

Federal Acquisition Regulation

7.101

(4) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

[60 FR 48236, Sept. 18, 1995]

PART 7—ACQUISITION PLANNING

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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42124, Sept. 19, 1983, unless otherwise noted.

7.000 Scope of part.

This part prescribes policies and procedures for—

(a) Developing acquisition plans;

(b) Determining whether to use commercial or Government resources for acquisition of supplies or services;

(c) Deciding whether it is more economical to lease equipment rather than purchase it; and

(d) Determining whether functions are inherently governmental.

[48 FR 42124, Sept. 19, 1983, as amended at 61 FR 2628, Jan. 26, 1996]

Subpart 7.1—Acquisition Plans

7.101 Definitions.

Acquisition planning means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

Acquisition streamlining, as used in this subpart means any effort that results in more efficient and effective use of resources to design and develop, or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems.

Design-to-cost is a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

Life-cycle cost means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

Planner, as used in this subpart, means the designated person or office responsible for developing and maintaining a written plan, or for the planning function in those acquisitions not requiring a written plan.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 53 FR 34226, Sept. 2, 1988; 60 FR 48236, Sept. 18, 1995]

7.102 Policy.

(a) Agencies shall perform acquisition planning and conduct market research (see part 10) for all acquisitions in order to promote and provide for—

(1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable (10 U.S.C. 2377 and 41 U.S.C. 251, *et seq.*); and

(2) Full and open competition (see part 6) or, when full and open competition is not required in accordance with part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)).

(b) This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

[60 FR 48236, Sept. 18, 1995]

7.103 Agency-head responsibilities.

The agency head or a designee shall prescribe procedures for—

(a) Promoting and providing for full and open competition (see part 6) or, when full and open competition is not required in accordance with part 6, for obtaining competition to the maximum extent practicable, with due re-

gard to the nature of the supplies and services to be acquired (41 U.S.C. 253a(a)(1)).

(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available, nondevelopmental items in response to agency solicitations (10 U.S.C. 2377 and 41 U.S.C. 251, *et seq.*); and

(c) Ensuring that acquisition planners address the requirement to specify needs, develop specifications, and to solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2305(a)(1)(A) and 41 U.S.C. 253a(a)(1)). (See part 6 and 10.002.)

(d) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, specifying those cases in which a written plan shall be prepared;

(e) Writing plans either on a system basis or on an individual contract basis, depending upon the acquisition;

(f) Ensuring that the principles of this subpart are used, as appropriate, for those acquisitions that do not require a written plan as well as for those that do;

(g) Designating planners for acquisitions;

(h) Reviewing and approving acquisition plans and revisions to these plans;

(i) Establishing criteria and thresholds at which design-to-cost and life-cycle-cost techniques will be used;

(j) Establishing standard acquisition plan formats, if desired, suitable to agency needs; and

(k) Waiving requirements of detail and formality, as necessary, in planning for acquisitions having compressed delivery or performance schedules because of the urgency of the need.

(l) Assuring that the contracting officer, prior to contracting, reviews:

(1) The acquisition history of the supplies and services; and

(2) A description of the supplies, including, when necessary for adequate description, a picture, drawing, diagram, or other graphic representation.

(m) Ensuring that agency planners include use of the metric system of measurement in proposed acquisitions in accordance with 15 U.S.C. 205b (see 11.002(b)) and agency metric plans and guidelines.

(n) Ensuring that agency planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions promoting the use of environmentally preferable and energy-efficient products and services (e.g., promoting energy conservation and the use of recovered material content and the elimination or reduction of ozone-depleting substances usage), and that these are considered in the evaluation and award of contracts, as appropriate (see part 23).

(o) Making a determination, prior to issuance of a solicitation for advisory and assistance services involving the analysis and evaluation of proposals submitted in response to a solicitation, that a sufficient number of covered personnel with the training and capability to perform an evaluation and analysis of proposals submitted in response to a solicitation are not readily available within the agency or from another Federal agency in accordance with the guidelines at 37.204.

(p) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts are adequately managed so as to ensure effective official control over contract performance.

(q) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based contracting methods and, therefore, fixed-price contracts (see 37.602-5) should occur for follow-on acquisitions.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 27561, July 3, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 27116, July 29, 1986; 57 FR 60574, Dec. 21, 1992; 60 FR 28495, May 31, 1995; 60 FR 48236, Sept. 18, 1995; 60 FR 49721, Sept. 26, 1995; 61 FR 2628, Jan. 26, 1996; 62 FR 40236, July 25, 1997; 62 FR 44814, Aug. 22, 1997]

EFFECTIVE DATE NOTE: At 62 FR 44814, Aug. 22, 1997, section 7.103 was amended by adding paragraph (q), effective Oct. 21, 1997.

7.104 General procedures.

(a) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award is necessary. In developing the plan, the planner shall form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, fiscal, legal, and technical personnel. The planner should review previous plans for similar acquisitions and discuss them with the key personnel involved in those acquisitions. At key dates specified in the plan or whenever significant changes occur, and no less often than annually, the planner shall review the plan and, if appropriate, revise it.

(b) Requirements and logistics personnel should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices. Early in the planning process, the planner should consult requirements and logistics personnel who determine type, quality, quantity, and delivery requirements.

(c) The planner shall coordinate with and secure the concurrence of the contracting officer in all acquisition planning. If the plan proposes using other than full and open competition, the plan shall also be coordinated with the cognizant competition advocate.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 52433, Dec. 23, 1985]

7.105 Contents of written acquisition plans.

In order to facilitate attainment of the acquisition objectives, the plan must identify those milestones at which decisions should be made (see subparagraph (b)(19) below). The plan shall address all the technical, business, management, and other significant considerations that will control the acquisition. The specific content of plans will vary, depending on the nature, circumstances, and stage of the acquisition. In preparing the plan, the planner shall follow the applicable instructions in paragraphs (a) and (b) below, together with the agency's implementing procedures. Acquisition

plans for service contracts shall describe the strategies for implementing performance-based contracting methods or shall provide rationale for not using those methods (see subpart 37.6).

(a) *Acquisition background and objectives*—(1) *Statement of need*. Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives, the impact of prior acquisitions on those alternatives, and any related in-house effort.

(2) *Applicable conditions*. State all significant conditions affecting the acquisition, such as (i) requirements for compatibility with existing or future systems or programs and (ii) any known cost, schedule, and capability or performance constraints.

(3) *Cost*. Set forth the established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate, the following items:

(i) *Life-cycle cost*. Discuss how life-cycle cost will be considered. If it is not used, explain why. If appropriate, discuss the cost model used to develop life-cycle-cost estimates.

(ii) *Design-to-cost*. Describe the design-to-cost objective(s) and underlying assumptions, including the rationale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific related solicitation and contractual requirements to be imposed.

(iii) *Application of should-cost*. Describe the application of should-cost analysis to the acquisition (see 15.407-4).

(4) *Capability or performance*. Specify the required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need.

(5) *Delivery or performance-period requirements*. Describe the basis for establishing delivery or performance-period requirements (see subpart 11.4). Explain and provide reasons for any urgency if it results in concurrency of development and production or con-

stitutes justification for not providing for full and open competition.

(6) *Trade-offs*. Discuss the expected consequences of trade-offs among the various cost, capability or performance, and schedule goals.

(7) *Risks*. Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effects on cost and schedule risks.

(8) *Acquisition streamlining*. If specifically designated by the requiring agency as a program subject to acquisition streamlining, discuss plans and procedures to:

(i) Encourage industry participation by using draft solicitations, presolicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements;

(ii) Select and tailor only the necessary and cost-effective requirements; and

(iii) State the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory.

(b) *Plan of action*—(1) *Sources*. Indicate the prospective sources of supplies and/or services that can meet the need. Consider required sources of supplies or services (see part 8). Include consideration of small business, small disadvantaged business, and women-owned small business concerns (see part 19). Address the extent and results of the market research and indicate their impact on the various elements of the plan (see part 10).

(2) *Competition*. (i) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated cite the authority in 6.302, discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

(ii) Identify the major components or subsystems. Discuss component break-out plans relative to these major components or subsystems. Describe how competition will be sought, promoted, and sustained for these components or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery schedules and acquisition method coding conferences, that affect competition.

(iv) When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the acquisition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) *Source-selection procedures.* Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see subpart 15.3).

(4) *Contracting considerations.* For each contract contemplated, discuss contract type selection (see part 16); use of multiyear contracting, options, or other special contracting methods (see part 17); any special clauses, special solicitation provisions, or FAR deviations required (see subpart 1.4); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see subpart 7.4) and why; and any other contracting considerations.

(5) *Budgeting and funding.* Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required (see subpart 32.7).

(6) *Product or service descriptions.* Explain the choice of product or service description types (including performance-based contracting descriptions) to be used in the acquisition.

(7) *Priorities, allocations, and allotments.* When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the

method for obtaining and using priorities, allocations, and allotments, and the reasons for them (see subpart 11.6).

(8) *Contractor versus Government performance.* Address the consideration given to OMB Circular No. A-76 (see subpart 7.3).

(9) *Inherently governmental functions.* Address the consideration given to OFPP Policy Letter 92-1 (see subpart 7.5).

(10) *Management information requirements.* Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort.

(11) *Make or buy.* Discuss any consideration given to make-or-buy programs (see subpart 15.407-2).

(12) *Test and evaluation.* To the extent applicable, describe the test program of the contractor and the Government. Describe the test program for each major phase of a major system acquisition. If concurrency is planned, discuss the extent of testing to be accomplished before production release.

(13) *Logistics considerations.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see subpart 7.3) and distribution of commercial items;

(ii) The reliability, maintainability, and quality assurance requirements, including any planned use of warranties (see part 46);

(iii) The requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data (see part 27); and

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as *standard* so that future purchases of the equipment can be made from the same manufacturing source.

(14) *Government-furnished property.* Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see part 45).

(15) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors.

(16) *Environmental and energy conservation objectives.* Discuss all applicable environmental and energy conservation objectives associated with the acquisition (see part 23), the applicability of an environmental assessment or environmental impact statement (see 40 CFR part 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts.

(17) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see subpart 4.4).

(18) *Contract administration.* Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced.

(19) *Other considerations.* Discuss, as applicable, standardization concepts, the industrial readiness program, the Defense Production Act, the Occupational Safety and Health Act, foreign sales implications, and any other matters germane to the plan not covered elsewhere.

(20) *Milestones for the acquisition cycle.* Address the following steps and any others appropriate:

- Acquisition plan approval.
- Statement of work.
- Specifications.
- Data requirements.
- Completion of acquisition-package preparation.
- Purchase request.
- Justification and approval for other than full and open competition where applicable and/or any required D&F approval.
- Issuance of synopsis.
- Issuance of solicitation.
- Evaluations of proposals, audits, and field reports.
- Beginning and completion of negotiations.
- Contract preparation, review, and clearance.
- Contract award.

(21) *Identification of participants in acquisition plan preparation.* List the individuals who participated in preparing

the acquisition plan, giving contact information for each.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985, and 51 FR 27116, July 29, 1986; 53 FR 17856, May 18, 1988; 53 FR 34226, Sept. 2, 1988; 60 FR 28495, May 31, 1995; 60 FR 48237, Sept. 18, 1995; 61 FR 2628, Jan. 26, 1996; 62 FR 40236, July 25, 1997; 62 FR 44814, Aug. 22, 1997; 62 FR 51230, 51270, Sept. 30, 1997]

EFFECTIVE DATE NOTES: 1. At 62 FR 44814, Aug. 22, 1997, section 7.105 was amended by adding a sentence to the end of the introductory paragraph; by revising paragraphs (a)(1), (a)(4), and (b)(6); by redesignating paragraphs (b)(18) through (b)(20) as paragraphs (b)(19) through (b)(21); and by adding a new paragraph (b)(18), effective Oct. 21, 1997. For the convenience of the user, the superseded text is set forth as follows:

2. At 62 FR 51230, 51270, Sept. 30, 1997, section 7.105 was amended by revising paragraph (b)(5); in paragraph (a)(3)(iii), "15.810" was amended to read "15.407-4", in paragraph (b)(3), "15.6" was amended to read "15.3"; and in paragraph (b)(11) "15.7" was amended to read "15.407-2", effective Oct. 10, 1997.

7.105 Contents of written acquisition plans.

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(a) *Acquisition background and objectives—(1) Statement of need.* Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives and any related in-house effort.

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(4) *Capability or performance.* Specify the required capabilities or performance characteristics of the supplies or services being acquired and state how they are related to the need.

* * * * *

(b) * * *

(5) *Budgeting and funding.* Describe how budget estimates were derived and discuss the schedule for obtaining adequate funds at the time when they are required (see subpart 32.7).

(6) *Product descriptions.* In accordance with part 11, explain the choice of product description types to be used in the acquisition.

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7.106 Additional requirements for major systems.

(a) In planning for the solicitation of a major system (see part 34) development contract, planners shall consider requiring offerors to include, in their offers, proposals to incorporate in the design of a major system—

(1) Items which are currently available within the supply system of the agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source; and

(2) Items which the Government will be able to acquire competitively in the future if they are likely to be needed in substantial quantities during the system's service life.

(b) In planning for the solicitation of a major system (see part 34) production contract, planners shall consider requiring offerors to include, in their offers, proposals identifying opportunities to assure that the Government will be able to obtain, on a competitive basis, items acquired in connection with the system that are likely to be acquired in substantial quantities during the service life of the system. Proposals submitted in response to such requirements may include the following:

(1) Proposals to provide the Government the right to use technical data to be provided under the contract for competitive future acquisitions, together with the cost to the Government, if any, of acquiring such technical data and the right to use such data.

(2) Proposals for the qualification or development of multiple sources of supply for competitive future acquisitions.

(c) In determining whether to apply paragraphs (a) and (b) above, planners shall consider the purposes for which the system is being acquired and the technology necessary to meet the system's required capabilities. If such proposals are required, the contracting officer shall consider them in evaluating competing offers. In noncompetitive awards, the factors in paragraphs (a) and (b) above, may be considered by

the contracting officer as objectives in negotiating the contract.

[50 FR 27561, July 3, 1985 and 51 FR 27116, July 29, 1986]

Subpart 7.2—Planning for the Purchase of Supplies in Economic Quantities

SOURCE: 50 FR 35475, Aug. 30, 1985, unless otherwise noted.

7.200 Scope of subpart.

This subpart prescribes policies and procedures for gathering information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased.

7.201 [Reserved]**7.202 Policy.**

(a) Agencies are required by 10 U.S.C. 2384(a) and 41 U.S.C. 253(f) to procure supplies in such quantity as (1) will result in the total cost and unit cost most advantageous to the Government, where practicable, and (2) does not exceed the quantity reasonably expected to be required by the agency.

(b) Each solicitation for a contract for supplies is required, if practicable, to include a provision inviting each offeror responding to the solicitation (1) to state an opinion on whether the quantity of the supplies proposed to be acquired is economically advantageous to the Government, and (2) if applicable, to recommend a quantity or quantities which would be more economically advantageous to the Government. Each such recommendation is required to include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

7.203 Solicitation provision.

Contracting officers shall insert the provision at 52.207-4, Economic Purchase Quantity—Supplies, in solicitations for supplies. The provision need not be inserted if the solicitation is for a contract under the General Services Administration's multiple award schedule contract program, or if the contracting officer determines that (a)

the Government already has the data, (b) the data is otherwise readily available, or (c) it is impracticable for the Government to vary its future requirements.

[52 FR 30076, Aug. 12, 1987]

7.204 Responsibilities of contracting officers.

(a) Contracting officers are responsible for transmitting offeror responses to the solicitation provision at 52.207-4 to appropriate inventory management/requirements development activities in accordance with agency procedures. The economic purchase quantity data so obtained are intended to assist inventory managers in establishing and evaluating economic order quantities for supplies under their cognizance.

(b) In recognition of the fact that economic purchase quantity data furnished by offerors are only one of many data inputs required for determining the most economical order quantities, contracting officers should generally take no action to revise quantities to be acquired in connection with the instant procurement. However, if a significant price variation is evident from offeror responses, and the potential for significant savings is apparent, the contracting officer shall consult with the cognizant inventory manager or requirements development activity before proceeding with an award or negotiations. If this consultation discloses that the Government should be ordering an item of supply in different quantities and the inventory manager/requirements development activity concurs, the solicitation for the item should be amended or canceled and a new requisition should be obtained.

Subpart 7.3—Contractor Versus Government Performance

7.300 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions of commercial or industrial products and services subject to (a) OMB Circular No. A-76 (Revised) (the Circular), Performance of Commercial Activities, and (b) the Supplement to the Circular.

[57 FR 60575, Dec. 21, 1992]

7.301 Policy.

The Circular provides that it is the policy of the Government to (a) rely generally on private commercial sources for supplies and services, if certain criteria are met, while recognizing that some functions are inherently Governmental and must be performed by Government personnel, and (b) give appropriate consideration to relative cost in deciding between Government performance and performance under contract. In comparing the costs of Government and contractor performance, the Circular provides that agencies shall base the contractor's cost of performance on firm offers.

7.302 General.

The Circular and the Supplement—

(a) Prescribe the overall policies and detailed procedures required of all agencies in making cost comparisons between contractor and Government performance. In making cost comparisons, agencies shall—

(1) Prepare an estimate of the cost of Government performance based on the same work statement and level of performance as apply to offerors; and

(2) Compare the total cost of Government performance to the total cost of contracting with the potentially successful offeror.

(b) Provide that solicitations and synopses of the solicitations issued to obtain offers for comparison purposes shall state that they will not result in a contract if Government performance is determined to be more advantageous (see the solicitation provisions at 52.207-1 and 52.207-2);

(c) Provide that each cost comparison shall be reviewed by an activity independent of the activity which prepared the cost analysis to ensure conformance with the instructions in the Supplement; and

(d) Provide that, ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies when the full-time equivalent Government employees involved are fewer than those specified by law, the Circular, and implementing agency guidance. Cost comparisons may be conducted in these instances if there is

reason to believe that commercial prices are unreasonable.

[50 FR 35475, Aug. 30, 1985, as amended at 53 FR 17856, May 18, 1988; 55 FR 25526, June 21, 1990; 57 FR 60575, Dec. 21, 1992]

7.303 Determining availability of private commercial sources.

(a) During acquisition planning reviews, contracting officers shall assist in identifying private commercial sources.

(b) In making all reasonable efforts to identify such sources, the contracting officer shall assist in—

(1) Synopsizing the requirement in the Commercial Business Daily until a reasonable number of potential sources are identified. If necessary, synopsis shall be submitted up to three times in a 90-day period with a minimum of 30 days between notices (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them).

(2) Requesting assistance from the Small Business Administration, the Department of Commerce, and the General Services Administration.

(3) If sufficient sources are not identified through synopses or from subparagraph (b)(2) of this section, a finding that no commercial source is available may be made and the cost comparison canceled.

[48 FR 42124, Sept. 19, 1983, as amended at 55 FR 25526, June 21, 1990; 57 FR 60575, Dec. 21, 1992]

7.304 Procedures.

(a) *Work statement.* When private commercial sources are available and a cost comparison is required, the Government's functional managers responsible for the comparison or another group shall prepare a comprehensive, performance work statement. The work statement must—

(1) Accurately reflect the actual Government requirement, stating adequately *what* is to be done without prescribing *how* it is to be done;

(2) Include performance standards that can be used to ensure a comparable level of performance for both Government and contractor and a common basis for evaluation; and

(3) Be reviewed by the contracting officer to ensure that it is adequate and appropriate to serve as a basis for solicitation and award.

(b) *Cost estimate.* The agency personnel who develop the cost estimate for Government performance—

(1) Enter on a cost comparison form (see Part IV of the Supplement) the cost estimate and the other elements required to accomplish a cost comparison;

(2) Review the estimate for completeness and accuracy and have the estimate audited; and

(3) Submit to the contracting officer the completed form and all necessary detailed supporting data in a sealed, dated envelope, or electronic equivalent, not later than the time established for receipt of initial proposals or bid opening. If more time is needed to develop the Government's cost estimate, the contracting officer shall amend the opening date of the solicitation.

(c) *Solicitation.* (1) The contracting officer shall issue a solicitation based on the performance work statement prepared in accordance with paragraph (a) of this section. Prepriced option prices in existing contracts will not be used instead of issuing a new solicitation when conducting a cost comparison under a new start.

(2) Firm offers shall be required for the period covered by the cost comparison, by using (i) a base contract period and any applicable priced options to total the amount of time represented by the cost estimate for Government performance (see subpart 17.2), or (ii) a multiyear contract when appropriate (see subpart 17.1).

(3) Solicitations shall not, unless a proper determination to the contrary is made, limit award to U.S. offerors.

(d) *Integrity of cost comparison.* (1) The confidentiality of (i) the cost estimate for Government performance and (ii) the bids in sealed bid cost comparisons shall be maintained until the time of bid opening, to ensure that they are completely independent.

(2) For cost comparisons conducted using the results of negotiation procedures, confidentiality and independence shall be maintained until after negotiations are completed and the most advantageous offer has been selected.

(3) Personnel who have knowledge of the cost figures in the cost estimate for Government performance shall not participate in the offer-evaluation process unless the contract file is adequately documented to show that no other qualified personnel were available.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 25526, June 21, 1990; 57 FR 60575, Dec. 21, 1992; 60 FR 34737, July 3, 1995]

7.305 Solicitation provisions and contract clause.

(a) The contracting officer shall, when contracting by sealed bidding, insert in solicitations issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-1, Notice of Cost Comparison (Sealed-Bid).

(b) The contracting officer shall, when contracting by negotiation, insert in requests for proposals issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-2, Notice of Cost Comparison (Negotiated).

(c) The contracting officer shall insert the clause at 52.207-3, Right of First Refusal of Employment, in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a cost comparison is conducted. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 52 FR 9037, Mar. 20, 1987; 56 FR 55372, Oct. 25, 1991]

7.306 Evaluation.

The evaluation procedure to be followed after the contracting officer receives the cost estimate for Government performance (see 7.304(b)) and the responses to the solicitation differs

from conventional contracting procedures as follows:

(a) *Sealed bidding.* (1) At the public bid opening, after recording of bids, the contracting officer shall—

(i) Open the sealed cost comparison on which the cost estimate for Government performance has been entered;

(ii) Enter on the cost comparison form the price of the apparent low bidder;

(iii) Announce the result, based on the initial cost comparison form, stating that this result is subject to required agency processing, including evaluation for responsiveness and responsibility, completion and audit of the cost comparison form (see Supplement, Part IV, Illustration 1), and resolution of any requests for review under the appeals procedure (see 7.307);

(iv) State that no final determination for performance by the Government or under contract will be made during the public review period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex; the public review period begins when the documents identified in (v) below are available to interested parties), plus any additional time required for the appeals procedure; and

(v) Make available for this public review by interested parties the abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance.

(2) After evaluation of bids (see subpart 14.4) and determinations of responsibility, the contracting officer shall provide the price of the low responsive, responsible bidder to the preparer of the cost estimate for Government performance, for final Government review of the cost comparison form.

(3) Upon completion of the review process, including resolution of any request under 7.307, the responsible agency official shall make the final determination for performance by the Government or under contract and provide written notification to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(4) The contracting officer shall make the completed and approved cost

comparison analysis available to interested parties upon request.

(b) *Negotiation.* The contracting officer shall receive proposals, evaluate them (see subpart 15.3), conduct negotiations, and select the most advantageous proposal in accordance with normal contracting procedures (see part 15). The contracting officer shall, before public announcement, open the sealed estimate in the presence of the preparer, enter the amount of the most advantageous proposal on the cost comparison form, and return the form to the preparer of the cost estimate for Government performance for completion. The preparer shall give due consideration to all types of costs which could add or subtract from the cost of either mode of performance.

(1) If the result of the cost comparison favors performance under contract and the responsible agency official approves the result, the contracting officer shall award a contract in accordance with agency procedures. Concurrently with the award, the contracting officer shall publicly—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost comparison form and detailed supporting data are available for review;

(iii) Announce the contractor's name; and

(iv) Advise interested parties that contractor preparations for performance are conditioned upon completion of the public review period specified in the solicitation plus any additional period required by the appeals procedure.

(2) If the result of the cost comparison favors Government performance, the contracting officer shall—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost comparison form and detailed supporting data relative to the Government cost estimate are available for public review (see subparagraph (3) below); and

(iii) Announce the price of the offer most advantageous to the Government.

(3) The public review period shall begin with the contracting officer's announcement of the cost comparison result and availability of the cost com-

parison forms and detailed supporting data to interested parties. The review period shall last for the period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex). Upon completion of the public review period and resolution of any questions raised under 7.307, the responsible agency official shall provide the contracting officer written notification of the final cost comparison decision. The contracting officer shall then, in the case of subparagraph (b)(1) of this section, give the contractor notice to commence or cancel the contract as appropriate or, in the case of subparagraph (b)(2) of this section, cancel the solicitation or award the contract, as appropriate.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 34125, Sept. 3, 1986; 53 FR 661, Jan. 11, 1988; 55 FR 25526, June 21, 1990; 56 FR 41744, Aug. 22, 1991; 57 FR 60575, Dec. 21, 1992; 60 FR 34737, July 3, 1995; 62 FR 51270, Sept. 30, 1997]

EFFECTIVE DATE NOTE: At 62 FR 51270, Sept. 30, 1997, in section 7.306, in paragraph (b), "15.6" was amended to read "15.3", effective Oct. 10, 1997.

7.307 Appeals.

(a) The Circular provides that each agency shall establish an appeals procedure for informal administrative review of the initial cost comparison result. The appeals procedure shall provide for an independent, objective review of the initial result by an official at a higher level than the official who approved that result. The purpose is to protect the rights of affected parties and to ensure that final agency determinations are fair, equitable, and in accordance with established policy.

(b) The Circular provides that the appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning selection of one contractor in preference to another, which shall be treated as prescribed in subpart 33.1, Protests. Directly affected parties may request review of any discrepancy in the cost comparison. Any such requests

shall be made in writing to the contracting officer, who shall forward them in accordance with agency procedures. Such requests shall be considered only if based on specific objections and received within the public review period stated in the solicitation.

[48 FR 42124, Sept. 19, 1983, as amended at 55 FR 25527, June 21, 1990; 57 FR 60575, Dec. 21, 1992; 60 FR 34737, July 3, 1995; 62 FR 40236, July 25, 1997]

Subpart 7.4—Equipment Lease or Purchase

7.400 Scope of subpart.

This subpart provides guidance pertaining to the decision to acquire equipment by lease or purchase. It applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases.

7.401 Acquisition considerations.

(a) Agencies should consider whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that should be considered:

(1) Estimated length of the period the equipment is to be used and the extent of use within that period.

(2) Financial and operating advantages of alternative types and makes of equipment.

(3) Cumulative rental payments for the estimated period of use.

(4) Net purchase price.

(5) Transportation and installation costs.

(6) Maintenance and other service costs.

(7) Potential obsolescence of the equipment because of imminent technological improvements.

(b) The following additional factors should be considered, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment:

(1) Availability of purchase options.

(2) Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.

(3) Trade-in or salvage value.

(4) Imputed interest.

(5) Availability of a servicing capability, especially for highly complex

equipment; e.g., can the equipment be serviced by the Government or other sources if it is purchased?

7.402 Acquisition methods.

(a) *Purchase method.* (1) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(2) Agencies should not rule out the purchase method of equipment acquisition in favor of leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

(b) *Lease method.* (1) The lease method is appropriate if it is to the Government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances—

(i) Require immediate use of equipment to meet program or system goals; but

(ii) Do not currently support acquisition by purchase.

(2) If a lease is justified, a lease with option to purchase is preferable.

(3) Generally, a long term lease should be avoided, but may be appropriate if an option to purchase or other favorable terms are included.

(4) If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase.

[50 FR 35475, Aug. 30, 1985, as amended at 59 FR 67026, Dec. 28, 1994]

7.403 General Services Administration assistance.

(a) When requested by an agency, the General Services Administration (GSA) will assist in lease or purchase decisions by providing information such as—

(1) Pending price adjustments to Federal Supply Schedule contracts;

(2) Recent or imminent technological developments;

(3) New techniques; and

(4) Industry or market trends.

(b) Agencies may request information from the following GSA offices:

(1) Center for Strategic IT Analysis (MKS), Washington, DC 20405, for information on acquisition of information technology.

(2) Federal Supply Service, Office of Acquisition (FC), Washington, DC 20406, for information on other types of equipment.

[48 FR 42124, Sept. 19, 1983, as amended at 54 FR 29280, July 11, 1989; 61 FR 41468, Aug. 8, 1996; 62 FR 40236, July 25, 1997]

7.404 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause in 52.207-5, Option to Purchase Equipment, in solicitations and contracts involving a lease with option to purchase.

[59 FR 67026, Dec. 28, 1994]

Subpart 7.5—Inherently Governmental Functions

SOURCE: 61 FR 2628, Jan. 26, 1996, unless otherwise noted.

7.500 Scope of subpart.

The purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors. It implements the policies of Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions.

7.501 Definition.

Inherently governmental function means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(a) An inherently governmental function involves, among other things, the

interpretation and execution of the laws of the United States so as to—

(1) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(2) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(3) Significantly affect the life, liberty, or property of private persons;

(4) Commission, appoint, direct, or control officers or employees of the United States; or

(5) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(b) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services. The list of commercial activities included in the attachment to Office of Management and Budget (OMB) Circular No. A-76 is an authoritative, nonexclusive list of functions which are not inherently governmental functions.

7.502 Applicability.

The requirements of this subpart apply to all contracts for services. This subpart does not apply to services obtained through either personnel appointments, advisory committees, or personal services contracts issued under statutory authority.

7.503 Policy.

(a) Contracts shall not be used for the performance of inherently governmental functions.

(b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.

(c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

(1) The direct conduct of criminal investigations.

(2) The control of prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution.

(3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.

(4) The conduct of foreign relations and the determination of foreign policy.

(5) The determination of agency policy, such as determining the content and application of regulations, among other things.

(6) The determination of Federal program priorities for budget requests.

(7) The direction and control of Federal employees.

(8) The direction and control of intelligence and counter-intelligence operations.

(9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.

(10) The approval of position descriptions and performance standards for Federal employees.

(11) The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

(12) In Federal procurement activities with respect to prime contracts—

(i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges

and subject to other reasonable conditions deemed appropriate by the agency);

(ii) Participating as a voting member on any source selection boards;

(iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(iv) Awarding contracts;

(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(vi) Terminating contracts;

(vii) Determining whether contract costs are reasonable, allocable, and allowable; and

(viii) Participating as a voting member on performance evaluation boards.

(13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

(14) The conduct of Administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

(15) The approval of Federal licensing actions and inspections.

(16) The determination of budget policy, guidance, and strategy.

(17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including—

(i) Collection of fees, fines, penalties, costs, and other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or

predetermined and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routine voucher and invoice examination.

(18) The control of the treasury accounts.

(19) The administration of public trusts.

(20) The drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal audit entity.

(d) The following is a list of examples of functions generally not considered to be inherently governmental functions. However, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive:

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities.

(3) Services that involve or relate to analysis, feasibility studies, and strategy options to be used by agency personnel in developing policy.

(4) Services that involve or relate to the development of regulations.

(5) Services that involve or relate to the evaluation of another contractor's performance.

(6) Services in support of acquisition planning.

(7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

(8) Contractors providing technical evaluation of contract proposals.

(9) Contractors providing assistance in the development of statements of work.

(10) Contractors providing support in preparing responses to Freedom of Information Act requests.

(11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the National Industrial Security Program described in 4.402(b)).

(12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.

(16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(17) Contractors providing inspection services.

(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

(19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

(e) Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials

using contractor services or work products. Disagreements regarding the termination will be resolved in accordance with agency procedures before issuance of a solicitation.

[61 FR 2628, Jan. 26, 1996, as amended at 62 FR 40236, July 25, 1997]

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42129, Sept. 19, 1983, unless otherwise noted.

8.000 Scope of part.

This part deals with the acquisition of supplies and services from or through Government supply sources.