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Season 5: Episode 4 – Acquisition Methods

Part 216 – Types of Contracts

Part 217 – Special Contracting Methods

Part 218 – Emergency Acquisitions

Co-Host – Lou Chiarella



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- Deputy Assistant General Counsel in the Procurement Law Division, Office of the General Counsel, U.S. Government Accountability Office (GAO) (2001-2022).
- Army Judge Advocate (1988-2018), culminating with his assignment as Chief Counsel for the Army Futures Command Task Force, which resulted in the Army's largest acquisition-related reorganization in 50 years.

Co-Host – Dave Drabkin



Independent consultant with 41-plus years of federal government contracting experience in both the public and private sector.

Chairman of The Advisory Panel on Streamlining and Codifying Acquisition Regulations (Section 809 Panel),
<https://discover.dtic.mil/section-809-panel/>

The President of the United States appointed Dave to the Service Acquisition Reform Act (SARA) and the Multiple Award Schedule (MAS) Panels.

DoD Program Manager for Federal Acquisition Streamlining Act (FASA) Implementation.

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Welcome Back and Rules of Engagement

- Class will begin promptly at 1300.
- Class will end at 1430.
- Please use the Q&A panel to ask your questions
- If we don't answer the questions today, we'll get back to you.

What's in the Documents Folder Today?

1. [CBE Guidebook](#)
2. [Class Deviation 2017-00007 Emergency Contracting](#)
3. [Class Deviation 2019-0001 Use of Fixed-Price Contracts](#)
4. [DCC Handbook](#)
5. [DPAP Contract Type Guidance](#)
6. [PGI Template for Renewable Energy Acquisition](#)

Today's Topics

Acquisition Methods

Part 216 – Types of Contracts

Part 217 – Special Contracting Methods

Part 218 – Emergency Acquisitions

Polling Question #1

- How much experience do you have with DoD-specific special contracting techniques?
 - a. Absolutely none
 - b. A little from the Government side
 - c. A little from the industry side
 - d. A lot from one or both sides



Polling Question #2

- What type of contract does DoD prefer to use?
 - a. An ID/IQ contract
 - b. A cost-type contract
 - c. A fixed-price contract
 - d. The Government has no preference



DFARS 216 – Types of Contract

- Fixed Price Contracts
 - “Shall” be considered in determination of contract type
 - Special requirements for FMS
 - EPA Clauses
 - Basic steel, aluminum, brass, bronze, or copper mill products
 - Non-standard steel items
 - Wage rates or material prices controlled by a foreign government.
- Cost Reimbursement Contracts
 - Prohibition with connection to construction and military housing
 - Allowability of costs – whistleblower proceeding

216.4 – Incentives

- DAU Award and Incentive Fees Community or Practice see PGI
- Need a D&F
- Use objective criteria to the maximum extent possible
- Include performance incentives in solicitation for engineering, manufacturing, production of weapons systems and embedded software
- Use FP-Firm Target to move from development to production
- Cost Type contracts
 - Award fee pool – 40% available for final evaluation
 - Award fee payments prohibited other than at the end of evaluation period

216.4 – Incentive Fee (con't)

- Reduction or denial of Award Fees:
 - where health or safety of government personnel is jeopardized
 - Failure to comply with performance requirements – private security

216.6 – T&M and Labor Hour

- D&F requirements
 - Contains sufficient facts to justify no other contract type suitable
 - Identify market research conducted
 - Structure award to minimize T&M/Labor Hour requirements
- Approval requirements different for
 - Humanitarian/peacekeeping
 - Recovery from conventional, NBC and cyber
 - International or support response to emergency or disaster
- IDIQ must also authorize orders for CR, Incentive or FP to maximum extent practicable

216.7 – Basic Ordering Agreements

- May not exceed 5 years
- See PGI procedures for placing orders.

Polling Question #3

- Which of the following contracting methods has four special categories in the DFARS that do not appear in the FAR?
 - a. Multiyear contracting
 - b. Options contracting
 - c. Interagency acquisitions
 - d. Management and Operating (M&O) contracts



DFARS 217 – Special Contracting Methods

- Multi-Year Contracts

- **Definitions –**

- Multi-year contract - a contract for the purchase of supplies or services for more than 1, but not more than 5, program years. . . . The key distinguishing difference between multi-year contracts and multiple year contracts is that multi-year contracts . . . buy more than 1 year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first
 - Advanced procurement - an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a FY in advance of the FY in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.
 - “Military installation” - a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (10 U.S.C. 2801(c)(4)).

DFARS 217 – Special Contracting Methods

- Multi-Year Contracts
 - **Policy** - Before awarding a multiyear contract, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis. Do not award the multiyear contract unless the analysis shows that the multiyear contract will result in the lower cost
 - **Multi-year contract for services** - The head of the agency may enter into a multiyear contract for a period of not more than 5 years for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated
 - **Multi-year contract for supplies** - >\$750M additional approval requirements

217.1, What Can You Use Multi-Year Contracts For?

- A weapon system and associated items, services, and logistics support for a weapon system
- Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates
- Military housing supplies and services up to 4 years
- Electricity from renewable sources up to 10 years

217.2 – Options

- May be for a period up to 5 years
 - May be extended
 - Shall not exceed 10 years
- If “Order” goes beyond 10-year time period for contract SPE approval needed
- Does not apply to
 - Contracts for advisory and assistance services may not be for a period in excess of 5 years - May be extended for no more than 6 months
 - Definite quantity contracts
 - GSA Schedule contracts
 - Multi-agency contracts awarded by any agency other DoD, NASA or Coast Guard
- Verify
 - Summary level score in SPRS for NIST SP 800-171
 - Current CMMC level

217.5 – Interagency Acquisitions

- DoD has additional procedures for providing assisted acquisitions to other DoD activities, see PGI 217.502-1

217.6 – Management and Operating Contracts

- FAR Subpart 17.6 does not apply to DoD

217.7 – Interagency Acquisitions (Non-DOD on Behalf of DOD)

- Definitions
 - “Assisted acquisition” - the type of interagency contracting through which acquisition officials of a non-DoD agency award a contract or a task or delivery order for the acquisition of supplies or services on behalf of DoD.
 - “Direct acquisition” - the type of interagency contracting through which DoD orders a supply or service from a Governmentwide acquisition contract maintained by a non-DoD agency.
 - “Governmentwide acquisition contract” means a task or delivery order contract that—
 - Is entered into by a non-defense agency; and
 - May be used as the contract under which property or services are procured for one or more er departments or agencies of the Federal Government.

217.7 – Interagency Acquisitions (Non-DOD on Behalf of DOD)

- Procedures.
 - Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—
 - Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—
 - Satisfying customer requirements;
 - Schedule;
 - Cost effectiveness (considering discounts and fees). In order to ensure awareness of the total cost of fees associated with use of a non-DoD contract, follow the procedures at PGI 217.770(a)(3); and
 - Contract administration (including oversight);
 - Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
 - Reviewing funding to ensure that it is used in accordance with appropriation limitations; and
 - Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements in subpart

217.70 – Exchange of Personal Property

- Exchange not excess
- Exchange where possible don't replace
- Use a Purchase Request and make sure it identifies the identify is eligible for exchange and economically makes sense
- Make sure property is demilitarized
- One contract to accomplish both except where there is a mandatory source of supply

Trivia Contest

What actor played the role of supply SGT “Crapgame” in the 1970 movie Kelly’s Heroes?



217.71 – Master Agreements for Repair & Alterations of Vessel

- Definitions
 - “Master agreement for repair and alteration of vessels”—
 - Is a written instrument of understanding, negotiated between a contracting activity and a contractor that—
 - Contains contract clauses, terms, and conditions applying to future contracts for repairs, alterations, and/or additions to vessels; and
 - Contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the master agreement.
 - “Job order”—
 - Is a fixed price contract incorporating, by reference or attachment, a master agreement for repair and alteration of vessels;
 - May include clauses pertaining to subjects not covered by the master agreement; but applicable to the job order being awarded; and
 - Applies to a specific acquisition and sets forth the scope of work, price, delivery date, and other appropriate terms that apply to the job order.
- Can be used for US and Foreign vessels when directed by contracting officer
- Remain in effect until canceled and may be terminated on 30 day written notice
- Review annually
- Job orders cannot be used to modify the master agreement
- There are identified required DFARS clauses for master agreements

217.73 – Identification of Sources of Supply

- Requires manufacturers to identify the actual manufacturer of supplies for DoD
- When practicable contractors shall require identification of sources in the delivery of supplies –
 - Actual manufacturer or producer, or all the contractor's sources (include ID number)
 - National stock number (if there is one)
 - Source of any technical data delivered under the contract
 - Does not apply to contracts that are—
 - For commercial items
 - Valued at or below the simplified acquisition threshold

217.74 – Undefined Contract Actions

- Includes Letter Contracts, Oral Contracts and Orders for which price has not been agreed to before performance begins.
- Contracting Officer needs HCA approval before entering into UCA or modifying UCA once performance begun.
- Not usually used for FMS, waiver/approvals required.
- May not be unilaterally definitized over \$50M without approvals
- Definitization - 180 day or 50% of NTE price
- Profit is double edged sword
- Enhanced reporting for oversight

217.75 – Acquisition of Replenishment Parts

- Spares - repairable or consumable parts acquired after the initial provisioning process
 - Can order replenishment parts with production
 - Require full and open competition when you have fully adequate drawings & rights
- Limitations on price increases –
 - No sole source when price > over 25% over past 12 months
 - There are exceptions –
 - National security
 - Contracting officer determines fair & reasonable
- Does not relieve contracting officer from their responsibility to determine price fair & reasonable

217.78 – Reverse Auctions

- Prohibition:
 - Personal Protective Equipment
 - Aviation Critical Safety Items

Polling Question #4

- How much experience do you have with the additional special acquisition flexibilities in DFARS 218?
 - a. I'm an expert on this subject
 - b. I have some experience with these issues
 - c. I've heard of these flexibilities
 - d. Is this some kind of gymnastics?



218.1 – Available Acquisition Flexibilities

- Circumstances permitting other than full and open competition.
- Use of the Governmentwide commercial purchase card.
- Master agreement for repair and alteration of vessels.
- Spare Parts breakout Program
- Storage & disposal of toxic & hazardous materials
- Domestic sourcing restrictions
- Rights in technical data
- Electronic submission & processing of payments request
- Mortuary services

Polling Question #5

Which of the following DFARS requirements are waived during defense or recovery from certain events?

- a. Policy for unique item identification at 211.274-2(a)
- b. Only one offer requirements at 215.371-2
- c. Approval of D&F for T&M or LH contracts at 216.601(d)(i)(A)(1) & (2)
- d. All of the above



218.2 – Emergency Acquisition Flexibilities

Varying waiver of certain requirements for

- Defense or recovery from certain events
- Incidents of national significance, emergency declaration, or major disaster declaration.
- Humanitarian or peacekeeping operation.

Head of Agency redefined as HCA for

- FAR 2.101 “Simplified acquisition threshold.”
- FAR 12.102(f) Facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack, as an acquisition of cml prods/servs
- FAR 13.201(g) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance FAR 13.500(c)(1) - the acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation; to facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster,.
- (e) FAR 18.2 – Emergency Acquisition Flexibilities

218.2 – Emergency Acquisition Flexibilities

- Contingency contracting officers don't need baccalaureate degree
- No IUID required
- No required use of GPC
- Contracting officer may use up to SAT
- May use Imprest Funds or third-party drafts
- May use SF44
- Only One Offer does not apply
- Don't need a D&F to use T&M or Labor Hour contracts
- UCAs – may be used with HCA approval
- May buy from certain prohibited sources OCONUS
- Domestic sourcing requirements not required where unusual & compelling circumstances exist
- Electronic submission & processing of payments may be waived

See you again on May 24th . . .

Same Bat Time . . .

Same Bat Channel . . .



THANKS!!!!!!