



*Staying Ready*



**U.S. Army Medical Research and Materiel Command  
Ft. Detrick, Maryland**

# Acquisition Desk Reference



## Commanders Directors & Senior Leaders



## Acknowledgement

The Deskbook is a result of many hours of hard work and commitment to acquisition excellence from the US Army Medical Research Acquisition Activity (USAMRAA), Fort Detrick, MD management and staff, and Anteon Corporation\*.

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This manual is intended for use as a convenient reference. Future updates will be reported as issued. Comments, questions or recommendations may be submitted at any time to:

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## **CHAPTER I. INTRODUCTION**

Effective execution of an acquisition program is often a complex process requiring all involved individuals – contracting personnel, technical personnel, administrative staff, legal counsel, etc., to work as a unified team. This desk reference is designed to provide commanders, directors and senior leaders with a basic understanding of the acquisition process. It provides information on the acquisition planning necessary to ensure the success of an acquisition, describes the various functions and stages involved in the acquisition process and introduces the reader to basic acquisition terminology. It also covers the potential problems inherent in the acquisition process and provides information on how to avoid these problems. Additional information and details on the acquisition process can be found in the companion publication title Acquisition Desk Reference for Project Officer, Contracting Officer's Representatives and Grant Officer's Representatives.

The U.S. Army Medical Research and Materiel Command (USAMRMC) is a major subordinate command of the Army Medical Command (MEDCOM). USAMRMC is responsible for life cycle management of medical materiel, to include basic laboratory research, advanced development, prototyping, procurement, delivery, maintenance and disposal. The USAMRMC is also responsible for planning, programming and budgeting for the construction of Army medical facilities and providing corporate information management and information technology support to the Army Medical Department.

The USAMRMC Commanding General has several key roles in the acquisition business. He/she is the Milestone Decision Authority for Acquisition Categories (ACAT) III & IV programs and the Head of the Contracting Agency (HCA). He/she is also the Approval Authority for Assistance Agreements (Grants & Cooperative Agreements). The Commanding General can and has delegated contracting and assistance agreement responsibilities to the Principal Assistant Responsible for Contracting (PARC). In USAMRMC, the PARC is also the Director of the US Army Medical Research Acquisition Activity (USAMRAA).

USAMRAA is committed to providing high quality, timely, customer focused contracting guidance and acquisition solutions to the Commander, U.S. Army Medical Research and Materiel Command and to all of our customers who are supporting global U.S. military missions and national medical research interests. Pride is taken in providing this community an atmosphere that instills public trust and offering the staff an environment that fosters growth and well being.

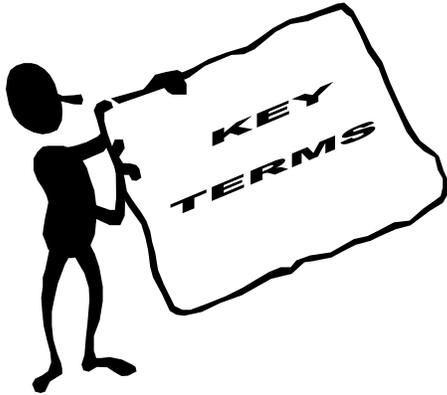


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USAMRAA, in its quest to maintain quality processes and standards, has achieved ISO 9002 certification. This certification places USAMRAA in a unique position when compared to other DOD contracting offices, many of which are not recognized for meeting international quality standards.



## **CHAPTER II. ACQUISITION BASICS AND KEY ACQUISITION TERMS**



This chapter describes the fundamentals of contract law, basic acquisition principles and key acquisition terms. Familiarity with these basic concepts and terms can help commanders, directors, and senior leaders fulfill their responsibilities and know when to seek assistance from professional contracting personnel.

### **2.1 Members of the Acquisition Team**

While acquiring goods and services to support their mission requirements, commanders, directors and senior leaders will need to interface with several key acquisition officials. These include the following:

#### **2.1.1 Head of the Contracting Activity (HCA)**

The HCA is the person who, by his/her position in an organization, has the overall responsibility for the effective and legal execution of the organization's acquisition program. The Commanding General, USAMRMC is the Head of the Contracting Activity for USAMRMC.

#### **2.1.2 Principal Assistant Responsible for Contracting (PARC)**

The PARC is the senior staff official responsible for the administration of the contracting and assistance agreement function within USAMRMC. The HCA appoints the PARC and provides a written delegation of his/her authorities and duties. The PARC, assisted by acquisition professionals assigned to the Office of the Principal Assistant for Contracting, promulgates policy and direction for the extramural program.

#### **2.1.3 Office of the Director, USAMRAA**

The Office of the Director, USAMRAA provides direct oversight and guidance as necessary to ensure acquisition and assistance business solutions are provided to USAMRAA's customers. The Director also serves as the USAMRMC PARC. He/she is the appointing official for Contracting/Grants Officers.



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**2.1.4 Deputy for Business Support, USAMRAA**

The Deputy for Business Support provides fiscal management, control and support for the Director, USAMRAA.

**2.1.5 Deputy for Business Operations, USAMRAA and the Chief of the Contracting Office (CCO)**

The Deputy for Business Operations plans, directs and supervises the acquisition of R&D, equipment, materiel, supplies and services. He/she also serves as the Chief of the Contracting Office and performs procurement review and approval duties, as described in the Federal Acquisition Regulations and its supplements. The PARC has delegated the authority to appoint Ordering Officers to the Deputy for Business Operations.

**2.1.6 Deputy for Business Management, USAMRAA**

The Deputy for Business Management provides acquisition policy, business advice and oversight of information and automation management support functions to USAMRAA and the PARC. The Deputy for Business Management serves as the USAMRMC's Freedom of Information Officer for requests concerning solicitations, contracts or assistance agreements. He/she also serves as USAMRMC's Competition Advocate.

**2.1.7 Contracting Officers/Grants Officers**

The PARC may appoint, in writing, individuals who can act as agents of the Federal Government, with the expressed purpose of entering into agreements that require the expenditure of federal government resources. These agents are referred to as Contracting Officers and Grants Officers. Contracting Officers and Grants Officers can also accept, on behalf of the government, resources provided by industry and institutions.

**2.1.8 Account Managers and Contracting Officers**

Account Managers act as the USAMRAA focal point for customer service, communications and product delivery. They coordinate with customers to plan and execute acquisition strategies; serve as Contracting Officers for the award of all assigned contracts and negotiate with USAMRAA Branch Chiefs for available resources in order to accomplish customer requirements. The Account Managers, serving as Contracting Officers, are the appointing officials for Contracting/Grants Officer's Representatives.



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**2.1.9 Administrative Contracting Officers (ACO) and Contracting Officer's Representatives (COR)**

Contracting Officers may authorize other individuals to act in their behalf. For example, a Contracting Officer may delegate the authority to perform certain contract administration functions. However, in no case may a Contracting Officer delegate the authority to obligate the government or change the terms and conditions of a contract. This delegation of authority is always done in writing. These contract administrative functions may be delegated to an Administrative Contracting Officer (ACO) or a Contracting Officer's Representative (COR). An ACO is a Contracting Officer designated to administer the contract. A COR is normally a technical or program person who is appointed to monitor the technical or scientific aspects of a contract.

**2.1.10 Grants Officer's Representative (GOR)**

Grants Officers also may appoint individuals to assist them in the administration of grants and cooperative agreements. These individuals, who are called Grants Officer's Representatives, are normally technical or program personnel familiar with the technical or scientific aspects of a grant or cooperative agreement. A GOR performs similar duties to a COR. The appointment of a GOR is always done in writing.

**2.1.11 Ordering Officers**

Ordering Officers have limited authority to order supplies and services from priced procurement instruments, such as General Service Administration Schedules, Blanket Purchase Agreements, and Indefinite Quantity/Indefinite Delivery Contracts (contracts containing a D in the contract number, e.g., DAMD17-01-D-1333.) Ordering Officers are normally located with the logistics or requirements organizations. The PARC or the USAMRAA Deputy for Business Operations, with delegated authority from the PARC, may appoint Ordering Officers. This delegation must be done in writing.

**2.1.12 Competition Advocate**

The role of the Command's Competition Advocate is to foster competition consistent with public law and the established goals of the Command. The Competition Advocate is a key player in acquisition planning.

**2.1.13 The Associate Director of Small and Disadvantaged Business Utilization**

The Associate Director of Small and Disadvantaged Business Utilization (ADSDBU) provides advice and counsel to the HCA and PARC on all small business matters. The ADSDBU also advises and assists program managers and contracting officials in developing strategies to ensure maximum participation by small businesses, small disadvantaged businesses, women-owned small businesses and historically black



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colleges and universities and minority institutions in the Command's prime and subcontracting opportunities.

### **2.2 Fundamentals of a Contract**

#### **2.2.1 Nature of a Contract**

A contract is legally binding relationship between two or more parties. All contracts contain four elements: an *offer* to provide something of value, usually goods or services; *acceptance* of that offer and communication of that acceptance to the offeror; *consideration*, something of value exchanged by the parties to bind the contract; and a *legal purpose*.

In government contracts, the proposal from the commercial concern is the offer. It is made by an offeror seeking to enter into a contract with the government. A Request for Proposal (RFP) issued by the government is not an offer. It is an informational document that expresses the government's needs to the community of potential offerors, and asks for proposals. When the government, after proposal review and negotiation, chooses an offeror with which to contract, it performs the act of acceptance. Consideration in government contracts is usually payment by the government and delivery of supplies or services by the contractor. Although non-government contracts may sometimes be oral, government contracts (including modifications) are always in writing.

#### **2.2.2 Authority to Enter into Contracts**

Only Contracting Officers/Grants Officers have the authority to enter into agreements, e.g., contracts, grants, or otherwise direct non-federal government firms and institutions, to provide goods and services, which will require the expenditure of government funds or other resources. The Contracting Officer/Grants Officer can execute agreements that bind the government by negotiating and awarding contracts, grants, and cooperative agreements and making changes and modifications to contracts, grants or cooperative agreements.

#### **2.2.3 Use of Contracts**

The use of contracts is appropriate whenever the Federal Government requires supplies, services or construction from commercial sources and nonprofit institutions. Contracting, for purposes of this Desk Reference, encompasses all processes utilized to purchase, rent, lease or otherwise obtain supplies and services from commercial sources or nonprofit institution using appropriated funds. Except where specifically indicated, the acquisition processes described below also apply generally to grants, cooperative agreements and intra-governmental orders. The contracting or acquisition process



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begins at the point when agency needs are established. It includes the sub-processes of developing a description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and contract close-out.

If you need further assistance on what constitutes a contract, who may enter into a contract or what constitutes a proper contracting action, please contact your USAMRAA Account Manager.

### **2.3 Competition**

Federal Law requires that full and open competition be used to acquire goods and services, except for a limited number of exceptions. Competition utilizes market forces to ensure the government receives favorable pricing. Competition allows the government to receive offers from a wide variety of prospective suppliers. This increases the probability that the government will receive offers fully meeting its need. It also facilitates the promotion of new, innovative and state-of-the-art solutions. There is a common misconception that the use of full and open competition often results in the government having to “settle” for inferior products or services. This is simply not true. A well-written statement of work, combined with valid offer evaluation criteria, will ensure the government’s needs are met. Competition maximizes the probability that these needs will be met at the best possible price.

### **2.4 Sole or Limited Sources**

There are times when it is impossible or impractical to solicit for goods and services on a full and open competitive basis. In these cases, the government will request proposals from only one or a limited number of sources. The use of “Other Than Full and Open Competition”, is the least desirable method of acquiring goods and services. Other than full and open competition procedures may only be used in limited circumstances and require detailed justification. This justification must be supported by verifiable facts and clearly demonstrate why the government’s requirement cannot be met by full and open competition. The dollar value of the acquisition and the nature of the justification will determine the level at which the justification must be approved. This may involve high-level officials and may add considerable time to the acquisition process. If you require additional information on the role of competition in federal contracting, you should contact the USAMRAA Competition Advocate/Deputy for Business Management. If you anticipate having a future acquisition requiring the limiting of competition, you should discuss this with both the USAMRAA Competition Advocate and your USAMRAA Account Manager and review USAMRMC Regulation 715-1, as soon as possible.



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## **2.5 Acquisition Order of Preference**

When acquiring goods and services, it is important to understand that there is a designated order of preference that must be followed. The following sources must be considered for all government acquisitions, in the order indicated: existing government inventory; mandatory sources of supply, i.e., UNICIOR (also known as Federal Prison Industries), and Nonprofit Agencies Employing People who are Blind or Severely Disabled (also known as the Javits-Wagner-O'Day Program or JWOD); existing contracts, e.g., GSA Schedules; small, minority owned businesses; small businesses, and large businesses.

## **2.6 Role of Small Business**

The role of small business is key to the economic health of the United States and readiness of the military forces. Small businesses comprise the greatest number of businesses in the United States and offer the largest number of employment opportunities. Most innovations come from small businesses. Microsoft and Apple Computer delivered their greatest innovations, when they were small businesses. This is why, if we are looking for the greatest owner involvement, innovation, lower overhead expenses, and fuel for the economic power of the United States, it is paramount that small businesses be provided every reasonable opportunity to fulfill the needs of the Federal Government. If you have any questions or would like to learn more about the Command's Socioeconomic Programs, you should contact our Associate Director of Small and Disadvantaged Business Utilization.

## **2.7 Unsolicited Proposals**

An unsolicited proposal is a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the government. It cannot be submitted in response to any type of solicitation on the part of the government. In order to be accepted by the government, an unsolicited proposal must meet all of the following criteria:

- Be innovative and unique.
- Be independently originated and developed by the offeror.
- Be prepared without government supervision.
- Include sufficient detail for determination of benefit to the government.
- Not be an advance proposal for a known requirement.

## **2.8 Simplified Acquisitions**

Simplified Acquisition procedures are normally used to buy government requirements below \$100,000. Simplified Acquisition Procedures (SAP) were instituted to reduce the



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time and expense required to obtain goods and services using the formal acquisition process. Simply put, SAP consists of a request for quote (RFQ), a proposal, which may be oral or written, and a purchase order (PO). SAP is normally done on a competitive basis. Request for quotes, proposals and purchase orders are done electronically to the extent possible. SAP is not as formal as the sealed bid and competitive request for proposal process and the proposal and purchase orders are not binding until the contractor performs some level of work under the PO. Additionally, SAP includes purchases by **Inter Military Purchase Agreement Card (IMPAC)** or **Government Purchase Card**, or through a **Blanket Purchase Agreement**. Simplified acquisitions over \$2500 must be made from small businesses unless a contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. Purchases under \$2500, normally made using the Government Purchase Card, are exempt from small business considerations. Simplified acquisition procedures should not be used to circumvent regular acquisition requirements. It is improper, for example, to break down a requirement of more than \$100,000 into smaller acquisitions merely to permit the use of small purchase procedures.

### **2.8.1 Government Purchase Card**

Normally, purchases below \$2500, the Micro purchase threshold, are accomplished by using the Government Purchase Card. This allows the requiring activity to purchase routine items below \$2500 using a card issued to someone in the organization, thereby streamlining the process for these small purchases. The USAMRMC continues to lead the way in the use of the credit cards for our local and global customers. Presently, we have over 300 cardholders and 100 billing officials. Over the years, the command has realized an increased reliance on the card by many of our customers whose missions require timely receipt of supplies and non-personal services. In those instances where vendors do not accept the government credit card as a method of payment, USAMRMC also offers the Visa Check to help fulfill mission needs.

### **2.8.2 Purchase Orders**

Purchase orders are offers by the government to buy supplies or services under specified terms and conditions, the aggregate amount of which does not exceed \$100,000 (for commercial items purchase orders may be used to \$5 million). The Purchase order process is quite different from that found when using formal solicitation procedures. The government Purchase Order represents the “offer” (see paragraph 2.2.1 - Nature of a Contract) “Acceptance” occurs when the contractor agrees to the terms and conditions of the Purchase Order by signing the document, begins work, or delivers the requested supplies or services. Purchase orders are normally issued on a fixed-price basis. Unfixed-price purchase orders may be issued in rare occasions where



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the price cannot be predetermined, i.e. for the repair of an item where the item must be disassembled to determine the extent of repair needed. However, even undefinitized purchase orders contain a ceiling price that cannot be exceeded without further authorization. Undefinitized purchase orders must be funded to the ceiling price.

### **2.8.3 Blanket Purchase Agreement (BPA)**

A BPA is an agreement that is written with suppliers that are capable of providing anticipated repetitive needs for supplies and services. A BPA, in effect, is a charge account with a supplier. Under a BPA, separate acquisitions are made according to detailed, but simple procedures. No single purchase can exceed the simplified purchase threshold. Your Account Manager or the logistics staff at your activity should be contacted for further information.

## **2.9 Contract Types**

The government uses two basic types or families of contracts - fixed-price and cost-reimbursement. Within each family there are several different variations, i.e. fixed price with economic price adjustment, cost plus fixed fee, cost plus incentive fee, etc., however, the essential characteristics within each family are the same. The Contracting Officer, after consulting with the project officer, will determine the contract type most appropriate for the requirement, or this may be determined through negotiations between the Contracting Officer and the prospective contractor. In any event, the customer needs to understand the characteristics of each major contract type as this can significantly affect acquisition planning and contract administration duties.

The contract types differ in two key respects - the relative amount of risk placed on the government and on the contractor, and the degree of contract management or administration that is required.

### **2.9.1 Fixed Price Contracts**

These contracts are normally used for commercial items or requirements where the government can describe its needs in a clear-cut, unambiguous manner sufficient for prospective contractors to develop a fair and reasonably priced proposal in which they assume only reasonable risk. The most common fixed price contract is the **firm fixed-price contract**. In a firm fixed-price contract, the contractor agrees to deliver all supplies or services at the times specified for an agreed upon price. This price cannot be changed (unless the contract is modified). Profit is determined by the contractor's ability to control costs relative to the contract price. If the contractor's costs exceed the contract price, the contractor must absorb the difference. Firm fixed-price contracts place maximum risk on contractors and little or no risk on the government. There are



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several other variations of fixed price contracts. Essentially these operate much the same as a firm fixed price contract, but they contain predetermined provisions for price adjustments. Under fixed price contracts, the government's contract monitoring requirements are usually limited to ensuring that the contractor meets the requirements of the contract.

### **2.9.2 Cost Type Contracts**

Many USAMRMC requirements cannot be specified with the certainty required for fixed-price contracts. In the absence of this certainty, responsible potential contractors have no way of estimating the price of the work with the degree of accuracy needed for fixed-price contract risk, nor is USAMRMC able to determine the accuracy of a proposed price. Research and development, demonstrations, the conduct of surveys and studies and their related requirements are typical examples of work that often has too much uncertainty associated with it to be used as the basis for fixed-price contracts.

**Cost-reimbursement contracts** are used when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of fixed-price type contracts. Like the fixed-price contract, there are several variations. The most common is the **cost-plus-fixed-fee contract**. Rather than guaranteeing to perform all contract terms and conditions at the specified price, the contractor agrees to deliver his/her best efforts to perform the requirements in return for costs incurred and a reasonable fee. This negotiated fee cannot be changed unless the scope of work in the contract is changed. The total estimated cost is agreed upon in advance by both the government and the contractor. This estimate becomes the contract cost limitation that the contractor cannot exceed except at the risk of non-reimbursement. This limit can be changed by mutual agreement of the government and the contractor through a modification to the contract.

In cost-plus-fixed-fee contracts, the contractor's risk is minimal. The contractor only agrees to a "best effort". No guarantee is given. Failure to do the specified work will not be a breach of contract, nor will it cost the contractor any money as long as a "best effort" was provided. On the other hand, the government's risk in a cost-plus-fixed-fee contract is high. It has no guarantee that it will get the specified work. If the work is not completed and the maximum costs have been reimbursed to the contractor, the government has two choices, both equally unsatisfactory. It can elect not to add funds to the contract and, essentially terminate the effort without receiving the desired product, or it can add money to the contract in the hope that the additional funds will be sufficient to achieve the expected result.



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Cost type contracts require a greater effort on the part of the government in monitoring performance. Appropriate oversight is required to ensure that the contractor is actually providing a best effort and that the contractor is judiciously expending funds and controlling cost. Given the nature of the work acquired by cost-reimbursement contracts, contractor performance often evolves in ways that neither the contractor nor the government foresaw at the time of award. Early and continued involvement on the part of the government is critical to dealing with these unexpected events.

## **2.10 Funding**

### **2.10.1 The Basic Rule**

No employee of the government can request or direct a contractor or other entity to provide any goods or services without funding or in the advance of funding. (Anti-Deficiency Act, 31 U.S.C. 1341). Before executing any contract, the contracting officer shall obtain written assurance from responsible fiscal authority that adequate funds are available or expressly condition the contract upon availability of funds.

### **2.10.2 Fully Funded Contracts**

Funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract.

### **2.10.3 Incrementally Funded Contracts**

Funds are obligated to cover the amount allotted and any corresponding increment of fee.

### **2.10.4 Fiscal Year Contracts**

The contracting officer may initiate a contracting action properly chargeable to funds of the new fiscal year before these funds are available provided that the contract includes the clause the “Availability of Funds” Clause. This authority may be used only for operation and maintenance and continuing services (*e.g.*, rentals, utilities, and supply items not financed by stock funds.)

### **2.10.5 Task Order Contracts**

Task Order contracts or other contracts for services with a performance period of 12 months or less, which are funded by annual appropriations, may extend beyond the fiscal year in which it begins. However, any specified minimum quantities must be ordered in the initial fiscal year and the contract must contain the “Availability of Funds for the Next Fiscal Year” Clause.



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The government shall not accept supplies or services under a contract conditioned upon the availability of funds until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

#### **2.10.6 Contracts Crossing Fiscal Years**

A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (*e.g.*, contracts for expert or consultant services). However, a Contracting Officer may enter into a contract, exercise an option or issue a task order for severable services that begin in one fiscal year and end in another if the period does not exceed one year.

#### **2.11 Options**

Options provide the government with the ability to order additional quantities or additional periods of service beyond those established in the initial contract. Normally, options pre-establish the quantity, price, and delivery schedule for these additional products or services. Options are used when there is a clearly defined quantity or requirement for the product or service, but due to funding rules or other restrictions, the goods or services cannot be ordered at the time of contract award. Prior to exercising an option, the contracting officer, with the assistance of the Project Officer, must determine that this is in the best interests of the government. The Contracting Officer must ensure that the conditions present when the original products or services were ordered did not change to a degree that would make the initial procurement strategy inappropriate. At a minimum, market research must be conducted to look at the current extent of competition, particularly from small and small disadvantaged business firms, the prevailing market price for similar goods and services, and the current status of the incumbent contractor to include his or her financial and management capacity, and the quality of the goods and services being provided. The Contracting Office must document these findings in a determination and findings format. Because of this effort, using options is not necessarily the most desirable approach to ordering goods or service beyond the initial quantity. Using an Indefinite Delivery/Indefinite Quantity (“D” contract) is usually a better approach because it does not take the same level of analysis.



## CHAPTER III. ACQUISITION PLANNING

### 3.1 Advanced Planning and Scheduling

Long before the government approaches the business community for proposals, it must successfully accomplish a myriad of planning and scheduling tasks in preparation for the acquisition (see figure 3-1). The better these tasks are completed, the better the chances that the acquisition will be successful. The acquisition planning process begins as soon as a need is identified and it is obvious that the need must be met outside the USAMRMC. Acquisition planning involves a general consideration of all the elements that will be required in connection with a particular acquisition. This process may be quite simple or very elaborate depending on the cost, political sensitivity, complexity, or importance of the item or service being acquired. Advanced planning helps both the

Contracting Officer and the customer to more efficiently procure outside supplies and services by enabling them to allocate and schedule the work involved in an acquisition. Early planning is the most effective way of preventing or resolving potential problems early in the process. Once a decision is made to acquire products or services through the contracting process, a partnership needs to be created between the Program Officer and the Account Manager/Contracting Officer. This partnership is essential to establishing and achieving the acquisition objectives, because these two officials are responsible for ensuring that the contracting process is successful. Assisting the Program Officer and Contracting Officer is an integrated team of individuals. The composition of this team is based upon the complexity and nature of the acquisition.

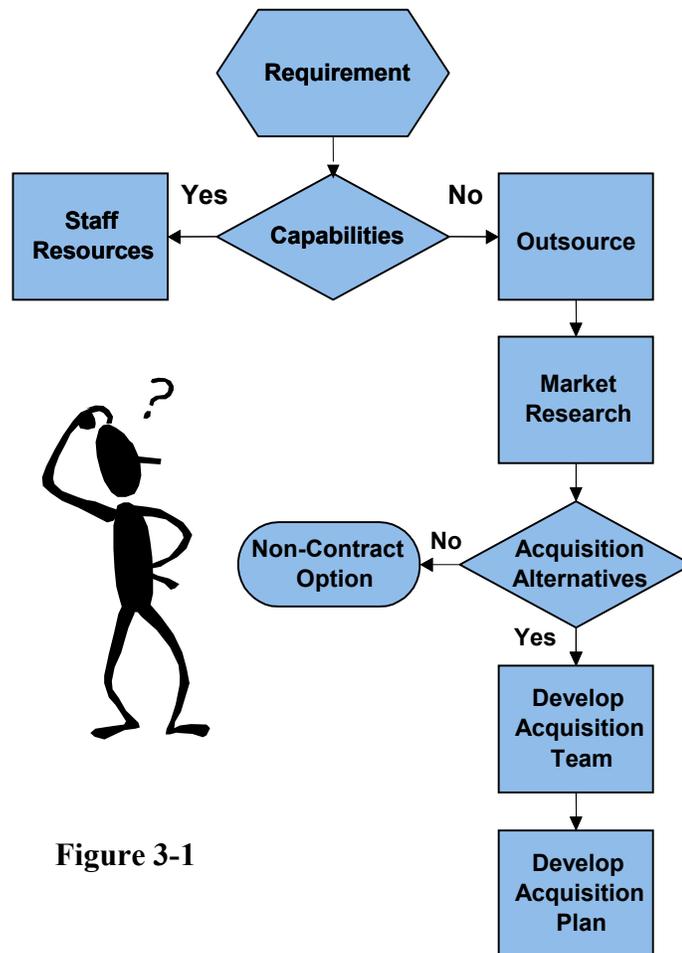


Figure 3-1



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Within USAMRMC, our integrated team approach is called Integrated Process Team (IPT)

### **3.1.1 Concept Development**

Concept development is the first step in an acquisition. In this phase the agency realizes that an acquisition is necessary and defines in broad terms what this effort will entail. A plan or concept is evolved which reflects consideration of USAMRMC in-house capabilities. Concept development may include assessment of prior contract results, in-depth literature searches, and discussions with technical and scientific personnel, both within and outside the government. These discussions may serve to determine interest, scientific approaches, technical capabilities, and the state-of-the-art solutions relevant to the subject area. In holding such discussions with people outside the government, care must be taken not to disclose advance information on any specific acquisition, proposed or contemplated. Such disclosure might create the impression that the government has given the recipient an unfair advantage over other organizations subsequently solicited. Once the concept has been formulated, it must be reviewed for program relevance, need, merit, priority, and timeliness by the appropriate management staff. In most programs, the concept development phase is intimately connected with the budget process since that is the primary means of identifying, defining, and approving program acquisitions.

### **3.1.2 Market Research**

Market research is then used to obtain a greater understanding of the market place and to obtain information necessary to document the requirement. Market research helps determine what products and services are available to satisfy the government's needs, identify potential sources for these products and services, and calculate what these products and services will cost the government. Market research information can be gathered from several sources. Discussions with commercial experts, reviewing the results of other recent market research information, publishing formal requests for information in the Federal Business Opportunities (Fed Biz Opps.com), and querying databases/on-line communication are all potential sources of valuable information. Market research may also include obtaining source lists from other agencies or associations, reviewing company catalogs and product literature and holding pre-solicitation conference. During the Market Research Phase, close coordination between the Project Officer and the Account Manager/Contracting Officer is extremely important. The Account Manager/Contracting Officer can provide valuable information about contracting lead-times, sources of information and potential problem areas. Following market research, the Project Officer is prepared to develop the various requirement documents that must be forwarded to the Contacting Office (see Figure 3-2).



### 3.2 Describing the Requirement

Providing an adequate description of the government's needs is one of the most important aspects of any acquisition. A well-written requirement document should contain a clear and explicit description that reduces problems and enhances the quality of the offers submitted. It should also describe requirements in sufficient detail to allow the government to develop sound proposal evaluation criteria. A well-written requirement document will avoid delays, save administrative efforts and reduce the chance of a protest or claim against the government. Carefully planning the requirement document will save time and will make it possible to develop a concise, trouble-free solicitation. The requirement document will vary depending upon the purpose of the acquisition.

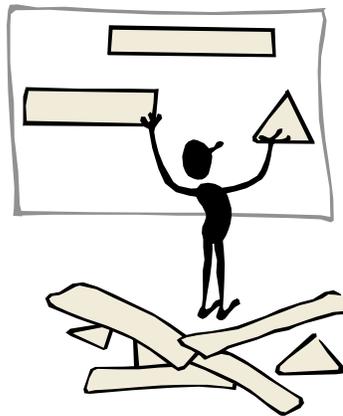
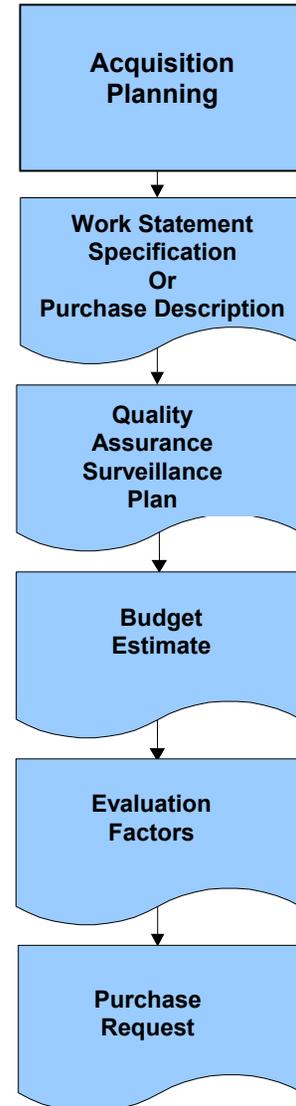


Figure 3.2



#### 3.2.1 Statements of Work (SOW)

A Statement of Work describes the needs of the government in a clear, simple, concise and legally enforceable manner. The SOW format presents required tasks in an easily understood manner. Complex tasks are further broken down into sub-tasks. Exhibits and references to external documents are included if they will help convey to the contractor the job that needs to be done.



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When contracting for services, the SOW is called a Performance Work Statement (PWS). A PWS defines the work in terms of “what” is required rather than “how” the work is to be performed. A PWS includes a measurable performance standard, a quality assurance surveillance plan, specific procedures for reductions in contract fee or price when services are not performed, and includes performance incentives where appropriate.

Work statements for R&D efforts describe the area of exploration, tasks to be performed and the objectives of the research effort. They include any background information on personnel, the environment or other issues that may constrain the results of the effort. They specify what deliverables, reports and information the contractor is expected to furnish. Work statements should focus on the expected outcome, not the process by which that outcome should be reached.

### **3.2.2 Purchase Descriptions**

A purchase description is normally used when acquiring supplies and equipment. Purchase descriptions describe the functions to be performed, the performance or end result required, and the essential physical characteristics (salient characteristics) necessary to meet the needs of the government. A purchase description may identify the requirement in generic or common terms. A purchase description may also include a reference to a Brand Name that has been predetermined to meet the needs of the government, however, “brand name or equal” purchase descriptions must identify the salient characteristic(s) of the identified brand name that are essential to meeting the government’s requirement. Whenever possible, the purchase description should enable and encourage offerors to supply commercial items.

### **3.2.3 Specifications and Standards**

Specifications are detailed descriptions of the technical requirement for an item or service. A specification can be written as a design specification, a performance specification, or as a combination of both. Design specifications detail the exact dimensions, materials, composition, and physical requirements of a product. Performance specifications, which are preferred over design specifications, describe the end item in terms of output, function or operation. Specifications are usually used primarily when acquiring construction.

Standards establish engineering and technical limitations and applications of items, materials, processes, method, designs and engineering practices. Standards include criteria deemed to be essential to achieve the highest degree of uniformity in materials or products.



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### **3.3 Non-Competitive Justifications**

Any requirement where the customer is recommending the use of other than full and open competition procedures must be fully justified. This written justification must be factual and supported by verifiable facts, not opinions. It must show how the government will be harmed if full and open competition is used on this acquisition. Depending upon the dollar value of the requirement and the justification used, this justification may require high-level approvals, adding considerable lead-time to the acquisition.

### **3.4 The Quality Assurance Surveillance Plan**

A Quality Assurance Surveillance Plan (QASP) is a systematic, structured method for the government to evaluate supplies and services provided by a contractor. The requesting agency is required to prepare the QASP. This plan will address how the government will monitor a contractor's performance. The plan should specify all work requiring surveillance, the method of surveillance and the place or places where the government intends to perform quality assurance. The nature of the requirement, cost, criticality, the cost of a potential loss and other similar factors will determine the extent of the QASP and the place where it will be executed.

### **3.5 The Government Budget Estimate or Independent Government Estimate**

Cost estimates are required for all acquisitions. This information is used for budgeting purposes and for evaluation of contractor's proposals. Developing cost estimates is the responsibility of the Project Officer. However, the Contracting Officer and activity resource management personnel can provide advice and assistance. For commercial items, the cost estimate can be developed by market research and/or reviewing past acquisitions of similar items. A Baseline Cost Estimate is developed for the materiel acquisition process using procedures described in the Medical Materiel Acquisition Management Handbook. For research projects, non-commercial items and complex requirements, an Independent Government Estimate (IGE) is developed. The IGE is the government's estimate of what a contractor should propose based on the SOW. It is calculated by considering the amounts and types of resources required (labor, equipment, supplies, travel, etc.) and applying standard industry indirect costs and burdens (fringe benefits, overhead, G&A & profit/fee). The IGE is also called the Independent Government Cost Estimate (IGCE) or the Independent Cost Estimate (ICE). The IGE is **confidential** information that should not be discussed or shared with the contractor



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### **3.6 Evaluation Factors**

If an acquisition will be processed using negotiated procedures, the customer must prepare a list of factors that can be used to evaluate the contractor's proposals. These factors and sub-factors, along with the weights assigned to each factor and sub-factor are used to determine if the offeror can meet the government's needs and which offer is most advantageous to the government. The number of evaluation factors and the complexity of the evaluation process are based upon the complexity and nature of the acquisition. Evaluation factors must be developed carefully as these are the only criteria that can be used to evaluate a proposal. Evaluation factors are usually rated using either colors (red, yellow, blue black, etc.) or using adjectival terms (poor, fair, good, excellent).

### **3.7 Acquisitions Using Contracting Offices Other Than USAMRAA**

In order to promote the effective and efficient use of the Command's resources and to enable timely advance planning of the acquisition workload, the acquisition of supplies, services and equipment by USAMRMC and subordinate units will normally be accomplished by USAMRAA. There are situations, however, where the use of a different contracting agency may be appropriate. For example, another agency may have capabilities or expertise not found at USAMRMC, or the other agency may already have an existing contract that will reduce administrative costs and lead times. Unfortunately, there have been a number of incidents where government activities have used external contracting agencies to avoid agency regulations and procedures. Consequently, federal acquisition regulations limit this practice to situations that can be shown to be clearly in the best interests of the government. Prior to forwarding a request for contracting or assistance agreement support to a contracting office other than USAMRAA, USAMRMC organizations and direct reporting units must prepare a Determination and Findings (D&F) (see USAMRMC Regulation 715-4). This D&F must detail the basis for the requested action and address costs associated with the transfer, procedures to ensure adherence to agency rules and regulations, and a variety of other issues. The requesting activity must forward the D&F through the USAMRMC Principal Assistant Responsible for Contracting, to the Commanding General for approval. The format for this D&F is contained in [Appendix A](#). Further information on acquisitions outside USAMRMC can be found in USAMRMC Regulation 715-4.

### **3.8 Sources for Solicitation**

Potential sources may be known from past acquisitions or identified during market research. A list of known sources should be supplied to the contracting office at the time the acquisition requirement documents are forwarded.



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### **3.9 Special Approvals and Clearances**

There are numerous types of acquisitions or elements within an acquisition that require particular approvals or clearances. The following special program approvals or clearances should be reviewed to see if they are applicable and, if so, must be addressed during acquisition planning.

#### **3.9.1 Human Use**

Coordination with the USAMRMC Deputy Chief of Staff for Regulatory Compliance & Quality, Human Subjects Protection Division is required for all research efforts involving human subjects. Certain protocols must also be submitted to The Surgeon General's Human Subjects Research Review Board. The Human Subjects Protection Division will make this determination and arrange for such submissions.

#### **3.9.2 Animal Use**

The use of animals is governed by Army Regulation 70-18, "The Use of Animals in DOD Programs

#### **3.9.3 Chemical Surety Materiel**

Research involving the use of chemical surety materiel must comply with the safety/surety requirements applicable to the use of such materiel. Coordination with the USA Medical Research Institute of Chemical Defense, Safety and Chemical Operations Branch must be accomplished when chemical surety materiel is involved in an acquisition.

#### **3.9.4 Recombinant DNA**

Research on recombinant DNA must conform to the policies and procedures in "NIH Guidelines for Research Involving Recombinant DNA Molecules" and its Administrative Supplements. The contract must set forth all of these requirements.

#### **3.9.5 Good Laboratory Practices and Current Good Manufacturing Practice**

When non-clinical safety study results will be required in support of a petition to FDA for approval of an investigational new drug, vaccine or medical device, the contract will require compliance with 21 CFR 58 on Good Laboratory Practices (GLP). When drug and biological drug products are to be delivered for administration to humans, compliance with 21 CFR 211 on Current Good Manufacturing Practices is specified in the contract. Contracts for conducting studies relating to health effects, environmental effects, and chemical fate testing shall require compliance with GLP regulations in 40



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CFR 792. These regulations should assure the quality and integrity of data submitted pursuant to Section 4(a) of the Toxic Substances Control Act.

**3.9.6 Paid Advertising**

Requests for advertising must be accompanied by the laboratory commander's written authority to advertise or publish, and give the names of the newspapers or journals, the frequency and dates of proposed advertisements, the estimated cost, and other pertinent information. Paid advertisements should be limited to the publication of essential descriptions required for a Broad Agency Announcement, Requests for Proposals (RFP) or any supplement pertaining thereto.

**3.9.7 Printing**

The acquisition of printing, binding and blankbook work by contract is prohibited unless authorized by the Congressional Joint Committee on Printing. Specific procedures to be followed are contained in the government Printing and Binding Regulations.



## **CHAPTER IV. SOLICITATION AND AWARD**



### **4.1 Negotiated Acquisitions**

The Federal Government uses different methods and approaches to acquire goods and services. Contracting by negotiation is the most commonly used approach in USAMRMC. It is also the most complex. In negotiated acquisitions, the government communicates its requirements to the business community by means of a solicitation document known as a Request for Proposal (RFP). The RFP contains the SOW that tells the contractor what is required, provides instructions to offerors to guide them in preparing their proposals and provides information telling offerors how the government will evaluate proposals to determine which offer will be selected for contract award.

#### **4.1.1 Best Value Techniques**

An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. Where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. Where the requirement is less definitive or where performance risk is high, technical approach will be more dominant.

#### **4.1.2 The Tradeoff Process**

The tradeoff process permits tradeoffs among cost or price and non-cost factors and allows the government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal must merit the additional cost. The evaluation factors that will be used to determine this tradeoff must be clearly documented in the RFP. The rationale for tradeoffs must also be clearly documented.

#### **4.1.3 Lowest Price Technically Acceptable Source Selection Process**

The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price. When using this approach, the evaluation factors and significant sub-factors that establish the requirements of acceptability are described in



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the solicitation along with a notice that evaluations will be made on this basis. Proposals are evaluated for acceptability, but not ranked using the non-cost/price factors. Tradeoffs are not permitted.

#### **4.1.4 Oral Presentations**

The government may request that the offerors use oral presentations to augment or clarify written information. The use of oral presentations can be effective in enhancing the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information.

#### **4.1.5 Review of Proposals**

The USAMRMC policy is to select best value contractors on the basis of a competitive, objective review, and to document source selections thoroughly. Depending on the complexity of the acquisition, this review is performed by either a formal Source Selection Evaluation Board (SSEB), which reports to a senior official designated as the Source Selection Authority (SSA), or a less formal Technical Evaluation Panel (TEP) convened by the Contracting Officer.

#### **4.1.6 Proposal Evaluation**

The SSEB or TEP is responsible for evaluating technical proposals according to the established evaluation criteria, identifying deficiencies and areas requiring clarification, and providing a consensus report to the SSA or Contracting Officer ranking the proposals. To the extent possible, the same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals.

#### **4.1.7 Review of Business/Cost Proposals**

The Contracting Officer is responsible for evaluating business considerations, i.e., those factors relating to cost/price analysis and determination of contractor's responsibility (e.g., adequate financial resources, ability to comply with delivery or performance schedule, satisfactory record of performance, etc.). The Contracting Officer may request assistance from the SSEB or TEP in evaluating the business/cost proposals.

#### **4.1.8 The Competitive Range**

The information from the evaluation process is used to determine the competitive range – those proposals that will be seriously considered for award. The Contracting Officer can decide to exclude a proposal from further consideration if it is so far out of the range of consideration, either due to lack of technical merit or excessive cost/price, that it is not likely to be in consideration for award even after substantial revision.



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#### **4.1.9 Cost Realism**

A cost realism analysis is used to determine if the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal. Cost realism analysis is performed by comparing each element of the offeror's proposal with the Government's Independent Cost Estimate.

#### **4.1.10 Negotiations**

Negotiations are discussions with the offerors to address significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could be altered or explained to enhance the proposal's potential for award. When discussions are held, they are tailored to each individual offeror. The Contracting Officer is responsible for organizing negotiations to include establishing goals and objectives. However, program personnel will be significantly involved in the process.

#### **4.2 Sealed Bidding**

Sealed bidding is a method of contracting that employs competitive bids and public opening of bids. Bids are solicited using an Invitation for Bid (IFB). All bids are opened publicly and an award is made to the responsible bidder whose bid, conforming to the invitation of bids, will be most advantageous to the government, considering only price and price-related factors. Sealed Bidding is used when it is not necessary to conduct discussions with offerors about their bid and the award can be made on the basis of price or price-related factors

#### **4.3 Preproposal/Prebid Conferences**

A Preproposal or Prebid Conference may be held to ensure industry understands the RFP/IFB and to identify any areas of concern or confusion early in the acquisition process. Whenever possible, notice of such a conference should be included in the RFP or IFB.

#### **4.4 Amending the Solicitation**

It may be necessary to amend the RFP/IFB during the solicitation period. An amendment will be required if, as a result of questions or comments provided by industry during the solicitation process, or as a result of changes in the government's requirement, material changes must be made to the specifications, terms, or conditions contained in the original solicitation. Amendments increase administrative costs and



often delay contract award and performance since they must provide a reasonable time for potential offerors to respond to the change. For these reasons, it is particularly important that sufficient time and attention to detail be applied to concept development, market research and preparation of the requirement documents. Often amendments are a result of a poorly defined requirement.

#### 4.5 Communication with Offerors

To ensure that the competition is fair and equitable, every firm must be provided with the same information. Under no circumstances may government employees take any action that might give one firm an advantage over another. In the interval between the time the RFP/IFB is mailed and the contract is awarded, only authorized procurement personnel should have any contact with the offerors. The RFP/IFB gives the names of the Contracting Officer and states that only he/she represents the government. Program personnel who are approached by prospective contractors should immediately refer them to the Contracting Officer.

#### 4.6 Selection and Award

Contract award is made to the offeror whose proposal or bid offers the greatest value to the government. The Contracting Officer is responsible for preparing the final contract document. A copy of the fully executed contract is forwarded to the contractor, the Program Officer, the Contracting Officer's Representative and other interested parties.

#### 4.7 Research Acquisition Procedures

Extramural research efforts can be acquired either through contracts or agreements. If the primary purpose of the acquisition is to obtain supplies and services for the direct benefit or use of the Federal government, then a **contract** must be used. If the purpose of the acquisition results in an indirect benefit to the Federal Government, a **Grant, Cooperative Agreement or Cooperative Research and Development Agreement** should be used (see Figure 4-1).

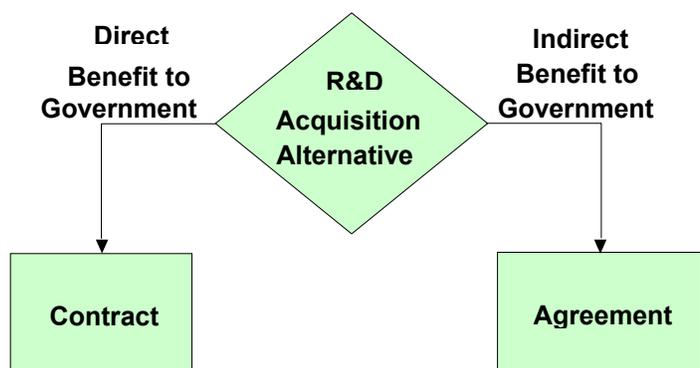


Figure 4-1

##### 4.7.1 R&D Solicitations

R&D contracts can be awarded as the result of a solicitation or a Broad Agency Announcement (see Figure 4-2). When using a solicitation, the procedures described above i.e., those used for other supplies and



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services, are followed. Program personnel use the acquisition planning process, to include concept development and market research, to prepare the various requirement documents. The contracting office uses these documents to prepare a request for proposals. Proposals submitted in response to the RFP are evaluated according to the established evaluation criteria. Finally, a contract is awarded to the contractor offering the best value to the government. Solicitations are used when proposal evaluation will be conducted using traditional source selection procedures or where the use of a Broad Agency Announcement is not appropriate.

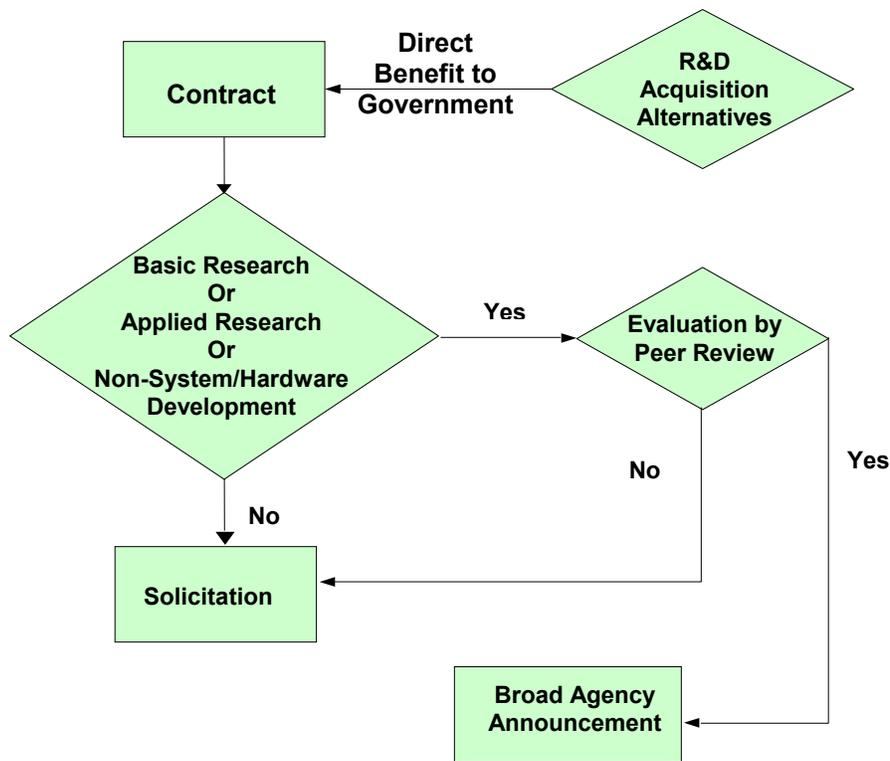


Figure 4-2



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#### **4.7.2 Broad Agency Announcements**

Broad Agency Announcements (BAA) provide a general announcement of an agency's research needs and solicit the participation of all offerors capable of providing research efforts aimed at addressing these needs. The BAA process recognizes that the selection of a basic research proposal is primarily a technical decision, with very low business risk. Its purpose is to accelerate and to save on the significant costs and efforts associated with the standard acquisition process.

The BAA describes basic research needs, the criteria for evaluating proposals, and the instructions for preparing and submitting proposals. Proposals submitted under a BAA are evaluated through peer or scientific review rather than the more formal source selection procedures utilized to evaluate most other proposals. In general, they are screened for military relevance and program merit by Research Area Directors (RAD) and reviewed for technical merit by the laboratory/institutes through in-house and/or peer review groups. Research proposals received under a BAA and then subjected to a peer review are considered as Full and Open competitions.

The BAA for USAMRMC is published periodically. Supplementary announcements of basic research needs are made in scientific journals, as required. Proposals submitted in response to a BAA can result in the award of either a contract or an agreement.

#### **4.7.3 Grants and Cooperative Agreements**

A grant is the legal instrument used to enter into a relationship, the principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation, rather than to acquire property or services for the direct benefit or use by DOD. It is a relationship in which substantial involvement is not expected between the DOD and the recipient when carrying out the activity contemplated by the grant.

Cooperative agreements are utilized when the purpose of the relationship is to extend authorized federal assistance and when substantial involvement is expected between the executive agency and the recipient when carrying out the activity.

#### **4.7.4 Cooperative Research and Development Agreements (CRDA)**

A CRDA may be used whenever a USAMRMC institute wants to enter into an agreement for cooperative technology development with private sector and civilian public sector organizations, pursuant to the Federal Technology Transfer Act. A CRDA for collaboration permits the USAMRMC institute to provide to the collaborating partner personnel, services, facilities, equipment or other resources, but not funds. The



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collaborating partner may also provide these assets and funds to the USAMRMC institute. A CRDA for material transfer may be used where only material or information will be exchanged and no actual collaboration is contemplated. USAMRMC regulation 70-57 provides guidance on CRDA and includes model agreements of the two types.

#### **4.7.5 Interagency Acquisitions**

Research needs may also be satisfied through the interagency transfer of funds. Interagency acquisitions generally follow the same path as any other solicitation. A key difference is that there are no legal restrictions on discussions with scientists and representatives of other government agencies. Consequently, it is standard for individuals from the other agency to assist our researchers in this process. Concept development and market research is still conducted to ensure that the interagency acquisition is the best method of meeting USAMRMC's needs. And, just like any other acquisition, a Work Statement is prepared that establishes the goals and objects of the acquisition. A Quality Assurance Surveillance Plan is also developed to ensure that these goals and objectives are met. Finally, a budget estimate is prepared to ensure that funding is available for the project. The acquisition is initiated by submitting a Purchase Request. All necessary administrative, fiscal and special approvals must be accomplished prior to forwarding the Purchase Request.

#### **4.8 Contracting for Development**

A detailed description of the Medical Materiel Development process and procedures is contained in the Medical Materiel Acquisition Management Handbook.

#### **4.9 Activities After Award**

##### **4.9.1 Debriefing Unsuccessful Offerors**

Unsuccessful Offerors are entitled to a debriefing. The debriefing is intended to tell unsuccessful offerors which areas of their proposals were judged to be weak and/or deficient, and whether the weaknesses or deficiencies were factors in not having been selected. Debriefings also identify factors that were the basis for selection of the successful contractor. Program personnel usually take part in the debriefing.

##### **4.9.2 Protests**

Protests may be filed whenever an offeror feels that they have been treated unfairly. Protests can be filed before award or after award. Protests can be filed with the Contracting Officer or a higher authority. Protests can significantly delay contract award and/or contract performance, particularly when the basis for the protest is



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determined to have merits. Since protests are based upon subjective and often emotional perceptions by the offeror, they cannot be totally prevented. However, following sound acquisition principles can limit the number of protests and ensure a successful outcome of those that are filed. These principles include avoiding unnecessarily restrictive specifications, avoiding inappropriate sole source procurements, ensuring that information provided to one source is provided to all sources and applying evaluation criteria fairly.

**4.9.3 Contracting Officer's Representatives (COR) Appointment**

The Contracting Officer may select and designate any government employee, military or civilian, to act as an authorized representative in administering a contract. The Contracting Officer shall ensure that the Contracting Officer's Representative (COR) possesses qualifications and experience commensurate with the authorities with which the COR will be empowered. For this, the Contracting Officer normally relies on the recommendation of the laboratory, institute or activity commander having programmatic responsibility for the contract. Ordinarily, a COR is designated by a Letter of Appointment from the Contracting Officer. The Appointment Letter will specify the authority and responsibilities of the COR to include specific limitations on the COR's authority. Grant Officer's Representatives (GOR) are appointed by Grant Officers, and are responsible for the same tasks as a COR.

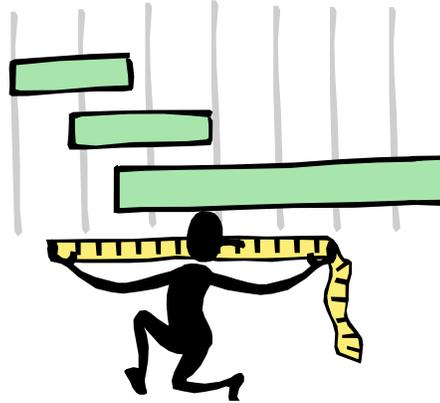


## **CHAPTER V. CONTRACT ADMINISTRATION**

### **5.1 The Contract Administrative Process**

Post award administration involves ensuring that the contract or assistance agreement is performed as written by both the contractor and the government. No matter what type of instrument is involved, a breakdown in administration can undo all previous efforts to develop a well-engineered contract. Administration begins after negotiations have been successfully concluded and both parties have signed the award document. It ends at the contract closeout when performance has been completed and final payment has been made.

Administration includes monitoring technical progress, controlling government property, monitoring subcontractors, reviewing modifications and terminations, and performing other administrative tasks required by the award document.



### **5.2 Planning for Administration**

Planning at the outset of the project is a necessary step in effective administration. This planning is needed to ensure that the administrative steps intended are consistent with the specific acquisition. Also, the analysis of administration requirements can disclose potential problems in performance of the work that might have been overlooked prior to award, making it possible to take early corrective action. The planning should be based on a review and analysis of the project and award requirements. It should include such things as an analysis of the need for and timing of such things as performance and cost reviews, inspections, scheduled delivery of government-supplied items, subcontractors, key personnel issues, monitoring of the contractor's compliance with terms and conditions, and other administrative duties. At a minimum, effective administration requires a thorough understanding of the contract; a detailed work plan to track required actions, status and milestones; and close coordination and communications between the customer, the contractor and the Contracting Officer. The Contracting Officer's Representative is the technical or program person responsible for monitoring the technical aspects of contract performance.

### **5.3 Post Award Orientation**

The Post Award Orientation is a meeting between government and contractor to ensure that both parties have a clear and mutual understanding of all contract requirements.



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The Post Award Orientation also is used to identify and resolve potential problems; introduce the government's representatives; furnish notices and other data to the contractor; and otherwise set the stage for a good working relationship under the contract.

### **5.4 Prior Authorization for Expenditures**

In order to control cost expenditures, provisions are often used that require prior authorization from the Contracting Officer before specific actions may be taken or certain costs incurred. For example, prior consent may be required prior to subcontracting some portion of the contract. Prior approval is also required for reimbursement of costs to be incurred in excess of limitations set in cost reimbursement contracts. Prior approval may even be required before a contractor may purchase equipment items, even though the items are in the agreed-upon budget. In all cases, the Contracting Officer is responsible for providing the approvals; however, since the underlying circumstances that call for approval may directly relate to the technical performance of the work, the using activity will normally be consulted before approval is granted or withheld.

### **5.5 Cost and Schedule Performance Data**

Contracts for materiel acquisition will contain requirements for cost and schedule performance data, as specified by the appropriate Project Management Office in the U.S. Army Medical Materiel Development Activity (USAMMDA).

### **5.6 Government Property**

There are times when it is in the best interest of the government to provide the contractor with government furnished property. When government property is provided, the COR frequently will be asked to advise or assist the Contracting Officer in administering its use. When government property is acquired under a grant or cooperative agreement, title is normally vested in the recipient upon acquisition.

### **5.7 Monitoring**

The contractor has primary responsibility for performance of the work, but the COR and the Contracting Officer have a vested interest in continually monitoring performance, because unsatisfactory performance may jeopardize a project or an entire program. Monitoring varies considerably both in intensity and in methodology, depending on the importance and size of the effort, as well as on the type of contract. Cost-reimbursement-type contracts generally warrant closer monitoring because the government's risk is higher than under a fixed-price contract. Monitoring of grants and



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cooperative agreements depends upon the type project and the government's experience with the recipient of the funds.

In monitoring performance, the government is primarily interested in progress toward completion of the specified requirements and the financial status of the project. One valuable monitoring tool is the reporting requirements. The government, in the award document itself, may require just about any type of report conceivable. It must be remembered, however, that the government is paying for any reports required as part of the price. Additional information may also be obtained in the form of letters and phone calls between the contractor and the COR. Visits to the facilities are sometimes necessary to evaluate performance. However, it is important to maintain a reasonable balance. Although the government has a right and a duty to monitor performance, Government personnel may be subject to charges of interference in operations or of making unreasonable demands if discretion is not used in this area.

### **5.8 Modifications**

A modification is a written alteration of award document provisions such as the work statement, period of performance, quantity or price. During the project life, different types of modifications may be necessary to incorporate new requirements or to handle problems that develop after award. Modifications must be made in writing by the Contracting Officer in order to preclude misunderstanding between the parties concerning the work to be performed.

A supplemental agreement is a bilateral agreement that either adds work or revises the delivery schedule, quality requirements or other terms of the contract. Such agreements almost always result in a price or cost change. Before initiating a modification, it is necessary to determine that the change is within the scope of the existing agreement, i.e. the new work does not add considerable magnitude to the contract. Work that is outside the scope of the contract is considered a new acquisition and subject to the same competitive requirements as a new acquisition or must be justified as meeting the criteria for "less than full and open competition."

The government may also change the contract using the "Changes" Clause. This clause is unique to government contracting. It permits the government to unilaterally direct certain changes within the general scope of the contract.

### **5.9 Constructive Changes**

A constructive change arises whenever, by informal action or inaction of the government, the contract changes without going through the required legal or regulatory formalities. The common causes of constructive changes include inadequate or latently



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defective specifications, improper interpretations of specifications, overly strict inspections, government caused delays, and improper technical direction.

In dealing with the contractor, the COR and other program personnel must exercise care not to accidentally generate the basis for claims or delays. When communicating with contractor personnel, or when conveying technical or assessment information, it is critical that the COR and other program personnel not instruct, supervise, or attempt to control contractor efforts except as specifically authorized in the contract SOW. If problems begin to develop, contact the Contracting Officer immediately.

### **5.10 Cost Overruns**

There are a variety of factors that cause cost overruns. The most common causes include changes in requirements, the inability to estimate uncertainties, and other unforeseeable and legitimate conditions. Only a very small percentage of overruns result from mismanagement or gross inefficiencies, which, unfortunately is a common misconception. While we cannot eliminate cost overruns, good communication can minimize their effect and their possible consequences.

### **5.11 Performance Problems**

The government has a wide variety of tools available to deal with unsatisfactory performance. These include providing notice to the contractor of the particular deficiency and obtaining a commitment for appropriate corrective action; withholding payments in cases where the contractor fails to comply with delivery or reporting provisions; and/or terminating the contract for convenience or default. The Contracting Officer can also extend the schedule of work if excusable delays in performance are involved. The most important aspect of dealing with poor performance is good documentation. It is very difficult to deal with issues of poor performance when the government has failed to document the performance issues. The second most important aspect of dealing with poor performance is a maintaining good communications. The COR must ensure that both the contractor and the Contracting Officer are aware that performance problems exist. Remember that silence on the part of the government could be interpreted as revised government expectation of performance and could adversely affect the government's rights.

#### **5.11.1 Withholding Payment under Contracts**

All government contracts contain a clause allowing the government to withhold payments. A contractor's failure to either submit a report, or to perform or deliver services or work when required by the contract is considered a default in performance. In either circumstance, the Contracting Officer normally issues a formal "cure notice,"



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which will include a statement to the effect that contract payments will be withheld if the default is not cured or is not determined to be excusable. A “cure notice” is a formal notice from the Contracting Officer pointing out specific deficiencies in contractor performance and directing that they be “cured” within a specified time, usually 10 days. If the default is not determined to be excusable or a response is not received within the allotted time, the Contracting Officer initiates withholding action on all contract payments and determines whether termination for default or other action would be in the best interest of the government.

### **5.11.2 Termination for Default**

The Termination for Default clause allows the government to terminate the contract when the contractor fails to make progress with the work or to perform any other contract requirements within the period provided by a cure notice.” Once a Contracting Officer has determined that it is necessary to invoke the Termination for Default clause, the COR and other program personnel should have no further contact with the contractor unless specifically directed to do so by the Contracting Officer.

### **5.12 Termination for Convenience/Cause**

The government has a unique right to terminate a contract for convenience. Under the Terminations for Convenience clause, the government has the right to cancel a contract when to do so is in the best interest of the government, notwithstanding the contractor’s ability and readiness to perform. Terminations for Convenience may occur when the item or service is no longer needed, funds are not available for continued contract performance, it is impossible for the contractor to perform as specified in the contract or there has been a radical change in the requirement that goes beyond the contractor’s expertise. Terminations for Convenience require that a financial settlement be made for the work that has been accomplished under the contract up to the effective date of the termination. Settlements may be reached by negotiated agreement or by Contracting Officer determination. When acquiring commercial items, default terminations are known as “Terminations for Cause”.

### **5.13 Suspension/Termination of Grants and Cooperative Agreements**

Agreements may be unilaterally suspended or terminated in whole or in part by the Grant Officer when, in the opinion of the Grant Officer, the recipient has materially failed to comply with the terms or conditions of the award or, where there is not a reasonable probability that the research objective will be achieved. An Agreement may be suspended or terminated for any reason by mutual agreement between the Grant Officer and the recipient upon the request of either party.



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#### **5.14 Resolving Contract Disputes**

No matter how carefully a contract is negotiated and written, disputes can and often do arise. The Disputes clause included in all government contracts is designed to ensure that disagreements between the government and the contractor will not interfere with the scheduled performance of the contract. It also provides a channel through which disagreements and the persons directly involved can resolve differences. The Contracting Officer has considerable discretion and can choose from variety of remedies when attempting to resolve a contract dispute. Some of the things the Contracting Officer can do include making equitable adjustments pursuant to the Changes clause; reducing prices under the Inspection clause; and providing for reimbursement for extra work performed.

#### **5.15 Resolving Agreement Disputes**

Disagreements regarding matters of fact between the recipient and the Grant Officer that arise during performance shall be resolved by negotiation to the maximum extent practicable. If agreement cannot be reached, the Grant Officer will issue a final decision in writing to the recipient. The final decision will permit the recipient to appeal the decision within 30 days after receipt of such notification. The Head of the Contracting Activity will resolve appeals. A decision will be final and not subject to further administrative appeal.

#### **5.16 Inspection and Acceptance Responsibilities**

Acceptance occurs when an authorized government representative examines the goods or services provided, compares the services provided to the requirements of the contract, and is satisfied that the goods and services conform to contractual requirements. The COR is normally authorized to inspect and accept goods and services. Acceptance is documented on a receiving report, normally after receipt of the vendor's invoice. The preferred form for the receiving report is the DD Form 250. Untimely and inaccurate completion of the acceptance document is a major problem for the government and should be a major focus area for the COR. Untimely receiving reports result in the government having to pay interest on the contractor's invoice.

#### **5.17 Contract Review and Analysis**

At the conclusion of a research effort, or at a significant intermediate milestone during a long-time research study, a Review and Analysis (R&A) may be conducted following submission of the contractor's draft final report, but before that report is finalized. The investigator will make a formal presentation at the meeting. The format, level of detail, and emphasis of the presentation should be mutually decided between the COR and the



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Principal Investigator. Attendees should include all key staff members and in-house personnel and consultants who participated in the study's technical monitorship, representatives from user agencies for which the study was conducted, and other individuals, technical experts, or contractors who have a substantial interest in the research effort.

The R&A accelerates the transfer of a study's results to the user and insures that the user is fully aware of both the impact and limitations of the study's findings. To achieve this, the meeting must be carefully planned to emphasize those items of interest to the user. Prior to the meeting, all attendees should be provided with a copy of the draft final report. The agenda should provide ample time for discussions of both technical details and impact of the findings.

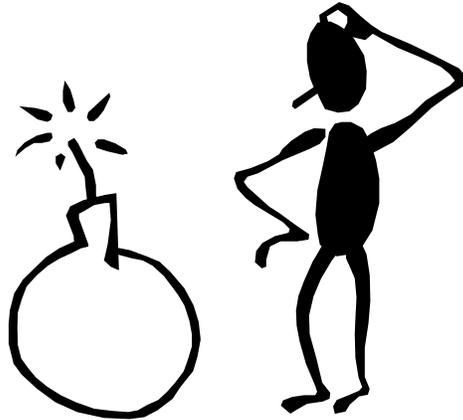
The R&A also provides an opportunity to evaluate the adequacy of the contractor's study to satisfy the user's needs. Critical review may be made of the contractor's performance and the necessity for additional research efforts to address unforeseen problem areas. Following the R&A, the government will provide the contractor with comments and guidance required for required modifications to the final report. If the modifications are major, a second draft for review may be required. If changes are minor, the contractor should be authorized to proceed with preparation and distribution of the final report.

### **5.18 Past Performance Management System**

Since the passage of the Federal Acquisition Streamlining Act of 1994, all Federal Departments and Agencies have initiated procedures to record contractor performance and to use past contractor performance information in source selection. The use of past performance information is a valuable evaluation factor in the analysis and award process. Not only is this a powerful motivator for contractors to maintain high quality performance, but it also increases the probability of awarding contracts to quality contractors. Past performance information is maintained both locally and in central Army and DOD databases.



## **CHAPTER VI. CONTRACTING PROBLEMS/ISSUES**



### **6.1 Anti-Deficiency Act**

No officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Violating the Anti-Deficiency Act is a very serious offense, which may result in criminal penalties.

### **6.2 Unauthorized Commitments**

An unauthorized commitment is an agreement made to bind the government by an employee of the government that does not have the authority to do so. Only a Contracting Officer/Grant Officer may enter into a contract/agreement on behalf of the government. Although the government is not bound by the acts of unauthorized individuals, such acts bring discredit to the activity; strain relationships with the vendor community, and in general, cause considerable additional paperwork to rectify. Individuals responsible for an unauthorized commitment could be held personally liable and/or subject to disciplinary action.

### **6.3 Contracts with Federal Employees**

Contracts between the government and government employees or between the government and organizations that are substantially owned or controlled by government employees may not knowingly be entered into, except for the most compelling reasons.



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#### **6.4 Conflicts of Interest**

Basically, the policies governing conflicts of interest prohibit an employee from participating “personally and substantially” as a government employee in a matter, procedure, determination, or contract in which any of the following individuals or organizations has a financial interest:

- The employee, or a member of the employee’s household including the employee’s spouse or the employee’s minor child
- An organization in which the employee serves as an officer, director, trustee, partner, or employee; or,
- A person or organization with which the employee is negotiating for prospective employment or has an arrangement for prospective employment.

If you feel that any of these circumstances may exist or if you feel that circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality in a matter, you should not participate in that matter until you have consulted with the Command’s ethics advisor.

#### **6.5 Gratuities**

Gratuities are defined as gifts, entertainment, or favors generally given to enhance the relationship between the offeror and the government employee. Government employees are prohibited from accepting gratuities on the premise that gifts, entertainment, or favors, no matter how innocently offered and received, may be a source of embarrassment both to USAMRMC and to the employee involved. Accepting gratuities might give the impression that the objective judgment of the recipient has been affected and could erode public confidence in the integrity of the relationship between USAMRMC and the private organization.

#### **6.6 Use of Official Information**

The public interest requires that certain information in the possession of the government be kept confidential and released only with general or specific authority under DOD or other regulations. Such information may involve the national security or be private, personal, or business information that has been furnished to the government in confidence. In addition, information in the possession of the government and not generally available to the public may not be used for private gain. Most of prohibitions against use of official information are applicable to the regulations governing conflict of interest. In addition, regulations governing use of official information prohibit an employee from allowing others to make use of official information. See your legal advisor for additional information.



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## **6.7 Protecting the Integrity of the Procurement Process**

The term, “integrity of the acquisition process,” in this instance means allowing private sector firms to compete for the government’s business on a scrupulously fair basis. The emphasis here is on the word “fair.” Not only is fairness a prerequisite in government acquisition due to the government’s unique position as representative of the American people, but fairness also helps ensure that the government will obtain its supplies and services at the best price available.

Government personnel who are associated with the acquisition process have a responsibility to protect its integrity, maintaining fairness in the government’s treatment of all contractors or potential contractors. Procurement officials are subject to additional requirements and restrictions regarding conduct while in the employ of the government and after they leave government employment. These requirements and restrictions are complex, subject to change and beyond the scope of the desk reference. In general, if you had anything to do with a procurement, including participation in the development of the Statement of Work, evaluation of proposals, or monitoring technical performance of the contract, then you are probably a procurement official. If this is the case, it is your responsibility to learn the restriction placed upon you by visiting with the Command’s ethics advisor

## **6.8 Relationships Between Government Personnel and Contractor Employees**

Relationships between government personnel and contractor employees are strictly controlled by a variety of laws and regulations. Supervisors, key personnel, and their subordinates must be familiar with and comply with these rules.

Contractors may not be utilized to perform inherently governmental functions. Any activity that involves exercising discretion or making a management decision on behalf of the government is considered an inherently governmental function. Examples of prohibited activities include supervision of government employees, determining agency priority or policy, and actions that bind the government, e.g. approving contract documents. Note however, that a contractor may appropriately gather information, or provide advice, opinions or recommendations to government officials.

Government personnel may not directly supervise contractor employees, unless the contract was awarded as a **personal services contract**. A personal services contract is one in which an employer – employee relationship is created between the government and the contractor personnel. This occurs when the government exercises relatively continuous control or supervision over the contractor employee. Under a personal services contract, the contract employee becomes a de facto government employee.



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Generally, the government is prohibited from entering into personal services contracts. There are limited exceptions. Your Account Manager can provide you additional information on this subject.

Contracting and legal reviews prior to award normally protect the government from entering into an improper personal services contract. However, even a properly written contract can become an improper personal services contract through faulty administration. Both the government and contractor personnel must avoid problems in this area. Contractor personnel must clearly identify themselves as contract employees. ID badges, name plates, and signature blocks should indicate the individual is a contract employee. They should also indicate this when attending meetings or answering government telephones.

For its part, the government must avoid “supervising” the contractor employee. For example, approving or disapproving leave is a supervisory function that only the contractor can perform. This does not mean, however, that the government is precluded from providing relevant input into the decisions of a contractor. Take for instance a contractor employee, providing help desk support to the government, that wants to take leave during a period when a new software program is being fielded and heavy usage of the help desk is anticipated. There is nothing wrong with the government informing the contractor that coverage is required during this period of time (assuming this is consistent with the contract). The contractor may choose to deny the leave request based upon this input, but that is his/her decision (other alternatives, such a providing a substitute individual, could also met the government’s requirement that “coverage” be provided).

Likewise, providing a contract employee with a daily list of task to be accomplished, establishing the priority in which the tasks are to be complete and the detailing the exact method by which each task is to be completed constitutes supervision and must be avoided. However, giving an order for a specific task or service, with the right to accept or reject the final product, is usually not a personal service. Evaluating whether or not a situation constitutes personal services is often complex, as there are a number of relatively subjective “tests” that must be considered. However, applying common sense to most situations can be invaluable. For more information and assistance on dealing with personal services contracts, consult your Account Manager/Contracting Officer.

## **6.9 Fraud in Government Contracts**

One of the cornerstones of the Federal procurement system is the requirement that government contracts shall be awarded to the greatest extent possible on the basis of



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free and open competition. More than a dozen Federal statutes define and specify the penalties for the varied methods through which the government and its contracting process can be defrauded or corrupted. Department of Justice experience shows that violations of those statutes can occur in all phases of the contracting process; involve both contractor and government employees; and entangle people who have no criminal intent. The well-meaning government program planner and executor should be aware of the indicators of fraud to ensure integrity of the contract process and avoid violation of the fraud statutes. Common sense is probably the keyword for meeting the intent of the fair and open competition principle.

### **6.9.1 Cost Mischarging**

Contractors maintain accounting systems that accumulate the costs for various things and allocate them to various cost objectives. The government uses the costs gathered in this way to calculate progress payments, the charges paid under cost reimbursement contracts, and future prices on negotiated fixed price contracts. When the contractor assigns a cost to the wrong cost objective, then it has mischarged the costs. When done with fraudulent intent, then the individual requests for payment are considered false claims. Mischarging includes allocation of material used on one contract to another contract; allocation of labor costs from one cost objective to another; and classifying costs that the government refuses to pay, e.g., entertainment, alcohol, and bad debts, as costs which the government ordinarily pays, such as wages and office supplies.

### **6.9.2 Progress Payment Fraud**

When a contract provides for progress payments, a contractor's inclusion of expenses not yet incurred results in a fraudulent interest free loan from the government to the contractor, e.g., payment for materials in advance of delivery, or issuing a check for payment, but not mailing it until a later date.

### **6.9.3 Defective Pricing**

This is defined as the failure to give the government cost and pricing information that is current, accurate, and complete as the basis for the negotiation of a reasonable cost or price. Areas of defective pricing include direct labor hours, material costs, scrap rates, subcontract costs, and rebates and discounts.

### **6.9.4 Product Substitution**

The delivery of a different product to the government from that specified in the contract can be fraudulent. When done intentionally, delivery of a noncompliant product is fraud, rather than a mere breach of contract. Examples include the following: failure to



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properly test or report false test results; altering test equipment to produce inaccurate results; and altering the government inspector's vigilance with bribes or gratuities.

**6.9.5 Collusive Bidding and Other Antitrust Violations**

Collusive bidding, price fixing, and other antitrust violations are express or implied agreements between independent competitors, which limit competition. Examples: agreements to allocate business among competing firms; joint ventures by independent competitors which effectively reduce available competition; no bids from obvious competitors; and token bids from obvious competitors.

**6.9.6 Kickbacks and Commercial Bribery**

This may occur when a subcontractor gives the prime contractor or one of its employees something in order to receive the subcontract or other favorable treatment. Kickbacks have been specifically prohibited on government contracts for many years. Examples are direct payments to individuals (purchasing agents to presidents) in exchange for taking action; gratuities to individuals to curry favor; and passing kickbacks through agents by paying excessive commissions.

Contractors, contract employees and government personnel committing fraud may be subject to one or more criminal, civil, administrative and/or contractual remedies of a punitive and/or pecuniary nature. Government personnel observing an indicator of fraud, or being informed by a non-government person or entity (e.g., competing contractor) of alleged fraudulent activity, should immediately inform the contracting officer and the Command Judge Advocate.

**6.10 Misconduct in Science**

In recent years the issue of misconduct in science has become a matter of concern to research institutions, individual scientists, sponsors of research, and the general public. Although instances of verified misconduct are rare, virtually every instance raises serious questions about the integrity of research and the stewardship of Federal funds, since most biomedical and behavioral research is Federally funded.



## **APPENDIX A - DETERMINATION & FINDINGS FOR ACQUISITIONS OUTSIDE USAMRMC**

### **DETERMINATION AND FINDINGS**

#### **Acquisition Outside USAMRMC**

1. I have reviewed the requirement for (description of supply or service) that (requiring activity) has proposed to enter into an intra agency or interagency agreement for acquisition of services outside USAMRMC. My review resulted in the following findings.

- a. The proposed acquisition is authorized under the authority of the Economy Act.
- b. The Army is legally authorized to acquire the supplies or services.
- c. Adequate funds are available (attach funding certification).
- d. The action does not conflict with any other agency's authority or responsibility. Specifically, a review of Part 8 of the FAR, Part 208 of the DFARS, or other parts as applicable, reveals that the responsibility for acquiring this supply or service has not been assigned to an agency other than the one proposed.
- e. The supplies or services are clearly within the scope of activities of the agency and that agency normally contracts for those supplies or services for itself.
- f. The cost to the Army for the requirement, including administrative fees charged by the agency are \$\_\_\_\_\_ and they appear to be reasonable. The fees proposed to be paid to the performing agency do not exceed the performing agency's actual cost (or estimated costs if actual costs are unknown) of entering into and administering the contract or other agreement under which the order is filled (provide all known costs or facts that lead to this conclusion).
- g. The contract administration procedures related to the agency contract are adequate for Army requirements (or the order contains additional contract administration requirements for contract administration procedures that comply with Army and DOD regulations and policies).

(Provide a detailed explanation for the following.)



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h. Explain why the services, supplies or equipment cannot be obtained by the assigned contracting office in terms of technical capability, quality, cost (including administrative support costs), and timeliness.

i. Describe the unique expertise or ability that the performing agency is providing.

j. Illustrate the type of work the performing organization engages in which satisfies the requirement.

2. I have determined that all approvals and authorizations required by Army and/or DOD policies for acquiring the supplies or services have been obtained and that the requirement is a bona-fide need of the Army. Based on the Findings above, the acquisition of services, supplies or equipment through an intra agency or interagency agreement is the best business decision for the Command.

Approved:

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Commander, USAMRMC

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Date



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