

SubCon

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Contractor Purchasing System Review (CPSR) Hot Topics

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AGENDA

- Discussion: “Tell us why you’re here today?”
- What is a CPSR?
- CPSR eligibility and threshold change
- What does a CPSR mean to you and how to prepare
- Learning from others: Most common contractor deficiencies
- Overview of the CPSR process
- What’s new in the world of CPSR

Clauses and Guidance to Understand

- FAR part 44 – Subcontracting Policies & Procedures
- DFARS part 244 – Subcontracting Policies & Procedures
- FAR 52.244-2 (Alternate I when applicable) – Subcontracts
- DFARS 252.242-7005 - Contractor Business Systems
- DFARS 252.244-7001 - Contractor Purchasing System Administration (New Business Rules)

What is the Purpose of a CPSR?

- Evaluation of efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting
- Complete evaluation of a contractor's purchasing of material from services, subcontracting, and subcontract management from development of the requirement through completion of the subcontract performance
- Report findings to Contracting Officer providing a basis for granting, withholding, or withdrawing approval of the purchasing system
- Review corrective action plan for effectiveness and validate implementation

Who Determines the Need for a CPSR?

- Eligible contractors are identified by the CPSR Team with Administrative Contracting Officer (ACO) input and coordination based on:
 - Qualifying Sales
 - Subcontracting volume, complexity and dollar amount
 - Contractor past performance
 - ACO identification of risk
- ACO solicits input from the contractor and perform a risk analysis using the DCMA CPSR Risk Assessment/Request form

Are You Eligible for a CPSR?

- Government sales include all Government contracts/subcontracts minus competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment contracts, or sales of commercial items pursuant to Part 12.
- Add up your eligible primes and subcontracts and if you meet the threshold then bring it to your ACOs attention.

New CPSR Threshold

- Based on Memo entitled, *DCMA Class Deviation for Raising the CPSR Threshold*, signed by DCMA Director on October 7, 2016
- The CPSR \$25 Million threshold established by FAR 44.302(a) had not been updated since 1996
- The new \$50 Million threshold was chosen based on an analysis of inflation and acceptable risk
- Goal is to be consistent with Better Buying Power (BBP) 3.0, and should reduce the administrative burden on smaller contractors

What is an Emerging System?

- CPSR group uses the term “Emerging System” to identify a contractor who is eligible for an Initial Review
 - The ACO and contractor complete a CPSR Request Form to request a CPSR when:
 - The \$50M Threshold is met
 - Risk factors have been identified
 - Consent to subcontract* requests are increasing in volume

*Consent to subcontract is required if the prime does not have an approved purchasing system and the Government is assuming a large portion of contract risk

What is an Existing System?

- CPSR group uses the term “Existing System” to identify a contractor who has an approved purchasing system and may be eligible for a Comprehensive Review
 - CPSR group sends out an E-mail to DCMA ACOs reminding them of the need to reevaluate the approved purchasing systems
 - Reasons for reevaluations:
 - 3 years or greater since last approval
 - Risk factors identified
 - Contractor not reviewed under current business system criteria (Final Rule 2012)

CPSR Reviews- The Four Types

- Initial – Emerging System not yet evaluated and the contractor meets the dollar threshold requirements of FAR 44.302
- Comprehensive - Existing System previously approved and usually conducted 3 years after initial or prior review
- Follow-up - Validation of Correction Action Plan (CAP) on a disapproved purchasing system and addresses previously identified deficiencies
- Special - Evaluation of specific risk areas (At request of ACO)

Are You a Candidate for a CPSR?

- Not everyone requires, or benefits from, a system approval
- Is your government customer or prime contractor pushing for a CPSR?
- Are the consent to subcontract clauses in your contract creating a lot of work for you and your ACO?
- A relationship with your ACO is important and will help determine if an approved purchasing system is right for you
- Must meet the threshold or have significant risk factors for starters
- What if you're not eligible?

Keep Your Purchasing House in Order

- The CPSR Group will not routinely conduct reviews of a contractor's purchasing system that does not meet the \$50 million threshold however:
- A CPSR can still be requested on a case by case basis anytime the ACO determines there is a need
- Regardless of the \$50 million threshold, DCMA reserves the right to issue a corrective action request (CAR) and identify the purchasing system as deficient when a material deficiency is identified
- Threshold increase does not waive the consent requirements nor the advance notification requirements at FAR 44.2

A CPSR is in Your Future

- How do I prepare?
- Read the clauses that are in your contract
- Best practice is to conduct a prime contract receipt and review
- Understand the reason you are being asked to comply in each instance. The FAR and DFARs give you the understanding you need
- Why are you doing this? We're coming to check your files!

Helping You Succeed!

- We actively seek forums like those offered by NCMA to educate contractors on our process
- No secrets - you can utilize the CPSR Guidebook
 - We provide transparency
 - You follow through
 - DFARS 252.244-7001 (c)(18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system
- What's keeping you from getting prepared now?

CPSR Guidebook

- Revised and expanded
- Outlines the whole CPSR process
- Job Aids provide an extensive explanation of all report elements
- Addresses compliance (both policy and practice)
- A living document updated by “Champions” as requirements change
- All revisions are reviewed by the Agency’s Policy and Legal Groups
- Posted on the Agency’s external website and available to all contracting officers and contractors
- http://www.dcma.mil/Portals/31/Documents/CPSR/CPSR_Guidebook_011817.pdf

Decisions Matter!

- Have a good acquisition strategy
 - Competitive awards
 - Preferred method. Three responsible bidders. Many elements exempted.
 - Commercial Item Determination (CID)
 - Preferred method. Prepare a CID. (Market Analysis and Price Analysis applies)
 - DCMA recently stood up the Commercial Item Group (CIG)
 - Sole Source Acquisitions
 - Often necessary, but is the least preferred resulting in many regulations to follow
 - Sole Source determination is required.
- Many of our review elements are off the table when you award competitively or make a commercial item determination

Review Elements

- In the past we evaluated 43 purchasing system elements
- New report format eliminated or combined review elements which resulted in current 29 elements
- The 29 review elements are based on:
 - The 24 Criteria identified in DFARS 252.244-7001(c)
 - FAR/DFARS clauses that flow-down from the prime contract awards to subcontracts

CPSR REPORT MATRIX (Elements 1-15)	DFARS 252.244-7001 Criteria
1. Policies and Procedures Manual	(c) (1), (17), (19), (22) and (24)
2. Truthful Cost or Pricing Data (Truth-In-Negotiations Act (TINA)) (Public Law 87-653)	(c) (10), (16) and (22)
3. Cost Accounting Standards (CAS) (Public Law 100-679)	(c) (2) and (19)
4. Prior Consent and Advance Notification (10 U.S.C. 2306(e))	(c) (1)
5. Small Business Subcontracting Plans (Public Law 95-507)	(c) (2) and (19)
6. Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (FAR 52.209-6)	(c) (7)
7. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions (Public Law 101-121 (Anti-Lobbying))	(c) (2) and (19)
8. Defense Priorities and Allocation System (DPAS) Rating (15 CFR 700)	(c) (1)
9. Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Public Law 109-282)	(c) (2) and (19)
10. Counterfeit Parts Mitigation and Surveillance	(c) (19) and (21)
11. Price Analysis	(c) (8), (9), (10), (16) and (22)
12. Source Selection	(c) (4), (5), (7), (8), (9), (10), (20) and (21)
13. Negotiations	(c) (11) and (12)
14. Make-or-Buy	(c) (6)
15. Limitations on Pass-through Charges	(c) (24)

CPSR REPORT Matrix (Elements 16-29)	DFARS 252.244-7001 Criteria
16. Documentation	(c) (4), (5) and (15)
17. Training	(c) (17) and (18)
18. Internal Review/Self-Audit	(c) (17) and (18)
19. Mandatory FAR and DFARS Flow Down Clauses/Terms and Conditions	(c) (2), (16) and (19)
20. Purchase Requisition Process	(c) (4)
21. Commercial Item Determination	(c) (5)
22. Subcontract Types	(c) (13) and (23)
23. Procurement Authority	(c) (3) and (20)
24. Supply Chain Management Process	(c) (12), (14), (20) and (21)
25. Restrictions on Acquisitions of Specialty Metals/Articles containing Specialty Metals (10 U.S.C. 2533a)	(c) (19)
26. Subcontractor/Vendor Closeout Process	(c) (4)
27. Long Term Purchasing Arrangements	(c) (23)
28. Handling Change Orders and Modifications	(c) (15)
29. Intra/Inter-Company, Affiliate, or Subsidiary Transactions	(c) (5)

Report Elements in Context

- ACO with support from the CPSR Functional Specialist determines the significance of a finding
- Material Findings usually pertain to elements dealing with Public Law or instances where risk is considered significant
 - Example: TINA, Price Analysis
- Non-Material Findings are everything else requiring attention
 - Example: Documentation, Training
- We'll learn from others in the next two slides

Most Common Material Deficiencies

(Based on FY16 CPSR reports)

1. Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (66/126)
2. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions (Anti-Lobbying) (48/126)
3. Price Analysis (43/126)
4. Defense Priorities and Allocation System (DPAS) Rating (34/126)
5. Federal Funding Accountability & Transparency Act (FFATA) (31/126)
6. Sole Source Selection Justification (27/126)
7. Policy and Procedure Manual (20/126)
8. Commercial Item Determination (15/126)
9. Truth in Negotiations Act (TINA) (12/126)
10. Documentation (12/126)

Most Common Non-Material Deficiencies

(Based on FY16 CPSR reports)

1. Policy and Procedure Manual (74/126)
2. Documentation (52/126)
3. Flow Downs/Terms & Conditions (31/126)
4. Training (25/126)
5. Internal Reviews/Self Audits (24/126)
6. Purchase Requisition Process (20/126)
7. Sole Source Selection Justification (18/126)
8. Negotiations (18/126)
9. Price Analysis (17/126)
10. Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (15/126)

Renewed Emphasis - Commercial Items

- DPAP Memorandum ,“Guidance on Commercial Item Determination and Price Reasonableness” dated September 2, 2016 updated the method the Government uses to evaluate Commercial Item Determinations (CID) as mandated by the FY16 NDAA
- Aligning with the DPAP Memorandum, the CPSR Group revised the way we evaluate CIDs
- When reviewing CIDs, an emphasis is placed on the contractor’s market research and content to support the price reasonableness determinations

Making a Commercial Item Determination(CID)

- Preparing the CID
- The clause is in your prime contract (FAR 52.244-6) - you must conduct market research
- Documented proof of searching for commercial products is required
- Price Analysis
- Self assertion by the sub-contractor
- Your verification of the commerciality assertion
- Let's look at the Guidebook "Job Aid"

No Counterfeit Parts! – DFARS 252.246-7007

- DOD has been addressing the proliferation of counterfeit (CF) electronic parts worldwide and their infiltration into the defense supply chain
- **DFARS 252.246-7007** only applies to contractors subject to the Cost Accounting Standards (CAS)
- Failure to maintain an acceptable CF parts detection and avoidance system may result in disapproval of the purchasing system and/or withholding of payments
- May affect the allowability of costs of CF parts or suspect CF parts and the cost of rework or corrective action
- The language of this clause must be included in subcontracts, including commercial item contracts, for electronic parts or assemblies containing electronic parts

No Counterfeit Parts! – DFARS 252.246.-7008

- **DFARS 252.246-7008** is new and creates a hierarchy for purchasing
- First – purchase electronic parts from the original manufacturer or authorized aftermarket manufacturer
- Second - source from own approved suppliers provided they meet CF prevention standards. Contractor bears responsibility for the risk of any CF parts and is subject to review and audit by the contracting officer
- Third - contractors must promptly notify the contracting officer in writing if:
 - it cannot source from one of the first two categories
 - must obtain the part from a subcontractor that refuses the flow down of the clause
 - cannot confirm the part is new or has not been comingled in stock with used, refurbished, reclaimed, or returned parts
- Contractors are responsible for inspection, testing, and authentication in accordance with existing applicable industry standards and maintain documentation for presentation to the Government upon request

Good Subcontracting Decisions

- Your Policy Manual guides buyers in good contracting practices and adheres to the requirements of the FAR and DFARS
- Prime contract flow downs are adhered to
- Terms and conditions are current and protect the Government's interests
- Your Subcontract, Purchase Order, and Modification numbering system is logical with no unaccounted for breaks in sequence
- Files are organized and consistent
- Now you're ready to interact with the CPSR Team

CPSR Pre-Review

- Once ACO request is received, the CPSR is assigned to a team
- CPSR Team locations: Boston, Atlanta, Dallas, and Phoenix
- CPSR Lead Analyst contacts the contractor, confirms dates, and requests the following:
 - PO's/subcontracts issued during a one year period
 - Contractor's policies and procedures
 - Contractor's terms and conditions
- The CPSR Team will identify specific contract requirements using government databases such as; EDA, MOCAS, EITS, FPDS

CPSR Pre-Review (Cont.)

- CPSR Team will also request input from the following DCMA functional specialists:
 - ACO
 - Quality Assurance
 - Small Business
 - Supply Chain Management
 - Commercial Item Group (CIG)

The CPSR Lead Requests a “Universe”

- The universe is comprised of all subcontracts and purchase orders from a designated one year period that meet the criteria
- For qualifying prime contracts, any subcontracts and purchase orders (including cost reimbursable, firm fixed price, and commercial items) written in support of those prime contracts, needs to be included in the universe provided by the contractor
- CPSR Team then utilizes a random based sampling tool to select the purchasing instruments to be reviewed

CPSR Threshold and Universe

Threshold

Government sales include all Government contracts/subcontracts minus competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment contracts, or sales of commercial items pursuant to Part 12.

Universe

For qualifying prime contracts, any POs and Subcontracts (including cost reimbursable, firm fixed price, and commercial items) written in support of those prime contracts, needs to be included in the universe provided by the contractor.

CPSR On-site Activities

- Entrance briefing with contractor and government personnel
- Physical review based on the 29 CPSR report elements
- Lead analyst conducts daily briefs to keep the contractor and ACO informed of arising concerns or issues
- Analyst questions are formally submitted to the contractor in writing and tracked on a question log which is provided at end of review
- Exit briefing conducted to provide the contractor and ACO with preliminary findings (compilation of the daily briefs)

CPSR Post Review

- Analyze data and develop statistics
- Prepare a report addressing the contractor's policy and practice for each of the review elements
- Report released to ACO within 30 business days of exit briefing
- When non-material deficiencies are identified, the procurement analyst will issue a Level II CAR and follow through to closure
- When material deficiencies are identified, the procurement analyst will prepare a draft level III CAR and the contractor should provide a response to the ACO

ACO System Determination

- Contracting Officer determines whether a purchasing system is approved or disapproved
- If no material deficiencies exist, the ACO will issue a final determination approving the system (within 10 days of receipt of CPSR report)
- If the ACO suspects one or more material deficiencies exist, the ACO will issue an Initial Determination (within 10 days of receipt of CPSR report)
- The contractor has 30 days to respond to the ACO
- If the contractor's response is adequate, the ACO will make a final determination of system approval
- If not adequate a final determination of disapproval results

Disapproval - Not the End of the World

- Many Emerging Purchasing Systems (Initial reviews) need work to be compliant
- The Government wants you to succeed
- We will work with you
- Approval will result if you put in the effort.
- CPSR Team will return and review within 60-90 days or when you have an approved Corrective Action Plan

Corrective Action Plan (CAP)

- Level II and Level III CARs, CAP requirements
 - Root cause of noncompliance
 - Corrective action taken or planned to eliminate and prevent recurrence
 - Actions taken to correct specific noncompliance
 - Identifying other processes that are affected by identified root cause
 - Target date for implementation of planned actions
- Expectation for adequate CAP is 90 days (agreement between ACO and contractor that deficiencies have been corrected)

CPSR – Seeking Efficiencies

- New report format eliminated or combined review elements from 43 to 29
 - Scrubbed existing elements for redundancy
 - Combined elements where appropriate
- Guidebook revisions
 - Added Job Aids for transparency and established “Champions”
- Aligned CPSR Universe categories to match FAR Thresholds
- Request a more realistic sample without compromising review integrity

CPSR Continuous Process Improvement

- DCMA Strategic Plan Initiative to improve CPSR effectiveness and efficiency
- Developed an Excel workbook versus Access database for compiling review data
- Champions assigned to develop Job Aids for each of 29 review elements
- Coordination with Commercial Item Group (CIG)
- Coordination with Quality on Detection and Avoidance of Electronic Counterfeit Parts
- New scheduling process developed
- Simplified Risk Assessment/Request Form

Questions?