**Section 1120.2055 Types of Contracts**

a) Scope of Rule

This Subpart contains descriptions of types of contracts and limitations as to when they should be utilized by the IOC in its procurements. Types of contracts not mentioned in this Section may also be utilized.

b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting

The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Code. This type of contracting may not be used alone or in conjunction with an authorized type of contract.

c) Types of Fixed-Price Contracts

1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the contractor's cost of performing the work specified in the contract.

2) Fixed-Price Contract with Price Adjustment

A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contractor price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

i) changes in the contractor's labor agreement rates as applied to an industry or areawide (such as are frequently found in contracts for the purchase of coal);

ii) changes due to rapid and substantial price fluctuations, that can be related to an accepted index (such as contracts for gasoline, heating oils and dental gold alloy); and

iii) in requirement contracts when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

B) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the IOC shall retain the right to reject the price increase and terminate without cost the future performance of the contract.

d) Cost-Reimbursement Contracts

1) Determination Prior to Use

A) A cost-reimbursement type contract may be used only when the CPO determines in writing that such a contract is likely to be less costly to the IOC than any other type or that it is impracticable to obtain otherwise the supplies or services.

B) Reimbursement of travel expenses in accordance with applicable travel control board regulations is authorized without further determinations.

2) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee.

3) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract that provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract. The cost-plus-fixed-fee contract can be either a completion form or term form.

4) Cost Incentive Contracts

A) General. A cost-incentive type of contract provides for the reimbursement to the contractor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the contractor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the contractor controls cost in the performance of the contract).

B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the contractor suffers a loss.

C) Cost-Reimbursement Contract with Cost-Incentive Fee. In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the IOC is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the contractor.

e) Performance Incentive Contracts

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus, while late completion may entitle the IOC to a price decrease.

f) Time and Materials Contracts; Labor Hour Contracts

Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Labor hour contracts provide only for the payment of labor performed. These contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior IOC approval.

g) Definite Quantity and Indefinite Quantity Contracts

1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the IOC is obligated to order and may also provide for a maximum quantity provision that limits the IOC's obligation to order.

3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the IOC to order all the actual IOC requirements during a specified period of time.

h) Leases

A lease is a contract for the use of supplies or real property under which title will not pass to the IOC at any time.

i) Recovery Contracts

Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the State. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.

j) Option Provisions

1) Contract Provision. When a contract is to contain an option for renewal, extension or purchase, notice of that provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the IOC's option.

2) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals.

k) State Produced Supplies and Services

Notwithstanding any provision in any contract, supplies or services available from the State's own programs, such as Correctional Industries, may be ordered without violating any contract.

l) Extraordinary Quantities

Notwithstanding any provision in any contract, the IOC reserves the right to take bids separately if a particular quantity requirement arises that exceeds the IOC's normal needs or ordering requirements.

m) Energy Conservation

The CPO may authorize an IFB, RFP or sole source negotiation for energy conservation measures whereby the IOC would make payment based on utility cost savings. The contract shall require a clearly defined baseline of energy usage and method of measuring cost savings taking into account at least differing weather conditions, changes in facility, usage and cost of energy.

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