



**DEPARTMENT
OF DEFENSE
(DOD)**

**DEFENSE
CONTRACT
MANAGEMENT
AGENCY
(DCMA)**

Contractor Purchasing System Review (CPSR) Guidebook

October 13, 2015

This revision supersedes all previous versions.

Table of Contents

Part 1 – Introduction.....	3
1.1 Scope of Guidebook	3
1.2 Application of Guidebook.....	3
1.3 Definitions.....	3
1.4 Types of CPSR Reviews	4
1.4.1 Initial / Comprehensive Review	4
1.4.2 Special Review	6
1.4.3 Follow-Up Review	7
Part 2 – Planning for a CPSR	7
2.1 Responsibilities	7
2.1.1 CO Responsibilities.....	7
2.1.2 DCMA CPSR Group Responsibilities.....	8
2.2 Scope of the CPSR	11
Part 3 – In-plant CPSR	12
3.1 Entrance Conference	13
3.2 Conduct In-Plant Review	13
3.3 Exit Conference.....	14
Part 4 – CPSR Report.....	14
4.1 CPSR Report.....	14
4.2 Contractor’s Effectiveness in Major Purchasing Areas	15
4.2.1 Public Laws and Certification Requirements	15
4.2.2 Pricing	15
4.2.3 Policy and Procedure.....	16
Part 5 – Contractor’s Approved Purchasing System	17
Part 6 – Appendixes for Reference.....	17

CONTRACTOR PURCHASING SYSTEM REVIEW (CPSR) PROGRAM FAR 44.3, FAR 44.202-2, and DFARS 244.3

Part 1 – Introduction

1.1 Scope of Guidebook

This Guidebook provides guidance and procedures to Government personnel for evaluating contractor's purchasing systems and preparing the CPSR reports.

1.2 Application of Guidebook

While the prime contractor has the responsibility of managing its purchasing program, the DCMA CPSR Team is responsible for evaluating the contractor's overall purchasing system to ensure that it is efficient and effective in the expenditure of Government funds and in compliance with contract requirements. The objective of a contractor purchasing system review (CPSR) is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer (ACO) a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

The CPSR shall be conducted in accordance with this Guidebook, DCMA instruction 109, the Federal Acquisition Regulation (FAR) subpart 44.3, and the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 244.3. A CPSR is conducted when a contractor's annual sales to the Government, resulting from the award of Government prime contracts and subcontracts, is expected to exceed \$25 million during the next 12 months. Excluded from the \$25M sales are subcontracts under prime contracts that are competitively awarded firm-fixed price, competitively awarded fixed price with economic price adjustment or commercial item contracts awarded pursuant to FAR part 12. Ultimately, the ACO shall determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts. All CPSRs, except a Follow-up review, are predicated on a Risk Assessment (RA) evaluation.

1.3 Definitions

- 1.3.1 *Subcontracts* – any contract as defined in FAR subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to Purchase Orders (POs) and changes and modifications to POs.
- 1.3.2 *Subcontractors* – any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.
- 1.3.3 *Sole Source Acquisition* – means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.
- 1.3.4 *Contractor Purchasing System Review (CPSR)* – the complete evaluation of a contractor's

purchasing of material and services, subcontracting, and subcontract management from development of the requirement through completion of subcontract performance.

- 1.3.5 *Procurement Analyst (PA)* – a Government functional specialist who may assist a Team Lead (TL) with a CPSR review or may be assigned as the TL.
- 1.3.6 *Team Lead (TL)* – the designated PA assigned to manage the CPSR and lead the CPSR team. The TL is the CO’s primary POC and is responsible for the performance and completion of the review, preparation of the report, and review of contractor responses/CAPs.
- 1.3.7 *Contracting Officer (CO)* – the designated Government representative authorized to request a CPSR per FAR 44.302 and issue the initial and/or final determinations for approval or disapproval of a contractor’s purchasing system. For this Guidebook, the term CO is used when referring to the respective authorized representative, whether the representative is a Procuring Contracting Officer, Administrative Contracting Officer, Divisional Administrative Contracting Officer or Corporate Administrative Contracting Officer.
- 1.3.8 *Risk Assessment (RA)* – used to perform an evaluation of the contractor’s sales and procurement data to determine if they meet the qualifications for a CPSR in accordance with FAR part 44. A RA must be performed prior to the assignment of a CPSR to a PA, except Follow-up reviews. The contractor should populate the data in Part I of the form, and the CO must complete Part II and then sign the form as the official request to perform a CPSR review.

1.4 Types of CPSR Reviews

1.4.1 Initial / Comprehensive Review

An initial review is a complete, first-time analysis of a contractor’s purchasing system. A comprehensive review is performed if a contractor has an approved purchasing system. The CO shall determine at least every three years if a CPSR is needed. If so, a comprehensive review is performed. Both the Initial and Comprehensive CPSRs evaluate the contractor’s compliance with the same 24 elements in the purchasing system analysis per DFARS 252.244-7001(c). At a minimum, the contractor’s purchasing system shall:

- 1.4.1.1 Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS);
- 1.4.1.2 Ensure that all applicable POs and subcontracts contain all flow down clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- 1.4.1.3 Maintain an organization plan that establishes clear lines of authority and responsibility;
- 1.4.1.4 Ensure all POs are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the PO/subcontract files which are subject to Government review;

- 1.4.1.5 Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
- 1.4.1.6 Apply a consistent make-or-buy policy that is in the best interest of the Government;
- 1.4.1.7 Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
- 1.4.1.8 Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- 1.4.1.9 Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- 1.4.1.10 Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- 1.4.1.11 Document negotiations in accordance with FAR 15.406-3;
- 1.4.1.12 Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- 1.4.1.13 Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- 1.4.1.14 Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- 1.4.1.15 Document and justify reasons for subcontract changes that affect cost or price;
- 1.4.1.16 Notify the Government of the award of all subcontracts that contain the FAR and DFARS flow down clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;
- 1.4.1.17 Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. Chapter 87, Kickbacks;
- 1.4.1.18 Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
- 1.4.1.19 Establish and maintain policies and procedures to ensure POs and subcontracts contain mandatory and applicable flow down clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of DFARS [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance

System, if applicable;

- 1.4.1.20 Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of DFARS [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;
- 1.4.1.21 Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of DFARS [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of DFARS [252.211-7003](#), Item Unique Identification and Valuation, if applicable;
- 1.4.1.22 Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;
- 1.4.1.23 Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and
- 1.4.1.24 Establish and maintain procedures to timely notify the Contracting Officer, in writing, if:
 - a. The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
 - b. Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

The report template format, located on the DCMA 360, will be used.

1.4.2 Special Review

A Special review is an investigation of specific weaknesses identified in any contractor's purchasing system, using the same techniques followed in performing an initial or comprehensive review. The CO, or the PA with the concurrence of the CO, may initiate a special review of any contractor's purchasing system in connection with weaknesses revealed as a result of:

- 1.4.2.1 The initial or comprehensive review, or continuing in-depth surveillance;
- 1.4.2.2 The review of subcontracts submitted under the notification and consent to subcontract requirement of contract clauses;

- 1.4.2.3 Major changes in the contractor's purchasing policies, procedures, or key personnel;
- 1.4.2.4 Changes in plant workload or type or work;
- 1.4.2.5 Information that changes the level of risk to the Government;
- 1.4.2.6 Award of a high dollar value contract to a vendor that has had no review of their system.

1.4.3 Follow-Up Review

A Follow-up review is performed when a contractor's purchasing system is disapproved by the CO. The purpose of the Follow-up review is to determine whether a contractor has effectively implemented a Corrective Action Plan (CAP) deemed adequate by the CO and corrected the deficiencies revealed by any purchasing system review. The same techniques used during an Initial or Comprehensive review are employed in the Follow-up review.

If the status of a contractor's purchasing system is disapproved, a Follow-up review shall be made as soon as:

- 1.4.3.1 Notification has been received from the contractor that all deficiencies have been corrected. The notification shall consist of a letter from the contractor giving the date of completion of the CAP; and
- 1.4.3.2 Sufficient time has passed to provide a suitable sample to be reviewed. Sufficient time is approximately 90 days after all elements of the CAP have been implemented.

A Follow-up review is confined to the areas found deficient in the previous CPSR. A follow-up report will only be completed if the previous CPSR was completed within the past 18 months. If it has been more than 18 months since the previous CPSR, then a full Comprehensive review will be done on the Contractor. The follow-up report template format, located on the DCMA 360, will be used as appropriate.

Part 2 – Planning for a CPSR

2.1 Responsibilities

2.1.1 CO Responsibilities

In the middle of each Calendar Year, a Tasking Memorandum is issued to COs requesting that a RA be filled out and returned to the CPSR group inbox, CPSRCenter@dcma.mil. Usually, the Administrative Contracting Officer is the Government POC; however, there are times that the Procurement Contracting Officer, Divisional Administrative Contracting Officer or the Corporate Administrative Contracting Officer may fill this role.

The CO has the ultimate authority to make the final decision, which is based on CPSR recommendations and to notify the contractor whether or not the purchasing system has been approved. Therefore, it is important that the CO be involved in the entire CPSR process.

Summary of Responsibilities of the CO:

- 2.1.1.1 Comply with annual CPSR Tasking Memorandum to include submitting a complete RA to the CPSR group at CPSRcenter@dcma.mil. A complete RA includes the CO completing and signing Part II of the form;
- 2.1.1.2 Confirm availability of CPSR dates;
- 2.1.1.3 Ensure functional specialists return requested information;
- 2.1.1.4 Attend entrance conference or send a representative if unable to attend;
- 2.1.1.5 Attend daily out briefs if possible; and
- 2.1.1.6 Attend exit conference or send a representative if unable to attend.
- 2.1.1.7 Follow responsibilities outlined in DCMA-INST 131

2.1.2 DCMA CPSR Group Responsibilities

The preparations for the CPSR are conducted by the CPSR Group. Assistance with obtaining information will be requested from the CO and contractor.

2.1.2.1 CPSR Management

Summary of responsibilities of CPSR Management:

- 2.1.2.1.1. Obtain a complete contractor RA form. A complete RA form will have the following information:
 - a. Administrative information shall include at a minimum:
 - i. Contractor POC name and phone numbers;
 - ii. Contractor's name, address, and all applicable CAGE codes;
and
 - iii. CO name and phone number;
 - iv. If any of the above items are missing, they must be obtained before proceeding.
 - b. Summary of purchasing actions during the past 12 months. A good summary will show:
 - i. The total dollar value of all purchases;
 - ii. The number of subcontractors broken down by dollar value, such as:

- a) under \$25,000;
 - b) \$25,000 to \$100,000;
 - c) \$100,000 to \$500,000;
and
 - d) over \$500,000;
- c. Dollar volume and number of POs placed with small and large business concerns and minority business enterprises;
 - d. Breakdown of sole source purchasing;
 - e. Summary of sales volume for the most recent 12-month period for which information is reasonably available, indicating total commercial sales, and Government sales including subcontracts issued under Government prime contracts by department or agency broken down by type of contract. In addition, fixed-price Government sales should be segregated between negotiated and competitive Government prime contracts with identification by department or agency; and
 - f. List of major subcontracts outstanding, showing subcontractor's name, item being produced, type of subcontract, total dollar amount, and undelivered balance.

2.1.2.1.2. Review the RAs to determine if the contractor qualifies for a CPSR per FAR 44.302:

- a. If it appears that the contractor does not qualify, the CO should be contacted for more information on why one might be required.
- b. If the contractor qualifies, assign a PA as the TL. Assignment is based on the location of the review, complexity of the review, and/or availability of a PA to support a TL role.

2.1.2.1.3. Manage the master CPSR schedule.

2.1.2.2 CPSR Team Leader

Summary of the pre-planning responsibilities of the TL:

- 2.1.2.2.1. Review the previous CPSR report, if applicable, and the RA. Based on this information, coordinate the length of the review, staffing needed, and the type of CPSR to be performed with the Supervisor;
- 2.1.2.2.2. Contact the CO, or other designated POC stated on the RA, to confirm if a CPSR is needed and further evaluate the risk associated with the contractor based on the conversation with the CO;
- 2.1.2.2.3. Develop a tentative schedule and notify the CO of the proposed dates for an in-plant CPSR. If the CO agrees, the TL will contact the contractor to confirm the dates:

- a. If the CO does not agree with the proposed dates for the in-plant review, the TL and CO will work together to find a suitable replacement date;
 - b. If the contractor does not agree with the proposed dates for the in-plant review, the TL will request that the contractor submit a request to delay the review. The TL, CO, and CPSR Management will review the request to delay. The TL will communicate the decision to the contractor, and if necessary, work with the CO and contractor to find a suitable replacement date;
- 2.1.2.2.4. If the contractor has cost-type prime contracts, the TL needs to ensure that the contractor has a system in place to monitor its subcontractors' accounting/billing systems;
- 2.1.2.2.5. Open a review file on the DCMA 360 that will document all review information, actions to date and all that will follow;
- 2.1.2.2.6. Keep CPSR Management informed on travel costs based on DTS arrangements, if applicable;
- 2.1.2.2.7. Send respective CPSR data questionnaires (located on the DCMA 360) to the CO. These questionnaires request information from a variety of DCMA functional specialists. The TL will need to follow-up to confirm the functional specialists return the questionnaires. If the questionnaires have been returned and clarification is required, call the DCMA specialist for a discussion of their concerns so they can be presented clearly;
- 2.1.2.2.8. Send respective CPSR data questionnaire (located on the DCMA 360) to the contractor POC. These questionnaires request information on the contractor's purchasing system, the policies and procedures manual, sales data, and the universe of subcontracts/POs;
- 2.1.2.2.9. Compare the contractor's policies and procedures against the CPSR Policies and Procedures Checklist, located on the DCMA 360, to determine if the contractor adequately addresses the elements that will be reviewed during the in-plant portion of the review. At this point the report can be started by imputing the policies and procedures information into the report template;
- 2.1.2.2.10. Review the universe provided by the contractor. The universe should include all applicable awards for the universe period, which is typically one year for Initial and Comprehensive reviews and 90 days for Follow-up reviews. The DCMA Zero-Based statistical plan will be used to build a sample to include awards in the following categories:
- a. Awards over \$500,000;
 - b. Awards from \$100,000 – 500,000;
 - c. Awards from \$25,000 – 100,000; and

- d. Awards under \$25,000.

Once the sample is confirmed, the length and staffing for the CPSR can be confirmed;

2.1.2.2.11. Request Terms and Conditions and Purchasing/Procurement Forms from the contractor;

2.1.2.2.12. Request from the contractor:

- a. A suitable room that can accommodate the required PAs, the PO/subcontract files, and CPSR working papers. Inform the contractor that the files must remain in the room for the duration of the review; therefore, a room with a lock may be needed based on the contractor's security requirements;
- b. Internet Access via Ethernet connection;
- c. Printer;
- d. Copy machine;
- e. Conference telephone;
- f. Unescorted access – Request any forms that need to be filled out to gain unescorted access.

2.1.2.2.13. Set-up weekly meetings to brief CPSR Management on CPSR progress;

2.1.2.2.14. Confirm CO, functional specialists, and DCAA are attending entrance briefing. Request the CO to assist with contacting DCAA, if necessary;

2.1.2.2.15. To ensure files will be available for review on the first day of the CPSR, the TL should provide the contractor the sample of PO/subcontract files no later than the Friday prior to arrival on-site. If paper files have to be shipped in from other locations, provide the sample of PO/subcontract files at least a week before the review.

2.1.2.2.16. Confirm last minute schedule and entrance details with contractor.

2.2 Scope of the CPSR

The TL will estimate the resources and time needed to conduct the CPSR based on the RA and previous CPSR report, if available. Once the Universe is received from the contractor, the sample size will be calculated and the following items can be confirmed:

- 2.2.1. Type of CPSR. A CPSR may be categorized as an Initial, Comprehensive, Follow-up, or Special review;
- 2.2.2. Length of the CPSR. The length of a CPSR will depend on the type of review, the sample size, and the complexity of PO/subcontract files to be reviewed. Typically, the in-plant timeframe for an Initial and Comprehensive CPSR is two weeks or less; for a Follow-up

CPSR, the in-plant timeframe is one week;

- 2.2.3. Staffing for the CPSR. The number of Procurement Analysts(PAs) needed to conduct a CPSR will depend on the sample size and the complexity of PO/subcontract files to be reviewed. Typically, two PAs: one TL and one PA, will perform a CPSR. However, additional PAs may be necessary to ensure an effective review;
- 2.2.4. Location of the CPSR. Information from the CO and contractor will assist the TL in determining the location of the on-site portion of the CPSR. The location of the CPSR may not always be the same as that designated by the CAGE code, especially considering many contractor's purchasing systems have more than one CAGE code. Issues that can affect where the on-site portion of the CPSR will take place include:
 - a. The location of the majority of procurement files if the contractor has a paper purchasing system;
 - b. The location of purchasing management personnel if the contractor has an electronic purchasing system;
 - c. Multiple locations for a large organization with multiple purchasing hubs.
- 2.2.5. Special Review. The resources needed for Special CPSRs are determined on a case-by-case basis but as with other reviews, the resources will be supported by the sample size and complexity of files;
- 2.2.6. Special Considerations. A request for increased review time and staff is approved by CPSR Management on a case-by-case basis. If approved, the TL must manage and schedule the PAs needed to coordinate the review and take responsibility for consolidation of all results into a single report. The following situations may justify increased resources:
 - a. Contractors that function at several operating locations;
 - b. Contractors that have high visibility and/or high risk contracts or critical issues as identified by the CO, DCMA headquarters, or Congressional inquiry;
 - c. Contractors that have excessively large sales (over \$1 billion) with many high dollar PO/subcontracts;
 - d. Contractors must be able to provide all procurement records at a single review location. The location should be one that typically processes Government sales. If multiple locations are necessary, more PAs or a longer review time may be justified.

Part 3 – In-plant CPSR

This section of the CPSR Guidebook sets forth the procedures to be followed in conducting the in-plant portion of the CPSR. The in-plant portion of the review will include:

- a. An examination of the written policies and procedures with the actual application of the policies

and procedures to the PO/subcontracting files;

- b. Evaluation of actual operating practices and methods through review of PO/subcontracting files and discussions with the contractor's personnel.

3.1 Entrance Conference

The entrance conference is a brief initial meeting with the contractor and is conducted by the TL. The meeting should be at the highest possible management level, preferably with the president or general manager, and should include the head of the purchasing department as well as other vested individuals. The conference will include a statement of the objectives, how the review will be conducted, and a discussion of coordination between the CPSR team and the contractor's organization, including the designation of a contractor POC. The CO and other concerned Government personnel, including a DCAA representative, are encouraged to attend the entrance conference. The entrance conference will cover the following:

- 3.1.1 Schedule of events to include tentative dates for the exit conference and the CPSR report issue date to the CO;
- 3.1.2 The items that the CPSR will cover, e.g., policies and procedures, PO/subcontract files, personnel interviews;
- 3.1.3 Explain and schedule daily out-briefs with the contractor and CO;
- 3.1.4 Explain the Question and Answer process;
- 3.1.5 Contractor briefing. The contractor should provide a brief overview of the company, e.g., overview of the procurement department, amount of Government business versus private industry.

3.2 Conduct In-Plant Review

- 3.2.1 Obtain ID cards and car passes;
- 3.2.2 Set-up CPSR room, i.e. test out internet connection, make sure there is a printer, conference telephone, copy machine, and any other support you may need;
- 3.2.3 Provide the contractor with the remaining PO/subcontract sample after the entrance conference. Begin reviewing PO/subcontract files. Review the contractor's policies and procedures against the PO/subcontract files and the actual processes that are being practiced;
- 3.2.4 Conduct daily out-briefs with the contractor and CO, if available;
- 3.2.5 Conduct contractor personnel interviews;
- 3.2.6 Examine the high risk areas identified in the RA so they may be fully addressed in the CPSR report;
- 3.2.7 Compare the information on the universe spreadsheet that the contractor provided with what

the PO/subcontracts are actually showing, i.e. PO amount, issue date, prime contract number, number of modifications, etc.;

- 3.2.8 Actively keep track of issues as they arise;
- 3.2.9 Note any observations or possible recommendations;
- 3.2.10 Convey preliminary findings to the contractor daily during the daily out-briefs. Ensure the contractor POC understands that it is their responsibility to communicate the preliminary findings to their management;
- 3.2.11 When answers to the CPSR Team's questions are received from the contractor, sign-in the responses on the question log;
- 3.2.12 Contact the CO and brief progress, if necessary;
- 3.2.13 Participate in weekly CPSR Management meetings for progress updates.

3.3 Exit Conference

As the final day of the in-plant review approaches, the TL will coordinate an exit conference with the CO and contractor. The exit conference will typically take place on the last day of the in-plant review and the CO, the contractor, and any other vested individuals should be in attendance. Items to be discussed during the exit conference include the following:

- 3.3.1 Areas found to be deficient and other general observations made by the review team; no official or formal recommendation pertaining to the contractor's purchasing system status may be made to the contractor at this time;
- 3.3.2 The TL will provide the contractor with a copy of the question sheet log and retain a signed acceptance of the question log, question sheets, and answers from the contractor;

Part 4 – CPSR Report

4.1 CPSR Report

After the in-plant portion of the CPSR is complete, the PAs return to the office and the TL finishes writing the CPSR report. The CPSR report, an executive summary referred to as a Business System Analysis Summary (BSAS), and a draft Level III Corrective Action Request (CAR) if necessary, will be provided to the Supervisory PA within 10 business days from the date of the exit conference. A Business System Analysis Summary (BSAS) is required for all reviews completed.

The report and BSAS will go through for Management review by the Supervisory PAs, CPSR Director and Director, Business Operations before release to the CO. The CPSR report will state recommendations that the CO will use to make a determination of approving or disapproving the contractor's purchasing system.

4.2 Contractor's Effectiveness in Major Purchasing Areas

This section of the CPSR Guidebook lists the various elements that make up an effective purchasing system and that are reviewed during a CPSR. The contractor's performance to these elements will be detailed in the CPSR report. The CPSR Team reserves the right to review a purchasing system in its entirety; therefore, the list of elements is not all inclusive, some related elements may be consolidated into one area, and some elements listed may be removed if not applicable.

4.2.1 Public Laws and Certification Requirements

- 4.2.1.1 Certified Cost or Pricing Data, Truth in Negotiations Act (TINA);
- 4.2.1.2 Compliance with Cost Accounting Standards (CAS);
- 4.2.1.3 Prior Consent and Advance Notification;
- 4.2.1.4 Small Business Subcontracting Plans;
- 4.2.1.5 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment;
- 4.2.1.6 Limitation on Use of Appropriated Funds to Influence Certain Federal Transactions Certification(Anti-lobbying);
- 4.2.1.7 Representations and Certifications Package;
- 4.2.1.8 Defense Priorities and Allocation System (DPAS) Rating;
- 4.2.1.9 Federal Funding Accounting and Transparency Act of 2006;
- 4.2.1.10 Counterfeit Parts Mitigation and Surveillance.

4.2.2 Pricing

- 4.2.2.1 Cost/Price Analysis;
- 4.2.2.2 Competition in Subcontracting;
- 4.2.2.3 Sole Source Selection Justification;
- 4.2.2.4 Negotiations;
- 4.2.2.5 Best Value;
- 4.2.2.6 Make-or-Buy Program;
- 4.2.2.7 Subcontract Financing;

4.2.2.8 Limitation on Pass-through Charges.

4.2.3 Policy and Procedure

4.2.3.1 Policy and Procedures Manual;

4.2.3.2 Internal Purchasing Organization;

4.2.3.3 Documentation;

4.2.3.4 Training;

4.2.3.5 Internal Review/Self Audit;

4.2.3.6 Mandatory FAR and DFARS Flow Down Requirements/Terms and Conditions;

4.2.3.7 Purchase Requisition Process;

4.2.3.8 Lead Time;

4.2.3.9 Commercial Item Determination;

4.2.3.10 Letter Subcontracts/Un definitized Contract Actions (UCA);

4.2.3.12 Interdepartmental Relations;

4.2.3.13 Procurement Authority;

4.2.3.14 Split Awards;

4.2.3.15 Accuracy of the Universe;

4.2.3.16 Vendor Rating System;

4.2.3.17 Restrictions on the Acquisition of Specialty metals/Articles containing Specialty Metals;

4.2.3.18 General Services Administration (GSA) Letters of Authorization;

4.2.3.19 Supply Chain Management Process;

4.2.3.20 Subcontractor/Vendor Closeout Process;

4.2.3.21 Long Term Purchasing Arrangements;

4.2.3.22 Handling Change Orders and Modifications;

4.2.3.23 Management's Support of Purchasing;

4.2.3.24 Intra/Inter-Company, Affiliate, or Subsidiary Transactions;

4.2.3.25 Procurements At or Below the Simplified Acquisition Threshold;

4.2.3.26 Reporting of Intended Performance Outside the United States and Canada – Submission After Award Reporting.

Part 5 – Contractor’s Approved Purchasing System

It is the responsibility of the Government to maintain a sufficient level of surveillance to assure that the contractor is effectively managing the purchasing system per FAR 44.304. To ensure compliance with FAR 44.304, the CO should use the Surveillance plan developed and issued under DCMA Tasking Memo 13-220. The developed Surveillance plan provides instructions on its use and application. A PowerPoint training presentation can be found on DCMA 360.

Certain contractors may require additional surveillance because of the emphasis in the flow down of system acquisition policies in subcontracts, with particular concern for subcontractor cost, schedule, and technical performance. The contractor must make available the necessary policies and procedures and data to permit adequate surveillance. The CO, PA, review team, and/or subcontract management personnel may request assistance of the Contract Administration Office (CAO) having cognizance over the subcontractor to provide information as a means of verifying the information obtained from the contractor's records and, if needed, the request will call for a complete report on the subcontractor's purchasing system.

Part 6 – Appendixes for Reference

Job aids for review elements

Counterfeit Electronic Parts

August 10, 2015

Introduction

DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System (May 2014), requires certain contractors to establish and maintain an acceptable system for detection and avoidance of counterfeit electronic parts. 252.246-7007(c) lists the minimum system criteria for an acceptable detection and avoidance system. 252.246-7007(e) requires contractors to flow-down the clause to subcontracts (including commercial item subcontracts) for electronic parts or assemblies. Contractor policies and procedures will be reviewed and evaluated by Government personnel as part of the Contractor Purchasing System Review (CPSR) in accordance with 252.244-7001 to ensure compliance.

This final rule became effective May 6, 2014, under Defense Federal Acquisition Regulation Supplement (DFARS) Case 2012-D055, which partially implements section 818 of NDAA for Fiscal Year (FY) 2012 and section 833 of NDAA FY 2013. This rule applies to contractors subject to the Cost Accounting Standards (CAS) with CAS-covered contracts awarded after the effective date. The remaining FY 2012 NDAA requirements may be implemented through FAR Case 2012-032, FAR Case 2013-002 and DFARS Case 2014-D005.

Regulatory References

- (a) DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System
- (b) DFARS 246.870-3
- (c) DFARS 252.211-7003, Item Unique Identification and Valuation
- (d) DFARS 211.274-6(a)(1)
- (e) DFARS 252.244-7001 (c)(19 -21)

Other Background Information

- (a) DOD final rule case no. 2012-D055
- (b) Section 818(f)(2) of Pub. L. 112-81

Applicability

Requirements must flow down to all sub-tiers except for subcontractors who are not Cost Accounting Standards (CAS) covered.

Review

I. CPSR Requirements - Practice

Government review and evaluation of the contractor's policies and procedures will be accomplished as part of the Contractor's Purchasing System Review (CPSR) pursuant to DFARS 252.244-7001(c)(19-21).

(a) requires the review and evaluation of counterfeit detection and avoidance policies and procedures as part of Contractor Purchasing System Reviews (CPSRs)

(b) does not apply unless the Contractor is subject to CAS under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1

If greater clarity is necessary, conduct an interview with contractor personnel responsible for Quality Assurance (QA). This can be done in conjunction with an explanation of their vendor rating system which can apply to any contractor but is more pertinent to those engaged in manufacturing.

Evaluation should examine pertinent policies and the practices that follow to ensure the contractor is protecting the government's interests. It may be necessary to engage with USG QA's to determine the effectiveness of their policies and practices.

II. CPSR Requirements – Policy and Procedures

CPSR findings should be based on the following:

(a) 252.244-7001 (c) (19), Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flow-down clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable.

(b) 252.244-7001 (c) (20), Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable.

(c) 252.244-7001 (c) (21), Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including

the requirements of FAR 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of FAR 252.211-7003, Item Unique Identification and Valuation, if applicable.

- (d) Ensure the contractor has a risk mitigation system that adequately covers the 12 items in DFARS 252.246-7007(c).
- (e) Ensure the contractor is compliant with the system specific criteria set forth in DFARS 252.246-7007(c)

III. Best Practices

- (a) Use the Counterfeit Checklist Summary maintained by DCMA QA
- (b) Engage pertinent USG QAS to determine if any assessment from the Counterfeit Checklist Summary has been made relative to the mitigation of risk of counterfeit electronic parts
- (c) Review purchasing files to ensure the substance of the clause has been flowed down to all tiers, as applicable. Review files to ensure the practice follows pertinent contractor policies.
- (d) Interview Contractor QA personnel for greater depth on practices to ensure the integrity of the supply chain with emphasis on compliance with DFARS 252.246-7007
- (e) Review any concerns with USG QAS
- (f) Findings should relate specifically to compliance with criteria set forth in DFARS 252.246-7007(c). Discuss findings with USG QAS and the ACO to inform the CPSR report and recommendations.
- (g) Two key areas are obsolescence and traceability.
 - i. Practices should include an assessment of possible future obsolescence and plans to mitigate through advance purchase up through re-design. If no replacement is viable, the USG should be involved with assessing the risk of non- OCM products. Any non-OCM replacement parts may require testing to validate the acceptability. There should be procedures to identify how this will be accomplished in accordance with system criteria (c)(12).
 - ii. Traceability ensures the supplier can trace the origin of electronic parts or assemblies. The contractor's policy and practices should demonstrate sufficient traceability in accordance with system criteria (c)(4).
- (h) The elements of mitigating risk from future obsolescence and traceability can be important in ensuring the integrity of the supply chain but has particular importance when DFARS 252.246-7007 applies. Note that while the clause is directly applicable to contractors engaged in providing product that is manufactured, the clause may also apply

to contractors providing services that may include the purchase of electronics such as the provision of laptops by an Information Technology Services contractor.

- (i) Ensure that purchase orders and subcontracts contain mandatory and applicable flow down clauses, including, if applicable, DFARS 252.211-7003, Item Unique Identification and Valuation.

Debarment

October 07, 2015

Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

Introduction

The purpose of this Job Aid is to define the requirements for obtaining a Debarment disclosure and methods that can be used to fulfill the requirement.

Regulatory References

- (a) FAR 2.101 Definitions “in writing”
- (b) FAR 2.101 Definitions “commercially available off the shelf (COTS)”
- (c) FAR 52.209-5(a)(1)(i), Certification Regarding Responsibility Matters
- (d) FAR 52.209-6(c)Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
- (e) DFARS 252.244-7001(c) (1), (2), (5), and (7) Contractor Purchasing System Administration Criteria

Applicability

All of the contractor’s subcontract/purchase order files in excess of \$35,000 other than those providing a commercially available off the shelf item.

Review

I. Exemptions for requiring a Debarment Disclosure

- (a) The subcontract or purchase order does not exceed \$35,000.
- (b) The subcontractor is providing a commercially available off the shelf item.
 - a. “Commercially available off-the-shelf (COTS) item--”
 - (1) Means any item or supply (including construction material) that is

- (i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101;
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

II. Requirement 52.209-6(c), (d), and (e):

- 1) The contractor shall require each proposed subcontractor (except those that meet the above exemptions) to disclose to the contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- 2) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment.

The notice must include the following;

- (i) The name of the subcontractor.
 - (ii) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
 - (iii) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
 - (iv) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.
- 3) The Contractor shall include the requirements of FAR 52.209-6 clause, including paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that
 - (1) Exceed \$35,000 in value; and
 - (2) Is not a subcontract for commercially available off-the-shelf items.

III. Means for successful compliance to the requirement:

Policies and Procedures

The policies and procedures should be written in such a way to ensure the requirements above are met on all applicable PO's.

- It should identify by what means purchasing personnel are to obtain the written debarment disclosure and when it is required.
- It should describe how procurement personnel are to notify the Contracting Officer if the contractor plans to award a subcontractor who is debarred or state that they do not award to debarred entities under any circumstances.
- It should identify how and who is responsible for ensuring that the requirements of the clause will be flowed down to subcontractors, (this could be accomplished in the section that describes debarment requirements or by having a policy that adequately describes other Mandatory FAR and DFARS flow-down clauses)

Practice

FAR 2.101 defines "in writing" as;

"In writing," "writing," or "written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

This definition provides for a wide range of options for meeting the requirements of FAR 52.209-6 as long as it provides essential information.

The following is needed to comply with requirement number 1 above

The disclosure must meet the following requirements:

- (i) It must be from the subcontractor to the contractor,
- (ii) It must identify that as of the time of award of the subcontract/purchase order, and
- (iii) It must state that the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

While the preferred method for obtaining the disclosure from the subcontractor might be for the contractor to place the substance of the disclosure found in FAR 52.209-5 on the subcontract/PO such as "By signing/acknowledging this subcontract/PO you (subcontractor) hereby certify that

you and/or any of your Principals -- are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency” the disclosure can be obtained by many other means; separate disclosure forms can be signed and returned by the contractor, or an email with the same disclosure could also be acceptable means for obtaining such a disclosure in writing.

The following is needed to comply with requirement number 2 above

If the contractor has awarded a subcontract/PO to a debarred, suspended, or proposed for debarment subcontractor, they shall provide evidence that they notified the Contracting Officer “in writing” before awarding the subcontract. They shall show that the notification met the requirements described above.

The following is needed to comply with requirement number 3 above

The Contractor shall include the requirements of FAR 52.209-6 in each subcontract/PO that does not meet one of the exemptions identified above.

Contracting by Negotiation

October 07, 2015

Introduction

- (a) In accordance with FAR 15.002, Types of Negotiated Acquisition, the two types of negotiated acquisitions are sole source acquisitions and competitive acquisitions. Contracting by negotiation is a flexible process that includes the receipt of proposals from offerors, discussion of deficiencies or weaknesses with the offeror, and usually affords an opportunity to revise their offers before award of a contract. Procedures for contracting by negotiation permit negotiations prior to contract award. However, a solicitation under procedures for contracting by negotiation may or may not actually require negotiations. For example, standard provisions are inserted stating “Government intends to evaluate proposals and award without discussions.” When this provision is used only clarifications should be used amongst offerors. There is no requirement for a contractor to ever negotiate any subcontract.
- (b) According to FAR 15.306(d), Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. If included in the contract, prime contractors must adhere to FAR Clause 52.244-5, Competition in Subcontracting, where the contractor shall select subcontractors on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

Regulatory References

- (a) FAR 15.002, Types of Negotiated Acquisitions
- (b) FAR 15.306, Exchanges With Offerors After Receipt of Proposals
- (c) FAR 15.244-2, Subcontracting
- (d) FAR 52.244-5, Competition in Subcontracting

Applicability

- (a) In accordance with FAR 52.244-5, Competition in Subcontracting, the Contractor shall select subcontracts (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) In accordance with FAR 15.306(d), Exchanges with Offerors after Receipt of Proposals, negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the

competitive range and are called discussions. In addition, award of contract can be made on the basis of technical excellence, management capability, personnel qualifications and past experience.

Review

- (a) **Competitive & Noncompetitive Negotiations.** Negotiation can be competitive or noncompetitive and when it takes place in the contracting/subcontracting process. (FAR 15.101, FAR 15.402(a), FAR 43.103(a), and FAR 49.201(a)).
- 1) Competitive discussions/negotiations may take place either before contract award or before award of a task/delivery order under an indefinite-delivery indefinite-quantity contract. The discussions with each offeror in the competitive range should be directed to facilitating preparation of a final proposal revision that will provide the best value for the Government, given the award criteria, the offeror's proposal, and existing constraints within the offeror's organization. Then the Government can evaluate the available proposals to determine which proposal offers the overall best value.
 - 2) Noncompetitive negotiations can take place either before or after award. In noncompetitive negotiations for:
 - i. Award of a new contract or a task/delivery order under an existing indefinite-delivery indefinite-quantity contract, the satisfactory result is a contract or order that provides for the purchase of the required supplies or services from a responsible source at a fair and reasonable price.
 - ii. A bilateral contract modification, the satisfactory result is a contract modification that reflects the agreement of the parties about any modification of contract terms, including any necessary equitable adjustment related to the modification.
 - iii. A fixed-price termination for convenience settlement, the satisfactory result is a settlement that fairly compensates the contractor for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit.
- (b) **Negotiation Objectives.** Negotiating any pricing action requires the development of negotiation objectives. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. However, when cost analysis is required, the requirement for formal documentation, i.e., a pre-negotiation plan is much more critical. The development of a pre-negotiation plan that does not reflect a rigorous analysis, evaluation, and examination by element of cost will diminish the achievement of obtaining a fair and reasonable price. Where there is a departure from the established negotiation objective, the price

negotiation memorandum should not only identify the negotiated results, but also reflect the same level of rigor in the analysis, evaluation, and basis for its acceptance.

- (c) **Negotiation Memorandum.** If the contract includes FAR clause [52.244-2\(e\)\(vii\)](#), Subcontracting, a negotiation memorandum between the main contractor and the subcontractor must be provided.

1) Negotiation memorandum must include:

- i. The principal elements of the subcontract price negotiations;
- ii. The most significant considerations controlling establishment of initial or revised prices;
- iii. The reason certified cost or pricing data were or were not required;
- iv. The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;
- v. The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
- vi. The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
- vii. A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

- (d) **Procurements less than the Simplified Acquisition Threshold (SAT), \$150k.** A supplier's submission of a quotation is not automatically considered the most fair and reasonable price. You should attempt to acquire the best terms, conditions, and pricing before placing any purchase order.

1) Documentation to be included in file should include but not limited to:

- i. Email correspondence where discussions for best pricing or terms/conditions took place
- ii. Documentation of oral discussion

- iii. If ample competition and no clarifications/discussions are conducted a brief competition memorandum.

Procurements at or Below the Simplified Acquisition Threshold

August 18, 2015

Introduction

A common problem encountered during a Contractor Purchasing System Review (CPSR) is the lack of purchasing documentation provided for low dollar contracts. The purpose of this Job Aid is to define the extent of contractor purchasing file documentation required when the Contractor procures supplies or services at or below the micro-purchase threshold (\$3,000), and up to the Simplified Acquisition Threshold (SAT) (\$150,000).

Regulatory References

- (a) FAR 4.801 (b), Government Contract Files
- (b) FAR 13, Simplified Acquisition Procedures
- (c) FAR 15.404-3(b) (1) and (2), Subcontract Pricing Considerations
- (d) DFARS 252.244-7001(c) (1), (2), (4), (5), (7), (8), (9), (10), (13) and (22), Contractor Purchasing System Administration Criteria

Applicability

All of the contractor's subcontract/purchase order files that are subject to Government review under the Simplified Acquisition Threshold (SAT).

Review

Before beginning any review, all applicable policies and procedures related to the procurement process from the identification of a bona fide need through closeout should be reviewed for the items required. (See below)

I. Micro-purchases (less than \$3,000)

(a) For general information regarding Government micro-purchasing procedures, refer to FAR 13.2.

(b) For this level, the Contractor's policies and procedures ought to encourage documentation of the below listed items; i.e., purchase requisition or some other document of bona fide need;

the purchase order or p-card receipt; price fair and reasonable; and any closeout documentation when the procurement is closed out.

(c) Contractor purchasing file documentation requirements are minimal. For this level of procurement, there is no requirement for competition or sole source justification as long as the price is considered fair and reasonable. CPSR analysts should verify that the contractor's file includes a Purchase Requisition, Purchase Order and documentation that the price is fair and reasonable and the basis for that determination. i.e., Prices are fair and reasonable based on Open Market, historical pricing, etc.

II. Purchases at or below the SAT (\$3,000 - \$150,000)

(a) For general information regarding Government procurement at or below the SAT, refer to FAR 13.3.

(b) For this level, the Contractor's policies and procedures should require documentation of the below listed items that are required for the appropriate dollar value of the procurement; i.e., PR, PO, SSJ, competition documentation, price fair and reasonable, any level of disclosure or certification required and any closeout documentation when the procurement is closed out.

(c) The CPSR system criteria at DFARS 252.244-7001(c)(7) require that a contractor use competitive sourcing to the maximum extent practicable. For competitively sourced purchases, analysts should verify the following documentation exists in contractor purchasing files:

(1) The solicitation sent to potential vendors and any amendments to the solicitation. If a vendor was selected from an Approved Supplier List (ASL), documentation should be evident. The file should include identification of vendors solicited and responses received or a bid abstract.

(2) Documentation showing adequate analysis of cost or price and technical capabilities of competing vendors.

(3) Documentation of any negotiations attempted.

(4) If the vendor selected was not the lowest offeror, documentation must address why that offeror was selected.

(5) For oral solicitations, records should be established and maintained of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers and date contacted and the prices and other terms and conditions

quoted by each. This includes pricing, any terms and conditions, and how the price was determined to be fair and reasonable.

(d) If competition was not utilized and only one source is identified, contractor file documentation should include, at a minimum, market research and a sole source justification stating why the source should be used. Price analysis should accompany the file to show the price is determined fair and reasonable. This can include comparison to historical pricing, similar items, contractor's knowledge of the item, or comparison to an independent estimate. The level of documentation should be based on the complexity of the purchase, i.e. new, reoccurring, or unique. All single or sole source justification procurements should include negotiation documentation.

(e) Documentation of the process used to determine that pricing is fair and reasonable is necessary and should be included. If a price change is needed, further documentation should be included to justify the change with approval by the contracting officer is required.

(f) For first tier subcontracts that exceed \$25,000 in value, FAR 52.204-10(e) should flow down to the subcontractor for Executive Compensation. (Public Law 109-282, effective July 2010). Additionally, the contractor should gather and report the subcontractor information required in FAR 52.204-10(d)(2)-(3). FAR 52.204-10(d)(2) requires reporting of certain information of first-tier subcontract awards with a value of \$25,000 or more to www.fsrc.gov. FAR 52.204-10(d)(3) requires the Contractor to report certain executive compensation information of first-tier subcontracts with a value of \$25,000 or more.

(g) For subcontracts issued under a prime contract that contains FAR 52.209-6, Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment; the clause should be flowed down to any subcontract that exceeds \$30,000 in value and is not for commercial off-the-shelf items. The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(h) For Government procurements above \$75,000 or one half of the SAT, the contractor file should contain a signed purchase order with Defense Priorities and Allocation System (DPAS) rating. (FAR 52.211-15 and 15 CFR 700.13) The contractor should issue a rated order to any suppliers or subcontractors where it is necessary to fulfill the delivery requirements of a rated order issued by the Government, and the purchasing file should contain a signed copy of the rated order. A person is not required to place a priority rating on an order for less than \$75,000, or one half of the Simplified Acquisition Threshold (as established in the Federal Acquisition

Regulation (FAR)) (see FAR section 2.101), whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating (15 CFR 700.17(f)).

SMALL BUSINESS SUBCONTRACTING PLAN

October 07, 2015

Introduction

As prescribed in FAR 19.702, in negotiated / sealed bidding acquisitions, each solicitation of offers /invitation for bids to perform a contract or contract modification, that individually is expected to exceed \$650,000 (\$1.5 million for construction) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan. Subcontracting plans are not required from small business concerns, for personal services contracts, for contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas, or for modifications to contracts within the general scope of the contract that do not contain the clause at [52.219-8](#), Utilization of Small Business Concerns (or equivalent prior clauses, *e.g.*, contracts awarded before the enactment of Public Law 95-507). The clause at FAR 52.219-9 Small Business Subcontracting Plan is not required to be inserted in an acquisition that is a set aside or is to be accomplished under the 8(a) program (Ref: FAR 19.708(b)(1)).

The award threshold for small business subcontracting plans is \$7000,000 (\$1,500,000 for construction) for contracts awarded on or after October 1, 2015, and \$650,000 (\$1,500,000 for construction) for contracts prior to October 1, 2015. This threshold is established by the clause rather than a provision, and does not automatically update when the FAR is revised. Subcontracts awarded pursuant to Government prime contracts issued before the latest threshold change may therefore require small business subcontracting plans at a lower threshold. Small business subcontractors do not need to submit a plan, nor is one required when the prime contract includes 52.212-5, or if the subcontractor provides a commercial item subject to the clause at 52.244-6.

Regulatory References

- (a) Public Law 95-507
- (b) FAR 52.219-9 as prescribed in FAR 19.708(b)

Applicability: All subcontract/purchase order files that are subject to Government review in excess of \$700,000 (\$1.5M for construction) awarded on or after October 1, 2015, and \$650,000 (\$1.5M for construction) before October 1, 2015.

Exemptions:

- Acquisition is set aside or is to be accomplished under the 8(a) program (Ref: FAR 19.708(b)(1))
- Subcontract was awarded to a small business (see FAR 52.219-9(a)) and FAR 19.702(b)(1))
- Subcontract is for personal services (Ref: FAR 19.708(a)(1)) and FAR 19.702(b)(2))

- CO determines that there are no subcontracting possibilities in accordance with FAR 19.705-2(b) (also Ref: FAR 19.702(a)(1) and (2)). Such determination must be approved at a level above the CO and included in the official contract file (see FAR 19.705-2(c)).(REF: FAR 19.708(b)(1))
- Prime contract contains FAR 52.212-5 (see FAR 52.219-9(j)).
- Subcontractor provides a commercial item subject to 52.244-6 (see FAR 52.219-9(j)). Contract is not required to include the clause at FAR 52.219-8. (Ref: FAR 19.708(b)(1))
- The contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas (REF: FAR 19.708(a)(2)) and FAR 19.702(b)(3))
- Modifications to contracts within the general scope of the contract that do not contain the clause at 52.219-8 (FAR 19.702(b)(4))

Review

I. Practice

- (a) FAR 52.219-9 is the regulatory contract vehicle to ensure compliance with PL 95-507 in the federal acquisition process. To comply, the contractor must document the following:
- Does the SBSP have all the elements per FAR 52.219-9(d)
 - Goals (see FAR 52.219-9(d)(1))
 - Statement of total dollars planned to be subcontracted to small business concerns by types (e.g. veteran-owned small business, women-owned small business, etc.) (see FAR 52.219-9(d)(2))
 - Description of the principal types of supplies and services to be subcontracted, and an identification of the types of small business concerns (e.g. veteran-owned small business, women-owned small business, etc.) to be subcontracted to (see FAR 52.219-9(d)(3))
 - A description of the method used to develop the subcontracting goals in paragraph (d)(1) of clause FAR 52.219-9 (FAR 52.219-9(d)(4))
 - A description of the method used to identify potential sources for solicitation purposes (FAR 52.219-9(d)(5)) **note that use of SAM as its source list does not relieve a firm of its responsibilities of the clause*
 - A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business concerns listed in i thru vi of FAR 52.219-9(d)(6))
 - The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual (FAR 52.219-9(d)(7))
 - A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts (FAR 52.219-9(d)(8))
 - Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further

subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility with further subcontracting possibilities) to adopt a plan similar to the plan that complies with the requirements of this clause (FAR 52.219-9(d)(9))

- Assurances listed i thru vi of FAR 52.219-9(d)(10))
- A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan (FAR 52.219-9(d)(11))

- Was the correct FAR clause flowed down to the subcontract?

II. Policy and Procedures

(a) To comply the contractor must:

- Ensure that the plan submitted by the offeror includes all eleven (11) the elements in FAR 52.219-9(d).
- The contractor's written policy and practice must include a provision that defines how they will assist small businesses, organize a solicitation process that facilitates participation of small businesses, and counsel and discuss opportunities with small businesses (per FAR 52.219-9(e)(1) & (e)(3)).
- The contractor's written policy and practice must include the examination of small business potential in the make or buy process (per FAR 52.219-9(e)(2)).
- The contractor must have a practice of confirming HUB zone small businesses are certified as such in SAMs or by contacting the SBA (per FAR 52.219-9(e)(4)).
- The contractor must have a practice to communicate to the offerors the penalties for misrepresentation of business class (per FAR 52.219-9(e)(5)).
- The contractor's written policy and practice must include a provision to inform unsuccessful small businesses of the name and location of the apparent successful offeror prior to the award of the contract of all competitive subcontracts over the simplified acquisition threshold "in which a small business concern received a small business preference" (per FAR 52.219-9(e)(6)).

TRUTH IN NEGOTIATIONS ACT (TINA)

October 07, 2015

Introduction:

The primary purpose of the Truth in Negotiations Act (TINA) is to provide the Government representatives with accurate, complete and current cost or pricing data from offerors to establish a fair and reasonable contract price. TINA requires the contractor to submit certified cost or pricing data (or other sufficient data) that it used in making its offer. If the contractor withholds relevant data which results in an overstated offer, the Government could recoup the resulting overstated costs.

Legal and Regulatory References

- 10 USC § 2306a: Cost or pricing data; truth in negotiations
- 41 USC § 3501-3509
-
- FAR 15.403-1(b)- provides TINA exceptions
- FAR 15.403-4- provides threshold and criteria for obtaining cost or pricing data
- FAR 15.404-3- provides subcontractor requirements
- FAR 15.406-2- provides an example of a Certificate of Current Cost or Pricing Data
- FAR 15.408(d)- prescribes FAR 52.215-12
- FAR 15.408(e)- prescribes FAR 52.215-13
-
- FAR 52.215-10- contract clause prescribed by FAR 15.408(b)
- FAR 52.215-11- contract clause prescribed by FAR 15.408(c)
- FAR 52.215-12- contract clause prescribed by FAR 15.408(d)
- FAR 52.215-13- contract clause prescribed by FAR 15.408(e)
- DFARS 252.244-7001(1),(2),(5),(7),(9),(10), and (22)

TINA Requirements

Threshold:

- \$750,000 for prime contracts awarded on or after October 1, 2015
- \$700,000 for prime contracts awarded on or after October 1, 2010

Applies to:

- A negotiated contract, mod, or change order of either sealed bid or negotiated contract exceeds threshold (for a modification or change order, the value of the modification or change order must meet or exceed threshold; not original plus changes)

- All tiers of subs, if the prime and other higher tier subs were required to provide Certified Cost & Pricing Data.

Exception (FAR 15.403-1):

- A determination of adequate competition
- Commercial item acquisition
- Waived by head of contracting activity

TINA and CPSR - Contractor Policies and Procedures

A contractor's policies and procedures serve as the backbone to any good purchasing system. Policies and procedures should provide clear guidance to buyers as they navigate the purchasing process. Contractor's policies and procedures should minimally contain as they relate to TINA:

- Proper FAR and DFARS cites.
- Current and proper dollar threshold for when TINA applies. (FAR 15.403-4)
- Instructions for exemptions and waivers to TINA requirement. (FAR 15.403-1(b))
- Instructions for when a Certificate of Current Cost or Pricing Data must be collected from suppliers. (FAR 15.406-2 and FAR 15.404-3)
- Instructions to buyer for submitting the TINA form to a supplier, receiving it back, and documenting it within the file. (FAR15.404-3 and FAR 52.215-12)
Note: FAR 52.215-12 requires the contractor to have the subcontractor certify in substantially the form prescribed in FAR 15.406-2. FAR 15.404-3, Subcontract Pricing Considerations, states that the Subcontractor certified cost or pricing data shall be submitted in the format provided in Table 15.2 of FAR 15.408 or alternate format specified in the solicitation.
- Procedures for making a commercial item determination if a supplier claims a TINA exemption based on the commerciality of an item or service. (FAR 15.403-1(c)(3))

TINA and CPSR – Practices

When reviewing a contractor's purchasing system, a CPSR Analyst should identify certain elements within the file in order to determine compliance with TINA regulations.

- Flow down of the prescribed FAR clauses
- The offeror's cost or pricing data,
- Analysis of the cost or pricing data,
- A "Certificate of Cost or Pricing Data," as required, or data other than certified cost and pricing data, and
- Requirement for commercial determination and documentation.

Note 1: Contractor instructions on making a commercial item determination may reference another section within the purchasing manual specifically addressing commercial items.

Note 2: If cost or pricing data is not required from the prime contractor due to the grant of a waiver from the head of a contracting activity, the prime contractor is still required to obtain such data from subcontractors unless an exception applies to that subcontractor, or the waiver specifically includes the subcontract and rationale supporting waiver for that subcontract. (FAR 15.403-1(c)(4)).

Note: TINA, as it has been known for years, has undergone a name change. The US Code and the DFARS now refer to TINA as “Truthful Cost or Pricing Data.” This name change, however, has not been reflected in the FAR, but the requirements remain the same.