Contract Officer in Military Service Contracts

By Douglas P. Tomlinson[1] and Edward J. Rhomberg,[2] Fellow, ASCE

Abstract: The contracting of services within the military is a growing field of opportunity for prospective contractors. With the added attention given to the Office of Management and Budget's A-76 Commercial Activities policy, many contractable services previously performed by government forces are now being accomplished by private companies. Contractors accustomed to performing construction-related work may not be aware that service contracts contain added requirements. As in all government contracts, contractors deal frequently with representatives who do not have the actual authority to obligate the government, but this problem can be more pronounced in the services-related field. Additionally, each branch of the military approaches service contracting in a slightly varied form with their own contracting guidelines. As the federal budget constraints increase, the military will assuredly devote more attention to the management of their contracts while concurrently relying on free enterprise to provide needed services within A-76 policy guidelines.

Introduction

Participation in any government contract is a very structured process which can become quite complicated at times. The administration of such contracts involves many different subject areas, each with a unique set of rules and procedures; they typically involve many government and contractor representatives performing numerous functions. A principal rule of which all prospective government contractors should be aware is that, in the administration of its contracts, the government is not bound by the unauthorized acts of its employees. To limit and control that authority, the government only grants true contracting authority to a select group of contracting officers who are generally not involved in the day-to-day activities of contract management.

Most contractors deal primarily with government personnel bearing such titles as inspector, evaluator, project manager, etc. Since a contractor's interaction is with such officials and since a large amount of contract administration activity is devoted to adapting to changing circumstances that can require the government to obligate itself to binding agreements, it must be asked: Who possesses the authority to actually obligate the government? What authority do those with whom the contractor interacts daily actually have?

While such issues can be raised in all three of the major types of government contracting (service, construction, and supply), the issues in service contracting have historically remained secluded behind the atten-

[1]Lt., U.S. Navy, Asst. Public Works Ofcr., Naval Constr. Battalion Ctr., Gulfport, MS 39560.

[2]Prof., Dept. of Civ. Engrg., Texas A&M Univ., College Station, TX 77843.

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tion given to the increasing amount of military construction. Additionally, in these days of budget belt tightening, the scrutiny of military procurement has increased dramatically, especially after the publication of the military's purchase of $600 toilet seats and $400 hammers. Service contracting is a sleepy, yet growing, giant in the U.S. Armed Forces. In fiscal year 1985, the Navy alone spent $126,584,000 on 2,217 service contracts (personal communication with M. Howard, 1987). With the current sentiment toward reducing government interference in the free market, the concept to halt the duplication of services performed by government employees which are also available from commercial sources has subsequently evolved.

In response to this growth, the Office of Management and Budget's (OMB) A-76 Commercial Activities program, which is a cost comparison process requiring the military to actively seek the most economically feasible services from any available source, has received increased attention. As a result of this executive mandate, many services previously performed by government forces are now being accomplished by private contractors. As bids are solicited for consideration in the cost comparison process, the prospective contractor should be aware that an in-house cost estimate is simultaneously being prepared to aid in the ultimate decision as to who will perform the service. For the government to retain in-house forces for the service, it must prove that "the work can be performed in-house at a cost that is less than anticipated contract performance by 10 percent of Government personnel-related equipment and facilities" (OMB 1983). A-76 policy and the Federal Acquisition Regulation (FAR) (General Services Administration [GSA] 1984) specifically state that federal employees have the right of first refusal to employment opening when a contractor assumes a previous in-house function.

Service contracts are unique because the "services rendered" are often not finite; there can be no tangible end product to measure, inspect, and accept. Often the services are time-critical and require that such a response be reflected in the specifications of the contract. Many times the specifications themselves are intangible and are derived from historical data in the areas covered the service. The prospective contractor essentially has no drawings or concrete data on which to bid and must rely on speculation and prediction. Frequently the customer or recipient of the service is not associated with the contracting authority yet possesses limited legitimate power with which to control the contractor.

Another concern is that some services such as major repairs may require engineering expertise while others such as grounds maintenance usually require nothing more than manual labor. Service contracting by the military, therefore, must be sufficiently well organized to handle the small jobs economically without large bureaucratic staffs, yet be prepared and staffed for the requirements of large value and lengthy major contracts. This paper analyzes the procedures involved in military service contracting and the authority of the government's representatives in conducting business with contractors. The approaches taken by each of the three branches of the Armed Forces in administering their service contracts also are analyzed.

Interestingly enough, the term "service contract" can be interpreted in a variety of ways in the different branches of the military. For the purpose

of this paper, a service contract is one designed to provide routine repair or maintenance of base property or vehicles and those services designed to preserve base facilities in usable or operable condition, such as refuse collection, grounds maintenance, custodial services, etc. New construction, the acquisition of facilities, and the contractual procurement of parts and supplies are not considered a service contract.

Contracting-Officer Authority

As its representative in contractual matters, government regulations convey the authority to issue and manage its contracts to "contracting officers." Since April 1, 1984, the one source from which all contracting officer guidelines have been derived is the FAR. The term *contracting officer* (CO) is used to describe those individuals who possess "the authority to execute contractural documents which bind the Government and to sign determinations and findings and other internal documents" (Cibnic and Nash 1985). FAR 2.101 contains the following definition:

> Contracting Officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

Subordinate Contracting Officers

COs have the authority to formally designate contracting officers' representatives (CORs) who may be assigned functions to be performed on behalf of the CO. The COR may act on behalf of the CO and bind the government in many ways, but only within the limits of the authority delegated to him by the CO. COR-delegated functions usually include such tasks as technical monitoring, inspection, approval of drawings, testing, price analysis and engineering, and finance specialties. It should be noted that the absence of formal delegation as an "authorized representative" has not prevented the boards of contract appeals from finding that these personnel are authorized representatives of the contracting officer (Cibnic and Nash 1985).

Appointment Procedures

Government officials do not become COs automatically by virtue of rank within the government. They must be appointed by the head of the agency under whose direction they operate. "Heads" of agencies are normally at the level of a deputy or assistant to an under secretary or assistant secretary of each of the military services (FAR 1.601, 1.603-1). This agency head then issues a certificate of appointment (Department of Defense form 1402) to his COs. The appointment process follows what has been referred to as a warranting procedure whereby the different services grant to the individual COs the authority to obligate the government up to a defined dollar limit.

Sources of Authority

A CO may bind the government only to the extent that his actions are authorized. Unfortunately, there is no single source to which one may

refer in determining the limit of the CO's authority. Such determination can only be made by looking at the relevant statutes and regulations, the certificate of appointment, other forms of delegation of authority, and of course the contract in question. If a government official acts beyond his actual authority, the government may not be bound by his actions. In such a case, the contractor risks losing the benefit of any agreement he may have made with the unauthorized agent and thus faces the prospect of out-of-pocket losses.

Implied Authority

If a COR takes action that he has been expressly authorized to take, he is said to have actual authority to take the action, and the government is thereby bound. Frequently, however, officials will take actions that are beyond the scope of the authority that has been expressly delegated to them. In addition to their expressed authority, CORs have been held to have implied authority to (1) Approve cost overruns in special circumstances; (2) extend notice periods for the filing of claims; (3) waive government rights under specified contract clauses; and (4) even waive unsatisfactory performance.

Ratification

"Ratification is the adoption of an unauthorized act resulting in the act being given effect as if originally authorized" (Cibnic and Nash 1985). "It is a process by which a Government official with authority adopts, approves, or confirms an unauthorized action and thereby makes it binding on the Government" (Bastianelli and Reifel 1986). For ratification to occur, the ratifying official must have had either actual or constructive knowledge of the unauthorized action.

The Dispute Process: Authority in Negotiations and Settlements

Another of the major duties of a CO is to deal with disagreements between the government and the contractor. The Contract Disputes Act of 1978, the majority of the judiciary, and a long line of court decisions favor the resolution of disputes by mutual agreement. Accordingly, and in holding with such opinions, the CO possesses inherent authority to negotiate contract modifications and to enter into binding settlement agreements. The CO has authority to settle a dispute as soon as it arises, but that authority does not necessarily last throughout the litigation process.

The CO's settlement authority is unusually broad. In the disputes process the CO operates in a dual role; in conducting negotiations with the contractor, he is the government's advocate; in rendering his final decision, however, he is acting in a quasi-judicial capacity. In the event that a negotiated agreement cannot be reached, the CO must issue his "final decision" in order to initiate the appeal process if the contractor so chooses.

The specific restrictions on the CO's authority are scattered throughout the various procurement and contract regulations and cases. Of particular note however is the fact that a CO's settlement authority does not extend to claims involving either fraud or penalties or forfeitures set by law. These include disputes concerning wage classifications, Service Contract Act violations, and safety violations.

For most situations, the CO has 60 days from the receipt of a claim from the contractor to prepare and issue his final decision. If the contractor is appealing, he then has 90 days from the receipt of the CO's final decision to furnish written notice to the Board of Contract Appeals that an appeal is taken or 12 months to appeal directly to the U.S. Claims Court.

Contract Termination

Termination is the ultimate method by which a dispute is settled should the contractor fail to abide by the requirements of the contract or the CO. The standard default clauses identify three grounds for termination: (1) Failure to complete the service within the stated time period; (2) failure to make progress in prosecuting the work which endangers timely completion; and (3) breach of "other" contract provisions (FAR 52.249-8). In contemplating default termination, the CO is required by FAR 49.202 to use discretion and "consider such issues as availability of other sources, the urgency of contract completion, and the excuses for the failure of the contractor to perform." In a service contract, a contractor who has been properly terminated for default is nevertheless entitled to payment for work which was properly performed prior to default (Cibnic and Nash 1985).

Another unique provision in government contracting is the right of the government to terminate for convenience. This clause allows the government to terminate the contract without cause and limits the contractor's recovery to costs incurred, profit on work done, and the costs of preparing the termination settlement proposal. FAR 52.249 states:

> The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determined that a termination is in the Government's best interest.

If the CO decides to terminate for convenience, the government's liability will be admitted and the contractor will recover his incurred cost and profit on work done. A CO is not permitted to exercise rights under the termination for convenience clause if such exercise demonstrates bad faith or if his intent is to "injure" the contractor.

The Military Service Contract

According to FAR 37.101, a service contract is "a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply." Some of the areas in which service contracts are found include the following (FAR 37.101):

1. Maintenance, repair, or modifications of supplies, systems, or equipment.
2. Routine recurring maintenance of real property.
3. Housekeeping and base services.
4. Consulting services.

The FAR further states that (1) Agencies are to rely on the private sector for commercial services in accordance with A-76 policy; (2) in no event

may a contract be awarded for the performance of an inherently governmental function; and (3) the relative costs of government and contract performance require appropriate consideration where government performance is practicable.

Contract Requirements

As in construction contracts, and unless provided by statute, contracts for services in most cases are subject to free and competitive bidding and shall be awarded through sealed bids. However, the designation of a contract as a service contract under FAR definition places it in a special position subject to additional requirements, restrictions, and freedoms. For example, all service contracts over $2,500 are subject to the Services Contract Act of 1965. There are designated service contracts which have as their purpose construction, which term is defined by the Davis-Bacon Act as "construction, alteration, and/or repair, including painting and decorating, of public buildings or public works." The Department of Labor has the final authority to determine whether a contract does or does not involve construction as defined in that act, and it has historically resolved debatable cases by finding that construction is involved. Neither the Department of Defense nor the General Accounting Office has authority to prescribe whether work is or is not construction, because of the statutory vesting of authority in the Department of Labor (Naval Facilities Engineering Command [NAVFAC] 1985).

As is true in both service and construction contracts, the CO is responsible for inserting into both the solicitation for bids and the contract itself the provisions and clauses prescribed by law and throughout the FAR as appropriate for each acquisition, depending on the conditions that are applicable. Such clauses are usually standard "boilerplate" general provisions and are discussed in detail throughout part 52 of the FAR. All prospective contractors should have a working knowledge of the conditions detailed in part 52.

There are some unique aspects to military service contracts that can confuse contractors accustomed to working in construction. Specifically, the submission of bids requires a different pattern of thought; bonding requirements are different; wage rates can be determined in a different manner; government funding is usually approached differently; and the length and type of contract can vary from those typically used in construction.

Considerations in Bidding

According to FAR 14.101, invitations for bids must describe the requirements of the government "clearly, accurately and completely. Unnecessarily restrictive specifications that might limit the number of bidders are prohibited." The uniform format for service-contract bid invitations as well as actual service-contract document organization are specifically outlined in FAR 14.2 using standard Department of Defense terms and forms. A reasonable time (usually at least 30 days) for prospective bidders to prepare and submit bids shall be allowed in all invitations consistent with the needs of the government. After bids are opened, awards are to be made with reasonable promptness to "the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the

Government considering . . . price-related factors included in the invitation" (FAR 14.101).

However, service contracts have a unique bidding difficulty. Unlike construction contract solicitations which outline specific details of a tangible product, service contracts are not always finite and sometimes must be estimated on historical data for the area covered by the contract. For example, a newly let refuse-collection contract would probably be solicited and bid based on the volume of refuse collected in the past. Significant efforts must usually be made to quantify the workload associated with the "services" provided and thus make the contract biddable. No prudent contractor would bid a fixed price sum on a contract in which he could not realistically determine a maximum value. Additionally, a criterion for response time must be included in contracts dealing with maintenance and custodial services. Such intangibles have led to unique approaches in developing service contract types.

Bonds

Unlike construction contracts, performance and payment bonds are not normally required in service contracts. FAR 28.103-2, 3 applies here.

Contract Appropriation and Execution

It is the policy of the federal government that contract appropriations are not to cross fiscal years except in accordance with statutory authorization. Additionally, no officer or employee of the government may create or authorize an obligation in excess of the funds available or in advance of appropriations (Cibnic and Nash 1985). Before executing any contract, the CO shall (1) Obtain written assurance from responsible fiscal authority that adequate funds are available; or (2) expressly condition the contract upon availability of funds in accordance with multiyear contracts (FAR 32.702).

An option for contract continuance (where the government has the right to extend the term of the contract) is preferred to multiyear contracting. This unilateral option clause used only in service contracting is widely exercised by all branches of the military. FAR allows the government to use up to four one-year options (for a total of 60 months). When an option year is exercised, the contractor is only allowed to adjust his labor rates for the option year, not the price of overhead, profit, or even supplies. This means that a contractor may be forced to live with prices he established on a bid five years previously if the government so demands, or face default. FAR 17.202 addresses the use of options.

Contract Types

The firm-fixed-price contract, whether lump sum or unit price, is the preferred form of all government contracts. The government believes such contracts maximize the incentive upon a contractor to compel employees to perform efficiently. However, in the nature of service contracting it is not uncommon for the quantity of work required to be undetermined at the time of bid so as to make a fixed price bid impractical. This problem has led to the use of special contracting techniques in service contracting.

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. It is a fixed-unit-price contract form which does not specify the total amount of work that the government will require or when such services will be required. It gives the government the right to call for work when and if needed (NAVFAC 1985).

Indefinite quantity contracts are recommended when it is inadvisable for the government to commit itself for more than a minimum quantity. However, such contracts are only to be used when a recurring need is anticipated. FAR 16.504 applies here (NAVFAC 1985).

Other Types

Another option in military service contracting is the requirements type contract, which is similar to an indefinite quantity contract except that the government is obligated to order, from one particular contractor and no other source, and either outside or in-house, all supplies or services of the type described in the contract which it requires during the contract term, and the contract clearly states that the government is not obligated to place any minimum orders; the government's obligation is solely that if the service is needed, it will be obtained only from the designated contractor (FAR 16.503).

Major Socioeconomic Programs Influencing Service Contracting

There are two basic regulations prescribed for determining the labor and wage requirements for military service contracts. The Davis-Bacon Act applies in service contracts where, in the opinion of the Department of Labor, construction is involved. The McNamara-O'Hara Service Contract Act of 1965 applies to any service contract (as interpreted by the Department of Labor) with a value of over $2,500. Violation of either statute allows the CO to stop work and/or withhold payment in order to ensure employees are adequately paid (Air Force Logistics Management Center, 1985).

It is the Department of Labor, not the administering CO or participating contractor who has the ultimate authority as to whether or not "construction" is actually involved in any particular contract and whether that contract is subject to the Service Contract Act. Separate contracts should always be used for Davis-Bacon work and work determined to be subject to the Service Contract Act. Otherwise, labor problems could be compounded inasmuch as employees may receive different pay for performing similar work.

The Service Contract Act requires that with "every contract (and any bid specification therefor) in excess of $2,500, the principal purpose of which is to furnish services in the U.S. through the use of service employees . . ." shall contain a secretary of labor wage and fringe benefit determination. Contracts subject to the Davis-Bacon Act are exempt from the Service Contract Act. Unlike a construction contract or any contract subject to Davis-Bacon, a specific wage determination must be made for each and every individual service contract subject to the Service Contract Act. If there are two separate contracts, there must be two separate wage determinations made (NAVFAC 1985).

Significant Legislative Action

Other legislation mandated by Congress over the years has covered such topics from the preference of American-made goods to the procedures for the recovery of plaintiff attorney fees. However, the nature of some of these statutes has made them especially applicable to a majority of service contracts. Presented is a partial list of some of the most common programs mandated by legislative action of which all COs and prospective contractors should be aware (Naval Facilities Contacting Training Center [NFCTC] 1986).

1. Small Business Act: Designed to place a fair portion of government purchases and contracts with small business concerns (15 United States Code [USC] 631–647).
2. Javitts-Wagner-O'Day Act: Makes mandatory the purchase of certain products and supplies from blind and other handicapped persons (41 USC 46–48).
3. Contract Work Hours and Safety Standards Act: Prescribes an eight-hour day and 40-hour work week, and health and safety standards for laborers and mechanics on public works (40 USC 328–332).
4. Fair Labor Standards Act of 1938: Establishes a minimum wage and the maximum hour standards for employees engaged in commerce or the production of goods (29 USC 201–219).
5. Copeland "Anti-Kickback" Act: Forbids kickbacks from employees engaged in public works activities (18 USC 874 and 40 USC 276c).
6. Clean Air Act of 1970: Prohibits government contracting with a company convicted of criminally violating air pollution standards (42 USC 1857h).
7. Prompt Payment Act of 1982: Requires payment of interest by the government on any properly received invoice over 30 days old (Public Law 97–177).
8. Improvement of Small Business Access to Federal Procurement Information Act: Requires publication in the *Commerce Business Daily* at least 15 days prior to the solicitation and 30 days between solicitation and bid opening of a new federal contract (Public Law 98–72).
9. Competition in Contracting Act: Grants the General Accounting Office the authority to rule on bid protests (Public Law 98–369).

All applicable laws and statutes have a corresponding clause in part 52 of the FAR and are included in the "boilerplate" or general provisions of all federal service contracts. Additionally, and although it is not a legislative statute, the executive order for equal employment opportunity (1965) which prohibits discrimination is a mandatory consideration on all government contracts.

Performance Appraisal

Ensuring performance meets specifications is the essence of any contract. Indeed, it is a requirement that all government contracts include inspections and other quality assurance programs to protect the government's interest. FAR 46.102 specifically requires agencies to ensure that "no contract precludes the Government from performing inspection" and that "contract quality assurance is conducted before acceptance."

Since the inception and enforcement of the A-76 program, the government has been required to develop what is called a performance work statement (PWS) for every definable service utilized by the government. The PWS "is a performance-oriented technical description of tasks to be accomplished within specified time limits and acceptable levels of quality." This technical description of work must be of sufficient accuracy to satisfactorily describe the detail of service to be accomplished. In other words, the PWS is essentially the "what has to be done" portion of the contract specifications (U.S. Army Facilities Engineering Support Agency [USAFESA] 1987).

Related but independent to the PWS is the quality assurance surveillance plan (QASP). Whereas the PWS established the tasks to be performed, the QASP identifies "frequency of task accomplishment, means of accomplishment, and most importantly, validity of accomplishment." Although it is not actually included in the contract package, "it is a vital part of the CO's contract administration guidelines and should be included in the invitation to bid to assist potential contractors in developing cost/prices and their quality control program." The QASP should specifically "develop and implement contract inspection/surveillance procedures to assure that the Government is getting services contracted for" and provide "a means for the surveillance and documentation of contractor work performance and for the evaluation of that work performance so that conclusions on its acceptability may be made" (USAFESA 1987). In other words, it is the CO's detailed plan whereby he will have the work performed by the contractor inspected.

For the purpose of inspections, the A-76 circular created a corps of quality assurance evaluators (QAEs) whose sole purpose is to inspect the contractor's work. Unless specifically exempted, QAEs must be appointed for service contracts of a value over $25,000 per year. It is the QAEs who administer the QASP developed by the CO and his staff, and just like any other member of the contract team, QAEs are specifically trained for their job, which is to inspect and evaluate (Air Force Logistics Management Center 1986). QAEs (inspectors) do not as a rule have the authority to obligate the government, but only the authority to enforce the requirements of the contract.

Responsibilities of the Prospective Contractor

While these previous functions represent the government's responsibilities in administering the contract, other administrative-type tasks are required of the contractor in bidding and performance of the services. Specifically, the contractor may be required to furnish evidence of fiscal and managerial responsibility, the latter being especially true because most service contracts are labor intensive; the effective use of labor would have an obvious effect on the ultimate contract cost. If a low bidder is unknown or has a record of poor performance, the CO may request that an investigation be conducted by the Small Business Administration or the Defense Contract Administration Service to determine if grounds exist for contract denial (NAVFAC 1985).

Once a contract has been initiated, all government contracts require the contractor to maintain his own inspection system. FAR 46.202-1 specifically states that "the Government shall rely on the contractor to accom-

plish all inspection and testing needed to ensure that supplies and services . . . conform to contract quality requirements before thay are tendered to the Government." FAR 46.202 continues to "require the contractor to provide and maintain an inspection system that is acceptable to the Government." Furthermore, all service contracts are required to contain specific clauses from FAR 52.246 outlining the details of the contractor's quality-control system. It should be noted that these contractor inspections are in addition to the government inspections required under the QASP and administered by the QAEs.

Structure of the Military's Service Contracting Organizations

Because each of the military branches have their own unique missions within the Department of Defense (DOD), they have developed their own structure and formed their own procedures in the accomplishment of those missions. Even so, each of the military branches is ultimately responsible to the constitutional authority of the Congress and the chief executive and must follow the statutes and orders pertaining to contracting matters. Of primary significance to all three of the military branches are the policies outlined in the FAR and the OMB A-76 program.

In all three branches, the majority of the personnel involved with contract management are civilians and have usually been at their current location and job longer than their military counterparts and are therefore more familiar with the historical data of the base on which they work. On the other hand, military members have usually seen service contracting from several perspectives and are more apt to possess a wide range of contract management specialties.

Although adverse publicity surrounding overpriced parts has tarnished the image of the military procurement program, the military branches have always taken seriously the training of their COs. In December 1986, the deputy secretary of defense introduced *DOD Directive 5000.48*, which increases the "experience, education, and training requirements for military and civilian personnel assigned to contracting, quality assurance, and business and financial management positions in the DOD." Additionally, the heads of all DOD components "shall have a procurement intern program . . . to provide a source of highly qualified candidates for high level procurement positions" (DOD 1986).

Budgeting is another facet of military service contracting that warrants the attention of prospective contractors. Severe limitations are placed on the military as to what services can be procured with what funds. The contractor should be aware that under circumstances where large dollar values are at stake or where significantly large changes are contemplated, the CO may have to seek guidance from a higher-echelon authority. This may slow the pace at which a contractor can pursue his work, but in a bureaucracy the size of the military and considering the regulations to which the military is answerable, such delays should be expected. If the prospective contractor is aware of these special situations, his understanding of the military service contracting process might be made more complete.

The U.S. Navy

Service contracts as they pertain to U.S. Navy and Marine Corps bases are administered through the Navy's Public Works (PW) organization. In the Navy, service contracts, as they are referred to in this paper, are called facility support contracts. The execution of these contracts involves close coordination between the receiving activity and the administering public works department or center. All public works departments or centers are staffed with at least one officer who "commands" that particular public works organization and is referred to as the public works officer (PWO).

In the administration of these facilities support contracts, the PWO and the officer in charge (OIC)—the person having contracting officer authority—are the primary parties with whom a contractor will be involved. Normally, the PWO and the OIC are the same person, but when a PWO obligates the government, he is acting in his capacity as the OIC. There are normally two separate staffs who work for the PWO/OIC; the PW staff prepares the PWS and provides technical information while the OIC staff prepares the final contract package, advertises and awards the contract, and provides general contract management information. While the PW staff is coordinating technical details and providing surveillance of contractor accomplishments and inspecting completed work, the OIC staff is providing guidance on contractual matters, processing payments, participating in change order negotiations, and the general enforcement of contract provisions. In the larger PW organizations, the OIC staff usually includes subordinate, but additional, assistant OIC's and specialists who have their own warranted contracting authority and assist the PWO/OIC in awarding and managing the high volume of service contracts (Naval Facilities Engineering Command 1982).

The PW organization is supported by the Naval Facilities Engineering Command (NAVFAC) which provides assistance to PWO/OICs through the various engineering field divisions. Besides the FAR and associated supplements, it is NAVFAC that determines policy regarding the administration of facility support contracts and on whom the PWO/OIC relies for guidance in both his roles as technical overseer and contracting officer. While there are many documents pertaining to facilities support contracting, the primary sources of authority and regulation from NAVFAC are the *NAVFAC P-68 Contracting Manual* (1985) and the *NAVFAC 4330* series (1982) of instructions on facilities support contracting.

In determining the limitations of a PWO/OIC's authority, reference should be made to the CO certificate and warrant level granted to the PWO/OIC by the appropriate commander. If a contract (or a change) is for a value exceeding the level of the PWO's warrant, only the OIC of the next higher echelon, that is, the engineering field division, may sign for the government (NAVFAC 1985).

Services procured by a Navy facilities-support contract require coordination among the PWO, the contractor, and the activity receiving the service. This coordination is usually provided by a designated service-contract manager (SCM) who is a subordinate of the PWO/OIC within the PW department. Some authority may be delegated to the SCM by the PWO/OIC on a contract-by-contract basis to better enable the SCM to manage the contract (NAVFAC 1982). Inspection of contract performance

is performed by designated QAEs who work with the SCMs and who also may be granted limited contract authority by the PWO (NAVFAC 1985).

Even though the PWO/OIC is almost always an active duty civil engineer by training, generally he is not the "engineer" as far as technical input to the contract specifications is concerned. The PWO staff is the responsible party for technical input and consists mostly of civilian technicians and civilian and military engineers of a variety of disciplines. So even though the contractor may be dealing with a PWO/OIC who is a Navy civil engineer, that PWO is serving in a role as a trained contract administrator with appropriate contracting authority. The Navy apparently feels that by so using a trained corps of engineers in an administration role, the government can be better represented both from the technical and contract management point of view.

The U.S. Air Force

Unlike the Navy, the Air Force does not group the responsibility for all service contracting functions under one public works type organization or under one person who wears two hats. There is the base contracting division (or base contracting office, BCO) which has the responsibility for the administration of all (service, construction, and supply) base contracts and is divided into branches according to the type of contract. There also exists the base engineer or base civil engineer (BCE) whose responsibility is to provide technical support to the appropriate branch of the contracting division in the development of PWS or other technical matters as they arise. Additionally, there is the "customer" or receiving activity of the service which funds the contract from its own departmental budget and coordinates with the BCE and BCO in preparing the necessary contract package.

In most base contracting divisions, the chief of base contracting, the deputy, and the chief of each branch are appointed contracting officers (Williams 1986). The various branches of the base contracting division consist of system management, supplies contracting, services contracting, and contract administration. The services contracting branch is obviously concerned with service (maintenance and upkeep) contracts but also handles any construction occurring on base. The services contracting branch is concerned with organizing the contract package, a task that includes the responsibility for the development of the PWS and QASP and the presentation of the package for advertisement and award. However, in the development of the PWS, the services contracting branch relies on the technical and engineering support of the base engineering staff. This staff is usually composed of civilian and military engineers and technicians practicing the discipline of their field (personal communication with R. Steffermeyer, 1987).

The actual ongoing "administration" of any contract, service or otherwise, is handled by the contract administration branch. It is this branch that actually monitors the contractor's performance against the contract requirements and ensures both a high quality and on-time product (Williams 1986). To accomplish this task, functional area chiefs (FAC) are appointed and serve essentially the same role as the Navy's service contract managers. The QAEs are appointed by the FACs and approved by the CO (AFR 70-9).

Air Force (AF) regulations (AFR) 70-9 and 400-28 are the primary sources for AF policy regarding service contract administration and procedures for the development of the PWS. These regulations establish the duties for the installation commander, the CO, the FAC, and the QAEs.

When performing service contracting work for the Air Force, a contractor should be keenly aware of the differences between these positions. As in all government contracts, only the CO himself possesses the "real" authority to contractually obligate the government. In any change negotiation, the Air Force will most likely be represented by a team composed of various individuals with less authority but who are trained in the business and technical aspects of contracting.

The U.S. Army

The organization of the U.S. Army most closely resembles that of the Air Force in that there is a director of contracts (similar to the BCO). Subordinate to the director of contracts are the offices of the chiefs of contracting, purchasing, contracting support, and contracting administration. Yet there also exists—on the same level of organizational structure as the director of contracts—a directorate of engineering and housing (DEH) which is an organization similar in function to the Navy's PW department but does not contain the staff support for the actual administration of the contract. Both the DEH and the director of contracts report to the installation or base commander (personal communication with M. Kendrick, 1987).

The base DEH is the functional manager for any construction or maintenance-related services occurring in any facility on that particular base. When DEH requires a contract for services, it is actually the "customer" of the director of contracts whose staff administers the contract. It is the DEH that oversees such tasks as base refuse collection, housing repair, and general upkeep. When those tasks are performed in-house, it is DEH personnel that perform the work, but when such services are to be contracted, the DEH must use the director of contracts to prepare the contract package, advertise and award the contract, and provide guidance on any contractual matters. Another of the roles assigned to the DEH is the preparation of the PWS and the QASP which, after preparation, is turned over to the director of contracts and to the contracting administration division.

A CO for a DEH-requested service contract is "employed" by the chief of contracting who, in turn, is subordinate to the director of contracts. Army COs are most frequently civilians trained in the business matters of contracting. For technical input, the CO consults the DEH engineering staff or possibly any resident staff of the Army Corps of Engineers. In any negotiations with the contractor, the Army would be represented by a team of at least one individual from the office of the chief of contracting and an individual from the technical staff of the DEH.

Where the Air Force and the Navy utilize FACs and SCMs for ensuring contractor compliance with specifications, the Army designates such officials as contracting officer's representatives (CORs). These CORs act as the CO's "on-site" representative for contractual matters and may be

granted limited authority by the CO in dealings with the contractor. However, the COR is actually nominated and furnished by the DEH and then approved by the CO, but is not directly in the chain of command of the CO. Should a COR observe an impropriety by the contractor, he would report his observation to his superior in DEH who in turn would request the director of contracts to settle the impropriety with the contractor (personal communication with M. Kendrick, 1987).

The primary regulations used in Army service contracting are the *DEH Service Contract Guide P-10* published by the Army Corps of Engineers Facilities Engineering Support Agency (FESA) (1987), and Army Regulation 5-20 (U.S. Army Corps of Engineers 1987). As NAVFAC did for the Navy, FESA provides guidance beyond the FAR and FAR supplements to Army service contracting offices. Extensive training for the Army CO and COR is available through the Army training facilities at Ft. Belvoir, Virginia.

In conducting business with the Army, the contractor should be aware that the majority of his liaison will be with the COR for any particular contract. As with any government official other than the CO, the COR has limited authority at best to contractually obligate the government. The prudent contractor will thoroughly investigate the powers of those government representatives with whom he works and ensure that any changes or modifications originated with the CO.

Conclusions

The military contracting process is a dynamic bureaucracy with a substantial amount of regulation as its foundation. Because of the sheer volume of knowledge required to effectively prepare, award, and administer a military service contract, it would be naive to expect any one person to become an expert in all facets of all contracts. But by the very title of his position a designated CO is the most knowledgeable person available, and to a contractor the word of a CO is ultimate authority as far as contracting decisions are concerned. The prudent contractor should make it a routine matter of conducting business with the government to properly identify to his employees the actual CO and any designated representative with limited authority. It should be common practice to deal with only those in authority when negotiating an impending Government obligation.

There are some basic guidelines that can be used by both the government and the contractor to promote the spirit of understanding and hopefully improve the overall contracting process.

1. Service contracts can be confusing to contractors accustomed to working in construction. The requirements in bid preparation, bonding procedures and wage rate determinations are specific examples of some of the differences. Before bidding, prospective contractors should become familiar with the Service Contract Act and other FAR sections unique to service contracting.
2. The contractor should always be aware of who the CO is and the limitations on his authority. The authority of any authorized representatives or CORs should be well defined and the contractor should make it standard practice to deal only with those so authorized.

3. Both parties should make sure that all personnel are aware that many people with whom they will be conducting business, such as QAEs and engineers have severely limited authority and the government may not be bound by their actions.

4. The concepts of ratification and implied authority are real, yet to rely on such concepts in lieu of open decisions by the CO can lead to misunderstandings, bitter feelings between the parties, and even monetary losses by the contractor.

5. Contractors should be cautious when dealing with such matters as wage and labor provisions. These areas are stringently controlled by statute and are generally not open to negotiation. Any actions waiving the legislative requirements of wage and labor regulations will probably not be binding on the government.

6. When preparing a service contract bid, the contractor should be aware that the government has the unilateral right to extend an initial contract out to a period of up to 60 months. As each annual option is exercised, the contractor is only allowed to adjust his labor cost to the most recently determined Department of Labor wage rates; no other cost adjustments are allowed during any option year.

7. Before relying on a decision with significant consequences, get it in writing. Even if a decision must be made and action taken before a written order can be made, follow up the action as soon as possible in a letter to the CO.

The influence of the A-76 program is significant in all of the military branches. However, many of the criticisms of the program are valid due in large part to the current attitude toward discipline in spending. The prospective contractor should rejoice in the fact that one of the goals of the program is to give the business of providing services to the private sector. However, the contractor should be aware that even while his services are being tendered, the government is comparing his price to the cost of the same services provided by in-house forces.

Even though the military branches approach services contracting in different ways, it should be apparent that there are two distinct chains of command with which a contractor must interact in accomplishing his work. The first is the business or contract management group which awards the contract and negotiates changes and prices. The other is the technical group which is responsible for the PWS and the specification input in any changes. Such an organizational structure may seem inefficient but the military apparently feels that by keeping the technical and business portions of the contract separate, they are in a better position in which to train each party in the field of their specialty. If the A-76 program works as designed, any such inefficiences should be recognized and the actual management of a service contract would be awarded as its own separate contract. The Army is actually considering such a venture (personal communication with M. Kendrick, 1987). But the problem with awarding contract management as its own separate contract is that eventually the government is going to have to manage somebody, and will thus require its own management staff anyway.

As the methods and organization of service contracts continue to evolve, the influence of A-76 will have an increasing impact on the volume

of contracts awarded to the commercial sector. Additionally, there will continue to be an increased emphasis on the training and experience level of all government personnel involved in the contracting process. The recently implemented internship program should establish an even more reliable pool from which the military can draw COs. Both the military and the contractor should expect increased Congressional and public attention as the budgets are tightened and all military procurement comes under even closer scrutiny. But the need for services will always be present and there will therefore always be service contracts and government officials to administer them.

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