



GovCon101: THE SIMPLIFIED ACQUISITION  
PROCEDURE

# Chapter 13 Federal Acquisition Regulation (FAR)

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# Statutory and Regulatory Overview

## **The Federal Acquisition Streamlining Act of 1994 (FASA) states a preference for government acquisition of commercial items**

Purchase of proven products such as commercial and non-developmental items can eliminate the need for research and development, minimize acquisition lead-time, and reduce the need for expensive product testing

Preference for Acquisition of Commercial Items, 10 U.S.C. § 2377(b), requires, in part, that:

The head of each executive agency shall ensure procurement officials in that agency, to the maximum extent practicable:

- Acquire commercial items or non-developmental items other than commercial items to meet the needs of the agency
- Require prime contractors and subcontractors of all levels under the agency contracts to incorporate commercial items or non-developmental items other than commercial items as components of items supplied to the agency

# Statutory and Regulatory Overview (cont.)

FAR 1.102(b)(1) (“The Federal Acquisition System will satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example – (i) Maximizing the use of commercial products and services . . . .”)

FAR 13.000 prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, commercial products, and commercial services, the aggregate amount of which does not exceed the simplified acquisition threshold

Subsequent statutory and regulatory changes over the past few decades following passage of FASA have broadened the scope of what the Government may procure/define as a commercial product or service

The DoD has even been rebuffed more than once when it made legislative proposals to eliminate specific categories (e.g., ‘of a type’) from the FAR 2.101 definition

- See, *e.g.*, Senate Report to the 2013 NDAA, Subtitle C, Sect. 841 (“The committee declines to make this change [proposed by the DoD]. The Federal Acquisition Streamlining Act of 1994 . . . adopted a broad definition of commercial items to ensure that federal agencies would have ready access to products that are available in the commercial marketplace - including new products and modified products that are just becoming available. Such access remains particularly critical in fast moving commercial markets, including the markets for information technology and other advanced products.”)

# Why Commercial Item Acquisition Matters

## Why it Matters to the Contractor

### Streamlines the Acquisition Process

- Eliminates the majority of burdensome terms, conditions, and regulations in federal procurement (*e.g.*, CAS, Truthful Cost or Pricing Data (formerly “TINA”)), and many other non-value added regulations do not apply)
- Vendors do not need to first invest in non-value added compliant internal systems and processes

Provides an easier point of entry into the government marketplace for small or inexperienced contractors

Primes have greater flexibility to provide financing to lower-tier suppliers, encouraging participation by small / non-traditional suppliers in the government marketplace

# Why Commercial Item Acquisition Matters (cont.)

## Why It Matters to the Federal Government

### Leverages the Commercial Marketplace

- Technical innovation (access to cutting edge tech at speed of relevance)
- Time efficiencies (as compared to development cycle of USG-unique items)
- Price competition (contractor over-pricing items will be driven out of the market)
- Economies of scale
- Reduced acquisition costs and cycle times (time efficiencies frequently under-valued by USG)
- Less administrative burden
- Drastic risk reduction in terms of development, technological and manufacturing maturation

# Commercial Items Now Commercial Products and Services Under FAR 2.101

## Commercial Products

- (1) **Any product of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes that has been (i) sold, leased, or licensed, or (ii) offered for sale, lease, or license to the general public;**
- (2) **Any product evolved from an product described in (1) that is not yet available in the commercial marketplace but will be in time to satisfy the delivery requirements under a government solicitation;**
- (3) **Any product that would satisfy (1) or (2) but for (i) modifications of a type customarily available in the commercial marketplace, or (ii) minor modifications of a type not customarily available in the commercial marketplace;**
- (4) **Certain Nondevelopmental Items**

## Commercial Services

- (1) **Installation services, maintenance services, repair services, training services, and other services**
- (2) **Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions**

# “Of A Type” Commercial Items

The FAR’s “of a type” language broadens the scope of acceptable commercial items so that qualifying items do not have to be identical to those in the commercial marketplace

A contractor need only demonstrate that the products or services offered to the government are of a type offered for sale or sold to the public generally

A contractor is not required to demonstrate either:

- The identical item is offered or sold (or will be sold in the future) to the general public; or
- That the contractor itself offers or sells the item to the general public
- In a commercial item determination, the government typically considers whether the product or service is “of a type” by considering:
  - Form, fit and function of the item (i.e., physical characteristics, interface with other systems, and the core purpose)
  - Essential characteristics that define the item
  - Technical specs
  - What industries use the item and for which applications?
  - Size of the market

# Evolved From A Commercial Product

If a commercial product evolves through technical or performance advances and is not yet available in the commercial marketplace, it will meet the commercial product definition, as long as it will be available in time to satisfy the Government's requirements (*e.g.*, new version of software)

- Allows the government to access new technology quickly

Commercial products that evolve as a result of advances in technology or performance include product updates/improvements and model changes

Government evaluators examine evolution by considering:

- Is this a newer version of something that you can already buy commercially?
- Is the difference in versions other than for technology or performance improvements?
- How far along is the development process? Has there been a successful prototype?



# Modified “Of A Type” Products

Any product (1) “of a type” customarily used by the public or by non-governmental entities for purposes other than governmental purposes, or (2) evolved from an “of a type” product through technology and/or performance, but for:

- Modifications of a type customarily available in the commercial marketplace; or
- Minor modifications of a type not customarily available in the commercial marketplace, made to meet Federal Government requirements

A minor modification means a modification that does not significantly alter the nongovernmental function or essential physical characteristics of a product or component, or change the purpose of a process

A government-unique product or service can still be a commercial product so long as any modifications are consistent with the basic nature of the products or supplies, and considers:

- The value and size of the modification;
- Changes to the essential physical characteristics of the product; and
- The comparative value and size of the final product
  - Dollar value and percentage may be used as guidelines, but are not solely conclusive of a minor modification

# Modified “Of A Type” Products (cont.)

Government evaluators typically determine whether a modification is an “of a type” modification by considering:

- Is the modified product similar to other modified products in the commercial marketplace?
- Does the supplier perform similar modifications for nongovernmental customers?
- Do the manufacturing processes used to perform the modification differ for governmental and nongovernmental customers?

# Combinations of Commercial Items

A combination of items meeting the different FAR requirements or the FAR 2.101 definition of “commercial item” may qualify in the aggregate, as a commercial item

- Example: a computer network that uses commercially-available hardware and software and a commercial help desk for users. The combination of the commercial hardware, software, and professional service components render the computer network commercial

Not every single component in an end item/service must be commercial

Non-commercial components may or may not render an item non-commercial based on factors such as the number and significance of the non-commercial components

# Non developmental Items/Products

Non-developmental items (NDIs) are separately defined under FAR 2.101 as:

- An already developed product “used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense agreement;”
- A product which meets the definition in (1) that requires minor modifications or modifications “of a type customarily available in the commercial marketplace;” or
- A product which does not meet the definition in either (1) or (2) “solely because the item is not yet in use”
- NDIs are Commercial Products if the procuring agency determines the product was (1) developed exclusively at private expense and (2) sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments

# Support Services

Installation services, maintenance services, repair services, or training services supporting commercial or commercial “of a type” products qualify as commercial services if:

- The services are procured for support of an item that otherwise meets the FAR definition of a commercial product (regardless of whether the services are provided by the same source or at the same time as the item); and
- The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the federal government

See also DoD Guidebook For Acquiring Commercial Items (July 2019), Part A at 26 (“Services evolve just as readily as supplies, and related services follow the evolution of supplies. This frequently applies to services under paragraph (5) of the FAR definition of a commercial item; as supplies evolve, so must the installation, maintenance, and repair of those same items (*e.g.*, maintenance of software).”)

# Commercial Item Support Services

Government evaluators typically determine whether a service is procured for support of a commercial product by considering:

- Is the product receiving the service commercial (or “of a type”)?
- Does the service support any non-commercial product(s)?

To determine whether the service being procured is also provided contemporaneously to the general public under similar terms and conditions, government evaluators consider:

- Whether the warranty terms available in the commercial marketplace are similar to those offered to the government
- Whether any government-unique liability concerns potentially affect the terms and conditions of service
- Whether the service provider has any commercial clients, and, if so, do the commercial clients receive similar services from the contractor?

# Services “Of A Type”

Addresses services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions:

- Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public
- Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors

# Services “Of A Type” (cont.)

Government evaluators typically determine whether services are “of a type” by considering:

- Are there similar commercial services offered and sold: (1) competitively, and (2) in substantial quantities?
- Does the contracting officer assess there are sufficient similar commercial services companies to conclude the commercial services are competitively offered and sold, resulting in market driven prices?
- Is there evidence that the item is sold in substantial quantities?



# Procedures – 13.101(a)(b)

## **In making purchases, the contracting officer has the following obligations:**

- 1) Ensuring the purchases are economically advantageous to the government and devoid of waste
- 2) Considering the overall competence and responsibility of a small business before rejecting its quotation

Note: This competence relates to the small business' capability, capacity, credit, integrity, perseverance, tenacity and limitations in subcontracting

- 3) Providing for inspection of supplies or services to ensure government quality assurance

## **The contracting officer is further mandated to:**

- 1) Include or combine related items in one solicitation and make an award on an “all-or-none” or “multiple award” basis
- 2) Incorporate provisions only by references and not in full text in solicitations and awards. But upon request, the contracting officer shall provide the full text of such provision
- 3) Pursue trade and prompt payment discounts
- 4) Maximize the use of bulk funding, particularly if numerous purchases using the same type of funds are to be made during a given period

# Vendors' Source List

Contracting officers should use the System for Award Management as their primary sources of vendor information

Offices maintaining additional vendor source files or listings should identify the status of each source in the following categories:

- Small businesses
- Small disadvantaged business
- Women-owned business concern, including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-owned Small Business (WOSB) Program
- HUBZone small business
- Service-disabled veteran-owned small business
- Veteran-owned small business

# Unenforceability of unauthorized obligations in micro-purchases – 13.202

Unauthorized obligations relating to micro-purchases, including those made with the Governmentwide purchase card is unenforceable

An example of this obligation is an unauthorized supplier license agreement or any other agreement that contains indemnification clauses that are inconsistent with federal laws

# Simplified Acquisition Methods

- 1) Governmentwide Commercial Purchase Card
- 2) Purchase Orders
- 3) Blanket Purchase Agreements
- 4) Imprest funds and Third Party Drafts
- 5) SF 44, Purchase Order-Invoice-Voucher

# 1) Governmentwide commercial purchase card

The Governmentwide purchase card is authorized for use in making and/or paying for purchases of supplies, services of construction authorized by law.

Agencies using the commercial purchase card shall establish procedures for use and control of the card that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4-4500) and are consistent with the terms and conditions of the current GSA credit card contract

The Governmentwide purchase card may be used:

1) Make micro-purchase

- < \$2,000 for Construction
- < \$2,500 for Services
- < \$3000 for Supplies

2) Place a task or delivery order (if authorized in the basic contract, ordering agreement or blanket purchase agreement)

3) Make payments, when the contractor agrees to accept payment by the card

Pre-priced government contracts are exceptions <\$25K

The following governs the government purchase card program:

- a) FAR 13.301
- b) GSA CONTRACT (with the Bank)
- c) AFI 64-117- AF Govt-Wide Purchase Card Program
- d) AFI 65-601 v1 - Budget Guidance and Procedures

# Items Typically Acquired

Homeland Defense

Computers, Software and Computer Equipment

Construction < \$2000

Office Supplies

Furniture

Electronics

Nonpersonal Services < \$2500

## **Cardholder expectation of vendors:**

Prompt processing of charges

Prompt delivery/service

Quick resolution of problems

FOB destination pricing

- Ensuring items are covered by a government contract if purchase exceeds micro-purchase threshold

# Cardholder Responsibilities

Proper Use

Maximizing competition

Fair and reasonable pricing

Training

Tracking delivery and warranty

Follow all simplified acquisition procedures as identified in FAR Part 13

Equipment accountability

Buying “Green”

IRS reporting/withstand audits

# Responsibilities of GPC Team

## Billing Official

- Routine oversight of cardholders

## Surveillances

- IAW AFI 64-117 Purchase Card Regulation
- Mandatory Sources
- Documentation
- Purchases > Micro-purchase threshold
- Split Purchases
- Abuses



## 2) Purchase Orders (General)

Purchase orders generally are issued on a fixed-price basis for acquisition of commercial products and commercial services. This is a priced purchase order. A purchase order, when issued by the Government, means an offer by the Government to buy supplies or services, at the stated price in the order and upon specified terms and conditions contained in the order.

Purchase orders shall:

- i) Specify the quantity of supplies or scope of services ordered
- ii) Contain a determinable date by which delivery of the supplies or performance of the services is required
- iii) Provide for inspection of the commercial products (usually at the destination). When inspection and acceptance will be performed at destination, advance copies of the purchase order shall be furnished to the consignee(s) for material receipt purposes
- iv) Specify f.o.b. destination for supplies to be delivered within the US except Alaska and Hawaii
- v) Include any trade and prompt payment discounts that are offered

To constitute a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require a written acceptance of the purchase order by the contractor.

# Unpriced Purchase Orders

An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order

This may be issued on paper or electronically

An unpriced purchase order may be used only when it is impractical to obtain pricing in advance of issuance of the purchase order; and the purchase is for:

- a) Repairs to equipment requiring disassembly to determine the nature and extent of repairs.
- b) Material available from one source and for which cost cannot readily be established.
- c) Supplies or services for which prices are known to be competitive, but exact prices are not known

# 3) Blanket Purchase Agreements

This is a simplified method of filing anticipated repetitive needs for supplies by establishing “charge accounts” with qualified sources of supply

BPAs should be established for use by an organization for providing supplies for its own operations or for other offices, installations, projects and functions

The use of BPAs does not exempt an agency from the responsibility for keeping obligations and expenditures within available funds

BPAs are used only for purchases that are authorized by law or regulation

Individual purchases shall not exceed the simplified acquisition threshold. But Agency regulations may establish a higher threshold

If for a particular purchase greater than the micro purchase threshold, there is an insufficient number of BPAs to ensure maximum practicable competition, the contracting officer shall:

- a) Solicit quotations from other sources and make the purchase as appropriate
- b) Establish additional BPAs to facilitate future purchases if recurring requirements for the same or similar supplies/services seem likely, qualified sources are willing to accept BPAs, and it is otherwise practicable to do so

For BPAs, documentation of purchases is limited to only essential information and forms

# Establishment of BPAs

Where the contracting officers determine that BPAs would be advantageous, they shall:

- a) Establish the parameters to limit purchases to individual items or commodity groups or classes or permit the supplier to furnish unlimited supplies or services
- b) Consider suppliers whose past performance has shown them to be dependable, offering quality supplies or services at consistently lower prices, and have provided numerous purchases at or below the simplified acquisition threshold

BPAs may be established with:

- a) More than one supplier for supplies or services of the same type
- b) A single firm from which numerous purchases at or below the simplified acquisition threshold will likely be made in a given period
- c) Federal Supply Schedule contractors, if not consistent with the terms of the applicable schedule contract

# Establishment of BPAs (cont.)

## **Circumstances under which contracting officers may establish BPAs are:**

- 1) There is a wide variety of items in a broad class of supplies or services that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance, and may vary considerably
- 2) There is need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise
- 3) The use of this procedure would avoid writing of numerous purchase orders
- 4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use

## **BPAs Review Procedure and Completion:**

- The contracting officer placing orders under BPAs shall review BPA files at least annually to ensure compliance with procedures
- The contracting officer shall maintain awareness of changes in markets conditions, sources of supply, and other pertinent factors that may warrant making new arrangements or modifying existing arrangements
- An individual BPA is considered complete when the purchases under it equals its total dollar limitation, if any, or its stated time period expires

# Blanket Purchase Agreements

## **BPA Forms**

- SF 1449, Solicitation/Contract/Order for Commercial Items, or
- DD 1155, Order for Supplies or Services

## **BPA award itself shall contain, at minimum, the following terms and conditions:**

- **Description of the Agreement**
  - General description of supplies or services that will be furnished
- **Extent of Obligation**
  - Government is only obligated to pay for actual orders placed
- **Authorized “Callers” and their dollar limitation per order (call)**
- **Delivery Tickets**
  - Require that deliveries be accompanied with “Sales slips”
- **Invoicing Instructions**
  - Price List (mandatory for decentralized ordering)

# Blanket Purchase Agreements (cont.)

## Ordering

- Centralized
  - **“Calls” placed by Contracting Office (Buyer or CO)**
    - Items do not have to be pre-priced in award
      - Fair and reasonable price needs to be determined and documented when ordering
- Decentralized
  - **“Calls” placed by functional organization (the customer)**
    - Items or services are pre-priced (Price Lists)
      - Negotiated price list are established up-front with award
      - Price lists are renegotiated at various agreed upon time intervals (*e.g.* 1 year)
    - Customer can only order from the price list
  - **Annual CO review of BPA calls/procedures/documentation required**

## 4) Imprest Funds & Third-Party Drafts

An imprest fund is a fixed-cash or petty-cash fund in the form of currency or coin that has been advanced as Funds Held Outside of Treasury. The imprest fund cash is charged to a specific appropriation account by a Government agency official to an authorized cashier for cash payment or other cash requirement as specifically authorized. The fund may be of a revolving type, replenished to the fixed amount as spent or used, or may be of a stationary nature such as a change-making fund

Third party draft - means an agency bank draft, similar to a check, that is used to acquire and to pay for supplies and services

Third party drafts are check-like payment instruments used by a Federal agency, drawn against and paid by an outside-the-government service provider that may be a financial institution. After the drafts, which have been furnished by the service provider, are issued by the agency and presented at the service provider's financial institution, the service provider bills the agency for the amount of the drafts plus the service fees



# Imprest Funds & Third-Party Drafts (cont.)

Imprest Funds and Third-Party Drafts may also be used to acquire and pay for supplies or services

Any agency using imprest funds and third-party drafts shall:

- a) Periodically review and determine whether there is a continuing need for each fund or third-party draft account established
- b) Take prompt action when necessary to have imprest funds or third-party draft accounts adjusted to a level commensurate with demonstrated needs
- c) Develop and issue appropriate implementing regulations designating the personnel authorized to make purchases using imprest funds, and documenting purchases from imprest funds or third-party drafts

# Conditions & Procedures for use

Imprest funds and third-party drafts may be used when:

- a) The imprest fund transaction does not exceed \$500 or such other limit approved by the agency head
- b) The third-party draft transaction does not exceed \$2,500, unless authorized at a higher level in accordance with Treasury restrictions
- c) The use of the imprest funds and third-party drafts is considered advantageous to the Government
- d) The use of such funds or drafts complies with any additional conditions established by agencies

Any purchase using imprest funds or third-party drafts shall be based upon an authorized purchase requisition, contracting officer verification statement, or other agency approved method of ensuring that adequate funds are available for the purpose

# 5) SF 44, Purchase Order-Invoice-Voucher

This is a multi-purpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and non-personal services while away from the purchasing office or at isolated activities

This can also be used as a receiving report, invoice, and public voucher

General procedural instructions regarding the form's use are printed on the form and on the inside front cover of each book of forms

This form may be used if all of the following conditions are satisfied:

- a) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under compelling urgency or for contingency operations
- b) The supplies or services are immediately available
- c) One delivery and one payment will be made
- d) Its use is determined to be more economical and efficient than other simplified acquisition procedures

# Fast Payment Procedures (FPPs)

This procedure allows for payment under limited conditions to a contractor prior to the government's verification of receipt of supplies

The FPP is based on a contractor's invoice certifying that the contractor:

- a) Has delivered the supplies to a post office, common carrier, or a government's point of first receipt
- b) Shall replace, repair or correct supplies not received, damaged in transit or not conforming to purchase agreements

It is the primary responsibility of the contracting officer to determine the amounts of debt resulting from the contractor's failure to properly replace, repair, or correct supplies lost, damaged or not conforming to purchase requirements

# Conditions for the use of FPPs

- 1) Individual purchasing instrument do not exceed \$35,000. The agency may permit a higher threshold on a case-by-case basis
- 2) Deliveries of supplies are to occur at locations where there is both a geographic separation and lack of adequate communications facilities between government receiving and disbursing activities that will make it impractical to make timely payment
- 3) Title passes to the government upon delivery to the post office/common carrier or upon receipt by the government if shipment other than the post office/common carrier is used
- 4) The supplier agrees to replace, repair, or correct supplies not received, damaged in transit or not conforming to purchase requirements
- 5) The purchasing instrument is a firm-fixed-price contract, a purchase order or a delivery order for supplies
- 6) An existing system ensuring documentation of contractor's performance, timely feedback to contracting officer regarding contract deficiency and identification of suppliers abusing the procedure

# Preparation & execution of orders under the FPPs

Any priced and unpriced contracts, purchase orders or BPAs using the FPP shall include:

- a) A requirement that the supplies shall be shipped transportation or postage prepaid
- b) A requirement that invoices be submitted directly to the finance or other designated office. For unpriced purchase orders, invoices are submitted to the contracting officer
- c) The consignee's copy must contain the following: "Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance"

After specified date of delivery of supplies not received, damaged or nonconforming supplies, the consignee shall notify the purchasing office promptly, but not later than 60 days after the specified date of delivery

The contracting officers shall insert an FPP clause in solicitations and contracts when the FPP conditions exist, and the procedure is intended to be used

# Simplified Acquisition Procedures (FAR 13.5)

SAPs are contracting methods designed to streamline the acquisition process and facilitate the procurement of goods and services quickly and easily. The results include less paperwork and lower costs for both the contractor and the government

Provides flexibility and reduced procedural requirements for small purchases to (1) reduce admin costs, and (2) increase efficiency

Typically applies to acquisitions not exceeding \$250,000 (*i.e.*, the Simplified Acquisition Threshold), but Simplified Procedures can be used for:

- Acquisitions not exceeding \$7.5 million if the CO reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial products or services (FAR 13.500(a))
- Acquisitions that do not exceed \$15 million when the acquisition is for commercial products or services that, as determined by the head of the agency, are to be used in support of, *inter alia*, the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack or to support response to an emergency or major disaster

# What Are The Simplified Acquisition Procedures?

Evaluation methods focus on efficiency; formal procedures not required

- Evaluation must be on basis established in solicitation
- All offers must be considered
- Price must be fair and reasonable

Minimal documentation, but contract file must include:

- Brief description of the procedures used in awarding the contract;
- The number of offers received;
- An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and
- The approved sole-source justification (if a sole-source acquisition was conducted)

Unsuccessful offerors entitled to only “brief explanation of basis for award” if requested (and award was based on factors other than price alone)

Compare with more robust post-award debriefing under FAR Part 15



# What Are The Simplified Acquisition Procedures? (cont.)

Requirements for Sole-Source Acquisition of Commercial Products or Services (FAR 13.501(a))

Although acquisitions conducted under SAP are exempt from the competition requirements of FAR Part 6, COs shall not conduct sole-source acquisitions, unless the need to do so is justified in writing with the appropriate level of approval indicated in FAR 13.501(a)(2)

A written Justification & Approval (J&A) is required for brand name acquisitions of commercial products or services

- The J&A must be based on one of the limited FAR Subpart 6.3 justifications (e.g., only one responsible source, unusual and compelling urgency, national security, industrial mobilization)

Make justifications publicly available within 14 days after contract award or in the case of unusual and compelling urgency within 30 days after contract award

• Make publicly available, brand name justifications with the solicitations

# Approval Requirements for sole source (including brand name) acquisitions – 13.501(2)

1. Contracts greater than the simplified acquisition threshold but less than \$750,000 – The contracting officer's certification that justification is accurate and complete serves as approval
2. Contracts greater than \$750,000 but less than \$15 Million – The advocate for competition for the procuring activity, a general or flag officer of the armed forces, a civilian of a grade above GS-15 under the General Schedule of a senior procurement executive of the agency
3. Contracts greater than \$15 Million but less than \$75 Million or the DoD, NASA & Coast Guard – Same as (2) above
4. Contracts greater than \$75 Million or for DoD, NASA & Coast Guard – Senior Procurement Executive of the agency

The contract file must include:

- a) A brief description of the procedures used in awarding the contract
- b) Number of offers received
- c) An explanation of the basis for contract award decision
- d) Any approved justification

# Advantages

## Faster than other acquisition methods

- Shorter solicitations
- Faster turnaround times

## Saves money for Government and Contractor

- Less paperwork
- Less manpower
- Reduced administrative costs

## Promotes Small Business Opportunities

- Acquisitions exceeding Micro-purchase but not over \$250K (SAT) are set-aside for Small Businesses (FAR 19.502-2)

# Inapplicable laws to contracts below the simplified acquisition threshold

10 USC 983 – Institutions of Higher education that prevent ROTC Access or Military Recruiting on Campus: Denial of Grants and Contracts from DoD, DoE and other Depts/Agencies

10 USC 3321(b) & 41 USC 3901 – Contract clause regarding contingent fees

10 USC 3841 & 41 USC 4706 – Authority to examine books and records of contractors

10 USC 4655 & 41 USC 4704 – Prohibition on limiting sub-contractors' direct sales to the US

22 USC 2593e – Measures against persons involved in activities that violate Arms Control Treaties or Agreements with the US

31 USC 1354 – Limitation on use of Appropriated Funds for contracts with entities not meeting veterans' employment reporting requirements

41 USC 8102(a)(1) – (Drug free workplace), except for individuals

# Inapplicable laws to contracts below the simplified acquisition threshold.....

The FAR Council will also include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the acquisition of property or services

However, this does not apply to laws that provide for criminal or civil penalties; or specifically state that the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold

# Inapplicable provisions and clauses

Pursuant to Public Law 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

- Covenant against contingent fees
- Restrictions on subcontractor sales to the government
- Anti-kickback procedures
- Audits and records-negotiation
- Contract work hours and safety standards overtime compensation
- Drug free workplace, except for individuals
- Estimate of percentage of recovered material content for EPA-Designated items

# Summary

## **Simplified Acquisition Procedures**

- Five (5) Acquisition Procedures prescribed in FAR 13
- For well-defined requirements
- No other procurement instrument in place or mandated to fill requirement
- Faster and more administratively economical than other acquisition methods
- Promote small businesses (SB)
  - Full SB set-aside for acquisitions < Micro-purchase to \$250K (SAT)

# Government-Wide Purchase Card Program

## VISA Card

- Primarily used for micro-purchase buys
- Exception: can be used as payment vehicle on pre-priced govt. contract < \$25K where authorized

The Governmentwide purchase card may be used:

### 1) Make micro-purchase

- < \$2,000 for Construction
- < \$2,500 for Services
- < \$3000 for Supplies

### 2) Place a task or delivery order (if authorized in the basic contract, ordering agreement or blanket purchase agreement)

### 3) Make payments, when the contractor agrees to accept payment by the card



# Purchase Orders

A **purchase order**, *when* issued by the Government, means an offer by the Government to buy supplies or services, at the stated price in the order and upon specified terms and conditions contained in the order

- Award amount > Micro-purchase and  $\leq$ \$250K (SAT)
  - Unless commercial > Micro-purchase and  $\leq$ \$5.5M
- Becomes a binding Contract versus offer when contractor performs or if contractor signs the order

# Blanket Purchase Agreements

Simplified method of obtaining anticipated repetitive needs for supplies and services by establishing “charge accounts” with qualified sources of supply

Initiated for a broad class of goods or services that are generally purchased but exact items, quantities and delivery requirements are not known

Orders are placed through “Calls” to Contractor

- Verbal or written
  - Centralized (Contracting Office)
  - Decentralized (customer) if authorized

# Imprest Funds & Third-Party Drafts

**Used in rare circumstances where Electronic Funds Transfer (EFT) method of payment is waived**

## **Imprest Funds**

- Cash payments
  - $\leq \$500$

## **Third Party Draft**

- Check-like payments
  - $\leq \$2,500$

Any purchase using imprest funds or third-party drafts shall be based upon an authorized purchase requisition, contracting officer verification statement, or other agency approved method of ensuring that adequate funds are available for the purpose

# SF 44 Purchase Order-Invoice-Voucher

The SF 44, Purchase Order -- Invoice -- Voucher, is a multipurpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and non-personal services while away from the purchasing office or at isolated activities (especially disaster and Contingency operations)

It's an all-in-one document. Can be used as a receiving report, invoice, and public voucher

# Knowledge Check #1

The acquisition of Commercial Items is governed by what part of the FAR?

- A. FAR Part 13
- B. FAR Part 12
- C. FAR Part 15
- D. FAR Part 8

# Knowledge Check #2

An imprest fund is a fixed-cash or petty-cash fund in the form of currency or coin that has been advanced as Funds Held Outside of Treasury.

TRUE OR FALSE

# Knowledge Check #3

Simplified Acquisition procedures provide all of these but which one:

- (a) Provide flexibility and reduced procedural requirements
- (b) Reduce admin costs,
- (c) Limit False Claims Act risk
- (d) Increase efficiency