

6 FAH-2 H-120

THE ACQUISITION ENVIRONMENT

(TL:CORH-2; 11-19-2003)
(Office of Origin: A/OPE)

6 FAH-2 H-121 KEY PRINCIPLES AND PRACTICES

(TL:CORH-2; 11-19-2003)

a. When the U.S. Government acts as a customer or buyer, it must operate within constraints and guidelines that often do not apply to other buyers. U.S. Government entities are responsible for spending public funds in the public interest, and must act in accordance with that responsibility. Federal law states that no contract or purchase on behalf of the U.S. Government will be made unless authorized by law and paid for with funds appropriated for that purpose.

b. While contracting personnel bear direct responsibility for compliance with controls on U.S. Government acquisition, program managers' activities often are critical as well. The ability to obtain competition often depends, for example, on the requirements office's development of a work statement that is not unnecessarily restrictive. Its ability to justify award decisions depends largely on whether requirements office personnel have played their part in developing sound criteria on which to judge the competitors. This system of separating the duties of the contracting activity and the requirements office provides for a system of checks and balances for better overall control of the contracting process.

6 FAH-2 H-122 THE REGULATIONS

6 FAH-2 H-122.1 The Federal Acquisition Regulation (FAR)

(TL:CORH-2; 11-19-2003)

The Federal Acquisition Regulation, Code of Federal Regulations, Title 48, Chapter 1 (48 CFR Ch. 1), is the primary regulation for use by all Federal agencies when they acquire supplies or services with appropriated funds. It provides uniformity in the Federal acquisition (contracting) process and its concise language, format, and numbering system makes it easy to use and understand.

6 FAH-2 H-122.2 The Department of State Acquisition Regulation (DOSAR)

(TL:CORH-2; 11-19-2003)

Federal agencies are authorized to establish their own regulations to implement and supplement the FAR. Accordingly, the Department of State has established uniform policies and procedures in the Department of State Acquisition Regulation (DOSAR) (48 CFR Ch. 6).

6 FAH-2 H-123 THE NATURE OF A CONTRACT

(TL:CORH-2; 11-19-2003)

a. A contract is an agreement between two or more parties consisting of a promise, or mutual promises, for breach of which the law gives a remedy, or the performance of which the law recognizes as a duty.

b. Unlike most social promises, a contract establishes a binding legal relationship that obligates the parties to keep their promises. In nearly all U.S. Government contracts, one party is the "seller," obligated by the contract to provide goods and services. The other party is the U.S. Government which, as the "buyer," is obligated to pay for those goods or services.

c. All contracts must contain the following elements:

(1) **An offer:** A proposal by an offeror that a contract be entered into;

(2) **An acceptance:** Assent to the offer by the other party, and communication of that assent to the offeror; and

(3) **Consideration:** Things of value in the eyes of the law exchanged by the parties to bind the agreement.

d. In addition, a contract must have a lawful purpose, clarity of terms and conditions, and must be entered into by mentally and legally competent parties.

e. In a U.S. Government contract (other than purchase order or other simplified acquisition method contracts), the bids or proposals from the firms are the offers. Each is made by an offeror seeking to enter into a contract with the U.S. Government. When the U.S. Government, after bid opening or proposal review and negotiation, selects one firm with whom to contract, it performs the act of acceptance when the contracting officer signs the contract.

f. The mutual consideration in U.S. Government contracts usually consists of:

- (1) The delivery of goods or services by the contractor; and
- (2) Payment by the U.S. Government.

g. The Performance Work Statement (see section H-340) or specifications must clearly communicate the U.S. Government's requirements, and must always be in writing.

6 FAH-2 H-124 DEFINITIONS AND ACRONYMS

6 FAH-2 H-124.1 Definitions

(TL:CORH-2; 11-19-2003)

a. **Acceptance:** The act of an authorized representative of the U.S. Government acknowledging that the supplies or services are in conformity with the contract requirements.

b. **Administrative controls:** Safeguards which ensure that contracting will be carried out in conformity with applicable regulations and Department policy.

c. **Amendment:** Modification made to a solicitation.

d. **Buying green:** Obtaining cost efficient products and services that have a reduced impact on the environment through waste minimization, natural resources conservation, and pollution reduction and prevention. When Department domestic acquisitions involve the purchase of an item identified by the Environmental Protection Agency (EPA), known as designated recycled content products, the product must meet the EPA guideline standards unless there is a price, performance, or availability justification for not doing so.

e. **Cardinal changes:** Modifications to an existing contract which are beyond the general scope of that contract and are so extensive that a new contract should be awarded.

f. **Changed conditions:** Construction site/repair conditions which differ significantly from conditions indicated in the contract, or conditions ordinarily encountered in the performance of the type of work in the contract.

g. **Change order:** Unilateral action taken by the contracting officer in order to modify the drawings, designs, specifications, method of shipping or packing, place of inspection, delivery, or acceptance of an existing contract.

h. **Competitive range:** Those proposals which, after evaluation by the technical evaluation panel, are the most highly rated.

i. **Constructive change order:** Informal requests for additional work or services caused by some act or omission on the part of the U.S. Government which causes a contractor extra work, delays, or money.

j. **Contract:** A legal instrument providing for the purchase, lease or barter of property or services for the direct benefit of the U.S. Government.

k. **Contract administration:** The monitoring of the contractor's performance in order to assure compliance with performance requirements and contract provisions.

l. **Contract modification:** Any written alterations in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of an existing contract.

m. **Contracting officer:** An official authorized to enter into or administer procurement contracts and make related determinations and findings.

n. **Contracting officer's representative (COR):** The individual in the requirements office who is responsible for the technical monitoring and evaluation of the contractor's performance.

o. **Cost estimate:** A written calculation of all items included in the scope of the work, tabulated under appropriate cost headings (direct costs, labor, overhead, and profit).

p. **Cost-reimbursement contract:** Contract in which the buyer and seller agree on an estimate of contract costs. The buyer agrees to reimburse the seller for reasonable, allowable, and allocable costs necessary to complete the work.

q. **Cure notice:** A document the contracting officer sends to a contractor to notify the contractor that the contract may be terminated by reason of default if the condition endangering performance of the contract is not corrected in 10 days.

r. **Determinations and findings:** Written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions.

s. **Excusable time delay:** Failure to perform which is beyond the control and without fault or negligence of the contractor.

t. **Federal Business Opportunities (FedBizOpps):** The single point where U.S. Government business opportunities greater than \$25,000,

including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically (<http://www.fedbizopps.gov>). FedBizOpps replaced the *Commerce Business Daily* (CBD) as of January 1, 2002.

u. **Firm fixed-price contract:** A contract that provides for a price which is not subject to any adjustment by reason of cost experience of the contractor in the performance of the contract.

v. **Government technical monitor (GTM):** An individual designated by the contracting officer to assist the COR in monitoring a contractor's performance.

w. **Indefinite-quantity contract:** A contract used for procurements in which the exact number of deliverable items is not known at the time of contracting. The contract provides for a minimum and maximum amount of goods/services which may be ordered under the contract.

x. **Inspection:** The examination and testing of supplies and services to determine whether they conform to contract requirements.

y. **Labor-hour contract:** A contract which provides for the procurement of services on the basis of direct labor-hours at specified, fixed hourly rates (which include direct and indirect labor, overhead, and profit).

z. **Letter contract:** A written authorization to begin work issued prior to the negotiation of a formal contract.

aa. **Level-of-effort contract:** A contract which specifies the number and type of person-hours which the contractor will apply in pursuing the project.

bb. **Modification:** See contract modification in paragraph I of this section.

cc. **Negotiation:** The procedure for awarding contracts without sealed bidding. This method of procurement is used when sealed bidding is not feasible or practicable. Under negotiation, the lowest offeror does not necessarily receive the award, since technical and other factors may be considered as well as cost.

dd. **Performance-based service contracting (PBSC):** PBSC is a method of contracting where the U.S. Government defines the results it is seeking, rather than the process by which those results are attained. An essential element is the standards against which contract performance will be measured. PBSC is the preferred method of contracting for services.

ee. **Performance work statement (PWS):** A description of what the contractor must accomplish in terms of results so that the U.S. Government

can effectively monitor and evaluate the progress and final result of the contract. It is used when conducting performance-based service contracting. It replaces the Statement of Work previously used in service contracts.

ff. **Responsible bidder/offeror:** One who has the technical and financial capacity to secure the necessary resources to deliver the goods or services.

gg. **Responsive bid:** A bid which conforms exactly to the requirements in the Invitation for Bids (IFB).

hh. **Sealed bidding:** Acquisition by competitive sealed bids. This method of procurement requires that specifications be written describing the requirements of the U.S. Government clearly, accurately, and completely, so that the evaluation of bids can be based on the lowest bid submitted by a responsive and responsible bidder.

ii. **Show-cause letter:** A document the contracting officer sends to a defaulting contractor to notify the contractor that the contract may be terminated by reason of default unless the contractor can prove in 10 days that the condition was not his or her fault.

jj. **Solicitation:** Process by which the U.S. Government requests, orally or in writing, offers from prospective contractors for specific items or services. Solicitation documents are Requests for Quotations (RFQs); Invitations for Bids (IFBs); and Requests for Proposals (RFPs).

kk. **Solicitation mailing list:** List of prospective contractors.

ll. **Specifications:** Clear and accurate description of the technical requirements of a service or supply contract.

mm. **Technical evaluation panel (TEP):** One or more technical staff members designated by the contracting officer to evaluate technical proposals, discuss the work with all offerors in the competitive range (if requested by the contracting officer), and prepare a selection recommendation.

nn. **Termination for cause:** A termination under a commercial item contract in the event of any default by the contractor.

oo. **Termination for convenience:** A contract clause designed to give the U.S. Government a unilateral right to terminate the contract when it no longer needs or requires the supplies or services.

pp. **Termination for default:** A contract clause which allows the U.S. Government to terminate a contract when the contractor fails to perform or fails to make progress so as to endanger performance.

qq. **Time-and-materials contract:** A contract that provides for payment of supplies and services on the basis of incurred direct labor hours (at fixed rates) and materials (at cost).

rr. **Time delay:** An interruption during which services, supplies, or work are not delivered in accordance with the performance time schedule stated in the contract.

6 FAH-2 H-124.2 Acronyms

(TL:CORH-2; 11-19-2003)

A/LM/AQM	Office of Acquisition Management
A/OPE	Office of the Procurement Executive
BPA	Blanket Purchase Agreement
CFR	Code of Federal Regulations
CG	Comptroller General
CICA	Competition in Contracting Act
CO	Contracting Officer
COR	Contracting Officer's Representative
CR	Cost-Reimbursement Contract
D&F	Determination and Findings
DOSAR	Department of State Acquisition Regulation
FAH	Foreign Affairs Handbook
FAM	Foreign Affairs Manual
FAR	Federal Acquisition Regulation
FEDBIZOPPS	Federal Business Opportunities
FFP	Firm-Fixed-Price Contract
FMO	Financial Management Officer
FOIA	Freedom of Information Act
FSI	Foreign Service Institute

FSN	Foreign Service National
GAO	General Accounting Office
GFP	U.S. Government-Furnished Property
GSBCA	General Services Administration Board of Contract Appeals
GTM	U.S. Government Technical Monitor
HCA	Head of the Contracting Activity
IFB	Invitation for Bids
JOFOC	Justification for Other Than Full and Open Competition
L/BA	Office of the Assistant Legal Adviser for Building and Acquisitions
OBO	Bureau of Overseas Buildings Operations
OFPP	Office of Federal Procurement Policy
OIG	Office of the Inspector General
OMB	Office of Management and Budget
PBSC	Performance-Based Service Contracting
PSC	Personal Services Contract
PWS	Performance Work Statement
RFP	Request for Proposals
RFQ	Request for Quotations
RM	Bureau of Resource Management
SBA	Small Business Administration
SF	Standard Form
SOW	Statement of Work
TEP	Technical Evaluation Panel
T for C	Termination for Convenience

T for D Termination for Default

UCF Uniform Contract Format

U.S.C. United States Code

6 FAH-2 H-125 THROUGH H-129 UNASSIGNED