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Parent topic: Defense Federal Acquisition Regulation

Subpart 244.1 - GENERAL

244.101 Definitions.

“Acceptable purchasing system” means a purchasing system that complies with the system criteria in paragraph (c) of the clause at 252.244-7001.

“Purchasing system” means the contractor’s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of

prices with vendors, placing and administering of orders, and expediting delivery of materials.

Subpart 244.2 - CONSENT TO SUBCONTRACTS

244.201 Consent and advance notification requirements.

244.201-1 Consent requirements.

(a) In accordance with section 824 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), notwithstanding the requirements in FAR 44.201-1(a), the contracting officer shall not withhold consent to subcontract without the written approval of the program manager, or comparable requiring activity official exercising program management responsibilities, if the contractor has an approved purchasing system, as defined in FAR 44.101.

(S-70) In solicitations and contracts for information technology, whether acquired as a service or as a supply, that is a covered system or covered item of supply as those terms are defined at 239.7301 , consider the need for a consent to subcontract requirement regarding supply chain risk (see subpart 239.73). For additional guidance see PGI 244.201-1 .

244.202 Contracting officers evaluation.

244.202-2 Considerations.

(a) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substantiated the selection as offering the greatest value to the Government?

Subpart 244.3 - CONTRACTORS' PURCHASING SYSTEMS REVIEWS

244.301 Objective.

The administrative contracting officer (ACO) is solely responsible for initiating reviews of the contractor's purchasing systems, but other organizations may request that the ACO initiate such reviews.

244.302 Requirements.

(a) In lieu of the threshold at FAR 44.302(a), the ACO shall determine the need for a CPSR if a contractor’s sales to the Government are expected to exceed $50 million during the next 12 months.

244.303 Extent of review.

(a) Also review the adequacy of rationale documenting commercial product or commercial service determinations to ensure compliance with the definition of “commercial product” or “commercial service” in FAR 2.101.

(b) Also review the adequacy of the contractor’s counterfeit electronic part detection and avoidance system under DFARS 252.246-7007 , Contractor Counterfeit Electronic Part Detection and Avoidance System.

244.305 Granting, withholding, or withdrawing approval.

244.305-70 Policy.

Use this section instead of FAR 44.305-2(c) and 44.305-3(b).

(a) The cognizant contracting officer, in consultation with the purchasing system analyst or auditor, shall—

(1) Determine the acceptability of the contractor’s purchasing system and approve or disapprove the system; and

(2) Pursue correction of any deficiencies.

(b) In evaluating the acceptability of the contractor’s purchasing system, the contracting officer, in consultation with the purchasing system analyst or auditor, shall determine whether the contractor’s purchasing system complies with the system criteria for an acceptable purchasing system as prescribed in the clause at 252.244-7001 , Contractor Purchasing System Administration.

(c) *Disposition of findings*—

(1) *Reporting of findings*. The purchasing system analyst or auditor shall document findings and recommendations in a report to the contracting officer. If the auditor or purchasing system analyst identifies any material weaknesses, the report shall describe the underlying deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses ordeficiencies.

(2) *Initial determination*.

(i) The contracting officer shall review all findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor that the contractor's purchasing system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more https://www.acq.osd.mil/dpap/dars/dfars/html/current/252244.htm#252.244-7001 material weaknesses due to the contractor’s failure to meet one or more of the purchasing system criteria in the clause at 252.244-7001, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknessesand notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness (see PGI 244.305-70(c)(2));

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Evaluate the contractor's response to the initial determination in consultation with the auditor or purchasing system analyst, and make a final determination.

(3) *Final determination*.

(i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor’s purchasing system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(*2*) Disapprove the system in accordance with the clause at 252.244-7001; and

(*3*) Withhold payments in accordance with the clause at 252.242-7005 , Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor’s corrective action and the correction of material weaknesses in PGI 244.305-70 (c)(3).

(d) *System approval*. The contracting officer shall promptly approve a previously disapproved purchasing system and notify the contractor when the contracting officer determines that there are no remaining material weaknesses.

(e) *Contracting officer notifications*. The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(f) *Mitigating the risk of deficiencies on specific proposals*.

(1) Source selection evaluation teams shall discuss identified deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by a purchasing system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., a fixed-price incentive (firm target) contract instead of firm-fixed-price;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the deficiency;

(iv) Segregating the questionable areas as a cost-reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by a deficiency should—

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including certified cost or pricing data, identifying the cost impact adjustment necessitated by the deficient purchasing system;

(iii) Provide for the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

244.305-71 Contract clause.

Use the Contractor Purchasing System Administration basic clause or its alternate as follows:

(a) Use the clause at 252.244-7001 , Contractor Purchasing System Administration—Basic, in solicitations and contracts containing the clause at FAR 52.244-2, Subcontracts.

(b) Use the clause at 252.244-7001 , Contractor Purchasing System Administration—Alternate I, in solicitations and contracts that contain the clause at 252.246-7007 , Contractor Counterfeit Electronic Part Detection and Avoidance System, but do not contain FAR 52.244-2, Subcontracts.

Subpart 244.4 - SUBCONTRACTS FOR COMMERCIAL PRODUCTS, COMMERCIAL SERVICES, AND COMMERCIAL COMPONENTS

244.402 Policy requirements.

(a) Contractors are required to determine whether a particular subcontract item meets the definition of a commercial product or commercial service. This requirement does not affect the contracting officer’s responsibilities or determinations made under FAR 15.403-1(c)(3). Contractors are expected to exercise reasonable business judgment in making such determinations, consistent with the guidelines for conducting market research in FAR Part 10.

(S-70) In accordance with 10 U.S.C. 3457(c) , items that are valued at less than $10,000 per item that are purchased by a contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract when purchased shall be treated as commercial products, even though the items may not meet the definition of “commercial product” at FAR 2.101 and do not require a commercial product determination.

244.403 Contract clause.

Use the clause at 252.244-7000 , Subcontracts for Commercial Products and Commercial Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.