

DAR -- Part 12

Contract Administration, Protests, Disputes, and Appeals

12.000 – Scope of Part	3
Subpart 12.1 -- Contract Administration.....	3
12.100 General	3
12.101 Contract Administration Functions	3
12.102 Purchase Order and Contract Numbering	4
12.103 Contract Option Year and Task or Delivery Order Numbering	4
Subpart 12.2 – Price Analysis, Contract Modifications /Change Orders.....	4
12.200 Scope of Subpart	4
12.201 Price Realism Analysis	4
12.202 Price Negotiation.....	5
12.203 Documenting the Negotiation.....	5
12.204 Files and Records	5
12.205 Purchase Order Files	6
12.206 General Fixed Assets.....	6
12.207 Advance Payments	6
12.208 Colorado Open Records ACT (CORA)/Freedom of information ACT (FOIA)	7
12.209 Local Competitive Procurements	7
Subpart 12.3 – Obligations Crossing Fiscal Years	7
12.300 Scope of Subpart	7
12.301 Bona Fide Need Determination.....	7
12.302 Misuse of Bona Fide Need Authority	7
Subpart 12.4 – Protests	8
12.400 General	8
12.401 Protests.....	8
12.402 Solicitations and awards in violation of the law.....	9
Subpart 12.5 -- Disputes.....	9
12.500 Policy	9
12.501 Initiation of a Claim	9
12.502 Contractor Certification	10
12.503 Interest on Claims	10

12.504	Suspected Fraudulent Claims	10
12.505	Contracting Officer's Authority	10
12.506	Contracting Officer's Decision.....	10
12.507	Alternative Dispute Resolution (ADR).....	11
12.508	Contract Clause	11
Subpart 12.6	– Appeals	11
12.600	Appeal of the Contracting Officers Decision	11

DAR -- Part 12 Contract Administration, Protests, Disputes, and Appeals

12.000 – Scope of Part

This part describes regulations and procedures for handling contract administration, filing *protests* and for processing contract disputes and appeals.

Subpart 12.1 -- Contract Administration

12.100 General

The amount of contract administration required varies from contract to contract. This subpart identifies the general types of contract administrative functions that should be evaluated by each *contracting officer* when performing their duties.

12.101 Contract Administration Functions

The following functions may be required during contract administration:

- a. Identify a *contracting officer technical representative* (COTR) to assist in the administration of the contract.
- b. Conduct post-award orientation conferences as required.
- c. Negotiate and issue change orders and contract *modifications* as required.
- d. When appropriate, perform unit price analysis, issue notices of intent to disallow or not recognize certain price.
- e. Attempt to resolve any disputes.
- f. Review and approve or disapprove the contractor's requests for payments, when an appropriate invoice has been received and work performance has been verified.
- g. Ensure timely notification by the contractor of any anticipated *modification* of the contracted price or schedule.
- h. Take appropriate action when it appears that the contract performance may be in jeopardy.
- i. Prevent any overpayments to a contractor.
- j. Issue work requests/task orders/*delivery orders* as necessary under maintenance contracts, indefinite quantity contracts and *blanket purchase agreements*.
- k. Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience.
- l. Negotiate and execute contractual documents settling cancellation charges.
- m. Process and execute novation agreements and change of name agreements.
- n. Ensure contractor compliance with contractual requirements through quality assurance *evaluations*.
- o. Ensure contractor compliance with contractual safety requirements.
- p. Perform surveillance to assess compliance with contractual terms for schedule, price, and technical performance in the areas of design, development, and production
- q. Ensure timely submission of required reports.
- r. De-obligate excess funds after final payment.
- s. When all actions have been completed and final payment has been made close the contract and forward to records holding until authorized destruction date. Determine when closed out contracts are to be archived and destroyed.

12.102 Purchase Order and Contract Numbering

- a. *Purchase orders* (PO's) placed for commodities and simple single delivery services may be awarded via a PeopleSoft PO with a PO number generated by the *PeopleSoft* system.
- b. The numbering system for contracts is based on a ten digit number beginning with "C" to signify a contract. The first four digits signify the fiscal year and the last four lists the contracts sequentially as they are awarded. An example of the first contract for fiscal year 2010 is C2010-0001. The 130th contract awarded in fiscal year 2010 will be C2010-0130. The sequential contract number is obtained from the Contract Numbering System Access Data Base.
- c. Solicitation numbering is the same except the (S) is used to signify a *solicitation*. An example of the first *solicitation* for fiscal year 2010 is S2010-0001. The sequential *solicitation* number is obtained from the Solicitation Numbering System Access Data Base.

12.103 Contract Option Year and Task or Delivery Order Numbering

- a. To accommodate the PeopleSoft limitation of 10 digits the following numbering system is used for option years of a contract. As an example, contract C2010-0130 has four option years. The first option year number will be 10-0130-01.
- b. To accommodate contracts with task or *delivery orders*, removal of a zero from the option designator provides an additional space without the loss of designation of the option period. The use of an alpha character rather than number provides quick reference that the action was a task or *delivery order* rather than an option. The following provides an example based on contract C2010-0130 of the first task order issued under option year one is 10-0130-1A.

Subpart 12.2 – Price Analysis, Contract Modifications /Change Orders

12.200 Scope of Subpart

This subpart describes the price negotiation regulation procedures for pricing negotiated contract modifications. Also see Colorado Revised Statutes (CRS) 24-103-403. The *Contracting Officer may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to the following:*

1. Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness.
2. Comparison of previously proposed prices and/or contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.
3. Comparison with competitive published price lists, similar indexes, discount or rebate arrangements, and comparison of proposed prices with prices obtained through market research for the same or similar items.
4. Comparison of proposed prices with independent District price estimates.
5. Analysis of pricing information provided by the offeror.

12.201 Price Realism Analysis

Price realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed price estimate to determine whether the estimated proposed price elements are realistic for the work to be performed; reflect a clear understanding

of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

12.202 Price Negotiation

The purpose of performing price analysis is to develop a negotiation position that permits the *Contracting Officer* and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of price, nor is it mandatory that the agreed price be within the *Contracting Officer's* initial negotiation position. Taking into consideration the advisory recommendations, reports of contributing specialists, and the current status of the contractor's purchasing system, the *Contracting Officer* is responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement.

12.203 Documenting the Negotiation

- a. The *Contracting Officer* should document in the contract file the principal elements of the negotiated agreement. The documentation should include the following:
 1. The purpose of the negotiation.
 2. A description of the acquisition.
 3. The name, position, and organization of each person representing the contractor and the District in the negotiation.
 4. A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the District's negotiation objective, and the negotiated position. When determination of price reasonableness is based on price analysis, the summary shall include the source and type of data used to support the determination.
 5. The most significant facts or considerations controlling the negotiated agreement including an explanation of any significant differences between the proposal and the final negotiated agreement.
 6. Documentation of fair and reasonable pricing.
- b. The *Contracting Officer* shall ensure that all copies of the negotiation documents are marked "Confidential". The *Contracting Officer* is responsible for ensuring discriminate release vendor information in the case of a CORA.

12.204 Files and Records

- a. All proprietary information regardless of ownership will be maintained appropriately and protected from unauthorized release.
- b. All contracts will be given the ten digit contract number.
- c. All contracts will be stored sequentially by the contract number in the central contract storage cabinets within the Procurement & Contracting Department.
- d. One copy of all *proposals* from offerors, either hard copy or electronic, will be maintained in the contract file. Unsuccessful *solicitations* may be removed from the contract file at the end of 1 year after contract award and destroyed prior to sending the contract file to records holding.
- e. Only five years of inclusive contract records will be stored in the Procurement & Contracting office. Ongoing contracts regardless of age will be retained in the Procurement & Contracting office.

12.205 Purchase Order Files

Purchase orders (PO's) may be contract instruments or funding instruments for formal contracts.

- a. The electronic copy (official copy) of the PO, with a number generated by *PeopleSoft* will be available within the *PeopleSoft* system.
- b. A *contracting officer* will maintain a hard copy of the signed PO along with any supporting documents until all actions, including final payment, are completed and the PO closed.
- c. When used as a funding instrument for a contract the PO will be *filed* with the contract.
- d. Funding PO's will be retained in the contract file and destroyed in accordance with authorized contract file destruction.

12.206 General Fixed Assets

- a. Board Policy DID-R, entitled General Fixed Assets, mandates statutory compliance with tracking and accounting of capitalized equipment and non-capitalized equipment. Equipment with a value of \$5000 or more is considered Capitalized Equipment.
- b. There are some equipment items that do not meet the criteria for capitalization (\$5000, or more in value) but the District has chosen to include in the fixed asset inventory records for safekeeping purposes. These items have a value of \$500 - \$4,999 and are particularly susceptible to theft or loss. The following list gives examples of non-capitalized equipment that will be tagged and tracked in the fixed asset inventory records:
 1. Amplifiers
 2. Cameras
 3. Computers (desktop and laptop)
 4. Copiers (table top)
 5. Microphones
 6. Monitors (TV, radio, 2 way radios, etc.)
 7. Player, Audio/Video (disc or cassette)
 8. Scanners
 9. Speakers
- c. Fixed assets that are received at the warehouse for distribution to the using organization, will be tagged and recorded by warehouse personnel prior to delivery. For all orders allowing fixed assets to be delivered directly to the using organization, it is the responsibility of the using organization to make arrangements with the warehouse to get the asset tagged and entered on the fixed asset list. For assistance, call the Warehouse or the Accounting Department.

12.207 Advance Payments

- a. The following purchases are the only purchases approved for advance payments, limited to a one year period:
 1. Magazines subscriptions or periodicals;
 2. Travel advances (also see financial regulations);
 3. Conference, seminars, workshops, and registration fees;
 4. Memberships, dues entry fees, and licenses and permits;
 5. Annual software license agreements; and
 6. Extended warranties or maintenance agreements.
- b. All other advance payments requests must be justified to and approved by Executive Director, Procurement & Contracting.

12.208 Colorado Open Records ACT (CORA)/Freedom of information ACT (FOIA)

Any Colorado Open Records (CORA)/Freedom of Information (FOIA) requests received in the Procurement & Contracting department will be immediately reported to and coordinated with the District Records Management Center.

12.209 Local Competitive Procurements

For all procurements the *Contracting Officer* should review the local market to determine if competition is sufficient to obtain fair and reasonable prices.

Subpart 12.3 – Obligations Crossing Fiscal Years

12.300 Scope of Subpart

This part sets forth the authority, procedures and responsibility for making a bona fide need determination for crossing fiscal years with annually appropriated funds.

12.301 Bona Fide Need Determination

- a. For requirements crossing fiscal year lines for construction, equipment and facility repairs, a written bona fide need determination is not required.
- b. For services and recurring maintenance being funded in the current fiscal year with a schedule completion in the following fiscal year, a written bona fide need determination is required. The approval authorities for a bona fide need determination are the division head of the requiring division, with the CFO having the final approval.
- c. For an obligation crossing fiscal years to be determined as a bona fide need of a given fiscal year with the services or maintenance to be completed in the subsequent fiscal year, the following is necessary:
 1. The award of the contract or modification to an existing contract cannot wait until the beginning of the new fiscal year for funding; and
 2. The delay in providing the performance was unavoidable; and
 3. The requirement must be identified and entered into PeopleSoft and the bona fide need approved before the purchase order cutoff date; and
 4. The requirement must have specified deliverables and a required completion date; and
 5. Performance must be initiated and partially performed in the year the funds are obligated.

12.302 Misuse of Bona Fide Need Authority

An action to reserve funds or to develop a nonspecific requirement with the intentions of specifying the deliverable at a later date in order to roll the funds into the next fiscal year is not a bona fide need, and is not authorized.

Subpart 12.4 – Protests

12.400 General

- a. *Contracting Officers shall* consider all *protests* and seek legal advice when deemed necessary by the *Executive Director* of Procurement and Contracting.
- b. If, in connection with a protest, the *Contracting Officer* determines that a *solicitation*, proposed award, or *award* does not comply with the requirements of law or regulation, the *Contracting Officer* may at his/her discretion:
 1. Take any action that could have been recommended by the District Court had the protest been *filed* with the District Court; and
 2. Pay appropriate prices as defined in CRS 24-109-104.
 3. Require the awardee to reimburse the District's costs, as provided in this paragraph, where a post award protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, the *District* may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the *District*.
 - a) When a protest is sustained by District Court under circumstances that may allow the *District* to seek reimbursement for protest costs, the *Contracting Officer* will determine whether the protest was sustained based on the awardee's negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs *shall* be apportioned according to the costs attributable to the awardee's actions.
 - b) The *contracting officer shall* review the amount of the debt, degree of the awardee's fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the *District* to seek reimbursement, the *contracting officer shall* notify the *contractor* in writing of the nature and amount of the debt, and the intention to collect by offset if necessary.

12.401 Protests

- a. *Reference.* CRS 24-109-101 & 24-109-102, establishes policy on procurement *protests*, except the District Court referred to in CRS 24-109-101 is El Paso County District Court.
- b. Prior to submission of a protest, all parties *shall* use their best efforts to resolve concerns raised by an interested party at the *contracting officer* level through open and frank discussions.
- c. The *contracting officer shall* offer to provide for inexpensive, informal, procedurally simple, and expeditious resolution of *protests*. Where appropriate, the use of *alternative dispute resolution* techniques, third party neutrals, and other *District* personnel are acceptable protest resolution methods.
- d. The following procedures are established to resolve *protests* effectively, to build confidence in the *District's* acquisition system, and to reduce *protests*:
 1. *Protests shall* be concise and logically presented to facilitate review. Failure of the protester to substantially comply with any of the requirements of subparagraph (d)(2) of this section may be grounds for dismissal of the protest.
 2. *Protests shall* include the following information:
 - a) Name, address, and fax and telephone numbers of the protester.
 - b) *Solicitation* or contract number.
 - c) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
 - d) Copies of relevant documents.

- e) Request for a ruling by the *Contracting Officer* or the Head of the Purchasing Agency.
 - f) Statement as to the form of relief requested.
 - g) All information establishing that the protester is an *interested party for the purpose of filing a protest* (see Part 2 – Definitions).
 - h) All information establishing the timeliness of the protest.
3. All *protests filed* will be addressed to the *contracting officer*.
 4. Interested parties may request an independent review of their protest at a level above the *contracting officer*.
 5. A written decision regarding the protest *shall* be rendered within seven working days after the protest is *filed*.
- e. *Protests* based on alleged apparent improprieties in a *solicitation shall be filed* before *bid* opening or the closing date for receipt of *proposals*. In all other cases, *protests* shall be *filed* no later than seven days after the basis of protest is known or should have been known, whichever is earlier. If the *District* determines, for good cause, or in unique circumstances, that a protest raises issues significant to the *District's* acquisition system, it may consider the merits of a protest even though it was not timely *filed*.
 - f. Protest decisions *shall* be well-reasoned, and explain the *District's* position. The protest decision *shall* be provided to the protester using a method that provides evidence of receipt.
 - g. *Service of Protest Solicitation and Contract Clause Language: Protests*, in accordance Colorado Revised Statutes 24-109-102, may be served by an actual or prospective bidder, offeror, or *contractor* who is aggrieved in connection with this *solicitation* or *award* of any contract resulting from this *solicitation* to the *Contracting Officer* or the Head of the Purchasing Agency. In the case of CSSD11, the Head of the Purchasing Agency is the Deputy Superintendent/Chief Financial Officer. Any protest *shall* be submitted in writing within seven working days after such aggrieved person knows or should have known of the facts giving rise thereto.

12.402 Solicitations and awards in violation of the law

If it is determined administratively or judicially or upon administrative or judicial review, that a *solicitation* or *award* of a contract is in violation of the law the following applies:

- a. Remedies prior to an *award* see CRS 24-109-402
- b. Remedies after an *award* see CRS 24-109-403.

Subpart 12.5 -- Disputes

12.500 Policy

The *District's* policy is to try to resolve all contractual issues in controversy by mutual agreement at the *contracting officer's* level. Reasonable efforts should be made to resolve controversies prior to the submission of a *claim*.

12.501 Initiation of a Claim

- a. Contractor *claims* shall be submitted, in writing, within six months after *accrual of a claim*, to the *contracting officer* for a decision. The *contracting officer shall* document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a *claim* by the *contracting officer*. The *contracting officer shall* render a decision, in writing, within sixty days of the request.

- b. The *contracting officer shall* use reasonable effort to issue a written decision on any *District claim* initiated against a contractor within six months after accrual of the *claim*. The 6-month period *shall* not apply to a *District claim* based on a *contractor claim* involving fraud.

12.502 Contractor Certification

- a. *Contractors* shall provide the certification specified in paragraph (c) of this section when submitting any *claim* exceeding \$50,000.
- b. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a *claim*.
- c. The certification *shall* state as follows:
"I certify that the *claim* is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the *contractor* believes the *District* is liable; and that I am duly authorized to certify the *claim* on behalf of the *contractor*."
- d. The aggregate amount of both increased and decreased costs *shall* be used in determining when the dollar thresholds requiring certification are met.
- e. The certification may be executed by any person duly authorized to bind the *contractor* with respect to the *claim*.

12.503 Interest on Claims

Interest on *claims* will be calculated in accordance with CRS 24-109-301 except that interest shall be calculated at a maximum rate of eight percent.

12.504 Suspected Fraudulent Claims

If the *contractor* is unable to support any part of the *claim* whether it is above or below \$50,000, and there is evidence that the inability is attributable to *misrepresentation of fact* or to fraud on the part of the *contractor*, the *contracting officer shall* refer the matter through managerial and legal review to the District Attorney, or the State or Federal Attorney General, depending on the funding jurisdiction.

12.505 Contracting Officer's Authority

Contracting officers are authorized, within any specific limitations of their *warrants*, to decide or resolve all *claims* arising under or relating to a contract. *Contracting officers* are authorized to use ADR procedures to resolve *claims*. The authority to decide or resolve *claims* does not extend to the settlement, compromise, payment, or adjustment of any *claim* involving fraud.

12.506 Contracting Officer's Decision

- a. When a *claim* by or against a *contractor* cannot be satisfied or settled by mutual agreement and a decision on the *claim* is necessary, the *contracting officer shall --*
 1. Review the facts pertinent to the *claim*;
 2. Secure assistance from managerial advisors;
 3. Coordinate with the program management office and/or other customers, as appropriate;
 4. Prepare a written decision that *shall* include a –
 - a) Description of the *claim* or dispute;
 - b) Reference to the pertinent contract terms;
 - c) Statement of the factual areas of agreement and disagreement;
 - d) Statement of the *contracting officer's* decision, with supporting rationale;
 - e) Paragraph substantially as follows:

"This is the final decision of the *Contracting Officer*. You may appeal this decision in accordance CRS 24-109-201, except the District Court referred to is El Paso District Court.

- b. The *contracting officer* shall furnish a copy of the decision to the *contractor* by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement *shall* apply to decisions on *claims* initiated by or against the *contractor*.

12.507 Alternative Dispute Resolution (ADR)

- a. The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include:
 - (1) Existence of an *issue in controversy*;
 - (2) A voluntary election by both parties to participate in the ADR process;
 - (3) An agreement on alternative procedures and terms to be used in lieu of formal litigation; and
 - (4) Participation in the process by officials of both parties who have the authority to resolve the *issue in controversy*.
- b. In any case where a *contractor* rejects a request of an agency for ADR proceedings, the *contractor* shall inform the agency in writing of the *contractor's* specific reasons for rejecting the request.
- c. ADR procedures may be used at any time that the *contracting officer* has authority to resolve the *issue in controversy*. If a *claim* has been submitted, ADR procedures may be applied to all or a portion of the *claim*. When ADR procedures are used subsequent to the issuance of a *contracting officer's* final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the *contracting officer's* final decision and does not constitute a reconsideration of the final decision.
- d. When appropriate, a *neutral person* may be used to facilitate resolution of the *issue in controversy* using the procedures chosen by the parties. The confidentiality of *ADR proceedings shall* be protected to the extent practical. *If the ADR proceedings* involve settlement discussions, such settlement discussions *shall* be deemed *confidential* and not admissible in other proceedings.

12.508 Contract Clause

The *contracting officer shall* insert the Disputes *clause* in all *solicitation* and contracts.

Subpart 12.6 – Appeals

12.600 Appeal of the Contracting Officers Decision

Appeal of the *contracting officer's* or the Head of the Purchasing Agency's decision will be made in accordance with CRS 24-109-201, except the District Court referred to is El Paso District Court.