

## **Procurement Practices at Embassy Berlin**

(AUD/FM-07-28)

### **Background**

By law, Congress has established a wide range of goals to be accomplished with the funds it appropriates for contracts and other acquisitions, ranging from competition to customer service. The Government has established extensive guidance on procurement practices, such as the Federal Acquisition Regulation (FAR) and the Department of State Acquisition Regulation (DOSAR), which are required to be followed for acquiring goods and services. In addition, the Office of the Procurement Executive has developed an overseas contracting and simplified acquisition guidebook known as The Cookbook.

The Embassy Berlin Procurement Office supports the operation of the embassy in administrative functions pertaining to procurement of supplies, equipment, and services. According to the Embassy Berlin website, the Procurement Office's services include:

- procurement guidance;
- review and acceptance of purchase requests;
- solicitation, evaluation, and contract award;
- sole source determination and approval; and
- contract administration.

The Procurement Office processes and awards contractual actions for the Facilities Maintenance Operations (FAC) section.

FAC is responsible for ensuring that preventive, routine, and special maintenance programs are implemented at post. It is also responsible for supplying needed furniture, furnishings, appliances, and equipment; providing pest control services; and administering the safety, health, and environmental management program.

To acquire necessary goods and services, FAC is responsible for preparing a procurement request package. This includes correctly identifying and documenting the need for contractual action, developing a scope of work, and preparing a government estimate. These documents are then forwarded to the Procurement Office. FAC is also responsible for ensuring that only authorized personnel are involved in the development of the procurement documents.

Post uses blanket purchase agreements (BPA) and purchase orders for much of the facilities maintenance work. BPAs are arrangements between the government and contractors that allow personnel to order supplies or services by phone, fax, in person, electronically, or in writing. Once a BPA is in place, personnel can place an order against it. BPAs can be awarded for a maximum of three years. Purchase orders are awarded as one-time procurements for specific jobs and cannot exceed \$100,000 (or \$5 million if buying commercial items).





not always award BPAs to a minimum of three companies. Specifically, 53 of the 79 (67 percent) BPAs did not list three suppliers.

### **Rotation of Suppliers**

When post personnel order supplies or services from BPAs, procurement regulations require that the government rotate procurement among the contractors. OIG found that the post did not rotate the procurement as required. For example, in FY 1998, only one of the three contractors available under the BPA category for locksmith services was used. The ordering official used the same contractor 30 times, and the contractor earned more than \$45,000. OIG also found that of the 369 orders placed for mason services between 1997 and 2004, 363 orders went to one company. For four of those years, this company was the only one used for mason services.

### **Monetary Limits on BPA Use—By Item**

The FAR requires that any purchase from a BPA that exceeds \$2,500 be competed among the contractors for that BPA category. Embassy Berlin's ordering officials did not abide by this limitation in eight of the ten BPA categories that OIG reviewed. For example, during one year, OIG found that 16 (23 percent) of the 69 orders placed under the plumbing services category exceeded the \$2,500 limit. There was no evidence that any of these items were competed among the contractors as required.

### **Monetary Limits on BPA Use—Overall**

The FAR requires that simplified acquisition procedures, such as BPAs, be limited to purchases of goods or services that are less than \$100,000. If a procurement official finds that purchases under a BPA exceed this limit or are even approaching the limit, the procurement official should inform the requesting office that it can no longer use that BPA. Instead, the requesting office should order goods or services from other contractors listed under the BPA category.

OIG found that post was not complying with this requirement. For instance, one contractor was included in the Carpenter Services BPA category. When this contractor neared the \$100,000 limit under this BPA category, post created a new BPA category called Carpenter Services 2. This contractor was the only one included under the new category. The contractor earned more than \$100,000 between Carpenter Services and Carpenter Services 2. This same contractor was also awarded a BPA for the category Mason Services. Again, when this contractor neared the \$100,000 limit, rather than rotating the orders among the other contractors included in the BPA category, post created Mason Services 2 so that the contractor could continue to provide services. Between Mason Services and Mason Services 2, the contractor earned more than \$100,000 for that year.

These instances of noncompliance were caused by an inadequate internal control environment. OIG identified a number of significant internal control weaknesses related to procurement practices that need to be addressed.

### **Separation of Duties**

Key duties and responsibilities need to be divided among different people to reduce the risk of error or fraud. This should include separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets. No one individual should control all key aspects of a transaction or an event.

OIG found that post did not maintain appropriate separation of duties. FAC personnel were identifying and documenting the need for goods and services and were obtaining bids for these goods and services from preferred providers for purchase orders. FAC would provide these bids to the Procurement Office, which would then accept these bids instead of issuing formal RFQs. Although procurement regulations would allow FAC to suggest contractors, only the Procurement Office should solicit bids. FAC staff was also authorizing and reviewing transactions and handling the assets that were ordered. These practices are unsound, and they remove procurement integrity from the process.

### **Authorization**

Transactions and other significant events should be authorized and executed only by individuals acting within the scope of their authority. This is the principal means of ensuring that only valid transactions are initiated or entered into.

OIG found that many of the orders placed through BPAs that it reviewed were not appropriately authorized. Between 1996 and 1999, the BPA purchase logs documented the authorized ordering officials for each contractor. However, OIG found that both authorized and unauthorized officials ordered goods and services from contractors during this period. Beginning in 1999, FAC removed the list of authorized ordering officials from the purchase logs. Therefore, OIG was unable to determine the authorized ordering officials.

An American official is supposed to review purchase logs each month and certify that the information on the logs is accurate. The official then provides the certified logs to the Procurement Office. According to the FAR, the Procurement Office should select a random sample of procurement logs for review each year to ensure that proper contracting procedures are followed. Beginning in 2004, OIG found that non-American officials began certifying the purchase logs each month before forwarding copies of these logs to the Procurement Office. The Procurement Office had not reviewed a random sample of procurement logs since 2003 and therefore was not aware of the change in procedure.

## **Adequate Documents and Records**

Documents and records are the physical objects upon which transactions are entered and maintained. Documents must be adequate to provide reasonable assurance that all assets are properly controlled and that all transactions are correctly recorded. All transactions and other significant events need to be clearly documented. All documentation and records should be properly managed and maintained and be readily available for review.

OIG found that certain standard documents had been modified to remove key information. For instance, the BPA purchase logs should contain key information that management can use to determine:

- whether an order was placed by an authorized official,
- whether there was competition (if greater than \$2,500),
- the estimated costs,
- whether delivery of the goods and services was accepted and by whom, and
- the amount charged by the contractor.

In 1999, FAC removed many of the key columns in the purchase log form. For instance, the logs no longer showed who was authorized to order supplies or services or who received the supplies or services. In addition, the amount of estimated costs was deleted once the actual invoice was received. By removing this key information, management was unable to ensure that post had complied with Federal procurement regulations.

In addition, OIG found that post's records were not properly managed and maintained. The contracting officer had awarded contracts, even though required documentation was not maintained in the procurement files. For example, all 31 purchase orders and all 79 BPAs indicated that the responsibility determination had been completed. However, the required responsibility determination memorandum was not included in any of the files. The contracting officer was proceeding with procurements without the approved procurement request, scope of work, and government estimate from FAC. The contracting officer was certifying that all procurement regulations had been followed without having these documents.

## **Oversight**

Internal control should generally be designed to ensure that ongoing monitoring occurs in the course of normal operations. It should be performed continually and be firmly established in the agency's operations. Unless someone observes and evaluates performance, personnel are more likely to forget or fail to follow procedures or to become careless. In addition, both fraudulent and unintentional misstatements become more likely without regular management oversight.

The American officials are responsible for ensuring that procurement is performed appropriately. OIG found that supervisors were not appropriately overseeing procurement transactions or regularly checking performance. The supervisors did not









During the review of purchase orders and blanket purchase agreements (BPA), the Office of Inspector General (OIG) noted noncompliance with procurement regulations as follows:

**Purchase Orders**

1. Using simplified acquisition procedures, the contracting officer should consider at least three sources to promote competition to the maximum extent possible. The requirements office can recommend sources, but the contracting officer has the final decision on what source to use. [The Cookbook, Chapter 2, p. 15, and FAR 13.104(b)]
2. For purchases over \$2,500, soliciting fewer than three contractors is not considered to be fully competitive. A justification is required in the purchase order file supporting the lack of competition. (The Cookbook, Chapter 2, p. 39)
3. For contract actions that are expected to exceed \$10,000, but not expected to exceed \$25,000, the contracting officer must display in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation. This notice must include a statement that all responsible sources may submit a response that, if received in a timely manner, must be considered by the agency. The information must be posted not later than the date the solicitation is issued and must remain posted for at least 10 days or until after quotations have been opened, whichever is later. [FAR 5.101(a) and 5.101(a)(2)]
4. For procurement actions between \$25,000 and \$100,000 (\$5 million for commercial items), the contracting officer should consider local advertising. Sole source justification is required if competition is not performed. (FAR 13.501 and 6.303, and The Cookbook, Chapter 2, p. 40)
5. The purchase order file should include some documentation that shows the Government has received the supplies or services, performed an inspection to make sure the items conform to what was required, and document the acceptance of the supplies or services. (OIG noticed that Post usually used Form OF-127, *Receiving and Inspecting Report*.) (FAR 46.401, 46.601, and 46.501, and The Cookbook, Chapter 2, pp. 135-138 and 152-153)
6. The contracting officer must use certain standard forms to record relevant data and document acquisitions. (DOSAR 613.307-70) For Embassy Berlin, the names of the contracting officer and procurement assistant should be included in the *Purchase Order Record of Quotations* document. The procurement assistant should sign in the lower left-hand corner of the document when it is ready for the contracting officer's review. The contracting officer should sign in the lower right-hand corner of the document to indicate that the purchase order was done according to rules and regulations and that it is a legal purchase order.

7. If a statement of work is required, a request for quotation (RFQ) should be prepared and used to solicit quotations from companies. Post should try to solicit three companies. (The Cookbook, Chapter 2, p. 41)
8. If a purchase order has been sole sourced, a valid written justification is required, which is limited to the following: (1) only one responsible source and no other will satisfy agency requirements, (2) unusual and compelling urgency, (3) industrial mobilization or other expert services, (4) international agreement, (5) authorized or required by statute, (6) national security, and (7) public interest. A contracting officer cannot negotiate for a sole source contract unless the contracting officer justifies, if required, the use of such actions in writing; certifies the accuracy and completeness of the justification; and obtains the required approval from the appropriate contracting official. (FAR 13.501 and 6.302).
9. Construction orders over \$2,000 require written solicitation. [The Cookbook, Chapter 2, p. 41, and FAR 13.106-1(d)]
10. An independent Government estimate of construction costs is required for each proposed contract and for each contract modification anticipated to exceed the simplified acquisition threshold. The contracting officer may require an estimate when the cost of required work is not anticipated to exceed the simplified acquisition threshold. The estimate shall be prepared in as much detail as though the Government were competing for award. [FAR 36.203(a)]
11. The contracting officer should assess prospective contractors for all purchase orders, including checking to see if the company is debarred or suspended. Documentation should be included in the file indicating why a contractor was chosen, such as previous acceptable work. [FAR 9.104, 9.103(b), and 9.105-2]

### **BPAs**

1. At least three sources should be considered to promote competition to the maximum extent practicable. Whenever practicable, quotations or offers should be requested from two sources not included in the previous selection. [FAR 13.104(b) and The Cookbook, Chapter 2, p. 39)
2. If a BPA has been sole sourced, a valid written justification is required, which is limited to the following: (1) only one responsible source and no other will satisfy agency requirements, (2) unusual and compelling urgency, (3) industrial mobilization or other expert services, (4) international agreement, (5) authorized or required by statute, (6) national security, and (7) public interest. A contracting officer cannot negotiate for a sole source contract unless the contracting officer justifies, if required, the use of such actions in writing; certifies the accuracy and completeness of the justification; and obtains the required approval from the appropriate contracting official. (FAR 13.501 and 6.303).

3. Each BPA will provide the name of the BPA Administrator. (The Cookbook, Chapter 2, p. 106)
4. The existence of a BPA does not justify purchasing from only one source. [FAR 13.303-5(c)]
5. Micropurchases should be distributed equitably among qualified suppliers. (The Cookbook, Chapter 2, p. 19)
6. Each BPA will list individuals authorized to purchase under the BPA and the monetary limitation per purchase for each individual shall be furnished to the supplier by the contracting officer. Each BPA will also have a purchase limitation, which is a statement that specifies the dollar limitation for each individual purchase under the BPA. [FAR 13.303-3(a)(3)-(4)]
7. The Government must properly document the receipt, inspection, and acceptance of supplies or services and review invoices before payment. (The Cookbook, Chapter 2, pp. 135-138 and 152-153)
8. Among other tasks, the BPA Administrator is responsible for verifying that each ordering official tracks BPA usage and collecting all order registers on a monthly basis and reviewing them to verify that only authorized officials are placing orders. [DOSAR 613.303-2(a)(2-3)]
9. BPAs must follow all procurement laws and regulations, such as FAR 13.303-5, which limits the dollar amount of individual BPA orders to \$100,000 (\$5 million for commercial items). (The Cookbook, Chapter 2, p. 106)
10. When items are delivered, the following information shall be included in a delivery ticket or sales slip:
  - Name of supplier;
  - BPA number;
  - Date of purchase;
  - Purchase number;
  - Itemized list of supplies or services furnished;
  - Quantity, unit price, and extension of each item, less applicable discounts; and
  - Date of delivery or shipment. [FAR 13.303-3(a)(5)]
11. Any request for BPA purchases that exceed \$2,500 must be competed. [FAR 13.303-5(d) and The Cookbook, Chapter 2, pp. 18-19 and 40]
12. The contracting officer should assess prospective contractors for all purchase orders, including checking to see if the company is debarred or suspended. Support documentation must be included in the file indicating why a contractor was chosen, such as previous acceptable work. [FAR 9.104, 9.103(b), and 9.105-2]

13. The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPAs, at least annually, to ensure that authorized procedures are being followed. [FAR 13.303-6(a)]
14. The contracting officer who entered into the BPA shall (1) ensure that each BPA is reviewed at least annually and, if necessary, updated at that time and (2) maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements. [FAR 13.303-6(b)]
15. The contracting officer must use certain standard forms to record relevant data and document acquisitions. (DOSAR 613.307-70) Embassy Berlin requires that the names of the contracting officer and purchasing agent or procurement assistant be included in the *Blanket Purchase Agreement Supporting Documentation* document. The purchasing agent or procurement assistant should sign in the lower left-hand corner of the document when it is ready for the contracting officer's review. The contracting officer should sign in the lower right-hand corner of the document to indicate that the BPA was done according to rules and regulations and that it is a legal BPA.
16. Embassy Berlin requires the contractor to sign the *Attachment of Blanket Purchase Agreement* document to acknowledge acceptance of the BPA.
17. The Government shall perform acquisition planning and conduct market research for all acquisitions in order to promote and provide for (1) acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable; and (2) full and open competition or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired. [FAR 7.102(a)(1-2)]