

Between the technical jargon and a veritable maze of statutes and regulations, it's all too easy for a novice government contractor to feel intimidated or lost. This article provides an introduction to the legal fundamentals of government contracting for those entering the world of federal procurement.

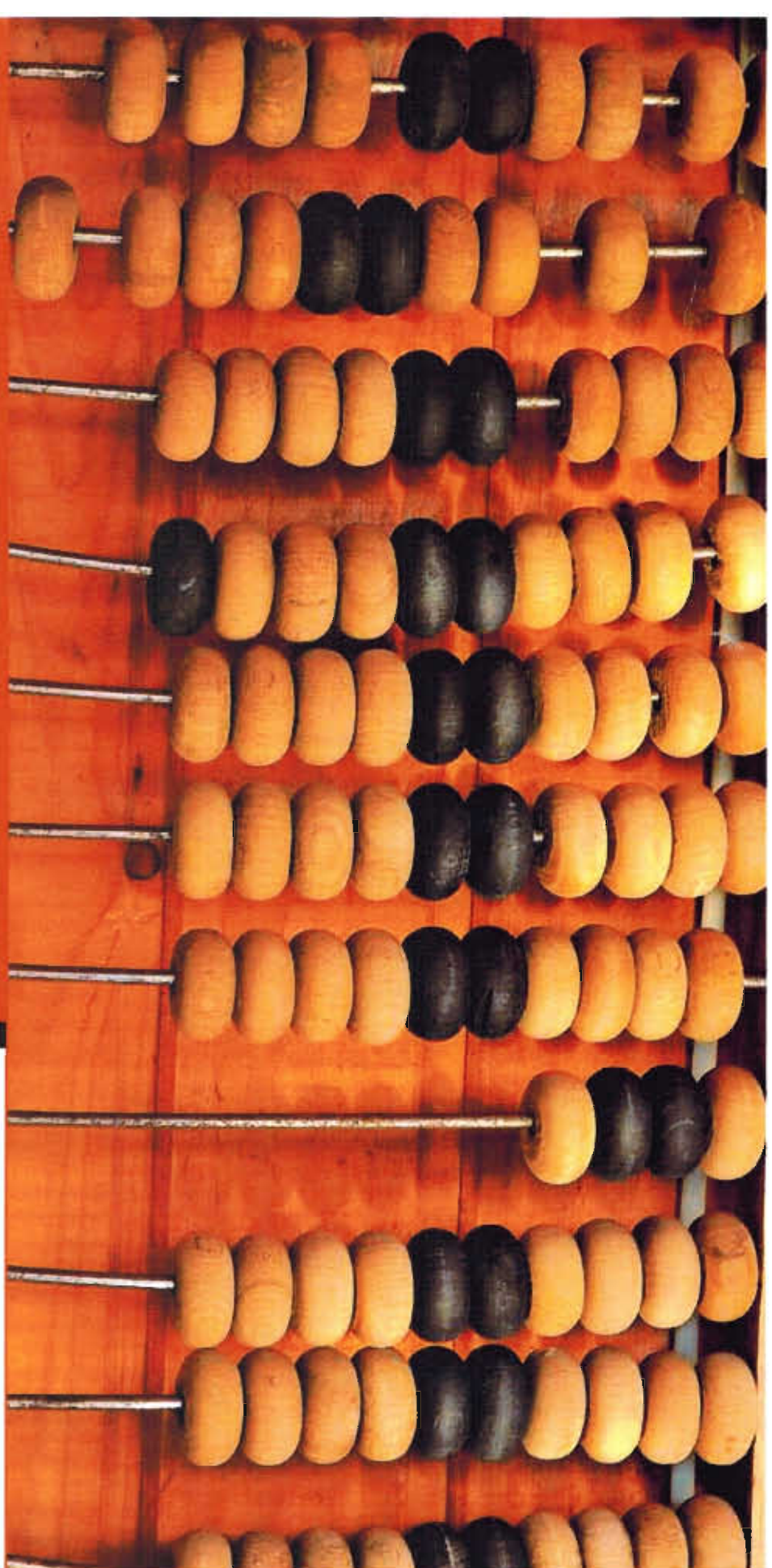
BY RICHARD D. LIEBERMAN
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About the Author

RICHARD D. LIEBERMAN is a government contracts attorney with McCarthy, Sweeney & Harkaway, PC, in Washington, DC. He handles a wide variety of government contract administration matters as well as bid protests and compliance programs for his clients. He also publishes the free newsletter, *MSHPC Government Contracts*, which keeps readers abreast of the latest developments in procurement law and also provides helpful tips for contractors. Interested parties can sign up at www.mshpc.com and read past newsletters.

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This article does not constitute legal advice with respect to any particular transaction.





The Basics

of Government Contracts—A Primer

IN 2005, FEDERAL PROCUREMENT OFFICIALS ENGAGED in over 11 million separate transactions with private industry, spending more than \$378 billion to obtain a wide variety of goods and services for the government. By 2006, procurement spending eclipsed \$400 billion. These government contracts include high-tech, national defense research and development projects like the National Missile Defense Program, as well as more mundane items, such as ropes, chains, cables, pumps, plumbing, valves, hand tools, instruments, furniture, toiletries, live animals, motion pictures, health services, real estate, insurance, and food. This article traces a government contract's lifespan from award to completion/termination and any disputes arising therefrom, while touching on some of the basic underlying laws. In addition, this article will familiarize the reader with some of the terms and acronyms that make up the jargon of government contracting. Because of the complexity of the federal procurement process, a contractor can easily run afoul of any number of regulations and is well advised to obtain the assistance of an experienced government contracts attorney.

The Law

An extensive set of statutes and regulations govern the formation and performance of government contracts, as well as provide a framework for the settlement of government contract disputes. The *Federal Acquisition Regulation (FAR)*, which is part of the Code of Federal Regulations, is a comprehensive set of rules that implements our procurement laws and applies to all executive agency purchases. The *FAR* is further supplemented by 26 agency acquisition regulations, such as the *Department of Defense (DOD)*, *FAR Supplement*, and the General Services Administration (GSA) Acquisition Regulation System. When combined, the *FAR* and its agency supplements exceed 5,000 printed pages. Decisions from administrative bodies and the courts add a further gloss to these rules and help us understand them as they are applied to actual disputes.

The Contracting Officer and Other Key Personnel

The government contracting officer (CO) is crucial to the entire procurement process, because typically he or she is the only party with the power to obligate and bind the government to a contract. In addition, he is the only person who may later change, modify, or terminate the contract on behalf of the government. This contracting authority is delegated to him in a document called a warrant and may only be exercised to the extent delineated therein. In addition, COs are also bound within the confines of all applicable statutes and regulations.

GAO Bid Protests	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Cases Filed	1,204	1,352	1,485	1,356	1,327
Cases Resulting in a Decision on the Merits	256	290	365	306	249
Protests Sustained (Successful)	41	50	75	71	72
Protest Success Rate (%)	16	17	21	23	29

Figure 1.

The CO has at her disposal a team of specialists for assistance, including quality assurance representatives (QAR), buyers, cost analysts, and auditors. These specialists, as well as the administrative contracting officer (ACO), contracting officer representative (COR), and the contracting officer technical representative (COTR), are agents of the CO who help administer and supervise the progress of the contract from its award to closeout. ACOs, CORs, and COTRs rarely if ever have the contracting authority of a CO. This means it is unlikely that one of these parties may lawfully modify or terminate a contract. (See "Contract Administration" later in this article.) Where there is a question concerning a party's contracting authority, simply ask to see it in writing. Information about the limits of a party's contracting authority must be produced upon demand.

Contractor Qualification

The government may award contracts to "responsible" contractors only. Responsibility is a pass/fail determination made by the CO after the contract has been competed, but just before the contract's award. (See "Contract Formation" later in this article.) The determination focuses on whether a contractor is capable of performing the contract. To qualify as responsible, the contractor must (1) have or be able to obtain the financial and material resources to perform the contract; (2) have or be able to obtain the requisite experience, managerial ability, and technical skills to perform the contract; (3) have a satisfactory performance record; (4) have a satisfactory record of integrity and business ethics; and (5) be able to comply with the contract's performance, schedule, considering all of the contractor's existing business commit-

ments. If the prospective awardee is a small business and is deemed nonresponsible by the CO, it may seek a certificate of competency from the Small Business Administration (SBA), which conclusively resolves the question of responsibility, despite the CO's determination otherwise.

Contractors who commit crimes, act fraudulently, or manifest a consistent history of poor performance may be suspended or debarred from receiving any new government contract for a period of up to three years. A debarment may be extended for an additional length of time, if considered necessary to protect the government's interest. The government maintains a registry of suspended and debarred contractors on its excluded party list system at www.epls.gov. Contractors facing suspension or debarment must be given notice of the proposed action and afforded an opportunity to respond. Because of the dire ramifications of suspension and debarment, contractors in this position are strongly advised to consult with an experienced government contracts attorney.

Types of Contracts

COs use two principal types of contracts: fixed price and cost reimbursement. Under a fixed-price contract, which is very similar to a commercial contract, the government agrees at the time of contract award to pay a specific price for completed work and delivered products or services. These contracts place all or most of the risk on the contractor, but also provide the greatest opportunity for profit. Variations of the fixed-price contract include the fixed-price contract with an economic price adjustment, which allows for an adjustment due to fluctuating labor rates or material costs

over the life of the contract as set forth in an index; and the fixed-price-incentive contract, which allows for the possibility of additional profit if the contractor can deliver his product early or provide a technically superior product than what was bargained for.

In contrast stand cost-reimbursement contracts, where the government agrees to pay "allowable" costs (as set forth in detail in the FAR) incurred by the contractor, plus some type of fee constituting the contractor's profit. They are typically employed in situations where the contractor would otherwise face extraordinary risk, such as a research and development (R&D) contract to develop a high-technology system, where success is not a foregone conclusion. These contracts place little or no risk on the contractor, but also limit his opportunity for profit. There are several variations on how the contractor's fee is calculated:

- **Cost plus fixed fee:** The fee is capped at a percentage (10 or 15 percent) of the total pre-determined contract price.
- **Cost plus incentive fee:** The fee varies depending on how well the contractor controls costs as compared to a pre-determined estimated cost.
- **Cost plus award fee:** The fee is determined by the CO after the contractor's performance is objectively judged against a series of qualitative criteria.

Finally, we would be remiss if we failed to mention multiple award schedule (MAS) contracts, which are also known as GSA Schedule contracts or Federal Supply Schedule contracts. These contracts place

a vendor's goods or services on a contract schedule at a fixed price, which the vendor must honor if and when an agency decides to make a purchase using a purchase order or task order. The government is under no obligation to purchase any of the goods on a vendor's schedule, except for a very small quantity or dollar amount. In addition, the government may conduct a solicitation among MAS contract-holders and negotiate a lower price than advertised in the vendor's schedule. These contracts typically are for commercial items not specifically designed for government use. A MAS contract can prove extremely lucrative for a vendor because of the simple, routine, and relatively noncompetitive nature of the contract. In 2006, more than \$34 billion was awarded under MAS procedures.

Contract Formation

The Competition in Contracting Act of 1984 (CICA) forms the basic law governing contract formation—an area of law that includes the solicitation (or advertisement) of contract opportunities and how contract awards are to be made. CICA

requires “full and open” competition among all responsible contractors, save for an enumerated list of limited situations. These situations include, among others: where the good or service is available only from a limited number or single vendor, emergency circumstances where waiting for the entire procurement process is too burdensome, or where full and open competition would compromise national security.

Competition is achieved through two different procurement methods: sealed bidding using invitations for bids (IFBs) and negotiated procurement using requests for proposals (RFPs). Sealed bidding is employed when an agency is able to articulate all of the specifications, terms, and conditions of the contract in the IFB, except for price. In this method, contractors provide the missing term—price—in the form of a sealed bid. These sealed bids are then publicly opened and announced at a stated time and place to ensure transparency. If a contractor's bid varies in any material way from the IFB, it will be considered nonresponsive and disregarded to

ensure fairness among all offerors. Award is made to the responsible contractor whose bid was responsive and offered the lowest price.

Negotiated procurements are used where the procuring agency seeks “best value,” meaning that the agency will award the contract on the basis of evaluation factors, including but not limited to price. These evaluation factors and how they objectively will be judged are provided to potential offerors in the RFP. Examples of evaluation factors include the contractor's history of performance under similar contracts, whether the contractor has expertise in providing the good or service sought, the level of technical excellence displayed in the proposal, technical quality of the goods, etc. Negotiated procurements also allow the agency to conduct discussions with contractors about their proposals. Once the CO receives the initial proposals from offerors, he or she will then conduct an evaluation using the evaluation factors and may make an award, if it is the best value. Otherwise, the CO will whittle the field to a “competitive range” of three to



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A Mini-Glossary of Government Contract Terms and Acronyms

ACO

Administrative Contracting Officer

ASBCA

Armed Services Board of Contract Appeals

CBCA

Civilian Board of Contract Appeals

CICA

Competition in Contracting Act of 1984 (the basic federal law designed to promote full and open competition in the award of government contracts)

Change Order

A written order (modification) signed by the CO, directing the contractor to make a change without the contractor's consent

Claim

Written demand for payment or other relief stemming from a government contract and certified if over \$100,000

CO

Contracting officer (a person with legal authority to bind the government on matters involving a particular contract)

COC

Certificate of Competency (issued by the SBA to denote that a small business is conclusively deemed responsible with respect to a particular procurement)

Compensable Delay

Where a CO suspends, delays, or interrupts the performance of a contract for an unreasonable period of time

Contract Disputes Act

Comprehensive federal statute that establishes procedures for adjudicating government contract disputes

Constructive Change

Because of a CO's act or omission, or for other reasons, a contract is effectively modified, but without a written change order or modification

COR/COTR

Contracting officer's representative or contracting officer's technical representative

Cost Reimbursement

A contract where the government agrees to pay contract "allowable" costs incurred by the contractor, plus some type of fee constituting the contractor's profit

Cure Notice

A notice that states a contractor is not in compliance with the terms of the contract or is endangering the contract's performance, and grants the contractor 10 days to cure the problem

Debarment

An action excluding a contractor from government contracting and government-approved subcontracting for a specified period

DOD

Department of Defense (includes Army, Navy, Air Force, Marine Corps, Defense Logistics Agency, and other defense agencies)

Equitable Adjustment

Relief granted to a contractor, resulting from a change, constructive change or compensable delay

False Claims Act

Attaches civil or criminal liability to a party who (civil and criminal) knowingly presents either a false claim or a false record in support of a claim

FAR

Federal Acquisition Regulation (uniform, governmentwide set of regulations governing all government contracting)

Fixed Price

A contract where the government agrees at the time of the contract's award to pay a specific price for completed work and delivered products or services

FPR

Final proposal revision

GAO

Government Accountability Office is a government agency, headed by the comptroller general of the United States that renders opinions on disbursement of government funds, decides the merits of protests regarding contract awards, and also analyzes government programs

GSA

General Services Administration

IFB

Invitation for bids (a solicitation for a procurement using sealed bidding)

MAS Contract

Multiple award schedule contract

Negotiated Procurement

Contracting through the use of competitive proposals, optional discussions, and FPRs

Protest

A written objection with regard to a solicitation submitted by an interested party who believes an agency has violated applicable procurement statutes and regulations

Responsible Contractor

A contractor capable of performing a contract that has a satisfactory record of integrity and performance

Responsive Bid

A bid that conforms with and commits to meet the material terms of an IFB

RFP

Request for proposals (a solicitation for a negotiated procurement)

Sealed Bidding

Procurement by obtaining sealed bids and awarding the contract to the lowest priced responsible bidder whose bid is responsive

SBA

Small Business Administration

Solicitation

An IFB or RFP

Termination for Convenience

The right of the government to cancel a contract in whole convenience or in part for any reason (absent bad faith), if the CO determines that it is in the best interest of the government

Termination for Default

The right of the government to cancel a contract in whole or in part if a contractor fails perform in accordance with the contract or endangers performance

four contractors. The agency will then hold discussions (negotiations) with the remaining offerors, who are subsequently asked to submit their final proposal revision (FPR). The FPR should address any deficiencies or weaknesses noted in the discussions, include additional improvements over the previous proposal, and represent the offeror's lowest price. Award is made to the responsible contractor whose proposal represents the best value; i.e., the best tradeoff between price and quality when judged against the evaluation factors. While the government frequently conducts negotiations and allows for an FPR, the government retains the right to make an award without discussions on the basis of initial proposals alone. The negotiated procurement method is frequently used in R&D and construction projects where the government seeks to harness the ingenuity of the private sector and is interested in each contractor's unique approach to meeting the government's requirements.

Regardless of the procurement method employed, the government advertises all federal procurements over \$25,000 on its Web site at www.fedbizopps.com, which vendors may then search and use. In addition, the Web site allows a CO to modify his or her solicitation and provide any necessary documents to potential offerors. The FAR requires prospective vendors to register in the Central Contracting Registration (CCR) at www.ccr.gov prior to contract award. However, many solicitations require registration before a vendor may submit an offer. As of May 2007, there were 435,114 active vendors registered in the CCR database.

For information on common problems that contractors face when bidding on government contracts, read "Ten Big Mistakes in Government Contract Bidding" in the January 2007 issue of *Contract Management*. In short, the ten biggest mistakes are:

3. You didn't submit your bid or offer on time;
4. In a negotiated procurement, you expected to have discussions and be allowed to submit a final proposal revision;
5. You didn't follow instructions in the solicitation;
6. You took verbal advice, or took advice from someone not authorized to give you valid advice or answers;
7. You submitted a nonconforming bid or noncompliant proposal;
8. You didn't understand the evaluation factors in an RFP or you failed to base your bid on the evaluation factors;
9. You didn't check your bid or proposal for compliance with the solicitation through a procedure such as red team/blue team, or another method; and
10. You didn't request a post-award debriefing in a negotiated procurement.

Socioeconomic Policies

Integrated with the government procurement process is a number of codified socioeconomic programs that affect both the award and performance of govern-


ment contracts. These programs include preferences and set-asides for small businesses and disadvantaged business owners pursuant to the Small Business Act. The Buy American Act creates a preference for domestic businesses, unless abridged by a trade agreement between the United States and another nation(s), e.g., the Israeli Trade Act or the North American Free Trade Agreement (NAFTA). Government contracts also require adherence to labor laws such as the Service Contract Act and Davis-Bacon Act, which require services and construction contractors to pay wages at or above prevailing wage rates as determined by the Department of Labor. The Equal Opportunity Clause backstops the Civil Rights Act of 1964 in government contracts and prohibits contractors from engaging in employment discrimination on the basis of race, color, religion, sex, or national origin.

Audits

The government has numerous regulations in place to ensure that it is paying a fair price for goods and services. If a negotiated procurement is expected to result in a contract exceeding \$650,000 in value, offerors will be required to submit cost and pricing data prior to award, certified as "accurate, current, and complete," unless an exception applies. These exceptions include (1) where there is adequate

1. You didn't read the entire solicitation, including all of the amendments and all of the clauses incorporated by reference;
2. You didn't ask a question about an ambiguity in the solicitation;

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The Federal Acquisition Regulation (FAR)

Luckily for federal procurement professionals, the FAR is organized in a sensible manner.

SUBCHAPTER A—GENERAL

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

PART 2—DEFINITIONS OF WORDS AND TERMS

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

PART 4—ADMINISTRATIVE MATTERS

SUBCHAPTER B—ACQUISITION PLANNING

PART 5—PUBLICIZING CONTRACT ACTIONS

PART 6—COMPETITION REQUIREMENTS

PART 7—ACQUISITION PLANNING

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

PART 9—CONTRACTOR QUALIFICATIONS

PART 10—MARKET RESEARCH

PART 11—DESCRIBING AGENCY NEEDS

PART 12—ACQUISITION OF COMMERCIAL ITEMS

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

PART 14—SEALED BIDDING

PART 15—CONTRACTING BY NEGOTIATION

PART 16—TYPES OF CONTRACTS

PART 17—SPECIAL CONTRACTING METHODS

PART 18—EMERGENCY ACQUISITIONS

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 19—SMALL BUSINESS PROGRAMS

PART 20—[RESERVED]

PART 21—[RESERVED]

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

PART 25—FOREIGN ACQUISITION

PART 26—OTHER SOCIOECONOMIC PROGRAMS

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 27—PATENTS, DATA, AND COPYRIGHTS

PART 28—BONDS AND INSURANCE

PART 29—TAXES

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

PART 32—CONTRACT FINANCING

PART 33—PROTESTS, DISPUTES, AND APPEALS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 34—MAJOR SYSTEM ACQUISITION

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

PART 37—SERVICE CONTRACTING

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

PART 40—[RESERVED]

PART 41—ACQUISITION OF UTILITY SERVICES

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

PART 43—CONTRACT MODIFICATIONS

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

PART 45—GOVERNMENT PROPERTY

PART 46—QUALITY ASSURANCE

PART 47—TRANSPORTATION

PART 48—VALUE ENGINEERING

PART 49—TERMINATION OF CONTRACTS

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

PART 53—FORMS

price competition; (2) where prices are set by law; or (3) where the contract is for the procurement of commercial items, i.e., items that could be easily procured in the private market. In addition, contractors are **required to submit certified cost and pricing data** under cost-reimbursement contracts. Cost and pricing data encompasses all data that can be reasonably expected to **affect the contract's price, such as projected labor, material, or overhead costs**. Where a contract is formed through negotiated procurement or is a cost-reimbursement contract, the cost and pricing data is subject to audit by either the procuring agency, the GAO, or both. If the cost and pricing data is found defective (i.e., it was not accurate, **current, or complete when certified**), the government is entitled to an adjustment in the negotiated contract price. Moreover, if it is shown that the contractor knew the cost and pricing data was false or fraudulent when he or she submitted it, the contractor may be civilly or criminally liable under the False Claims Act.

Award Controversies

Because of the highly competitive nature of most government procurements, controversies often arise, particularly in larger procurements where the stakes are high. Disappointed bidders (and sometimes mere prospective bidders) have a choice of two forums—the Court of Federal Claims and the GAO—to protest the award of a contract if they believe an agency has violated applicable procurement laws (notwithstanding an appeal to the procuring agency itself). The vast majority select the GAO. Upon filing a timely protest, the procuring agency must stay (stop) the award/performance of the disputed contract while the GAO conducts its review, unless the agency can show a compelling need otherwise.

Because of constitutional concerns regarding the separation of power (which is well beyond the scope of this article), the findings of the GAO are technically mere recommendations and not binding on the agency. However, if the agency chooses not to implement the recommendation, the GAO reports this fact to Congress. Accordingly, agencies typically follow the recommendations of the GAO, lest they garner unwanted publicity and Congress-

sional attention. Bid protestors are finding increasing success at the GAO over the last **five years, but still face relatively long odds**, as **Figure 1** on page 34 illustrates.

A disappointed bidder may also file a protest with the Court of Federal Claims. The remedies provided by both forums are the same and include (1) ordering the agency to re compete the contract; (2) awarding the contract consistent with solicitation and applicable law, which ultimately may mean award to the successful protestor; (3) awarding bid preparation costs to the successful protestor; (4) awarding attorney's fees; and (5) some combination of the above. Where a protest is initially denied by the GAO, the protestor may then seek redress at the Court of Federal Claims. However, if a protest is initially denied by the Court of Federal Claims, the protestor is precluded from bringing the same protest at the GAO and may only lodge an appeal at the U.S. Court of Appeals for the Federal Circuit.

Contract Administration

Once a contract has been awarded, many different issues may crop up during performance—some of which are unique to government contracts. The government, unlike a private party, may unilaterally change a contract and compel the contractor to continue performance under the modified contract, provided the change

falls within the general scope of the contract (i.e. the government cannot contract for a submarine and then ask the contractor to change the product to an airplane). Only the CO or someone with contracting authority may issue a change order and it should be exercised in writing through a formal contract modification. However, sometimes the government will insist on performance in accord with an interpretation that is at variance with the contract, giving rise to a “constructive” change where no written change order (modification) is issued. Constructive changes are fact-specific, but one example would be a CO insisting on contract performance in a time frame shorter than that stated in the contract.

Finally, the government sometimes insists that the contractor delay in performing the contract for an unreasonable period of time to serve the government's convenience. This scenario results in a “compensable delay.” In all three of these circumstances—a change, a constructive change, or a compensable delay—the contractor is entitled to an equitable adjustment. An equitable adjustment allows the contractor to seek additional compensation or time beyond the negotiated price and contract schedule. Whenever a contractor believes that he may be entitled to an equitable adjustment, he should notify the CO in writing immediately, outlining the cir-

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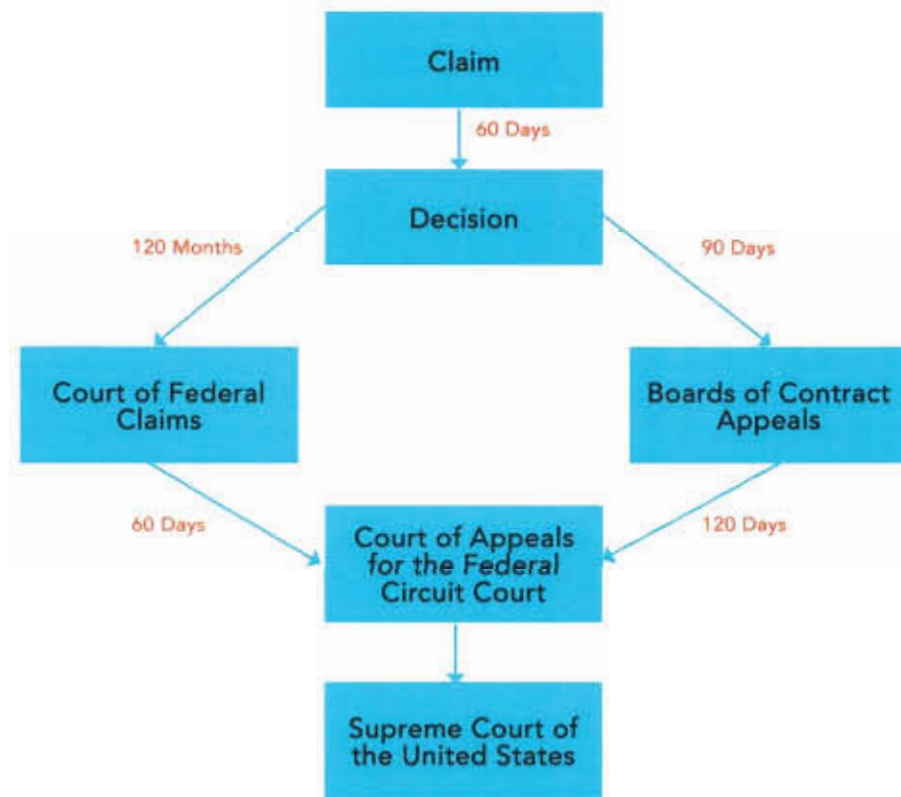


Figure 2.

circumstances giving rise to his claim for an equitable adjustment.

During the performance of a contract, the government will inspect and formally accept goods that are delivered. During this time, the government may demand strict compliance with the quality specifications in the contract—even where a contractor’s deviation is minor and immaterial. If the government refuses to accept something furnished, the contractor will not be paid for the work.

If a contractor fails to perform in accordance with the contract or endangers contract performance, the government may terminate the contractor for default and cease making payment under

the contract. In most cases, the CO must provide the contractor with a “cure notice” and permit correction to be made within ten days. After a termination for default, the government is entitled to “cover” the defaulted items; i.e., it may repurchase the defaulted supplies or services from a different contractor and charge the additional costs to the defaulted contractor. This can result in substantial costs to a contractor and is one reason contractors should assiduously work to avoid default.

Government contracts include a unique provision not found in private contracts—the termination for convenience clause, which allows the government to terminate the contract for any reason, except for bad

faith. The clause exists because of the government’s need to end contracts when the underlying requirements no longer exist, e.g., when a war ends or when Congress eliminates a program. Under the termination for convenience clause, the contractor does not perform the remaining balance of the contract, but is entitled to the price of work already delivered and accepted; and the cost of any work performed but not delivered, plus a fair and reasonable profit. If the government can show that the contractor would have lost money on the contract, then it is not obligated to pay the fair and reasonable profit outlined above.

For more information on common problems that contractors face during the

Major Agencies and Categories in Federal Procurement

In 2005, the federal government purchased \$378 billion worth of goods and services. The Department of Defense (DOD) accounted for \$268 billion or 71 percent of that spending, while the remaining civilian agencies accounted for the remaining \$110 billion or 29 percent. Purchases by major agencies and category are shown below.

TOP BUYERS	
Agency	2005 Procurement (\$billions)
Department of Defense	
Army	\$95
Navy	\$64
Air Force	\$55
Defense Logistics Agency	\$28
Other DOD	\$26
Civilian Agencies	
Dept. of Energy	\$23
General Services Administration	\$14
National Aeronautics and Space Administration	\$13
Dept. of Homeland Security	\$10
Dept. of Veterans Affairs	\$9
Other Civilian Agencies	\$9
Dept. of Health and Human Services	\$8
Dept. of State	\$6
Dept. of Interior	\$5
Dept. of Justice	\$4
Dept. of Treasury	\$4
Dept. of Agriculture	\$4
Dept. of Transportation	\$1
BREAKDOWN BY PRODUCT AND SERVICE CATEGORY	
Product or Service	2005 Procurement (\$billions)
Supplies and Equipment	\$149
Other Services	\$118
Research and Development	\$48
Construction	\$27
ADP Services and Equipment	\$24
Other	\$1

administration of a government contract, read "Ten Big Mistakes in Government Contract Administration" in the December 2006 issue of *Contract Management*. In short, the ten biggest mistakes are:

1. You didn't actually read your entire contract;
2. Your performance was not world class and you didn't care about your customer;
3. You took direction from **unauthorized officials**;
4. You didn't comply with quality control or quality assurance requirements and **specifications in your contract**;
5. Instead of following what was in your written contract, you listened to verbal promises and direction;
6. You failed to deliver on time as required by the delivery schedule and thought the government would deem this acceptable;
7. You didn't invoice properly, in accordance with the requirements of your contract;
8. On multiple award schedule (MAS) contracts, you didn't give most favored customer pricing to the government throughout the entire life of the contract;
9. You volunteered to perform extra work with the erroneous expectation of being paid; and
10. You failed to flow down your FAR clauses to your subcontractors and suppliers.

Claims

Disputes in the administration of contracts are covered by the Disputes Clause and by the Contract Disputes Act of 1978 (CDA). Where a contractor believes she is due payment or some other form of relief under a contract, she must present her claim to the CO in writing within six years of the date

the basis of the claim arose. If the claim **exceeds \$100,000, it must be certified by an appropriate corporate official**. The CDA requires the CO to make an initial decision on the claim after considering the contractor's position. If the contractor is not satisfied with the CO's decision or the CO fails to issue a decision within 60 days, the contractor may appeal to one of two boards—either the Civilian Board of Contract Appeals (CBCA) or the Armed Services Board of Contract Appeals (ASBCA), depending on the agency that awarded the contract—or to the U.S. Court of Federal Claims. **An appellant has 90 days to file an appeal with the appropriate board and one year to file at the Court of Federal Claims. If the appellant is still unsatisfied, he may appeal to the U.S. Court of Appeals for the Federal Circuit, and ultimately, may petition the U.S. Supreme Court to hear the matter. The disputes process is summarized in Figure 2 on page 40.**

Conclusion

Government contracting can seem daunting for the uninitiated, because of the jargon of the industry and the intricate network of statutes and regulations that govern it. This article has attempted to introduce you to some of the acronyms and terms, while touching on the most important underlying legal concepts. In summary, competition generally is required in awarding contracts and is achieved through sealed bidding or competitive negotiation. Award controversies are settled through bid protests submitted by disappointed bidders.

During the performance of the contract, the contractor must comply with all of the terms of the contract, including any changes requested by the government. However, contractors are entitled to equitable adjustments to offset the impact of these changes and can utilize the disputes procedures to obtain payment where necessary. Finally, contractors must be ever-mindful of the need for compliance with all contractual and legal requirements in order to avoid potential civil and criminal liability. **CM**