

Simplified Acquisition Procedures for Federal Purchases

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Abstract. Simplified acquisition procedures for federal purchases include everything from very small purchase card transactions up to purchases of commercially available supplies and services of up to \$5,000,000 per order. During fiscal year 2002, this amounted to nearly 8 million contracting actions, totaling over \$15 billion dollars. (FPDC) This paper discusses the policies and procedures generally used by Government buyers to acquire supplies and services under the rules of Part 13 of the Federal Acquisition Regulation (FAR), using a variety of purchasing methods collectively known as simplified methods. This generally covers all items bought below the micro-purchase threshold of \$2,500 and those covered under the simplified acquisition procedures (SAP) threshold of \$100,000 (higher in certain national security areas), in addition to purchases of commercial items up to \$5,000,000.

Introduction. Simplified acquisition procedures (SAP) as authorized by the Federal Acquisition Regulation (FAR) were used for acquiring goods and services for the federal Government 7,982,466 times in fiscal year 2002 for a grand total of \$15,310,129,000. This is a large percentage of total actions for the year—92 percent—but is also a minor portion of the dollars—6 percent. (FPDC) This is in line with the stated purposes of the simplified acquisition procedures:

- (a) Reduce administrative costs;
- (b) Improve opportunities for small, small disadvantaged, and women-owned small business concerns to obtain a fair proportion of Government contracts;
- (c) Promote efficiency and economy in contracting; and
- (d) Avoid unnecessary burdens for agencies and contractors. (FAR 13.002)

SAP may be used for supplies and services, including construction, research and development, and commercial items, as long as they do not exceed the simplified acquisition threshold (SAT). Generally the SAT is \$100,000, but it has been raised to \$200,000 for contracts awarded and performed, or purchases made outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation. There are other higher limits for acquisitions of supplies or services that, as determined by the head of the agency are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, in some circumstances up to \$500,000. (FAR 2.101) For a test period, special authority for acquisitions of commercial supplies and services exceeding the SAT, but not exceeding \$5,000,000 may also use SAP.

Also, “micro-purchase” means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold of \$2,500, except that it is set at

- (1) \$2,000 for construction subject to the Davis Bacon Act; and

(2) \$7,500 for acquisitions of supplies or services that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The threshold is \$15,000 for acquisitions in these areas by or for the Department of Defense. (FAR 2.101)

Policy. FAR 13.003 provides that, when possible, agencies should use SAPs, unless they can meet their requirements using

- Required sources of supply, such as Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts
- Existing indefinite delivery/indefinite quantity contracts
- Other established contracts

There are several policy issues in relation to setting aside acquisitions for small businesses. In general all purchases above the micro-purchase threshold (\$2,500), but under the maximum SAT (generally \$100,000) are reserved exclusively for small business concerns, unless the contracting officer determines there is no reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. (FAR 19.502-2) The contracting officer may set aside these purchases for HUBZone small business concerns.

Contracting officers are warned not to break down requirements totaling more in value than the SAT merely to permit the use of SAPs or avoid any requirement that applies to purchases that exceed the micro-purchase threshold. (FAR 13.003(c))

The purpose of the SAPs is to obtain supplies and services in the most efficient manner, thus their use is mandated, when their use makes sense. Agencies must use the Government-wide commercial purchase card and electronic purchasing techniques as much as possible when conducting simplified acquisitions. (FAR 13.003(e)) Simplified purchases should be made in the most suitable, efficient, and economical manner, based on the circumstances of each acquisition. (FAR 13.003(g))

Contracting officers also have four other considerations that they must take into account:

1. Promote competition to the maximum extent practicable
2. Establish deadlines for the submission of responses to solicitations that afford suppliers a reasonable opportunity to respond
3. Consider all quotations or offers that are timely received
4. Use innovative approaches to the maximum extent practicable in awarding contracts using SAPs (FAR 13.003(h))

Legal Effect of Quotations. Most typically in federal Government procurement, the prospective contractor submits an offer that the contracting officer may accept on behalf of the Government. However, under SAPs, contracting officers are reminded that a quotation is not an offer and cannot be accepted by the Government to form a binding contract. Here, the order is an offer by the Government to the supplier to buy the supplies or services with specified terms and conditions. The contracting officer may ask the supplier to accept the offer and notify the government, but often the supplier indicates acceptance by furnishing the supplies or

services or by proceeding with the work. The Government may withdraw, amend, or cancel the offer by giving written notice to the supplier any time before acceptance. (FAR 13.004)

Other Simplifications. The Federal Acquisition Streamlining Act (FASA) of 1994 made a number of laws inapplicable to items bought under contract or subcontracts within the SAT. Since that time, the FAR Council, who administers the FAR, has been able to add newly passed laws to the inapplicable list. In addition, an individual may petition the FAR Council to add an item of any law that it has not previously considered to the list of inapplicable provisions. (FAR 13.005)

In addition, the FAR makes a number of standard solicitation provisions and contract clauses inapplicable below the SAT. This includes such items as the Restriction on Subcontractor Sales to the Government, Audits and Records—Negotiation, and several others. (FAR 13.006)

Micro Purchases. Agency heads are encouraged to delegate micro-purchase authority (\$2,500 or less) and to have them done by the Government-wide purchase card. Required sources of supply must be used for micro-purchases. However, any of the methods described below may be used, if purchasers have been trained and are authorized by their agencies. These purchases do not require provisions or clauses, except for Central Contractor Registration (when the purchase card is not used) and sometimes regarding Electronic Funds Transfer. The requirements of the Resources Conservation and Recovery Act and the related Executive Order do apply to micro-purchases. (FAR 13.201)

Micro-purchases must be distributed equitably among qualified suppliers, but competitive quotations are not needed if the contracting officer believes the price to be reasonable. Action to verify price reasonableness is only needed if the contracting officer suspects or has information that the price may not be reasonable or if no comparable pricing information is readily available. If competitive quotations are received and award is made to other than the low quoter, the file should be documented to identify the concerns and explain the award decision. (FAR 13.202)

Government-Wide Commercial Purchase Card. This card may be used for making or paying for purchases of supplies, services, or construction as long as the purchases are otherwise authorized by law or regulation. Agencies must establish procedures for the use and control of the card, but it should not be limited to only micro-purchases. Its use for making purchases and payment for all types of purchases (including placing task or delivery orders) should be encouraged when consistent with the terms of conditions of the General Services Administration credit card contract and agreed to by the contractor. (FAR 13.301)

Other Simplified Procedures. Contracting officers are required to comply with certain provisions relating to buying economic order quantities and provide for the inspection of supplies and services. In addition, they must comply with the procedures for Certificates of Competency issued by the Small Business Administration before rejecting a quotation from a small business concern determined to be non-responsible.

Contracting officers are encouraged to also

1. Include related items in one solicitation and award on an all-or-none or multiple-award basis

2. Incorporate provisions and clauses by reference (rather in full text)
3. Make maximum effort to obtain trade and prompt payment discounts
4. Use bulk funding to the maximum extent practicable. Bulk funding provides a lump sum of funds that can be drawn down rather than having to get individual budget authority for each purchase (FAR 13.101)

To develop a source list of firms to be asked to provide quotations, contracting officers should use the Central Contractor Registration database (<http://www.ccr.gov>) as their primary source of vendor information. If the office maintains additional vendor source files, the status of each source should be identified in the following categories

1. Small business
2. Small disadvantaged business
3. Women-owned small business
4. HUBZone small business
5. Service-disabled veteran-owned small business
6. Veteran-owned small business (FAR 13.102)

Promoting competition is very important. The contracting officer must promote competition to the maximum extent practicable to place the order from the source whose offer is most advantageous to the Government, considering the administrative costs of the purchase. The contracting officer must not solicit quotations on the basis of personal preference or restrict solicitation to well-known and widely distributed makes or brands. Usually the local trade area is sufficient and at least three sources, two of which were not included in the previous solicitation, should be solicited. (FAR 13.104)

The contracting officer must provide for public display and posting of requirements, but electronic means may be used. When buying commercial supplies or services under SAPs the contracting officer may use a combined synopsis and solicitation, so a separate solicitation will not be required. (FAR 13.105)

The contracting officer may solicit from only one source if there is only one source readily available due to factors such as urgency, exclusive licensing agreements, or industrial mobilization. (FAR 13.106-1(a))

The contracting offer must notify those solicited of the basis on which award will be made—price alone or price and other factors, for example, past performance and quality. Contracting officers are encouraged to use best value, that is, considering more than just low price. Neither relative importance nor subfactors are required. The contracting officer should solicit quotations orally to the maximum extent practicable, but written solicitations should be used for contract actions likely to exceed \$25,000. Options may be included in solicitations, as long as the total dollar value will not exceed the SAT. The agency should respond to all inquires when doing so would not interfere with the efficient conduct of the acquisition. (FAR 13.106-1)

Contracting officers have broad discretion in developing suitable procedures for evaluation of quotations, but must evaluate all quotations or offers in an impartial manner and include all transportation charges to the delivery destination. If using other factors in addition to price, the contracting officer must ensure that they can be evaluated in an efficient and minimally burdensome fashion. (FAR 13.106-2)

The contracting officer must determine that the proposed price is fair and reasonable, generally based on competitive quotations, but the determination may be based on market research, comparison with prior purchases, current price lists, comparison with similar items, personal knowledge, an independent Government estimate, or any other reasonable basis. If a minimum order price or quantity applies, the contracting officer should inform the requiring activity of the facts and ask them to confirm or alter their requirement, documenting the final action taken. (FAR 13.106-3)

Purchasing offices should keep documentation to a minimum, but they should establish and maintain records of oral price quotations. They should limit written records to notes or abstracts to show prices, delivery, references to printed price lists, suppliers contacted, etc. They must also document the file for special situations, such as the absence of competition, or information supporting the award decision if other than price-related factors were considered. Notification to unsuccessful suppliers shall be given only if requested or if over \$25,000, but when a supplier requests information, it will be provided with a brief explanation of the basis for the award. The copy of the award document must be annotated with the contractor's Taxpayer Identification Number (TIN) and type of organization, unless this information is obtained from another source, such as a centralized database. (FAR 13.106-3(b)-(e))

Other Simplified Acquisition Methods. In addition to the credit card use described above, there are several other methods that may be used to carry out simplified acquisitions.

One of the primary methods is by the use of purchase orders. They are generally issued on a fixed-price basis and must specify the quantity or scope of the work, contain a date for delivery or performance, specify f.o.b. destination, include any trade or prompt payment discounts, and provide for inspection. The contracting officer must sign purchase orders, although this may be done by facsimile or electronically. Copies shall be limited as much as possible and electronic funds transfer is generally required for payment. (FAR 13.302-1)

The contracting officer may require written acceptance of a purchase order and orders may be modified when needed. Orders that have not been accepted in writing may be cancelled, which the contractor may accept or may claim that costs were incurred as result of beginning performance. If a claim is made, or if the purchase order had been accepted in writing, the contracting officer must follow FAR termination procedures. (FAR 13.302-3 and -4)

Each purchase order must include the clauses required for that type of acquisition. Most often this will mean including the clause at FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). For commercial items, see FAR 12.301 for a discussion of a set of simplified clauses. Additional guidance is provided for the acquisition of supplies that cannot be set aside for small business and for supplies acquired outside the United States. (FAR 13.302-5)

Blanket Purchase Agreements (BPAs) are “charge accounts” established with qualified sources of supply for the filling of repetitive needs. They can be established for the contracting office's own use or by it for use by other offices. They may be used when there is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance. This procedure

should be used when its use would avoid the writing of numerous purchase orders and there is no existing requirements contract that covers the same supply or service. Generally, BPAs are established with more than one supplier, but they may be established with a single source. Although individual purchases must be within the SAT, an agency may establish a higher threshold for the overall BPA. At least annually, the contracting officer must review a sufficient random sample of the BPA files to ensure that authorized procedures are being used. (FAR 13.303)

The fast payment procedure allows payment to the contractor for supplies under limited conditions prior to the Government's verification of receipt and acceptance. The contractor must certify that the items have been delivered for shipment and that the contractor shall replace, repair, or correct supplies not received, damaged in transit, or not conforming to purchase agreements. Although most frequently used under the SAT, executive agencies may permit higher thresholds. They are to be use where there is a geographical separation and lack of adequate communication between the Government receiving and disbursing offices. Generally, invoices will be submitted directly to the paying office. (FAR 13.401)

Test Program for Certain Commercial Items. At the present time there is a test program allowing the use of simplified procedures for the purchase of supplies and services up to the value of \$5,000,000. The test is to allow contacting officers to make purchases and to maximize efficiency and economy, and minimize burden and administrative costs for both the Government and industry. The contract clauses to be used are prescribed by FAR 12.3. Special documentation requirements are limited to cases of sole source acquisitions. In general, the contract file must include a brief written description of the procedures used in awarding the contract, the number of offers received, an explanation of the basis for the contract award decision, and any justification for a sole source acquisition. As of November 2003, authority to issue solicitations under the test program expires on January 1, 2004. (FAR 13.5) However, this authority has been extended in the past.

Conclusion. Part 13 of the FAR prescribes simplified procedures to use when making federal Government purchases in a effort to increase the efficiency of the buying process for the high volume of low dollar-value purchases. The procedures are relatively simple and are used nearly 8 million times per year, for supplies and services totaling over \$15 billion. Most of the requirements, procedures, and methods are similar to commercial practices, but there are differences that sellers should know of before entering into contracts with the federal Government.

REFERENCES

FAR Federal Acquisition Regulation found at <http://www.arnet.gov/far/>

FPDC Federal Procurement Data Center http://www.fpdc.gov/fpdc/fpdc_home.htm