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Chapter 5 Contracting Processes



Key Points

- In any contingency operation, quality acquisition support to the commander is critical to mission accomplishment.
- The absence of direction should be interpreted as permitting innovation and the use of sound business judgment.
- A wide selection of contract types is available to provide the needed flexibility in acquiring required supplies and services. Most contingency purchases can be accomplished through simplified acquisition procedures (SAPs).
- Contingency contracting officers (CCOs) should emphasize price negotiations, even where competition exists, at sustained or established locations.
- The type of contract selected determines both the clauses to be included and the degree of risk accepted by the government.
- The objective is to select the contract type that places a reasonable degree of risk on the contractor and provides the contractor with the greatest incentive to perform efficiently and economically.

Introduction

CCOs and all DoD officials have an ethical obligation to abide by laws and regulations. However, in an absence of clear-cut directions, 1.102-(4)(e) of the Federal Acquisition Regulation (*FAR 1.102-(4)(e)*) encourages personnel to think outside of the box.

This chapter summarizes the limitations on, and exceptions to, contracting operating procedures in a contingency environment. Specific augmentation programs that are common to the contingency environment are explained, including SAPs. Frequently used contract types, instruments, and appointed personnel (such as ordering officers)

are also described. CCOs can refer to this chapter for a discussion of determinations and findings (D&Fs), justifications and approvals (J&As), and equipment lease-or-purchase decisions that can apply to the contracting process. The chapter notes the tools for organizing and tracking contracts and the means of providing oversight through the contracting officer's representative (COR) to ensure accountability. The CCO's job is to facilitate the purchasing needs of customers. This chapter also explains the duties of a paying agent and the execution of ratification procedures when unauthorized commitments are made. **Figures 6 and 7** outline and review basic contracting processes and contract formats, respectively.

Simplified Acquisition Procedures

Once contingency contracting is selected, most purchases can be accomplished using SAPs, as described in *FAR Part 13*, which include procedures for the acquisition of supplies and services, including military construction (MILCON), as long as the aggregate amount does not exceed the simplified acquisition threshold (SAT) for declared contingency or peacekeeping operations.

Competition requirements under simplified acquisition procedures. The CCO must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is fair, reasonable, and most advantageous to the government. Maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources in the local trade area. Unless the contract action requires a synopsis pursuant to *FAR 5.101* and an exception under *FAR 5.202* is not applicable, the CCO should consider a solicitation with responses from at least three sources to promote competition to the maximum extent practicable. Whenever possible, the CCO should request quotations or offers from two sources not included in the previous solicitation. The requirement

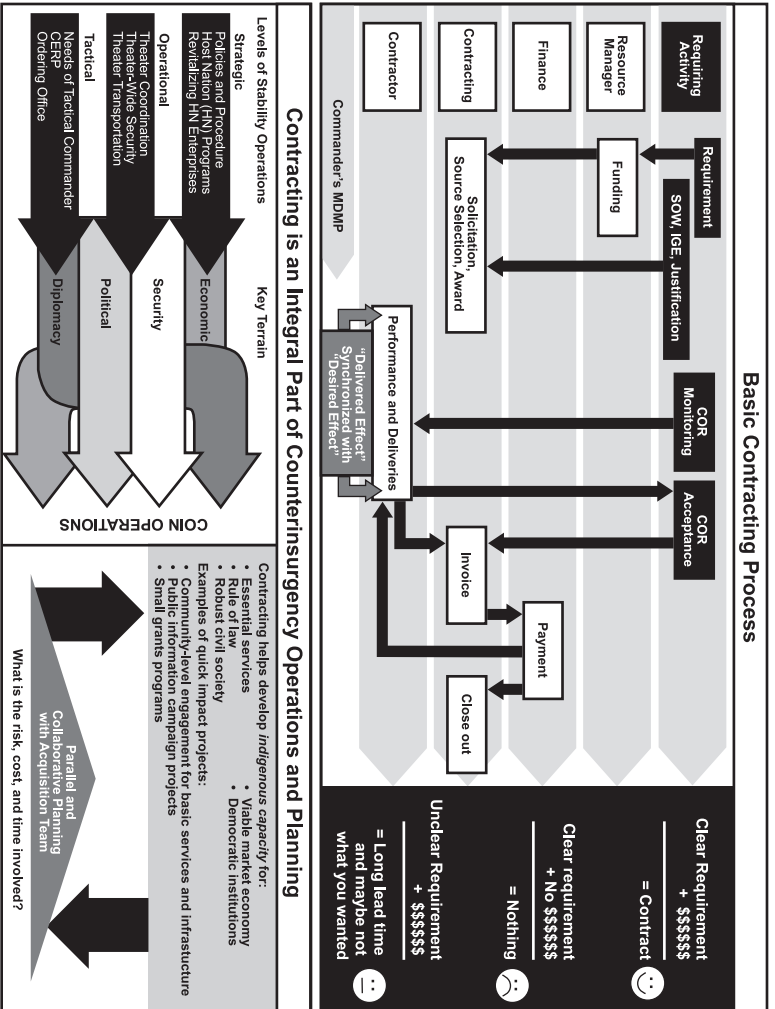


Figure 6. Basic Contracting Processes

Contract Format

A contract is usually organized in the Uniform Contract Format. It is formatted into parts I, II, III, and IV.
Part I:

| | | | | | |
|--|--|---|--|---|---|
| Section A Contract Form. Contains basic information such as the issuing office, address and contact number. | Section B Supplies or Services and Prices/Costs. Contains a brief description of the supplies or services and quantity. | Section C Description Specifications/Statement of Work. Contains a brief description of the supplies or services and quantity. | Section D Packaging and Marking. Provides packaging, packing, preservation, and marking requirements. | Section E Inspection and Acceptance. Contains inspection, acceptance, quality assurance, and reliability requirements. | Section F Deliveries or Performance. Specifies the time, place and method of delivery or performance. |
| Section G Contract Administration Data. Contains any required accounting, appropriation data, required contract information or other instructions. | Section H Special Contract Requirements. Contains a clear statement of any special contract requirements not included in sections I, II, or III. | <i>Watch out! Do not accept any gratuities, that include any (1) special compensation of any kind (Anti-Kickback Act of 1996 and UCMJ) 134 of the UCMJ!</i> | Part II Contract Clauses Section I: Includes standard clauses of considerable power responsible of contracting parties. | Part III List of Documents, Exhibits, and Other Attachments Section J: List of attachments, exhibits in sections (examples: Illustrations and certifications). | Part IV Representations and Instructions Section K: Representations, certifications Section L: Instructions conditions and notices Section M: Evaluation factors for Award. |

Parts II, III, and IV:

Basic Contracting Process

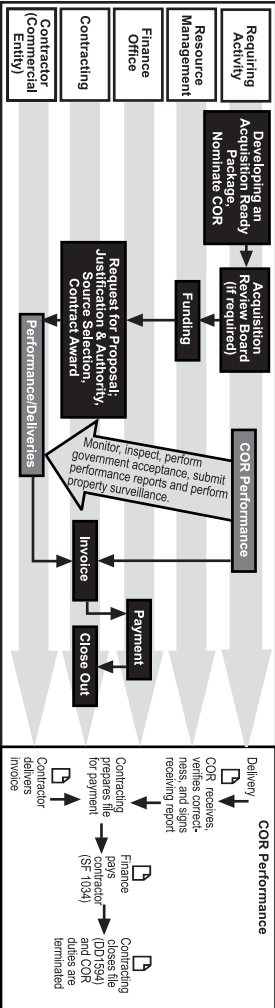


Figure 7. Contract Format

for competition is not waived when using SAPs. In addition, to make micropurchases outside of the United States to support a contingency operation, the CCO needs to support price reasonableness. To the extent practicable, micropurchases shall be distributed equitably among qualified suppliers, and micropurchases may be awarded without soliciting competitive quotations if the contracting officer or the person appointed in accordance with *FAR 1.603-3(b)* concludes that the price is reasonable.

Micropurchases

Governmentwide commercial purchase card. A governmentwide commercial purchase card (GCPC) is the preferred method of purchasing supplies and services within the micropurchase threshold. All purchases that are made or paid for by using GCPCs are subject to all applicable provisions of *FAR Subpart 13.2* and of 213.270 of the Defense Federal Acquisition Regulation Supplement (*DFARS 213.270*) and must be authorized and documented accordingly. Although the benefits associated with using the GCPC are well known, the card might not be readily accepted in many locations in a contingency situation. CCOs may use the GCPC to support a contingency, humanitarian, or peacekeeping mission to buy immediately available supplies or services for a single delivery that does not exceed the CCO single-purchase limit. The GCPC can be used for over-the-counter purchases (as permitted by the local banking infrastructure). The GCPC also is frequently used (when local infrastructure supports the technology) over the telephone and the Internet. Training materials are available at <https://acc.dau.mil/CommunityBrowser.aspx?id=18895>. If the GCPC is not accepted, Standard Form (SF) 44 may be used.

Contracting officer use of the governmentwide commercial purchase card. Contracting officers may use the GCPC to support a contingency, humanitarian, or peacekeeping mission to buy immediately

available supplies or services that will be delivered at one time and do not exceed the applicable SAT. (*DFARS 213.301(3)*)

Imprest fund and third-party drafts. (*FAR 13.305* and *DFARS 213.305*) These instruments are cash funds of a fixed amount (established by a funds advance to a duly appointed cashier) for the purpose of making immediate cash payments of relatively small amounts for authorized supplies and nonpersonal services. Imprest funds and third-party drafts are no longer standard DoD instruments, but they can be established for contingencies if a waiver is received. CCOs should use these instruments as a last resort given the significant security requirements for obtaining the money. SF 44s and purchase cards have generally eliminated the need for imprest funds. However, in the rare event that an imprest fund or third-party draft is the only way to address certain categories of requirements, the CCO will provide the customer with more information and the procedures outlined in *FAR 13.305*.

Contract Types

Selection of contract types. As described in *FAR 16.101*, a wide selection of contract types is available to the government and contractors, providing the flexibility needed to acquire the large variety and volume of supplies and services required by agencies. Contract types vary according to the following factors:

- Degree and timing of the responsibility assumed by the contractor for the costs of performance
- Amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

The contract types are grouped into three broad categories: fixed-price contracts, (*FAR Subpart 16.2*) cost-reimbursement contracts (*FAR Subpart 16.3*), and time and materials (T&M) or labor-hour (LH) contracts. (*FAR Subpart 16.6*)

Specific contract types range from firm fixed price (FFP), in which the contractor has full responsibility for the performance costs and the resulting profit or loss; to cost plus fixed fee, in which the contractor has minimal responsibility for performance costs, and the negotiated fee (or profit) is fixed; to T&M or LH, in which the contractor is paid at preestablished fixed hourly rates, differentiated by the types of labor actually provided, and is reimbursed for materials or other direct costs of performance. In addition, in a number of incentive contracts (*FAR Subpart 16.4*), the contractor's responsibility for performance costs and for the offered profit or fee incentives is tailored to the uncertainties involved in contract performance. Moreover, in some situations, it is beneficial for the government to negotiate master indefinite-delivery contracts for supplies or services, with specific requirements detailed later in specific task orders or delivery orders. (*FAR Subpart 16.5*)

Noncompetitive contracting, cost-reimbursable contracts, and T&M and LH contracts pose special risks of overspending. DoD has received specific guidance to reduce the use of these high-risk contract authorities, as specified in *Office of Management and Budget (OMB) Memorandum M-09-25*, "Improving Government Acquisition."

Fixed-price contracts. As described in *FAR Subpart 16.2*, under a fixed-price contract, the government must describe exactly the required contract results and give the contractor the flexibility to plan, manage, and execute the work to achieve those results. This type of contract has tremendous advantages because the performance and cost risks lie with the contractor. Contract types commonly used in a contingency environment are as follows:

- FFP contract
- Fixed-price contract with an economic price adjustment
- Fixed-price incentive contract, with determination and finding (D&F) required.

Firm-fixed-price contracts. As described in *FAR 16.202-1*, an FFP contract specifies a price that is not subject to any adjustment based on the contractor's cost experience in performing the contract. This contract type specifies that the contractor assumes maximum risk and full responsibility for all costs and resulting profit or loss. An FFP contract provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden on the government. An FFP contract may include an award fee incentive (*FAR 16.404*) or performance or delivery incentives (*FAR 16.402-2* and *16.402-3*) when the award fee or incentive is based solely on factors other than cost. The contract is still an FFP contract when such incentives are used. FFP contracts are suitable under the following conditions:

- There is adequate price competition.
- There are reasonable price comparisons with previous purchases of the same or similar supplies or services that were made on a competitive basis or supported by valid cost or pricing data.
- Available cost or pricing information permits realistic estimates of the probable costs of performance.
- Performance uncertainties can be identified; reasonable estimates of their cost impacts can be made; and the contractor is willing to accept an FFP contract and the associated assumption of the risks involved.

Cost-reimbursement contracts. As described in *FAR Subpart 16.3*, in general, the CCO will not be involved in cost-type efforts unless deployed as an administrative contracting officer with the Defense Contract Management Agency or deployed into security, sustainment, relief, or reconstruction activities. Under a cost-reimbursement contract, the contractor agrees to provide its best effort to complete the required

contract effort. Cost-reimbursement contracts specify the payment of allowable incurred costs (to the extent prescribed in the contract). These contracts include an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor cannot exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts are generally labor intensive and require additional scrutiny of the contractor's cost accounting system. CCOs should use these types of contracts when uncertainties in contract performance do not permit costs to be estimated with sufficient accuracy to justify the use of any type of fixed-price contract. Consequently, these types of contracts generally entail large dollar values and external support. When awarding cost-reimbursement contracts, CCOs should ensure that the allowable cost and payment clause specified in *FAR 52.216-7* is included and flows down to cost-type subcontracts. The Defense Contract Audit Agency supports deployed support personnel in a contingency operation and is available to assist the CCO in awarding and administering cost-type contracts.

The handbook DVD includes additional information about incentive type contracts.

Time-and-materials and labor-hour contracts. As described in *FAR Subpart 16.6*, under a T&M or LH contract, the contractor agrees to provide its best efforts to accomplish a specific requirement for services at predetermined hourly rates for the categories of labor to be performed. In T&M contracts, but not LH contracts, the contractor is reimbursed for the actual costs of any materials or other direct costs required to perform the work. T&M and LH contracts call for periodic payments for the actual labor performed, using the labor category rates in the contract, which include all direct labor, associated indirect costs, and an amount for profit. In addition, to the extent that materials or other direct costs are incurred in providing the services, the contractor will be reimbursed at actual cost, up to the ceiling amount noted in the

contract or order. T&M and LH contracts can be particularly useful and appropriate in contingency contracting situations when the need for services is clearly understood, but the particular parameters of the required labor or materials cannot be definitively established at the time of contract award. In such situations, the use of T&M and LH contracts can be the most appropriate way to acquire the necessary services while limiting the potential obligations of both the contractor and the government. Because the contractor will be paid for each hour of services provided (up to the ceiling amount established in the contract or order), the CCO and the designated COR must take great care in performing contractor oversight and overall administration. CCOs should ensure that the inspection clause (*FAR 52.246-6*) is included in all T&M and LH contracts and should be prepared to reduce the labor category hourly rates paid to contractors that must reperform work that was unacceptable to the government when initially performed. This labor category rate reduction is designed to remove potential contractor profit in the hourly rates when the government must require unacceptable work to be reperformed.

Indefinite-delivery contracts. The three types of indefinite-delivery contracts are definite-quantity, indefinite-quantity, and requirements contracts, as described in *FAR Subpart 16.5* and *DFARS Subpart 216.5*.

Definite-quantity contracts. As described in *FAR Subpart 16.502*, a definite-quantity contract provides for the delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance scheduled at a designated location, time, and date after the order is placed. A definite-quantity contract may be used when the following can be determined in advance:

- A definite quantity of supplies or services will be required during the contract period.

- The supplies or services are regularly available or will be available after a short lead time.

Indefinite-quantity contracts. As described in *FAR Subpart 16.5* and *DFARS Subpart 216.5*, an indefinite-quantity contract may be used when the government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that it will require during a fixed contract period, so it is inadvisable for the government to commit itself to procuring more than a minimum quantity. Such quantity limits can be stated as number of units or as dollar values. The contracting officer should use an indefinite-quantity contract only if a recurring need is anticipated. Indefinite-quantity contracts are characterized as follows:

- The contract must require the government to order—and the contractor to furnish—at least a stated minimum quantity of supplies or services. If an order is placed, the contractor must furnish any additional quantities, not to exceed the stated maximum.
- The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.
- To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the government is fairly certain to order.
- The contract may also specify maximum or minimum quantities that the government may order under each task order or delivery order and the maximum quantity that it may order during a specific period of time.

A solicitation and contract for an indefinite quantity must address the following:

- Specify the period of the contract, including the number of options and the period during which the government may extend the contract under each option
- Specify the total minimum and maximum quantity of supplies or services that the government will acquire under the contract
- Include a statement of work, specifications, or other description that reasonably explains the general scope, nature, complexity, and purpose of the supplies or services that the government will acquire under the contract and thereby enables a prospective offeror to decide whether to submit an offer
- State the procedures that the government will use in issuing orders (including the ordering media) and, if multiple awards may be made, note the procedures and selection criteria that the government will use to give awardees a fair opportunity to be considered for each order (*FAR 16.505(b)(1)*)
- Include the name, address, telephone number, fax number, and email address of the agency task order and delivery order ombudsman (*FAR 16.505(b)(5)*) if multiple awards may be made
- Include a description of the activities authorized to issue orders
- Include authorization for placing oral orders, if appropriate, provided that the government has established procedures for obligating funds and that oral orders are confirmed in writing
- Because quantities are not fixed, specify that variable units or amounts (such as the number of meals served beyond the minimum guaranteed) require subsequent verification and audit by the COR.

Requirements contracts. As described in *FAR 16.503*, a requirements contract is an indefinite-delivery contract that provides for filling all of the actual purchase requirements for specific supplies or services of

designated activities during a specified contract period, with deliveries scheduled by the timely placement of orders with the contractor. Requirements contract advantages include the following:

- Requirements contracts have the flexibility needed to support deployment without the financial risk and administrative burden that an indefinite-delivery contract imposes. Under a requirements contract, the activity only orders the needed supplies or services when they are needed and only pays upon acceptance. Funds are obligated only when the government issues a delivery order against the contract. Delivery orders are prepared on Department of Defense (DD) Form 1155 and contain information similar to that in a purchase order, with some minor differences.
- The contract price can be based on an FFP or cost-reimbursement determination. The agreed-to prices can be derived from either catalog or market prices.
- If the government no longer has a requirement for the supplies or services covered by the contract, the contractor has the burden of proving whether additional compensation is warranted.
- The maximum and minimum order quantity limitations are included in the original contract. These limitations allow the contractor to propose reasonable prices, permitting the contractor to provide economic quantities in keeping with local market conditions. Orders that fall outside the applicable range will be treated as separate purchases. The better the customer defines its needs up front, the better the resulting competition and prices.
- The CCO should perform a spend analysis of known requirements to determine the categories of supplies and services that might be suitable for a centralized contract. One approach would be reviewing the number of simplified acquisition actions for the same items.

Letter contracts and undefinitized contract actions. As described in *DFARS 217.74*, undefinitized contract actions (UCAs) are defined as any contract action for which the contract terms, specifications, or prices are not agreed upon before performance begins. Examples include letter contracts, basic ordering agreements, and provisioned item orders when the price is not agreed upon before performance begins. The head of contracting activity (HCA) shall approve a UCA before award. The regional contracting center (RCC) chief will forward a request for approval to award a UCA through the senior contracting official (SCO) to the HCA. UCAs shall be accomplished in accordance with *DFARS 217.74*. UCA approval authorities shall establish procedures for RCC chiefs to track UCAs and to submit a written report to them for any UCA that is not definitized within 180 days after the contractor submits a qualifying proposal. The report shall list each UCA, explain why it was not definitized within the allotted time frame, and provide a new definitization date. CCOs shall document the contract file with the justification for the delay and shall prepare a new milestone schedule if the DFARS definitization schedule milestones are improved. UCAs that exceed 180 days substantially elevate the overall financial risk to the government. Every effort should be made to definitize contract actions before that time. Requests for approval to issue a UCA shall include a written statement of urgency. (*DFARS 217.7404*) The urgency statement for UCAs must cite the reasons why the government would be seriously injured if the action is delayed to permit negotiation of a price. A UCA—including an undefinitized task order or delivery order under a civil augmentation program (CAP) contract or another external support contract—of a flexibly priced nature should include the clauses specified in *FAR clause 52.216-24*, “Limitation of Government Liability”; *DFARS clause 252.217-7027*, “Contract Definitization”; and *DFARS 217.7404-4*, “Limitations on Obligations.” These clauses limit obligations to 50 percent of the not-to-exceed (NTE) price before

definitization. If a qualifying proposal is submitted before 50 percent of the NTE price is obligated, then obligations before definitization may be increased to no more than 75 percent of the NTE price.

Considerations for Contract Type Selection and Risk Assessment

The CCO decides which type of contract to use depending on the facts surrounding the individual acquisition. The objective is to select the contract type that places a reasonable degree of risk on the contractor and also provides the contractor with the greatest incentive to perform efficiently and economically. The CCO must consider the factors in *FAR 16.104* as well as the stability and predictability of the requirement, specificity of the work description, known track records of available contractors, and general acquisition environment. The CCO must document in the contract file the rationale for the contract type selected.

Commerciality of the requirement. As described in *FAR 12.207*, when acquiring a commercial item, the CCO should consider a number of factors, including the following:

- The CCO should normally use an FFP contract or fixed-price contract with an economic price adjustment. (*FAR 12.207(a)*)
- To protect the government's interests, each purchase of commercial items and services should be assessed to determine whether it should use a unilateral or bilateral contractual instrument.
- CCOs may use a T&M or LH contract under certain circumstances if the determination is made that no other authorized contract type is suitable. (*FAR 12.207(b)*)

When assessing unilateral and bilateral options, the CCO should consider factors such as the following:

- Business and cultural environment. Commercial practices vary among countries. Market research will clarify the risk associated with local commercial practices and the level of protection required to maintain the government's interests. (*FAR 10.002(b)*)
- Nature of the requirement and impact on the mission. A unilateral purchase order is an offer by the government to a contractor. The contractor is not obligated to perform. A binding agreement is created when the contractor begins performance. A bilateral signature makes the agreement binding on both parties. (*FAR 13.004(b)*)
- Order amount, contractor financial capabilities, and potential impact on mission (if order is not filled).

Acquisition method. As described in *FAR 16.102* and *DFARS 216.104-70*, the acquisition method selected for a particular acquisition can limit the available choice of contract type as follows.

- **Simplified acquisition.** When using SAPs, purchase orders are normally FFP.
- **Unpriced orders.** An unpriced order can be used in certain situations when it is impossible for the CCO to obtain firm pricing before issuing the purchase order. Whenever the CCO uses an unpriced order, it must include a dollar limit on the government's obligation, and the contracting officer must follow up to ensure timely pricing.
- **Negotiation.** When using the negotiation procedures prescribed in *FAR Part 15*, the CCO may use any contract type (or combination of contract types) that will promote the best interests of the government, as long as the specific limitations in *FAR Part 16* are met. CCOs must not use any contract type not specified in the FAR unless authorized by agency regulation or a FAR deviation.

- **Cost risk.** (*FAR 16.103(a)*) CCOs must encourage contractors to accept reasonable cost risks of contract performance. However, requiring contractors to accept unknown or uncontrollable cost risk can endanger contract performance, substantially reduce competition, or substantially increase contract price. To realistically choose the proper contract type to meet a specific contract situation, CCOs must consider the proper allocation of cost risk. At a minimum, the appraisal of cost risk should consider two areas of particular concern, contract performance risk and market risk.
- **Performance risk.** Most contract cost risk is related to contract requirements and the uncertainty surrounding contract performance—the lower the uncertainty, the lower the risk. Therefore, the appraisal of cost risk should begin with an appraisal of performance risk. For larger, more complex contracts, the CCO likely will need assistance from other members of the government acquisition team (e.g., representatives from the requiring activity, engineering staff, contracting, and program or project management). Relevant considerations include the following:
 - » Stability or clarity of the contract specifications or statement of work
 - » Type and complexity of the item or service being purchased
 - » Availability of historical pricing data
 - » Previous experience in providing required supplies or services
 - » Urgency of the requirement
 - » Contractor technical capability and financial responsibility
 - » Extent and nature of proposed subcontracting.
- **Market Risk.** Changes in the marketplace will affect contract costs. Preferred acquisition practice calls for forward pricing of contract efforts because forward pricing provides a baseline that the CCO and the contractor can use to measure cost or price performance against contract effort. Forward pricing requires the

contracting parties to make assumptions about future changes in the marketplace. A volatile market will increase the cost risk involved in contract pricing, particularly when the contract period extends several years. What will material and labor cost years from now? Will material shortages occur years from now? If these unknown costs are significant, the length of the contract becomes an important consideration in the selection of contract type. A fixed-price contract with an economic price adjustment is designed specifically to reduce this market risk for contractors.

Determinations and Findings

Definition. As described in FAR 1.701, a D&F is a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions. The determination is a conclusion or decision supported by the findings, which are statements of fact or rationale that are essential to support the determination and must cover each requirement of the statute or regulation.

General. As described in FAR 1.702, a D&F shall ordinarily be for an individual contract action. Unless otherwise prohibited, class D&Fs may be executed for classes of contract actions. (FAR 1.703) The approval granted by a D&F is restricted to the proposed contract action, as reasonably described in that D&F. D&Fs may provide a reasonable degree of flexibility. Furthermore, in the application of D&Fs, reasonable variations in estimated quantities or prices are permitted unless the D&F specifies otherwise.

When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the level of the increase permitted by the option.

Some of the more common general D&Fs address type of contracting action, exercising of an option, extension of period of performance, and ratification.

Class determination and finding. As described in *FAR 1.703*, CCOs shall be aware of any class D&Fs for their areas of responsibility (AORs). A class D&F provides authority for a class of contract actions. A class may consist of contract actions for the same or related supplies or services (or other contract actions that require essentially identical justification). Important D&F considerations include the following:

- The findings in a class D&F shall fully support the proposed action, either for the class as a whole or for each action. A class D&F shall be for a specified period, with the expiration date stated in the document.
- The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F fall within the scope of the D&F.
- Expiration dates are required for class D&Fs and are optional for individual D&Fs. (*FAR 1.706*)

Content. As described in *FAR 1.704*, each D&F shall detail sufficient facts and circumstances to clearly and convincingly justify the specific determination made. At a minimum, each D&F shall include, in the required agency format, the following information:

- Specific identification of the document as a D&F
- Identification of the agency and the contracting activity
- Nature and description of the action being approved
- Citation of the appropriate statute or regulation that is the basis for the D&F
- Findings that detail the particular circumstances, facts, or reasoning essential to support the determination, with necessary supporting documentation that shall be obtained from appropriate requirements and technical personnel

- Determination (based on the findings) that the proposed action is justified under the applicable statute or regulation
- Expiration date of the D&F, if required (*FAR 1.706*)
- Signature of the official authorized to sign the D&F (*FAR 1.707*) and the date signed.

Supersession and Modification. As described in *FAR 1.705*, D&Fs function as follows:

- If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F before the date that it was superseded.
- The contracting officer does not need to cancel a solicitation if the D&F, as modified, supports the contract action.

Signatory authority. As described in *FAR 1.707*, when a D&F is required, the appropriate official shall sign it in accordance with agency regulations. Authority to sign (or delegate signature authority for D&Fs) is specified in the applicable parts of the FAR.

Justifications and Approvals

Justification and approval for other than full and open competition. When using procedures other than those for full and open competition, the contracting officer must complete a thorough written justification in accordance with *FAR 6.303*, explaining the reasons for proceeding with the award of a contract without full and open competition. The CCO must also ensure that a fair and reasonable price is achieved. This justification must be approved by the approval authorities, as specified in *FAR 6.304*. The CCO should be familiar with the deployed agency's thresholds and should know when legal review of the J&A is required.

New contracts and modifications are exempt from the requirements for full and open competition (so no J&A is required) if the following apply:

- Acquisitions are made under the SAP of *FAR Part 13*.
- Contracts are awarded under procedures expressly authorized by statute, except for those specifically addressed under the authority of *Section 2304(c)(5)* of the United States Code (*10 U.S.C. Section 2304(c)(5)*).
- Contract modifications are within the scope and under the terms of an existing contract.
- Orders are placed under requirements contracts or definite-quantity contracts, as noted in *FAR Part 16.5*.
- Orders are placed under indefinite-quantity contracts when (1) the contract was awarded under the procedures of *FAR Part 6.1* or *Part 6.2* and all responsible sources were realistically permitted to compete for the requirements in the order; or (2) the contract was awarded under *FAR Subpart 6.3* and the contract's J&A adequately covered the requirements in the order.

If the contract action or modification is not exempt from the requirements for full and open competition (as previously described), there are several exceptions to the requirements. The most commonly used exception in a deployed environment is unusual and compelling urgency, but the CCO must be familiar with the complete list of FAR exceptions, noted as follows in *FAR 6.302*:

- Only one responsible source (sole source) and no other supplies or services will satisfy agency requirements. (*FAR 6.302-1*)
- The unusual and compelling urgency (*FAR 6.302-2*) authority to use procedures other than those for full and open competition applies in

those situations when an unusual and compelling urgency precludes full and open competition and a delay in contract award would result in serious financial or injury to the government. It is important to note that (1) unusual and compelling requirements are not to be confused with sole source requirements (*FAR 6.301 (c)(1)*); and (2) CCOs are warned against contracting without providing for full and open competition because of a lack of advance planning by the requiring activity or because of concerns related to the level of funds available (for example, funds will expire).

- Industrial mobilization, engineering, developmental or research capability, or expert services. (*FAR 6.302-3*)
- International agreement. (*FAR 6.302-4*)
- Statutory authorization or requirement. (*FAR 6.302-5*)
- National security. (*FAR 6.302-6*)
- Public interest. (*FAR 6.302-7*)

When unusual and compelling urgency is the basis for using procedures other than those for full and open competition, the written J&A may be made after contract award if the preparation and approval of the J&A before award would unreasonably delay the acquisition. (*FAR 6.302-2(c)(1)*) Contracts awarded under this circumstance should include an appropriately limited period of performance, with follow-on contracts awarded based on full and open competition or the submission of cost or pricing data for sole-source awards.

Class justifications and approvals. (*FAR 6.303-1(d)*) Class justifications and international agreement competitive restriction (IACR) documents may be used in certain circumstances. For example, they may be used when citing similar justification authority for a group of related contract actions for the same or related supplies or services.

Information that is the same for multiple contracts need not be restated for each. CCOs shall be aware of class J&As and IACRs for their AORs.

Lease or Purchase

Pursuant to *FAR Subpart 7.4*, consideration of whether to lease or purchase equipment should be based on a case-by-case evaluation of comparative costs and other factors. At a minimum, the following factors should be considered (in addition to applying *10 U.S.C. Section 2401* statutory authorization requirements to the lease of a vessel, aircraft, or combat vehicle or a commercial vehicle and associated equipment):

- Estimated length of the period that the equipment will be used and the extent of use during that period
- Financial and operating advantages of alternative types and makes of equipment
- Cumulative rental payments for the estimated period of use
- Net purchase price
- Transportation and installation costs
- Maintenance and other service costs
- 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:

- Availability of purchase options
- Potential for use of the equipment by other agencies after its use by the acquiring agency ends
- Trade-in or salvage value

- Imputed interest
- Availability of a servicing capability, especially for highly complex equipment (i.e., the ability of the equipment to be serviced by the government or other sources if it is purchased).

Leases should be funded in accordance with *DoD Financial Management Regulation (FMR) 7000.14-R* (available at <http://comptroller.defense.gov/fmr>). Leases are either capital leases or operating leases. (*FMR 7000.14-R*, Volume 4, “Accounting Policy and Procedures,” Chapter 6, “Property, Plant, and Equipment,” Section 060206) Procurement funds are used for capital leases, which are essentially installment purchases of property. Note that if a lease is justified, a lease with option to purchase is the preferred acquisition method, as specified in *FAR 7.402(b)(2)*.

Nontactical vehicle lease or purchase. The lease-or-purchase decision is especially important in the acquisition of nontactical vehicles (NTVs). A recent DoD Inspector General report on the management of NTVs (available at <http://www.dodig.mil/audit/reports/fy10/10-022.pdf>) discusses the cost trade-offs in different acquisition methods. **Figure 8** (taken from that report) illustrates the average cost over time of different acquisition approaches. This figure is an example of the insights that the required analyses can offer with regard to the lease-versus-purchase decision. The report also identifies another important issue—the management of NTVs and the problems associated with improperly managing them and failing to centralize their purchase. Such actions could lead to unnecessary and more expensive leases and purchases. If the requirement is for procuring or leasing vehicles versus transportation services, CCOs should review procurement restrictions with the General Services Administration.

Publicizing Contract Actions

Publication of contract actions. Pursuant to *FAR Part 5.002*, contracting officers are required to publicize contract actions to increase competition. To publicize contract actions, contracting officers should at least post in a public place a notice of all unclassified solicitations for goods and services to support the contingency operation. (*FAR 5.101(a)(2)*) In addition, contracting officers should advise potential vendors about all unclassified solicitations that have been released to request proposals and should encourage vendors to submit proposals.

Synopsis of requirements in *Federal Business Opportunities*. A CCO can unilaterally decide that a particular requirement does not need to be synopsized in *Federal Business Opportunities (FedBizOps)* under 14 specific exceptions specified in *FAR 5.202(a)*. In a contingency

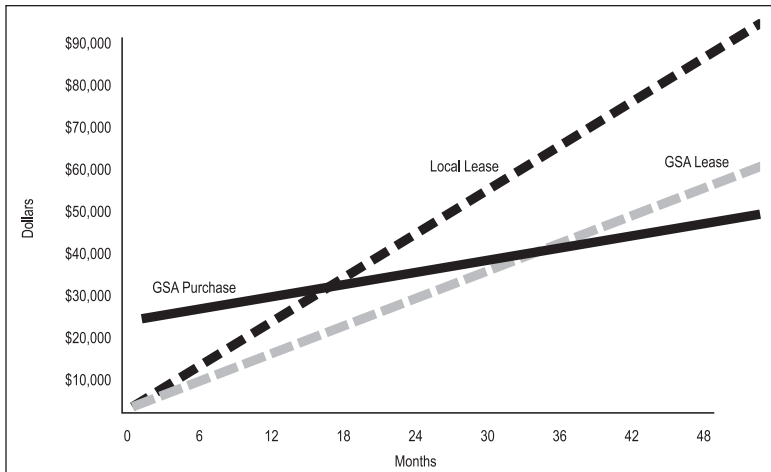


Figure 8. Average Cost of NTVs Over Time Using Different Acquisition Approaches

or humanitarian situation, the most commonly used exception applies when the proposed action will be made and performed outside the United States and its outlying areas and only local sources will be solicited. However, the CCO should carefully consider whether one of the other exceptions might apply to the proposed action before proceeding with a synopsis. Local contracting organization policies might require some form of posting or prior notification to potential offerors or bidders, even if the proposed action does not require a synopsis in *FedBizOps*.

Oral solicitations. Oral solicitations or verbal requests for proposals (RFPs) are authorized when a written solicitation would delay the acquisition of supplies and services to the detriment of the government and a solicitation notice is not required under *FAR 5.202* (such as perishable items, support of contingency operations, or other emergency situations). This technique does not excuse the CCO from complying with all other statutory and regulatory requirements. Oral solicitations are typically a last resort because of potential associated problems, and they require immediate follow-up in writing. CCO documentation also must provide a sufficient rationale for the use of an oral solicitation. The contract file includes the following:

- Justification for use of an oral solicitation
- Item description, quantity, and delivery schedule
- Sources solicited, including the date, time, name of the person contacted, and prices quoted
- Solicitation number provided to prospective offerors.

Once the CCO completes the oral solicitation and selects a successful offeror, a contract will be prepared as quickly as possible for the contractor's signature. Delay might require a further explanation in the contract file that describes the rationale for failing to take prompt

action. Sample contract formats, electronic prepopulated forms, and electronic copies of the required clauses in the contingency contracting support kit will accelerate the contracting documentation process.

Domestic Source Restrictions

Foreign acquisitions. *FAR Part 25* and *DFARS Part 225*, “Foreign Acquisition,” establish regulations implementing the Buy American Act, Balance of Payments Program, and Trade Agreements Act.

Buy American Act. The Buy American Act restricts the purchase of supplies that are not domestic end products for use in the United States. The Buy American Act does not apply to articles, materials, and supplies for use outside of the United States, its possessions, Puerto Rico, and other sites subject to its jurisdiction. (*FAR 25.001(a)(1)*) A foreign end product may be purchased if the contracting officer determines that the price of the lowest-cost domestic offer is unreasonable. In view of this exception, most acquisitions conducted overseas to support a foreign contingency operation will not be subject to the Buy American Act and the implementing regulations at *FAR Subpart 25.1* and *Subpart 25.2*.

Balance of Payments Program. This program applies to purchases of supplies or construction for use outside of the United States. The program institutes a preference for domestic (US-made) products and construction materials. Exceptions to the program are specified: (*DFARS 225.75*) A foreign end product may be acquired for use outside of the United States—or a foreign construction material may be used in construction outside of the United States—without regard to the restrictions of the Balance of Payments Program if the following conditions are met:

- The estimated cost of the end product does not exceed the SAT.
- The end product or construction material is listed at *FAR 25.104*, or the HCA determines that the requirement (1) can only be filled by a

foreign end product or construction material (*FAR 25.103(b)*); (2) is for end products or construction materials that, by their nature or as a practical matter, can only be acquired in the geographic area concerned (e.g., ice or bulk material such as sand, gravel, or other soil material; stone; concrete masonry units; or fired brick); or (3) is for perishable subsistence products and delivery from the United States would significantly impair their quality at the point of consumption.

- The acquisition of foreign end products is required by a treaty or executive agreement between governments.
- The end products are petroleum products or products for commissary resale.
- The end products are eligible products subject to the Trade Agreements Act, North American Free Trade Agreement (NAFTA), or Israeli Trade Act; or the construction material is subject to the Trade Agreements Act or NAFTA.
- The cost of the domestic end product or construction material (including transportation and handling costs) exceeds the cost of the foreign end product or construction material by more than 50 percent.
- The head of the agency has determined that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material or that it is impracticable to apply the restrictions of the Balance of Payments Program to the construction material.

Trade Agreements Act. The Trade Agreements Act (*19 U.S.C. Section 2501 et seq.* and *FAR Subpart 25.4*) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States or that meet

certain other criteria, such as holding least developed nation status. The President has delegated this waiver authority to the US trade representative.

FAR 25.401 lists all designated countries to which the Trade Agreements Act will apply. The Trade Agreements Act does *not* apply to the following:

- Purchases of supplies below the dollar threshold established by the US trade representative, with current dollar thresholds listed in FAR 25.402(b)
- Purchases of arms, ammunition, or war materiel
- Construction contracts valued at less than established dollar threshold
- Some service contracts, per FAR Section 25.403(c)
- Purchase from foreign sources that is restricted by the DoD Annual Appropriations or Authorization Act, with all products to which the act applies identified in DFARS 225.401-70.

Berry Amendment. (DFARS 225.7002) CCOs must comply with the Berry Amendment. Unless a specific exception in law applies, the following products, components, or materials must be grown, reprocessed, reused, or produced wholly in the United States if they are purchased with funds made available (but not necessarily appropriated) to DoD: (DFARS clause 252.225-7012)

- Food
- Clothing and the materials and components thereof, except for sensors, electronics (an exception that only applies to clothing with electronics), or other items added to (and not normally associated with) clothing and the materials and components thereof
- Tents

- Tarpaulins
- Covers
- Natural fibers or yarns
- Cotton and natural fiber products
- Natural fabrics (including all fibers and yarns therein)
- Synthetic fabrics (including all fibers and yarns therein)
- Fabric blends (including all fibers and yarns therein)
- Items of individual equipment (items in federal supply class 8465) made from or containing fibers, yarns, fabrics, or materials (including all fibers, yarns, fabrics, or materials therein)
- Hand tools
- Measuring tools.

DFARS 225.7002-2 explains Berry Amendment exceptions. Several of these exceptions may apply in a deployed environment as follows:

- Acquisition at or below the SAT
- Acquisition of any of the items in DFARS 225.7002-1(a) or 225.7002-1(b) if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired when needed at a satisfactory quality and in a sufficient quantity at US market prices
- Acquisition of items listed in FAR 25.104(a) unless the items are hand or measuring tools
- Acquisition outside the United States in support of combat operations
- Acquisition of perishable foods by or for activities located outside of the United States for their personnel

- Acquisition of food, specialty metals, or hand or measuring tools in support of contingency operations or for which the use of procedures other than competitive ones has been approved based on unusual and compelling urgency (*FAR 6.302-2*)
- Emergency acquisition by activities located outside of the United States for their personnel
- Acquisition of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced, and acquisition of specialty metals when the acquisition furthers an agreement with a qualifying country (*DFARS 225.872*)
- Acquisition of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country (*DFARS 225.872*), with a requirement for synopsis within 7 days after contract award when using this exception (*DFARS 205.301*)
- Acquisition of commercially available off-the-shelf items containing specialty metals, an exception that does not apply when the specialty metal (raw stock) is acquired directly by the government or by a prime contractor for delivery to the government as the end item.

The DFARS clauses pertaining to the Berry Amendment must be included in DoD solicitations (invitations for bids [IFBs] or RFPs) and DoD contracts. If the cited clause is included in a solicitation or contract, the Berry Amendment restrictions apply to that procurement. **Table 4** shows the applicability of *FAR Subpart 25.5 et seq.*

Other Unique Contracting Considerations

Synchronized Predeployment and Operational Tracker. The Synchronized Predeployment and Operational Tracker (SPOT) is the US government system of record for contractor and contractor

| Subpart | Supplies for Use | | Construction | | Services Performed | |
|---|------------------|------------|--------------|------------|--------------------|------------|
| | Inside US | Outside US | Inside US | Outside US | Inside US | Outside US |
| 25.1 Buy American Act—Supplies | X | — | — | — | — | — |
| 25.2 Buy American Act—Construction Materials | — | — | X | — | — | — |
| 25.3 Contracts Performed Outside the United States | — | X | — | X | — | X |
| 25.4 Trade Agreements | X | X | X | X | X | X |
| 25.5 Evaluating Foreign Offers— Supply Contracts | X | X | — | — | — | — |
| 25.6 American Recovery and Reinvestment Act—Buy American Act—Construction Materials | | | X | | | |
| 25.7 Prohibited Sources | X | X | X | X | X | X |

Table 4. FAR Subpart 25.5 Provides Comprehensive Procedures for Offer Evaluation and Examples, Part 1

| Subpart | Supplies for Use | | Construction | | Services Performed | |
|--|------------------|------------|--------------|------------|--------------------|------------|
| | Inside US | Outside US | Inside US | Outside US | Inside US | Outside US |
| 25.8 Other International Agreements and Coordination | X | X | — | X | — | X |
| 25.9 Customs and Duties | X | — | — | — | — | — |
| 25.10 Additional Foreign Acquisition Regulations | X | X | X | X | X | X |
| 25.11 Solicitation Provisions and Contract Clauses | X | X | X | X | X | X |

Table 4. FAR Subpart 25.5 Provides Comprehensive Procedures for Offer Evaluation and Examples, Part 2

personnel accountability and visibility. Per *DFARS clause 252.225-7040(g)*, SPOT is mandated for all contractors authorized to accompany the forces (CAAF) serving in a declared contingency, humanitarian, or peacekeeping operation (or in other military operations or exercises) when designated by the combatant commander. CAAF may include US citizens, US legal aliens, third-country nationals, local nationals who reside with US forces, or others as required by each combatant command (COCOM). Additional information on SPOT is available at <http://www.resource.spot-es.net/>.

Theater business clearance. (*DFARS 225.74* and *DFARS Procedures, Guidance, and Information [PGI] 225.74*) Theater business clearance (TBC) and contract administration delegation (CAD) refer to Office of the Secretary of Defense policies that give the COCOMs both visibility and a level of control over all external support, systems support, and theater support contracts that execute or deliver contracted support.

Defense Base Act insurance. Defense Base Act (DBA) insurance is required in all contracts for services to be performed outside of the United States, regardless of whether the personnel performing those services have CAAF status. In addition, before an employee who has CAAF status can deploy, the DBA insurance information block in SPOT must include a valid policy or binder number. Additional information on DBA is available at www.dol.gov/compliance/guide/defense.htm and <http://www.dol.gov/owcp/dlhwc/DBAFaqs.htm>.

Payment Information

Wide Area Workflow (WAWF).

The Wide Area Workflow (WAWF) system, described at <https://wawf.eb.mil/>, is a secure Web-based system for government contractors and authorized DoD users for generating, capturing, and processing receipt and payment documents. It enables electronic submission of contractor invoices as well as government inspection and acceptance documents. (*DFARS 232.7002*) Contractors shall submit payment requests and receiving reports in electronic form, except for

1. Purchases paid for with a GCPC;
2. Awards to foreign vendors for work performed outside of the United States;
3. Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security;

4. Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations, as defined in *10 U.S.C. Section 101(a)(13)*; humanitarian or peacekeeping operations, as defined in *10 U.S.C. Section 2302(8)*; or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or to national or civil emergencies;
5. Purchases to support unusual or compelling needs of the type described in *FAR 6.302-2*;
6. Cases in which DoD is unable to receive payment requests or provide acceptance in electronic form; or
7. Cases in which the contracting officer who administers the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the contractor.

Payment in local currency. As described in *FAR 25.1002*, local currency is the preferred payment method for contracts entered into with local foreign firms and performed outside of the United States, unless an international agreement provides for payment in dollars or the contracting officer concludes that the use of local currency is inequitable or inappropriate, as described at <http://fxtop.com/>. It is a preferred practice to use electronic funds transfer (EFT) when making payments to vendors and contractors. Currency exchange rates are available from the local finance office or at <http://www.fms.treas.gov/>.

Contingency contracting officer currency declaration. As noted in *FAR 25.1002* and *DoD FMR 7000.14-R*, Volume 5, paragraph 120104.A, "... the contracting officer has the authority to make a determination as to whether the contract will be priced in US dollars or the local currency." It is important to remember that CCOs must include in the contract the exchange rate to be used for converting the contract price from US dollars to the local currency, as available at <http://www.xe.com>.

One of the CCO functions is to help stabilize the local economy. An

influx of US dollars often works against this goal by further devaluing the local currency. Before placing overseas contracts in US dollars, the CCO should discuss the subject with the embassy, host nation liaison office, staff judge advocate, and accounting and finance office.

Choice of law. (*DFARS 233.215-70*) Each contract awarded in a foreign country in support of a contingency operation should contain a contract clause stating that US laws apply to the contract, the contract will be interpreted in accordance with US laws, and all disputes under the contract will be handled in accordance with the disputes clause of the contract.

Pre-Award Determinations and Memorandums

Negotiating practices. Much of the business conducted by contractors overseas is accomplished through negotiation. When setting the price of an item, CCOs should keep in mind that the first price quoted is usually only a starting position for negotiations. CCOs who deal with foreign contractors know that most of them can be shrewd negotiators. CCOs should consider negotiating for lower prices as a normal and necessary business practice. Two or three rounds of negotiating exchanges can be the most prudent and effective way to reduce proposed prices. For supplies, services, and construction, experience in the US Central Command (USCENTCOM) theater has shown that the price drops dramatically whenever discussions are initiated with an offeror. The CCO's bargaining position is enhanced when the product or service is available elsewhere or the requirement is not urgently needed. However, if the reverse is true and the contractor is aware that the product or service is unavailable or the requirement is urgent, the CCO might be hard pressed to negotiate a better deal.

Price negotiation memorandum. The business culture in most deployed locations relies on price negotiations. CCOs should emphasize price negotiations, even if competition exists, at sustained or established

locations. In awarding negotiated contracts, contracting officers should always engage in aggressive negotiations based on renegotiation objectives. (*FAR 15.405*) All negotiation results must be documented in a price negotiation memorandum (PNM). (*FAR 15.406-3*)

Fair and reasonable prices. The CCO shall include in the contract file a CCO memorandum that explains how fair and reasonable prices were obtained by the government and the basis for the price reasonableness determination. (*FAR 15.402*)

Certified cost or pricing data. The award of any negotiated contract (or the modification of any contract) that exceeds \$700,000 will require the contractor to submit certified cost or pricing data unless one of the exemptions to the requirement for certified cost or pricing data applies. (*FAR 15.403-4(a)(1)*) The CCO can seek a waiver if there is a reasonable basis for it. When the certificate of cost or pricing data is required, offerors must complete the certificate form available at *FAR 15.403-4(b)(2)*.

Exceptions to certified cost or pricing data. (*FAR 15.403-1(b)*) Contracting officers are not required to obtain certified cost or pricing data from offerors under the following conditions:

- Acquisition is at or below the SAT.
- Prices are based on adequate price competition (i.e., two or more responsible offerors responded).
- Commercial items are being acquired.
- A contract or subcontract for commercial items is being modified.
- Prices are set by law or regulation.
- A waiver has been obtained (only for contracts in excess of \$700,000).

Independent government estimate. An independent government estimate (IGE) is generally used for commercial items, supplies, equipment, and simple services that are routinely available on the open

market at competitive prices. The price estimate is required on all contract requirements that exceed the SAT and must be independently developed based on a comparison and analysis of factors such as historical prices paid and market survey information. The IGE is usually developed by the requiring unit and is used to establish a realistic price or cost.

Responsible prospective contractor. (*FAR 9.103(a)*) Contracts may be awarded only to responsible prospective contractors. A responsible contractor is defined as an entity that meets the criteria in *FAR 9.104-1*. The CCO is responsible for researching a contractor and determining whether that contractor is deemed responsible. The Contractor Performance Assessment Reporting System (CPARS) and the Federal Awardee Performance and Integrity Information System (FAPIS) can aid the CCO in researching contractor responsibility. The following general standards apply:

- Adequate financial resources (or the ability to obtain the resources) needed to perform contract work (*FAR 9.104-1(a)*)
- Ability to comply with the delivery schedule (*FAR 9.104-1(b)*)
- Satisfactory performance record (*FAR 9.104-1(c)*) and, for construction contracts, the specific requirement for the agency to review performance evaluation reports (*DFARS 236.201*)
- Satisfactory record of integrity and business ethics (*FAR 9.1041(d)*)
- Necessary organization, experience, accounting, operational controls, and technical skills required to perform contract work (*FAR 9.104-1(e)*)
- Necessary production, construction, and technical equipment (or the ability to obtain them) (*FAR 9.104-1(f)*)
- Eligibility to receive the award. (*FAR 9.104-1(g)*)

Check for excluded, debarred, and restricted sources. CCOs shall check the Excluded Parties List System and should check the Embassy Business Restrictions List and the Department of Treasury website, available at <https://www.epls.gov/>. CCOs should check these exclusions before opening proposals or bids and again before award.

CCOs are responsible for safeguarding contractor information. In some cases, the safety of contractor personnel depends on you and your vigilance to keep their information safe. In certain deployed locations, CCOs must not advertise contractors that have won awards, including email address, physical address, and names of employees. Upon arrival in the AOR, the CCO will be informed whether this type of strict information safeguards applies to the deployed location.

Host-nation-first programs. The Iraqi First and Afghanistan First programs were implemented to leverage contracting resources for the creation of economic expansion, employment, and skills development for the people of Iraq and Afghanistan. Contracting agencies are encouraged to partner with local vendors to develop effective production and distribution systems that will help procure quality products and supplies. Section 886 of the 2008 National Defense Authorization Act (NDAA) provided enhanced authority to acquire products and services produced in Iraq and Afghanistan. (*DFARS 225.77*, “Acquisition Support of Operations in Iraq and Afghanistan”) Congress may implement similar programs for future contingencies. A recent comparable initiative is the Central Asian States Procurement Initiative, established by the USCENTCOM commander in September 2011.

Contract Forms

Contractual instruments for contingency. Most contingency requirements can be met by using SAPs such as manual or electronic versions of SF 44, “Purchase Order-Invoice-Voucher”; DD Form 1155, “Order for Supplies and Services”; SF 1449, “Solicitation/Contract/

Order for Commercial Items”; blanket purchase agreements (BPAs); and GCPC. (*DFARS 253.213*)

SF 44, “Purchase Order-Invoice-Voucher.” SF 44, described in *FAR 13.306* and *DFARS 253.213*, is a pocket-sized purchase order form designed primarily for on-the-spot over-the-counter purchases of supplies and nonpersonal services. SF 44 can be used as a purchase order, receiving report, invoice, and public voucher. Because SF 44 contains no written terms and conditions, its use is authorized only when no other simplified acquisition method is more economical or efficient and all of the following conditions are met:

- The supplies or services are immediately available.
- One delivery and one payment are to be made.
- The amount of the purchase is at or below the micropurchase threshold.
- If an item is below the micropurchase threshold for a contingency operation, a competitive procurement is not needed.

Warranted CCOs may use SF 44 for overseas transactions in support of declared contingencies and undeclared contingencies, such as humanitarian assistance or peacekeeping operations (*10 U.S.C. Section 2302(8)*) and the purchase of aviation fuel and oil. When using SF 44, a purchase cannot exceed the SAT.

The buyer is responsible for ensuring that funds are available, the form is properly processed, and only authorized items are purchased. Care should be exercised to maintain physical control over, and accountability of, the forms. In addition, there should be a separation of functions to the maximum extent possible when using SF 44. Four separate signatures should appear on SF 44 from the individual receiving supplies or nonpersonal services, CCO or field ordering officer (FOO), contractor or supplier receiving payment, and person

certifying the voucher (paying agent). At no time should the CCO/FOO and certifying official functions be combined.

The SF 44 execution and clearing process can now be automated by using a new tool. The 3in1 Tool will record and electronically transmit purchase, receipt, and payment information to a central database for automated clearing of orders and will give the CCO visibility into remote purchases for oversight and analysis. Additional information on the 3in1 Tool is available at http://www.acq.osd.mil/dpap/pacc/cc/contingency_tools.html.

DD Form 1155, “Order for Supplies or Services.” As described in *FAR 13.302*, purchase orders are self-contained, onetime contracts that typically result in one delivery and one payment. When DD Form 1155 is used as a purchase order, it is authorized for purchases that do not exceed the SAT. Vendors are solicited orally or in writing. DD Form 1155 content includes appropriate information such as shipping details, prompt payment discounts, financial data, vendor, quantities, price, and additional relevant data. The completed form is mailed, hand-carried, or picked up by the vendor, who will either perform the order or sign the back and return it, thereby promising to perform the order. When the item requested is received or the requested service is performed, the bottom of the front page may be used as a receiving report for the government. DD Form 1155 details include the following:

- **Clauses.** Use of alternative I to subparagraph (l) of the disputes clause at *FAR clause 52.233-1* is recommended.
- **Modification of purchase orders.** SF 30, “Amendment of Solicitation/Modification of Contract,” is used to modify DD Form 1155 purchase orders. If the contract is bilateral, both parties must agree to the modification unless it falls under the changes clause. In addition, a unilateral contract may be changed to a bilateral contract by using SF 30. Additional guidance on the use of unilateral

modifications is provided in *DFARS PGI 213.302-3*, “Obtaining Contractor Acceptance and Modifying Purchase Orders.”

- **Unilateral action.** A unilateral agreement is defined as a promise in return for performance (or service or supply), while a bilateral contract is defined as a promise in return for a promise. Most DD Form 1155 actions are unilateral; that is, the government simply sends the contractor the form, which authorizes it to perform immediately on a specific time and date. After the contractor performs, the government is obligated to pay. However, the contractor is under no duty to perform because the government’s DD Form 1155 is merely an offer that the contractor may accept by performance or may refuse to accept by failing to perform. If the contractor fails to perform by the specified time and date, no contract has been breached or defaulted because no contract existed.
- **Bilateral action.** After the contractor signs the acceptance, a bilateral contract is in place, and the government has the right under the termination-for-default clause to terminate the contract if the contractor fails to perform according to contract terms and also to charge the defaulted contractor with the excess costs of addressing the requirement with a new procurement. The form is used as a bilateral contract when there is a relatively long lead time, a more complex contract calls for a higher level of contract administration, or previous experience with a supplier indicates that the government could obtain better contractor performance if it included the termination-for-default clause in its business arrangement with the contractor.
- **Withdrawal of purchase order.** Unilateral and bilateral purchase orders shall include provisions to allow termination for convenience or default. (*FAR 49.102*) The CCO shall terminate contracts for convenience or default only by a written notice to the contractor.

(*FAR 49.601*) When the CCO arranges for hand delivery of the notice, a written acknowledgment shall be obtained from the contractor. The notice shall specify:

- **Contract termination.** Contract termination may be for the convenience of the government (or for default) under the contract clause authorizing the termination. A contract termination will include the effective date of termination, extent of termination, and any special instructions. It also will discuss steps that the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor workforce (*FAR 49.601-2(g)*) and, if the termination notice is by telegram, inclusion of these steps in the confirming letter or modification.

Once the contractor begins performance on an order, the government has lost its absolute right to withdraw without cost or liability. To terminate such an order, the contractor should be asked to agree to a cancellation of the order without cost or liability. If the contractor refuses to agree to a no-cost settlement, a stop-work order is executed that prevents the incurring of additional costs. The case is then referred to the legal office, and action is withheld pending legal advice. If costs were incurred in reliance on the order, an agreement will be negotiated to reimburse the contractor for those costs.

SF 1449, “Solicitation/Contract/Order for Commercial Items.”

As described in *FAR 53.212* and *53.213*, the use of SF 1449 is required in solicitations and contracts for commercial items. SF 1449 is required for the purchase of commercial items that exceed the SAT if a paper solicitation or contract is being used and the streamlined procedures of *FAR 12.693* are not being used. SF 1449 is encouraged, but is not required, for purchases of commercial items that fall below the SAT. (*FAR 12.204*) Agencies can require additional detailed instructions

for use of the form to acquire commercial items. SF 1449 can also be used to acquire items that fall below the SAT, establish BPAs, and issue orders under basic ordering agreements.

DD Form 1155 or SF 1449 as a task order or delivery order. These forms can be used as a task order or delivery order against requirements-type contracts. Delivery orders are orders for supplies, and task orders are orders for services, both placed against an established requirements contract. As exact requirements become known, DD Form 1155 or SF 1449 is sent to the supplier, initiating the delivery of supplies or services as specified in the delivery order, subject to the terms and conditions of the existing requirements contract.

Table 5 summarizes basic contract forms.

Blanket Purchase Agreements

Blanket purchase agreements. As described in *FAR 13.303*, a BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing charge accounts with qualified sources of supply. BPAs are designed to reduce administrative costs and time in accomplishing simplified acquisition purchases. Individual purchases using BPAs shall not exceed the SAT. BPAs shall contain all clauses required in accordance with *FAR 13.303-4* and *13.303-8* and relevant statutes and executive orders. CCOs follow procedures for preparing BPAs in accordance with *FAR 13.303-3*. CCOs may establish BPAs when a broad class of goods or services includes a wide variety of items (e.g., hardware or consultant services) that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and can vary considerably. BPAs have the following characteristics:

- BPAs should be prepared without a purchase requisition.
- BPAs shall not cite accounting and appropriation data.

| Contract Instrument | Threshold/ Transaction Limit | Use | Limitations |
|---|--|--|---|
| Governmentwide commercial purchase card | \$3,000/Up to simplified acquisition threshold in a contingency operation if conditions from Defense Federal Acquisition Regulation Supplement 213.301(3) are met. | –Up to simplified acquisition threshold as payment in conjunction with other purchase methods –No cash advance –No rental/lease or real estate | – No clauses – Up to simplified acquisition threshold for General Services Administration – No incrementation – No telecommunications |
| Convenience checks | \$2,500 | –(Federal Acquisition Regulation [FAR] 13.3) Commercial items without technical specifications –Simultaneous order placement and item delivery | –Check transactions –No clauses |
| Standard Form (SF) 44 –White= Seller Invoice/ Accounting and Finance – Blue= Seller’s copy –Pink= Receiving copy –Green= Keep in book | \$3,000 Contingency up to simplified acquisition threshold | –Purchase Order/ receiving report/ invoice/public voucher –Supplies immediately available and nonpersonal services –Purchases under \$3,000 do not require competition (except: first time buys, price exceeds government estimate, suspect price may not be reasonable) –Multipurpose form | –No clauses –Commercial items without technical specs –FAR Part 12 does not apply –One delivery, one payment –Can decentralize ordering officer |

Table 5. Basic Contract Forms, Part 1

| Contract Instrument | Threshold/ Transaction Limit | Use | Limitations |
|----------------------------|---|---|---------------------------|
| DD Form 1155 | >\$100K | – Order supplies or services – Purchase order/ delivery order | –Commercial purchase only |
| DD Form 25 | | –Material inspection and receiving reports | |
| SF Form 1449 | | –Solicitation/Contract/ Order of commercial items | |
| SF Form 1442 | | Solicitation/Contract/ Order of construction | |
| SF Form 26 | | –Award contract | |
| SF Form 33 | | –Solicitation offer and award (3 in 1) | |
| SF Form 30 | | –Amend Solicitation/ Modification of Contract | |

Table 5. Basic Contract Forms, Part 2

- BPAs should be made with firms from which numerous individual purchases likely will be made during a given period. For example, if past experience shows that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities—and if numerous simplified acquisitions are usually made from such suppliers—it would be advantageous to establish BPAs with those firms.
- To the extent practicable, BPAs for items of the same type should be placed concurrently with more than one supplier. In that instance, all

capable contractors in the portfolio of BPAs for that service or supply must be given a fair opportunity to respond to the government's requirement.

- If the determination is that BPAs would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, obtaining the best prices and delivery terms, making advantageous business arrangements such as packaging ancillary services together for a cheaper price, and documenting individual purchase transactions, periodic billing, and other necessary details.
- A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply can furnish.
- BPAs shall be prepared and issued on DD Form 1155 or SF 1449.
- BPAs are not contracts; they are agreements. The CCO should always consider whether transitioning BPAs to more formal contract vehicles is in the best interests of the government as the stage of the contingency environment changes.
- For chief of contracting offices (COCOs), proper oversight of the BPA program is essential to ensure compliance with *FAR 13.303*. This oversight is especially important for decentralized BPAs because they carry greater risks, such as splitting of requirements, exceeding of spending limits, and unauthorized purchases.
- Each year, the CCO should review and document the strategy of using a BPA versus a contract. In addition, the CCO should ensure that all BPA vendors receive a fair share of award opportunities and should verify that the prices are fair and reasonable.

The FOO and ordering officer sections of this chapter explain the procedures for placing orders against BPAs.

Delivery tickets. BPAs shall include a requirement for all shipments under the agreement to be accompanied by delivery tickets or sales slips that shall contain the following minimum information:

- Name of supplier
- BPA number
- Date of purchase
- Purchase number
- Itemized list of supplies or services furnished
- Quantity, unit price, and extension of each item, minus applicable discounts
- Date of delivery or shipment
- Invoicing method options.

The following types of invoices are commonly used:

- A summary invoice shall be submitted at least monthly or upon expiration of the BPA, whichever occurs first, for all deliveries made during a billing period for which payment has not been received. The summary invoice shall also identify the delivery tickets covered, noting the total dollar value and including supporting receipt copies of the delivery tickets. In coordination with the requiring activity, the CCO will validate the invoice.
- An itemized invoice shall be submitted at least monthly or upon expiration of the BPA, whichever occurs first, for all deliveries made during a billing period for which payment has not been received. These invoices need not be supported by copies of delivery tickets. In coordination with the requiring activity, the CCO will verify the accuracy of the invoices.

- When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated by the CCO or the assigned COR, as long as a consolidated payment will be made for each specified period—and the period of any discounts will start on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period.

Blanket purchase agreement authorized caller. The responsibility for placing calls under a BPA rests with the CCO, who may authorize individuals assigned to the contracting office to place calls in any dollar amount within the limitations under established BPAs. CCOs who authorize personnel to place calls under BPAs shall perform the following:

- Instruct the BPA authorized caller in the proper use of BPAs.
- Furnish copies of BPAs to each individual authorized to place BPA calls.
- Ensure that authorized BPA callers have ready access to price lists or catalogs incorporated in, or attached to, BPAs and that they understand they may only order the prepriced items or services.
- Ensure that authorized BPA callers equitably distribute calls among suppliers that have in-place BPAs.
- Ensure that authorized BPA callers do not split purchase transactions to evade monetary limitations.
- Require authorized BPA callers to refer all cases to the contracting officer for determination if prices are not considered to be reasonable.
- If appropriate, at the end of each billing period, obtain from authorized BPA callers copies of delivery tickets or sales slips so that supplier invoices may be promptly paid.

- Maintain continuing surveillance over authorized BPA callers to ensure their compliance with acquisition regulations and to validate the need for retention of BPA call authorization for each BPA caller.
- Ensure that suppliers are informed of the names of personnel who are authorized to place BPA calls.
- Ensure that sufficient funding is available.
- Inform personnel authorized to place BPA calls that the authority may not be redelegated.

Source Selection Process

Figure 9 summarizes the acquisition process.

Source selection processes and techniques (competitive). As described in *FAR 15.302* and *DFARS Subpart 215.3*, the objective of a source selection is to choose the proposal that represents the best value to the government. For competitive contract actions not using SAPs, source selection procedures must be followed. (*FAR Subpart 15.3*) Likewise, applicable Service guidance and procedures on source selection also must be followed. For competitive contract actions using SAPs, the procedures at *FAR 13.106* apply, providing broad contracting officer discretion in fashioning evaluation procedures. It is important to know the various review thresholds at each deployed location (e.g., acquisition plan, acquisition strategy, source selection plan, source selection authority, solicitation/contract review, other than full and open competition, ratification, undefinitized contract actions, and non-DoD contracts and delivery orders). Source selection characteristics include the following:

- **Best value and trade-off.** Best value can be obtained by using any one source selection approach (or a combination of them). The relative importance of price may vary depending on the acquisition.

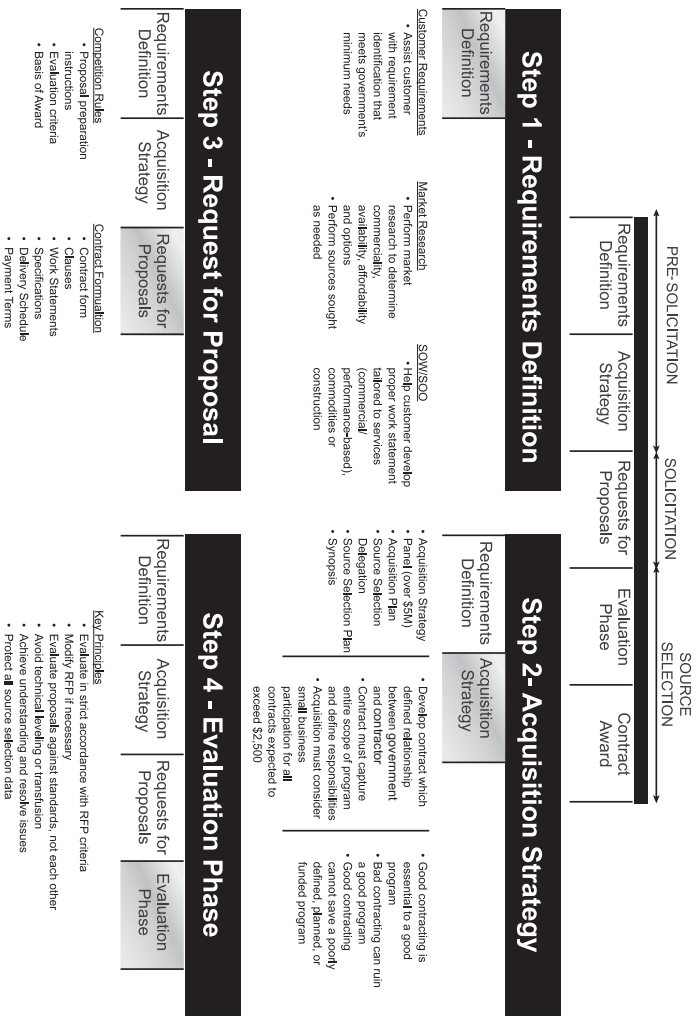


Figure 9. Acquisition Process, Part 1

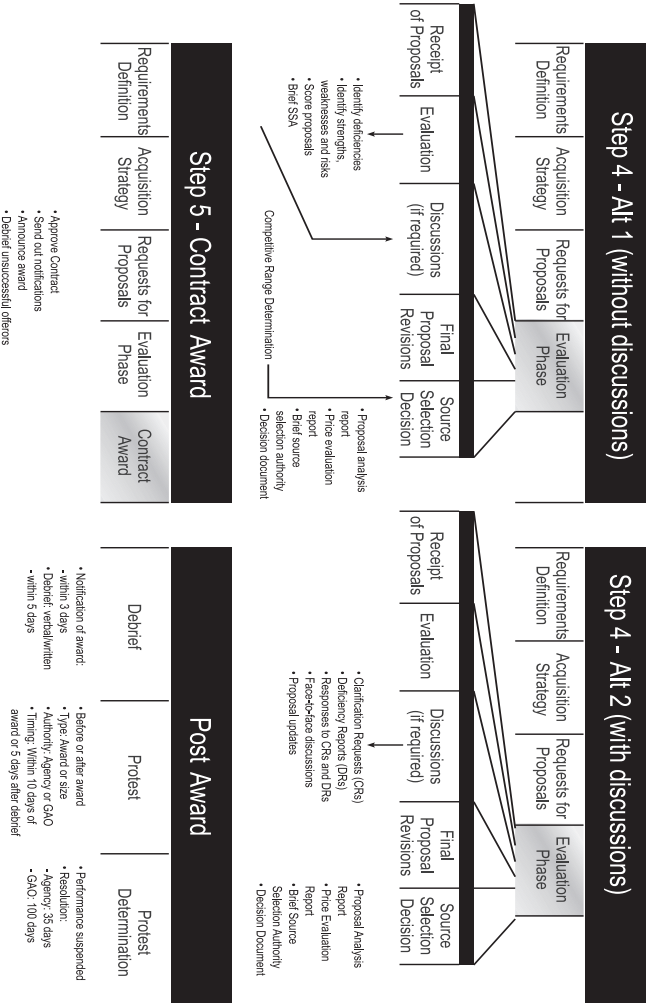


Figure 9. Acquisition Process, Part 2

Therefore, the evaluation factors and their relative importance (when not using SAPs) must be clearly stated in the solicitation and otherwise must comply with the requirements of *FAR 15.101-1*. The perceived benefits of a higher-priced proposal must be demonstrated to merit the additional cost: (1) the lowest price technically acceptable (LPTA) source selection process is appropriate when the expectation is that best value will result from selection of the technically acceptable proposal with the lowest evaluated price; and (2) the performance price trade-off (PPT) source selection process allows performance as the only trade-off for price.

- **Evaluation factors for award.** *FAR 15.304* specifies the principles associated with crafting sound evaluation factors. Although it permits latitude in methods, it clearly states that evaluation factors must be qualitative in nature (e.g., adjectival, colors, or other indicators, but not numbers) and must represent the key areas of importance for consideration in the source selection process, including past performance. Commercial requirements might derive evaluation criteria from the clause at *FAR clause 52.212-2*, “Evaluation—Commercial Items,” established by the contracting officer. In addition, past PPT methods might be appropriate. When using SAPs, the inclusion of these elements in the RFP is optional (*FAR 13.106-1(a)(2)*), but they may be included based on the complexity of the requirement. The contracting officer shall always include a statement regarding the relative importance of cost (or price) and non-cost (or non-price) factors. (*FAR 15.304(e)*) Conversely, when not using SAP contracting, authorities may require the use of these elements.
- **Proposal evaluation and discussions.** Pursuant to *FAR 15.305*, proposals shall be evaluated solely on the evaluation factors specified in the solicitation. All solicitations shall state that the government intends to make award without discussions unless the contracting officer determines that they are necessary. If the contracting officer

decides that discussions are necessary, the contracting officer shall document the file and conduct discussions in accordance with FAR 15.306 and all applicable Service guidance and procedures. This language is included in the instructions provisions of FAR clause 52.215-1.

- **Source selection decision and documentation.** A source selection decision (SSD) that adheres to FAR 15.3 must be prepared for all source selections when not using SAPs. The SSD will be composed of the background of the acquisition, evaluation criteria, summary of the technical and past performance evaluations, and summary of the proposed prices. The source selection authority (SSA) will document an independent, integrated assessment and will approve the SSD. The SSA shall not receive a recommendation from any individual or body about who shall receive the award, nor shall the SSA receive a rank order (or order of merit) list of the offerors. The completed SSD shall be submitted to the SSA for the required approval.

The responsibilities of the SSA (formal source selection) are as follows:

- Establish or appoint a source selection evaluation board (SSEB). Appoint source selection advisory council if necessary. (FAR 15.303(b)(1))
- Approve strategy and acquisition plan before the solicitation release. (FAR 15.303(b)(2))
- Approve source selection plan. (DFARS 215.303(b)(2))
- Approve the RFP before its release. Ensure consistency among solicitation requirements, notices to offerors (amendments), proposal preparation instructions (Section L), evaluation factors and subfactors (Section M), solicitation provisions and clauses, and data requirements. (FAR 15.303(b)(3))

- Ensure that conflicts of interest, or the appearance thereof, are avoided.
- Ensure that premature or unauthorized disclosure of source selection information is avoided.
- Ensure that the evaluation of proposals is based solely on factors and subfactors in the RFP. (*FAR 15.303(b)(4)*)
- Review SSEB evaluation results. (*FAR 15.303(b)(5)*)
- Approve competitive range determination, per Army Federal Acquisition Regulation Supplement 5115.306(c).
- Perform an integrated assessment of the evaluation results, and select the source whose proposal represents the best value to the government. (*FAR 15.303(b)(6)*)

Selection of sources through sealed bidding procedures. As noted in *FAR 14.101*, sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. The following steps are involved:

- **Preparation of invitations for bids.** IFBs must describe the requirements of the government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The IFB includes all documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.
- **Publicizing of the invitation for bids.** IFBs must be publicized by distribution to prospective bidders, posting in public places, and any other means that might be appropriate. This publicity process must give prospective bidders sufficient time to prepare and submit bids before the public opening of submitted bids.

- **Submission of bids.** Bidders must submit sealed bids, which will be opened at the time and place stated in the solicitation for the public opening of bids.
- **Evaluation of bids.** Bids shall be evaluated without discussions.
- **Contract award.** After bids are publicly opened and evaluated, an award will be made with reasonable promptness to the responsible bidder whose bid conforms to the IFB and will be most advantageous to the government, considering only price and the price-related factors included in the IFB.

Advance and partial payments. The full spectrum of government financing should be considered to facilitate business partnerships in any contingency, including progress payments, payments for partial deliveries, performance-based payments, and commercial interim payments. Advance payments present the highest risk and are the most regulated financing option. However, their use should not be dismissed. An advance payment business strategy (commercial and noncommercial), will consider (1) conditions that warrant the request (e.g., lack of an established or robust banking system, unstable commercial environment, or hostilities), (2) other financing options (e.g., progress payments or partial payments), (3) tangible risks and mitigation plan, and (4) adequate security to protect the government's interests. Such payments can be used for the following purposes:

- Experimental projects and research and development with nonprofit institutions
- Operation of government-owned plants
- Acquisition at cost of facilities for government ownership
- Classified items and national security
- Financially weak contractor

- Vendor when a private loan is not practicable
- Other exceptional circumstances.

Paying Agent Duties

DoD FMR 7000.14-R, Volume 5, Chapter 2, paragraph 020604, describes the duties of paying agents. The commander appoints (in writing) paying agents to make payments for purchases by using cash or other negotiable instruments. Ideally, a CCO should not be designated as a paying agent because this violates the concept of checks and balances. However, in extreme circumstances, a CCO can be dual-hatted, serving as both the CCO and the paying agent. CCOs cannot make cash payments unless they are designated as paying agents. If appointed as a paying agent, the individual CCO should be thoroughly briefed on duties and responsibilities by the financial services officer or local deputy disbursing officer. The paying agent appointment will describe the type of payments to be made, quantity of funds to be advanced, and period of time covered by the appointment and will include an acknowledgment of acceptance of the appointment, including a statement that the member has been counseled about the pecuniary liability of the duties.

Cash advances. The quantity of cash that the disbursing office gives to the paying agent is governed by the following considerations:

- Facilities available for replenishment of funds
- Anticipated mission requirements
- Capability to safeguard funds.

The maximum sum to be advanced to the paying agent will be specified in the appointing order. The CCO might need to advance cash to others for payment of orders. When advancing cash, the CCO should obtain a receipt on DD 1081, "Statement of Agent Officers Account," or

SF 1165, “Receipt for Cash Subvoucher.” The name of the person paying for the goods and services will be used in the place of imprest fund cashier, and the person receiving the cash will sign, date, and annotate the time on the form. (The rest of SF 1165 will not be used.) The paying agent must account for all cash; therefore, interim payments to others must be made carefully. The disbursing officer should be informed about any losses or shortages as soon as possible.

Noncommercial advance and partial payments. As noted in *FAR Subpart 32.4*, these payments can be used under the following conditions:

- The contractor gives adequate security.
- The payment does not exceed the unpaid contract price.
- The agency head or designee determines that such a payment is in the public interest or facilitates national defense.
- The payment does not exceed interim cash needs.
- The CCO submits the request to a higher-level headquarters official and must ensure that findings, determinations, and authorizations are provided.

Commercial advance and interim payments. As noted in *FAR Subpart 32.2*, these payments can be used under the following conditions:

- The HCA determines whether the terms and conditions are appropriate.
- The commercial practice in the local market is to use buyer financing.
- The purchase is for a commercial supply or service.
- The price exceeds the SAT.
- The CCO concludes that advance payments are appropriate for the market.

- The determination is that advance payments are in the best interests of government.
- Adequate security is obtained.
- The advance payment does not exceed 15 percent of price, before performance.
- Competitive or normal financing is not available.
- The CCO obtains a concurrence from finance and must ensure that a D&F is completed for advance payments.

Options instead of advance payments. Other payment options include the following:

- Request that the disbursing officer pay cash to the vendor
- Request that the disbursing officer pay the vendor for subcontractor work (progress payment).

Considerations. When using advance payments, personnel have the following responsibilities:

- Recognize that advance payments are used as a last resort and are the least preferred contracting payment arrangement.
- Use SF 44 or DD 1155. Explain to the vendor how to obtain prompt payment by using these forms.
- Try to convince the vendor to accept SF 44 or SF 1449, explaining how prompt cash payment works.
- Explain to the customer that the CCO may decide not to do business with the vendor because the vendor will only accept advance payments, and the CCO then will look for other sources.

Advance payments are acceptable for subscriptions, as noted in *FAR 32.404(a)* and the clause in *FAR 52.213-2*.

Partial payment. The CCO will place a statement on the invoice so that the finance officer knows that the invoice is a partial payment, not a final payment. The partial payment statement will comply with the following relevant regulations:

- Finance guidance for partial payment in *DoD FMR 7000.14-R*, Volume 10, Chapter 10, Section 1003
- Exceptional circumstances only, as noted in *FAR 32.403(h)*.

Settlement of paying agent account. After deployment operations or when the disbursing office resumes operations, the paying agent will terminate this account with the disbursing office. The paying agent will obtain and complete a copy of DD Form 1081, “Statement of Agent Officer’s Account,” showing the account reduced to zero.

Field Ordering Officers and Ordering Officers

Field ordering officers. The SF 44 may be used by personnel other than the CCO, such as the FOO, provided that the individual has the following characteristics:

- **Has written authorization from the contingency contracting officer.** The CCO should give a copy of the written authorization to the finance and accounting officer, in effect delegating authority to sign a contract instrument.
- **Has been trained by the contingency contracting officer to use the form.**
- **Is teamed with an appointed and trained paying agent.** In addition, the paying agent must also be designated in writing.

Designation. The CCO may designate individuals as FOOs, either from within or outside the contracting organization, with the authority to execute micropurchases by using SF 44. The CCO needs to exercise

strict operational control and oversight of FOOs to prevent violations of laws and regulations. The CCO is responsible for helping the commander determine the adequate number of FOOs required to ensure mission accomplishment. Commanders should have a point of contact for each FOO team.

Nomination, appointment, and termination. Commanders must formally nominate FOO candidates, by name, to the CCO for appointment; this responsibility cannot be delegated. The FOO candidate must be a DoD employee; contractor employees cannot be FOOs. The CCO must determine the validity of the requirement and must formally appoint personnel as FOOs via official appointment letters. The appointment letter must specify the extent and limitations of the FOO's authority to act on behalf of the CCO. The appointment is effective until the FOO is reassigned to another unit or the CCO terminates the individual's duties. The CCO (or higher authority) reserves the right to revoke a FOO appointment at any time. Such a revocation must be made in writing.

Qualification and training. At a minimum at least annually, the FOO candidate must review the standards of conduct as specified in *Department of Defense Directive 5500.7-R*, "Joint Ethics Regulation." The CCO will develop an effective FOO training program. The FOO candidate must complete training before official appointment as a FOO. Refresher training will be conducted whenever the CCO deems it necessary. In larger contingencies, the COCO (rather than individual CCOs) would be responsible for management and oversight of FOO and ordering officer decentralized purchasing programs.

Authority and responsibilities. The scope of the delegated authority limits all FOOs in terms of the dollar limitation that a FOO may obligate. The FOO must review the written appointment to ensure a complete understanding of the scope and limitations of FOO authority. Before making any purchases, the FOO must receive written

appointment orders from the CCO and a funded document from the comptroller, showing a fund cite with a specific dollar amount. The FOO cannot exceed the amount specified in the document. If additional funds are required, the FOO must request and receive more funds from the comptroller before proceeding with any purchases. After the FOO receives a valid purchase request (PR), the FOO must answer the following questions:

- Is the purchase allowable in accordance with established purchasing procedures?
- Are funds available?
- Does the FOO have authority to purchase the item (type and dollar threshold)?
- Are the supplies available in the supply system or from another government source?
- Is this the most efficient purchase method?

After considering these questions, the FOO must record all PRs in a logbook, as approved by the CCO. The FOO must maintain the original PR document, a copy of the SF 44 used for the purchase, logbook, original receipt of the purchase, and receipt for property received (RPR). If the vendor cannot provide an automated receipt, a handwritten receipt may be substituted. The FOO is responsible for providing all RPRs to the appropriate office to ensure the accountability of acquired items. When the 3in1 Tool is used, it records all information and documents it electronically. FOO characteristics include the following:

- **Limitations.** FOOs may not redelegate their authority. The CCO may set additional limitations to maintain an effective and efficient FOO program.

- **Separation of functions.** To ensure the integrity of the procurement process, the FOO shall avoid, if possible, being a paying agent, certifying official, or individual receiving the products or nonpersonal services.
- **Evaluation, documentation, and reconciliation.** The CCO shall supervise the FOO. At least monthly, or as otherwise determined by the CCO, the CCO shall review and reconcile the FOO's purchase documents. This review will be documented on the FOO clearance letter, which can be done electronically when using the 3in1 Tool. After receiving this letter, the FOO will reconcile the account with the paying agent. The CCO will immediately forward any potential case of waste, fraud, or abuse to the appropriate legal office for review.
- **Revocation of authority.** When a FOO appointment is terminated for any reason, the FOO will give the CCO (1) a copy of the appointment letter; (2) copies of all previously filed reports; (3) a complete report for any period between the last audit and termination date; (4) receipts, PRs, and RPRs; and (5) any unused SF 44s.

Once the CCO conducts a final review and documents the outcome, the CCO will issue an official Revocation of Authority to the FOO, terminating the appointment. One copy each will be provided to the terminated FOO, FOO's commanding officer, and appropriate disbursing office; one copy will be maintained on file with the contingency contracting office. Any additional purchases or business agreements by the FOO after revocation of this authority will be considered unauthorized commitments for which the former FOO may be held liable.

Field ordering officer violations. The CCO may revoke the FOO appointment for any violation of regulations, orders, or statutory authority. The administration of decentralized purchasing programs

carries an increased risk of becoming problematic. Typical violations include, but are not limited to, the following:

- Unauthorized commitments
- Splitting of requirements to stay below authorized thresholds
- Purchases above authorized limits
- Purchases outside the purpose of the appropriated funds
- Purchasing items not authorized under local programs or BPA price lists or not authorized by the CCO
- Delinquent reconciliation with the CCO
- Training delinquencies
- Circumvention of Competition in Contracting Act (CICA) requirements.

Violations may result in revocation of the FOO appointment and of any additional FOOs within the unit, section, or battalion. In the case of an unauthorized commitment, the revocation will remain effective until the unauthorized commitment is ratified by the appropriate authority and reviewed by legal officials to determine whether disciplinary action is recommended. For other violations, the CCO may reinstate the FOO appointment after correcting the deficiency.

Contract Tracking and Reporting

Procurement instrument identification numbers. *DFARS 204.70* specifies policies and procedures for assigning procurement instrument identification numbers (PIINs) to all solicitations, contracts, and related instruments. The PIIN is designed to help track all actions. **Table 6** shows an example of a PIIN from *DFARS 204.7003* and *204.7004*.

| DoDACC | Last 2 digits of FY | Instrument Type | Serial # | Supplemental # |
|--------|---------------------|-----------------|----------|----------------|
| N00062 | 10 | D | 0001 | 0005 |

Table 6. Sample PIIN N00062-10-D-0001-0005

Procurement instrument identification number logs. Establishing and maintaining accurate PIIN logs in accordance with *DFARS 204.70* is essential in the contingency environment. In general, terminations, claims, and contract closeouts have been a recurring problem in all recent contingency operations. A contributing factor in many cases is the lack of accurate records, duplicative contract and purchase order numbers, and similar issues. In fixed installation and systems contracting offices, standard contracting automated systems are typically used to perform the PIIN log function. In the contingency environment, this capability is usually unavailable. Therefore, CCOs must ensure that they have appropriate blocks of PIINs assigned for their use and also must design and implement a log system for local use. Commercial off-the-shelf software such as Microsoft Excel or Lotus 1-2-3 can be used to automate the PIIN generation system in contingency environments. A well-thought-out PIIN log can also capture and track other key data such as the PR number, dollar value of request and award, delivery data, payments data, and more.

Contract action report. As noted in *FAR 4.601*, a contract action report (CAR) is required for all contract actions that obligate or deobligate more than \$3,000 in funds and must be submitted within 3 business days of executing an action. In addition, all modifications, regardless of price, must be reported. However, in a contingency, OCONUS reporting might not be possible because of the lack of Internet connectivity. Therefore, actions that require reporting shall be accomplished after arrival in an area where Internet connectivity

is available, which may be upon redeployment to CONUS bases or stations. (*DFARS PGI 204.606(l)(iii)*) CARs can be created on the Federal Procurement Data System-Next Generation (FPDS-NG) website. The CAR replaces reports using DD Form 350, “Individual Contracting Action Report,” and DD 1057, “Monthly Summary of Contracting Actions.”

The CAR process is as follows:

- The contract is complete, through approval by the CCO.
- The CCO creates the CAR from the unreleased contract, through validation and approval. The CAR is created directly on the FPDS-NG website, with a link to the CAR in the Standard Procurement System.
- Both the contract and CAR are routed to the CCO for release of the contract and finalization of the CAR.

An express CAR is used to report data for more than one contract action. The following contract actions may be reported on an express CAR instead of an individual CAR:

- Indefinite delivery, indefinite quantity (IDIQ) contract vehicles, requirements contracts, BPAs, and basic ordering agreements
- Contracts from foreign vendors not registered in the Central Contractor Registration.

The CAR is created before the release of the contract action. In FPDS-NG, much of the CAR data is prepopulated with data in the contract (e.g., data from the North American Industry Classification System, Service Contract Act). Creation of the CAR before release of the contract enables correction of the contract so that the CAR can pass the validation process in FPDS-NG. Training for FPDS-NG is available at <https://www.fpds.gov>.

Awards using appropriated funds must follow the congressional notification procedures in DFARS 205.303 unless an exception in FAR 5.202 applies. The reachback office can assist in preparing congressional notifications to alleviate the burden on forward-deployed units or CCOs.

Unauthorized Commitments and Ratifications

An unauthorized commitment is defined as an agreement that is nonbinding solely because the government representative who made it lacked the authority to enter into that agreement, as explained in FAR 1.602-3. An unauthorized commitment typically occurs in a contingency environment when a well-meaning individual believes that immediate action is necessary to support the mission. Ratification occurs when an official who has the appropriate authority approves an unauthorized commitment to pay for supplies or services provided to the government as a result of an unauthorized commitment. (FAR 1.602-3(a)) The need for ratification can be avoided if the CCO is involved in the operation early and becomes highly visible.

The HCA may ratify an unauthorized commitment up to a specified threshold, as designated by agency procedures. The HCA may further delegate ratification authority at specific thresholds to the SCO or the RCC office.

In accordance with FAR 1.602-3(c), unauthorized commitments may be ratified if the following conditions are satisfied:

- Supplies or services were provided to, and accepted by, the government, or the government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment.
- The ratifying official has the authority to enter into a contractual commitment.
- The resulting contract would otherwise have been proper if made by an appropriate contracting officer.

- The contracting officer reviewing the unauthorized commitment concludes that the price is fair and reasonable.
- The contracting officer recommends payment, and legal counsel concurs in the recommendation (unless agency procedures expressly do not require such concurrence).
- Funds are available and were available at the time the unauthorized commitment was made.
- The ratification is in accordance with any other limitations prescribed under agency procedures. (*FAR 1.602-3(c)*).

Unauthorized commitments need to be resolved as quickly as possible. After it is determined that the actions were in the government's best interests, funds were available, the ratification is approved at the required level, and the customer was counseled, the CCO should put a memorandum in the file and pay the vendor. At least quarterly, the RCC chief shall publish to the base populace a reminder that only duly appointed contracting officers can obligate the government. Commanders will reinforce this policy by publishing an annual letter to emphasize the seriousness of obligating the government without proper authority. Ratification authority and associated specific thresholds are granted by the HCA to the SCO, who may delegate that authority to a level no lower than the RCC chief. If the CCO anticipates a high likelihood for substantial unauthorized commitments, the CCO might want to request a waiver of policy to increase the RCC chief's ratification authority level.

The processing of a ratification involves determining whether the action should be ratified into a contract and then creating the contract document. Actions that do not meet the criteria are deemed nonratifiable and are subject to resolution by the Government Accountability Office under its claim procedures.

Website and DVD Materials Related to Chapter 5

- [Chapter 5 PowerPoint Briefing](#)
- [Chapter 5 Test Questions](#)
- [Trainings Related to Chapter 5](#)
- [Scenarios Related to Chapter 5](#)
- [Topical Index Webpages](#)
 - » [Blanket Purchase Agreements \(BPA\)](#)
 - » [Contracting Instruments](#)
 - » [Contract Options](#)
 - » [Determinations and Findings \(D&F\)](#)
 - » [Field Ordering Officers \(FOO\) and Ordering Officers \(OO\)](#)
 - » [Government Purchase Card \(GPC\)](#)
 - » [Imprest Funds](#)
 - » [Lease or Purchase](#)
 - » [Letter Contracts](#)
 - » [Pricing](#)
 - » [Purchase Requests](#)
 - » [Ratifications](#)
 - » [Receiving Reports](#)
 - » [Request for Proposals \(RFP\)](#)
 - » [Simplified Acquisition Procedures \(SAP\)](#)
 - » [Sole Source Contracting](#)
 - » [Source Selection](#)
 - » [Un definitized Contract Actions \(UCA\)](#)