

## MANAGERS GUIDE TO FEDERAL PROCUREMENT

The original *Manager's Guide* was prepared by the Federal Acquisition Institute in the 1990s. This simple guide has been updated and revised by OGC to provide a basic orientation to Federal procurements.

### INTRODUCTION

Every year, the Federal Government spends billions of dollars on purchases from the private sector for property and services. The Federal procurement system has been established to manage these vast expenditures. More than likely, you will eventually play one or more roles in this system -- as a customer, acquisition manager, financier, or technical expert. We have written this guide to provide you with some basic information on:

- The objectives of the Federal procurement system.
- How the system is organized.
- The legal foundation of the system.
- The role of contracting officers.
- The roles of other Federal acquisition personnel.
- Contracting sources and methods.
- Steps in contracting for supplies and services.
- Standards of conduct related to contracting.
- *What you can do* to help the Government acquire timely, high quality, economical deliverables.
- Where you can obtain assistance and information.

### PRIMARY OBJECTIVE: VALUE

The primary goal of the Federal procurement system is to obtain maximum value for the money we spend on property and services (i.e. contract deliverables). The following are among

the factors considered in measuring "Value."

**Customer Satisfaction.** Are Federal employees receiving the contract deliverables required for their missions? Are they satisfied with the deliverables?

**Quality.** How well do the contract deliverables perform? Are they free of defects? Are they reliable? Are they effective in accomplishing the functions for which they were acquired?

**Timeliness.** Are end users obtaining supplies or benefitting from services when and where required for their missions?

**Price Reasonableness.** Is the Government paying reasonable prices for contract deliverables, considering their total costs, including:

- The contract price.
- Acquisition and ownership costs (e.g. spares, repairs, disposal, maintenance) not covered in the contract price.
- Government overhead for contract award and administration.

**Risk.** Are contracts effectively minimizing and fairly allocating risks inherent in the work? In every contract there is a risk that amounts paid to the contractor will exceed the fair market value of the work. More importantly, there is a risk that the contract will fail because of defective requirements, failure to perform, flawed tooling, shortages, and the like. An accurate finding of potential risks is especially important in selecting contract terms and contract type (e.g., fixed price vs. cost reimbursement vs. labor hour).

### OTHER OBJECTIVES

In addition to maximizing value, the Federal procurement system has other objectives, concerns, and values, such as:

**Compliance.** Are Federal officials complying with statutory and regulatory requirements in awarding and administering contracts? Are both Government and contractor personnel complying with contract terms and conditions after award?

**Integrity.** Are Federal officials dealing fairly, and in good faith, with all parties and stakeholders in the procurements?

**Efficiency.** How much does it cost to award and administer contracts? How trouble-free is the process? Are problems resolved swiftly and effectively? To what extent are problems preventable? Can the process be streamlined and made easier for all concerned?

**Supplier Relations.** Are the best suppliers (as measured by the relative value of their products and services) willing and able to do business with the Government? Are contractors investing in production and product innovations of benefit to Government missions?

**Social and Economic Concerns.** Are both parties satisfying statutory requirements related to such goals as:

- Providing work for small and disadvantaged business.
- Paying fair wages to contractor employees.
- Protecting the environment during the production and shipment of contract deliverables.
- Promoting equal employment opportunity in contractor hiring practices?

### KEY OFFICIAL: THE CONTRACTING OFFICER

Contracting Officers are the key actor for the Government in contracts with the private sector because:

- The Government is one party.
- The contractor is the other party.
- The Contracting Officer (CO) represents the Government in contracting with private parties.

**Concentration of Authority.** As the Government's representative, only COs may execute, modify, or terminate a contract. However, COs may bind the Government only to the extent of the authority delegated to them in writing. There are very narrow exceptions allowing others to contract for goods and services with appropriated funds.

**Responsibilities.** COs ensure that:

- The interests of the United States are safeguarded.
- The Government obtains maximum value from contracts.
- All requirements of law are met prior to executing a contract.
- Sufficient funds are available for obligation.
- Both parties comply with the contract.
- Contractors receive impartial, fair, and equitable treatment.

**Independence.** COs often request advice from specialists in audit, law, engineering, and other fields. However, with rare exception, the CO is ultimately responsible for all significant procurement decisions. The recommendations of specialists are advisory.

### PROCUREMENT BODIES & OTHER OFFICIALS

These bodies and officials play critical roles in the Federal procurement system:

*The Congress* (1) authorizes programs that procurements support; (2) appropriates funds that contract awards "obligate"; and (3) writes laws governing the Federal procurement system. Obligations are legally binding commitments,

such as contracts made by authorized Federal officials, which lead to future cash outlays.

*The President* establishes Government-wide procurement policies and procedures through executive and other orders.

*The Office of Federal Procurement Policy (OFPP)* (1) provides Government-wide direction on Federal procurement; (2) advises the President and the Congress on procurement matters; and (3) provides for the Federal Acquisition Institute.

*The Federal Acquisition Regulatory Council* issues and maintains the Federal Acquisition Regulation (FAR), providing Government-wide acquisition policies and procedures. The Council includes the Administrators of OFPP, GSA, and NASA, and the DOD Secretary.

*Regulatory agencies* such as the Department of Labor, the SBA, and EPA (1) implement statutory socioeconomic contract requirements and (2) review protests related those requirements.

*Agency Heads* (1) designate contracting activities, (2) delegate contracting authority to the heads of those activities; and (3) oversee the exercise of contracting authority within the agency.

*The Chief Acquisition Officer*, among other things, advises and assists the head of an agency to ensure the agency mission is achieved through management of the agency's acquisition activities.

*The Senior Procurement Executive* manages the procurement system of an agency and implements its unique procurement policies, regulations, and standards (subject to the FAR).

*The Head of the Contracting Activity* manages a Contracting Activity -- an organization of

individuals with broadly delegated contracting authority.

*Contracting Officers* are delegated specific contracting authority by HCAs (or superior officials) and issue contracts supporting the agency mission. Usually, only COs are authorized to obligate funds on and enter into Government contracts for goods and services.

*The Government Accountability Office (GAO)* (1) investigates agency contract management; (2) hears protests of agency pre-award and award decisions, and (3) provides guidance on funding availability.

*Inspector Generals* (1) review agency contract management, (2) investigate potential fraud, and, in most civilian agencies, (3) audit contractor records.

*The Attorney General and DOJ* (1) represents agencies before courts on procurement matters, (2) render binding legal advice, and (3) prosecutes contract fraud cases in the courts.

*Boards of Contract Appeals* ("Civilian" for civilian agencies and "Armed Services" for DOD) administratively adjudicate post-award Government contract disputes.

*The Court of Federal Claims* adjudicates bid protests and Government contract disputes.

*Small Business Advocates:*

- Recommend that contracts be set-aside for competition among or award to small businesses.
- Identify opportunities for placing contracts with small businesses or within particular small business programs, such as the "8(a)" program for businesses owned by socially and economically disadvantaged persons.
- Review offeror plans for placing subcontracts with small businesses.

*Auditors and accountants* perform such functions as:

- Auditing cost and pricing data provided by an offeror and recommending positions on proposed elements of cost.
- Investigating the financial responsibility of offerors.
- Auditing contractor invoices.
- Reviewing contractor accounting and cost estimating systems.

*Competition Advocates* are responsible for identifying and removing "barriers" to competition. For this purpose, they review draft acquisition plans, statements of work, and justifications for non-competitive contracting.

*Agency Lawyers* interpret procurement statutes and regulations, review proposed solicitations and contracts for legal sufficiency, advise COs on certain procurement matters as required by the FAR, and represent the agency in bid protests and contract disputes before the GAO and the Boards of Contract Appeals.

*Logistics specialists* perform such functions as: manage the shipping and storage of contract deliverables, evaluate contractor quality assurance programs, and review contractor treatment of Government furnished property.

There are many other procurement actors.

## LEGAL FRAMEWORK

In 1831, the Supreme Court declared in *U.S. v. Tingey* that the Government, based on sovereignty, has inherent power to contract. However, the Government's broad constitutional authority to contract is limited by statutes, court decisions, and administrative law.

Numerous statutes govern Federal contracting, most of which are compiled in Titles 10 and 41 of

the United States Code (U.S.C.). Among the basic public laws (current and repealed) addressing procurement are:

- The Armed Services Procurement Act of 1947 (substantially found in 10 U.S.C. §§ 2202, 2301-2314, 2381, 2383)
- The Federal Property and Administrative Services Act of 1949 (numerous sections in Titles 40 and 41 of the U.S.C.).
- The Office of Federal Procurement Policy Act, as amended (41 U.S.C. §§ 403-440).
- The Small Business Act (15 U.S.C. § 631- 657o).

Government procurement is controlled by legal precedents established by the Court of Federal Claims (and its historical antecedents), as reviewed by the U.S. Court of Appeals for the Federal Circuit and the Supreme Court.

Administrative law in the form of Executive Orders and procurement policy issuances, the Federal Acquisition Regulation (FAR), decisions of the Boards of Contract appeals, and guidance from the Government Accountability Office are also very influential.

The FAR is the uniform procurement regulation that applies to most of the Executive Branch. The FAR system consists of the FAR (48 C.F.R. Part 1), the FAR agency supplements (48 C.F.R. Parts 2-57), and internal agency manuals and guidance implementing the FAR (e.g. delegations of authority and office procedures). The FAR is the procurement community's book of first resort.

## CONDUCT STANDARDS

Procurement is a fiduciary responsibility and should be conducted with complete impartiality and preferential treatment for none (except as authorized by statute or regulation). Procuring

offices should:

- Avoid any conflicts of interest or the appearance of same.
- Avoid making Government decisions outside official channels.
- Conduct themselves as though full public disclosure of its actions will occur.

The following conduct is specifically prohibited:

- Making or recommending official decisions in which you, your spouse, or minor children have a financial interest.
- Representing contractors.
- Taking bribes.
- Conspiring to defraud the Government.
- Making false statements or covering up unethical conduct.
- Contracting with Members of Congress.

The Procurement Integrity Act, implemented at FAR 3.104, addresses other specific prohibitions (and provides administrative, contractual, civil, and remedies and criminal penalties) regarding:

- Disclosing or obtaining source selection or proprietary information, except as authorized by law.
- Negotiating for employment with offerors on a procurement on which a Federal employee is serving.
- Acceptance of compensation from a contractor awarded a contract arising from a procurement in which the Federal employee served in certain capacities (the post-employment restriction).

As defined by FAR 2.101, source selection information includes:

- Source selection plans.
- Technical evaluation plans.
- Technical and price proposal information.
- Bid prices or listings of bid prices.
- Technical and price evaluations.

- Competitive range determinations.
- Rankings of bidders and offerors.
- Reports and evaluations of source selection panels, boards, and advisory councils.
- Data marked "Source Selection Information" in accordance with the FAR.

For each phase of the acquisition process, the FAR prescribes what, if any, source selection information and other acquisition sensitive information (1) may be released, (2) who may release the information, (3) when the information may be released, and (4) how it may be released.

For example, you may not disclose the price of a bid prior to bid opening. However, at the bid opening, all bid prices are publicly announced. As a basic rule of thumb, read FAR 3.104 and contact the CO before talking about future buys with any private sector party.

#### DISCLOSURE

Certain procurement documentation is required to be published, including procurement solicitations; notices of award; and justifications for the use of statutory exemptions from the competition rules. While awarded contracts are usually required to be made available upon request, certain parts of those contracts may be exempt from disclosure as containing confidential proprietary information of the contractor.

Unsuccessful proposals are not made available to public requestors, nor are contractor performance evaluations.

#### PROCUREMENT SOURCES & METHODS

When COs receive purchase requests from program managers, they must decide (1) whether to solicit offers from required sources, small business, or on an unrestricted basis and (2) the method for soliciting and

evaluating offers.

**Required Sources.** FAR Part 8 requires that Federal agencies acquire certain supplies and services from "required sources," such as excess property inventories, Federal Prison Industries, Inc., and AbilityOne nonprofit agencies (people who are blind or severely handicapped).

The FAR also specifies sources for such items as liquid or gaseous helium and Government printing.

COs may turn to the open market only if a required source cannot meet the need. Typical issues are:

- Can products from required sources meet the need?
- Can the required source deliver the necessary quantity on time?
- Can you obtain the identical product or service on the open market at a lower delivered price than would be charged by the required source?

**Small Business.** Even if a required source is not prescribed, agencies must determine whether the requirement must or should be competed among or awarded to small business under one of the many small business programs summarized in FAR Part 19 (using methods discussed below).

**Methods of Procurement.** The FAR authorizes three basic methods for establishing contracts and soliciting and evaluating offers from open market sources: (1) small purchases under FAR Part 13, (2) sealed bidding under FAR Part 14, and (3) contracting by negotiation under FAR Part 15.

COs use small purchase procedures and instruments (e.g., Purchase Orders) to contract under the "simplified acquisition threshold" (a set of dollar thresholds for smaller purchases).

Also, program managers are sometimes delegated authority to buy supplies or services through purchase cards and other small purchase techniques (within limits).

Benefits of small purchase procedures include:

- No statutory lead times
- Most FAR clauses do not apply.
- Forms are short and simple.
- Quotes are solicited (sometimes by phone) from only a short list of sources.

For larger buys, where the products or services to be acquired, including their quality and nature, are very well defined, COs use sealed bidding when:

- Competition can be limited to price and price-related factors.
- There is sufficient time to solicit and evaluate bids.
- There is no need to discuss the goods or services to be delivered.
- 2 or more sources are likely to bid.

Basic milestones in sealed bidding are:

- The CO publicizes and issues an Invitation for Bids (IFB).
- Bidders submit sealed bids.
- The bids are publicly opened.
- The CO awards to the low, responsive, responsible bidder.

When small purchases and sealed bidding are not appropriate, COs contract by negotiation. If competitive, this means:

- Publicizing and issuing a Request For Proposals (RFP),
- Sometimes establishing a "competitive range" limited to proposals with a reasonable chance of award.
- Discussing proposals with offerors in the

competitive range, if established; and then requesting "final revised proposals" (FRPs).

- Awarding based on price and other RFP evaluation factors.

Noncompetitive negotiations are allowed only when justified under FAR Part 6 (e.g., for such reasons as: only one source exists for the product; urgency; to keep a second source of supply in existence; or to protect national security).

Other often-used procurement methods include distinct procedures for architectural and engineering competitions as well as broad area announcement procedures used for research and development contracting. See FAR Subpt. 36.6 and 35.015.

Many requirements, however, are not satisfied through creating a new contract, but by placing an order under an existing contract. Particularly popular are order competitions held among multiple awardees holding contracts under the GSA Schedule contract program, see FAR Subpart 8.4, and those multiple awardees holding contracts under Government-wide or agency-specific indefinite delivery contracts. See FAR Part 16.5. When using these contracts, agencies compete requirements among contract awardees. The competition rules under these "order competitions" differ from those used when creating a new contract, but they still maintain variations on the core competition values found in FAR Part 6.

#### PROCUREMENT PROCESS

Although the terminology and specifics differ with procurement method, the procurement process typically involves three phases: (1) presolicitation, (2) solicitation, evaluation, and award and (3) post-award.

*The Presolicitation Phase* lays the groundwork for soliciting offers. In this phase, the Government performs such tasks as:

- Identifying its needs for goods and services.
- Conducting market research.
- Preparing a statement of work (SOW) or statement of objectives (SOO).
- Committing funds for the procurement.
- Preparing Purchase Requests.

*The Solicitation, Evaluation & Award Phase* requires the government to:

- Determine the extent and nature of competition for award (i.e. Must the requirement be set-aside for small business? Can full and open competition be achieved?)
  - Determine the procurement method.
  - Establish price and non-price related evaluation factors for the competition.
  - Select provisions and clauses for the solicitation and contract.
  - Publicize the procurement.
  - Answer questions from interested firms.
  - Determine the need to amend the solicitation.
  - Evaluate bids, proposals, or quotations.
- Here, program managers (or their designees) often play a key role in determining, analyzing labor and material mix, determining sufficiency, and applying evaluation factors.
- As necessary, set a competitive range and discuss proposals.
  - Select a tentative awardee and confirm its responsibility.
  - Award and publicize the contract.
  - As necessary, debrief offerors.
  - As necessary, defend against protests.

*The Postaward Phase* typically requires the government to:

- Orient the contractor to the agency.
- Monitor compliance with the contract by both the contractor and Government personnel.
- Inspect and accept or reject contract deliverables.
- If problems arise, determine whether to: (1) stop work, (2) extend delivery dates for excusable delay, or (3) pursue contract remedies (issue a show cause or cure notice or a performance improvement plan).
- Determine the timing and amount of payments to contracts based on acceptability of the product, the contract type, extent of completed work, invoicing, and financing.
- Evaluate contractor performance for purposes of reference in future procurements.
- Modify or terminate contracts, where necessary.
- Close out the contract.
- Respond to or assert claims.

#### WHAT YOU CAN DO

By this point, you may be wondering what you can do to help obtain maximum value from Federal contracts and investments made through them. Here's what:

1. *Plan.* Research and plan against known milestones for fully competitive procurements prescribed by the FAR.
2. *Streamline.* Where possible, streamline the acquisition planning process. Lead times for the largest buys are often measured in months or even years, due in large part to redundant reporting, coordination, clearance, and approvals.
3. *Consult Early.* Talk to your CO prior to submitting a Purchase Request (PR). This will enable the CO to:

- Apprise you of milestones that have to be factored into the acquisition plan.
- Provide feedback on PR issues.
- Get a jump on market research and other tasks, so that they will need less time after receipt of the PR to begin soliciting offers.

4. *Research.* Thoroughly research the requirement prior to writing the statement of work, including probable changes in technology. Constantly changing requirements delay contracting!

5. *Reach Out.* Prior to soliciting, get industry feedback on complex statements of work, through such means as Requests for Information and presolicitation conferences. Do this, however, only through the CO (to minimize conflicts of interest and to assure a level playing field in future competitions).

6. *Rely.* Where possible, use commercial specifications and standards. Products tested in commercial markets tend to work at least as well and cost less than those built to Government-unique specifications.

7. *Be Definite.* Make sure that statements of work are clear, unambiguous, and enforceable -- whether written by the Government or by an offeror in response to a statement of objectives. Protests and disputes with contractors often center on vague or ambiguous contract terms.

8. *Stress Relevance.* Establish quality-related evaluation factors that are truly relevant to the procurement at issue and your agency mission. This can be done in areas such as past performance, technical excellence, management capability, personnel qualifications, prior experience, and schedule adherence, if they are relevant.

9. *Know What's Best.* When writing evaluation factors, write with the end in mind. What are the

most important things you want out of contract performance and out of the contractor?

10. *Consult Often.* Consult COs before taking questions from offerors or applying evaluation factors to questionable facts or circumstances.

11. *Make it a Priority.* Give priority to timely completion of proposal evaluation tasks for which you are responsible.

12. *Feed Back.* Provide early feedback to the CO on problems found through contract performance monitoring. To avoid "constructive changes" and costly claims, DO NOT try to solve problems before alerting the CO.

13. *Read the Contract First.* Make sure that the contractor and Government personnel comply with contract terms.

14. *Train.* Provide formal training to members of your staff in their acquisition-related duties.

For other instruction, consult the procurement staff of your agency.

#### FOR MORE INFORMATION:

##### 1. On the Federal Acquisition Regulation, visit:

<https://www.acquisition.gov/far/index.html>

The FAR web site provides an online edition of the FAR, printable versions, a wealth of reference information, and a help desk (to be contacted after resort to your own agency's procurement and legal offices).

[http://www.whitehouse.gov/omb/procurement\\_far\\_council](http://www.whitehouse.gov/omb/procurement_far_council)

The Federal Acquisition Regulatory Council web site provides links to contact information on FAR policy makers and status information on FAR cases.

##### 2. On Federal procurement policy, visit:

[http://www.whitehouse.gov/omb/procurement\\_default](http://www.whitehouse.gov/omb/procurement_default)

The Office of Federal Procurement Policy web site provides information on broadly based executive instruction in procurement in the form of OMB and OFPP circulars, guides, memoranda, and policy letters.

##### 3. On acquisition training and education programs generally, contact:

Federal Acquisition Institute  
9820 Belvoir Road  
Fort Belvoir, VA 22060-5565  
(Building 205, 1<sup>st</sup> Fl., West Wing)  
Call: (703) 805-2300  
Fax: (703) 805-2111  
<http://www.fai.gov/>

##### 4. On Defense acquisition training and education, contact:

Defense Acquisition University  
9820 Belvoir Road  
Fort Belvoir VA 22060  
(703) 805-3459  
(866) 568-6924 (within the USA, toll free)  
<http://www.dau.mil/default.aspx>

##### 5. On procurement and acquisition related information generally, visit:

<https://www.acquisition.gov/>  
Acquisition Central is a web portal providing access to a panorama of Federal Government acquisition and procurement sites.