

12 FAH-7 H-420 GUARD CONTRACTING PROCESS

*(TL:LGP-3; 12-31-2003)
(Office of Origin: DS/IP/FPO)*

12 FAH-7 H-421 GENERAL

(TL:LGP-3; 12-31-2003)

- a. *Local guard services (which may include a surveillance detection program)* may be acquired through a *Non-Personal Service (NPS)* contract with a company or by Personal Service Agreements (PSAs). PSAs are covered in 12 FAH-7 H-440. Under a NPS contract with a company, the guards *and surveillance detection personnel remain employees of the company.*
- b. *The guard contracting process consists of several phases:*
 - (1) Pre-solicitation which is advance planning and publicizing of the upcoming contract, preparing the solicitation;
 - (2) Soliciting and evaluating offerors and awarding the contract;
 - (3) Administering the contract after award (contract administration); and
 - (4) Contract closeout.

12 FAH-7 H-422 SOLICITATION

12 FAH-7 H-422.1 Pre-Solicitation

(TL:LGP-01; 08-10-2001)

This is the initial phase of an LGP contract. The RSO's thoughts and efforts are devoted to defining the security problems, analyzing various solutions and developing initial or draft plans to operate a LGP.

12 FAH-7 H-422.2 Statement of Work (SOW)

(TL:LGP-01; 08-10-2001)

RSO and CO actions taken in the pre-solicitation phase of the acquisition process result in the completion of an advance acquisition plan and a procurement request package, including the development of the SOW, independent U.S. Government cost estimate, and technical evaluation plan. (See 6 FAH-2 H-312 Exhibit H-312 for a list of COR responsibilities versus CO responsibilities in the pre-solicitation phase.)

12 FAH-7 H-422.3 Solicitation

(TL:LGP-01; 08-10-2001)

- a. When a contract is used, the Competition in Contracting Act of 1984 (CICA) and specific legislation related to the local guard program generally require that the U.S. Government allow full and open competition. To do so, the U.S. Government must solicit proposals from all responsible sources.
- b. The CO will prepare solicitations for guard services with input from the RSO. Full and open competition requires the U.S. Government to publicize its intent to issue a solicitation in the Commerce Business Daily. The CO either posts the solicitation on the Internet (with assistance from A/OPE) or provides each prospective offeror a copy of the solicitation.
- c. Because the mission must evaluate the technical capability of the offerors in addition to their prices, a negotiated acquisition is required. The type of solicitation used is a request for proposal (RFP).
- d. By law (22 U.S.C. 4864), the U.S. Government must award the contract to the technically acceptable offeror with the lowest price, subject to a 10 percent price preference for eligible U.S. firms.

12 FAH-7 H-423 OTHER THAN FULL AND OPEN COMPETITION

(TL:LGP-01; 08-10-2001)

The CO and RSO are responsible for preparing the written justification in those rare instances where full and open competition is not desirable or possible. In preparing the justification the CO may call upon the RSO to assist in documenting the basis for limiting competition. In these cases, the RSO must provide the CO a written, signed statement providing accurate and complete data to support a justification for other than full and open

competition (JOFOC). For example, when unusual and compelling urgency will not allow full and open competition, the U.S. Government may document the reasons for limiting the sources solicited. In some cases, host government restrictions may limit competition. If this is the case, legal requirements under the CICA and the Department's own legislation mandate documentation.

12 FAH-7 H-424 TECHNICAL EVALUATION OF PROPOSALS

(TL:LGP-01; 08-10-2001)

- a. The RFP requires evaluation of technical and price proposals. When evaluating proposals, the CO will ask the RSO and the technical evaluation panel to perform a detailed technical evaluation to document whether each proposal is acceptable or unacceptable. A sample technical evaluation plan is available from A/OPE and may be found on the Department's intranet site at <http://aope.a.state.gov> and also found on the Department's Internet site at <http://www.statebuy.gov/opehelp/opehelp.htm>. The technical evaluation must contain both a rating of acceptable or unacceptable for each offeror and a narrative explaining the basis for the rating, citing any deficiencies or weaknesses in the proposals.
- b. While the CO does sit on the technical evaluation panel, he or she serves only as a technical advisor. The panel is generally chaired by the RSO and may have as other members, U.S. Government employees, regardless of agency, considered able to help make a fair evaluation of whether or not the technical proposals meet the standards required by the RFP.
- c. Contractors should have a demonstrated performance record of satisfactory delivery of services as well as a record of integrity and business ethics. As part of the technical evaluation, the technical evaluation panel or CO will review the past performance of each offeror by contacting clients. The RSO must also examine prospective contractors from the security point of view. This may require additional research, i.e., record checks, on both the personal background of principal officers as well as the past activities of the firm.

12 FAH-7 H-425 IDENTIFICATION, DETERMINATION, AND SELECTION OF RESPONSIBLE OFFERERS

(TL:LGP-01; 08-10-2001)

The CO makes the determination of "responsibility" on the part of the prospective contractor. This determination is based on a review of the firm's capability to perform, as well as the firm's technical and financial resources. The RSO may provide the CO with the information needed to make the determination.

12 FAH-7 H-426 U.S. SOURCES AND LOCAL PERMITS

(TL:LGP-01; 08-10-2001)

- a. The U. S. Government must solicit all responsible sources when awarding LGP contracts. In addition, the law requires special efforts to ensure that U.S. firms are allowed to compete, and that a price preference is given during the proposal evaluation process. As a result, many U.S. firms, as well as local or international firms, have won local guard contracts. Many countries require that non-local firms establish a local business entity for the purpose of conducting business. This establishment is required to pay taxes and obtain pertinent licenses. The host government may require that any firm demonstrate or certify that it has met all or will meet all such local prerequisites to be able to do business. U.S. law also requires that the embassy and/or consulate assist U.S. firms in obtaining licenses and permits from the local government. The CO and RSO should document all efforts made in this regard.
- b. Under U.S. law, preference must be given in the award of LGP contracts to offerors qualifying as "U.S. persons or U.S. joint venture persons." Offerors must complete a certification, which is reviewed by A/OPE and L/BA, to qualify for this 10 percent price preference. See the sample solicitation found on the Department's Intranet site at <http://aope.a.state.gov> and also found on the Department's Internet site at <http://www.statebuy.gov/opehelp/opehelp.htm> for more information on this subject.

12 FAH-7 H-427 PAYMENT IN LOCAL CURRENCY

(TL:LGP-01; 08-10-2001)

Contracts awarded to non-U.S. firms are normally paid in local currency. Contracts awarded to U.S. firms are often paid in dollars. Payment to U.S. firms in U.S. dollars is required by U.S. law where payment in local currency would be a barrier to competition by U.S. firms. Payment in U.S. dollars to a local firm may raise legal issues under local law. Contact A/OPE with any questions on payment matters.

12 FAH-7 H-428 POST AWARD

(TL:LGP-01; 08-10-2001)

- a. When a contract is awarded on a basis other than price, unsuccessful offerors, upon their written request, must be debriefed by the CO and furnished the basis for the selection decision.
- b. A CO debriefing can be conducted orally or in writing. It should tell the offeror in general terms why it was not selected for award. The debriefing should tell an unsuccessful offeror which areas of its proposal were deficient and whether the deficiencies were factors in its not having been selected. The debriefing should not reveal confidential or privileged commercial or financial information, trade secrets, or the proposal contents of the other offerors.

12 FAH-7 H-429 CONTRACT MODIFICATION AND PERFORMANCE WARNINGS

(TL:LGP-01; 08-10-2001)

Each contract must state a performance period and must include clauses allowing termination for the convenience of the U. S. Government or for the default of the contractor. These elements are the primary responsibility of the CO.

12 FAH-7 H-429.1 Duration

(TL:LGP-01; 08-10-2001)

- a. LGF services contracts should be for a period of one year with the option

to renew for as many additional one-year periods as are appropriate, up to a total period of five years (four one-year renewals). Further extensions require approval by A/OPE and are only granted under unusual circumstances. Both the basic performance period and the options must have fixed rates and prices, subject only to adjustment due to increases in the applicable mandatory wage law.

- b. Periodic re-competition allows an opportunity to take advantage of new market conditions and to promote fairness in the procurement process. If offerors can project firm rates into the future, then a one-year contract with four, one-year options may be appropriate.

12 FAH-7 H-429.2 Modification and/or Change Orders

(TL:LGP-01; 08-10-2001)

The contract must contain clauses allowing the CO to modify the contract to adjust to changed conditions. The "Changes" clause required by the Federal Acquisition Regulation (FAR) allows the CO to change the SOW, for example. The "Variation in Quantity" clause allows the contract to be modified to increase or decrease the number of guard hours, up to plus or minus twenty five percent without a change in rates. Major changes that are not within the scope of the contract may require a new solicitation.

12 FAH-7 H-429.3 Unsatisfactory Performance Warnings

(TL:LGP-01; 08-10-2001)

There are several methods used to indicate unsatisfactory performance or illustrate areas where improvements are needed. These are:

- (1) **The Deduct Schedule**—As part of the contract (Exhibit C), there is a complete schedule of specific items that subject the contractor to deductions in the dollar amounts received if they are unaccomplished or ignored. When the contractor has failed to comply with any item on this list the RSO and/or PSO should inform the CO to apply the appropriate deduction from the deduct schedule. This serves two purposes. It puts the contractor on warning of unsatisfactory performance and it saves the U. S. Government from paying for a service that it did not receive.
- (2) **Cure Notice**—If or when the RSO and/or PSO discovers a failure on

the part of the contractor to adhere to any elements of the contract the failure should be brought to the attention of the CO. A cure notice can then be sent to the contractor, informing him of the problem and/or lapse and identifying the actions needed to "cure" the problem. A cure notice also includes notification of the possible consequences of the contractor's failure to comply.

- (3) **Show Cause Notice**—This is the last step before termination of a contract for default. The CO provides the contractor with a list of outstanding deficiencies, lapses and failures on the part of the contractor. The order demands that the contractor "show cause" as to why the contract should not be terminated.

12 FAH-7 H-429.4 Termination for Default and/or Convenience

(TL:LGP-01; 08-10-2001)

The U.S. Government has the right to terminate a contract for default or convenience. Terminations for default may be necessary when the contractor fails to perform or make satisfactory progress. Terminations for convenience allow the U.S. Government to terminate a contract when it is in the best interests of the Government, through no fault of the contractor. If termination is necessary, the CO must coordinate with A/OPE, L/BA and DS/CIS/PSP/FPD. Terminations are rare. Terminations for default require a considerable amount of documentation showing unacceptable performance by the contractor and must be preceded by an opportunity to correct the deficiencies. Whenever a termination for default is being considered, the CO and the RSO must have a plan in place for a replacement contractor.