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~~Parent topic: Federal Acquisition Regulation~~

44.000 Scope of part.

(a) This part prescribes policies and procedures for consent to subcontracts or advance notification of subcontracts, and for review, ~~evaluation~~, and approval of contractors' purchasing systems.

(b) The consent and advance notification requirements of subpart 44.2 ~~are~~do not ~~applicable~~apply to prime contracts for commercial ~~supplies~~products or commercial services ~~acquired pursuant to part 12~~.

~~Subpart 44.1—General~~

~~44.101~~001 Definitions.

As used in this part—

~~Approved purchasing system means a contractor's purchasing system that has been reviewed and approved in accordance with this part.~~

Contractor means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant, that performs its own purchasing.

Contractor purchasing system review (CPSR) means the complete ~~evaluation~~assessment of a contractor's purchasing of material and services, subcontracting, and subcontract management from ~~development of~~developing the requirement through ~~completion of~~completing subcontract performance.

Subcontract means any contract as defined in subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Subpart 44.1 - [Reserved]

Subpart 44.2 - Evaluation and award

44.201 Consent to subcontracts

~~44.201 Consent and advance notification~~ and requirements for advance notice.

44.201-1 Consent requirements.

(a) If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in ~~the subcontracts clause~~ paragraph (d) of the contract, 52.244-2, Subcontracts. The contracting officer may require consent to subcontract ~~if the contracting officer has determined that an individual consent action is required~~ to protect the Government ~~adequately~~ because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance. ~~These can be subcontracts for critical systems, subsystems, components, or services. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines on a prime contract for air frames).~~

(b) If the contractor does not have an approved purchasing system, consent to subcontract is required for ~~cost reimbursement, time and materials, labor hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold, for~~ certain subcontracts identified in paragraph (c) of 52.244-2, Subcontracts.

~~(1) Cost reimbursement, time and materials, or labor hour subcontracts; and~~

~~(2) Fixed-price subcontracts that exceed-~~

~~(i) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or~~

~~(ii) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.~~

~~(c) Consent may be required for subcontracts under prime contracts for architect-engineer services.~~

~~(d) The contracting officer's written authorization for the contractor to purchase from Government sources (see part 51) constitutes consent.~~

44.201-2 Advance notification requirements.

Under cost-reimbursement contracts, the contractor is required by statute to notify the contracting officer as follows:

(a) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, unless the contractor maintains an approved purchasing system, 10 U.S.C. 3322(c) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(b) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, even if the contractor has an approved purchasing system, 41 U.S.C. 3905 requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

44.202-3 Contracting officer's ~~evaluation~~ responsibilities.

~~44.202-1 Responsibilities.~~

(a) The ~~cognizant administrative~~ contracting officer (ACO) is responsible for consent to subcontracts, except when the contracting officer retains the contract for administration or withholds the consent responsibility from (see part 42 regarding delegation to the ACO. In such cases, the contract administration office should assist the contracting office in its evaluation as requested.

~~(b) The contracting officer responsible for consent shall~~ must review the contractor's notification (i.e., request to subcontract) and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

~~(c) Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clause at 52.244-2. However, if, in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer shall identify those subcontracts in paragraph (j) of the clause at 52.244-2.~~

~~44.202-2 Considerations.~~

~~(a) The contracting officer responsible for consent must, at a minimum,~~ (b) Careful and thorough review and consideration of the request ~~and supporting data and consider the following:~~

~~(1) Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any (see 15.407-2)?~~

~~(2) Is the subcontract for special test equipment, equipment or real property that are available from Government sources?~~

~~(3) Is the selection of the particular supplies, equipment, or services technically justified?~~

~~(4) Has the contractor complied with the prime contract requirements regarding-~~

~~(i) Small business subcontracting, including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUBZone, small disadvantaged and women-owned small business concerns (see part 19); and~~

~~(ii) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled 41 U.S.C.8504 (see part 8)?~~

~~(5) Was adequate price competition obtained or its absence properly justified?~~

~~(6) Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?~~

~~(7) Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?~~

~~(8) Has the contractor performed adequate cost or price analysis or price comparisons and obtained certified cost or pricing data and data other than certified cost or pricing data?~~

~~(9) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?~~

~~(10) Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government provided equipment and real property?~~

~~(11) Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?~~

~~(12) Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?~~

~~(13) Is the proposed subcontractor listed as excluded in the System for Award Management (see subpart 9.4)?~~

~~(b) Particularly careful and thorough consideration under paragraph (a) of this section is necessary when—~~

(1) The **prime** contractor's purchasing system or performance is inadequate;

(2) Close working relationships or ownership affiliations between the **prime**contractor and subcontractor may preclude free competition or result in higher prices;

(3) Subcontracts are proposed for award on a **non-competitive**noncompetitive basis, at prices that appear to be unreasonable, or at higher prices ~~higher~~ than those offered to the Government in comparable circumstances; or

(4) Subcontracts are proposed on a cost-reimbursement, time-and-materials, or labor-hour basis.

(c) If the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer must identify those subcontracts in paragraph (j) of the clause at 52.244-2.

44.~~203~~201-4 Consent limitations.

(a) The contracting officer's consent to a subcontract or approval of the contractor's purchasing system does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs, unless the consent or approval specifies otherwise.

(b) Contracting officers ~~shall~~must not consent to—

(1) Cost-reimbursement subcontracts if the fee exceeds the fee limitations ~~of in part 15.404-4(e)(4)(i);~~

(2) Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;

(3) Subcontracts obligating the contracting officer to deal directly with the subcontractor; or

(4) Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government; ~~or.~~

~~(5) Repetitive or unduly protracted use of cost reimbursement, time and materials, or labor-hour subcontracts (contracting officers should follow the principles of 16.103(c)).~~

~~(e) Contracting officers should not refuse consent to a subcontract merely because it contains a clause giving the subcontractor the right of indirect appeal to an agency board of contract appeals if the subcontractor is affected by a dispute between the Government and the prime contractor. Indirect appeal means assertion by the subcontractor of the prime contractor's right to appeal or the prosecution of an appeal by the prime contractor on the subcontractor's behalf. The clause may also provide that the prime contractor and subcontractor shall be equally bound by the contracting officer's or board's decision. The clause may not attempt to obligate the contracting officer or the appeals board to decide questions that do not arise between the Government and the prime contractor or that are not cognizable under the clause at 52.233-1, Disputes.~~

44.~~204~~201-5 Contract clauses.

~~(a) (1) The contracting officer shall~~(a)(1) Insert the clause at 52.244-2, Subcontracts, in solicitations and contracts when contemplating—

(i) A cost-reimbursement contract;

(ii) A labor-hour, time-and-materials, or letter contract that exceeds the simplified acquisition threshold; or

(iii) A fixed-price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated; .

~~(iv) A time-and-materials contract that exceeds the simplified acquisition threshold; or~~

~~(v) A labor-hour contract that exceeds the simplified acquisition threshold.~~

(2) If a cost-reimbursement contract is ~~contemplated~~planned, for civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, ~~the contracting officer shall~~ use the clause with its Alternate I.

(3) Use of this clause is not required in—

(i) Fixed-price architect-engineer contracts; or

(ii) Contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency-prescribed clause on approval of subcontractors' facilities is required.

(b) The contracting officer may insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.

~~(c) The contracting officer shall,~~(c) When contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold, unless—

(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is ~~contemplated~~planned; or

(2) A time-and-materials, labor-hour, or architect-engineer contract is ~~contemplated~~planned.

Subpart 44.3 - Postaward

44.301 Contractors' purchasing systems reviews.

44.301-1 Objective.

The objective of a contractor purchasing system review (CPSR) is to ~~evaluate~~assess the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the ~~administrative contracting officer (ACO)~~ a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

~~44.302~~44.301-2 Requirements.

(a) The responsible contracting officer (see part 42 regarding delegation) must determine if a CPSR is needed based on factors such as the past performance of the contractor, and the volume, complexity and dollar value of subcontracts.

~~(b) (a) The ACO shall determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts. If a contractor's sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial supplies and commercial services pursuant to part 12) are expected to exceed \$25~~

million during the next 12 months, perform a review to determine if a CPSR is needed. Sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the \$25 million review level if it is considered to be in the Government's best interest.

~~(b) Once an initial~~ If a determination ~~has been~~is made under paragraph (a) ~~of this section to~~
conduct a CPSR, at least every three years the ~~ACO shall~~contracting officer must determine
whether a ~~purchasing system review is necessary. If necessary, the cognizant contract~~
~~administration office will conduct a purchasing system review~~CPSR is needed.

~~44.303 Extent of review:~~

~~A CPSR requires an evaluation of the contractor's purchasing system. Unless segregation of subcontracts is impracticable, this evaluation shall not include subcontracts awarded by the contractor exclusively in support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial supplies and commercial services pursuant to part 12. The considerations listed in 44.202-2 for consent evaluation of particular subcontracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to-~~

- ~~(a) The results of market research accomplished;~~
- ~~(b) The degree of price competition obtained;~~
- ~~(c) Pricing policies and techniques, including methods of obtaining certified cost or pricing data, and data other than certified cost or pricing data;~~
- ~~(d) Methods of evaluating subcontractor responsibility, including the contractor's use of the System for Award Management Exclusions (see 9.404) and, if the contractor has subcontracts with parties on the Exclusions list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see 9.405-2);~~
- ~~(e) Treatment accorded affiliates and other concerns having close working arrangements with the contractor;~~
- ~~(f) Policies and procedures pertaining to small business concerns, including small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns;~~
- ~~(g) Planning, award, and postaward management of major subcontract programs;~~
- ~~(h) Compliance with Cost Accounting Standards in awarding subcontracts;~~
- ~~(i) Appropriateness of types of contracts used (see 16.103);~~

~~(j) Management control systems, including internal audit procedures, to administer progress payments to subcontractors; and~~

~~(k) Implementation of higher-level quality standards.~~

44.304 Surveillance.

~~(a) The ACO shall maintain a sufficient level of surveillance~~ (c) The contracting officer must monitor a contract to ensure that the contractor is effectively managing its purchasing program.

~~(b)~~ Surveillance ~~shall~~ must be accomplished in accordance with a plan developed by the ACO contracting officer with the assistance of subcontracting, audit, pricing, technical, or other specialists as necessary. The plan should cover pertinent phases of a contractor's purchasing system ~~(preaward, postaward, performance, and contract completion)~~ and pertinent operations that affect the contractor's purchasing and subcontracting. ~~The plan should also provide for reviewing the effectiveness of the contractor's corrective actions taken as a result of previous Government recommendations. Duplicative reviews of the same areas by CPSR and other surveillance monitors should be avoided.~~

~~44.305~~ 301-3 Responsibilities for granting, withholding, or withdrawing approval.

~~44.305-1 Responsibilities.~~

The ~~eognizant ACO~~ contracting officer is responsible for granting, withholding, or withdrawing approval of a contractor's purchasing system. ~~The ACO shall, and must—~~

(a) Approve a purchasing system only after determining that the contractor's purchasing policies and practices are efficient and ~~provide adequate protection of~~ adequately protect the Government's interests; and

(b) Promptly notify the contractor in writing ~~of the~~ after granting, withholding, or ~~withdrawal of~~ withdrawing approval.

~~44.305-2 Notification~~ 301-4 Notice.

(a) The ~~notification~~ notice granting purchasing system approval ~~shall~~ must include—

(1) Identification of the plant or plants covered by the approval;

(2) The effective date of approval; and

(3) A statement that system approval—

(i) Applies to all Federal Government contracts at that plant to the extent that cross-servicing arrangements exist;

(ii) Waives the contractual requirement for advance notification in fixed-price contracts, but not for cost-reimbursement contracts;

(iii) Waives the contractual requirement for consent to subcontracts in fixed-price contracts and for specified subcontracts in cost-reimbursement contracts but not for those subcontracts, if any, selected for special surveillance and identified in the contract Schedule; and

(iv) May be withdrawn at any time at the ~~ACO's~~contracting officer's discretion.

(b) In ~~exceptional~~certain circumstances, the contracting officer may require consent ~~to for~~ certain subcontracts or classes of subcontracts ~~may be required~~ even though the contractor's purchasing system ~~has been~~is approved. The system approval notification ~~shall~~must identify the class or classes of subcontracts requiring consent. ~~Reasons for selecting the subcontracts include the fact that a CPSR or continuing surveillance has revealed~~When sufficient weaknesses in a particular area of subcontracting ~~to warrant special attention by the ACO~~are identified, requiring consent to subcontract provides the contracting officer additional visibility. See 52.244-2(d).

~~(c) When recommendations are made for improvement of an approved system, the contractor shall be requested to reply within 15 days with a position regarding the recommendations.~~

44.~~305-3~~301-5 Withholding or withdrawing approval.

(a) The ~~ACO shall~~contracting officer must withhold or withdraw approval of a contractor's purchasing system when ~~there are~~ major weaknesses exist or when the contractor is unable to provide ~~sufficient~~enough information upon which to make an affirmative determination. The ~~ACO~~contracting officer may withdraw approval at any time based on ~~the basis of~~ a determination that ~~there has been a deterioration of~~ the contractor's purchasing system has deteriorated or to protect the Government's interest. ~~Approval shall be withheld or withdrawn when there is a recurring noncompliance with requirements, including but not limited to-~~

~~(1) Certified cost or pricing data (see 15.403);~~

~~(2) Implementation of cost accounting standards (see 48 CFR chapter 99);~~

~~(3) Advance notification as required by the clauses prescribed in 44.204; or~~

~~(4) Small business subcontracting (see subpart 19.7).~~

(b) When approval ~~of the contractor's purchasing system~~ is withheld or withdrawn, the ~~ACO shall~~contracting officer must notify the contractor in writing within 10 days after completing the ~~in-plant~~ review ~~(1) inform the contractor in writing, (2) The notice must specify the deficiencies that must be corrected to qualify the system for approval, and (3) request the contractor to furnish within 15 days a plan for accomplishing to correct the necessary actions~~deficiencies. If the plan is accepted, the ~~ACO shall~~contracting officer must make a follow-up review as soon as the contractor notifies the ~~ACO~~contracting officer that the deficiencies have been corrected.

44.306 ~~Disclosure of~~(c) The contracting officer must withhold or withdraw approval status. Upon request, when the ACO may inform a contractor ~~that the purchasing system of a proposed subcontractor has been approved or disapproved, but shall caution that the Government will~~consistently does not ~~keep the contractor advised of any changes in the approval status. If the~~

~~proposed subcontractor's purchasing system has not been reviewed, the contractor shall be so advised~~comply with requirements.

~~44.307 Reports.~~

~~The ACO shall distribute copies of CPSR reports; notifications granting, withholding, or withdrawing system approval; and Government recommendations for improvement of an approved system, including the contractor's response, to at least~~

~~(a) The cognizant contract audit office;~~

~~(b) Activities prescribed by the cognizant agency; and~~

~~(c) The contractor (except that furnishing copies of the contractor's response is optional).~~

Subpart 44.4 - Subcontracts for Commercial Products and Commercial Services

~~44.400 Scope of~~401 Definition.

Subcontract, as used in this subpart, includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

~~44.402 This subpart prescribes the policies limiting the contract clauses a contractor may be required to apply to any~~Requirements.

~~(a) Preference. Require contractors and subcontractors that are furnishing commercial products, including commercial components, or commercial services in accordance with 41 U.S.C. 3307.~~

~~44.401 Applicability.~~

~~This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term "subcontract" has the same meaning as defined in part 12.~~

to incorporate

~~44.402 Policy requirements.~~

~~(a) Contractors and subcontractors at all tiers shall,~~ to the maximum extent practicable:

~~(1) Be required to incorporate,~~ commercial products, commercial services, or nondevelopmental items as components of items ~~delivered~~supplied to the ~~Government; and~~agency.

~~(2) Not be required~~(b) Flowdown. The clauses listed in the clause at 52.244-6, Subcontracts for Commercial Products and Commercial Services, flow down to subcontracts for commercial products and commercial services as indicated in the specific clause. Do not require a contractor or subcontractor to apply to any of its divisions, subsidiaries, affiliates, subcontractors, or suppliers that are furnishing commercial products ~~or commercial services any clause, except those-~~

~~(i) Required to implement provisions of law or Executive orders applicable to subcontractors furnishing,~~ commercial ~~products~~components, or commercial services; ~~or~~

~~(ii) Determined to be consistent with customary commercial practice for the item being acquired.~~

~~(b) The clause at 52.244-6, Subcontracts for Commercial Products and Commercial Services, implements the policy in paragraph (a) of this section. Notwithstanding any other a clause that is not listed in the prime contract, only those clauses identified in the clause at 52.244-6 are required to be in.~~

~~(c) Inapplicable laws. A list of laws that do not apply to~~ subcontracts for ~~commercial products or commercial services.~~

~~(e) Agencies may supplement the clause at 52.244-6 only as necessary to reflect agency unique statutes applicable to the acquisition of commercial products and, including commercially available off-the-shelf items, or commercial services is available at~~
www.acquisition.gov/inapplicablelaws.

44.403 Contract clause.

~~The contracting officer shall~~ Insert the clause at 52.244-6, Subcontracts for Commercial Products and Commercial Services, in solicitations and contracts ~~other than those for commercial products or commercial services.~~