
  - ▣ Administrative burden to maintain accountability



# Inspection and Acceptance Requirements

45

- Standard inspection clause included in RFP and Subcontract Award language
  - ▣ Gives us right to inspect and test work in process
  - ▣ Add other inspection requirements as needed
- Include acceptance criteria in specification
  - ▣ Shall be conclusive, excepting latent defects, fraud, gross mistakes amounting to fraud
    - A latent defect is a fault in the goods that could not have been discovered by inspection before acceptance



# Purchasing Quality Significant Items (QSI)



46

- Coordinate QSI/high-risk requirements with ESH&Q prior to being issued to Procurement
  - ▣ Hazardous or environmentally harmful materials
  - ▣ Critical use items with potential for counterfeiting (S/CI)
  - ▣ Pressure systems and structural systems (involving Class A & B welding/brazing)
  - ▣ Custom electronic devices not listed by a nationally recognized testing lab
  - ▣ Work performed at the Jefferson Lab site



# Applicable Industry Codes & ESH&Q References



47

- Utilize applicable industry codes when specifying QSI related work
  - American Society of Mechanical Engineers (ASME)
    - ASME Section III for Pressure Vessels
    - ASME B31.3 for Pressure Vessel Piping
    - ASME B31.9 for Building Utilities
  - American Welding Society (AWS)
    - AWS D.1.1 & D.1.6 for Structural Welding
  - Important ESH&Q References from Jefferson Lab ES&H Manual
    - 3210 Hazard Identification and Characterization
    - 3410 Aspects of Procurements
    - 4200 Developing Job-Specific Training
    - 5200 Incident/Notable Event/Injury/Investigation and Causal Analysis
    - 6122 Welding, Cutting, Brazing, and Grinding
    - 6151 Pressure Systems
    - 6750 Environmentally Harmful Materials

# Applicable Construction Spec Requirements

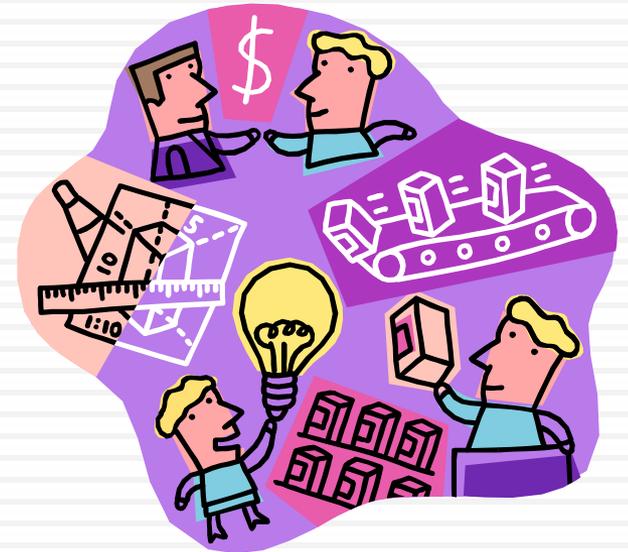
48

- Specifications for Construction and Architect/Engineering may require flow down language from the DOE General Design Manual for construction and Architect-Engineer Subcontracts
  - e.g., Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
  - e.g., Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled “General Design Criteria Manual.”
  
- SOTR shall notify SO if non-conforming material has been supplied.

## Part 5

# The Solicitation Process

- Forming the Request for Proposals
- Issuing the Request for Proposals
- Evaluating Proposals
- Awarding the [Sub]Contract



# Forming the Request for Proposals (RFP)



50

- The RFP establishes the basis for selection of a contractor and award of the subsequent subcontract
  - The SOTR provides all required technical and funding documentation to evaluate and award the subcontract
    - Establishes the criteria needed to select the contractor
      - Must be consistent with the Source Selection Plan
    - Establishes the technical requirements of the subcontract
    - Provides Purchase Requisition (PR) based on cost estimate
      - Utilize MAXIMO System to issue PR
      - May issue no fund PR if reasonable expectation funds will be available at the time of award
      - Issue Letter of Increase to add funds to PR before award

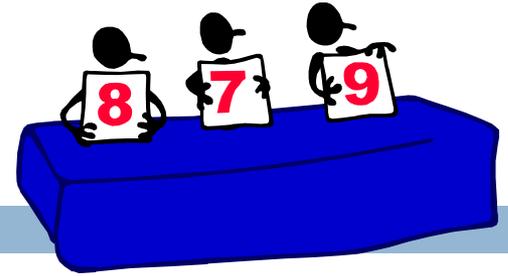
# Issuing the RFP



51

- Allow 30-90 days for submission of offers
  - ▣ Can require oral presentations to minimize paperwork
- Post solicitation on Jlab website and notify vendors
- Issue amendments to incorporate changes
- Proposals are distributed to Technical Evaluation Team for review and evaluation

# Evaluating Proposals- Low Price



52

- SO has lead responsibility for determining that proposals are complete
  - ▣ Requests clarifications from bidders to correct omissions/errors in business proposal
- SOTR is lead technical representative
  - ▣ Provides technical guidance/documentation to SO

# Evaluating Proposals- Best Value



53

- Proposals evaluated in accordance with SSP
  - ▣ Technical and business parts evaluated separately
    - We can request clarifications as needed to complete eval
  - ▣ Selection committee develops “Competitive Range” (CR)
  - ▣ Can award on initial offers or conduct “discussions”
    - Discussions requires BAFO from all offerors in CR
- SO has lead responsibility for the selection process
  - ▣ Leads negotiations and written/oral discussions
  - ▣ Evaluates terms & conditions, & prepares price analysis
- SOTR is lead technical representative
- Source Selection Official (SSO) makes source selection decision based on guidance from TET & SO

# Awarding the Contract



54

- Prior to award SO must satisfy that the:
  1. Offeror is “Responsive” to the solicitation,
  2. Offeror is “Responsible” to complete the work,
  3. The final price is “Fair and Reasonable”, and
  4. The award is consistent with the solicitation
- Successful Offeror notified of award decision
- Unsuccessful Offerors notified and given opportunity for debriefing
  - ▣ SO and SOTR provide post-award debriefing upon request
  - ▣ Advise strengths/weaknesses of offeror’s proposal only

# BREAK

55

- PLEASE RETURN  
PROMPTLY



# Part 6

## Contract Management & Oversight

- ❑ Starting Contractor Performance
- ❑ Contract Administration
- ❑ S/CI
- ❑ Making Changes to the Subcontract
- ❑ Constructive Changes
- ❑ Request for Equitable Adjustment
- ❑ Contractor Claims
- ❑ Final Acceptance
- ❑ Issues Affecting Final Acceptance
- ❑ Closing the Contract
- ❑ Enforcing the Warranty
- ❑ Terminating Contractor Performance
- ❑ Your Approach is Critical to Success

Common Environments for S/CI  
Protect Against Intrusion of S/CI  
Example of S/CI at JLab  
Corrective and Preventative Measures



# Starting Contractor Performance



57

- Conduct pre-performance “kick-off” meeting to identify and clarify requirements, i.e.,
  - Assign & communicate contract roles & responsibilities
  - Achieve a clear & mutual understanding of the contract requirements, e.g.,
    - Contractor access to the work site and training requirements
    - Communication process for submittals, status reports & payments
    - Permits, safety, and environmental issues requiring coordination
    - Inspection, testing and hold points
    - Delivery and milestone schedules
  - Other?...

# Contract Administration – 30 K Tank for CHL Area

58



# Contract Administration

59



- Ensure contract requirements are being met
  - ▣ Monitor performance, inspections, and witness tests
    - Document performance deficiencies & address with SO
    - Intervene if you observe unsafe work practices and stop work for imminent danger!
    - Be vigilant to avoid suspect/counterfeit items (S/CI)
    - Coordinate inspections by subject matter experts
    - Accept work and services consistent with subcontract
      - Approve and process invoices (including earned value)
  - ▣ SOTR's records and supporting documentation are important to ensure a satisfactory outcome
  
- For on-site work
  - ▣ Ensure subcontractor has appropriate signage, i.e., safety notices, DOL Notices including Wage Determinations (service and construction), contact information, and e-verify notices



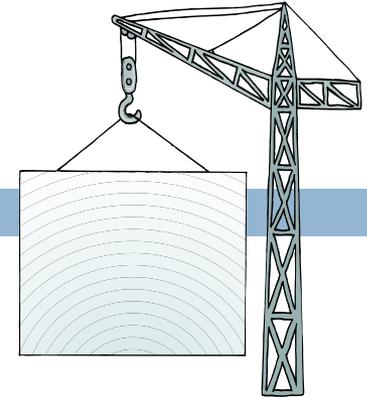
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Example of “suspect” part used by a JLab subcontractor

Lesson: ensure mfg.’s markings are clearly indicated

# Common Environments for S/CI

61



- Locations where S/CI may reside at the workplace-
  - ▣ Lifting & Rigging hardware & material
  - ▣ Valves and compressors
  - ▣ Temperature or high-pressure steam or fluid systems
  - ▣ Systems that support safe operation or shutdown of a facility or process
  - ▣ Electrical panels and circuits
  - ▣ Other? ...

# Protect Against Intrusion of S/CI

62

- Common types of S/CI found at DOE facilities
  - ▣ Fasteners (bolts and brackets)
  - ▣ Rigging components
  - ▣ Ratchet straps/tie down straps
  - ▣ Refurbished molded-case circuit breakers
  - ▣ Transformers, fuses, resistors, switch gear
  - ▣ Metal struts
  - ▣ Pipe components, fittings, flanges, valves
  - ▣ Material and testing certification



# Corrective and Preventative S/CI Measures

63

- Corrective and preventive actions are institutionalized within JLab
  - S/CI guidance and policy can be found at:
    - JLab's Assurance Program Description
    - JLab's QA Plan
    - S/CI Program Description
    - S/CI Policy
    - S/CI Identification Procedure
    - S/CI Documentation and Notification Procedure
    - S/CI Segregation and Disposal Procedure
    - There is the online training, including images, at [http://www.jlab.org/div\\_dept/train/online\\_courses/GEN305/](http://www.jlab.org/div_dept/train/online_courses/GEN305/).
    - Additional images can be found at [http://www.jlab.org/div\\_dept/train/Knowledge\\_Docs/KD0005.pdf](http://www.jlab.org/div_dept/train/Knowledge_Docs/KD0005.pdf)





# Directing Changes to the Subcontract

64

- The “Changes” clause allows JLab to unilaterally direct changes **within the scope of the subcontract**
  - ▣ Contractor must proceed with the changed work
  - ▣ JLab may negotiate the cost of the change prior to authorizing the performance of the work
  - ▣ Changes outside the scope require a sole source action
- The change must be coordinated with, and authorized by, the Subcontracting Officer
  - ▣ SOTR must provide a Purchase Requisition (PR) to support the requested change

# Constructive Changes (CC)



65

- A CC can occur when we fail to act in a reasonable and prudent manner, e.g., when we...
  - ▣ Provide specifications that are defective, ambiguous, or create an impossibility of performance
  - ▣ Don't address or correct obvious errors, e.g., submittals
  - ▣ Don't extend the schedule for an excusable delay
  - ▣ Provide defective or late GFE/GFP
  - ▣ Direct contractor's means or methods of performance
  - ▣ Withhold critical information affecting performance
- May also result when the contractor encounters "differing site conditions"

# Request for Equitable Adjustment (REA)



66

- Purpose of a REA is to make the contractor whole for directed or constructive changes to the contract
- The contractor may submit a REA for damages
  - ▣ if he can demonstrate he has been harmed,
  - ▣ The adjustment amount is reasonable (quantum), and
  - ▣ The connection between the circumstances and amount(s) to subcontract (entitlement)
- Contract price may also be reduced for changes that reduce contractor's cost of performance

# Contractor Claims



67

- A Claim is any open dispute or REA that cannot be settled directly with the contractor without 3<sup>rd</sup> party intervention
  - ▣ An unsettled claim can be resolved in two ways:
    1. Alternative Dispute Resolution (ADR)-
      - Includes mediation and arbitration
    2. Litigation in Federal Court

# Terminating Contractor Performance

68



- Two ways to formally terminate
  - “Termination for Convenience”
    - JLab can terminate contract without cause
    - Contractor recovers all costs + associated profit
  - “Termination for Default”
    - Contractor responsible for all re-procurement costs
    - Termination for Default requires accurate/thorough records to protect our interest
  
- Both parties may mutually agree to “walk away” and end contract relationship without fault/liability



# Issues Affecting Final Acceptance

69

- Beneficial occupancy allows JLab to take possession of the project (or portion of) prior to final acceptance
  - ▣ Construction contractor works on a “punch list” of outstanding construction and installation issues
  - ▣ May negate contractor’s liability for further liquidated damages
- System commissioning identifies issues that need to be resolved prior to project completion and final acceptance

# Final Acceptance



70

- Final acceptance establishes the point in time that title passes to the Government (not JLab)
  - ▣ Nonconforming items must be communicated to the SO
    - Correct defective/nonconforming work before acceptance
    - May accept non-conforming items in return for consideration
    - Non-conforming QSI must be coordinated with JLab's QA Department
  - ▣ Acceptance of services is on a monthly basis
    - Approval of contractor's invoice indicates acceptance
  - ▣ Acceptance may be implied when JLab uses the item, or time for acceptance expires without comment

# Closing the Contract



71

- Retrieve all contractor badges
- Ensure satisfactory return of all GFE/GFP
  - ▣ Coordinate with Procurement and JLab Property Office
- Ensure received items are properly stored
- Complete and return the contractor performance evaluation form to Procurement (actions >\$100K)
  - ▣ Document contractor's performance (strengths/weaknesses)
  - ▣ Document "lessons learned"

# Enforcing the Warranty



72

- Problems encountered after acceptance should be addressed through the contract's warranty provision
  - ▣ Procurement maintains the warranty provisions in the subcontract file
  - ▣ Enforce subcontract warranty provisions in a timely manner
  - ▣ Coordinate vendor compliance issues with SO
- Recovery for latent defects or fraud (including gross mistakes) are not constrained by warranty clause

# Your Approach Is Critical to Success



73

- Cultivate a positive work relationship with the contractor
  - Convey realistic expectations- the contractor is only accountable for what's in the contract
  - Ensure technical oversight does not interfere with contractor's ability to perform work
  - Maintain open communications with all parties- and seek "win-win" outcomes, and
  - Demonstrate integrity in all relationships

# Questions

74

