Subpart 5201.90 - BUSINESS CLEARANCE

Parent topic: Part 5201 - FEDERAL ACQUISITION REGULATIONS SYSTEM

5201.9000 Scope.

This subpart describes requirements to be met before entering into contract actions.

5201.9001 Policy.

(a) Contract actions, as delineated in 5201.9003(a), are subject to a formal review process prior to award through the use of a business clearance. The objective of the business clearance process is to:

(1) Ensure that the proposed decision on a contract action is consistent with laws, regulations, and DOD/DON acquisition policies.

(2) Document the basis for approval of the contract action, the basis for determination that the prices are fair and reasonable, and the application of good business practices.

(b) For contract actions requiring a business clearance, documentation generally includes the use of a pre-negotiation and post-negotiation business clearance memorandum (BCM).

(1) For acquisitions requiring competitive range determinations, the pre-negotiation BCM presents a chronology of the acquisition up to the determination to enter into discussions and provides the basis for the competitive range decision. The post-negotiation BCM continues the chronology to contract award and provides the basis for the award decision.

(2) For acquisitions requiring price negotiations, the pre-negotiation BCM presents the chronology of the acquisition prior to the start of formal negotiations and demonstrates to the approving official that the Government is ready to enter into negotiations. The post-negotiation BCM continues the chronology to contract award and describes the results of negotiations.

(3) When intending to use a combined BCM, the contracting officer must still comply with the pre-negotiation objectives documentation requirements of FAR 15.406-1 and DFARS PGI 215.406-1 or the proposal evaluation documentation requirements of FAR 15.305 and DFARS 215.305.

5201.9002 Procedures.

(a) HCAs shall establish written procedures defining the types of contract actions requiring a business clearance, the applicable dollar thresholds, and the review and approval process. HCAs must establish business clearance approval levels at least one level above the individual responsible for conducting the negotiations, or, if negotiations are not required, the individual responsible for preparing the proposed contract action. HCAs may choose to create BCM templates based on applicable regulatory and policy requirements. The degree and complexity of documentation

required for various actions should be governed by the magnitude and complexity of the action being reviewed.

(b) For contract actions subject to business clearance requirements, HCAs shall ensure that business clearances include all required content and compliances outlined in Annex 2, Business Clearance Required Content. If documentation of compliance with these requirements exists elsewhere in the contract file, the business clearance may reference the existing documentation rather than restate it. If an activity plans to delete any content otherwise required by Annex 2, the activity shall notify DASN(P) by submitting its HCA approved alternate content by email at Policy@navy.mil with the subject "[Activity Name] NMCARS 5201.90 – Business Clearance Content Deviation." HCAs may add documentation requirements to the business clearance.

5201.9003 Applicability

(a) Business clearance requirements apply to the contract actions identified below. HCAs may expand this list, as appropriate.

(1) Contracts (including task and delivery orders issued against indefinite-delivery contracts and basic ordering agreements; however, see the exceptions at (b)(3) and (b)(4) for task and delivery orders).

(2) Contract modifications not within the scope or under the terms of an existing contract with the exception of modifications to actions listed in paragraph (b).

(3) Undefinitized contract actions (see DFARS Subpart 217.74).

(4) Modifications that set or change a contract price, including definitization of any undefinitized or unpriced contract actions, change orders, engineering change proposals, value engineering change proposals, over and above work, settlement of claims, or requests for equitable adjustment.

(5) Retroactive pricing after completion, including final price determination.

(6) Advance agreements on special or unusual cost items (see 5231.109.)

(7) Actions that result in the establishment, modification, or rescission of a guarantee of performance on a government contract by a third party.

(b) The following contract actions do not require a business clearance, but the file must include the rationale for award, sufficiently documented, as prescribed by HCA procedures:

(1) Contract actions awarded under FAR Part 13, Simplified Acquisition Procedures;

(2) Contract actions awarded under FAR Part 14, Sealed Bidding;

(3) Task orders or delivery orders issued under FAR Subpart 8.4, Federal Supply Schedules; or

(4) Task orders or delivery orders issued on a firm-fixed price basis against indefinite-delivery type contracts for:

(i) Supplies for which unit prices are established in the contract; or

(ii) Services for which unit prices are established in the contract for specific tasks to be performed and where a statement of work/statement of objectives/performance work statement is not required.