

Purchasing System

Part of the 2024 Baker Tilly Business Systems Webinar Series



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Today's Presenters



Drew Lewis, CPA, CFE

- Director with Baker Tilly, with over ten years experience in the government contracting industry, having started his career with a stint at the Defense Contract Audit Agency (DCAA).
- Expertise in: DFARS business systems controls, indirect rates and allocation structures, forward pricing rate and final indirect rate proposals, CAS related compliance matters (including noncompliance resolution and preparation of cost impact analyses), audit support activities



Alec Bronder

- Manager with Baker Tilly, with over 6 years experience working with government contractors
- Expertise in: DFARS business system controls, indirect rates and allocation structures, cost accounting and compliance, cost impact analyses under the Cost Accounting Standards

Agenda

- Purchasing System Background
- Fundamental System Requirements
- Government's Oversight Approach
- Special Issues in Purchasing

Objectives

- Know and understand triggers for a CPSR
- Understand purchasing system requirements and design elements
- Understand government oversight process and high-risk areas

Purchasing System Background

Why Does the Government Review Purchasing Systems?

FAR 44.301: Objective is to evaluate...

- Efficiency and effectiveness with which contractor spends Government funds, AND
 - Protects taxpayer dollars (pays reasonable prices)
 - Procures quality goods and services & from responsible vendors
- Complies with Government policy when subcontracting
 - Complies with applicable procurement regulations
 - Supports Government socio-economic agenda
- Provides ACO a basis for granting, withholding, or withdrawing system approval
 - System approval eliminates or reduces notification & consent requirements
 - Government can rely on contractor's system of controls for subcontracting

Purchasing System Applicability

ACO Determination of “Need” (at least every 3 years) – Key Considerations

- \$25M* in **SALES** to the Government, excluding:
 - Competitively awarded firm-fixed-price
 - Competitively awarded fixed-price with economic price adjustment
 - Commercial item sales pursuant to FAR Part 12
- Contractor past performance
- Volume, complexity, and dollar value of subcontracts

FAR 52.244-2, Subcontracts

- “(i) The Government reserves the right to review the Contractor’s purchasing system as set forth in FAR subpart 44.3”

** Note: DCMA is operating under a \$50M threshold (DFARS 244.302)*

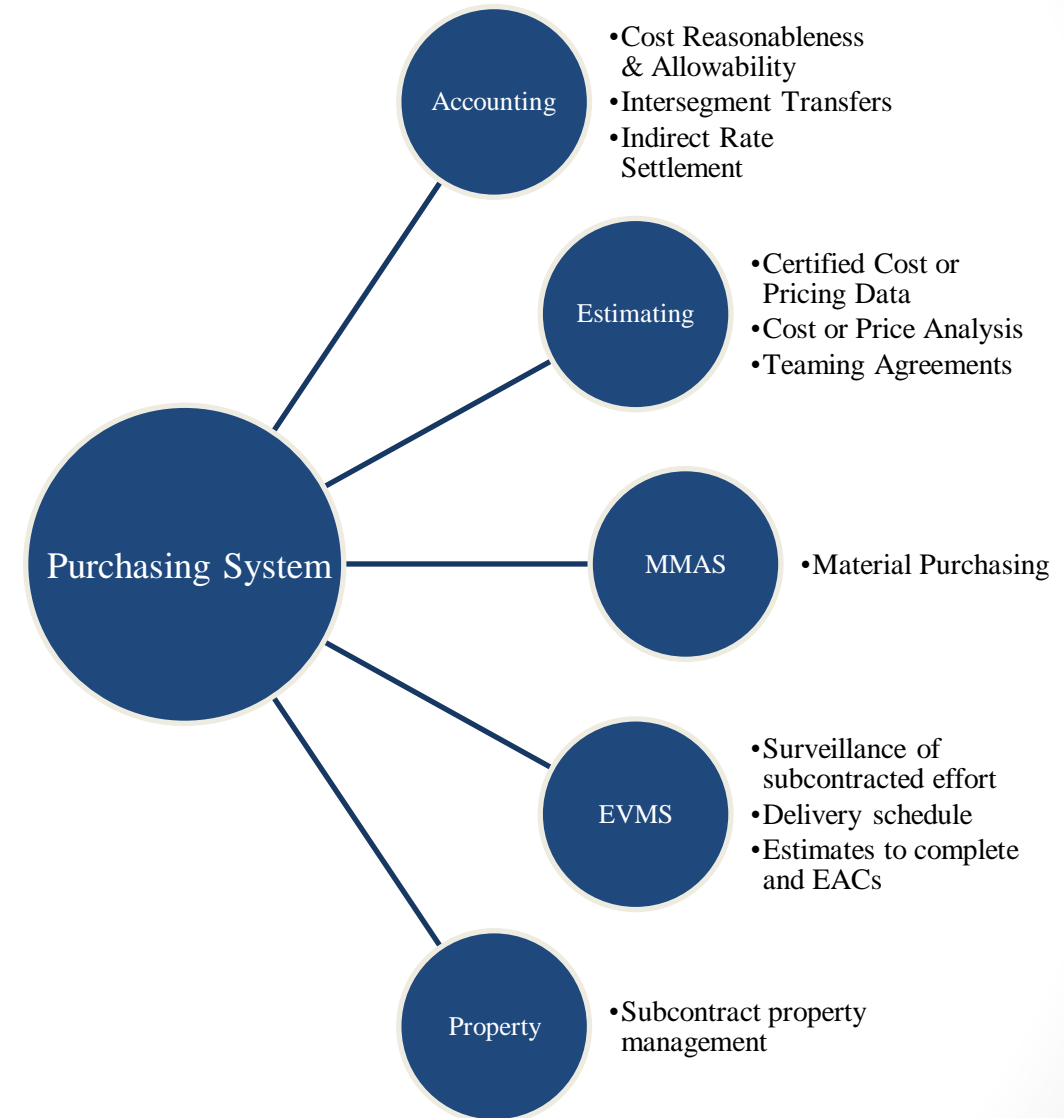
Other Business Systems Intersection

Connection with Other Business Systems

- Deficiencies in one system can result in deficiencies with others

Other System Overlap / Impacts

- Security
 - Safeguarding Covered Defense Information and Cyber Incident Reporting (252.204-7012)
- Operations / Material Inspection & Receiving
 - Contractor Counterfeit Electronic Part Detection and Avoidance System (252.246-7007)
 - Item Unique Identification and Valuation (252.211-7003)
- Operations / Small Business Administration
 - Small Business Subcontracting Plan (52.219-9)



Polling Question #1



What may trigger a contractor purchasing system review?

- A. Government RFP requirement to have an approved system
- B. Contractor sales volume to Government customers
- C. ACO woke up on the wrong side of the bed
- D. None of the above

Fundamental System Requirements

Purchasing System Requirements

- **FAR 44.303, Extent of review**

- **Specifies Universe:** Unless segregation of subcontracts is impracticable, this evaluation shall not include subcontracts awarded by the contractor exclusively in support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to part 12
- **Specifies what should be reviewed:** The considerations listed in 44.202-2 for consent evaluation of particular subcontracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system.
- **Identifies areas for special attention**

- **DFARS 244.303, Extent of review**

- Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of "commercial item" in FAR 2.101.
- 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.

Purchasing System Requirements

- DFARS 252.244-7001, Purchasing System Administration
 - 24 System Criteria
 - Contractual requirements for certain DoD contractors
 - Expectations for other non-DoD contracts during CPSR
- Solicitation Provisions and Contract Clauses
 - Contain requirements related to subcontracting and supply chain management
 - May identify certain “flowdown” terms and conditions that apply to subcontractors
 - Establish certain prime contractor responsibilities for administering subcontractor performance
- DCMA CPSR Team Expectations
 - 30 “Review Elements”
 - Generally aligned with DFARS criteria and contract clause requirements (note that not all expectations are contract “requirements”)

DFARS 252.244-7001 Criteria

Criteria

1. Have an adequate system description including policies, procedures, and purchasing practices that comply with the FAR and the DFARS

Requirement for System Description and P&Ps

2. Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract

Standalone requirement for Flowdown of clauses, T&Cs any anything else required to satisfy the prime

3. Maintain an organization plan that establishes clear lines of authority and responsibility

Define roles and responsibilities

4. Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review

Authorized requisitions

5. Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid

Documentation!

6. Apply a consistent make-or-buy policy that is in the best interest of the Government

Make-or-buy; BUT see also FAR 15.407-2

DFARS 252.244-7001 Criteria

Criteria

7. Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award

Competition!
(FAR 52.244-5) and Debarment
FAR 52.209-6

8. Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices

Vendor evaluation process.
Rating? Responsibility

9. Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award

Noncompetitive justification
and price

10. Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices

Cost or price analysis &
technical evaluation

11. Document negotiations in accordance with FAR 15.406-3

Subcontract negotiation,
specific content

12. Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts

Discounts! These are
negotiations

13. Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts

Contract type selection

DFARS 252.244-7001 Criteria

Criteria

14. Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price

Subcontract surveillance, DPAS nuance

15. Document and justify reasons for subcontract changes that affect cost or price

Change Order management

16. Notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts

Follow prime contract preaward and postaward reporting requirements

17. Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks

Anti-kickback FAR 52.203-7, Annual Ethics training

18. Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system

Internal audits, monitoring, & training

DFARS 252.244-7001 Criteria

Criteria

19. Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable

Have P&Ps that require Flowdown and compliance with prime. Emphasis here on 252.246-7007

20. Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable

Organizational responsibility for collecting and measuring past performance. Serves as input for source selection and procurement strategy

21. Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of 252.211-7003, Item Unique Identification and Valuation, if applicable

Procurement strategy, source selection methodology, buy from suppliers with acceptable performance history that meet 7007 & 7003 for parts traceability

DFARS 252.244-7001 Criteria

Criteria

22. Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions

Standalone P&P establishing when & how to perform, how to document

23. Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort

Standalone P&P with guidance on when to use, what types are authorized, and how to administer

24. Establish and maintain procedures to timely notify the Contracting Officer, in writing, if

- (i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
- (ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s)

Standalone P&P describing how degree of subcontracting is learned, monitored and reported

DCMA – Review Elements

1. Policy & Procedures
2. **TINA**
3. **CAS**
4. **Notification & Consent**
5. **SB Subcontracting Plan**
6. Suspended / Debarred Exclusions
7. **Anti-Lobbying**
8. **DPAS Ratings**
9. **FFATA Reporting**
10. Counterfeit Parts Surveillance
11. Price Analysis
12. Source Selection
13. Negotiations
14. Make-or-Buy Program
15. Limitation on Pass-Through Charges
16. Documentation
17. Training
18. Internal Review / Self Audit
19. Flow Down Requirements
20. Purchase Requisition Process
21. **Commercial Item Determination**
22. Subcontract Types
23. Procurement Authority
24. Supply Chain Management Process
25. **Buy American**
26. **Restrictions on Specialty Metals**
27. Subcontract Closeout
28. Long Term Purchasing Agreements
29. Change Orders and Modifications
30. **Intra/Inter-Company Transactions**

Polling Question #2



Which is not a requirement typically analyzed during a CPSR?

- A. Price analysis
- B. Excessive pass-through monitoring
- C. Subcontractor labor category qualifications
- D. Small business subcontracting plan compliance requirements

Government's Oversight Approach

Contractor Purchasing System Review

Pre-review

- Risk Assessment
 - Government prime & subcontract sales (exclude competitive FFP, FP EPA, & FAR Part 12)
 - Summary of purchase orders/subcontracts in support of Government sales
 - Input from Functional Specialists/Procurement Customer
 - System Changes, organizational changes, employee turnover
- System Questionnaire
 - Administrative information (security protocols, etc.)
 - Procurement system questionnaire
 - Sales data breakdown (again)
 - PO/Subcontract data stratification (breakout commercial vs. non-commercial)

Contractor Purchasing System Review

Pre-review

- Procurement Universe
 - FAR 44.303: Unless segregation of subcontracts is impracticable, evaluation shall not include subcontracts awarded in support of competitive FFP, FP EPA, and FAR Part 12 Government contracts
 - Alignment of prime contract data with subcontract data is key
 - Internal system scope definition is important (do you include all direct purchases?)
 - Listing of purchase orders, subcontracts, modifications issued during universe period
 - Attribute data (small/large bus. award, award value, current value, DPAS, etc.)
 - Prime contract attributes
 - Commercial vs. non-commercial

Contractor Purchasing System Review

Pre-review

- Policy & Procedure Manual
 - Align procedures with DCMA checklist
 - Be thorough and direct procurement analysts to information they are looking for
 - Comprehensive coverage of applicable procurement regulations
 - Describes procedures, roles, and responsibilities to comply (see CPSR Guidebook for specific expectations)
- Prime Contract Clause Information
 - Identification of contract clauses by prime contract

Contractor Purchasing System Review

During the Review

- Sample Selection (initial subset of files requested prior to on-site review)
 - Typically, short turnaround time for providing access to files
 - Be prepared to provide access to any file in universe provided
 - Consider procedures for providing electronic access
- Entrance Conference
 - Contractor to provide company and procurement department overview
- File Reviews
 - Typically, 2 weeks or less (virtual or on-site)
- Q&A
 - Daily Q&A related to file reviews or other inquiries
 - Review questions for systemic misunderstanding
- Exit Conference
 - Questionnaire Log
 - Summary of findings

Contractor Purchasing System Review

Post Review

- CPSR Report Provided to ACO
 - Request a copy!
- Corrective Action Requests – Level II
 - Less than “significant” deficiencies
 - Contractor expected to respond and resolve with procurement analyst
- ACO Initial Determination & Contractor Response
- Corrective Action Requests – Level III
 - ACO final determination of significant deficiency
 - Requires contractor root cause analysis and detailed corrective action plan
 - Follow up confirmation / review of corrective actions

Polling Question #3



What information does DCMA typically request from a contractor as part of a CPSR?

- A. Purchasing Policies & Procedures
- B. Clauses Included in Prime Contracts
- C. Detailed System Questionnaire
- D. All of the Above

Special Issues in Purchasing

Source Selection/Competition

- Requirements
 - Competition to the maximum extent practicable
 - Management level justification and adequate cost/price analysis for sole source
- CPSR Expectations
 - Evidence of competition (bids/proposals received, etc.) and market research
 - Well documented justification for lack of competition (i.e. SSJ)
- Common Pitfalls
 - “Management level” justification
 - Evidence of competition and/or timing of competition (in another file)
 - Teaming partner selection documentation
 - Procurement files that don’t “tell the story”

Price Analysis

- Requirements
 - Perform price or cost analysis to ensure fair and reasonable subcontract prices
- CPSR Expectations
 - CPSR Guidebook: “In the absence of competition, a price analysis must be performed to determine price reasonableness and the file must be properly documented.”
 - Cost analysis (to include technical evaluation) when subcontractors provide certified cost or pricing data
- Common Pitfalls
 - Poorly justified analysis (do the documented facts and circumstances allow a prudent person to determine that the price is fair and reasonable?)
 - Basis of comparison is key
 - Overcomplicating the analysis when adequate competition was achieved
 - Teaming arrangements (again) and other unique contract pricing circumstances
 - GSA schedule prices as only basis for comparison (DCMA says “no”, right or wrong...)

Commercial Item Determination

- Requirements
 - 52.244-6: Incorporate commercial items to the maximum extent practicable
 - Insert clauses listed at 52.244-6(c) in subcontracts for commercial items
 - 52.210-1: Before awarding subcontracts over the SAT for non-commercial items, perform market research to determine if commercial items are available
- CPSR Expectations
 - Documented commercial item determinations (CID) the way DoD does (note: what's expected is not always what's right)
- Common Pitfalls
 - No documented commercial item determination
 - Insufficient supporting market research / rationale to justify determination
 - Misunderstanding of applicability (for DCMA too!)

Subcontractor Certifications

- Requirements
 - Certain prime contract clauses require vendor certifications, disclosures, and/or information (debarment, anti-lobbying, FFATA, DPAS, etc.)
 - Some require certification at time of award
- CPSR Expectations
 - Appropriate flow down and compliance with prime contract requirements
- Common Pitfalls
 - Timing of day-of-award / award specific certifications (careful with annual reps and certs)
 - Obtaining information (FFATA) and not meeting reporting deadlines
 - Simple solutions can avoid significant deficiencies

Compliance with Prime Contract Requirements

- Proper flowdown of mandatory requirements to subcontractors
 - Public law requirements
 - Socioeconomic requirements
 - Commercial item vs. non-commercial item clauses
- Compliance with other prime contract responsibilities that are not mandatory flowdown clauses, e.g.
 - Buy American
 - Restriction on Acquisition of Specialty Metals
 - Reporting executive compensation and first-tier subcontract awards
 - Settling subcontract amounts and indirect cost rates

Safeguarding Covered Defense Information & Cyber Incident Reporting

- DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting
- CPSR Guidebook Section 5.24, Supply Chain Management Process
 - Contractor to demonstrate their ability to safeguard covered defense information in accordance with DFARS 252.204-7012
 - Flow down DFARS 252.204-7012 in all applicable subcontracts
 - Demonstrate how covered defense information is transferred to subcontractors
 - Exhibit examples of covered defense information data transfers to demonstrate ability to comply with requirement
 - Validate that the sub has a Covered Contractor Information System (CCIS) that can receive and protect CUI

Polling Question #4

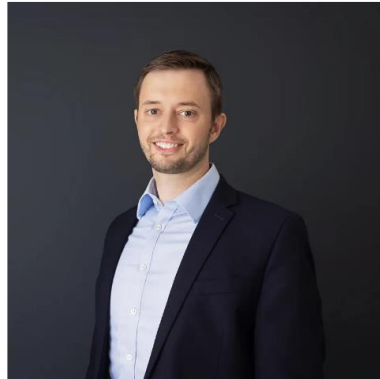


What presents the highest risk during a CPSR?

- A. SAM checks for subcontractor suspension or debarment
- B. Your out-of-office reply during the Q&A process
- C. Compliance with Public Law requirements

Questions?

Connect with us!



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