

CHAPTER 10

**Contract Management**

This chapter provides an overview of the overall acquisition process and its underlying principles, tools, and techniques. The installation is responsible for the coordination of a vast amount of resources to ensure that the units, organizations, and residents it supports are well cared for. The Army budgets billions of dollars for operations and maintenance. It spends large amounts of these funds through its installation contracting offices. The primary activity for obligation of these funds is the installation directorate of contracting (DOC).

Contracting is one of the several functions involved in the Army's acquisition process. It is the DOC's function to obtain the Army's equipment, supplies, or services of the proper quality and sufficient quantity at a fair and reasonable price.

Army managers face the challenge of coping with this high volume of contracting actions. The manager's acquisitions are scrutinized by contractors, auditors, the General Accounting Office (GAO), Congress, and the news media and must be accomplished in a manner that is above reproach. Therefore, the governing policy and legal guidance are both detailed and voluminous and can be quite rigid to protect the integrity of the process. For these reasons every appropriated fund (APF) Army acquisition must be accomplished in accordance with the

Federal Acquisition Regulation (FAR), the Defense FAR supplement (DFARS), the Army FAR supplement (AFAR), the Federal Information Resource Management Regulation (FIRMR) and any MACOM guidance.

CONTENTS	
	Page
THE ACQUISITION PROCESS	10-1
SCOPE AND MAGNITUDE OF INSTALLATION ACQUISITION	10-1
LAWS AND REGULATIONS	10-2
AUTHORITY AND RESPONSIBILITY	10-3
INSTALLATION CONTRACTING PROCESS	10-3
COMPETITION IN CONTRACTING	10-7
US GOVERNMENT BANKCARD	10-9
CONTACTS WITH INDUSTRY REPRESENTATIVES	10-9
RECEIVING UNSOLICITED PROPOSALS	10-10
CONTRACTING SUPPORT FOR DEPLOYING UNITS	10-10

**THE ACQUISITION PROCESS**

Each contracting action at the installation has as its origin a need for a service or product. The requirement's identification and funding sets into motion an acquisition cycle, beginning with acquisition planning and ending with contract administration and close-out after the delivery and acceptance of services or products.

While the acquisition process includes all of the actions that must be taken in obtaining the required goods or services, it must be emphasized that there is no single set of actions for each step in the process. Variables such as

type of goods and services required; the size, type, complexity, and urgency of the requirement; and the applicable laws and regulations all influence the actions taken.

The term acquisition covers the entire cycle from need identification and funding through contract administration and close-out. The term contracting covers the portion of the acquisition cycle starting with the purchase request (as a culmination of the planning step) through contract close-out.

**SCOPE AND MAGNITUDE OF INSTALLATION ACQUISITION**

**BASE SUPPORT**

The maintenance and operation of installations and bases requires a multiplicity of housekeeping materials

and services. Most of these requirements are met by the installations. Some items in common use throughout the DOD are centrally controlled and managed by

agencies such as the DLA or the General Services Administration (GSA).

### AREA SUPPORT

Contracting operations in support of installations in a geographic region or area provide on an economic basis, consolidation of buying and related professional services that can meet the needs of many customer activities in the area served. This is accomplished through Blanket Purchase Agreements and Requirements-type contracts which specifically designate multiple locations.

### INDUSTRIAL SUPPORT

The arsenals, munitions plants, and overhaul facilities of the Army are major industrial enterprises similar in many respects to their counterparts in private industry. The support of these installations demands a high degree of coordination among research, engineering, production, and acquisition staffs. This will ensure that proper materials and equipment are available to meet manufacturing and production schedules.

### TRANSPORTATION SERVICES

The normal volume of personnel and materiel movement to include personal property shipment and storage, personnel movements, and unit movement support services is in excess of what can be provided by DOD. The acquisition of considerable air and sealift as well as land transportation is, therefore, required. This is a specialized field of contracting where particular laws, regulations, and industry practices substantially affect the techniques and manner of doing business.

### CONSTRUCTION

Much of the maintenance, repair, and minor construction of existing facilities are performed in-house

or by installation contracts. Certain design, engineering, and construction of major new facilities along with environmental and installation support services are acquired from private industry by the USACE. The field of military engineering contracting requires extensive education and experience in architectural, engineering, environmental, and construction disciplines. This field is subject to specific laws, techniques, and trade practices.

There are long-term consequences from installation acquisitions that have a profound impact on the local economy. Acquisition programs influence business decisions of local companies in such areas as expansion, inventory levels, and modernization of equipment, and jobs. When an acquisition is well managed, costs are decreased and installation and local business relationships are improved. At the same time, the capability to support the installation during emergency/mobilization periods can be greatly enhanced.

Installation contracts provide significant leverage for the implementation of national, social, and economic policies that have been established by congressional legislation and executive orders. These policies create contractual obligations related to economic and social areas, such as-

- Preference for small and small disadvantaged business and economically distressed areas.
- Preference for Federal Prison Industries, Inc., UNICOR, and workshops for the blind and other severely handicapped.
- Domestic suppliers.
- Requirement for safe and sanitary working conditions and for the payment of minimum wages.
- Provisions for equal employment opportunity, employment of veterans, and the employment of blind and other handicapped individuals.

### LAWS AND REGULATIONS

Federal directives govern the scope and authority of the Army in contracting actions. DOD and other agency regulations establish the functions and authority of the departments, agencies, and courts. These authorities establish procedures for the conduct and regulation of acquisition activities, as well as the form and general content of contractual instruments.

The FAR is the primary document that covers the acquisition process for the DOD and the FAR is

supplemented by the DFARS. For the Army, the AFARS further supplements each of these regulations. Although deviations from these directives are possible, specific authority must be obtained by the requesting agency. Ample justification outlining the unique circumstances supporting either a local or class deviation is necessary.

It is essential that the legal advisor review procurement files for legal sufficiency and sound business judgment. If legal questions arise anytime before or after

the award of a contract, the legal office should be consulted as soon as possible. Appeals of contract claims

and protests should be coordinated immediately with the legal advisor.

## AUTHORITY AND RESPONSIBILITY

The President, as Commander-in-Chief, has the authority for ultimate direction of the DOD and its military departments — including all logistical functions. The President's authority to set broad defense policy derives from the US Constitution and acts of Congress.

Congress, however, exercises control over military acquisitions by approving defense programs and related funding through the annual DOD Authorization and Appropriation Acts. Although executive departments, including the Army, are not dependent on Congress for legal authority to contract, the services are bound by the fiscal restrictions imposed by Congress in passage of the attendant funding.

The authority to contract flows through the OSD and OSA to the MACOMs. The commander of each Army command is the head of contracting activity (HCA) for that command. The HCA is responsible for the management and conduct of acquisitions to accomplish the assigned mission. The HCA has the authority to acquire supplies, equipment, and services by contract for that

activity. The HCA appoints a principal assistant responsible for contracting (PARC). The PARC accomplishes those delegable responsibilities of the HCA described in the AFARS, or as directed by DOD or DA. Contracting authority is further delegated by the PARC in selecting and appointing contracting officers who have authority to enter into, administer, or terminate contracts.

Every organization, whether corporate, municipal, state, or federal, must have agents who act as its representatives in making contracts. The general and statutory powers of the government to contract are exercised through delegation to specified agencies. These agencies, in turn, empower agents to perform the contracting functions. The contracting officer's authority to bind the United States is restricted. The limitations are specified in the appointment warrant, directives of that department, the FAR and its supplements, federal statutes, and interpretative decisions of the Comptroller General and courts or boards.

## INSTALLATION CONTRACTING PROCESS

Installation contracting requires the interaction of numerous players and the expertise of many offices to effectively contract for services and supplies in support of the installation and many offices. Installation DOC offices acquire a wider range of commodities and use more contractual instruments to complete their mission than any other contracting organization in the Army. Approximately one-third of the acquisition dollars obligated, and over 95 percent of the individual actions, are accomplished through small purchase procedures. The balance is accomplished through formal contracting processes. Typical items bought by an installation contracting office are shown in Table 10-1.

Contract types are grouped into two broad categories: fixed-price and cost reimbursement contracts. The contract types range from firm-fixed price, in which the contractor has full responsibility for the performance costs and the resulting profit or loss to a variety of cost reimbursement types. The cost-plus-fixed fee contract requires minimal contractor responsibility for the performance costs and the negotiated fee (profit) are freed.

Whereas, the cost reimbursement incentive type contract tailors the fee (profit) to the uncertainties involved in contract performance and the contractor's ability to control performance costs plus his quality of performance determines the fee (profit) entitlement.

The process of contracting at an installation consists of eight phases shown in Figure 10-1.

Preaward planning consists of establishing a need and planning ahead for the proposed acquisition. At the installation, this should consist of an installation advance acquisition plan (IAAP) approved by the commander. The IAAP is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan. Studies have shown that commitment to the IAAP process results in better work load management. Good planning results in the most efficient and timely acquisition of installation requirements and permits consolidation of requirements to ensure maximum cost effectiveness. The IAAP board consists of the principal staffs and customers. The board

Table 10-1. Purchases by installation contracting office.

SUPPLIES	SERVICES	CONSTRUCTION
<p>Lumber                      ADP Equipment*                      ADP Supplies                      Office Furniture                      Construction Materiel                      Office Equipment                      Hospital Supplies                      Pharmaceuticals                      Vehicle Leases                      Large Equipment Leases                      Telecommunications                      Appliances                      Commercial Equipment                      Copy Machines                      Nonstandard Supplies</p> <p>*Some MACOMs (e.g. TRADOC) require ADP to be purchased by one centralized contracting office.</p>	<p>Laundry                      Full Food Service                      Custodial                      Field Latrines                      ADP Repair                      Office Machine Repair                      Aircraft Repair                      Ship Dry-Docking                      Vehicle Maintenance                      Refuse Disposal                      Range Maintenance                      Guard Services                      Mortuary Services                      Ambulance Services                      Educational Services                      Flight Training                      Transportation                      Snow Removal                      Grounds Maintenance                      Sewage Treatment                      Demolition                      Hazardous Waste Removal</p>	<p>Road Repair                      Painting                      Building Maintenance and Repair                      Minor Construction                      Housing Maintenance and Repair</p>

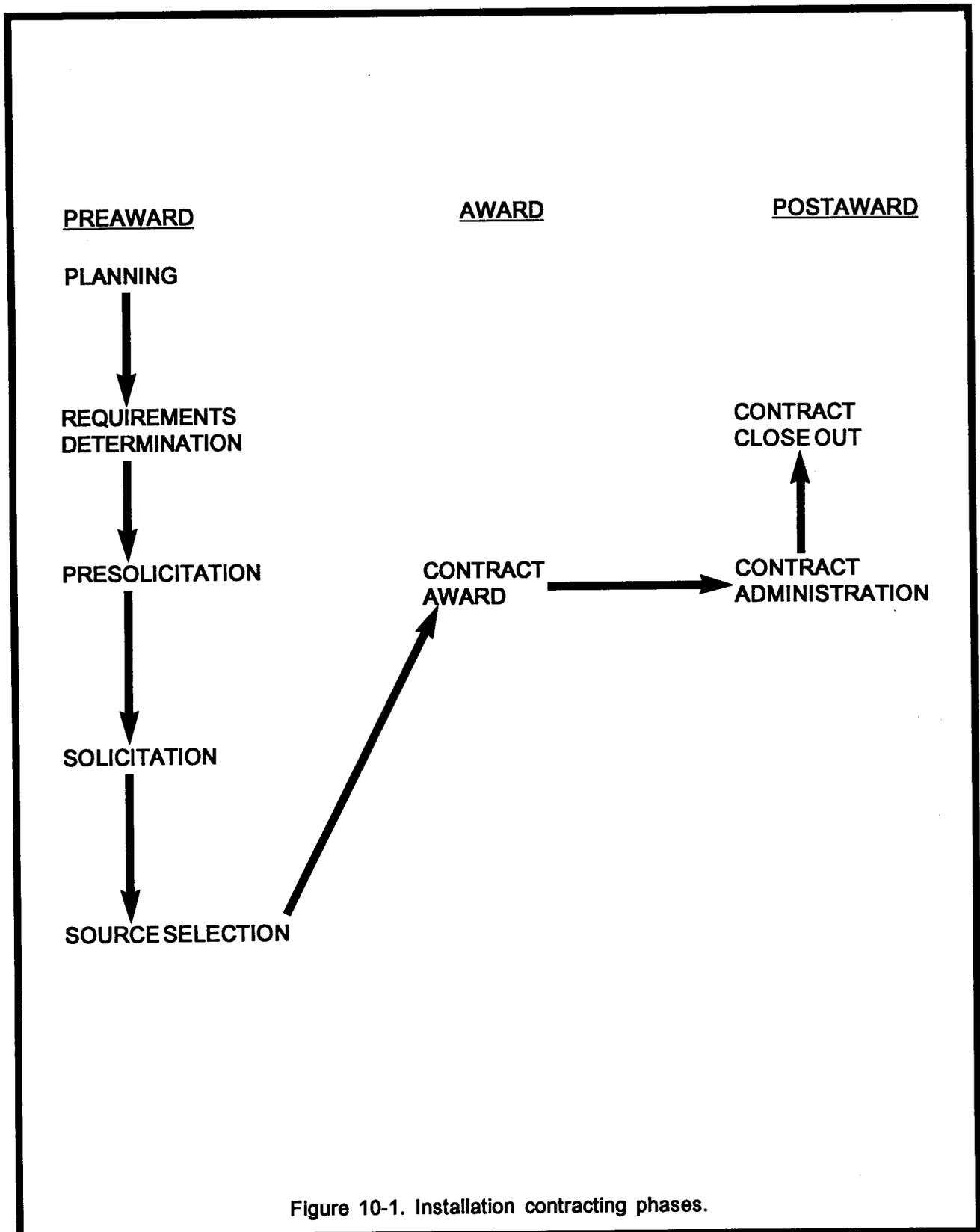


Figure 10-1. Installation contracting phases.

should meet at least quarterly to examine the plan, discuss milestones, and adjust priorities as necessary.

Ideally, 30 percent of the funds should be obligated in each of the first two quarters with not less than 80 percent of all funds obligated by the end of the third quarter. However, the financial management process often does not allow this obligation rate, and DOC staff must plan and execute year-end rushes. Installation commanders committed to the IAAP process generally have directorates with good working relationships. The IAAP provides the commander a system to adjust priorities and track the status of installations programs.

Requirements determination consists of those actions a customer takes to identify what needs to be done by contract. While the DOC will often assist the customer, it is the customer's responsibility to adequately describe the product, service, or construction requirements and any special details needed for the DOC to acquire the item or service. As soon as a requirement is identified, someone should be assigned as the acquisition manager to be responsible for assembling all required contract documentation. The acquisition manager should form a team of experts early in the process. This team will help accomplish all the tasks associated with the purchase of the needed goods or services.

The presolicitation phase is the period when the DOC in coordination with the functional proponent determines the method of procurement and plans for contract administration. The DOC must process all the necessary paperwork provided by the requiring activity for restrictive requirements. Also, the DOC ensures all the laws and regulations are met prior to solicitation. This is the most important phase. Continual coordination between the requiring activity and the DOC is required to assure the Statement of Work Performance Work Statement (SOW/PWS) and related documents clearly and concisely reflect the government's needs. Any error or omission will result in delays and improper awards and costly contract modifications.

Solicitation is the phase in which the requirement is advertised to prospective contractors.

The solicitation is the agency's invitation to submit bids or offers on the requirement – described in detail by the statement of work. There are two basic acquisition methods represented by a solicitation:

- Sealed bidding.
- Negotiated competitive proposals.

Source selection consists of the review and evaluation by the government of bids and proposals received from offerors to determine the relative advantages and disadvantages of proposals, their compliance with contract terms, and a comparison of the proposals with the evaluation factors that will be used in making the award in negotiated procurements. Unless another official is designated, the contracting officer will select the company to receive the award. The contracting officer will also determine each offeror's responsibility prior to making award.

The Army is emphasizing a "best value" approach to contract award rather than what is commonly known as award to "the lowest bidder." While this may ultimately be a compliance technical issue, basically the term "best value" means the best technical solution and/or services with price as only one of the factors for evaluation of contractor proposals/offers. In the case of CA type contract awards, the installations must make a personnel commitment to contract administration for the life of the contract at the time it decides to contract out.

Contract award consists of those actions necessary to formally announce the winning contractor and ensures all legal requirements have been met. In most cases, award is followed by the performance period described in the contract, together with administration by the government representatives assigned to monitor the work.

However, the law also allows for unsuccessful offerors to interrupt this process by filing of bid protests in an effort to either delay the award, cancel the procurement, or have the award reassigned to themselves. The legal procedure for the processing of bid protests is described in detail by agency regulation. Depending on the type of contract affected, a bid protest may be decided in one of several different agency forums or federal courts. Most protests of federal contracts are first reviewed by either the affected agency or by the US General Accounting Office. However, the General Services Board of Contract Appeals is the appropriate forum for ADPE protests.

Contract administration is a time and resource consuming phase in which the government manages the performance requirements of the contract. Contract administration ends upon delivery, payment, and close out. Services and construction contracts, in particular, require extensive monitoring to ensure the government is receiving everything included in the contract. Resources, procedures, and personnel should

be identified for training prior to contract solicitation to ensure that quality levels are monitored properly and performed in accordance with the terms of the contract. The Commercial Activities Program, service, and construction contracting require a considerable amount of planning and manpower to ensure proper execution of a contract. Close-out is the final acceptance of and payment for the contracted services or items and the deobligation of any remaining funds. Most contract files are held for a specified number of years and then transferred to records holding for disposition.

## COMPETITION IN CONTRACTING

When the decision has been made to satisfy a requirement with contractor support, there are several valid means to accomplish this goal.

The most preferred method is full and open competition. Competition is mandated by law and generally results in lower costs and higher quality. A sole source may be possible if there is only one responsible source capable of satisfying the requirements. Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source. It may also be possible to limit competition in certain emergency situations. Public law requires acquisitions to be planned far enough in advance to allow adequate time for full and open competition. The law requires the approval of a written justification and approval (J&A) document whenever the contracting officer determines that full and open competition is not appropriate for the procurement. The J&As are closely examined by the legal advisors and higher headquarters to ensure all requirements are met.

The Competition in Contracting Act of 1984 requires contracting officers promote and provide for full and open competition to the maximum extent practicable in soliciting offers and awarding contracts. The competition advocate in the contracting activity reviews functional activity requirements. He takes appropriate action to ensure competition is obtained. To obtain maximum open competition, requirements over the specified threshold will be published in the *Commerce Business Daily*. This is the public notification media used by US government agencies to identify proposed contract actions and awards. Prescribed waiting periods for responses from potential offerors

The DOC team concept must be used in the contracting process. All talents and expertise must be used. When an acceptable, funded procurement package is submitted, the DOC becomes the manager of the contracting process. Delegated authority to contracting officer representatives (COR) is under the authority of, coordination with, and decision of the contracting officer. Functional managers are key players on the contracting team.

will be adhered to so all responsible sources will have the opportunity to compete.

Under limited circumstances, contracting without providing for full and open competition is authorized subject to detailed justification and approvals. These seven circumstances are identified below:

- Only one responsible source and no other supplies or services will satisfy agency requirements.
- Unusual and compelling urgency.
- Industrial mobilization; or engineering, developmental, or research capability.
- International agreement.
- Authorized or required by statute.
- National security.
- Public interest (requires prior congressional notification).

The lack of or delay in receipt of funding, last minute planning, or "the boss wants it" are not authorized exceptions to the congressional mandate for competition.

### SMALL BUSINESS CONSIDERATIONS

Government policy is to place a fair proportion of its contracts with small businesses. These businesses are independently owned, not dominant in the field, and meet the criteria size standards set by the Small Business Administration. Small disadvantaged business concerns are at least 51 percent owned by individuals who are socially and economically disadvantaged. The primary purposes of increased small business contracting are to broaden the industrial base for mobilization and enhance competition. To ensure small business and small disadvantaged business participation, a method known as a set-aside is used. When requirements for supplies and services are determined to be susceptible to performance

by small or small disadvantaged business, they maybe set-aside for exclusive participation by these firms. Section 8(a) of the Small Business Act also establishes a program that authorizes the Small Business Administration to enter into all types of contracts with other agencies. It also awards subcontracts to small and disadvantaged business firms eligible for program participation. These awards can be either sole source or competitive within the 8(a) program.

### OFFLOADING

Offloading is used by a requiring activity to obtain contracting support from other than its assigned contracting office. Although there is no prohibition against contract offloading, the practice can significantly heighten the potential for waste and abuse; loss of management control over Army appropriated funds and the acquisition process; and Anti-Deficiency Act Violations. This is especially true when requirements are offloaded for convenience or expediency to non-DOD agencies, which maybe generally unaware of limitations and special requirements placed on DOD acquisitions bylaw or DOD and DA regulations. Of particular concern in this regard are:

- Surcharges and administration fees levied by the acquiring activity are an added expense.
- Contracting, legal, resource management, and ADP rules and regulations are frequently circumvented when offload occurs.
- Property accountability procedures are bypassed and property generated as a result of offloads does not get into the Army's inventory.

If an activity requires contracting support from other than its assigned servicing contracting office(s), it shall coordinate requests for such support with the assigned servicing contracting office. These actions should be completely documented, containing the same information that would be required in a procurement request package to the assigned contracting office. The chief of the appropriate assigned contracting office must conduct a review in order to determine whether offloading will be more economical or otherwise more beneficial to the Army than having the contracting support provided by that contracting office. Certain offloading requests must be approved by general officers.

### CONTRACT ADMINISTRATION

Contract administration is an important part of Army installation operations. However, the degree to

which savings are achieved and an acceptable level of quality is maintained depends on the motivation and managerial skills of the contractor and assigned government personnel. For that reason, the purpose of contract administration is to assure the contract is performed as specified. It also assures that any significant failures (contractor or government) are acted upon in a timely manner.

Contract administration is a multidisciplinary process. Its success depends on communication and cooperation. The leader of the contract administration team is the contracting officer, who will determine the composition of the team. The FAR and the statutes provide the contracting officer with authority. The authority of the team members is determined by the contracting officer. The number of personnel and skills needed should be commensurate with the technical complexity of the contract. Personnel may increase or decrease depending upon the quality of the contractor's actual performance. It is critical that the functional manager for the particular product or service have continuous, significant involvement during phases of contract administration.

### CONTRACTING OFFICER'S REPRESENTATIVE

A contracting officer may select and designate any government employee, military or civilian, to act as his authorized representative in administering a contract. This is for contracts not assigned to Defense Contract Management Command (DCMC) for administration subject to the authority and limitation set forth by regulation. In selecting an individual for designation as his authorized representative, the contracting officer ensures that the individual possesses qualifications and experience commensurate with the authorities with which he is to be empowered. If an individual is to be designated as a Contracting Officer's Representative (COR), the contracting officer should assure that training is received.

Each designation of a COR will be in writing. It should clearly define the scope and limitations of his authority and shall include the statement that the authority is not redelegable. The COR has no authority to modify or waive provisions of the contract. The COR keeps the contracting officer informed of potential problems at all times.

## US GOVERNMENT BANKCARD

The US Government Bankcard is authorized for use in making over-the-counter or telephone purchases of supplies or nonpersonal services when a single delivery and payment will be made. Items purchased over-the-counter must be available immediately, and no back ordering is allowed. Those purchased during telephone transactions must be part of a single delivery and must be delivered within 30 days or within the billing cycle. The credit card purchase program is designed to minimize cost and administration burden and reduce procurement lead-time. The card may not be the most efficient and economical means of acquiring supplies and services for all activities or for each purchase. Prior to requesting a credit card, each activity must meet with the DOC. This meeting will determine if the credit card is the most efficient method of acquiring supplies and services. Small organizations with infrequent purchases may not realize the benefits and increased efficiencies that are possible through use of the bankcard.

The delegation of authority provided to each cardholder sets the individual limit up to \$2,500 for

noncontracting activities. Warranted contracting officers within the DOC on any single purchase have a limit of not more than \$25,000. The delegation may also set specific restrictions by the commander on the use of the card. Each time a cardholder makes a purchase with a bankcard, the bank authorization will deny the purchase should the amount exceed the single purchase limit. These limits are established to ensure that procurement laws, as implemented by the FAR, DFARS, and AFARS are followed. Limits also minimize the potential for abuse. Each cardholder will be assigned a monthly purchase dollar limit. Cardholders under each approving official will be assigned a cumulative monthly office dollar limit.

Cardholders must ensure that the following elements are present prior to making any purchases:

- Have authorization to purchase.
- Have a request to purchase.
- Have available funds.
- Have authority for local procurement.

## CONTACTS WITH INDUSTRY REPRESENTATIVES

Installation managers will probably have contacts with industry representatives outside the scope of the formal acquisition process. These contacts are constrained by numerous laws and regulations. Nevertheless, such contacts are very often helpful in accomplishing the installation mission. To avoid problems, commanders and managers should routinely seek the advice of their SJA (particularly the ethics counselors and contract attorneys). Following that advice, commanders should generally be able to engage in meaningful dialogue with industry representatives. Some situations which may arise and related general rules are outlined as follows:

- Avoid any perception of favoritism to any one source, particularly when dealing with former DA or DOD officials. There are special issues when dealing with industry representatives who are former government employees. Personnel who meet with or brief industry representatives must be cognizant of the need to avoid furnishing information if an unfair competitive advantage is the likely result. Contracting officers are the best

people to talk with the contractors to avoid the possibility of unauthorized commitments.

- Only contracting officers are authorized to commit the government with respect to award of a contract or the obligation of dollars. Commanders must ensure that no one makes any commitments, encourages, or instructs a contractor to perform work in anticipation that a contract will eventually be awarded.
- The government may not request a contractor to provide goods or services at no charge to the government. It is acceptable practice for a contractor to provide a briefing on his capabilities or to demonstrate a product. However, before any demonstrations are conducted, a written vendor demonstration agreement must be executed. Legal and contracting advisors should be consulted prior to such a request to ensure propriety of the request.
- If the proposed subject of a discussion with a contractor is a matter that could constitute contractor assistance, it should not be discussed with

industry representatives until, or unless, the contracting officer has made disclosure of the proposed subject to all potential sources.

Again, to be on the safe side, consult the ethics counselor or your contracting officer before talking with any contractor.

### **RECEIVING UNSOLICITED PROPOSALS**

A unsolicited proposal is a written offer to perform a task or effort involving unique or innovative methods or approaches that have originated or developed outside the government. This proposal is initiated and submitted to the government by a prospective contractor in anticipation of obtaining a future contract. It is the DOD policy to foster and encourage the submission of

unsolicited proposals. These proposals can be made available to government agencies for potential use in the accomplishment of their missions. All unsolicited proposals received should be forwarded to the contracting office without delay. The contracting office must formally evaluate all valid proposals.

### **CONTRACTING SUPPORT FOR DEPLOYING UNITS**

The DOC must be prepared to support deploying forces. The DOC should ensure that -

- Mobilization plans are in place to support deploying forces.

- There are on-call procedures for obtaining contracting support in emergencies.
- Contractors are identified to provide emergency logistical support to our forces.