

CHAPTER 11

Indefinite-Delivery Contracts

This Chapter Presents:

- C Discussion of the circumstances where indefinite-delivery contracts may be advantageous and describes the various types that may be used
- C Procedures for placing orders
- C Examples of existing indefinite-delivery contracts which may be used by ARS

Cross-References:

- C Section 3B discusses consideration of indefinite-delivery contracts during acquisition planning.
- C Chapter 7 addresses the possible use of indefinite-delivery contracts in lieu of placing numerous orders for like items.

INTRODUCTION

Frequently, a review of purchase files and documentation on the use of the various simplified acquisition procedures will uncover a pattern of repeated buys of certain items. For instance, an Area office may find that it is consistently purchasing hardware under a BPA with a local supplier. Or, at a broader level, it may be found that the various activities of USDA are making, altogether, hundreds of buys of a particular piece of equipment, one buy at a time at each location.

In this respect, it should be noted that the Small Business and Federal Procurement Competition Enhancement Act of 1984 requires that agencies acquire supplies where practicable in quantities which will result in unit, as well as total, costs which are most advantageous to the government so long as those quantities do not exceed the quantities reasonably expected to be required by the agency (See FAR Subpart 7.2).

Consequently, solicitations for supplies, where practicable, are to contain a provision which invites the vendor to state an opinion as to whether or not the quantity of supplies proposed to be acquired is advantageous and, if not, to recommend a quantity including a quotation for the total and the unit prices of the recommended quantity.

In any case where a location, Area office, or the USDA as a whole is purchasing particular items repeatedly over the course of a year, (generally, with the total annual purchase amount exceeding \$100,000), establishment of an indefinite-delivery or "term" contract should be considered (See FAR 16.5). Such a contract provides an established source of supply, reduces the administrative costs of processing multiple new orders, and improves the capacity of purchasing operations to meet program needs in a timely manner.

Finally, FAR 13.106-1(e) provides another alternative to situations where additional quantities of supplies or services may be required. FAR 13.106(e) authorizes the use of options in simplified acquisitions provided that the policy and procedures in FAR Subpart 17.2 are followed and that the aggregate value of the basic acquisition and all options does not exceed the simplified acquisition threshold.

TYPES OF INDEFINITE-DELIVERY CONTRACTS

FAR Subpart 16.5 describes three types of indefinite-delivery contracts--definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used when the exact times and/or quantities of future deliveries are not known at the time of contract award.

The various types of indefinite-delivery contracts offer the following advantages:

- C All three types permit (1) government stocks to be maintained at minimum levels and (2) direct shipment to users.

- C Indefinite-quantity contracts and requirements contracts also permit (1) flexibility in both quantities and delivery scheduling and (2) ordering of supplies or services after requirements materialize.
- C Indefinite-quantity contracts limit the government's obligation to the minimum quantity specified in the contract.
- C Requirements contracts may permit faster deliveries when production lead time is involved, because contractors are usually willing to maintain limited stocks when the government will obtain all of its actual purchase requirements from the contractor.

Definite-Quantity Contracts

A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries to be scheduled at designated locations upon order.

A definite-quantity contract may be used when it can be determined in advance that (1) a definite quantity of supplies or services will be required during the contract period and (2) the supplies or services are regularly available or will be available after a short lead time.

Requirements Contracts

A requirements contract provides for filling all actual purchase requirements of designated government activities for specific supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor. A requirements contract may be used when the government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated government activities will need during a definite period. Generally, a requirements contract is appropriate for items or services that are commercial products or commercial-type products. Funds are obligated by each delivery order, not by the contract itself.

Government Estimate

For the information of offerors and contractors, the CO must state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The CO may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

Maximum Order Limitation

The contract must state, if feasible, the maximum limit of the contractor's obligation to deliver and the government's obligation to order. The contract may also specify maximum or minimum quantities that the government may order under each individual order and the maximum that it may order during a specified period of time.

Indefinite-Quantity Contracts

An indefinite-quantity contract provides for an indefinite- quantity, within stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor. An indefinite-quantity contract may be used

when the government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period and it is inadvisable for the government to commit itself for more than a minimum quantity. An indefinite-quantity contract should be used only for items or services that are commercial products or commercial-type products and when a recurring need is anticipated. Funds for other than the stated minimum quantity are obligated by each delivery order, not by the contract itself.

The contract must require the government to order and the contractor to furnish at least a stated minimum quantity of supplies or services (the amount that the government is fairly certain to order) and as ordered, the contractor to furnish any additional quantities, not to exceed a stated maximum. The CO may obtain the basis for the maximum from records of previous requirements and consumption, or by other means, but the maximum quantity should be realistic and based on the most current information available.

Examples:

- C Activities receive a definite amount of the contract item at definite times (e.g., 400 board feet of white pine to be delivered on the first day of each month);
- C Activities receive an indefinite amount of the contract item at definite times (e.g., an activity is allowed to order any amount between 300 pounds and 1,000 pounds of hamburger, with delivery to be made each Wednesday);
- C Activities receive a definite amount of the contract item at indefinite times (e.g., an activity can order 4 tons of asphalt, to be delivered, one ton at a time, on request any time between March 1 and September 30);
- C Activities receive an indefinite amount at indefinite times (e.g., an agency can order a minimum of 30,000 feet and a maximum of 50,000 feet of PVC pipe, to be delivered within 15 days of issuance of a delivery order, with no order to be for less than 1,000 feet or for more than 5,000 feet); or
- C Activities receive all of their needs for a specific period from one or more named suppliers.

POLICY FOR THE USE OF INDEFINITE-DELIVERY CONTRACTS

Authority to Establish Indefinite-Delivery Contracts

Most indefinite-delivery contracts are established by the PAO or other appropriate CO. However, Purchasing Agents may enter into contracts on an indefinite-delivery basis if the maximum obligation possible under the contract is within their delegated authority. Thus, a Purchasing Agent with \$25,000 purchasing authority could make a contract for an indefinite quantity of a product if the total amount that could be purchased over the term of the contract were limited to less than \$25,000.

Competition in the Use of Indefinite Delivery Contracts

The rules concerning competition (See Section 7C) apply to indefinite-delivery contracts as well as to other types of contracts. If the total that may be ordered over the term of the contract exceeds \$2,500, the Purchasing Agent must obtain reasonable competition. However, competition must be obtained only once: when the contract is first established. It is unnecessary to get competition before placing an individual order.

It is important to note that the use of an indefinite-delivery contract differs significantly from a BPA. A BPA does not establish a contract but merely sets up in advance certain ordering provisions for the convenience of the government and the supplier--neither of whom have any legal obligation. Under an indefinite-delivery contract, however, the government is contractually obligated to buy at least a minimum amount, and the vendor is required to sell to the government up to the contract's maximum amount.

ORDERING UNDER AN INDEFINITE-DELIVERY CONTRACT

Indefinite-Delivery Contract Provisions

Contract clauses contained in indefinite-delivery contracts govern the way in which orders under the contract are placed. USDA and ARS contracts call for the AD-838 to be used as a delivery order. In addition, most contracts spell out who can order, how much can be ordered, the place of delivery, and other details. Before ordering, all of the contract's provisions should be read and understood. The Purchasing Agent/CO must include contract clauses prescribed in FAR 16.506 as well as others which are identified in the FAR Subpart 52.3 matrices entitled, "Indefinite-Delivery" and "Simplified Acquisition Procedures." Exhibit 11(i) presents the provisions that should be considered when using an indefinite-delivery contract.

Overview of the Indefinite-Delivery Contract Process

The following steps must be followed in using indefinite-delivery contracts. Remember that the requirements for competition, socioeconomic policy implementation, and fair and equitable treatment of all suppliers apply to the use of indefinite-delivery contracts.

- C Review purchasing files to identify repetitive purchases.
- C Determine that indefinite-delivery contract is appropriate.
- C Determine which type of indefinite-delivery contract is needed.
- C Solicitation of competition by person having authority; receipt and evaluation of bids, quotes, or proposals; award of an indefinite-delivery contract.
- C Placement of orders by person with authority to order, in accordance with the method of ordering and other provisions of the indefinite-delivery contract.
- C Ensuring delivery or performance by the contractor, under the terms of the contract and processing payment to contractor.

Delivery Order Content

FAR 16.505 requires that orders placed under indefinite-delivery contracts contain the following information:

- C Date of order.
- C Contract number and order number.
- C Item number and description, quantity, and unit price.
- C Delivery or performance date.
- C Place of delivery or performance (including consignee).
- C Packaging, packing, and shipping instructions, if any.
- C Accounting and appropriation data.
- C Any other pertinent information.

Also see Exhibit 6D(ii), Preparing the AD-838 as a Delivery Order.

INDEFINITE-DELIVERY CONTRACTS ARRANGED FOR ALL DEPARTMENTS AND AGENCIES: EXAMPLES

Many of the established sources set up by GSA and the other National Supply System managing agencies are indefinite-delivery contracts that provide for ordering by all executive agencies.

The single-award Federal Supply Schedules (See Chapter 6) are straightforward "requirements" contracts. If ARS has a requirement for a product provided under the FSS contract, it must fill that requirement through the FSS contractor. The multiple-award FSS and ADP Schedules are indefinite-delivery-indefinite-quantity contracts. A supplier is guaranteed agency orders if it is the lowest priced supplier on a schedule (See Chapter 6).

Other such contracts include the VA Medical Center ordering schedules and Decentralized Schedules, and special supply contracts set up by GSA for appliances, vehicles, and other items.

PROPERTY REHABILITATION SERVICES AND SOURCES

GSA's Federal Supply Service periodically surveys Federal agencies to obtain estimates of

agency maintenance and repair needs for the coming year. To assist GSA in providing appropriate contract coverage at a reasonable cost, agencies must provide accurate data. Based upon these surveys, GSA enters into indefinite-delivery contracts that are to be used as the primary source for meeting requirements for maintenance, repair, rehabilitation, and reclamation of personal property to the extent provided for in such contracts. These contracts and covering price schedules may be mandatory for agencies within the geographic areas designated.

Request for Waivers

When an agency determines that services available from an existing contract will not fill its needs, a request to waive the mandatory usage requirement (where necessary) is submitted for approval to the appropriate GSA Regional Director. This request must specify the quantities involved, describe the differences between the services required and those listed in the contract, and give the reasons why the services will not meet the requirements. Agencies must not initiate action to acquire similar services from non-GSA sources until a request for a waiver has been approved. See FAR 8.404-3.

Contract Administration

Unless otherwise specified, agency activities using a GSA indefinite-delivery contract have primary responsibility for the administration of purchase orders placed under the contract and must deal directly with the contractor concerned. This responsibility includes placing orders, making payments, inspecting, and accepting or rejecting the services performed. One may also make price adjustments for nonconforming services or require the correction of these services when appropriate. One or more purchase orders may be terminated (but not the entire contract) for default when warranted, and the contractor may be charged with any resulting excess costs from obtaining replacement services, according to the provisions of the applicable price schedule. The GSA Regional Office must be notified of any price adjustments, corrections, or purchase order terminations for default. Procedures for these contract administration functions are explained in further detail in the contract price schedules.

GSA Regional Offices will provide the overall administration of service contracts. Specifically, GSA will serve as liaison, when necessary, between the contractor and using activities and assist in resolving any issues that arise concerning contract performance. GSA will assist in expediting orders when needed and ensure compliance with contract requirements through periodic visits to contractor facilities and the sampling of using activity evaluations. GSA will also be responsible for termination of a service contract when warranted.

USDA INDEFINITE-DELIVERY CONTRACTS

The USDA Office of Operations sometimes makes consolidated indefinite-delivery contracts for products and services constantly in demand by the Department but not available from GSA. Purchasing Agents should check the availability of such contracts.

ARS INDEFINITE-DELIVERY CONTRACTS

Various ARS Area offices sometimes have indefinite-delivery contracts with suppliers for

common-use products not available from government sources. These contracts may include such items as hay, animal feed, research animals, or hardware.

OTHER GOVERNMENT AGENCIES

Purchases may be made under the contracts of other government agencies if both the agency and the contractor agree. Many transactions of this kind are carried out with the Veterans Administration. One contract often used by ARS is that held by the Forest Service for radio communications equipment.

To order from suppliers under other agencies' contracts, first arrange with the other agency and the contractor to allow placement of orders by ARS. Place the order using the AD-838 Purchase Order prepared as a Delivery Order.

For such purchases, inspection and acceptance is normally the responsibility of the ordering agency. In general, however, the ARS Purchasing Agent will have none of the COs responsibilities or authority, unless specifically delegated. The Purchasing Agent must be cautious in dealing with the supplier to avoid impairing the government's rights in any way.

Exhibit 11(i)
Indefinite-Delivery Contract Checklist

1. Minimum total order _____
2. Maximum total order _____
3. Minimum single order _____
4. Maximum single order _____
5. Persons authorized to order _____
6. Method of ordering _____
7. Placing of delivery
or performance _____
8. Time in which order
must be filled _____
9. Persons authorized to make
changes in the contract _____
10. Changes the ordering
official may make _____
11. Period in which orders may
be placed (term of contract) _____
12. Place of inspection _____
13. Method of shipment _____
14. Method of documenting
receipt _____
15. Unit price of products or
services under contract _____
16. Discount terms _____