



# **Acquisition Desk Reference**

**Commanders, Directors,  
and Senior Leaders**



**U.S. Army Medical Command  
Health Care Acquisition Activity**

---

**"MULTIPLYING THE HEALTH CARE FORCE STRUCTURE  
THROUGH QUALITY AND RESPONSIVE CONTRACTS"**

# *HCAA Acquisition Guide for Commanders, Directors and Senior Leaders*

2004 Edition

This manual is intended for use as a convenient reference. Future updates will be reported as issued. Comments, questions or recommendations may be submitted at any time to:

Commander, Health Care Acquisition Activity  
Attn: Ms. Joyce Nadeau  
2107 17<sup>th</sup> Street, Building 4197  
Fort Sam Houston, Texas 78234-5069

Webpage at <http://hcaa.medcom.amedd.army.mil/>

**Table of Contents**

**INTRODUCTION-----6**

**CHAPTER 1. ACQUISITION BASICS AND KEY ACQUISITION TERMS-----8**

**MEMBERS OF THE ACQUISITION TEAM.....8**

*Head of the Contracting Activity (HCA).....8*

*Principal Assistant Responsible for Contracting (PARC).....8*

*Contracting Officer.....8*

*Contract Specialist.....8*

*Requiring Activity.....9*

*Contracting Officer’s Representative (COR).....9*

*Legal Advisor.....9*

*Competition Advocate.....9*

*The Associate Director of Small and Disadvantaged Business Utilization.....9*

**FUNDAMENTALS OF A CONTRACT .....10**

*Nature of a Contract.....10*

*Authority to Enter into Contracts.....10*

*Use of Contracts.....10*

**COMPETITION.....10**

**SOLE OR LIMITED SOURCES .....11**

**ACQUISITION ORDER OF PREFERENCE .....11**

**ROLE OF SMALL BUSINESS .....11**

**UNSOLICITED PROPOSALS .....11**

**COMMERCIAL ITEMS .....12**

**ACQUISITION THRESHOLDS .....12**

**SIMPLIFIED ACQUISITIONS .....12**

*Government Purchase Card.....12*

*Purchase Orders.....12*

*Delivery Orders/Task Orders.....13*

*Blanket Purchase Agreement (BPA).....13*

**CONTRACT TYPES .....13**

*Fixed Price Contracts.....13*

*Cost Type Contracts.....14*

*Indefinite-Delivery Contracts.....14*

*Multiple Award Contract.....15*

*Personal Services Contracts.....15*

**FUNDING .....15**

*Anti-Deficiency.....15*

*Bona Fide Need.....15*

**OPTIONS .....16**

<b>CHAPTER 2. ACQUISITION PLANNING</b> .....	<b>17</b>
<b>ADVANCED PLANNING AND SCHEDULING</b> .....	<b>17</b>
<b>CONCEPT DEVELOPMENT</b> .....	<b>17</b>
<b>ASSEMBLE THE ACQUISITION TEAM</b> .....	<b>18</b>
<b>MARKET RESEARCH</b> .....	<b>18</b>
<b>DEVELOP THE ACQUISITION PLAN</b> .....	<b>19</b>
<b>DESCRIBING THE REQUIREMENT</b> .....	<b>19</b>
<i>Statements of Work (SOW)</i> .....	<i>19</i>
<i>Performance Based Statements of Work</i> .....	<i>20</i>
<i>Purchase Descriptions</i> .....	<i>20</i>
<i>Specifications and Standards</i> .....	<i>20</i>
<b>EVALUATION FACTORS</b> .....	<b>20</b>
<b>THE QUALITY ASSURANCE SURVEILLANCE PLAN</b> .....	<b>21</b>
<b>THE GOVERNMENT BUDGET ESTIMATE OR INDEPENDENT GOVERNMENT ESTIMATE</b> .....	<b>21</b>
<b>OTHER SUPPORTING DOCUMENTATION</b> .....	<b>21</b>
<i>Non-Competitive Justifications</i> .....	<i>21</i>
<i>Acquisitions Using Outside Contracting Offices</i> .....	<i>21</i>
<i>Sources for Solicitation</i> .....	<i>22</i>
<b>PURCHASE REQUEST</b> .....	<b>22</b>
<b>CHAPTER 3. SOLICITATION AND AWARD</b> .....	<b>23</b>
<b>NEGOTIATED ACQUISITIONS</b> .....	<b>23</b>
<i>Evaluation Approaches</i> .....	<i>23</i>
<i>Oral Presentations</i> .....	<i>24</i>
<i>Review of Proposals</i> .....	<i>24</i>
<i>Proposal Evaluation</i> .....	<i>24</i>
<i>Review of Business/Cost Proposals</i> .....	<i>25</i>
<i>The Competitive Range</i> .....	<i>25</i>
<i>Cost Realism</i> .....	<i>25</i>
<i>Negotiations</i> .....	<i>25</i>
<b>SEALED BIDDING</b> .....	<b>25</b>
<b>PREPROPOSAL/PREBID CONFERENCES</b> .....	<b>26</b>
<b>AMENDING THE SOLICITATION</b> .....	<b>26</b>
<b>COMMUNICATION WITH OFFERORS</b> .....	<b>26</b>
<b>SELECTION AND AWARD</b> .....	<b>26</b>
<b>ACTIVITIES AFTER AWARD</b> .....	<b>26</b>
<i>Debriefing Unsuccessful Offerors</i> .....	<i>26</i>
<i>Protests</i> .....	<i>26</i>
<i>Contracting Officer's Representative Appointments</i> .....	<i>27</i>

**CHAPTER 4. CONTRACT ADMINISTRATION ----- 28**

- THE CONTRACT ADMINISTRATION PROCESS.....28**
- PLANNING FOR ADMINISTRATION .....28**
- POST AWARD ORIENTATION.....29**
- GOVERNMENT PROPERTY.....29**
- MONITORING.....29**
- MODIFICATIONS .....29**
- CONSTRUCTIVE CHANGES .....29**
- PERFORMANCE PROBLEMS.....30**
  - Withholding Payment under Contracts.....30*
  - Termination for Default/Cause.....30*
  - Termination for Convenience .....31*
- RESOLVING CONTRACT DISPUTES .....31**
- INSPECTION AND ACCEPTANCE RESPONSIBILITIES .....31**
- PAST PERFORMANCE MANAGEMENT SYSTEM.....31**

**CHAPTER 5. CONTRACTING PROBLEMS/ISSUES ----- 32**

- ANTI-DEFICIENCY ACT.....32**
- UNAUTHORIZED COMMITMENTS .....32**
- CONTRACTS WITH FEDERAL EMPLOYEES.....32**
- CONFLICTS OF INTEREST .....32**
- GRATUITIES.....32**
- USE OF OFFICIAL INFORMATION.....33**
- PROTECTING THE INTEGRITY OF THE PROCUREMENT PROCESS .....33**
- RELATIONSHIPS BETWEEN GOVERNMENT PERSONNEL AND CONTRACTOR EMPLOYEES ..33**
- FRAUD IN GOVERNMENT CONTRACTS .....34**

**DESK REFERENCE INDEX ----- 36**

## INTRODUCTION

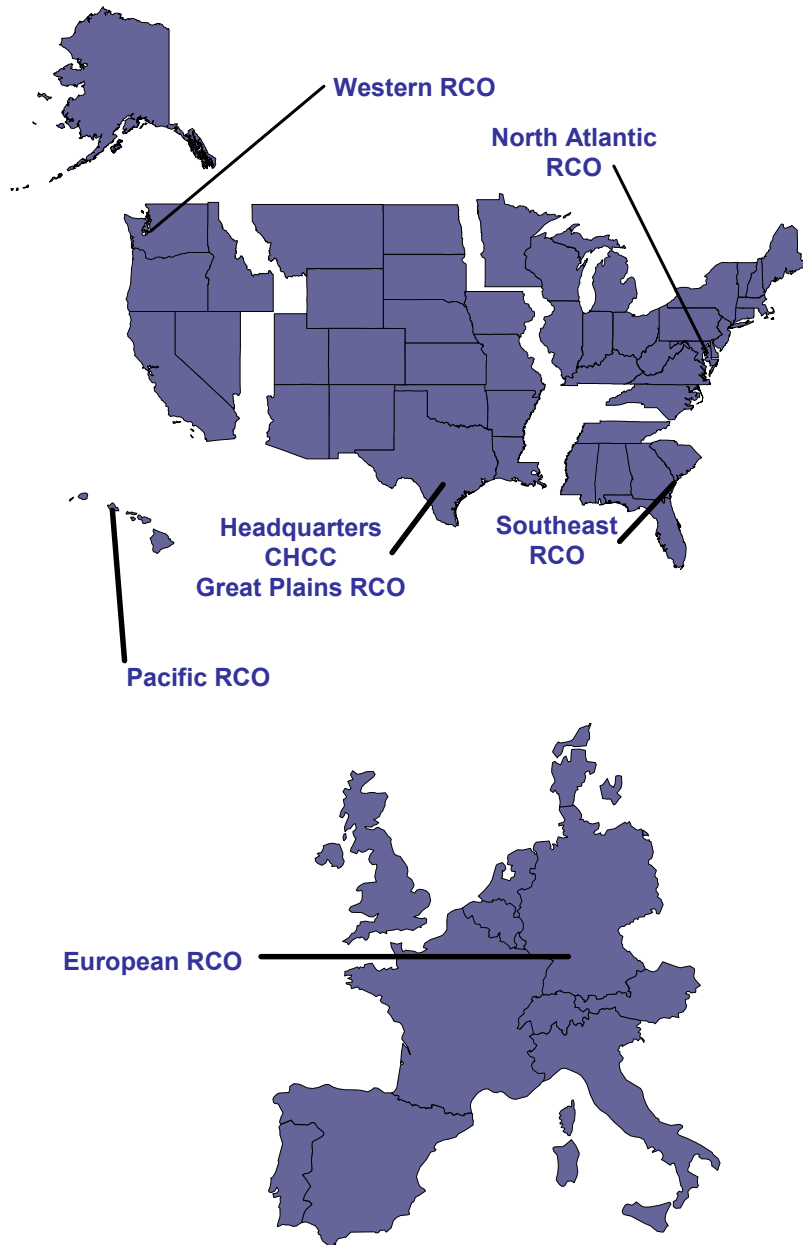
Effective execution of an acquisition program is often a complex process requiring the end user, contracting personnel, technical personnel, administrative staff, legal counsel, and other involved individuals to work as a unified team. This desk reference is designed to provide commanders, directors and senior leaders with a basic understanding of the acquisition process. It provides information on the acquisition planning necessary to ensure the success of an acquisition, describes the various functions and stages involved in the acquisition process and introduces the reader to basic acquisition terminology. It also covers the potential problems inherent in the acquisition process and provides information on how to avoid these problems. Additional information and details on the acquisition process can be found in our companion publication titled HCAA Acquisition Desk Reference for Requiring Activities, Program Managers and Contracting Officer's Representatives.

The U.S. Army Medical Command Health Care Acquisition Activity (HCAA) is a Field Operating Activity of the United States Army Medical Command (MEDCOM). HCAA has two primary missions. The first is to provide business advice to the Army Medical Command relative to medical contracting issues. The second is to provide responsive medical contracting services to the MEDCOM. The contracting services provided by HCAA include:

- **Health care services.** HCAA contracts for all health care services to include individual health care providers, clinics, lab services and other contracted medical services.
- **Contracts in support of the health care mission.** HCAA contracts for hospital housekeeping, laundry and linen distribution, and regulated medical waste/hazardous medical waste handling and disposal. HCAA also provides contracting support to augment prime vendor and other centralized medical supply and service contracts.
- **Command sensitive contracts.** HCAA awards A-76 and other highly sensitive command contract.
- **Business Advice.** HCAA provides business advice and recommendations on healthcare contracting matters to The Office of the Surgeon General (OTSG), MEDCOM and its subordinate activities.

HCAA is organized into a headquarters, located at Fort Sam Houston, a Center for Health Care Contracting (CHCC) and six regional contracting offices. CHCC, also located at Fort Sam Houston, provides medical contracting support to the command on a general support basis by writing global contracts for use by all of the regional contracting offices, by awarding and administering contracts in support of command-wide programs, and by awarding contracts affecting multiple MEDCOM facilities. The six Regional Contracting Offices (RCO), the North Atlantic Regional Contracting Office (NARCO), located at Walter Reed Army Medical Center; the Southeast Regional Contracting Office (SERCO), located at Eisenhower Army Medical Center; the Great Plains Regional Contracting Office, (GPRCO), located at Brooke Army Medical Center; the Western Regional Contracting Office (WRCO), located at Madigan Army Medical Center; the Pacific Regional Contracting Office (PRCO), located at Tripler Army Medical Center; and the European Regional Contracting Office (ERCO), located at Landstuhl, Germany, provide medical contracting support, on a direct support basis, to their respective Regional Medical Commands. HCAA also operates several small contracting cells at select medical facilities.

Figure 1. HCAA Offices

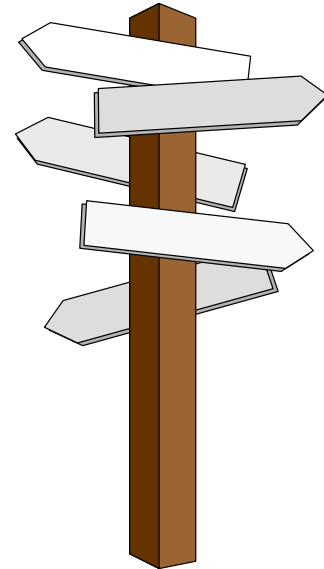


The HCAA Commander or Deputy Commander also serves as the Principal Assistant Responsible for Contracting (PARC). The role of the PARC, a directorate level senior staff official, is to provide advice, policy and oversight on medical contracting issues for the MEDCOM.

HCAA is committed to providing appropriate, timely and customer-focused contracting guidance and acquisition solutions to all our customers.

## CHAPTER 1. ACQUISITION BASICS AND KEY ACQUISITION TERMS

This chapter describes the fundamentals of contract law, basic acquisition principles and key acquisition terms. Familiarity with these basic concepts and terms can help commanders, directors, and senior leaders fulfill their responsibilities and know when to seek assistance from professional contracting personnel.



### **Members of the Acquisition Team**

While acquiring goods and services to support their mission requirements, commanders, directors and senior leaders will need to interface with several key acquisition officials. These include the following:

#### ***Head of the Contracting Activity (HCA)***

The HCA is the person who, by his/her position in an organization, has the overall responsibility for the effective and legal execution of the organization's acquisition program. This is always a General Officer position. Currently, the Assistant Surgeon General/Chief of Staff for Force Sustainment is the Head of the Contracting Activity for HCAA.

#### ***Principal Assistant Responsible for Contracting (PARC)***

The PARC is a directorate level senior staff official responsible for establishing policy and administrating the medical contracting program within the MEDCOM.

#### ***Contracting Officer***

A Contracting Officer is an individual expressly authorized to enter into, administer and/or terminate contracts. Contracting Officers are appointed in writing by the PARC. Contracting Officers act as the HCAA focal point for customer service, communications and product delivery. They coordinate with customers to plan and execute acquisition strategies. Contracting Officers are responsible for ensuring that all contract actions comply with appropriate laws, executive orders, regulations and other applicable procedures, including clearances and approvals. They are also responsible to ensure that both the government and the contractor comply with the terms and conditions of the contract.

Contracting Officers may authorize other individuals to act on their behalf. For example, a Contracting Officer may authorize another Contracting Officer to perform contract administration functions on a contract. This individual then becomes the Administrative Contracting Officer or ACO. A Contracting Officer may also designate an individual to function as a Contracting Officer's Representative, an individual who assists the Contracting Officer in administering the contract.

#### ***Contract Specialist***

The Contract Specialist is an acquisition professional who works directly for the Contracting Officer. The Contract Specialist performs most of the day-to-day functions



required to advertise and award government contracts, i.e. synopsis (advertising) the requirement, preparing contract documents for the Contracting Officer's review and approval, answering questions from prospective contractors, etc.

***Requiring Activity***

The requiring activity is normally the end user(s) of the goods or services. The requiring activity is most familiar with the requirement and as such, is responsible for developing the technical requirements of the acquisition, determining the evaluation criteria that will be used to evaluate contractor proposals and will normally be involved in monitoring the technical aspects of contract performance. The number of individuals from the requiring activities that will be involved in a particular acquisition will vary according to its complexity. At a minimum, a member of the requiring activity's management team and/or a technical representative will participate in the acquisition. In more complex requirements, a separate project manager may be designated and multiple technical specialists, to include those from other activities may be used. The Contracting Officer's Representative usually comes from the Requiring Activity, but that is not always the case.

***Contracting Officer's Representative (COR)***

A COR is an individual appointed, in writing, by a Contracting Officer who monitors the technical or performance aspects of a contract and performs other duties specified by the Contracting Officer. The COR may only perform those tasks stated in the appointment letter. The individual who will serve as the COR once the contract is awarded, should participate in developing the requirement and other pre-award activities so that he/she is familiar with all aspects of the contract.

***Legal Advisor***

A Government Legal Counsel provides advice to the acquisition team regarding the legality of proposed contract actions. He/she will also review the solicitation, proposed contract and other support documents to determine legal sufficiency.

***Competition Advocate***

The role of the Command's Competition Advocate is to foster competition consistent with public law and the established goals of the Command. The Competition Advocate is a key player in acquisition planning.

***The Associate Director of Small and Disadvantaged Business Utilization***

The Associate Director of Small and Disadvantaged Business Utilization (ADSDBU) provides advice and counsel to the HCA and PARC on all small business matters. The ADSDBU also advises and assists program managers and contracting officials in developing strategies to ensure maximum participation by small businesses, small disadvantaged businesses, women-owned small businesses and historically black colleges and universities and minority institutions in the Command's prime and subcontracting opportunities.

## **Fundamentals of a Contract**

### *Nature of a Contract*

A contract is a legally binding relationship between two or more parties. All contracts contain four elements: an *offer* to provide something of value, usually goods or services; *acceptance* of that offer and communication of that acceptance to the offeror; *consideration*, something of value exchanged by the parties to bind the contract; and a *legal purpose*.

In government contracts, the proposal from the commercial concern is considered the offer. It is made by an offeror seeking to enter into a contract with the government. A Request for Proposal (RFP) issued by the government is not an offer. It is an informational document that expresses the government's needs to the community of potential offerors, and asks for proposals. When the government, after proposal review and negotiation, chooses an offeror with which to contract, it performs the act of acceptance. Consideration in government contracts is usually payment by the government and delivery of supplies or services by the contractor. Although non-government contracts may sometimes be oral, government contracts (including modifications) are always in writing.

### *Authority to Enter into Contracts*

Only Contracting Officers have the authority to enter into contracts or otherwise direct non-federal government firms and institutions, to provide goods and services, which will require the expenditure of government funds or other resources. Contracting Officers serve as an agent of the government when negotiating and awarding contracts, or, when making changes and modifications to contracts. This authority is not delegable to other individuals.

### *Use of Contracts*

The use of contracts is appropriate whenever the Federal Government requires supplies, services or construction from commercial sources and nonprofit institutions. Contracting, for purposes of this Desk Reference, encompasses all processes utilized to purchase, rent, lease or otherwise obtain supplies and services from commercial sources or nonprofit institutions using appropriated funds. The contracting or acquisition process begins at the point when agency needs are established. It includes the sub-processes of developing a description of requirements, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and contract close-out.

## **Competition**

Federal Law requires that full and open competition be used to acquire goods and services, except for a limited number of exceptions. Competition utilizes market forces to ensure that the government receives quality goods at favorable pricing. Competition allows the government to receive offers from a wide variety of prospective suppliers. This increases the probability that the government will receive offers that fully meet its needs. It also facilitates the promotion of new, innovative and state-of-the-art solutions. A common misconception is that the use of full and open competition often results in the government having to "settle" for inferior products or services. This is simply not true. A well-written statement of work, combined with valid offer

evaluation criteria, will ensure the government's needs are met. Competition maximizes the probability that these needs will be met at the best possible price.

### **Sole or Limited Sources**

There are times when it is impossible or impractical to solicit for goods and services on a full and open competitive basis. In these cases, the government will request proposals from only one or a limited number of sources. The use of "Other Than Full and Open Competition" is the least desirable method of acquiring goods and services. Other than full and open competition procedures may only be used in limited circumstances and require detailed justification. This justification must be supported by verifiable facts and clearly demonstrate why the government's requirement cannot be met by full and open competition. The dollar value of the acquisition and the nature of the justification will determine the level at which the justification must be approved. This may involve high-level officials and may add considerable time to the acquisition process. If you require additional information on the role of competition in federal contracting, or anticipate having a future acquisition requiring the limiting of competition, contact the HCAA Competition Advocate or your Contracting Officer.

### **Acquisition Order of Preference**

When acquiring goods and services, there is a designated order of preference that must be followed. The following sources must be considered for all government acquisitions, in the order indicated: existing government inventory; mandatory sources of supply, i.e., UNICOR (also known as Federal Prison Industries) and Nonprofit Agencies Employing People who are Blind or Severely Disabled (also known as the Javits-Wagner-O'Day Program or JWOD); existing contracts, e.g., GSA Schedules; small, minority-owned businesses; small businesses; and finally, large businesses.

### **Role of Small Business**

The role of small business is vital to the economic health of the United States and readiness of the military forces. Small businesses comprise the greatest number of businesses in the United States and offer the largest number of employment opportunities. Most innovations come from small businesses. Microsoft and Apple Computer delivered their greatest innovations when they were small businesses. This is why, if we are looking for the greatest owner involvement, innovation, lower overhead expenses, and fuel for the economic power of the United States, it is paramount that small businesses be provided every reasonable opportunity to fulfill the needs of the Federal Government. If you have any questions or would like to learn more about the Command's Socioeconomic Programs, contact our Associate Director of Small and Disadvantaged Business Utilization.

### **Unsolicited Proposals**

An unsolicited proposal is a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the government. It cannot be submitted in response to any type of solicitation on the part of the government. In order to be accepted by the government, an unsolicited proposal must meet all of the following criteria:

- Be innovative and unique.
- Be independently originated and developed by the offeror.
- Be prepared without government supervision.

- Include sufficient detail for a determination of benefit to the government.
- Not be an advance proposal for a known requirement.

### **Commercial Items**

Commercial items are supplies and services generally available for sale or lease by the general public, i.e. not designed to meet a unique government application. The government prefers to buy commercial products and services and has developed special procedures that simplify the purchase of commercial items and more closely mirrors buying practices used by commercial industry. Most health care supplies, services and equipment are considered commercial items.

### **Acquisition Thresholds**

Many acquisition actions, i.e. what procedures to be used, what clauses are included, etc., are keyed to the dollar value of a requirement. This is determined by looking at the entire dollar value of the resulting contract (to include any options). It is prohibited to split a requirement into smaller acquisitions for the purpose of avoiding an acquisition threshold.

### **Simplified Acquisitions**

Simplified Acquisition Procedures (SAP) are used to buy government requirements below \$100,000 (\$5 million for commercial items). SAP were developed to reduce the time and expense required to obtain goods and services, reserving more formal acquisition procedures for only high dollar value acquisition. Simplified Acquisition Procedures include the use of purchase orders, delivery orders, blanket purchase agreements, and government purchase cards. SAP are normally done on a competitive basis. Request for quotes, proposals and purchase orders are processed electronically to the extent possible. Simplified acquisitions over \$2500 must be made from small businesses unless a contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. Purchases under \$2500, are exempt from small business considerations.

#### ***Government Purchase Card***

Normally, purchases below \$2500, also known as the micro-purchase threshold, are accomplished by using the Government Purchase Card. This allows the requiring activity to purchase routine items below \$2500 using a card issued to someone in the organization. Over the years, the command has realized an increased reliance on the Government Purchase Card, reducing both the cost and timelines associated with purchasing small dollar items.

#### ***Purchase Orders***

Purchase orders are used to buy supplies or services that do not exceed \$100,000 (\$5 million for commercial items). The process normally begins with the government requesting a quotation to supply goods or services and potential suppliers responding to this request. However, from a legal standpoint, a quotation is not considered an offer (see paragraph on the “Nature of a Contract”, above). An offer is not made until the government issues the purchase order. Acceptance occurs when the contractor agrees to the terms and conditions of the purchase order by signing the document, begins work, or delivers the requested supplies or services. A binding contract does not exist until the

contractor accomplishes one of these actions. Purchase orders are normally issued on a fixed-price basis. Unpriced purchase orders may be issued in rare occasions where the price cannot be predetermined, i.e. for the repair of an item where the item must be disassembled to determine the extent of repair needed. However, even unpriced purchase orders contain a ceiling price that cannot be exceeded without further authorization. Unpriced purchase orders must be funded in the amount of the ceiling price.

### ***Delivery Orders/Task Orders***

Delivery orders/task orders are orders issued under a pre-existing indefinite delivery contract such as a Federal Supply Schedule. Delivery orders/task orders expedite the acquisition process and allow the government to take advantage of prices associated with the anticipated volume of the entire contract rather than an individual purchase. Delivery orders are used to order supplies. Task orders are used to order services.

### ***Blanket Purchase Agreement (BPA)***

A BPA is an agreement that is written with suppliers that are capable of providing anticipated repetitive needs for supplies and services. A BPA, in effect, is a charge account with a supplier. Under a BPA, separate acquisitions are made according to detailed, but simple procedures. No single purchase can exceed the simplified purchase threshold.

## **Contract Types**

The government uses two basic types or families of contracts - fixed-price and cost-reimbursement. Within each family there are several different variations, i.e. fixed price with economic price adjustment, cost plus fixed fee, cost plus incentive fee, etc., however, the essential characteristics within each family are the same. The Contracting Officer, after consulting with the customer, will determine the contract type most appropriate for the requirement, or this may be determined through negotiations between the Contracting Officer and the prospective contractor. In any event, the customer needs to understand the characteristics of each major contract type as this can significantly affect acquisition planning and contract administration duties. The two contract types differ in two key respects - the relative amount of risk placed on the government and on the contractor, and the degree of contract management or administration that is required.

### ***Fixed Price Contracts***

These contracts are normally used for commercial items or requirements where the government can describe its needs in a clear-cut, unambiguous manner sufficient for prospective contractors to develop a fair and reasonably priced proposal in which they assume only reasonable risk. The most common fixed price contract is the **firm fixed-price contract**. In a firm fixed-price contract, the contractor agrees to deliver all supplies or services at the times specified for an agreed upon price. This price cannot be changed (unless the contract is modified). Profit is determined by the contractor's ability to control costs relative to the contract price. If the contractor's costs exceed the contract price, the contractor must absorb the difference. Firm fixed-price contracts place maximum risk on contractors and little or no risk on the government. There are several other variations of fixed price contracts. Essentially these operate much the same as a firm fixed price contract, but they contain predetermined provisions for price adjustments. For example, a fixed-price with economic adjustment contract permits the contract price to change based

upon some external factor, i.e. change in a designated economic indicator. The government's contract monitoring requirements on fixed price contracts are usually limited to ensuring that the supplies or services conform to the requirements of the contract. Fixed price contracts are the predominate type of contract used by HCAA.

### ***Cost Type Contracts***

Sometimes, a requirement cannot be specified with the certainty required for a fixed-price contract. In the absence of this certainty, potential contractors have no way of estimating the price of the work with the degree of accuracy needed for fixed-price contract risk. Nor, is HCAA able to determine the accuracy of a proposed price. **Cost-reimbursement contracts** are used when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of fixed-price type contracts. Like the fixed-price contract, there are several variations.

In cost contracts, the contractor's risk is minimal. The contractor only agrees to a "best effort". No guarantee is given. Failure to do the specified work will not be a breach of contract, nor will it cost the contractor any money as long as a "best effort" was provided. On the other hand, the government's risk is high. It has no guarantee that it will get the specified work. If the work is not completed and the maximum costs have been reimbursed to the contractor, the government has two choices, both equally unsatisfactory. It can elect not to add funds to the contract and, essentially terminate the effort without receiving the desired product, or it can add money to the contract in the hope that the additional funds will be sufficient to achieve the expected result. Cost type contracts require a greater effort on the part of the government in monitoring performance. Appropriate oversight is required to ensure that the contractor is actually providing a best effort and that the contractor is judiciously expending funds and controlling cost.

Contracts may also be classified in a variety of other ways. The following are some of the other contract types used by HCAA:

### ***Indefinite-Delivery Contracts***

The government uses indefinite-delivery contracts when it does not know the exact quantity or delivery requirements at the time the contract is finalized. There are three types of indefinite-delivery contracts. **Definite-quantity** contracts specify the total amount of supplies or services that will be required, but permit delivery to be scheduled as required. The government is obligated to purchase the entire amount of supplies or services specified in a definite-quantity contract. **Indefinite-quantity** contracts permit the government to place subsequent orders for an indefinite quantity of supplies or services. The contract must state both a minimum and a maximum quantity. The government is obligated to purchase this minimum quantity. A **requirements** contract is used when the government anticipates recurring requirements but cannot reasonably determine the quantity that will be required. The contractor is only furnished with a reasonable estimate. The government does not have an obligation to purchase any supplies or services under a requirements contract, however, if it purchases any of the designated supplies or services, it must purchase them using this contract.

### ***Multiple Award Contract***

Multiple award contracts are indefinite-delivery contracts that are awarded to more than one contractor. The successful contractors then compete among themselves for follow-on task orders. Once awarded, multiple award contracts streamline the contracting process, reduce acquisition lead times and are particularly advantageous for large requirements where it is beneficial to have several contractors providing goods or services. An example of a multiple award contract is our iMAP (innovative Medical Acquisition Program) contracts where we have awarded contracts covering all health care providers required by the MEDCOM.

### ***Personal Services Contracts***

Contracts may also be classified based upon the relationship that is established between the government and the contractor's employees. Contracts where the government exerts direct supervision or otherwise establishes an employer – employee relationship with the contractor's employees, which are known as personal services contracts, are generally prohibited. However, the Department of Defense (DoD) has special authority to establish personal services contracts with health care providers. Under these contracts, the government directly supervises all technical aspects of the services performed. (See Chapter 5, [Supervising Contractor Personnel](#) on page 33 for additional information on this subject.

## **Funding**

Funding rules are complex and vary among the various contract types. Some of the basic rules include the following:

### ***Anti-Deficiency***

No employee of the government can request or direct a contractor to provide goods or services without funding or in the advance of funding. Before executing any contract, the Contracting Officer shall obtain written assurance from responsible fiscal authority that adequate funds are available or expressly condition the contract upon availability of funds.

### ***Bona Fide Need***

Funds can only be obligated to fund a bona fide need of the current fiscal year. There are several exceptions of this rule to include:

- **Fiscal Year Contracts** - The contracting officer may initiate a contracting action properly chargeable to funds of the new fiscal year before these funds are available provided that the contract includes the "Availability of Funds" Clause.
- **Nonseverable Services** – Services that produce a single or unified outcome, product or report are considered nonseverable. Contracts for nonseverable services can cross fiscal years, but must be totally funded out of appropriations current at the time of contract award.
- **Severable Services** – Under a current exception applicable to DoD, contracts for severable services (services that do not produce a single or unified outcome) may also cross fiscal years, however the total period of performance cannot exceed one year (this does not preclude the use of options as these are funded as if they are a new contract).

Contracts for severable services can be totally funded by an appropriation current at the time of contract award. They can also be funded by using funds from two different fiscal years provided that the contract contains the “Availability of Funds” Clause covering the appropriation for the follow-on fiscal year. Performance of the service must begin in the year that the contract/order was funded.

### **Options**

Options provide the government with the ability to order additional quantities or additional periods of service beyond those established in the initial contract. Normally, options pre-establish the quantity, price, and delivery schedule for these additional products or services. Options are used when there is a clearly defined quantity or requirement for the product or service, but due to funding rules or other restrictions, the goods or services cannot be ordered at the time of contract award. Prior to exercising an option, the Contracting Officer, with the assistance of the client, must determine that this is in the best interests of the government. The Contracting Officer must ensure that the conditions present when the original products or services were ordered did not change to a degree that would make the initial procurement strategy inappropriate. At a minimum, market research must be conducted to look at the current extent of competition, particularly from small and small disadvantaged business firms, the prevailing market price for similar goods and services, and the current status of the incumbent contractor to include his or her financial and management capacity, and the quality of the goods and services that are being provided.



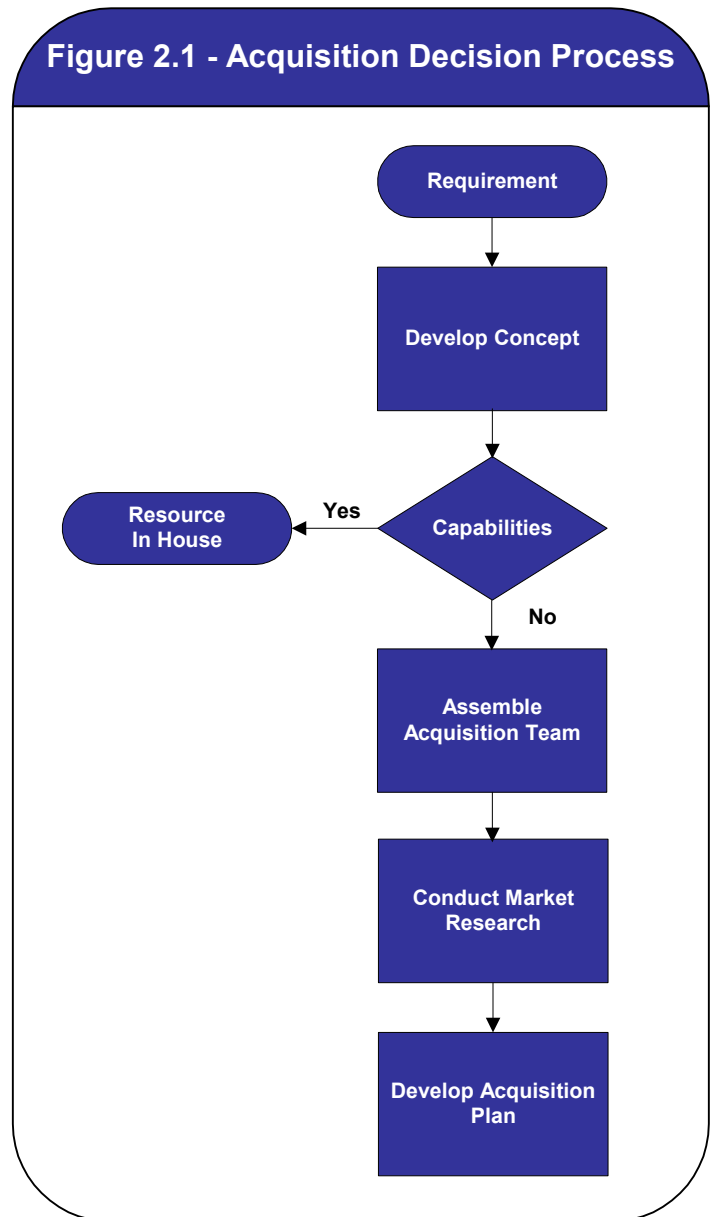
## CHAPTER 2. ACQUISITION PLANNING

### Advanced Planning and Scheduling

Long before the government approaches the business community for proposals, it must successfully accomplish a myriad of planning and scheduling tasks in preparation for the acquisition (see Figure 2.1).

The better these tasks are completed, the better the chances that the acquisition will be successful. The acquisition planning process begins as soon as a need is identified and it is obvious that the need must be met outside the MEDCOM. Acquisition planning involves a general consideration of all the elements that will be required in connection with a particular acquisition. This process may be quite simple or very elaborate depending on the cost, political sensitivity, complexity, or importance of the item or service being acquired. Advanced planning helps both the Contracting Officer and the customer to more efficiently procure outside supplies and services by enabling them to allocate and schedule the work involved in an acquisition. Early planning is the most effective way of preventing or resolving potential problems early in the process. Once a decision is made to acquire products or services through the contracting process, a partnership needs to be created between the customer and the Contracting Officer. This partnership is essential to establishing and achieving the acquisition objectives, because these two officials have the most influence over whether or not the contracting process is successful. Assisting the customer and the Contracting Officer is an integrated team of individuals. The composition of this team is based upon the complexity and nature of the acquisition.

Figure 2.1 - Acquisition Decision Process



### Concept Development

Concept development is the first step in an acquisition. In this phase the agency realizes that an acquisition is necessary and defines in broad terms what this effort will entail. A plan or concept

is developed that reflects consideration of MEDCOM in-house capabilities. Concept development may include assessment of prior contract results, in-depth literature searches, and discussions with technical and scientific personnel, both within and outside the government. Once the concept has been formulated, it must be reviewed for program relevance, need, merit, priority, and timeliness by the appropriate management staff. In most programs, the concept development phase is intimately connected with the budget process since that is the primary means of identifying, defining, and approving program acquisitions.

### **Assemble the Acquisition Team**

A team approach is the cornerstone to a successful acquisition. There are far too many technical, legal and regulatory considerations for one or two people to accomplish this process on their own. Additionally, decisions made early in the acquisition process will have a large effect on the overall outcome of the process. Failure to include all the decision makers early in the process could lead to significant delays or a less than desirable outcome. At a minimum, the Acquisition Team will consist of the following individuals:

- The requiring activity's technical representative. This is the individual most knowledgeable of the requirement. The technical representative will be responsible for documenting the requirement and preparing most of the paperwork necessary to start the acquisition process;
- An appropriate management official from the requiring activity;
- The contract specialist who will develop most of the contract documents needed for the acquisition;
- The Contracting Officer;
- The proposed COR, if different from the technical representative, should also be part of the Acquisition Team.

Additional personnel are included depending upon the complexity of the required supply or services and the proposed contract. These may include the additional technical personnel, a legal advisor, the end user and financial personnel.

### **Market Research**

Market research is then used to obtain a greater understanding of the market place and to obtain information necessary to document the requirement. Market research helps determine what products and services are available to satisfy the government's needs, identify potential sources for these products and services, and calculate what these products and services will cost the government. Market research information can be gathered from several sources. Discussions with commercial experts, reviewing the results of other recent market research information, publishing formal requests for information in the [Federal Business Opportunities Website](#), and querying databases/on-line communication are all potential sources of valuable information. Market research may include obtaining source lists from other agencies or associations, reviewing company catalogs and product literature and holding a pre-solicitation conference. Market research may also include discussions with potential contractors. These discussions may serve to determine interest, scientific approaches, technical capabilities, and state-of-the-art solutions relevant to the subject area. Since the government's requirement is not yet defined at this point in the process, discussions with industry are not only permissible, they are encouraged. However, in holding such discussions, care must be taken not to disclose specific advance information on a proposed acquisition that may give a contractor an unfair advantage. While it may be necessary to disclose some general information regarding the government's intention, the

purpose and focus of these meeting should be to obtain information from the contractor. During the Market Research Phase, close coordination between the customer and the Contracting Officer is extremely important. The Contracting Officer can provide valuable information about contracting lead-times, sources of information and potential problem areas. Following market research, the requiring activity is prepared to develop the various requirement documents that must be forwarded to the Contracting Officer (see Figure 2.2).

### Develop the Acquisition Plan

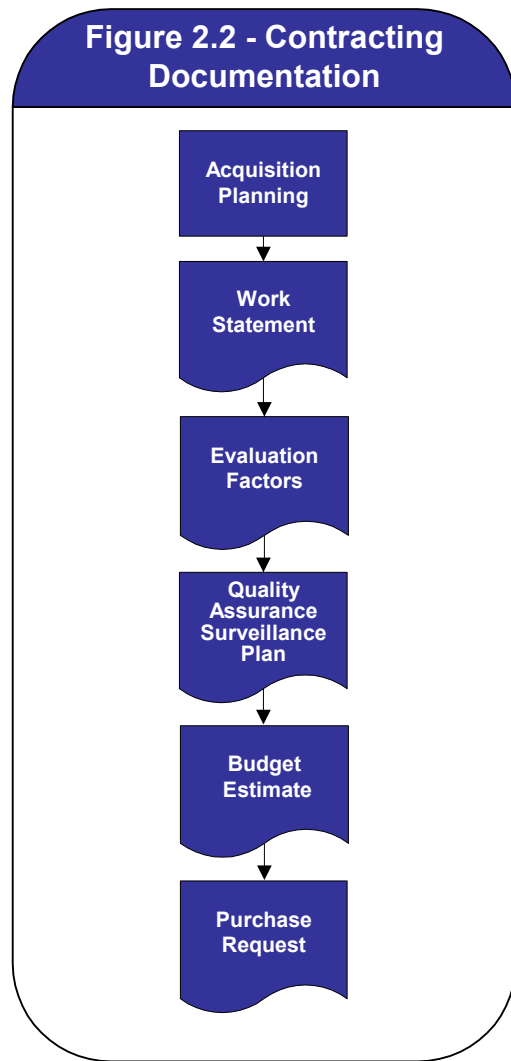
At the completion of market research, the Acquisition Team begins to develop an acquisition plan that will serve as a roadmap for the remaining tasks necessary for a successful acquisition. The acquisition plan provides background information on the acquisition (purpose, history, funding), the objectives of the acquisition (specific requirements, period of performance, deliverables) and the action plan for the acquisition (type of contract, solicitation method, limitation on competition). Based upon the information gathered during market research, and the agreed upon acquisition plan, the technical representative, with support from the other members of the Acquisition Team, begins preparing the various documents necessary to begin the “formal” phase of the acquisition process whereby the government advertises the requirement, receives and evaluates offers and makes a contract award.

### Describing the Requirement

Providing an adequate description of the government's needs is one of the most important aspects of any acquisition. A well-written requirement document should contain a clear and explicit description that reduces problems and enhances the quality of the offers submitted. It should also describe requirements in sufficient detail to allow the government to develop sound proposal evaluation criteria. A well-written requirement document will avoid delays, save administrative efforts and reduce the chance of a protest or claim against the government. Carefully planning the requirement document will save time and will make it possible to develop a concise, trouble-free solicitation. The requirement document will vary depending upon the purpose of the acquisition.

### Statements of Work (SOW)

A Statement of Work describes the needs of the government in a clear, simple, concise and legally enforceable manner. The SOW format presents required tasks in an easily understood manner. Complex tasks are further broken down into sub-tasks. Exhibits and



Acquisition Planning

references to external documents are included if they will help convey to the contractor the job that needs to be done.

***Performance Based Statements of Work***

When contracting for services, the SOW is called a Performance Work Statement (PWS). A PWS defines the work in terms of “what” is required rather than “how” the work is to be performed. A PWS includes a measurable performance standard; a quality assurance surveillance plan; specific procedures for reductions in contract fee or price when services are not performed; and performance incentives where appropriate.

***Purchase Descriptions***

A purchase description is normally used when acquiring supplies and equipment. Purchase descriptions describe the functions to be performed, the performance or end result required, and the essential physical characteristics (salient characteristics) necessary to meet the needs of the government. A purchase description may identify the requirement in generic or common terms. A purchase description may also include a reference to a Brand Name that has been predetermined to meet the needs of the government, however, “brand name or equal” purchase descriptions must identify the salient characteristic(s) of the identified brand name that are essential to meeting the government’s requirement. Whenever possible, the purchase description should enable and encourage offerors to supply commercial items.

***Specifications and Standards***

Specifications are detailed, descriptions of the technical requirement for an item or service. A specification can be written as a design specification, a performance specification, or as a combination of both. Design specifications detail the exact dimensions, materials, composition, and physical requirements of a product. Performance specifications, which are preferred over design specifications, describe the end item in terms of output, function or operation. Specifications are usually used primarily when acquiring construction.

Standards establish engineering and technical limitations and applications of items, materials, processes, method, designs and engineering practices. Standards include criteria deemed to be essential to achieve the highest degree of uniformity in materials or products.

**Evaluation Factors**

If an acquisition will be processed using negotiated procedures, the customer must prepare a list of factors that can be used to evaluate the contractor’s proposals. These factors and sub-factors, along with the weights assigned to each factor and sub-factor are used to determine if the offeror can meet the government's needs and which offer is most advantageous to the government. The number of evaluation factors and the complexity of the evaluation process are based upon the complexity and nature of the acquisition. Evaluation factors must be developed carefully as these are the only criteria that can be used to evaluate a proposal. Evaluation factors are normally rated using either colors (red, yellow, blue black, etc.) or using adjectival terms (poor, fair, good, excellent).

### **The Quality Assurance Surveillance Plan**

A Quality Assurance Surveillance Plan (QASP) is a systematic, structured method for the government to evaluate supplies and services provided by a contractor. The requesting agency is required to prepare the QASP. This plan will address how the government will monitor a contractor's performance. The plan should specify all work requiring surveillance, the method of surveillance and the place or places where the government intends to perform quality assurance. The nature of the requirement, cost, criticality, the cost of a potential loss and other similar factors will determine the extent of the Quality Assurance Surveillance Plan and the place where it will be executed.

### **The Government Budget Estimate or Independent Government Estimate**

Cost estimates are required for all acquisitions. This information is used for budgeting purposes and for evaluation of contractor's proposals. Developing cost estimates is the responsibility of the customer. However, the Contracting Officer and your activity resource management personnel can provide advice and assistance. For commercial items, the cost estimate can be developed by market research and/or reviewing past acquisitions of similar items. For non-commercial items and complex requirements, an Independent Government Estimate (IGE) is developed. The IGE is the government's estimate of what a contractor should propose based on the PWS. It is calculated by considering the amounts and types of resources required (labor, equipment, supplies, travel, etc.) and applying standard industry indirect costs and burdens (fringe benefits, overhead, G&A & profit/fee). The IGE may also be called the Independent Government Cost Estimate (IGCE) or the Independent Cost Estimate (ICE). The IGE is **confidential** information that should not be discussed or shared with the contractor. In some situations, it may be necessary to use contractor employees to assist the government develop requirement documents (IGEs, PWS, etc). In these situations, the contractor employee should sign a non-disclosure statement. Because of potential conflict of interest, companies involved in developing requirements documents may not compete for that requirement.

### **Other Supporting Documentation**

#### *Non-Competitive Justifications*

Any requirement where the customer is recommending the use of other than full and open competition procedures must be fully justified. This written justification must be supported by verifiable facts, not opinions. It must show how the government will be harmed if full and open competition is used on this acquisition. Depending upon the dollar value of the requirement and the justification used, this justification may require high-level approvals, adding considerable lead-time to the acquisition.

#### *Acquisitions Using Outside Contracting Offices*

In order to promote the effective and efficient use of the Command's resources and to enable timely advance planning of the acquisition workload, the acquisition of supplies, services and equipment by MEDCOM units will normally be accomplished by the appropriate supporting contracting office. The MEDCOM is supported by three different contracting activities. For all **non-medical supply and service requirements**, contracting support will be provided by the local Army Contracting Agency (ACA) Office. For most **medical supply and equipment requirements**, MEDCOM activities will receive contracting from the Defense Supply Center, Philadelphia (DSCP) using Prime Vendor, the

Electronic Catalog System (ECAT) and other contracting programs offering a wide variety of product choice at volume discounted prices. For medical equipment and supplies not available through DSCP, and for all medical services, contracting support will be provided from HCAA.

There are some limited situations, where the use of a contracting agency other than ACA, DSCP or HCAA may be appropriate. For example, another agency may have capabilities or expertise not provided by one of these activities. Unfortunately, there have been a number of incidents where government activities have used external contracting agencies to avoid agency regulations and procedures. Consequently, federal acquisition regulations limit this practice to situations that can be shown to be clearly in the best interests of the government. Prior to using an external contracting agency for health care contracting support (except those specifically authorized by regulation or support agreement) requesting activities must contact their supporting HCAA contracting officer to obtain additional information on the approval process required.

***Sources for Solicitation***

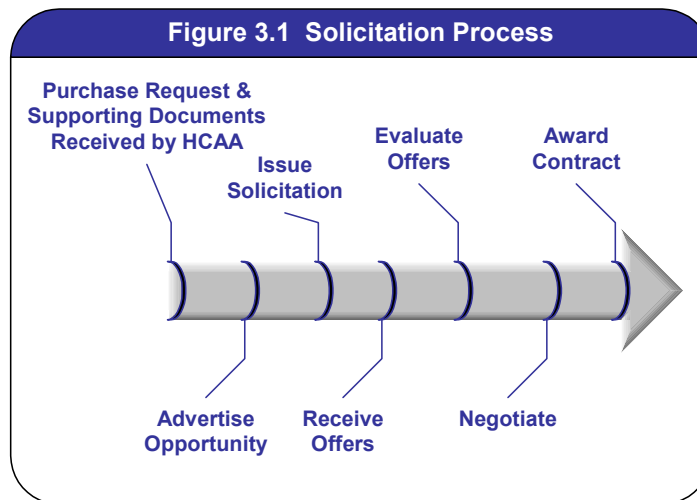
Potential sources may be known from past acquisitions or identified during market research. A list of known sources should be supplied to the contracting office at the time the acquisition requirement documents are forwarded.

**Purchase Request**

At this point, the requiring activity is ready to develop a purchase request. This is accomplished using the web-based Acquiline PRWeb System. The requiring activity enters specified information into the PRWeb screens to include a description of the requirement, purchase request number, issuing office, identification and description of each line item, delivery date, estimated costs, and suggested vendors. For simple requirements, the purchase request is the only document that needs to be forwarded to the contracting office. For more complex requirements, appropriate support documentation, i.e. a separate work statement, evaluation factors, quality assurance surveillance plan, budget estimate, etc are added to PRWeb as an attachment. The entire Purchase Request Package is routed through approval and budget officials. Once approval is received and funds are certified, the entire package is routed electronically directly into HCAA’s automated contracting system, Procurement Desktop – Defense (PD<sup>2</sup>). Should any of the approving officials or the contracting office require additional information, the PR can be routed back to the initiator using PRWeb. Should the PR require subsequent amendment or, should the resulting contract require modification, PRWeb is again used to initiate the action. PRWeb can also be used by the Requesting Activity to obtain status information directly from PD<sup>2</sup>.

## CHAPTER 3. SOLICITATION AND AWARD

Once the purchase request and supporting documents are received in the contracting office, the formal solicitation process begins. The requirement is advertised to industry, proposals are received and evaluated, and a contract is awarded (see figure 3.1).



Once the Purchase Request and supporting documents are received in the contracting office, they are reviewed for accuracy and completeness. At this point a variety of decision must be made by the Contracting Officer, with input from a variety of the Acquisition Team members. Some of these decisions may already have been accomplished during the acquisition planning process. If this is the case, the Contracting Officer will validate the decision based upon any changes in the Purchase Request or the supporting document. These include the type of contract to be used, the extent to which the requirement is to be competed and the procedures to be used to solicit and award the contract. As soon as these issues are determined, the contract specialist alerts industry about the opportunity, using a variety of electronic media, then begins to prepare the solicitation documents. The Federal Government uses different methods and approaches to acquire goods and services. Contracting by *negotiation* is the most commonly used approach in the MEDCOM. This technique provides the government with the maximum flexibility in selecting a contractor, but it is a relatively complex and resource intensive process. Opportunities can also be solicited using *sealed bidding*. This process is much simpler than negotiating a requirement, but it provides very little flexibility in selecting a contractor.

### Negotiated Acquisitions

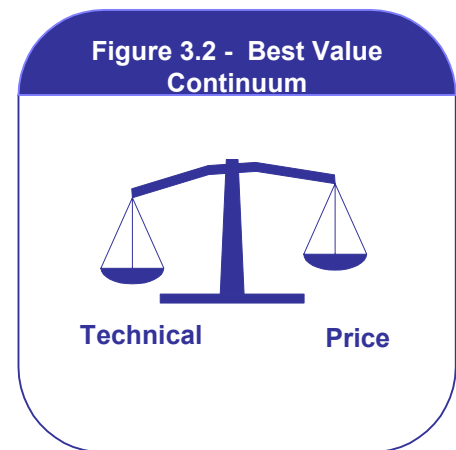
In negotiated acquisitions, the government communicates its requirements to the business community by means of a solicitation document known as a Request for Proposal (RFP). The RFP contains the PWS that tells the contractor what is required, provides instructions to offerors to guide them in preparing their proposals and provides information telling offerors how the government will evaluate proposals to determine which offer will be selected for contract award.

#### *Evaluation Approaches*

The government has considerable flexibility in establishing evaluation criteria, as long as the potential contractors are notified how their proposals will be evaluated and the government adheres to this criteria when completing their evaluation. Note that proposals

are evaluated against the criteria stated in the solicitation and not each other. Where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price plays a dominant role in source selection. Where the requirement is less definitive or where performance risk is high, technical approach will be more dominant.

The **best value approach** gives the government the flexibility to award to other than the lowest price offeror. All the evaluation factors and significant sub-factors are weighted depending upon their importance and given a ranking during the evaluation process. Then a tradeoff evaluation is accomplished between the cost or price and non-cost factors to determine if the perceived benefits of a higher rated technical proposal merit the higher cost or price. The evaluation factors that will be used to determine this tradeoff must be clearly documented in the RFP. The rationale for tradeoffs must also be clearly documented.



A **lowest price technically acceptable approach** is used when the government's need can be best satisfied with a technically acceptable proposal with the lowest evaluated price. When using this approach, the evaluation factors and significant sub-factors that establish the requirements of acceptability are described in the solicitation along with a notice that evaluations will be made on this basis. Proposals are evaluated for acceptability, but not ranked using the non-cost/price factors. Tradeoffs are not permitted.

### ***Oral Presentations***

The government may request that the offerors use oral presentations to augment or clarify written information. The use of oral presentations can be effective in enhancing the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information.

### ***Review of Proposals***

The HCAA policy is to select best value contractors on the basis of a competitive, objective review, and to document source selections thoroughly. Depending on the complexity of the acquisition, this review is performed by either a formal Source Selection Evaluation Board (SSEB), which reports to a senior official designated as the Source Selection Authority (SSA), or a less formal Technical Evaluation Panel (TEP) convened by the Contracting Officer.

### ***Proposal Evaluation***

The SSEB or TEP is responsible for evaluating technical proposals according to the established evaluation criteria, identifying deficiencies and areas requiring clarification, and providing a consensus report to the SSA or Contracting Officer ranking the proposals. To the extent possible, the same evaluators should be available throughout the entire



evaluation and selection process to ensure continuity and consistency in the treatment of proposals.

***Review of Business/Cost Proposals***

The Contracting Officer is responsible for evaluating business considerations, i.e., those factors relating to cost/price analysis and determination of contractor’s responsibility (e.g., adequate financial resources, ability to comply with delivery or performance schedule, satisfactory record of performance, etc.). The Contracting Officer may request assistance from the SSEB or TEP in evaluating the business/cost proposals.

***The Competitive Range***

The information from the evaluation process is used to determine the competitive range – those proposals that will be seriously considered for award. The Contracting Officer can decide to exclude a proposal from further consideration if it is so far out of the range of consideration, either due to lack of technical merit or excessive cost/price, that it is not likely to be in consideration for award even after substantial revision.

***Cost Realism***

A cost realism analysis is used to determine if the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal. Cost realism analysis is performed by comparing each element of the offeror’s proposal with the Government’s Independent Cost Estimate.

***Negotiations***

Negotiations are discussions with the offerors to address significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could be altered or explained to enhance the proposal's potential for award. When discussions are held, they are tailored to each individual offeror. The Contracting Officer is responsible for organizing negotiations to include establishing goals and objectives. However, program personnel will be significantly involved in the process.

**Sealed Bidding**

Sealed bidding is a method of contracting that employs competitive bids and public opening of bids. Bids are solicited using an Invitation for Bid (IFB). All bids are opened publicly and an award is made to the responsible bidder whose bid, conforming to the invitation of bids, will be most advantageous to the government, considering only price and price-related factors. Sealed bidding is used when it is not necessary to conduct discussions with offerors about their bid and the award can be made on the basis of price or price-related factors

### **Preproposal/Prebid Conferences**

A Preproposal or Prebid Conference may be held to ensure industry understands the RFP/IFB and to identify any areas of concern or confusion early in the acquisition process. Whenever possible, notice of such a conference should be included in the RFP or IFB.

### **Amending the Solicitation**

It may be necessary to amend the RFP/IFB during the solicitation period. An amendment will be required if, as a result of questions or comments provided by industry during the solicitation process, or as a result of changes in the government's requirement, material changes must be made to the specifications, terms, or conditions contained in the original solicitation. Amendments increase administrative costs and often delay contract award and performance since they must provide a reasonable time for potential offerors to respond to the change. For these reasons, it is particularly important that sufficient time and attention to detail be applied to concept development, market research and preparation of the requirement documents. Often amendments are a result of a poorly defined requirement.

### **Communication with Offerors**

To ensure that the competition is fair and equitable, every firm must be provided with the same information. Under no circumstances may government employees take any action that might give one firm an advantage over another. In the interval between the time the RFP/IFB is mailed and the contract is awarded, only authorized contracting personnel should have any contact with the offerors. The RFP/IFB provides the names of the Contracting Officer and states that only he/she represents the government. Program personnel who are approached by prospective contractors should immediately refer them to the Contracting Officer.

### **Selection and Award**

Contract award is made to the offeror whose proposal or bid offers the greatest value to the government. The Contracting Officer is responsible for preparing the final contract document. A copy of the fully executed contract is forwarded to the contractor, the requiring activity, the Contracting Officer's Representative and other interested parties.

### **Activities After Award**

#### ***Debriefing Unsuccessful Offerors***

Unsuccessful Offerors are entitled to a debriefing. The debriefing is intended to tell unsuccessful offerors which areas of their proposals were judged to be weak and/or deficient, and whether the weaknesses or deficiencies were factors in not having been selected. Debriefings also identify factors that were the basis for selection of the successful contractor. Program personnel usually take part in the debriefing.

#### ***Protests***

Protests may be filed whenever an offeror feels that they have been treated unfairly. Protests can be filed before award or after award. Protests can be filed with the Contracting Officer or a higher authority. Protests can significantly delay contract award and/or contract performance, particularly when the basis for the protest is determined to have merits. Since protests are based upon subjective and often emotional perceptions by

the offeror, they cannot be totally prevented. However, following sound acquisition principles can limit the number of protests and ensure a successful outcome of those that are filed. These principles include avoiding unnecessarily restrictive specifications, avoiding inappropriate sole source procurements, ensuring that information provided to one source is provided to all sources and applying evaluation criteria fairly.

***Contracting Officer's Representative Appointments***

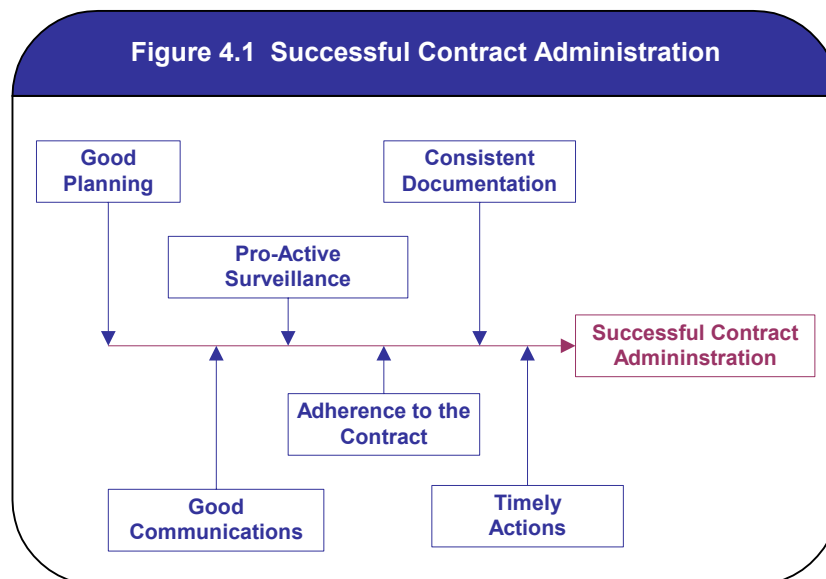
The Contracting Officer may select and designate any government employee, military or civilian, to act as an authorized representative in administering a contract. The Contracting Officer shall ensure that the Contracting Officer's Representative (COR) possesses qualifications and experience commensurate with the authorities with which the COR will be empowered. For this, the Contracting Officer normally relies on the recommendation of the senior manager having program responsibility for the contract. The COR is designated by a Letter of Appointment from the Contracting Officer. The Appointment Letter will specify the authority and responsibilities of the COR to include specific limitations on the COR's authority.

## CHAPTER 4. CONTRACT ADMINISTRATION

### The Contract Administration Process

Post award administration involves ensuring that the contract is performed as written by both the contractor and the government. A breakdown in administration can undo all previous efforts to ensure a well-engineered contract. Administration begins after both parties have signed the award document. It ends at the contract closeout when performance has been completed and final payment has been made. Administration includes monitoring technical progress, controlling government property, monitoring subcontractors, reviewing modifications and terminations, and performing other administrative tasks required by the award document. There are six elements to successfully administering a contract.

- **Good Planning** – identify who, what, when, where and how
- **Good Communications** – begin communicating with the contractor early in the process and continue to communicate throughout the period of performance
- **Pro-Active Surveillance** – make a schedule and follow it
- **Adherence to the Contract** – the contract establishes the relationship between the contractor and the government
- **Consistent Documentation** – maintain good records
- **Timely Actions** – address issues as they occur



### Planning for Administration

Planning at the outset of the project is a necessary step in effective administration. This planning is needed to ensure that the administrative steps intended are consistent with the specific acquisition. Also, the analysis of administration requirements can disclose potential problems in performance of the work that might have been overlooked prior to award, making it possible to take early corrective action. The planning should be based on a review and analysis of the project and award requirements. It should include such things as an analysis of the need for and timing of such things as performance and cost reviews, inspections, scheduled delivery of government-supplied items, subcontractors, key personnel issues, monitoring of the contractor's compliance with terms and conditions, and other administrative duties. The results of this

planning are captured in a detailed work plan that is used to track required actions, status and milestones. The Contracting Officer's Representative is the technical or program person responsible for monitoring the technical aspects of contract performance.

### **Post Award Orientation**

The Post Award Orientation is a meeting between government and contractor to ensure that both parties have a clear and mutual understanding of all contract requirements. The Post Award Orientation also is used to identify and resolve potential problems; introduce the government's representatives; furnish notices and other data to the contractor; and otherwise set the stage for a good working relationship under the contract.

### **Government Property**

There are times when it is in the best interest of the government to provide the contractor with government furnished property. When government property is provided, the COR frequently will be asked to advise or assist the Contracting Officer in administering its use.

### **Monitoring**

The contractor has primary responsibility for performance of the work, but the COR and the Contracting Officer have a vested interest in continually monitoring performance, because unsatisfactory performance may jeopardize a project or an entire program. Monitoring varies considerably both in intensity and in methodology, depending on the importance and size of the effort, as well as on the type of contract. Obviously, Personal Services Contracts will require the most amount of effort on the part of the government.

### **Modifications**

A modification is a written alteration of award document provisions such as the work statement, period of performance, quantity or price. During the project life, different types of modifications may be necessary to incorporate new requirements or to handle problems that develop after award. Modifications must be made in writing by the Contracting Officer in order to preclude misunderstanding between the parties concerning the work to be performed.

A supplemental agreement is a bilateral agreement that either adds work or revises the delivery schedule, quality requirements or other terms of the contract. Such agreements almost always result in a price or cost change. Before initiating a modification, it is necessary to determine that the change is within the scope of the existing agreement, i.e. the new work does not add considerable magnitude to the contract. Work that is outside the scope of the contract is considered a new acquisition and subject to the same competitive requirements as a new acquisition or fully justified as meeting the criteria for "less than full and open competition."

The government may also change the contract using the "Changes" Clause. This clause is unique to government contracting. It permits the government to unilaterally direct certain changes within the general scope of the contract. All contract changes, regardless of the type, must be accomplished by the Contracting Officer.

### **Constructive Changes**

A constructive change arises whenever, by informal action or inaction of the government, the contract changes without going through the required legal or regulatory formalities. The

common causes of constructive changes include inadequate or latently defective specifications, improper interpretations of specifications, overly strict inspections, government caused delays, and improper technical direction.

In dealing with the contractor, the COR and other program personnel must exercise care not to accidentally generate the basis for claims or delays. When communicating with contractor personnel, or when conveying technical or assessment information, it is critical that the COR and other program personnel not instruct, supervise, or attempt to control contractor efforts except as specifically authorized in the contract PWS. If problems begin to develop, contact the Contracting Officer immediately.

### **Performance Problems**

The government has a wide variety of tools available to deal with unsatisfactory performance. These include providing notice to the contractor of the particular deficiency and obtaining a commitment for appropriate corrective action; withholding payments in cases where the contractor fails to comply with delivery or reporting provisions; and/or terminating the contract for convenience, cause or default. The Contracting Officer can also extend the schedule of work if excusable delays in performance are involved. The most important aspect of dealing with poor performance is good documentation. It is very difficult to manage poor performance issues when the government has failed to document the performance issues. The second most important aspect of managing poor performance is maintaining good communications. The COR must ensure that both the contractor and the Contracting Officer are aware that performance problems exist. Remember that silence on the part of the government could be interpreted as revised government expectation of performance and could adversely affect the government's rights.

#### ***Withholding Payment under Contracts***

All government contracts contain a clause allowing the government to withhold payments. A contractor's failure to perform or deliver services or work when required by the contract is considered a default in performance. In these circumstances, the Contracting Officer normally issues a formal "cure notice," which will include a statement to the effect that contract payments will be withheld if the default is not cured or is not determined to be excusable. A "cure notice" is a formal notice from the Contracting Officer pointing out specific deficiencies in contractor performance and directing that they be "cured" within a specified time, usually 10 days. If the default is not determined to be excusable or a response is not received within the allotted time, the Contracting Officer initiates withholding action on all contract payments and determines whether termination for default or other action would be in the best interest of the government.

#### ***Termination for Default/Cause***

The Termination for Default clause allows the government to terminate the contract when the contractor fails to make progress with the work or to perform any other contract requirements within the period provided by a cure notice. Once a Contracting Officer has determined that it is necessary to invoke the Termination for Default clause, the COR and other program personnel should have no further contact with the contractor unless specifically directed to do so by the Contracting Officer. When acquiring commercial items, default terminations are known as Terminations for Cause.

***Termination for Convenience***

The government has a unique right to terminate a contract for convenience. Under the Terminations for Convenience clause, the government has the right to cancel a contract when to do so is in the best interest of the government, notwithstanding the contractor's ability and readiness to perform. Terminations for Convenience may occur when the item or service is no longer needed, the contract is no longer affordable given other funding priorities, it is impossible for the contractor to perform as specified in the contract or there has been a radical change in the requirement that goes beyond the contractor's expertise. Terminations for Convenience require that a financial settlement be made for the work that has been accomplished under the contract up to the effective date of the termination. Settlements may be reached by negotiated agreement or by Contracting Officer determination.

**Resolving Contract Disputes**

No matter how carefully a contract is negotiated and written, disputes can and often do arise. The Disputes clause included in all government contracts is designed to ensure that disagreements between the government and the contractor will not interfere with the scheduled performance of the contract. It also provides a channel through which disagreements and the persons directly involved can resolve differences. The Contracting Officer has considerable discretion and can choose from a variety of remedies when attempting to resolve a contract dispute. Some of the things the Contracting Officer can do include making equitable adjustments pursuant to the Changes clause; reducing prices under the Inspection clause; and providing for reimbursement for extra work performed.

**Inspection and Acceptance Responsibilities**

Acceptance occurs when an authorized government representative examines the goods or services provided, compares the services provided to the requirements of the contract, and is satisfied that the goods and services conform to contractual requirements. The COR is normally authorized to inspect and accept goods and services. Acceptance is documented on a receiving report, normally after receipt of the vendor's invoice. The preferred form for the receiving report is the DD Form 250. Untimely and inaccurate completion of the acceptance document is a major problem for the government and should be a major focus area for the COR. Late receiving reports result in the government having to pay interest on the contractor's invoice.

**Past Performance Management System**

Since the passage of the Federal Acquisition Streamlining Act of 1994, all Federal Departments and Agencies have initiated procedures to record contractor performance and to use past contractor performance information in source selection. The use of past performance information is a valuable evaluation factor in the analysis and award process. Not only is this a powerful motivator for contractors to maintain high quality performance, but it also increases the probability of awarding contracts to quality contractors. Past performance information is maintained both locally and in central Army and Federal databases.

## **CHAPTER 5. CONTRACTING PROBLEMS/ISSUES**

### **Anti-Deficiency Act**

No officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Violating the Anti-Deficiency Act is a very serious offense, which may result in criminal penalties.

### **Unauthorized Commitments**

An unauthorized commitment is an agreement made to bind the government by an employee of the government that does not have the authority to do so. Only a Contracting Officer may enter into a contract on behalf of the government. Although the government is not bound by the acts of unauthorized individuals, such acts bring discredit to the activity; strain relationships with the vendor community; and in general, cause considerable additional paperwork to rectify. Individuals responsible for an unauthorized commitment could be held personally liable and/or subject to disciplinary action.

### **Contracts with Federal Employees**

Except in the most compelling circumstances, the government may not enter into a contract with a government employee or with an organization that is substantially owned or controlled by a government employee.

### **Conflicts of Interest**

The policies governing conflicts of interest prohibit an employee from participating “personally and substantially” as a government employee in a matter, procedure, determination, or contract in which any of the following individuals or organizations has a financial interest:

- The employee, or a member of the employee’s household including the employee’s spouse or the employee’s minor child;
- An organization in which the employee serves as an officer, director, trustee, partner, or employee; or,
- A person or organization with which the employee is negotiating for prospective employment or has an arrangement for prospective employment.

If you feel that any of these circumstances may exist or if you feel that circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality in a matter, you should not participate in that matter until you have consulted with the Command’s ethics advisor.

### **Gratuities**

Gratuities include gifts, entertainment, or favors generally given to enhance the relationship between the offeror and the government employee. Government employees are prohibited from accepting gratuities on the premise that gifts, entertainment, or favors, no matter how innocently offered and received, may be a source of embarrassment both to the MEDCOM and to the employee involved. Accepting gratuities might give the impression that the objective judgment of the recipient has been affected and could erode public confidence in the integrity of the relationship between the MEDCOM and the private organization.



### **Use of Official Information**

The public interest requires that certain information in the possession of the government be kept confidential and released only with general or specific authority under DoD or other regulations. Such information may involve the national security or be private, personal, or business information that has been furnished to the government in confidence. As such, employees may not allow individuals outside the government to have access to official information. Additionally, information in the possession of the government and not generally available to the public may not be used for private gain.

### **Protecting the Integrity of the Procurement Process**

The term, “integrity of the acquisition process,” in this instance means allowing private sector firms to compete for the government’s business on a scrupulously fair basis. The emphasis here is on the word “fair.” Not only is fairness a prerequisite in government acquisition due to the government’s unique position as representative of the American people, but fairness also helps ensure that the government will obtain its quality supplies and services at favorable prices.

Government personnel who are associated with the acquisition process have a responsibility to protect its integrity, maintaining fairness in the government’s treatment of all contractors or potential contractors. Procurement officials are subject to additional requirements and restrictions regarding conduct while in the employ of the government and after they leave government employment. These requirements and restrictions are complex, subject to change and beyond the scope of the desk reference. In general, if you had anything to do with a procurement, including participation in the development of the Statement of Work, evaluation of proposals, or monitoring technical performance of the contract, then you are probably a procurement official. If this is the case, it is your responsibility to learn the restrictions placed upon you by visiting with the Command’s ethics advisor.

### **Relationships Between Government Personnel and Contractor Employees**

Relationships between government personnel and contractor employees are strictly controlled by a variety of laws and regulations. Supervisors, key personnel, and their subordinates must be familiar with and comply with these rules.

**Inherently Governmental Functions:** An inherently governmental function is any activity that involves exercising discretion or making a management decision on behalf of the government. Examples include supervision of government employees, determining agency priority or policy, and any actions that bind the government, e.g. approving contract documents. Contractors or contract personnel may not be used to perform inherently governmental functions. However, contractor personnel may appropriately gather information, or provide advice, opinions or recommendations to a government official that may be used by that official in performing an inherently governmental function. For example, a contractor may not serve as a voting member of a contract source selection board, as these boards exercise discretion on behalf of the government. However, a contractor can be used to conduct technical evaluations of contractor proposals and to provide recommendations to the members of a source selection board.

**Supervising Contractor Personnel:** Government personnel are also generally prohibited from directly supervising contractor personnel. Most service contracts within the MEDCOM, except

those for healthcare providers, are categorized as **nonpersonal services contracts**. A nonpersonal services contract recognizes that an arms-length relationship must exist between the government and the contractor. Both the statement of work and the actual administration of the contract must avoid any situation that results in the government directly supervising the contractor or the contractor's employees. For example, giving an order for a specific task or service, with the right to accept or reject the final product, does not constitute supervision. However, providing a contract employee with a daily list of tasks to be accomplished, establishing the priority in which the tasks are to be completed and detailing the exact method by which each task is to be performed constitutes supervision and must be avoided. Approving or disapproving leave is another supervisory function that must be left up to the contractor. The government may provide input to the contractor regarding this decision, but a government employee cannot be the decision maker. For example, suppose a contract employee wants to take leave during a period when there will be a high demand for his or her services. There is nothing wrong with the government informing the contractor that coverage is required during this period of time (assuming this is consistent with the contract). This may result in the contractor denying the leave request, but that is his/her decision. The contractor also has a variety of other available alternatives, i.e. providing a substitute or backup individual.

It is also important for contractor personnel to clearly identify themselves as contractor personnel when attending meetings, answering government phones and working in areas where their contractor status may not be obvious. ID badges, nameplates, and signature blocks should indicate the individual is a contract employee. All documents or reports produced by the contractors must also be suitably marked as contractor products. Determining what does or does not constitute supervision is usually a matter of common sense. If a question does arise, consult your Contracting Officer for advice and assistance.

There are a limited number of exceptions where a contract can allow direct supervision of a contract employee. One such exception is for our healthcare provider contracts. These contracts, which are called **personal services contracts**, permit the government to exercise continuous control and supervision over contract employees. However, even with this type of contract, the government's authority is limited to supervising the technical aspects of the contract employee's performance. Administrative supervision, i.e. establishing salary rates, implementing disciplinary action, approving or disapproving leave, etc are the responsibility of the contractor, not the government.

### **Fraud in Government Contracts**

One of the cornerstones of the Federal procurement system is the requirement that government contracts shall be awarded to the greatest extent possible on the basis of free and open competition. More than a dozen Federal statutes define and specify the penalties for the varied methods through which the government and its contracting process can be defrauded or corrupted. Department of Justice experience shows that violations of those statutes can occur in all phases of the contracting process; involve both contractor and government employees; and entangle people who have no criminal intent. The well-meaning government program planner and executor should be aware of the indicators of fraud to ensure integrity of the contract process and avoid violation of the fraud statutes. Common sense is probably the keyword for meeting the intent of the fair and open competition principle.

Contractors, contract employees and government personnel committing fraud may be subject to one or more criminal, civil, administrative and/or contractual remedies of a punitive and/or pecuniary nature. Government personnel observing an indicator of fraud, or being informed by a non-government person or entity (e.g., competing contractor) of alleged fraudulent activity, should immediately inform the Contracting Officer and the Command Judge Advocate.

## DESK REFERENCE INDEX

- Acceptance, 31
- Acquisition Order of Preference, 11
- Acquisition Team, 8, 18, 19, 23
- Acquisitions Through Contracting Offices
  - Other Than HCAA, 21
- Advanced Planning, 17
- Anti-Deficiency Act, 15, 32
- Associate Director of Small and Disadvantaged Business Utilization (ADSDBU), 9
- Competition, 9, 10, 11, 16, 19, 21, 26, 29, 34, 35
- Competition Advocate, 9, 11
- Concept Development, 17
- Conflicts of Interest, 32
- Constructive Changes, 30
- Contract Fundamentals
  - Authority to Enter into Contracts, 10
  - Nature of a Contract, 10
  - Use of Contracts, 10
- Contract Types, 13
  - Cost Type Contracts, 14
  - Cost-plus-fixed-fee contracts, 14
  - Cost-reimbursement contracts, 14
  - Firm fixed-price contract, 13
  - Fixed Price Contracts, 13
  - Indefinite-Delivery Contracts, 14
  - Personal Services Contracts, 15
- Contracting Officer, 6, 8, 9, 10, 11, 13, 16, 17, 18, 19, 21, 23, 24, 25, 26, 27, 29, 30, 31, 32, 34
- Contracting Officer's Representative, 8, 9, 26, 27, 29, *See also* COR
- Contracts with Federal Employees, 32
- COR, 9, 18, 27, 29, 30, 31, 35
- Definite-Quantity Contracts, 14
- Delivery Orders, 13
- Disputes, 31
- Evaluation Factors, 20, 22, 24
- Fraud, 34, 35
- Funding
  - Basic Rule, The, 15
  - Bona Fide Need Rule, 15
  - Fiscal Year Contracts, 15
- Funding Rules
  - Nonseverable Services, 15
  - Severable Services, 15
- Government Budget Estimate, 21, 22
- Government Property, 29
- Gratuities, 32
- HCA, 8, 9
- HCAA, 6, 7, 8, 11, 14, 22, 24, *See also*
  - Health Care Acquisition Activity
- Head of the Contracting Activity, 8
- Health Care Acquisition Activity, 2, 6
- Indefinite-Quantity Contracts, 14
- Independent Government Estimate, 21
- Inspection, 31
- Integrity of the Procurement Process, 33
- Legal Advisor, 9
- Market Research, 18, 19
- Modifications, 29
- Multiple Award Contracts, 15
- Negotiated Acquisitions, 23
- Options, 16
- PARC, 7, 8, 9, *See also* Principal Assistant Responsible for Contracting
- Past Performance, 31
- Performance Problems, 30
- Performance Work Statement, 20
- Personal Services Contract, 34
- Personal Services Contracts, 15
- Post Award Orientation, 29
- Principal Assistant Responsible for Contracting, 8
- Purchase Descriptions, 20
- Purchase orders, 12
- Purchase Request, 22, 23
- Quality Assurance Surveillance Plan, 20, 21
- Relationships Between Government Personnel and Contractor Employees, 33
- Requirements Contracts, 14
- Sealed Bidding, 25
- Simplified Acquisitions, 12
  - Blanket Purchase Agreements, 13
  - Government Purchase Card, 12, 13
  - Purchase Orders, 12, 13
- Small Business, role of, 11
- Sources for Solicitation, 22
- SOW, 19, 20, 21, 23, 30
- Specifications, 20
- Standards, 20
- Statement of Work, 19, 33, *See also* SOW
- Task Orders, 13

Termination for Convenience, 31  
Termination for Default/Cause, 30  
Unauthorized commitment, 32

Unsolicited Proposals, 11  
Use of Official Information, 33