



ARMY CONTRACTING AGENCY

Acquisition Instruction

12 March 2008

## FOREWARD

This version of the HQ ACA AI incorporates paragraph numbers that do not coincide to Federal Acquisition Regulation (FAR) Parts. Chapter subparagraphs are numbered sequentially, but do not imply correlation to FAR subparts.

**CHAPTER 1 - FEDERAL ACQUISITION REGULATION SYSTEM.**

(Implements FAR 1.301, AFARS 5101.301(c), AFARS 5101.304(1), FAR 1.403, AFARS 5101.601(5), AFARS 5101.602-2-90, DFARS 201.602-2(2), AFARS 5101.602-3, AFARS 5101.603-1, and AFARS 5101.690-1).

1.1. Purpose, Authority and Issuance. This Acquisition Instruction (AI) establishes general contracting procedures for the Army Contracting Agency (ACA). It is issued pursuant to Federal Acquisition Regulation (FAR) 1.301(a)(2), and provides internal agency guidance, including designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements. It contains procedures required by regulation to be established by the Head of the Contracting Agency (HCA); procedures that implement policies; and procedures necessary to ensure certain practices are consistent throughout the ACA. Where extensive standard operating instructions or detailed procedures are required, this instruction may reference ACA policy. ACA guides and templates referred to in this instruction can be found in the on-line library at the following World Wide Web (www) address:  
<http://www.aca.army.mil/Community/procedures.htm> (Implements FAR 1.301)

1.2. Maintenance of ACA AI. The ACA Director, Operations and Policy Directorate, (SFCA-CO), prepares and maintains the ACA AI, including on-line maintenance. The AI may be supplemented by:

1.2.1. Local contracting instructions issued by Principal Assistants Responsible for Contracting (PARCs) shall be consistent with this AI, be kept to a minimum, and be provided to SFCA-CO for review and approval prior to issuance or update.

1.2.2. ACA policy memoranda used to provide additional guidance or policy pending possible incorporation into the AI or other policy document. ACA policy memoranda will be issued under the signature of the ACA Director, with a four to five character reference beginning with the letter "P" followed by three to four numeric characters (such as P001 or P0016). Active and rescinded letters/memoranda will be maintained electronically at <http://www.aca.army.mil/Community/policies.htm>

1.2.3. Acquisition Information Bulletins (AIBs) ) means informal information for contracting personnel including (but not limited to): advance notification of changes in acquisition regulations; reminders; procedures; and general information.

1.3. Policy. Implementation of the FAR, Defense Federal Acquisition Regulation Supplement (DFARS) and Army Federal Acquisition Regulation Supplement (AFARS) are contained in the Headquarters, Army Contracting Agency Instruction. SFCA-CO issues the ACA AI for the ACA Director under authority prescribed in AFARS 5101.304(1).

1.3.1. Nonstandard clauses that will be used on a repetitive basis and will not have significant cost or administrative impact on contractors or offerors or will not have a significant effect outside the internal operating procedures of ACA, shall be reviewed by the Director of Contracting, local experts, legal counsel and approved by the PARC. After it is cleared for use, forward a copy of each non-standard clause to SFCA-CO. The PARC may delegate authority to the Director of Contracting to approve and use non-standard clauses on a one-time basis. The contract file must document the rationale for use of such clauses. (Implements AFARS 5101.301(c))

1.4.. Deviations from the FAR. All proposed individual deviations must be reviewed by legal counsel before they are approved by the PARC. (Implements FAR 1.403).

#### 1.5. PARC Responsibilities.

1.5.1. The HCA has delegated certain HCA authorities to PARCs in individual PARC appointment letters. Additional general delegations are identified in this instruction and other ACA policy memoranda.

1.5.2. PARCs shall ensure that ACA AI dollar thresholds established are not exceeded. The value for threshold determination is the maximum potential amount of funds that could be obligated over the life of the action, including all contract options.

1.5.3. The senior official of the contracting office shall forward all actions requiring PARC execution or approval to the cognizant PARC Office. These actions will contain a copy of all reviews performed at that level, including the legal review, and the Contracting Officer's responses to review comments.

1.5.4. Unless otherwise prescribed, the PARC will submit all contract actions requiring HCA or higher level approval for staffing to the HCA.

1.5.5. Termination of PARC appointment will be by letter. Termination may be for such reasons as reassignment, retirement or unsatisfactory performance.

1.5.6. Alternate PARC. The HCA is authorized to appoint an alternate PARC.

1.5.6.1. The HCA shall appoint the Alternate PARC in writing and specify any limitations on the authority to be exercised, other than limitations contained in applicable law or regulation.

1.5.6.2. The Alternate PARC shall have the same responsibilities and

duties as the PARC, unless otherwise stated in the Alternate PARC's appointment letter.

1.5.6.3. The Alternate PARC will only execute responsibilities in the absence of the PARC.

1.5.6.4. Termination of Alternate PARC appointment will be by letter. Termination may be for such reasons as reassignment, job termination, or unsatisfactory performance. No termination shall operate retroactively. (Implements AFARS 5101.601(5))

1.6. Appointment of Ordering Officers. Authority to appoint ordering officers is delegated to Chiefs of Contracting Offices with the ability to redelegate this authority to a warranted Contracting Officer. (Implements AFARS 5101.602-2-90).

1.7. Contracting Officer's Representatives (CORs). (Implements DFARS 201.602-2(2))

1.7.1. CORs must be designated prior to contract performance for all services greater than \$2,500 to ensure adequate surveillance is performed. This guidance is consistent with Deputy Assistant Secretary for Army (Policy and Procurement) Memorandum issued in February 2007.

1.7.2. The requiring activity nominates the COR. The nomination memorandum must include the nominee's qualifications.

1.7.3. It is the contracting officer's responsibility to appoint a trained Contracting Officer's Representative knowledgeable of the technical requirements to oversee contract performance. Refer to "ACA COR Guide and Minimum Requirements for Contracting Officer's Representative (COR) Training" located at the following web site:

<http://www.aca.army.mil/Community/procedures.htm>

1.7.3.1. At a minimum, the COR must complete the Defense Acquisition University (DAU) on-line continuous learning module entitled "COR with a Mission Focus" (CLC 106) at <http://learn.dau.mil> every three years. A current copy of the certificate shall be filed in the contract and the COR's file. (Implements DFARS 201-602-2(2))

1.7.4. The Contracting Officer shall provide a copy of the COR appointment memo to the COR and his/her supervisor, as appropriate. The COR's supervisor may address the contribution of CORs in monitoring the administration of contracts as appropriate in annual performance reviews. This guidance is consistent with the Director, Defense Procurement and Acquisition Policy Memorandum issued 06 December 2006.

1.8. Ratification of Unauthorized Commitments. All ratification actions over \$100,000 must be approved by the Director, ACA. Submit the Request for Ratification of Unauthorized Commitment Form utilizing the form and specific supporting documentation described in ACA Policy Letter P0016 located at the following web site: [www.aca.army.mil/Communities/policies.htm](http://www.aca.army.mil/Communities/policies.htm). All ratifications and supporting documentation shall be submitted through the PARC to SFCA-CO. (Implements AFARS 5101.602-3).

1.9. Selection, Appointment, and Termination of Appointment.  
General.

1.9.1. Authority to appoint Contracting Officers is delegated to the PARCs. Nomination for appointment shall contain sufficient information to document that the individual meets the requirements of FAR 1.603-2, DFARS 201.603-2 and AFARS 5101.603-2 regarding qualifications and shall use Request for Selection and Appointment of Contracting Officer, Request for Termination of Contracting Officer Warrant and Contingency Contracting Officer Warrant Templates (Appendices 1 through 4).

1.9.2. Army contracting personnel deploying to support operational or contingency missions fall under the operational control of the cognizant theater PARC. Those PARCs determine the authorities to be delegated and issue warrants based on their mission assessment and analysis of the experience, maturity and capabilities of each individual Contracting Officer. This policy allows our war fighting PARCs to deviate from standard warrant language as needed based on this analysis and their mission requirements. For further guidance on Contingency Contracting Officer Warrants see Policy Memorandum P004 located at: [www.aca.army.mil/Communities/policies.htm](http://www.aca.army.mil/Communities/policies.htm)

1.9.3. All ACA overseas PARCs shall recognize and honor the information and levels presented for a contracting officer position by a warranted member of other Army organizations, Navy, (including Marine Corps) and Air Force assigned to them to support a contingency mission. When an Air Force or Navy candidate is identified on orders for such deployment, request a copy of any previously held warrant(s) with a suspense date no less than 2 working days before arrival in theater. In addition, request documentation of the candidate's highest certification level and highest college degree earned. A warrant commensurate with the level of expertise and experience demonstrated by these documents and that supports mission requirements will be issued upon a candidate's arrival in theater, except as specified in paragraph 1.9.4.

1.9.4. If the information requested is not received in the timeframe requested, or if there is a reason the PARC believes the same level of

warrant as held previously is not appropriate, an immediate notice should be provided to the HCA, with a copy to the Chief of Staff. If the discrepancy cannot be resolved at that level, DASA(P&P) will be notified before denying a reciprocal Service warrant. The HCA is also to be notified if the PARC believes additional training is required for a contingency contracting military officer or Department of Defense civilian. (Implements AFARS 5101.603-1).

1.9.5. Selection and Appointment. At a minimum, the request for selection and appointment of Contracting Officer shall contain the following:

1.9.5.1. Name (as it will appear on the Contracting Officer Warrant), Duty Assignment, Position, Grade/Rank, Series and Certification Level.

1.9.5.2. Brief description of proposed type of contractual actions (i.e., Contracts, grants, cooperative agreements, other transactions, Economy Act Orders, etc.).

1.9.5.3. Limitations on contracting authority (i.e, dollar threshold, limited warrant, unlimited warrant).

1.9.5.4. The following procedures shall be used when selecting and appointing Contracting Officers:

1.9.5.4.1. Enclose a copy of an updated and signed Acquisition Career Record Brief (ACRB). Military requests shall include a copy of their Officer Record Brief (ORB) and for enlisted personnel a copy of their Enlisted Records Brief (ERB). Military requests should also include a copy of the most recent and signed ACRB.

1.9.5.4.2. Provide previous Contracting Officer experience and limitations imposed. (See Appendix 1 for standard language to be placed on each Contracting Officer Certificate of Appointment).

1.9.5.4.3. The request for Contracting Officer selection and appointment memorandum shall be processed by the Director of Contracting along with the Certificate of Appointment and a signed DD Form 577 (Appointment/Termination Record – Authorized Signature) and forwarded to the Principal Assistant Responsible for Contracting (PARC) for authorization. (See Appendix 2 for sample memorandum.) All Contracting Officers shall be appointed in writing on an SF 1042, Certificate of Appointment and specify any limitations on the scope of authority to be exercised, other than the limitations contained in applicable law or regulation.

1.9.5.4.4. The Director of Contracting shall submit an electronic warrant file to the PARC that includes the following scanned documents: memorandum signed by the requester, memorandum for approval and signature by the PARC, signature card, Certificate of Appointment, ACRB/ORB/ERB/DA Form 2/2A and other supporting documentation. The electronic warrant files and Contracting Officer log will be maintained and updated by each PARC's office. The PARC's Office shall verify that 40 hours of continuous learning are maintained each year as part of the warrant qualifications. Failure to maintain the continuous learning requirements may result in suspension of the warrant, until the 40 hour requirement is fulfilled.

1.9.5.4.5. The newly appointed Contracting Officer information or adjustments, shall be keyed into the Standard Procurement System (SPS)/Procurement Desktop (PD2) by the SPS/PD2 systems administrator located in each office.

1.9.5.4.6. Each appointing authority shall promptly distribute copies of instruments of appointment as follows:

1.9.5.4.6.1. Original to the individual appointed along with an official letter. (See Appendix 3 for sample memorandum).

1.9.5.4.6.2. One copy to the activity having custody of the military personnel record for permanent retention in the personnel file of each military contracting officer; and

1.9.5.4.6.3. One copy to the servicing Civilian Personnel Office having custody of the civilian personnel records for input into the appropriate personnel data system of the type, date, and amount of the instrument.

1.9.5.4.7. All appointments shall be reviewed at least once every two years by the appointing authority to determine whether each contracting officer has maintained professional proficiency and otherwise remains qualified. Warrant authority shall be terminated or reduced in scope, when justified and documented accordingly. (Implements AFARS 5101.603-1).

1.9.6. Termination. The following procedures will be utilized when terminating Contracting Officer's warrant:



1.9.6.1. Requests for termination of a Contracting Officer's Warrant shall be by formal letter to the PARC and will include the reason and the rationale that justifies the termination.

1.9.6.2. The termination request will be processed by the Director of Contracting and forwarded to the PARC for authorization and updating of the electronic warrant file. The termination shall be keyed into the SPS/PD2 by the appropriate SPS/PD systems administrator. (See Appendix 4 for sample memorandum.) (Implements AFARS 5101.603-1).

1.1. Management Control. Use Appendix BB of the AFARS, "Management Control Evaluation Checklist" to conduct Review & Assessments (R&A) and document any supplementation. If PARCs or contracting offices believe additional items should be addressed on the management control and evaluation checklist or have developed additional checklists, their recommendations shall be forwarded to the ACA Resource Management Directorate (SFCA-RM) for approval. Director of Contracting Offices shall provide yearly input into the Commander's Annual Statement of Assurance and highlight any material weaknesses reported during the fiscal year. Any proposed material weakness shall be immediately brought to the attention of the Director, ACA through the ACA Resource Management Directorate (ATTN: SFCA-RM) along with recommended corrective action. Any performance agreement or standards for managers with management control responsibility shall include an explicit statement of said responsibility. The ACA (R&A) will be conducted as determined by the ACA, Director with all submissions to the ACA Operations and Policy Directorate (ATTN: SFCA-CO). (Implements AFARS 5101.690-1).

1.11. At least on a quarterly basis, Directors of Contracting Offices shall provide the ACA Review and Outreach Directorate (ATTN: SFCA-RA) information regarding upcoming external inspections, reviews and audits. This information may be provided by e-mail and in any format. The Internal review audit (IRA) activities that should be reported are those that are being conducted by the AAA, DAIG, DoDIG, and GAO, as well as Army-wide reviews that are being conducted by Internal Review offices.

1.11.1. Directors of Contracting Offices shall cooperate fully with IRA agencies during audits and reviews. However, all written responses to IRA report recommendations shall be routed through the respective PARC office to HQ ACA (SFCA-RA) unless otherwise directed. Both command and Official Army Position memos shall be signed at the Director, Army Contracting Agency level or higher.

1.11.2. Directors of Contracting Offices shall also cooperate with local Internal Review offices during their reviews and may provide written replies to reports that pertain to local (non-Army-wide) reviews unless specifically precluded by PARC-level policy.

**CHAPTER 2 – DEFINITION OF WORDS AND TERMS**

RESERVED

**CHAPTER 3 – IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST** (Implements FAR 3.101)

3.1 Standards of Conduct. See “ACA Guide Contractor’s in the Workplace” for specific guidance on dealing with contractor representatives and prohibited

practices. This Guides is available at:  
<http://www.aca.army.mil/Community/procedures.htm>

**CHAPTER 4 -ADMINISTRATIVE MATTERS** (Implements AFARS 5104.1, FAR 4.4 and FAR 4.602)

4.1. Legal Reviews. At a minimum, legal reviews will be conducted for any action requiring higher headquarters review, on proposed contract actions over \$500,000. Contracting Officers may also request legal reviews below the above threshold on a case-by-case basis.

4.1.1. Other actions requiring legal review include, but are not limited to, settlements, novation and change-of-name agreements, protests, justification and approval documents (J&As), use of local clauses and provisions, acquisition plans, acquisition strategies, Congressional inquiries, determinations of nonresponsiveness, suspension and debarment actions, terminations, disputed claims, late bid determinations, mistakes in bids/proposals, final decisions, appeals, ratifications, actions with significant potential for environmental impact, proposed deviations from generally accepted contracting practices (including ACA policy and guidance), and novel/experimental contracting approaches.

4.1.2. When legal counsel is not available at the contracting activity, the Contracting Officer will request support from the installation Office of the Staff Judge Advocate, and simultaneously notify the ACA Office of the Command Counsel (through the Regional Counsel), of the request. The ACA Regional Counsel and Chief Counsel should be advised of substantial shortfalls in legal support to contracting activities as they occur, so they can participate in the problem-solving process, as required.

4.2. Other Reviews. Where appropriate, include technical expert(s) in the requirements area, to include Quality Assurance specialists, Small Business Specialists, and Competition Advocates in the review of proposed contract actions. (Implements AFARS 5104.1).

4.3. Safeguarding Classified Information Within Industry. For general guidance needed to complete a Contract Security Classification Specification (DD Form 254) refer to “ACA DD Form 254 Instructions Guide” located at <http://www.aca.army.mil/Community/procedures.htm>. (Implements FAR 4.403(c)(1)).

4.4. Federal Procurement Data System. For specific guidance on the Federal Procurement Data System and Contracting Action Report Data refer to ACA Policy Memorandum entitled Contracting Action Report (CAR) Data available on Army Knowledge Online (AKO) (Implements FAR 4.602).

## **CHAPTER 5 - PUBLICIZING CONTRACT ACTIONS** (Implements FAR 5.003, FAR 5.403, AFARS 5105.404-1(a) and AFARS 5105.502).

5.1. Scope of Part. Governmentwide Point of Entry. Post notices to the Governmentwide Point of Entry (GPE) through the Army Single Face to Industry <https://acquisition.army.mil/asfi> which is linked and posted to FedBizOpps. The

official date of publication or notice is when the item appears on FedBizOpps. (Implements FAR 5.003).

5.2. Requests from Members of Congress. A congressional inquiry relating to contract issues that is received by the ACA or PARCs will be sent to the appropriate office for preparation of the draft response. When the inquiry is received directly by the office, a copy will be forwarded through the PARC to SFCA-CO immediately for tasking. If it is determined that responsiveness “would result in disclosure of classified matter, business confidential information, or information prejudicial to competitive acquisition,” the Contracting Officer shall, within three working days after receipt of the inquiry, prepare the proposed interim reply, obtain legal concurrence, and forward both, with full documentation, to the ACA Congressional Affairs Contact Officer (CACO), SFCA-CO for transmittal to the Agency Head. An interim reply indicating the action being taken and addressed to the respective Member of Congress shall also be sent to the Army’s Office of Chief of Legislative Liaison. Normally, the inquiry will be completed within five working days of date of receipt to final dispatch. Use the fastest possible means to reply to the congressional inquiry. “ACA Congressional Inquiries Guide” and Army Regulation (AR 1-20), Congressional Inquiries provides additional guidance. The “ACA Congressional Inquiries Guide” is accessible on Army Knowledge Online (AKO). (Implements FAR 5.403).

5.3. Release Procedures. Directors of Contracting Offices are authorized to release long range acquisition estimates, without the power of redelegation. (Implements AFARS 5105.404-1(a)).

5.4. Newspapers. Directors of Contracting Offices are delegated the authority to approve publication of paid advertisements in newspapers. (Implements AFARS 5105.502).

**CHAPTER 6 - COMPETITION REQUIREMENTS** (Implements DFARS 206.302-5, FAR 6.303-2, FAR 6.304, AFARS 5106.501 and AFARS 5106.502(b)(2)).

6.1. Authorized or Required by Statute. Application. The authority in FAR 6.302-5, Authorized or Required by Statute shall not be used to place sole

source awards with non profit agencies or workshops under the Ability One Program unless the item or service is already on the procurement list. (Implements DFARS 206.302-5).

6.2. Approval of the Justification. Approval levels for J&As shall be in conformance with the following table:

	<b>Review</b>	<b>Approval</b>
<b>&gt;\$100K to \$550K</b>	Legal, Office of Small Business Programs (if not set-aside for small business)	Contracting Officer
<b>Over \$550K to \$11.5M</b>	Legal, Office of Small Business Programs, Chief of Contracting Office	Special Competition Advocate
<b>Over \$11.5M to \$78.5M</b>	Legal, Office of Small Business Programs, Special Competition Advocate, PARC	HCA or Designee
<b>Over \$78.5M</b>	Legal, Director, Office of Small Business Programs, Department of the Army, Special Competition Advocate, PARC, HCA or designee.	Senior Procurement Executive (SPE)

6.3. Approval Thresholds. When necessary, obtain verbal approval from the approving authority (see the above table) before the release of any solicitation or before the execution of the contract action (e.g., modification) with an estimated price at or under \$78.5 million that cites unusual and compelling urgency as the authority for other than full and open competition. Follow-up the initial verbal approval with a written J&A within fifteen working days.

6.4. If a contract action exceeding \$78.5 million must be awarded prior to final approval of the J&A, the J&A shall be submitted for approval through the PARC to arrive at the ACA, SFCA-CO not later than 30 working days after contract award so that the document can be reviewed and forwarded to the SPE. When the approving authority grants prior verbal or electronic approval, the name and title of the approving authority and date of the approval shall be included in paragraph two of the J&A.

6.5. Technical and requirements personnel must certify on the J&A document any data they provide to support their recommendation for other than full and open competition. The technical certification should be made by an individual knowledgeable about and responsible for the technical (or functional) aspects of the procurement.

6.6. For specific guidance on the preparation of J&A's, please see the "ACA Justification and Approval Guide" located at: :  
<http://www.aca.army.mil/Community/policies.htm> (Implements FAR 6.303-2).

6.7. Appointment of Special Competition Advocate. The HCA will designate Special Competition Advocate(s) and alternate Special Competition Advocates, when necessary, who are responsible for approving actions up to \$11.5 million for individual regions and commands. PARCs shall submit nominations to the SFCA-CO. The nominee must be a senior official who is independent of the Contracting Officer. Electronic transmittal of the nomination is recommended. (Implements AFARS 5106.501).

6.8 Special Competition Advocates shall submit the reports required by AFARS 5106.502(b)(2) to the ACA Special Competition Advocate through the SFCA-CO five working days prior to November 15<sup>th</sup> of each year. (Implements AFARS 5106.502(b)(2)).

## **CHAPTER 7 - ACQUISITION PLANNING** (Implements AFARS 5107.104 and AFARS 5107.170)

7.1 Acquisition Plans. For guidance on advance acquisition planning, please



see “ACA Advance Acquisition Planning Guide” available at :  
<http://www.aca.army.mil/Community/procedures.htm> (Implements AFARS  
5107.104)

**CHAPTER 8 - REQUIRED SOURCES OF SUPPLIES AND SERVICES,**  
(Implements FAR 8.002 and FAR 8.704).

8.1 Priorities for Use of Government Supply Sources. Contracting Officers must verify that the requirement is not suitable for The AbilityOne Program performance before proceeding with a Federal Supply Schedule purchase or a commercial source purchase, including those made under the 8(a) program or via small business set-aside. This policy applies under all acquisition methods,

including simplified, sealed bid and negotiated procedures. It also applies to all types of contract vehicles awarded. If the acquisition is not suitable for Ability One Program performance, document the file with the rationale. The instructions for offering a requirement as a possible addition to the AbilityOne procurement list are in the Code of Federal Regulations 51-2 at [http://www.jwod.gov/jwod/library/JWOD\\_Regulations\\_51\\_2.htm](http://www.jwod.gov/jwod/library/JWOD_Regulations_51_2.htm). (Implements FAR 8.002)

8.2.. *Supplies*. Where geographic areas, quantities, percentages or specific supply locations for a commodity are listed, the mandatory provisions of the AbilityOne Program apply only to the portion or portions of the commodity indicated by the Procurement List.

8.3. *Services*. When the location or geographic area(s) are listed on the Procurement List, only the service for the location or geographic area(s) listed must be procured from the nonprofit agency, except as provided in replacement services. If the service is on the Procurement List to meet the needs of a government entity at a specific location and the entity moves to another location, the service at the new location is automatically considered to be on the Procurement List. The incumbent qualified nonprofit agency will perform the service at the new location, unless another contractor is already providing the service at that location. If another contractor is providing the service at the new location, the service will not be placed on the Procurement List unless the Committee adds it. If another government entity moves into the old location, the service at that location will remain on the Procurement List to meet the needs of the new government entity. Where the Procurement List indicates no location or geographic area, it is mandatory that the total government requirement for that service is procured from a nonprofit agency. (Implements FAR 8.704)

8.4. Application of Army Regulation (AR) 210-25, Vendor Facility Program for the Blind on Federal Property – Randolph-Sheppard Act. For guidance on the application and procedures to be followed when acquiring military dining facilities, see Army Contracting Agency Policy Memorandum P006, “Randolph Sheppard Act” located at : [www.aca.army.mil/Communities/policies.htm](http://www.aca.army.mil/Communities/policies.htm)

## **CHAPTER 9 - CONTRACTOR QUALIFICATIONS** (Implements DFARS 209.104-1(g)(i) and AFARS 5109.404(c)(7)).

9.1. *General Standards*. To ensure all prospective contractors are responsible, qualified and eligible to receive an award, please see Policy Memorandum entitled “Incorporation of anti-Terrorism Measures Into the Contracting Process”

available on the AKO web site. (Implements DFARS 209.104-1(g)(i).

9.2. List of Parties Excluded from Federal Procurement and Nonprocurement Programs. Check the Excluded Parties List System at <http://epls.gov> before soliciting an offer from, awarding a contract or modification that changes the existing scope of the contract, or consenting to subcontract with any potential contractor. (Implements AFARS 5109.404(C)(7)).

## **CHAPTER 10 – MARKET RESEARCH** (Implements FAR 10.001)

10.1. Policy. For guidance on market research, refer to “ACA Market Research Guide” on the HQ ACA web page located at :  
<http://www.aca.army.mil/Community/procedures.htm>

**CHAPTER 11 – DESCRIBING AGENCY NEEDS**

RESERVED

**CHAPTER 12 – ACQUISITION OF COMMERCIAL ITEMS**

RESERVED

**CHAPTER 13– SIMPLIFIED ACQUISITION PROCEDURES.** (Implements DFARS 213.306).

13.1. SF 44, Purchase Order-Invoice-Voucher. PARCs may be given authority by the Director of the Army Contracting Agency (ACA) on a case by case basis to use the SF 44, Purchase Order-Invoice-Voucher instead of the government-wide purchase card. This authority will only be exercised when local conditions do not support use of the purchase card, e.g., when local merchants do not accept credit cards or when the local e-commerce infrastructure has been compromised. In that event, after ACA has granted authority, ordering officers may use the SF 44 within the limitations imposed on purchase cards by Defense Federal Acquisition Regulation Supplement DFARS 213.301 instead of the limitations imposed on SF 44 use at DFARS 213.306(a)(1).

## **CHAPTER 14 – SEALED BIDDING**

RESERVED

**CHAPTER 15 – CONTRACTING BY NEGOTIATION** (Implements FAR 15.201, FAR 15.3, AFARS 5115.303, FAR 15.305(b), FAR 15.305(c), FAR 15.306(c), FAR 15.406 and FAR 15.6).

15.1. Early Exchanges with Industry. To permit industry the maximum opportunity to participate in ACA acquisitions, the use of requests for information (RFIs) and draft requests for proposals (DRFPs) are encouraged. They must be



posted on Army Single Face to Industry (<https://Acq.Army.mil/asfi>) which is linked and posted to FedBizOpps. Acquisition regulations encourage early exchanges with industry about planned procurements. The purpose is to improve the understanding of Government requirements and industry capabilities. Potential offerors then have an opportunity to judge whether or how they can satisfy the requirements. Such exchanges also enhance our ability to obtain quality supplies and services at reasonable prices and increases efficiency in proposal preparation, evaluation, negotiation and contract award. Particular care must be taken to ensure that source selection or proprietary data are not disclosed, including any potential offer's confidential business strategy.

15.1.1. Emphasize in the DRFP that a potential offeror may exchange information about internal business practices or potential solutions to the Army on a confidential basis. The DRFP is not a solicitation, but a mechanism for potential offerors to comment on all aspects of the solicitation and identify unnecessary or inefficient requirements. Information offerors need to prepare their proposals, however, will be disclosed to all potential offerors at the earliest possible opportunity. When using techniques involving one-on-one communications, any contacts with potential offerors should include a representative from the contracting office.

15.1.2. Whenever feasible, Contracting Officers should include a summary of the disposition of significant DRFP comments with the final RFP.

15.1.3. If performance-based payments are planned to be used in a competitive negotiated acquisition, the DRFP shall request potential offerors to suggest terms, including performance events or payment criteria. Contracting Officers may use that information to establish a common set of performance-based payment parameters in the formal RFP when practicable. (Implements FAR 15.201).

15.2. For guidance on source selection as part of the competitive negotiation process, please see "ACA's Best Value Guide" on the HQ ACA web site located at : <http://www.aca.army.mil/Community/procedures.htm>. (Implements FAR 15.3).

15.3. Source Selection Authority Responsibilities. The Source Selection Authority (SSA) shall establish the Source Selection Organization, Source Selection Evaluation Board (SSEB) and Source Selection Advisory Council (SSAC) in writing. (Implements AFARS 5115.303).

15.4. Non-Government personnel. Appropriate Organizational Conflict of Interest (OCI) clauses shall be included in the contract through which non-Government personnel are provided. (Implements 15.305(c)).

15.5. Evaluation of a single proposal. If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the SSA shall direct the contracting officer to:

15.5.1. Award without discussions (if permitted by the solicitation) provided the contracting officer determines that adequate price competition exists (see FAR 15.403-1(c)(1)(ii);

15.5.2. Award after negotiating an acceptable contract. (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.403-1); or

15.5.3. Reject the proposal and cancel the solicitation. (Implements FAR 15.305(b)).

15.6. Competitive Range. Obtain legal review of competitive range determination before SSA approval. (Implements 15.306(c)).

15.7. Documentation. For instructions on the preparation of prenegotiation objective memorandums and price negotiation memorandums, refer to "ACA Prenegotiation Objective Memorandum (POM) and Price Negotiation Memorandum Guide" on the ACA web page available at : [www.aca.army.mi./Communities/policies.htm](http://www.aca.army.mi./Communities/policies.htm). (Implements FAR 15.406)

15.8. Unsolicited Proposals. For detailed guidance on processing unsolicited proposals, refer to ACA guide for Processing Unsolicited Proposals at : <http://www.aca.army.mil/Community/procedures.htm>. (Implements FAR 15.6).

## **CHAPTER 16 - TYPES OF CONTRACTS** (Implements DFARS 216.405-2, AFARS 5116.405-2(b)(2), FAR 16.401 and FAR 16.505(b)(5)).

16.1. Cost-plus-award-fee contracts. Approval of a Determination and Findings (D&F) is required when using a cost-plus-award-fee type contract, and it is determined that the work to be performed is such that it is neither feasible, nor

effective to devise predetermined objective incentive targets applicable to cost, technical performance or schedule. The HCA has delegated this approval authority to the cognizant PARCs. Specific guidance on award fee pool percentages, rollover and performance ratings are contained in ACA Policy Memorandum P0020 “Proper use of Award Fee Contracts and Award Fee Provisions” located at [www.aca.army.mil/Communities/policies.htm](http://www.aca.army.mil/Communities/policies.htm). (Implements DFARS 216.405-2)

16.1.1. The award fee plan should contain at a minimum the following elements: identification of the roles and responsibilities of the award fee evaluation team, definition of each category of performance evaluated, definition of the standards used to grade the performance, the evaluation periods by date, the available award fee amount and a description of the general procedures for assessing the contractor’s performance. (Implements AFARS 5116.405-2(b)(2)).

16.2. Contract Incentives. For further guidance on the use of incentives, please see “ACA Contract Incentives Guide” at <http://www.aca.army.mil/Community/procedures.htm>. (Implements FAR 16.401).

16.3. Task and Delivery Order Ombudsman. The ACA HCA will designate one or more Task and Delivery Order Ombudsmen who are responsible for reviewing complaints from contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders.

16.3.1. Task and Delivery Order Ombudsman Procedures.

16.3.2. Complaints.

16.3.2.1 For multiple task order and multiple delivery order contracts, contractor complaints relative to an individual task or delivery order are reviewable by the Ombudsman.

16.3.2.2. Contractors should file complaints with the Ombudsman shortly after knowing of the disputed task order/delivery order. The complaint must specifically state that it is being filed pursuant to FAR 16.505. If a contractor fails to properly identify the complaint as a FAR 16.505 complaint, the complaint will be considered a Contracting Officer protest. Additionally, a failure to promptly file a complaint may result in the Ombudsman determining little or no remedy is available.

16.3.2.3. After receiving a complaint, the Ombudsman will review the complaint and issue a decision or otherwise resolve the complaint.

#### 16.3.3. Resolution.

16.3.3.1. Upon receipt of the complaint, the Ombudsman will review the facts to determine whether the Contracting Officer complied with the order placement criteria set forth in the contract and to determine whether the contractor was afforded a fair opportunity to be considered. The Ombudsman will provide a copy of the complaint to the Contracting Officer.

16.3.3.2. In reaching a decision, the Ombudsman will seek input From The Contracting Officer, and, if needed, from any other party likely to have information bearing on the complaint. The Ombudsman shall seek advice from the Office of Counsel.

16.3.3.3. Before issuing a decision, the Ombudsman is encouraged to hold a meeting or telephone conference call between the complainant and the Contracting Officer in an effort to resolve the dispute.

#### 16.3.4. Decision

16.3.4.1. The Ombudsman's decision shall be reviewed by and coordinated with the Office of Counsel.

16.3.4.2. The Ombudsman's written decision will be issued within 35 calendar days after receipt of the complaint. The original decision is to be sent to the complainant, copies are to be forwarded to the Contracting Officer, the Office of Counsel, and any other interested party who has participated in the complaint process.

16.3.4.3. The decision shall state that it is the Ombudsman's final decision and provide the remedy, if any.

#### 16.3.5. Remedies

16.3.5.1. If, after review of the complaint, the Ombudsman determines that the order was not placed in accordance with

the order placement criteria of the contract, or that the complainant was not afforded a fair opportunity to compete for the order, the Ombudsman may, as part of his/her decision, provide a remedy to the complainant.

16.3.5.2. There is no specific remedy required. However, in determining the appropriate remedy, the Ombudsman shall give consideration to the particular circumstances of the procurement and order at issue. Remedies include, but are not limited to, directing that the contested order be cancelled and recompeted, directing that the complainant receive a future order, and directing procurement process improvements to avoid further problems. (Implements FAR 16.505(b)(5)).

16.4 Time-and-materials and labor hour contracts. The D&F format at Appendix 5 shall be used for all time and material type contracts approved by the HCA when the base period plus any option periods exceed three years. (Implements FAR 16.601(d)(1)(ii)).

**CHAPTER 17 - SPECIAL CONTRACTING METHODS** (Implements DFARS 217.204, DFARS 217.7403, DFARS 217.7404-1 and DFARS 217.7404-3).

17.1. Options. See ACA Policy Memorandum P0011, "Period of Performance for Task and Delivery Orders" for specific guidance on approvals and ordering periods available at: <http://www.aca.army.mil/Community/policies.htm> (Implements DFARS 217.204)

17.2. Undefined Contract Actions.

17.2.1. PARCs will manage undefinitized contract actions to ensure appropriate use and timely resolution.

17.2.2. Prior to award, all UCAs must be reviewed by legal counsel. (Implements DFARS 217.7403).

17.3. Authorization. The Chief of the Contracting Office will forward a request for approval to award a letter contract or other type of undefinitized contract action to the PARC. The request must include a copy of all reviews. Provide a copy of the negotiated definitization schedule, and updated status on UCAs to the PARC as key events occur, but not less than monthly. (Implements DFARS 217.7404-1).

17.4. Definitization schedule. If the Contracting Officer is unable to definitize within 180 calendar days after issuance of the action or of any extension authorized by the Contracting Officer, he/she shall submit a determination of a reasonable price or fee in accordance with FAR Subpart 15.4 and FAR Part 31, to the HCA for approval. This determination is subject to appeal as provided in the Disputes clause. (Implements DFARS 217.7404-3).

**CHAPTER 18 – EMERGENCY ACQUISITIONS**

RESERVED

**Chapter 19 - SMALL BUSINESS PROGRAMS** (Implements FAR 19.505, FAR 19.506, FAR 19.705-4, 19.804-2, FAR 19.804-4 and FAR 19.805-1(a)).

19.1. Rejecting Small Business Administration Recommendations. The case file required when a Small Business Administration (SBA) appeal is received shall contain a discussion of the market research results or attached market research report. (Implements FAR 19.505).

19.2. Withdrawing or modifying small business set-asides. Withdrawal of a small business set-aside shall be accomplished on a DD Form 2579. The contracting officer will complete a DD Form 2579 to include a complete explanation, in the Remarks block, to support the withdrawal decision. The contracting officer's signature in block 17e, withdraws the set-aside. The SBA procurement center representative and Small Business Specialist reviews and concurs, respectively with the action by signing the form. The Contracting Officer's signature on the form withdraws the set-aside. (Implements FAR 19.506).

19.3. Reviewing the subcontracting plan. The Contracting Officer shall incorporate the approved subcontracting plan into the contract by specific identification and may also include it as an attachment to the contract. When the subcontracting plan is incorporated into the contract by reference, ensure that the Associate Director, Office of Small Business Programs is provided a copy. (Implements FAR 19.705-4).

19.4. Agency Offering. Contracting activities shall provide a copy of 8(a) Program offering letters to the Associate Director for the Office of Small Business Programs concurrent with submission to the appropriate Small Business Administration District Office. (Implements FAR 19.804-2).

19.5. Repetitive Acquisitions.

19.5.1. The Contracting Officer must use the order of precedence at FAR 8.002 to determine that the work must be placed with the required sources before considering the use of the 8(a) program on each individual acquisition.

19.5.2. When a contractor graduates from the SBA 8a program and the Contracting officer desires to remove the work from the 8(a) program, the Contracting officer must document the contract file regarding the firm's graduation. The use of a DD Form 2579 shall be implemented to support the withdrawal decision consistent with the guidance delineated in paragraph 19.2. Then, the contracting officer must notify SBA stating that the requirement will not remain in the SBA program and it will be offered to another type of source. (Implements FAR 19.804-4).

19.6. Although it is permissible to award sole source 8a contracts, competition should be maximized in the acquisition process. For specific guidance, please



see ACA Policy Memorandum P0019: “Maximizing Competition in the Acquisition Process” available at:  
<http://www.aca.army.mil/Community/policies.htm> (Implements FAR 19.805-1(a)).

**CHAPTER 20 - RESERVED**

**CHAPTER 21 - RESERVED**

**CHAPTER 22 – APPLICATION OF LABOR LAWS TO GOVERNMENT  
ACQUISITIONS**

22.1. Applicable Davis-Bacon Act (DBA) clauses shall be include in utilities privatization contracts which includes construction. The applicable clauses shall be added to solicitations and new contracts. All existing contracts shall be modified to incorporate the requisite clauses.

**CHAPTER 23 – ENVIRONMENT, ENERGY AND WATER EFFICIENCY,  
RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND  
DRUG-FREE WORKPLACE**

RESERVED

**CHAPTER 24 – PROTECTION OF PRIVACY AND FREEDOM OF  
INFORMATION**

RESERVED

## **CHAPTER 25 – FOREIGN ACQUISITION**

25.1. Elimination of Unreliable Sources of Defense Items and Components. The notification process and specific guidance for situations involving a country that

restrict the provision or sale of military goods or services to the United States because of united States counterterrorism or military operation as mandated by Section 821 National Defense Authorization Act for Fiscal year 2004 is provided in Policy Memorandum P005: "Elimination of Unreliable Sources of Defense Items and Components" available at the ACA webpage at:  
<http://www.aca.army.mil/Community/policies.htm>

## **CHAPTER 26 – OTHER SOCIOECONOMIC PROGRAMS**

RESERVED

**CHAPTER 27 – PATENTS, DATA, AND COPYRIGHTS**



RESERVED

**CHAPTER 28 – BONDS AND INSURANCE**

RESERVED

**CHAPTER 29 – TAXES**

RESERVED

**CHAPTER 30 – COST ACCOUNTING STANDARDS ADMINISTRATION**

RESERVED

**CHAPTER 31 – CONTRACT COST PRINCIPLES AND PROCEDURES**

RESERVED

**CHAPTER 32 – CONTRACT FINANCING** (Implements DFARS 232.702 and DFARS 232.703)

32.1. Contract Funding Requirements. All fixed-price service contracts should be fully funded on an annual basis. However, the use of incremental funding may be considered under limited circumstances. Regulatory guidance regarding incremental funding of fixed-price contracts is set forth in DFARS 232.703-1 and FAR Clause 252.232-7007, Limitation of Government's Obligation. Contracting Officers are cautioned, however, to exercise sound judgment and to fully consider the circumstances and business implications before utilizing incremental funding. (Implements DFARS 232.702 and DFARS 232.703).

**CHAPTER 33 – PROTESTS, DISPUTES, AND APPEALS** (Implements AFARS 102, FAR 33.103, AFARS 5133.10-90, AFARS 5133.104 and AFARS 5133.90-4).

33.1. General. Agency protests may be filed using any of the three ACA recognized protest forums. A contractor with an interest may protest to the Contracting Officer, protest to the PARC (or their designated representative) for independent review, or in the alternative, file an Executive Level Agency Protest (ELAP), where resolution is made at the HQ, ACA.

33.2. Protests to the Agency. PARCs will manage protest actions for the ACA. If an interested party elects to file an agency level protest, they may submit directly to the applicable ACA PARC. For specific guidance on agency level protests, refer to “ACA Agency Protest Procedures ” available on the ACA web page located at: <http://www.aca.army.mil/Community/procedures.htm>.

33.2.1 Upon receipt of a protest, a synopsis of the protest action shall be furnished immediately by electronic means to the ACA Operations and Policy Directorate (SFCA-CO).

33.2.2. Upon resolution of the protest, a synopsis of the protest action and notice of resolution, with a copy of the decision or settlement agreement shall immediately be furnished to the ACA Operations and Policy Directorate (SFCA-CO).

33.3. Annual Agency Bid Protest Report. PARCs shall forward an annual report of bid protests to the ACA Operations and Policy Directorate (SFCA-CO) and Office of Counsel HQ ACA (ATTN: SFCA-AC) for consolidation by October 15th each year.

33.4. ACA Executive-Level Agency Protest Program Procedures.

33.4.1. *Authority.* The executive-level agency protest procedures are established under the authority of FAR 33.103(d)(4).

33.4.2. *Introduction.* This subpart prescribes policy and procedures for an HQ, Army Contracting Agency Executive-level Agency Protest Program, ACA ELAP, within the meaning of FAR 33.103. The Executive Level Agency Protest Program is a CONUS-only program intended to encourage interested parties to seek resolution of their concerns within ACA, rather than filing a protest with the Government Accountability Office (GAO) or other external forum. Unless otherwise stated, the procedures in this section apply to the HQ, ACA ELAP program only.

33.4.3. *Policies and Procedures.*

33.4.3.1. An ACA ELAP to an ACA forum is a "Protest To The

Agency," within the meaning of FAR 33.103. Under this special ACA ELAP program, the protestor may file with either:

33.4.3.1.1. The Contracting Officer designated in ACA AI provision 5152.233-9000, Army Contracting Agency Executive Level Agency Protest Program located at Chapter 52.1; or, directly with the

33.4.3.1.2. HQ, ACA Executive-Level Protest Decision Authority designated in ACA AI provision 5152.233-9000, Army Contracting Agency Executive Level Agency Protest Program, of the solicitation.

33.4.4. *Interested Parties.* For the purpose of filing a HQ, ACA Executive-Level Agency Protest, an interested party means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

33.4.5. *Election of Forum.* After an interested party protests an ACA procurement to HQ, ACA and while that ELAP is pending, the protester agrees not to file a protest with the GAO or other external forum. If a protest is filed with an external forum on the same solicitation as the HQ, ACA ELAP, the HQ, ACA ELAP will be dismissed.

33.4.6. The ACA voluntarily agrees to stay performance of a contract when an interested party files a protest under the ELAP Program. Should the interested party disagree with the ACA's resolution of a protest under the ELAP program, it may utilize another protest forum without prejudice in accordance with FAR 33.103(d)(4).

33.4.7. *Protest Decision Authority.* The ACA Chief Counsel is the HQ, ACA Executive-Level Agency Protest Decision Authority.

33.4.8. *Time for Filing a Protest.*

33.4.8.1. An ACA ELAP shall be considered timely if filed before bid opening or the closing date for receipt of proposals when the protest is based on alleged apparent improprieties in a solicitation. A protest shall also be considered timely if filed within 10 calendar days after contract award, or filed within 5 calendar days after a debriefing date offered to the protester under a timely debriefing request in accordance with FAR 15.505 or FAR 15.506, whichever is later.

33.4.8.2. ELAPS Filed Directly with the HQ ACA. To be



considered timely filed, the protest must be received at the HQ ACA offices by 4:30 Eastern Time on the last day on which such filing may be made. The address for HQ ACA is included in the ACA AI provision 5152.233-90 Army Contracting Agency Executive-Level Agency Protest Program

*33.4.8.3. ELAPs Filed Directly with the Contracting Officer.* To be considered timely filed, the protest must be received at the local contracting office designated in the solicitation by the close of business time designated in the solicitation on the last day on which such filing may be made. The address for the Contracting Officer is included in ACA FAR AI provision 5152.233-90 (Army Contracting Agency Executive-Level Agency Protest Program). The Contracting Officer shall immediately forward the protest to the HQ ACA.

*33.4.9. Form of Protest.* An ACA ELAP protest must include the protester's name, address and telephone number, including fax number; the solicitation or contract number, identity of the contracting activity and the contracting officer's name; a detailed statement of all legal and factual grounds for protest (mere disagreement with the decisions of Contracting Officers does not constitute grounds for protest), including copies of all relevant documents; a request for a ruling; and, a request for relief. An authorized representative of the protester must sign all protests. The protest must specifically state the intent to file under this special ACA ELAP program. Otherwise, it will be processed under the normal agency protest procedures.

*33.4.10. Processing of ACA ELAPs.* Within 10 working days after the protest is filed, the Contracting Officer, with the assistance of local legal counsel, shall file with the HQ, ACA Office of Counsel, ATTN: ACA SFCA-AC, one copy of an administrative report responsive to the protest and a detailed memorandum of law addressing the issues in the protest. Reports and memos shall be sent by facsimile, email, over night mail or hand-delivered, to ensure timely receipt. The ACA ELAP Decision Authority will issue a written decision within 20 working days after the filing of the protest. The written decision will be binding on the Army Contracting Agency and its contracting activities. For good cause shown, the ACA ELAP Decision Authority may grant extensions of time for filing the administrative report and for the issuance of the written decision. When such an extension is granted, the protester and all interested parties shall be notified within 1 working day of the decision to grant the extension. The Protest Decision Authority shall make his/her best effort to decide the ELAP within 35 calendar days of filing. (FAR 33.103(g))

*33.4.11. Effect of Protest on Award and Performance.*

33.4.11.1. *Protests before award:* When an ELAP is filed prior to award, a contract may not be awarded unless authorized by the HQ, ACA Special Competition Advocate (SCA) in accordance with FAR 33.103(f)(1) and (2).

33.4.11.2. *Protests after award:* When an ELAP is filed within 10 calendar days after award, or within five calendar days of debriefing for any debriefing that when requested was required by FAR 15.505(a) or 15.506(a), whichever is later, the Contracting Officer immediately shall suspend performance.

33.4.12. *Protocol and Criteria for Overrides.*

33.4.12.1. All timely ELAPs will automatically trigger a Voluntary Agency Stay of award or performance. This Voluntary Agency Stay is similar to the Competition In Contracting Act, (CICA), automatic stay found in Title 31 U.S.C. § 3553(c)(d); 4 C.F.R. § 21.6 (2000); FAR 33.104(b)(c); AFARS 5133.104(b)(c). In all cases where an ELAP is timely, the contracting officer must inform all interested parties of the automatic stay. If appropriate, the contracting officer will obtain extensions of bid/proposal acceptance times from the offerors. If the contracting officer cannot obtain extensions, he/she should request that HQ, ACA consider an override of the stay in accordance with Paragraph 33.4.11.1.

33.4.12.2. The HQ, ACA Special Competition Advocate may authorize contract performance, notwithstanding the protest, upon a written finding that:

33.4.12.2.1. Contract performance will be in the best interests of the United States; or

33.4.12.2.2. Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision from the HQ, ACA Protest Decision Authority. Generally, override decision are not subject to judicial review.

33.4.13. *Remedies.* The ELAP Protest Decision Authority may grant or direct any one or combination of the following remedies:

(1) Terminate the contract;

(2) Recompete the requirement;

- (3) Issue a new solicitation;
- (4) Refrain from exercising options under the contract;
- (5) Award a contract consistent with statute and regulation;
- (6) Pay appropriate costs (see FAR 33.102(B)(2)); or
- (7) Such other remedies as ELAP Protest Decision Authority determines necessary to correct a defect.

33.4.14. *Service of Protest for ACA Procurement.* Protests under the HQ, ACA ELAP Program shall be filed at: HQ, Army Contracting Agency, Chief Counsel ATTN: SFCA-AC, 5109 Leesburg Pike, Suite 301, Falls Church, VA 22041-3201. Protests to Contracting Officer under the ELAP program shall be filed at the address specified in the solicitation.

33.4.15. *Discovery.* To the extent permitted by law and regulation, the agency and the protester may exchange information relevant to the protest. FAR 33.103(g).

33.4.16. *Solicitation Provision.* Insert the provision at Chapter 52.1, ACA AI 5152.233-9000 in all solicitations that are eligible for use of the ACA ELAP procedures.

### 33.5. Protests to GAO.

33.5.1. PARCs will manage protest actions for the ACA. Upon receipt of a notice of protest, a copy of the protest and a synopsis of the protest action shall be immediately furnished electronically to the ACA Operations and Policy Directorate (ATTN: SFCA-CO) and the ACA Office of Counsel (ATTN: SFCA-AC). Upon resolution of the protest, furnish a synopsis of the protest action and notice of resolution, with a copy of the decision or settlement agreement, to the ACA Operations and Policy Directorate (ATTN: SFCA-CO) as soon as possible.

33.5.1.1. The protest summary must include the solicitation number, the title of the contract action, a point of contact in the DOC, a point of contact in the local legal office, an indication of whether an override will be sought, and a brief description of the protest grounds.

33.5.2. *Protests before award.* Determinations and Findings supporting protest overrides must be processed through the Operations and Policy

Directorate (SFCA-CO). For further guidance on the preparation of overrides, please see “ACA CICA Automatic Stay Override Guide” located at : <http://www.aca.army.mil/Community/procedures.htm>

*33.5.3. Protests after award.* Determinations and Findings supporting protest overrides must be processed through the Operations and Policy Directorate (SFCA-CO). Use the following format:

#### 33.5.3.1. Contents of the Determination and Finding

33.5.3.1.1. Clearly state the urgent and compelling circumstances that significantly affect the interests of the United States and describe why those circumstances do not support waiting for the Comptroller General to determine the merits of the protest. Expiration of the incumbent’s contract is not a good enough reason by itself. Describe why the incumbent’s contract cannot or should not be extended to provide coverage as the protest is processed. Include an analysis of why extending the incumbent’s contract is not in the best interests of the United States. Also include an analysis of why continued performance of the requirement is in the best interest of the United States.

33.5.3.1.2. Describe why an immediate award is essential. Consider the contractor’s special or technical skills, savings over the incumbent contract, the scope of the new acquisition and any other characteristics that would make award to the prospective contractor in the Government’s best interests.

33.5.3.1.3. Describe the costs and other damage the Army will incur if the protest is sustained after override of the protest and award of the contract to other than the incumbent.

33.5.3.1.4. Discuss how likely it is that the protestor will prevail. Discuss the protest allegations and the merits of the Army’s case.

33.5.3.1.5. The D&F must be tailored to reflect the circumstances of the instant acquisition, as each protest is judged on its own merits. The findings must be supported by the circumstances of the instant acquisition.

33.6. Review of Appeals. All appeals filed under the Disputes Clause must be

reviewed at a level higher than the contracting officer.

## **CHAPTER 34 – MAJOR SYSTEM ACQUISITIONS**

RESERVED

**CHAPTER 35 – RESEARCH AND DEVELOPMENT CONTRACTING**

RESERVED

**CHAPTER 36 – CONSTRUCTION AND ARCHITECT AND ENGINEER  
CONTRACTS**

RESERVED

**CHAPTER 37 – SERVICE CONTRACTING** (Implements AFARS 5137.104-90-2, DFARS 237.204, AFARS 5137.590-4, AFARS 5137.590-6, AFARS 5137.590-7, AFARS 5137.590-8, FAR 37.603 and FAR 37.604).



37.1. Contracts for Service Personnel Requirements. All new requirements for the acquisition of contracted services, as well as the exercise of options on existing contracts for services shall be justified and approved in advance, in writing prior to execution of any service requirement. For specific guidance and approval levels, please see ACA Policy Memorandum P0014: "Implementation Guidance on Contracts for Service Personnel Requirements" available at: <http://www.aca.army.mil/Community/policies.htm>

37.2. Stenographic Reporting Services. Chiefs of Contracting Offices are authorized to approve contracts for stenographic reporting services for hearings in connection with agency Merit System Protection Board appeals and grievances, processing employee complaints of discrimination under the equal opportunity program, and other administrative hearings for which verbatim records are required, either by regulation or by order of the administrative board's appointing authority. (Implements AFARS 5137.104-90-2).

37.3. Army Management and Oversight of the Acquisition of Services. All service acquisitions as defined in AFARS 5137.590-3 with a total planned value of \$150M or above shall be categorized as special interest and subject to the Army Service Strategy Panel (ASSP) process. For further guidance on new review and approval thresholds for service acquisitions, refer to ACA Policy Memorandum P0018: "Army Service Strategy Panel (ASSP) – Special Interest Strategy Reviews" located at: <http://www.aca.army.mil/Community/policies.htm>. For specific guidance on the ACA level ASSP process, please see the "ACA Army Service Strategy Panels Guidebook" located at: <http://www.aca.army.mil/Community/procedures.htm> (Implements AFARS 5137.590-4, AFARS 5137.590-6, AFARS 5137.590-7 and AFARS 5137.590-8).

37.4. Contractor Manpower Data Reporting (CMR).

37.4.1. The requirement for Contractor Manpower Reporting (CMR) shall be included in all applicable contracts, task orders/delivery orders, and bilaterally modified contracts for services. Refer to Frequently Asked Questions at the Contractor Manpower Reporting application (<https://cmra.army.mil/>) for applicability of CMR.

37.4.2. All requiring activities shall include the Accounting for Contract Services reporting requirements as requirement in every Performance Work Statement (PWS) . Requiring activities shall ensure that the requirement for CMR data reporting is a deliverable within each applicable solicitation, contract and contract modification issued on or after March 8, 2005, and provide resources associated with the collection and reporting of this data; as well as the Unit Identification Code (UIC) of the Army requiring activity to the Contracting Officer. The Contracting Officer shall include a contract line item number (clin) to allow for pricing for this reporting requirement. The requiring activity shall also monitor and assist the contractor to ensure the

complete reporting takes place no later than October 31 each year and assist the contactor in identifying the fund cite on the contract. Inputting of information into the CMR system may also be the responsibility of the requiring activity, in lieu of the contractor.

37.4.3. The Contracting Officer shall ensure that the need for CMR data reporting is a deliverable within each applicable solicitation, contract and contract modification issued on or after March 8, 2005; (1) ensure that UIC for the Army requiring activity is included in the contract or as a part of a CLIN of each service contract; (2) ensure that the data collection costs charged by the contractor are reasonable; (3) include the requirement to monitor the contractor's reporting as required information in the COR appointment letter; and, (4) verify the status of reporting by the contractors within the CMR system.

37.4.4. Contractors are responsible for reporting the required information to the CMR system's secure Internet web sit or through the Army requiring activity, as defined in the performance work statement. The COR is responsible for verifying that the contractor has reported the required data or the COR may have the contractor provide the necessary information and provide the report to the CMR themselves.

37.5. Security Clearances and Identification for Contractor Personnel. Contractor employees shall not sign any memoranda or other documents which in any way imply that they are making a decision on behalf of the Government.

37.6. Performance-Based Service Acquisition. For further guidance on the preparation of performance standards, refer to "ACA Performance Requirement Summary (PRS) Guide" located at: <http://www.aca.army.mil/Community/procedures.htm>. (Implements FAR 37.603). Requirements for quality assurance surveillance plans are delineated in Chapter 46.1. Refer to "ACA QASP User's Guide" for specific guidance accessible from [www.aca.army.mil/Communities/procedures.htm](http://www.aca.army.mil/Communities/procedures.htm). (Implements FAR 37.604)

## **CHAPTER 38 – FEDERAL SUPPLY SCHEDULE CONTRACTING**

RESERVED

**CHAPTER 39 – ACQUISITION OF INFORMATION TECHNOLOGY** (Implements  
DFARS 208.7403)

39.1. When acquiring information technology products and/or services the following order of precedence is established:

39.1.1. Regardless of dollar value, all requirements for commercial software and related services, such as software maintenance shall be checked against the Enterprise Software Agreements available on the DOD Enterprise Software Initiative available at: <http://www.esi.mil> as delineated in ACA Policy Memorandum P0017: Use of Enterprise Software Agreements (ESA's) located at: <http://www.aca.army.mil/Community/policies.htm> (Implements DFARS 208.7403)

39.1.2. All purchases of desktops or notebooks should use the Computer Hardware, Enterprise Software and Solutions (CHESS) contract vehicles first regardless of dollar value. However, if the requirement is other Information Technology products or services and the cost is greater than \$25,000 the requirement should be screened against the CHESS list of contract vehicles. A waiver is required if the IT requirement is over \$25,000 and required supply/service is not acquired from the CHESS. See CHESS web site for complete information on seeking a waiver at <https://ascp.monmouth.army.mil>.

39.1.3. The primary source for all commercial wireless communication requirements shall be satisfied using Basic Purchasing Agreements (BPAs) established by ITEC4-4. as appropriate. These BPAs are accessible on the internet at [www.itec4.army.mil](http://www.itec4.army.mil).

39.1.4. If the information technology requirement is not available from ESAs, the ASCP or the BPAs, it is highly encouraged that GSA's Government-Wide Acquisition Contracts for Service-Disabled Veteran-Owned Small Businesses be utilized as a means of achieving small business goals. The Veteran's Technical Services (VETS) are available at: [www.gsa.gov/vets.gwac](http://www.gsa.gov/vets.gwac).

## **CHAPTER 40 - RESERVED**



**CHAPTER 41 – ACQUISITION OF UTILITY SERVICES**

RESERVED

**CHAPTER 42 – CONTRACT ADMINISTRATION AND AUDIT SERVICES  
RESERVED**

**CHAPTER 43 – CONTRACT MODIFICATIONS**

RESERVED



**CHAPTER 44 – SUBCONTRACTING POLICIES AND PROCEDURES**

RESERVED

**CHAPTER 45 – GOVERNMENT PROPERTY**

**RESERVED**

## **CHAPTER 46 - QUALITY ASSURANCE** (Implements FAR 46.103)

46.1. Contracting Office Responsibilities. Government Quality Assurance Surveillance Plans (QASP) shall be prepared for all service contract actions greater than \$2,500 to ensure systematic quality assurance methods are used during contract administration. The level of surveillance described in the plan should be commensurate with the dollar value, risk, complexity and criticality of the acquisition. However, the QASP should contain at a minimum: the roles and responsibilities of participating Government officials, define the types of work to be performed, describe the evaluation methods that will be employed by the Government in assessing the contractor's performance, provide copies of the quality assurance surveillance checklists that will be used by the Government in documenting and evaluating the contractor's performance, describe the process of performance documentation, which will become part of historic past performance information and outline the corrective procedures to be taken against the contractor for deficient performance. "ACA QASP User's Guide" provides additional guidance and is located at" <http://www.aca.army.mil/Community/policies.htm>

**CHAPTER 47 – TRANSPORTATION**

RESERVED

**CHAPTER 48 – VALUE ENGINEERING**

RESERVED

## **CHAPTER 49 – TERMINATION OF CONTRACTS**

RESERVED

**CHAPTER 50 – EXTRAORDINARY CONTRACTUAL ACTIONS AND THE  
SAFETY ACT**

RESERVED

**CHAPTER 51 – USE OF GOVERNMENT SOURCES BY CONTRACTORS**

RESERVED

**CHAPTER 52 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES.**



**52.1. Insert the following provision in solicitations as prescribed in Chapter 33.4.**

5152.233-9000 Army Contracting Agency Executive Level Agency Protest Program. (NOV 2005)

(a) This solicitation is eligible for the HQ, Army Contracting Agency (ACA) Executive-Level Agency Protest (ELAP) program, as an alternative to the usual provisions applicable for Agency protests under FAR 33.103. An ELAP is a "PROTEST TO THE AGENCY," within the meaning of FAR 33.103. The ELAP Program is intended to encourage interested parties to seek resolution of their concerns within ACA, rather than filing a protest with the Government Accountability Office (GAO) or other external forum. After an interested party files an ELAP on an ACA procurement to HQ, ACA and while that protest is pending, the protestor agrees not to file a protest with the GAO or other extended forum. If a protest is filed with an external forum on the same solicitation as the ACA ELAP, the ACA, ELAP will be dismissed.

(b) An interested party may file a written protest to the Agency under the Executive-Level Agency Protest program for contract solicitations arising and performed within the continental United States. Such Executive-Level Agency protests are limited to objections to any of the following:

(1) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(2) The cancellation of the solicitation or other request.

(3) An award or proposed award of the contract.

(4) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(c) *Voluntary Automatic Stay.* This provision describes the circumstances under which the ACA voluntarily agrees to stay performance of a contract in consideration of a decision by an interested party to file an Army Contracting Agency (ACA) Executive Level Agency Protest (ELAP), as permitted by FAR 33.103(f)(4).

(1) In a standard post-award agency protest, the agency must not proceed with contract performance, pending resolution of the protest. This is known as an "automatic stay" and it mirrors the stay required under a timely post-award protest to the General Accounting Office (GAO) under 31

U.S. Code 3553(c) and FAR 33.104(c) (a “Competition in Contracting Act (CICA) Stay”). However, if the agency determines that performance must proceed, based upon the criteria set forth in FAR 33.103(f)(1), the automatic stay may be overridden. This is known as an automatic stay “override.”

(2) The CICA stay applies only if the GAO protest is filed within 10 days from notice of award, or within 5 days of a required debriefing. A firm may file an agency protest and, if it is dissatisfied with the agency’s protest decision, may wish to file a follow-on GAO protest. Under normal circumstances, a protester that goes to the GAO after receiving an adverse agency decision will find that the GAO may take jurisdiction and actually render a recommendation, but that the CICA Stay no longer applies.

(3) The ACA voluntarily agrees to stay performance of a contract when an interested party files a timely protest under the ELAP Program. Should the interested party disagree with the ACA's resolution of an ELAP protest, it may utilize another protest forum without prejudice. The ELAP Voluntary Automatic Stay extends the protester’s right to preserve the status quo pending resolution of all protests with respect to a particular contract action. In return for the protester’s initially filing its protest as an ELAP instead of with the GAO, the contracting officer agrees that, if the protester ultimately disagrees with the ELAP decision and files a GAO protest, the agency will agree not to proceed with performance just as it would have done if the protester had filed its protest with the GAO right from the start. This means that in an ELAP protest, the agency may override the stay under the same standards and circumstances as would have applied if the protest had originally been filed with the GAO. Nothing in this provision adversely affects an interested party’s rights to protest a contract action to the GAO, or to seek other relief related to the action.

(d) An Executive-Level Agency protest may be filed with the Contracting Officer designated in paragraph (g) of this provision for resolution of protests, or, with the ACA Chief Counsel at HQ, ACA at, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041-3201.

(e) For the purpose of filing an ELAP protest, an interested party means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. The ACA Chief Counsel is the ELAP Protest Decision Authority.

(f) An ELAP protest must include the protester's name, address and telephone number, including fax number; the solicitation or contract number, identity of the contracting activity and the contracting officer's name; a detailed statement of all legal and factual grounds for protest (mere disagreement with the decisions of Contracting Officers does not constitute grounds for protest),

including copies of all relevant documents; a request for a ruling; and, a request for relief. All protests must be signed by an authorized representative of the protester and must state it is an ACA Executive-Level Agency Protest.

(g) Executive-Level Agency Protests, as defined in FAR 33.101, may be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from \_\_\_\_\_. *[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]*

## **APPENDIX 1**

## Unlimited Warrant

In accordance with the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement and the Army Federal Acquisition Regulation Supplement, no monetary limitations are placed on this appointment other than those established by law, regulation and directive.

## Simplified Acquisition Procedures (SAP)

Subject to the limitations contained in the Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement and Army Federal Acquisition Regulation Supplement. Monetary limitation for each new contract action not exceeding the Simplified Acquisition threshold, including actions for commercial items up to \$5.5 Million as specified under FAR Parts 12/13. The same thresholds apply for modifications, task and delivery orders issued under existing contracts awarded using simplified acquisition procedures.

## Limited Warrant

Subject to the limitations contained in the Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement and Army Federal Acquisition Regulation Supplement. This appointment is limited to the execution of contractual documents which do not exceed \$\_\_\_\_\_. The same dollar threshold applies to modifications, task and delivery orders issued under existing contracts.

Unlimited Warrant providing additional authority to approve and execute Grants, Cooperative Agreements and Other Transactions:

Subject to the limitations contained in the Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement and Army Federal Acquisition Regulation Supplement. No monetary limitations are placed on this appointment other than those established by law, regulation and directive. In addition, approve and execute Grants, Cooperative Agreements and Other Transactions in accordance with applicable statutory guidance.

## **APPENDIX 2**

SFCA

Date

MEMORANDUM FOR (Insert Name of PARC)

SUBJECT: Selection of Contracting Officer

In accordance with FAR 1.603, I recommend the following individual be appointed as a Contracting Officer to enter into, administer or terminate contracts, and to make related determinations and findings:

Name (as it will appear on the Contracting Officer Warrant)  
Duty Station  
Position  
Grade/Rank, Series  
Certification Level

Request Warrant be approved for (Insert Unlimited or Dollar Limitation of Authority).

I certify, the above named individual, possesses the qualifications as cited in FAR 1.603-2 and as documented by his or her enclosed Acquisition Career Record Brief (ACRB) or Officer Record Brief (ORB)/Enlisted Records Brief (ERB), as appropriate.

Signature Block of  
Requesting Official

Encls

### APPENDIX 3

SFCA

Date

MEMORANDUM FOR (INSERT CONTRACTING OFFICER'S NAME),  
ARMY CONTRACTING AGENCY (ACA)  
(INSERT NAME AND ADDRESS OF COMMAND)

SUBJECT: Appointment of Contracting Officer

Congratulations on your appointment as a Contracting Officer. This appointment attests to your professional commitment and dedication to deliver on a timely basis the best value product or service to our customers, while maintaining the public's trust and fulfilling public policy objectives.

As a Contracting Officer, you have the authority to enter into, administer contracts and execute contract documents with (Insert Limitation of Authority). In addition, should the need arise, you have the authority to negotiate and execute the termination of contracts with (Insert Limitation of Authority). No contract shall be entered into unless you ensure that all requirements of the law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

You are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract and safeguarding the interests of the United States in its contractual relationships. To perform these responsibilities, you are allowed wide latitude in exercising sound business judgment. However, you should ensure that the requirements of 1.602-1(b) have been met and sufficient funds are available for obligation; ensure contractors receive impartial, fair and equitable treatment; and request and consider the advice of specialists in audit, law, engineering, transportation and other fields, as appropriate.

Pursuant to the authority of the Army Federal Acquisition Regulation Supplement 1.603-3, enclosed is your Certificate of Appointment (Insert Warrant Number). Please display the certificate in a prominent place.

NAME OF PARC  
Signature Block

Encls

**APPENDIX 4**

SFCA

Date

MEMORANDUM FOR (INSERT NAME OF CONTRACTING OFFICER),  
ARMY CONTRACTING AGENCY, (INSERT  
NAME AND ADDRESS OF COMMAND)

SUBJECT: Termination of Contracting Officer Warrant

Pursuant to the authority granted by Federal Acquisition Regulation 1.603-4,  
Certificate of Appointment (Insert Warrant Number) is revoked in its entirety  
without prejudice to any action taken. This termination is effective as of (Insert  
Effective Date).

NAME OF PARC  
Signature Block

## APPENDIX 5

# SAMPLE

Control Number \_\_\_\_\_

Date \_\_\_\_\_

(Complete Identification of Agency/specific identification of the document as a  
“Determination and Findings”)

### DETERMINATION AND FINDINGS

For

(Nature and/or Specific Description of Action Requiring Approval and Citation of  
the appropriate statute and/or regulation upon which the D&F is based)

#### Finding (Support Rationale)

(Content in accordance with FAR Subpart 1.704)

Findings that detail the particular circumstances, facts, or reasoning essential to  
support the determination, with necessary supporting documentation obtained  
from appropriate requirements and technical personnel.

- Why three (3) year performance period is not sufficient
- Identification of associated risk of mission failure, and effective mitigation  
of this risk factor
- Discuss surveillance, the participation and responsibility of the COR for  
ensuring that efficient methods and effective cost controls will be used
- Emphasize the use of a comprehensive and effective Quality Assurance  
Surveillance Plan (QASP) that will be provided, and effectively executed  
by the COR
- In consideration of ASA/ALT’s policy that addresses the major weakness  
in contract administration and surveillance that was identified by the  
Government Accountability Office (GAO) and the Department of Defense



Inspector General (DoDIG) reviews, the D&F should also point out that the COR has been identified, possesses the requisite skill level regarding the requirement, and COR training has been verified

Determination (Conclusion)

(Content in accordance with FAR Subpart 1.704)

A determination based on the findings, that the proposed action is justified under the applicable statute or regulation.

**Procuring Contracting Officer** Determination that no Other Contract Type is Suitable: On the basis of the above findings, I hereby determine that no task order type other than a hybrid Fixed-Price/Time and Materials is suitable for this acquisition, pursuant to Federal Acquisition Regulation (FAR) Subpart 16.601(d)(1)(i).

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

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

**Principal Assistant Responsible for Contracting**, \_\_\_\_\_ Agency Name \_\_\_\_\_.  
Based on the foregoing justification, I hereby recommend approval of the  
Determination and Finding (D&F) for the aforementioned procurement,

\_\_\_\_\_,  
pursuant to Federal Acquisition Regulation (FAR) Subpart 16.601(d)(1)(i).

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

\_\_\_\_\_  
Title

(Always prepare signature block on a separate page)

## APPROVAL

Based on the foregoing findings, I hereby approve the D&F for a (*state time and materials or labor hour contract type as applicable*) exceeding three years under the (*state name of contract if IDIQ*) pursuant to Federal Acquisition Regulation (FAR) Subpart 16.601(d)(1)(ii), and provided the requirement herein described has otherwise been authorized for acquisition.

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

Bryon J. Young  
Head of Contracting Activity (HCA)  
Army Contracting Agency (ACA)