

Ch 2 - Maximize Price Competition

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2.0 - Chapter Introduction

Acquisition strategy. In this chapter, we will examine the effect of numerous acquisition decisions on competition and contract pricing. The sections of this chapter, provide answers to the following three questions:

- How can solicitation Schedules (e.g., Part I of the UCF) be improved to yield more effective price competition?
- How can business terms and conditions (e.g., Parts II - IV of the UCF) be improved to yield more effective price competition?
- How can the methods of publicizing the buy be tailored to yield more effective price competition?

Why promote competition? The Government policy regarding competition is stated in [FAR 6.101\(b\)](#):

Contracting officers shall provide for full and open competition through the use of competitive procedure(s) . . . that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's needs efficiently.

Competition is important to contract pricing in three ways:

- Competition is widely acknowledged as the best way to encourage firms to offer a quality product at a reasonable price.
- Competitive prices are one of the best bases to use in evaluating the reasonableness of an offered price.
- Adequate price competition is the most common basis for excepting offerors from the requirement to submit cost or pricing data.

What does "Maximizing Price Competition" mean? To maximize price competition, you must:

- Attract competitive offers from the best vendors (in terms of their track records for pricing, quality, timeliness, and integrity), and
- Obtain reasonably-priced offers, in part because the solicitation:
 - Reflects the Government's **actual minimum need** and
 - Prospective contract provisions **balance the cost risk** associated with satisfying that need.

Key acquisition team members. Efforts to maximize competition require a detailed analysis of Government requirements. To be effective this analysis must involve affected members of the Acquisition Team. Member participation will vary from acquisition to acquisition, but most often contracting personnel and one or more of the following team members will be involved:

- Users-key source of information on the real needs of the Government;
- Requirement Managers-key decision makers;
- Suppliers-information source in market research and analysis; and

- Contracting Personnel-responsible for the effectiveness of the acquisition decision.

Potential impediments to competition. In various acquisition situations, you may use many different formats to organize a solicitation or contract. Regardless of the format, there are potential impediments to competition.

Potential Impediments to Price Competition

Solicitation Element	Potential Impediments
Supplies or Services and Prices Requirements Documents	<ul style="list-style-type: none"> • Failure to consolidate requirements • Use of vague or ambiguous terms • Excessive (i.e., gold plated) or impractical requirements • Use of design specifications when performance specifications are feasible • Brand-name specifications • Brand-name-or-equal specifications that admit few, if any, equals • Use of Government-unique specifications for commercial or commercial-type deliverables • Biased specifications (i.e., specifications geared to the unique features of a single product or of premium priced products)
Packaging and Marking	<ul style="list-style-type: none"> • Noncommercial requirements • Excessive requirements • Biased requirements
Inspection and Acceptance	<ul style="list-style-type: none"> • Noncommercial requirements • Excessive requirements • Biased requirements
Deliveries or Performance	<ul style="list-style-type: none"> • Noncommercial terms • Delivery requirements not in tune with market cycles (e.g., requirements for "out-of-season" deliveries.) • Excessively tight deadlines
Contract Administration	<ul style="list-style-type: none"> • Noncommercial requirements

- Data
 - Excessive requirements
- Special Contract Requirements
 - Noncommercial requirements
 - Excessive requirements
- Contract Clauses
 - Noncommercial terms and conditions
 - Excessive requirements (e.g., an excessively long warranty period, relative to commercial warranties)
 - Use of the wrong type of contract, given risks inherent in the work
 - Failure to use terms and conditions that could encourage competition
- Instructions, Conditions, and Notices to Offerors
 - Noncommercial requirements
 - Excessive requirements
- Evaluation for Award
 - Price given too little weight relative to technical factors
 - Biased evaluation factors (e.g., geared to unique features of a single product or of premium priced products)

2.1 - Improving The Schedule

Section Introduction. Solicitations and contracts must include the product or service requirements that the contractor is expected to meet. These requirements should be specified in a manner designed to promote full and open competition and should only include restrictive provisions or conditions that are necessary to satisfy the minimum needs of the Government (see [FAR 11.002\(a\)\(1\)](#)).

This section covers the following strategies for improving purchase descriptions and related terms (i.e., Part I of the UCF-Schedule) to obtain more effective price competition:

- 2.1.1 - [Consolidate Requirements](#)
- 2.1.2 - [Describe Government Needs To Promote Competition](#)
- 2.1.3 - [Review Requirements Documents](#)
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2.1.1 - Consolidate Requirements

Introduction. Federal agencies are required to procure supplies in quantities that will:

- Result in the total cost and unit cost most advantageous to the Government, where practicable ([FAR 7.202](#)).
 - Total cost is the sum of allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable facilities capital cost of money ([FAR 31.201-1](#)).
 - Unit cost is the cost to complete any unit identified in the contract.
- Not exceed the reasonable quantity expected to be required by the agency.

In contracting, the general assumption is that larger quantities will attract greater competition and result in lower prices. However, most inventory management systems do not consider the effect of larger quantities on price. Price is considered to be fixed regardless of the quantity purchased. Because inventory management systems typically do not consider the benefits of requirement consolidation, contracting personnel must often take primary responsibility for coordinating consolidation efforts.

Consolidation decision. As you review the Government requirements and prepare the schedules of supplies or services, consider the following:

Consolidation Decision

If you can answer "YES" to the following questions...	AND...	Then...
Is the contracting office likely to receive more purchase requests for this item or service during the	Quantity and delivery requirements are firm and full	Consolidate purchase requests into a single definite

coming year?	funding is currently available.	delivery contract.
Can we reasonably estimate total organization requirements for the coming year?	Quantity or timing of requirements is not firm or full funding is not currently available.	Consolidate purchase requests into a single indefinite delivery contract.
Can this requirement be combined with other known requirements to reduce the total cost to the Government?		

Consolidate purchase requests. If you expect to receive purchase requests from a number of different activities for the same end item, encourage those activities to submit their purchase requests at roughly the same time. Then award a single contract for the aggregate quantity in the purchase requests.

Consider polling the requiring activities by phone if you suspect that a number of requiring activities will need the same end item. You might also consider "riding" the contract of another agency that needs the same end items (see [FAR 17.502](#)).

Place economic order quantities. The major drawback to consolidating requirements is that you may acquire a warehouse full of supplies that are not immediately needed. The Government incurs a daily cost for storing unused supplies—a cost that may over time outweigh any price breaks from having purchased in bulk. Therefore, when deciding the quantity to acquire at any one time, you should minimize the **total** cost of both:

- Buying the supplies; **and**
- Storing the supplies.

This means balancing per unit prices against per unit storage costs, taking into account how many units are likely to be drawn from inventory each month. The "Economic Order Quantity" is the quantity that represents the best balance of acquisition and storage costs—this is the quantity that ideally you should award at any one time.

If inventory managers are available, work with them to determine the economic order quantity. You can also solicit

information from offerors relevant to determining the economic order quantity.

Use indefinite delivery contracts. **Indefinite-delivery contracts** give the Government greater flexibility and buying power by combining requirements over an extended period of time with limited obligation regarding the exact time of delivery. They establish limits on the Government's obligation under the contract and provide flexibility in scheduling deliveries to minimize the costs to the Government for holding and managing inventory.

Types of indefinite-delivery contracts ([FAR 16.501](#)). There are three principal types of indefinite-delivery contracts:

- Definite Quantity
- Indefinite Quantity
- Requirements

Indefinite quantity and requirements contracts are further divided into delivery order and task order contracts.

- A **delivery order contract** is an indefinite quantity or requirements contract for supplies.
- A **task order contract** is an indefinite quantity or requirements contract for services.

Indefinite-quantity contract (See [FAR 16.504](#)). An indefinite-quantity contract (either delivery order or task order) provides for an indefinite quantity of purchases within limits established in the contract. At the time that the contract is awarded, the Government is only obligated to acquire a stated minimum quantity (or dollar value) during the term of the contract. Delivery orders or task orders may be placed as needed until the maximum quantity (or dollar value) stated in the contract is reached.

If the indefinite quantity contract is not for advisory and assistance services, give the maximum practicable preference to making multiple awards under a single solicitation. For advisory and assistance contracts that will not exceed three years and \$10,000,000 (including all options) you may (but you are not required to) give preference to making multiple awards. If the indefinite-quantity contract for advisory and assistance services exceeds three years and \$10,000,000 (including all options), you must make multiple awards unless only one

offer is received or a written determination to make a single award is made in accordance with FAR 16.504(c).

Example of situation for use: Suppose an organization needs specialized engineering support. The exact amount of support is not known at the beginning of the year, but the requiring activity can estimate minimum and maximum requirement limits. Here, an indefinite-quantity contract provides a useful contracting and pricing tool.

Requirements contract (See [FAR 16.503](#)). A **requirements contract** (either delivery order or task order) requires the contractor to fill all actual purchase needs for specific requirements at an agreed-to price. The contract must include a realistic estimate of the Government's requirements during the contract period. However, the Government is obligated to order only its actual requirements.

Example of situation for use: Suppose the organization requires a standard commercial item. The exact quantity is not known at the beginning of the year and it is not possible to clearly estimate a minimum and a maximum quantity for the year. However, it is possible to develop an estimate of quantity needs. A requirements contract will permit the organization to contract for needs that may develop based on the estimated quantity.

Comparison of contract types. The following table compares the Government pricing leverage for the three indefinite-delivery contract types and a definite-quantity definite-delivery contract:

Contract Type and Pricing Leverage	
Contract Type	Pricing Leverage Ranking
Definite-Quantity- Definite-Delivery	First, if the entire quantity is known and contracted for at one time.
	Last, if individual small orders are required.
Definite-Quantity- Indefinite-Delivery	Second

Indefinite-Quantity- Third
Indefinite-Delivery or
Requirements

2.1.2 Describe Government Needs To Promote Competition

Need description objectives. [FAR 11.002\(a\)](#) requires that agencies describe Government needs in a manner designed to:

- Promote full and open competition, with due regard to the nature of the supplies or services to be acquired; and
- Only include restrictive provisions or conditions to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

Contracting officer responsibility. Normally, you will not be ultimately responsible for describing Government needs. That will normally be the responsibility of technical experts and the requiring activity. However, as a member of the Acquisition Team, you are responsible for sharing your acquisition knowledge in an attempt to meet the needs of the Government.

Points to consider in describing requirements (See [FAR 11.002\(a\)\(2\)](#)). To promote full and open competition to the maximum extent possible, the Acquisition Team must:

- State supply or service requirements in terms of:
 - Functions to be performed;
 - Performance required; or
 - Essential physical characteristics;
- Define requirements in terms that enable and encourage offerors to supply commercial items, or modified commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items;
- Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;
- Require prime contractors and subcontractors at all tiers to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and
- Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items

or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items.

Comparing functional, performance, and design requirements. As indicated above, there are three basic ways to define a requirement: function, performance, and design requirements. A specific Government need could be described using just one of the three ways, but most needs are described using some combination of the three. Still, a particular requirement is normally classified as the type of requirement it most resembles, even though it also contains the elements of other types of requirements.

Comparing Requirements

Requirement Type	States requirement in terms of...	Considerations for use...
Functional	Functions to be performed. For example, a container for serving water to individuals.	<ul style="list-style-type: none"> • When needs are complex and innovation is desirable, they permit the greatest competition. • HOWEVER, requirements that permit a wide variety of approaches can also increase the difficulty of determining price reasonableness, because competitive prices may no longer be useful bases for price analysis (e.g., a 10-ounce pewter cup vs. a 4-ounce paper cup).
Performance	Performance required. For example, a serving container capable of holding eight ounces of water for a period of two hours.	<ul style="list-style-type: none"> • May make it possible for you to obtain competition and innovation on specialized requirements. • HOWEVER, as with functional requirements, performance requirements that permit a wide variety of approaches can also limit the usefulness of competitive prices as a base for price analysis (e.g., an 8-ounce pewter

cup vs. an 8-ounce paper cup).

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|--------|---|---|
| Design | Essential physical characteristics. For example, a 303 stainless cup, with specified diameter and height. | <ul style="list-style-type: none">• Requirements consistent with the designs and production methods common in the appropriate industry can be effective in obtaining price competition and uniform products.• Unique or out of date requirements can restrict competition and increase prices.• Competitive prices typically provide a good base for price analysis.• HOWEVER, if the design requirement is unique or out of date, all the prices offered may be unreasonable. |
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2.1.3 Review Requirements Documents

General Order of Precedence. The Acquisition Team may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, as long as the Team's selection is consistent with the following order of precedence (see [FAR 11.101\(a\)](#)):

- Documents mandated for use by law.
- Performance-oriented documents.
- Detailed design-oriented documents.
- Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

Environmentally Preferable Material. The Acquisition Team should prepare product descriptions to make maximum practical use of recovered material and other materials that are environmentally preferable (see [FAR 11.101\(b\)](#)).

Recovered materials ([FAR 23.402](#)) are waste materials and by-products which have been recovered or diverted from solid waste including post-consumer material. However, recovered materials do not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. The Environmental Protection Agency has developed a list of designated items that are or can be made with recovered materials in [40 CFR Chapter 1, Subchapter I](#). For example, paper and paper products have been designated as items that can be produced with recovered materials.

An **environmentally preferable** ([FAR 23.703](#)) material is an item that has a lesser negative effect on human health or the environment when compared with competing products that serve the same purpose. This comparison should be made using principles recommended in guidance issued by the EPA and may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

Standardization Programs. The Acquisition Team must select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with applicable standardization programs (see [FAR 11.102](#)).

Product Market Acceptance ([FAR11.103](#)). There may be situations where the agency needs to assure that existing commercial or nondevelopmental products will meet the needs of the Government. For example, the agency may require an item that has a demonstrated reliability, performance, or product support record in a specified environment. In such situations, the agency head may require offerors to demonstrate that the items offered:

- Either:
 - Have achieved commercial market acceptance; **OR**
 - Have been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; **AND**
- Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

If the agency head determines that offerors must demonstrate market acceptance, develop solicitation

criteria that the Acquisition Team can use to evaluate product market acceptance. Ensure that the criteria:

- Reflect the minimum need of the Government;
- Relate to an item's performance and intended use, not an offeror's capability;
- Are supported by market research;
- Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and
- Consider the entire relevant commercial market, including small business concerns.

Do not make market acceptance the sole criterion that you use to determine whether an item meets Government requirements. You should also conduct related market research to evaluate the item's acceptability. Whenever you have questions concerning an item's acceptability, you should involve other appropriate members of the Acquisition Team in the evaluation process.

Whenever you use commercial market acceptance as an evaluation criterion, document your rationale in the contract file. In your documentation, describe the circumstances that justify the use of commercial market acceptance criteria, and support the specific criteria being used.

Items Peculiar to One Manufacturer ([FAR 6.302-1\(c\)](#) and [11.104](#)). An acquisition that uses a brand-name description or other purchase description to specify a particular brand-name product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number sources solicited. For that reason, you must not use such descriptions unless:

- The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's minimum needs; and
- The authority to contract without providing for full and open competition is supported by the justifications and approvals required under [FAR 6.302-1](#).

Content of Brand-Name-Or-Equal Purchase Descriptions. [FAR 11.104\(b\)](#) requires that each brand-name-or-equal purchase description include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an "equal" item must meet to be acceptable for award.

Example of Problems That Can Develop: In 1991, the General Accounting Office (GAO) reported (GAO/NSIAD 91-53) that solicitations giving only part numbers as item descriptions may be unnecessarily restricting competition. All solicitations questioned by the report required offerors to submit technical data, on both the brand-name item identified in the solicitation and any alternative product offered, so that the Government could determine whether the offered item met Government needs. However, the solicitations usually did not identify descriptive information available in the buying center on the items being solicited.

Several prospective sources indicated that they could not identify the items required, because only part numbers were provided. Providing even incomplete data to prospective offerors should be beneficial to the Government by helping to increase competition.

2.1.4 - Use And Maintain Requirements Documents

Identifying Applicable Specifications and Related Documents ([FAR 11.201](#)). Any requirements documents used in a solicitation or contract must be clearly identified to avoid any confusion about the Government's requirements.

- **Identify Federal or Military specifications.** If you cite requirements documents listed in the [General Services Administration \(GSA\) Index of Federal Specifications, Standards and Commercial Item Descriptions](#), the [DoD Index of Specifications and Standards \(DoDISS\)](#), or other agency index, identify each document's approval date and the dates of any applicable amendments and revisions. Do not use general identification references, such as "the issue in effect on the date of the solicitation." Do not furnish the cited requirements documents with the solicitation, except when:

- The requirements document must be furnished with the solicitation to enable prospective contractors to make a competent evaluation of the solicitation;
 - You believe that it would be impracticable for prospective contractors to obtain the documents in a reasonable time to respond to the solicitation; or
 - A prospective contractor requests a copy of a Government promulgated requirements document.
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- **Identify other pertinent documents.** Clearly identify any pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DoDISS. When you use such documents, either furnish them with the solicitation or provide specific instructions on how prospective offerors can obtain or examine such documents.
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- **Assure that any necessary references to other documents are clear.** Make sure that any references made in requirements documents to other documents:
 - Are restricted to documents, or appropriate portions of documents, that apply to the acquisition;
 - Cite the extent of their applicability;
 - Do not conflict with other documents and provisions of the solicitation; and
 - Identify all applicable first tier references.
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- **Assure that interested parties know where to obtain Federal and Military specifications.**
 - The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the General Services Administration, Federal Supply Service Bureau, Specification Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407, telephone (202) 619-8925.
 - The DoDISS may be purchased from the Standardization Documents Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, telephone (215) 697-2667/2179 .

- **Assure that interested parties know where to obtain nongovernment standards adopted by the Government.** Interested parties may generally obtain them from the GSA Specification Section or the DoD Standardization Documents Desk those nongovernment (voluntary) standards adopted for use by Federal or Defense activities. Standards not available from these sources may be obtained from Government libraries, activities subscribing to document handling services or the organization responsible for the preparation, publication or maintenance of the standard.

Identifying the Need for Changes ([FAR 11.203](#)). Standardization documents are maintained to assure that requirements for items used across the Government are uniform. However, products available in the commercial market and the needs of the Government change over time.

As part of your market research, communicate with customers to determine how well the requirements document reflects the customer's needs. If the customer indicates that the requirements do not meet customer needs, obtain suggestions for corrective action.

Whenever practicable, you may provide affected industry an opportunity to comment on the requirements documents. If industry sources recommend changes, obtain comments from the appropriate members of the Acquisition Team before taking any action to modify requirements documents.

Modifying Standardization Documents ([FAR 11.202](#)). Whenever you determine that Government standardization documents should be changed:

- Submit any recommended changes for standardization documents listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, to the General Services Administration, Federal Supply Service, Office of Acquisition, Washington, DC 20406.
- Submit any recommendations for changes to standardization documents listed in the DoDISS to the cognizant preparing activity.

When you cite an existing standardization document but modify it to meet agency needs, follow the guidance provided in the appropriate standardization reference.

2.1.5 - Consider Acquiring Other Than New Material

Introduction. Your market research may identify situations where it would be advantageous to the Government to acquire items that are not new (e.g., rebuilt items), former Government surplus property, or residual inventory. Such items may be available at a fraction of the price of new material. You must consider the best interests of the Government in deciding whether to solicit offers based on providing such items.

Contracting Officer Authorization. Do not permit a contractor to provide other than new material, former Government surplus property, or residual inventory unless the contractor has obtained the appropriate contracting officer authorizations required by [FAR 52.211-5](#), Material Requirements clause.

Considering Authorization Requests. Allow offers of other than new material, former Government surplus property, or residual inventory unless you determine that such materials are unacceptable. As you make your determination, consider the following:

- Requirements of law or regulation;
- Safety of persons or property; and
- Contract performance requirements.

When you are acquiring commercial items, you should consider the customary practice in the industry for the item being acquired. For example, in many industries it is common practice to use rebuilt parts because of the savings over the purchase of new parts. In other industries, safety and performance considerations make the use of new components essential.

2.1.6 - Consider Delivery Or Performance Schedules

Introduction. The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. Assure that delivery or performance schedules ([FAR 11.401\(a\)](#)) are realistic and meet the requirements of the acquisition. Remember that unreasonably tight or difficult to attain schedules:

- Tend to restrict competition;
- Are inconsistent with small business policies; and
- May result in higher prices.

Consider Market Norms. In 1990, GAO examined inventory and contracting practices at two Government buying centers (GAO/NSIAD 90-124). GAO found that, in most cases, buyers made no effort to match delivery schedules to market norms. Instead, buyers awarded contracts based on quotes to deliver on the date specified by the organizations' automated inventory system. Since little was known about market delivery norms, there was no reason to question the specified delivery schedule. Buyers assumed that suppliers would deliver according to the contract schedule.

The data collected by GAO do not support that assumption. GAO examiners reviewed 109 purchases of 57 supply items. They found that:

- 1 purchase (0.9%) was delivered exactly on time
- 58 purchases (53.2%) were delivered an average of 51 days late
- 50 purchases (45.9%) were delivered an average of 61 days early

At these buying centers, failure to consider market norms may have had a substantial impact on competition, prices, and other acquisition costs.

- Many prospective competitors who recognized that the required delivery schedule did not provide sufficient time for production and delivery, may have been unreasonably excluded from the competition.
- Some firms may have had an unfair competitive advantage because they knew that the Government would accept less-than-agreed-to delivery.
- The Government likely paid unnecessarily high prices because of the limited competition and unenforced delivery schedules.

- Items delivered late may have caused inventory shortages or other operational delays.
- Items delivered early may have increased Government inventory holding costs.

Supply/Service Schedule Factors to Consider ([FAR 11.402\(a\)](#)) Consider the following factors when establishing delivery schedules for supplies or services:

- Urgency of need;
- Industry practices;
- Market conditions;
- Transportation time;
- Production time;
- Capabilities of small business concerns;
- Administrative lead time for obtaining and evaluating offers -- contractor delivery should not be curtailed because of Government delays in contract award;
- Time required for contractors to comply with any conditions precedent to contract performance; and
- Time required for the Government to perform its contract obligations -- such as delivering Government-Furnished Property.

Construction Schedule Factors to Consider ([FAR 11.402\(b\)](#)) In developing a schedule for construction projects, you must consider such factors as:

- Nature and complexity of the project;
- Construction seasons involved;
- Required completion date;
- Availability of materials and equipment;
- Capacity of contractors to perform;
- Use of multiple completion dates (e.g., a separate completion date for separable items of work).

Selecting Appropriate Method of Expressing Schedule ([FAR 11.403\(a\)](#)) Consider different ways of expressing delivery or performance schedules and select the one that seems most appropriate for your acquisition situation. Common methods of expressing contract delivery or performance requirements include specific:

- **Calendar dates;**
- **Time periods from a contract date** (e.g., from the date of contract award, from date of acceptance by the

Government, or from the effective date of the contract);

- **Time periods from the date of receipt of contract notice** by the contractor (e.g., notice of award or notice of acceptance by the Government);
 - **Time period for delivery after receipt by the contractor of each individual order** under the contract (e.g., orders under indefinite delivery contracts and GSA schedules).
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2.1.7 - Consider Liquidated Damages

Introduction. In Government contracting, a liquidated damages clause is a stipulation by the Government and contractor to a sum of money to be recovered by the Government in the event the contractor fails to meet a specified contract delivery or performance requirement. Liquidated damages are normally assessed at a daily rate for each day of delay in meeting the delivery or performance requirement. A liquidated damages clause may be used in any type of contract, but such clauses are most commonly used in construction contracts.

Deciding Whether to Use Liquidated Damages ([FAR 11.502](#) and [DFARS 211.504](#)). In some agencies, use of a liquidated damages clause may be mandatory in certain contracting situations, For example, the Department of Defense requires the use of liquidated damages in all construction contracts over \$500,000.

If the use of a liquidated damages clause is not specifically required by your agency, you should only use liquidated damages when you can answer "YES" to both of the following questions:

- Will the Government reasonably expect to suffer damage if the delivery or performance is delinquent?
- Would the extent or amount of such damage be difficult or impossible to ascertain?

As you decide whether to include a liquidated damages clause in the contract, consider the probable effect on contract pricing, competition, and contract administration:

- Concern among prospective offerors about the cost risk associated with liquidated damages may increase contract prices and decrease competition. A tight delivery schedule will increase offeror concern. If the risk of timely performance is substantial, consider using positive performance incentives rather than liquidated damages.
- The cost/difficulty of contract administration will likely increase if the contractor perceives that timely performance is unlikely or impossible. Numerous claims may result as the contractor attempts to use Government action or inaction to justify its failure to meet the contract schedule.

Estimating a Reasonable Rate ([FAR 11.502\(b\)](#), [11.503\(b\)](#), and [11.503\(c\)](#)). Whenever you use liquidated damages, you must calculate the rate on a case-by-case basis, based on an estimate of actual damage to the Government if the contractor does not perform on time. Assure that the rate is reasonable because a rate fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

If a liquidated damages clause is used in a construction contract, the contract should identify a daily rate for the assessment of liquidated damages. As a minimum, the rate should cover the estimated cost of inspection and superintendence for each day of delay in contract completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, the rate should also include an amount to cover those losses. Examples of specific losses include the:

- Cost of substitute facilities;
- Rental of buildings and/or equipment; or
- Continued payment of quarters allowances.

Usually, a single liquidated damages rate (e.g., \$500 per day) is used from the date of contractually required delivery/performance until the contractor actually delivers or the contract is terminated. However, the probable damage to the Government may not follow a linear pattern.

- If appropriate to reflect probable damages to the Government, you may develop two or more incremental

rates which provide for a declining rate assessment as the delinquency continues.

- You may also include an overall maximum dollar amount or period of time, or both, during which liquidated damages may be assessed, to ensure that the result is not an unreasonable assessment of liquidated damages.
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2.1.8 - Consider Variation In Quantity

Introduction ([FAR 11.701\(a\)](#)). As part of your market research, you should evaluate the market use of variation in quantity clauses for the item(s) you are acquiring. In particular, you should consider possible variations in quantity for fixed-price supply contracts, service contracts that involve the furnishing of supplies, and unit-priced construction contracts.

Reasonable Variation for Supplies ([FAR 11.701\(a\) and \(b\)](#) and [52.211-16](#)). When you are preparing a solicitation for a fixed-price supply contract or service contract that involves the furnishing of supplies, you can insert the FAR Variation in Quantity clause to provide for accepting a quantity that is greater than the quantity called for in the contract, a quantity that is less than the quantity called for in the contract, or both, as long as the variation is caused by conditions of loading, shipping, packing, or by allowances in manufacturing processes.

In the solicitation, you must describe the acceptable plus or minus variation as a percentage of a specific quantity of items.

- Base the percentage(s) that you assign on your market research of the items and industry involved.
 - Tailor the plus and minus variation percentages to the item and industry involved -- do not use a standard or usual variation that you apply in all circumstances.
 - Neither variation percentage should be larger than necessary to afford a contractor reasonable protection.
 - Neither the plus or minus variation percentage shall exceed 10 percent.
 - Either variation percentage could be as small as zero.

- If you allow both a plus and a minus variation, the plus percentage and the minus percentages can be different (e.g., plus 10 percent and minus 5 percent).
- Carefully determine which quantity or quantities will be subject to the variation. Possibilities include:
 - The total contract quantity,
 - A particular item (e.g., Item 1 only),
 - Each quantity specified in the delivery schedule,
 - Total item quantities for each destination, or
 - Total quantity of each item without regard to destination.

Delivery of Excess Supplies ([FAR 11.701\(c\)](#) and [52.211-17](#)). You are preparing a solicitation for a fixed-price supply contract and you are concerned that the contractor may deliver more than the quantity specified in the contract (including any allowable variation in quantity)? You know that delivery of even a small quantity of excess items will result in unnecessary administrative cost to the Government, because Government personnel will have to determine and manage the disposition of the excess supplies. What action can you take to protect the Government?

You can insert the FAR Delivery of Excess Quantities clause, into the solicitation/contract. That clause provides that:

- Excess quantities of items totaling up to \$250 in value may be retained by the Government without compensating the contractor.
- Excess quantities of items totaling \$250 in value may, at the Government's option, be either returned at the contractor's expense or retained and paid for at the contract unit price.

Reasonable Variation for Construction ([FAR 11.702](#) and [52.211-18](#)). When you are preparing a solicitation for a fixed-price construction contract that will authorize a variation in the estimated quantity of unit-priced items (e.g., feet of road paving), you must insert the FAR Variation in Estimated Quantity clause. Under this clause:

- When the actual quantity of a unit-priced item varies more than 15 percent above or below the estimated quantity, either the contracting officer or the

contractor can demand an equitable adjustment in the contract price. The equitable adjustment must be based upon any increase or decrease in costs due solely to variation above 115 percent or below 85 percent of the estimated quantity.

- If a quantity variation causes an increase in the time necessary for contract completion, the contractor may request an extension of time.

2.1.9 - Pursue Restrictive Requirement Relief

Introduction. Improving Government requirements documents to increase competition requires responsible and effective management at all levels. The effort is not limited to contracting and requirements management activities, but must extend to all members of the Acquisition Team.

Analysis. Typically, you must work closely with other Acquisition Team members to analyze the:

- User's real needs
- Current product requirements
- Products available in the commercial market
- Real restrictions that prevent the use of commercial products

Improving Communications. Effective communications are essential. Acquisition Team members must communicate effectively with each other as well as with top management in the department or agency.

The objectives and benefits of pursuing restrictive requirement relief must be communicated to everyone involved.

Any effort to eliminate restrictive requirements must have top management support. Top management can communicate its support by establishing an effective monitoring system—using the inspectors general, internal audit, or other groups. Monitors should periodically evaluate whether managers at all levels are taking an active and positive approach to eliminating restrictive requirements, increasing competition, and increasing the use of commercial and nondevelopmental items.

Effective Communication System. The table below provides an overview of the communication process necessary to eliminate restrictive requirements, and the key Acquisition Team members involved.

Effective Communication		
Personnel	Communicating With...	Communicating About...
Users	<ul style="list-style-type: none"> • Requirements Managers • Contracting Personnel 	<ul style="list-style-type: none"> • Adequacy of current specifications in communicating the user's minimum needs. • Current product capabilities. • Current product failures and deficiencies. • Suggestions for improvement and corrective action.
Requirements Managers	<ul style="list-style-type: none"> • Users • Contracting Personnel 	<ul style="list-style-type: none"> • Satisfaction of user needs with current products. • Satisfaction of user needs by less expensive commercial products. • Tailoring of mandatory requirements documents to assure identification of the minimum Government needs. • Justification for other than commercial items or services.
Suppliers	<ul style="list-style-type: none"> • Users • Requirements Managers 	<ul style="list-style-type: none"> • The industry: <ul style="list-style-type: none"> ○ Business practices in sales and distribution. ○ Production capacity.

- o Packaging and preservation practices.
 - Commercial products available to satisfy user needs.
 - Commercial product quality practices.
 - Commercial product support.
-
- | | | |
|--------------------------|---|---|
| Contracting
Personnel | <ul style="list-style-type: none"> • Users • Requirements Managers • Suppliers | <ul style="list-style-type: none"> • Restrictive requirements. • Provision of commercial market information to users and requirements managers. • Analysis of competitive conditions in the market. • Communicating Government requirements to suppliers in a way that maximizes competition. |
|--------------------------|---|---|

Catalyst for Action. </&NBSP;&NBSP;YOU p Government.< the of needs minimum meet to standards, or specifications voluntary commercial descriptions, purchase Standards, and Specifications Federal modified ability about uncertainties are there where situations be may However, prices. reduce quality, improve items, nondevelopmental use increase competition, can encouragement, support management strong with Team, Acquisition Ideally, action. for catalyst forceful a as serve required also>

Situation 1: Two potential suppliers assure you that their commercial products will "do the job just as well as the product specified by Federal Specifications, and save the Government at least 15 percent." The user and the

requirements manager say that "the commercial products may work" but they are "not sure of the possible long-term effects on safety." They feel that, "we should stick with the product we know."

Situation 2: You have a brand-name request for copy paper. Technical personnel certify that only the brand-name can meet Government needs. Suppliers of other copy papers indicate that their brands are "as good as the requested paper in all important respects and will save the Government at least 25 percent." Users and the requirements manager still maintain that "the brand-name paper is the only brand that does not jam under prevalent high-humidity conditions."

What should the contracting officer do?

In both the situations above, technical personnel have evaluated the commercial products and have rejected them, and it appears that the contracting officer's job is done. However, [FAR 11.002\(a\)\(1\)\(ii\)](#) requires that you:

Only include restrictive provisions or conditions to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

In both situations, it appears that some suppliers are being unreasonably excluded from the competition. The Government may be paying for more than it needs at prices much higher than necessary. In addition, the rejected potential suppliers may protest exclusion from any future contract actions.

As a contracting officer, you should continue to ask questions to make sure that you get the correct answer about the true agency requirements. There are no "dumb questions" in contracting, except those that are never asked!

Action Support. To whom should the contracting officer raise questions?

Ideally, you should work with concerned members of the Acquisition Team to raise questions about unnecessarily restrictive requirements to higher authority within the agency. In the case of a Government specification item, you should raise the question to the authority responsible for the specification. If other members of the Acquisition Team refuse to question requirements that appear to be unnecessarily restrictive, you, as the contracting officer, should raise questions to higher technical authority through contracting channels.

Whether you act alone or with the Team to question requirements, the ultimate answer might be to accept or to reject the proposed alternatives. Regardless of the answer, you have fulfilled the responsibility of pursuing all actions necessary to ensure effective contracting. You have also formed the basis for a broad Government position on the answer. If potential suppliers do protest, no one will wonder why you did not ask the question earlier.

2.2 - Improving Business Terms And Conditions

Section Introduction. This section covers the following strategies for selecting clauses and provisions for the solicitation to maximize price competition:

- [2.2.1 - Base The Contract Type On Risk Analysis](#)
- [2.2.2 - Review Applicability Of Socioeconomic Requirements](#)
- [2.2.3 - Match Payment And Finance Terms To Market Conditions](#)
- [2.2.4 - Furnish Government Property](#)
- [2.2.5 - Consider Warranty Requirements](#)
- [2.2.6 - Optimize Price/Technical Tradeoffs](#)

2.2.1 - Base The Contract Type On Risk Analysis

Introduction. The selection of contract type can have a significant effect on both competition and contract price.

Two Contract Categories. Most contract types fit into one of two categories:

- Fixed-Price; or
- Cost-Reimbursement.

The biggest difference between the two is the assignment of risk.

In **fixed-price contracts**, the contractor is required to deliver the product specified and there is a maximum limit on the amount of money the Government must pay.

In **cost-reimbursement contracts**, the contract is required to deliver a "best effort" to provide the specified product. All allowable costs must be reimbursed, regardless of delivery, up to the level specified in the contract.

Risk, Contract Type, and Price. Analysis of the risk inherent in the contracting situation is the key element in the selection of an appropriate contract type. The relationship between risk, contract type, and price can be demonstrated by the following examples.

Examples:

- Selection of a fixed-price contract when the risks are beyond the contractor's control, as in many development contracts, will increase price and reduce competition.
- Selection of a cost-reimbursement contract when the risks are well within the contractor's control, as in most production contracts, will reduce the contractor's motivation to control costs.

Commercial Items ([FAR 16.201](#)). When acquiring commercial items, you are limited to using either a firm fixed-price (FFP) or fixed-price with economic price adjustment (FPEPA).

Major Types of Contracts. The table below presents a comparison of the major contract types.

Comparison of Major Types of Contracts

	<i>Firm Fixed-Price (FFP)</i>	<i>Indefinite Delivery (ID)</i>	<i>Fixed-Price Economic Price Adjustment (FPEPA)</i>
Principal Risk to Be Mitigated	Costs of performance can be estimated with high degree of confidence. Thus, the contractor assumes the risk.	At time of award, delivery requirements are not certain.	Market prices for required labor and/or materials are likely to be highly unstable over the life of contract.

Use When	<ul style="list-style-type: none"> o The requirement is well-defined. o Commercial item o Contractors are experienced in meeting it. o Market conditions are stable. o Financial risks are otherwise insignificant. 	<p>Definite Quantity: The required quantity is known and funded at the time of award.</p> <p>Indefinite Quantity: The minimum quantity required is known and funded at award.</p> <p>Requirements: No commitment on quantity is possible at award.</p>	<ul style="list-style-type: none"> o Commercial item o The market prices at risk are severable and significant. o The risk stems from industry-wide contingencies beyond the contractor's control. o The dollars at risk outweigh the administrative burdens of an FPEPA.
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Elements	<p>Firm fixed-price for each line item or one or more groupings of line items.</p>	<ul style="list-style-type: none"> o Performance period. o Ordering activities and delivery points. o Maximum or minimum limit (if any) on each order. o Extent of each party's obligation on quantity. 	<p>A fixed-price, ceiling on upward adjustment, and a formula for adjusting the price up or down based on:</p> <ul style="list-style-type: none"> o Established prices. o Actual costs of the labor or materials. o Labor or material indices.
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Contractor Is Obligated To	<p>Provide an acceptable deliverable at the time, place, and price specified in the contract.</p>	<p>Provide acceptable deliverables at the time and place specified in each order at the per unit price, within any ordering limits established by the contract.</p>	<p>Provide an acceptable deliverable at the time and place specified in the contract at the adjusted price.</p>
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Contractor Incentive	<p>Generally realizes an additional dollar of profit for every dollar that costs are reduced. (<i>Other Than Maximizing Goodwill</i>)¹</p>	<p>Incentive will depend on the contract pricing arrangement.</p>	<p>Generally realizes an additional dollar of profit for every dollar that costs are reduced.</p>
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A Typical Application	<p>Commercial supplies and services.</p>	<p>Long-term contracts for commercial supplies or support services.</p>	<p>Long-term contracts for commercial supplies during a period of high inflation.</p>
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Principal Limitations	<p>Generally not appropriate for R&D. Firm fixed-price level</p>	<p>May use any appropriate cost or pricing arrangement that</p>	<p>Must be justified.</p>
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In FAR Parts 16 , 32 , 35 , and 52	of effort contract may be used for R&D if agreement can be reached on effort required at a price of \$100,000.	complies with FAR Part 16. Multiple awards preferred for most indefinite quantity contract items. Single award required for requirements contract items.
Variants of Effort	Firm Fixed-Price Level	Definite quantity, indefinite quantity requirements.

Comparison of Major Types of Contracts

	Fixed-Price Award Fee (FPAF)	Fixed-Price Prospective Redetermination (FPPR)	Fixed-Price Incentive (FPI)
Principal Risk to Be Mitigated	Acceptance criteria are inherently judgmental, with a corresponding risk that the end user will not be fully satisfied.	Costs of performance can be estimated with confidence only for the first year of performance.	Labor or material requirements for work are moderately uncertain. Hence, the Government assumes part of the risk.
Use When	Judgmental standards can be fairly applied. ² The potential fee is large enough to both: Provide a meaningful incentive. Justify the administrative burdens of an FPAF.	The Government needs a firm commitment from the contractor to deliver the supplies or services during subsequent years. The dollars at risk outweigh the administrative burdens of an FPPR.	Ceiling price can be established that covers the most probable risks inherent in the nature of the work. The proposed profit sharing formula would motivate the contractor to control costs and meet other objectives.
Elements	A firm fixed-price	Fixed price for the first	Ceiling price

	Fee pool	period.	Target cost
	Standards for evaluating performance.	Proposed subsequent periods (at least 12 months apart).	Target profit
	<u>Criteria for determining a "fee" based on performance against the standards.</u> ²	Timetable for pricing the next period(s).	Delivery, quality, and/or other performance targets (optional)
			Ratio for adjusting profit based on actual costs and/or performance.
Contractor Is Obligated To	Perform at the time, place, and the price fixed in the contract.	Provide acceptable deliverables at the time and place specified in the contract at the price established for each period.	Provide an acceptable deliverable at the time and place specified in the contract, at or below the ceiling price.
Contractor Incentive (<i>Other Than Maximizing Goodwill</i>) ¹	Generally realizes an additional dollar of profit for every dollar that costs are reduced; earns an additional fee for satisfying the performance standards.	For the period of performance, realizes an additional dollar of profit for every dollar that costs are reduced.	Realizes a higher profit by completing the work below the ceiling price and/or by meeting objective performance targets.
Principal Limitations In FAR Parts <u>16</u> , <u>32</u> , <u>35</u> , and <u>52</u>	Must be negotiated.	Must be negotiated. Contractor must have an adequate accounting system that supports the pricing periods. Prompt	Must be justified. Must be negotiated. Contractor must have an adequate accounting system. Targets

	redeterminations must be supported by the cost data.
Variants	Retroactive Firm or Redetermination. Successive Targets.

Comparison of Major Types of Contracts

	Cost-Plus-Fixed-Fee (CPFF)	Cost-Plus-Incentive-Fee (CPIF)	Cost-Plus-Award-Fee (CPAF)
Principal Risk to Be Mitigated	Labor hours, labor mix, and/or other things necessary to perform are highly speculative. Hence, the Government assumes the risks inherent in the contract, benefiting if the actual cost is lower than the expected cost; losing if the work cannot be completed within the expected cost of performance. Some cost type contracts include procedures for raising or lowering the fee as an incentive for the contractor to perform at lower cost and/or attain performance goals.	and/or material requirements (among other things) necessary to perform are highly uncertain and speculative. Hence, the Government assumes the risks inherent in the contract, benefiting if the actual cost is lower than the expected cost; losing if the work cannot be completed within the expected cost of performance. Some cost type contracts include procedures for raising or lowering the fee as an incentive for the contractor to perform at lower cost and/or attain performance goals.	and/or material requirements (among other things) necessary to perform are highly uncertain and speculative. Hence, the Government assumes the risks inherent in the contract, benefiting if the actual cost is lower than the expected cost; losing if the work cannot be completed within the expected cost of performance. Some cost type contracts include procedures for raising or lowering the fee as an incentive for the contractor to perform at lower cost and/or attain performance goals.
Use When	Formulas relating fee to performance (e.g. to actual costs) would be unworkable or of marginal utility.	Objective relationship can be established between the fee and such performance measures as actual costs, delivery dates, performance benchmarks, and the like.	Objective incentive targets are not feasible for critical aspects of performance. Judgmental standards can be fairly applied. ² Potential fee would provide a meaningful incentive.
Elements	Estimated cost A fixed fee	Target cost Performance targets (optional) Minimum, maximum, and target fee Ratio for adjusting fee based on actual costs and/or performance	Estimated cost Standards for evaluating performance Base and maximum fees Procedures for adjusting "fee" based on performance against the standards ²
Contractor Is Obligated To	Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule.	Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule.	Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule.
Contractor Incentive (Other Than Maximizing Goodwill) ¹	Realizes a higher rate of return (i.e., fee divided by total cost)	Realizes a higher fee by completing the work at a lower cost and/or by meeting other	Realizes a higher fee by meeting judgmental performance standards.

	decreases. ³	objective performance targets.	
A Typical Application	Research study.	Research and development of the prototype for a major system.	Large scale research study.
Principal Limitation In FAR Parts 16 , 32 , 35 , and 52	The contractor must have an adequate accounting system. The Government must exercise surveillance during performance to ensure use of efficient methods and cost controls. Must be negotiated. Must be justified. Statutory and regulatory limits on the fees that may be negotiated. Must include the applicable FAR Limitation of Cost clause.		
Variants	Completion or Term.		

Comparison of Major Types of Contracts

	<i>Cost or Cost Sharing (C/CS)</i>	<i>Time & Materials (T&M)</i>
Principal Risk to Be Mitigated	Labor hours, labor mix, and/or material requirements (among other things) necessary to perform are highly uncertain and speculative. Hence, the Government assumes the risks inherent in the contract, benefiting if the actual cost is lower than the expected cost; losing if the work cannot be completed within the expected cost of performance.	
Use When	The contractor expects substantial compensating benefits for absorbing part of the costs and/or foregoing fee, or	Hourly labor rates can be firmly defined at contract award but hours required to complete the required task cannot.
	The vendor is a nonprofit entity.	
Elements	Estimated cost	Ceiling price
	If cost sharing, agreement on the Government's share of the cost	Per hour labor rate that also covers overhead and profit
	No fee	Provisions for reimbursing direct material costs plus material handling cost
Contractor Is Obligated To	Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule.	Make a good faith effort to meet the Government's needs within the "ceiling price."
Contractor Incentive	Cost sharing shares the cost of providing a deliverable of <i>(Other Than Mutual benefit. Maximizing Goodwill)</i> ¹	Fixed rate and flexible hours to perform a task with unknown elements.
A Typical Application	Joint research with educational institutions.	Emergency repairs to heating plants and aircraft engines.
Principal Limitations In FAR	The contractor must have an adequate accounting system. The Government must exercise	Contracting officer must determine in writing that no other contract type is

<p>Parts 16, 32, 35, and 52</p> <p>surveillance during performance to ensure use of efficient methods and cost controls. Must be negotiated. Must be justified. Must include the applicable FAR Limitation of Cost clause.</p> <p>Variants</p>	<p>suitable. Labor rate must be negotiated and justified. The Government must exercise appropriate surveillance to ensure efficient performance. Contract must include a ceiling price.</p> <p>Labor Hour</p>
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Notes to tables:

Note 1 - Goodwill being the value of the name, reputation, location and other intangible assets of a firm.

Note 2 - Performance is evaluated by an Award Fee Panel with fee determined by a Fee Determining Official. Fee determinations are not subject to contract disputes provisions.

Note 3 - The CPFF contract is commonly used in situations where the Government is more interested in technical excellence than cost control. However, you must be aware that higher cost does not necessarily equal technical excellence. Contractors may attempt to shift unnecessary resources to CPFF contracts to control costs on other contracts.

2.2.2 - Review Applicability Of Socioeconomic Requirements

Introduction. The Government has established socioeconomic programs to achieve national social and economic goals, but these programs can also limit potential sources. As you implement these programs, always consider the probable effect on competition and contract pricing.

Consider Small Business Program Effects. The single most important socioeconomic program affecting competition is the small business program. The following table summarizes four elements of the program related to mandatory sources. Particularly notice the situations where you should question the various requirements that limit competition or produce prices that are not fair and reasonable.

Sourcing Requirement	Question When...
<p>Total Small Business Set-Aside (FAR 19.502-2(a))</p>	<p>There is a reasonable expectation that:</p>

An acquisition must be reserved for exclusive participation by small business when there is a reasonable expectation that the requirements can be met by small business.

Offers WILL NOT be obtained from at least two responsible small business concerns (The two concerns must offer products from different small business concerns unless the requirement is waived by SBA.) OR THAT

Partial Small Business Set-Aside
([FAR 19.502-3](#))

A portion of the acquisition is reserved for participation by small business when a total set-aside is not appropriate and the requirement is severable into two or more economic lots.

Award(s) WILL NOT be made at fair market prices.

There is a reasonable expectation that ONLY two firms (one large and one small) with performance capability will respond to the solicitation.

HUBZone Set-Aside ([FAR 19.13](#))

An acquisition exceeding the simplified acquisition threshold must be set-aside for HUBZone small business concerns when there is a reasonable expectation that:

There is a not reasonable expectation that:

Offers will be received from two or more HUBZone small business concerns; and

Offers will be received from two or more HUBZone small business concerns; and

Award will be made at a fair and reasonable price.

Award will be made at a fair and reasonable price.

Very Small Business Set-Aside ([FAR 19.9](#))

If a contracting office is located in a designated Small Business Administration district is acquiring supplies or contracts for other than supplies will be performed in a designated district, the contracting officer must set aside requirements estimated to be greater than \$2,500 but not greater than \$50,000 for for very small business concerns as long as competitive offers are expected from two or more offerors that meet set-aside requirements.

There is no reasonable expectation that offers will be received from two or more acceptable offerors that are competitive in terms of market prices, quality, and delivery.

8(a) Program ([FAR 19.8](#))

Contracts may be awarded to the Small Business Administration (SBA) for performance by eligible 8(a) firms. The SBA subcontracts may be awarded on a non-competitive or competitive basis.

There is a reasonable expectation that the contract price will exceed a fair market price. The negotiated contract price and estimate of a fair market price are subject to the concurrence of the SBA.

Consider Effects of Other Mandatory Source Programs. There are a number of other socioeconomic programs that limit the sources that you can consider for a particular acquisition. The three most important programs are considered in the following table. Again notice the situations where you should question the various requirements that limit competition.

Mandatory Sources	
Socioeconomic Sourcing Requirements	Question when the price of the required source exceeds open market prices
Federal Prison Industries (FPI) or UNICOR Mandatory source for supplies of the classes listed in the Schedule of Products Made in Federal Penal and Correctional Institutions. FAR 8.6	The contracting officer may refer the matter to the cognizant product division identified in the Schedule or to the FPI Washington office for resolution.
Committee for Purchase from the Blind and Other Severely Handicapped Mandatory source for supplies and services identified in the Procurement List. FAR 8.7	Ordering offices may make recommendations to the Committee at any time for price revisions.

2.2.3 - Match Payment And Finance Terms To Market Conditions

Introduction. Under cost-reimbursement contracts, contractors are typically reimbursed for costs incurred on a monthly basis. Under fixed-price contracts, payment is made in a lump sum at contract completion unless other financing terms are provided for in the contract. Sometimes, you can attract a greater level of competition and lower-priced offers by providing financing. However the costs of extending such financing must be considered.

Contractor Financing. Requiring contractors to fund the entire contract may severely limit competition, particularly with large contracts and long performance periods. Any firm that does submit an offer will probably offer a higher price to cover the cost of working capital.

Recognizing the potential effects of required contractor funding on competition and pricing, you may want to consider other financial terms.

However, there are negative aspects to Government funding. Government funds are not free. The Government must also pay interest on borrowed capital. In addition, when the Government provides working capital support, the contractor has both the funds and the product. In the event of contractor default or bankruptcy, the Government may lose both the product and the funds.

Simplified Acquisition Financing. Unless agency regulations otherwise permit, you must not provide contract financing for purchases made under the authority of FAR Part 13 (see [FAR 32.003](#)).

Customary and Unusual Financing. Financing methods can be divided in several different ways. As you make financing decisions, the most basic division is into customary and unusual financing methods ([FAR 32.001](#)).

- **Customary contract financing** is financing deemed by your agency to be routinely available for fixed-price contracts. Most customary contract financing arrangements should be available for your use without specific reviews or approvals by higher management ([FAR 32.113](#)).
- **Unusual contract financing** is financing not deemed to be customary contract financing by your agency. Unusual contract financing is financing that is legal and proper under applicable laws, but your agency has not authorized you to use it without specific reviews or approvals by higher management ([FAR 32.114](#)).

Customary Financing Methods for Non-Commercial Items. The following table outlines customary methods for financing non-commercial items in accordance with FAR Part 32 and agency regulations:

Financing of...	Description	Requirement for Use
Shipbuilding, or ship conversion, alteration,	Progress payments are based on the stage or percentage of completion.	Use in accordance with agency guidance.

or repair
using
progress
payments
based on a
percentage or
stage of
completion

([FAR
32.113\(a\)](#))

Construction or architect-engineer services using progress payments based on a percentage or stage of completion	Progress payments are based on the stage or percentage of completion. Up to 10 percent of the progress payment may be withheld if progress is not satisfactory during any payment period.	Mandatory for construction contracts and architect-engineer contracts.
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([FAR 32.103](#)
and ([FAR
32.113\(b\)](#))

Supplies or services awarded under sealed bidding, competitive negotiation, or sole-source negotiation, using progress payments based on costs.	Payments are made based on costs incurred as work progresses. Payments may be customary or unusual. The customary rates for large and small business are found in FAR 32.501-1.	Customary progress payments may be included when the contract exceeds minimum dollar amounts, first deliveries will not be made for a substantial time after work begins, and there will be performance expenditures prior to delivery.
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([FAR
32.113\(c\) and
\(d\) and FAR
32.501-1\)](#))

Supplies or services awarded under a sole-source	Performance-based payments can be based on a single item or the entire contract.	Performance-based payments preferred over progress payments when
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acquisition, through performance-based payments (Do not combine performance-based payments in with progress payments based on cost). ([FAR 32.10](#))

Terms must include: practical.

Performance-based payments require:

- o Performance-based payments.
- o Performance-based finance amount.
- o Procedures for multiple appropriations (if applicable).
- o Procedures for liquidating finance payments.
- o Agreement with contractor on performance-based payment terms.
- o Definitized fixed-price contract.
- o Contract does not provide for other methods of financing except advance payments and guaranteed loans when authorized.

Supplies or services through advance payments ([FAR 32.4](#))

Advances of money to a contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts.

Advance payments are the least preferred method of contracting and should not be authorized if other types of financing are reasonably available. May be used only when statutory requirements and standards are met.

Supplies or services through guaranteed loans ([FAR 32.3](#))

Guarantees are made by Federal Reserve Banks to enable contractors to obtain financing from private sources under national defense contracts for supplies or services.

- o Annual maximums for guarantees set by Congress.
- o Contractors apply through the Federal Reserve Bank. Loan approval requires a Certificate of Eligibility prepared by the

contracting
officer
considering FAR
requirements.

Supplies or services through any appropriate combination of advance payments, guaranteed loans, and either performance-based payments or progress payments (but not both) (FAR 32.113(g))	Any combination of these financing methods can be used long as performance-based payments and progress payments are not used together on the same contract.	The requirements outlined in the blocks above for each type of payment considered for combination apply here.
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Circumstances for Financing Commercial Items. In some markets, commercial buyers commonly provide contract financing. You may include appropriate financing terms in contracts for commercial purchases when doing so will be in the best interest of the Government (see [FAR 32.202-1](#)).

Specifically, you may use commercial interim payments and commercial advance payments when the following conditions are met:

- The contract item financed is a commercial supply or service;
- The contract price exceeds the simplified acquisition threshold in FAR Part 13;
- You determine that it is appropriate or customary in the commercial marketplace to make financing payments for the item;
- This form of contract financing is in the best interest of the Government;
- You obtain adequate security to protect the Government from financial loss;

- Prior to any performance of work under the contract, the aggregate of commercial advance payments shall not exceed 15 percent of the contract price;
- You award the contract on the basis of competitive procedures or, if only one offer is solicited, adequate consideration is obtained (based on the time value of the additional financing to be provided) if the financing is expected to be substantially more advantageous to the offeror than the offeror's normal method of customer financing; and
- You obtain concurrence from the payment office concerning liquidation provisions when required.

Customary Financing Methods. The following table outlines customary commercial methods for contract financing in accordance with [FAR Part 32](#) and agency regulations:

Customary Financing Methods for Commercial Items

Financing Method	Description	Special Considerations
Commercial advance payments (FAR 32.202-2)	Payments made before the performance of any work under the contract.	Aggregate of payments shall not exceed 15 percent of the contract price. Payments are not subject to the requirements covering advance payment for non-commercial items.
Commercial interim payments (FAR 32.202-2)	Payments made to the contractor after some work has been done, but before the item is delivered.	Includes all payments that are not advance payments or delivery payments.

Do not automatically include financing in commercial item contracts. Consider customary commercial financing arrangements as part of your market research. In particular, consider:

- The extent to which other buyers provide contract financing for purchases in that market;
- The overall level of financing normally provided;

- The amount or percentages of any payments equivalent to advance payments;
- The basis for any payments equivalent to commercial interim payments as well as the frequency, and amounts of percentages; and
- Methods of liquidation of contract financing payments and any special or unusual payment terms applicable to delivery payments.

2.2.4 - Furnish Government Property

Introduction. Government-furnished property can be used in several ways to encourage competition and assure overall price reasonableness.

Description. The term **property** includes facilities, material, special tooling, special test equipment, and agency peculiar property. Different types of property can be used to affect competition and pricing.

Overview of Government Property. The table below provides an overview of the various types of Government property and how each type can be used to affect competition and pricing.

Furnishing Government Property		
Type of Property	Definition	Competition and Pricing Considerations
Facilities (FAR 45.302)	Plant equipment and real property for production, maintenance, research, or testing furnished as Government facilities under situations identified in FAR 45.302.	Making facilities available can significantly increase competition for major production efforts, while eliminating the need for duplicative investment by competitors.
Material (FAR 45.301)	Property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes	Providing Government material can enhance competition in several situations. Breakout of key components can increase competition and reduce component prices.

assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. Furnishing proprietary components can increase effective competition on larger systems.

Special Tooling
([FAR 45.101](#))

Jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, components of these, all items, and replacement of these items, which are of such specialized nature that, without substantial modification, or alterations, their use is limited to the development or production of particular supplies or parts thereof, or to particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

Government provision of special tooling increases competition by reducing the need for investment that can only be used on one contract or project. Government ownership and right to move tooling limit producer ability to obtain a lock on the competition because of unique tooling capacity.

Special Test Equipment
([FAR 45.101](#))

Single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general purpose items or components that are

Like special tooling, Government provision of special test equipment increases competition by reducing the need for investment that can only be used on one contract or project. Government ownership and right to move test equipment limit producer ability to obtain a lock on the

interconnected and competition because of
interdependent so as to unique tooling capacity.
become a new functional
entity for special
testing purposes. It
does not include
material, special
tooling, facilities
(except foundations and
similar improvements
necessary for installing
special test equipment),
and plant equipment
items used for general
plant testing purposes.

2.2.5 - Consider Warranty Requirements

Introduction. A warranty is a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies, or performance of services furnished under a contract (see [FAR 46.701 and 46.702](#)).

The principal purposes of a warranty in a Government contract are to:

- Delineate the rights and obligations of the contractor and the Government for defective work.
- Foster quality performance.

Commercial Warranties. Take advantage of commercial warranties (including extended warranties, where appropriate and in the Government's best interests) offered by the contractor for the repair and replacement of commercial items ([FAR 46.709](#)).

In solicitations for commercial items, require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. You may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

- Assure that any express warranty the Government intends to rely upon meets the needs of the

Government. Analyze any commercial warranty to determine if--

- - The warranty is adequate to protect the needs of the Government (e.g., items covered by the warranty and length of warranty);
 - The terms allow the Government effective postaward administration of the warranty; and
 - The warranty is cost-effective.
- In some markets, customary commercial practice may exclude or limit the implied warranties contained in the Government contract terms and conditions for commercial contracts. In such cases, ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.
- Include express warranties in the contract by addendum.

Use of Other Warranties. Warranties generally are not mandatory. Use must be approved in accordance with agency procedures. In determining whether a warranty is appropriate, you must consider the:

- Nature and use of the supplies or services;
- Warranty cost including contractor charges and the cost of Government enforcement and administration;
- Government's ability to administer and enforce the warranty;
- Customary trade practice; and
- Reductions in the cost of Government contract quality assurance.

([FAR 46.703](#) and [46.704](#))

Effect of Warranty on Competition and Pricing. By agreeing to a warranty, contractors accept the risk of deferred liability. That acceptance of risk has associated costs. Contractors unwilling to accept that risk will drop from the competition. Others may increase their price to compensate for the risk.

Before you include a warranty provision in a solicitation, you must evaluate the benefits of the warranty against the effect on competition and price. To do that, you must understand the relationship between warranty requirements, competition, price, the nature of the

product, and trade practice. Warranty requirements that are unreasonable, given the nature of the product, will reduce competition and increase price. Requirements which significantly exceed trade practice will reduce competition and increase price.

Control Warranty Costs. Work with the requiring activity to identify and eliminate warranty requirements that are not in the best interest of the Government. In your analysis, consider the following guidelines:

- For commercial items, use commercial rather than Government-unique warranties.
- For non-commercial items, tailor warranty requirements to mirror existing trade practices.
- When a Government-unique warranty is required, solicit the warranty as a separately priced line item, which the Government may or may not exercise.
- If you are unsure about the benefits of an extended warranty, solicit offerors on the extended warranty as a separately priced option (especially for distant future years).

2.2.6 - Optimize Price/Technical Trade-Offs

Technical Factors that Can Reduce Competition. The factors already considered in this chapter have the greatest effect on competition and contract price. There are, however, many other technical and business factors that can reduce competition and increase prices. These include:

- Security requirements;
- Payment provisions that increase contractor investment;
- Packaging requirements that require survival under extreme conditions;
- Unclear instructions, certifications, and notices to bidders/offerors;
- Unclear source selection criteria; and
- Conflicting and restrictive general contract clauses.

Technical Factors and Price. Technical factors could invite offerors to submit higher prices as the tradeoff for

a technically superior offer. Key questions to ask regarding proposed technical evaluation factors:

- Will the technical evaluation factor unnecessarily force the acquisition into a higher-priced market segment?
- Will the technical factor constructively amend the specifications to require more than the Government's actual minimum needs?
- Given the likely effect on contract price, is the factor truly necessary to minimize the technical or business risks inherent in the contract requirements?
- Will use of the technical factor likely result in a "greater value" for the taxpayer?

2.3 - Publicizing The Acquisition

Introduction. Publicizing the contract action is one of the most important considerations in maximizing competition. If the solicitation never gets into the hands of potential offerors, competition cannot occur.

As you decide how to publicize the buy, consider the potential effect on competition and contract price. If you can obtain dozens of competitive offers through a notice in the Commerce Business Daily (CBD), you probably do not need to be too concerned about more aggressive means of publicizing the buy. However, if the CBD notice is not likely to reach the strongest competitors, select the method of publicizing most likely to reach them.

As you publicize the buy, remember to allow enough time to receive requests for the solicitation. Of course you must also allow enough time after the solicitation is issued for firms to prepare appropriate offers.

Methods of Publicizing the Buy. The following table presents a variety of different methods for publicizing an acquisition buy and situations where the method can provide the most useful results in increasing competition.

Method Of Publicizing	Description	Situations For Use
Posting a Notice in the	An unclassified notice of the	Unless exempt under FAR 5.101(a)(2)(ii)

<p>Contracting Office (FAR 5.101)</p>	<p>solicitation or a copy of the solicitation.</p> <p>Primary purpose is to reach local sources willing to visit the contracting office at least once a week.</p> <p>Especially useful in providing notice of requirements to local small business.</p>	<p>(e.g., oral or FACNET solicitation), notice is required for all contract actions over \$10,000 but not over \$25,000.</p> <p>Posting for actions over \$25,000 is useful and may be required by your agency.</p>
<p>Commerce Business Daily (CBD) Synopsis of Proposed Contract Actions (FAR 5.201 and 5.207)</p>	<p>A synopsis of upcoming acquisitions following the format in FAR 5.207. Primary purposes are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.</p> <p>Designed to reach interested national and international sources. Especially useful in providing notice of larger requirements that will attract distant sources.</p>	<p>Required for all nonexempt supply and service contract actions over \$25,000.</p>
<p>Commerce Business Daily (CBD) Synopsis of Contract Awards (FAR 5.207 and 5.301)</p>	<p>A synopsis of contract awards following the format in FAR 5.207.</p>	<p>Required for all nonexempt supply and service purchase actions over \$25,000 subject to Trade Agreements Act, or likely to result in any subcontracts.</p>
<p>Handouts (FAR)</p>	<p>Listings or synopses of proposed contracts</p>	<p>Particularly useful when the you want to</p>

5.101(b)(1)	published periodically, normally once a week.	bring unique requirements to the attention of local sources.
	May be posted much like notices required for contracting offices or in other locations convenient for local sources.	By providing the information in a usable format, handouts make collecting information easier for potential sources and may increase competition.
Assisting Trade Association Dissemination (FAR 5.101(b)(2))	Handouts or similar publications may be distributed to local trade associations with a membership potentially interested in contracting to provide required goods and services.	Particularly useful when you want to bring unique requirements to the attention of firms in the trade that may never have considered Government business.
Federal Acquisition Computer Network (FACNET) or Another Means of Access Through the Single Governmentwide Point of Entry (FAR 5.101(b)(1))	FACNET or another point of entry designated by the Administrator of the Office of Federal Procurement Policy that allows the private sector to electronically access governmentwide opportunities Governmentwide.	Use electronic commerce whenever practicable or cost-effective.
Announcements to Mass Media Without Cost (FAR 5.101(b)(1))	Announcements can be made in the form of news releases to newspapers, magazines, or other mass media without cost.	Particularly useful when you want to reach firms that may never have considered Government business
	Announcements may even emphasize the	Announcements may be made about any significant proposed purchase, but larger

public service that requirements and will be performed by traditionally non-firms competing to competitive meet Government requirements will likely be considered the most newsworthy.

Paid Advertisements can be tailored to get the exact message the Government wants to send to businesses in the identified target area, whether or not the business is specifically trying to identify Government requirements.

You may use a single newspaper or several newspapers in a region.

You may place orders for paid advertising directly with the media or through an advertising agency.

Paid advertisements Use only when you anticipate that you cannot otherwise obtain effective competition.

Do not place any advertisements proposed contracts in a newspaper published and printed in the District of Columbia (DC) unless supplies or services will be furnished or labor performed in DC or adjoining counties of Maryland and Virginia.

Prior to using paid newspaper advertisements, you must obtain approval from the agency head or designee.

([FAR 5.101\(b\)\(4\)](#))