

General Procurement and the FAR.

Acquisition Life Cycle:

Determine Need; Determine Where to Buy it; Determine How to Buy it; Award the Contract; Monitor the Contract Performance; and Close-out

Determine Need:

Products (Supplies and Equipment)

Service (R&D, Maintenance on Equipment, Janitorial, Printing)

Combination Product & Service

Other: Major systems acquisitions (Defense Airplanes, flight simulators)

Terminology: Statement of Work, CLIN, Specs,

Determine Where to Buy it:

Sole Source: Only one. Should be the exception, not the rule.

Competition: Use to the maximum extent practical.

Set Asides: Minority and small businesses: The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A “set-aside for small business” is the reserving of an acquisition exclusively for participation by small business concerns. A small business set-aside may be open to all small businesses. A small business set-aside of a single acquisition or a class of acquisitions may be total or partial. Except as authorized by law, a contract may not be awarded as a result of a small business set-aside if the cost to the awarding agency exceeds the fair market price. Reference FAR Part 19.5

Market Research

Auction

Determine How to Buy it:

Two types of acquisition methods:

1. Sealed Bidding: must be awarded on price, requirements clearly stated, date & time for response strictly adhered to

2. Negotiation: may be awarded on factors other than price; requirements may not be fully known

Sealed Bidding: Reference FAR Part 14

Negotiation: Reference FAR Part 15

Relatively new concept is Reverse Auction

Unsolicited Proposals

Sealed Bidding may be done in a process of “Two Steps” Two Step means that there may be a Technical Proposal due and then if selected, Step Two is the Cost/Price bid. Negotiation may be done in similar fashion called “Multi-Step Process”.

Terminology may see: RFQ, RFP, IFB, RFA, RFI, BAA

Contract Award

Two basic types of award: Fixed Price and Cost Reimbursement
(see handout for comparison) Reference FAR Part 16

Sealed Bidding must result in Fixed Price award.

“Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Negotiating the contract type and negotiating prices are closely related and should be considered together. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.”

Factors in Selecting Contract Types: FAR Part 16.104

Generally, to make an award, the Contracting Officer has to look at Source Selection, Price/Cost Factors and Risk.

Other Award mechanisms: Indefinite Delivery Indefinite Quantity (IDIQ), Blanket Orders (GWAC), Time and Materials, Labor-Hour or Letter Contracts (Notice to Proceed)

Monitor the Contract Performance

Invoices (monthly or at fixed intervals called “milestones”)

Progress Reports (monthly, quarterly, etc. or at milestones)

“Show Cause” usually provides contractor an opportunity to explain circumstances and a time frame to improve performance

“Cure Notice” Before the delivery date; but the Contracting Officer suspects something’s going wrong. Minimum of 10 days given to fix the issue.

Close Out

Reference FAR Part 4.804

Submit Property Accounting Form

Submit Patent Form

Submit Final Invoice

Submit Final Technical Reports

Any final audits to be completed.

Contract Formation

FAR, OMB Circulars, Executive Orders, Public Laws

FAR Matrix outlines which clauses are included by Award Type, Dollar Threshold and Receiving Entity

Terminology: Micro Threshold (currently at \$2,500); Simplified Acquisition Threshold (currently \$100,000); \$550,000 (small business plan) \$650,000 for cost or pricing data

	Higher Ed	Non-Profits	For-Profits	State Government
Cost Principles	A-21	A-122	FAR (Part 31)	A-87
Administrative Requirements	A-110	A-110	FAR (Part 42)	A-102
Audit Requirements	A-133	A-133	FAR (Part 42)	A-133

Fair and Reasonableness? Price Analysis or Cost Analysis (FAR 15.404)

Price Analysis: Usually established by competition, market rates, established catalog pricing, commercial products, prices set by law or regulation

Cost Analysis: All the elements that go into the price of the proposal; labor, materials, overhead, profit, fee, trends in the marketplace

Contract Clauses of particular importance

(also see handout)

Rights in Technical Data (reference FAR Part 27)

- Reports
- Copyrights
- “Work for Hire”

Export Controls

- Allowing foreign national restrictions
- Sensitive but Unclassified
- Requiring Licensing from ITAR and EAR

Publication Restrictions

- Confidential Information
- Written approval to Disclose

Property (Reference FAR Part 45)

Who owns after the award is finished? Typically the government wants to own it if it paid for it. Title vests in the Government, unless otherwise approved/negotiated—must ask for it. Under PHS grants, title is passed to the institution upon completion of the project.

Termination (Reference FAR Part 49)

For “convenience” (called T4C) Government will want to be able to terminate “for convenience” just because it decides the procurement is no longer in “its best interest”.

“for default” (T4D) (a) Termination for default is generally the exercise of the Government’s contractual right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations. (b) If the contractor can establish, or it is otherwise determined that the contractor was not in default or that the failure to perform is excusable; *i.e.*, arose out of causes beyond the control and without the fault or negligence of the contractor, the default clauses provide that a termination for default will be considered to have been a termination for the convenience of the Government, and the rights and obligations of the parties governed accordingly.

References:

FAR: <http://farsite.hill.af.mil/VFFAR1.HTM>

OMB: <http://www.whitehouse.gov/omb/circulars/>