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A8.270 Types of Contracts

1. General

The selection of an appropriate contract type depends on factors such as the nature of the goods, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the University or the Contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the Contractor.

2. Types of Contracts

The following are the most common types of contracts used by the University. Other types of contracts not described may be used, subject to the approval of the Director, Office of Procurement and Real Property Management (OPRPM).

a. Fixed-Price Contracts

A fixed-price contract places responsibility on the Contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price which is firm or may be subject to contractually specified adjustments. The fixed-price contract is appropriate for use when the extent and type of work necessary to meet University requirements can be reasonably specified and the cost can be reasonably estimated, as is generally the case for construction or standard commercial products. A fixed-price type of contract is the only type of contract that can be used in competitive sealed bidding.

b. Requirements Contract

This type of contract provides for filling all actual purchase requirements of specific supplies or services of designated University activities during a specified contract period with deliveries to be scheduled by the timely placement of orders with the Contractor. For such a contract, an estimated total quantity is stated in the Invitation for Bids for the information of prospective Contractors and should reflect the University's estimated use of such supplies or services as realistically as possible. The estimate may be obtained from the records of previous requirements.

Care should be used in preparing and administering this type of contract to avoid imposition of an impossible burden on a Contractor. Therefore, the contract should state, where feasible, the maximum limit of the Contractor's obligation to deliver and, in such event, shall also contain an appropriate provision limiting the University's obligation to order.

A requirements contract may be used for procurements when it is impossible to determine in advance the precise quantities of supplies or services that will be needed by designated University activities during a specified period of time.

c. Multi-Term Contract

A multi-term contract for goods or services may be entered into for any period of time deemed to be in the best interests of the University provided the term of the contract and conditions of renewal or extension are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability of funds.

d. Leases

A lease is a contract for the use of equipment under which title will not pass to the University at any time. A lease may be entered into provided all conditions for renewal and costs of termination are set forth in the lease and the lease is not used to circumvent normal procurement procedures.

e. Lease/Purchase Contract

A lease/purchase contract is a contract for the use of equipment under which title will pass to the University when the University exercises the option to purchase. Such a contract specifies the initial term of the contract with an option for renewal, extension or purchase. Renewals or extensions for succeeding periods shall be subject to the availability of funds. At the end of the lease term, the University may exercise its option of purchasing the equipment for a nominal amount or returning it to the Contractor. The University does not acquire an equity interest in the equipment until the exercise of the purchase option under this type of contract.

f. Installment-Purchase Contract

This type of contract provides for the purchase of equipment over a specific period. The contract specifies the initial term of the contract which shall be renewable annually thereafter up to the agreed upon term period, contingent upon the availability of funds. At the end of the specified term, title to the equipment passes to the University. The University does acquire an equity interest in the equipment under this type of contract.