

Figure 1. Key Aspects of the Contracting Process

Pre-Award			Award		Contract Administration			Contract Closeout
Requirements Development	Acquisition Planning		Source Selection	Award	Contract Monitoring	Acceptance of Supplies/Services	Payments	Contract Closeout
<p>Contracting activities and their customers should consider both technical needs and business strategies when defining and specifying requirements.</p> <p>The Government must define and describe agency requirements that explain the required results in clear, specific, and objective terms with measurable outcomes in a statement of work, statement of objectives, or performance work statement.</p> <p>Establish files containing the records of all contractual actions (contract files, documentation of market research, documentation of pre-negotiation and negotiation decisions, surveillance plans, and surveillance documentation).</p>	<p>The acquisition plan is a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.</p> <p>When cost or pricing data are required, contracting officers should use cost analysis to evaluate the reasonableness of individual cost elements and should use price analysis to verify that the overall price is fair and reasonable.</p> <p>When planning for acquisitions, before any Requests For Proposal (RFP) are sent out, the program funding must be executable.</p> <p>Determine contract type and duration of contract.</p> <p>Determine whether any waivers or deviations are required.</p> <p>Plan for requesting Defense Contract Audit Agency and Defense Contract Management Agency assistance.</p>	<p>Conduct an assessment of technical, cost, schedule, performance risks, and the plan for mitigating those risks.</p> <p>Develop quality assurance surveillance plans and responsibilities for monitoring contract performance.</p> <p>Assign an administrative contracting officer and determine the number of contracting officer's representatives needed to be appointed.</p>	<p>The objective of a source selection is to choose the proposal that represents the best value to the government.</p> <p>Price or cost to the Government must be evaluated in every source selection and the quality of the product or service must be addressed through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file; conflicts of interest, or the appearance thereof, must be avoided when conducting source selection.</p> <p>Conduct proposal evaluation by assessing the offeror's proposal and ability to perform the prospective contract successfully.</p> <p>No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility for the prospective contractor.</p>	<p>Contracting officers must provide for full and open competition through use of the competitive procedures that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently.</p> <p>Sole-source contracts may be awarded if there is only one responsible source and no other supplies or services will satisfy agency requirements. In addition, a written justification and approval is required prior to commencing negotiations for a sole-source contract.</p> <p>The award decision is based on evaluation factors and significant sub factors that are tailored to the acquisition and an agency must evaluate competitive proposals and then assess their relative qualities solely on the factors and sub factors specified in the solicitation.</p>	<p>Contracting officers perform or delegate oversight and surveillance to ensure that suppliers or services conform to contract requirements.</p> <p>The contracting officer is responsible for ensuring that there is an effective process for measuring the contractor's performance that includes clearly defined levels of contractor surveillance.</p> <p>A fully developed and appropriately structured contract surveillance system is critical to ensure that the contractor is performing on schedule, current in its understanding of the requirements, and applying adequate skills and resources to the contractual task.</p> <p>Continued update of contract files.</p> <p>Contractor system reviews should be performed by Defense Contract Management Agency and Defense Contract Audit Agency.</p> <p>DoD Components must track Government-furnished property. The contracting officer is responsible for Government property administration, but normally delegates the responsibility to a contract administration office. The effectiveness of contractor records and other aspects of contractor property control systems are reviewed through Government conducted property management system audits.</p>	<p>Acceptance of contractual supplies or services may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract.</p> <p>The Government should not accept supplies or services before completion of the Government contract quality assurance actions, and the contracting officer should reject supplies or services not conforming to contract requirements.</p> <p>Acceptance constitutes acknowledgement that the supplies or services conform with contract quality and quantity requirements and must be evidenced by an acceptance certificate.</p>	<p>Payments made by the Government should directly correlate to a contractual document, contractor invoice, and acceptance or receiving report.</p> <p>Invoices are reviewed by the contracting officer's representative and the Defense Contract Audit Agency.</p> <p>Financial management of funds for contract to include:</p> <ul style="list-style-type: none"> Ensuring appropriated funds are used to fund the contract. Ensuring fund obligations are not in excess of appropriated funding. 	<p>When the contractor has satisfactorily completed contract performance, and final payment has been made, the contract file should be closed as soon as possible.</p> <p>The contract file must contain all documents to facilitate full reconciliation of the contract actions through the life of the contract.</p> <p>Closeout actions include:</p> <ul style="list-style-type: none"> Physical actions, such as issuing a unilateral modification to deobligate excess funds after receipt of the final invoice and a receiving report. Administrative actions, such as disposing of Government-furnished property and classified information, as well as obtaining releases from contractor's claims. Financial actions, such as ensuring that all interim or disallowed costs are settled. Financial actions should be completed when the total obligations and the contract amount are in agreement and all disbursements have been paid and recorded properly.

Red Text = Top 5 recurring contracting problem areas.

Figure 2. Fraud Indicators and Poor Practices in Relation to the Contracting Problem Areas

Pre-Award			Award		Contract Administration			
Requirements	Contract Documentation	Contract Type	Source Selection	Contract Pricing	Oversight and Surveillance	Contractor Personnel	Property Accountability	Financial Management
<p>The Government fails to state requirements functionally to the maximum extent possible. Specifications that are vague make it difficult to reasonably compare estimates.</p> <p>The Government defines statements of work and specifications to fit products or capabilities of a single contractor, which effectively excludes competition.</p> <p>The Government splits requirements to use simplified acquisition procedures in order to avoid review and approval.</p> <p>The Government modifies the contract shortly after award in order to make material changes in the requirements or statement of work.</p>	<p>A pattern of missing documents or documentation with outdated information in the contract file.</p> <p>Contract documents that are altered, backdated, or modified to cover deficiencies.</p> <p>Contract awards are made without adequate documentation of all pre-award and award actions.</p> <p>Invoices that do not have adequate supporting documentation or supporting documentation is incomplete.</p>	<p>Using a cost-reimbursement type contract may increase the risk that the contractor will fraudulently overcharge the Government.</p> <p>Award/use of an illegal cost-plus-percentage-of cost contract.</p>	<p>Improper relationships between Government and contractor personnel.</p> <p>The Government fails to perform market research to determine evaluation factors, contracting method, or whether commercial items or non-developmental items would meet the Government's needs.</p> <p>The Government restricts procurement to exclude or hamper any qualified contractor.</p> <p>The Government reveals information about procurements to one contractor which is not revealed to another.</p> <p>The Government accepts late or non-responsive proposals.</p> <p>The Government improperly disqualifies offerors.</p> <p>The Government exercises favoritism towards a particular contractor during the evaluation process.</p> <p>The Government awards contracts to contractors with poor records of performance.</p> <p>The Government awards contracts that include items other than those contained in the bid specifications.</p> <p>The Government's approval or a justification for less than full and open competition is based on improper reasons or inaccurate facts.</p>	<p>The Government does not prepare estimates or prepares estimates after solicitations are requested.</p> <p>The Government and contractor utilize unqualified personnel to develop cost or pricing data used in estimates.</p> <p>Government estimates and contract award prices are consistently very close.</p> <p>The Government approves items that are of lesser value but the contract cost is not reduced.</p> <p>The contractor issues an engineering change proposal soon after the award of a contract.</p> <p>Certain contractors always bid against each other or conversely, certain contractors do not bid against one another.</p> <p>There is an apparent pattern of low bids regularly recurring, such as corporation "x" always being the low bidder in a certain geographical area or in a fixed rotation with other bidders.</p> <p>The successful bidder repeatedly subcontracts work to companies that submitted higher bids or to companies that picked up bid packages and could have bid as prime contractors, but did not.</p> <p>Statements by a bidder that it is not their turn to receive a job or conversely that it is another bidder's turn.</p>	<p>Contractors award subcontracts to unsuccessful bidders.</p> <p>The Government provides materials to contractors even though contractors are being paid to provide the materials.</p> <p>The contracting officer's representative approves contract modifications.</p> <p>Contractors failed to meet terms but no compliance efforts are undertaken.</p> <p>The Government certifies receipt of goods without performing inspections.</p> <p>The users frequently complain of poor quality of supplies or services provided under a contract. This may indicate that contractors are delivering something less than what you are paying for.</p> <p>The Government fails to closeout contracts in a timely and appropriate manner.</p>	<p>Increased workloads and responsibilities that prohibit ongoing DoD monitoring of each contractor's work.</p> <p>Contractors certify payments for vendor goods, services, or salaries.</p>	<p>Inadequate management oversight and physical inventory control.</p> <p>Unreliable property inventory data.</p> <p>Inventory records disclose unusual patterns that cannot be reasonably explained.</p> <p>Inventory items marked with incorrect disposal condition codes, such as repairable or scrap, when they should be labeled excellent.</p> <p>Contractors are not required to return excess materials.</p>	<p>The contractor submits false invoices or claims to the Government.</p> <p>The Government pays contractors twice for the same items or services without attempting to recoup the overpayments.</p> <p>The Government does not regularly reconcile contract payments, daily transactions, and inventory.</p> <p>The contractor fails to correct known business system deficiencies.</p> <p>Contractors or suppliers complain that they are not being paid in a timely manner. This may indicate fraudulent manipulations and diversion of Government resources through supply or finance operations.</p> <p>Excess profits on either a specific contract, product line, or diversion.</p> <p>Later billings showing a downward adjustment in material costs as labor/overhead costs increase.</p> <p>The Government's failure to deobligate funds.</p>