DEPARTMENT OF DEFENSE (DOD)

DEFENSE CONTRACT MANAGEMENT AGENCY (DCMA)

Contractor Purchasing System Review (CPSR) Guidebook

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CONTRACTOR PURCHASING SYSTEM REVIEW (CPSR) PROGRAM
FAR 44.3, FAR 44.202-2, and DFARS 244.3

Part 1 – Introduction

1.1 Scope of Guidebook

This Guidebook provides guidance and procedures to Government personnel for evaluating contractor's purchasing systems and preparing the CPSR reports.

1.2 Application of Guidebook

While the prime contractor has the responsibility of managing its purchasing program, the DCMA CPSR Team is responsible for evaluating the contractor's overall purchasing system to ensure that it is efficient and effective in the expenditure of Government funds and in compliance with contract requirements. The objective of a contractor purchasing system review (CPSR) is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer (ACO) a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

The CPSR shall be conducted in accordance with this Guidebook, DCMA instruction 109, the Federal Acquisition Regulation (FAR) subpart 44.3, and the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 244.3. A CPSR is conducted when a contractor's annual sales to the Government, resulting from the award of Government prime contracts and subcontracts, is expected to exceed $25 million during the next 12 months. Excluded from the $25M sales are subcontracts under prime contracts that are competitively awarded firm-fixed price, competitively awarded fixed price with economic price adjustment or commercial item contracts awarded pursuant to FAR part 12. Ultimately, the ACO shall determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts. All CPSRs, except a Follow-up review, are predicated on a Risk Assessment (RA) evaluation.

1.3 Definitions

1.3.1 *Subcontracts* – any contract as defined in FAR subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to Purchase Orders (POs) and changes and modifications to POs.

1.3.2 *Subcontractors* – any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

1.3.3 *Sole Source Acquisition* – means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

1.3.4 *Contractor Purchasing System Review (CPSR)* – the complete evaluation of a

contractor's purchasing of material and services, subcontracting, and subcontract management from development of the requirement through completion of subcontract performance.

1.3.5 *Procurement Analyst (PA*) – a Government functional specialist who may assist a Team Lead (TL) with a CPSR review or may be assigned as the TL.

1.3.6 *Team Lead (TL)* – the designated PA assigned to manage the CPSR and lead the CPSR team. The TL is the CO's primary POC and is responsible for the performance and completion of the review, preparation of the report, and review of contractor responses/CAPs.

1.3.7 *Contracting Officer (CO)* – the designated Government representative authorized to request a CPSR per FAR 44.302 and issue the initial and/or final determinations for approval or disapproval of a contractor's purchasing system. For this Guidebook, the term CO is used when referring to the respective authorized representative, whether the representative is a Procuring Contracting Officer, Administrative Contracting Officer, Divisional Administrative Contracting Officer or Corporate Administrative Contracting Officer.

1.3.8 *Risk Assessment (RA)* – used to perform an evaluation of the contractor's sales and procurement data to determine if they meet the qualifications for a CPSR in accordance with FAR part 44. A RA must be performed prior to the assignment of a CPSR to a PA, except Follow-up reviews. The contractor should populate the data in Part I of the form, and the CO must complete Part II and then sign the form as the official request to perform a CPSR review.

1.4 Types of CPSR Reviews

1.4.1 Initial / Comprehensive Review

An initial review is a complete, first-time analysis of a contractor's purchasing system. A comprehensive review is performed if a contractor has an approved purchasing system. The CO shall determine at least every three years if a CPSR is needed. If so, a comprehensive review is performed. Both the Initial and Comprehensive CPSRs evaluate the contractor's compliance with the same 24 elements in the purchasing system analysis per DFARS 252.244-7001(c). At a minimum, the contractor's purchasing system shall:

1.4.1.1 Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS);

1.4.1.2 Ensure that all applicable POs and subcontracts contain all flow down clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

1.4.1.3 Maintain an organization plan that establishes clear lines of authority and responsibility;

1.4.1.4 Ensure all POs are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the PO/subcontract files which are subject to Government review;

1.4.1.5 Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

1.4.1.6 Apply a consistent make-or-buy policy that is in the best interest of the Government;

1.4.1.7 Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

1.4.1.8 Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;

1.4.1.9 Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;

1.4.1.10 Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;

1.4.1.11 Document negotiations in accordance with FAR 15.406-3;

1.4.1.12 Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;

1.4.1.13 Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;

1.4.1.14 Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;

1.4.1.15 Document and justify reasons for subcontract changes that affect cost or price;

1.4.1.16 Notify the Government of the award of all subcontracts that contain the FAR and DFARS flow down clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

1.4.1.17 Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. Chapter 87, Kickbacks;

1.4.1.18 Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

1.4.1.19 Establish and maintain policies and procedures to ensure POs and subcontracts contain mandatory and applicable flow down clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of

DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

1.4.1.20 Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

1.4.1.21 Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of DFARS 252.211-7003, Item Unique Identification and Valuation, if applicable;

1.4.1.22 Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

1.4.1.23 Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

1.4.1.24 Establish and maintain procedures to timely notify the Contracting Officer, in writing, if:

a. The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

b. Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

The report template format, located on the DCMA 360, will be used.

1.4.2 Special Review

A Special review is an investigation of specific weaknesses identified in any contractor's purchasing system, using the same techniques followed in performing an initial or comprehensive review. The CO, or the PA with the concurrence of the CO, may initiate a special review of any contractor's purchasing system in connection with weaknesses revealed as a result of:

1.4.2.1 The initial or comprehensive review, or continuing in-depth surveillance;

1.4.2.2 The review of subcontracts submitted under the notification and consent to subcontract requirement of contract clauses;

1.4.2.3 Major changes in the contractor's purchasing policies, procedures, or key personnel;

1.4.2.4 Changes in plant workload or type or work;

1.4.2.5 Information that changes the level of risk to the Government;

1.4.2.6 Award of a high dollar value contract to a vendor that has had no review of their system.

1.4.3 Follow-Up Review

A Follow-up review is performed when a contractor's purchasing system is disapproved by the CO. The purpose of the Follow-up review is to determine whether a contractor has effectively implemented a Corrective Action Plan (CAP) deemed adequate by the CO and corrected the deficiencies revealed by any purchasing system review. The same techniques used during an Initial or Comprehensive review are employed in the Follow-up review.

If the status of a contractor's purchasing system is disapproved, a Follow-up review shall be made as soon as:

1.4.3.1 Notification has been received from the contractor that all deficiencies have been corrected. The notification shall consist of a letter from the contractor giving the date of completion of the CAP; and

1.4.3.2 Sufficient time has passed to provide a suitable sample to be reviewed. Sufficient time is approximately 90 days after all elements of the CAP have been implemented.

A Follow-up review is confined to the areas found deficient in the previous CPSR. A follow-up report will only be completed if the previous CPSR was completed within the past 18 months. If it has been more than 18 months since the previous CPSR, then a full Comprehensive review will be done on the Contractor. The follow-up report template format, located on the DCMA 360, will be used as appropriate.

Part 2 – Planning for a CPSR

2.1 Responsibilities

2.1.1 CO Responsibilities

In the middle of each Calendar Year, a Tasking Memorandum is issued to COs requesting that a RA be filled out and returned to the CPSR group inbox, CPSRCenter@dcma.mil. Usually, the Administrative Contracting Officer is the Government POC; however, there are times that the Procurement Contracting Officer, Divisional Administrative Contracting Officer or the Corporate Administrative Contracting Officer may fill this role.

The CO has the ultimate authority to make the final decision, which is based on CPSR recommendations and to notify the contractor whether or not the purchasing system has been approved. Therefore, it is important that the CO be involved in the entire CPSR process.

Summary of Responsibilities of the CO:

2.1.1.1 Comply with annual CPSR Tasking Memorandum to include submitting a complete RA to the CPSR group at CPSRcenter@dcma.mil. A complete RA includes the CO completing and signing Part II of the form;

2.1.1.2 Confirm availability of CPSR dates;

2.1.1.3 Ensure functional specialists return requested information;

2.1.1.4 Attend entrance conference or send a representative if unable to attend;

2.1.1.5 Attend daily out briefs if possible; and

2.1.1.6 Attend exit conference or send a representative if unable to attend.

2.1.1.7 Follow responsibilities outlined in DCMA-INST 131

2.1.2 DCMA CPSR Group Responsibilities

The preparations for the CPSR are conducted by the CPSR Group. Assistance with obtaining information will be requested from the CO and contractor.

2.1.2.1 CPSR Management

Summary of responsibilities of CPSR Management:

2.1.2.1.1 Obtain a complete contractor RA form. A complete RA form will have the following information:

a. Administrative information shall include at a minimum:

i. Contractor POC name and phone numbers;

ii. Contractor's name, address, and all applicable CAGE codes; and

iii. CO name and phone number;

iv. If any of the above items are missing, they must be obtained before proceeding.

b. Summary of purchasing actions during the past 12 months. A good summary will show:

i. The total dollar value of all purchases;

ii. The number of subcontractors broken down by dollar value, such as:

a) under $150,000;

b) $150,000 to $749,999;

c) $750,000 and over;

c. Dollar volume and number of POs placed with small and large business concerns and minority business enterprises;

d. Breakdown of sole source purchasing;

e. Summary of sales volume for the most recent 12-month period for which information is reasonably available, indicating total commercial sales, and Government sales including subcontracts issued under Government prime contracts by department or agency broken down by type of contract. In addition, fixed-price Government sales should be segregated between negotiated and competitive Government prime contracts with identification by department or agency; and

2.1.2.1.2 Review the RAs to determine if the contractor qualifies for a CPSR per FAR 44.302:

a. If it appears that the contractor does not qualify, the CO should be contacted for more information on why one might be required.

b. If the contractor qualifies, assign a PA as the TL. Assignment is based on the location of the review, complexity of the review, and/or availability of a PA to support a TL role.

2.1.2.1.3 Manage the master CPSR schedule.

2.1.2.2 CPSR Team Leader

Summary of the pre-planning responsibilities of the TL:

2.1.2.2.1 Review the previous CPSR report, if applicable, and the RA. Based on this information, coordinate the length of the review, staffing needed, and the type of CPSR to be performed with the Supervisor;

2.1.2.2.2 Contact the CO, or other designated POC stated on the RA, to confirm if a CPSR is needed and further evaluate the risk associated with the contractor based on the conversation with the CO;

2.1.2.2.3 Develop a tentative schedule and notify the CO of the proposed dates for an in-plant CPSR. If the CO agrees, the TL will contact the contractor to confirm the dates:

a. If the CO does not agree with the proposed dates for the in-plant review, the TL and CO will work together to find a suitable replacement date;

b. If the contractor does not agree with the proposed dates for the in-plant review, the TL will request that the contractor submit a request to delay the review. The TL, CO, and CPSR Management will review the request to delay. The TL will

communicate the decision to the contractor, and if necessary, work with the CO and contractor to find a suitable replacement date;

2.1.2.2.4 If the contractor has cost-type prime contracts, the TL needs to ensure that the contractor has a system in place to monitor its subcontractors' accounting/billing systems;

2.1.2.2.5 Open a review file on the DCMA 360 that will document all review information, actions to date and all that will follow;

2.1.2.2.6 Keep CPSR Management informed on travel costs based on DTS arrangements, if applicable;

2.1.2.2.7 Send the Quality Questionnaire, Supply Chain Questionnaires, and CO Letter (located on the DCMA 360) to the CO. Send the Small Business Questionnaire (also located on DCMA 360) to the Small Business inbox at smallbusinesscenterinbox@dcma.mil. These questionnaires request information from a variety of DCMA functional specialists. The TL will need to follow-up to confirm the functional specialists return the questionnaires. If the questionnaires have been returned and clarification is required, call the DCMA specialist for a discussion of their concerns so they can be presented clearly;

2.1.2.2.8 Send respective CPSR data questionnaires (located on the DCMA 360 and listed below) to the contractor POC. These questionnaires request information on the contractor's purchasing system, the policies and procedures manual, sales data, and the universe of subcontracts/POs;

KTR Policies and Procedures Checklist
KTR Questionnaire
KTR Universe Spreadsheet

2.1.2.2.9 Compare the contractor's policies and procedures against the CPSR Policies and Procedures Checklist, located on the DCMA 360, to determine if the contractor adequately addresses the elements that will be reviewed during the in-plant portion of the review. At this point the report can be started by inputting the policies and procedures information into the report template;

2.1.2.2.10 Review the universe provided by the contractor. The universe should include all applicable awards for the universe period, which is typically one year for Initial and Comprehensive reviews and 90 days for Follow-up reviews. The DCMA Zero-Based statistical plan will be used to build a sample to include awards in the following categories:

a. Awards $750,000 and over;

b. Awards from $150,000 – $749,999;

c. Awards under $150,000.

Once the sample is confirmed, the length and staffing for the CPSR can be confirmed;

2.1.2.2.11. Request Terms and Conditions and Purchasing/Procurement Forms from the contractor;

2.1.2.2.12. Request from the contractor:

a. A suitable room that can accommodate the required PAs, the PO/subcontract files, and CPSR working papers. Inform the contractor that the files must remain in the room for the duration of the review; therefore, a room with a lock may be needed based on the contractor's security requirements;

b. Printer;

c. Copy machine;

d. Conference telephone;

e. Unescorted access – Request any forms that need to be filled out to gain unescorted access.

2.1.2.2.13 Set-up weekly meetings to brief CPSR Management on CPSR progress;

2.1.2.2.14 Confirm CO, functional specialists, and DCAA are attending entrance briefing. Request the CO to assist with contacting DCAA, if necessary;

2.1.2.2.15 To ensure files will be available for review on the first day of the CPSR, the TL should provide the contractor the sample of PO/subcontract files no later than the Friday prior to arrival on-site. If paper files have to be shipped in from other locations, provide the sample of PO/subcontract files at least a week before the review.

2.1.2.2.16 Confirm last minute schedule and entrance details with contractor.

2.2 Scope of the CPSR

The TL will estimate the resources and time needed to conduct the CPSR based on the RA and previous CPSR report, if available. Once the Universe is received from the contractor, the sample size will be calculated and the following items can be confirmed:

2.2.1. Type of CPSR. A CPSR may be categorized as an Initial, Comprehensive, Follow-up, or Special review;

2.2.2. Length of the CPSR. The length of a CPSR will depend on the type of review, the sample size, and the complexity of PO/subcontract files to be reviewed. Typically, the in-plant timeframe for an Initial and Comprehensive CPSR is two weeks or less; for a Follow-up CPSR, the in-plant timeframe is one week;

2.2.3. Staffing for the CPSR. The number of Procurement Analysts (PAs) needed to conduct a CPSR will depend on the sample size and the complexity of PO/subcontract files to be reviewed. Typically, two PAs: one TL and one PA, will perform a CPSR. However, additional PAs may be necessary to ensure an effective review;

2.2.4. Location of the CPSR. Information from the CO and contractor will assist the TL in determining the location of the on-site portion of the CPSR. The location of the CPSR may not always be the same as that designated by the CAGE code, especially considering many contractor's purchasing systems have more than one CAGE code. Issues that can affect where the on-site portion of the CPSR will take place include:

a. The location of the majority of procurement files if the contractor has a paper purchasing system;

b. The location of purchasing management personnel if the contractor has an electronic purchasing system;

c. Multiple locations for a large organization with multiple purchasing hubs.

2.2.5. Special Review. The resources needed for Special CPSRs are determined on a case-by-case basis but as with other reviews, the resources will be supported by the sample size and complexity of files;

2.2.6. Special Considerations. A request for increased review time and staff is approved by CPSR Management on a case-by-case basis. If approved, the TL must manage and schedule the PAs needed to coordinate the review and take responsibility for consolidation of all results into a single report. The following situations may justify increased resources:

a. Contractors that function at several operating locations;

b. Contractors that have high visibility and/or high risk contracts or critical issues as identified by the CO, DCMA headquarters, or Congressional inquiry;

c. Contractors that have excessively large sales (over $1 billion) with many high dollar PO/subcontracts;

d. Contractors must be able to provide all procurement records at a single review location. The location should be one that typically processes Government sales. If multiple locations are necessary, more PAs or a longer review time may be justified.

Part 3 – In-plant CPSR

This section of the CPSR Guidebook sets forth the procedures to be followed in conducting the in-plant portion of the CPSR. The in-plant portion of the review will include:

a. An examination of the written policies and procedures with the actual application of the policies and procedures to the PO/subcontracting files;

b. Evaluation of actual operating practices and methods through review of PO/subcontracting files and discussions with the contractor's personnel.

3.1 Entrance Conference

The entrance conference is a brief initial meeting with the contractor and is conducted by the TL. The meeting should be at the highest possible management level, preferably with the president or general manager, and should include the head of the purchasing department as well as other vested individuals. The conference will include a statement of the objectives, how the review will be conducted, and a discussion of coordination between the CPSR team and the contractor's organization, including the designation of a contractor POC. The CO and other concerned Government personnel, including a DCAA representative, are encouraged to attend the entrance conference. The entrance conference will cover the following:

3.1.1 Schedule of events to include tentative dates for the exit conference and the CPSR report issue date to the CO;

3.1.2 The items that the CPSR will cover, e.g., policies and procedures, PO/subcontract files, personnel interviews;

3.1.3 Explain and schedule daily out-briefs with the contractor and CO;

3.1.4 Explain the Question and Answer process;

3.1.5 Contractor briefing. The contractor should provide a brief overview of the company, e.g., overview of the procurement department, amount of Government business versus private industry.

3.2 Conduct In-Plant Review

3.2.1 Obtain ID cards and car passes;

3.2.2 Set-up CPSR room, i.e. test out internet connection, make sure there is a printer, conference telephone, copy machine, and any other support you may need;

3.2.3 Provide the contractor with the remaining PO/subcontract sample after the entrance conference. Begin reviewing PO/subcontract files. Review the contractor's policies and procedures against the PO/subcontract files and the actual processes that are being practiced;

3.2.4 Conduct daily out-briefs with the contractor and CO, if available;

3.2.5 Conduct contractor personnel interviews;

3.2.6 Examine the high risk areas identified in the RA so they may be fully addressed in the CPSR report;

3.2.7 Compare the information on the universe spreadsheet that the contractor provided with what the PO/subcontracts are actually showing, i.e. PO amount, issue date, prime contract number, number of modifications, etc.;

3.2.8 Actively keep track of issues as they arise;

3.2.9 Note any observations or possible recommendations;

3.2.10 Convey preliminary findings to the contractor daily during the daily out-briefs. Ensure the contractor POC understands that it is their responsibility to communicate the preliminary findings to their management;

3.2.11 When answers to the CPSR Team's questions are received from the contractor, sign-in the responses on the question log;

3.2.12 Contact the CO and brief progress, if necessary;

3.2.13 Participate in weekly CPSR Management meetings for progress updates.

3.3 Exit Conference

As the final day of the in-plant review approaches, the TL will coordinate an exit conference with the CO and contractor. The exit conference will typically take place on the last day of the in-plant review and the CO, the contractor, and any other vested individuals should be in attendance. Items to be discussed during the exit conference include the following:

3.3.1 Areas found to be deficient and other general observations made by the review team; no official or formal recommendation pertaining to the contractor's purchasing system status may be made to the contractor at this time;

3.3.2 The TL will provide the contractor with a copy of the question sheet log and retain a signed acceptance of the question log, question sheets, and answers from the contractor;

Part 4 – CPSR Report

4.1 CPSR Report

After the in-plant portion of the CPSR is complete, the PAs return to the office and the TL finishes writing the CPSR report. The CPSR report and a Business System Analysis Summary (BSAS) will be provided to the Supervisory PA within 10 business days from the date of the exit conference. A Level II Corrective Action Request (CAR), and a draft Level III CAR if necessary, are created before releasing the report to the ACO. A Business System Analysis Summary (BSAS) is required for all reviews with deficiencies.

The report and BSAS will go through for Management review by the Supervisory PAs, CPSR Director before release to the CO. The CPSR report will state recommendations that the CO will use to make a determination of approving or disapproving the contractor's purchasing system.

4.2 Contractor's Effectiveness in Major Purchasing Areas

This section of the CPSR Guidebook lists the various elements that make up an effective purchasing system and that are reviewed during a CPSR. The contractor's performance to these elements will be detailed in the CPSR report. The CPSR Team reserves the right to review a purchasing system in its

entirety; therefore, the list of elements is not all inclusive, some related elements may be consolidated into one area, and some elements listed may be removed if not applicable.

4.2.1 Contractor's Current Effectiveness in Major Purchasing Areas

4.2.1.1 Policy and Procedure Manual; (see appendix 1, 3 pages)

4.2.1.2 Truthful Cost or Pricing Data, Truth in Negotiations Act (TINA); (see appendix 2, 3 pages)

4.2.1.3 Cost Accounting Standards (CAS); (see appendix 3, 5 pages)

4.2.1.4 Prior Consent and Advance Notification; (*Reserved*, see appendix 4, x pages)

4.2.1.5 Small Business Subcontracting Plans; (see appendix 5, 3 pages)

4.2.1.6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment; (see appendix 6, 4 pages)

4.2.1.7 Limitation on Use of Appropriated Funds to Influence Certain Federal Transactions Certification (Anti-lobbying); (see appendix 7, 2 pages)

4.2.1.8 Defense Priorities and Allocation System (DPAS) Rating; (*Reserved*, see appendix 8, x pages)

4.2.1.9 Federal Funding Accountability and Transparency Act of 2006; (see appendix 9, 4 pages)

4.2.1.10 Counterfeit Parts Mitigation and Surveillance. (see appendix 10, 3 pages)

4.2.1.11 Price Analysis; (see appendix 11, 2 pages)

4.2.1.12 Competition in Subcontracting; (*Reserved*, see appendix 12, x pages)

4.2.1.13 Sole Source Selection Justification; (see appendix 13, 2 pages)

4.2.1.14 Negotiations; (see appendix 14, 4 pages)

4.2.1.15 Best Value; (*Reserved*, see appendix 15, x pages)

4.2.1.16 Make-or-Buy Program; (see appendix 16, x pages)

4.2.1.17 Limitation on Pass-through Charges. (see appendix 17, 3 pages)

4.2.1.18 Internal Purchasing Organization; (see appendix 18, 3 pages)

4.2.1.19 Documentation; (*Reserved*, see appendix 19, x pages)

4.2.1.20 Training; (see appendix 20, 3 pages)

4.2.1.21 Internal Review/Self Audit; (see appendix 21, 8 pages)

4.2.1.22 Mandatory FAR and DFARS Flow Down Requirements/Terms and Conditions; (*Reserved*, see appendix 22, x pages)

4.2.1.23 Purchase Requisition Process; (see appendix 23, 2 pages)

4.2.1.24 Commercial Item Determination; (*Reserved*, see appendix 24, x pages)

4.2.1.25 Subcontract Types; (see appendix 25, 2 pages)

4.2.1.26 Interdepartmental Relations; (see appendix 26, 1 page)

4.2.1.27 Procurement Authority; (see appendix 27, 2 pages)

4.2.1.28 Vendor Rating System; (*Reserved*, see appendix 28, x pages)

4.2.1.29 Restrictions on the Acquisition of Specialty metals/Articles containing Specialty Metals; (see appendix 29, 17 pages)

4.2.1.30 Supply Chain Management Process; (see appendix 30, 3 pages)

4.2.1.31 Subcontractor/Vendor Closeout Process; (*Reserved*, see appendix 31, x pages)

4.2.1.32 Long Term Purchasing Arrangements; (see appendix 32, 2 pages)

4.2.1.33 Handling Change Orders and Modifications; (see appendix 33, 2 pages)

4.2.1.34 Intra/Inter-Company, Affiliate, or Subsidiary Transactions; (see appendix 34, 2 pages)

4.2.1.35 Procurements at or Below the Simplified Acquisition Threshold; (*This is no longer an element on the CPSR, but will be covered on the Documentation job aid when posted*, see appendix 35, 4 pages)

Part 5 – Contractor's Approved Purchasing System

It is the responsibility of the Government to maintain a sufficient level of surveillance to assure that the contractor is effectively managing the purchasing system per FAR 44.304. To ensure compliance with FAR 44.304, the CO should use the Surveillance plan developed and issued under DCMA Tasking Memo 13-220. The developed Surveillance plan provides instructions on its use and application. A PowerPoint training presentation can be found on DCMA 360.

Certain contractors may require additional surveillance because of the emphasis in the flow down of system acquisition policies in subcontracts, with particular concern for subcontractor cost, schedule, and technical performance. The contractor must make available the necessary policies and procedures and data to permit adequate surveillance. The CO, PA, review team, and/or subcontract management personnel may request assistance of the Contract Administration Office (CAO) having cognizance over the subcontractor to provide information as a means of verifying the information obtained from the

contractor's records and, if needed, the request will call for a complete report on the subcontractor's purchasing system.

Part 6 – Appendixes for Reference

Job aids for review elements

Truth In Negotiations Act (TINA)

October 07, 2015

Introduction

The primary purpose of the Truth in Negotiations Act (TINA) is to provide the Government representatives with accurate, complete and current cost or pricing data from offerors to establish a fair and reasonable contract price. TINA requires the contractor to submit certified cost or pricing data (or other sufficient data) that it used in making its offer. If the contractor withholds relevant data which results in an overstated offer, the Government could recoup the resulting overstated costs.

Legal and Regulatory References

- 10 USC § 2306a: Cost or pricing data; truth in negotiations
- 41 USC § 3501-3509
-
- FAR 15.403-1(b)- provides TINA exceptions
- FAR 15.403-4- provides threshold and criteria for obtaining cost or pricing data
- FAR 15.404-3- provides subcontractor requirements
- FAR 15.406-2- provides an example of a Certificate of Current Cost or Pricing Data
- FAR 15.408(d)- prescribes FAR 52.215-12
- FAR 15.408(e)- prescribes FAR 52.215-13
-
- FAR 52.215-10- contract clause prescribed by FAR 15.408(b)
- FAR 52.215-11- contract clause prescribed by FAR 15.408(c)
- FAR 52.215-12- contract clause prescribed by FAR 15.408(d)
- FAR 52.215-13- contract clause prescribed by FAR 15.408(e)
- DFARS 252.244-7001(1),(2),(5),(7),(9),(10), and (22)

TINA Requirements

Threshold:

- $750,000 for prime contracts awarded on or after October 1, 2015
- $700,000 for prime contracts awarded on or after October 1, 2010

Applies to:

- A negotiated contract, mod, or change order of either sealed bid or negotiated contract exceeds threshold (for a modification or change order, the value of the modification or change order must meet or exceed threshold; not original plus changes)
- All tiers of subs, if the prime and other higher tier subs were required to provide Certified Cost & Pricing Data.

Exception (FAR 15.403-1):

- A determination of adequate competition
- Commercial item acquisition
- Waived by head of contracting activity

TINA and CPSR - Contractor Policies and Procedures

A contractor's policies and procedures serve as the backbone to any good purchasing system. Policies and procedures should provide clear guidance to buyers as they navigate the purchasing process. Contractor's policies and procedures should minimally contain as they relate to TINA:

- Proper FAR and DFARS cites.
- Current and proper dollar threshold for when TINA applies. (FAR 15.403-4)
- Instructions for exemptions and waivers to TINA requirement. (FAR 15.403-1(b))
- Instructions for when a Certificate of Current Cost or Pricing Data must be collected from suppliers. (FAR 15.406-2 and FAR 15.404-3)
- Instructions to buyer for submitting the TINA form to a supplier, receiving it back, and documenting it within the file. (FAR15.404-3 and FAR 52.215-12)
  Note: FAR 52.215-12 requires the contractor to have the subcontractor certify in substantially the form prescribed in FAR 15.406-2. FAR 15.404-3, Subcontract Pricing Considerations, states that the Subcontractor certified cost or pricing data shall be submitted in the format provided in Table 15.2 of FAR 15.408 or alternate format specified in the solicitation.
- Procedures for making a commercial item determination if a supplier claims a TINA exemption based on the commerciality of an item or service. (FAR 15.403-1(c)(3))

TINA and CPSR – Practices

When reviewing a contractor's purchasing system, a CPSR Analyst should identify certain elements within the file in order to determine compliance with TINA regulations.

- Flow down of the prescribed FAR clauses
- The offeror's cost or pricing data,
- Analysis of the cost or pricing data,
- A "Certificate of Cost or Pricing Data," as required, or data other than certified cost and pricing data, and
- Requirement for commercial determination and documentation.

Note 1: Contractor instructions on making a commercial item determination may reference another section within the purchasing manual specifically addressing commercial items.

Note 2: If cost or pricing data is not required from the prime contractor due to the grant of a waiver from the head of a contracting activity, the prime contractors is still required to obtain such data from subcontractors unless an exception applies to that subcontractor, or the waiver specifically includes the subcontract and rationale supporting waiver for that subcontract. (FAR 15.403-1(c)(4).

Note: TINA, as it has been known for years, has undergone a name change. The US Code and the DFARS now refer to TINA as "Truthful Cost or Pricing Data." This name change, however, has not been reflected in the FAR, but the requirements remain the same.

Cost Accounting Standards (CAS)

November 11, 2016

Introduction

The Cost Accounting Standards (CAS) resulted from concerns about the pricing and accounting practices of defense contractors. There was no consistency among contractors' cost accounting practices, making it difficult for the DoD to conduct standardized audits of their records.
In 1968, Congress asked the General Accounting Office (now the Government Accountability Office) to study the feasibility of establishing and applying CAS to provide greater uniformity in cost accounting as the basis for negotiating and administering procurement contracts. Congress subsequently established the Cost Accounting Standards Board (CASB) in 1970, which in turn developed the CAS. After the standards were implemented, Congress decided the Board had fulfilled its mission and dissolved it. However, the Board was subsequently re-established in 1990.

Regulatory References

- 48 CFR Chapter 99 Cost Accounting Standards
- FAR 52.230-2, Cost Accounting Standards
  - The above, "requires a contractor to include the substance of the CAS clause in all negotiated subcontracts (at any tier) into which the contractor enters. This is commonly referred to as the "CAS flow down clause." However, if a subcontract meets one of the CAS exemptions at 48 CFR 9903.201-1, the subcontract will not be subject to CAS. 48 CFR Chapter 99, Cost Accounting Standards
- 52.230-1 -- Cost Accounting Standards Notices and Certification
- 9903.201-1, Exemptions; see Note below.

Note:
A good website to use: Hill AFB site, under "FAR", see bottom for, AP-1 (Appendix Cost Accounting Preambles and Regulations)

CAS Standards

There are 19 cost accounting standards, which were developed by the CASB.

- 401 = Consistency in Estimating, Accumulating and Reporting Costs
- 402 = Consistency in Allocating Costs Incurred for the Same Purpose
- 403 = Allocation of Home Office Expenses to Segments
- 404 = Capitalization of Tangible Assets
- 405 = Accounting for Unallowable Costs
- 406 = Cost Accounting Period
- 407 = Use of Standard Costs for Direct Material and Direct Labor
- 408 = Accounting for Costs of Compensated Personal Absence
- 409 = Depreciation of Tangible Capital Assets
- 410 = Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives

- 411= Accounting for Acquisition Costs of Material
- 412 = Composition and Measurement of Pension Costs
- 413 = Adjustment and Allocation of Pension Cost
- 414 = Cost of Money as an Element of the Cost of Facilities Capital
- 415 = Accounting for the Cost of Deferred Compensation
- 416 = Accounting for Insurance Cost
- 417 = Cost of Money as an Element of the Cost of Capital Assets Under Construction
- 418 = Allocation of Direct and Indirect Costs
- 419 = RESERVED
- 420 = Accounting for Independent Research and Development Costs and Bid and Proposal Costs (IR&D and B&P)

Applicability

- 41 United States Code, Chapter 15 requires certain contracts and subcontracts to comply with CAS. The PCO determines whether CAS standards are applicable and inserts the appropriate CAS clauses into the contract, as stated in FAR Part 30, unless an exemption applies at time of award. Contract modifications made under the terms and conditions of the contract do not affect its status with respect to CAS applicability. If CAS is applicable to the contract, it will apply to the modification. Conversely, if the contract is exempt from CAS, the modification will also be exempt regardless of the amount of the modification. However, if the contract modification adds new work, it must be treated as if it were a new contract for CAS purposes. In this case, if the modification exceeds the threshold, it will be CAS covered. See "EXEMPTIONS" below, for criteria exempting negotiated contracts or subcontracts from CAS coverage.
- The following are the two types of CAS coverage:
    - Fully covered – all 19 CAS standards apply.
    - Modified – only CAS 401, 402, 405, 406 apply.
- Full:
    1. A contractor receives a single CAS-covered contract award of $50 million or more; or
    2. A contractor received $50 million or more in net CAS-covered awards during its most recent cost accounting period.
- Modified:
    1) If the offeror certifies that it is eligible for and elects to use modified coverage, it may be applied to a CAS-covered contract of:
       Less than $50 million awarded to a business unit that received less than $50 million in net CAS-covered awards in the immediately preceding cost accounting period.
- Disclosure Statement (48 CFR 9903.202-1):
    1) Any business unit (as defined in CAS 410-30(a)(2)) that is selected to receive a CAS-covered contract or subcontract of $50 million or more, including option amounts, shall submit a Disclosure Statement before award.
    2) Any company which, together with its segments (as defined in CAS 410-30(a)(7)), received net CAS-covered awards totaling more than $50 million in its most recent cost accounting period shall submit a Disclosure Statement. When a Disclosure Statement is required under this criteria, it must be submitted before

award of the first CAS-covered contract in the immediately following cost accounting period. However, if the first covered award is made within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of the 90 days.

3) When required, a separate Disclosure Statement must be submitted for each segment having more than the Truth in Negotiations Act (TINA) threshold of costs included in the total price of any CAS-covered contract or subcontract, unless:
   (a) The contract or subcontract is of the type or value exempted by 48 CFR 9903.201-1; or
   (b) In the most recently completed accounting period, the segment's CAS-covered awards are less than 30 percent of total segment sales for the period and less than $10 million.

Notes:

- *Net award means the total value of negotiated CAS-covered prime contract and subcontract awards, including the potential value of contract options, received during the reporting period minus cancellations, terminations, and other related credit transactions (48 CFR 9903.301(a)). Transfers from one business segment to another are considered subcontract awards for the purpose of measuring CAS-covered awards (48 CFR 9903.201-2(d)).*
- *Generally, awards ≥$7.5m are considered "trigger contracts" subjecting the award to modified or full CAS coverage.*

<u>Exemptions</u> (CAS 201-1, CAS Applicability)

1. Negotiated Government contract/subcontract for less than the Truth in Negotiation Act (TINA) Threshold;
2. Sealed bid contract;
3. Firm fixed price contract/subcontract awarded on the basis of adequate price competition without submission of certified cost or pricing data
4. Firm-fixed price, fixed-priced with EPA (except for adjustment based on actual costs), T&M and labor hours contract/subcontract for the acquisition of commercial items;
5. Contract/subcontract price is set by law or regulation;
6. Contract/subcontract with a small business;
7. Exemption does not extend to contract/subcontract with foreign concern which is subject to CAS 401/402;
8. Subcontract under the NATO PHM Ship Program to be performed outside of the United States by a foreign concern;
9. Contract/subcontract less than $7.5 million, provided the contractor s not currently performing any CAS-covered contracts/subcontracts of $7.5 million or more.

<u>CPSR Requirements – Practice</u>

- No CPSR action is required if one of the following exist:
  - Subcontractor effort is below TINA threshold;
  - Subcontractor meets one of the CAS exemptions;
  - CAS waiver exists;

    - CAS FAR clause does not exist in prime or modification.
- If supplier's effort > TINA threshold, then verify if:
    - The correct FAR clause(s) are flowed down to the PO/subcontract.
    - Supplier has completed the Cost Accounting Standards and Notifications Certification, FAR 52.230-1.
    - If supplier is a foreign concern:
        - See EXEMPTION 7 above and then ensure that the CAS FAR clause has been flowed down to the supplier.
        - A CAS DS would be required for a foreign concern that meets the applicable thresholds in 48 CFR 9903.202-1, even though the company's contracts are only subject to CAS 401 & 402.
- CAS is applicable to letter contracts exceeding the threshold as of the date of the award. Definitizing the contract will not activate any new standards since definitization is a contract modification rather than a new contract (see CAS Working Group Paper 77-16).
- Ensure the contractor has policies and procedures in place and consistently follows them. The policies and procedures should identify and explain how to comply with the provision.
- Basic agreements and basic ordering agreements (BOAs) are not considered contracts (FAR 16.702(a) and 16-703(a)). Since orders must be considered individually in determining CAS applicability, only orders that exceed the threshold will be CAS-covered.

<u>CPSR Report DFARS Requirements</u>

- 252.244-7001(c)(2):
    - Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;.
- 252.244-7001(c)(19):
    - Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory applicable flowdown clauses as required by FAR and DFARS including terms and conditions required by the prime contract, including the requirements of DFARS 252.246-7007.
- To comply, the contractor's policy & procedure must:
    - Provide instructions on how the company monitors subcontract costs in both proposed and actual costs to ensure there are no violations.
    - Contain instructions for the required mandatory and applicable flowdown clauses.
    - DFARS 252.246-7007 instructions for Contractor Counterfeit Electronic Part Detection and Avoidance System, if CAS applies.

<u>Best Practices</u>

- Remember that a 'contract' is subject to CAS coverage, NOT a contractor.
  If you have any questions about CAS applicability, contact your ACO and/or local counsel for assistance in making that determination.
- Inquire if the contractor is "currently performing on any CAS covered contracts, and if so, whether the contractor subject to 'FULL' OR 'MODIFIED', coverage".

  - Determining the type of coverage the contractor's contracts are subject to assists in determining CAS flowdown.
- Ensure the applicable mandatory FAR clauses are flowed down to the supplier;
- Foreign concern is subject to CAS 401, 402, and possibly Disclosure Statement requirements – do not assume since supplier is foreign, that CAS exemption applies. See also FAR 30.201-4 and consult with your ACO/Legal Counsel.

Small Business Subcontracting Plan

October 07, 2015

Introduction

As prescribed in FAR 19.702, in negotiated / sealed bidding acquisitions, each solicitation of offers /invitation for bids to perform a contract or contract modification, that individually is expected to exceed $650,000 ($1.5 million for construction) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan. Subcontracting plans are not required from small business concerns, for personal services contacts, for contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas, or for modifications to contracts within the general scope of the contract that do not contain the clause at 52.219-8, Utilization of Small Business Concerns (or equivalent prior clauses, *e.g.*, contracts awarded before the enactment of Public Law 95-507). The clause at FAR 52.219-9 Small Business Subcontracting Plan is not required to be inserted in an acquisition that is a set aside or is to be accomplished under the 8(a) program (Ref: FAR 19.708(b)(1)).

The award threshold for small business subcontracting plans is $700,000 ($1,500,000 for construction) for contracts awarded on or after October 1, 2015, and $650,000 ($1,500,000 for construction) for contracts prior to October 1, 2015. This threshold is established by the clause rather than a provision, and does not automatically update when the FAR is revised. Subcontracts awarded pursuant to Government prime contracts issued before the latest threshold change may therefore require small business subcontracting plans at a lower threshold. Small business subcontractors do not need to submit a plan, nor is one required when the prime contract includes 52.212-5, or if the subcontractor provides a commercial item subject to the clause at 52.244-6.

Regulatory References

(a) Public Law 95-507

(b) FAR 52.219-9 as prescribed in FAR 19.708(b)

Applicability: All subcontract/purchase order files that are subject to Government review in excess of $700,000 ($1.5M for construction) awarded on or after October 1, 2015, and $650,000 ($1.5M for construction) before October 1, 2015.

Exemptions:

- Acquisition is set aside or is to be accomplished under the 8(a) program (Ref: FAR 19.708(b)(1))
- Subcontract was awarded to a small business (see FAR 52.219-9(a)) and FAR 19.702(b)(1))
- Subcontract is for personal services (Ref: FAR 19.708(a)(1)) and FAR 19.702(b)(2))

- CO determines that there are no subcontracting possibilities in accordance with FAR 19.705-2(b) (also Ref: FAR 19.702(a)(1) and (2)). Such determination must be approved at a level above the CO and included in the official contract file (see FAR 19.705-2(c)).(REF: FAR 19.708(b)(1))
- Prime contract contains FAR 52.212-5 (see FAR 52.219-9(j)).
- Subcontractor provides a commercial item subject to 52.244-6 (see FAR 52.219-9(j)). Contract is not required to include the clause at FAR 52.219-8. (Ref: FAR 19.708(b)(1))
- The contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas (REF: FAR 19.708(a)(2)) and FAR 19.702(b)(3))
- Modifications to contracts within the general scope of the contract that do not contain the clause at 52.219-8 (FAR 19.702(b)(4))

Review

I. Practice

(a) FAR 52.219-9 is the regulatory contract vehicle to ensure compliance with PL 95-507 in the federal acquisition process. To comply, the contractor must document the following:

- Does the SBSP have all the elements per FAR 52.219-9(d)
    - Goals (see FAR 52.219-9(d)(1))
    - Statement of total dollars planned to be subcontracted to small business concerns by types (e.g. veteran-owned small business, women-owned small business, etc.) (see FAR 52.219-9(d)(2))
    - Description of the principal types of supplies and services to be subcontracted, and an identification of the types of small business concerns (e.g. veteran-owned small business, women-owned small business, etc.) to be subcontracted to (see FAR 52.219-9(d)(3))
    - A description of the method used to develop the subcontracting goals in paragraph (d)(1) of clause FAR 52.219-9 (FAR 52.219-9(d)(4))
    - A description of the method used to identify potential sources for solicitation purposes (FAR 52.219-9(d)(5)) **note that use of SAM as its source list does not relieve a firm of its responsibilities of the clause*
    - A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business concerns listed in i thru vi of FAR 52.219-9(d)(6))
    - The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual (FAR 52.219-9(d)(7))
    - A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts (FAR 52.219-9(d)(8))

- Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $650,000 ($1.5 million for construction of any public facility with further subcontracting possibilities) to adopt a plan similar to the plan that complies with the requirements of this clause (FAR 52.219-9(d)(9))
- Assurances listed i thru vi of FAR 52.219-9(d)(10))
- A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan (FAR 52.219-9(d)(11))

- Was the correct FAR clause flowed down to the subcontract?

II. Policy and Procedures

(a) To comply the contractor must:

- Ensure that the plan submitted by the offeror includes all eleven (11) the elements in FAR 52.219-9(d).
- The contractor's written policy and practice must include a provision that defines how they will assist small businesses, organize a solicitation process that facilitates participation of small businesses, and counsel and discuss opportunities with small businesses (per FAR 52.219-9(e)(1) & (e)(3)).
- The contractor's written policy and practice must include the examination of small business potential in the make or buy process (per FAR 52.219-9(e)(2)).
- The contractor must have a practice of confirming HUB zone small businesses are certified as such in SAMs or by contacting the SBA (per FAR 52.219-9(e)(4)).
- The contractor must have a practice to communicate to the offerors the penalties for misrepresentation of business class (per FAR 52.219-9(e)(5)).
- The contractor's written policy and practice must include a provision to inform unsuccessful small businesses of the name and location of the apparent successful offeror prior to the award of the contract of all competitive subcontracts over the simplified acquisition threshold "in which a small business concern received a small business preference" (per FAR 52.219-9(e)(6)).

Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

October 07, 2015

Introduction

The purpose of this Job Aid is to define the requirements for obtaining a Debarment disclosure and methods that can be used to fulfill the requirement.

Regulatory References

(a) FAR 2.101 Definitions "in writing"

(b) FAR 2.101 Definitions "commercially available off the shelf (COTS)"

(c) FAR 52.209-5(a)(1)(i), Certification Regarding Responsibility Matters

(d) FAR 52.209-6(c)Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

(e) DFARS 252.244-7001(c) (1), (2), (5), and (7) Contractor Purchasing System Administration Criteria

Applicability

All of the contractor's subcontract/purchase order files in excess of $35,000 other than those providing a commercially available off the shelf item.

Review

I. Exemptions for requiring a Debarment Disclosure

(a) The subcontract or purchase order does not exceed $35,000.

(b) The subcontractor is providing a commercially available off the shelf item.

a. "Commercially available off-the-shelf (COTS) item--"
(1) Means any item or supply (including construction material) that is
(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101;
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

II. Requirement 52.209-6(c), (d), and (e):

1) The contractor shall require each proposed subcontractor (except those that meet the above exemptions) to disclose to the contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

2) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment.

   The notice must include the following;

   (i) The name of the subcontractor.
   (ii) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
   (iii) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
   (iv) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

3) The Contractor shall include the requirements of FAR 52.209-6 clause, including paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that
   (1) Exceed $35,000 in value; and
   (2) Is not a subcontract for commercially available off-the-shelf items.

III. Means for successful compliance to the requirement:

Policies and Procedures

The policies and procedures should be written in such a way to ensure the requirements above are met on all applicable PO's.

- It should identify by what means purchasing personnel are to obtain the written debarment disclosure and when it is required.
- It should describe how procurement personnel are to notify the Contracting Officer if the contractor plans to award a subcontractor who is debarred or state that they do not award to debarred entities under any circumstances.
- It should identify how and who is responsible for ensuring that the requirements of the clause will be flowed down to subcontractors, (this could be accomplished in the section that describes debarment requirements or by having a policy that adequately describes other Mandatory FAR and DFARS flow-down clauses)

Practice

FAR 2.101 defines "in writing" as;

> "In writing," "writing," or "written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

This definition provides for a wide range of options for meeting the requirements of FAR 52.209-6 as long as it provides essential information.

The following is needed to comply with requirement number 1 above

The disclosure must meet the following requirements:

(i) It must be from the subcontractor to the contractor,

(ii) It must identify that as of the time of award of the subcontract/purchase order, and

(iii) It must state that the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

While the preferred method for obtaining the disclosure from the subcontractor might be for the contractor to place the substance of the disclosure found in FAR 52.209-5 on the subcontract/PO such as "By signing/acknowledging this subcontract/PO you (subcontractor) hereby certify that you and/or any of your Principals -- are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency" the disclosure can be obtained by many other means; separate disclosure forms can be signed and returned by the contractor, or an email with the same disclosure could also be acceptable means for obtaining such a disclosure in writing.

The following is needed to comply with requirement number 2 above

> If the contractor has awarded a subcontract/PO to a debarred, suspended, or proposed for debarment subcontractor, they shall provide evidence that they notified the Contracting Officer "in writing" before awarding the subcontract. They shall show that the notification met the requirements described above.

The following is needed to comply with requirement number 3 above

> The Contractor shall include the requirements of FAR 52.209-6 in each subcontract/PO that does not meet one of the exemptions identified above.

Anti-Lobbying

March 17, 2016

Introduction

A common problem encountered during a Contractor Purchasing System Review (CPSR) is contractors lacking adequate documentation for Anti-Lobbying compliance. The purpose of this Job Aid is to outline the extent of contractor purchasing file documentation required to be compliant with Anti-Lobbying regulations.

Regulatory References

(a) FAR 3.808, Solicitation Provision and Contract Clause
(b) FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
(c) FAR 52.203-12, Limitations on Payments to Influence Certain Federal Transactions

Applicability

All of the contractor's subcontract/purchase order files above $100,000 before October 1, 2010, or $150,000 on or after Oct 2010 that are subject to Government review are to be examined for compliance.

Review

FAR 52.203-11 require offerors to certify, to the best of their knowledge, that no Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with awarding of any federal contract; the making of any federal grant; the making of any federal loan; or the entering into any cooperative agreement. Additionally, it requires offerors to disclose any lobbying contact that occurred in relation to the contract.
FAR 52.203-12(g) requires the prime contractor to obtain a declaration, including the certification and disclosure required by FAR 52.203-11, for each subcontract exceeding the applicable monetary threshold ($100,000 or $150,000). Each subcontractor certification and disclosure shall be retained in the subcontract file.
Before beginning any review, all applicable contractor's policies and procedures related to the procurement process, from the identification of a bona fide need through closeout, should be reviewed for items specified in FAR 52.203-12(g). Once applicability is determined, all eligible subcontracts should be reviewed for the required documentation.

I. FAR 3.808 - Solicitation Provision and Contract Clause

(a) CPSR analyst shall ensure FAR Clauses 52.203-11 and 52.203-12 are included in solicitations expected to exceed $100,000 on purchases made before October 1, 2010 and $150,000 on purchases made on or after October 1, 2010, according to FAR 3.808,

II. FAR 52.203-11 – Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

(a) For general information regarding definitions, prohibition, certification, disclosure, and penalty, CPSR analysts should refer to FAR 52.203-11 for guidance. However, with respect to penalties, also note that contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form pursuant to FAR 52.203-12(e)(2).

III. FAR 52.203-12(g) – Subcontracts

(a) According to FAR 52.203-12(g), CPSR analysts should ensure all of the following requirements are fulfilled and documented for each subcontract greater than $100,000 on purchases made before October 1, 2010 and $150,000 on purchases made on or after October 1, 2010:
1. The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding $150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.
(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding $150,000.

Federal Funding Accountability and Transparency Act of 2006

August 9, 2016

Introduction

On September 26, 2006 the Federal Funding Accountability and Transparency Act (FFATA) of 2006, was signed into law by President George W. Bush. This Act was introduced by a group of bipartisan Senators in which it passed the Senate unanimously and later approved in the House. The FFATA of 2006 is an Act of Congress that requires the full disclosure to the public of all entities of organizations receiving federal funds beginning in the fiscal year 2007. The website USAspending.gov opened in December 2007 as a result of the act, and is maintained by the Office of Management and Budget (OMB). This Act was amended in section 6202 of the Government Funding Transparency Act of 2008 requiring the Contractor to report information on the subcontract awards. The law requires the Contractor to notify its subcontractors that the required information will be made public.

Regulatory References

(a) Federal Acquisition Regulations (FAR) clause 52.204-10. Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015)

The contract requirement at FAR 52.204-10 to report executive compensation most closely aligns to the Contractor Purchasing System criteria, DFARS 252.244-7001 (c) (1) which requires the Contractor's Purchasing System to have an adequate system description including policies, procedures and purchasing practices that comply with the FAR. So it would be helpful to see if the Contractor's policy and procedures outlined its compliance protocol with reporting their Executive Compensation and First-Tier Subcontract Awards IAW FAR 52.204-10.

Applicability

All of the contractor's subcontract/purchase order files above $25,000 before October 1, 2015, or $30,000 on or after 2015 that are subject to Government Review are to be examined for compliance.

Exemptions

Classified contracts and contracts with individuals

If the contractor in the previous tax year had gross income, from all sources, under $300,000, the contractor is exempt from the requirement to report subcontractor awards. If a subcontractor in the previous tax year had gross income from all sources under $300,000, the Contractor does not need to report awards for that subcontractor. (See FAR 52.204-10(g)

Policy

Reporting is required by any contractor with purchase orders in excess of $30,000 and receiving over 80% of its annual revenue from Federal Contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance. The contractor is required to report its executive compensation data that is not available to the public

through section 13(a) or 15(d) of the Securities and Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986.

Practice

As prescribed in FAR 4.1403 "Contract Clause", the contracting officer shall insert the clause 52.204-10, Reporting Executive Compensation and First Tier Subcontract Awards, in all solicitations and contracts of $30,000 or more. Which means, for the contractor to be in compliance, the clause should be flown down from the prime contractor to all of its subcontracts that apply and reported at http://www.fsrs.gov. Review documentation to ensure the reporting is being completed. The contractor should be able to provide a report validating that executive compensation is being reported and included within the PO file.

Review

FAR clause 52.204-10 requires Reporting Executive Compensation and First-Tier Subcontract Awards under the following terms:

a) Executive Compensation of the Prime Contractor

In the Contractor's preceding fiscal year, the Contractor received:

1) 80% or more of its annual gross revenues from Federal contracts, loans, grants, cooperative agreements, and other forms of Federal financial assistance.
2) $25,000,000 or more of its annual gross revenues from Federal contracts, loans, grants, cooperative agreements, and other forms of Federal financial assistance.

b) First-Tier Subcontractor

Unless otherwise directed by the contracting officer, or as provided in paragraph (g) of this clause, by the end of the month (EOM) following the month of award of a first-tier subcontract with a value of $30,000 or more, the Contractor shall report the following information at http://fsrs.gov for that first tier subcontract:

1) Unique identifier for the subcontractor receiving that award and for the subcontractor's parent company, if the subcontractor has a parent company.
2) Name of the Subcontractor.
3) Amount of the subcontractor award.
4) Date of the subcontract award.
5) A description of the products or services being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
6) Subcontract number.
7) Subcontractor's physical address including the 9 digit zip code and congressional district.
8) Subcontractor's primary performance location including address including 9 digit zip code and congressional district.
9) The prime contract number, and order number if applicable.
10) Awarding agency name and code.
11) Funding agency name and code.
12) Government contracting office code.
13) Treasury account symbol (TAS) as reported in FPDS
14) The applicable North American Industry Classification System code (NAICS).

c) Executive Compensation of the First-Tier Subcontractor

Unless otherwise directed by the Contracting Officer, by the EOM following the month of award of a first-tier subcontract with a value of $30,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each the five most highly compensated executive for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at https://www.fsrs.gov, if:

In the subcontractor's preceding fiscal year, the subcontractor received:

1) 80% or more of its annual gross revenues from Federal contracts, loans, grants, cooperative agreements, and other forms of Federal financial assistance.
2) $25,000,000 or more in annual gross revenues from Federal contracts, loans, grants, cooperative agreements and other forms of Federal financial assistance.

The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

The law requires all reported information be made public. Therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

Conclusion

The contract clause FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract awards, is required for inclusion in all contract awards with a value greater than $25,000 on or before October of 2015 and greater than $30,000 after October of 2015. This clause, when included in prime contracts applies when there are no exemptions.

Counterfeit Electronic Parts

August 10, 2015

Introduction

DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System (May 2014), requires certain contractors to establish and maintain an acceptable system for detection and avoidance of counterfeit electronic parts. 252.246-7007(c) lists the minimum system criteria for an acceptable detection and avoidance system. 252.246-7007(e) requires contractors to flow-down the clause to subcontracts (including commercial item subcontracts) for electronic parts or assemblies. Contractor policies and procedures will be reviewed and evaluated by Government personnel as part of the Contractor Purchasing System Review (CPSR) in accordance with 252.244-7001 to ensure compliance.
This final rule became effective May 6, 2014, under Defense Federal Acquisition Regulation Supplement (DFARS) Case 2012-D055, which partially implements section 818 of NDAA for Fiscal Year (FY) 2012 and section 833 of NDAA FY 2013. This rule applies to contractors subject to the Cost Accounting Standards (CAS) with CAS-covered contracts awarded after the effective date. The remaining FY 2012 NDAA requirements may be implemented through FAR Case 2012-032, FAR Case 2013-002 and DFARS Case 2014-D005.

Regulatory References

(a) DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System

(b) DFARS 246.870-3

(c) DFARS 252.211-7003, Item Unique Identification and Valuation

(d) DFARS 211.274-6(a)(1)

(e) DFARS 252.244-7001 (c)(19 -21)

Other Background Information

(a) DOD final rule case no. 2012-D055

(b) Section 818(f)(2) of Pub. L. 112-81

Applicability

Requirements must flow down to all sub-tiers except for subcontractors who are not Cost Accounting Standards (CAS) covered.

Review

I. CPSR Requirements - Practice

Government review and evaluation of the contractor's policies and procedures will be accomplished as part of the Contractor's Purchasing System Review (CPSR) pursuant to DFARS 252.244-7001(c)(19-21).

(a) requires the review and evaluation of counterfeit detection and avoidance policies and procedures as part of Contractor Purchasing System Reviews (CPSRs)

(b) does not apply unless the Contractor is subject to CAS under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1

If greater clarity is necessary, conduct an interview with contractor personnel responsible for Quality Assurance (QA). This can be done in conjunction with an explanation of their vendor rating system which can apply to any contractor but is more pertinent to those engaged in manufacturing.

Evaluation should examine pertinent policies and the practices that follow to ensure the contractor is protecting the government's interests. It may be necessary to engage with USG QA's to determine the effectiveness of their policies and practices.

II. CPSR Requirements – Policy and Procedures

CPSR findings should be based on the following:

(a) 252.244-7001 (c) (19), Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flow-down clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable.

(b) 252.244-7001 (c) (20), Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable.

(c) 252.244-7001 (c) (21), Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of FAR 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of FAR 252.211-7003, Item Unique Identification and Valuation, if applicable.

(d) Ensure the contractor has a risk mitigation system that adequately covers the 12 items in DFARS 252.246-7007(c).

(e) Ensure the contractor is compliant with the system specific criteria set forth in DFARS 252.246-7007(c)

III. Best Practices

(a) Use the Counterfeit Checklist Summary maintained by DCMA QA

(b) Engage pertinent USG QAS to determine if any assessment from the Counterfeit Checklist Summary has been made relative to the mitigation of risk of counterfeit electronic parts

(c) Review purchasing files to ensure the substance of the clause has been flowed down to all tiers, as applicable. Review files to ensure the practice follows pertinent contractor policies.

(d) Interview Contractor QA personnel for greater depth on practices to ensure the integrity of the supply chain with emphasis on compliance with DFARS 252.246-7007

(e) Review any concerns with USG QAS

(f) Findings should relate specifically to compliance with criteria set forth in DFARS 252.246-7007(c). Discuss findings with USG QAS and the ACO to inform the CPSR report and recommendations.

(g) Two key areas are obsolescence and traceability.

  i. Practices should include an assessment of possible future obsolescence and plans to mitigate through advance purchase up through re-design. If no replacement is viable, the USG should be involved with assessing the risk of non- OCM products. Any non-OCM replacement parts may require testing to validate the acceptability. There should be procedures to identify how this will be accomplished in accordance with system criteria (c)(12).

  ii. Traceability ensures the supplier can trace the origin of electronic parts or assemblies. The contractor's policy and practices should demonstrate sufficient traceability in accordance with system criteria (c)(4).

(h) The elements of mitigating risk from future obsolescence and traceability can be important in ensuring the integrity of the supply chain but has particular importance when DFARS 252.246-7007 applies. Note that while the clause is directly applicable to contractors engaged in providing product that is manufactured, the clause may also apply to contractors providing services that may include the purchase of electronics such as the provision of laptops by an Information Technology Services contractor.

(i) Ensure that purchase orders and subcontracts contain mandatory and applicable flow down clauses, including, if applicable, DFARS 252.211-7003, Item Unique Identification and Valuation.

PRICE ANALYSIS

March 17, 2016

Introduction

The purpose of this Job Aid is to define the requirements for the Contractor and Procurement Analyst regarding Price Analysis.

Regulatory References

- FAR 15.404
- DFARS 252.244-7001 (c)(8), (9), (10), (16) and (22)

Applicability

Price Analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements or proposed profit. In the absence of competition, a price analysis must be performed to determine price reasonableness and the file must be properly documented. FAR 15.404-3 states that the prime contractor or subcontractor shall conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices and include the results of these analyses in the price proposal.

Contractor Purchasing System Administration Criteria

In accordance with DFARS 252.244-7001 (c)(8), (9), (10), (16) and (22), the Contractor's Purchasing System shall:

- Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices
- Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- Notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts; and
- Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions.

Procurement Analyst Requirements

The Procurement Analyst is required to ensure that the price analysis has been adequately performed and documented within each applicable file. Each of those files must document the rationale used for making the pricing decision and include the source and type of data used to support the determination. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

Price Analysis Techniques

FAR 15.404-1(b)(2) describes examples of price analysis techniques to establish price reasonableness:

- Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes a fair and reasonable price;
- Comparison of proposed prices to historical prices paid for the same or similar items.
    - The prior price must be a valid basis for comparison. If there has been a significant time lapse between the last acquisition and the present one, if the terms and conditions of the acquisition are significantly different, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison.
    - The prior price must be adjusted to account for materially differing terms and conditions, quantities and market and economic factors.
- Comparison with competitive published price lists/catalogs
- Comparison of proposed prices with independent cost estimates.
- Comparison of proposed prices with prices obtained through market research for the same or similar items.
- Analysis of data other than certified cost or pricing data provided by the offeror.

Policies and Procedures

The Contractor's written policy and procedures must document that a price analysis be performed and documented for all applicable procurements utilizing the guidelines in FAR 15.404.

Sole Source Selection Justification

May 26, 2016

Introduction

According to FAR 2.101, "sole source acquisition" means a contract for the purchase of supplies or services that is entered into or proposed to be entered into after soliciting and negotiating with only one source. There are acquisition factors that drive an acquisition to a particular (sole) source that is the best source for the current acquisition. There are seven statutory exceptions to full and open competition; however, these rules bind only federal Contracting Officers. Contractors must justify any sole source award, but are not bound to the statutory exceptions. The management level justification should adequately and fully demonstrate why competitive sourcing was not practicable. When using other than full and open competition, written documentation of justification is required.

Regulatory References:

Federal Acquisition Regulation (FAR) 2.101 and 52.244-5

Defense Federal Acquisition Regulation Supplement (DFARS) 252.244-7001 (c)(7), and (c)(9)

FAR 52.244-5

> The contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
>
> Exception: If the contractor is an approved member of the DoD Mentor-Protégé Program, the contractor may award contracts under this contract on a non-competitive basis to its proteges.

Guidance

Review contractor purchasing files and identify any sole source awards. Every sole source award should have a justification. Each justification should contain sufficient facts and rationale to justify the use of a non-competitive award, along with supporting data. The justification should be signed by management level personnel.

Key points for justification:

Validate assumptions regarding the specified sources unique capabilities.

Identify all sources that expressed interest in the requirement (market research), and details regarding the evaluation of their capabilities.

Thoroughly describe unique capabilities or qualifications that form basis of the justification.

Summary

Full and open competition is the rule and noncompetitive contracts should have management level justification documented in the file.

Negotiations

October 07, 2015

Introduction

(a) In accordance with FAR 15.002, Types of Negotiated Acquisition, the two types of negotiated acquisitions are sole source acquisitions and competitive acquisitions. Contracting by negotiation is a flexible process that includes the receipt of proposals from offerors, discussion of deficiencies or weaknesses with the offeror, and usually affords an opportunity to revise their offers before award of a contract. Procedures for contracting by negotiation permit negotiations prior to contract award. However, a solicitation under procedures for contracting by negotiation may or may not actually require negotiations. For example, standard provisions are inserted stating "Government intends to evaluate proposals and award without discussions." When this provision is used only clarifications should be used amongst offerors. There is no requirement for a contractor to ever negotiate any subcontract.

(b) According to FAR 15.306(d), Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. If included in the contract, prime contractors must adhere to FAR Clause 52.244-5, Competition in Subcontracting, where the contractor shall select subcontractors on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

Regulatory References

(a) FAR 15.002, Types of Negotiated Acquisitions

(b) FAR 15.306, Exchanges With Offerors After Receipt of Proposals

(c) FAR 15.244-2, Subcontracting

(d) FAR 52.244-5, Competition in Subcontracting

Applicability

(a) In accordance with FAR 52.244-5, Competition in Subcontracting, the Contractor shall select subcontracts (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) In accordance with FAR 15.306(d), Exchanges with Offerors after Receipt of Proposals, negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. In addition, award of contract can be made

on the basis of technical excellence, management capability, personnel qualifications and past experience.

Review

(a) **Competitive & Noncompetitive Negotiations**. Negotiation can be competitive or noncompetitive and when it takes place in the contracting/subcontracting process. (FAR 15.101, FAR 15.402(a), FAR 43.103(a), and FAR 49.201(a)).

1) Competitive discussions/negotiations may take place either before contract award or before award of a task/delivery order under an indefinite-delivery indefinite-quantity contract. The discussions with each offeror in the competitive range should be directed to facilitating preparation of a final proposal revision that will provide the best value for the Government, given the award criteria, the offeror's proposal, and existing constraints within the offeror's organization. Then the Government can evaluate the available proposals to determine which proposal offers the overall best value.

2) Noncompetitive negotiations can take place either before or after award. In noncompetitive negotiations for:

i. Award of a new contract or a task/delivery order under an existing indefinite-delivery indefinite-quantity contract, the satisfactory result is a contract or order that provides for the purchase of the required supplies or services from a responsible source at a fair and reasonable price.

ii. A bilateral contract modification, the satisfactory result is a contract modification that reflects the agreement of the parties about any modification of contract terms, including any necessary equitable adjustment related to the modification.

iii. A fixed-price termination for convenience settlement, the satisfactory result is a settlement that fairly compensates the contractor for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit.

(b) **Negotiation Objectives**. Negotiating any pricing action requires the development of negotiation objectives. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. However, when cost analysis is required, the requirement for formal documentation, i.e., a pre-negotiation plan is much more critical. The development of a pre-negotiation plan that does not reflect a rigorous analysis, evaluation, and examination by element of cost will diminish the achievement of obtaining a fair and reasonable price. Where there is a departure from the established negotiation objective, the price negotiation memorandum should not only identify the negotiated results, but also reflect the same level of rigor in the analysis, evaluation, and basis for its acceptance.

(c) **Negotiation Memorandum**. If the contract includes FAR clause 52.244-2(e)(vii), Subcontracting, a negotiation memorandum between the main contractor and the subcontractor must be provided.

1) Negotiation memorandum must include:

i. The principal elements of the subcontract price negotiations;

ii. The most significant considerations controlling establishment of initial or revised prices;

iii. The reason certified cost or pricing data were or were not required;

iv. The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;

v. The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

vi. The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

vii. A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(d) **Procurements less than the Simplified Acquisition Threshold (SAT), $150k**. A supplier's submission of a quotation is not automatically considered the most fair and reasonable price. You should attempt to acquire the best terms, conditions, and pricing before placing any purchase order.

1) Documentation to be included in file should include but not limited to:

i. Email correspondence where discussions for best pricing or terms/conditions took place

ii. Documentation of oral discussion

iii. If ample competition and no clarifications/discussions are conducted a brief competition memorandum.

Make-or-Buy Program

July 7, 2016

Introduction

A contractor's make-or-buy program is the process to determining whether to manufacture and/or MAKE a part of a major component "in-house", versus whether to BUY the part from the open market (other sellers)
A prospective contractor maybe required to submit a make-or-buy program for negotiated acquisitions requiring certified cost & pricing data where overall contract price is $13.5m or more. (FAR 15.407-2)

Regulatory References

a) FAR 15.407-2, Make-or-Buy Programs
b) FAR 52.215-9, Changes or Additions to Make-or-Buy Programs
c) DFARS 215.407-2, Make-or-Buy Programs
d) DFARS 252.244-7001(c)(6), Contractor Purchasing Systems Administration

Applicability

If the prime contains FAR 52.215-9, all the contractor's subcontract/purchase order files with a minimum value of $1.5million are subject to review. (Ref: FAR 15.407-2(e)(1); DFARS 2015.407-3(e)(1))

Exceptions

The exception for the make-or-buy program is when the proposed contract is for research & development (R&D) and if prototypes or hardware are involved and no significant follow-on productions is anticipated. (Ref: FAR15.407-2(c)(1))

Review

I. FAR 15.407-2 outlines the requirement for make-or-buy program. For contracts requiring make-or-buy program, the Contracting Officer may require the contractor to submit make-or-buy program plans for negotiated acquisition requiring certified cost & pricing data whose overall contract price is $13.5million or more. DFARS 215.407-2(e)(1) establishes a minimum dollar amount of $1.5 million for items or work efforts to be included in make-or-buy programs. Accordingly, subcontracts/purchase orders files with a value greater than $1.5million and where FAR 52.215-9 is in the associated prime contract -, shall be reviewed to ensure that the contractor's make-or-buy program plan is being implemented in the best interest of the government.

II. Contractor's policies and procedures should demonstrate and describe the planning, placing and administration of subcontracts under its make-or-buy program, including cost and technical considerations. The policies and procedures should demonstrate some form

of independent logical analysis or processes used to determine make or buy decision to be in the best interest of the government.

III. CPSR analyst should review and evaluate the decision process of the contractor's choice on the use of make-or-buy program. This is to ensure that contractor's decision to implement its make-or-buy program was fair, logical and ensures minimal overall risk and cost to the government.

Limitation On Pass-Through Charges

July 19, 2016

Introduction

Federal Acquisition Regulation (FAR) FAR 52.215-23 requires identification of subcontract efforts in proposals and reporting the performance of the work to ensure that the Government does not pay excessive pass-through charges. Excessive pass-through charges are indirect costs or profit/fee on work performed by a contractor or subcontractor that adds no or negligible value to a contract or subcontract. Contractors must report changes to the amount of subcontract effort after award if it exceeds 70% of the total cost of work to be performed under the contract. FAR clause 52.215-23 must be flowed down to subcontracts.

Regulatory References

(a) FAR 52.215-23, Limitations on Pass-Through Charges
(b) FAR 15.404-1(h)(2), Proposal Analysis, Review and justification of pass-through contracts
(c) Defense Federal Acquisition Regulation Supplement (DFARS) 252.244-7001(c)(24)(i), Contractor Purchasing System Administration Criteria
(d) DFARS 252.244-7001(c)(24)(ii), Contractor Purchasing System Administration Criteria
(e) DFARS 252.244-7001(c)(2), Contractor Purchasing System Administration Criteria

Applicability

For DoD, the contracting officer inserts clause FAR 52.215-23 in contracts when the total estimated contract or order value exceeds the threshold for obtaining cost or pricing in FAR 15.403-4 and the contemplated contract type is expected to be any contract type except those identified at FAR 15.408(n)(2)(i)(B)(2). For DoD, the contractor shall insert the substance of clause FAR 52.215-23 in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified at FAR 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

Exemptions

The contract types (exemptions) identified at FAR 15.408(n)(2)(i)(B)(2) are as follows:

1. A firm-fixed-price contract awarded on the basis of adequate price competition;
2. A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition;
3. A firm-fixed-price contract for the acquisition of a commercial item;
4. A fixed-price contract with economic price adjustment, for the acquisition of a commercial item;
5. A fixed-price incentive contract awarded on the basis of adequate price competition; or
6. A fixed-price incentive contract for the acquisition of a commercial item.

Contractor Purchasing System Review (CPSR) Requirements - Practice

To comply, the contractor must document the following:

- Was the correct FAR clause flowed down to the subcontract?
- Validate subcontractor's effort does not exceed 70% of total cost of prime contract.
- Ensure the contractor has policies and procedures in place to comply with the provision and that the policies and procedures are being adhered too.
- As required at clause FAR 52.215-23(c)(1), verify the contactor provided the required written notification to the CO if the ktr changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. Verify the notification identifies the revised cost of the subcontract effort and includes verification that the Contractor will provide added value.
- As required at clause FAR 52.215-23(c)(2), verify the contractor provided the required written notification to the CO if any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. Verify the notification identifies the revised cost of the subcontract effort and includes verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

CPSR Requirements – Policy and Procedures

To comply with DFARS 252.244-7001(c)(2) and (24) the contractor must:

- Ensure FAR 52.215-23 clauses are flowed down to the subcontractor.
- Establish and maintain procedures to timely notify the Contracting Officer in writing if the contractor changes the amount of subcontracted effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontractor effort and include verification that the work will provide added value.
- Establish and maintain procedures to timely notify the Contracting Officer in writing if any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).
- The contractor's written policy and practice should provide instructions on how their company monitors subcontract costs in both proposals and actual costs to ensure there are no violations.

Best Practices

- Ask how the contractor determines added value – if it is expected that a subcontractors performance will exceed 70%, make sure the prime contractor can clearly articulate what added value is expected in the overall performance.

- Review any metrics the contractor has for monitoring the 70 percent threshold. Review their accounting cost controls and work with the Defense Contract Audit Agency to see if they have identified any issues. Metrics could include (1) the ratio of direct subcontract costs to total cost incurred and (2) calculating ratio by using current estimate of costs to be incurred at contract completion.

Internal Purchasing Organization

July 19, 2016

Introduction

(a) In accordance with DFARS 252.244-7001(c)(3), a contractor's purchasing system shall maintain an organizational plan which establishes clear lines of authority and responsibility.

(b) In accordance with DCARS 252.244-7001(c)(20), provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable.

(c) In accordance with DFARS 252.244-7001(c)(9), perform internal audits or management reviews, training and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system and require management level justification and adequate cost or price analysis, as applicable for any sole or single source award.

Regulatory References

(a) DFARS 252.244-7001(c)(3)

(b) DFARS 252.244-7001(c)(20)

(c) DFARS 252.246-7007

Applicability

(a) Procurement authority establishes responsible individuals within a company authorized to contract for supplies and services. This authority is often limited in scope, and different individuals within the procurement organization may be authorized to approve awards at different dollar values. Buyers must obtain approval from an official with the appropriate level of authority when they work on procurements above their own authority level.

(b) Procurement activities should not be performed, nor approval given, by individuals who do not have procurement authority. Purchases made by people who lack or have inadequate procurement authority for the value of the procurement are considered Unauthorized Commitments. FAR 1.602-3 defines an Unauthorized Commitment as an agreement that is not binding solely because the representative who made it lacked the authority to enter into that agreement.

(c) If DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System applies, there are criteria for that as well. (See below - Procurement Analyst Requirements, (b)).

Procurement Analyst Requirements

(a) In a review of contractor's internal operations, the CPSR Procurement Analyst should examine the juxtaposition of the procurement department in the overall scheme of their supply chain management operation. The CPSR Procurement Analyst should review how the contractor is efficiently and effectively managing its internal operations in the following areas to provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources:

- Developing and maintenance of policies and processes to address all the system requirements of DFARS 252.244-7001 and applicable contract clauses: 252.246-7002, Contractor Counterfeit Electronic Part Detection and Avoidance and 252.111-7003, Item Unique Identification and Valuation;
- Defining procurement strategy and structure to address using commercial items, or maximum competitive sourcing, justifying sole/single source awards, using discounts (c)(12), ensuring proper contract selection and prohibiting cost plus a percentage of cost subcontracts (c)(13); and
- Providing professional training and growth opportunities for employees, i.e., for Counterfeit Electronic Part Detection and Avoidance, DFARS 252.246-7007, if applicable.
- If DFARS 252.246-7007 is applicable, the CPSR Analyst should consult with the cognizant functional specialist, Quality Assurance Representative, to address this specific requirement during a CPSR.

(b) If DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, applies, there are criteria for that as well. (Refer to the actual DFARS clause for more detail). Below is simply a quick summarized listing:

- Training of personnel;
- Inspection and testing of electronic parts;
- Processes to abolish counterfeit parts;
- Processes for maintaining electronic part traceability;
- Use of supplies that are the original manufacturer;
- Reporting and quarantining counterfeit electronic parts and suspect counterfeit electronic parts;
- Methodologies to identify suspect counterfeit parts and to rapid determine if a suspect counterfeit parts is, in fact, counterfeit;
- Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts;
- Flowdown of counterfeit detection and avoidance requirements;
- Process for keeping continually informed of current counterfeiting information and trends;
- Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts; and
- Control of obsolete electronic parts

(c) The CPSR Procurement Analyst should examine the purchasing systems organizational plan to ensure it establishes clear lines of authority and responsibility.

Training

October 11, 2016

Introduction

A common problem encountered during a Contractor Purchasing System Review (CPSR) is the lack of training documentation provided by the Contractor. Training is a management tool to insure that purchasing functions not only satisfy regulatory requirements, but also to ensure the integrity of the purchasing system. The purpose of this Job Aid is to define the extent of contractor training documentation required to be compliant with DFARS 252.244-7001(c) (17),(18) and 41 U.S.C. 87, Kickbacks ACT.

Regulatory References

FAR 52.209-7, Anti-Kickback Procedures
The requirements of this clause must be flowed down to its subcontracts.

(a) DFARS 252.244-7001(c) (17), Contractor Purchasing System Enforcement
Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 U.S.C. Chapter 87, Kickbacks Act

(b) DFARS 252.244-7001(c) (18), Contractor Purchasing System Training
Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system

Applicability

The contractor's purchasing system subject to Government review.

Review

In accordance with DFARS 252.244-7001(c)(l7), a contractor's purchasing system is required to enforce adequate policies on conflict of interest, gifts, gratuities and training as required by 41 U.S.C. 87. (Kickbacks)

In accordance with DFARS 252.244-7001(c) (18), 41 U.S.C. 87 training is a crucial component of an effective purchasing system. The process of acquiring the skills, knowledge and experience to perform procurement functions is critical in successfully fulfilling the requirements of Government procurement.

In accordance with DFARS 252.244-7001(c) (18), the contractors purchasing system shall perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

In accordance with 41 U.S.C chapter 87, kickbacks Statute is a criminal statute that prohibits

anyone from offering, paying, soliciting, or accepting anything of value to induce or reward a company with favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. Penalties can include fines, jail time, and contractual action to suspend or debar to enter into contracts with the Federal Government. 41 USC 8703 requires contractors to have in place and follow reasonable procedures designed to prevent and detect violations of this statute in its own operations and direct business relationships. Contractors must cooperate fully with a Federal Government agency investigation such violations. A prime contractor or subcontractor that has reasonable grounds to believe that a violation of this title has occurred must report this possible violation to the inspector general of the contracting agency.

Before the review, the CPSR analyst should send the contractor the functional specialist questionnaire. These documents provide a method of assessing the contractor's training management procedures and processes. A training roster with training dates, training completed and employees attended should part of the documents that should be part of the questionnaires.

CPSR Training Requirements – Practice

CPSR analyst should review and evaluate the decision practice of the contractor's choice on its training program is fair, logical and ensures minimal overall risk to the government.

To comply, the contractor must document the following:

- Were the correct DFAR clauses instituted into the training policies and procedures?
- Validate that contractor's effort of training is in the best interest of the Government.
- Ensure the contractor has policies and procedures in place and consistently following them. The policies and procedures should identify and explain how to comply with the training practice.
- Does the contractor have policy, procedures, and training designed to prevent and detect violations of the Kickback Acts in its operations and direct business relationships?
- The Contractor is required to provide a description of the added value of its training program; includes oversight, audits, assessments and metrics of internal practices.
- CPSR analyst should ensure the contractor is in compliance with the following requirements pertaining to contractors training program:
    - Does the contractor have roster established training policies and procedures?
    - Does the contractor have established training policies and procedures?
    - Do they document how they plan to train their employees in order to meet their (contractual) obligations to their customers and their own internal goals?
    - Do they document requirements for reporting training progress and performance?
    - Does the contractor have history of training performance?
    - Do they strive to improve training process performance on an ongoing basis? Or does it take a DCMA Corrective Action Request (CAR) and/or consideration to force improvement?
    - Do they have training and procedures on potential personal conflicts of interest,

gifts, gratuities?;
- Do they execute to the training plan?
  a) Do what they said they were going to do?
  b) Do what they said they should be doing? The way they said they should do it?

CPSR Training Requirements – Policy and Procedures

Reviewing and understanding the contractor's policies and procedures is the foundation of good CPSR review. The level of risk a contractor's training poses to the government depends on how good the contractor's policies, procedures, and internal controls are and how well they are followed by the contractor's employees.

To comply the contractor must:

- Ensure that the DFARS 252.244-7001(c)(17) and DFARS 252.244-7001(c)(18) are implemented to the employees and its subcontractors
  a. Are there policies and procedures on how to appropriate handle conflicts of interest, gifts and gratuities, and the Kickbacks Act IAW (c)(17)?
  b. Is there training on conflict of interest, gifts and gratuities, and the Kickbacks Act IAW (c)(17)?

- The contractor has a clear training policies and procedures that consider the intent behind gifts, entertainment and hospitality, in particular whether these actions are to induce or reward someone to improperly perform their duties with a view to obtaining a business advantage.
- The contractor's written policy and practice should provide instructions on how their company monitors training, conflicts of interest, gifts, gratuities, and kickbacks to ensure there are no violations.
- The Contractor should establish and maintain written training policies and procedures for guiding employees in the implementation of ethical, efficient and effective purchasing practices with conflicts of interest, gifts, gratuities, and kickbacks.
- While each contractor's formal policy and procedures documentation may differ, the following elements should be found within and on conflict of interest, gifts, and gratuities training management program:

  - Roles and responsibilities.
  - Conflict of interest awareness.
  - Affirmation process.
  - Conflict disclosure.
  - Risk assessment.
  - Reporting procedures.
  - Investigation process
  - Corrective action.
  - Continuous monitoring.

Internal Review/Self-Audit

July 19, 2016

Introduction

The purpose of internal audits is a control process to monitor compliance with Government regulations and contract clauses, and verify that company policies adhere to the requirements of the business system criteria. Internal reviews and self-audits must be used as a management tool to verify that purchasing functions not only satisfy regulatory requirements, but management is ensuring the integrity of the purchasing system. Audits should be conducted not only by the procurement department but also by company employees outside the department.

Regulatory References

DFARS 252.244-7001(c)(18), Contractor Purchasing System Administration Criteria
FAR 52.203.13, Contractor Code of Business Ethics and Conduct (Ref: FAR 3.1004(a))
FAR 52.203-14 – Display of Hotline Poster(s) (Ref: FAR 3.1004(b)
FAR 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Ref: FAR 3.907-7)
FAR 52.203-16, – Preventing Personal Conflicts of Interest (Ref: FAR 3.1106)

Applicability

The contractor's purchasing system subject to Government review.

Review

The contractor is responsible for conducting internal audits or management reviews, training, and maintaining policies and procedures for the purchasing department to ensure the integrity of the purchasing system.

Therefore, when conducting a CPSR, the Analyst should ensure the contractor is in compliance with the following requirements pertaining to Government contracts: (Please note the requirements are contract specific. Eg: apply when the contractor has a contract that includes the clause).

FAR 52.203-13, Contractor Code of Business Ethics and Conduct, addresses codes of business ethics and conduct.

(Insert the clause at FAR 52.203-13, in solicitations and contracts if the value of the contract is expected to exceed $5.5 million and the performance period is 120 days or more)
In accordance with FAR 52.203-13(b):

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the contractor shall—

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) The contractor shall—

(i) Timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by the law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Government wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

In accordance with FAR 52.203-13(c):

The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period (unless the company is considered a small business or if the contract is for the acquisition of a commercial item as defined at FAR 2.101):

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out

At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and special requirements of Government contracting, including—

(*1*) Monitoring and auditing to detect criminal conduct;

(*2*) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(*3*) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(B) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(C) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(D) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(*1*) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(*2*) If the violation relates to an order against a Government wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(*3*) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(E) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(3) Subcontracts.

(i) The Contractor shall include the substance of this clause in subcontracts that have a value in excess of $5,500,000 and a performance period of more than 120 days.

(ii) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

FAR 52.203-14, Display of Hotline Poster(s).

Unless the contract is for the acquisition of a commercial item or will be performed entirely outside the United States, insert the clause at FAR 52.203-14, if—(i) the contract exceeds $5.5 million or a lesser amount established by the agency; and
(ii) (A) The agency has a fraud hotline poster; or (B) The contract is funded with disaster assistance funds.
If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any **agency** fraud hotline posters as required in paragraph (b) of clause 52.203-14, other than any required DHS posters.
Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed $5.5 million, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

FAR 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.

(Use the clause at 52.203–15, in all solicitations and contracts funded in whole or in part with Recovery Act funds.)

(1) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act).

The Contractor shall include the substance of this clause, including this paragraph, in all subcontracts that are funded in whole or in part with Recovery Act funds

FAR 52.203-16, Preventing Personal Conflicts of Interest.

Insert the clause at 52.203-16, Preventing Personal Conflicts of Interest, in solicitations and contracts that—

(1) Exceed the simplified acquisition threshold; and

(2) Include a requirement for services by contractor employee(s) that involve performance of acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department.

(b) If only a portion of a contract is for the performance of acquisition functions closely associated with inherently governmental functions, then the contracting officer shall still insert the clause, but shall limit applicability of the clause to that portion of the contract that is for the performance of such services.

(c) Do not insert the clause in solicitations or contracts with a self-employed individual if the acquisition functions closely associated with inherently governmental functions are to be performed entirely by the self-employed individual, rather than an employee of the contractor.

The Contractor shall—

(1) Have procedures in place to screen covered employees for potential personal conflicts of interest;

by—

(i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:

(A) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household

(B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).

(C) Gifts, including travel; and

(ii) Requiring each covered employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing

(2) For each covered employee—

(i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;

(ii) Prohibit use of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform covered employees of their obligation—

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause; and

(6) Report to the Contracting Officer any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include—

(i) Failure by a covered employee to disclose a personal conflict of interest;

(ii) Use by a covered employee of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Failure of a covered employee to comply with the terms of a non-disclosure agreement.

Subcontract flowdown. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts—

(1) That exceed $150,000; and

(2) In which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (i.e., instead of performance only by a self-employed individual).

DFARS 252.244-7001(c)(18), Contractor Purchasing System Administration Criteria.

In addition to the above standards of conduct and ethics requirements, the CPSR Analyst should also ensure the contractor develops a systematic Internal Review/Self Audit program, establish standards and procedures, pertinent metrics for corrective actions, and subsequent follow ups to ensure correction of deficiencies. The contractor's internal audit program should be assessing that its purchasing system is meeting the purchasing system criteria of DFARS 252.244-7001.

Purchase Requisition Process

July 19, 2016

Introduction

The purpose of this Job Aid is to define the requirements of the Purchase Requisition Process.

Regulatory References

DFARS 252.244-7001(c)(4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review.

Applicability

All of the contractor's subcontract/purchase order files require an authorized purchase requisition.

Review

I. The Purchase Requisition

(a) A purchase requisition ("PR" or "Requisition") is an internal document used as part of the contractor's accounting process to initiate the purchase of goods or services. By processing a purchase requisition, appropriate controls can monitor the legitimacy of a purchase, as well as identify the business need for the goods or services.

(b) Contractors use requisition orders to notify individuals responsible for company financial decisions, normally department heads and project managers with purchasing authority, that an authorized employee is requesting a purchase. Financially accountable personnel also use the document to coordinate expense reporting with the company accounting department. The Purchase Requisition is generally the starting point of the audit trail and authorizes the purchasing department to issue a purchase order to the vendor.

II. Requirement 252.244-7001(c)(4)

1) Purchase Requisition is authorized in accordance with company policy.

2) Purchase Requisition documents that a bonafide need exists.

3) Purchase Requisition precedes issuance of the subcontract/purchase order, thereby insuring that no subcontract/purchase orders are awarded without authorization.

4) A Purchase Requisition ensures that all purchase orders are based on authorized requisitions.

III. Means for successful compliance to the requirement:

Policies and Procedures

The policies and procedures should be written in such a way to ensure the requirements above are met on all applicable PO's.

- All purchase requisitions require authorization from the requesting organization (requestor) and the appropriate procurement authority approvals.
- The purchase requisition must contain an adequate description of what is to be purchased and the appropriate reference, documenting the need for the goods or services.
- All purchase orders are initiated via an applicable purchase requisition.
- The purchase requisition is included in the subcontract/purchase order files in order to provide a complete and accurate history of purchase transactions to support vendor selected, and price paid.

Practice

FAR 252.244-7001(c)(4)

The Subcontract/Purchase Order files contain a complete and accurate history and must show:

(i) All Subcontract/Purchase Order files are initiated via an applicable authorized Purchase Requisition.

(ii) All Purchase Requisitions are authorized in accordance with company policy.

(iii) All Purchase Requisitions contain an adequate description of the goods or services, and reference a bona fide need.

(iv) Purchase Requisition date precedes Subcontract/Purchase Order date.

Subcontract Types

October 11, 2016

Introduction

The Analyst should be able to identify if the contractor has selected the appropriate contract type appropriate for the procurement risks involved, consistent with the contractor's policy & procedures.

Regulatory References

(a) DFARS 252.244-7001(c)(1), 252.244-7001(c)(5), 252.244-7001(c)(23)
(b) FAR 52.244-2, Subcontracts, FAR Subpart 44.2, Consent to Subcontract, and FAR Subpart 44.3, Contractors Purchasing System Reviews.

Applicability

Subcontract type selection is the principal method of allocating risk between the buyer/contractor and the supplier/subcontractor. Subcontract types are grouped into two broad categories: fixed price and cost-reimbursement subcontracts. The subcontract type selected should be appropriate to the circumstances of the acquisition.

Contracts do not include grants and cooperative agreements covered by 31 U.S.C.6301, et seq. For discussion of various types of contracts, see FAR Part 16.

Means for successful compliance to the requirement

Policies and Procedures

The selection of subcontract types (by the contractor) varies according to the degree and timing of the responsibility assumed by the subcontractor for the costs of performance. The subcontract types are grouped into two broad categories: fixed-price subcontracts (see FAR Subpart 16.2) and cost-reimbursement subcontracts (see FAR Subpart 16.3).
If a letter subcontract is appropriate, the contractor should ensure compliance with the requirements of FAR 16.603 (i.e., that definitization occurs within 180 days of award or before 40% of the work is complete).

Practice

CPSR Review Process

I. Subcontract Types

CPSR PA should ensure that the contractor's subcontract type selection follows their (contractor's) policies and procedures.

II. PO File Documentation (What to Look for)

(a) Is the rationale for the subcontract type selection adequate? Each subcontract file shall include documentation to show why the particular subcontract type was selected.

(b) For letter subcontracts, definitization schedules, since letter subcontracts are temporary instruments.

Does the subcontractor exercise adequate control/oversight on letter/UCA subcontract actions?

Interdepartmental Relations

March 17, 2016

Introduction

Contractors should maintain an organizational plan that establishes clear lines of authority and responsibility. They should also maintain an organizational and administrative structure that ensures effective and efficient procurement practices. The purpose of this Job Aid is to recognize the importance of the need to have interdepartmental relations that contribute positively to the procurement process.

Regulatory References

- DFARS 252.244-7001(c)(3), DFARS 252.244-7001 (c)(20), Contractor Purchasing System Administrative Criteria

CPSR Report Language

When the Government has complex and unique projects, it is critical for departments within a contractor's organization to work together. The contractor's procurement group needs to interact well with other functional groups. External departments often provide critical sole source justifications and technical evaluations of supplier proposals in support of the procurement process.

Contractor Policies and Procedures

Contractor policy does not have to be addressed in this element.

A contractor's procedure should be for all external departments to co-exist with procurement to allow for procurement processing of authorized requirements.

CPSR Process

Requirement:

When reviewing a purchasing file or when conducting interviews, a CPSR Analyst should document any files that show conflict between external departments and procurement that resulted in procurement not following regulatory guidelines.

Applies to

All awards (including modifications)

Procurement Authority

March 17, 2016

Introduction

Procurement authority is awarded to contractor personnel who are authorized to contract for supplies and services. The purpose of this Job Aid is to recognize the importance for contractors to identify the appropriate dollar value limits established for their procurement personnel authorized to approve awards.

Regulatory References

- DFARS 252.244-7001(c)(3), Contractor Purchasing System Administrative Criteria

CPSR Report Language

Procurement authority establishes responsible individuals within a company authorized to contract for supplies and services. This authority is often limited in scope and different individuals within the procurement organization may be authorized to approve awards at different dollar values. Buyers must obtain approval from an official with the appropriate level of authority when they work on procurements above their own authority level.

Procurement activities should not be performed, nor approval given, by individuals who do not have procurement authority. Purchases made by people who lack or have inadequate procurement authority for the value of the procurement are considered Unauthorized Commitments. FAR 1.602-3 defines an Unauthorized Commitment as an agreement that is not binding solely because the representative who made it lacked the authority to enter into that agreement.

Contractor Policies and Procedures

A contractor's policy should provide clear guidance to buyers on the importance to recognize the established dollar value thresholds and commodity limitations established by its company.
A contractor's procedure should be to adhere to the procurement authority established by its company.

CPSR Process

Requirement

When reviewing a purchasing file, a CPSR Analyst should obtain a procurement authority document that list all procurement personnel authorized to approve awards and their appropriate dollar value limits.

Applies to

All awards (including modifications)

Restrictions on the Acquisition of Specialty Metals/Articles containing Specialty Metals

July 25, 2016

Introduction

The Berry Amendment (10, U.S.C. 2533b) requires the Department of Defense (DOD) to give preference in procurement to domestically produced, manufactured, or home grown products, most notably food, clothing, fabrics, and specialty metals. DOD contractors are prohibited from utilizing appropriated funding to procure certain items produced outside the United States.

DFARS 252.225-7008 (Mar 2013) restricts the acquisition of specialty metals to the US; DFARS 252.225-7009 (Mar 2014) restricts the acquisition of certain articles containing specialty metals.

- DFARS 252.225-7008 states: "any specialty metal delivered under this contract shall be melted or produced in the United States or its outlying areas."
- DFARS 252.225-7009 states: "except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country."
- A list of qualifying countries is found at DFARS 225.003.
- DFARS 252.225-7009(c) lists thirteen exceptions for which the specialty metal requirement does not apply. CPSR team should review this clause thoroughly if the specialty metal clause requirement applies to ensure they take into account the exceptions to the specialty metal requirement.

Definitions: see DFARS 225.7003-1; DFARS 252.225-7008; DFARS 252.225-7009.

History: There have been policy changes on the specialty metals clauses since 2006. Note the dates of these clauses as contracts may contain various versions of these clauses.

- DFARS 252.225-7008 (Mar 2013) replaced 252.225-7014 (May 1998); DFARS 252.225-7014 (Mar 1998) no longer exists. More information on the historical policy from 2006 onward can be found at the DPAP website: http://www.acq.osd.mil/dpap/cpic/ic/restrictions_on_specialty_metals_10_usc_2533b.html.

Threshold: Procurements above the Simplified Acquisition Threshold (DFARS 225.7003-3(a)(1)).

Legal References

(a) 10 U.S.C. 2533b, Requirements to Buy Strategic Materials Critical to National Security from American Sources

(b) DFARS 225.7003, Restrictions on Acquisition of Specialty Metals

(c) DFARS 252.225-7008, Restriction on Acquisition of Specialty Metals

(d) DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals

(e) DFARS PGI 225.7003-2(a), Restriction (applies to the item containing the specialty metal)

(f) DFARS 252.244-7001(c) (1), (2), (18), and (19) Contractor Purchasing System Administration Criteria

Applicability

All of the contractor's subcontract/purchase order files containing DFARS 252.225-7009 and valued above the SAT.
Exceptions on procurements: see DFARS 225.7003-3 (there are 13 exceptions, see embedded file below).

Review

I. Contractor's Prime Contracts

Verify presence of DFARS 252.225-7008 and DFARS 252.225-7009 (for applicable contracts);
Verify that DFARS 252.225-7009 clause has been flowed down to subcontractors. (DFARS 252.224-7008 does not require an explicit flow down to subcontracts (for questions, contact legal counsel).

II. PO File Documentation (What to Look for)

Contractor's Policy and Procedures (P & P) manual should cover the restrictions on acquisition of specialty metals and require flow down.

- In accordance with DFARS 252.244-7001(c)(1) and (19). Note: there may be exceptions to the specialty metals restrictions, reference DFARS 252.225-7009(c).

- Verify contractor's practice in flowing down clauses which should be reflected in its purchase orders and subcontracts, reference DFARS 252.244-7001(c)(2) as required.

- Verify documentation of internal audits or management review regarding the flow down of specialty metals requirements, reference DFARS 252.244-7001(c)(18).

Supply Chain Management Process

June 1, 2016

Introduction

Supply Chain Management (SCM) includes the oversight, coordination and integration of the movement of goods from a supplier to a customer, including delivery and financial arrangements. Efficient supply chain management results in high quality and low cost products delivered in a timely manner. An adequate Vendor Rating System (VRS) is an important part of the SCM process because it provides the process for measuring those factors that add value to the procurement through value addition or decreased cost. An effective system will continually evolve and the criteria will change to meet current issues and concerns. Vendor performance is usually evaluated in the areas of pricing, quality, delivery, and service.

A Department of Defense (DoD) Contractor's Supply Chain Management processes should address the SCM methodology either combined into one overarching supply chain process or in separate processes for the following issues; Sourcing Strategy, Work Transfer, Vendor Rating System, Supplier Risk Management, Purchasing, Government Notification, Internal Audit & Controls (metrics), Surveillance & Performance Monitoring, and Supplier Corrective Action.

Regulatory References

(a) FAR 52.244-2, Subcontracts
(b) FAR 42.302 (a)(50) Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system (see Part 44).
(c) FAR 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System
(d) DFARS 252.244-7001

- (c) (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (c) (20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;
- (c) (21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of 252.211-7003, Item Unique Identification and Valuation, if applicable;

Applicability

The Supply Chain Management Process applies to contractor's subcontracts and purchase order files that are subject to Government review under Contractor Purchasing System Administration basic clause or it's alternate as follows:

(a) DFARS 252.244-7001, Contractor Purchasing System Administration—Basic, is applicable in solicitations and contracts containing FAR 52.244-2, Subcontracts.
(b) DFARS 252.244-7001, Contractor Purchasing System Administration—Alternate I, is applicable in solicitations and contracts that contain FAR 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, but do not contain FAR 52.244-2, Subcontracts.
NOTE: *If Alternate I is applicable: As prescribed in 244.305-71 and 244.305-71(b),the DFARS 252.244-7001 clause paragraph (c) of the basic clause is amended by deleting paragraphs (c)(1) through (c)(18) and (c)(22) through (c)(24), and revising and renumbering paragraphs (c)(19) through (c)(21) of the basic clause. Therefore, DFARS 252.244-7001(c)(14) is removed from the SCM requirement.*

Prior to the on-site Visit: The CPSR procurement analyst (PA) should send the Administrative Contracting Officer (ACO) the SCM functional specialist questionnaire. The PA should review the responses, any attachments, and the associated SCM policies and procedures to determine if there are any SCM issues. These documents provide a method of assessing the Contractor's supply chain management procedures and processes. This includes the ability of the prime contractor (PC) to monitor and control their suppliers and the supply chain process.

During the Review: The PA should look for vendor ratings (VR) documentation in the award files. If no VR documentation is found in the award files, the PA should ask the PC if VR are conducted and if so, where they are stored (in award files or in a separate consolidated location). The PA should determine if the process is adequate. If not adequate, the PA should write to the inadequacies in the SCM section of the CPSR report.

After the Review: By reviewing the data collected from the SCM FS data call, along with the review of information gathered during the review on the prime contractors VRS, the PA should have a good grasp on the PC's control of their SCM process and be able to answer the following questions:

1. Does the prime know their critical suppliers? How does the prime contractor (PC) ensure timely delivery of an acceptable product? What procedures do they have to notify the Government of non-conforming products and potential problems that may affect delivery, quantity, or price?
2. Does the PC have an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources? Please describe!

3. Does the PC maintain an Approved Supplier List and a Problem Supplier List? If so, please describe!

4. Does the contractor have a Vendor Rating System (VRS)? Describe its effectiveness? How often does the prime contractor review supplier performance? Does the VRS quickly and reliably inform purchasing/management of major

problems? Has the vendor rating system found current or recent problem suppliers? Are such situations rare or numerous? If numerous, can you provide a list of problem suppliers?

5. Does the PC provide for disapproval, downgrade, and reinstatement of a supplier based on Vendor Ratings, Quality System Audit results, and Effectiveness of corrective and/or preventive actions? Please explain!

6. What resource planning tools does the contractor use to ensure that specified requirements, terms and conditions, quality clauses, special processes, DPAS etc., are accurately captured on Purchase Orders and flowed down to the supplier?

SPECIAL NOTE: If the contractor has a number of significant deficiencies in other areas of the report, the Procurement Analyst should consider if the contractor could have caught those problems with improvements to their Vendor Rating System? If so the Procurement Analyst should include improvements to the VRS in the Opportunity for Improvement section of the CPSR Report.

Long Term Purchasing Agreements

October 11, 2016

Introduction

Definition.

"Contractor team arrangement," as used in this subpart, means an arrangement in which—

(1) Two or more companies that form a partnership or joint venture to act as a potential prime contractor; or

(2) A potential prime contractor who agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

Purchasing System Adequacy Issues with Long Term Agreement (LTAs) can relate to:

1. Maintaining adequate price competition in subcontracting "to the maximum practical extent" (FAR 52.244-5; analogous FAR policy for prime contracts in 6.101(b)).

2. Ensuring adequate pricing policies and techniques, especially where adequate price competition is not obtained (including cost or pricing data and TINA compliance); and

3. Ensuring sufficient subcontract formation techniques, generally consistent with FAR contract formation rules, considering FAR guidance addressing indefinite delivery and requirements type contracts, and contracts with options, negotiated in a manner consistent with FAR Subparts 16.5 and 17.2.

Regulatory References

(a) FAR 9.601 - Contractor Team Arrangements

(b) FAR 16.5 - Indefinite-Delivery Contracts

(c) FAR 16.7 – Agreements

(d) FAR 17.2 - Options

CPSR Report Language

Contractors and subcontractors may use a number of different contract vehicles for engaging in long term purchasing arrangements for supplies or services. Teaming Agreements, Long Term Agreements (LTA*s*), Basic Ordering Agreements (BOA*s*), or Indefinite Delivery/Indefinite Quantity (IDIQ) subcontracts, may be used to establish prices, terms and conditions for several years.

Reference FAR 9.601 para (2), the CPSR should assess whether the particular subcontract arrangement (prices and terms and conditions) was included as part of the prime contractor's winning proposal under an RFP for the award of the prime contract, i.e. where: "a potential prime contractor agrees with one or more companies to have them act as its subcontractors under a specified contract or acquisition program." This scenario plays out in one of two ways: (1) where there is adequate price competition for the prime contract and therefore certified cost or pricing data is not required from either the prime or sub; or (2) where there is not adequate price competition for the prime contract, and therefore whether cost or pricing data and TINA compliance is required for the subcontract. This evaluation bears on how and whether there was price competition and/or TINA compliance under the prime contract, and the extent such compliance extends to the subcontract.

However, other subcontracting and pricing situations arise as well -- situations where the subcontract prices were not evaluated as part of the negotiated price of the prime contract -- such as when the subcontracting is done AFTER award of the prime contract without having been included as part of the prime contract proposal. CPSR reviewers need to be aware of these various situations in evaluating subcontractor's purchasing system procedures for compliance with competition and TINA requirements.

In evaluating subcontracts that extend for multiple years (i.e., LTAs), CPSR reviewers should focus on whether the prime contractor entered into a sufficient subcontract vehicle in the first instance, that would comply with FAR requirements, such as IDIQ or requirements-type IAW 16.5, or multiple-year contracts with options IAW FAR 17.2. In evaluating the sufficiency of the subcontract:
-- Consider that FAR guidance (e.g., FAR 17.204) generally allows IDIQ contracts and option contracts to extend for up to 5 years
-- Consider the clause 52.244-5 requirement for "competition to the maximum extent practicable consistent with objectives and requirements of the contract"
-- Consider that TINA applies to pricing of noncommercial subcontracts entered into without adequate price competition over the TINA threshold
-- Consider that BOAs and other noncontract Agreements and price lists are not valid contracts, such that orders under BOAs must individually comply with competition and TINA requirements
-- Contrast contracts with options and multiple-year Requirements contracts and IDIQ contracts
--- These types of multiple-year contracts (LTAs) are available for use, and the initial compliance with competition and TINA extends for the life of the contract."

<u>Contractor Policies and Procedures</u>

A contractor's policies and procedures serve as the backbone to any good purchasing system. Policies and procedures should provide clear guidance to buyers as they navigate the purchasing process. Below, is what a contractor's policies and procedures should minimally contain as they relate to Long Term Agreements.

- References – FAR References

- Definition – Define Teaming Agreements, Long Term Agreements, BOAs, IDC (Indefinite/Definite Contracts)

- Procedures – Outline when each is appropriate and the necessary steps to be followed for entering into each type of agreement.
    - Explanation of the teaming agreement *and/or LTA process* from top to bottom
    - Explanation of scenarios in which the company may enter into Teaming Agreements *and LTAs* with potential suppliers
    - Layout of the approval process

<u>Long Term Agreements and the CPSR Process Requirement:</u>

Check adequacy to FAR references:

- FAR 9.601 - Contractor Team Arrangements
- FAR Subpart 16.5 - Indefinite-Delivery Contracts
- FAR Subpart 16.7 – Agreements
- FAR 17.2 - Options

Check practice adequacy to the contractor's policy and procedures

- LTAs that extend too long, i.e. 20 years, are not acceptable subcontracts as they violate policy requiring 'competition to the maximum extent possible.'
- LTA's that extend too long may also violate TINA unless a new TINA certification is obtained for each new priced subcontract.
- Contractors who negotiate mere "price lists" with favored vendors which are allowed to continue for years without compliance with basic FAR subcontracting policies of competition and TINA.

Handling Change Orders and Modifications

July 6, 2016

Introduction

Contract modification (frequently referred to as a "mod") is a generic term meaning any written change in the terms and scope of a contract. The terms *modification* and *change* are often used interchangeably. Contract modifications are common for many contracting professionals. Changes may be in relation to contract cost, quantity, schedule, delivery schedule, fees, terms and conditions, and personnel. Changing technologies, mission requirements, and funding may create the need for changes in a contract. Contracts can be very complex, and can lead to misinterpretations and miscommunications of requirements and administrative issues, some which may not become evident until the contract is awarded. A modification may become necessary when the Government wants something different than what was originally envisioned or something unforeseen occurs.

Regulatory References

DFARS 252.244-7001(c)(1)
DFARS 252.244-7001(c)(4)
DFARS 252.244-7001(c)(15)

Applicability

All of the contractor's subcontract/purchase orders files that are subject to Government review.

Requirements

DFARS 252.244-7001(c)(4) states that the contractor's purchasing system shall ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, prices paid, and document the subcontract/purchase order files which are subject to Government review.
In accordance with DFARS 252.244-7001(c)(15), the contractor's purchasing system must also document and justify reasons for subcontract changes that affect cost or price.

Review

When reviewing subcontracts and purchase orders, each modification or change order is treated as a stand-alone contract in terms of thresholds and documenting the need for the change should be in the file in accordance with DFARS 252.244-7001(c)(4) and (15). Documentation in the file should include the date of the modification, the reason for the modification and the amount of the modification.
For example, if a modification leads to Public Law compliance (such as TINA), the date of the modification will be used to determine if compliance with TINA requirements was accomplished (for example, TINA certification, negotiation completion, etc.).

In documenting modifications, the reason for the modification should also be considered, such as, delivery date or quantity change, price increase or decrease, and administrative changes. Any change in price should also be documented in the file. Questions that should be asked are: How does the contractor address modifications?, Is there supporting documentation for the change in price?, and Does the modification have the appropriate signature authority for the change in price?

Policies and Procedures

When evaluating a contractor, the contractor's purchasing system shall have an adequate system description including policies, procedures, and purchasing practices that comply with the FAR and DFARS which is in accordance with DFARS 252.244-7001(c)(1).
The contractor should have a policy and procedure that addresses change orders and modifications to provide guidance and direction in ensuring compliance with applicable laws and regulations. The policy and procedure should dictate how change orders and modifications are handled with subcontracts and purchase orders.

Summary

In summary, the review will cover the adequacy of the contractor's policies and procedures for handling contract modifications and change orders to include proper file documentation, which may impact review thresholds. The review will also cover the adequacy of the contractor's practice to determine if the contractor is operating in accordance with their policies and procedures.

Intra/Inter-Company, Affiliate or Subsidiary Transactions

September 20, 2016

Introduction

An inter-company transaction occurs when one unit of an entity is involved in a transaction with another unit of the same entity. While these transactions can occur for a variety of reasons, they often occur as a result of the normal business relationships that exist between the units of the entity. An intra-company transaction occurs within the same legal entity.
An affiliate is a type of inter-company relationship in which associated business concerns or individuals, directly or indirectly; (1) controls or can control the other, or (2) a third party controls or can control both.
A subsidiary is a company that is partly or completely owned by another company that holds a controlling interest in the subsidiary. The voting stock of a subsidiary is more than 50% controlled by another company, usually referred to as the parent company or holding company. For the purposes of liability and regulation, subsidiaries are distinct legal entities.

Regulatory References

FAR 31.205-26(e)
FAR 44.303(e)
DFARS 252.244-7001(c)(1)
DFARS 252.244-7001(c)(5)

Applicability

All of the contractor's subcontract/purchase orders files that are subject to Government review.

Requirements

FAR 31.205-26(e) states that allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, this allowance may be on the basis of price when—

> (1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control; and
>
> (2) The item being transferred qualified for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable.

FAR 44.303(e) states that in evaluation of the contractor's purchasing system, special attention shall be given to the treatment accorded affiliates and other concerns having close working arrangements with the contractor.

In accordance with DFARS 252.244-7001(c)(5), the contractor's purchasing system must also establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and price paid.

Review

When reviewing subcontracts and purchase orders, an analyst may come across an affiliate or intercompany procurement between the contractor and suppliers where there is a financial or management relationship to the contractor. The prices paid for these procurements must be fair and reasonable and the transaction may include profit to only one of the entities involved.
In accordance with FAR 31.205-26(e), any materials, supplies, and services that are sold or transferred between any divisions, subsidiaries, or affiliates of the contractor shall be on the basis of cost incurred. It also permits an allowance at price under certain conditions as previously stated.
Affiliates, another division, plant, and related separate entities are not considered subcontractors. Since these procurements could have been given to a subcontractor, there is the possibility of additional savings to the Government through competition. When considering an inter-company transaction, the contractor should perform a make-or-buy analysis documenting that the in-house work is or is not, in the Government's best interest before soliciting outside contractors. When evaluating an inter-company transaction, it is also important to evaluate these procurements to ensure that there is no profit charged on top of profit. If a subcontractor is used, the contractor should provide documentation insuring that the prices are fair and reasonable.

Policies and Procedures

When evaluating a contractor, the contractor's purchasing system shall have an adequate system description including policies, procedures, and purchasing practices that comply with the FAR and DFARS which is in accordance with DFARS 252.244-7001(c)(1).
The contractor should have a policy and procedure that addresses intra/inter-company, affiliate, or subsidiary transactions to provide guidance and direction in ensuring compliance with applicable laws and regulations. The policy and procedure should dictate how intra/inter-company transactions are handled with subcontracts and purchase orders.

Summary

In summary, the review will cover the adequacy of the contractor's policies and procedures for intra/inter company, affiliate or subsidiary transactions to include proper file documentation for fair and reasonable pricing and to make sure that materials and services are transferred on the basis of cost incurred. The review will also cover the adequacy of the contractor's practice to determine if the contractor is operating in accordance with their policies and procedures.

This is no longer an element on the CPSR, but will be covered on the Documentation job aid when posted.

Procurements at or Below the Simplified Acquisition Threshold

August 18, 2015

Introduction

A common problem encountered during a Contractor Purchasing System Review (CPSR) is the lack of purchasing documentation provided for low dollar contracts. The purpose of this Job Aid is to define the extent of contractor purchasing file documentation required when the Contractor procures supplies or services at or below the micro-purchase threshold ($3,000), and up to the Simplified Acquisition Threshold (SAT) ($150,000).

Regulatory References

(a) FAR 4.801 (b), Government Contract Files

(b) FAR 13, Simplified Acquisition Procedures

(c) FAR 15.404-3(b) (1) and (2), Subcontract Pricing Considerations

(d) DFARS 252.244-7001(c) (1), (2), (4), (5), (7), (8), (9), (10), (13) and (22), Contractor Purchasing System Administration Criteria

Applicability

All of the contractor's subcontract/purchase order files that are subject to Government review under the Simplified Acquisition Threshold (SAT).

Review

Before beginning any review, all applicable policies and procedures related to the procurement process from the identification of a bona fide need through closeout should be reviewed for the items required. (See below)

I. Micro-purchases (less than $3,000)

(a) For general information regarding Government micro-purchasing procedures, refer to FAR 13.2.

(b) For this level, the Contractor's policies and procedures ought to encourage documentation of the below listed items; i.e., purchase requisition or some other document of bona fide need;

This is no longer an element on the CPSR, but will be covered on the Documentation job aid when posted.

the purchase order or p-card receipt; price fair and reasonable; and any closeout documentation when the procurement is closed out.

(c) Contractor purchasing file documentation requirements are minimal. For this level of procurement, there is no requirement for competition or sole source justification as long as the price is considered fair and reasonable. CPSR analysts should verify that the contractor's file includes a Purchase Requisition, Purchase Order and documentation that the price is fair and reasonable and the basis for that determination. i.e., Prices are fair and reasonable based on Open Market, historical pricing, etc.

II. Purchases at or below the SAT ($3,000 - $150,000)

(a) For general information regarding Government procurement at or below the SAT, refer to FAR 13.3.

(b) For this level, the Contractor's policies and procedures should require documentation of the below listed items that are required for the appropriate dollar value of the procurement; i.e., PR, PO, SSJ, competition documentation, price fair and reasonable, any level of disclosure or certification required and any closeout documentation when the procurement is closed out.

(c) The CPSR system criteria at DFARS 252.244-7001(c)(7) require that a contractor use competitive sourcing to the maximum extent practicable. For competitively sourced purchases, analysts should verify the following documentation exists in contractor purchasing files:

(1) The solicitation sent to potential vendors and any amendments to the solicitation. If a vendor was selected from an Approved Supplier List (ASL), documentation should be evident. The file should include identification of vendors solicited and responses received or a bid abstract.

(2) Documentation showing adequate analysis of cost or price and technical capabilities of competing vendors.

(3) Documentation of any negotiations attempted.

(4) If the vendor selected was not the lowest offeror, documentation must address why that offeror was selected.

(5) For oral solicitations, records should be established and maintained of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the

This is no longer an element on the CPSR, but will be covered on the Documentation job aid when posted.

names of the suppliers and date contacted and the prices and other terms and conditions quoted by each. This includes pricing, any terms and conditions, and how the price was determined to be fair and reasonable.

(d) If competition was not utilized and only one source is identified, contractor file documentation should include, at a minimum, market research and a sole source justification stating why the source should be used. Price analysis should accompany the file to show the price is determined fair and reasonable. This can include comparison to historical pricing, similar items, contractor's knowledge of the item, or comparison to an independent estimate. The level of documentation should be based on the complexity of the purchase, i.e. new, reoccurring, or unique. All single or sole source justification procurements should include negotiation documentation.

(e) Documentation of the process used to determine that pricing is fair and reasonable is necessary and should be included. If a price change is needed, further documentation should be included to justify the change with approval by the contracting officer is required.

(f) For first tier subcontracts that exceed $25,000 in value, FAR 52.204-10(e) should flow down to the subcontractor for Executive Compensation. (Public Law 109-282, effective July 2010). Additionally, the contractor should gather and report the subcontractor information required in FAR 52.204-10(d)(2)-(3). FAR 52.204-10(d)(2) requires reporting of certain information of first-tier subcontract awards with a value of $25,000 or more to www.fsrs.gov. FAR 52.204-10(d)(3) requires the Contractor to report certain executive compensation information of first-tier subcontracts with a value of $25,000 or more.

(g) For subcontracts issued under a prime contract that contains FAR 52.209-6, Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment; the clause should be flowed down to any subcontract that exceeds $30,000 in value and is not for commercial off-the-shelf items. The Contractor shall require each proposed subcontractor whose subcontract will exceed $30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(h) For Government procurements above $75,000 or one half of the SAT, the contractor file should contain a signed purchase order with Defense Priorities and Allocation System (DPAS) rating. (FAR 52.211-15 and 15 CFR 700.13) The contractor should issue a rated order to any suppliers or subcontractors where it is necessary to fulfill the delivery requirements of a rated order issued by the Government, and the purchasing file should contain a signed copy of the rated order. A person is not required to place a priority rating on an order for less than $75,000,

This is no longer an element on the CPSR, but will be covered on the Documentation job aid when posted.

or one half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR)) (see FAR section 2.101), whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating (15 CFR 700.17(f)).