

**Effective 3/29/2014**

**63G-6a-1205 Regulation of contract types -- Permitted and prohibited contract types.**

- (1) Except as otherwise provided in this section, and subject to rules made under this section by the applicable rulemaking authority, a procurement unit may use any type of contract that will promote the best interests of the procurement unit.
- (2) An applicable rulemaking authority:
  - (a) may make rules governing, placing restrictions on, or prohibiting the use of any type of contract; and
  - (b) may not make rules that permit the use of a contract:
    - (i) that is prohibited under this section; or
    - (ii) in a manner that is prohibited under this section.
- (3) A procurement officer, the head of an issuing procurement unit, or a designee of either, may not use a type of contract, other than a firm fixed price contract, unless the procurement officer makes a written determination that:
  - (a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated;
  - (b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and
  - (c) the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the procurement unit, taking into consideration the following criteria:
    - (i) the type and complexity of the procurement item;
    - (ii) the difficulty of estimating performance costs at the time the contract is entered into, due to factors that may include:
      - (A) the difficulty of determining definitive specifications;
      - (B) the difficulty of determining the risks, to the contractor, that are inherent in the nature of the work to be performed; or
      - (C) the difficulty to clearly determine other factors necessary to enter into an accurate firm fixed price contract;
    - (iii) the administrative costs to the procurement unit and the contractor;
    - (iv) the degree to which the procurement unit is required to provide technical coordination during performance of the contract;
    - (v) the impact that the choice of contract type may have upon the level of competition for award of the contract;
    - (vi) the stability of material prices, commodity prices, and wage rates in the applicable market;
    - (vii) the impact of the contract type on the level of urgency related to obtaining the procurement item;
    - (viii) the impact of any applicable governmental regulation relating to the contract; and
    - (ix) other criteria that the procurement officer determines may relate to determining the contract type that is in the best interest of the procurement unit.
- (4) Contract types that, subject to the provisions of this section and rules made under this section, may be used by a procurement unit include the following:
  - (a) a fixed price contract;
  - (b) a fixed price contract with price adjustment;
  - (c) a time and materials contract;
  - (d) a labor hour contract;
  - (e) a definite quantity contract;
  - (f) an indefinite quantity contract;
  - (g) a requirements contract;

- (h) a contract based on a rate table in accordance with industry standards; or
- (i) a contract that includes one of the following construction delivery methods:
  - (i) design-build;
  - (ii) design-bid-build; or
  - (iii) construction manager/general contractor.
- (5) Except as it applies to a change order, a procurement unit may not enter into a cost-plus-percentage-of-cost contract, unless:
  - (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement officer;
  - (b) it is standard practice in the industry to obtain the procurement item through a cost-plus-percentage-of-cost contract; and
  - (c) the percentage and the method of calculating costs in the contract are in accordance with industry standards.
- (6) A procurement unit may not enter into a cost-reimbursement contract, unless the procurement officer makes a written determination that:
  - (a)
    - (i) a cost-reimbursement contract is likely to cost less than any other type of permitted contract;  
or
    - (ii) it is impracticable to obtain the procurement item under any other type of permitted contract;  
and
  - (b) the proposed contractor's accounting system:
    - (i) will timely develop the cost data in the form necessary for the procurement unit to timely and accurately make payments under the contract; and
    - (ii) will allocate costs in accordance with generally accepted accounting principles.

Amended by Chapter 196, 2014 General Session