

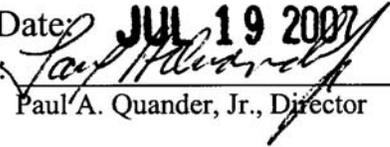


POLICY STATEMENT

Policy Statement 5604

Policy Area: Procurement

Effective Date: JUL 19 2007

Approved: 
Paul A. Quander, Jr., Director

Contracting Officer's Technical Representation

I. COVERAGE

This Policy Statement and its appended procedures apply to all employees of the Court Services and Offender Supervision Agency ("CSOSA" or "Agency"), excluding the Pretrial Services Agency.

II. BACKGROUND

Contracting Officers may appoint qualified individuals nominated by program offices to act as authorized technical representatives in the monitoring and technical administration of a contract. Such officials will be designated as Contracting Officer's Technical Representatives (COTRs). CSOSA relies on COTRs to ensure that acquisitions yield the highest quality products and services, and that such contracted products and services are delivered in accordance with both the technical and financial terms and conditions of the contract.

III. POLICY

CSOSA may designate, in writing, qualified individuals to serve as COTRs to assist in the monitoring and technical administration of an assigned contract. To serve in this capacity, these individuals must complete the required training as determined by the Office of Procurement (Procurement). The selection, appointment, and authority of COTRs shall be in compliance with the procedures appended to this Policy Statement.

IV. AUTHORITIES, SUPERSEDURES, REFERENCES, AND ATTACHMENTS

A. Authorities

Section 11233 of the *National Capital Revitalization and Self-Government Improvement Act of 1997*, Pub. Law 105-33, 111 Stat. 748, codified at D.C. Official Code § 24-133.

Office of Federal Procurement Policy Act of 1974, Pub. L. 93-400, amended by Pub. L. 96-83, codified at 41 U.S.C. Chapter 7.

Federal Acquisition Regulations (FAR).

48 C.F.R. 1.3 (2005), Agency Acquisition Regulations

48 C.F.R. 2.101 (2005), Definitions of Words and Terms.

48 C.F.R. 3.1 (2005), Safeguards.

Procurement Integrity Act, Pub L. 93-400, 41 U.S.C. § 423 (c-f) (1988).

48 C.F.R. § 3.104 (2005), Improper Business Contacts and Conflicts of Interest.

5 C.F.R. § 2635 (2006), Standards of Ethical Conduct for Employees of the Executive Branch.

5 C.F.R. § 2636 (2006), Limitations on outside earned income, employment and affiliations for certain noncareer employees.

5 C.F.R. § 2638 (2006), Office of Government Ethics and executive agency ethics program responsibilities.

B. Supersedures

None.

C. Procedural References

Policy Statement “Standards of Employee Conduct”, 30 August 1999.

D. Attachments

Appendix A – General Procedures

Appendix B – Sample COTR Appointment

Appendix C – Training Sources

APPENDIX A GENERAL PROCEDURES

A. Introduction

Designation of a Contracting Officer's Technical Representative (COTR) is required for any Agency contracts that involve monitoring of contractor performance after contract award (with respect to the technical requirements and/or terms and conditions of the contract). Essentially, a COTR serves as the Contracting Officer's "eyes and ears" during the post-award phase of a contract or task order. COTRs provide technical expertise for contract administration, ensuring timely oversight of contractor performance and monitoring contract funds.

B. Definitions

Contract: A mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. This includes all types of commitments that obligate the Government to an expenditure of appropriated funds, and that, except as otherwise authorized, are in writing.

Contracting Officer: A procurement official appointed in writing with the authority to enter into, administer, or terminate contracts and make related determinations and findings on behalf of the Agency.

Contracting Officer's Technical Representative: A Government employee with delegated authority from the Contracting Officer to monitor the contract performance within the technical requirements and/or terms and conditions of the contract, and as prescribed in the Contracting Officer's written appointment which delegates authority.

Senior Procurement Executive: The Associate Director of Management and Administration serves in this position and is responsible for the management and direction of the Agency's contracting functions and acquisition policies.

C. Eligibility Standards

In order to be determined eligible for an appointment as an Agency COTR, the following standards must be met:

1. The candidate must attend, and successfully complete, a basic COTR training course every five years. (See Appendix C "Suggested Sources" for COTR training)
2. The candidate must also attend the Agency training course, "Ethics and You".

3. The candidate must have the approval of his/her supervisor or Associate Director to serve in the COTR capacity for the appropriate program office.
4. The COTR must have relevant education, training, and experience that qualify him/her to monitor contractors' performance and provide technical expertise in support of contracted service or supply requirements. (Training requirement should be specific. Acceptable courses should be identified.)

D. Appointment Process

To be appointed as a COTR on a contract, the candidate's supervisor must submit a written request to the Director of Procurement. If the candidate is deemed qualified, the Contracting Officer will issue a written appointment which designates the individual as a COTR for a specific contract. In making a determination as to COTR qualifications, the Contracting Officer will evaluate the individual's education, training, and experience. The Contracting Officer will also ensure that no conflicts of interest exist between the prospective COTR and his assigned tasks, in accordance with the Procurement Integrity Act (FAR 3.104) and 5 U.S.C. § 2635. A copy of the COTR designation must be maintained in the official contract file.

E. Duties and Responsibilities

COTRs are expected to read and understand all provisions of assigned contracting actions in order to become completely familiar with what the contractor is required to provide or perform, including general and special contracting provisions, as well as technical specifications and appendices, including any modifications thereto. A COTR is authorized and obligated to perform the tasks listed below, to the extent required by the terms of the contract and to the extent authorized by the Contracting Officer:

1. Inspect and monitor contractor performance to assure technical proficiency and compliance with the technical and financial terms of the contract. Immediately notify the Contracting Officer of any noncompliance with the terms and conditions of the contract or of failure to make due progress;
2. Verify timely contractor performance and/or ensure the receipt of all deliverables, including, but not limited to, a monthly activity report. Review and approve the contractor's reports and/or other deliverable items as required by the contract unless such approval is specifically reserved for the Contracting Officer;
3. Review and approve (or recommend disapproval of) Contractor invoices to certify that the Contractor has satisfactorily performed work towards completed delivery/performance of items required under the contract;
4. Monitor and track the status of contract funding to ensure use is in accordance with planned efforts and adequate funds are available to complete all the terms and conditions of the contract.

5. Maintain liaison and direct communications with the contractor. Written communications with the contractor and other documents pertaining to the contract shall be signed as "Contracting Officer's Technical Representative" and a copy shall be furnished to the Contracting Officer;
6. Use good judgment, skill and reasonable care in the exercise of his/her authority, including the protection of privileged and sensitive information;
7. Avoid conduct that may compromise the position of the Agency, impair confidence in the integrity of the Agency with the business community or compromise the integrity of the procurement process. Such conduct may include financial conflicts with any entity doing business with CSOSA; accepting gifts or gratuities from said entities; or any other conduct prohibited by the Procurement Integrity Act or 5 U.S.C. § 2635.
8. Maintain adequate records to sufficiently describe the performance of his/her duties as a COTR during the life of the contract and to dispose of such records as directed by the Contracting Officer.

F. Limitations

The COTR is not an authorized Contracting Officer and, as stated in the COTR appointment, does not have the authority under any circumstances to:

1. Award, agree to award, or sign any contract, contract modification, notice of intent, or any other form of binding agreement;
2. Issue a solicitation or request for a proposal or bid;
3. Obligate, in any manner, the payment of money by the Agency;
4. Direct or approve any changes in the performance of the contract, the contract specifications; or any other actions that would result in additional liability to the Agency;
or
5. Interfere with the contractor's right to proceed with performance under the contract.

G. Acknowledgment of Appointment

An individual appointed as a COTR is required to acknowledge receipt of his/her appointment and return the acknowledgment to the Contracting Officer for inclusion in the official contract file.

H. Termination of Appointment

The Contracting Officer has the authority to terminate a COTR's appointment for violation of this policy statement. Such termination shall be made in writing and sent through the employee's chain of command. A termination notice is not required when the COTR's appointment terminates due to expiration of the contract or resignation from the Agency.

I. Waiver of Training Requirement

An employee may not serve as a COTR on any contract without the requisite training stated in Appendix A, Section C, "Eligibility Standards" and appointment by a Contracting Officer. In the event there is an urgent requirement for a specific individual to serve as the COTR, and the individual has not successfully completed the required training, the Director of Procurement, or in the absence of the Director, the Senior Procurement Executive, may waive the training requirement for a period of time not to exceed 180 days. The waiver will be granted in writing for this limited term.

APPENDIX B
SAMPLE COTR APPOINTMENT

(May be tailored to individual needs of the contract.)

MEMORANDUM

To: *John Doe, Program Specialist*
Office of Information Technology

From: *Tammie Crank, Contracting Officer*
Office of Procurement Management

Subject: COTR Appointment

Date: *May 4, 2006*

A. Responsibilities

You are hereby designated as the Contracting Officer's Technical Representative (COTR) for the Agency to communicate with the *Smith Company*, regarding Contract No. CSOSA-03-C-1001 for *systems consulting services*. You may not re-delegate your COTR authority. You are expected to read and understand all the provisions of this contracting action in order to become completely familiar with what the contractor is required to provide or perform, including general and special contracting provisions as well as technical specifications and appendices, including any modifications thereto. Specifically, this designation requires your performance of the following duties and responsibilities:

1. Inspect and monitor contract performance to assure technical proficiency and compliance with the technical and financial terms of the contract. Immediately notify the Contracting Officer of any noncompliance with the terms and conditions of the contract or of failure to make due progress;
2. Verify timely contractor performance and/or ensure the receipt of all deliverables, including, but not limited to, a monthly activity report. Review and approve the contractor's reports and/or other deliverable items as required by the contract unless such approval is specifically reserved for the Contracting Officer;
3. Review and approve (or recommend disapproval of) Contractor invoices to certify that the Contractor has satisfactorily performed work towards the delivery/performance of items required under the contract. Upon approval (or disapproval) return the invoice to the Office of Financial Management with your concurring signature. Improperly prepared invoices may be rejected by OFM. However, any disallowance or dispute with the amount(s) invoiced are only within the purview of the Contracting Officer. In those circumstances, the COTR must forward the invoice to the Office of Procurement for resolution with the contractor;
4. Monitor and track the status of contract funding to ensure that adequate funds available to fulfill the terms and conditions of the contract and that funds are being used for the purpose specified in the contract;

5. Maintain liaison and direct communications with the contractor. Written communications with the contractor and other documents pertaining to the contract shall be signed as "Contracting Officer's Technical Representative" and a copy shall be furnished to the Contracting Officer;
6. Use good judgment, skill and reasonable care in the exercise of your authority, including the protection of privileged and sensitive information; and
7. Avoid conduct that may compromise the position of the Agency, impair confidence in the integrity of the Agency with the business community or compromise the integrity of the procurement process. Such conduct may include financial conflicts with any entity doing business with CSOSA; accepting gifts or gratuities from said entities; or any other conduct prohibited by the Procurement Integrity Act or 5 U.S.C. § 2635.

B. Modifications

1. Under this designation, you have no authority to modify the stated terms of the contract or specifications in any manner, or to approve any action which would result in additional liability to the government. This prohibition includes: awarding, agreeing to award or signing any contract, contract modification, notice of intent or any other form of binding agreement; issuing a solicitation or request for proposal or a bid, directing or approving any changes to the pricing of the contract or revising the deadlines for performance; or interfering with the contractor's right to proceed with performance. You may be personally liable for unauthorized acts. Only the Contracting Officer has the authority to make changes relating to price, performance, deliverables, schedules and/or specifications.

2. To initiate a modification to this contract, please complete a requisition and forward it to the Office of Financial Management (OFM) with at least 15 days advance notice. OFM will review the requisition for appropriateness and funds availability and forward it to Procurement for processing. The following information should be included in, or attached to, the requisition:

- a) Contractor's name, address, and phone number;
- b) Dates of performance (or project deadlines);
- c) Place of performance;
- d) Brief description of modification action (e.g., revised delivery schedule or changed period of performance). (If a detailed statement of work is necessary, it should be attached to the requisition.);
- e) Unit prices and total funding amount;
- f) Cost center and project code;
- g) COTR name and phone number; and
- h) Any other supporting information or documentation (e.g., government cost estimate, statement of work, specific deliverables, security requirements, quotes from other vendors, etc.).

The requisition will subsequently be assigned for processing in the Procurement office. Upon execution of the acquisition, you will be notified via phone or email that the goods and/or services have been ordered and you will receive a paper copy of the contract, purchase order, or credit card transaction for your files.

C. Invoices

1. Contractors are responsible for submitting invoices directly to the Office of Financial Management (OFM). Upon receipt from the contractor, OFM will forward the invoice to you for review and certification as accurate for payment. You will review the invoice, confirm delivery of the goods and/or completion of the services ordered, and if acceptable, sign and date the original invoice and return it to OFM for payment. To the extent possible, you should maintain a tracking system to monitor Contractor work and compare the results of the tracking system to the invoice to ensure its accuracy. You may be subject to disciplinary action if, due to your negligence or carelessness, you approve an erroneous invoice for payment. A copy of the invoice should be retained for your files. If, in your opinion, any charges on the invoice should be disallowed or disputed, you must notify the Contracting Officer who will take appropriate action with the contractor.
2. Keep in mind that all invoices are paid in accordance with the Prompt Payment Act (31 U.S.C. § 3903). This means that the Government must pay Contractors on a timely basis for proper invoices. Late payments incur an automatic interest penalty that is paid to the Contractor in addition to the invoice amount. Therefore, it is critical that, upon receipt of an invoice from OFM, you process it immediately.

D. Summary

1. In the performance of your duties under this COTR designation, you must constantly work to protect the government's interest. Similarly, you must avoid any act that may tend to compromise the position of the Government or which may impair confidence in the integrity of the Agency with the business community. A COTR who may have direct or indirect interests which place the COTR in a position where there is a conflict between the COTR's private interests and the public interests of the United States, shall immediately notify his/her supervisor and the Contracting Officer so appropriate action may be taken. COTRs shall avoid the appearance of a conflict of interest to maintain public confidence in the U.S. Government's conduct of business with the private sector. When in doubt, COTRs should contact CSOSA's Designated Agency Ethics Official (DAEO, within the Office of the General Counsel) for assistance in ascertaining whether a conflict of interest or other integrity issues exist. COTRs may also request an advisory opinion from the DAEO as to whether specific conduct which has not yet occurred would violate ethics provisions.
2. You are required to maintain adequate records to sufficiently describe the performance of your duties as a COTR during the life of this contract and to dispose of such records as directed by the Contracting Officer. (A retention schedule shall be provided to the COTR specific to the contract.) Your designation as COTR shall remain in effect through the life of the contract, unless revoked sooner in writing by the Contracting Officer or you are separated from Government service. If you are to be separated from, or reassigned within, Government service, you shall notify the Contracting Officer sufficiently in advance of separation or reassignment to permit timely selection and designation of a successor COTR. If your designation is revoked for any reason before completion of this contract, turn your records over to the successor COTR or obtain disposition instructions from the Contracting Officer.

E. Acknowledgment of COTR Appointment

You are required to acknowledge receipt of this designation in the space below and return a duplicate copy to the Contracting Officer. The original copy of this designation should be retained for your COTR records.

Should you have any questions regarding this memorandum, or the contractor's performance, please do not hesitate to contact me at (phone) 202-220-5704.

Copy Furnished: Official Contract File
Contractor

Receipt of appointment on CSOSA-03-C-1001 is hereby acknowledged.

Name: _____ Signature: _____
(Print or Type)

Title: _____ Date: _____
(Print or Type)

APPENDIX C TRAINING SOURCES*

1. ESI International: “The Contracting Officer’s Representative (COR) and COTR Training Program” is a three-day course providing training on managing contract awards from the perspective of CORs and COTRs. In addition to training on procurement basics and contract monitoring, the course covers protests, contract terminations, contract disputes, and fraud. Over-arching goals of this course are to provide: instruction on applicable FAR and regulatory requirements, guidance on actions that can be taken to ensure a contract’s goals are successfully met, and training on how to identify and remedy problems. Specifics on this course, including locations and fees, are available at <http://www.esi-intl.com> under “Find a Course.”

2. Federal Acquisition Institute (FAI): Provides an on-line training “COR Mentor Program” at <http://www.fai.gov/> (follow the links for “FAI Online University”). This training is self-paced and takes approximately 16 hours to complete (depending on individual skill level). It is comprised of 18 duties, each with its own test. The passing score for each duty is 90%. There is no comprehensive test; the course is completed upon passing the test for the last duty. (Refresher training from this source might consist of the current six modules under the “COR Mentor Course” or the five lessons under the “COTR Module 1 – Orientation.”)

3. Houseman & Associates: Contract Management for COTRs is a three-day course that includes 4 hours of procurement ethics training. The course covers: introduction to contract management, quality assurance through inspection, technical direction of the contractor's performance, progress monitoring, modifications including bilateral and unilateral changes, payments, requests for equitable adjustment, contractor performance evaluations, and contract close-out. For additional course information, review the course description and schedule at: <http://www.housemanandassociates.com/30cmcotr.html> (Refresher training is available from this source.)

4. Management Concepts: Contracting Officer’s Representative, Course No. 1070, is designed to provide non-contracting personnel with knowledge of the federal acquisition process as well as the knowledge and skills to execute their responsibilities as a representative of the contracting officer. The course also provides guidance on procurement ethics. Specific topics include: COR role and authority in the acquisition process; acquisition planning, contract formation, and contract administration processes; developing a contract administration plan; monitoring contract performance; and assisting the Contracting Officer with processing changes, equitable adjustments, claims, disputes, and awards. Dates, times and fees for this five-day course are available at: <http://www.managementconcepts.com> (Refresher training is also available as Course No. 1071.)

*(Note: Inclusion of commercial courses on this list does not infer endorsement of any particular training source. Rather, these sources are provided because they provide relevant subject and learning objectives for COTR training. Views expressed in commercial courses may not be those of the Court Services and Offender Supervision Agency.)