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**\*\*\*\*\* BY THE CG \*\*\*\*\***

# **ACQUISITION GUIDE**

**DIRECTORATE OF CONTRACTING**

**UNITED STATES ARMY**  
**INTELLIGENCE AND SECURITY COMMAND**

April 2000

## ACQUISITION GUIDE

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# CHAPTER 1

## INTRODUCTION

## INTRODUCTION

The purpose of this guide is twofold: (a) To provide basic guidance for preparation of the documents required by the INSCOM Directorate of Contracting, IAPC-DCO to process procurement requests and (b) to provide guidance in related areas of contracting where requirors often have questions and need a basic understanding.

INSCOM is a tenant activity on Fort Belvoir. Therefore installation type support must be procured through the Fort Belvoir Directorate of Contracting. Installation type support includes all supplies or services which support the INSCOM facility but are not essential to the INSCOM mission. Examples are: procurement, maintenance and repair of general office equipment; and transportation. INSCOM may also make Installation type purchases up to \$2,500, using the Government Purchase card.

The INSCOM IAPC-DOC procures mission type services and supplies that directly support the INSCOM mission. Examples are: Studies, foreign materiel acquisitions (FMA), requirements containing classified documents and requiring contractor security clearances to perform, and information resources directly in support of the INSCOM mission.

The Federal Acquisition Regulations (FAR) references mentioned in this document can be accessed at Department of Defense, and General Services Administration internet web sites; or at <http://www.arnet.gov>.

This guide was prepared by Roberta Roberts in IAPC-DOC. If you have any questions or comments, please contact her on DSN 235-1709, COM 703-706-1709, FAX # 703-806-1156, or E-mail: [rlrober@vulcan.belvoir.army.mil](mailto:rlrober@vulcan.belvoir.army.mil).

## CHAPTER 2

# PROCUREMENT PACKAGE CHECKLIST

**PROCUREMENT PACKAGE CHECKLIST**

**REQUIRED**

- 1. Letter/Memorandum of Transmittal [ ]
- 2. Procurement Package Checklist [ ]
- 3. Acquisition Plan [ ]
- 4. Management Decision Document [ ]
- 5. Approvals Unique to this Acquisition [ ]
- 6. Market Research [ ]
- 7. Funding Document [ ]
- 8. Independent Government Cost Estimate (IGCE) [ ]
- 9. Statement of Work [ ]
- 10. Specifications/description [ ]
- 11. Justification for Other than Full and Open Competition (J&A) [ ]
- 12. Source selection/Evaluation Plan [ ]
- 13. Statement of Urgency []
- 14. Contract Data Requirements List (DD1423) [ ]
- 15. Government Furnished Property and Data List [ ]
- 16. Warranties [ ]
- 17. Contract Security Classification (DD254) [ ]
- 18. Non-Personal Services Certification [ ]
- 19. Labor/Wage determination [ ]
- 20. Information Technology Approval [ ]

## CHAPTER 3

### TRANSMITTAL LETTER/MEMO

LETTER or MEMORANDUM OF TRANSMITTAL

A letter or memorandum of transmittal is a cover for the total procurement package. It is optional, but recommended when special instructions or concerns need to be expressed to the Contracting Officer.

Use it for such purposes as to:

Recommend special provisions for inclusion in the contract

Advise the Contracting Officer of unusual circumstances or special instructions

Pose issues and questions to the Contracting Officer that you need answered or discussed regarding the acquisition

Alert the Contracting Officer to critical performance or delivery dates

Provide history of previous acquisitions such as contract numbers, performance concerns

Provide information on status of the current contract expiration date for follow on efforts

Provide information about the interface with any other contracts in place or in process of award.  
For example: Is property or data that is to be provided to the contractor, being produced or validated on another contract?

The letter may be signed by the requiring activity Director/Senior Official or the designated program official.

Letters/memos shall be addressed to: Commander, USAINSCOM, Directorate of Contracting Operations (IAPC-DOC), 8825 Beulah Street, Fort Belvoir, VA 22060-5246

# CHAPTER 4

## ACQUISITION PLANNING

## ACQUISITION PLANNING

An acquisition planning program is an effort to coordinate, prioritize and manage the installation's procurement needs and effectively use resources in support of mission requirements. Acquisition planning applies to INSCOM Headquarters Heads of Staff, all subordinate INSCOM Commands, and any other activities which receive contracting support from the INSCOM Directorate of Contracting (IAPC-DC). Acquisition planning is a development of the overall strategy for managing acquisitions. It is a joint effort of all personnel responsible for significant aspects of the acquisition. This includes such players as the budget officer, legal advisor, technical personnel, logistician, Contracting Officer, Competition Advocate, cost analyst, security specialist, or any other type representative of other aspects of the acquisition.

The INSCOM Chief of Staff (IA-CS) is the oversight manager for acquisition planning. The Commanders and Heads of Staff, or their designee, identify the acquisition requirements. The IA-CS makes the final decision on prioritizing requirements, if necessary.

The Assistant Chief of Staff for Resource Management provides advice and guidance to the Command regarding the availability of resources and budgeting for acquisition requirements.

The Director of Contracting (DOC) has the overall responsibility for surveillance of the acquisition planning program within INSCOM. The DOC issues a memo each fiscal year requesting acquisition plans and issuing procurement administrative lead time (PALT) for various types of acquisitions. The information is used to assist the DCO in managing the workload for the fiscal year. A sample of the memo and the current PALT is at the end of this chapter.

Acquisition planning is required on all requirements, to some extent. It should begin as soon as the need is identified, preferably well in advance of the fiscal year in which the contract award must be made. The plan addresses technical, business, management and other significant considerations related to the acquisition. Greater details and formality are required as the acquisition becomes more complex and costly.

*WRITTEN ACQUISITION PLANS ARE REQUIRED FOR* the total acquisitions, on a *program basis*, for:

development (See FAR Part 35.001 for definition) when the total cost of all contracts for the program is estimated at \$5 million or more.

production or services when the total cost is estimated at \$30 million or more for all years, or \$15 million or more for any fiscal year.

any other acquisition considered appropriate by the department or agency.

Other acquisition plans may be written on a program or individual contract basis.

Written acquisition plans are NOT required for final buy out or one time buys if it is a single contract which covers all known and present and future requirements, and it is not a multi year contract or contract with options or phases.

*CONTENT OF WRITTEN ACQUISITION PLANS:*

The content and format for the acquisition plan may be found on the internet at <http://www.arnet.gov/far>. It is in the Federal Acquisition Regulation (FAR) Part 7.105

(date)

IAPC-DOC

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Cut-Off dates for FY \_\_ Acquisitions

1. A list of the Procurement Administrative Lead Times (PALT) for various types of acquisitions is at Enclosure 1. These timeframes are the usual timeframes required to process the described action. The PALT is developed from historical data regarding the time it takes from receipt of an adequate procurement request through award. It includes consideration of overall management of workload and resources in the Directorate, compliance with laws and regulations, and interface with other offices and agencies.
2. The list of cut off dates for submission of FY \_\_ requirements to this Directorate is at Enclosure 2. Contact this office to establish due dates for any type action not identified on the list or for assistance in determining how your requirement will be processed. Do not assume that a requirement will be processed as non-competitive. The method of procurement must be established based on law, regulation and other factors. Requirements cannot be split for purpose of staying within any particular threshold.
3. Late procurement packages must contain justification for missing the cut-off date.
4. The cut-off dates for FY\_\_ award are based on receipt of complete, workable, procurement packages. If you need guidance in developing a new requirement contact Gail McGraw, Team Leader for the Awards Team. She may be reached on 703-706-1710 or e.mail: [ggmcgra@vulcan.belvoir.army.mil](mailto:ggmcgra@vulcan.belvoir.army.mil). If guidance is needed for existing contracts, contact Zenaida Castro, Team Leader for the Contract Administration Team. Ms. Castro may be reached on 703-706-2763 or e.mail [zbcasr@vulcan.belvoir.army.mil](mailto:zbcasr@vulcan.belvoir.army.mil).

Attach

PATRICIA A. HORVATH  
Director  
Contracting Operations

DISTRIBUTION:  
CDR, NGIC  
Heads, Staff Elements  
DCSINT

PROCUREMENT ADMINISTRATIVE LEAD TIME

Simplified Acquisition Procedures up to \$2,500 10 days

These purchases must be made with the Government credit card, if a card has been issued.

Simplified Acquisition Procedures \$2,500 to \$25,000  
Non Commercial

Competitive	18 days
Non-competitive	10 days
Modification	various

Simplified Acquisition Procedures \$25,000 to \$100,000

Non Commercial	35 days
Commercial	24 days

Simplified Acquisition Procedures \$100,000 to \$5,000,000  
Commercial 25 days

Basic Purchasing Agreement (BPA) Calls

BPA in place	5 days
BPA authority must be obtained	30 days

Orders against Federal Supply Schedules 18 days

Orders against Indefinite Delivery Type Contracts 45 days

Orders to Blind and Other Severely handicapped 75 days

Orders to Federal Prison Industries 75 days

Administrative modifications to orders 10 days

Contract options exercise 30 days

Contracts above \$100,000

a. Sealed bidding 112 days

b. Full and open competition negotiated 198 days

c. Non-Competitive, negotiated 189 days

d. Contracts with the Small Business Administration (8A) 210 days

e. Limited competition 150 days

f. Contract modifications -PALT varies depending on the purpose of the mod  
Usually 55 days if negotiated

Encl 1

FY\_\_ CUT-OFF DATES FOR SUBMISSION OF ACQUISITIONS TO IAPC-DOC

Simplified Acquisition Procedures up to \$2,500 23 Aug

These purchases must be made with the Government credit card, if a card has been issued.

Simplified Acquisition Procedures \$2,500 to \$25,000  
Non Commercial

Competitive	13 Sept
Non-competitive	20 Sept
Modification	various

Simplified Acquisition Procedures \$25,000 to \$100,000

Non Commercial	25 Aug
Commercial	6 Sept

Simplified Acquisition Procedures \$100,000 to \$5,000,000  
Commercial 6 Sept

Basic Purchasing Agreement (BPA) Calls

BPA in place	25 Sept
BPA authority must be obtained	31 Aug

Orders against Federal Supply Schedules 13 Sept

Orders against Indefinite Delivery Type Contracts 16 Aug

Orders to Blind and Other Severely handicapped 17 July

Orders to Federal Prison Industries 17 July

Administrative modifications to orders 20 Sept

Contract options exercise 31 Aug

Contracts above \$100,000

- a. Sealed bidding 9 June
- b. Full and open competition negotiated 15 March
- c. Non-Competitive, negotiated 24 March
- d. Contracts with the Small Business Administration (8A) 3 March
- e. Limited competition 3 May

f. Contract modifications -PALT varies depending on the purpose of the mod.  
Usually 55 days if negotiated

Encl 2

S: \_\_\_\_\_

#### ACQUISITION PLANNING FORM

Please provide a brief statement of your acquisition planning, for each of your requirements, in the following format. :

DATE OF PREPARATION:

ACTIVITY: Identify the staff element, office symbol, point of contact and telephone number.

REQUIREMENT: Give a brief description of the requirement. State whether it is a new or follow-on acquisition. For follow-on effort, provide the previous contract or purchase order number.

DELIVERY OR PERFORMANCE DATE: Required dates for delivery or performance.

ESTIMATED DOLLAR AMOUNT: State the total estimated amount of the requirement, including options.

TYPE FUNDS: State what type funds are to be used and the dollar amounts associated with each.

STATUS OF FUNDS: State whether the funds are committed, programmed, or the requirement is unfunded. State what date funds will be available.

# CHAPTER 5

## MANAGEMENT DECISION DOCUMENT

## MANAGEMENT DECISION DOCUMENT (MDD)

The management decision document is a letter or memorandum that seeks approval for initiation of Contracted Advisory and Assistance Services (CAAS).

Army Regulation 5-14, Management of Contracted Advisory and Assistance Services, 15 January 1993; provides the details on the required approvals, acquisition, management and use of CAAS. The following excerpts from the AR are provided as general guidance. If your requirement appears to fall under these definitions, refer to AR 5-14, and AR 5-5 for the details. They define the process to follow and the specifics of managing such an acquisition. The level of approval that is required, and the content of the MDD are also given.

CAAS are defined in AR 5-14 as those services acquired by contract from non governmental sources to support or improve agency policy development, decision making, management and administration, program and project management and administration, or to improve the effectiveness of management processes or procedures or the operations of weapon systems, equipment, or components. CAAS efforts procured by Army through the use of another Government agency's contract are also covered by the regulation.

AR 5-14, Appendix B, defines three categories of CAAS:

*CATEGORY A: studies, analyses, and evaluations (SAE)*

“Organized, analytic assessments to understand and/or evaluate complex issues, to improve policy development, decision-making, management, or administration. SAEs result in formal, structured documents containing or leading to conclusions and/or recommendations for use by decision makers. Databases, models, methodologies, and related software created in support of a SAE are to be considered part of the overall effort. SAEs are performed by personnel from non-Governmental analytic organizations including Federally Funded Research and Development Centers (FFRDCs).”

A detailed definition is given in AR 5-5, Management Army Studies and Analyses, 15 November 1981

*CATEGORY B: management and support services (MSS)*

“Contracts for management support services provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of Army organizations, activities, or systems. They are normally closely related to the basic responsibilities and mission of the using organization. This category includes efforts that support or contribute to improved organization or program management, logistics management project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative and/or technical support for conferences and training programs.”

*CATEGORY C: engineering and technical services (ETS)*

“The furnishing of technical assistance, instruction, and training to DOD personnel by commercial or industrial companies in the installation, operation, and maintenance of DOD weapons, equipment, and systems. This includes transmitting the knowledge necessary to develop among those DOD personnel

the technical skill required for installing, maintaining, and operating such equipment in a high state of military readiness. These services are to assure that existing weapon systems, equipment, and components operate at design or required specifications. These services consist of the following:

- a. *Contractor plant services.* ETS provided to DOD personnel by a manufacturer of weapon systems, equipment, or components. These services are provided in the manufacturer's facilities by engineers and technicians employed by the manufacturer.
- b. *Contractor field services.* ETS provided to DOD personnel onsite, at DOD locations, by technically qualified DOD contractor representatives. These services include information, instruction, training, and hands-on training (that is, direct assistance provided by contractor representatives).
- c. *Field service representatives.* ETS provided to DOD personnel by employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components."

CAAS EXEMPTIONS - From AR 5-14, Appendix C:

1. Requirements that fall under the OMB Circular A-76 program
2. Architectural and engineering services for construction, under FAR Part 36 definition. If it does not fall under FAR Part 36, AR 5-14 applies.
3. Day-to-day operation of facilities and house-keeping services.
4. Routine maintenance of systems, equipment, and software; routine administrative services; printing services; and direct advertising.
5. Initial training as an integral part of procurement of weapons systems, ADP systems, equipment or components, and training obtained for individual professional development.
6. Basic operation and management contracts for Government owned, contractor operated facilities (GOCO) However, any CAAS action under the basic GOCO contract falls under AR 5-14.
7. Clinical and medical services
8. Information technology/telecommunications functions and related services covered under OMB guidance and regulation and reported in Schedule 80-Information Technology Budget of the Command Budget Estimates.
9. Services supporting policy development, management, and administration of the Foreign Military Sales Program that are not paid for with appropriated funds. This includes CAAS funded with appropriated funds and reimbursed by the foreign customer.
10. Services acquired by or for a program office to increase the design performance capabilities of existing or new systems or where the services are integral to the logistics support and maintenance of a system or major component and/or end item of equipment essential to the operation for the system before final Government acceptance of a complete hardware system. Not exempted are services to advise and assist program office and or manager for program and/or contractor oversight and administration processes,

resource management, planning and programming, milestone and schedule tracking, or other professional or administrative service necessary in performing its mission.

11. Research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.

12. Auctioneers, realty-brokers, appraisers, and surveyors.

13. Services procured with funds from the Defense Environmental Restoration Account.

14. The national Foreign Intelligence Program (NFIP)

15. The General Defense Intelligence Program (GDIP)

16. Tactical Intelligence and Related Activities (TIARA)

17. Programs managed by the Director, National Security Agency/Central Security.

# CHAPTER 6

## APPROVAL AUTHORITIES

## APPROVAL AUTHORITIES

### JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

Up to \$500,000 - Contracting Officer

\$500,000 not exceeding \$10,000,000 - Competition Advocate (Marjorie Jenkins)

\$10,000,000 not exceeding \$50,000,000 - Head of the procuring activity  
( Commanding General)

Over \$50,000,000 - Secretary of the Army

All require review by the legal office and the Principal Assistant Responsible for Contracting (PARC)

### MANAGEMENT DECISION DOCUMENT

Studies and Analysis, AR 5-5

\$50,000 and under - Staff Head/Major Subordinate Command Commander

Over \$50,000 - \$500,000 - General Officer/SES

Over \$500,000 - Headquarters Department of the Army

Analytical Support, AR 5-14

\$50,000 and under - Staff Head/Major Subordinate Command Commander

Over \$50,000 - General Officer/SES

### RATIFICATION OF UNAUTHORIZED COMMITMENT

\$10,000 and under - Director, Contracting Operations (IAPC-DCO)

Over \$10,000 up to \$100,000 - Principal Assistant Responsible for Contracting

Over \$100,000 - Head of Contracting Activity

### ACQUISITION PLANS

Reference Army Federal Acquisition Regulation (AFARS) Part 7.

Program Executive Officers (PEOs) and Project Managers (PMs) reporting directly to Department of Army shall approve acquisition plans for programs/projects assigned to them.

Principal Assistant Responsible for Contracting (PARC) at INSCOM shall approve plans for all non-PEO acquisitions

Dollar thresholds requiring approvals:

Over \$30,000,000, including option years, for research and development (R&D), production, supply, and services other than base support services

Over \$5,000,000 for base support services per year

Over \$15,000,000 for base support services for all years including options

Below the above thresholds:

Approval of the Director of Contracting with the concurrence of the Contracting Officer, Competition Advocate, Small and Disadvantaged Business Utilization office (PARC), legal office and appropriate Assistant Chief of Staff elements.

INFORMATION TECHNOLOGY -Assistant Chief of Staff for Information Management

PUBLICATIONS - (other than a one time buy) - Assistant Chief of Staff for Information Management

TELECOMMUNICATIONS - Assistant Chief of Staff for Information Management

AUDIO VISUAL - Assistant Chief of Staff for Information Management

TEST, MEASUREMENT AND DIAGNOSTIC EQUIPMENT - Assistant Chief of Staff for Logistics

See INSCOM Memorandum 1-2 for further guidance

# CHAPTER 7

## MARKET RESEARCH

## MARKET RESEARCH

Market research is required to arrive at the best approach to obtaining, distributing and supporting supplies and services. Agency needs must be stated in terms sufficient to allow conduct of market research. Market research is required at two points in an acquisition process. The requiring activity must conduct the research before developing new requirements documents, and the contracting office must do a market survey before soliciting proposals. There is an on-line training module on market research at <http://www.acqref.navy.mil/marketresearch/menu.htm>. You can link to it from <http://SADBU.Army.Mil>.

1. Identify legitimate needs
2. Describe needs adequately for market research
3. Do market research. Request the minimum information necessary depending on factors such as urgency, est. value, past experience, size and complexity
4. Evaluate tradeoffs

### USE THE RESULTS :

Determine what sources are capable

Can commercial items do the job - either meet or reasonably modify?

Determine to what extent commercial or nondevelopmental items can be used at the component level

Assess the market practices supporting commercial items  
such as warranties, financing, maintenance, packaging, marketing

Assure maximum use of recovered materials IAW (FAR 23.4) - Resource Conservation and Recovery Act - Don't exclude recovered materials or require virgin materials.

Determine if the need can be restated to permit commercial or nondevelopmental items to meet the agency need

### HOW TO TECHNIQUES:

- Contact knowledgeable individuals anywhere.
- Review recent market research
- Publish formal requests for information in tech and scientific journals or business publications
- Query Government data bases
- On-line communication with industry, acquisition personnel and customers.
- Source lists
- Catalogs and literature
- Interchange meetings or presolicitation conferences (must be announced and conducted by the contracting office.)
- Sources sought announcements in the Commerce Business Daily (Must be handled through the contracts office.

DOCUMENT results of research and provide it to the Contracting Office as part of the procurement package.

## CHAPTER 8

### FUNDING

## FUNDING

The Anti-deficiency Act prohibits expenditure or obligation of Federal funds in excess or advance of Congressional appropriation. Decisions on the availability of funds as to time, purpose and amount become quite involved. Each acquisition is unique. Resolve questions regarding funding with the Assistant Chief of Staff for Resource Management, and the Contracting Officer in the Directorate of Contracting Operations (IAPC-DC).

The following identifies the appropriation by type, availability as to time, and military service. The asterisk is where the fiscal year identification will appear:

### OPERATION AND MAINTENANCE (O&M) FUNDS (1 YEAR)

97*0100	DOD Agencies
57*3400	Air Force
17*1804	Navy
21*2020	Army
17*1106	Marines

(O&M funds may be used for supply items in certain cases and up to certain dollar thresholds. See the DCSR for guidance.)

### RESEARCH AND DEVELOPMENT (R&D) FUNDS (2 YEAR)

97*0400	DOD Agencies
57*3600	Air Force
17*1319	Navy
21*2040	Army
None	Marines

### PROCUREMENT FUNDS (3 YEAR)

97*0300	DOD Agencies
57*3080	Air Force
17*1810	Navy
21*2035	Army [Other Procurement, Army (OPA)]
17*1109	Marines

### CONSTRUCTION FUNDS (GOOD UNTIL USED)

97*0500	DOD Agencies
57*3730	Air Force
17*1205	Navy
21*2050	Army [Military Construction, Army (MCA)]
None	Marines

### ARMY STOCK FUNDS (ASF)

21x4991 - No year -- revolving account

ARMY INDUSTRIAL FUND (AIF)

21x4992 - No year -- revolving account

FAMILY HOUSING (FHA) (ONE YEAR)

2197\*07

TROUP SUPPORT (TRP SPT) (NO YEAR)

21X8420

NATIONAL SECURITY AGENCY RESEARCH AND DEVELOPMENT (NSAR&D) (2 YEAR)

9720400.45

NATIONAL SECURITY AGENCY PROCUREMENT (NSAP) (3 YEAR)

9700300.45

**How the Federal Government's Budget Process Works**

The following is a brief outline of the budget process and the meanings of some of the words you will often hear associated with it:

Agencies present their budget request to the Office of Management and Budget (OMB) (Executive Branch of the Government).

OMB presents the budget to Congress for approval. The budget is debated. This is the stage where you hear of continuing resolutions to keep the Government funded if Congress and OMB do not come to agreement before the fiscal year ends.

Congress signs an Appropriation Bill which **appropriates** the approved budget amounts and gives it to OMB.

OMB **allocates** it among the Government agencies. Sometimes OMB does not give the agencies money all in one allocation. They may dole it out quarterly to control spending. This is one reason why the Command does not always have the total budget and has to restrain commitments.

OMB gives the Department of Defense (DOD) its **apportioned** amount of money. Army then receives its portion of the DOD funds.

When INSCOM receives funds, they are **committed** to the planned requirements by the Deputy Chief of Staff for Resource Management (DCSRM).

The Directorate of Contracting (DCO) receives the committed funds from DCSRM.

The funds are **obligated** on contracts by warranted Contracting Officers who are exclusive agents of the Government.

The funds are **dispersed** as payment to contractors for goods and services.

Funds can only be **deobligated** from a contractual document by a Contracting Officer. Funds cannot unilaterally be removed from contracts. Negotiation, audits, etc. may be required.

**Unfunded requirements**

All requirements must be funded or funds programmed by resource management, in order for the contracting office to solicit and enter into negotiations with contractors.

**Processing Military Interdepartmental Procurement Requests (MIPRs)**

See Chapter 36.

## CHAPTER 9

# PROCUREMENT REQUEST AND COMMITMENT (PR&C) INSTRUCTIONS

## PROCUREMENT REQUEST AND COMMITMENT INSTRUCTIONS (PR&C)

The form is DA Form 3953. It is on Formflow. The following instructions are numbered to coincide with the block numbers on the form. Items for which no guidance is given are considered self-explanatory.

2. Requisition Number: Number each requisition sequentially beginning with the office or entity DODAAC (must be 14 digits)
4. To: Should read – Directorate of Contracting, INSCOM, IAPC-DCO
5. Thru: The office through which the requisition is processed, if any.
6. From: The office designation of the requestor
7. Purchased For: The office for which the item/service is being procured
8. Delivered to: The destination of the item/service being procured
9. Not Later Than: The date the requested item/service is required. “As soon as possible” or “ASAP” is not adequate information.
10. Name of Person to Call and Telephone Number: The name and number of a person to contact for additional information regarding the requirement. This is usually the person responsible for processing the requisition.
- 12 & 13. Local Purchase Authorization: Cite the regulation/directive that authorizes the procurement of the item/service.
15. Description of Supply or Service: Detailed description of what is to be procured. Identify suggested sources, if known, including addresses and phone numbers.
17. Unit: This may be expressed in such terms such as each, box, carton, per year, lot.
- 18.a. Unit Price: Price per unit expressed in block 17.
- 18.b. Total Cost: Total price for the procurement
19. Accounting Classification: A 65 digit accounting classification number and the total amount of the procurement. This data is provided by the funding official.
20. Signature: Signature of the funds certification official
25. Purpose: Reason for ordering the requested item/service

# CHAPTER 10

## INDEPENDENT GOVERNMENT COST ESTIMATE (IGCE)

## **INDEPENDENT GOVERNMENT COST ESTIMATE**

An independent Government cost estimate (IGCE) is a pre-solicitation, in-house estimate of the probable price. It is based upon the scope of work and/or technical requirements, without reliance upon contractors' pricing estimates. It is a controlled, procurement sensitive document used by the Contracting Officer in determining cost/price reasonableness.

There is no specific format for the estimate. Length should be tailored to cover the detail necessary for the individual requirement. The IGCE must be for the life cycle, option years, segments of work, discounts or any other factor contributing to the total estimate. It should be as simple and concise as possible yet include whatever is necessary to present an adequate, understandable, realistic estimate.

An IGCE shall be submitted with each procurement request and shall include:

- The date of the estimate
- The source or technique used to arrive at the estimate
- Any factor that may influence the cost over time
- Statement of reliability of information upon which the estimate is based. (usually expressed in a percentage)
- The signature of the person who prepared it
- A marking "FOR OFFICIAL USE ONLY"

METHODS OF ESTIMATING may be based on any of the following:

An estimate which is based on experience of the estimator or other persons

Historical procurement data.

Market survey data, vendor catalogs and price lists

General Service Administration Federal Supply Schedules

Comparative labor rates can be obtained from Government personnel offices or the Department of Labor

Comparison with similar items for which costs or prices are known

An estimate which is the Command position on a given program. The estimate is based upon evaluation and blending the variances between the baseline cost estimate and the IGCE.

An estimate which is based upon the price of some measurable characteristic of the product, such as so many dollars for each radio channel.

A cost based estimate that involves a complete, detailed, fully documented break out of probable costs of all elements.

Cost based estimates include such elements as:

Material Costs: Raw material, purchased parts, and other material. It may include an estimate of making vs. buying. Estimates can be obtained from current or prior quotes or contract prices.

Labor Costs: Estimate on a task basis or by some analysis using hours or dollars per unit, per month, or some amount per dollar cost of some other function. Adjust, if necessary for special circumstances such as learning curve or economic conditions.

Indirect Costs: These are costs that benefit two or more cost objectives. It is not appropriate to allocate them as a direct cost to any one contract. They are costs such as xerox paper, telephone service, fringe benefits, material, engineering, manufacturing overheads, off-site overhead and general and administrative expense. (G&A)

Other Direct Costs: These are costs that are reasonably defined as benefiting one contract effort charged to it totally. These costs include items such as travel, printing, data processing and relocation. Travel, for example, can be estimated as to the number of trips, location, duration and number of persons. Direct costs estimates come from the statement of work for a specific requirement and can be reasonably charged exclusively to it.

Labor Burden (Fringe benefit): This cost is accumulated in indirect cost pools, however, sometimes it is treated as direct cost. It is a percentage of direct labor expense. Typically this would run around 30%. It includes such items as payroll records, FICA, workmen's compensation, employee benefits, health and welfare, and vacation and holidays.

Overhead: This is an indirect rate as elements in this category cannot be applied to specific cost objectives. It includes such expenses as utilities, rent, indirect supplies, property taxes, and depreciation. This is a percentage of the total cost of direct labor and labor burden. Typically this runs between 60-80%.

General and administrative (G&A): This includes general and executive office expenses, staff services such as legal, public relations and financial services. It is expressed as a percentage of costs. Typical G&A runs 10-20%.

Profit: On the type requirements INSCOM has, the fee usually does not exceed 10%. For purposes of planning and estimates, apply this maximum. A more structure approach is used by the contracting personnel in arriving at a reasonable fee for a specific requirement.

The IGCE must be for the life cycle, option years, segments of work, discounts or any other factor contributing to the total estimate.

ESCALATION METHODS: If you have cost data that is not current you may have to escalate it to bring it up to a current value. If the requirement is for more than one year, you may have more than one escalation rate. Escalation rates can be obtained from Data Resources Incorporated (DRI) quarterly economic forecast index. For current factor information, contact the IAPC-DCO, Cost Analyst. An escalation example: 1996 cost data= \$30.00. An escalation factor of 1.035 applied to the data results in a 1997 estimate of \$31.05. For option years, the appropriate escalation factors are applied to the previous cost element to arrive at the next year value.

A "Handbook of Cost and Price Analysis Terms" is available in the Directorate of Contracting.

**SAMPLE FORMAT FOR INDEPENDENT GOVERNMENT COST ESTIMATE**

(This is only a sample. The IGCE can be tailored to individual requirement estimates and need not necessarily follow this format.)

ITEMS OR SERVICES: \_\_\_\_\_

1. DIRECT LABOR:

<u>Category</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
-----------------	--------------	-------------	---------------

(List all labor categories expected to perform)

TOTAL DIRECT LABOR \_\_\_\_\_

2. LABOR BURDEN:

(Fringe benefit. This cost is accumulated in indirect cost pools, however; sometimes it is treated as direct cost. It is used as a percentage of direct labor expense. Typically this is around 30%. In includes elements such as payroll records, FICA, workmen’s compensation, employee benefits, health and welfare, and vacation and holidays.)

<u>Element</u>	<u>Direct Labor Base</u>	<u>Rate</u>	<u>Amount</u>
----------------	--------------------------	-------------	---------------

TOTAL BURDEN \_\_\_\_\_

3. MATERIALS:

(List materials and provide total.)

<u>Item</u>	<u>Amount</u>
-------------	---------------

(List materials and provide total.)

TOTAL MATERIALS \_\_\_\_\_

4. MATERIAL OVERHEAD: \_\_\_\_\_

(If applicable)

5. OTHER DIRECT COSTS:

<u>Item</u>	<u>Amount</u>
-------------	---------------

TOTAL OTHER DIRECT COSTS \_\_\_\_\_

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6. TOTAL DIRECT AND OVERHEAD COSTS: \_\_\_\_\_

7. INDIRECT COSTS:

<u>Item</u>	<u>Amount</u>
TOTAL INDIRECT COSTS	_____
8. TOTAL COSTS (DIRECT AND INDIRECT):	_____
9. GENERAL AND ADMINISTRATIVE:	_____
10. TOTAL COSTS AND G&A:	_____
<b>TOTAL ESTIMATED COST:</b>	_____
<b>PROFIT/FEE:</b>	% _____
<b>TOTAL ESTIMATE:</b>	_____

Assumptions used: (Identify any assumptions and methodologies used in the computations.)

Basis for Cost Estimates:

<u>Item</u>	<u>Basis</u>	<u>Source</u>
-------------	--------------	---------------

(Specify the item, the basis for the factor used and the source of the data used.)

Reliability: (Prepare a statement to express the reliability of the information upon which the estimate is based. This is usually expressed in a percentage.)

Additional Project Information: (Identify any other information which may be necessary or helpful in the evaluation of price reasonableness.)

Date prepared: \_\_\_\_\_

Prepared by: \_\_\_\_\_  
Printed name and signature

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# CHAPTER 11

## PERFORMANCE BASED WORK STATEMENT

## **PERFORMANCE BASED WORK STATEMENT**

A performance based work statement (PBWS) is a description of requirements for service contracts. Typical services are for information resources support, technical studies, data collection development and management, and research.

Unlike specifications for supplies, there are no standard PBWSs; each must be developed to express the individual requirement. It is the core of the contract and plays a significant role in proposal preparation, proposal evaluation and contractor selection, quality of the service performed, and understanding between the contractor and the Government in contract administration. Regardless of discussions or “gentlemen’s agreements” between the Government and the contractor, the language of the PBWS is the final determinant of the responsibility and criteria for performance.

PBWSs should focus on results or objectives and performance requirements. Allow the contractor to propose how to accomplish the job. The Government is likely to get a state-of-the-art solution which provides a better result at less cost. It also allows the contractor to manage in their customary way rather than having to customize their way of doing business to comply with Government direction in performance of the work.

It is critical that the requirement be well defined. Ambiguities can result in unsatisfactory performance, delays, disputes, and higher costs. The PBWS should be as concise as possible. It is not important how lengthy it is as long as it adequately covers the requirement. Common sense judgments of service characteristics, intended use, complexity and dollar values determine the extent of detail necessary.

If a PBWS is not well defined, contractors may not propose because of uncertainty about the risks or they do not understand the PBWS in relation to their capabilities. If the PBWS is too restrictive, capable contractors may not be interested when they feel that their creativity or alternate approaches will be inhibited. Clear and explicit expression of requirements will increase the possibility of receipt of high quality proposals. It should also reduce the time for technical evaluation, clarifications and negotiations, and lessen the possibility of protests.

### ***HOW TO WRITE A PERFORMANCE BASED WORK STATEMENT***

#### ***Planning:***

1. Completely understand what is needed. Understand the requirement, proposed solutions to problems and the history of the requirement and previous procurements. Construct a literature review and ask questions of offices that you believe have had similar acquisitions.
2. Divide the subject matter into logical parts.
3. Develop an outline of how the subject will be covered.
4. Identify potential cost drivers and reduce them to those necessary to meet the Government’s minimal needs.
5. Identify any required tasks that are already defined or required by specifications and standards.
6. Identify portions of the work that will require special care in presentation in the PBWS

7. Prepare a list of primary tasks and any optional tasks.
8. Determine what Government furnished property, equipment, information will be provided to the contractor for performance. This may include such things as computer time, office space, telephone access, data.
9. Assemble copies of all technical documents related to the effort.
10. Address the security issues and decide what level of classification is necessary .
11. Separate the aspects of the work that will require research or assistance. Establish target dates for obtaining what is needed and begin on it immediately.

***Language:***

Be aware that PBWSs are read and interpreted by persons of varied backgrounds such as lawyers, engineers, cost estimators, accountants, comptrollers, contract managers, and specialists in transportation, security, and quality control inspection. All are not familiar with the technical language. They may also interpret the PBWS in a variety of ways, if it is not worded to avoid ambiguities.

- a. Any technical language used should be explained, if necessary for non-technical persons to understand.
- b. Avoid ambiguous and undefinable wording as “and/or”, “as necessary”, “as much as possible”.
- c. Be sure it is clear what is mandatory, desirable or optional
- d. Spell out acronyms the first time they are used
- e. Avoid jargon and slang
- f. Write in the active voice
- g. Do not use “as directed by””. This indicates a personal services manner of working, which is prohibited by law.
- h. Use quantities, ranges or parameters, minimums, maximums; rather than adjectives such as many, most, simple, high volume, etc., or phrases such as “including, but not limited to...”
- i. Use “shall” for mandatory  
Use “should” for non mandatory, desirable  
Use “may” for non mandatory, an alternative acceptable
- j. Use simple, concise, direct language - say what you mean
- k. Be consistent in the use of terminology
- l. Minimize punctuation
- m. Avoid redundancy

**REVIEW CHECKLIST FOR THE PBWS:**

1. Is it specific enough for a contractor to determine manpower and other resources needed?
2. Are the specifics of the requirement, tasks, etc. stated so that a contractor knows what is required and the desired result? Can a technical representative tell whether the contractor complied with the contract, for purposes of determining quality and signing for acceptance?
3. Is the wording such that there is no question over mandatory, desirable, and alternative requirements?
4. Are the proper reference documents shown. Are they really pertinent and necessary - by full or partial document? Are documents properly cited?
5. Has quality assurance been fully covered for the life of the requirement?
6. If specifications and standards are applicable, are they properly cited? Are they necessary in whole or part?
7. Is general information, background information, suggested procedures clearly distinguishable from contractor performance requirements?
8. Are the performance or delivery dates reasonable, timeframes current, and is it clear whether time is calendar or work days?
9. Has the document been checked for format, spelling and grammar use. Are the headings correct for the text?  
Is the numbering in sequence and do references to it track?
10. Does the Contract Data Requirements List (CDRL), DD1423; track with the SOW?
11. Have extraneous data requirements been eliminated?
12. Are all GFP/GFI of the Government carefully defined and time limit stated as to when the contractor will receive them?
13. Is the requirement described completely as to when, where, what?
14. Is the PBWS free from proprietary references or sources which could sole source the work?
15. Is the PBWS written to specify the results required and allow contractors to determine the method to attain them?
16. Has the work been organized into logical tasks, phases, etc.
17. Are points of reviews and approvals, if needed, clear?
18. Are reporting and other data requirements only those really necessary and useful?

Suggestion: Have someone other than the preparer, review the draft SOW to help check it.

***Content:***

“Military Handbook, Preparation of Statement of Work(SOW), MIL-HDBK-245C, 10 SEP 1991 covers the preparation of SOWs for Department of Defense contractual documents. The handbook covers format, numbering and guidance on content for several types of SOWs. For purposes of this Acquisition Guide, the PBSW, which is commonly used at INSCOM, will be discussed. A typical PBWS contains:

TABLE OF CONTENTS - A table of contents is not necessary unless the PBWS is lengthy and it aids in locating the material. Use your own discretion.

SCOPE. Introduction and background information. Briefly explain what the requirement covers - what is the desired result. If necessary or an understanding of the requirement, explain the relationship to other projects, past present or future and how this requirement interfaces with them. Background information should be limited to that necessary to adequately prepare a proposal to meet the need. Do not include classified information if it is not needed in order to propose.

APPLICABLE DOCUMENTS. Use excerpts of handbooks, regulations and other data to tailor the document needs to the minimum needs of the instant PBWS. Specifications and standards must be justified before putting them in the PBWS.

**REQUIREMENTS:**

- a. Describe specific work to be performed in functional terms. This may be done in tasks, phases or general narrative
- b. Do not tell the contractor *how* to accomplish the work.
- c. State the work in logical, chronological order.
- d. Define the total work requirement (scope of work) and identify any portions that may be an option.
- e. Do not state overall program objectives outside the scope of this PBWS.
- f. Do not include administrative information such as how a contractor obtains a badge, or how the contract is structured with delivery orders .
- g. Do not include security requirements. This goes on the Contract Security Requirements form DD254.
- h. Do not use portions of rejected unsolicited proposals.

*Where to put other pertinent information that does not go in the PBWS:*

The PBWS should be dedicated to expressing what the Government wants accomplished. The contract has a uniform format and other relevant information goes in specific parts. Do not clutter the PBWS with it. Provide such information to the Contracting Officer on a separate sheet of paper; or mention it in your transmittal letter, if it is not lengthy.

*The uniform contract format sections of a contract are:*

- A Award page - This contains the identifying information such as contract number, dates, addresses, and signature blocks.
- B This section is for a brief identification of what is to be procured, quantities, and prices
- C. The statement of work/description
- D. Packaging and marking. Any packaging, marking, preservation requirements specific to the requirement, goes in this section.
- E. Inspection and acceptance. How and where you want to perform inspection and acceptance is addressed in this section. The contractor's standard inspection practice may be sufficient. Keep in mind that inspection, as work is in process, is disruptive to contractors and costly to the Government. Is it really necessary in order to insure quality? Consider where you want acceptance to take place. Are any tests required to verify acceptability? Do you require acceptance after an item has been installed and run successfully for a certain time?
- F. Deliveries and performance. Specify requirements for time, place and method of delivery or performance. Time can be expressed in specific dates or a certain number of days after contract award or at specific points, such as "The draft report shall be delivered to the Government within 10 days after the award of the Delivery Order. The Government shall have 20 days to review it, make comments, and return it to the contractor. The final document shall be delivered within 30 days from the date the Government returns the comments."  

Period of performance goes in this section. Include the timeframes for the base period and any optional periods.
- G. Contract administration data. This section is prepared by the contracting office. It is used for accounting and appropriation data and any contract administration information that is not on the award page. (A)
- H. Special contract requirements. This includes such information as what Government property will be provided, and when and in what condition; logistical support to be provided, or any other special contract requirements that do not go in any other section of the contract.
- I. Contract clauses. The contracting office selects the appropriate clauses for each acquisition. There are a lot of standard clauses to cover a variety of issues and concerns you may have related to your requirement. Check with the contracting office before drafting special provisions.
- J. List of documents, exhibits, and other attachments. This includes such items as the Data List, DD1423; the security requirement, DD254; and any other data provided as part of the contract.
- K. Representations, certifications. These are standard and are completed by the contractor.
- L. Instructions, conditions, and notices to offerors. This section is used for any information that needs to be conveyed to offerors for use in the solicitation stage. It could be information such as the location and times for a reading room to review

documents and voluminous to put in a proposals is sometimes put in the contract so no needed in performance of the contract or background information necessary to prepare a proposal but too solicitation. Instruction on organization and format of this section. This section does not become part of information is put in this section if it will be needs to be in the binding agreement.

- M. Evaluation factors. The factors are listed and their relative importance discussed in this section. An explanation is given as to how the government intends to evaluate the proposals. This section is developed by the contracting office, based on the evaluation plan submitted by the requiring activity. Section M and the plan must agree.

***Interpretation of Specifications and Statements of Work:***

The following rules are frequently use by boards of contract appeals for interpreting specifications and Statements of Work. It is well to understand them and keep them in mind when drafting a statement of work.

- a. *Standards for Interpretation of Provisions.* The meaning that would be attached to the writing by a reasonably intelligent person acquainted with all operative usages and knowing all the facts and circumstances prior to and contemporaneous with the making of the contract.

- b. *Rules of interpretation.*

Technical words and words of art are given their technical meaning, unless the context or a usage which is applicable indicates a different meaning.

A writing is interpreted as a whole and all writing forming part of the contract are interpreted together. It is improper to interpret a single word, phrase or sentence out of context with the rest of the contract.

All circumstances accompanying the transaction may be taken into consideration, with the exception of oral statements made by the parties of what they intended a writing to mean. The circumstances under which the contract was made may also be shown, as the objective is to determine the meaning of the writing at the time and place when the contract was made. All the surrounding circumstances at that time necessarily throw light on the meaning of the contract, -i.e. What was the intent of the parties at the time of execution of the contract?

An interpretation which gives a reasonable and effective meaning to all the language is preferred to one that leaves part of the language unreasonable or of no effect.

The principal apparent purpose of the contract is given weight in determining the meaning to be given to the contract or any part thereof.

Where there is an inconsistency between general provisions and specific provisions, the specific provisions ordinarily qualify the meaning of the general provisions.

When there are two reasonable interpretations of a specification the interpretation of the contractor will be accepted. The burden is on the drafter (Government) of the language to have it correct. Where words bear more than one reasonable meaning, an interpretation is preferred which operates more strongly against the party which drafted the language.

# CHAPTER 12

## SPECIFICATIONS

## SPECIFICATIONS/DESCRIPTIONS

The Government must communicate its needs for items or services in sufficient detail that contractors have the information they need to prepare an offer and the Government gets a quality product that fills the requirement. The Government can describe the need in terms of function, performance requirement, physical characteristics, specifications, standards or commercial item descriptions.

Law requires that the Government procure commercial items to as great an extent as practicable when they meet the need. The definition of a commercial item has been expanded to mean:

- a. Any item, other than real property; sold, leased, or licensed to the general public
- b. Any item that evolved from a. May not yet be available in the commercial market but will be in time to satisfy the Government delivery requirement
- c. Any item in a and b that is modified as is customarily done in the market
- d. Any item that is modified in minor ways to meet Government requirements. (Does not significantly alter physical characteristics, the process or function)
- e. Any combination of the above items, customarily combined for sale in the commercial market
- f. Installation services, maintenance, repair, training, etc. in support of the items above, if the services are offered to the general public and are performed by the same work force as to the general public
- g. Services sold competitively in substantial quantities in the commercial market, based on established catalog or market prices for specific tasks under standard commercial terms and conditions.
- h. Any item an/or service or combination of items/services above, regardless of fact that different divisions, affiliates, subsidiaries, etc. provide them
- i. Non-developmental item, developed at private expense, sold in substantial quantities on a competitive basis to multiple State and local governments

A non-developmental item is defined as:

Any previously developed item exclusively for Federal, state or local government or a foreign government with a US defense cooperative agreement.

Customary minor commercial modifications

Item in production but does not fit the definition requirements in a and b because it is not in use yet

*IF YOU MUST DESCRIBE THE REQUIREMENT:*

Use simple language.

Include restrictive provisions or conditions only to the extent necessary to fill the minimum needs or as authorized by law.

You must select requirements documents or develop new documents to meet your needs, in accordance with the DOD 4120.3-M, Defense Standardization Program Policies and Procedures.

Consider lessons learned from previous acquisitions when preparing subsequent requirements.

To the maximum extent practicable, state requirements in terms of :

- a. Functions to be performed - Program objectives, what is to be accomplished. The method of accomplishment is left to the discretion of the contractor.
- b. Performance required - Statement of the minimum acceptable standards or range of acceptable characteristics
- c. Essential physical characteristics - Physical or chemical properties, weight, dimensions, materials

You may select from existing requirements documents, modify, combine or create new documents in the following order of precedence:

- a. Documents mandated by law
- b. Performance-oriented documents
- c. Detailed design-oriented documents
- d. Standards, specifications and related Government publications, outside DOD or Federal series, for non-repetitive acquisition of items

*BRAND NAME OR EQUAL DESCRIPTIONS:*

Requirements shall not be written so as to require a particular brand-name, product or feature of a product, peculiar to one manufacturer, unless it is essential to the Government's needs and market research reveals no other can meet the requirement.

Provide the Contracting Officer a list of the salient characteristics of the brand name. What are the characteristics of the item that the Government requires to meet its minimum need? Leave off the "nice to haves".

This must be supported with a written justification for other than full and open competition.

# CHAPTER 13

## JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

## JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

Law requires that the Government promote and provide for full and open competition to as great an extent as possible. Reasons for other than full and open competition must be justified in writing. The Justification for Other than Full and Open Competition is commonly referred to as the J&A. It must be prepared when the requirement is expected to exceed \$100,000 and sources are going to be limited for any reason. Lack of planning or concerns about amount of funds or expiring funds, may not be used for justification to limit competition.

### ***J&As are not required for:***

- a. Simplified acquisitions under \$100,000. These require justification for sole source or limited competition over \$2,500, but there is no prescribed format.
- b. Contracts authorized by statute, such as the small business set asides and the 8(a) small and disadvantaged business program.
- c. Contract modifications within the scope of an existing contract
- d. Orders and tasks under indefinite delivery, indefinite quantity type contracts when the contract was initially competed or a J&A was done for the contract.
- e. Exercise of options on a contract when the options were evaluated as part of the initial award.

### ***Statutory authorities for other than full and open competition:***

There are only 7 authorities that allow for other than full and open competition:

1. *Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.*

Cite: 10 U.S.C. 2304(c)(1)

One source or a limited number of sources. No other supplies or services will satisfy the requirement. This could occur when a source has submitted a unique and innovative unsolicited research proposal, or has a unique capability not otherwise available to the Government. It could be a follow on contract for continued highly specialized work and there would likely be duplication of costs and intolerable delays. Utility services are another example, when only one company serves an area. Limited rights to data, patents, copyrights, secret processes, and control of raw material may be other reasons for sole source. However, this alone does not limit the acquisition to one source. You must still justify why the Government must have the product, process, etc. of a particular source. Brand name acquisitions must be justified, although there may be many suppliers.

The planned acquisition must be advertised and any responses must be considered. This cite is not used in preference to 7-Public Interest. All other cites take precedence over this cite 1.

2. *Unusual and Compelling Urgency*

Cite: 10 U.S.C. 2304(c)(2)

Urgency must be such that the Government would be seriously injured. How and to what extent must be explained. Delay in award could cause serious injury, financial or other, to the Government.

The J&A may be done after award if the preparation would delay award. We must still consider soliciting as many potential offerors as practicable.

3. *Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services.*

Cite: 10 U.S.C. 2304(c)(3)

This cite is used when it is necessary to maintain a source to perform in a national emergency or for industrial mobilization. It is used to maintain essential engineering, research or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or to acquire expert services for litigation or dispute. It could be to maintain balanced sources of supply for industrial mobilization. This authority may be appropriate when you must establish or maintain an essential capability for theoretical analyses, exploratory studies or experiments in science or technology, engineering or developmental work calling for application of investigative findings and theories of a scientific or technical nature.

4. *International Agreement.*

Cite: 10 U.S.C. 2304(c)(4)

This is used in cases where international agreements or treaties with other governments or international organizations take precedence. It may be when an acquisition is going to be reimbursed by a foreign country and the product must be procured from a particular firm as specified in official written direction. It applies when the sources for services or supplies to be performed or used in another country are limited by treaties or agreements.

This authority does not require a written J&A.

5. *Authorized or Required by Statute.*

Cite: 10 U.S.C. 2304 (c)(5)

This is used when statute authorizes procurement through another agency or from a specified source, or the need is for a brand name commercial item for authorized resale through commissaries or other similar facilities. It covers procurements from the Federal Prison Industries (FPI), Nonprofit Agencies for the Blind and Severely Handicapped, Government Printing and Binding (GPO), and sole source awards under the small business 8(a) program.

A J&A is not required for the above sources. Otherwise, a J&A is required if statute *authorizes*, but does not require, a certain source. If a source is *required*, no J&A is needed.

6. *National Security.*

Cite: 10 U.S.C. 2304(c)(6)

This is used when disclosure of the need would compromise national security unless sources are limited. It should not be used merely because an acquisition is classified or access to classified material will be necessary to prepare a proposal or perform the contract. As many sources as practicable must be solicited.

A written J&A is required. The requirement does not have to be advertised if the Contracting Officer determines that it cannot be worded to preclude disclosure of classified information.

7. *Public Interest.*

Cite: 10 U.S.C. 2304(c)(7)

An Agency Head must make a written determination that it is not in the public interest to fully compete the specific acquisition.

This authority may be used only if no other applies. Congress must be notified in writing not less than 30 days before award of the contract.

These J&As may be made on a class basis, except for authorization number 7.

J&As must be amended

*if prior to award:*

- a. The increase in value goes beyond the authority of the current approving official
- b. There is a change in the competitive strategy that further reduces competition
- c. There is a change in the requirement that affects or changes the basis for the justification

*if prior to modifying a contract:*

- a. The modification increase added to the contract value goes above the authority of the current approving official

J&As do not have to be amended if the increase does not increase the contract value more than 10%, and the total amount of the contract and the increase does not exceed the authority of the current approving authority. The Contracting Officer must merely document the file.

***Format for the original J&A:***

A sample of the current Army format and guidance for the review document (cover page) and the justification begin on the following page.

**CONTROL NO:**

**JUSTIFICATION REVIEW DOCUMENT FOR OTHER THAN  
FULL AND OPEN COMPETITION**

**Program/Equipment:**

**Authority:**

**Amount:**

**Prepared by:**

Typed Name:

DSN:

Title:

Date: \_\_\_\_\_

**Procuring Contracting Officer:**

Typed Name:

DSN:

Date Reviewed: \_\_\_\_\_

**Technical Representative:**

Typed Name:

DSN:

Title:

Date Reviewed: \_\_\_\_\_

**Requirements Representative:**

Typed Name:

DSN:

Title:

Date Reviewed: \_\_\_\_\_

**REVIEWS:** I have reviewed this justification and find it adequate to support other than full and open competition.

**Program Manager**

Typed Name:

DSN:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Counsel**

Typed Name:

DSN:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTROL NO:**

**Principal Assistant Responsible for Contracting**

Typed Name:

DSN:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Competition Advocate**

Typed Name:

DSN:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Typed Name:

Date: \_\_\_\_\_

## JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN COMPETITION

### JUSTIFICATION

1. **Contracting Activity:** Specify the contracting activity responsible for this action.
2. **Description of Action:** State whether this action is a new contract or a modification. Include type of contract, type of funds to be used.
3. **Description of Supplies/Services:** Describe the supplies/services. Include the estimated total value, including options.
4. **Authority Cited:** Identify the statutory authority for other than full and open competition, and the FAR cite number and title.
5. **Reason for Authority Cited:** Describe the reason for the authority cited. Identify the proposed or potential contractor(s). Discuss the contractor(s) unique qualifications for filling the requirements. If the authority is 1 or 2, include the required delivery schedule and lead-item involved. If it is 2, also discuss what serious injury to the Government would result if award is delayed.
6. **Efforts to Obtain Competition:** Describe efforts to ensure that offers are solicited from as many potential sources as is practicable. Describe the extent of competition anticipated for this acquisition.
7. **Actions to Increase Competition:** Although it may not be possible to compete the instant acquisition, state the actions taken, or to be taken, to increase competition on any subsequent acquisition.
8. **Market Survey:** Describe the extent and results of the market survey. (See Chapter 8.) If one was not done, give the reasons, and attach a copy of the approved waiver.
9. **Interested Sources:** List the sources that have written to express interest in the acquisition. If none, state "To date, no other sources have written to express an interest." If authority 1 is used, explain why other sources were rejected. State that the notices required by FAR 5.201 shall be or have been published, and that any bids or proposals received shall be considered. If a Commerce Business Daily (CBD) notice will not be published, state the applicable exception.
10. **Other Facts:** Discuss any other facts supporting the use of other than full and open competition, such as:
  - A. **Procurement history.** Reasonable effort must be made to retrieve:
    - Contract numbers and dates of the last several awards
    - Competitive status of these awards
    - Authority previously used for other than full and open competition
    - Summary of justification in paragraph 7 of previous buys and an explanation of the results
    - If any prior award was fully competed, explain in detail what changed the circumstances.
    - Explanation of patterns in the history, such as repeated urgent buys
  - B. **Data Availability.** Explain why technical data packages, specifications, engineering descriptions, statements of work or purchase descriptions suitable for full and open competition have not been developed or are not available. Describe actions taken or planned to remedy this situation.

C. Unusual and compelling urgency. When authority 2 is cited, provide data, estimated cost or other rationale to explain the nature and extent of the injury to the Government. If delay in first article testing is the principal reason for limiting competition, describe the reasons it is required on this procurement and why other means of quality assurance are not being used.

D. Subcontracting competition. In single source situations, address efforts to be taken to assure that the prime contractor obtains as much competition as possible in subcontracting.

**11. Technical Certification:**

I certify that the supporting data under my cognizance which are included in the justification are accurate and compete to the best of my knowledge and belief.

Typed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Signature: \_\_\_\_\_

**12. Requirements Certification:**

I certify that the supporting data under my cognizance which are included in the justification are accurate and complete to the best of my knowledge and belief.

Typed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Signature: \_\_\_\_\_

**13. Fair and Reasonable Cost Determination:**

I hereby determine that the anticipated cost to the Government for this contract action will be fair and reasonable.

Provide the basis for this determination such as techniques to be used, cost analysis, price analysis, audit, should cost, independent Government cost estimate, etc.

Typed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Signature: \_\_\_\_\_

**14. Procuring Contracting Officer Certification:** This certification shall be made by the contracting officer who will sign the contract.

I certify that this justification is accurate and complete to the best of my knowledge and belief.

Typed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## APPROVAL

Based on the foregoing justification, I hereby approve the procurement of *(briefly state the supplies or services to be procured)* on an other than full and open competition basis pursuant to the authority of 10 U.S.C. 2304(c) *(insert authority)*, subject to availability of funds, and provided that the services and property herein described have otherwise been authorized for acquisition.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

### ***Approval levels:***

Up to \$500,000 - The Contracting Officer

Over \$500,000 but not above \$10,000,000 - The Competition Advocate

Marjorie Jenkins

Over \$10,000,000 but not above \$50,000,000 - The Commanding General, INSCOM

Over \$50,000,000 - The Army Deputy Director for Acquisition

The total estimated dollar value of the requirement, including all options, shall be used to determine the approval level.

### ***Format for an amended J&A:***

Title it "Amendment to Justification for Other Than Full and Open Competition".

Use the same paragraph designations as in the original justification.

Attach a copy of the original justification review and documents

Number amendments sequentially

Include paragraphs 1,2,3 in full. If revised, place a vertical line in the right margin to mark the revised lines.

Include new Contracting Officer certifications in paragraphs 11 and 12.

Include new technical and requirements certifications in paragraphs 13 and 14 only when the changes were in their area of responsibility.

Explain the reason for the amendment in paragraph 10.

Include all of the remaining paragraphs. Annotate either "No Change" or insert the revised paragraph.

# CHAPTER 14

## SOURCE SELECTION EVALUATION

## SOURCE SELECTION EVALUATION

### . BASIS FOR THIS GUIDANCE

The documents listed below provide more detailed guidance. However, they are written to cover major systems acquisitions and tailoring the process is mandated by the DODI. This DCO guidance is tailored to some usual types of acquisitions in INSCOM.

Department of Defense Directive (DODD) 5000.1  
Department of Defense Instruction (DODI) 5000.2  
AMC Pamphlet 715-3  
Federal Acquisition Regulations Part 15

### 2. TYPES OF EVALUATIONS

There are a variety of methods to perform evaluations and select contractors for award. The method and plan should be as simple and efficient as possible and yet provide for analysis of the elements that are of significant importance in filling the Government's requirement.

a. A *product evaluation* may only require certain salient characteristics. If those are met, and the terms and conditions of the solicitation are met, selection can be made on the lowest price. This method of evaluation may only require one evaluator. Negotiations may or may not be conducted.

b. A *service evaluation* may be done based on meeting stated requirements such as response time and ability to maintain and repair certain a certain type, or types of equipment. Our only concern may be that the service response is within a certain time, the repairs are done correctly, and routine scheduled maintenance is done. In such an evaluation, a proposal or bid may be considered acceptable as long as requirements such as these, stated in the solicitation, are met. If all other terms and conditions are met, award may be made without discussions, to the lowest offeror or bidder. Negotiations may be conducted, if necessary.

c. A *formal source selection* requires a structured method and plan, tailored to the specific needs of an individual requirement. It is used in acquisitions where various factors influencing the resulting performance or product can vary in quality, methods and costs and may be very critical to the outcome.

The objective of a source selection evaluation plan (SSEP) is to conduct a high quality source selection with a minimum investment of time and personnel. The guidance provided herein should support the typical formal evaluation selection acquisitions in INSCOM. Any question regarding tailoring this guidance to your requirement should be discussed with the Directorate of Contracting Operations.

The SSEP is developed based on the requirements expressed in the Statement of Work. The Government's needs and the source selection criteria and method of source selection must be clearly and precisely expressed in the solicitation. Because of this, the Contracting Officer must have a completed SSEP before the solicitation can be issued. The criteria and plan must be the same as expressed in the solicitation and the evaluation of offerors must follow the criteria and plan. Deficiencies in the solicitation results in contractor confusion and misinterpretation, proposals unresponsive and unacceptable for the real need, appropriate emphasis not placed on the factors, contractor built in costly contingency allowances to cover unknowns, addressing the wrong issues, protests, and administrative and legal problems.

The Source Selection Evaluation Plan (SSEP) is the written guide for the source selection process. The purpose is:

- a. To describe how the proposals will be evaluated, rated, summarized
- b. To provide the names and functions of the members of the Source Selection Evaluation Board (SSEB) who will evaluate the proposals
- c. To provide the evaluation criteria, give the relative importance of the criteria, and provide the scoring technique
- d. To define the source selection evaluation team responsibilities
- e. To provide the evaluation team with a clear and common understanding of the process
- f. To provide the source selection authority with an impartial, comprehensive basis for source selection
- f. To provide an official record of the evaluation process

### 3. HOW TO WRITE A SOURCE SELECTION EVALUATION PLAN

The SSEP is developed from the Statement of Work (SOW) for the specific acquisition. Look over the SOW and decide what factors are most important to the Government in order for the Government to obtain what it needs and expects in the product or service. Sub factors may be used under the factors.

Tailor the method and plan to the specific requirements of each acquisition. It should be simple and concise, yet cover all the elements essential for the Government to make a determination on the important aspects of performance. It should involve as little investment of time and personnel as possible. The usual timeframe planned to conduct INSCOM evaluations is two weeks.

There is no prescribed format for a SSEP. Typically it is in two parts. PART I describes the organization, SSEB membership, and responsibilities. PART II identifies the evaluation criteria and detailed procedures for conduct of the evaluation. An example of a SSEP is:

#### SOURCE SELECTION EVALUATION PLAN

##### PART I

##### 1. NATURE AND SCOPE OF THE ACQUISITION

- a. Description  
(A concise statement, in layman's terms if possible)
- c. Security of source selection information  
(Describe the procedures to be used for classified and contractor proprietary data, and the control, handling and security of all source selection documents.)

## 2. SOURCE SELECTION EVALUATION BOARD MEMBERSHIP

(Give the individual names and identify their organizations)

- a. Source Selection Authority (SSA)/Contracting Officer (CO)
- b. Chairman
- c. Evaluators
- d. Advisor(s)
- e. Board Recorder (May be one of the evaluators)

## 3. DUTIES AND RESPONSIBILITIES OF BOARD MEMBERS

### SSA/CO:

- a. Ensures the process is properly and efficiently conducted
- b. Approves the evaluation plan and board membership
- c. Provides the board with guidance and special instruction, as necessary
- d. The sole authority to authorize release of source selection data and information
- e. Approves the source selection evaluation documents and makes the source selection
- f. Ensures all aspects of the evaluation are clearly conveyed in the solicitation

### CHAIRMAN:

- a. Provides guidance, direction and oversight of the evaluation process
- b. Compiles and reviews the individual evaluators scoring and rationales
- c. Conducts discussions to arrive at consensus
- d. Prepares consolidated scores and board recommendation to the SSA/CO for source selection
- e. Is the point of contact for the SSA/CO on issues related to the evaluation board

### EVALUATORS:

- a. Evaluate the proposals in accordance with the plan
- b. Advisors to the SSA/CO
- c. May develop or help develop the source selection criteria
- d. Select the Board Recorder
- e. Provide briefings and consultations, as needed

- f. Prepare individual evaluation documents on each proposal

BOARD RECORDER:

- a. Performs administrative and liaison functions for the board.
- b. Obtains reference material
- c. Custodian for all documentation in the evaluation process
- d. Coordinates arrangements for meetings and meeting space
- e. Obtains the required statements and certifications from the board members

Staffing should be planned for full time participation of the members at the projected time for receipt of proposals. If changes in membership become unavoidable, the changes must be submitted as a revision to the evaluation plan and approved by the Contracting officer.

Members must be individuals with the necessary skills, expertise and judgment to do meaningful analyses of the proposals. The board should consist of at least three evaluators and a chairman. If this is not possible, consult with the Contracting Officer for a resolution. The chairman should have previous source selection experience. A person may be the chairman on more than one evaluation board as long as they can give the required time and attention to each.

Sources for members may be the program management office, within the Command, other military departments or civilian agencies. However, they may require reimbursement of the salaries of civilians assigned to source selections.

Non-Government advisors should be used only when there is a compelling need which cannot be met inside the Government. This may be universities, Federal Contract Research Centers (FCRCs), non profit organizations, or industry. The SSEP must address the nature of the services required, identify the individuals who will participate, and how they will participate in the evaluation process. The plan must also address guidance for appropriate legal and other clearances as well as conflict of interest provisions.

Problems arise due to the advisory contractor's access to the proposing contractors' proprietary data. Such services require great care and planning due to the exceptional sensitivity of the evaluation. Written approval of the Commanding General must be obtained. Obtaining such services must be in compliance with AR 5-14. See Chapter 3.

The Source Selection Authority (SSA) may not be a member of the evaluation Board and shall not participate in the scoring or evaluation process. The SSA must make an impartial, objective, sound decision based on the completed evaluation. At INSCOM, the Contracting Officer is the SSA. If you have reason to believe someone other than the Contracting Officer needs to be the SSA, discuss it with the Contracting Officer.

## PART II

### I. EVALUATION CRITERIA

- a. Definition  
(Principal areas are concerns such as scientific and technical capabilities, engineering approaches, management capabilities, past performance, design approach, systems engineering and integration.

The criteria for selection must be established by persons at the management level who have the necessary expertise.

A criterion is a standard on which a judgment or decision can be based. It permits the evaluation of proposals against objective norms rather than against each other. Criteria must be structured to reach a level of detail sufficient to determine the advantages, disadvantages and deficiencies of offers directly associated with a significant aspect of the effort. Factors may not be designed to restrict competition and favor specific vendors. Some examples of criteria are past performance, corporate experience, management approach or plan. Criteria may be broken down into sub factors.

Describe the selection criteria that are necessary to meet the specific objectives of the acquisition. List their relative importance so that prospective offerors can clearly understand how they are to be evaluated.

Criteria may be:

*Critical absolutes.* These must be met for the supply or service to be considered acceptable. There is no latitude. These must be stated in the solicitation. However, it is meaningless to have them as a factor in the the value scoring plan since they are not variable factors.

*Discriminating criteria.* This type allows for trade-off and latitude in proposals. Acceptable parameters must be defined. A quantitative range of values should be incorporated in these descriptions.

*Qualification criteria.* This type is for screening capabilities and level of expertise. They cannot be restrictive beyond factors that are clearly essential to contract performance. They cannot be designed around a specific contractor's capability or qualifications or designed to intentionally restrict competition.

#### SOURCE SELECTION EVALUATION FACTOR SAMPLES:

Understanding the requirement  
Management plan, project structure for accomplishment of the effort  
Management techniques and controls  
Excellence of design  
Corporate experience  
Available facilities and resources  
Past performance  
Cost realism  
Proposed subcontracting effort  
Personnel qualifications  
Feasibility of approach  
Project management  
Technical approach  
Project Staffing

Cost cannot be used as a factor. After the technical evaluation is completed, the source selection official considers the offerors' costs and technical proposal ranking in making a "best value" decision for the award.

National security clearance cannot be used as a factor. Clearances are absolutes and related to responsibility not performance capability. Furthermore, the Government controls the billets and facility clearances.

The following questions are provided to give some suggestions on the issues to consider in developing evaluation plans and evaluating proposals. They are typical concerns. You may think of others. Evaluation factors are chosen and plans are developed to cover what is important to performance on individual acquisitions.

- Is there a stated understanding of the requirements and accurate assessment of problems to be solved?
- Were more problems generated by the solution process and would they broaden the scope or require follow on work and more funds?
- Does the proposal explain how the offeror will perform or just repeat the requirement as stated in the solicitation?
- Are individual parts of the proposal interrelated adequately to the larger context?
- Are there any technical errors?
- Are goals realistic in view of time, equipment, budget, and personnel.
- Are the solutions or plans impossible or impractical?
- Was there more than one approach and did the offeror propose alternatives?
- Is the plan over sophisticated - more than the Government needs?
- Are estimates of man hours realistic?
- Does the proposal present a unique, imaginative approach?
- Is the plan feasible?
- Are there any exceptions taken or deviations proposed to the terms and conditions regarding such things as reporting requirements, proprietary rights, documentation disclosures, and any other special technical conditions?
- Have all areas of the solicitation been addressed, or are there gross omissions?
- Are there any apparently misleading statements, ambiguities or erroneous data?
- Does the proposal reflect that the organization has the capability in the work required?
- Do the personnel proposed have the education and experience to meet the specific needs of the requirement?
- Does the proposal show a depth of qualified personnel?
- Does the project management plan show appropriate and efficient placement of personnel which is realistic in the overall performance and delivery schedule needs?
- Are highly paid, overqualified persons proposed to do work an adequately qualified, lower pay person could handle just as well?

- Does the proposal show the capabilities of management to handle a project of the size contemplated?
- Are the right types of management people being utilized?
- Is it clear how project management will operate?
- Are the type quality controls and methods for corrective action shown?
- Is the breadth and depth of management appropriate to the requirement - top heavy, or not adequate?
- Are lines of communication, authority and integration of the overall organization effective?
- Does performance success depend excessively on subcontracts or consultants, and recruitment of key personnel?
- Does the proposal reflect the use of adequate facilities and equipment?
- Does the proposal depend on Government furnished facilities or equipment?
- Does the proposal call for contractor acquired facilities or equipment?
- Are facility and equipment needs justifiable?
- Are availability locations and schedules for facilities and equipment realistically planned to meet performance requirements?
- Is the work schedule clear and realistic?
- Is the proposed delivery schedule in conformance with the requirement or, if an alternate is proposed, is it acceptable?
- Is the work schedule clear and realistic in terms of time and money?
- Are the various phases of work detailed and realistically scheduled and integrated?
- Are effective review, evaluation and control provided throughout performance?
- What is the offeror's previous contract experience with the type work required?
- What is the quality of the past performance? - outstanding - good- satisfactory - poor.
- Did the offeror solve their own technical problems or rely heavily on the contracting agency's technical staff?
- Were delivery/performance schedules met?
- Were there contractual problems attributed to contractor inflexibility, or lack of cooperation?
- Did the contractor complete the prior contract work? If not, why not?
- Were cost overruns due to an incompetently low cost estimate, or to problems which should have been anticipated; or were they due to changes or problems which could not have been anticipated?

## USING PERSONNEL QUALIFICATIONS AS A FACTOR IN SOURCE SELECTION

It is better to place the emphasis in source selection on corporate capability, management and experience rather than personnel. There is no certainty that persons named in the offer will stay on a resulting contract. They can leave the company, die, retire, etc. What is important is the level of expertise we expect to have on the contract because the contractor is only required to replace employees with comparable levels of expertise. However, the following guidance is provided if you use personnel as an evaluation factor.

*Personnel Qualifications:* Setting up formulas which provide for acceptable combinations of education and experience are self defeating and easily protested. Requiring 20 years of experience and a Doctorate degree does not necessarily mean the Government gets the best value for its money. A person with 10 years experience and a Bachelors degree may actually be more valuable to the projected work because the person has kept up with the state of the art, is exceptional in their field, has innovative ideas, etc. The person with the Ph.D., on the other hand, may be a long time company employee who has gotten behind in their profession, had one year of experience twenty times, and stays with dated procedures and ideas.

When writing personnel qualifications, write them in terms of what level of expertise you require or expect persons to have, rather than specific education and experience. This allows you flexibility to rate them as you would the other factors. It works much the same way it does when selecting a person to fill a position. The evaluator scores the contractor personnel from what the evaluator sees as the total picture of the employee capability, justified and documented in the evaluation scoring. The ranking falls in place just as it does with the other factors. Sample verbiage for the solicitation might be:

*An introductory general statement ----*

### PERSONNEL REQUIREMENTS

Offerors are expected to provide personnel to perform on the contract who fill the requirements to ensure a sound technical approach. Offerors are free to propose the labor mix and labor category titles to manage the contract requirements. Proposals will be evaluated on the overall personnel base proposed in conjunction with the management plan for utilizing them. Personnel experience and educational qualifications are expected to cover the following areas of expertise:

*Areas of expertise with more specifics of what is required and expected----*

Persons proposed to provide program management support should have experience in .....

Program leaders should possess thorough knowledge and experience in.....

They should have expertise in.....

It is expected that education will be in areas such as.....

A thorough understanding of.....is required.

Experience managing.....for organizations comparable to....., is desired.

Persons proposed for..... support are expected to have a level of expertise to provide ..... support to..... requirements.

They must be capable of.....

They should be familiar with .....

They must be able to.....lines.

Experience in .....is required.

Person proposed for.....are expected to have expertise sufficient to.....

Education and experience is expect in ..... or related technologies plus hands on experience in

They must have the expertise necessary to .....

Experience as an ..... is desirable.

Familiarity with..... is desired.

Must have the expertise to conduct studies and analyses on complex.....and related disciplines.

Persons proposed to provide .....must have formal training in ....., first-hand experience in....., with specific experience in.....

Persons proposed to provide.....are expected to have a level of expertise to works directly with directors, senior staff and major command levels to accomplish these duties.

Must be able to.....

Persons proposed to provide..... are expected to have a level of expertise to provide leadership and direction to accomplish all aspects of the..... efforts in .....

Will be required to work directly with program managers, executive officers, directors, and senior staff to accomplish.....

Should possess advanced training, education, or experience in....., and possess a track record for providing practical ..... advice and assistance.

Should have an ability to develop ..... based on stated user requirements for .....and be capable of providing technical direction and guidance to less experienced personnel.

Should have the ability to.....

Advanced training education, and experience in..... field is desirable, especially as it applies to.....

Demonstrated state of the art knowledge in..... is desirable.

Demonstrated ability to.....

Persons proposed to provide .....support are expected to be capable of working under limited supervision..... standards and specifications.

Should be experienced in.....

Have demonstrated knowledge in.....

Should have extensive training and experience in.....

Persons proposed to provide.... support will be required to.....

Must have an understanding of.....

Should have training, experience and education in.....

Should understand.....

## 2. RATING PLAN AND METHODOLOGY

*( Structuring criteria for evaluation - Discuss or diagram the relative importance of the criteria)*

Law requires that we tell potential offerors what the factors are and somehow give their relative importance. Current guidance allows revealing the weights. Another method is to state that the factors are listed in their relative order of importance. We tell the contractor whether cost and technical are of equal importance, or we may state that technical is significantly more important or slightly more important than cost. Formulas written in confusing language should not be used.

Subfactor totals must equal the value of the factor. The total of the primary factors must total the maximum value being used for that factor in evaluation. For example:

FACTOR 1 = 40 points.

Subfactor 1 = 25 points

Subfactor 2 = 10 points

Subfactor 3 = 5 points

One hundred (100) points is usually used as the total of all factors. The evaluation plan may have as many factors and subfactors as necessary to adequately evaluate. However, the number of factors and breakdown to subfactors should be kept to the minimum really necessary. The more involved the scoring, the more time consuming and involved the evaluation and scoring becomes. An example of how the factors might be listed in descending order of importance and valued is as follows:

FACTOR 1 = 40 points.

Subfactor 1 = 25 points

Subfactor 2 = 10 points

Subfactor 3 = 5 points

FACTOR 2 = 35 points.

Subfactor 1 = 25 points

Subfactor 2 = 10 points

FACTOR 3 = 15 points.

Subfactor 1 = 5 points

Subfactor 2 = 5 points

Subfactor 3 = 5 points

FACTOR 4 = 10 points

This example shows that all factors do not have to have subfactors, factors or subfactors can be equal in value, and all factors do not have to have the same number of subfactors.

### 3. PROCEDURES FOR PROPOSAL EVALUATION

An example of verbiage in this portion of the plan:

Proposals will be evaluated in accordance with the criteria set forth in this plan. Proposals will be independently reviewed, evaluated and scored by the evaluators using a point scoring system. Each proposal will be scored strictly against the criteria. Significant deficiencies which cause exceptionally low scores may be a basis for eliminating a proposal from further consideration. The objective of the evaluation is to determine which proposal offers the best prospect for optimum attainment of the objectives of this program.

The evaluators' scores will be consolidated by the Chairman. The Chairman will analyze the results for consistency with the evaluation plan, compliance with the rating scheme, objectivity, adequate documentation of rationales, areas of concern to the evaluators, and any major differences in scores and rationales.

The Chairman will meet with the evaluators to discuss areas of concern or differences of opinion. Evaluators will not vote on ratings, nor will the ratings be averaged or otherwise mathematically manipulated to produce a single raw rating. The consolidated ratings will be arrived at through discussion and consensus on the issues. The Chairman will prepare a summary scoring and ranking report and recommendation for award for the Source Selection Authority.

The SSA will consider the cost, technical scores, and other factors, in making a "best value" decision for award. This could result in a contract award to other than the lowest price.

*(THIS IS THE END OF THE EVALUATION PLAN STRUCTURE.)*

### 4. OTHER EVALUATION PLANNING CONCERNS

Will you need secretarial support?

Do any of the evaluation team members need training? Formal training courses are offered by a number of Government and commercial sources, and educational institutions.

Where will the evaluation be conducted and what are the security issues? INSCOM headquarters is the preferred and most logical evaluation site. Other local Government owned or leased installations may be used but use of them is discouraged due to cost and security of the source selection sensitive information.

Do you need to make any provisions for access to equipment and supplies, telephones?

Are there any transportation issues, TDY or housing issues that need to be addressed?

## 5. CERTIFICATIONS

Certain certifications must be signed by members of the evaluation board and advisors to the board or source selection authority. Other persons who have access to the source selection information may be required to sign them also, at the discretion of the Contracting Officer. The certifications are maintained in the contracting office file. The certifications are:

- a. Procurement Integrity
- b. Certificate of Nondisclosure
- c. Rules of Conduct
- d. Conflict of Interest

These are combined in one certification for source selections through the DCO. The certification form is at the end of this chapter.

## 6. CONDUCT OF THE EVALUATION

The evaluation must be fair, comprehensive and impartial.

The members of the SSEB must become familiar with the contents of the solicitation before the evaluation begins.

- a. Introductory sessions  
(Held a week to a month prior to the receipt of proposals. It includes discussion to assure there is common understanding of the conduct of the evaluation, the criteria, and methods of rating, among the board members.)
- b. The Contracting Officer will provide the SSEB copies of all proposals, after the closing date of the solicitation.
- c. Video or oral presentations may be used. If these are necessary or desirable, discuss with the Contracting Officer because they have to be equitably handled, recorded, etc. and there are other related concerns such as releasing such information in Freedom of Information Requests.
- d. The technical evaluation is handled independently of the cost or price evaluation. The technical evaluators will not be given the cost proposals. Those will be evaluated by Contracting Office
- e. No discussions with offerors during the evaluation stage. Any desired communication must be done by the Contracting Officer.
- f. Don't read into the proposals. The proposals must be evaluated solely against the established criteria and must stand on their own. Information known, but not expressed in the proposal cannot be used as part of the rating.
- g. Proposals are not evaluated against each other. They are evaluated against the criteria expressed in the solicitation and evaluation plan.
- h. The criteria may not be changed during the evaluation process.

- i. Individual evaluators must state where the requirement is stated in the solicitation, where it is addressed in the proposal, and why the aspect of the proposal is considered deficient, acceptable or above acceptable.
- j. Use terminology as it is in the solicitation and the evaluation plan. Don't introduce new terminology.
- k. Do not write in the proposal.
- l. Do not recommend solutions.
- m. Remember: You cannot evaluate on anything not expressed in the evaluation plan and solicitation.

## 7. TECHNICAL EVALUATION REPORT

The format for the report varies with the requirements of each source selection. However, each should include:

- a. Evaluation summaries for each proposal, major strengths and weaknesses, and any risks to the Government .
- b. The ratings and narrative supporting them. Sample rating sheets are at the end of the chapter.

*A sample report format is:*

### TECHNICAL EVALUATION REPORT FOR SOLICITATION *(put in solicitation number and brief identification)*

#### I. Introduction

- a. Organization of the source selection team
- b. Discussion and documentation of each Proposal

Ratings should be supported with clear, but brief narrative that identifies advantages, disadvantages, degree of worth, the significance and the risks.

Minority opinions should be made a part of the evaluation report.

Show how the overall assessment of each proposal was reached.

Provide a narrative justification for conclusions, at the end of the rating discussions.

State what, in the evaluators' opinions, may be done to remedy a deficiency.

State why a proposal is considered above merely acceptable.

Significant exceptions or exclusions to the solicitation.

The individual evaluator sheets and working papers must be given to the Contracting Officer with the technical evaluation report. The evaluator sheets must have statements to support their scores.

Sample rating sheets are at the end of this chapter. They may be automated and the format adjusted to accommodate individual acquisitions. The important point is that the content be preserved and the format kept simple.

c. Evaluation results

Summarize the outcome of the evaluation. State any offeror issues that need clarification or discussion. These may be minor irregularities, clerical mistakes or further explanation or require negotiations to resolve.

d. Recommendation

State overall basis for the award. This must be as it is expressed in section M of the solicitation. The SSA's decision must clearly and succinctly provide sound rationale for the selection without revealing the ratings, prices or proprietary or source selection information. It is based on objective, good business judgment made in the best interest of the Government. It must be well documented.

A briefing to the Source Selection Authority may be requested, at the SSAs discretion. The briefing is usually given by the chairman of the SSEB.

## 8. DETERMINATION OF THE COMPETITIVE RANGE

The Contracting Officer will take the technical evaluation report and the cost/price analysis report and determine which contractors fall in a comparable range for negotiations. This competitive range is based on informed judgment and is complex. Contractors who submit proposals that are deficient but may have a reasonable chance of being selected for award, by negotiation, are left in the competitive range. Contractors who submit seriously deficient proposals which would require extensive work to become acceptable, are eliminated from further consideration.

## 9. NEGOTIATIONS/DISCUSSIONS

The Contracting Officer may make award based on the initial offers or conduct written or oral discussions with the contractors in the competitive range. Deficiencies are pointed out, but the contractor is not provided with desired solutions. Content of other contractors' proposals are not revealed to the competition. Any new information must be provided to all offerors.

## 10. BEST AND FINAL OFFERS

After negotiations with all offerors have been completed, they are all provided an opportunity to submit revised proposals as their "best and final offer" (BAFO). A final cut off date is established for their submission. These are evaluated the same way the original proposals were, although it is usually not as long and involved a process. The affected portions of each proposal are reevaluated and new ratings for the entire proposal are then computed and the relative standing of the competitors is determined again. The rating and recommendation for award must be carefully documented, just as the original proposals.

**CERTIFICATION CONCERNING CONFLICTS OF INTEREST, NONDISCLOSURE, RULES OF  
CONDUCT, AND PROCUREMENT INTEGRITY**

SOLICITATION NO.

(In one line, briefly title the acquisition)

I certify that:

1. I have read, understand, and will abide by the requirements of AR 340-17, AR 380-5, AR 600-50, FAR 3.104 and DFARS 203.104.
2. To the best of my knowledge, neither I, nor my spouse, nor my dependent child(ren), nor members of my household:

a. Have any direct or indirect financial interest:

(1) In any firm on the list of potential offerors or which has otherwise expressed an interest in the acquisition (if this certification is made prior to receipt/opening of proposals).

(2) In any of the firms submitting proposals in response to Solicitation No. \_\_\_\_\_, or their proposed subcontractors (if this certification is made subsequent to receipt/opening of proposals): or

b. Have any other beneficial interest in such firms except:

(List firms, if any)

3. To the best of my knowledge no person related to me by blood or marriage (apart from the persons referred to in paragraph 2, above) or any business associate is employed by or has a direct or indirect financial interest or any other beneficial interest in the firms referenced at paragraph 2.a. above, except:

(List firms, if any)

4. I understand that the release of proprietary and source selection information is governed by AR 340-17 (Release of Information and Records from Army Files), AR 600-50 (Standards of Conduct for Department of the Army Personnel), and provisions of FAR 3.104. I will not knowingly disclose any proprietary or source selection information regarding this procurement directly or indirectly to any person other than a person authorized by the head of the agency or the contracting officer to receive such information.

5. As a participant in or an advisor to this source selection, I will observe the following rules of conduct:

a. I will not solicit or accept, directly or indirectly, any promise of future employment or business opportunity from or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing contractor.

b. I will not ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent or

consultant of any competing contractor for this procurement. I will advise my family that the acceptance of a gratuity for those who are engaged in or seek to do business with the Department of Defense may be imputed to me as a violation of AR 600-50, and must therefore be avoided.

c. I will instruct members of my parent or home organization to not divulge to unauthorized persons my participation in the evaluation and source selection process or my physical location while participating.

d. I understand that all communications with offerors or their subcontractors concerning this acquisition must be made by/through the contracting officer or his/her designee. I will divert all attempted communications by offerors' representatives or any other unauthorized person to the contracting officer, and advise the Chairman of the Source Selection Evaluation Board of such attempts.

e. I will not discuss evaluation or source selection matters with any unauthorized individuals, including Government personnel, even after the announcement of the successful contractor, unless authorized by proper authority. Discussion of evaluation/source selection matters with other SSEB members will be conducted in areas designated for deliberations.

6. I realize that my actions in connection with my participation in this source selection are subject to intense scrutiny and I will conduct myself in a way that will not adversely affect the confidence of the public in this source selection process. I will avoid any action, whether or not prohibited, that could result in or could create the appearance of my losing independence or impartiality. I will not use my public office for private gain, and I agree not to engage in any personal business or professional activity, or enter into any financial transaction, that involves or appears to involve the direct or indirect use of "inside information" to further a private gain for myself or others.

7. As a condition of serving as a procurement official, I hereby certify that I am familiar with the provisions of subsections 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 USC 423) as amended by section 814 of Public Law 101-189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contacting officer any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27(a) through (f) has been made available to me. I understand that, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to that procurement and a requirement to so certify.

8. I understand that my obligations under this certification are of a continuing nature, and if anything takes place which would cause a change to any statement, or create a violation of any representation or rule of conduct herein, I will bring such matter to the attention of the SSEB Chairman, or the contracting Officer.

(Enter Name  
Enter SSN  
Enter Command or Agency name)

Date \_\_\_\_\_

**THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.**

**EVALUATION FACTOR RATING SHEET FOR  
PROPOSAL NO. \_\_\_\_\_**

**VENDOR** \_\_\_\_\_

**EVALUATOR** \_\_\_\_\_

**FACTOR NO 1:** ( *enter title of factor* )

**TOTAL FACTOR POINT VALUE** \_\_\_\_\_

**TOTAL FACTOR POINTS AWARDED** \_\_\_\_\_

**Sub-Factor 1a:** ( *enter title of subfactor* )

**Value** \_\_\_\_\_

**Score** \_\_\_\_\_

*Provide rationale in support of score. Define strengths, weaknesses, deficiencies and areas requiring discussion.*

**Sub-Factor 1b:** ( *enter title of subfactor* )

**Value** \_\_\_\_\_

**Score** \_\_\_\_\_

*Provide rationale in support of score. Define strengths, weaknesses, deficiencies and areas requiring discussion.*

**Sub-Factor 1c:** ( *enter title of subfactor* )

**Value** \_\_\_\_\_

**Score** \_\_\_\_\_

*Provide rationale in support of score. Define strengths, weaknesses, deficiencies and areas requiring discussion.*

Start each primary factor on a separate sheet. Prepare sheets for each factor, in the same manner as above.

**INDIVIDUAL EVALUATOR SUMMARY RATING SHEET FOR  
PROPOSAL NO. \_\_\_\_\_**

**VENDOR:** \_\_\_\_\_

**EVALUATOR:** \_\_\_\_\_

<b>Evaluation Factor or Subfactor Title</b>	<b>Factor ID Number</b>	<b>Total Value of Factor or Subfactor</b>	<b>Rating</b>
-----			

**TOTAL PROPOSAL RATING** \_\_\_\_\_

**SUMMARY OF EVALUATORS' RATINGS FOR  
PROPOSAL NO. \_\_\_\_\_**

<u>Offeror Name</u>	<u>Evaluator Names and Ratings</u>	<u>Total Rating</u>
---------------------	------------------------------------	---------------------

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

The evaluation board chairman prepares and analyzes this summary. After discussion with the evaluators and reaching consensus, the chairman prepares the technical ranking and recommendation for the Source Selection Authority. This ranking can be in the narrative portion of the evaluation summary or on a separate page. If it is on a separate page it should basically look like this, starting with the highest scoring offeror:

**RANKING OF OFFERORS' PROPOSALS  
FOR PROPOSAL NO. \_\_\_\_\_**

<u>Offeror Name</u>	<u>Total Technical Score</u>
---------------------	------------------------------

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

# CHAPTER 15

## STATEMENT OF URGENCY

## STATEMENT OF URGENCY

Emergency and priority processing of procurement requests that cannot be processed in accordance with normal Procurement Administrative Lead Time (PALT) must have a statement of urgency as part of the procurement package. PALT is discussed in Chapter 2.

Requirements should be planned and processed so that urgent processing requests are kept to a minimum. There are certain regulatory and legal requirements that cannot always be justifiably circumvented and may result in inability to meet requested timeframes.

The statement of urgency is prepared by the requiring activity. It can be in any format. The following is the required content:

Title the document STATEMENT OF URGENCY

1. Give a brief description of the product or service to be acquired and the impact on the mission and resources if that date is not met.
2. Give the date the requirement was first known to exist and the date the product or service is required.

If the known date of the requirement was such that normal PALT could have achieved delivery, explain the reasons for delay in initiating the action.

If the known date of the requirement was such that normal PALT could not have achieved timely delivery, describe the circumstances which prevented timely submission of the procurement request. For priority requests other than emergency requests, explain what actions will be taken to allow adequate procurement lead time on future requests.

3. The statement of urgency will be signed and dated by the Division Chief. Acquisitions that must be awarded within the fiscal year and do not meet year end cut off dates announced by the Director of Contracting, must be approved and signed by the Chief of Staff.

# CHAPTER 16

## CONTRACT DATA REQUIREMENTS LIST (DD 1423)

**CONTRACT DATA REQUIREMENTS LIST  
(DD1423)**

The policy of the Department of Defense is to maximize the use of commercial reporting practices and minimize data requirements placed on contractors. Generation of data, particularly in unique presentations for the Government only, is costly. Always consider carefully whether the intended use of it is worth the cost.

*STREAMLINING CONTRACT DATA REQUIREMENTS*

This information is from a memo, dated April 19, 1997, from the Under Secretary of Defense (Acquisition and Technology)

Background: Army was tasked to lead an inter-agency work group to review Contract Data Requirements guidance and their development, with OSD and Defense Agency support. The following are the recommendations from the research and analysis. They are approved for implementation, by the USD:

1. Make a continuous effort to cancel or revise Data Item Descriptions (DIDs)
2. Develop and implement performance-based contract data requirements in solicitations
3. Encourage offerors to propose industry data practices and respond to DOD-unique data requirements with alternative, cost-effective data proposals.
4. Determine minimum data needs and use commercial data as much as possible.
5. Tailor the data to minimize unique data acquired from contractors
6. Decide upon data formats and media that promote data sharing in an Integrated Product Team (IPT)
7. Make data requirements completely visible in contracts
8. Ensure the cost-effectiveness of data acquired
9. Promote the uniform use of commercial data exchange standards and open systems among DOD and contractors
10. Ensure the quality of data meets contract and industry standards
11. Ensure timeliness, accuracy, and adequacy of data delivered
12. Ensure proper marking of data
13. Ensure compliance with DOD regulations regarding data
14. Maximize sharing of data within DOD
15. Coordinate data delivery with program schedules
16. Reduce use of Data Item Descriptions (DIDS) and write functional data requirements, where possible

USE OF THE DD FORM 1423:

The Contract Data Requirements List (DD Form 1423) (CDRL) is on Formflow. It is not mandatory; its use is optional. If used, DOD highly encourages tailoring of CDRLs and Data Item Descriptions (DID) to contract requirements. Tailored CDRLs and DIDs are contractually binding.

The form is used for such data as:

- a. Draft reports during performance
- b. Maintenance reports during and at the end of performance
- c. Research and engineering data and drawings
- d. Specifications and standards
- e. Computer software documentation
- f. Process sheets
- g. Tapes, films, computer data

These are usually data items that are produced or used during performance but not the final deliverable. Items may be records that were developed during performance and the Government wants them for reuse or reference. They may be records needed during performance, such as down time reports, briefing schedules, or monthly financial reports on the contract.

If the CDRL form 1423 is not used, don't forget to define your data needs and delivery instructions elsewhere in the contract.

The DD Form 1423 is signed by the technical person who prepares it. INSCOM does not have a designated Data Item Manager. Therefore, a reviewer in the requiring office signs in the "Approved by" block.

REFERENCES

DoD 5010.12.M, Procedures for the Acquisition and Management of Technical Data

MIL-STD-963B, Standard Practice for Data item Descriptions (DIDs)

MIL-HDBK-XXX, Data management Guidance

# CHAPTER 17

## GOVERNMENT PROPERTY

## GOVERNMENT PROPERTY

Contractors are usually required to provide all property necessary to perform Government contracts. However, contractors may be allowed to use and be accountable for property to which the Government keeps the title.

### **DEFINITIONS:**

**Property** means all property, both real and personal.

**Real property** means land and rights in land, ground improvements, utility distribution systems, buildings and other structures.

**Government property** means all property owned by or leased to the Government or acquired by the Government. It includes Government furnished, and contractor acquired property.

**Contractor acquired property** means property acquired or otherwise provided by contractor for use on the contract. The Government has title to the property.

**Government furnished property** means property in the possession of, or acquired by the Government and furnished to the contractor for performance of the contract.

**Facilities** means property used for production, maintenance, research, development, or testing.

**Facilities contract** means a contract under which Government facilities are provided to contractors for use in performing contracts

**Agency peculiar property** means Government owned personal property that is peculiar to the mission of one agency.

**Data** is handled as property in Government contracting. It means recorded information, regardless of form or the media on which it is recorded. When providing data, or procuring data, provide information to the Contracting Officer regarding what data rights you deem appropriate and why. See also Chapter "Technical Data".

Property and data that is to be provided to a contractor for performance of a contract must be identified in the solicitation and contract. Provide the Contracting Officer with a list of property or data to be furnished, the date(s) it will be furnished and the value of each item.

Sometimes the Government provides office space at a Government installation, equipment, telephones, computer time or other accommodations to contractors for use in performance of contracts. Although the Government retains property accountability in many cases, the property must all be defined in the solicitation and contract. Provide such information to the Contracting Officer, with the submission of your procurement request.

# CHAPTER 18

## WARRANTIES

## **WARRANTIES**

The use of warranties is not mandatory. You should consider the following criteria and provide your supporting documentation to the Contracting officer if you deem a warranty feasible:

### *1. NATURE AND USE OF THE SUPPLIES AND SERVICES --*

- a. Complexity and function
- b. Degree of development
- c. State of the art
- d. End use
- e. Difficulty in detecting defects before acceptance
- f. Potential harm to the Government if the item is defective

### *2. COST --*

Consider both the contractor's charge and the Government expense to administer and enforce the warranty. Do these costs outweigh the value of the warranty?

### *3. ADMINISTRATION AND ENFORCEMENT --*

- a. Storage time
- b. Difficulty in tracing responsibility for defects
- c. Distance of the user from the source of the item
- d. Value and purpose of the item

### *4. TRADE PRACTICE --*

DOD specifies the use of commercial warranties to as great an extent as practicable. In many cases an item or service is customarily warranted in the trade and the cost to the Government will be the same whether or not a warranty is included. In other cases, the commercial warranty may be an additional cost and a decision will have to be made as to the feasibility of acquiring it.

### *5. REDUCED REQUIREMENTS --*

The cost of added warranties may be offset by reducing the quality assurance requirements where the trade or commercial warranty provides adequate assurance of a satisfactory product.

# CHAPTER 19

## CONTRACT SECURITY CLASSIFICATION SPECIFICATION (DD254)

**CONTRACT SECURITY CLASSIFICATION SPECIFICATION  
(DD FORM 254)**

The DD Form 254 specifies the requirements and responsibilities in classified acquisitions which require contractor access to national security information. The form is required for each classified acquisition and must be included in the solicitation and the contract. The security specifications are tailored to the individual acquisition. The Program Manager and/or Cognizant Security Office should be contacted for specific guidance in preparing the form.

A classified acquisition is an acquisition which requires contractors to have access to classified information in order to understand the performance requirements to submit an offer, or perform the contract. A acquisition may be classified even though the contract document is not classified.

Determine whether access to classified information will be required during the solicitation stage, or not until award and performance of the contract. If access will not be required in the solicitation stage, potential offerors do not have to have clearances to receive the solicitation and offer. If access will be required in the solicitation stage, potential offerors must have a clearance to receive a classified solicitation, view reading room material, prepare an offer and discuss the requirement.

Review the security requirements during the pre-award, award and post award stages of the contract. Issue a revised DD Form 254 as required.

A copy of the DD 254 form is on Formflow. There is an addendum for contracts that require access to Sensitive Compartmented Information (SCI).

The form is completed by the requiror. It is reviewed and approved by the Contractor Support Element (CSE). CSE returns it to the requiror and it is submitted to the Directorate of Contracting as part of the procurement package.

The address for CSE is: Commander, 1 Co., Contractor Support Element, CI Support BN, 902nd MI Group, Attn: IAGPA-C-AC, Fort George G. Meade, MD 20755-5998. The point of contact is Mr. Vaughan, DSN 923-6982.

# CHAPTER 20

## PERSONAL SERVICES

## **GUIDELINES ON PERSONAL AND NON-PERSONAL SERVICES**

**PERSONAL SERVICES CONTRACT** means a contract that, by its express terms or as administered makes the contractor personnel appear to be, or to function as, Government employees.

Personal services contracts are characterized by an employee-employer relationship in which contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. Personal services contracts are limited by the Classification Act. Individual experts, consultants and others specifically authorized by statute are allowable but hiring must be processed through the Civilian Personnel Office. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Agencies shall not award personal services contracts unless specifically authorized by statute (e.g., 5 U.S. C. 3109). There are other requirements which apply in acquiring personal services of experts or consultants (e.g., benefits, taxes, conflicts of interest).

**NON-PERSONAL SERVICES CONTRACT** means a contract under which the personnel rendering the services do not appear to be, or function as, Government employees. Contractor employees, either by the contract terms or by the manner of its administration, are not subject to the supervision and control usually prevailing in relationships between the Government and its employees. Contractor employees may not perform inherently governmental functions.

**INHERENTLY GOVERNMENTAL FUNCTIONS** - So intimately related to the public interest as to mandate performance by Government employees. This includes activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. It includes monetary transactions and entitlements, interpretation and execution of the laws.

EXAMPLES of interpretation and execution of the law:

Decisions that bind the United States to take or not take actions

Determinations to protect and advance economic, political, territorial, property, or other interest

Decisions that significantly affect life, liberty or property of private persons

Commission, appoint, direct, or control officers or employees of the United States

Exert ultimate control over the acquisition, use, or disposition of property, real or personal, tangible or intangible, of the United States. This includes collection, control, or disbursement of appropriated and other Federal funds.

EXAMPLES OF INHERENTLY GOVERNMENTAL FUNCTIONS:

Direct conduct of criminal investigations

Control of prosecutions and performance of adjudicator functions (other than those relating to arbitration or other methods of alternative dispute resolution).

Command of military forces, especially leadership in combat, and leadership of personnel who are in combat support or combat service support roles.

Conduct of foreign relations and determination of foreign policy.

Determination of agency policy, such as the content and application of regulations.

Determination of Federal program priorities or budget requests .

Direction and control of Federal employees

Direction and control of intelligence and counterintelligence operations

Selection or non selection of individuals for Federal Government employment, including interviewing

Approval of position descriptions and performance standards for Federal Government employment

Determinations regarding disposal of Government property and agreements on disposal terms.

Determining what supplies or services the Government will procure

Participating as a voting member on a contract source selection board

Approving any contractual document, including defining requirements, plans, evaluation criteria

Determining whether contract costs are reasonable, allocable and allowable

Participating as voting member on contractor performance evaluation boards

Approval of responses to Freedom of Information Act requests

Conduct of administrative hearings regarding eligibility for security clearance, or matters of personal reputation or eligibility to participate in Government programs.

Approval of Federal licensing actions and inspections

Determination of budget policy, guidance, and strategy

Collection, control and disbursement of fees, royalties, duties, fines, taxes, and other public funds unless authorized by statute

Routine voucher and invoice examination

Control of the treasury accounts

Administration of public trusts

Drafting of Congressional testimony, responses to Congress and responses to audit reports

#### TYPES OF FUNCTIONS NOT NORMALLY INHERENTLY GOVERNMENTAL

Gathering information for or providing advice, opinions, recommendations or ideas to Government officials

Research and analytical type work

Functions that are primarily ministerial and internal in nature such as building security, mail operations, housekeeping, cafeterias, warehouse operations motor vehicle fleet management and operations, facilities operations and maintenance.

#### TYPES OF SERVICES THAT ARE NOT INHERENTLY GOVERNMENTAL FUNCTIONS, BUT MAY BECOME SO

These types require full awareness of the terms of the contract and contractor performance in contract administration to ensure agency control is preserved. This is an illustrative listing:

Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

Services that involve or relate to reorganization and planning activities

Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

Services that involve or relate to the development of regulations

Services that involve or relate to the evaluation of another contractor's performance

Services in support of acquisition planning

Contractor's providing assistance in contract management where the contractor might influence official evaluations of other contractors

Contractor's providing technical evaluation of contract proposals

Contractors assisting in the development of statements of work.

Contractors providing support in preparing responses to Freedom of Information Act requests.

Contractors working in any situation that permits them to gain access to internal, sensitive, Government business information. (This does not mean security classification type information)

Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of the Government, conducting community relations campaigns, or training courses.

Contractors acting in any situation where they might be mistaken for Government employees.

Contractors participating as technical advisors to sources selection boards.

Contractors acting as arbitrators or providing alternate methods of disputes resolution (AD)

Contractors constructing buildings or structures intended to be secure from penetration

Contractors providing inspection services

Contractors providing legal advice and interpretations of regulations and statutes to Government officials

Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

ADVISORY AND ASSISTANCE SERVICE CONTRACTS are the type contracts where the personal/non-personal relationship most often becomes an issue. These types contracts are for:

Individual experts and consultants

Studies, analyses, and evaluations

Management and professional support services

Engineering and technical service

Outputs may take the form of advice, opinions, alternatives, analyses, evaluations, recommendations, training and day-to-day support personnel to ongoing Federal operations.

Contracts for these types services shall not be used---

- a. for inherently Government functions
- b. to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures
- c. for employing former Government employees on a preferential basis
- d. specifically to aid in influencing or enacting legislation
- e. to obtain professional or technical advice which is readily available within the agency or another Federal agency

#### CONTRACTOR EVALUATION AND ANALYSIS OF PROPOSALS

May not conduct evaluations or analyses of any aspect of a proposal for initial contract award unless

HCA makes written determination that no agency or other agency personnel are available and qualified

the contractor is a Federally-Funded Research and Development Ctr (FFRDC), or such and the work meets the criteria of 35.017-3 or

such functions are otherwise authorized by law.

#### DETERMINATION OF AVAILABILITY OF AGENCY PERSONNEL FOR PROPOSAL EVAL

HCA must determine if personnel are available in the agency

HCA must determine whether other Federal agencies have personnel. -- Consider admin cost, time to conduct search, dollar value of procurement, other costs such as travel

If other Federal agency agrees to provide personnel, the agencies must execute an agreement for the detail

Can make determination for a class of proposals if expertise is unique or specialized and limited

CO has responsibility to ensure the determination is made before issuing solicitation

NOT INCLUDED IN THE ADVISORY OR ASSISTANCE DEFINITION:

Professional architectural and engineering services (Defined in FAR Part 36)

Routine Federal information processing services unless integral part of a contract for advisory and assistance services.

Research on theoretical math and basic research involving medical, biological, physical, social, psychological, or other phenomena

CONTROL MEASURES:

Carefully craft statements of work (SOW). SOWs shall:

- a. Reserve final determination for Government officials
- b. Require identification of contractor personnel in meetings, on phone and in work situations
- c. Require marking of documents or reports produced by contractors

Carefully craft quality assurance plans

Have audit plans for periodic review of contracts

Conduct pre-award conflict of interest reviews to ensure objective contract performance

Physically separate contractor personnel from Government personnel at the work-site

Require contractors to make clear reports on the methods and considerations upon which their recommendations are based. Such specifics may include explanation of alternatives, description of the procedures used to arrive at the recommendations, list of sources relied upon, summarization of the substance of their deliberations including dissenting views.

Shall require contractor personnel to identify themselves at meetings, when answering Government telephones or working in any situation where their contractor status is not obvious.

Ensure contractor work products are identified where they may be confused with Government work products

Ensure final approval, or agency action involving contractor products is in compliance with law and government policy.

Must ensure that a sufficient number of qualified Government employees are assigned to oversee Contractor activities and manage Government programs properly.

Enhance oversight when contracting for functions that closely support inherently governmental functions

## PROVISIONS FOR SOLICITATION AND AWARD

52.209-7 Organizational Conflicts of Interest Certificate - Marketing Consultants

52.209-8 Organizational Conflicts of Interest Certificate - Advisory and Assistance Services

## IMPLEMENTATION

Agency head or designated requirements official shall provide a written determination that none of the functions to be performed in the statement of work are inherently governmental. This determination shall be given to the contracting officer with the submission of the Statements of Work.

Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of the solicitation.

## BASIS OF THIS GUIDANCE:

Law - 5 U.S.C. 3109  
10 U.S.C. Chap 137  
40 U. S.C. 486(c)  
42 U.S.C. 2473(c)

Office of Management and Budget (OMB) Policy Letter 92-1; Sept 23, 1992; Inherently Governmental Functions

Federal Acquisition Regulation, Parts 7, 9 and 37

Army Studies and Analyses, AR 5-5

Management of Contracted Advisory and Assistance Services, AR 5-14

Federal Personnel Manual (FPM) Chapter 304 - Advisory and assistance services obtained by personnel appointments

Chartered Federal advisory committees, AR 15-1

ADVISORY AND ASSISTANCE SERVICES

ADDITIONAL QUESTIONNAIRE

1. Which form of advisory and assistance service will this contract be? (See AR 5-5 "Army Studies and Analyses" and AR 5-14 "Managing Contracted Advisory and Assistance Services" for definitions and required approvals)

\_\_\_\_\_ Individual experts and consultants

\_\_\_\_\_ Studies, analyses and evaluations

\_\_\_\_\_ Management and professional support services

\_\_\_\_\_ Engineering and Technical Services

2. Describe the final output expected from this service.

3. What do you intend to accomplish from the output received from this service?

4. Is the statement of work specific, complete, and does it specify a fixed period of performance for the service?

5. Is this advice or information readily available from another government activity or source?

## SERVICES QUESTIONNAIRE

The following questions are to answered by the individual initiating the procurement request and will be used by the Contracting officer in making the determination of personal or non personal services.

PURCHASE REQUEST NUMBER \_\_\_\_\_

1. Nature of the work
  - a. Provide a brief description of the requested service.
  - b. To what extent can the Government obtain civil servants to do the job? Are we contracting out because our personnel ceilings do not permit hiring a civil servant?
  - c. Does the proposed contractor have specialized knowledge or equipment which is unavailable in the Government? If the answer is yes, describe the specialized knowledge or equipment.
  - d. Will the proposed service require the contractor to perform any Government function which calls for the exercise of personal judgement, advice and decision making on behalf of the Government? If the answer is yes, provide an explanation.
  - e. Will the services to be performed be continuing, short-term or intermittent?
2. Contractual provisions concerning the contractor's employees
  - a. To what extent will the Government specify the qualifications of or approve individual contractor employees? (Granting or denying security clearance is permissible. It is also permissible to specify the technical and experience qualifications of contractor employees, if this is necessary to assure satisfactory performance.)
  - b. To what extent and by what method does the Government plan to assign tasks and to prepare work schedules for the contractor employees during the performance of the contract? (This does not preclude inclusion of work schedules and period of performance in the contract)
  - c. Does the Government plan to supervise the work of contractor employees, either directly or indirectly? If yes, explain.
  - d. Does the Government plan to supervise or control the method in which the contractor performs the service, the number of people he will employ, the specific duties of the individual employees and similar details? If yes, explain.

- e. Will the Government review the performance of each individual employee, as opposed to reviewing a final product on an overall basis after completion of the work? If yes, explain.
  - f. To what extent will the Government retain the right to have the contractor employees removed from the job for reasons other than misconduct or security?
3. Other provisions of the contract
- a. Are the Services properly defined as an end product?
  - b. Is the contractor undertaking a specific task or project that is definable in writing either at the inception of the contract or at some point during the performance?
  - c. Will payment be for results accomplished or solely according to time worked?
  - d. To what extent will the Government furnish the office or working space, facilities, equipment, and supplies necessary for contract performance?
4. Administration of the contract
- a. Are contractor employees to be used interchangeably with Government personnel to perform the same functions? If yes, explain.
  - b. Are the contractor employees to be integrated into the Government's organizational structure? If yes, explain.

PREPARED BY \_\_\_\_\_

TITLE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

DETERMINATION

Pursuant to FAR 37.103 and on the basis of information contained above and a review of the referenced acquisition request, it is my determination that the service to be procured are nonpersonal.

CONTRACTING OFFICER \_\_\_\_\_

# CHAPTER 21

## SERVICE CONTRACT ACT

## **LABOR WAGE DETERMINATION**

This guidance is provided to give a basic understanding of the Service Contract Act. No documentation in the procurement package is required specifically for the determinations required, unless requested by the Contracting Officer.

The Service Contract Act (SCA) applies to Government contracts over \$2,500, which are for services. The Act requires that service employees be paid prevailing wages and benefits for certain jobs. The rates are determined by the Department of Labor and are specific to the locality where the work is to be performed. Employees must be paid the minimum wage as defined under the Fair Labor Standards Act. The Acts cover both blue and white collar workers. Professional, administrative and supervisory employees are excluded. The SCA does not apply to contracts outside the United States or outside most U.S. territories.

There are also statutory and regulatory exemptions for contracts:

- Covered by the Davis Bacon and Walsh-Healy Acts
- For carrying freight or persons by vessel, air, bus, truck, express, rail; or for oil or gas lines when tariff rates apply
- For radio, telephone, telegraph or cable companies subject to the Communications Act
- For public utility services.
- For direct employment of individuals
- With the U.S. Postal Service

The Government Printing Office (GPO) publishes the Department of Labor (DOL) rates in a document titled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". The publication is divided into three volumes for East, Central, and West and lists the States covered in each volume. If the general wage determination is available in this publication, the Contracting Officer may use it without contacting the DOL. If the determination is not available, the Contracting Officer may have to submit a request for a general wage determination to DOL. The Contracting Officer may request additional information from you, to complete the form.

# CHAPTER 22

## INFORMATION TECHNOLOGY

## INFORMATION TECHNOLOGY

The Information Technology Management Reform Act (ITMRA) of 1996, made major changes in the acquisition of information technology. It abolished the Brooks Act and took away the General Service Administration's management and oversight responsibilities. The Office of Management and Budget now has the oversight responsibility. Direction is more in terms of guidance rather than regulations and control over agency decision making.

Agencies are required to have Chief, Information Officers (CIO) with responsibility to plan and manage the acquisition of information technology.

The General Services Board of Contract Appeals has been abolished and The Government Accounting Office (GAO) now hears all information technology protests.

OMB has established a mandatory Government wide Financial Management Systems Software program.

The Act emphasizes modular contracting as opposed to the Brooks Act emphasis on buying a whole system in one action plan.

The Act provides exemptions for "national security systems". However, acquisitions of information technology for national security systems must be conducted in accordance with 40.U.S.C. 1412 with regard to requirements for performance and results-based management; the role of the agency Chief Information Officer; and accountability. These requirements are addressed in OMB Circular No. A-130.

*National security system* means any telecommunications or information system operated by the United States government, the function, operation, or use of which----

- a. Involves intelligence activities
- b. Involves cryptologic activities related to national security
- c. Involves command and control of military forces
- d. Involves equipment that is an integral part of a weapon or weapons system
- e. Is critical to the direct fulfillment of military or intelligence missions.

THIS DOES NOT INCLUDE a system that is to be used for routine administrative and business applications, such as payroll, finance, logistics, and personnel management applications.

### AVAILABLE GUIDANCE

1. OMB has issued OMB Circular A-130 "Management of Federal Information Resources", as the basic guidance for procuring information technology.
2. OMB Circular A-127, Revised; titled "Financial Management Systems" provides policy direction regarding the Financial management Systems Software program.

3. OMB has also issued eight rule guidance which they will use as a measure to accept or reject agency proposals for information technology spending. The rules are that major investments should:

1. Support core or priority federal government missions
2. Be impossible for another agency, company or government to efficiently perform
3. Support work already redesigned to cut costs, improve efficiency and use off-the-shelf technology
4. Show a return on investment equal to or better than other uses of available resources
5. Be consistent with agency and government wide architectures that integrate work and information flows with strategic plans; comply with year 2000 standards; incorporate standards allowing information exchange and resource sharing; and retain flexibility in the choice of suppliers.
6. Reduce risk by avoiding custom design, using pilot projects and prototypes, establishing clear measures of success, securing buy-in from users.
7. Be put into effect in phased, successive chunks that are short-term and narrow in scope and independently solve part of an overall mission problem.
8. Appropriately allocate risk between government and contractor, tie payments to accomplishments and use commercial technology.

4. The Department of Defense has published implementing guidance in “Executive Summary”, DoDD 5000.1; DOD 5000.2-R, dated 15 March 1996.

## CHAPTER 23

# ROUTING OF PROCUREMENT REQUEST

## **ROUTING OF PROCUREMENT REQUESTS**

1. The requiring activity prepares the Procurement Request and Commitment (PR&C) (DD3953) and supporting documents and submits it to the INSCOM Assistant Chief of Staff for Logistics (G-4), Property Book Branch.
2. The G-4 assigns a requisition number to the DD3953. The Property Book Branch faxes the request to the Mission Support Requiring Activity (MSRA) for a due-out document number and assignment of stock numbers. The requiring activity is then called to pick up the PR&C and take it to Resource Management (RM). RM assigns the accounting classification approval, and the requestor takes the PR&C back to the Property Book Branch for signature and on to the appropriate contracting office.
3. If the request is for installation type support, the G-4 will send it to the Fort Belvoir Directorate of Contracting.
4. If the request is for mission type support, the G-4 will send it to the INSCOM Directorate of Contracting (IAPC-DCO).
6. If the request is for shipment overseas, the G4 puts the SRA number on the original PR&C, verifies the ship to address and returns the PR&C to the requiring activity.

# CHAPTER 24

## RECEIVING AND ACCEPTANCE

## RECEIVING/ACCEPTANCE/QUALITY ASSURANCE

There are numerous arrangements that can be made for receipt and acceptance. There are contract clauses to cover a variety of situations and levels of quality assurance. Any concerns over the quality assurance requirements and circumstances of delivery, inspection and acceptance should be discussed with the Directorate of Contracting in the planning stages of the acquisition. Any specific needs should be provided to the Contracting Officer with the procurement package. This should be a separate document titled "Inspection and Acceptance" as it goes in a specific section of a contract.

There is a distinction between "receipt" and "acceptance". Receipt is merely acknowledgment that the goods or services were delivered or performed. Acceptance constitutes acknowledgment that the supplies or services conform with the contract quality and quantity and subject to the other terms and conditions of the contract.

Inspection and acceptance can take place at the origin, (such as the contractor's plant) or at destination (such as the Government dock or office.) The Government may acknowledge receipt at a point of embarkation and acceptance in another country, where conformance can be determined. Safe transit to avoid damage is the responsibility of the Government, in such a case. The Government should be certain the contractor has packaged and packed the items in accordance with the contract specifications.

Receipt, inspection and acceptance can take place at the same time or at different times. For example, it is not unusual for receipt and acceptance to be acknowledged at the Government destination (warehouse dock) for commercial items covered by the uniform commercial code and commercial warranties. In another case, the Government may acknowledge receipt of data processing equipment for accountability reasons but not accept it until it is installed and successfully operates for a certain testing period.

The Defense Logistics Agency has regional Defense Contract Management Offices (DCMO) that can perform quality assurance surveillance, and acceptance functions for the procuring contracting office. For example: Sometimes it is necessary to inspect production at various points during the process. The DCMO is conveniently located and has the expertise to do this. They can also perform acceptance functions, if acceptance is to be at origin, or at a Government facility that is not conveniently located for the procuring contracting office.

The actual documents for receipt and acceptance vary. There is a DD1155 "Order for Supplies or Services" which is used for simplified acquisitions under \$100,000 and delivery orders under larger contracts. There is a SF1449 "Solicitation/Contract/Order for Commercial Items" which is used for commercial items. There is a DD 250 "Materiel Receiving and Inspection Report" used for contracts. Sometimes invoices or other arrangements are tailored to the acquisition. The Contracting Officer handling the acquisition makes the decision as to the document and documentation required. Any person responsible for receipt and acceptance should be certain they have a clear understanding with the Contracting Officer, regarding procedure.

The person receiving and/or accepting goods or services does not have to have a specific appointment to perform the functions. However, they must be qualified at the level necessary to make the required assessment of conformance and compliance with the contract terms and conditions.

Receiving and acceptance are critically tied to the Prompt Payment Act. This relationship and the requirements of the Prompt Payment Act are explained in the next chapter.

# CHAPTER 24

## PROMPT PAYMENT

## PROMPT PAYMENT

The guidance in this chapter is based on law - The Prompt Payment Act. The Act provides for contractors to receive interest on overdue payments from the Government. The money to pay the interest comes directly from the administration or operation budget of the program which incurred the penalty. Therefore, it is of program level significance as it directly impacts that budget.

The Act applies to Government contracts, including those below the simplified acquisition threshold (\$100,000), except the following:

- a. Late payment penalties established by other governmental authority, such as tariffs.
- b. Advance payments
- c. Progress payments
- d. Interim payments on cost type contracts

No interest penalty is paid to contractors as a result of delayed payments on these types of contract financing payments.

### ***IMPORTANT DEFINITIONS FOR UNDERSTANDING PROMPT PAYMENT PROCEDURES***

***Day:*** Calendar day, unless otherwise indicated

***Designated billing office:*** Office or person, designated in the contract, where the contractor first submits the invoices. This is designated in the contract and may be the Government disbursing office, contract administration office, office accepting the supplies or services, audit office, or a non governmental agent.

***Designated payment office:*** Designated in the contract as the place responsible for making the payment. This is normally the disbursing office.

***Discount for prompt payment:*** A discount offered by the contractor to the Government which applies if the Government makes payment within a certain number of days prior to the usual due date. For example: 10% /15 days, (usual due date 30 days). The due date is calculated from the date of the contractor's invoice.

***Due date:*** The date payment should be made. Unless specified otherwise in the contract, the due date is 30 days after the designated billing office receives a proper invoice, or 30 days after acceptance of the supplies or services, whichever is later. This is the date the billing office calculates to make payment. Interest may still be due if the Government has been delinquent in meeting acceptance dates and processing paperwork.

***Payment date:*** The date of the check for payment, or the date the electronic transfer is made.

***Proper invoice:*** A proper invoice must include:

- a. Name and address of the contractor  
(Payment must be sent to this name and address unless specified otherwise on a proper notice of assignment)
- b. Invoice date
- c. Contract number or other authorization, including order number and contract line item number

- d. Description, quantity, unit of measure, unit price, extended price
- e. Shipping and payment terms
- f. Any other information required by the contract, such as evidence of shipment

**Receiving report:** Written acceptance of supplies or services. This may be:

- a. The DD250 Materiel Inspection and Receiving Report
- b. Completion of the lower portion of the DD 1155 - Order for Supplies or Services
- c. Completion of the lower portion of the SF 1449 - Solicitation/Contract/Order for Commercial Items
- d. Acknowledgment and authorization for payment directly on the invoice
- e. Other Government documentation agreed upon and specified in the contract.

The acceptance document/receiving report should be forwarded to the designated payment office by the 5th working day after acceptance, unless other arrangements have been made. It should include:

- a. Contract number or other authorization for the supplies or services
- b. Description of the supplies or services
- c. Quantities, if applicable
- d. Date supplies delivered or services performed
- e. Date of acceptance
- f. Signature, printed name, title, mailing address and telephone number of the official who accepted for the Government.

It is important to acknowledge acceptance as soon as possible and send the receiving report, or any other acceptance document defined by the contract, to the finance office. Interest starts accruing on the 7th day after the contractor delivers supplies or performs services, unless the contract provides for another acceptance date. The Contracting Officer may specify a longer period of acceptance if the Government needs longer to inspect and test the property or evaluate the services. If you need more than 7 days, provide the justification to the Contracting Officer in your transmittal letter. Due dates should be established which allow reasonable time required for the Government to perform administrative and acceptance responsibilities. Interest penalties are charged to the organization that provided the fund cite. Late documents to the payment office increase the total contract cost.

#### ***CALCULATION OF THE INTEREST PAYMENT***

Contractors do not have to request interest penalties; they are automatically calculated, applied and paid by the paying offices.

Temporary unavailability of funds to make timely payment does not relieve the obligation to pay interest penalties.

Invoice payments on all contracts are to be made by the Government as close as possible to, but not later than, the due date (or the end of the discount period, if applicable). A determination by the agency head is required, case-by-case, if payment is to be made earlier.

Penalty calculations are made when the designated billing office has:

- a. A proper invoice
- b. A proper receiving report/document
- c. A final invoice - (not subject to dispute or contract settlement actions)
- d. Paid the contractor after the due date - (not necessarily due to the disbursing office processing time)

The penalty rate is established by the Secretary of the Treasury.

The penalty accrues daily and is compounded in 30-day increments from the first day after the due date through the payment date. For example: Interest applied at the end of any 30 day period will be added to the payment amount and interest will be paid on that total in the succeeding 30 day period. Penalties will not continue to accrue for more than 1 year.

Additional penalties may be due if the interest penalty is not paid within 10 days after the invoice amount is paid.

Any interest that may be payable under claims and disputes are settled as part of those proceedings.

# CHAPTER 26

## CONTRACT TERMINATIONS

## CONTRACT TERMINATIONS

The following information regarding contract terminations is provided to give a general understanding of terminations and address certain issues and concerns that arise about them.

The Government has a unilateral right to terminate contracts if it is not in the best interest of the government to continue with the contract.

Terminations for convenience and default are taken very seriously by the Government and contractors and can only be made by a written termination notice to the contractor, issued by the Contracting Officer. They are a last resort after considering all the issues and factors involved.

### FUNDS

The Contracting Officer is responsible for release of excess funds resulting from terminations. Funds cannot automatically be removed from the contract. The Terminating Contracting Officer (TCO) must estimate the funds needed for settlement, within 30 days after receipt of the termination notice. The TCO then notifies the Procuring Contracting Officer the amount of excess funds that may be deobligated on the contract.

### SETTLEMENTS

Settlement of terminated contracts are usually negotiated after the contractor submits a settlement proposal. However, if a settlement proposal is not submitted in the timeframe required, or settlement cannot be reached by agreement, a Contracting Officer can settle it by a determination. Settlement may also be made by merely costing out under vouchers. Sometimes, settlements involve a combination of these methods.

### TYPES OF TERMINATIONS

- 1 . **NO COST:** If there are no outstanding payments, debts due the Government, or other contractor obligations, and the Contractor agrees; the contract is closed by agreement without the issuance of a termination notice, and without going through the termination administrative procedures.
- 2 . **TERMINATION FOR CONVENIENCE:** This is used when the contractor is not at fault, but it is in the Government's best interest to discontinue contract performance. An example of such a situation is when the Government's requirements have changed and the service or product is no longer needed.
- 3 . **TERMINATION FOR DEFAULT:** This is used when the contractor fails to perform, fails to make progress, or it is apparent that the contractor is not going to successfully complete the contract.

This is a very serious step to take, both for the contractor and the Government. The Government loses because the need is not met and time and money may be lost in having to reprocore. The contractor has a negative image for future references and opportunity for awards. Before the point of TforD is reached, effort may be made to allow the contractor to seek business alternatives to solve the performance problem.

Under TforD, the Government may reuse the funds to reprocore the same or similar item or service. The Government may also repurchase the same or similar supplies or services against the contractor's account. The Government is not liable for the contractor's costs on undelivered work.

Under TforC, the contractor is not at fault and the Government cannot terminate one contractor merely to give the work to another contractor. The Government must also pay more of the settlement costs to the contractor for expenses such as work in progress, and settlement proposal costs.

#### REINSTATEMENT

If the contractor consents, contracts may be reinstated by the contracting officer. The need must still exist and the Contracting Officer must determine reinstatement to be in the best interest of the government.

## CHAPTER 27

# METHODS OF PROCUREMENT

## AVAILABLE METHODS OF PROCUREMENT

There are a variety of ways goods and services can be procured. The Contracting Officer makes the final decision as to the method of contracting and can structure a contract specific to your requirement. Discuss your requirement with the Directorate of Contracting in the acquisition planning stage because the document requirements, processing route and timeframes for processing individual requirements vary.

**BLANKET PURCHASE AGREEMENTS (BPA):** BPAs are not a contract. They are more like a charge account agreement against which frequent repetitive buys can be made.

**GOVERNMENT PURCHASE CARD:** The INSCOM IAPC-DOC has established procedures for use of the International Merchant Purchase Authorization Card (I.M.P.A.C) with USBank. The Chief of Staff of the Army has directed that the card be used for individual purchases up to \$2,500. Individual cards can be issued by the IAPC-DOC for both installation support and mission support. Their issuance and use requires that an individual be trained and certified for the use of it. The INSCOM Contracting Office provides this training periodically. Contact the office to set up an account, schedule training or obtain a manual explaining the card use.

**MULTI-USER CONTRACTS:** These contracts are structured to allow more than one agency or office to use them. IAPC-DOC's use of them depends on the terms and conditions of the individual contract. Contact the Contracting Office if you wish to determine if one is usable for a particular requirement.

**MICRO PURCHASES:** These are purchases under \$2,500. They do not require competition and can be awarded to large or small businesses. Requirements may not be split to stay under this threshold. The Government commercial credit card is to be used for these purchases to as great an extent as practicable. See the paragraph above regarding the card.

**SIMPLIFIED ACQUISITIONS:** The IAPC-DOC can use simplified acquisition procedures for acquisitions up to \$100,000. Open market acquisitions over \$2,500 must be competed or justification for other than full and open competition must be documented. Requirements cannot be split for the purpose of staying within a particular threshold.

**COMMERCIAL ITEM PROCEDURES:** These are simplified procedures for acquisition of commercial items of supply or service. The procedures may be used up to \$5,000,000 and are designed to shorten the acquisition process.

**CONTRACTS:** Over \$100,000, the IAPC-DOC must process the acquisition in accordance with a more involved formal procedure.

**8A CONTRACTS:** Contracts may be awarded through the Small Business Administration (SBA) to contractors who have been determined small and disadvantaged and are in a developmental program under SBA. Contracts may be awarded sole source to an 8A contractor, up to \$3,000,000 for services and \$5,000,000 for manufactured items/supplies. Above these thresholds, requirements have to be competed among 8A contractors, if set-aside for 8As. The SBA may request a set aside or INSCOM can offer an acquisition to SBA for a set aside. The Government is required by law to promote awards to 8A contractors and the Department of Defense sets annual goals to award a certain percentage of all contracts to 8A contractors.

**CONTINGENCY CONTRACTING:** Army Federal Acquisition Regulation supplement manual No 2, Dated December 1993 covers special procedures for contingency contracting. A copy is available in the IAPC-DCO office. The manual describes a contingency as:

A situation involving the deployment of military forces in response to natural disasters, terrorist or subversive activities, collapse of law and order, political instability, or military operations.

**SECURE ENVIRONMENT CONTRACTING (SEC):** Army Regulation 715-30 (C), Secure Environment Contracting (U) covers this method of contracting. The Principal Assistant Responsible for Contracting (PARC) at INSCOM has management and oversight responsibility for SEC.

**STANDARD FORM 44, PURCHASE ORDER-INVOICE-VOUCHER:** This is a pocket size, multipurpose form for use away from the purchasing office or in isolated places. It is the forerunner of the Government credit card and is used much the same way. It has generally the same limitations as the credit card. It is not used as much today, since the credit card came into use. The instructions for use are with the form.

**COMMERCIAL ACTIVITIES (A76):** This method of contracting sets up principles and procedures for making decisions on in-house vs. contractor or Interservice Support Agreements (ISSA). It provides principles and procedures for competition between the government and commercial sources and specifies how to conduct cost comparisons. The Office of Management and Budget (OMB) publishes guidance and regulation for this method of contracting. The references are:

OMB Circular A-76, August 16, 1983 "Performance of Commercial Activities", and  
"Revised Supplemental Handbook, Performance of Commercial Activities", March 1996

Copies may be obtained from The Executive Office of the President, Office of Administration, Publications Office, Washington, DC 20503, at (202) 395-7332. It is also on the OMB Home Page at <http://www.whitehouse.gov/WH/EOP/omb>.

**VOLUNTARY SERVICES:** The Government cannot accept voluntary services. Sometimes marketing representatives will offer free services or supplies for a period of time, as an introduction to a product. This is discouraged. However, in some cases, this can be done, but it requires a written agreement of understanding through the legal advisor so that the Government does not risk a claim for supplies or services. Be aware that this type arrangement does not assure sole source to a contractor for eventual purchase or future service.

Average procurement administrative lead time (PALT) for various methods of acquisitions is covered in chapter 4, Acquisition Planning.

# CHAPTER 28

## CONTRACT TYPES

## CONTRACT TYPES

This general guidance is provided to give requisitioners some idea of the variety and flexibility of contractual arrangements that are available. Contract type selection is tailored to individual requirements. The types vary based on cost risk, subject matter, contract structure and delivery requirements. The requiror may request a certain type contract. However, the Contracting Officer selects the type contract or agrees upon it as part of negotiations with the contractor. This is a very simplified explanation of contract types. Each has its limitations and criteria for use. For a detailed explanation of how any particular contract works, contact the Directorate of Contracting.

Contracts are divided into two basic types: Fixed Price, and Cost-Reimbursement. The primary difference is the amount of risk and incentive placed on the contractor.

**FIXED PRICE:** Supplies and services can be reasonably defined and performance has little uncertainty. Contractor assumes the greatest risk.

**FIXED PRICE/ECONOMIC PRICE ADJUSTMENT:** Provides for prospective or retrospective price adjustment, upward or downward, where item prices or labor cost are unstable.

**FIXED PRICE INCENTIVE:** Provides profit motivation to encourage efficient and economical performance and delivery. Provides for adjustment of profit and establishment of final price by a formula based on final costs relationship to target cost.

**FIXED PRICE WITH PRICE REDETERMINATION:** Provides for negotiation of price at certain periods during the contract, or at completion of the contract, when long term costs and pricing cannot be reasonably determined. Fixed price initially with agreement on a stated time or times to redetermine the price.

**FIXED PRICE LEVEL OF EFFORT TERM:** Work can only be described in general terms, to a certain objective, within a specified time. Payment is based on effort expended rather than on results achieved; as in research and development, or investigations.

**COST:** Provides for payment of cost and no fee. The contractor benefits other than by monetary consideration. Used often with non-profit educational or other non-profit organizations.

**COST SHARING:** Contractor and the Government share the cost of performance. The contractor gains partially in profit and partially in other benefits such as use of an item in the commercial market.

**COST PLUS INCENTIVE FEE:** Provides performance, delivery and cost savings incentives to encourage economical, efficient, effective performance. Used when cost uncertainties are too excessive for a fixed price incentive contract. A formula is used based on relationship of allowable costs to target costs.

**COST PLUS AWARD FEE:** Provides an incentive arrangement with a formula to motivate the contractor with an opportunity to earn extra fee above the base fee. Used where it is not feasible nor effective to predetermine incentive targets. Provides a means to change the areas of performance emphasis. Time consuming and expensive to administer.

**COST PLUS FIXED FEE:** Where costs can only be estimated due to vague scope and indefinite specifications. However, the term of the effort or the completed desired result can be defined. You will hear these contracts described as Cost Plus Fixed Fee Level of Effort, and Cost Plus Fixed Fee Completion.

**LABOR HOUR:** Provides for payment by the hour when the extent or duration of the work and the cost cannot be anticipated with any degree of confidence.

**TIME AND MATERIALS:** Provides for payment by the hour, and materials at cost when the extent or duration of the work and the cost cannot be anticipated with any degree of confidence.

**LETTER CONTRACT:** A binding agreement that provides for commencement of work pending negotiation of a definitized contract. Used for urgent requirements when no other contract is suitable.

**INDEFINITE DELIVERY-DEFINITE QUANTITY:** Used when there is a recurring need and the quantity is known and funds are obligated for the full amount of the contract. Delivery is made to designated locations, in a specified timeframe.

**INDEFINITE DELIVERY-REQUIREMENTS:** Used where precise quantities are not known. Promises purchase of all the actual needs for the specified supplies or services, for a specified period of time, from the contractor.

**INDEFINITE DELIVERY- INDEFINITE QUANTITY:** Provides for purchase of indefinite quantity, within limits, for a definite period of time. Used when total need is not known; only the minimum quantity can be established in advance. The requirements clause may be added to promise all the purchases. Otherwise, there is no obligation to use only this contractor.

*GENERAL INFORMATION:*

*Basic Ordering Agreements, (BOA) and Basic Purchasing Agreements (BPA)* are not contracts. They are agreements on certain terms and conditions which the parties have negotiated to apply to acquisition of any items or services covered under agreement. Competition or justification for other than full and open competition is required to award a contract or purchase order under them.

*Other types of contracts* may not be used unless a waiver is approved by the Secretary of the Army.

*Contract surveillance* increases for both the Contracting Officer and the requirors when the contract is a cost-reimbursable type. It can be very time consuming.

*Profit* is not evil. It must be reasonable, but it is the major incentive for a contractor.

*Risk* must be reasonable. It may be better to share the risk rather than to put unreasonable risk on a contractor and jeopardize performance or delivery of your product.

*More than one type* arrangement can be in a single contractual document.

*Changing circumstances* during the contract life may make a different contract type appropriate in later periods that that used at the beginning.

*Cost Plus Percentage of Cost* contract use is not allowed in Federal Government contracting.

# CHAPTER 29

## CONTRACT OPTIONS

## CONTRACT OPTIONS

An option in a contract gives the Government a unilateral right , within a specified time, to purchase additional supplies or services defined in the contract, or to extend the term of the contract. There may be multiple options in a contract. For example: There may be an option to buy additional quantities, and also an option to extend the period of performance for another year.

The Contracting Officer must make a written determination that an option provision is in the best interest of the Government and there is reasonable likelihood that the option will be exercised. Normally, it is not in the Government's best interest if:

1. The requirements involve minimum economic quantities which are large enough to permit recovery of startup costs and the production of the required supplies at a reasonable price and delivery is far enough into the future to permit competitive acquisition, production and delivery.
2. An indefinite quantity or requirements contract would be more appropriate.

### *OPTIONS CANNOT BE USED IF:*

1. The contractor will incur undue risks such as enforceable fluctuations in the availability of materials or labor.
2. Market prices are likely to change substantially
3. The requirement is firm and funds are available, unless the basic quantity is for learning or testing and competition for the option is impracticable once the initial contract is awarded.

### *THE CONTRACT:*

1. Must state the limits on the purchase of additional supplies or services or duration of the option
2. Must state the period within which the options may be exercised
3. The time frame must allow adequate lead time to ensure continuous production
4. The period may extend beyond the contract completion date for services contracts
5. The total of the basic and option periods shall not exceed 5 years, except in the case of information technology contracts, or timeframes stated in specific statutes.
6. Options may be expressed in terms of:
  - a. Percentage of specific line items
  - b. Increase in specific line items
  - c. Additional numbered line items identified as the option
  - d. Extensions of the term (period of performance) of the contract as an amended completion date, additional time; e.g., days, weeks, months, year

*TO EXERCISE AN OPTION:*

The contract will have a specified timeframe in which to give the contractor notice of the Government's intent to exercise the option. This timeframe must be met, or the Government does not have a unilateral right to the option. The contractor may decide to raise the price, or not honor the option. It would have to be a bilateral agreement.

- a. Funds must be available
- b. The need must still exist
- c. Price and other factors must be considered.

The Contracting Officer must consider the age of the pricing, competition concerns and make certain other assessments to determine that it is anticipated that the best price available is the option price.

Continuity of operations and potential costs of disrupting operations is another factor considered.

*SOME EXAMPLES OF REASONS OPTIONS MAY BE USED IN A CONTRACT:*

- a. You may have a need for several tasks to be performed. You are reasonably certain funds will be available in the fourth quarter of the fiscal year. Therefore, some of the tasks could be optional.
- b. You may have a requirement that includes support to another agency. You are reasonably certain that you will receive the funds at some time during the period of performance. The tasks involved could be optional.
- c. You may need certain quantities of an item. However, you are reasonably certain that additional items will be needed when a new office is opened. An option for additional quantities could be used.
- d. On a level of effort contract, where we buy a certain number of hours, not knowing for sure how many will be needed, we may put an option in for an additional block of hours.
- e. For continuity of performance, or for work we believe will continue into another fiscal year, we may have an option for extending the period of performance.

If you want the Contracting Officer to consider options for your requirement, provide a request with an explanation why and the details of quantities, time, etc; with your procurement package. This may be addressed in your transmittal letter or as an attachment.

# CHAPTER 30

## UNSOLICITED PROPOSALS

## UNSOLICITED PROPOSALS

Unsolicited proposals are valuable to the Government as a means to obtain innovative, unique approaches to mission accomplishment.

Proposals to perform services or provide products are often verbal or in the form of “white papers”. White papers are merely an informal method of making an unsolicited proposal. Advertising material, commercial items offered as replacement for a supply item, or technical inquiries as to general agency needs, are not considered unsolicited proposals.

Any unsolicited offer or proposal must be forwarded to the IAPC-DOC for proper processing. They must be processed and evaluated in accordance with law and regulations, and protected as proprietary and procurement sensitive data. The IAPC-DOC is also the INSCOM point of contact for inquiries as to the general need for the type effort, and for understanding of the agency mission related to the type of effort contemplated. The IAPC-DOC will assist a potential offeror with other desired and required guidance and information.

Any agency personnel who are in personal contact with industry shall not make any agency commitments concerning an unsolicited proposal. Agency personnel may not informally request white papers or unsolicited proposals.

Also see chapter 36 “Procurement Integrity”, and chapter 26 “Personal and Non-Personal Services” as they are directly related to concerns in handling unsolicited proposals.

A valid unsolicited proposal must -----

- Be innovative and unique

- Be independently originated and developed by the offeror (Proposals in response to publicized *general* statement of agency need are considered independently originated.)

- Be prepared without Government supervision

- Include sufficient detail for the Government to evaluate it and determine whether it will benefit the agency mission requirements

- Not be an advance proposal for a known agency requirement that can be competed

The DOC office will review an unsolicited proposal and route it to the appropriate staff element(s) for evaluation.

A comprehensive evaluation of an unsolicited proposal must consider -----

- What unique and innovative methods, approaches or concepts are demonstrated in the proposal

- Overall scientific, technical, or socioeconomic merits of the proposal

- Potential contribution of the effort to the agency’s specific mission

- The offeror’s capabilities, related experience, facilities, techniques, or unique combinations of these which are integral to achieving the objectives

The qualifications, capabilities, and experience of the proposed principal/key personnel who are critical to achieving the objectives.

Any other appropriate factors for the particular proposal (such as resources being available within INSCOM or another Government agency.)

Although an unsolicited proposal is determined to have merit, it cannot be accepted without first considering other available sources and competition law.

The offeror's data, concept, idea, or other part of the proposal cannot be used as the basis of solicitation or negotiations with another firm unless the offeror is notified and agrees to the use. However, this does not preclude using data, concepts, or ideas available from other sources without restriction.

If the unsolicited proposal is to be accepted sole source, a justification for other than full and open competition, and the original and all copies of the proposal, must be submitted with a complete procurement request package.

If the unsolicited proposal is not accepted, the original and all copies must be returned to the IAPC-DOC with a written explanation for the rejection.

# CHAPTER 31

## PAST PERFORMANCE

## PAST PERFORMANCE

We are required by law to consider past performance in source selection in all new contracts over \$100,000. The Principal Assistant Responsible for Contracting (PARC) office maintains a central file. Past performance information can also be obtained from a variety of sources, including private firms. The extent of research should be relative to the complexity of the instant acquisition.

*PAST PERFORMANCE INFORMATION* is relevant information regarding contractor work on previous contracts. It includes :

- a. Record of conforming to specifications and standards of good workmanship
- b. Containing and forecasting cost on cost reimbursable contracts
- c. Adherence to schedules, including administrative performance
- d. History of reasonable cooperative behavior
- e. Commitment to customer satisfaction
- f. Businesslike concern for the interest of the customer.

*EVALUATION AND REPORTING* is to be completed within 30 days after completion of the work under the contract. It may also be done during performance, if necessary for contract administration purposes. If the period of performance exceeds 18 months, an evaluation must be done annually.

Preparation of the evaluation report is the responsibility of the Contracting Officer's Representative, or end user. However, it can be a joint effort with the Contracting Officer.

The report is submitted to the Contracting Officer.

The Contracting Officer must promptly send a copy to the contractor.

The contractor has 30 days in which to prepare a response, rebut the evaluation or provide additional information and return it to the Contracting Officer.

The Contracting Officer must provide a copy of the evaluation, contractor response, and review comments to the PARC, for the central file, within 5 days after the review.

Past performance information cannot be retained and used for source selection purposes for longer than 3 years after completion of the contract.

The sample format for reporting is at the end of this chapter.

*RELEASE OF EVALUATION INFORMATION.* The evaluation information is marked "Source Selection Information" and shall not be released to other than Government personnel and the contractor whose performance has been evaluated.

# CHAPTER 32

## FREEDOM OF INFORMATION

## **FREEDOM OF INFORMATION REQUESTS**

There is a Freedom of Information Act (FOIA) Officer in the Directorate of Contracting to handle any requests for contracting information. Contracting information must be carefully controlled for a variety of reasons. Any requests for contracting information, past, present or future, should be referred to the FOIA Officer.

# CHAPTER 33

## CONTRACTING OFFICER'S REPRESENTATIVE

## **CONTRACTING OFFICER'S REPRESENTATIVE**

The Contracting Officer (CO) may appoint a Government employee to act as an authorized representative to assist in administering a contract and performing certain functions within the scope of the contract. A COR is not given authority to change the contractual agreement. This person is titled the Contracting Officer's Representative (COR). Sometimes the title is worded Contracting Officer's Technical Representative (COTR). COR is the proper title. The appointment requirements and purpose do not differ.

If necessary, the CO can appoint an Assistant or Alternate Contracting Officer's Representative (ACOR). This appointment would be for the purpose of assuming the responsibility when the COR is not available. The qualification requirements for an ACOR are the same as for the COR.

CORs are not needed on all contracts. For example, contracts that require only receipt and acceptance of commercial items only need a point of contact for inspection and acceptance. CORs are usually needed on service contracts which involve ongoing efforts that need monitoring or supply contracts that need production reviews and have involved quality assurance procedures.

### *QUALIFICATIONS:*

CORs and ACORs must successfully complete the COR course at the U.S. Army Logistics Management College, Ft. Lee, VA, or an equivalent civilian agency, or industry given course. If the course cannot be completed prior to nomination, the immediate requirement may be waived at the discretion of the CO. The course date must be scheduled immediately and taken as soon as possible.

The nominee must have qualifications and experience commensurate with the responsibility and authority requested.

### *NOMINATIONS:*

A COR or ACOR nomination must be made by an official of the requiring activity who is in position to certify as to the qualifications.

Documentation supporting the nomination must be submitted to the CO. The nomination may be in any format but must state the full name, organization and office symbol and address.

The nominating official must include the statement certifying that the individual is qualified to be COR or ACOR by virtue of his/her education and experience and has successfully completed an accredited COR course. If the course has not been completed, the statement can be changed to state the scheduled date for the course to be taken. The certificate from the course can be included with the nomination, in lieu of certification that the course was passed.

### *APPOINTMENT:*

The individual must be designated in writing by the Contracting Officer (CO).

The appointment letter will clearly define the scope and limitations of the authority and give additional orientation instructions and guidance.

It will be tailored to the responsibilities of the pertinent contract. The extent of the authority is determined by the CO.

The COR or ACOR cannot delegate their authority or be coerced in carrying out the appointed responsibilities

The COR or ACOR can work on more than one contract provided the responsibilities can be performed adequately under all appointments. Each contract requires an individual appointment.

*TERMINATION OF APPOINTMENT:*

The appointment cannot be revoked or the COR or ACOR replaced by anyone other than a Contracting Officer.

If changes in the COR or ACOR are required, the nominating official must nominate a qualified replacement as soon as the need for the change is known. The CO must have time to process the termination and a new appointment so that contract administration continues effectively.

# CHAPTER 34

## TECHNICAL DATA RIGHTS

## TECHNICAL DATA RIGHTS

*TECHNICAL DATA* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature; including computer software documentation. It does not include computer software or data incidental to contract administration, such as financial and management information.

This subject is very complex. The rights vary with the requirement and require careful negotiation, and legal advice. Guidance in this chapter is given only to the extent that requirors understand the Government's, and Department of Defense's general position regarding data rights. The specifics of any acquisition must be discussed with the Contracting Officer so that the desired agreement regarding data rights can be negotiated and expressed in the contract.

### *IN GENERAL:*

- a . The Government encourages maximum commercial use of inventions made under Government contracts.
- b . The Government will not refuse to award a contract because the awardee may infringe a patent.
- c . The Government encourages use of inventions in performing contracts, even though the inventions may be covered by patents and indemnification against infringement may be appropriate.
- d . The Government should be indemnified against infringement when the supplies or services normally are for sale by any supplier on the commercial open market.
- e . It is important that the efforts toward full and open competition not improperly demand use of data relating to private developments.
- f . The Government limits its demands for rights to data from private developments to those essential for Government use.
- g . The Government complies with the law in using or acquiring rights in patents, data, and copyrights.
- h . The Government requires that contractors get permission from copyright owners before including copyrighted data required to be delivered under Government contracts.

### *STANDARD LICENSE RIGHTS* are:

*Unlimited Rights:* The right to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

*Government Purpose Rights:* Any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but not the right to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

*Limited Rights:* The right to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party; *except* that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure or use is (a) for emergency repair, (b) by a foreign government in the interest of the Government for evaluation or information, (c) subject to prohibition on further reproduction, release disclosure, or use and (e) the contractor asserting the restriction is notified of such use.

*SPECIFICALLY NEGOTIATED LICENSE RIGHTS* may be negotiated but any agreement cannot give the Government lesser rights than limited rights.

*CONTRACTOR RIGHTS* - The contractor retains any rights not granted to the Government.

#### *RIGHTS IN COMPUTER SOFTWARE AND COMPUTER SOFTWARE DOCUMENTATION*

##### *General Policy:*

- a. It shall be procured under the commercial licenses unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.
- b. It shall be procured competitively, to the maximum extent practicable, using fixed pricing.
- c. Offerors and contractors shall not be required to furnish related information unless it is customarily provided to the public, unless it is information documenting modifications made at the Government's expense to meet Government requirements.
- d. Offerors and contractors shall not be required to relinquish or provide the Government with rights to use, modify, reproduce, release, perform, display, or disclose it unless mutually agreed upon.

*The following "DESK GUIDE FOR INTELLECTUAL PROPERTY" covers data rights and policy in more detail:*

### **DESK GUIDE FOR INTELLECTUAL PROPERTY**

This document has been prepared to be used as a desk guide by the INSCOM Directorate of Contracting. It has been tailored to the type contracts the DCO does. Therefore, there is no discussion of construction, and architectural and engineering data rights. Most terminology definitions not explained in this document can be found in the Rights in Technical Data clause at DFARS 252.227-7013.

This guide is based primarily on guidance from DFARS Part 227 which is specific to DOD policy. The subject is complex. Decisions as to what rights to include in a contract should be made with close coordination with the technical personnel and legal guidance. This guide is only an outline of the subject in generalities. There are many different circumstances, exceptions, clauses and guidance unique to specific situations you may experience. You should always read the specifics, in the FAR and DFARS, which pertain to your situation.

Take a broadminded approach to the subject. There are numerous circumstances that can exist and there are many areas for give and take - negotiation.

#### **THE GOVERNMENT'S GENERAL POLICY**

1. Encourages maximum use of inventions made under Government contracts.
2. Will not refuse to award a contract because the contractor may infringe a patent.
3. Encourages use of U.S. patented inventions on Government contracts, authorizes and consents to use.
4. Government is indemnified against infringement of U.S. patents which occurs in performance of a Government Contract.
5. Efforts at full and open competition will not improperly require use of privately developed data.
6. Honor private data rights and limit demands for such rights to what is essential for Government purposes.
7. Contractors are to obtain permission before using copyrighted works to be delivered under Government contracts.

#### **PATENTS**

The Government authorizes and consents to the manufacture or use of a patented invention in Government contracts. Any suit for patent infringement because of manufacture or use of an invention on a Government contract can only be made against the Government; not against the prime or sub contractor. However, the patent indemnity clause provides that damages may ultimately be borne by the prime or subcontractor. The clause at FAR 52.227-1 Authorization and Consent, and 52/227-3, Patent Indemnity, cover this. The patent indemnity clause is not required in negotiated contracts. Guidance is at FAR 27.203.

Contractors must notify the contracting officer of all claims of infringement and assist with evidence and information in connection with any lawsuit. FAR 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, covers this.

To the extent permitted by law, the Government promotes commercialization and public availability of patentable results of federally funded research . Contractors are granted title to patents in exchange for royalty-free use by or for the Government. There are circumstances under which the Government may take title. These are basically where the contractor does not exert the right and take steps to file the patent. The Government’s “march in” rights are usually exerted when the contractor has not taken steps to achieve practical application, and the invention is needed for public health or safety, or there is practical application for public use.

#### **DFARS 227.6 FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS**

To further the Military Assistance Program or for national defense, the US Government may enter into agreements for development or encourage development of supply agreements with foreign companies. These agreements are often called “foreign licensing agreement” or “technical assistance agreement”.

Such agreements involve international laws, may involve Department of State responsibilities and controls, and DOD coordination with the Department of State. The DFARS also has the address and phone numbers for the HQ US European Command (USEUCOM) for the USEUCOM areas of responsibility.

#### **DFARS 227.70 INFRINGEMENT CLAIMS, LICENSES, AND ASSIGNMENTS**

**This subpart does not apply to licenses or assignments acquired under the Patent Rights clauses.**

When a claim of infringement is asserted against DOD, it shall be thoroughly investigated, and settled administratively, denied or disposed of, prior to a suit against the United States.

Even though no infringement has occurred or been alleged, DOD policy is to procure rights under patents, patent applications, and copyrights whenever it is in the Government’s interest to do so and the rights can be obtained at a fair price.

## **DFARS 227.71 RIGHTS IN TECHNICAL DATA**

**This DFARS guidance shall be used in lieu of FAR 27.4.**

**This part does not apply to computer software or technical data that is computer software documentation.**

This part covers policy and procedures for acquiring technical data and the rights to use, modify, reproduce, release, perform, display or disclose the data.

**TECHNICAL DATA** means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). It does not include computer software or data incidental to contract administration such as financial or management information.

DOD Policy is to acquire only the data and rights needed to meet agency needs. Requirors are responsible for identifying the minimum needs. Consider the contractor's economic interest and the Government's cost to acquire the data.

Data and delivery schedules for the data must be in the contract.

Use separate contract line items for pricing, to the extent practicable.

Contractors identify the data and the restrictions on data use.

Contractors shall not be required to relinquish rights in data developed at private expense.

Contractors shall not be discouraged from furnishing their data because Government rights may be restricted.

### **DFARS 227.7103-4 LICENSE RIGHTS**

The scope of the license is usually determined by the funding source. Generally:

Unlimited rights - funded exclusively with Government funds

Government purpose rights - mixed Government and contractor funding

Limited - funded exclusively at private expense

The Government obtains irrevocable licenses.

The licensor keeps all rights in data that are not specifically granted to the Government.

The licensor is not obligated to provide the Government greater rights and the Government does not have to accept lesser rights than those provided in the standard grant of license. The data rights are defined in DFARS 252.227-7013, Rights in Technical Data - Noncommercial Items. Basic definitions and situations in which they are used are as follows:

### **Unlimited Rights**

Royalty free, world-wide, nonexclusive, irrevocable license rights.

The Government gets these rights in technical data that are:

1. Developed exclusively with Government funds
2. Data specified as an element of performance
3. Form, fit and function data
4. Necessary for installation, operation, maintenance or training
5. Corrections or changes to technical data furnished to the contractor by the Government
6. Publicly available or have been released by the contractor without restrictions on further use
7. When the Government has unlimited rights under another Government contract, or through negotiations.
8. When the limited rights and restrictive condition(s) have expired
9. Contractor's exclusive right to use the data for commercial purposes has expired

### **Government Purpose Rights**

Government purpose means any activity in which the United States Government is a party. This includes international or multi-national defense cooperative agreements, or sales or transfers to foreign governments or international organizations. This right includes competitive procurements, but not the right to use, modify, reproduce, release, perform, display or disclose the data for commercial purposes or allow others to do so.

Government purpose rights mean the right to use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and allow persons outside the Government to use, modify, reproduce, release, perform, display, or disclose the data for government purposes.

The period of time these rights are effective is negotiable. The applicable clause provides for 5 years. Either party may request a different timeframe which may be made any time prior to delivery, without consideration.

The period of time begins at award of the contract document.

During the period of time, the Government may not use, or allow other persons to use the data for commercial purposes.

Government purpose use must be accompanied by a non-disclosure statement from any recipient of the data.

### **Limited Rights**

Limited rights means the right to use, modify, reproduce, release, perform, or disclose data within the Government. The Government must have written permission to release or disclose the data outside the Government, use it for manufacture or allow the data to be used by another party. The Government may reproduce, release or disclose the data or authorized the sue or reproduction of the data by persons outside the Government if it is :

For emergency repair and overhaul

To, or for use by, a foreign government that is in the interest of the United States Government and is required for evaluation or informational use

Subject to further reproduction, release, disclosure or use and the licensee is notified.

### **Specifically Negotiated License Rights**

Negotiate modified license rights when either party needs to obtain or relinquish or increase rights in technical data.

Consider logistical support and other factors which may have relevance to the requirement.

The Government may accept lesser rights than unlimited or government purpose rights but may not accept less than limited rights.

All agreements on negotiated rights must be in a license agreement made part of any resulting contract.

The Government usually does not ask for additional rights unless there is need to disclose the data outside the Government or the rights are required for competitive procurement and the savings expected through competition are estimated to exceed the cost of additional rights.

Prior to negotiating additional rights consider alternatives. - Using performance specs, contractor's willingness to maintain adequate competition among the sources, reverse engineering.

### **DEFERRED DELIVERY AND DEFERRED ORDERING OF TECHNICAL DATA**

When it is in the Government's best interest, the Contracting Officer may defer delivery up to two years after acceptance of all items (other than tech data or computer software) under the contract.

Ordering of any data generated under the contract may be deferred until three years after acceptance of all items (other than tech data or computer software).

### **COPYRIGHT**

When negotiating non-standard license rights in technical data, negotiate the copyright license concurrent with the data rights license. Do not negotiate a copyright license with less rights than the standard limited rights license in technical data.

## **MARKING OF TECHNICAL DATA**

Contractors are required to determine the restrictive markings and identify and mark their data accordingly. They must maintain records to justify the validity of restrictive markings under a Government contract.

The Government has the right to review, verify, challenge and validate restrictive markings. The contracting officer issues the final decision on challenges to restrictions. The Government must respect the contractor's markings until the decision is made, unless the agency head determines urgent or compelling circumstances exist.

Unmarked data is presumed to have been delivered with unlimited rights.

The Government has the right to establish conformity of markings, and may return data with non conforming markings.

The Government may conduct matters, under the contract, directly with subcontractors if there is a need to protect the subs data rights.

## **CONFORMITY, ACCEPTANCE AND WARRANTY OF TECHNICAL DATA**

The Contracting Officer may withhold up to 10% of the contract price pending correction or replacement of nonconforming data or negotiation of a reduction in contract price.

## **RELEASE OF TECHNICAL DATA TO FOREIGN GOVERNMENTS AND CONTRACTORS, AND INTERNATIONAL ORGANIZATIONS**

Data may be released if permitted by both Federal export controls and other national security laws or regulations.

In overseas situations, the Government should obtain rights in technical data that are no less than those in the data rights clauses(s) for comparable procurements in the United States.

## **ACQUISITION OF EXISTING WORKS**

FAR 252.227-7021, Rights in Data - Existing Works is used in lieu of the Rights in Technical Data - Noncommercial Items for existing works if :

1. The works will be acquired without modification,
2. The Government acquires the right to reproduce, produce derivative works, publicly perform or display the works,
3. The Government has a specific need to obtain indemnity for liabilities that may arise out of the content, performance, use, or disclosure of the data.

FAR 252.227-7020, Rights in Special Works, is used when the Government acquires modified existing works.

## **ACQUISITION OF SPECIAL WORKS**

The Government obtains rights for special works when it has a specific need to control the distribution of works first produced, created, or generated in the performance of a contract; or a need to obtain indemnity for liabilities that may arise. The specific portion the Government must own or control copyright must be identified in a special contract requirement.

The Government gets an assignment of copyright and unlimited rights. The contractor retains use and disclosure rights. If the Government needs to restrict these contractors rights, it must negotiate a special license specifically restricting the rights.

The contractor cannot incorporate third party copyrighted works in a special work without the Contracting Officer's permission. Permission is granted only when the Government's requirements cannot be met without the third party work.

#### **CONTRACTOR DATA REPOSITORIES**

Contractors may establish and maintain data repositories. DFARS 227.7108 provides minimum requirements for procedures, control and disclosure of data, maintaining currency of data, and indemnity provisions. These must be expressed in the contract.

**DFARS 227.72 - RIGHTS IN COMPUTER SOFTWARE AND COMPUTER SOFTWARE  
DOCUMENTATION**

**This DFARS guidance shall be used in lieu of FAR 27.4.**

**This part does not apply to GSA schedule contracts.**

This part provides policy and procedure for acquiring computer software and computer software documentation and the rights to use, modify, reproduce, release, perform, display, or disclose such software or documentation. It is based on specific laws and Executive Orders.

**COMPUTER SOFTWARE** means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable software to be reproduced, recreated or compiled. It does not include computer data bases or computer software documentation.

**COMPUTER SOFTWARE DOCUMENTATION** means owner's manuals, installation instruction, operating instructions, and similar items; regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

**COMMERCIAL COMPUTER SOFTWARE AND COMMERCIAL COMPUTER SOFTWARE  
DOCUMENTATION**

***POLICY:***

This software and documentation must be acquired under the contractor's commercial license customarily provided to the public unless the license conflicts with Federal law or does not meet user needs.

It must be obtained competitively, to the extent practicable.

It must be procured using fixed-prices under available pricing schedules.

Contractors cannot be required to furnish information on this software and data which is not customarily provided to the public unless it is for specific modifications for Government needs and made at Government expense.

Contractors cannot be required to give the Government rights to use, modify, reproduce, release, perform, display, or disclose this software or documentation, unless mutually agreed upon.

***RIGHTS:***

The Government shall only have the rights specified in the license under which the software or documentation was obtained.

The Government must negotiate acceptable terms with the contractor, for specific rights, (if needed). The specific rights must be in the contract license agreement or an addendum to it.

## **NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION**

### ***POLICY:***

Acquire only the subject software and documentation necessary to meet agency needs.

Contractors shall not be required to sell or otherwise relinquish their rights as a condition to be responsive to a solicitation or eligible for award.

Contractors shall not be prohibited or discouraged from offering their software or documentation because the Government's rights may be restricted.

Balance the assessment of the Government's needs with prices offered.

Solicitations and contracts shall:

1. To the extent practicable, use separate contract line items for computer software or computer software documentation to be delivered on a contract and require them to be separately priced.
2. Specify the software or documentation to be delivered and the delivery schedule
3. Specify procedures for determining acceptability
4. Require contractors to the restrictions and rights associated with the software or documentation

### ***LICENSE RIGHTS:***

Rights are generally determined by the source of funds used to develop the software. This determination should be made at the lowest practicable segregable portion of the software documentation.

The standard license rights in computer software that a licensor grants to the Government are unlimited, government purpose, and restricted.

#### **Unlimited Rights:**

The situations under which unlimited rights are obtained are:

1. Software developed exclusively with Government funds
2. Software documentation that is a deliverable under a Government contract
3. Corrections or changes to computer software or documentation furnished to the contractor by the Government
4. Software or documentation otherwise publicly available without restriction
5. Software or documentation obtained with unlimited rights under another Government contract or by negotiation
6. Software or documentation furnished under Government contract and the restrictive conditions have expired.

### **Government Purpose Rights**

These rights are obtained when computer software is developed with mixed funding

The rights period of time begins upon contract award.

The period during which the rights are effective is negotiable. Changes may be made any time prior to delivery without consideration from either party. Five years is the usual time but longer periods may be negotiated.

During the rights period, the Government may not use or allow other persons to use the software for commercial purposes. It may not be released unless a non-disclosure agreement is signed or the recipient is a Government contractor accessing it for performance of a Government contract.

### **Restricted Rights**

These rights are obtained when noncommercial computer software, developed exclusively at private expense, is provided to the Government.

Contractors do not have to provide the Government additional rights unless they agree to in a negotiated agreement which is made part of a license agreement.

### **Specifically Negotiated License Rights**

These rights are negotiated modifications to the standard license rights. When negotiating specific licenses consider the software maintenance philosophy, user requirements, sharing arrangements, the administrative burden of protection, and other relevant factors.

### **Rights in Derivative Computer Software or Computer Software Documentation**

When a contractor uses software or documentation developed under a Government contract to produce modified or derivative software or documentation, the Government retains the rights it got under the development contract, in the unmodified portions.

## **DEFERRED DELIVERY AND DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE**

When it is in the Government's best interest, the Contracting Officer may defer delivery up to two years after acceptance of all items under the contract.

Ordering of computer software and documentation generated under the contract may be deferred until three years after acceptance of all items.

## **COPYRIGHT**

When negotiating non-standard license rights in technical data, negotiate the copyright license concurrent with the data rights license. Do not negotiate a copyright license with less rights than the standard limited rights license in technical data.

## **MARKING REQUIREMENTS**

### **VALIDATION**

### **CONFORMITY OF MARKINGS**

### **GOVERNMENT RIGHTS TO CHALLENGE**

### **CONFORMITY AND WARRANTY**

### **SUBCONTRACTOR RIGHTS**

### **FOREIGN CONTRACTORS**

### **INTERNATIONAL ORGANIZATIONS**

### **SPECIAL WORKS**

### **CONTRATOR DATA REPOSITORIES**

The policy and verbiage in the DFARS on the preceding areas of concern in handling computer software and computer documentation are basically the same as for technical data in DFARS 227-71. However, use DFARS 227.72 because the terminology differs slightly and the clauses are specific to software and its related documentation.

## ECONOMIC ESPIONAGE ACT OF 1996

This act is known referred to as the “Trade Secrets Act”. It prohibits economic espionage and theft of trade secrets. It became law in October 1996. The following is a synopsis of what is in this Act:

### Economic Espionage

In General, *any person or persons* who do, attempt to do, or conspire to do, any of the following, knowing that it will benefit any foreign entity, shall be fined up to \$500,000 or imprisoned up to 15 years, or both. If these actions are done by any *organization*, the organization shall be fined up to \$10,000,000. –

1. Steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains a trade secret
2. Without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys a trade secret
3. Receives, buys, or possesses a trade secret, knowing the same to have been stolen or appropriated, obtained, or converted without authorization

### Theft of Trade Secrets

Any *person or persons*, knowingly, and with intent to convert a trade secret that is related to, or included in a product in interstate or foreign commerce to economically benefit anyone other than the owner, and intending or knowing that the action will harm the owner, shall be fined or imprisoned up to 10 years, or both. If these actions are done by any *organization*, the organization shall be fined up to \$5,000,000.

1. Steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information
2. Without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates or conveys such information
3. Receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization

### Criminal Forfeiture

A person sentenced for a violation shall forfeit to the United States:

1. Any property that is, or is derived from, any proceeds obtained directly or indirectly from the violation
2. Any of the person’s property used, or intended to be used, in any way in the violation; if the court determines it be forfeited

## **Conduct Outside the United States**

The Act applies outside the U.S. if :

1. The offender is a citizen or permanent alien resident of the U.S.
2. The offender is an organization under the laws of the U.S, or a State, or political subdivision thereof
3. An act which furthered the violation was committed in the U.S.

## **Definitions**

*Foreign Instrumentality:* Any agency, bureau, ministry, component, institution, association  
Any legal, commercial, business organization, corporation, firm or  
entity that is substantially owned, controlled, sponsored, commanded,  
managed, or dominated by a foreign government

*Foreign Agent:* Any officer, employee, proxy, servant, delegate, or representative of a foreign  
government

*Trade Secret:* All forms and types of financial, business, scientific, technical, economic, or  
engineering info, including patterns, plans, compilations, program devices,  
formulas, designs, prototypes, methods, techniques, processes, procedures,  
programs, or codes, whether tangible or intangible, no matter how stored,  
compiled, or memorialized physically, electronically, graphically,  
photographically, or in writing.

For information to be defined as a trade secret, the owner has to have taken  
reasonable measures to keep it secret and it must have actual or potential  
economic value from not being generally known and readily available to the public.

*Owner:* The person or entity with legal or equitable title, or license.

# CHAPTER 35

## FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS (FFRDC)

## **FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS (FFRDC's)**

The following information is provided to give a general understanding of FFRDC's. We sometimes encounter them in advisory positions in Government contracting. They are entities such as the C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, Software Engineering Institute, and Mitre Corporation. A master Government list of FFRDC's can be obtained from The National Science Foundation (NSF). Primary sponsors provide information to the NSF on the FFRDC's; including agreements, mission statements, funding data and type of R&D being performed.

FFRDC's meet special long-term research or development needs which cannot be met as effectively by existing Government or contractor resources. All work placed with a FFRDC must be within their purpose, mission, general scope of effort, or special competency.

FFRDC's must be sponsored by a Government executive agency or multiple agencies. One agency must be specified as the primary sponsor responsible for management, administration, monitoring, funds and the overall use of the FFRDC. Certain determinations and justifications are required of the sponsoring agency before they may establish a FFRDC or change its purpose and mission.

FFRDC's are operated, managed, and/or administered by either a university or consortium of universities, other not-for-profit or nonprofit organization, or an industrial firm. They operate as an autonomous organization or as a separate unit of the parent organization.

They have more liberal access to Government and supplier data, sensitive and proprietary data, employees and facilities, beyond what is usually allowed with contractors. They must be free of conflict of interest and conduct their business objectively and independently in the public interest. They must fully disclose their affairs to the Government sponsoring agency. They cannot use their privileged information or access to facilities to compete with the private sector. Contact the Directorate of Contracting for any specific case guidance on participation of any FFRDC in the acquisition process.

No DOD fiscal year funds from 1992 or later may be expended to finance a FFRDC if a member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DOD unless the FFRDC has a DOD approved conflict of interest policy.

DOD and NASA may not obligate DOD appropriations to operate an FFRDC that was not in existence before June 2, 1986 until the head of the agency submits a report on the center to Congress. There is a 60 day waiting period once it is submitted to Congress.

### *SPONSORING AGREEMENTS*

A written sponsoring agreement between the Government and the FFRDC is required to establish a FFRDC.

As a minimum the agreement must include:

1. Purpose and mission of the FFRDC
2. Provisions for the orderly termination/non renewal, disposal of assets, settlement of liabilities
3. Identification of retained earnings and a plan for their disposition
4. Prohibition on competing with a non-FFRDC concern on Government solicitations  
( FFRDCs that function primarily as research laboratories may compete on programs which promote research, development, demonstration or transfer of technology.)

5. Understanding as to whether work may be accepted from other than the sponsor, and if so, from what agencies and organizations
6. Any other necessary provisions.

#### *REVIEWS OF AGREEMENTS*

A comprehensive review of the agreement is required before it can be extended. When a sponsor no longer needs the FFRDC, it may be transferred to one or more Government agencies, if appropriately justified. Approval to continue or terminate rests with the head of the sponsoring agency.

## CHAPTER 36

# INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

## INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

### “OFFLOADING” “MIPRS”

**Interagency acquisition:** A procedure by which an agency needing supplies or services obtains them from another agency.

**The Economy Act:** Authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition. By current definition, this applies to agencies other than those under the Department of Defense.

**Offloading:** By current definition - When a requesting agency wants another contracting office within the Department of Defense to contract for a requirement.

#### **Processing Military Interdepartmental Procurement Requests (MIPRs)**

The following guidance for preparing MIPRS has been extracted from the Principal Assistant Responsible for Contracting (PARC) policy memo, dated 10 December 1998:

- a. MIPRs must not be used to circumvent normal contracting through your supporting contracting office.
- b. All MIPRs, including amendments, excluding civilian pay and travel, must be processed through the HQ, INSCOM, Staff Judge Advocate (SJA) and Directorate of Contracting (DOC) offices. Also, MIPRs for intelligence equipment purchases shall be reviewed and approved by the INSCOM Senior Intelligence Officer, the ACofS, G4 (enclosure 1).
- c. MIPRs will have an accepting agency and activity technical point of contact (POC) and telephone numbers. The activity technical POC will interface with the accepting agency POC and the contractor. The activity technical POC is also responsible for ensuring that the supplies or services being procured are received. Whether the MIPR is for supplies or services, the activity technical POC should obtain a copy of the new contractual instrument. If a complete copy of the contractual instrument is not readily available, at a minimum, obtain the statement of work and schedule B.
- d. If supplies or services are to be purchased under an existing contract, the MIPR should specify the contractor and contract number. The activity technical POC should obtain a copy of the existing contractual instrument prior to processing the MIPR request. If a complete copy of the contractual instrument is not readily available, at a minimum, obtain the statement of work and/or schedule B.
- e. MIPRs must provide sufficient detail, to include the period of performance, to permit a clear understanding of the supplies or services being procured. The following supporting documentation shall be attached to the MIPR, such as a statement of work, item description, justification and approval, and/or DD Form 254 Department of Defense Contract Security Classification Specification. MIPRs submitted for review and approval by the HQ, INSCOM SJA and DOC personnel will be returned, if they contain insufficient information. Do not assume that others know what you are purchasing. Explain acronyms.
- f. MIPRs requiring contractor performance within the Nolan Building must contain a justification on why performance in the Nolan Building is required and the number of contractors requiring workspace. Additional approval time will be required to process these types of MIPRs.
- g. MIPRs are required to have the signature of the Staff Head or Deputy, preferably on the document face. MIPRs without the signature of the Staff Head or Deputy will not be processed.
- h. **MIPRs BEING ISSUED TO ANOTHER ARMY AGENCY OR WITHIN DoD** do not require a Determination and Finding (D&F).

i. **MIPRS BEING ISSUED OUTSIDE OF DoD TO ANOTHER FEDERAL AGENCY, (LIKE THE DEPARTMENT OF ENERGY), THAT ARE COMPLIANT WITH THE FEDERAL ACQUISITION REGULATION (FAR).** These MIPRs do require a D&F, enclosure 2. A “Class D&F” may be written to cover periodic continuing requirements. A “Class D&F” differs slightly from a one-time D&F. Upon request, the PARC office will furnish additional guidance on drafting a “Class D&F”.

j. **MIPRS TO THE GENERAL SERVICES ADMINISTRATION** for information technology from GSA programs that are funded through the Information Technology Fund (ITF) do not require a D&F. The more familiar GSA programs that are funded through ITF are the Federal Systems Integration and Management Center (FEDSIM), Federal Computer Acquisition Center (FEDCAC), Federal Information Systems Support Program (FISSP), and the Federal Acquisition Service for Technology (FAST). If you have a GSA MIPR that does not fall under one of the ITF programs, you must prepare a D&F. For a complete listing of the GSA ITF programs refer to <http://OITI.GSA.gov/ITI/ITIHOME.nsf> and <http://www.GSA.gov/ITI/>.

k. **MIPRS BEING ISSUED OUTSIDE OF DoD TO AN AGENCY THAT IS NOT FAR COMPLIANT.** Currently, the only agency to which this applies is the CIA; see enclosure 3 for D&F example of a one-time MIPR approval. If you know that this will be an ongoing requirement, suggest that a “Class D&F” be written.

l. **MIPRS NOT INVOLVING CONTRACTING BY SERVICING AGENCY.** When the servicing agency provides the supplies or services from organic sources a D&F is still required. It may be tailored to recognize that no contracting action is anticipated. The approval for this D&F is a level higher than the requirements manager. The D&F and MIPR still require HQ, INSCOM SJA and DOC review.

m. **PROCESSING CHECKLIST.** In addition to the required information in the referenced memorandum, the enclosed MIPR Processing Checklist shall be completed for all MIPR transactions estimated to exceed \$100,000.00, except amendments. You must complete the checklist in the format provided at enclosure 4, even though some of the information is with the MIPR backup. (Don’t put “see attached MIPR” for the item coverage, this checklist must stand alone.)

n. MIPRs are also reviewed to ensure that proper funds are being obligated. Funding may now cross fiscal years, but the MIPR period of performance may not exceed one year. Staff Program Analysts are responsible for monitoring fund utilization of their Budget Line Items as well as reconciling commitments, obligations, and disbursements with the headquarters’ budget analyst. The staff section is responsible for maintaining records and tracking the status of funds.

o. The PARC office processes all Special Access Program MIPRS.

p. Economy Act D&Fs shall be submitted to the PARC office electronically to: [cdjamis@vulcan.belvoir.amy.mil](mailto:cdjamis@vulcan.belvoir.amy.mil). Hard copy submission is the least preferred method.

The OPARC point of contact for MIPR policy and SAP programs is Cheryl Jamison COML (703) 706-1355, DSN 235-1355. The INSCOM point of contact for all other MIPR processing is Roberta Roberts in the Directorate of Contracting at COML (703) 706-1709, DSN 235-1709.

IACG (710)

MEMORANDUM FOR ACofS, G4

SUBJECT: Designation of MACOM Senior Intelligence Officer (SIO) Review and Approval Authority

1. Under the authority of paragraphs 1-4f and 3-17a and b, Army Regulation (AR) 381-143, the following INSCOM positions, and personnel assigned to perform the duties of those positions, are hereby delegated authority to function as the MACOM SIO for review and approval of use within INSCOM of AR 381-143 procedures to acquire and manage supplies and equipment as Intelligence Property Book items.

- a. Primary: ACofS, G4
- b. Alternate: ACofS, G4, Chief, Supply and Services  
Division

2. Purpose: To permit the above designated officials to review and approve unit staff/coordinated requests to procure, maintain, and account for specified supplies and equipment, required in support of approved intelligence missions, projects, or operational plans, on an Intelligence Property Book under AR 381-143 in lieu of normal requisition, supply, and logistics procedures.

3. Term of Appointment: Indefinite

4. Special Instructions:

a. In acting on requests to use AR 381-143 procedures, the designated officials must evaluate whether the requested supplies and equipment either cannot or should not be obtained through normal supply channels because of overriding security or risk of compromise considerations.

b. Determination that the type and quantity of supplies and equipment requested is reasonable, necessary and appropriate remains the unit commander's responsibility. Similarly, accountability and inventory control of approved Intelligence Property Book items remains a unit command function.

c. Designated officials will indicate approval of each request, prior to any procurement or acquisition, by signing the submitting unit's request for issue document (DA Form 3161, DA Form 3953, or other comparable written supply request).

d. Block approvals of specifically designated categories of equipment are only permitted under the International Merchant Purchase Authorization Card (IMPAC) purchase process.

e. This delegation of authority also applies to bulk procurement initiatives of intelligence property generated by the Headquarters INSCOM Staff for command distribution.

ROBERT W. NOONAN, JR.  
Major General, USA  
Commanding

CF:  
DCSINT (DAMI-CH)  
Dir, IMD

Enclosure 1

## ECONOMY ACT DETERMINATION AND FINDING

1. I have reviewed the requirement for funding (**FILL IN WHAT YOU ARE BUYING**) to the (**NAME THE FEDERAL AGENCY**) for the (**NAME YOUR AGENCY**) as an interagency order under the Economy Act. My review resulted in the following findings:

- a. The proposed acquisition is authorized under the authority of the Economy Act.
- b. The Army is legally authorized to acquire these services.
- c. Funds to support this requirement (**ARE AVAILABLE OR HAVE BEEN PROGRAMMED FOR FY??**).
- d. This action does not conflict with any other agency's authority or responsibility. Specifically, a review of Part 8 of the FAR, Part 208 of the DFARS, or other part as applicable, reveals that the responsibility for acquiring this supply or service has not been assigned to an agency other than the one proposed.
- e. The services cannot be provided in the time required nor more economically by contractors under an Army contract.
- f. The servicing agency has unique expertise and authorities not available within the DoD. (**PROVIDE SOME INFORMATION ON WHY THIS AGENCY HAS UNIQUE EXPERTISE AND AUTHORITY NOT AVAILABLE WITHIN THE DoD IF POSSIBLE**).
- g. The servicing agency regularly performs the type of work required, will accept the order and is FAR compliant.
- h. The services are clearly within the scope of activities of (**NAME THE AGENCY**).
- i. The cost to the Army for the requirement appears to be reasonable. (**IF THE AGENCY CHARGES A FEE FOR THIS SERVICE STATE WHAT THE FEE PERCENTAGE IS**).
- j. The contract administration procedures related to (**NAME THE AGENCY**) contract are adequate for Army requirements.
- k. All approvals and authorizations required by Army and/or DoD policies have been obtained. (**IF SPECIAL APPROVALS AND AUTHORIZATIONS ARE REQUIRED AND HAVE BEEN OBTAINED SPECIFY WHAT THEY ARE AND WHO APPROVED THE ACTION**).
- k. The requirement is a bona-fide need of the Army.

Enclosure 2

**DETERMINATION**

2. Given the above findings, I hereby determine that it is in the best interest of the Government to place an order for **REQUIREMENT**) with **(NAME THE AGENCY)** under the authority of the Economy Act.

-----  
TERRY BATHEN  
Staff Judge Advocate  
HQ, INSCOM

-----  
JAN SHADOWENS  
Principal Assistant  
Responsible for Contracting  
HQ, INSCOM

-----  
**(LEAVE THE SIGNATURE BLOCK BLANK.  
THE OPARC WILL FILL THIS IN)**

**DETERMINATION AND FINDINGS**  
INTERAGENCY SUPPORT UNDER THE ECONOMY ACT  
WITH THE **(NAME THE AGENCY)**

References:

1. 31 U.S.C. 1535 (the Economy Act).
2. Section 844, FY 94 National Defense Authorization Act (P.L. 103-160).
3. Federal Acquisition Regulation (FAR) 17.500 Interagency Acquisition under the Economy Act.
4. Defense FAR Supplement (DFARS) 217.5.
5. Memorandum, Secretary of Defense, February 8, 1994, Subject: Use of Orders Under the Economy Act.
6. Memorandum, Office of Secretary of Defense, OSD DDP (DAR), April 25, 1994, subject: Use of Orders Under the Economy Act, June 29, 1994.
7. Memorandum, ASA (RDA), Delegation of Authority 94-5, Authority to Approve Determinations to Use the Economy Act, June 29, 1994.
8. Memorandum, HQDA, SFRD-KP, subject: Acquisition Letter 94-5, Economy Act Orders Outside DoD, August 4, 1994.

**FINDINGS**

1. I have reviewed the requirement to **(FILL IN WHAT YOU ARE BUYING AND BE SPECIFIC)** that the **(NAME YOUR AGENCY)** proposes to place with the **(NAME THE AGENCY)** as an interagency order under the Economy Act. My review resulted in the following findings:
  - a. The proposed acquisition is authorized under the Economy Act.
  - b. The Army is legally authorized to acquire the supplies or services.
  - c. Adequate funds are available. A Military Interdepartmental Purchase Request in the amount of **(FILL IN AMOUNT)** forwarded to **(NAME THE AGENCY)** for these services. **(IF FUNDS HAVE ONLY BEEN PROGRAMMED THEN CHANGE THE STATEMENT TO REFLECT PROGRAMMED FUNDS IN THE AMOUNT OF ?)**.
  - d. This action does not conflict with any other agency's authority or responsibility. A review of Part 8 of the FAR, 208 of the DFARS, and other parts as applicable, reveals that the responsibility for acquiring this information has not been assigned to an agency other than the one proposed.

Enclosure 3

e. It is more convenient and cost effective to procure these services from **(NAME THE AGENCY)** than by Army direct contract. **(INCLUDE ADDITIONAL INFORMATION, IF AVAILABLE TO SUPPORT THIS STATEMENT.)**

f. The **(NAME THE AGENCY)** has a unique capability not available within DoD to perform these services.

g. The **(NAME THE AGENCY)** regularly performs these services, will accept the order, and can satisfy the requirement.

h. These services are clearly within the scope of activities of the **(NAME THE AGENCY)** and that agency normally contracts for those supplies or services for itself.

i. The cost to the Army for these services is considered reasonable. The **(NAME THE AGENCY AND INCLUDE EITHER, does not charge administrative fees or the fee for this service is ?%.)**

j. The contract administration procedures related to **(NAME THE AGENCY)** contracts are adequate for Army requirements.

k. All approvals and authorizations required by the Army and/or DoD policies/regulations for acquiring these services have been obtained. **(IF SPECIAL APPROVALS AND/OR AUTHORIZATIONS ARE REQUIRED AND HAVE BEEN OBTAINED, SPECIFY WHAT THEY ARE AND WHO APPROVED THE ACTION. IF A MEMORANDUM OF AGREEMENT OR UNDERSTANDING EXISTS BETWEEN INSCOM, NGIC, TAC-D, THAT INCLUDES THIS SUPPORT, SO STATE.)**

l. The requirement is a bonafide need of the Army.

#### **DETERMINATION**

2. Given the above findings, I hereby determine that it is in the best interest of the U.S. Army to acquire these services from the **(NAME THE AGENCY)** under the Authority of the Economy Act.

DATE \_\_\_\_\_ SIGNED \_\_\_\_\_

**LEAVE NAME BLANK - OPARC WILL FILL-IN**

Assistant Secretary of the Army  
(Research, Development and Acquisition)

**MILITARY INTERDEPARTMENTAL PURCHASE REQUEST (MIPR)  
PROCESSING CHECKLIST**

1. What is the cost and purpose of the MIPR? What is the anticipated end result of this MIPR? (Attach Statement of Work)
  
2. Has a cost benefit analysis been done and documented?
  
3. Has the INSCOM Directorate of Contracting been informed of the requirement and do they have a method of obtaining these goods & services in the time required?
  
4. Is the MIPR for a non-DoD agency? If so, has the appropriate Determination and Findings been approved?
  
5. Will this service be performed from the agencies organic resources or via contractor?
  
6. If via contractor, is this a new or existing contract?
  
7. If existing, what is the contract number?
  
8. Who is the activity POC? (Provide name & telephone number)
  
9. Who will be the Technical POC for the requiring activity? (Provide name & telephone number)
  
10. Is a DD 254 required? If so, who will be the Contract Monitor?
  
11. Has the MIPR been approved by the Staff Head or deputy?

Enclosure 4

# CHAPTER 37

## RATIFICATIONS

## **RATIFICATION OF UNAUTHORIZED COMMITMENTS**

Contracts may be entered into on behalf of the Government only by Contracting Officers and appointed International Merchant Purchase Authorization Card (IMPAC) holders.

The Commander, INSCOM has delegated the authority to make Contracting Officer appointments and terminations to the Principal Assistant Responsible for Contracting. The Director of Contracting has the authority to appoint IMPAC cardholders.

No contract may be entered into unless all requirements of law, executive orders, regulations, procedures, and approvals have been met.

Unauthorized commitment - An action/agreement that is not binding because the person who made it lacked the authority to enter into the agreement on behalf of the Government.

Ratification - The act of approving an unauthorized commitment by a Contracting Officer who has the authority to do so.

An unauthorized commitment must be ratified by a Contracting Officer in order to be binding to the Government. Persons making unauthorized commitments cannot assume that the action will automatically be approved and ratified. They may be held personally responsible for the obligation.

Actions can only be ratified if:

1. Supplies or services have been provided to and accepted by the Government, or the Government will benefit.
2. The ratifying official has the required level of authority
3. The resulting contract would otherwise have been legal and proper if it had been entered into by a Contracting Officer or appointed IMPAC cardholder.
4. The price is determined fair and reasonable
5. The Contracting Officer and legal officer concur that payment should be made
6. Funds are available and were available at the time the unauthorized commitment was made
7. Other agency limitations and procedures are met

### **RATIFICATIONS PROCEDURES FOR THE DEPARTMENT OF ARMY**

Approvals: Over \$100,000 - Head of the Contracting Activity

\$100,000 or less - Principal Assistant Responsible for Contracting

\$10,000 or less - Director, Contracting Operations

The form is located in Formflow. The required explanations, routing, signatures and approvals are explained on the form.

# CHAPTER 38

## PROCUREMENT INTEGRITY

## PROCUREMENT INTEGRITY

The Procurement Integrity Act is codified in section 423 of title 41, U.S. Code (Public Contracts). It was substantially revised and rewritten by the National Defense Authorization Act for Fiscal year 1996 (Public Law 104-106).

The Act, as amended, prohibits the unauthorized disclosure of contractor bid or proposal information and source selection information by current or former officers, civilian employees or members of the uniformed services. Another subsection prohibits any person from obtaining such information. Both of these prohibitions apply before the award of the contract to which the information relates.

The law authorizes criminal penalties (confinement for five years and/or a monetary fine) for violating these prohibitions when the covered information is exchanged for something of value or for the purpose of allowing anyone to obtain a competitive advantage in the award of a federal contract. Additional enforcement means include civil and administrative penalties for violations, including suspension or debarment of the contractor.

The Act also includes new uniform standards for recusal and post-Federal employment restriction on specified Federal officials. These portions of the amended statute now apply to all Federal agencies, including DOD. A current DOD official, employee, or military member who is contacted by a DOD contractor regarding possible employment opportunities outside the Federal government must notify his supervisor and agency ethics officials of the offer or negotiations and must either reject the offer or disqualify himself or herself from further personal or substantial participation in any procurement actions concerning the particular DOD contractor making the offer or engaging him or her in such discussions.

Federal personnel who participate personally or substantially in any of the following activities are covered by these recusal and post-employment restrictions:

1. The drafting of a specification developed for that procurement
2. The review and approval of specifications developed for that procurement
3. The preparation or issuance of a procurement solicitation in that procurement
4. The evaluation of bids or proposals for that procurement
5. The selection of sources for that procurement
6. The conduct of negotiations in the procurement
7. The review and approval of the award, modification, or extension of a contract in that procurement
8. Any other specific procurement actions that an agency identifies in its implementing regulations

The amended law includes a broad range of civil and administrative penalties for contractors as well as for agency personnel or employees who violate the recusal or post-employment provisions.

A specific subsection of the revised statute applies to certain former Federal officials for a one-year period after they leave government service if the officials served as the procuring contracting officer, source selection authority, member of the source selection evaluation board or chief of a financial or technical evaluation team at the time the contractor organization was selected or awarded a contract in excess of \$10,000,000. Similar limitations apply to program managers, contracting officers and individuals who made

contract award decisions, established compensation rates for contracts, authorized contract payments, or settled contract claims.

Both the former official and the contracting entity are subject to various civil penalties, administrative sanctions and contractual remedies for violating the above prohibitions during the covered one-year period. Significantly, this includes suspension and debarment actions against the contractor.

The statute contains very comprehensive definitions of numerous terms, including “contractor bid or proposal information”, “source selection information”, “contracting officer”, and “official”.

The statute specifically requires that agency implementing regulations include procedures for current or former Federal officials, employees or military personnel to request advice from agency ethics officials and lawyers regarding the restrictions on post-Federal government employment and one-year restriction on accepting compensation from a contractor. If you are uncertain whether specific conduct may violate the new law, you should request an advisory opinion from INSCOM’s designated ethics official in the Office of the INSCOM Staff Judge Advocate.

