

WHAT A BLANKET PURCHASE AGREEMENT IS *NOT*

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The Navy issued a solicitation for a Blanket Purchase Agreement (“BPA”) for accepting and filling orders placed by the Navy for parts for maintenance, repair and operations of ship stores, including their operation, with the contractor’s own labor,. The solicitation stated that services/products *can* be ordered under this BPA,” and also stated that “This BPA does not obligate any funds [but can] be obligated by placement of calls under Federal Acquisition Regulation (“FAR”) Subpart 8.4, Federal Supply schedule.” The solicitation estimated but stated it did not *guarantee* that the volume of purchases under the BPA would be \$70 million. *OSC Solutions, inc. v. Sec’y of the Navy*, No. 2024-1195 (Fed. Cir. Jan.7, 2026).

After submission of its offer, the Navy notified OSC stating that its pricing proposal must contain separately prices services. OSC responded that there was no additional charge for OSC to offer its services under the BPA, and also that that ship store service was included within the price of the products. The Navy issued a BPA to OSC for one year with four one-year options, and repeated the caveats that the BPA didn’t obligate funds, didn’t guarantee the \$70 million volume of purchases, and that services and products could be ordered under the BPA.

On the same day the BPA was issued, the Navy also exercised its first option to extend the BPA by a year. The Navy ordered supplies under orders issued pursuant to the BPA. Six months later, OSC sent the Navy an invoice for \$1 million for “unabsorbed store services direct costs” (its store-staffing labor costs) because of “unexpectedly low Navy orders.” The Navy didn’t exercise the next option year, and terminated performance two years after BPA award. The Navy also informed OSC that there was no mechanism for billing labor under this BPA, and a month later, OSC submitted a certified claim for \$1.2 million because “the Navy had only ordered 17 percent of the Navy’s estimated volume of products.” The Navy denied the claim, citing the guarantees in the formation document (no volume of sales guaranteed, labor costs were intentionally not price in the BPA and the BPA was not a contractual obligation of the Navy-only orders were).

OSC appealed the claim denial to the Armed Services Board of Contract Appeals (“Board”), alleging the breach of an implied-in-fact contract. Two months later the Board denied OSC’s appeal, specifically noting that the BPA expressly stated that it did not obligate any funds or guarantee a specific volume of purchases. Further, the Board rejected OSC’s theory that there was an implied in fact contract, or a constructive change. OSC appealed to the Federal Circuit.

The Federal Circuit’s opinion makes short work of OSC’s arguments, holding the following:

- OSC was incorrect that the BPA was a requirements contract that required the Navy to purchase through OSC all of the products required in the BPA. The BPA had no such terms, and was not a requirements contract—it lacked the specific FAR provision needed for requirements contracts. Further, the BPA did not obligate any funds (Navy was obligated only to the extent of authorized purchases (orders) actually made under the BPA).
- OSC could point to nothing in the BPA or the orders that required the Navy to make payments for OSC’s labor costs separately from the price of products purchased—no such language existed in the BPA or the orders.

- There was no implied-in-fact contract that arose in the existence of the orders that required the payment for OSC’s labor costs, noting that the requirements for an implied-in-fact contract were the same as for an express contract, and here the evidence showed there was no intent by the Navy to provide for OSC’s labor costs.

Takeaway: A BPA is not:

- A requirements contract;
- An actual *order* for goods or services (which is a contract!);
- An implied in fact contract for the goods or services that might be procured through the BPA; or
- A contract.

The FAR contains a detailed description of the use and preparation of BPA’s at FAR Subpart 13.303. FAR 13.303-3(a) states that the following terms and conditions, inter alia, are **mandatory** for all BPA’s:

- A statement that the supplier shall furnish supplies or services, described in general terms, *if and when requested by the contracting officer (or the authorized representative of the contracting officer)* during a specified period.
- A statement that the government is obligated only to the extent of authorized purchases actually made under the BPA; and
- An identification of those who can purchase using the BPA.

This is how the Federal Circuit characterizes what a BPA is:

A BPA is “an ordering vehicle which makes ... issuance of orders a more simple process.” A BPA functions as “an agreement between the [g]overnment and a contractor to allow repetitive orders during a specified time period. BPAs are not contracts; rather, they are “appropriately characterized as frameworks for future contracts—‘a set of ground rules as it were, and no obligations are assumed by either party until orders are given by the [g]overnment and accepted by the contractor.’”

Advanced Mgmt., Strategies Grp., Inc. v. United States, No. 25-695, (Fed. Cl. Nov. 20, 2025). This is a clear statement by the Federal Circuit that a BPA is not a contract because it lacks mutuality of consideration. When an order is issued pursuant to the BPA, that order is a contract.

The Navy fully complied with its obligations, and OSC clearly did not understand the purpose and procedure for the BPA it had been awarded.

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