

409th CSB PARC TIPS

Training in a Practical Sense

PARC TIPS Number: 12-001

Date: 22 March 2012

SUBJECT: How Contract Structure supports Performance (Contract Administration)

REFERENCE: FAR Clauses 52.212-4, 52.214-29, 52.215-8, FAR Part 11, Part 16, DFARS 204.7103, 215.300.

DISCUSSION/GUIDANCE:

1. Contracting personnel need to address the alignment of elements of contract structure: contract type, the specification (i.e.: SOW, PWS, etc.), line items, evaluation factors, terms and conditions and surveillance methods/remedies in support of contract administration activities.
2. The contracting community has the primary responsibility to ensure procurement vehicles are formed in a way to facilitate their administration. However, all parties (requirements, financial management and legal) must work together to develop the appropriate acquisition strategy or plan addressing the impact of the elements early enough in the acquisition process to obtain the desired results. The bottom line is this effort must lead to successful performance by the contractor for the Government to get what we are paying for!
3. Contract type: This addresses risk. There are many factors that the KO should consider in choosing the contract type. It requires the exercise of sound judgment. The objective is to select a contract type that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.
4. Specification: This is what has to be done. It is a description of the requirement or the Government's needs. It is critical to be concise, clear, and use plain language to avoid ambiguity. Say what you mean and mean what you say!
5. Line items (aka the Schedule): This is how the contractor will invoice for supplies and services. Contracts shall identify the items or services to be acquired as separate contract line items (CLINs) unless it is not feasible to do so. Most CLINs shall have all four of the following characteristics: single unit price; separately identifiable; separate delivery schedule; and single accounting classification citation. Do not establish a separate CLIN solely to account for functions incidental to a supply or service. If these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, just identify the functions in the contract schedule. Spell it out in the CLIN! This way it is captured in the contract.
6. Evaluation factors: They represent those specific characteristics that are tied to significant requirements of the solicitation and are expected to be discriminators, or are required by statute/regulation. They are the uniform baseline against which each offeror's proposal is evaluated. The evaluation of factors and subfactors may be quantitative, qualitative, or a combination of both. The contractor's proposal addresses how they intend to provide for the needs of the Government (aka the specification). Specifically, in trade-off best-value acquisitions where the Government may

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be willing to pay more for a “higher” level of effort, it is desired to ensure that this effort is captured in the resultant contract. See paragraph 9 below.

7. Terms and conditions: They are related to customary practice for a particular market. They establish how different aspects of the contract will be managed. They define “the rules of the game.” They address risk by imposing responsibilities to the parties involved in the contract.
8. Surveillance Methods/Remedies: This is how the Government ensures contractor’s performance is in compliance with the contract. These may be addressed by using a QASP, a deduction schedule, deliverables schedule and remedies contained in Clauses.
9. It is highly recommended that contracting personnel consider incorporating the contractor’s proposal or pertinent sections of it into the resultant contract. It may be in the best interest of the Government to attach the relevant parts of the contractor’s proposed execution plan to the contract or incorporate the sections by reference on the face of the contract citing page number, date and revision number if available. Note that this plan could have given the offeror an advantage over others (in a trade-off scenario), however, without incorporating the appropriate proposal excerpts, the “promised effort” might not be captured anywhere else in the contract. Therefore, if not part of the contract, no remedies can be applied!
10. Reminder: The FAR establishes an order of precedence to resolve solicitation or contract inconsistencies for both the commercial and the uniform contract format (UCF). For sealed bidding (FAR Part 14) and contracting by negotiation (FAR Part 15), the order is the following: the Schedule; Representations and other instructions; Clauses; other documents, exhibits, and attachments; and the specifications. For commercial items (FAR Part 12), the order is the following: the schedule; the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of Clause 52.212-4; Clause at 52.212-5; addenda to the solicitation or contract; Solicitation provisions, if applicable; other paragraphs of Clause 52.212-4; the Standard Form 1449; other documents, exhibits, and attachments; and the specification.

FOR QUESTIONS PLEASE EMAIL THE 409th CSB PARC POLICY AND COMPLIANCE OFFICE AT: usarmy.kaiserslautern.409-contr-spt-bde.list.hq-cmd-par@mail.mil.