



**DEPARTMENT  
OF DEFENSE  
(DOD)**

**DEFENSE  
CONTRACT  
MANAGEMENT  
AGENCY (DCMA)**

# Contractor Purchasing System Review (CPSR) Guidebook

June 14, 2019

This Guidebook revision supersedes all previous versions and has been approved.

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**Release Date:**  
June 14, 2019

### Change Log

Change #	Description	Document Section	Change Date
1	Validation of contractor actions will be conducted as a comprehensive review when a contractor's system is in a disapproved state for more that 12 months.	1.4.3	2/26/2019
2	Universe category updated to align with new Simplified Acquisition Threshold.	2.1.2.1.1 and 2.1.2.2.10	2/26/2019
3	Supply Chain Management (SCM) Job Aid updated to emphasize the requirements of DFARS 252.204-7012.	6.24	2/26/2019
4	Use term "covered defenses information" unless referring to specific markings ie. CUI or CTI in SCM Job Aid	6.24	06/14/19
5	Replace "First Tier Supplier " with "subcontractor " in SCM Job Aid	6.24	06/14/19
6	Replace "prime contractor" with "contractor" in SCM Job Aid	6.24	06/14/19
7	Replace "track" cyber incidents with "document"	6.24	06/14/19
8	Remove requirement for contractor to track subcontractor requests to vary from NIST in SCM Job Aid	6.24	06/14/19
9	Remove references to contractor assuring subcontractor compliance with specific NIST security requirements in SCM Job Aid	6.24	06/14/19
10	eliminate asterisk and note referring to 252.204-7012 not being an indiscriminate flowdown	6.24	06/14/19
11	Add DFARS 252.204-7008, as appropriate in SCM Job Aid	6.24	06/14/19
12	Update Micro-purchase threshold from \$5000 to \$10,000	6.16	06/14/19

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

**1.0 – Introduction 1.1**

**Scope of Guidebook**

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

**1.2 Application of Guidebook**

While the prime contractor has the responsibility of managing its purchasing system, 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 are expected to exceed \$50M in a 12 month period. These Government sales include all Government contracts/subcontracts minus those competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or sales of commercial items 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 Purchasing* – means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by a contractor 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 (PCO), Administrative Contracting Officer (ACO), Divisional Administrative Contracting Officer (DACO) or Corporate Administrative Contracting Officer (CACO).
- 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. With the exception of a Follow-up, a RA must be performed prior to the assignment of a CPSR to a PA. 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.

## **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 30 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 flowdown 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 subcontract/PO 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 flowdown 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 of 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 with a purchasing system that has not been previously reviewed.

### **1.4.3 Follow-Up Review**

A follow-up review is performed when a contractor's purchasing system has been 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 implementation 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's main focus will be on the areas found deficient in the previous CPSR. However, the CPSR Team may review other areas as needed to assess the overall health of the contractor's purchasing system. A follow-up review will only be completed if the previous CPSR was completed within the past 12 months. If it has been more than 12 months since the previous CPSR, then a full comprehensive review will be performed on the contractor's purchasing system. The follow-up report template format, located on the DCMA 360, will be used as appropriate.

## **2.0 – Planning for a CPSR**

### **2.1 Responsibilities**

#### **2.1.1 CO Responsibilities**

The CPSR Group will send a reminder to COs of their responsibility to conduct an assessment of their contractor's purchasing system at intervals defined by in FAR Subpart 44.302. Usually, the ACO is the Government POC; however, there are times that the PCO, DACO or the CACO may fill this role.

Based on CPSR recommendations, the CO has the ultimate authority to make the final decision 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 Respond to reminders from CPSR Group to submit a completed RA to DCMA Boston MA HQ List DCMA AQBC@mail.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 completed 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 awards to subcontractors broken down by dollar value, such as:
      - a) under \$250,000;

- b) \$250,000 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](mailto: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 Notification Letter  
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 \$250,000 – \$749,999;
  - c. Awards under \$250,000.

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 If the files are stored locally or electronic, the TL should provide the contractor 5 PO/subcontract files from the sample, no later than the Friday prior to arrival on-site. Provide the rest of the sample after the conclusion of the Entrance Conference. If paper files have to be shipped in from other locations, provide the sample of PO/subcontract files 5 calendar days before the review. The files should remain sealed/packed and the CPSR Team will open them upon arrival.

#### 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.

### **3.0 – In-plant CPSR**

This section of the CPSR Guidebook sets forth the procedures to be followed while 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;

## **4.0 – 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, Business System Analysis Summary (BSAS), the analyst's excel data workbook, and PO/subcontract deficiency report will be provided to their first line supervisor within 10 business days from the date of the exit conference. The excel data workbook and supporting documentation from the review are reviewed by the first line supervisor to verify that the findings support the report recommendations and to ensure sustainment of the analyst's conclusions and findings.

The report, BSAS, and PO/subcontract deficiency report requires a peer, first line supervisor, second supervisor, and CPSR Group Director reviews to ensure quality, accuracy, and completeness 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. 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.



## **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. Regardless of the type of review being conducted, 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; (see appendix 3, 3 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; (see appendix 8, 4 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, 5 pages)
- 4.2.1.11 Price Analysis; (see appendix 11, 3 pages)
- 4.2.1.12 Source Selection; (see appendix 12, 3 pages)
- 4.2.1.13 Negotiations; (see appendix 13, 3 pages)
- 4.2.1.14 Make-or-Buy Program; (see appendix 14, 2 pages)
- 4.2.1.15 Limitation on Pass-through Charges. (see appendix 15, 3 pages)
- 4.2.1.16 Documentation; (see appendix 16, 6 pages)
- 4.2.1.17 Training; (see appendix 17, 3 pages)
- 4.2.1.18 Internal Review/Self Audit; (see appendix 18, 8 pages)

- 4.2.1.19 Mandatory FAR and DFARS Flow Down Requirements/Terms and Conditions; (see appendix 19, 4 pages)
- 4.2.1.20 Purchase Requisition Process; (see appendix 20, 2 pages)
- 4.2.1.21 Commercial Item Determination; (see appendix 21, 5 pages)
- 4.2.1.22 Subcontract Types; (see appendix 22, 2 pages)
- 4.2.1.23 Procurement Authority; (see appendix 23, 2 pages)
- 4.2.1.24 Supply Chain Management Process; (see appendix 24, 10 pages)
- 4.2.1.25 Buy American; (see appendix 25, 5 pages)
- 4.2.1.26 Restrictions on the Acquisition of Specialty Metals/Articles containing Specialty Metals; (see appendix 26, 2 pages)
- 4.2.1.27 Subcontractor/Vendor Closeout Process; (see appendix 27, 2 pages)
- 4.2.1.28 Long Term Purchasing Arrangements; (see appendix 28, 2 pages)
- 4.2.1.29 Handling Change Orders and Modifications; (see appendix 29, 2 pages)
- 4.2.1.30 Intra/Inter-Company, Affiliate, or Subsidiary Transactions; (see appendix 30, 2 pages)

## **5.0 – 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.

## **6.0 – Appendixes for Reference**

Job aids for review elements

## **POLICIES AND PROCEDURES**

May 9, 2017

### **Introduction**

In accordance with DFARS 252.244-7001(c)(1), (17), and (19), a contractor's purchasing system shall have an adequate description to include policies, procedures, and purchasing practices which comply with FAR and DFARS regulations. These policies and procedures form the foundation of a procurement system that the DOD can rely upon to spend Government funds effectively and efficiently in compliance with Government policy. The manual should include procedures to ensure that the contractor enforces adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C Chapter 87, Kickbacks. A Policy and Procedure Manual provides instructions and directions for the day-to-day operations, and ensures compliance with applicable laws and regulations.

### **References**

(a) DFARS 252.244-7001(c) (1), System Criteria, The Contractor's purchasing system shall 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)

(b) DFARS 252.244-7001(c) (17), System Criteria, The Contractor's purchasing system shall enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks

(c) DFARS 252.244-7001(c) (19), System Criteria, The Contractor's purchasing system shall establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown 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

(d) FAR 2.101, Definitions of Words and Terms as applicable

(e) DFARS 244.305-71 Contract Clause

## **Applicability**

In accordance with DFARS 252.244-7001(c)(1), a contractor's purchasing system shall 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).

## **Pre-Review**

- (a) Seventy-five to 90 calendar days prior to CPSR, the procurement analyst shall request the contractor's policies and procedures.
- (b) Review contractor policies and procedures as outlined in the job aids review elements.
- (c) Document policies that are not adequate on the Contractor's Policies and Procedures Checklist, found under the Analyst Tools on the CPSR Team Home page in DCMA360.
- (d) Request clarifications/questions for policies that are not adequate and document on contractor's Policies and Procedure Checklist.

## **Review**

When reviewing policies and procedures, the CPSR procurement analyst(s) will review to ensure the policies and procedures are:

- a. Current and updated to include current dollar thresholds, clause numbers, as well as any clause prescriptions.
- b. Ensure purchase orders and subcontracts contain mandatory and applicable flow-down clauses required to carry out the requirements of the prime contract.

Policies and procedures shall be written in a way that complies with the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement, and be in accordance with DFARS 252.244-70001(c)(1).

They shall have an adequate system description including policies, procedures, and purchasing practices. The policies and procedures should specify who is responsible for ensuring compliance with each prescribed policy and or procedure.

Review any questions or issues on policies and procedures with the contractor during the daily outbrief meetings and include as an area of concern in the exit briefing, if applicable.

## **Post-Review**

At the conclusion of the onsite review, the analyst should be able to speak to whether or not the contractor's policies and procedures provide clear guidance to procurement personnel and meet the minimum requirements of DFARS 252.244-7001(c)(1), (17), and (19).

The review of the contractor's terms and conditions shall be part of the policy section under the Mandatory FAR/DFARS Flow Down Requirements/Terms and Conditions element of the report. The contractor may have a policy that is adequate covering this topic; however, the policy will not be considered adequate if there are any recommended changes to their terms and conditions.

# Truth in Negotiations Act (TINA)

April 17, 2018

## 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)

## **Applicability**

- 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.

## **Threshold**

- \$2,000,000 for prime contracts awarded on or after July 1, 2018
- \$750,000 for prime contracts award on or after October 1, 2015
- \$700,000 for prime contracts awarded on or after October 1, 2010

## **Exception (FAR 15.403-1):**

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

## **Pre-Review**

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))

## **Review**

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 contractor 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 3:** 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.

### **Post-Review**

At the conclusion of the onsite review, the analyst should be able to speak to whether or not the contractor’s TINA policies and procedures and practices are sound enough that Government officials may rely on them consistently.



# 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  $\geq$ \$7.5m are considered “trigger contracts” subjecting the award to modified or full CAS coverage.*

**Exemptions** (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 is not currently performing any CAS-covered contracts/subcontracts of \$7.5 million or more.

**CPSR Requirements – Practice**

- 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.

### **CPSR Report DFARS Requirements**

- 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.

### **Best Practices**

- 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.

## Consent to Subcontract

January 18, 2017

### **I. Introduction**

- A. Advance notification and consent to subcontract are required in accordance with 10 U.S.C. 2306(e) before the award of subcontracts if the prime contractor does not have an approved purchasing system, where the Government is assuming a large portion of the contract risk and, therefore, has a vested interest in knowing and controlling costs associated with the contract.
- B. In accordance with FAR 44.201-1(a), if the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in the subcontracts clause (FAR 52.244-2) of the contract. The contracting officer may require consent to subcontract if it is determined that an individual consent action is required to protect the Government because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance.
- C. In accordance with FAR 44.201-1(b), if the contractor does not have an approved purchasing system, consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold, in advance of the award of cost-reimbursement, time-and-materials, or labor-hour subcontracts, and also fixed-price subcontracts that exceed the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- D. Consent to subcontract applies to the award of first-tier subcontracts. This clause does not flow down to lower tier subcontracts and, accordingly, there is no requirement for consent to subcontract beyond award of the first-tier subcontract.

### **II. Regulatory References**

- A. 10 U.S.C. 2306(e)
- B. FAR 44.201
- C. FAR 52.244-2

### **III. Applicability**

- A. Insertion of the clause at FAR 52.244-2, Subcontracts, is required by FAR 44.204(a)(1) for a cost-reimbursement contract, and, if it exceeds the simplified acquisition threshold, for a letter contract, a time-and-materials contract, or a labor-hour contract, or for a fixed-price contract that exceeds the simplified acquisition threshold under which

unpriced contract actions are anticipated.

#### **IV. Review**

- A. When the contractor has an approved purchasing system, the CPSR Procurement Analyst should determine, for each PO/Subcontract under review, if the prime contract contains FAR 52.244-2. If the clause is in the contract, then the Analyst needs to further determine if any subcontracts are listed in subparagraph (d) of the clause. Any subcontract that is listed will require contractor compliance with the requirements of subparagraph (e) of the clause.
- B. When the contractor does not have an approved purchasing system, the CPSR Procurement Analyst should determine, for each PO/Subcontract under review, if the prime contract contains FAR 52.244-2. If the clause is in the contract, then the Analyst needs to decide, based on the type of prime contract and the type of subcontract being reviewed, whether or not consent to subcontract is required, as follows:
  1. Consent is generally not required under fixed-price prime contracts.
  2. If the prime contract is a cost-reimbursement type, consent will be required if the subcontract is cost-reimbursement, time-and-materials, or labor-hour type, or if the subcontract is fixed-price and exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
  3. If the prime contract is a time-and-materials type, consent will be required if the subcontract is cost-reimbursement, time-and-materials, or labor-hour type, or if the subcontract is fixed-price and exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
  4. If the prime contract is a labor-hours type, consent will be required if the subcontract is cost-reimbursement, time-and-materials, or labor-hour type, or if the subcontract is fixed-price and exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
  5. If the prime contract is a letter contract type, consent will be required if the subcontract is cost-reimbursement, time-and-materials, or labor-hour type, or if the subcontract is fixed-price and exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
  6. If the prime contract is an unpriced action (including unpriced modifications and unpriced delivery orders) under a fixed-price contract that exceeds the simplified acquisition threshold, consent will be required if the subcontract is cost-reimbursement, time-and-materials, or labor-hour type, or if the subcontract is fixed-price and exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

- C. Where it is determined that consent to subcontract is applicable, the contractor is required to comply with the clause at FAR 52.244-2(e)(1), which states that the contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required, including the following information:
1. A description of the supplies or services to be subcontracted.
  2. Identification of the type of subcontract to be used.
  3. Identification of the proposed subcontractor.
  4. The proposed subcontract price.
  5. The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
  6. The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of the contract.
  7. A negotiation memorandum.
- D. Where it is determined that consent to subcontract applies, the Procurement Analyst should verify that written prior consent of the Contracting Officer, dated prior to the date of award of the subcontract, is obtained and documented in the PO/Subcontract file.



# 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 contracts, 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 GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT**

May 8, 2017

## **Introduction**

The contractor shall award contracts only to responsible subcontractors. It is the responsibility of the contractor to avoid doing business with subcontractors that are debarred, suspended or proposed for debarment. Compliance is to be accomplished in accordance with FAR 52.209-6(c), under which the contractor shall require each proposed subcontractor whose subcontract/PO will exceed \$35,000 if issued under a prime contract awarded after September 30, 2015, or \$30,000 if issued under a prime contract awarded before October 1, 2015, 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, the subcontractor, or its principals, is or is not debarred, suspended or proposed for debarment by the Federal Government.

## **References**

- A. FAR 2.101, Definitions, “in writing”
- B. FAR 9.409, Contract Clause
- C. FAR 52.209-5(a)(1)(i), Certification Regarding Responsibility Matters
- D. FAR 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
- E. DFARS 252.244-7001(c) (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

## **Applicability**

- A. In accordance with FAR 9.409, the clause at FAR 52.209-6 shall be inserted in all contracts where the contract value exceeds \$35,000. When the clause is included in the prime contract or subcontract, it applies to all of the contractor’s subcontract/purchase order files in excess of the applicable threshold, other than those providing a commercially available off-the-shelf item.
- B. Exemptions for requiring a Debarment Disclosure:
  - 1. The subcontract or purchase order does not exceed the applicable threshold amount.
  - 2. The subcontractor is providing a commercially available off-the-shelf item.
    - a. “Commercially available off-the-shelf (COTS) item”
      - 1) Means any item of supply (including construction material) that is
        - a) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101;
        - b) Sold in substantial quantities in the commercial marketplace; and

- c) 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.

## **Pre-Review**

Review the policy and procedures of the onsite company as regards to protecting the government's interest when subcontracting with the contractors.

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;
  - a. The name of the subcontractor.
  - b. The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
  - c. The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
  - d. 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. Subcontracts - The Contractor shall include the requirements of the clause at FAR 52.209-6, including paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that
  - a. Exceeds the applicable threshold amount; and
  - b. Is not a subcontract for commercially available off-the-shelf items.

## Review

### 1. Policies and Procedures

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

- a. It should identify by what means purchasing personnel are to obtain the written debarment disclosure and when it is required.
- b. 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.
- c. 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)

### 2. Practice

- a. 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.
- b. 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.
- c. In order to comply with the requirement at IV. B. 1. above, the disclosure must meet the following requirements:
  - 1) It must be from the subcontractor to the contractor;
  - 2) It must be as of the time of award of the subcontract/purchase order; and
  - 3) It must state that the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- d. 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. An email with the same disclosure could also be an acceptable means for obtaining such a disclosure in writing.
- e. The time of disclosure is not specifically stated in the FAR. The requirement for written disclosure does lead to the assumption that a particular subcontract or award would be in mind when making the disclosure. It would also lead one to assume that it is in the Government's best interest that the disclosure be made

sometime close in time to the award for the disclosure to be reliable. Therefore the disclosure should be at a time on or before award to cover the requirement, generally less than 10 days prior to award.

- f. The following is needed to comply with the requirement at IV. B. 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.

- g. The following is needed to comply with the requirement at IV. B. 3. above:

The Contractor shall include the requirements of FAR 52.209-6 in each subcontract/PO that exceeds the threshold amount.

### **Post-Review**

At the conclusion of the onsite review, a determination that the contractor’s process is sound enough that Government officials can consistently rely on it, requires that for each applicable subcontract/PO reviewed.

1. A disclosure *in writing* that is from the subcontractor to the contractor, *within 10 days of the award* that states the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government, or
2. 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.*

# 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.

# Defense Priorities and Allocation System (DPAS)

January 4, 2017

## **Introduction:**

The purpose of this job aid is to define the DPAS requirements and provide guidance for the procurement analyst in this portion of the Contractor Purchasing System Review (CPSR).

## **Regulatory References:**

- a) 15 Code of Federal Regulations (CFR) 700 Defense Priorities and Allocations System
- b) Federal Acquisition Regulation (FAR) 11.6 Priorities and Allocations
- c) FAR 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use (Provision)
- d) FAR 52.211-15 Defense Priority and Allocation System (Clause)
- e) Defense Federal Acquisition Regulation Supplement 252.244-7001(c) (1) Contractor Purchasing System Administration Criteria
- f) DoDD 4400.1-M, Defense Production Act Programs

## **Applicability:**

This element applies to all of the contractor's subcontract/purchase order files in support of a rated contract/subcontract/order/modification whether they are a prime contractor or a subcontractor.

Exemption: Per 15 CFR 700 (700.17(f)) – “A person is not required to place a priority rating on an order for less than \$125,000, 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.”

## **Responsibilities:**

### **I. Contractor's Responsibilities**

- (a) FAR 52.211-15 simply states that the contractor must follow all of the requirements of the DPAS regulation 15 CFR 700.
- (b) 15 CFR 700 – Defense Priorities and Allocation System

- a. Must accept and fill rated orders for items that the person (company) normally supplies.
- b. Must give rated orders preferential treatment; DO takes precedence over non-rated; DX takes precedence over DO; Directive issued by Department of Commerce takes precedence over DX.
- c. All rated orders must be scheduled to ensure delivery by the required delivery date.
- d. May place a priority rating on orders only when in receipt of a rated order, authorized to do so by DOC or Delegate Agency, or permitted by this regulation.
- e. During national emergencies, may be required to follow special rules.
- f. Must include the following elements on each rated order:
  - i. Appropriate priority rating
  - ii. Specific delivery date or dates
  - iii. Written or electronic signature of an individual authorized to sign rated orders for the person (company) placing the order
  - iv. A statement that reads in substance: "This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)."
- g. Must accept or reject every rated order received without discrimination and fill such orders regardless of any other orders that have been accepted within the following guidelines:
  - i. Acceptance or rejection must be transmitted in writing or electronic format.
  - ii. Acceptance or rejection must occur within 15 working days of a DO rated order or within 10 working days of a DX rated order.
  - iii. If rejected, person (company) must provide the reasons for the rejection in writing or electronic format.
  - iv. If shipment or performance of an accepted order will be delayed, the person (company) must notify the customer immediately, give the reasons for the delay, and advise of a new shipment date. If notification is given verbally, written or electronic confirmation must be provided within *one* working day.
- h. Persons (companies) who receive rated orders must place rated orders with their suppliers for the items needed to fill the orders, further clarified in paragraph 700.15, Extension of Priority Ratings:

- i. The person (company) must use the priority rating indicated on the customer's rated order.
- ii. The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order – "This continues from contractor to subcontractor to supplier throughout the entire procurement chain."

(c) FAR 11.6 – Priorities and Allocations

According to FAR 11.603(g), "contractors and subcontractors at any tier that experience difficulty...should seek special priorities assistance in accordance with agency procedures." (These responsibilities are further explained in DoDD 4400.1-M)

## II. Procurement Analyst Responsibilities

(a) Policy

Review all applicable contractor's policies and procedures related to the procurement process, from the identification of a bona fide need through closeout for DPAS requirements specified in FAR 52.211-15 (See 15 CFR 700). The policy should contain:

- a. Procedures for how and when the rating is flowed down to POs/subcontracts to include the four main elements.
- b. Established processes for ensuring that the acceptance or rejection is received in accordance with required time lines on all rated orders and identification of who is responsible.
- c. Guidance for delayed shipments or performance.

(b) CPSR Authorities and Direction

- a. DFARS 252.244-7001(c)(1) – DPAS policies, procedures, and performance can be considered a purchasing practice that complies with the FAR and DFARS under this clause.
- b. FAR 11.603 – Procedures – During the review, the CPSR analyst will confirm compliance with the Defense Priorities and Allocations System (DPAS) IAW regulation 15 CFR 700.

(c) Practice – CPSR analysts should check these items to ensure the contractor is in compliance with 15 CFR 700 per FAR 52.211-15:

- a. That all orders and applicable change orders written against a rated prime contract or subcontract contain the following:
  - i. Appropriate priority rating.

- ii. Specific delivery date or dates – “immediately” or “as soon as possible” are not acceptable. \*Exception: LTA-type contracts may contain no specific delivery date or dates, but all related POs, DOs, calls, requisitions, etc. must specify required delivery date or dates.
  - iii. Written or electronic signature of an individual authorized to sign rated orders for the person (company) placing the order.
  - iv. A statement that reads in substance: “This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).”
- b. Make sure that no orders against unrated contracts or subcontracts contain priority ratings.
- c. Ensure that the contractor is obtaining appropriate acknowledgment from their suppliers:
  - i. Acceptance or rejection must be transmitted in writing or electronic format.
  - ii. Acceptance or rejection must occur within 15 working days of a DO rated order or within 10 working days of a DX rated order.
  - iii. If rejected, the person (company) must provide the reasons for the rejection in writing or electronic format.
- d. Check for timely and appropriate actions when there is a delivery/performance delay:
  - i. Notification must be received immediately from the supplier.
  - ii. Notification must include reasons for the delay and provide a new shipment/performance date.
  - iii. If notification was given verbally, the written or electronic confirmation must be provided by the supplier within *one* working day.
- e. Modifications should be treated as new rated orders except for:
  - i. Changes in shipping destination
  - ii. Reduction in total amount of order
  - iii. Increase which has negligible impact on deliveries
  - iv. Minor variation in size or design
  - v. Change which is agreed upon between supplier and customer

(d) Important Note

If a DPAS rating is flowed down to an order, it must be accepted or rejected and comply with all requirements according to the guidelines in 15 CFR 700 regardless if it is under \$125K or half the SAT.

# 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.fsrc.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/excomp.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 PARTS MITIGATION AND SURVEILLANCE

August 11, 2017

### Introduction

As required by FAR 44.303(k), Extent of Review, a CPSR shall give special attention to the contractor's implementation of higher-level quality standards. The clause at DFARS 252.244-7001(c)(19),(20) and (21) details the standards for a contractor's purchasing system as it relates to quality parts and materials. Additionally, in accordance with the National Defense Authorization Act for Fiscal Years 2012 and 2013, DFARS 252.244-7001 requires that contractors subject to CAS establish and maintain an acceptable counterfeit electronic parts detection and avoidance system sufficient to meet, at a minimum, the requirements of DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System. Contractors' counterfeit parts detection and avoidance systems must include risk-based policies and procedures to ensure subcontracts/POs contain mandatory and applicable flow down clauses, including DFARS 252.211-7003, Item Unique Identification and Valuation, if applicable. DoD contractors and subcontractors at all tiers must ensure that their purchasing system will include the most responsive and responsible sources in the purchase of required quality parts and materials in accordance with DFARS 252.246-7008, Sources of Electronic Parts.

### Reference(s):

- (a) DFARS 252.244-7001(c)(19), Contractor Purchasing System Administration: 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) DFARS 252.244-7001(c)(20), Contractor Purchasing System Administration: 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) DFARS 252.244-7001(c)(21), Contractor Purchasing System Administration: 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.

- (d) DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System.
- (e) DFARS 252.246-7008, Sources of Electronic Parts.
- (f) DFARS 252.211-7003, Item Unique Identification and Valuation.

### **Applicability**

Criteria related to quality standards are addressed in DFARS 252.244-7001(c)(19), (20) and (21), and apply to all contractors including small businesses and non-CAS covered contractors.

Counterfeit detection and avoidance is applicable as prescribed in DFARS 246.870-3, Contract Clauses, if a contractor is dealing with electronic parts whether or not they are CAS covered, depending on which clause is provided in the prime contract. DFARS 246.870-3(b) applies to all contracts when procuring electronics.

The only exemption is a service provider who has no electronic parts or electronic component material CLINs in their contract.

DFARS 252.246-7007, Contractor's Counterfeit Electronic Part Detection and Avoidance Systems, applies to contractors subject to the Cost Accounting Standards (CAS) with CAS-covered contracts awarded after the effective date. The contractor shall include the substance of this clause, including paragraph (e), in subcontracts, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer.

DFARS 252.246-7008, Sources of Supply, applies to all DoD contractors and subcontractors at all tiers, including small businesses and non-CAS covered contractors.

### **Pre-Review**

- (a) The CPSR Procurement Analyst (PA) must evaluate the contractor's quality program based on DFARS 252.244-7001(c) (19), (20), and (21). This applies to all contractors, including small businesses and non-CAS covered contractors.
- (b) In addition to evaluating the contractor's quality program in accordance with DFARS 252.244-7001(c) (19), (20), and (21), the CPSR PA should determine which of the following scenarios apply:
  - 1) DFARS [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, is incorporated in at least one of the prime contracts awarded to the contractor during the review period.
  - 2) DFARS [252.246-7008](#), Sources of Electronic Parts, is incorporated in at least one of the prime contracts awarded to the contractor during the review period.

- 3) Neither DFARS [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, nor DFARS [252.246-7008](#), Sources of Electronic Parts, are incorporated in any of the prime contracts, however the contractor has procured electronic parts during the review period.
  - 4) Neither DFARS [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, nor DFARS [252.246-7008](#), Sources of Electronic Parts, are incorporated in any of the prime contracts during the review period.
- (c) In some instances the PA may discover that DFARS 252.246-7007 or DFARS 252.246-7008 have been mistakenly incorporated in the prime contract. If it is determined that DFARS 252.246-7007 or DFARS 252.246-7008 should be added or removed from a prime contract, the PA should contact the ACO or PCO immediately and request a modification.
- (d) Review the contractor's policy and procedure manual to ensure it meets the criteria in DFARS 252.246-7007, DFARS 252.246-7008, and DFAS 252.244-7001(c) (19), (20), and (21) as applicable.
- (e) Send the ACO the Quality Functional Specialist questionnaire. The PA should review the response and obtain the Counterfeit Checklist Summary from the DCMA Quality Technical Specialist (TS) including the last date of review of the contractor's counterfeit system/program, if applicable. If a TS has been delegated to the contractor and the TS has not performed a process review within the past year, then the TS should perform a review during the CPSR. In this scenario the expectation is that the DCMA TS will perform a review and provide a timely Counterfeit Checklist for the PA to include in their CPSR report. A Counterfeit Checklist is required on all contracts as part of the performance factors assessment for all suppliers IAW INST-1205 and INST-326.
- (f) If no response is received from the ACO, the PA should contact the DCMA TS directly. If no TS has been delegated, the PA should inquire as to why there is no Quality delegation and provide a comment in the CPSR report. If inspection is performed by Quality at destination, rather than source/origin, as indicated on the prime contract, then there may be no Quality delegation for the contractor.

## **Review**

1. Policies and Procedures
  - (a) Ensure the contractor has a policy and procedure manual that adequately provides guidance to buyers on policy and procedures related to the contractor's quality program, Counterfeit Electronic Part Detection and Avoidance System, and Sources of Electronic Parts as applicable.

- (b) The contractor's quality program should address the criteria in DFARS 252.244-7001(c)(19),(20), and (21). An adequate quality program will provide instruction on how to procure materials from responsive, responsible, and reliable sources.
- (c) The contractor's Counterfeit Electronic Part Detection and Avoidance System should address the twelve criteria in DFARS 252.246-7007. The contractor's manual should also address Sources of Electronic Parts in accordance with DFARS 252.246-7008.
- (d) Review the Quality Functional Specialist Questionnaire and Counterfeit Checklist Summary obtained from the DCMA TS and follow up with questions to the TS and the contractor as applicable.

## 2. Practice

- (a) Review purchasing files to ensure DFARS 252.246-7007 and/or 252.246-7008 have been flowed down, as applicable.
- (b) Review files to ensure the contractor's practice follows their policy and ensures traceability requirements are met as established in DFARS 252.246-7008, Sources of Supply, as applicable. The contractor should maintain documentation of traceability, or inspection, testing, and authentication when traceability cannot be established.
- (c) Interview contractor Quality personnel for greater insight on practices to ensure compliance with DFARS 252.244-7001, DFARS 252.246-7007, and DFARS 252.246-7008.
  - 1) If the contractor is a service provider, inquire about electronic parts and electronic component material CLINs.
  - 2) Inquire about training of personnel related to counterfeit detection and avoidance.
  - 3) Ensure the contractor is reporting to the Contracting Officer and the Government-Industry Data Exchange Program (GIDEP) as appropriate.
  - 4) How does their program work? What procedures are in place?
- (d) Address issues with the contractor related to their quality program and counterfeit part detection and avoidance at daily and final exit briefing(s).

## Post-Review

- (a) Determine if there are any findings and discuss any necessary corrective action with the Contractor, DCMA Quality, and ACO as appropriate.
- (b) Initiate level II or draft level III CARs based on deficiencies found, if applicable.

- (c) Does the CPSR report provide an update of the current status of the Contractor Counterfeit Electronic Part Detection and Avoidance System and guidance for CBAR to be annotated? This is particularly relevant if a contractor seeks to claim and recover costs associated with counterfeit parts (Safe Harbor). A contractor must contractually be required to have an operational system to detect and avoid counterfeit as well as have an approved purchasing system in order to recover costs in accordance with DFARS 231.205-71(b). In the event a contractor does not have an approved purchasing system and discovers a counterfeit part and seeks to recover costs associated with counterfeit parts, a CPSR special review may be conducted.
- (d) The PA should consider any other questions to ask that will result in a thorough analysis as documented in the CPSR report.
- (e) Include the date of the checklist summary provided by DCMA TS in the Quality/Counterfeit section of the CPSR report. The date of the checklist summary should be within the past year.
- (f) Comment if DFARS 252.246-7007 and DFARS 252.246-7008 were or were not included in the prime contracts within the Quality/Counterfeit section of the CPSR report.
- (g) The only exemption is a service provider who has no electronic parts or electronic component material CLINs in their contract.

## PRICE ANALYSIS

May 9, 2017

### Introduction

Price Analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. In the absence of competition, a price analysis must be performed to determine price reasonableness and the file must be properly documented.

### References:

- (a) FAR 2.101, Definitions of Words and Terms as applicable
- (b) FAR 15.404, *Proposal Analysis*
- (c) DFARS 252.244-7001(c) (8), (9), (10), (16), and (22), *Contractor Purchasing System Administration*. The Contractor's purchasing system shall –
  - (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
  - (9) Require management-level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
  - (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;
  - (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; and
  - (22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions.

### Applicability

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. DFARS 252.244-7001(c) (8), (9), (10), (16), and (22), which are outlined in full text above, apply to the system criteria of a contractor's purchasing system regarding price analysis. Ineffective price analysis affects government cost expenditures when the contractor is not paying a fair and reasonable price for its products or services. Contractors must evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure that government interests are protected through subcontracting based on fair and reasonable prices. In the absence of competition, a price analysis must be performed to determine price reasonableness and the file must be properly documented.

## Pre-Review

- Review the contractor's P&Ps.
- Review and become familiar with the price analysis techniques to determine price reasonableness that are discussed in FAR 15.404-1(b) (2).

## Review

### I. Policies and Procedures

When reviewing the contractor's policies and procedures the CPSR Analyst should ensure that the contractor's policy, at a minimum, requires:

- a. A price analysis be performed and documented for all applicable procurements utilizing the guidelines found in FAR 15.404.

### II. Practice

The CPSR Analyst needs to first determine whether an award was competed or based on sole source. If an award was not competed, the analyst must review and analyze the price analysis that was utilized to determine if the price was fair and reasonable. As required in the contractor's policy, each of those applicable 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.

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 same or similar items. This method may be used for commercial items including those "of a type" or requiring minor modifications.
  - 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 economic factors.
  - Expert technical advice should be obtained when analyzing similar items or commercial items that are "of a type" or requiring minor modifications, to ascertain the magnitude of changes required and to assist in pricing the required changes.
- Use of parametric estimating methods/application of rough yardsticks.
- Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

- Comparison of proposed prices with independent cost estimates.
- Comparison of proposed prices obtained through market research for same or similar items.
- Analysis of data other than certified cost or pricing data provided by the offeror.

In accordance with DARS class deviation memo 2014-O0011, if a contractor is authorized to use GSA schedules, then a price reasonableness determination should be made using the analysis techniques at FAR 15.404-1. GSA schedules are not be used as a basis for comparison when conducting market research.

### **Post-Review**

Did all of the noncompetitive awards include some type of price analysis?

Was the price analysis consistent with the price analysis techniques discussed in FAR 15.404-1(b) (2)?

If the price analysis was based on a comparison to historical pricing, was the historical price a valid basis for comparison?

When conducting a comparison of proposed prices obtained through market research for similar items, was an adequate determination made regarding the accuracy of a “similar item”? Are we comparing apples to apples and oranges to oranges?

Were GSA schedules used as the sole basis for comparison? If so, the GSA schedules are not to be used as a basis for comparison when conducting market research.

Did the complexity and circumstances of each acquisition adequately warrant the level of price analysis detail required?



# Source Selection Process

November 3, 2016

## **Introduction**

The purpose of this Job Aid is to define the Source Selection Process. There are three parts to this process: Competition, Other Than Full and Open, and Best Value.

## **Regulatory References**

- (a) 10 U.S.C. 2304, Contracts: Competition Requirements
- (b) 41 U.S.C. 3301, Competition Requirements

## **Clauses for Contractor**

- (a) FAR 15.406, Documentation
- (b) FAR 44.204(c), Contract Clauses
- (c) FAR 52.244-5, Competition in Subcontracting
- (d) DFARS 252.244-7001(c)(4)(5)(7)(8)(9)(10)(21), Contractor Purchasing System Administration

## **Helpful Background Information**

- (a) FAR 2.101, Definitions
- (b) FAR 15.101, Best Value Continuum
- (c) FAR 15.304(c)(iii), Evaluation Factors and Significant Subfactors
- (d) FAR 15.305, Proposal Evaluation
- (e) FAR 15.403-1(c)(1), Prohibition on Obtaining Certified Cost or Pricing Data
- (f) FAR 15.404-3(c)(1), Subcontract Pricing Considerations

## **Applicability**

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

## **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. Competition**

- (a) For general information regarding Competition in Subcontracting, refer to FAR 15.403-1(c)(1). These are the standards for exceptions from certified cost or pricing data requirements, if there is adequate price competition.

(b) FAR 52.244-5 requires the contractor to select subcontracts/purchase orders on a competitive basis to the maximum practical extent. To know if this has been achieved the analyst needs to know the following: Number of bids requested, number of bids received and number of bids responsive.

(c) There are three ways the contractor can show adequate price competition. FAR 15.403-1(c)(1) describes adequate price competition as occurring when:

(1) Two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement

(2) There was reasonable expectation, based on market research or other assessment, that two or more responsible offerors competing independently would submit priced offers in response to the solicitation

(3) Price Analysis clearly demonstrates that the proposed price is reasonable in comparison with current and recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(d) To accomplish this, look for an abstract of offers and/or proof of to whom proposals were sent and when they were sent.

(e) If an award is not competed, then it is other than full and open competition. If it is other than full and open competition, then justification will be needed.

## **II. Other Than Full and Open Competition**

(a) If a purchase order is not competed, there must be documentation justifying why it was not competed and showing management's approval per DFARS 252.244-7001(c)(9). This justification should contain the following.

(b) Content of the Justification - Each procurement must stand on its own merit; each justification shall contain sufficient facts and rationale to justify the use of a sole source.

(c) 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.

(d) Approvals – Management level justification and adequate cost or price analysis, as applicable, is required for all non-competitive awards per DFARS 252.244-7001(c)(9) and (10).

(e) Summary – Full and open competition is the rule and noncompetitive awards should have management level approved justification documented in the file per DFARS 252.244-7001(c)(9).

(f) If a competitive purchase order is awarded on any factor other than lowest price, then it is considered a best value award.

### **III. “Best Value”**

CPSR business system criteria:

252.244-7001(c)(8): Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices.

252.244-7001(c)(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.

#### **Background**

(a) IAW FAR 2.101 Best Value is defined as the expected outcome of an acquisition that, provides the greatest overall benefit in response to the requirement.

(b) If an award is made based on other than lowest price, it is considered best value and the file requires documentation to justify the award on other than price.

(c) Ordering activities should consider the following factors that can be used to determine the best value: Item Characteristics, Past Performance, Warranty, Ownerships costs, Maintenance availability, Useful life, Environmental and energy efficiency, Technical qualifications, Transportation costs, Administrative costs, Delivery and performance terms.

## CONTRACTING BY NEGOTIATION

September 01, 2017

### Introduction

Federal Acquisition Regulation (FAR) Part 15 addresses Contracting by Negotiation. There is no other separate definition of negotiations in the FAR. All of Part 15 addresses various aspects of contracting by negotiation. Under the FAR, contracting (source selection) is conducted either using FAR Part 15 procedures (sole source acquisition or competitive acquisition), or under FAR Part 14 sealed bidding procedures. There are only two ways to conduct procurements under the FAR: by negotiation, or by sealed bidding. Commercial item contracting under FAR Part 12, and simplified acquisitions under FAR Part 13 are each a subset of “contracting by negotiation”, allowing for more streamlined negotiation processes, but still calling for compliance with many FAR 15 contracting by negotiation requirements.

### Reference(s):

- (a) FAR 15.000, Scope of the Part
- (b) FAR 15.405, Price Negotiation
- (c) FAR 15.406-3, Documenting the Negotiation
- (d) FAR 52.244-5, Competition in Subcontracting
- (e) DFARS 252.244-7001(a), Contractor Purchasing System Administration, Definitions, “Acceptable purchasing system” means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

### Applicability

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.

As indicated in FAR 15.000, Scope of the Part, policies and procedures governing competitive and noncompetitive negotiated acquisitions are prescribed in FAR Part 15. A contract awarded using other than sealed bidding procedures is a negotiated contract.

All of FAR Part 15 represents contracting by negotiation. As such, there is no separate definition of negotiations in FAR. The concept of negotiations contemplates a source selection process. This process should include using competitive sourcing to the maximum extent practicable, evaluating price, quality, delivery, and technical capabilities to ensure fair and reasonable prices, and to perform adequate cost or price analysis. These are all elements of contracting by negotiation, and are the requirements of the 24 system criteria set out in the clause at DFARS 252.244-7001(c). These 24 system criteria essentially flow down the major applicable requirements of FAR Part 15, Contracting by Negotiation, which the contractor must comply

within its subcontracting processes, in order to establish and maintain an acceptable purchasing system.

The applicability of negotiations for a specific subcontract included in the CPSR sample selection needs to be evaluated on a case-by-case basis depending on the particular circumstances in each instance. The purpose of performing cost or price analysis is to develop a negotiation position that permits the contractor and the subcontractor an opportunity to reach agreement on a fair and reasonable price. Where the subcontract price has been shown to be fair and reasonable, based on adequate price competition or adequate price/cost analysis, further price negotiation is not needed. Conversely, it is appropriate and expected that contractors negotiate with subcontractors where the proposed price has not been adequately established as fair and reasonable. In each case the Procurement Analyst needs to evaluate specifically what negotiations are required of a particular subcontract procurement, and specifically what is required for documentation for such procurement, with reference to FAR Part 15 requirements for contracting by negotiation, and the requirements in the 24 system criteria set out in DFARS 252.244-7001(c). This evaluation should include such factors as dollar value, complexity and prior history of the specific subcontract procurement. The supporting documentation should include the information called for by FAR 15.406-3, supporting the negotiation at a level appropriate with the subcontract dollar value and complexity.

### **Pre-Review**

Review the contractor's policies and procedures for the following:

- a. Determine if the contractor has a policy on negotiations
- b. Determine if the contractor's policy defines when they will conduct negotiations
- c. Ensure the contractor's policy defines the minimum documentation needed in accordance with FAR 15.406-3.

### **Review**

#### **I. Policies and Procedures**

When reviewing the contractor's policies and procedures the CPSR Analyst should ensure that the contractor's policy, at a minimum, requires:

- a. Inclusion of FAR and DFARS references as appropriate.
- b. Negotiations to be conducted for all sole source procurements exceeding the micro-purchase threshold whenever price analysis of the proposed price does not find the price to be fair and reasonable.
- c. All negotiations to be documented.
- d. Documentation to be commensurate with the dollar value, but should always as a minimum include date, participants, offers and counteroffers, and rationale for final price agreed on.
- e. Form or location in the file where negotiation documentation should be included.

## II. Practice

- a. The Analyst should determine if negotiation is required, by determining if the subcontract is sole source, and if price analysis disclosed that the proposed price was not fair and reasonable.
- b. If negotiation was not conducted, there should be a statement in the file giving the reasons for this decision.
- c. There should be a negotiation memorandum in some form in the file if negotiation was applicable.
- d. The memorandum should provide sufficient detail to give a complete explanation of events leading to agreement of final price.
- e. The negotiation, and the supporting documentation, should be in accordance with the requirements in the contractor's written policy.

## Post-Review

At the conclusion of the onsite review, the Analyst should be able to speak to whether or not the contractor's process is sound enough that Government officials may rely on it consistently. The Analyst should be able to answer the following questions at the conclusion of the review:

- a. Did the contractor comply with its policies and procedures for negotiations?
- b. Where negotiation was not attempted, did the contractor document the reason for this decision?
- c. Did the contractor consistently attempt to negotiate prices where the proposed price was not considered fair and reasonable?
- d. Was there a negotiation memorandum in the file whenever negotiation was conducted?
- e. Did the negotiation memorandum fully explain the events that took place leading up to the final agreed price?
- f. Did negotiations successfully lower the proposed prices or achieve some other changes to terms and conditions, PoP, delivery, etc., or were the attempts to negotiate basically ineffective?

# 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 to.
- As required at clause FAR 52.215-23(c)(1), verify the contractor provided the required written notification to the CO if the contractor 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.

# DOCUMENTATION REQUIREMENTS

June 14, 2019

## Introduction

Documentation ensures the contractor has taken appropriate actions to properly document each procurement file as an individual stand-alone file in order to maintain a complete and accurate history of the purchasing transaction. The CPSR Analyst should review and evaluate the contractor's documentation process to ensure that each procurement transaction is complete and fully documented to include any requisitions, representations and certifications, FAR/DFARS flow down requirements, negotiations, competition, sole-source justification, price analysis, change order/modifications and other pertinent information in order to maintain a complete and accurate history of each transaction.

## Reference(s):

- a) 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
- b) DFARS 252.244-7001(c)(5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid
- c) DFARS 252.244-7001(c)(7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award
- d) DFARS 252.244-7001(c)(9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award
- e) DFARS 252.244-7001(c)(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
- f) DFARS 252.244-7001(c)(11) Document negotiations in accordance with FAR 15.406-3
- g) DFARS 252.244-7001(c)(12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts
- h) DFARS 252.244-7001(c)(15) Document and justify reasons for subcontract changes that affect cost or price

- i) DFARS 252.244-7001(c)(16) 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
- j) DFARS 252.244-7001(c)(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown 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
- k) DFARS 252.244-7001(c)(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
- l) FAR 154.406-3, Documenting the Negotiation
- m) DFARS 252.244-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System
- n) FAR 13, Simplified Acquisition Procedures
- o) FAR 15.404-3(b)(1) and (2), Subcontracting Pricing Considerations

### **Applicability**

If the prime contains DFARS 252.244-7001, all the contractor's subcontract/purchase order files are subject to this requirement.

### **Pre-Review**

- Review contractor's policies and procedures on all applicable elements.

### **Review**

#### **I. Policies and Procedures**

DFARs 252.244-7001(c)(4)(5)(11) and (15) outline the requirements for documentation of the contractor's purchasing transaction. When reviewing the contractor's policies and procedures the CPSR Analyst should ensure that the contractor's policy at a minimum requires:

- a. Per (c)(4), the contractor's purchasing system shall ensure all procurements 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.

- b. (c)(5) Requires the CPS to establish and maintain adequate documentation to provide a complete and accurate history of purchase transaction to support vendor selected and prices paid.
- c. (c)(11) Requires that the CPS “document negotiations in accordance with FAR 15.406-3”.
- d. (c)(15) Requires that the CPS “document and justify reasons for subcontract changes that affect cost or price.”

## **II. Practice**

### **Micro-purchases at or below \$10,000**

- (1) The contractor’s policies and procedures should encourage documentation for purchase requisitions, or some other documents of bona fide need, purchase order or purchase card receipt, price is fair and reasonable and any close-out documentation if the procurement is in fact closed.
- (2) 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 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.

### **Procurements at or below the SAT (\$10,000-\$250,000)**

- (1) 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. purchase requisition, purchase order, sole source justification, competition documentation, price fair and reasonable, any level of disclosure or certification required and any closeout documentation when the procurement is closed out.

#### **a. Source Selection Process**

##### **(Competition, Other than Full and Open Competition, Best Value)**

See CPSR Guidebook, Appendix 12

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

See CPSR Guidebook, Appendix 6

**c. Defense Priorities and Allocations Systems (DPAS)**

See CPSR Guidebook, Appendix 8

**d. Policy and Procedure Manual**

See CPSR Guidebook, Appendix 1

**Procurements and Subcontracts above the SAT (\$250,000)**

**a. Limitation on Use of Appropriated Funds to Influence Certain Federal Transactions Certification (Anti-Lobbying)**

See CPSR Guidebook, Appendix 7

**b. Federal Funding Accounting and Transparency Act of 2006**

See CPSR Guidebook, Appendix 9

**c. Prior Consent and Advance Notification**

See CPSR Guidebook, Appendix 4

**d. CAS**

See CPSR Guidebook, Appendix 3

**e. Small Business Subcontracting Plan**

See CPSR Guidebook, Appendix 5

**f. Truthful Cost or Pricing Data, Truth in Negotiations Act (TINA)**

See CPSR Guidebook, Appendix 2

**g. Restrictions on the Acquisition of Specialty Metals/Articles containing Specialty Metals**

See CPSR Guidebook, Appendix 26

**Other Documentation**

**e. Counterfeit Parts Mitigation and Surveillance**

See CPSR Guidebook, Appendix 10

**f. Price Analysis**

See CPSR Guidebook, Appendix 11

**g. Negotiations**

See CPSR Guidebook, Appendix 13

**h. Make or Buy Program**

See CPSR Guidebook, Appendix 14

**i. Limitations on Pass-through Charges**

See CPSR Guidebook, Appendix 15

**j. Documentation Requirements**

See CPSR Guidebook, Appendix 16

**k. Training**

See CPSR Guidebook, Appendix 17

**l. Internal Review/Self Audit**

See CPSR Guidebook, Appendix 18

**m. Mandatory FAR and DFARs Flow Down Requirements/Terms and Conditions**

See CPSR Guidebook, Appendix 19

**n. Purchase Requisition Process**

See CPSR Guidebook, Appendix 20

**o. Commercial Item Determination**

See CPSR Guidebook, Appendix 21

**p. Subcontract Types**

See CPSR Guidebook, Appendix 22

**q. Procurement Authority**

See CPSR Guidebook, Appendix 23

**r. Supply Chain Management Process**

See CPSR Guidebook, Appendix 24



**s. Buy American**

See CPSR Guidebook, Appendix 25

**t. Restrictions on the Acquisition of Specialty Metals/ Articles containing Specialty Metals**

See CPSR Guidebook, Appendix 26

**u. Long Term Purchasing Agreement**

See CPSR Guidebook, Appendix 28

**v. Handling Change Orders and Modifications**

See CPSR Guidebook Appendix 29

**w. Intra/Inter-Company, Affiliate, or Subsidiary Transactions**

See CPSR Guidebook, Appendix 30

**Post-Review**

At the conclusion of the onsite review, the CPSR analyst should be able to determine the appropriate documentation requirements for each element based on the CPSR guidebook appendixes.

# 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)(17), 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 appropriately 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.

# MANDATORY FAR/DFARS FLOW DOWN REQUIREMENTS/TERMS AND CONDITIONS

May 9, 2017

## Introduction

- a. Government contracts contain clauses that require prime contractors to flow down certain terms and conditions to their subcontractors. The flow down clauses should be tailored based on clauses contained in the applicable Government prime contracts. If the prime contract does not contain a particular FAR or DFARS clause, generally, it cannot be flowed down to subcontractors. The exception to this rule is the Christian Doctrine.
- b. The Christian Doctrine is based on a U.S. Federal District Court case (G.L. Christian and Associates v. United States) ruling that the Government could terminate the contract for the Government's convenience, even though the Termination for Convenience clause was not included in the prime contract. In a later case this doctrine was expanded to include other clauses than the Terminations clause, but would only apply to mandatory contract clauses which express a significant or deeply-ingrained strand of public procurement policy. The omitted clauses are considered to be included in the contract by operation of law. The contractor would then be required to include these clauses as flow downs in its subcontracts when appropriate. This doctrine is applied in very few instances and on a case-by-case basis.
- c. Contractor terms and conditions protect the interests of the contractor. These terms and conditions must also protect the interests of the Government. The contractor terms and conditions should not include language that can be construed to be against the best interests of the Government.

## References

- a. DFARS 252.244-7001(c)(2), Contractor Purchasing System Administration: Ensure that all applicable purchase orders 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.
- b. DFARS 252.244-7001 (c)(19), Contractor Purchasing System Administration: 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.

## **Applicability**

In accordance with the Contractor Purchasing System Administration clause at DFARS 252.244-7001(c)(2), a contractor's purchasing system shall ensure that all applicable purchase orders 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. The clause further requires at (c)(19) that the contractor 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.

## **Pre-Review**

Prior to the onsite visit to the contractor's facility the CPSR Analyst should:

- Request the Terms and Conditions and policies and procedures used by the Contractor for their Government procurements:
- Develop a base of knowledge of the contractor's Mandatory FAR/DFARS Flow Downs and Terms and Conditions:
  - Review the contractor's policies and procedures to ensure that they adequately address the requirements;
  - Send the Contractor's Terms and Conditions to your assigned CMO Legal Counsel for review;
  - Research the Contractor's Prime contracts for applicable flow-downs in EDA. If they are non DoD Contracts, then contact the ACO or Contractor for a copy of the flow down section of their Prime contract;
  - Compare the flow downs found in the Contracts to the Mandatory Flow Down tab in the DATA workbook to determine if the flow downs in the Prime need to be flowed down to subcontractors or not;
  - In the DATA workbook, on the Contract Flow Down tab, annotate by Contract (one contract per column) which flow downs are required/applicable for that contract. The common mandatory ones are already prepopulated on that tab and you just need to annotate, if applicable or not. However, it is not an all-inclusive list and you need to add the additional clauses for each of the contracts in the rows after the Additional Comments row.

## **Review**

### **I. POLICIES AND PROCEDURES**

When reviewing the contractor's policies and procedures, the analyst should ensure that the contractor's policy, at a minimum, require:

- a. Identification of individuals or departments within the company responsible for determining how mandatory clauses are flowed down.
- b. Procedures and practices are in place to ensure all purchase orders and subcontracts contain mandatory FAR/DFARS flow down clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract.
- c. Clauses that are determined by the prime contract are actually flowed down to each individual purchase order or subcontract.
- d. A system of checks and balances are in place prior to purchase order and subcontract execution that ensures compliance with the mandatory FAR flow down clause requirement.

## II. PRACTICE

- The CPSR analyst is required to utilize the Contract Flow Down tab of the DATA workbook for reference while reviewing each file. Compare the mandatory flow downs for the prime contract the procurement is being purchased for to the actual file being reviewed. Record the results of the file being reviewed in the DATA workbook for the mandatory FAR and DFARS flow downs and whether or not they were adequately flowed down to the subcontractor.
- In one of the daily out-briefs, discuss with the Contractor any missing flow downs for any of the contracts being reviewed.
- Also, discuss with the Contractor if there are any recommended changes to their Terms and Conditions.
- The Team Lead should validate the data and comments in the DATA workbook with the accompanying analyst(s) and ensure there are no questions in regards to Mandatory Flow Downs in the procurement files. If there are any questions, re-review the file in question and clarify before leaving the review.

### **Post-Review**

When the review has been completed and the team is back in the office:

- The Team Lead complete their analysis of the DATA workbook and identify any areas of concern that need to be addressed in the report.
- The Team Lead will write the CPSR report and BSAS and identify any deficiencies or Opportunities for Improvement found in the areas of Terms and Conditions or Mandatory Flow Downs.
- If Counsel has recommendations in regards to the Terms and Conditions, this is to

be addressed under the Policy portion of the write-up in addition to whether they had a policy regarding Terms and Conditions and Flow Downs.

- Whether the Contractor adequately flowed down the appropriate clauses to the subcontractors is addressed under the Practice portion of the write-up.

# 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.



## COMMERCIAL ITEM DETERMINATION

November 1, 2016

### Introduction

Commercial items and the determination of reasonableness of price of commercial items are critical to mission success. For further instruction on price reasonableness refer to the Contractor Purchasing System Review (CPSR) Guidebook Part 6 Appendix 10 – Price Analysis.

The Commercial Item Determination (CID) process is important to the purchasing system review as commercial items are exempt from certain requirements, e.g., Truth in Negotiations Act, that impact fair pricing.

Commercial item determinations include products and services.

### Definitions

Commercial items and commercial services are defined in FAR Part 2.101.

### Reference(s):

- (a) FAR 2.101, Definitions of Words and Terms
- (b) FAR 52.244-6, Subcontracts for Commercial Items
- (c) DFARS 252.244-7000, Subcontracts for Commercial Items
- (d) DFARS 252.244-7001(c)(1), Contractor Purchasing System Administration (Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement)
- (e) DFARS 252.244-7001(c) (5), Contractor Purchasing System Administration (Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid)
- (f) Fiscal Year 2016 National Defense Authorization Act Sections 851-853
- (g) Office of the Secretary of Defense Acquisition, Technology, and Logistics Commercial Item Handbook Version 2.0

### Applicability

A commercial item determination is required when an item and/or service is asserted as commercial by the awarding contractor or proposed supplier(s). Prime contracts that include FAR 52.244-6 require the contractor to incorporate, and require subcontractors at all tiers to incorporate, commercial items to the maximum extent practicable.

The policy requirement for subcontracts for commercial items and/or components is found at DFARS 244.402. The policy requires that contractors determine whether a particular subcontract item meets the definition of a commercial item; contractors are expected to exercise reasonable judgement in making such determinations. The Contractor Purchasing System Administration clause at DFARS 252.244-7001(c)(1) is the regulatory vehicle to ensure that contractors have procedures and practices that comply with the aforementioned policy requirement and other regulations.

## **Pre-Review**

Prior to the onsite visit to the contractor's facility the CPSR Analyst should:

- Develop a base of knowledge of the contractor's commercial item determination processes:
  - Review the contractor's policies and procedures to ensure that they adequately address the requirements;
  - Send the survey found on the 360 CPSR analyst tools page to the DCMA Commercial Item Group (CIG) [commercial@dcma.mil](mailto:commercial@dcma.mil) and analyze the CIG response;
  - Review the CIG database by Cage and/or prime contract number and review the CIG's evaluation of the contractor's proposals  
[https://360.dcma.mil/teams/AQK/AQKT/Commercial%20Item%20Group/SitePages/Commercial\\_Log.aspx](https://360.dcma.mil/teams/AQK/AQKT/Commercial%20Item%20Group/SitePages/Commercial_Log.aspx);
- Request and review the universe of commercial item subcontract/purchase orders (POs) for the designated review period; and
- Coordinate virtual or physical augmentation from the CIG for the onsite review.

## **Review**

### **I. Policies and Procedures**

When reviewing the contractor's policies and procedures the CPSR Analyst should ensure that the contractor's policy, at a minimum, requires:

- a. A written commercial item determination for both commercial supplies and services;
- b. Market research that fully supports the exercise of reasonable business judgement in the determination whether a particular item or service meets the definition of a commercial item, and whether use of commercial item is appropriate in accordance with FAR 10.002(c) and (d);
- c. The flow down of FAR 52.244-6 to subcontracts at all tiers, when applicable;
- d. The flow down of clauses specified at FAR 52.244-6(c)(1) when the prime contains the clause at FAR 52.244-6; and

- e. The flow down of DFARS 252.244-7000 in solicitations and contracts, when applicable.

Additionally, the contractor's policies and procedures should prescribe processes to ensure compliance with the aforementioned policy requirements and designate the documentation required to evidence compliance. Best practices include processes that:

- f. Identify who makes and documents the determination by position;
- g. Define minimum considerations in making commercial item determinations;
- h. Outline market research procedures and required documentation to evidence compliance;
- i. Require technical evaluation for determinations involving items and/or services of a type; and
- j. Require management level review and approval.

## II. Practice

When reviewing the contractor's purchasing system, the CPSR Analyst should examine the file documentation for an indication as to whether an item and/or service is being established as commercial for the first time, or that the item and/or service is a re-procurement of an established commercial item to ascertain the documentation needed to demonstrate compliance.

Indications that an item and/or service is being established as commercial for the first time may include the contractor's or supplier's assertion that an item is commercial along with the contractor's examination of the assertion supported by market research, and subsequent written commercial item determination.

Indications of a re-procurement of an established commercial item may include a previous subcontract/PO determination, a Government Contracting Officer's (CO) commercial item determination and/or a statement by the contractor's buyer/subcontract administrator that the item and/or service is commercial with a reference to a previous procurement.

For both initial and established commercial item and/or service procurements, the contractor's files must demonstrate that adequate market research was conducted to determine whether the item and/or service meet the FAR 2.101 commercial item definition.

To demonstrate compliance, the contractor's file should minimally include:

- a. The written commercial determination demonstrating that the item and/or service meets the definition in FAR 2.101;
- b. Market research conducted to support the commercial item determination;
- c. Support for price reasonableness of the commercial item and/or service (see the CPSR Guidebook Part 6 Appendix 10 – Price Analysis);
- d. The flow down of FAR 52.244-6 to subcontracts at all tiers, when applicable;

- e. The flow down of clauses specified at FAR 52.244-6(c)(1) when the prime contains the clause at FAR 52.244-6; and
- f. The flow down of DFARS 252.244-7000 in solicitations and contracts, when applicable.

Acceptable file documentation to demonstrate that an item and/or service is an established commercial item may include:

- a. A copy of the contractor's prior commercial determination and market research in support of the determination;
- b. The CO's signed Determination and Findings (D&F) and/or commercial item determination for the subjected prime contract;
- c. The CO's signed D&F and/or commercial item determination explicitly for the items or services procured; or
- d. A copy of a prior commercial determination made by the Government Contracting Officer in accordance with DFARS 212.102 along with a statement that the prior determination is valid for the instant procurement.

If the universe sample does not include review files with commercial item determinations, the CPSR Analyst should expand the universe by asking the contractor to supply subcontract/POs outside of the review period that demonstrate the commercial item determination practice. Every effort should be made to evaluate the contractor's commercial determination practice during the review.

### **Post-Review**

At the conclusion of the review, the CPSR Analyst should be able to speak to whether or not the contractor's commercial item determination process is sound enough that Government officials may rely on it to consistently make appropriate commercial item determinations. Specifically, the CPSR Analyst should be able to speak to the contractor's commercial item determination practices: (1) the process the contractor uses; (2) describe the market research procedure utilized to make such determinations; (3) describe the documentation required in the files; and (4) if that documentation was observed in the files and to what extent. In preparation to write the CID section of the report, review the following questions:

- a. What percentage of the files reviewed incorporated commercial items and/or services?
- b. Does the contractor make cost-effective use of commercial items to meet contract requirements?
- c. Does the contractor have a documented practice of requiring suppliers to use commercial item and/or services to the maximum extent practicable?

- d. Did the contractor's practice demonstrate consistent use of the established approach to determine an item as commercial?
- e. Does the contractor document market research procedures in support of commercial determinations?
- f. Did the contractor's policy require a technical evaluation for commercial items and/or services of a type?
- g. Did the files demonstrate the contractor's practice to include technical evaluation of items and/or services of a type?
- h. Did the technical evaluation of items and/or services of a type address or compare nongovernmental function or essential physical characteristics of the proposed items and/or services with the commercial items and/or services?
- i. Did the files demonstrate price reasonableness in accordance with CPSR Guidebook Part 6 Appendix 10 – Price Analysis?
- j. Did the subcontract/POs include the required flow downs?

If the commercial item determination practice could not be reviewed, then the report will be annotated:

The contractor's commercial item determination practice could not be evaluated. The universe did not include subcontract/POs for commercial items. Should this review result in the approval of the contractor's purchasing system, CBAR should be annotated to reflect that the commercial item processes were not evaluated. Government officials should not rely on the system approval as an evaluation of the contractor's ability to make suitable commercial item determinations for any proposed or ongoing acquisitions.

The Administrative Contracting Officer would be able to use standard language when annotating CBAR:

The contractor's commercial item determination practice could not be evaluated. The universe did not include subcontract/POs for commercial items. Government officials should not rely on the system approval as an evaluation of the contractor's ability to make suitable commercial item determinations for any proposed or ongoing acquisitions. Surveillance in accordance with FAR 44.304 will provide review of the contractor's effectiveness in this area.

# 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?

# 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)



## Supply Chain Management Process

June 14, 2019

### 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 as 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.

Safeguarding DoD covered defense information is a critical aspect of SCM. As required by DFARS 252.204-7008, *Compliance with Safeguarding Covered Defense Information Controls*, and DFARS 252.204-7012, *Safeguarding Covered Defense Information and Cyber Incident Reporting*, contractors must implement the security requirements in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, Rev1, *Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations*, as a means to safeguard the Department of Defense's covered defense information that is processed, stored, or transmitted on the contractor's internal unclassified information system(s) or network(s).

A Department of Defense (DoD) Contractor's SCM 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, Safeguarding Covered Defense Information, Cyber Incident Reporting, 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) DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System
  - d) DFARS 252.204-7008, Compliance with Safeguarding Covered Defense Information Controls
  - e) DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting
  - f) NIST Special Publication (SP) 800-171, Rev 1, Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations
  - g) DFARS 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

- (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 SCM 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.*

When DFARS 252.204-7008 and/or 252.204-7012 is applicable, contractors must implement the security requirements specified in the National Institute of Standards and Technology (NIST) Special Publication (SP) , *Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations*. The Contractor's purchasing system will be evaluated to assess that:

- (a) The contractor's covered defense information flowdown procedures ensure that DoD marking and dissemination statements, contractual requirements on contract deliverables, and DoD government furnished information, that contains marking and dissemination requirements, flow down appropriately to their subcontractors.

- (b) The contractor's procedures assure subcontractor compliance with DFARS Clause 252.204-7012.

**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 contractor to monitor and control their suppliers and the supply chain process. The PA reviews contracts to identify when DFARS 252.204-7012 is present and note any special marking requirements pertaining to covered defense information.

When reviewing the contractor's supply chain management policies and procedures the CPSR Analyst should ensure that the contractor's policy, at a minimum, requires the flow down of DFARS 252.204-7012, when applicable, including the content of paragraph (m), *Subcontracts*, which states that the contractor shall:

- (a) include this clause, in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine when the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer/requiring activity; and
- (b) Require subcontractors to:
  - i. Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and
  - ii. Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber-incident to DoD as required in paragraph (c) of DFARS 252.204-7012.

**During the Review:** The PA should look for Vendor Rating System (VRS) documentation in the award files. If no VRS documentation is found in the award files, the PA should ask the contractor if VRS reviews are conducted and if so, where they are stored (in award files or in a separate consolidated location). The PA should ask the contractor to demonstrate their ability to safeguard covered defense information in accordance with DFARS 252.204-7012. The PA will review subcontracts/POs to determine if the contractor has flowed down DFARS 252.204-7012 in all applicable procurement files within the selected sample. The PA should validate that covered defense information is properly marked in procurement files containing DFARS 252.204-7012 and be aware that no covered defense information should be present in procurement files where DFARS 252.204-7012 is not included.

The contractor will be asked to demonstrate how covered defense information is transferred to their subcontractors. The PA should request that the contractor provide contracts containing covered defense information which was transferred to a subcontractor. The contractor will be asked to exhibit examples of covered defense information data transfers to demonstrate their ability to comply with this requirement.

The PA will ask the contractor's procurement staff to describe their SCM Policy with regards to safeguarding covered defense information and demonstrate execution of the policy in the following areas:

- The flow down of DFARS 252.204-7012 in situations where the subcontractor will be utilized for operationally critical support or is performing duties that involve covered defense information.
  - When the subcontractor is providing operationally critical support and accepts DFARS 252.204-7012 as part of the subcontract Terms and Conditions, they are asserting compliance with the security requirements in NIST SP 800-171.
- The contractor will be asked to show how they have determined that the subcontractor has a covered contractor information system that can receive and protect covered defense information, to include an adequate System Security Plan. An alternate acceptable method would be for the subcontractor to present the contractor with a basic self-assessment of compliance with the NIST SP 800-171 security requirements.
- Provide sufficient examples of how covered defense information was transferred, if applicable.
  - The PA will verify that procedures are in place to satisfy any covered defense information marking requirements called out in the contract.
- Subcontractors are required to notify the contractor when submitting a request to the Contracting Officer to vary from a NIST SP 800-171 security requirement.
  - There is no expectation that requests to vary from NIST SP 800-171 will be documented when provided by the subcontractor to contractor, but if approved by the DoD CIO, should be documented in the subcontractor's system security plan.
- Subcontractors must provide an incident report number to the contractor as soon as practicable.
  - The PA should ask the contractor if any incidents were reported and ask the contractor to demonstrate how subcontractor incident report numbers, when received, are documented and made available, as appropriate, to contractor procurement and IT personnel for decision making purposes.

Listed below are areas that should be addressed while evaluating the contractor SCM process:

1. Does the contractor know their critical suppliers? How does the contractor 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 contractor 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 contractor maintain an Approved Supplier List and a Problem Supplier List? If so, please describe!
4. Does the contractor have a VRS? Describe its effectiveness? How often does the contractor review supplier performance? Does the VRS quickly and reliably inform purchasing/management of major problems? Has the VRS 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 contractor 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?
7. Based on the review of contracts, did the contractor adequately flow down DFARS 252.204-7008 and/or 252.204-7012 in all applicable subcontracts, or similar contractual instruments?
8. Did the contractor properly mark covered defense information in procurement files containing DFARS 252.204-7012? Did you validate that no covered defense information is present in procurement files where DFARS 252.204-7012 was not included?
9. Did the contractor show how they have determined that the subcontractor has a Covered Contractor Information System that can receive and protect covered defense information, to include an adequate System Security Plan?
10. Did the contractor adequately protect covered defense information when transferring such information to subcontractors? Did the contractor provide evidence of secure transfers of covered defense information?
11. In the event of a cyber-incident experienced by the subcontractor, did the contractor receive the DOD incident report number from the subcontractor as soon as practicable? Does the contractor have a system to document cyber incidents reported by their subcontractors?

**After the Review:** By reviewing the data collected from the SCM data call, along with the review of information gathered during the review of the contractor's SCM process, the PA should be able to determine if the process is adequate. If not adequate, the PA should write to the inadequacies in the SCM section of the CPSR report.

**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 VRS. If so the Procurement Analyst should include improvements to the VRS in the Opportunity for Improvement section of the CPSR Report.

If the contractor's ability to protect covered defense information could not be reviewed, then the report will be annotated:

The contractor's covered defense information safeguarding practice could not be evaluated. The universe included no subcontract/POs containing the DFAR 252.204-7012 requirement. Should this review result in the approval of the contractor's purchasing system, CBAR should be annotated to reflect that the contractor's covered defense information safeguarding processes were not evaluated. Government officials should not rely on the system approval as an evaluation of the contractor's ability to protect covered defense information for any proposed or ongoing acquisitions.

The Administrative Contracting Officer should use the following language when annotating CBAR:

The contractor's covered defense information safeguarding practice could not be evaluated. The sample included no subcontract/POs containing the DFAR 252.204-7012 requirement. Government officials should not rely on the system approval as an evaluation of the contractor's ability to protect covered defense information for any proposed or ongoing acquisitions. Surveillance in accordance with FAR 44.304 will provide review of the contractor's effectiveness in this area.



## Supply Chain Management Process

February 4, 2019

### 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.

Protecting Controlled Unclassified Information is a critical aspect of SCM. As required by DFARS 252.204-7012, *Safeguarding Covered Defense Information and Cyber Incident Reporting*, contractors must implement the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, Rev1, *Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations*, as a means to safeguard the Department of Defense's controlled unclassified information that is processed, stored, or transmitted on the contractor's internal unclassified information system or network.

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, Safeguarding Covered Defense Information, Cyber Incident Reporting, 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) DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System
- d) DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting
- e) NIST Special Publication (SP) 800-171, Rev 1, Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations
- f) DFARS 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
  - (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.*

When DFARS 252.204-7012 is applicable, the contractors must implement the security requirements specified in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, *Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations*. The Contractor's purchasing system will be evaluated to assess that:

- (a) The contractor's procedures ensure contractual DoD requirements for marking and distribution statements on DoD Controlled Unclassified Information (CUI) flow down appropriately to their Tier 1 Level Suppliers.
- (b) The contractor's procedures to assure Tier 1 Level Supplier compliance with DFARS Clause 252.204-7012 and NIST SP 800-171.

**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 to monitor and control their suppliers and the supply chain process. The PA reviews prime contracts to identify when DFARS 252.204-7012 is present and note any special marking requirements pertaining to CUI.

When reviewing the contractor's supply chain management policies and procedures the CPSR Analyst should ensure that the contractor's policy, at a minimum, requires the flow down of DFARS 252.204-7012, \*when applicable, including the content of paragraph (m), *Subcontracts*, which states that the contractor shall:

- (a) include this clause, in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information



(CDI), including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

*\*When applicable - flow clause down only in situations where the subcontractor will be utilized for operationally critical support or performing duties that involve CDI. (This is not an indiscriminate flow down)*

(b) Require subcontractors to:

- i. Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and
- ii. Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of DFARS 252.204-7012.

**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 contractor if VR are conducted and if so, where they are stored (in award files or in a separate consolidated location). The PA should ask the contractor to demonstrate their ability to protect CUI in accordance with DFARS 252.204-7012 and NIST SP 800-171. The PA will review subcontracts/POs to determine if the contractor has flowed down DFARS 252.204-7012 in all applicable procurement files within the selected sample. The PA should validate that CUI is properly marked in procurement files containing DFARS 252.204-7012 and be aware that no CUI should be present in procurement files where DFARS 252.204-7012 is not included.

The contractor must demonstrate how the CUI was transferred to their subcontractor. The PA should request that the contractor provide prime contracts containing CUI which was transferred to a subcontractor. The contractor must exhibit examples of CUI data transfers to demonstrate their ability to comply with this requirement.

The PA will request that the contractor's procurement staff describes their SCM Policy, with regards to safeguarding CUI, to the CPSR Team and demonstrate execution of the policy in the following areas:

- Flow down DFARS 252.204-7012 in situations where the subcontractor will be utilized for operationally critical support or performing duties that involve CDI.
  - When subcontractor accepts DFARS 252.204-7012 as part of the subcontract Terms and Conditions, they are asserting compliance with the 14 Requirements and 110 Controls outlined in NIST SP 800-171.
- The prime contractor must validate that the subcontractor has a Covered Contractor Information System (CCIS) that can receive and protect CUI. The prime contractor must show documentation that they have determined that the subcontractor has an acceptable CCIS to include an adequate System Security Plan (SSP).
- Provide sufficient examples of how CUI was transferred.
  - The PA will verify that any CUI marking requirements called out in the prime contract were satisfied.

- Subcontractors must notify the prime contractor when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer.
  - The PA must ask the contractor to demonstrate how they are managing and documenting their subcontractors' request for variances.
- Subcontractors must also provide an incident report number to the prime contractor as soon as practicable. The PA should ask the prime contractor if any variances were requested by subcontractors or if any incidents were reported.
  - The PA must ask the contractor to demonstrate how they are managing and documenting their subcontractors' incident report numbers.

Listed below are areas that should be addressed while evaluating the contractors SCM process:

1. Does the prime know their critical suppliers? How does the prime contractor 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 contractor 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 contractor 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 contractor 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?
7. Based on the review of prime contracts, did the contractor adequately flow down DFARS 252.204-7012 in all subcontracts, or similar contractual instruments?
8. Did the prime contractor properly mark CUI in procurement files containing DFARS 252.204-7012? Did you validate that no CUI is present in procurement files where DFARS 252.204-7012 was not included?
9. Did prime contractor validate that the subcontractor has a CCIS that can receive and protect CUI?
10. Did the prime contractor exhibit the ability to protect CUI in accordance with the NIST SP 800-171? Did the prime contractor adequately protect CUI when transferring such information to subcontractors? Did the prime contractor provide evidence of secure transfers of CUI?

11. Does the prime contractor have a system to track subcontractor security requirement variance requests made to the Contracting Officer?

12. In the event of a cyber incident, did the prime contractor obtain the DoD incident report number from the subcontractor, as soon as practicable? Does the prime contractor have a system to track cyber incidents reported by their subcontractors?

**After the Review:** By reviewing the data collected from the SCM FS data call, along with the review of information gathered during the review of the prime contractor's SCM process, the PA should be able to determine if the process is adequate. If not adequate, the PA should write to the inadequacies in the SCM section of the CPSR report.

**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.

If the contractor's ability to protect Controlled Unclassified Information (CUI) could not be reviewed, then the report will be annotated:

The contractor's Controlled Unclassified Information (CUI) protection practice could not be evaluated. The universe did not include subcontract/POs containing the DFAR 252.204-7012 requirement. Should this review result in the approval of the contractor's purchasing system, CBAR should be annotated to reflect that the contractor's CUI protection processes were not evaluated. Government officials should not rely on the system approval as an evaluation of the contractor's ability to protect CUI for any proposed or ongoing acquisitions.

The Administrative Contracting Officer should use the following language when annotating CBAR:

The contractor's Controlled Unclassified Information (CUI) protection practice could not be evaluated. The universe did not include subcontract/POs containing the DFAR 252.204-7012 requirement. Government officials should not rely on the system approval as an evaluation of the contractor's ability to protect CUI for any proposed or ongoing acquisitions. Surveillance in accordance with FAR 44.304 will provide review of the contractor's effectiveness in this area.

# BUY AMERICAN

September 24, 2017

## Introduction

The purpose of this job aid is to define the requirements for compliance with Buy American and Berry Amendment regulations.

Executive Order 13788, “Buy American, Hire American”, dated April 18, 2017, requires agencies to scrupulously monitor, enforce, and comply with Buy American Laws. The Buy American Act (now Buy American) was originally signed on March 3, 1933 as 41 U.S.C. 10a-10d (now 41 U.S.C. 8301-8305). As implemented in FAR 52.225-1, Buy American – Supplies, and DFARS 252.225-7001, Buy American and Balance of Payments Program, Buy American provides a preference for domestic end products for supplies acquired for use in the United States. Contractors are required to disclose and certify other than domestic end products that are classified as “qualifying country end products” and “foreign end products” by providing a line item number and country of origin when required in accordance with FAR 52.225-2 Buy American Certificate or DFARS 252.225-7000 Buy American--Balance of Payments Program Certificate, as applicable.

The Berry Amendment was originally passed by Congress in 1941 to promote the purchase of certain U.S. goods. The Amendment was included in subsequent defense appropriations act until it was made permanent in Fiscal Year 1994 by section 8005 of Public Law 103-139. It was subsequently codified as [10 U.S.C. 2533a](#) in 2002 by section 832 of Public Law 107-107. The Berry Amendment directs DoD personnel to ensure funds appropriated or otherwise available to DoD are not used to procure covered items if the items were not grown, reprocessed, reused, or produced in the United States, regardless of whether they are purchased as end items, components, or materials. The Berry Amendment applies even if another agency, such as the GSA, is purchasing the item for DoD. As of November 16, 2006, the law restricts any funding appropriated or otherwise available to DoD from being used to buy the following end items, components, or materials unless they are wholly of US origin: An article or item of food; clothing; tents, tarpaulins, or covers; cotton and other natural fiber products; woven silk or woven silk blends; spun silk yarn for cartridge cloth; synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics); canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or any item of individual equipment (Federal Supply Class 8465) manufactured from or containing such fibers, yarns, fabrics, or materials; and hand or measuring tools. Violation of the Berry Amendment would generally also result in the violation of the Anti-Deficiency Act ( [31 U.S.C. 1341](#)).

## Reference(s)

FAR 52.225-1, Buy American – Supplies

FAR 52.225-2, Buy American Certificate

FAR 52.225-3, Buy American –Free Trade Agreements – Israeli Trade Act

FAR 52.225-4, Buy American –Free Trade Agreements – Israeli Trade Act Certificate

DFARS 252.225-7000, Buy American--Balance of Payments Program Certificate  
DFARS 252.225-7001, Buy American and Balance of Payments Program  
DFARS 252.225-7004, Report of Intended Performance Outside the United States and Canada  
DFARS 225.7002-1, Restrictions  
DFARS 252.225-7012, Preference for certain domestic commodities  
DFARS\_252.225-7015, Restriction on acquisition of hand or measuring tools  
DFARS 252.244-7001(c) (1), The contractor's purchasing system shall 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).

### **Applicability**

All of the contractor's subcontract/purchase order files, above the micro-purchase threshold, are subject to this requirement.

Unless otherwise specified, the clause applies to all line items in the prime contract.

### **Exemptions**

In accordance with FAR 12.505(a) (1), the component test of the Buy American statute is waived for an end product that is a COTS item.

The exceptions established in DFARS 225.7002-2, apply to the Berry Amendment.

A waiver (Domestic Non-Availability Determination (DNAD)) to the Berry Amendment may be granted if items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices (does not apply to acquisitions of hand or measuring tools).

Items listed in FAR 25.104 are items for which domestic sources can only meet 50 percent or less of total U.S. Government and non-government demand. To be considered unavailable under the Berry Amendment, the item must not be available from any domestic source. Therefore, the procuring agency must conduct market research to determine if the item is available from any domestic source.

### **Contractor's Responsibility**

The contractor is required to deliver only domestic end products unless, in its offer, it specified otherwise and disclosed the other than domestic end products in either the Buy American Balance of Payments Program Certificate provision or the Buy American Certificate provision. If the contractor certified in its offer that it will deliver a qualifying country end product, the contractor must deliver a qualifying country end product or, at the contractor's option, a domestic end product.

There is no requirement to flow down the regulatory clauses to subcontracts. However, the clauses do confer a duty on the prime contractor to ensure requirements are met as applicable.

The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product in FAR 52.225-1.”

In addition, the Contracting Officer has determined that Federal Trade Agreements (FTA) (except the Bahrain, Morocco, Oman, Panama, and Peru FTAs) and the Israeli Trade Act apply to this acquisition.

Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American --Free Trade Agreements--Israeli Trade Act Certificate.”

If the Contractor specified in its offer that the Contractor would supply an FTA country end product (other than a Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product) or an Israeli end product, then the Contractor shall supply an FTA country end product (other than a Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product), an Israeli end product or, at the Contractor's option, a domestic end product.

### **Pre-Review**

Review prime contracts for the following clauses:

FAR 52.225-1 Buy American – Supplies

FAR 52.225-2 Buy American Certificate

DFARS 252.225-7001 Buy American and Balance of Payments Program

DFARS 252.225-7000 Buy American--Balance of Payments Program Certificate

DFARS 252.225-7004 Report of Intended Performance Outside of the United States and Canada

DFARS 225.7002-1, Restrictions

DFARS 252.225-7012, Preference for certain domestic commodities

DFARS 252.225-7015, Restriction on acquisition of hand or measuring tools

If either FAR 52.225-1, Buy American – Supplies, or DFARS 252.225-7001, Buy American and Balance of Payments Program, is included in any of the prime contracts, then review the CPSR sample to determine if any POs/Subcontracts awarded under that prime contract were awarded to foreign suppliers. If no foreign suppliers are included in the CPSR sample, then expand the sample if possible to include foreign suppliers.

If yes, review the “certificate” clause (referenced above) to determine if the contractor listed and certified the line item number and country of origin to identify qualifying country end products and/or other foreign end products that do not qualify as domestic end products.

## **Review**

### **Policies and Procedures**

When reviewing the contractor's policies and procedures the CPSR Analyst should ensure that the contractor's policy, at a minimum:

References the appropriate clauses shown above.

Provides instruction to submit a report to the Contracting Officer and Deputy Director of Defense Procurement and Acquisition Policy at least 30 days before award of a subcontract in accordance with DFARS 252.225-7004 Report of Intended Performance Outside of the United States and Canada if it is in the prime contract.

### **Practice**

Determine if DFARS 252.225-7004, Report of Intended Performance Outside of the United States and Canada, is in the prime contract.

Ensure contractor identify end products in the certificate clauses (FAR 52.225-2 or DFARS 252.225-7000).

Verify that the contractor is documenting timely submission of the report.

### **Reporting Requirements**

The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—

- (1) Exceeds \$700,000 in value; and
- (2) Could be performed inside the United States or Canada.

Submission of reports. The Contractor—

- (1) Shall submit a report as soon as practical after the information is known,
- (2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract.
- (3) Need not resubmit information submitted with its offer, unless the information changes.

### **Post-Review**

The analyst should document recommendations within the report element and comment on the adequacy of the contractor's policy description and procedure.

If necessary the analyst should follow up with the Contracting Officer in order to request the insertion or removal of clauses; i.e., if there are foreign suppliers, and Buy American or Berry Amendment clauses are not in the prime, clauses will need to be added.



# 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](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).

# Subcontractor / Vendor Close-out Process

March 21, 2018

## Introduction

The purpose of this Job Aid is to define the requirements for the Contractor and Procurement Analyst regarding Subcontractor / Vendor Close-out Process.

## Reference(s):

- a. FAR 4.804
- b. DFARS 252.244-7001 (c)(4)

## Applicability

Contract close-out begins when the contract has been physically completed, all services have been performed, and all products delivered.

Close-out is completed after all administrative actions have been performed, all disputes settled, and final payments have been made.

The process can be simple or complex depending on the subcontract/PO type. The close-out process requires close coordination between the Purchasing/Subcontracts Department, the Accounting Department, the Program/Project Department, and the Subcontractor. Subcontract close-out is an important aspect of good contract administration.

## Pre-Review

Request of the contractor as sample of purchase orders/subcontracts for review. Within the sample, please request at least two to three files that are amongst each of the CPSR dollar value threshold categories.

## Review

### I. Policies and Procedures

When reviewing the contractor's policies and procedures, the analyst should ensure that the contractor's policy, at a minimum, requires the close-out of purchase orders and subcontracts utilizing the guidelines found in FAR 4.804-5

### II. Practice

Review each closed-out file requested, and ensure that the purchase order / subcontract close-out process is in compliance with the policy and procedures set forth by the contractor.

## **Post-Review**

Ensure that you have a complete understanding of the purchase order/subcontract close-out process that the contractor has set forth, and that the contractor has been compliant in practice for each of the sample files you have reviewed.

# 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 (LTAs), Basic Ordering Agreements (BOAs), 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."*

### **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. 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

**Long Term Agreements and the CPSR Process Requirement:**

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.