CHAPTER CONTENTS

Chapter 5
Contracting Processes

Contracting Processes

Key Points

- In any contingency operation, quality acquisition support to the commander is critical to mission accomplishment.
- The absence of direction should be interpreted as permitting innovation and the use of sound business judgment.
- A wide selection of contract types is available in order to provide needed flexibility in acquiring the supplies and services required. Most contingency purchases can be accomplished through simplified acquisition procedures (SAP).
- Contingency contracting officers (CCO) should emphasize price negotiations, even if they have competition, at sustained or established locations.
- The type of contract selected determines both the clauses to be included and the degree of risk accepted by the government.
- The objective is to select the contract type that places a reasonable degree of risk upon the contractor and provides the contractor with the greatest incentive to perform efficiently and economically.
- Figures 5 and 6 outline and review basic contracting processes and contract formats.

Introduction

We have an ethical obligation to abide by laws and regulations. However, in an instance where there is an absence of clear-cut directions, remember, *Federal Acquisition Regulation (FAR) 1.102 (4)(e)* encourages us to think outside of the box.

This chapter provides a quick reference to limitations and exceptions to contracting operating procedures in a contingency environment. Specific augmentation programs that are common to the contingency

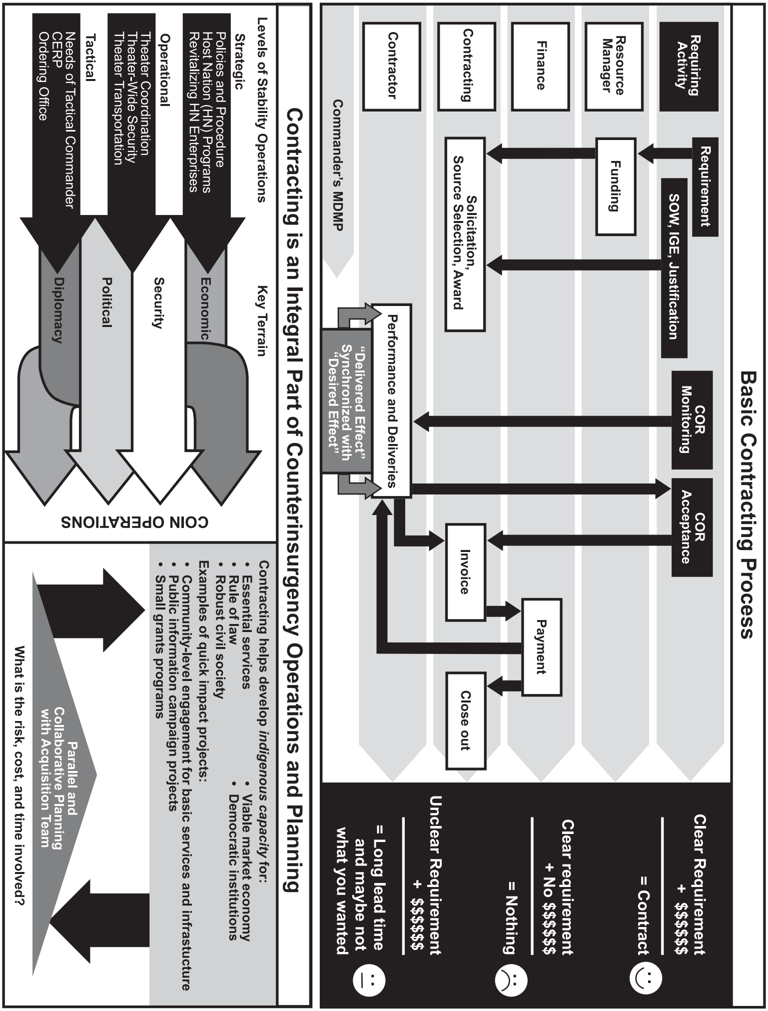

Figure 5. Basic Contracting Processes

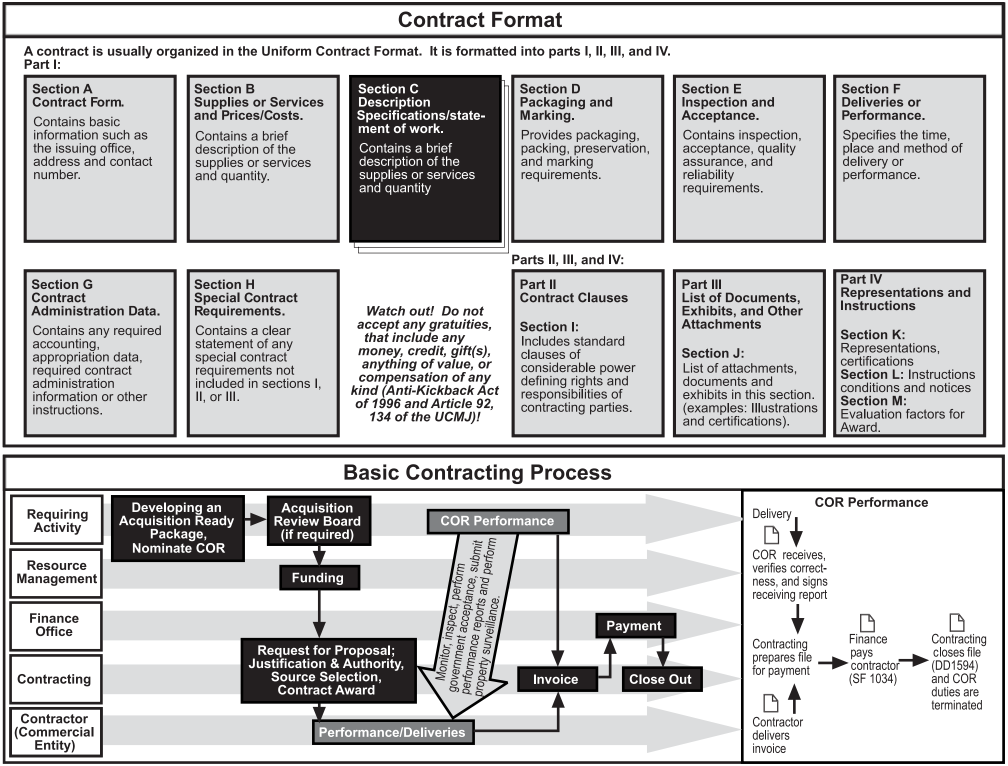

Figure 6. Contract Format

environment are covered and explained, along with SAP. Frequently used contract types, instruments, and appointed personnel (such as ordering officers) are also covered. This chapter provides the CCO with a discussion of determinations and findings, justification and approvals, and equipment lease or purchase decisions that may apply to the contracting process. The chapter further discusses the tools to organize and track contracts and the means of providing oversight through the contracting officer's representatives (COR) in order to ensure accountability. It is the CCO's job to facilitate the purchasing needs of our customers. This chapter concludes by explaining the duties of a paying agent and the execution of ratification procedures when unauthorized commitments are made.

Simplified Acquisition Procedures

Once it is determined that contingency contracting is the chosen method, you will find that most purchases can be accomplished through simplified acquisition procedures (SAP) procedures. *(FAR) Part 13)* SAP includes procedures for the acquisition of supplies and services (including MILCON [military construction]), the aggregate amount of which does not exceed the simplified acquisition threshold (SAT) for declared contingency or peacekeeping operations and *FAR Part 13.5*, *Test Program for Certain Commercial Items*.

Competition Requirements Under SAP. The CCO must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is fair and reasonable and most advantageous to the government. Maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to *FAR 5.101* and an exception under *FAR 5.202* is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation. Note that the competition requirements are not waived by using simplified acquisition procedures. In other words, for micro-purchases to be made outside the United States (US) in support of a contingency operation *under* $25K, a CCO needs to support price reasonableness. To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers and micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with *FAR 1.603-3(b)* considers the price to be reasonable.

Oral Solicitations.

Oral solicitations or request for proposals (RFP) are authorized when a written solicitation would delay the acquisition of supplies and services to the detriment of the government and a solicitation notice is not required under *FAR 5.202* (such as perishable items, support of contingency operations, or other emergency situations). This technique does not excuse the CCO from complying with all other statutory and regulatory requirements. Oral solicitations are typically used as a last resort due to potential problems associated with them and they must immediately be followed up in writing. The CCO's documentation also must provide sufficient rationale for the use of oral solicitations. The contract file includes:

- A justification for use of an oral solicitation
- Item description, quantity, and delivery schedule
- Sources solicited, including the date, time, name of individual contacted, and prices quoted
- The solicitation number provided to the prospective offerors

Once the CCO completes the oral solicitation and selects a successful offeror, a contract will be prepared for the contractor's signature as quickly as possible. Delay may require a further explanation in the contract file describing the rationale for failing to take prompt action. Sample contract formats, electronic prepopulated forms, and electronic copies of the required clauses in the contingency contracting support kit will accelerate the contracting documentation process.

Micro-purchases

Governmentwide Commercial Purchase Card (GCPC).

A GCPC is the preferred method of purchasing supplies and services within the micro-purchase threshold. All purchases that are made or paid for using GCPC are subject to all applicable provisions of *FAR 13.2* and *Defense Federal Acquisition Regulation Supplement (DFARS) Part 213.2.2*, and must be authorized and documented accordingly. While the benefits associated with the use of the GCPC are well known, the card may not be readily accepted in many locations in a contingency situation. CCOs may use the GCPC to support a contingency, humanitarian, or peacekeeping mission to buy immediately available supplies or services for a single delivery up to CCO's single purchase limit. The GCPC can be used for over the counter purchases (when the local banking infrastructure permits). It also is frequently used (when local infrastructure supports the technology) over the phone and over the Internet. See *https://wbt.access.usbank.com*. When GCPC is not accepted, a Standard Form (SF) 44 may be used.

Use of the GCPC by Contracting Officers. Contracting officers may use the GCPC to support a contingency, humanitarian, or peacekeeping mission to buy immediately available supplies or services that will be delivered at one time up to the applicable SAT. (*DFARS 213.301*)

Imprest Fund and Third Party Drafts. (*FAR 13.305* and *DFARS 213.305*)

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

Contract Types

Selecting Contract Types. (*FAR 16.101*) A wide selection of contract types is available to the government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. Contract types vary according to:

- The degree and timing of the responsibility assumed by the contractor for the costs of performance
- The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals

The contract types are grouped into two broad categories: fixed-price contracts (*FAR 16.2*) and cost-reimbursement contracts (*FAR 16.3*). The specific contract types range from firm-fixed price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts (*FAR 16.4*), in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

Fixed-Price Contracts. (*FAR 16.2*)

Under a fixed-price contract the government must be able to describe exactly the required contract results and allow the contractor the flexibility to plan, manage, and execute the work to achieve those results. This type of contract has tremendous advantages, as the performance and cost risk lie with the contractor. Contract types commonly seen in a contingency environment are:

- Firm-fixed-price (FFP) contracts
- Fixed-price contracts with economic price adjustment
- Fixed-price incentive contracts—determination and findings (D&F) required

Firm-Fixed-Price Contracts. (*FAR 16.202-1*) An FFP contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively, and imposes a minimum administrative burden upon the government. An FFP contract may include an award fee incentive (*FAR 16.404*) or performance or delivery incentives (*FAR 16.402-2* and *16.402-3*) when the award fee or incentive is based solely on factors other than cost. The contract type remains FFP when used with these incentives. FFP contracts are suitable when:

- There is adequate price competition.
- There are reasonable price comparisons with prior purchases of the

same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data.

- Available cost or pricing information permits realistic estimates of the probable costs of performance.
- Performance uncertainties can be identified, and reasonable estimates of their cost impact can be made, and the contractor is willing to accept an FFP contract representing assumption of the risks involved.

Cost-Reimbursement Contracts. (*FAR 16.3*) Under a cost-reimbursement contract, the contractor agrees to provide its best effort to complete the required contract effort. Cost-reimbursement contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts include an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor cannot exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts are generally labor intensive and require additional scrutiny in regards to the contractor's cost accounting system. These types of contracts should be used when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract. As such, these types of contracts are generally large dollar, external support type contracts. Generally the CCO will not be involved in cost-type efforts, unless deployed as an administrative contracting officer with Defense Contract Management Agency or deployed into security, sustainment, transition, and reconstruction activities. When awarding cost-reimbursable contracts, CCOs should ensure that the Allowable Cost and Payment Clause (FAR 52.216-7) is included and flows down to cost-type subcontracts. Defense Contract Audit Agency is part of the deployed support personnel in a contingency operation and is available to assist the CCO in the award and administering of cost-type contracts.

To read more about incentive type contracts consult the DVD.

Indefinite Delivery Contracts.

The three types of indefinite delivery contracts are definite quantity, indefinite quantity, and requirements contracts. (*FAR 16.5* and *DFARS 216.5*)

Definite Quantity Contracts. (*FAR 16.502*)

A definite quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at a designated location, time, and date upon placement of the order. A definite quantity contract may be used when it can be determined in advance that:

- A definite quantity of supplies or services will be required during the contract period.
- The supplies or services are regularly available or will be available after a short lead time.

Indefinite Quantity Contract. (*FAR 16.5* and *DFARS 216.5*) An indefinite quantity contract may be used when the government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the government will require during a fixed contract period, and it is inadvisable for the government to commit itself for more than a minimum quantity. Quantity limits may be stated as number of units or as dollar values. The contracting officer should use an indefinite quantity contract only when a recurring need is anticipated. The following pertains to the indefinite quantity contract.

- The contract must require the government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. If ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum.
- The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for

similar supplies or services, survey of potential users, or any other rational basis.

- To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the government is fairly certain to order.
- The contract may also specify maximum or minimum quantities that the government may order under each task or delivery order, and the maximum that it may order during a specific period of time.
- A solicitation and contract for an indefinite quantity must:
    - Specify the period of the contract, including the number of options and the period for which the government may extend the contract under each option.
    - Specify the total minimum and maximum quantity of supplies or services the government will acquire under the contract.
    - Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer.
    - State the procedures that the government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the government will use to provide awardees a fair opportunity to be considered for each order. (*FAR 16.505(b)(1)*)
    - Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (*FAR 16.505(b)(5)*) if multiple awards may be made.
    - Include a description of the activities authorized to issue orders.
    - Include authorization for placing oral orders, if appropriate, provided that the government has established procedures for obligating funds and that oral orders are confirmed in writing.

- Because quantities are not fixed, variable units or amounts (such as the number of meals served beyond the minimum guaranteed) require subsequent verification and audit by the COR.

Requirements Contract. (*FAR 16.503*) A requirements contract is an indefinite delivery type contract that provides for filling all actual purchase requirements of specific supplies or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor. It has several advantages.

- Requirements contracts have the flexibility needed to support deployment without the financial risk and administrative burden that an indefinite delivery contract would pose. Under a requirements contract, one only orders what is needed, when it is needed, and only pays upon acceptance. Funds are obligated only when the government issues a delivery order against the contract. Delivery orders are prepared on *Department of Defense Form (DD) 1155* and contain information similar to a purchase order with some minor differences.
- The contract price can be based on a firm-fixed-price or cost-reimbursement. The prices agreed to can be derived from either catalog or market prices.
- If the government no longer has a requirement for the supplies or services on the contract, the contractor has the burden to prove if additional compensation is warranted.
- The maximum and minimum order quantity limitations are included in the original contract. These limitations allow the contractor to propose reasonable prices, as they allow the contractor to provide economic quantities in keeping with local market conditions. Orders outside the applicable range will be treated as separate

purchases. The better the customer defines its needs up front, the better the competition and prices that will be realized.

- The CCO should do a spend analysis of known requirements to determine which categories of supplies and services might be suitable for a centralized contract. One way to determine this is to review the number of simplified acquisition actions being made for the same items.

Letter Contracts and Undefinitized Contract Actions (UCA). (*DFARS 217.74*)

UCA means any contract action for which the contract terms, specifications, or price are not agreed upon before performance begins. Examples include letter contracts, basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun. A UCA shall be approved by the HCA prior to award. The regional contracting center (RCC) chief will forward a request for approval to award a UCA through the senior contracting official to the HCA. UCAs shall be accomplished IAW *DFARS 217.74*. UCA approval authorities shall establish procedures for RCC chiefs to track UCAs and submit a written report to them for any UCA that is not definitized within 180 days after the contractor submits a qualifying proposal. The report shall list each UCA, explain why it was not definitized within the allotted time frame, and provide a new definitization date. CCOs shall document the contract file with the justification for the delay, and prepare a new milestone schedule if the DFARS definitization schedule milestones are bettered. UCAs that exceed 180 days substantially elevate the overall financial risk to the government. Every effort should be made to definitize contract actions before that time. Requests for approval to issue a UCA shall include a written statement of urgency. (*DFARS 217-7404*) The urgency statement for UCAs must cite why the government would be seriously injured if the action was delayed to permit negotiation of a price. A UCA (including an undefinitized task order or delivery order under a civil augmentation program [CAP] contract or other external support contracts) of a flexibly priced nature should include the clause at *FAR 52.216-24, Limitation of Government Liability*, DFARS *252.217-7027*, *Contract Definitization* and DFARS 217.7404-4, *Limitations on Obligations* which limit obligations to 50 percent of the not-to-exceed (NTE) price before definitization. If a qualifying proposal is submitted before 50 percent of the NTE price has been obligated, then obligations before definitization may be increased to no more than 75 percent of the NTE price.

Considerations for Contract Type Selection and Risk Assessment

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

Consider Commerciality of the Requirement. (*FAR 12.207*) When acquiring a commercial item:

- You normally should use a firm-fixed-price contract.
- You may use a fixed-price contract with economic price adjustment if the contracting officer determines (in writing) that this type of contract is necessary to protect the contractor and the government against significant fluctuations in labor or material costs or to provide for contract price adjustments in the event of changes in the contractor’s established prices.

Consider Acquisition Method. (FAR 16.102, and DFARS 216.104.70) The acquisition method selected for a particular acquisition may limit the available choice of contract type.

- Simplified Acquisition. When using simplified acquisition procedures, purchase orders are normally firm-fixed-price.
    - Unpriced Orders: You may use an unpriced order in certain situations when it is impossible to obtain firm pricing prior to issuing the purchase order. Whenever you use an unpriced order, the order must include a dollar limit on the government's obligation and the contracting officer must follow up to assure timely pricing.
- Test Program for Commercial Items. (FAR Subpart 13.5) Use simplified procedures for supplies or services up to $5.5M[1] (or $11M for acquisitions which are for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack if the CCO reasonably expects that offers will include only commercial items). Ensure verbiage is in contract award and business clearance that states "this acquisition is IAW FAR Part 13.5, *Test Program for Commercial Items.*"
- Negotiation. When using the negotiation procedures prescribed in FAR Part 15 you may use any contract type or combination of contract types that will promote the best interests of the government, as long as you meet the specific limitations in FAR Part 16. You must not use any contract type not prescribed in the FAR unless authorized by agency regulation or a FAR deviation.

Consider Cost Risk. (FAR 16.103(a)) Encourage contractors to accept reasonable cost risks of contract performance. However, requiring contractors to accept unknown or uncontrollable cost risk can endanger contract performance, substantially reduce competition, or substantially increase contract price. To realistically choose the proper contract type to meet a specific contract situation, you must consider the proper allocation of cost risk.

As a minimum, your appraisal of cost risk should consider two areas of particular concern, contract performance risk and market risk.

- Performance Risk. Most contract cost risk is related to contract requirements and the uncertainty surrounding contract performance—the lower the uncertainty, the lower the risk. Therefore, your appraisal of cost risk should begin with an appraisal of performance risk. For larger, more complex contracts, you will likely need assistance from other members of the government acquisition team (representatives from the requiring activity, engineering staff, contracting, and program or project management). Areas that you consider should include:
    - Stability or clarity of the contract specifications or statement of work
    - Type and complexity of the item or service being purchased
    - Availability of historical pricing data
    - Prior experience in providing required supplies or services
    - Urgency of the requirement
    - Contractor technical capability and financial responsibility
    - Extent and nature of proposed subcontracting
    - Market Risk. Changes in the marketplace will also affect contract costs. Preferred acquisition practice calls for forward pricing of contract efforts, because forward pricing provides a baseline which you and the contractor can use to measure cost or price performance against contract effort.

- Forward pricing requires the contracting parties to make assumptions about future changes in the marketplace. A volatile market will increase the cost risk involved in contract pricing, particularly when the contract period will extend several years. What will material and labor cost 2 years from now? Will material shortages occur 2 years from now? In cases where these unknown costs are significant, the length of the contract becomes an important consideration in selection of contract type.

Fixed-price contracts with economic price adjustment are designed specifically to reduce this risk for contractors.

Determinations and Findings

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

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

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

Some of the more common general D&Fs are as follows: type of contracting action, exercising option, period of performance extension, ratification, and so forth.

Class Determinations and Findings. (*FAR 1.703*) The CCO shall be aware of any class D&Fs for their area of responsibility (AOR). A class D&F provides authority for a class of contract actions. A class may consist of contract actions for the same or related supplies or services or other contract actions that require essentially identical justification.

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

Content. (*FAR 1.704*) Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the specific determination made. As a minimum, each D&F shall include, in the prescribed agency format, the following information:

- Specific identification of the document as a D&F.
- Identification of the agency and of the contracting activity.
- Nature and description of the action being approved.
- Citation of the appropriate statute or regulation upon which the D&F is based.

- Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.
- A determination based on the findings, that the proposed action is justified under the applicable statute or regulation.
- Expiration date of the D&F, if required. (*FAR 1.706*)
- The signature of the official authorized to sign the D&F (*FAR 1.707*) and the date signed.

Supersession and Modification. (*FAR 1.705*)

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

Signatory Authority. (*FAR 1.707*) When a D&F is required, it shall be signed by the appropriate official in accordance with agency regulations. Authority to sign or delegate signature authority for the various D&Fs is as shown in the applicable parts of the FAR.

Justifications and Approvals

Justification and Approval (J&A) for Other than Full and Open Competition. In using other than full and open competition procedures, the contracting officer must complete a thorough written justification in accordance with (IAW) *FAR 6.303*, explaining the reasons for proceeding with the award of a contract without full and open competition. The CCO should ensure that a fair and reasonable price is achieved. This justification must be approved by the approval authorities as set forth at *FAR 6.304*. Also, be familiar with your deployed agency's thresholds as to when legal must review the J&A. When unusual and compelling urgency is the basis for other than full and open competition, the written J&A may be made after contract award when preparation and approval of the J&A prior to award would unreasonably delay the acquisition. (*FAR 6.302-2(c)(1)*) Contracts awarded under this circumstance should include an appropriately limited period of performance, with follow-on contracts awarded based on full and open competition or the submission of cost or pricing data for sole-source awards. A complete list of the seven FAR exceptions for other than full and open competition is provided in the section entitled "Limitations and Exceptions." (*FAR 6.302-1*)

Full and open competition is required for all new contracts and modifications except:

- Acquisitions made under the SAP of *FAR Part 13*.
- Contracts awarded under procedures expressly authorized by statute (other than those specifically addressed under the authority of *10 United States Code (USC) §2304(c)(5).*
- Contract modifications that are within the scope and under the terms of an existing contract.
- Orders placed under requirements contracts or definite quantity contracts. (*FAR Part16.5*)
- Orders placed under indefinite quantity contracts when the contract was awarded under the procedures of *FAR Parts 6.1* or *6.2* and all responsible sources were realistically permitted to compete for the requirements in the order or when the contract was awarded under *FAR 6.3* and the contract's J&A adequately covered the requirements in the order.

Although the most commonly used exception in a deployed environment is unusual and compelling urgency, the following is a complete list of FAR exceptions:

- Only one responsible source (sole source) and no other supplies or services will satisfy agency requirements. (*FAR 6.302-1*)

- Unusual and Compelling Urgency. (*FAR 6.302-2*) This authority to utilize other than full and open competition procedures applies in those situations where an unusual and compelling urgency precludes full and open competition, and delay in award of a contract would result in serious injury, financial or other, to the government. (D&F urgent and compelling). **Note**: (1) unusual and compelling requirements are not to be confused with sole source requirements. *FAR 6.301 (c)(1)* and (2) warns against contracting without providing for full and open competition justification on the basis of a lack of advance planning by the requiring activity and concerns related to the amount of funds available (that is, funds will expire).
- Industrial mobilization, engineering, developmental or research capability, or expert services (*FAR 6.302-3*)
- International agreement. (*FAR 6.302-4*)
- Authorized or required by statute. (*FAR 6.302-5*)
- National security. (*FAR 6.302-6*)
- Public interest. (*FAR 6.302-7*)

Class J&As. Class justifications and international agreement competitive restrictions (IACR) documents may be used in certain circumstances. For example, they may be used when citing similar justification authority for a group of related contract actions for the same or related supplies or services. Information that is the same for multiple contracts need not be restated for each. CCOs shall be aware of class J&As and IACRs for their AOR.

Equipment Lease or Purchase.

Pursuant to *FAR Subpart 7.4*, consideration of whether to lease or purchase equipment should be based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that should be considered. In addition, see 10 USC §2401 and 10 USC §2401a for statutory authorization requirements for the lease of a vessel, aircraft, and combat vehicle or commercial vehicle and associated equipment.

- Estimated length of the period the equipment is to be used and the extent of use within that period.
- Financial and operating advantages of alternative types and makes of equipment.
- Cumulative rental payments for the estimated period of use.
- Net purchase price.
- Transportation and installation costs.
- Maintenance and other service costs.
- Potential obsolescence of the equipment because of imminent technological improvements.

The following additional factors should be considered, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment.

- Availability of purchase options.
- Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.
- Trade-in or salvage value.
- Imputed interest.
- Availability of a servicing capability, especially for highly complex equipment (can the equipment be serviced by the government or other sources if it is purchased).

Leases should be funded in accordance with *DoD Financial Management Regulation (FMR) 7000.14-R* (*http://comptroller.defense.gov/fmr*). Leases are either capital leases or operating leases (see *FMR 7000.14-R*, Volume 4, *Accounting Policy and* Procedures, Chapter 6, "Investments and Other Assets," Section 060207). Procurement funds are used for capital leases, as these are essentially installment purchases of property. **Note**: If a lease is justified, a lease with option to purchase is the preferred acquisition method. (*FAR 7.402(b)(2)*)

Nontactical Vehicle (NTV) Lease or Purchase. Lease or purchase is an especially important decision in the acquisition of the NTVs. A recent DoD inspector general report on the management of NTVs (*http://www.dodig.mil/audit/reports/fy10/10-022.pdf*) discusses the cost trade-offs in different acquisition methods. Figure 7 is a chart from the report illustrating the average cost over time on different acquisition approaches. The chart is an example of what the required analyses can reveal with

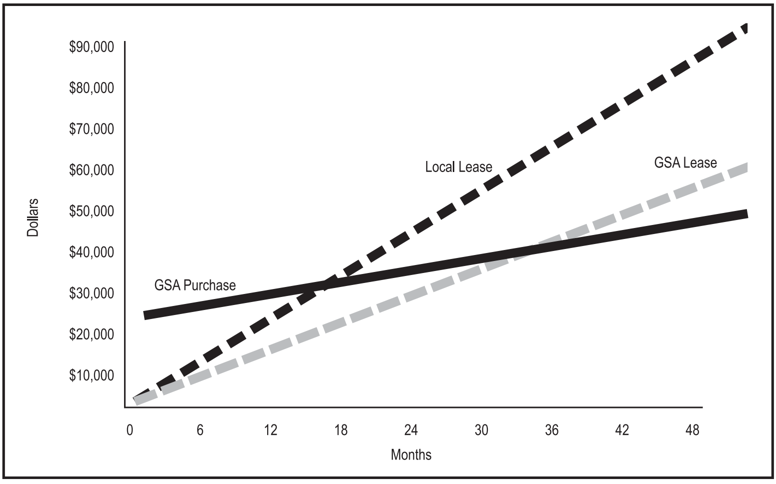

Figure 7. Average Cost of NTVs Over Time Using Different Acquisition Approaches

regard to the lease versus purchase decision. The report also identifies another important issue—the management of NTVs and the problems associated with not properly managing them and not centralizing their purchase. This could lead to unnecessary and more expensive leases and purchases. If the requirement is for procuring or leasing vehicles vice transportation services, CCOs should review procurement restrictions with the General Services Administration.

Publicizing Contract Actions

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

Synopsis of Requirements in FedBizOps. Whenever a contract action will be made and performed outside the US, its possessions, or Puerto Rico, and only local sources will be solicited, then CCOs are generally not required to synopsize requirements if the contracting officer determines an exception applies IAW *FAR 5.202*. However, your local contracting office may require the use of a synopsis. (D&F waiving synopsis) **Note**: FedBizOps requires CCOs to apply for access as a buyer and the gaining command needs to be willing to approve the request on behalf of the CCO.

Domestic Source Restrictions

Foreign Acquisitions. *FAR 25.000* and DFARS 225, *Foreign Acquisition,* establish regulations implementing the *Buy American Act*, the Balance of Payments Program, and the *Trade Agreements Act*.

Buy American Act. The *Buy American Act* restricts the purchase of supplies that are not domestic end products for use within the US. The

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

Balance of Payments Program. This program applies to purchases of supplies, services, or construction for use outside the US. The program applies a preference for domestic products by requiring upward adjustment of foreign end product offers by 50 percent for evaluation purposes. Exceptions to the program (*FAR 25.303*) are as follows:

- A foreign end product may be acquired for use outside the United States, or a foreign construction material may be used in construction outside the United States, without regard to the restrictions of the Balance of Payments Program if:
    - The estimated cost of the end product does not exceed the simplified acquisition threshold.
    - The end product or construction material is listed at *FAR 25.104*, or the head of the contracting activity determines that a requirement (1) can only be filled by a foreign end product or construction material (see *FAR 25.103(b)*), (2) is for end products or construction materials that, by their nature or as a practical matter, can only be acquired in the geographic area concerned (ice or bulk material such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick), or (3) is for perishable subsistence products and delivery from the United States would significantly impair their quality at the point of consumption.
    - The acquisition of foreign end products is required by a treaty or executive agreement between governments.

- The end products are (1) petroleum products or (2) for commissary resale.
- The end products are eligible products subject to the *Trade Agreements Act*, *North American Free Trade Agreement* (NAFTA) or the *Israeli Trade Act*, or the construction material is subject to the *Trade Agreements Act* or NAFTA.
- The cost of the domestic end product or construction material (including transportation and handling costs) exceeds the cost of the foreign end product or construction material by more than 50 percent, or a higher percentage specifically authorized by the head of the agency.
- The head of the agency has determined that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material or that it is impracticable to apply the restrictions of the Balance of Payments Program to the construction material.

Trade Agreements Act. The *Trade Agreements Act* (*19 USC 2501*, et seq) does not apply to:

- Purchases of supplies below the dollar threshold established by the US trade representative.
- Purchases of arms, ammunition, or war materiel.
- Construction contracts below established dollar threshold.
- Some service contracts per *FAR 25.403(c)*.
- Where purchase from foreign sources is restricted by the *Department of Defense (DoD) Annual Appropriations or Authorization Act*. *DFARS 225.401-70* identifies all products to which the act applies. In addition, *FAR 25.401* lists all designated countries to which the *Trade Agreements Act* will apply. See *FAR 25.402(b)* for a list of current dollar thresholds.

The *Trade Agreements Act* provides the authority for the President to waive the *Buy American Act* and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as least developed nation status. The President has delegated this waiver authority to the US trade representative.

Berry Amendment. CCOs must comply with the *Berry Amendment*. Unless a specific exception in law applies, the products, components, or materials listed below must be grown, reprocessed, reused, or produced wholly in the US if they are purchased with funds made available (not necessarily appropriated) to DoD.

Item, Component, or Material. (*DFARS 252.225-7012*)

- Food
- Clothing, and the materials and components thereof, other than sensors, electronics (this exception for electronics only applies to clothing with electronics), or other items added to, and not normally associated with, clothing (and the materials and components thereof)
- Tents
- Tarpaulins
- Covers
- Natural fibers or yarns
- Cotton and natural fiber products
- Natural fabrics (including all fibers and yarns therein)
- Synthetic fabrics (including all fibers and yarns therein)
- Fabric blends (including all fibers and yarns therein)
- Items of individual equipment (items in federal supply class 8465) made from or containing fibers, yarns, fabrics, or materials (including all fibers, yarns, fabrics, or materials therein)

- Hand tools
- Measuring tools

DFARS 225.7002-2 explains various *Berry Amendment* exceptions. Several exceptions, which may be applicable in a deployed environment, are listed below:

- Acquisition at or below the simplified acquisition threshold.
- Acquisition of any of the items in *DFARS 225.7002-1 (a)* or *(b)*, if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired when needed in a satisfactory quality and sufficient quantity at US market prices.
- Acquisition of items listed in *FAR 25.104(a)*, unless the items are hand or measuring tools.
- Acquisition outside the US in support of combat operations.
- Acquisition of perishable foods by or for activities located outside the US for personnel of those activities.
- Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with *FAR 6.302-2*.
- Emergency acquisition by activities located outside the US for personnel of those activities.
- Acquisition of foods manufactured or processed in the US, regardless of where the foods (and any component if applicable) were grown or produced. Acquisitions of specialty metals when the acquisition furthers an agreement with a qualifying country (see *DFARS 225.872*).
- Acquisition of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country. (See *DFARS 225.872* and the requirement in *DFARS 205.301* for

synopsis within 7 days after contract award when using this exception.)

- Acquisition of commercially available off-the-shelf items containing specialty metals. This exception does not apply when the specialty metal (raw stock) is acquired directly by the government or by a prime contractor for delivery to the government as the end item.
- DFARS 252.225-7014, *Preference for Domestic Specialty Metals*, applies to solicitations, acquisitions, and contracts exceeding the simplified acquisition threshold that require delivery of an article containing specialty metals. It requires certain specialty metals incorporated in articles delivered under DoD contracts be melted in the US or a qualifying country, unless specific exceptions apply or a Secretarial exception of restrictions is granted.

Remember to include the DFARS clauses pertaining to the *Berry Amendment* in DoD solicitations (invitations for bids or requests for proposals) and DoD contracts. If the cited clause is included in a solicitation or contract, the *Berry Amendment* restrictions apply to that procurement. Table 4 shows the applicability of the subparts.

Other Unique Contracting Considerations

Synchronized Predeployment and Operational Tracker (SPOT). SPOT is the US government system of record for contractor and contractor personnel accountability and visibility. SPOT is mandated per FAR 52.225-19 (g) and DFARS 252.225-7040 (g) for all contractors authorized to accompany the forces (CAAF) serving in a declared contingency operation. *(http://www.bta.mil/products/spot.html)*

Theater Business Clearance (TBC). Theater business clearance (TBC)/ contract administration delegation (CAD) refers to Office of the Secretary of Defense policies that allows United States Central Command (USCENTCOM) to have both visibility and a level of control over all

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

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

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

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

contracts (external support, systems support, and theater support) executing or delivering contracted support to Iraq and Afghanistan. *(http://www2.centcom.mil/_layouts/accessagreement.aspx)*

Defense Base Act (DBA) Insurance. DBA insurance information is a prerequisite for employment when working outside the continental US. As such, before an employee can deploy, the DBA Insurance Information block must be filled in with a valid account. This DBA requirement is applicable to US, third country nationals, and local nationals who have

CAAF status. (http://www.dol.gov/compliance/guide/defense.htm and http://www.dol.gov/owcp/dlhwc/DBAFaqs.htm)

Payment Information

Wide Area Workflow (WAWF).

The WAWF (*https://wawf.eb.mil/*) system is a secure, Web-based system for government contractors and authorized DoD users to generate, capture, and process receipt and payment documents. It enables electronic submission of contractor invoices and of government inspection and acceptance documents. (DFARS 232.7002) Contractors shall submit payment requests and receiving reports in electronic form, except for: (1) Purchases paid for with a governmentwide commercial purchase card, (2) Awards made to foreign vendors for work performed outside the United States, (3) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security, (4) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 USC §101(a)(13) or humanitarian or peacekeeping operations as defined in 10 USC §2302(8), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies, (5) Purchases to support unusual or compelling needs of the type described in FAR 6.302-2, (6) Cases in which DoD is unable to receive payment requests or provide acceptance in electronic form, or (7) Cases in which the contracting officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the contractor.

Payment in Local Currency. (*FAR Subpart 25.1002*) The preferred payment method for contracts entered into and performed outside the US with local foreign firms is to pay in local currency, unless an international agreement provides for payment in dollars or the contracting officer determines the use of local currency to be inequitable or inappropriate (see *http://fxtop.com/*). It is a preferred practice to utilize EFT [electronic funds transfer] when making payments to vendors and contractors. See your local finance office for currency exchange rates or *http://www.fms.treas.gov/.*

CCO's Currency Declaration. (*FAR 25.1002*, *Use of Foreign Currency*; *DoD FMR 7000.14-R*, paragraph 120104.A) "… the contracting officer has the authority to make a determination as to whether the contract will be priced in US dollars or the local currency." It is important to remember, CCOs must include in the contract the exchange rate to be used for calculating the contract price from US dollar to local currency (*http://ww.xe.com*).

One of the functions we serve as contingency contracting officers is to help stabilize the local economy. An influx of US dollars often works against this goal by further devaluing the local currency. Prior to placing overseas contracts in US dollars, discuss the subject with the embassy, host nation liaison office, staff judge advocate, and accounting and finance office.

Choice of Law. Each contract awarded in a foreign country in support of a contingency operation should contain a contract clause stating that the laws of the US apply to the contract, that the contract will be interpreted in accordance with the laws of the US, and that all disputes under the contract will be handled in accordance with the disputes clause of the contract.

Pre-award Determinations and Memorandums

Negotiating Practices. Much of the business conducted by contractors overseas is by negotiation. When setting the price of an item, keep in mind the first price quoted is usually only a starting position for negotiations. Be advised most of the foreign contractors with whom you will be dealing can be shrewd negotiators. Negotiating for lower prices should be considered a normal business practice. Two or three rounds of exchange may be the most prudent and effective way to reduce prices proposed. For supplies, services, and construction, experience in the USCENTCOM theater has shown that the price drops dramatically whenever discussions are opened up with an offeror. The CCO's bargaining position is enhanced when the product or service is available elsewhere, or the requirement is not urgently needed. If these two factors are reversed and the contractor is aware of that, the CCO may be hard pressed to negotiate a better deal.

Price Negotiation Memorandum (PNM).

The business culture in most deployed locations is to negotiate pricing. CCOs should put more emphasis on price negotiations, even if you have competition, at sustained or established locations. In awarding negotiated contracts, contracting officers should always engage in aggressive negotiations based on prenegotiation objectives. (*FAR 15.405*) All negotiation results must be documented in a PNM. (*FAR 15.406-3*)

Fair and Reasonable Prices.

A CCO's memorandum, explaining how fair and reasonable prices were obtained by the government and the basis for the price reasonableness determination, should be included in the contract file (fair and reasonable price).

Certified Cost or Pricing Data.

The award of any negotiated contract or modification of any contract in excess of $650K will require the contractor to submit certified cost or pricing data, unless one of the exemptions to the requirement for certified cost or pricing data applies. (*FAR 15.403-4(a)(1))* A waiver can be sought by the CCO if there exists a reasonable basis for it. When the certificate of cost or pricing data is required, then offerors will complete the certificate form at *FAR 15.403-4(b)(2).*

Exemptions to Certified Cost or Pricing Data. (*FAR 15.403-1(b)*) Contracting officers are not required to obtain certified cost or pricing data from offerors when:

- Acquisition is at or below the simplified acquisition threshold
- Prices are based on adequate price competition (two or more responsible offerors)
- Commercial items are being acquired
- Modifying a contract or subcontract for commercial items
- Prices are set by law or regulation
- A waiver has been obtained (contracts in excess of $650K only)

Responsible Prospective Contractor. (*FAR 9.103(a)*) Contracts may be awarded only to responsible prospective contractors. A responsible contractor is an entity that meets the criteria in *FAR 9.104-1*. A CCO is responsible for researching and determining if a contractor is deemed responsible. To aid the CCO in contractor's responsibility research, a listing of already annotated responsible contractors in the AOR can be found at the following Web site: https://ishare.bta.mil/default.aspx (password required). The general standards include:

- Adequate financial resources, or the ability to obtain the resources, needed to perform. (*FAR 9.104-1(a)*)
- The ability to comply with the delivery schedule. (*FAR 9.104-1(b)*)
- A satisfactory performance record. (*FAR 9.104-1(c)*) In construction contracts, the agency is specifically required to review performance evaluation reports. (*DFARS 236.201*)
- A satisfactory record of integrity and business ethics. (*FAR 9.1041(d)*)
- The necessary organization, experience, accounting, operational controls, and technical skill required to perform. (*FAR 9.104-1(e)*)

- The necessary production, construction, and technical equipment or the ability to obtain them. (*FAR 9.104-1(f)*)
- Eligibility to receive the award. (*FAR 9.104-1(g)*)

Excluded/Debarred/Restricted Sources Check. CCOs shall check the Excluded Parties List System, and should check Embassy Business Restrictions List, Department of Treasury Web site (*https://www.epls.gov/epls/jsp/FAQ.jsp*). Checks should be made prior to opening proposals or bids and again prior to award.

As a CCO, you are responsible for safeguarding contractor information. In some cases the safety of the contractor's personnel depends upon you and your vigilance to keep their information safe. In certain deployed locations it is necessary to not advertise contractors that have won awards, which includes their e-mail address, physical address, name of employees, and so forth. You will be informed, upon AOR arrival, if this type of strict information safeguarding applies to your deployed location.

Iraqi First/Afghanistan First Programs. The Iraqi First and Afghanistan First programs seek to leverage contracting resources for the creation of economic expansion, employment and skills development for the people of Iraq. Contracting agencies are encouraged to partner with Iraqi vendors to help them develop effective production and distribution systems that will help obtain quality products and supplies. The *National Defense Authorization Act* [NDAA] Section 886 provides enhanced authority to acquire products and services produced in Iraq and Afghanistan (*DFARS 225.77*, *Acquisition Support of Operations in Iraq and Afghanistan).*

Contingency Approval Thresholds

See Table 5 for a summary of contingency approval thresholds

Subject	Dollar Level	Approval Level
Justification and approval (FAR 6.304) (Legal review over $100K)	< $1M No Justification and approval/just memo for record >$1M, to $11.5M >$11.5M to $78.5M >$78.5M	-Contracting Officer -Senior Contracting Official -Head of Contracting Activity -Senior Procurement Executive
Legal Review		Refer to local policy
Source Selection	<$30M >$30M to $100M (Services or Construction) >$100M	-Contracting Officer -Senior Contracting Official/Head of Contracting Activity -Senior Procurement Executive
Solicitation Reviews (Competitive)	<$1M >1M to $11.5M >$11.5M to $78.5M >$78.5M	-Contracting Official -Senior Contracting Official -Head of Contracting Activity -Senior Procurement Executive
Undefinitized Contractual Action	All dollar levels	-Head of Contracting Activity
Ratification	<$10K >$10K to $100K >$100K	-Regional Contracting Center or Chief of Contracting Office -Senior Contracting Official -Head of Contracting Activity
Clearance	<$500K <$1M <$5M	Refer to local policy
Termination	Termination for Default Termination for Convenience/Cause	Refer to local policy
Non-DoD Contractors and Delivery Orders	$1M to $100M >$100M to $500M	-Contracting Officer -Head of Contracting Activity

Table 5. Summary Contingency Approval Authority[2]

Contractual Forms

Contractual Instruments for Contingency. Most contingency requirements can be met by using SAP such as manual or electronic SF 44 (*Purchase Order-Invoice-Voucher*), DD Form 1155 (*Order for Supplies and Services*), SF 1449 (Soli*citation/Contract/Order for Commercial Items*), blanket purchase agreements (BPA), and GCPC (*DFARS 253.213*).

SF 44.

The SF 44 (*DFARS 253.213*) is a pocket-sized purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services. It can be used as a purchase order, receiving report, invoice, and public voucher. Since the SF 44 contains no written terms and conditions, its use is authorized only when no other simplified acquisition method is considered more economical or efficient and all of the conditions listed below are met:

- The supplies or services are immediately available.
- One delivery and one payment are to be made.
- The amount of the purchase is at or below the micro-purchase threshold.
- If an item is below the micro-purchase threshold for a contingency operation, it does not have to be competed.

Warranted CCOs may use the SF 44 for overseas transactions in support of declared contingencies and undeclared contingencies, such as humanitarian assistance or peacekeeping operations (*10 USC §2302(7)*) and purchase of aviation fuel and oil. When using an SF 44, a purchase cannot exceed the SAT.

The buyer is responsible for ensuring that funds are available, that the form is properly processed, and that only authorized items are purchased.

Care should be exercised to maintain physical control and accountability of the forms. In addition, there must be a separation of functions when using the SF 44. Four separate signatures should be resident on the SF 44: individual receiving supplies or nonpersonal services, CCO or field ordering officer (FOO), contractor or supplier receiving payment, and the paying agent.

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

- Clauses. Use of alternative I to subparagraph (l) of the disputes clause at *FAR 52.233-1* is recommended.
- Modification of Purchase Orders. The SF 30, *Amendment of Solicitation/Modification of Contract*, is used to modify *DD Form 1155* purchase orders. If the contract is bilateral, both parties must agree to the modification unless it falls within the changes clause. In addition, a unilateral contract may be changed to a bilateral contract by using the SF 30. See *DFARS Procedures, Guidance, and Information, PGI* 213.302-3, *Obtaining Contractor Acceptance and Modifying Purchase Orders* for additional guidance on the use of unilateral modifications.
- Unilateral Action. A unilateral agreement is defined as a promise in return for performance (service or supply), while a bilateral contract

is defined as a promise in return for a promise. Most DD Form 1155 actions are unilateral; that is, the government simply sends the contractor the form which authorizes it to perform immediately on a specific time and date. Once the contractor performs, the government is obligated to pay. However, the contractor is under no duty to perform, since the government's DD Form 1155 is merely an offer which the contractor may accept by performance or refuse to accept by failing to perform. If the contractor fails to perform by the specified time and date, no contract has been breached or defaulted since no contract existed.

- Bilateral Action. Once the contractor has signed the acceptance, a bilateral contract exists and the government has the right under the termination for default clause to terminate the contract if the contractor fails to perform according to its terms and to charge the defaulted contractor with the excess costs of reprocuring the requirement. The form is used as a bilateral contract when there is a relatively long lead time, when a more complex contract calls for a greater amount of contract administration or when previous experience with a supplier indicates that the government could obtain better contractor performance if it included the termination for default clause in its business arrangement with the contractor.
- Withdrawal of Purchase Order. Unilateral and bilateral purchase orders shall include provisions to allow termination for convenience or default. (*FAR 49.102*) The CCO shall terminate contracts for convenience or default only by a written notice to the contractor. (*FAR 49.601*) When the CCO arranges for hand delivery of the notice, a written acknowledgment shall be obtained from the contractor. The notice shall state:
- The contract is being terminated for the convenience of the government (or for default) under the contract clause authorizing the termination.

- The effective date of termination.
- The extent of termination.
- Any special instructions.
- The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force. (*FAR 49.601-2(g)*) If the termination notice is by telegram, include these steps in the confirming letter or modification.

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

SF 1449, *Solicitation/Contract/Order for Commercial Items*.

For commercial items and services up to $5.5M[3] purchased under simplified acquisition procedures or up to $11M if to be used in support of a contingency operation, include in solicitations appropriate instructions on what the offeror must submit with offers to be fairly evaluated for award. Acquisitions of commercial services, particularly those in excess of SAT but less than $5.5M or up to $11M if to be used in support of a contingency operation, should use simplified acquisition trade-off source selection techniques described in *FAR Part 15.000*.

To protect the government's interests, each purchase of commercial items and services should be assessed to determine whether it should be a unilateral or bilateral contractual instrument. Factors to consider are provided below.

- Business and Cultural Environment. Commercial practices vary among countries. Market research will determine the risk associated with local commercial practices and the level of protection required maintaining the government's interests. (*FAR 10.002(b)*)
- Nature of the Requirement and Impact on the Mission. A unilateral purchase order is an offer by the government to a contractor. The contractor is not obligated to perform. A binding agreement is created when the contractor begins performance. Obtaining a bilateral signature makes it binding on both parties. (*FAR 13.004(b)*)
- Amount of the order, contractor's financial capability, and potential impact on the mission if the order is not filled.

Purchase Orders. Standard Form 1449 is authorized for the purchase of commercial items exceeding the SAT, but not exceeding \$5.5M[4] or up to \$11M if to be used in support of a contingency operation. Only firm-fixed-price instruments may be used.

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

See Table 6 for basic contract forms.

Contract Instrument	Threshold/ Transaction Limit	Use	Limitations
Governmentwide commercial purchase card	\$3,000[6]/Up to simplified acquisition threshold in a contingency operation if conditions from Defense Federal Acquisition Regulation Supplement 213.301(3) are met.	–Up to simplified acquisition threshold as payment in conjunction with other purchase methods –No cash advance –No rental/lease or real estate	– No clauses – Up to simplified acquisition threshold for General Services Administration – No increment-tation – No telecom-munications
Convenience checks	\$2,500[6]	–(Federal Acquisition Regulation [FAR] 13.3) Commercial items without technical specifications –Simultaneous order placement and item delivery	–Check trans-actions –No clauses
Standard Form (SF) 44 **–White=Seller Invoice/ Accounting and Finance** **–Blue=Seller's copy** **–Pink=Receiv-ing copy** **–Green=Keep in book**	\$3,000[6] Contingency up to simplified acquisition threshold	–Purchase Order/receiving report/invoice/public voucher –Supplies immediately available and nonpersonal services –Purchases under \$3,000 do not require competition (except: first time buys, price exceeds government estimate, suspect price may not be reasonable) –Multipurpose form	–No clauses –Commercial items without technical specs –FAR Part 12 does not apply –One delivery, one payment –Can decentralize ordering officer
DD Form 1155	>\$100K[6]	– Order supplies or services – Purchase order/delivery order	–Commercial purchase only

Table 6. Basic Contract Forms, Part 1[6]

Contract Instrument	Threshold/ Transaction Limit	Use	Limitations
DD Form 250		–Material inspection and receiving reports	
SF Form 1449		–Solicitation/Contract/ Order of commercial items	
SF Form 1442		–Solicitation/Contract/ Order of construction	
SF Form 26		–Award contract	
SF Form 33		–Solicitation offer and award (3 in 1)	
SF Form 30		–Amend Solicitation/Modification of Contract	

Table 6. Basic Contract Forms, Part 2

Blanket Purchase Agreements

Blanket Purchase Agreements (BPA). (FAR 13.303) A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing *charge accounts* with qualified sources of supply. BPAs are designed to reduce administrative costs and time in accomplishing simplified acquisition purchases. Individual purchases using BPAs shall not exceed the SAT. However, the limitation for individual purchases for commercial item acquisitions conducted under *FAR Part 13.5* is $5.5M or up to $11M[5] if used in support of a contingency operation. BPAs shall contain all clauses required in accordance with *FAR 13.303-4* and *13.303-8*, statutes, and executive orders. Follow procedures for preparing BPAs IAW *FAR 13.303-3*. CCOs may establish BPAs when there is a wide variety of items in a broad class of goods or services (for example, hardware or consultant services) that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

- BPAs should be prepared without a purchase requisition.
- A BPA shall not cite accounting and appropriation data.
- BPAs should be made with firms from which numerous individual purchases will likely be made during a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous simplified acquisitions are usually made from such suppliers, it would be advantageous to establish BPAs with those firms.
- To the extent practicable, BPAs for items of the same type should be placed concurrently with more than one supplier. In that instance, all capable contractors within the portfolio of BPAs for that service or supply must be given a fair opportunity to respond to the government's requirement.
- If it is determined that BPAs would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, obtaining the best prices and delivery terms, obtaining advantageous business arrangements such as packaging ancillary services together for a cheaper price, documenting the individual purchase transactions, periodic billing, and other necessary details.
- A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.
- BPAs shall be prepared and issued on DD Form 1155s, *Order for Supplies and Services*, or SF 1449, *Solicitation/Contract/Order for Commercial Items*.
- BPAs are not contracts, per se. As the contingency operation moves toward sustainment operations, the CCO should consider if

transitioning long-standing BPAs to contracts is in the best interest of the government.

- The strategy of using a BPA, versus a contract, should be reviewed and documented by the CCO on an annual basis. Additionally the CCO should ensure all BPA vendors receive a fair share of award opportunities and verify that the prices are fair and reasonable.

See the field ordering officer and ordering officer sections in this chapter for procedures on placing orders against BPAs.

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

- Name of supplier.
- BPA number.
- Date of purchase.
- Purchase number.
- Itemized list of supplies or services furnished.
- Quantity, unit price, and extension of each item less applicable discounts.
- Date of delivery or shipment.
- Invoicing method options are as follows:
  - A summary invoice shall be submitted at least monthly or upon expiration of the BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. The summary invoice shall also identify the delivery tickets covered therein, stating their total dollar value and supported by receipted copies of the delivery tickets. The CCO in coordination with the COR will validate the invoice.
  - An itemized invoice shall be submitted at least monthly or upon expiration of the BPA, whichever occurs first, for all deliveries

made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets. The CCO in coordination with the COR will verify accuracy of the invoices.

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

BPA Authorized Caller.

Responsibility for placing calls under BPAs rests with the CCO who may authorize individuals assigned to the contracting office to place calls in any dollar amount within the limitation under established BPAs. CCOs who authorize callers to place calls under BPAs shall:

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

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

Source Selection Process

See Figure 8 for summary of the acquisition process.

Source Selection Processes and Techniques (Competitive). Per *FAR 15.302*, the objective of a source selection is to select the proposal that represents the best value to the government. For competitive contract actions not using SAP, source selection procedures per *FAR 15.3* must be followed. Likewise, applicable Service guidance and procedures on source selection also must be followed. For competitive contract actions using SAP, the procedures at *FAR 13.106* apply. *FAR 13.106* provides broad contracting officer discretion in fashioning evaluation procedures. It is important to know the various review thresholds at your deployed location (for example, acquisition plan, acquisition strategy, source selection plan, source selection authority, solicitation/contract review, other than full and open competition, ratification, undefinitized contract actions, and non-DoD contracts and delivery orders).

- **Source Selection Plan.** A source selection plan, written IAW the requirements of *DFARS 215.303* shall be prepared for each source selection and approved by the assigned source selection authority for all contract actions over $1M that utilize *FAR 15.3* source

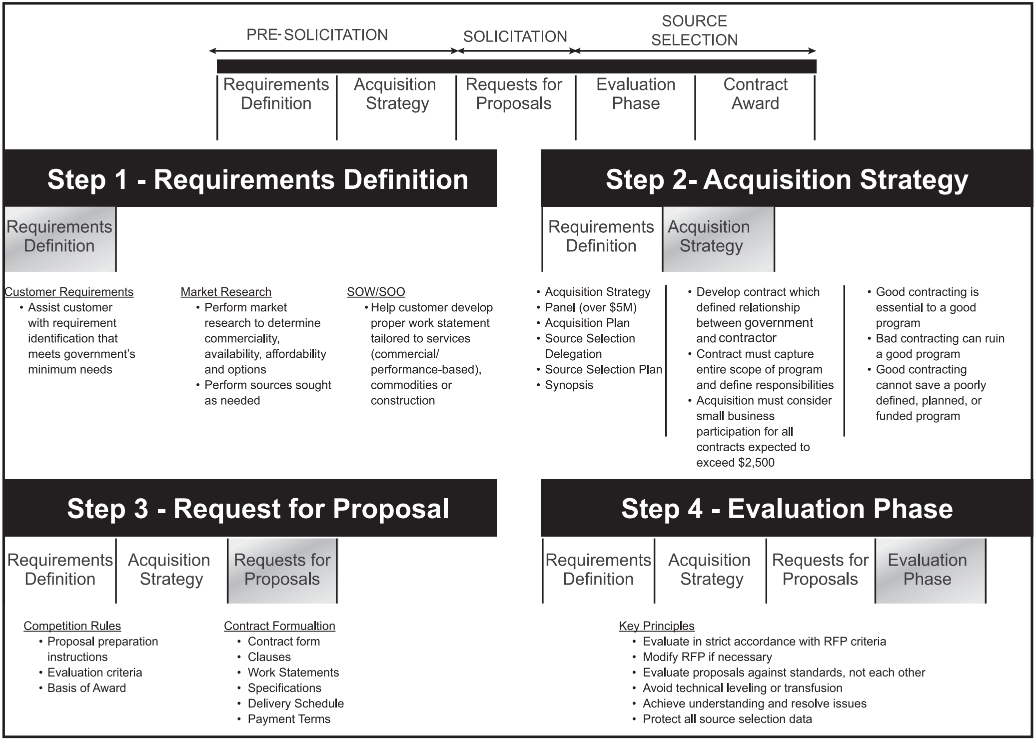

Figure 8. Acquisition Process, Part 1

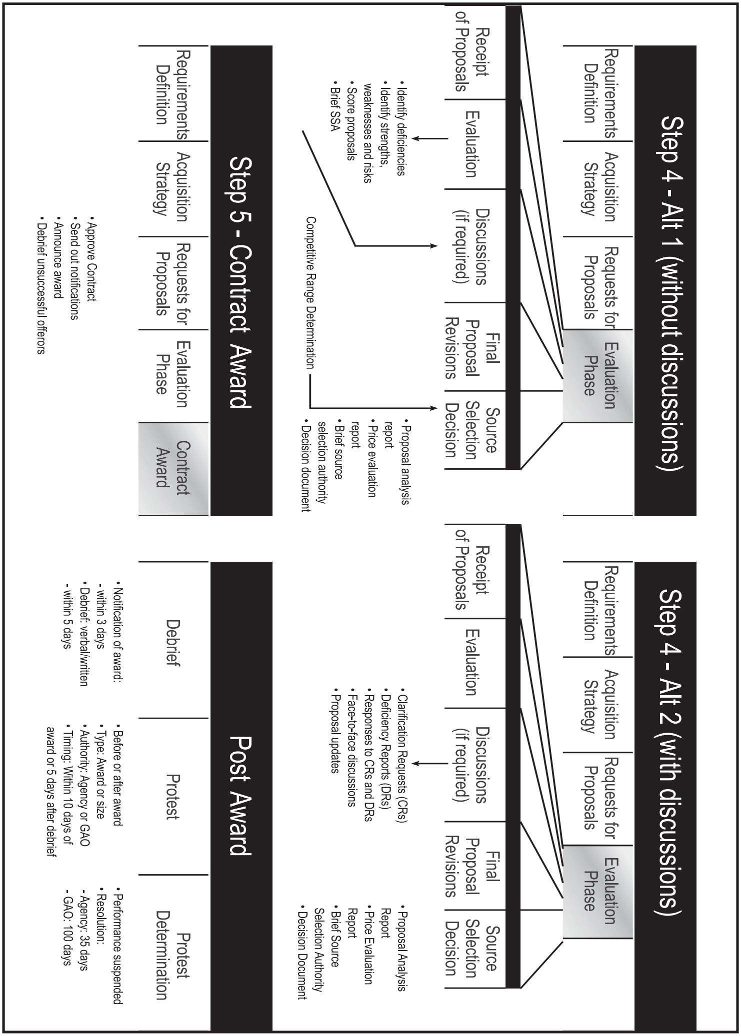

Figure 8. Acquisition Process, Part 2

selection procedures. Tailor the content and extent of the plan consistent with the dollar value and complexity of the proposed acquisition. A source selection plan is not required for commercial actions which are less than $11M using *FAR 13* simplified acquisitions.[7]

- **Best Value and Trade-Off**. Best value can be obtained by using any one or a combination of source selection approaches. The relative importance of price may vary depending on the acquisition. Therefore, the evaluation factors and their relative importance (when not using SAP) must be clearly stated in the solicitation and otherwise comply with the requirements of *FAR 15.101-1*. The perceived benefits of a higher priced proposal must be demonstrated to merit the additional cost.
  - The LPTA [lowest price technically acceptable] source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.
  - The PPT [performance price trade-off] source selection process allows for performance being the only trade-off for price.
- **Source Selection and Commercial Items**. (*FAR 12.203*) To the maximum extent practicable, contracting officers shall use the policies and procedures for solicitation, evaluation, and award described in *FAR Part 13*, *Simplified Acquisition Procedures*, for procurements under $11M.[8] Otherwise, contracting officers should use *FAR 15.3*.
- **Evaluation Factors for Award**. *FAR 15.304* enumerates the principles associated with crafting sound evaluation factors. While it permits latitude in methodology, it clearly states that evaluation factors be qualitative in nature (adjectival, colors, or other indicators, but not numbers) and represent the key areas of importance to be considered in the source selection process,

including past performance. Commercial requirements may derive evaluation criteria from the clause at FAR 52.212-2, *Evaluation—Commercial Items,* established by the contracting officer. Additionally, past performance price trade-off methodologies may be appropriate. When using SAP, the inclusion of these elements in the RFP is optional (*FAR 13.106-1(a)(2)*) but may be included based on the complexity of the requirement. The contracting officer shall always include a statement regarding the relative importance of cost or price and non-cost or price factors. (*FAR 15.304(e)*) Conversely, when not using SAP contracting, authorities may require the use of these elements.

- **Proposal Evaluation and Discussions**. Pursuant to *FAR 15.305*, proposals shall be evaluated solely on the evaluation factors specified in the solicitation. All solicitations shall state that the government intends to make award without discussions, unless the contracting officer determines that discussions are necessary. If the contracting officer determines discussions are necessary, the contracting officer shall document the file and conduct discussions in accordance with *FAR 15.306* and all applicable Service guidance and procedures. This language is included in the instructions provisions of *FAR 52.215-1*.
- **Source Selection Decision and Documentation**. A source selection decision (SSD) which adheres to *FAR 15.3* must be prepared for all source selections when not using SAP. It will be comprised of the background of the acquisition, the evaluation criteria, a summary of the technical and past performance evaluations, and a summary of the proposed prices. The source selection authority (SSA) will document his or her independent, integrated assessment and make the source selection decision. The SSA shall not receive a recommendation from any individual or body as to who shall receive the award, nor shall the SSA receive a rank order or order of

merit list of the offerors. The completed SSD shall be submitted to the SSA for the required approval.

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

- Establish or appoint a source selection evaluation board (SSEB). Appoint source selection advisory council, as necessary. (*FAR 15.303(b)(1)*)
- Approve strategy and acquisition plan before solicitation release. (*FAR 15.303(b)(2)*)
- Approve source selection plan. (*DFARS 215.303(b)(2)*)
- Approve RFP prior to release. The SSA will ensure consistency between solicitation requirements, notices to offerors (amendments), proposal preparation instructions (Section L), evaluation factors and subfactors (Section M), solicitation provisions and clauses, and data requirements. (*FAR 15.303(b)(3)*)
- Ensure that conflicts of interest, or the appearance thereof, are avoided.
- Ensure that premature or unauthorized disclosure of source selection information is avoided.
- Ensure evaluation of proposals is based solely on factors and subfactors in the RFP. (*FAR 15.303b)(4)*)
- Review SSEB evaluation results. (*FAR 15.303(b)(5)*)
- Approve competitive range determination. (Army Federal Acquisition Regulation Supplement *5115.306(c)*)
- Perform an integrated assessment of the evaluation results and select the source whose proposal represents the best value to the government. (*FAR 15.303(b)(6)*)

Source Selection Procedure—Sealed Bidding. (*FAR 14.101*) Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. The following steps are involved:

- Preparation of Invitations for Bids. Invitations must describe the requirements of the government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.
- Publicizing the Invitation for Bids. Invitations must be publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing must be given sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.
- Submission of Bids. Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.
- Evaluation of Bids. Bids shall be evaluated without discussions.
- Awarding the Contract. After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the government, considering only price and the price-related factors included in the invitation.

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

- Experimental and research and development with nonprofit institutions
- Operation of government-owned plants
- Acquisition at cost of facilities for government ownership
- Classified items and national security
- A financially weak contractor
- A vendor when a private loan is not practicable
- Other exceptional circumstances

Paying Agent Duties

See *DoD FMR,* Volume 5, paragraph 020604.

Paying agents are appointed in writing by the commander to make payments for purchases using cash or other negotiable instruments. Ideally, a CCO should not be designated as a paying agent, as this violates the concept of checks and balances. However, in extreme circumstances a CCO can find himself or herself dual-hatted, as the CCO and the paying agent. CCOs cannot make cash payments unless they are designated as paying agents. If appointed as a paying agent, the individual should be thoroughly briefed on his or her duties and responsibilities by the financial services officer or local deputy disbursing officer. Paying agent appointment will include a description of the type of payments to be made, amount of funds to be advanced, the period of time the appointment covers, and an acknowledgment of acceptance of said appointment to include a statement that the member has been counseled as to the pecuniary liability of the duty.

Cash Advances. The amount of cash given to the paying agent by the disbursing office is governed by:

- Facilities available for replenishment of funds
- Anticipated mission requirements
- The capability to safeguard funds

The maximum amount to be advanced to the paying agent will be specified in the appointing order. It may be necessary for the CCO to advance cash to others for payment of orders. When advancing cash, the CCO should obtain a receipt on the SF 1165, *Receipt for Cash Subvoucher*. The name of the person paying for goods and services will be used in the place of imprest fund cashier and the person receiving the cash will sign, date, and annotate the time on the form. The rest of the SF 1165 will not be used. The paying agent must account for all cash; therefore, interim payments to others must be made carefully. The disbursing officer should be told of any losses or shortages as soon as possible.

Noncommercial Advance and Partial Payments. (*FAR Subpart 32.4*) These payments can be used when:

- The contractor gives adequate security
- The payment does not exceed the unpaid contract price
- The Agency head or designee determines in the public interest or facilitates national defense
- The payment does not exceed interim cash needs
- The CCO submits request to higher headquarters

Ensure findings, determinations, and authorizations are provided.

Commercial Advance and Interim Payments. (*FAR Subpart 32.2*) These payments can be used when:

- The head of contracting activity determines whether terms and conditions are appropriate.
- The commercial practice in the local market is buyer's financing.
- The purchase is for commercial supply or service.
- The price exceeds SAT.
- The CCO determines advance payments are appropriate for the market.
- Advance payments are determined to be in the best interest of government.
- Adequate security is obtained.
- Advance payment does not exceed 15 percent of price, prior to performance.
- Competitive or normal financing is not available.
- The CCO obtains a concurrence from finance.

Ensure determination and findings is completed for advanced payments.

Options Instead of Advance Payments.

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

Considerations.

- Advance payments are used as a last resort and are the least preferred contracting payment arrangement.
- Use SF 44 or DD 1155 and explain to the vendor how to get prompt payment using these forms.
- Try to convince the vendor to accept SF 44, SF 1449 and explain how prompt cash payment works.

- Explain to the customer that the CCO may decide not to do business with the vendor because the vendor will only accept advance payments, and the CCO will look for other sources.

Advance payments are acceptable for subscriptions. (*FAR Subpart 32.404(a)*, use clause 52.213-2)

Partial Payment. The CCO will place a statement on the invoice so finance knows the invoice is a partial, not a final payment.

- Finance guidance for partial payment (*DFAS DR 102-1711*)
- Exceptional circumstances only (*FAR 32.403(h)*)

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

Field Ordering Officers and Ordering Officers

Field Ordering Officers (FOO). The SF 44 may be used by persons other than the CCO (such as the FOO) provided the individual:

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

Designation. The CCO may designate individuals as FOOs, either from within or outside the contracting organization, with the authority to execute micro-purchases by using the SF 44. Strict operational control and oversight of FOOs by the CCO is necessary to prevent violations of laws and regulations. The CCO is responsible for helping the commander determine the adequate number of FOOs required to ensure mission accomplishment.

Nomination, Appointment, and Termination. Commanders, on a nondelegable basis, must formally nominate FOO candidates, by name, to the CCO for appointment. The FOO candidate must be a DoD employee. Contractor employees cannot be FOOs. The CCO must determine the validity of the requirement and formally appoint individuals as FOOs via an official appointment letter. The appointment letter must specify the extent and limitations of the FOO's authority to act on behalf of the CCO. The appointment is effective until the FOO is reassigned to another unit or the individual's duties are terminated by the CCO. The CCO, or higher authority, reserves the right to revoke a FOO's appointment at any time. Revocation must be made in writing.

Qualification and Training. As a minimum, the FOO candidate must review the standards of conduct as prescribed in *Department of Defense Directive [DoDD] 5500.7-R*, *Joint Ethics Regulation* at least annually. The CCO will develop an effective FOO training program. The FOO candidate must complete training prior to being officially appointed a FOO. Refresher training will be conducted whenever the CCO deems necessary.

Authority and Responsibilities. The scope of the delegated authority limits all FOOs as to the dollar limitation a FOO may obligate. The FOO must review his or her written appointment and ensure he or she has a complete understanding of the scope and limitations of his or her authority. The FOO, before making any purchases, must receive written appointment orders from the CCO and must receive a funded document from the comptroller, showing a fund cite with a specific dollar amount. The FOO cannot exceed the amount specified on the document. If additional funds are required by the FOO, he or she must request and receive more funds from the comptroller before proceeding with any purchases. After a valid purchase request (PR) is received by the FOO, he or she must consider the following:

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

After consideration of the items listed above, the FOO must record all requests for purchase in a logbook, as approved by the CCO. The FOO must maintain the original PR document, a copy of the SF 44 used for the purchase, logbook, original receipt of the purchase, and the receipt for property received (RPR).

If the vendor cannot provide an automated receipt, a hand receipt may be substituted. It is the FOO's responsibility to provide all RPRs to the appropriate office to ensure the accountability of acquired items.

- Limitations. FOOs may not redelegate their authority. The CCO may set additional limitations to maintain an effective and efficient FOO program.
- Separation of Functions. The FOO should avoid, if possible, being a paying agent or the individual receiving the products or nonpersonal services. There should be a separation of functions between the FOO, paying agent, and the individual receiving the

products or nonpersonal services in order to ensure the integrity of the procurement process.

- Evaluation, Documentation, and Reconciliation. The FOO shall be under the supervision of the CCO. At least monthly, or as otherwise determined by the CCO, the FOO's purchase documents shall be reviewed and reconciled by the CCO. This review will be documented on the FOO clearance letter. Upon receipt of this letter, the FOO will reconcile his or her account with the paying agent. Any potential case of waste, fraud, or abuse will be immediately forwarded by the CCO to the appropriate legal office for review.
- Revocation of Authority. When a FOO's appointment is terminated for any reason, the FOO will bring the CCO the following:
  - Copy of the appointment letter.
  - Copies of all reports previously filed.
  - A complete report for any period between the last audit and termination date.
  - Receipts, PRs, and RPRs.
  - Any unused SF 44s.

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

FOO Violations. The CCO may revoke the FOO appointment for any violations of regulations, orders, or statutory authority. These violations include, but are not limited to, unauthorized commitments, split purchases, purchases not authorized by the CCO, purchases made over the FOO's dollar limitation, delinquent reconciliation with the CCO, or training delinquencies. Violations may result in the revocation of the appointment of the FOO and of any additional FOOs within the unit, section, or battalion. In the case of an unauthorized commitment, the revocation will remain effective until the unauthorized commitment is ratified by the appropriate authority and reviewed by legal to determine if disciplinary action is recommended. For other violations, the CCO may reinstate the FOO appointment upon correcting the deficiency.

Contract Tracking and Reporting

Procurement Instrument Identification Numbers (PIIN). *DFARS 204.70* prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments. The purpose of this number is to aid in tracking all actions. (See Table 7 for an example of a PIIN from *DFARS 204.7003*.)

PIIN Logs. Establishing and maintaining accurate PIIN logs in accordance with *DFARS 204.70* is essential in the contingency environment. Generally, terminations, claims, and contract closeouts have been a recurring problem in all recent contingency operations. A contributing factor in many cases has been the lack of accurate records, duplicative contract and purchase order numbers, and so forth. In fixed installation and systems contracting offices, standard contracting automated systems are generally used to perform the PIIN log function. In the contingency environment, this capability is usually unavailable.

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

Table 7. Sample PIIN N00062-10-D-0001-0005

Therefore, CCOs must ensure they have appropriate blocks of PIINs assigned for their use and must also design and implement a log system for local use. Commercial off-the-shelf software such as Microsoft Excel and Lotus 1-2-3 can be used to automate the PIIN generation system in contingency environments. A well thought out PIIN log can also be used to capture and track other key data such as PR number, dollar value of request and award, delivery data, payments data, and more.

Contract Action Reporting (CAR). A CAR is required for all contract actions that obligate or deobligate funds above $3K within 3 business days of executing an action. In addition, all modifications, regardless of price, must be reported. However, in a contingency, OCONUS [outside continental United States] reporting may not be possible due to the lack of Internet connectivity. Therefore, actions that require reporting shall be accomplished upon arrival to an area where Internet connectivity is available; this may be upon redeployment to CONUS [continental United States] bases or stations. The CAR can be created on the Federal Procurement Data System-Next Generation (FPDS-NG) Web site. The CAR replaces the *DD Form 350*, *Individual Contracting Action Report,* and *DD 1057*, *Monthly Summary of Contracting Actions*, reports.

The process is as follows:

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

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

- Indefinite delivery/Indefinite quantity vehicles, requirements contracts, BPAs, and basic ordering agreements
- Contracts from foreign vendors not registered in the Central Contractor Registration

The CAR is created prior to the release of the contract action. In FPDS-NG, much of the data in the CAR is prefilled from data in the contract (*North American Industry Classification System, Service Contract Act*, and so forth). The creation of the CAR prior to the release of the contract enables correction of the contract in order for the CAR to pass the validation process in FPDS-NG. Training for FPDS-NG can be found at *https://www.fpds.gov*.

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

Unauthorized Commitments and Ratifications

An *unauthorized commitment* is an agreement that is nonbinding solely because the government representative who made it lacked the authority to enter into that agreement (*FAR 1.602-3*). An unauthorized commitment typically occurs in a contingency environment by a well-meaning individual who believes that immediate action was necessary to support the mission. Ratification is the act of approving an unauthorized commitment by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the government as a result of an unauthorized commitment (*FAR 1.602-3(a)*). It can be avoided if the CCO gets to the operation early and becomes highly visible.

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

IAW *FAR 1.602-3(c),* unauthorized commitments may be ratified provided that:

- Supplies or services have been provided to and accepted by the government, or the government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment.
- The ratifying official has the authority to enter into a contractual commitment.
- The resulting contract would otherwise have been proper if made by an appropriate contracting officer.
- The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable.
- The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence.
- Funds are available and were available at the time the unauthorized commitment was made.
- The ratification is in accordance with any other limitations prescribed under agency procedures. (*FAR 1.602-3(c).*

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

Processing a ratification involves determining if the action should be ratified into a contract and then creating the contract document. Actions that do not meet the criteria are deemed non-ratifiable and are subject to resolution by the Government Accountability Office under its claim procedures.

Notes

1. It is anticipated that the simplified acquisition threshold for commercial items will increase. Please check FAR 13.003 for changes in the SAT.
2. *Ibid*.
3. *Ibid*.
4. *Ibid*.
5. *Ibid*.
6. *Ibid*.
7. *Ibid*.
8. *Ibid*.

Chapter Acronyms

AOR – Area of Responsibility
BPA – Blanket Purchase Agreement
CAAF – Contractors Authorized to Accompany the Forces
CAP – Civil Augmentation Program
CAR – Contract Action Reporting
CCO – Contingency Contracting Officer
CONUS – Continental United States
COR – Contracting Officer's Representative
D&F – Determination and Findings
DBA – Defense Base Act
DD – Department of Defense (Form)
DFARS – Defense Federal Acquisition Regulation Supplement
DoD – Department of Defense
DoDD – Department of Defense Directive
EFT – Electronic Funds Transfer
FAR – Federal Acquisition Regulation
FFP – Firm-Fixed-Price
FMR – Financial Management Regulation
FOO – Field Ordering Officer
FPDS-NG – Federal Procurement Data System—Next Generation
GCPC – Governmentwide Commercial Purchase Card
HCA – Head of Contracting Activity
HQDA – Headquarters Department of the Army
IACR – International Agreement Competitive Restrictions
IAW – In Accordance With
J&A – Justification and Approval
LPTA – Lowest Price Technically Acceptable
MILCON – Military Construction
NAFTA – North American Free Trade Agreement
NDAA – National Defense Authorization Act

NTE – Not to Exceed
NTV – Nontactical Vehicle
OCONUS – Outside Continental United States
PIIN – Procurement Instrument Identification Number
PNM – Price Negotiation Memorandum
PPT – Performance Price Trade-Off
PR – Purchase Request
RCC – Regional Contracting Center
RFP – Request for Proposal
RPR – Receipt for Property Received
SAP – Simplified Acquisition Procedures
SAT - Simplified Acquisition Threshold
SCO – Senior Contracting Official
SF – Standard Form
SPOT – Synchronized Predeployment & Operational Tracker
SSA – Source Selection Authority
SSD – Source Selection Decision
SSEB – Source Selection Evaluation Board
UCA – Undefinitized Contract Action
US – United States
USCENTCOM – United States Central Command
USC – United States Code
WAWF – Wide Area Workflow