
COMMUNICATIONS WITH CONTRACTORS
AND OFFERORS
Table of Contents

1. General
 - .1 Purpose
 - .2 Scope

2. Policy
 1. General
 2. Policy on Written Communications
 3. Policy on Oral Communications
 4. Special Policy on Communications Regarding Proposed Acquisitions

COMMUNICATIONS WITH CONTRACTORS
AND OFFERORS
General

1. GENERAL

1.1 Purpose. This Supplement promulgates policy and procedures governing written and oral communications with contractors and offerors relative to Bureau contracts. Its purpose is to:

A. Ensure that contractual commitments are made only by Bureau Contracting Officers.

B. Ensure that two-way communications between a contractor (or offeror) and the Bureau flow promptly and properly.

C. Caution all Bureau personnel other than Contracting Officers to abstain from making statements or taking actions that can be construed by any contractor as authority to alter the terms of an existing contract or to perform any work not under an existing contract.

1.2 Scope. This directive applies to all communications with contractors and offerors. It does not apply to requests for information received under the Freedom of Information Act. (See 11 BIAM for Freedom of Information Act and 19 BIAM Supp. 20, Dissemination of Acquisition Information).

COMMUNICATIONS WITH CONTRACTORS
AND OFFERORS
Policy

2. POLICY

2.1 General. The following policies have been established by 19 BIAM and its Supplements regarding contractual matters:

A. Contractual Matters Exclusive Province of Contracting Officers.

(1) Authority with regard to contracts rests exclusively with a Bureau employee to whom such authority has been delegated — that is, to an employee holding a current and valid warrant as a Contracting Officer. Only a Contracting Officer can sign contracts or other papers that incur, amend, or terminate contractual obligations.

(2) Actions that commit the Bureau to obtain supplies or services from commercial or private sources, or actions that modify the terms of contracts, shall be processed only through proper administrative channels and shall be executed only by Contracting Officers.

B. Curbs on Employee Participation in Contractual Matters.

Except for a Contracting Officer, no Bureau employee — regardless of position, title, or classification grade — shall:

(1) Approve, seek to approve, or influence contractual actions.

(2) Give the appearance of incurring, amending, or terminating contractual obligations on behalf of the Government by means of letters, memoranda, messages, or statements of any kind, written or oral, no matter how informal.

C. Penalties for Unauthorized Employee Participation in Contractual Matters.

(1) Letter of Reprimand. Any attempt by an employee other than a Contracting Officer to change or to offer to alter the scope of a contract's terms or conditions in any way may constitute an action for which the Bureau cannot be held accountable unless the unauthorized action is ratified by the Deputy Assistant Secretary - Indian Affairs. Regardless of the ultimate ratification of an unauthorized act, a letter of reprimand will be placed in the Official Personnel Folder of an employee who commits an unauthorized acquisition act. (See 19 BIAM Supp. 28, Ratification of Unauthorized Acquisition Acts).

(2) Reimbursement of Funds. An employee other than a Contracting Officer who approves, seeks to approve, or influences contractual actions is subject to disciplinary action and may be required to personally reimburse the U.S. Treasury for any Bureau funds expended as a result of such actions.

COMMUNICATIONS WITH CONTRACTORS
AND OFFERORS
Policy

(3) Personal Liability to Contractor. Commitments made by persons who do not possess contract signatory authority are considered personal acts, and the Government is not legally bound in any contracts by the signature of an unauthorized person. Any employee making an unauthorized commitment regarding a contract may be held personally liable by the contractor through civil collection proceedings. (See 19 BIAM Supp. 28, Ratification of Unauthorized Acquisition Acts).

D. Penalty for Encouraging Contractor to Work in Absence of Funds. Any employee who encourages a contractor to work in the absence of funds may be violating 31 U.S.C. 665 and may be subject to criminal penalties.

2.2 Policy on Written Communications.

A. Written Communications Preferred. Whenever possible, communications concerning contractual matters with contractors or offerors shall be conducted in writing.

B. Communications Reserved for Contracting Officer. Only a Contracting Officer shall issue a written communication intended for dissemination to a contractor or offeror that:

- (1) Contractually commits the Bureau.
- (2) Interprets, waives, or changes the provisions of any contract or solicitation documents.
- (3) Exercises any right under a contract.
- (4) Proposes or affects any other contractual terms or provisions.
- (5) Amends a contract.
- (6) Gives advance, informal or formal notice of termination to a contractor or notice to suspend work.

C. Handling Communications on Current Contracts.

(1) Written communications relative to a current contract which are received or routed to a Bureau office other than the Contract Office may normally be answered and signed in the Bureau office if it can be determined that the answer will not incur, amend, or terminate a contractual obligation. A copy of the incoming correspondence and the Bureau reply shall, in that case, be provided the cognizant Contracting Officer for information purposes and for filing in the contract file.

COMMUNICATIONS WITH CONTRACTORS
AND OFFERORS
Policy

(2) If the incoming correspondence requires an answer that incurs, amends, or terminates a contractual obligation, the correspondence will be forwarded by the Bureau office to the Contracting Officer together with any necessary background information. The Contracting Officer shall answer the correspondence and provide a copy of the answer to the Bureau office.

D. Involvement of the Solicitor's Office. The Solicitor's Office may communicate directly with current contractors and offerors concerning matters of form and legality of contracts, legal aspects of claims, litigation, and other legal issues. A copy of each communication between the parties should be sent to the Contracting Officer for inclusion in the contract file.

2.3 Policy on Oral Communications. When communications between the Bureau and contractors or offerors cannot be reduced to writing, the following policy applies:

A. Contracting Officer to be Present. Whenever oral communications may affect the scope or provisions of a contract, the appropriate Contracting Officer shall be a party to the discussion.

B. Solicitor's Office to Participate when Legal Issues Arises. Whenever legal aspects of a contract are to be discussed, the Solicitor's Office shall be a party to the discussion along with the Contracting Officer.

C. Requirement in Absence of Contracting Officer or Legal Representative. In the event the Contracting Officer or a representative from the Solicitor's Office cannot be a party to a discussion that may affect the scope or provision of a contract (particularly in the case of telephone conversations), the Bureau employee holding the discussion shall provide either or both offices with a written summary of the discussion.

D. Employee's Statement of Limited Authority.

(1) A Bureau employee (other than Contracting Officers) who talks to contractors at meetings, conferences, site visits, etc., or who has any other form of communication with contractors, should advise them that:

(a) He or she (the Bureau employee) has neither authority nor the intention to change contract terms; and

(b) If the Bureau wants to issue changes, only a Contracting Officer is empowered to do so -- in writing, and in the manner prescribed in the contract.

COMMUNICATIONS WITH CONTRACTORS
AND OFFERORS
Policy

(2) The following is a statement that a Bureau employee may use verbatim or in paraphrase to inform contractors of the limitation of authority regarding contractual matters:

You are hereby notified that I do not have the authority to direct you in any way to alter your obligations or change the Statement of Work in your contract. Further, if the Bureau of Indian Affairs, as a result of the information obtained from today's discussion, desires to alter your contract obligations or to change the contract's Statement of Work, changes will be issued in writing and signed by the Contracting Officer. You should take no action on any change unless and until you receive such a change order.

2.4 Special Policy on Communications Regarding Proposed Acquisitions.

A. Information concerning proposed acquisitions shall not be released outside the Bureau prior to review by the Acquisition/Assistance Agreement Review Committee, or prior to synopsis or solicitation.

B. Information concerning a proposed acquisition shall be released by the appropriate Contracting Officer to all potential offerors at the same time in order to preclude any potential offeror receiving an unfair advantage over others.

C. Between the time Invitations for Bids (IFBs) or Request for Proposals (RFPs) are mailed and contracts are awarded, oral or written communications with potential offerors shall be conducted only by, or under the authority of, a Contracting Officer. This includes solicitation of prices, technical or management information, or engineering data from a potential offeror. Inquiries from offerors received by other Bureau employees about IFBs or RFPs shall be referred directly to the appropriate Contracting Officer without any further discussion.

D. No information regarding referrals for technical review, contracting authority, or other matters in connection with any acquisition shall be divulged outside the Bureau. This restriction applies particularly to proceedings of the Acquisition/ Assistance Agreement Review Committee. (See 19 BIAM Supp. 2, Charter for the Acquisition/Assistance Agreement Review Committee).