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Contractor Purchasing System Review (CPSR) Group

CPSR Update - Common Purchasing System Deficiencies and Safeguarding Covered Defense Information and Cyber Incident Reporting

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- What is a Contractor Purchasing System Review (CPSR)
- Clauses and Guidance to Understand
- CPSR Guidebook
- Preparing for a CPSR
- CPSR Review Elements
- Learning from others: Most common contractor deficiencies in FY18
- Emphasis item – Supply Chain Management - Safeguarding Controlled Defense Information (CDI) when subcontracting

What is the Purpose of a CPSR?

- Evaluation of efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting
- Complete evaluation of a contractor's purchasing of material from services, subcontracting, and subcontract management from development of the requirement through completion of the subcontract performance
- Report findings to Contracting Officer providing a basis for granting, withholding, or withdrawing approval of the purchasing system
- Review corrective action plan for effectiveness and validate implementation

- FAR part 44 – Subcontracting Policies & Procedures
- DFARS part 244 – Subcontracting Policies & Procedures
- FAR 52.244-2 (Alternate I when applicable) – Subcontracts
- DFARS 252.242-7005 - Contractor Business Systems
- DFARS 252.244-7001 - Contractor Purchasing System Administration (New Business Rules)

Who Determines the Need for a CPSR?

- Eligible contractors are identified by the CPSR Team with Administrative Contracting Officer (ACO) input and coordination based on:
 - Qualifying Sales
 - Subcontracting volume, complexity and dollar amount
 - Contractor past performance
 - ACO identification of risk
 - CBAR - the database of record
- ACO solicits input from the contractor and performs a risk analysis using the DCMA CPSR Risk Assessment/Request form

- The current \$25 Million FAR Threshold found at 44.302(a) has been in effect since 1996
- DCMA issued a Class Deviation Memo, signed by DCMA Director on October 7, 2016, raising the CPSR Threshold to \$50 Million
- This \$50 Million threshold was chosen based on an analysis of inflation and acceptable risk
- Goal is to be consistent with Better Buying Power (BBP) 3.0, and should reduce the administrative burden on smaller contractors
- A FAR Case has been opened to raise the threshold to \$50 Million.

- Government sales include all Government contracts/subcontracts minus competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment contracts, or sales of commercial items pursuant to Part 12
- Add up your eligible prime and subcontract sales and if you meet the threshold then bring it to your ACO's attention
- We don't have visibility of your subcontract sales numbers so we'll ask you for this data

The Four Types of CPSR Reviews

- Initial - System not yet evaluated and Contractor meets FAR 44.302 (CPSRs) dollar threshold requirement
- Comprehensive - System previously approved and usually conducted 3 years after initial or previous review
- Follow-up – Validates the Correction Action Plan (CAP) on a disapproved purchasing system and addresses previously identified deficiencies
- Special - Evaluation of specific risk areas

Are You a Candidate for a CPSR?

- Not everyone requires, or benefits from, a system approval
- Is your government customer or prime contractor pushing for a CPSR?
- Are the consent to subcontract clauses in your contract creating a lot of work for you and your ACO?
- A relationship with your ACO is important and will help determine if an approved purchasing system is right for you
- Must meet the threshold or have significant risk factors for starters
- What if you're not eligible?

Keep Your Purchasing House in Order

- The CPSR Group will not routinely conduct reviews of a contractor's purchasing system that does not meet the \$50 million threshold however:
 - A CPSR can still be requested on a case by case basis anytime the ACO determines there is a need
 - Regardless of the \$50 million threshold, DCMA will issue a corrective action request (CAR) and identify the purchasing system as deficient when a material deficiency is identified
 - The threshold increase does not waive the consent requirements nor the advance notification requirements at FAR 44.2

- Outlines the whole CPSR process
- Job Aids provide an extensive explanation of all report elements
- Addresses compliance (both policy and practice)
- A living document updated by “Champions” as requirements change
- All revisions are reviewed by the Agency’s Policy and Legal Groups
- Posted on the Agency’s external website and available to all contracting officers and contractors
- Found at <https://www.dcma.mil/> under the **Customer & Industry Access** section

- How do I prepare?
 - Understand the clauses that are in your contract
 - Best practice is to conduct a prime contract receipt and review
 - Understand the reason you are being asked to comply in each instance
 - The FAR and DFARS provide ultimate guidance
 - Review the CPSR Guidebook
- CPSR is coming to check your files so that government officials can rely on your purchasing system

- Entrance briefing with contractor and government personnel
- Physical review based on the 30 CPSR report elements
- CPSR Analysts conduct daily briefs to keep the contractor and ACO informed of arising concerns or issues
- Analyst questions are formally submitted to the contractor in writing and tracked on a question log which is provided at end of review
- Pre- Exit briefing conducted to present contractor with preliminary findings (compilation of the daily briefs)
- Formal Exit briefing conducted to provide the contractor and ACO with preliminary findings

- Analyze data and develop statistics
- Prepare a report addressing the contractor's policy and practice for each of the review elements
- Report released to ACO within 30 business days of exit briefing
- When non-material deficiencies are identified, the procurement analyst issues a Level II CAR and follows through to closure
- When material deficiencies are identified, the procurement analyst prepares a draft level III CAR and the contractor provides a response to the ACO

CPSR REPORT MATRIX (Elements 1-15)	DFARS 252.244-7001 Criteria
1. Policies and Procedures Manual	(c) (1), (17), (19), (22) and (24)
2. Truthful Cost or Pricing Data (Truth-In-Negotiations Act (TINA))	(c) (10), (16) and (22)
3. Cost Accounting Standards (CAS)	(c) (2) and (19)
4. Prior Consent and Advance Notification	(c) (1)
5. Small Business Subcontracting Plans	(c) (2) and (19)
6. Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	(c) (7)
7. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions (Anti-Lobbying)	(c) (2) and (19)
8. Defense Priorities and Allocation System (DPAS) Rating	(c) (1)
9. Federal Funding Accountability and Transparency Act (FFATA) of 2006	(c) (2) and (19)
10. Quality Management and Counterfeit Parts Detection and Avoidance Systems	(c) (19) and (21)
11. Price Analysis	(c) (8), (9), (10), (16) and (22)
12. Source Selection	(c) (4), (5), (7), (8), (9), (10), (20), and (21)
13. Negotiations	(c) (11) and (12)
14. Make-or-Buy Program	(c) (6)
15. Limitations on Pass-through Charges	(c) (24)

CPSR REPORT MATRIX (Elements 16-30)	DFARS 252.244-7001 Criteria
16. Documentation	(c) (4), (5), and (15)
17. Training	(c) (17) and (18)
18. Internal Review/Self-Audit	(c) (17) and (18)
19. Mandatory FAR/DFARS Flow Down Requirements/Terms and Conditions	(c) (2), (16) and (19)
20. Purchase Requisition Process	(c) (4)
21. Commercial Item Determination	(c) (5)
22. Subcontract Types	(c) (13) and (23)
23. Procurement Authority	(c) (3) and (20)
24. Supply Chain Management Process	(c) (12), (14), (20) and (21)
25. Buy American and Berry Amendment	(c) (1)
26. Restrictions on the Acquisition of Specialty Metals/Articles containing Specialty Metals	(c) (19)
27. Subcontractor/Vendor Closeout Process	(c) (4)
28. Long Term Purchasing Arrangements	(c) (23)
29. Handling Change Orders and Modifications	(c) (15)
30. Intra/Inter-Company, Affiliate, or Subsidiary Transactions	(c) 5)

Top 10 Material Deficiencies (FY18)

1. Cost/Price Analysis (55/103)
2. Debarment (44/103)
3. Federal Funding Accountability & Transparency Act (FFATA) (42/103)
4. Sole Source Selection Justification (SSSJ) (40/103)
5. Defense Priorities & Allocation System (DPAS) Rating (37/103)
6. Anti-Lobbying (31/103)
7. Commercial Item Determination (CID) (31/103)
8. Truth in Negotiations Act (TINA) (18/103)
9. Negotiations (15/103)
10. Policy & Procedure Manual (14/23)
11. Cost Accounting Standards (CAS) (14/103)

Top 10 Non-Material Deficiencies (FY18)

1. Policy & Procedure Manual (73/103)
2. Documentation (48/103)
3. Negotiations (27/103)
4. Sole Source Selection Justification (SSSJ) (27/103)
5. Commercial Item Determination (CID) (27/103)
6. Cost/Price Analysis (20/103)
7. Debarment (18/103)
8. Handling Change Orders & Modifications (16/103)
9. Mandatory FAR & DFARS Flow-Down T & Cs (15/103)
10. Training (14/103)

Renewed Emphasis – Commercial Items

- FAR 52.244-6 is in your prime contract
- Document market research for commercial products
- Conduct Price Analysis
- Self assertion of commerciality by the sub-contractor
- Verification of the commerciality assertion by the prime contractor
- Identification of the commercial item type as defined per FAR 2.101

No Counterfeit Parts! – DFARS 252.246-7007

- DOD has been addressing the proliferation of counterfeit (CF) electronic parts worldwide and their infiltration into the defense supply chain
- **DFARS 252.246-7007** only applies to contractors subject to the Cost Accounting Standards (CAS)
- Failure to maintain an acceptable CF parts detection and avoidance system may result in disapproval of the purchasing system and/or withholding of payments
- May affect the allowability of costs of CF parts or suspect CF parts and the cost of rework or corrective action
- The language of this clause must be included in subcontracts, including commercial item contracts, for electronic parts or assemblies containing electronic parts

No Counterfeit Parts! – DFARS 252.246-7008

- **DFARS 252.246-7008** is new and creates a hierarchy for purchasing
- First – purchase electronic parts from the original manufacturer or authorized aftermarket manufacturer
- Second - source from own approved suppliers provided they meet CF prevention standards. Contractor bears responsibility for the risk of any CF parts and is subject to review and audit by the contracting officer
- Third - contractors must promptly notify the contracting officer in writing if:
 - it cannot source from one of the first two categories
 - must obtain the part from a subcontractor that refuses the flow down of the clause
 - cannot confirm the part is new or has not been comingled in stock with used, refurbished, reclaimed, or returned parts
- Contractors are responsible for inspection, testing, and authentication in accordance with existing applicable industry standards and maintain documentation for presentation to the Government upon request

- We actively seek forums like those offered by NCMA to educate contractors on our process
- No secrets –
 - We provide transparency
 - You can utilize the CPSR Guidebook
 - All CPSR review elements addressed
- What's keeping you from getting prepared now?

Questions about overall CPSR process ?

- DCMA was engaged by DoD to Implement the intent of OUSD (A&S) Memorandum, *Addressing Cybersecurity Oversight as Part of a Contractor's Purchasing System Review*
- Issued by Ms. Lord on January, 21 2019
- This Memo basically asks the CPSR Group to assure that Prime Contractors are able to safeguard DoD Controlled Information (CDI) when subcontracting

- The Memo asked that DCMA, when providing contract administration and oversight, review contractor procedures to:
- ensure that contractual requirements for marking and distribution of DoD Controlled Unclassified Information (CUI) flow down appropriately to Tier 1 level suppliers, (DoD CUI = CDI)
- validate that prime contractor procedures assure that Tier 1 level suppliers are compliant with DFARS Clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting when a transfer of CDI is anticipated

- DFARS Clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting requires contractors and subcontractors handling CDI to comply with the National Institute of Standards and Technology (NIST) Special Publication, NIST SP 800-171, Rev 1, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations.
 - 14 Families of Requirements
 - 110 Controls

- Proper management of a supply chain requires prime contractors to manage the flow of CDI to subcontractors.
- DFARS 252.204-7012, is a mandatory flow down.
- Reviewing such flow downs has always been a part of a contractor purchasing system review. This flow down requirement is being emphasized as part of the Supply Chain Management (SCM) review process.

- CPSR field reviews began in March of 2019 and will follow the instruction of the revised SCM Job Aid when evaluating contractor purchasing systems.
- Should a Safeguarding of CDI deficiency be identified, it will be captured in the CPSR report and forwarded to the ACO. At that point, the deficiency is processed just like any other.
- No matter the decision on significance, a CAR will be issued and tracked to completion, thus resolving the deficiency.

- Prime contractor policies and procedures must provide adequate instruction to procurement personnel on both DFARS 252.204-7012, and NIST SP 800-171, Rev 1.
 - Prime contractors should understand which prime contracts contain DFARS Clause 252.204-7012, and specifically require the protection of CDI identified in prime contract special instructions, statements of work, or identified as actual markings.
 - Prime contractors should only include DFARS 252.204-7012, as part of the subcontract terms and conditions, when they are sure that the 14 Families Requirements and 110 Controls outlined in NIST SP 800-171, Rev 1 have been adequately addressed by their subcontractors.

- Prime contractors must document and be able to explain the steps taken to assure that any identified recipients or developers of CDI have a Covered Contractor Information System (CCIS) and associated System Security Plan (SSP).
- The prime contractors should be capable of providing a listing of all subcontractors that receive or create CDI as part of subcontract performance.
- Subcontractors should be informed by prime contractors that when accepting DFARS 252.204-7012, they are asserting compliance with the 14 Families of Requirements and 110 Controls outlined in NIST SP 800-171 Rev 1.

- DFARS 252.204-7012 requires contractors and subcontractors to safeguard or to have dissemination controls for CDI that resides on or is transiting through a contractor's internal information system or network.
- CDI should be properly marked in subcontracts containing DFARS 252.204-7012 and should not be present in subcontract/PO files where DFARS 252.204-7012 is not included. CDI should maintain its markings in all Subcontract/PO files.

Notification/Reporting Requirements

- DFARS 252.204-7012 (m)(2)(i)
- Prime contractors must have a system in place to track notifications from subcontractors that they have requested, from the Contracting Officer, a variance from NIST SP 800-171, Rev 1,
- DFARS 252.204-7012 (m)(2)(ii)
- Prime contractors must have a system in place to track incident report numbers received from subcontractor as a result of cyber incidents being reported to the DOD at <http://dibnet.dod.mil>.

- Having DCMA validate that prime contractors are compliant when subcontracting is the next logical step in DoDs efforts to strengthen the safeguarding of CDI
- Contractors should be prepared since the deadline to implement DFARS 252.204-7012 and the controls of NIST SP 800-171 Rev. 1 was December 31, 2017

Questions?