

Section 1: Contracting Procedures

Objectives

- Identify the applicable acquisition regulations, their authority and precedence
- Understand procedures for Simplified Acquisitions
- Identify the two methods of procurement and know when to appropriately use each
- Name the two broad categories of contract types

Acquisition Regulations

FAR	-	Federal Acquisition Regulations
FAC	-	Federal Acquisition Circulars
DFARS	-	Defense Federal Acquisition Regulation Supplement
AFARS	-	Army Federal Acquisition Regulation Supplement
EFARS	-	Engineer Federal Acquisition Regulation Supplement
PIL	-	Procurement Instruction Letters



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Acquisition Regulations

Web Sites:

FAR:

<http://acquisition.gov/far/index.html>

DFARS:

<http://www.acq.osd.mil/dpap/dars/dfarspgi/current>

AFARS:

<http://farsite.hill.af.mil.vfafara.htm>

EFARS:

<https://kme.usace.army.mil/CoPs/Contracting/Engineer%20Federal%20Acquisition%20Regulation%20Supplement/Forms/Contracting%20Documents.aspx>

Labor Laws

Applicability of Labor Laws

- Construction in excess of \$2,000 (Davis Bacon Act)
- Services in excess of \$2,500 (Service Contract Act)
- Supplies in excess of \$15,000 (Walsh-Healey Act)

Written to protect the contractor's workforce,
requires payment of a prevailing wage



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Small Business Requirements (FAR Part 19)

- All purchases under the simplified acquisition threshold (>\$3,000 to \$150,000, \$6,500,000 for commercial items) shall be set aside for small business.
- All other procurement actions shall be considered for set-aside for small business unless determined that there are insufficient qualified small businesses.
- North American Industry Classification Codes (NAICS)
 - Determines applicable small business size standard

Small Business Requirements Categories

Small Business

Small Disadvantaged Business

8(a) Small Business

HUBZone Small Business

Service Disabled Veteran Owned Small Business

Women-Owned Small Business



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Small Business Requirements

- Determining small business size standard
- FAR Part 19

	NAICS		Size Standard
Supply	327320	Ready-Mixed Concrete	500 employees
Service	238990	Concrete Paving	\$14.0 million

NAICS – www.census.gov/naics/2007/index.html

Size Standards -

www.sba.gov/sites/default/files/Size_Standards_Table.pdf

Simplified Acquisition

Authority for Simplified Acquisitions:

- FAR Part 13.003 says “Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the “Simplified Acquisition Threshold”.
- Agencies are required to:
 - Promote competition to the maximum extent possible
 - Establish deadlines for the submission of responses
 - Give suppliers a reasonable time/opportunity to respond
 - Consider all quotations or offers that are received timely
 - Use innovative approaches in awarding contracts



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Simplified Acquisition Procedures (SAP)

- Purchases of supplies, services or construction over \$3,000 but less than \$150,000
- Purchases of Commercial Items purchases over \$3,000 but less than \$6,500,000

Commercial Item (Definition)

Any item or service that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes (off-the-shelf items, etc.)

Examples: computers, mowers, steel, mowing/cleaning services, computer software



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Steps for SAP

- Scope of work/description of item to be purchased
- Approved/Certified PR&C
- Market Research
- Advertise/Issue Request for Quotation
- Receive quotes
- Coordinate with technical customer for verification of requirements
- Award

Micro-Purchases

- Micro-Purchase Threshold:
 - \$3,000 for supplies
 - \$2,500 for services
 - \$2,000 for construction
- To the maximum extent practicable, shall be distributed equitably among qualified suppliers
- May be awarded without soliciting competitive quotations if price is considered reasonable
- No requirement for small business set-aside



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Micro-Purchases

Restrictions:

- Micro-Purchases shall be made with the Government-wide Purchase Card (VISA)
- Micro-Purchases cannot be made by Contracting except for those to vendors who will not accept VISA
- Services – still restricted to \$2,500 (Service Contract Act)
- Construction – still restricted to \$2,000 (Davis-Bacon Act)

Micro-Purchases

GOVERNMENT-WIDE PURCHASE CARD (VISA)

Conditions for use:

- Approved & Certified PR&C
- Purchase must be in accordance with Acquisition Regulations
- Purchase cannot exceed the authorized single purchase limit stated in cardholder's Delegation of Authority
- Approving Official assumes substantial liability when they approve a cardholders monthly statement. Approving Official maintains files for monthly statements and backup documentation
- Approving Official will ensure that disposition of items is in accordance with applicable property regulations, i.e. bar coded, etc.



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Micro-Purchases

GOVERNMENT-WIDE PURCHASE CARD (VISA)

(Cont'd)

- Item must be readily available – no back orders
- Intentional use of the VISA Card for non-approved purposes will be considered an attempt to commit fraud against the government and will result in immediate cancellation of the card as well as disciplinary action.

Simplified Acquisition

PURCHASE ORDER

An offer by the Government to buy certain supplies or nonpersonal services from commercial sources, upon specified terms and conditions. A purchase order becomes a contract by written acceptance or performance.

- Supplies and Services – Issued on DD Form 1155
- For Commercial Items – Issued on SF 1449



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Simplified Acquisition

PURCHASE ORDER (Cont'd)

Conditions and Limitations for Use:

- Fixed Price – Not to exceed the simplified acquisition threshold
- Specify quantity of supplies or services ordered
- Inspection and acceptance at destination
- F.O.B. destination unless valid reason to contrary
- Contain calendar date on which delivery is required
- Contain appropriate contract clauses
- Not binding unless signed by contractor or work begins
- May be cancelled or terminated
- Regulations are not as strict as for contracts

Simplified Acquisition

Blanket Purchase Agreement (BPA)

- Repetitive needs of wide variety of items when delivery schedule cannot be determined in advance
- Provide commercial sources for supplies and services to isolated projects which do not have or need authority to purchase using other means
- Avoid writing of numerous purchase orders



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Simplified Acquisition

UNPRICED PURCHASE ORDER

- May be used when the transaction will not exceed the simplified acquisition threshold
- May be used when impractical to obtain pricing in advance of issuance of purchase order
- Used for:
 - Repair of equipment requiring disassembly to determine nature and extent of repair
 - Sole source and cost cannot be readily established
 - Supplies or service for which prices are known to be competitive but exact price is not known
 - Shall state monetary limitation (Not to exceed amount)

Awards over SAP

Contract actions exceeding the Simplified Acquisition Threshold require more stringent solicitation and award procedures.

Following are procedures required for advertisement and award of contracts over \$150,000 (or \$6.5 M for commercial items).



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Acquisition Planning

1. Requirement of the Competition in Contracting Act (CICA) of 1984
2. Involves decisions on matters such as:
 - * Funds availability
 - * Scope/Specification requirements
 - * Method of procurement (sealed bid/negotiation)
 - * Type of contract (fixed price/cost reimbursement)
 - * Market Research
 - * Small Business Participation

Full and Open Competition

The Competition in Contracting Act (CICA) requires that all interested contractors be given the opportunity to participate in all government procurement actions (full and open competition).

- Advertise requirement (Synopsis in FedBizOpps)
- Hold information meetings
- Pre-bid/proposal meetings
- Small business fairs



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Limited competition required:

- Set-asides (e.g. competition among small businesses)
- Simplified Acquisitions (maximum practicable competition)
- Within scope modifications
- Reprocurement actions (after a termination for default)
- Orders placed against an existing contract

Other Than Full and Open Competition

Exceptions Under 10 U.S.C. 2304(C)

1. Sole Source
2. Unusual and Compelling Urgency
3. Industrial Mobilization
4. International Agreement
5. Authorized or Required by Statute
6. National Security
7. Public Interest



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Other Than Full and Open Competition

Required if an exception is cited:

- (1) Written Justification (J&A)
- (2) Certifications (Technical, Legal, KO)
- (3) Approvals

Under \$650,000 – Chief of Contracting
\$650,000 - \$12.5 M – PARC, Competition Advocate
\$12.5 M - \$85.5 M – HCA (USACE Commander)
Over \$85.5 M – Senior Procurement Executive of Agency

Contracting Procedures

CONTRACT:

- Method of procuring supplies, services, construction or Architect-Engineer services over \$150,000. A contract is a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them.



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Contracting Procedures

- Two primary methods of advertising/selecting contractors:
 - SEALED BIDDING
 - NEGOTIATION

SEALED BIDDING (FAR Part 14)

Solicitation under sealed bidding procedures is called an Invitation for Bid (IFB)

- Use sealed bidding procedures if:
 - Well defined statement of work/product specs
 - The award will be made on the basis of price and other price-related factors
 - It is not necessary to conduct discussions with the responding bidders about their bids; and
 - There is a reasonable expectation of receiving more than one sealed bid



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SEALED BIDDING

- No information released before synopsis – all interested vendors should have access to the information at the same time
- During solicitation phase, no discussions are held except those with the Contracting Officer
- Information that would give one vendor an advantage over another could be considered grounds for protest
- Bid Opening
 - Specific Place, Date and Hour
 - Publicly Opened
- Bids are evaluated based on
 - Price and other price related factors
 - Responsiveness
 - Responsibility

SEALED BIDDING

Steps

- Synopsis (Published in FedBizOpps)
- Issuance of solicitation (IFB) (15 days after synopsis)
- Bid Opening (at least 30 days after solicitation is issued)
 - Additional days should be considered based on -
 - Complexity of requirement
 - Anticipated extent of subcontracting



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Contracting by Negotiation

Any contract awarded using other than Sealed Bidding procedures is a negotiated contract

- Contractor submits a technical proposal as well as a cost proposal
- Offerors may withdraw proposals any time prior to award
- Not required to award to contractor who submits the lowest price/offer
- Award may be made on initial offers or after discussions.

Confidential

Contracting by Negotiation

- Steps
 - Synopsis (concurrently appoint selection board and develop source selection plan)
 - Issue Requests for Proposal (RFP) – 15 days after synopsis
 - Receive Proposals – 30+ days after solicitation depending on complexity of proposal
 - Selection Board meets (CT does price analysis)
 - Develop competitive range (if applicable)
 - Determine whether or not to hold discussions
 - If so: Discussions followed by revised proposals
 - If not: Proceed with award



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Contracting by Negotiation

Source Selection Evaluation Board (SSEB) Responsibilities:

- SSEB appointed by KO based on recommendation of technical element
- Evaluate against evaluation factors included in the solicitation ONLY.
- Each board member evaluates each proposal independently
- Board meets to arrive at consensus score
- Develop SSEB report

Types of Contracts

- Fixed Price
- Cost Reimbursement



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Pre-Award Survey

- Prepared by Contracting Division in an effort to award only to qualified contractors; i.e. contractors that have the capabilities (responsibility) to receive an award
- Formal pre-award survey must be performed on acquisitions over \$150,000
- Pre-award surveys can be performed on any acquisition when the Contracting Officer feels it necessary

Pre-Award Survey

Areas to check during pre-award survey:

- Debarred/suspended bidder's list
- Any available past performance records
- Contact references supplied by the contractor
- Obtain audit assistance as necessary
- Past business experience in relation to services to be performed
- Volume of business already on hand
- Physical capability
- Testing and inspection facilities
- Equipment availability
- Credit references (Dun & Bradstreet, bank, subcontractors)
- Other information considered necessary (accounting system, bonding capacity, financial strength, etc.)



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Pre-Award Survey

If no pre-award survey is done, the following consequences may occur:

- Losses to Government; time, money, service, administrative frustration
- Losses to Contractor; profit, reputation, bankruptcy
- Termination for Default; administrative burden on Government, delayed service while obtaining reprocurement or surety takeover, risk of reversal in favor of contractor after appeal, unexpected costs to the Government

“Contracting – ese”

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Preaward:

B = Invitation for Bid (Sealed Bid/ IFB)
R = Request for Proposal (Negotiated/RFP)
T = Request for Quotation (RFQ)

Award:

C = Lump Sum Contract
D = Indefinite Delivery Contract
P = Purchase Order
F = Delivery Order
A = Blanket Purchase Agreement



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Indefinite Delivery Contracts

- Indefinite Quantity
- Definite Quantity
- Requirements

Park Attendant Services

Construction Delivery Order Contract

Consolidated Service Contract

Equipment Rental

SATOC vs MATOC

SATOC (Single Award Task Order Contract)

One contract is awarded from a solicitation. No further competition is required to write task orders. Not the preferred method.

MATOC (Multiple Award Task Order Contract)

More than one contract is award from a solicitation. Each task order is competed among contract holders. Preferred method.

