

MS 736 PROCUREMENT REQUESTS AND UNSOLICITED PROPOSALS IN THE UNITED STATES

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ATTACHMENTS

Attachment A PC Form 1540 “Procurement Request (PR)”

Attachment B PC Form 203 “Request for Equipment, Supplies or Services under \$500”

1.0 PURPOSE

This manual section sets forth the policy and procedures for the initiation of procurement requests and processing of unsolicited proposals.

2.0 GENERAL ACQUISITION POLICIES

2.1 Full and Open Competition

In preparation for the acquisition of supplies and services, the Federal Acquisition Regulation specifies that:

1. Agencies shall specify needs in a manner designed to promote full and open competition for acquisitions.
2. Agencies shall develop specifications and purchase descriptions using market research in a manner designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.
3. In solicitations, agencies shall include specifications and purchase descriptions that:
 - (a) Permit full and open competition; and
 - (b) Include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

4. Agencies shall prepare specifications and purchase descriptions which reflect the minimum needs of the agency and the market available to satisfy such needs. Specifications and purchase descriptions may be stated in terms of:
 - (a) Function, so that a variety of products or services may qualify;
 - (b) Performance, including specifications of the range of acceptance characteristics or of the minimum acceptable standards; or
 - (c) Design requirements.
5. Descriptions of agency requirements, whenever practicable, shall be stated in terms of functions to be performed or performance required.

2.2 Domestic Government Supply Source Priorities

Federal regulations require agencies to satisfy their domestic requirements for supplies and services from or through the sources listed below in descending order of priority :

1. Supplies:
 - (a) Agency inventories;
 - (b) Excess from other agencies;
 - (c) Federal Prison Industries, Inc.;
 - (d) Procurement lists of products available from the Committee for Purchase from the Blind and Other Severely Handicapped;
 - (e) Wholesale supply sources, such as stock programs of the General Services Administration (GSA), the Defense Logistics Agency, the Veterans Administration, and military inventory control points;
 - (f) Mandatory Federal Supply Schedules;
 - (g) Optional use Federal Supply Schedules; and
 - (h) Commercial sources (including educational and nonprofit institutions).
2. Services:
 - (a) Procurement lists of services available from the Committee for Purchase from the Blind and Other Severely Handicapped;
 - (b) Mandatory Federal Supply Schedules (see FAR Subpart 8.4.) and mandatory GSA term contracts for personal property rehabilitation;
 - (c) Optional use Federal Supply Schedules and optional use GSA term contracts for personal property rehabilitation; and
 - (d) Federal Prison Industries, Inc. or other commercial sources (including educational and nonprofit institutions).

- (e) Sources other than those listed above may be used in an unusual and compelling urgency under circumstances prescribed in the Federal Acquisition Regulation.

2.3 Economic Quantities

Agencies are required to procure supplies in quantities that will result in a total cost and unit cost most advantageous to the Government, where practicable, and which do not exceed the quantity reasonably expected to be required by the agency.

2.4 Equipment Lease or Purchase

Offices should consider whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors, and shall document for the record the decision-making process. The following factors prescribed by the Federal Acquisition Regulation should be considered:

1. Estimated length of the period equipment is to be used and the extent of use within that period.
2. Financial and operating advantages of alternative types and makes of equipment.
3. Cumulative rental payments for the estimated period of use.
4. Net purchase price.
5. Transportation and installation costs.
6. Maintenance and other service costs.
7. Potential obsolescence of the equipment because of imminent technological improvements.

The following additional factors should be considered, as appropriate, depending on the type, cost, complexity and estimated period of use of the equipment:

8. Availability of purchase options.
9. Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.
10. Trade-in or salvage value.
11. Imputed interest.
12. Availability of a servicing capability, especially for highly complex equipment; e. g., whether or not the equipment can be serviced by the Government or other sources if it is purchased.

2.5 Small Business - Small Purchase Set-asides

Under the Federal Acquisition Regulations, each acquisition of supplies or services that has an anticipated dollar value of \$25,000 or less and is subject to small purchase procedures, shall be reserved exclusively for small business concerns. This set-aside requirement is applicable unless the Contracting Officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality and delivery.

2.6 Foreign Purchases

Part 25 of the Federal Acquisition Regulation provides policies and procedures to implement the Buy American Act, the Balance of Payments Program, purchases under the Trade Agreements Act of 1979, and other laws and regulations that pertain to acquiring foreign supplies, services and construction materials.

Purchases made by Peace Corps for use outside the United States are excepted from the Buy American Act requirements.

The Balance of Payments Program covered in FAR, Subpart 25.3, is a procedure to assist in alleviating the impact of government expenditures on the balance of international payments. The Balance of Payments Program differs fundamentally from the Buy American Act in that the Buy American Act applies only to acquisitions for use in the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.

There are nine basic exemptions in FAR, Subpart 25.3, which permit the acquisition of foreign end products or services. However, only the following exemptions would usually apply to post acquisitions:

1. Estimated cost of the product or service does not exceed \$25,000.
2. Perishable subsistence items are required and delivery from the U. S. would significantly impair their quality at the point of consumption.
3. A requirement can only be filled by a foreign product or service, and it is not feasible to forego filling it or to provide a domestic substitute.
4. The acquisition is for ice, books, utilities, communications and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned, and a U. S. Government capability does not exist.

3.0 SCOPE

This manual section applies to all U. S. Peace Corps employees involved in the procurement of goods and services for the Peace Corps.

4.0 AUTHORITIES & REFERENCES

Peace Corps Act, Section 10. Federal Acquisition Regulation (FAR), 48 CFR, Chapter 1, Competition in Contracting Act of 1984 (P. L. 98-369).

5.0 DEFINITIONS

5.1 Acquisition

The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contract, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

5.2 Acquisition planning

The process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency needs in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing an acquisition.

5.3 Brand-name description

A purchase description that identifies a product by its brand name and model or part number or other appropriate nomenclature by which the product is offered for sale.

5.4. CBD

The Commerce Business Daily , a publication of Government procurements published by the Department of Commerce.

5.5 Commercial product offer

An offer of a commercial product usually sold to the general public and which the vendor wishes to see introduced into the Government's supply system as an alternative or replacement for an existing supply item.

5.6 Contract

A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and obligating the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered under 41 U. S. C., 501, et seq.

5.7 Contracting Office

The office that awards or executes a contract for supplies or services and performs the post-award functions not assigned to the Contracting Officer's Technical Representative (COTR).

5.8 Contracting Officer (CO)

A person with the authority delegated or designated in writing to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the Contracting Officer.

5.9 Contracting Officer's Technical Representative (COTR)

An individual given authority by the Contracting Officer to monitor all technical aspects and assist in administering the contract. The type of actions within the purview of the COTR's authority are to assure that the Contractor performs the technical requirements of the contract; to perform or cause to be performed inspections necessary in connection with performance of the contract; to maintain both written and oral communications with the Contractor concerning the technical aspects of requirements of Government drawings, designs and specifications; to monitor the Contractor's performance under the contract and notify the Contractor and Contracting Officer of any deficiencies and delays observed; and to coordinate Government furnished property availability and provide for site entry of Contractor personnel if required. The COTR cannot modify the contract, obligate money or make decisions for the C.O.

5.10 Delivery Order

An order for supplies or services placed against an established contract or with Government sources of supply.

5.11 Full and Open Competition

When used with respect to a contract action, means that all responsible sources are permitted to compete.

5.12 Market Survey

Attempts to ascertain whether other qualified sources capable of satisfying the Government's requirement exist. The testing of the marketplace may range from written or telephone contacts with knowledgeable federal and non-federal experts regarding similar or duplicate requirements, and the results of market tests recently undertaken, to the more formal sources-sought announcements in pertinent publications (e. g., technical/scientific journals or the Commerce Business Daily), or solicitations for information and planning purposes.

5.13 Offer

A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals." Responses to requests for quotations (negotiation) are not offers and are called "quotes."

5.14 Purchase Description

A description of the essential physical characteristics and functions required to meet the Government's minimum needs.

5.15 Purchase Order

As used in this part, means an offer by the government to buy certain supplies, nonpersonal services or construction from commercial sources, upon specified terms and conditions, the aggregate amount of which does not exceed the small purchase limit. The Optional Form 347, "Order for Supplies or Services," is designated for this purpose within the United States.

5.16 Ratification

Improper contracts entered into by government representatives without contracting authority, or by contracting officers exceeding the limits of their authority, which may be later ratified. To be effective, the ratification has to be in writing, clearly stating that ratification of a previously unauthorized act is intended. The ratification may only be made by an official on whose behalf the contract was made, and then only if funds are available and the official could have given authority to enter into the contract before it was awarded and still has the power to do so at the time of ratification.

5.17 Small Purchase

An acquisition of supplies, nonpersonal services and construction in the amount of \$25,000 or less using the prescribed procedures.

5.18 Small Purchase Procedures

The methods prescribed for making small purchases using imprest funds, purchase orders, and blanket purchase agreements (see MS-732).

5.19 Solicited Bid/Proposal

A bid or offer received in accordance with the terms and conditions of a formal solicitation (Invitation for Bids, Requests for Proposals, Requests for Quotation) issued by authorized procurement personnel.

5.20 Specifications

Description of the technical requirements for a material, product or service that includes the criteria for determining whether these requirements are met. Specifications shall state only the Government's actual minimum needs and be designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.

5.21 Sole-source Acquisition

A contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

5.22 Unsolicited Proposal

A written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs).

6.0 PROCUREMENT RESPONSIBILITIES

6.1 Procurement Requests

An approved PR or PC-203 (see Attachment A) must be submitted to the Office of Contracts (M/C) for the following:

- Each proposed contract; -Each amendment or modification to an existing contract which changes the scope of the contract by adding or deleting material or work, including the extension of completion dates or changes in the estimated cost or fee;
- Each amendment of an existing contract which exercises an option included in the contract;
- Each new job order or task order issued under an existing contract;
- Each change in a PR not yet contracted for, which increases or decreases the scope of the proposed contract; and
- Each change order to be issued under the "CHANGES" clause in an existing contract.
- Contract administration services which do not require obligation or deobligation of funds, other than those set forth above, may be requested by memorandum.

6.1.1 Small Purchases

The following procurement requests for equipment, supplies and services are processed by the Small Purchase Section of M/C:

1. Requests available from mandatory and non-mandatory GSA schedule contractors, or GSA stock, or open market sources via competitive procedures;
2. Requests within the \$25,000 small purchase authority limit or the maximum order limitation of the applicable GSA schedule contract; and

3. Requests which can be obtained in conjunction with existing contracts of another Government agency in accordance with the provisions of the Federal Acquisition Regulation and the contract.
4. Requests for printing or duplicating should be submitted to the Printing Officer, M/AS/R, using the appropriate printing requisition (see MS-898).

6.1.2 Initiating Procurement Action

To initiate a procurement action, the requesting office submits a Procurement Request (Form PC-1540, Attachment A), or a Requisition (Form PC-203, Attachment B) for purchases under \$500, to M/C (forms are available in the Agency supply room).

The PR shall include either (1) functional specifications for supplies or a Statement of Work for services, (2) performance specifications, or (3) a brand name description. In addition, the requesting office must indicate whether the requested procurement was included in the requesting office's acquisition plan (MS-730).

6.1.3 Submission Schedule

The timeframes outlined below indicate the lead time necessary before action on a procurement request may be completed. Offices shall consider these lead times when planning acquisitions and submitting procurement requests and requisitions in order to allow for solicitation, negotiation and award of contracts or purchase orders.

These timeframes should be used as general guidelines for procurement planning. However, the actual timeframes for a particular procurement may vary based upon the procurement workload, the availability of sources of supply, staffing, and the need for external agency clearances (external clearances are normally required in audio-visual, evaluation and automated data processing procurements). In addition, MS-732 requires internal agency approval of all ADP hardware and software by the Director, Office of Information Resources Management.

Note: These timeframes do not include the additional time that may be required for contractor startup or vendor delivery.

6.1.3.1 Competitive Awards

Initial Contract Award : Normally 120 to 160 calendar days from receipt of the PR (including specifications or Statement of Work and evaluation criteria) in the Office of Contracts.

Contract Amendments/Modifications : 30 to 45 calendar days from receipt of the PR (including specifications or Statement of Work changes, deletions or additions) and contractor's modification proposal in the Office of Contracts.

6.1.3.2 Section 8(a), Minority-owned Business Awards

Initial Award : 60 to 75 calendar days from receipt of the PR (including specifications or Statement of Work) in the Office of Contracts.

Amendments/Modifications : 30 to 45 calendar days from receipt of the PR (including specifications or Statement of Work changes, deletions and additions) and contractor's modification proposal in the Office of Contracts.

6.1.3.3 Non-competitive Award

Sole-source justification and the PR should be submitted 160 days prior to expected delivery date. This is to permit competitive award if publication in the Commerce Business Daily (CBD) of a notice of intent to award a sole-source contract results in alternative sources and denial of a sole-source.

Initial Award : 45 to 60 calendar days from the date of approval and publication of CBD 30-day notice if the sole-source Determination and Findings is approved. Total period is 75-90 days.

Amendments/Modifications : 30 to 45 calendar days from receipt of PR and specifications or Statement of Work changes, deletions or additions and contractor's modification proposal in the Office of Contracts.

6.1.3.4 Personal Services Contracts

(PSCs) 21 to 30 calendar days from receipt of the PR, Statement of Duties, completed SF-171, and cable certifying funds for contracts charged to posts. PSCs in excess of \$25,000 will require a minimum of 90 calendar days.

6.1.3.5 Open Market Small Purchases (Purchase Orders)

Less than \$2,500 : 14 calendar days from receipt of the PR and Statement of Work or specifications in the Office of Contracts.

\$2,500-\$ 9,999 : 21 calendar days from receipt of the PR and the Statement of Work or specifications in the Office of Contracts.

\$10,000-\$ 24,999 : 30 calendar days from receipt of PR and Statement of Work or specifications (requires public posting of solicitation for 10 days).

Amendments/Modifications : 14 calendar days from receipt of the PR in the Office of Contracts.

6.2 Solicited Bids/Proposals

6.2.1 Policy

All solicited proposals/bids for Peace Corps shall be processed by procurement personnel (M/C) in accordance with the Federal Acquisition Regulation (FAR).

The Contracts Office shall use competitive procedures to the greatest extent practical in the awarding of Peace Corps contracts and purchase orders.

M/C publishes notices of forthcoming solicitations in the Commerce Business Daily and/or solicits proposals/bids from source lists supplied by the requiring office, supplemented with sources from M/C bidders files.

M/C will not solicit proposals/bids until the Director, M/C, has accepted an approved PR which states requirements and certifies that funds are available for obligation or are contingent upon Congressional appropriations for awards to begin in the next fiscal year.

Technical evaluations are conducted to insure that all prospective offerors/bidders receive fair and equal opportunity to compete for Peace Corps contracts, as well as to attract competitive proposals/bids from the best suppliers. These evaluations are based on criteria determined in advance which allow for reasonable and qualitative distinctions among proposals.

6.2.2 Disclosure

Proposals/bids received in response to competitive solicitations shall be closely controlled. Release of proposal information (data) before decision as to award of the contract, or the transfer of valuable and sensitive data between competing offerors during the competitive phase of the acquisition process, could seriously disrupt the Government's decision-making process and undermine the integrity of the competitive acquisition process, thereby adversely affecting the Government's ability to solicit competitive proposals and award a contract which best meets the Government's needs and serves the public interest. The disclosure of source selection information is a criminal offense.

6.3 Unsolicited Proposals

6.3.1 Policy

Peace Corps may accept unsolicited proposals in accordance with procedures and methods set forth in Subpart 15.5 of the Federal Acquisition Regulation. To award a contract based on an unsolicited proposal without providing for full and open competition requires that appropriate statutory authority exists in Subpart 6.3. of the Federal Acquisition Regulation.

6.3.2 General

The acceptance of an unsolicited proposal for evaluation neither constitutes nor implies any basis of claim against the Peace Corps. Unsolicited proposals are a valuable means for Government agencies to obtain innovative or unique methods or approaches for accomplishing their missions from sources outside the Government. Advertising material, commercial product offers, contributions or technical correspondence are not unsolicited proposals.

A valid unsolicited proposal must:

- Be innovative and unique;
- Be independently originated and developed by the offeror;
- Be prepared without Government supervision;
- Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and
- Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

Unsolicited proposals in response to a publicized general statement of Peace Corps needs are considered to be independently originated. Receipt of unique and innovative unsolicited proposals not related to the Peace Corps missions may be referred to other agencies whose missions bear a reasonable relationship to the proposal's subject matter.

6.3.3 Procedures

The Director of the Office of Contracts is the agency contact point to coordinate the receipt and handling of unsolicited proposals. Offices shall coordinate the handling of unsolicited proposals with the Director of Contracts. If an employee receives an unsolicited proposal, he or she shall forward it, prior to any discussions of its contents with the submitter, to the Office of Contracts. If any agency personnel have personal contacts with the submitter, they shall not make any agency commitments concerning acceptance of the proposal.

If the Director of the Office of Contracts receives an unsolicited proposal with any restrictions, he or she shall have the contractor delete the restricted portions of the proposal or place a cover sheet on the proposals which reads as follows:

UNSOLICITED PROPOSAL USE OF DATA LIMITED All Government personnel must exercise **EXTREME CARE** to ensure that the information in this proposal is not disclosed outside the Government and is **NOT DUPLICATED, USED OR DISCLOSED** in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use.

This notice does not limit the Government's right to use information contained in the proposal if it is available from another source without restriction.

This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

Staff should encourage potential offerors to make preliminary contacts with the Office of Contracts before expending extensive effort on a detailed unsolicited proposal or submitting proprietary data to the Peace Corps. Contacts with agency technical personnel may include contacts for the limited purpose of obtaining an understanding of the Peace Corps mission and responsibilities relative to the type of effort contemplated.

The Director of the Office of Contracts is responsible for acknowledging all unsolicited proposals and inquiries about them. Acknowledgment is made by letter.

6.3.4 Evaluation

Comprehensive evaluations shall be coordinated by the Office of Contracts, which shall attach or imprint on each unsolicited proposal circulated for evaluation the legend set forth in 6.3.3 herein. When performing a comprehensive evaluation of an unsolicited proposal, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

1. Unique and innovative methods, approaches or concepts demonstrated by the proposal.
2. Overall scientific, technical or socio-economic merits of the proposal.
3. Potential contribution of the effort to the agency's specific mission.
4. The offeror's capabilities, related experience, facilities, techniques or unique combinations of these which are integral factors for achieving the proposal objectives.
5. The qualifications, capabilities and experience of the proposed principal investigator, team leader or key personnel who are critical in achieving the proposal objectives.

The evaluators shall notify the Office of Contracts in writing of their conclusions and recommendations when the evaluation is completed. No discussions between the evaluators and offerors shall take place without the consent of the Contracting Officer.

6.3.5 Award

A favorable evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing full and open competition. The Office of Contracts shall return an unsolicited proposal to the offeror, citing reasons, when the proposal's substance:

1. Is available to the Government without restriction from another source; or

2. Closely resembles a pending competitive acquisition requirement; or
3. Does not demonstrate an innovative and unique method, approach or concept.

The Contracting Officer may commence negotiations only when:

1. An unsolicited proposal has received a favorable comprehensive evaluation;
2. The unsolicited proposal is not of the character described in 6.3.5 above;
3. The agency's technical office sponsoring the contract supports its recommendation with facts and circumstances that preclude competition, including consideration of the evaluation factors in 6.3.4, furnishes the necessary funds, and provides the certification required by FAR 6.303-2(b);
4. The Contracting Officer has complied with the synopsis requirements; and
5. The Contracting Officer has executed any justification and obtained any approval or determination and findings that are required.

If the unsolicited proposal is acceptable for award without competition, the agency and offeror shall use the proposal as the basis for negotiation.

6.3.6 Prohibitions

Peace Corps personnel shall not use any data, concept, idea or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other contractor unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea available to the Government from other sources without restriction.

Peace Corps personnel shall not disclose restrictively marked information included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus and other matters, except as authorized by law, may result in criminal penalties under 18 U. S. C., 1905.

7.0 EFFECTIVE DATE

This manual section shall take effect on date of issuance.