



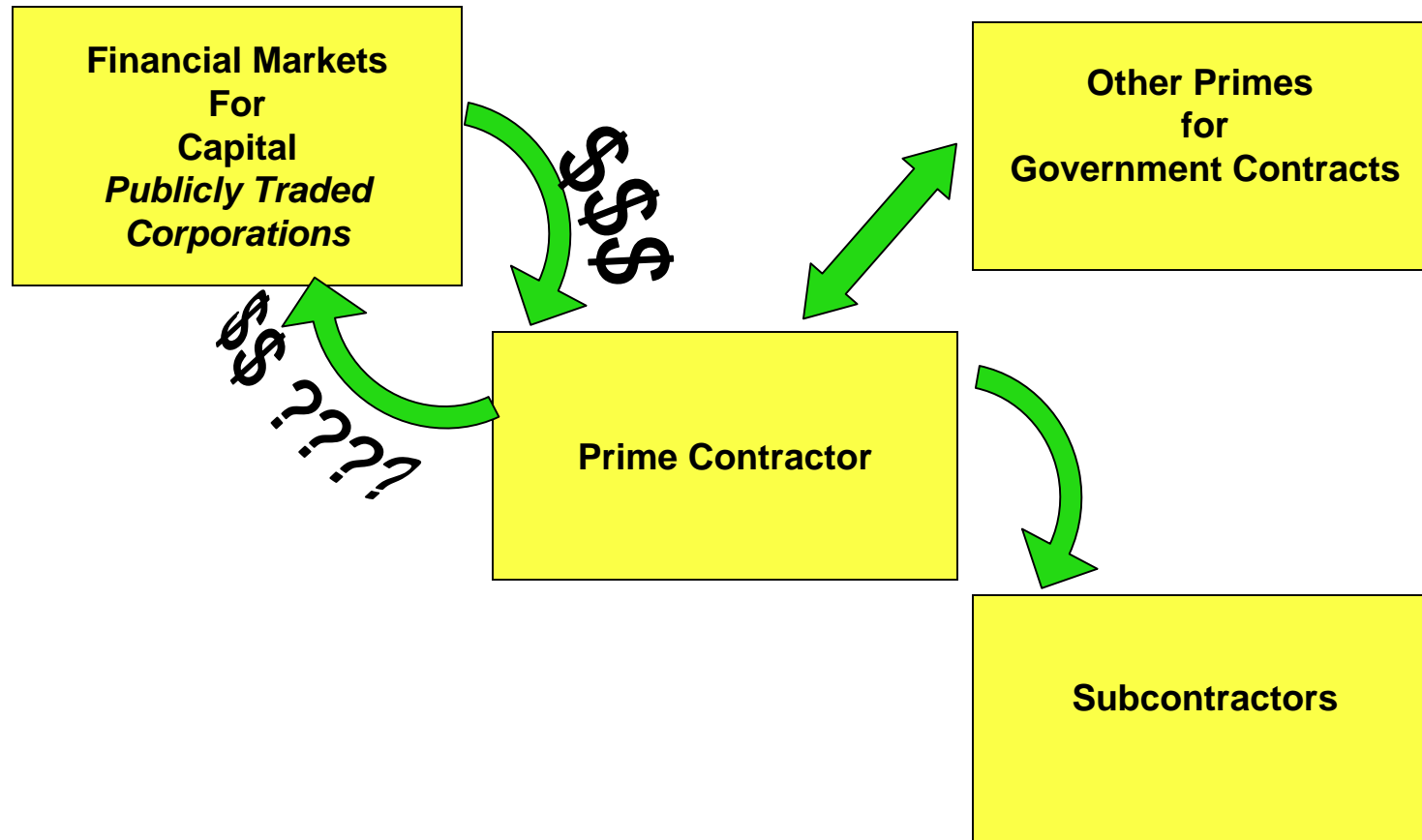
Before the Ink Dries.....

Army Small Business Conference
04 November 2003

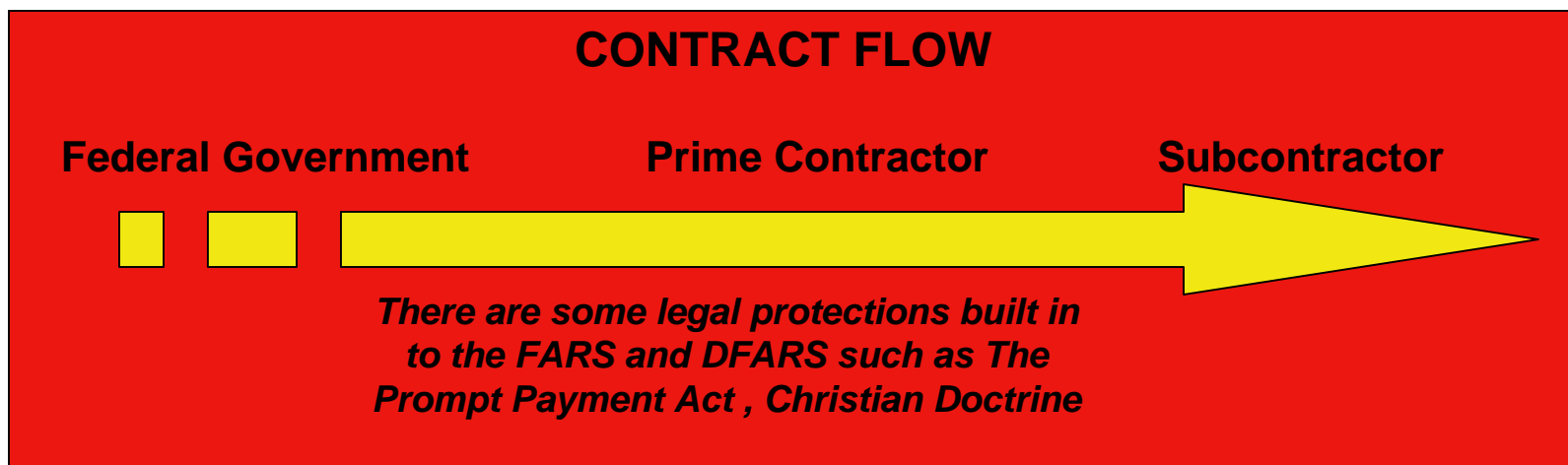
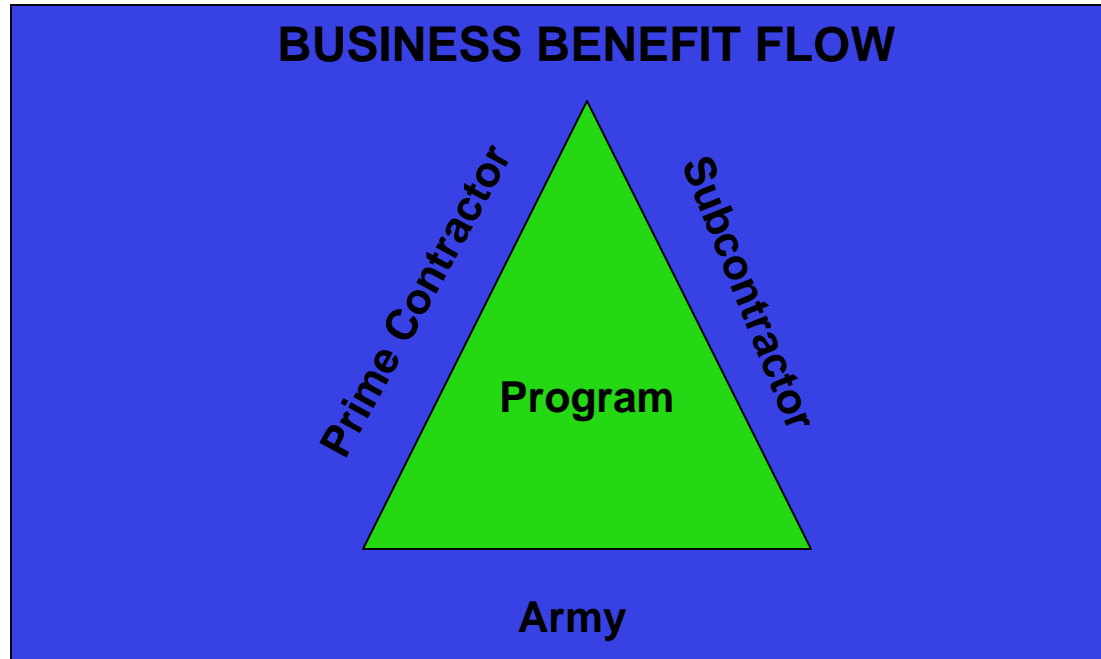
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Pamela S. Roberts

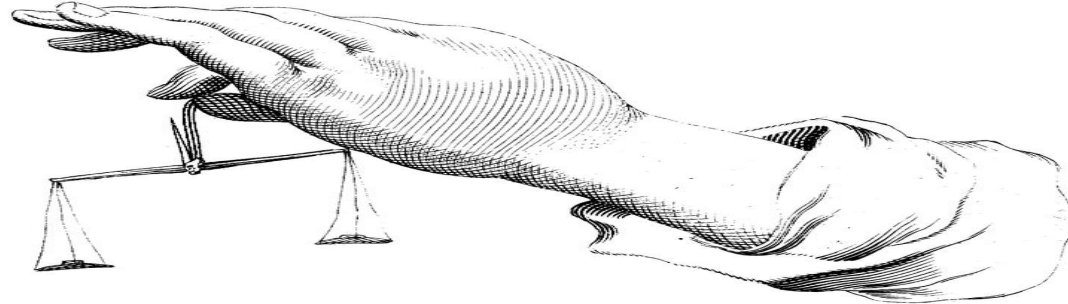
Before the Ink Dries.... THE COMPETITIVE MARKET SPACE



Before the Ink Dries.... BUSINESS AND CONTRACT FLOWS



Before the Ink Dries.... CONSIDERATIONS



- **Take into consideration the corporation's:**
 - **Current financial situation and the future projections**
 - **Relative competitive position in the industry sector**
 - **Exposure to macro and micro economic market movements**
 - **Cost of debt and its debt structure**
 - **Current and pending legal actions and the impact on their financial condition**
 - **Financial and legal relationships between it and the entity with which you are contracting (i.e. wholly owned subsidiary, independent business unit, joint venture, etc.)**
 - **Corporate and program management, structure, composition and competencies.**
 - **Revenue model on this contract in relation to core business and competency.**
 - **Strategic direction and focus and how this contract fits or doesn't fit into it.**



Before the Ink Dries.... HUMANS AND ENTITIES

- **Good humans can make bad decisions. When humans make a bad decision, the resolution is between the entities who are parties to the contract rather than between people.**
- **And people have a fiduciary duty to their respective entities to do what is best in the interest of their entities.**

They (corporations) cannot commit treason, nor be outlawed nor excommunicated, for they have no souls.

Sir Edward Coke (1552 - 1634)

Case of Sutton's Hospital, 10 Rep. 32.

Before the Ink Dries.... CONTRACTS

- Contracts, if done properly, have two purposes:
 - the ***first and most important purpose*** is to allow the parties to establish the rights, obligations, duties and expectations for all involved so that breach can be avoided.
 - the ***second purpose*** is to enforce in the event of breach

There will always be times when it is good business sense to breach a contract because it is less expensive than meeting the obligations of the contract, hence the reason for liquidated damages.



Before the Ink Dries.... BASICS

- **A Few Basics**
 - **Do the Business Case**
 - **Calculate in: opportunity costs, resource requirements, cash flow, contract financing (if any), etc.**
 - **Structure an agreement that addresses each party's needs**
 - **Equitable, win-win transactions last; inequitable, win-lose contracts fail**
 - **Strike a balance between time to negotiate and desired specificity**
 - **Obtain a clear definition of terms**
 - **Ambiguity leads to conflict and misunderstanding**
 - **Pay close attention to contract term and termination clauses**
 - **What are the payment terms - cash flow is king.**
 - **Hire outside counsel who specializes government contracts**
 - **Protect your intellectual property**