Did You Know . . .

Published

May 31, 2011

The PARC Policy and Compliance Team is establishing a series of "Did You Know" questions that provide interesting facts and tidbits relating to contracting. With some of these, you may say, "Hey, I knew that." For others, the information may be new or updated. Finally, you may decide that you need more information, maybe even a policy, guidance, checklist, a TIPs, or even a training session. Our goal is to send out 3 to 5 of these Did You Know questions every Monday (or Tuesday in this case). Please feel free to provide feedback on these questions to the PARC Policy and Compliance Team.

Here we go!

Did you know . . .

1. . . . that, before awarding a contract in excess of the simplified acquisition threshold, the contracting officer shall review the Federal Awardee Performance and Integrity Information System (FAPIIS), (available at www.ppirs.gov, then select FAPIIS)? See FAR 9.104-6.

2. . . . that, when using FAR Part 12 procedures for acquisitions exceeding $1M in value, the contracting officer shall determine in writing (in the contract file) that the acquisition meets the commercial definition in FAR 2.101? (See DFARS 212.102(a)(i)).

3. . . . that the contract file must be documented if the Contracting Officer determines that an exception at FAR 5.202 applies to the synopsis requirements? See FAR 5.202.

4. . . . that the term, "Information Other than Cost or Pricing Data", has changed to "Data Other than Cost or Pricing Data"? See FAR 2.101.

5. . . . that any questions or concerns relating to policy and guidance may be directed to the PARC Policy and Compliance Office at DL-409CSB-HQ-CMD-PARCPolicy@eur.army.mil?

June 5, 2011

6. . . . that, when using FAR 13.5, Test Program for Certain Commercial Items, the contract file must contain a brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR 13.5 were used? See FAR 13.501(b).

7. . . . that all members, advisors, and persons involved in a source selection or receiving source selection information must sign a non-disclosure statement for that procurement? See the Department of Defense Source Selection Procedures (DFARS 215.300) and the Army Source Selection Manual (AFARS Appendix AA).

8. . . . that DCAA has sole authority for approving interim payment request for all T&M, Labor Hour, and Cost Reimbursement contracts or CLINS, even commercial ones? See FAR 52.212-4 Alt 1, FAR 42.8, DFARS 42.803, and OSD AT&L Memo dated Apr 14, 2008 titled "Approving Payments under Cost-Reimbursement, T&M and LH Contracts".

9. . . . that for services acquisitions that are not performance based, higher level approval is required? See DFARS 237.170-2 and AFARS 5137.170-2.

June 13, 2011

10. . . . that a contracting officer has only 3 days to report in FAPIIS after issuing a final termination for cause or default notice? See FAR 42.1503(f).

11. . . . that the Contracting Officer must verify that a prospective contractor is registered in CCR and include documentation in the file that this was accomplished? See FAR 4.1103.

12. . . . that the FAR contains a preference for Multiple Award IDIQ Contracts and that the Contracting Officer must document the decision whether or not to use multiple awards in the acquisition plan/strategy or contract file? See FAR 15.504(c).

13. . . . that Single Source IDIQ Contracts over $103M must have a Determination and Findings (D&F) approved at the Head of the Contracting Activity? See FAR 15.404(c).

June 20, 2011

14. . . . that a Determination and Findings (D&F) is required to be executed and included in the contract file anytime a procurement is both commercial and T&M or LH? See FAR 12.207.

15. . . . that PGI 204.2 has procedures for Contract Distribution that must be followed when distributing contracts?

16. . . . that, unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options? And, if the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options? See FAR 1.108(c).

17. . . . that the PARC may approve one time FAR/DFARS/AFARS deviations? See AFARS 5101.403(1).

June 27, 2011

18. . . . that PGI 204.804 has procedures for Contract Close Out that must be followed when closing out contracts?

19. . . . that, for the 409th CSB, Mr. Tony Baumann is the Special Competition Advocate? See AFARS 5106.502.

20. . . . that the DoD CORT (Contracting Officer's Representative Tool) is required for contracts or options that are exercised after 1 Apr 11? See ACC-P-70-1.

21. . . . that, for DoD awards, Congressional Notification is required for all contractual actions, including modifications, that have a face value, excluding unexercised options, of more than $6.5 million? See DFARS 205.303. Additionally, contracts awarded to foreign vendors for overseas performance are excluded from this reporting requirement. Also exempt are contracts placed with the Small business Administration 8(a) Program and those contracts for which synopsis was exempt under FAR 5.202(a)(1) (See FAR 5.303).

<u>July 1, 2011</u>

22. . . . that a D&F is required to be executed before each option is exercised on T&M and LH contracts? See FAR 16.601(d)(1)(i) and FAR 16.602.

23. . . . that it is appropriate to address all the General Standards of responsibility that are listed in FAR 9.104-1? And, that documents and reports supporting a determination of responsibility or non-responsibility must be included in the contract file? See FAR 9.104-1 and FAR 9.105-2(b).

24. . . . that, for competitive actions over the SAT, a written notification to unsuccessful offerors is required within three days after contract award? See FAR 15.503(b).

25. . . . that for using "brand name or equal," the solicitation must specify the salient physical, functional, or performance characteristics that make an item "equal" to the brand name one? See FAR 11.104(b). And, that in Germany, if these characteristics are addressed by a DIN, the solicitation should clearly state it?

<u>July 11, 2011</u>

26. . . . that contracting officers shall use only Firm-Fixed-Price Contracts, Fixed-Price Contracts with Economic Price Adjustment or Time and Materials/Labor Hour contracts (with certain restrictions) in the acquisition of commercial items? See FAR 12.207. The clause, 52.212-4 Alternate 1, addresses the handling of materials and travel; so any Material CLIN or Travel CLIN in commercial contracts should be considered as T&M CLINs in PD2.

27. . . . that Acquisition Strategies are required for all services efforts exceeding the Simplified Acquisition Threshold? See AFARS 5137.590-4 for the review thresholds. For the contents of an acquisition strategy, see the ACC Deskbook (Aug 2010) Part 37 Annex A.

28. . . . that the contracting officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price and shall include the justification document in the contract file? See FAR 17.205.

29. . . . that, when a COR is not appointed for service contracts, the contracting officer must document the file explaining who will be responsible for oversight and surveillance functions to include performance assessment of contractors? See DASA(P) Memo dated Oct 21 2010 titled "Post Award Oversight and Surveillance of Contracts".

July 18, 2011

30. . . . that all solicitations must be posted to the Army Single Face to Industry (ASFI) Acquisition Business Website at https://acquisition.army.mil/asfi/ ? See AFARS 5104.502.

31. . . . that all J&As over $150,000, to include ones under the commercial test program, must be posted within the times frames set forth in the applicable FAR references? See FAR 6.305, 8.405-6(a)(2), and 13.501(a)(1)(iii).

32. . . . that the 409th's Head of Contracting Activity (HCA) is the Commander of the Expeditionary Contracting Command (ECC), Brigadier General Joseph L. Bass?

July 25, 2011

33. . . . that Contracting Officers are required to ensure that the requiring activity has made the appropriate OCONUS and anti-terrorism (AT) considerations in their requirements package, and document and retain that information in the contract file? See DFARs PGI 225.7401.

34. . . . that Defense Acquisition University offers a variety of Continuous Learning Points at their website www.dau.mil?

35. . . . that, for all contracts greater than $25K, contractors are required to report their first tier-subcontractor(s) and their five highest paid executives information at www.fsrs.gov <http://www.fsrs.gov> and www.ccr.gov <http://www.ccr.gov> respectively, and that they only have one month after contract award to complete this unless otherwise specified by the KO? See FAR 52.204-10.

36. . . . that, for requirements greater than the SAT using non-DoD contracts (GSA Schedule, NASA-SEWP, other agency contracts), the requiring activity is required to complete and provide a non-DoD certification document? See DFARS 217.7800. The attached template provides the format for use in these situations.

August 1, 2011

37. . . . that FAR 19, Small Business Programs, only applies to contracts in the Unites States or its outlying areas? See FAR 19.000(b). However, FAR 19.6, Certificates of Competency and Determinations of Responsibility apply to contracts worldwide when dealing with U.S. small business concerns. See FAR 19.601(e).

38. . . . that there are staggered closing dates for ending the Fiscal Year for our major customers? (AFRICOM, IMCOM, USAREUR, etc.? See attached schedule.

39. . . . that all hardware and software requirements must be purchased through CHESS unless a Waiver is obtained? See FAR 5139.101.

40. . . . that the requirement for obtaining cost or pricing data is $700,000 unless an exception applies? See FAR 15.403-4(a)(1).

August 8, 2011

41. . . . that FAR Part 6 authorities for sole source or limiting competition are not the authorities for sole source under the SAT or FAR 13.5 or the authorities for sole source or limiting sources under Federal Supply Schedule Procurements?

42. . . . that the "authority" for sole source justifications under the Simplified Acquisition Threshold is FAR 13.106-1(b)? See FAR 13.106-1(b).

43. . . . that the authority for sole source under FAR 13.5, Test Program for Certain Commercial Items, is Section 4202 of the Clinger-Cohen Act of 1996 as implemented by FAR 13.5? See FAR 13.501(a)(ii).

44. . . . that the authority for limiting sources when placing orders or establishing BPAs under Federal Supply Schedules is the Federal Property and Administrative Service Act of 1949 as implemented by FAR 8.4. See FAR 8.401 and 8.405-6.

45. . . . that justifications (sole source or limiting sources) based on unusual and compelling are the only ones that are allowed to be approved after the fact? See FAR 6.302-2(c)(1).

August 15, 2011

46. . . . that Contracting Officers are required to get cost or pricing data for the award of any negotiated contract or modification of any sealed bid or negotiated contract unless an exception applies? See FAR 15.403-4 and FAR 15.403-1.

47. . . . that FAR Part 12 terminations are either for Cause or Convenience, and that non-commercial terminations are either for Default or Convenience? See FAR 12.403(a) and FAR 49.

48. . . . that the Service Contract Approval (SCA) approval limit for Garrison Commanders is $100,000 (not the SAT)? See AFARS 5107.503.

49. . . . that the IMCOM-E Regional Director conducts a Service Contract review quarterly to approve SCAs?

August 22, 2011

50. . . . that, under Requirements contracts, the government is not required to award task orders that exceed the maximum order limitation to the contract holder? See FAR 52.216-19(c).

51. . . . FAR 15.4 includes the techniques and pricing methodologies for pricing any effort?

52. . . . that, IAW with the Better Buying Power Initiatives dated Sept 14, 2010, we are not allowed to consider that we have adequate price competition when only one offer/bid is received as a result of a solicitation? Furthermore, we are required to perform price or cost analysis in accordance with FAR 15.404-1 to determine the price to be fair and reasonable. See attached e-mail on Improving Competition in Defense Procurements.

53. . . . that a J&A is not required when modifying a contract within the scope of the changes clause? See FAR 43.2.

August 29, 2011

54. . . . that you can visit the find DoD Contractor Personnel Office (DOCPER) webpage to obtain information on the accreditation process for Germany and Italy? See the DOCPER webpage at http://www.per.hqusareur.army.mil/content/CPD/docper.html <http://www.per.hqusareur.army.mil/content/CPD/docper.html> ?)

55. . . . that, in Germany, status accreditation provides contractor employees status under SOFA? This means that contractor employees may receive logistics support and have a certain amount of their income as tax exempt. Additionally, this saves the government money on contracts and increases US government contractors ability to acquire and retain high quality employees

56. . . . that, in Germany, there are four types of status that can be approved through DOCPER; Technical Expert (TE) - accomplishes complex tasks of a technical-military or technical-scientific nature; Analytical Support (AS) - military planning and intelligence analysis; Troop Care (TC) - provides care to members of the force (doctors, nurses, physical therapists, social workers, and military career counselors); Troop Care Information Technology (IT): IT support to TC missions? Article 73 covers TE status and an Article 72 covers the other types of status. Approval times can vary but may take up to 18 weeks or more in some cases.

57. . . . that, in Germany, DOCPER can grant immediate, temporary, unilateral status when a Military Exigency (ME) exists? This is valid for 10 weeks to allow regular processing to take place and can only be authorized for strong candidates requesting TE or AS status.

September 6, 2011

58. . . . that, for orders placed under multiple award contracts (MATOCs), the contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding $3,000? See FAR 16.505(b)(1).

59. . . . that, when not giving every awardee under a MATOC a fair opportunity to be considered for an order exceeding $3,000, (i.e., limiting competition), the contracting officer must justify the exception to fair opportunity, and the

justification must be approved at the levels stated? See FAR 16.505(b)(2) for justification requirements and approval levels.

60. . . . that the Alternate Special Competition Advocate for the 409th CSB is LTC Patrick J. Badar?

61. . . . that the Time-and-Materials and/or Labor-Hour Determination and Findings must be re-executed each time an option period is exercised? See FAR 16.601(d)(1)(i).

September 12, 2011

62. . . . that Federal Acquisition Circulars (FACs) are used to amend the Federal Acquisition Regulation (FAR)? These can be found at https://www.acquisition.gov/far.

63. . . . that the DFARS has DFARS Procedures, Guidance and Information (PGIs) that must also be consulted when referenced in a particular DFARS Subpart?

64. . . . that DoD published new source selections procedures that must be used when conducting negotiated competitive acquisitions utilizing FAR 15 procedures? See DoD Source Selection Procedures at DFARS PGI 215.300. This includes commercial acquisitions above the commercial test program at $6.5M.

65. . . . that the Changes Clause(s) should only be used to make changes within the general scope of a contract in the following areas: (1) Description of services to be performed; (2) Time of performance (i.e., hours of the day, days of the week, etc.); (3) Place of performance of the services; (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government, in accordance with the drawings, designs, or specifications, (5) Method of shipment or packing of supplies; and/or (6) Place of delivery? See Changes clauses 52.243-1 and 52.243-2 with alternates for specifics.

September 19, 2011

66. . . . that the KO shall not knowingly award a contract to a Government employee? And that the HCA is the only one authorized to grant an exception to this policy? See FAR 3.601, FAR 3.602 and AFARS 5103.602.

67. . . . that the Ethics Counselors for the 409th CSB are the members of the 409th CSB's Legal team? See AFARS 5103.104-1.

68. . . . that, effective October 11, 2011, foreign concerns will no longer exempt from the cost accounting standards? In accordance with 76 FR 49365, the exception to cost accounting standards for "contracts executed and performed entirely outside the United States, its territories, and possessions" is being removed.

69. . . . that KOs must ensure that 52.222-50 (and its Alternate 1 for performance outside the US) is included in all solicitations and contracts? Note that this clause is included in the 52.212-5 commercial clause. See FAR 22.1705.

September 26, 2011

70. . . . that PD2 closes before 0000 (midnight) (GMT) on 30 September and that contracting officers cannot expend FY 11 funds after this time? The PD2 system cannot be manipulated to alter the time of award. (Recommend not cutting it this close :)). ADDITIONAL INPUT: Ahhh, the ever-present debate...I think that's 2400 on 30 Sep, which is the same as 0000 on 1 Oct. Of course, clocks will never show 2400, as they go from 2359 on 30 Sep to 0000 on 1 Oct. Funny, but I once Googled "midnight" to see what it meant officially, and you can find people arguing that it's entering the day and others arguing it's exiting the day. Regardless, we know what it means for us...the FY is over in the second set of darkness on 30 Sep! Oh, and it's not GMT, it's CET for us...always local time. TB

71. . . . that the Army Agency Head authority for contracting, procurement and acquisition matters is the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT))? See General Orders No. 3 dated 9 July 2002.

72. . . . that one of reasons for a company to protest is the cancellation of the solicitation? See FAR 33.101.

73. . . . that files for cancelled solicitation must be kept for 5 years? See FAR 4.805.

74. . . . that PARC Policy and Compliance has started including the TIPS, Did You Know's, policies and other information on the 409th website? See http://www.409csb.army.mil/ and click on the Policy and Procedures tab.

October 3, 2011

75. . . . that, in situations where there is a Mistake in Bid, the PARC, in coordination with Legal Counsel, is delegated the authority to allow the bidder to correct its bid if the conditions of FAR 14.407-3 are met? See FAR 14.407-3.

76. . . . that bids in response to an Invitation for Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids? See FAR 14.304(e).

77. . . . that proposals received in response to a Request for Proposal may be withdrawn by written notice at any time before award? See FAR 15.208(e).

78. . . . that, if any portion of a proposal received by the KO electronically or by fax is unreadable, the KO shall immediately notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal? And, resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness? See FAR 15.207(c)?

79. . . . that Oct 1, 2011 started Fiscal Year 2012? Happy New year!