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**ACQUISITION OPERATING PROCEDURE (AOP)**

**FROM:**

  
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**SUBJECT:**

AOP No. 8: Pre-Contract File Review

◆ **PURPOSE:** The purpose of this Acquisition Operating Procedure (AOP) is to establish a Pre-Contract File Review process of pre-solicitation and pre-contract file documents. The Pre-Contract File Review process will be conducted for selected proposed contract actions outlined in this procedure to ensure the proposed contract actions, when properly executed, will--

- Comply with established acquisition statutes, regulations, policies and procedures;
- Reflect sound business judgment; and
- Be in the best interests of the Government.

This procedure applies to the Procurement Operations Division of Management Services, and excludes the contracting staff at the National Information Technology Center and National Finance Center.

◆ **REVISIONS:** Replaces Procurement Operations Division (POD) Policy Memorandum 03-04, dated June 10, 2003.

◆ **AUTHORITIES:** AGAR Advisory 87A, USDA Federal Procurement Data Quality Plan, dated November 13, 2009; and Departmental Regulation 5000-4, Legal Review of Contractual Actions, dated September 10, 1997.

◆ **FILE REVIEWERS:**

The File Reviewers may consist of:

- Cognizant Contracting Team Lead and Contract Specialist;
- Other POD Contracting Team Leads and Contract Specialists other than the cognizant; Procurement Analyst; and Head of the Contracting Activity Designee (HCAD); and
- External Office – Small and Disadvantaged Business Utilization, Office of General Counsel, Procurement Policy Division or other related offices as deemed appropriate.

◆ **PROPOSED CONTRACT ACTIONS TO REVIEW:**

The Pre-Contract File Review applies to solicitations; purchase orders; task and delivery orders; blanket purchase agreements (BPA); BPA calls; contracts; and modifications. The dollar thresholds exclude contract modifications for administrative funding and exercising of option actions.

<b>PRE-CONTRACT FILE REVIEW THRESHOLDS</b>	
<b>Threshold</b>	<b>Required Review</b>
Between \$3,000 - \$5,000,000	Randomly selected proposed contract actions, at the Contracting Team Lead's discretion to determine File Reviewers
\$5,000,000 and greater	All proposed contract actions reviewed by Contracting Team Lead and with the discretion to determine other File Reviewers
High Visibility Actions <i>(regardless of value)</i>	Selected proposed contact actions at the HCAD's discretion

◆ **FILE DOCUMENTATION:**

1. All supporting and applicable documents (e.g. acquisition strategy, milestones, clearances, Determinations & Findings, Justifications and Approvals, waivers, pre/negotiated memoranda, award memorandum) must be placed in the pre-contract file at time of submission for review in accordance with AOP Number (No.) 7, Contract File Checklists.
2. Requirements to note:
  - The Program Official and Contracting Officer (CO) should sign and date the Acquisition Strategy and procurement milestones.
  - Performance-Based Contracting will be included for eligible services requirements, whenever possible (FAR Subpart 11.101, and FAR Subpart 37.6).
  - If a Federal Business Opportunities notice results in contractor or vendor responses, the CO will include the contractor/vendor responses, CO's draft contractor/vendor reply(s), and the written memorandum on whether the proposed contract action should remain, as a non-competitive or limited competition must be provided to the cognizant Contracting Team Lead.
  - Negotiated procurements over \$500,000 (\$1M for construction) should contain subcontracting plan requirements as part of the proposal evaluation criteria, if applicable. Procurements issued against General Services Administration Federal Supply Schedules, Government-wide Acquisition Contracts and Set-Aside for a Small Business concerns are excluded from subcontracting requirements.

3. The cognizant Contract Specialist must use the appropriate Contract File Checklists (see AOP No.7, Contract File Checklists)
4. All documents for the Contract File Checklist must contain the current notations, filed, and tabbed sequentially per the Contract File Checklists; otherwise, the file will be returned to the cognizant Contract Specialist for correction prior to further review.
5. The cognizant Contract Specialist will place the pre-contract file documents in the 6-part file folders for Contracts and the pocket/standard file folders for Simplified Acquisition Procedures actions.
6. The cognizant Contract Specialist will provide the original File Review Form and pre-contract file sequentially to the File Reviewers identified by the cognizant Contracting Team Lead.
7. The File Review Form(s) will become a permanent part of the official contract file.

◆ **REVIEW PROCESS:**

1. In order to expedite the Pre-Contract File Review, the cognizant Contract Specialist must identify, document and resolve contractual problems, including legal concerns during the early stages of procurement planning (prior to Offeror's discussions).
2. Normally, five (5) business days will be allowed to complete the Pre-Contract File Review to enable a thorough and meaningful contract review by the File Reviewers; however, the cognizant Contracting Team Lead will establish, on a case-by-case basis, the due date, for which the Pre-Contract Review is to be completed.
3. The cognizant Contracting Team Lead may assign the Pre-Contract File Review to a Contract Specialist on their team for specific proposed contract actions and/or may request review by other POD team staff and/or External Offices.
4. The File Reviewer(s) may be allowed up to five (5) business days, depending on the number of File Reviewers, to complete the Pre-Contract File Review.
5. The File Reviewers must use the File Review Form (Attachment) to explain comments, and to provide findings and recommendations.
6. The File Reviewers must return the File Review Form and the pre-contract file to the cognizant Contracting Team Lead, which requested the Pre-Contract File Review.
7. If the cognizant Contracting Team Lead requests a Pre-Contract File Review by other POD Contracting Team Leads, the other POD Contracting Team Lead may complete the Pre-Contract File Review or may:
  - Assign the Pre-Contract File Review to a Contract Specialist on their team.
  - The Contract Specialist will complete the Pre-Contract File Review and provide the comments, findings and/or recommendations to their Contracting Team Lead.
  - The other POD Contracting Team Lead will review and/or discuss the Contract Specialist's comments, findings or recommendations prior to providing the File Review Form and the pre-contract file to the cognizant Contracting Team Lead requesting the Pre-Contract File Review.

8. The cognizant Contracting Team Lead will review the File Reviewer's comments and include any additional comments as appropriate, and then provide the File Review Form and pre-contract file to the cognizant Contract Specialist for action.
9. The cognizant Contracting Team Lead may request a meeting with the cognizant Contract Specialist and/or File Reviewer(s) to discuss the comments, findings and recommendations submitted.

◆ **WAIVER REQUEST:**

1. In special situations, the cognizant Contracting Team Lead or HCAD may waive the Pre-Contract File Review process for a specific proposed contract action, when it is determined to be in the best interest of the agency.
2. The cognizant Contract Specialist will submit the File Review Form with the "Waiver" box checked and at a minimum, annotate or attached supporting information/rationale and impacts on the proposed contract action or agency should the cognizant Contracting Team Lead or HCAD not grant the waiver.
3. The cognizant Contract Specialist will allow adequate time for a deliberate assessment of all facts by the cognizant Contracting Team Lead or HCAD prior to the procurement action being released.



