

## Section 1: Contract Regulatory Process/Contract Types

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### Objectives

- Identify the applicable acquisition regulations, their authority and precedence.
- Define the Competition in Contracting Act (CICA)
- Identify the two methods of procurement and know when to appropriately use each.
- Name the two broad categories of contract types.

### Acquisition Regulations

FAR	-	Federal Acquisition Regulations
FAC	-	Federal Acquisition Circulars
DFARS	-	Defense Federal Acquisition Regulation Supplement
AFARS	-	Army Federal Acquisition Regulation Supplement
EFARS	-	Engineer Federal Acquisition Regulation Supplement
PIL	-	Procurement Instruction Letters



### Acquisition Regulations

#### Web Sites:

##### FAR:

<http://acquisition.gov/far/index.html>

##### DFARS:

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

##### AFARS:

<https://webportal.saalt.army.mil>

##### EFARS:

<http://www.hq.usace.army.mil/cepr/asp/library/efar.asp>

### Competition In Contracting Act (CICA)

1. Full and Open Competition
  - a. Acquisition Planning
  - b. Functional Specifications
  - c. Equal Opportunity For All Responsible Sources



### Competition in Contracting Act (CICA) (Cont'd)

2. Full and Open Competition After Exclusion of Sources
  - a. Establishing or Maintaining Alternative Sources
  - b. Set-Asides
  - c. Head of Agency Approval (Determination & Finding (D&F))

### Competition in Contracting Act (CICA) (Continued)

3. Other Than Full and Open Competition
  - a. Exceptions Under 10 U.S.C. 2304(C)
    1. Sole Source
    2. Unusual and Compelling Urgency
    3. Industrial Mobilization
    4. International Agreement
    5. Authorized or Required by Statute
    6. National Security
    7. Public Interest



### Competition in Contracting Act (CICA) (Continued)

4. Requirements for Contracting Officer if an exception is cited:
  - (1) Justification (J&A)
  - (2) Certifications (Technical, Legal, KO)
  - (3) Approvals (See EFARS for appropriate approval level)

### Competition in Contracting Act (CICA) (Continued)

5. Non-Applicability
  - Simplified Acquisitions (Maximum Practicable Competition)
  - Within Scope Contract Modifications
  - Orders Placed Under Existing Contracts (If Basic Contract Complied with CICA)
  - Reprocurement Actions (Maximum Practicable Competition)



### Small Business Requirements

- All purchases under the simplified acquisition threshold (>\$3,000 to \$100,000, \$5,500,000 for commercial items) shall be set aside for small business.
- All other procurement actions shall be considered for set-aside for small business unless determined that there are insufficient qualified small businesses.
- North American Industry Classification Codes (NAICS)
  - Determines applicable small business size standard

### Small Business Requirements

- Determining small business size standard
- FAR Part 19

	NAICS		Size Standard
Supply	327320	Ready-Mixed Concrete	500 employees
Service	238990	Concrete Paving	\$13.0 million

NAICS – [www.censusbureau.gov/epcd/www.naicsdev.htm](http://www.censusbureau.gov/epcd/www.naicsdev.htm)

Size Standards – [www.sba/sizetable2002.html](http://www.sba/sizetable2002.html)



### Contracting Procedures

#### CONTRACT:

- Method of procuring supplies, services, construction or Architect-Engineer services over \$100,000
- Must be synopsisized in FedBizOpps, advertised and awarded in accordance with Part 14 or 15 of the FAR
- Solicitation contains bid schedule, scope of the contract, numerous clauses, terms and conditions
- Awarded on SF 33 for supplies or services
- Awarded on SF 1442 for construction

### Contracting Procedures

#### Methods of Contracting

1. Sealed Bidding
2. Negotiation



### SEALED BIDDING (FAR Part 14)

Solicitation under sealed bidding procedures is called an Invitation for Bid (IFB)

- Use sealed bidding procedures if:
  - Well defined statement of work/product specs
  - The award will be made on the basis of price and other price-related factors
  - It is not necessary to conduct discussions with the responding offerors about their bids; and
  - There is a reasonable expectation of receiving more than one sealed bid

### SEALED BIDDING

#### Steps

- Synopsis (Published in FedBizOpps)
- Issuance of solicitation (15 days after synopsis)
- Bid Opening (at least 30 days after solicitation is issued)
  - Additional days should be considered based on -
    - **Complexity of requirement**
    - **Anticipated extent of subcontracting**



### SEALED BIDDING

- No information released before synopsis – all interested vendors should have access to the information at the same time
- During solicitation phase, no discussions are held except those with the Contracting Officer
- Information that would give one vendor an advantage over another could be considered grounds for protest
- Bid Opening
  - Specific Place, Date, and Hour
  - Publicly Opened
- Bids are evaluated based on
  - Price and other price related factors
  - Responsiveness
  - Responsibility

### SEALED BIDDING

- “Other price related factors” may include such things as:
  - Foreseeable costs or delays resulting from contractors location, place of inspection, location of supplies and transportation
  - Changes made to bid document by contractor (if change does not constitute grounds for rejection of bid)
  - Advantages/disadvantages to the Gov't that might result from making more than one award
  - Federal, state and local taxes
  - Origin of supplies, and, if foreign, application of the Buy American Act or any other prohibition on foreign purchases



### Contracting by Negotiation

A contract awarded using other than Sealed Bidding procedures is a negotiated contract

- Contractor submits a technical proposal as well as a cost proposal
- Offerors may withdraw proposals any time prior to award
- Not required to award to contractor who submits the lowest price/offer
- Award may be made on initial offers or after discussions.

Confidential

### Contracting by Negotiation

- Steps
  - Synopsis (Concurrently appoint selection board and develop source selection plan)
  - Issue Request for Proposals (RFP) – 15 days after synopsis
  - Receive Proposals – 30+ days after solicitation depending on complexity of proposal
  - Selection Board meets (CT does price analysis)
  - Develop competitive range
  - Determine whether or not to hold discussions
    - If so: Discussions followed by revised proposals
    - If not: Proceed with award



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## Sealed Bidding

Requisition w/SOW

Synopsise

Issue IFB

Open Bids (Public Bid Opening)

Evaluate Bids for  
Responsiveness and Responsibility

Determine Offeror Responsibility

Award to Lowest Responsive  
and Responsible Bidder

## Negotiation

(Competitive Proposals)

Requisition w/SOW

Determine Contract Type

Develop Evaluation Factors

Synopsise

Issue RFP

Appoint Source Selection Team

Open Proposals (Not Public)

Evaluate Proposals Based on Evaluation  
Factors

Determine Offeror Responsibility

Award to Offer Most Advantageous to The  
Government, Price and Other Factors  
Considered

## Contracting by Negotiation

Source Selection Evaluation Board (SSEB) Responsibilities:

- SSEB appointed by KO based on recommendation of technical element
- Evaluate against evaluation factors included in the solicitation ONLY.
- Each board member evaluates each proposal independently
- Board meets to arrive at consensus score
- Develop SSEB report



### Contracting by Negotiation

#### Best Value Contracting

Methods:

Low price/Technically acceptable

Price/Performance trade-off

### Contracting by Negotiation

#### Low Price/Technically Acceptable

- Government determines what qualifications a contractor MUST have to be considered acceptable
- Evaluation factors are based on these qualifications
- All firms possessing these qualifications are considered
- Low price among qualified contractors is awarded the contract
- Trade-offs are not permitted



### Contracting by Negotiation

#### Price-Performance Trade-Off

- Government may award to other than the lowest priced offeror
- Evaluation criteria, and their relative importance, are clearly stated in the solicitation
- Evaluation factors such as: past performance, specialized experience, management capability, personnel qualifications
- Permits trade-offs among cost or price and non-cost factors. Allows the Government to accept other than the lowest price

### Contracting by Negotiation

#### 4 Keys to Success with Best-Value Solicitations

##### Evaluation Criteria (Factors)

- Clear, simple, reveal differences in technical capabilities of firms

##### Evaluation Method

- Consistent application of the criteria
- Always consider past performance
- Individuals rate, the board consensus
- Provide necessary information to allow meaningful discussions

##### Documentation

- Consists of clear and concise information to the Contracting Officer/Source Selection Authority (SSA) permitting informed decision

##### Debriefings

- Informative, consistent debriefings



### Types of Contracts

- Fixed Price
- Cost Reimbursement

### Types of Contracts

#### Fixed Price

- Firm Fixed Price (FFP) – provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract
- Fixed Price Economic Price Adjustment – provides for upward or downward revision of stated contract price based on changes in market, etc.
- Fixed Price Incentive (FPI) – provides for an incentive based on contractor performance
- Fixed Price Level of Effort – contractor will provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms



### Types of Contracts

#### Cost Reimbursement

- Cost Contract – contractor receives no fee
- Cost Sharing – contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs
- Cost Plus Incentive Fee (CPIF) – provides for a negotiated fee to be adjusted based on relationship of total allowable costs to total target costs
- Cost Plus Award Fee (CPAF) – provides for a payment of a fee based on a judgmental evaluation by the government sufficient to provide motivation for excellence in performance
- Cost Plus Fixed Fee (CPFF) - provides for payment to the contractor of a fee based on prenegotiated factors; i.e. quality of performance

### Simplified Acquisition

- Purchases of supplies over \$3,000 but less than \$100,000
- Purchases of services over \$2,500 but less than \$100,000
- Construction over \$2,000 but less than \$100,000
- Commercial Items purchases over \$3,000 but less than \$5,500,000



### Simplified Acquisition Commercial Item (Definition)

Any item that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes (off the-shelf items, etc.)

### Simplified Acquisition

#### Authority for Simplified Acquisitions:

- FAR Part 13.003 says "Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the "Simplified Acquisition Threshold".
- We must promote competition to the maximum extent possible; establish deadlines for the submission of responses that afford suppliers a reasonable opportunity to respond, consider all quotations or offers that are timely received and use innovative approaches in awarding contracts using Simplified Acquisition Procedures.



### Simplified Acquisition

- Micro-Purchase Threshold – FAC Number 2005-13 (dated 28 Sep 06) increased to \$3,000
- To the maximum extent practicable, shall be distributed equitably among qualified suppliers
- May be awarded without soliciting competitive quotations if price is considered reasonable
- No requirement for small business set-aside

### Simplified Acquisition

#### Restrictions:

- Micro-Purchases shall be made with the Government-wide Purchase Card (VISA)
- Micro-Purchases cannot be made by Contracting except for those to vendors who will not accept VISA
- Services – still restricted to \$2,500 (Service Contract Act)
- Construction – still restricted to \$2,000 (Davis-Bacon Act)



### Simplified Acquisition

#### GOVERNMENT-WIDE PURCHASE CARD (VISA)

##### Conditions for use:

- Approved & Certified PR&C
- Purchase must be in accordance with Acquisition Regulations
- Purchase cannot exceed the authorized single purchase limit stated in cardholder's Delegation of Authority
- Approving Official assumes substantial liability when they approve a cardholders monthly statement. Approving Official maintains files for monthly statements and backup documentation
- Approving Official will ensure that disposition of items is in accordance with applicable property regulations, i.e. bar coded, etc.

### Simplified Acquisition

#### GOVERNMENT-WIDE PURCHASE CARD (VISA)

(Cont'd)

- Item must be readily available – no back orders
- Intentional use of the VISA Card for non-approved purposes will be considered an attempt to commit fraud against the government and will result in immediate cancellation of the card as well as disciplinary action.



### Simplified Acquisition

#### PURCHASE ORDER

An offer by the Government to buy certain supplies or nonpersonal services from commercial sources, upon specified terms and conditions. A purchase order becomes a contract by written acceptance or performance.

- Supplies and Services – Issued on DD Form 1155
- For Commercial Items – Issued on SF 1449

### Simplified Acquisition

#### PURCHASE ORDER (Cont'd)

Conditions and Limitations for Use:

- Fixed Price – Not to exceed the simplified acquisition threshold
- Specify quantity of supplies or services ordered
- Inspection and acceptance at destination
- F.O.B. destination unless valid reason to contrary
- Contain calendar date on which delivery is required
- Contain appropriate contract clauses
- Not binding unless signed by contractor or work begins



### Simplified Acquisition PURCHASE ORDER (Cont'd)

#### Conditions and Limitations for Use:

- May be cancelled or terminated
- Regulations are not as strict as for contracts

### Simplified Acquisition

#### Blanket Purchase Agreement (BPA)

- Repetitive needs of wide variety of items when delivery schedule cannot be determined in advance
- Provide commercial sources for supplies and services to isolated projects which do not have or need authority to purchase using other means
- Avoid writing of numerous purchase orders



### Simplified Acquisition

#### Blanket Purchase Agreement (Cont'd)

- Establish basic BPA without PR&C
- Give all competitive sources an equal opportunity to furnish the supplies or services
- Must contain a beginning and expiration date
- Specify dollar limit for each individual purchase under the BPA
- Specify personnel authorized to place calls
- Both contractor and government must maintain internal controls identifying and summarizing all calls placed under a BPA

### Simplified Acquisition

#### UNPRICED PURCHASE ORDER

- May be used when the transaction will not exceed the simplified acquisition threshold
- May be used when impractical to obtain pricing in advance of issuance of purchase order
- Used for:
  - Repair of equipment requiring disassembly to determine nature and extent of repair
  - Sole source and cost cannot be readily established
  - Supplies or service for which prices are known to be competitive but exact price is not known
  - Shall state monetary limitation (Not to exceed amount)



### Pre-Award Survey

- Prepared by Contracting Division in an effort to award only to qualified contractors; i.e. contractors that have the capabilities (responsibility) to receive an award
- Formal pre-award survey must be performed on acquisitions over \$100,000
- Pre-award surveys can be performed on any acquisition when the Contracting Officer feels it necessary

### Pre-Award Survey

#### Areas to check during pre-award survey:

- Debarred/suspended bidder's list
- Any available past performance records
- Contact references supplied by the contractor
- Obtain audit assistance as necessary
- Past business experience in relation to services to be performed
- Volume of business already on hand
- Physical capability
- Testing and inspection facilities
- Equipment availability
- Credit references (Dun & Bradstreet, bank, subcontractors)
- Other information considered necessary (accounting system, bonding capacity, financial strength, etc.)



### Pre-Award Survey

If no pre-award survey is done, the following consequences may occur:

- Losses to Government; time, money, service, administrative frustration
- Losses to Contractor; profit, reputation, bankruptcy
- Termination for Default; administrative burden on Government, delayed service while obtaining reprocurement or surety takeover, risk of reversal in favor of contractor after appeal, unexpected costs to the Government

### CONTRACTING OFFICER (KO)

- Appointed in writing by PARC in the form of a warrant
- Each KO can have different level of authority
- KO only people who may bind Government funds
- Appropriate wage determinations have been included in contract to enforce necessary labor laws
- Must ensure all requirements of law, executive orders, regulations, and all other applicable procedures, including clearance and approvals, have been met, such as:
  - Small Business Requirements
  - Required Competition
  - Fair and Reasonable Price
  - Funds are Available



### CONTRACTING OFFICER (KO)

#### Applicability of Labor Laws

- Construction in excess of \$2,000 (Davis Bacon Act)
- Services in excess of \$2,500 (Service Contract Act)
- Supplies in excess of \$10,000 (Walsh-Healey Act)

Written to protect the contractor's workforce,  
requires payment of a prevailing wage

### Contracting Officer Support Team

- Field/Technical Personnel – Technical knowledge, knowledge of contractor performance
- Legal Counsel – Litigation and Claims Activity
- Auditor – Audit contractor records when necessary



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### Ordering Officer

- Applies to both IDIQ contracts and VISA cardholders
- Authority delegated by the district Chief, Contracting Division for specific contract
- Must ensure that all requirements of law, executive order, regulation, and all other applicable procedures, including clearance and approvals have been met
- Will be appointed in writing by the Chief, Contracting Division
- Appointment will contain limitations which must be adhered to
- May sign task orders/delivery orders in their name and execute documents only under the title "Ordering Officer"

### CONTRACTING OFFICER'S REPRESENTATIVE (COR)

- The COR is the Contracting Officer's representative on site. Authority is limited. Cannot commit government funds or make any changes to a contract
- Delegation shall:
  - be in writing, stating the COR name, KO name and the contract number
  - clearly define the appointee's scope, authority, responsibility and limitations
  - state that the appointment is not redelegable



### CONTRACTING OFFICER'S REPRESENTATIVE (COR)

#### Authority:

- COR may take any action under a contract which could lawfully be taken by the Contracting Officer except where the terms and conditions of the contract itself would be changed or the delegation specifically prohibits such authority
- Authorities given are specific and technical in nature
- Have technical authority to interpret scopes of work
- Have no monetary authority

### CONTRACTING OFFICER'S REPRESENTATIVE (COR)

#### Limitations of authority:

- COR is not authorized to award, agree to, sign any contract or modification thereto, or in any way obligate the payment of money by the government
- COR not authorized to initiate procurement actions by use of: Blanket Purchase Agreement, Other Simplified Acquisition Procedures or task/delivery orders against IDIQ contracts
- COR's records are part of the official contract file and as such may be reviewed by the Inspector General. Files should be set up and maintained in accordance with the official recordkeeping system of the Department of the Army



### CONTRACTING OFFICER'S REPRESENTATIVE (COR)

#### COR Duties:

- Enforce contract compliance
- Interpret plans/specs
- Monitor contractor's quality control plan
- Implement government's quality assurance plan
- Monitor contractor performance/ progress
- Prepare performance evaluations as required and input to appropriate database
- Monitor contractor safety
- Prepare pay estimates/receiving reports
- Contract close out

### REVIEW

- List applicable acquisition regulations
- Define CICA
- List two methods of procurement, when to use each
- List two broad categories of contract types
- Define acquisition planning
- Define full and open competition
- Describe difference between sealed bidding and negotiated procurement and the advantage of using the latter
- Describe evaluation process for negotiated procurements
- Describe purpose of Pre-Award Survey, who performs it, dollar threshold, useful factors to consider and pitfalls of inadequate survey

