

Federal Acquisition Regulation

17.103

proceed with pricing as soon as practical. In no event shall an entire order be priced retroactively.

[48 FR 42219, Sept. 19, 1983, as amended at 50 FR 1742, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 61 FR 39198, July 26, 1996; 62 FR 64926, Dec. 9, 1997]

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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42231, Sept. 19, 1983, unless otherwise noted.

17.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services through special contracting methods, including—

- (a) Multi-year contracting;
- (b) Options; and
- (c) Leader company contracting.

Subpart 17.1—Multiyear Contracting

SOURCE: 61 FR 39204, July 26, 1996, unless otherwise noted.

17.101 Authority.

This subpart implements Section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c) and 10 U.S.C. 2306b and provides policy and procedures for the use of multiyear contracting.

17.102 Applicability.

For DoD, NASA, and the Coast Guard, the authorities cited in 17.101 do not apply to contracts for the purchase of supplies to which 40 U.S.C. 759 applies (information resource management supply contracts).

17.103 Definitions.

As used in this subpart—
Cancellation means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer

- (1) Notifies the contractor of non-availability of funds for contract performance for any subsequent program year, or
- (2) Fails to notify the contractor that funds are available for performance of

the succeeding program year requirement.

Cancellation ceiling means the maximum cancellation charge that the contractor can receive in the event of cancellation.

Cancellation charge means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term canceled.

Multiyear contract means a contract for the purchase of supplies or services for more than 1, but not more than 5, program years. A multiyear contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multiyear contracts and multiple year contracts is that multiyear contracts, defined in the statutes cited at 17.101, buy more than 1 year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

Nonrecurring costs means those costs which are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.

Recurring costs means costs that vary with the quantity being produced, such as labor and materials.

[48 FR 42231, Sept. 19, 1983, as amended at 66 FR 2129, Jan. 10, 2001; 67 FR 43514, June 27, 2002]

17.104 General.

(a) Multiyear contracting is a special contracting method to acquire known requirements in quantities and total cost not over planned requirements for up to 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated may not be available at the time of contract award. This method may be used in sealed bidding or contracting by negotiation.

(b) Multiyear contracting is a flexible contract method applicable to a wide range of acquisitions. The extent to which cancellation terms are used in multiyear contracts will depend on the unique circumstances of each contract. Accordingly, for multiyear contracts, the agency head may authorize modification of the requirements of this subpart and the clause at 52.217-2, Cancellation Under Multiyear Contracts.

(c) Agency funding of multiyear contracts shall conform to the policies in OMB Circulars A-11 (Preparation and Submission of Budget Estimates) and A-34 (Instructions on Budget Execution) and other applicable guidance regarding the funding of multiyear contracts. As provided by that guidance, the funds obligated for multiyear contracts must be sufficient to cover any potential cancellation and/or termination costs; and multiyear contracts for the acquisition of fixed assets should be fully funded or funded in stages that are economically or programmatically viable.

(d) The termination for convenience procedure may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent fiscal years' quantities).

[61 FR 39204, July 26, 1996, as amended at 67 FR 13054, Mar. 20, 2002; 67 FR 43514, June 27, 2002]

17.105 Policy.

17.105-1 Uses.

(a) Except for DoD, NASA, and the Coast Guard, the contracting officer may enter into a multiyear contract if the head of the contracting activity determines that—

- (1) The need for the supplies or services is reasonably firm and continuing over the period of the contract; and
- (2) A multiyear contract will serve the best interests of the United States