

National Gallery of Art
ACQUISITION POLICY
MANUAL

Procurement and Contracts



September 20, 2019

Elevated View from Northwest with U.S. Capitol at Night, c. 1990

National Gallery of Art, Washington, D.C., Gallery Archives. Photograph by Dennis Brack/Black Star.

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A. Definitions of Words and Phrases

Accessibility	Defined in Chapter 5.4 Reasonable Accommodation for Individuals with Disabilities
Acquisition Plan	Defined in Chapter 2.1 Acquisition Planning
Acquisition Team	Defined in Chapter 1.1 Guiding Principles
Administrative Change	Defined in Chapter 6.3 Contract Modifications
Adequate Competition	Defined in Chapter 2.2 Competition
Advance Payments	Defined in Chapter 5.12 Contract Payment
Advanced Authorization	Defined in Chapter 5.15 Advanced Authorization
Annual Support Agreement	Defined in Chapter 5.10 Warranties and Annual Support Agreements
APC Chief	Defined in Chapter 1.2 Procurement Policy
Award	A contractually binding decision to purchase products, services or construction from a person, firm, or entity.
Award Term	Defined in Chapter 5.6 Incentive Contracting
Best Practice	Defined in Chapter 1.2 Procurement Policy
Bilateral Modification	Defined in Chapter 6.3 Contract Modifications
Bond	Defined in Chapter 5.7 Bonds
Commercial Item	Defined in Chapter 3.1 Simplified Procurement
Commercial-Items Threshold	\$7,500,000
Competitive Range	Defined in Chapter 3.2 Formal Contracting
Completion	Defined in Chapter 6.6 Contract Closeout
Construction Specifications Institute (CSI) Division Format (also known as the Master Format)	Defined in 4.2 Construction Contracting
Constructive Change	Defined in Chapter 6.3 Contract Modifications
Contract Administration	Defined in Chapter 6.2 Contract Administration
Contract Closeout	Defined in Chapter 6.6 Contract Closeout
Contract Modification	Defined in Chapter 6.3 Contract Modifications
Contracting Authority	Defined in Chapter 1.4 Contracting Authority
Contracting Officer	Defined in Chapter 1.4 Contracting Authority
Contracting Officer's Representative	Defined in Chapter 6.2 Contract Administration
Contractor	A person, firm or entity having obtained an award of a Gallery contract.
Cost Evaluation Panel (CEP)	Defined in Chapter 3.2 Formal Contracting
Deputy Chief	Defined in Chapter 1.203 Procurement Policy
Dispute	Defined in Chapter 5.13 Protests and Appeals
Extended Warranty	Defined in Chapter 5.10 Warranties and Annual Support Agreements
Federal Funds	Defined in Circular No. 81 – Administrative Control of Federal Funds
Firm-fixed-price Payments	Defined in Chapter 5.12 Contract Payment
Formal Contracting Procedures	Defined in Chapter 3.2 Formal Contracting
Gallery	National Gallery of Art

Gallery-furnished Property	Defined in Chapter 6.5 Gallery-furnished Property
Government-wide Contract	Defined in Chapter 3.3 Government-wide Contracts
Incentive Contracting	Defined in 5.6 Incentive Contracting
Information Technology (IT)	Defined in Chapter 4.1 Acquisition of Information Technology
Insurance	Defined in Chapter 5.8 Insurance
Intellectual Property	Defined in Chapter 5.5 Intellectual Property
Interested Party	Defined in Chapter 5.13 Protests and Appeals
Justification and Approval	Defined in Chapter 2.2 Competition
Labor-hour Payments	Defined in Chapter 5.12 Contract Payment
Large Contract Threshold	\$1,000,000
Legal Requirement	Defined in Chapter 1.2 Procurement Policy
Market Research	Defined in Chapter 2.1 Acquisition Planning
Micro-purchase Threshold	Defined in FAR 2.101.
National Gallery of Art Master Facilities Plan (MFP)	Defined in 4.2 Construction Contracting
Non-competitive Contracting	Defined in Chapter 2.2 Competition
Non-responsive Proposal	Defined in Chapter 3.2 Formal Contracting
Novation	Defined in Chapter 6.3 Contract Modifications
Offeror	Defined in Chapter 3 Contracting Methods and Types
Option	Defined in Chapter 6.3 Contract Modifications
Ordering Official	Defined in Chapter 6.2 Contract Administration
Oversight Management	Defined in Chapter 6.2 Contract Administration
P-Card Holder	Defined in Chapter 1.4 Contracting Authority
Performance-based Payments	Defined in Chapter 5.12 Contract Payment
Personal Services Contract	Defined in Chapter 1.7 Personal Services Contracts
Personally Identifiable Information	Defined in Chapter 5.1 Procurement-sensitive Information and Confidentiality
Policy Requirement	Defined in Chapter 1.2 Procurement Policy
Pre-Qualified Bidders List	Defined in Chapter 2.2 Competition
Procurement Policy	Defined in Chapter 1.2 Procurement Policy
Procurement Sensitive Information	Defined in Chapter 5.1 Procurement-sensitive Information and Confidentiality
Progress Payments	Defined in Chapter 5.12 Contract Payment
Proposal	A written offer, quote, or similar instrument submitted to the Gallery to obtain the Award of a Gallery contract.
Prompt Payment Act	Defined in Chapter 5.12 Contract Payment
Property	Defined in Chapter 6.5 Gallery-furnished Property
Protest	Defined in Chapter 5.13 Protests and Appeals
Qualifications-based Selection (QBS)	Defined in Chapter 4.3 Architect and Engineering Contracting
Request for Proposal (RFP)	Defined in Chapter 3.2 Formal Contracting
Responsibility	Defined in Chapter 1.6 The Standard of Responsibility
Selected Bidders List	Defined in Chapter 2.2 Competition

Service Contract Act	Defined in Chapter 5.11 Labor Standards
Sensitive Information	Defined in Chapter 5.1 Procurement-sensitive Information and Confidentiality
Simplified Acquisition Procedures	Defined in 3.1 Simplified Procurement
Simplified Acquisition Threshold	Defined in FAR 2.101
Sole Source	Defined in Chapter 2.2 Competition
Solicitation Mailing List	Defined in Chapter 2.2 Competition
Source Selection Plan	Defined in Chapter 3.2 Formal Contracting
Source Selection Report	Defined in Chapter 3.2 Formal Contracting
Substantive Change	Defined in Chapter 6.3 Contract Modifications
Task Manager	Defined in Chapter 6.2 Contract Administration
Technical Evaluation Panel (TEP)	Defined in Chapter 3.2 Formal Contracting
Termination for Convenience	Defined in Chapter 6.4 Contract Termination
Termination for Default	Defined in Chapter 6.4 Contract Termination
Time-and-materials Payments	Defined in Chapter 5.12 Contract Payment
Unauthorized Commitment	Defined in Chapter 1.4 Contracting Authority
Unilateral Modification	Defined in Chapter 6.3 Contract Modifications
Warranty	Defined in Chapter 5.10 Warranties and Annual Support Agreements

B. Abbreviations for Gallery Divisions and Departments

APC	Procurement and Contracts
AP	Personnel
DIA	Internal Auditor
TTS	Technology Solutions
SG	Secretary and General Counsel

C. Miscellaneous Abbreviations

A/E	Architect and Engineering
AOPC	Purchase Card Agency Program Coordinator
APM	Acquisition Policy Manual
COR	Contracting Officer's Representative
CWS	Contract Writing System
EDTC	Executive Digital Technical Committee
FAR	Federal Acquisition Regulation
IP	Intellectual Property
J&A	Justification and Approval
PII	Personally Identifiable Information
SAM	System for Award Management
QBS	Qualifications Based Selection

D. Circulars Referenced in this Manual

- Circular No. 2 – Protection of Personally Identifiable Information
- Circular No. 6 – Access Control Policy
- Circular No. 40 – Fire and Life Safety
- Circular No. 71 – Purchase Card Program
- Circular No. 73 – Procurement of Services, Supplies, and Equipment
- Circular No. 79 – Work and Equipment Restrictions in Art-Containing Spaces
- Circular No. 81 – Administrative Control of Federal Funds
- Circular No. 82 – Ethical and Financial Complaints
- Circular No. 87 – Reasonable Accommodation and Personal Assistance Services for Individuals with Disabilities

E. Acquisition Policy Memorandums issued by the APC Chief

- Acquisition Policy #2008-1 – Best Value Approach
- Acquisition Policy #2008-2 – GSA Schedule (superseded)
- Acquisition Policy #2008-3 – Price-Past Performance Tradeoff
- Acquisition Policy #2008-4 – Integrated Best Value Assessment
- Acquisition Policy #2011-1 – Advertising/Publicity
- Acquisition Policy #2012-1 – Supply Source Priorities
- Acquisition Policy #2012-2 – CCR Registration
- Acquisition Policy #2012-3 – Advertisement Dissemination
- Acquisition Policy #2013-1 – Zero Dollar Requisitions
- Acquisition Policy #2013-2 – On-site Badges
- Acquisition Policy #2014-1 – GSA Schedule Procurements
- Acquisition Policy #2014-2 – Acquisition Plans
- Acquisition Policy #2015-1 – Contracting Writing System Guidance
- Acquisition Policy #2016-1 – Length of Gallery Contractual Requirements
- Acquisition Policy #2017-1 – Federal Direct Contracts and Orders
- Acquisition Policy #2018-1 – Increased Simplified Acquisition Threshold

Module 1. GUIDING PRINCIPLES, AUTHORITY, ETHICS, AND CONTROLS

Chapter 1.1. Guiding Principles

1.101. Purpose

This Acquisition Policy Manual (APM) is established by the Chief, Procurement and Contracts (APC Chief) and is based upon the procurement procedures and practices accepted in industry and government and upon the guiding principles of the Federal Acquisition Regulation (FAR).

1.102. Application

This APM applies to Federally funded contract awards made by APC and purchases made through the Gallery's purchase card program.

1.103. Scope

This chapter provides guiding principles for this APM.

1.104. Definitions

Acquisition Team: Consists of the Contracting Officer; supporting Contract Specialists and other support staff in the Procurement and Contracts Division (APC); and the responsible staff of the Divisions and Departments, particularly including the Contracting Officer's Representative (COR) and the Task Manager.

1.105. Key Attributes

Five key attributes of professional acquisition management promoted throughout the Gallery –

Effectiveness: The timely and cost-effective procurement of products and services that work well for the customer;

Flexibility: The ability to make good decisions based on best practices for any particular circumstance, rather than rigid adherence to standard procedures;

Efficiency: Simple processes that achieve good results without undue oversight or waste of resources;

Responsibility: The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment; and

Public Trust: Achieved through fairness and open and honest communications with contractors and the public.

1.106. Key Policies

The policies provided in this APM apply to all members of the Acquisition Team, including APC and Division and Department staff, as well as the clients they serve and the contractors who provide the products and services. These policies allow the Gallery to achieve the following goals –

Competition: Establish Adequate Competition as the preferred method of source selection;

Innovation: Enable innovative and creative tailoring of procurement processes to meet individual requirements, so that the right contractor is selected for each requirement; and

Best Value: Select contractors on the basis of the best value to the Gallery.

Chapter 1.2. Procurement Policy

1.201. Scope

This chapter provides the authority to establish in this APM a Procurement Policy for the Gallery.

1.202. Definitions

Procurement Policy: A policy that defines authority, responsibility, and establishes best practices, policy requirements and legal requirements for the Acquisition Team to follow when carrying out their responsibilities.

1.203. Establishment of Procurement Policy

The Administrator has directed the APC Chief to establish in this APM a Procurement Policy for the Gallery based on the Key Attributes and Key Policies set forth under 1.105 and 1.106 above. The APC Chief may change this policy from time-to-time, in consultation with the Secretary and General Counsel (SG), where the change is consistent with key attributes and policies, reflects the exercise of sound business judgment, and is in the best interest of the Gallery. Suggestions for changes to Procurement Policy should be directed to the APC Chief or Deputy Chief.

With the exception of changes to Legal Requirements, the APC Chief or Deputy Chief may:

- (a) approve one-time deviations from Procurement Policy; and
- (b) issue interim policy memoranda pending the review of the memoranda by SG and subsequent issuance of permanent revisions of this APM.

Chapter 1.3. Legal Requirements, Policy Requirements, and Best Practices

1.301. Scope

This chapter describes Legal Requirements, Policy Requirements and Best Practices.

1.302. Definitions

Legal Requirement: A procedure or practice mandated by law.

Policy Requirement: A procedure or practice not mandated by statute or regulation that the Gallery chooses to make mandatory.

Best Practice: A procurement procedure or practice accepted in industry or government as being most often correct or most effective.

1.303. Policy

1.303(a) *Legal Requirements*

Most of the Legal Requirements governing the activities under this APM are set forth under Circular No. 81 – Administrative Control of Federal Funds. This Circular is prepared in accordance with Office of Management and Budget (OMB) Circular A-11, Section 150, and related OMB guidelines, and establishes Gallery procedures for budgetary control of Federal Funds. Contracting Officers and all other members of the Acquisition Team must comply with all Legal Requirements.

In order to promote consistency and clarity in the interpretation of this APM, this APM uses the express term “Legal Requirement” to establish that a procedure or practice that it discusses is a Legal Requirement.

Example of a Legal Requirement, a practice mandated by law: Contracting Officers must not contractually obligate the Gallery to make a payment in excess of the amount available on a purchase requisition. This constraint implements a Legal Requirement.

1.303(b) *Policy Requirements*

Policy Requirements are procurement procedure or practice established by the APC Chief that are not Legal Requirements. Contracting Officers and all other members of the Acquisition Team must comply with Policy Requirements except where deviations are granted by the APC Chief or Deputy Chief. Deviations may be granted where the APC Chief or Deputy Chief determines that the deviation reflects the exercise of sound business judgment, including economic advantage to the Gallery, or is otherwise in the best interest of the Gallery.

In order to promote consistency and clarity in the interpretation of this APM, this APM uses the terms “must” and “is responsible for” to establish that a procedure or practice that it discusses is a Policy Requirement.

Examples of Policy Requirements not mandated by law that the Gallery chooses to make mandatory –

Once a procurement is established, the Contracting Officer must be the single point of contact with potential Offerors and industry regarding the acquisition.

Each Division and Department is responsible for coordinating their requirements

packages with other Divisions and Departments that are stakeholders and for ensuring that all stakeholders are fully informed.

1.303(c) *Best Practices*

Best Practices provided in this APM are procurement practices accepted in industry and government that, through experience, have proven to lead to successful outcomes. Contracting Officers may make decisions regarding Best Practices in their discretion exercising sound business judgment and considering the best interests of the Gallery. To provide consistency and clarity, this APM uses the terms “should” or “may” to establish that a practice is a Best Practice.

Examples of Best Practices, which Contracting Officers may use in their discretion exercising sound business judgment and considering the best interests of the Gallery –

The Contracting Officer may use any combination of contract type and pricing arrangement suitable to the procurement.

The number of sources needed to achieve Adequate Competition is normally three, but should be determined commensurate with the importance and dollar value of the procurement and the efficiency and economy of the procurement process.

Chapter 1.4. Contracting Authority

1.401. Scope

This chapter describes Contracting Authority.

1.402. Definitions

Contracting Authority: Authority to enter into agreements on behalf of the Gallery with individuals, business concerns, or other institutions to provide products and/or services to the Gallery.

Unauthorized Commitment: Any purchase made or order placed by someone on behalf of the Gallery who does not have delegated Contracting Authority.

1.403. Administrator

Contracting Authority is vested in the Administrator.

1.404. Contracting Officers

The Administrator has delegated to the APC Chief and Deputy Chief Contracting Authority to enter into, administer, and terminate contracts, and to make related decisions. Contracting authority is delegated to named individuals, rather than to positions, based on the individual's education, experience, and training. Contracting Officers operate under the authority of Certificates of Appointment, which establish the scope, and limits of a Contracting Officer's authority.

Contracting Officers are responsible for ensuring that Gallery contracting is efficient, effective,

and in accordance with the terms and conditions of its contracts and applicable law. Contracting Officers must protect the interests of the Gallery in all of its contractual relationships. Contracting Officers must manage contractor relationships by overseeing the integrity of the contracting process, ensuring that all contractors are treated in a business-like and objective manner. Contracting Officers must maintain effective communications with contractors during contract performance. Contracting Officers must exercise sound business judgment based on the business needs of the Gallery. In meeting these responsibilities, Contracting Officers should consult and confer with Divisions and Departments, as required, to make sure that sound business practices are followed consistently.

1.405. Purchase Card Holders

The Administrator has delegated Contracting Authority, limited to purchase card use, to named individuals called purchase card holders or P-card holders. The APC Chief is responsible for the overall management of the purchase card program. Day-to-day management of the program is the responsibility of the Purchase Card Agency Program Coordinator (AOPC).

Purchase card holders must comply with Circular No. 71 – Purchase Card Program, which establishes policy and procedures for the program.

1.406. Ordering Officials

Contracting Officers may designate individuals as Ordering Officials to place orders under and in accordance with the provisions set forth under existing task order contracts, or other pre-established contracts. Ordering Officials must be identified by name in the contracts under which they are permitted to order, along with the scope and limits of the Ordering Officials' authority. Ordering Officials are not Contracting Officers.

1.407. Unauthorized Commitments

The Gallery's policy on Unauthorized Commitments is set forth under Circular No. 73 – Procurement of Services, Supplies, and Equipment for the Gallery.

Chapter 1.5. Ethics

1.501. Scope

This chapter provides policy on ethics matters.

1.502. Definitions

Reserved

1.503. Policy

The Gallery is committed to the highest standards of operations, conduct, and integrity in the award and administration of contracts. The standards of behavior for all Gallery employees, including Contracting Officers, are set forth under Circular No. 36 – Employee Responsibilities and Conduct.

1.503(a) *Policy on Disqualifying Conditions*

The Gallery does not conduct business with firms unless they conduct their business affairs in a manner above reproach reflecting the high ethical standards necessary to support and retain public trust in the Gallery and confidence in our acquisition process. Contracting Officers may consider factors such as firms that are on the Debarred and Suspension List, adverse audit findings, adverse past performance information, and national security interests when making such determinations. Contracting Officers must receive written approval from the APC Chief or Deputy Chief prior to excluding any contractor or subcontractor.

1.503(b) *Policy on Conflicts of Interest*

The Gallery's procurement policy is not to enter into or continue contracts with individuals or organizations that present an unmitigated conflict of interest. If the Gallery finds that a conflict of interest exists, the contractor may not perform the contract unless the conflict is waived by the Gallery or the contractor eliminates it. Conflicts of interest can be either individual or organizational. Conflicts of interest most frequently arise when a personal, business, or financial interest of a contractor, its employee, or subcontractor is such that the contractor's judgment and loyalty in performing services for the Gallery might be compromised by concerns for pursuit of its own interest. The APC Chief or Deputy Chief will determine whether a conflict of interest exists.

Conflicts of interest are also applicable to Contracting Officers, Contracting Officer's Representatives and other members of a Gallery acquisition team. Any potential conflict of interests must be raised to the APC Chief or Deputy Chief for resolution.

1.503(c) *Policy on Ethical and Financial Complaints*

The Gallery's policy and procedures for receiving and handling complaints of violations of applicable law or ethical or financial standards and guidelines is set forth under Circular No. 82 – Ethical and Financial Complaints.

1.504. Responsibilities

Contracting Officers and the Divisions and Departments they support must comply with the policy provided in this Chapter.

Chapter 1.6. The Standard of Responsibility

1.601. Scope

This chapter provides policy on Responsibility.

1.602. Definitions

Responsibility: A standard that states that a proposed recipient of a contract award must be a contractor possessing the ability to accomplish the work successfully under the terms and conditions of the proposed contract.

1.603. Policy

To obtain true economy, the procurement process must minimize defaults by contractors, late deliveries, or other unsatisfactory performance that results in unnecessary delay and

administrative costs. This APM recognizes the importance of Responsibility – that Offerors have the financial ability, resources, skills, capability, and business integrity necessary to perform the contract.

An inquiry is not required in every case. The extent to which a review or investigation of Responsibility should be conducted will depend on the type, value and size of the procurement, and the Offeror's record of past performance.

1.604. Responsibilities

Before awarding a contract, the Contracting Officer must be satisfied that the Offeror meets the Responsibility standard.

Contracting Officers should not make an award to an Offeror that does not have an active registration in the System for Award Management (SAM). Additional policy, procedures and information on SAM is set forth under Acquisition Policy #2012-2 – CCR Registration.

Contracting Officers may solicit information regarding Responsibility from Offerors. When such information is of a privileged or proprietary nature, the information must be treated as protected from disclosure in accordance with APM Chapter 5.1 Procurement-sensitive Information and Confidentiality.

Chapter 1.7. Personal Services Contracts

1.701. Scope

This chapter provides policy on Personal Services Contracts. When situations arise that may require a Personal Services Contract, the decision regarding which office will handle the contract must be made by SG in consultation with APC.

1.702. Definitions

Personal Services Contract: A contract that, by its express terms or as administered, results in the contractor who is an individual subject to continuous supervision by Gallery employees.

1.703. Policy

APC is prohibited from awarding Personal Service Contracts. When situations arise that may require a Personal Services Contract, APC will consult with SG, which will determine whether to permit one. SG will consult with the Contracting Officer, and, if necessary, the appropriate Division and Department Head, the COR, and with Personnel (AP).

1.704. Responsibilities

Division and Department Heads are responsible for maintaining arms-length relationships with contractors, and for ensuring that the terms of their contract specifications and the actual performance do not create employer-employee relationships with persons hired as independent contractors.

Division and Department Heads must ensure that CORs and other staff as appropriate are familiar with any problems and issues that arise when contracts, by their express terms or as administered, make contractor personnel appear to be Gallery staff.

Division and Department Heads must –

- (a) review statements of work and other contract specifications before an award to ensure that only appropriate direction and control requirements are included; and
- (b) conduct ongoing reviews of contractor interactions with Gallery staff after award to ensure that personal services are not provided that are not pre-approved.

Module 2. ACQUISITION PLANNING AND COMPETITION

Chapter 2.1. Acquisition Planning

2.101. Scope

This chapter provides policy on acquisition planning.

2.102. Definitions

Acquisition Plan: A plan that documents the course of action for the procurement developed jointly by the Contracting Officer and the Divisions and Departments that they support.

Market Research: Learning about the market to make informed and suitable decisions and choices by obtaining information and knowledge about the different types of goods or services in the commercial marketplace, and their availability and pricing. Market research can also identify the type and extent of competition that can exist for a product or service.

2.103. Policy

2.103(a) *Market Research*

The Acquisition Team should engage in a continuous process of Market Research to keep abreast of marketplace changes and trends. Market Research, even when there is no specific procurement identified, will help identify firms that offer the goods and/or services required by the Gallery for future procurements.

2.103(b) *Acquisition Planning*

Close coordination, establishing milestones, and early planning among decision makers in the Divisions and Departments, Contracting Officers, and other members of the Acquisition Team are essential for an effective and efficient procurement.

2.103(c) *Requirements Package*

A significant part of acquisition planning is assembling the requirements package. The requirements package consists of all the documents and information needed to produce a solicitation or contract to fulfill a requirement. The core documents in the requirements package are the approved purchase requisition; the statement of work or statement of objectives; funding; and the independent Gallery cost estimate, when applicable.

2.103(d) *Contract Types and Pricing Arrangements*

The Gallery's policy is to select a contract type and pricing arrangement that results in reasonable contractor risk and provides the contractor with the greatest incentive for efficient and economical performance.

Available contract types and pricing arrangements include, but are not limited to, indefinite-delivery-indefinite-quantity (IDIQ) contracts, blanket purchase agreements (BPAs), basic

ordering agreements (BOAs), firm fixed price, time and materials, and labor hour contracts. Any of these types of contracts may have pricing arrangements that include cost reimbursement features, where the contractor is reimbursed for actual costs, and may also include performance incentives such as monetary and contract extension incentives.

2.103(e) *Socioeconomic Programs*

The Gallery does not mandate specific goals for participation of minority, women-owned and small businesses concerns. While no preferences are given, COs are encouraged to include these categories of firms when soliciting for Gallery requirements. The Gallery strives to provide such businesses concerns with opportunities to participate in performing Gallery contracts, whether as contractors or subcontractors.

2.104. Responsibilities

Division and Department Heads must coordinate with the APC Chief or Deputy as soon as a potential procurement need is identified to support the acquisition planning process.

Divisions and Departments must provide Contracting Officers with a complete requirements package, including the core documents identified under 2.103(c) above and any other documents identified by the Contracting Officer as essential to the procurement action. Each Division and Department is responsible for coordinating their requirements packages with any other Division and Department that is a stakeholder and for ensuring that all stakeholders are fully informed.

The Contracting Officer must select the type of contract and pricing arrangement that represents the most prudent and reasonable relationship with the contractor and minimizes cost and other risks to the Gallery. The Contracting Officer may use any combination of contract type and pricing arrangement suitable to the procurement.

Contracting Officers are encouraged to solicit bids from as wide a variety of businesses as possible.

Contracting Officers must prepare Acquisition Plans in accordance with Acquisition Policy #2014-2 – Acquisition Plans.

Chapter 2.2. Competition

2.201. Scope

This chapter provides policy on competition in contracting.

2.202. Definitions

Adequate Competition: Soliciting a sufficient number of sources to obtain a market response large enough to support analysis of the fairness and reasonableness of individual offers. The number of sources considered sufficient to achieve Adequate Competition is normally three, but the number should be determined commensurate with the importance and dollar value of the procurement, and the efficiency and economy of the procurement process.

Non-Competitive Contracting (also referred to as Sole Source): Award of a contract for the

purchase of a product or service without competitive bidding.

Justification and Approval (J&A): Document required to justify and obtain appropriate level approvals to contract using Non-Competitive Contracting.

Solicitation Mailing List: List of names of products and services suppliers from which proposals may be solicited.

Selected Bidders List (or Pre-Qualified Bidders Lists): A Solicitation Mailing List that includes firms that the Gallery considers well qualified to fill the requirements of a particular procurement.

2.203. Policy

The Gallery seeks competitive opportunities when procuring products and services. When Adequate Competition exists, the Gallery is able to compare the value of competing technical proposals and prices in order to determine which proposal affords the best value.

The Gallery's policy recognizes that Solicitation Mailing Lists and Selected Bidders Lists promote efficiency and economy of the procurement process when seeking Adequate Competition.

The Gallery's policy permits the use of Non-Competitive Contracting as an alternative to seeking Adequate Competition when there is –

- (a) only one responsible source, or
- (b) an unusual and compelling urgency, or
- (c) when it is deemed to be in the best interest of the Gallery as determined by the APC Chief or Deputy Chief. With a Non-Competitive approach, the Sole Source supplier does not have to compete with other businesses and may have limited incentive to offer the best value.

2.204. Responsibilities

2.204(a) *Competitive Procedures*

Contracting Officers must use Adequate Competition in acquisitions to the maximum extent possible.

Contracting Officers are responsible for determining the number of bidders required for Adequate Competition.

CORs, upon the request of the Contracting Officers, must provide a list of firms considered capable of fulfilling their requirements for the development of Solicitation Mailing Lists and Selected Bidders Lists.

2.204(b) *Non-competitive Procedures*

Contracting Officers may use Non-Competitive Contracting Procedures for –

- (1) procurements at or below the Micro-purchase Threshold;
- (2) certain orders placed pursuant to Acquisition Policy #2014-1 – GSA Schedule

Procurements (additional policy, procedures and information on Government-wide Contracts such as GSA Schedule Procurements is provided in this APM under Chapter 3.3); or

- (3) procurements at or above the Micro-purchase Threshold if Market Research identifies only one potential source for requirements, where there is an unusual or compelling circumstance, or where otherwise determined by the APC Chief or Deputy Chief to be in the best interest of the Gallery.

When Non-competitive Contracting Procedures are used pursuant to sub-paragraph 3 above, the procedure must be justified in writing prior to award using the J&A template provided in CWS.

Do not split requirements to circumvent the thresholds provided in this APM.

Module 3. CONTRACTING METHODS AND TYPES

Chapter 3.1. Simplified Procurement

3.101. Scope

This chapter provides policy for the procurement of products and services using Simplified Acquisition Procedures.

3.102. Definitions

Commercial Item: Products and services sold in substantial quantities in the commercial marketplace to the general public at established prices or rates.

Simplified Acquisition Procedures: Process of acquiring products and services designed to promote efficiency and reduce administrative costs.

Offeror: Contractor or individual who has submitted a quote or proposal to the Gallery to provide goods or services.

Source Selection Report: Document prepared by the Contracting Officer that outlines the procurement process undertaken and the basis for the award decision.

3.103. Policy

The Gallery encourages use of Simplified Acquisition Procedures. Contracting Officers may use Simplified Acquisition Procedures for purchases of –

- (a) Products and services, including construction and A/E services, not exceeding the Simplified Acquisition Threshold; and
- (b) Commercial Items not exceeding the Commercial Items Threshold.

3.104. Responsibilities

Under Simplified Acquisition Procedures, Contracting Officers must conduct the procurement as described below. Contracting Officers may adjust the steps, the amount of detail required under any section to reflect the complexity of the contract, and the level of associated risk.

3.104(a) *Identifying Potential Sources*

Divisions and Departments are responsible for identifying potential sources sufficient to ensure Adequate Competition, normally a minimum of three.

3.104(b) *Communications with Offerors*

Once a procurement is established, the Contracting Officer becomes responsible for, and has authority over, all communications with industry regarding the acquisition. The Contracting Officer must provide clear direction to the Divisions and Departments about how to engage with industry during the procurement. Communications with potential sources must not create an unfair competitive advantage.

3.104(c) *Solicitation*

When soliciting proposals, the Contracting Officer must notify potential Offerors of the basis

on which an award will be made, such as price alone, best value, or a combination of factors, including other factors such as past performance and quality.

3.104(d) *Receipt of Proposals*

The Contracting Officer is responsible for receiving all proposals.

3.104(e) *Safeguarding Procurement Sensitive Information*

All persons engaged in the solicitation, evaluation, and award of contracts must protect Procurement Sensitive Information. Additional policy, procedures and information on the protection of Procurement Sensitive Information is provided in this APM under 5.106.

3.104(f) *Evaluations*

The Contracting Officer is responsible for evaluating proposals, with the assistance of the Divisions and Departments, as requested. Evaluations must be conducted in an impartial manner on the basis established in the solicitation.

3.104(g) *Award*

The Contracting Officer is responsible for finalizing each contract, including making sure that all necessary matters are addressed in the final contract, completing the drafting of the contract, briefing stakeholders as required, obtaining required approvals, and arranging for contract signing. The Contracting Officer may, but is not required to, notify unsuccessful Offerors of the award and offer debriefings. If unsuccessful Offerors request notification or debriefing, the Contracting Officer must provide such information.

Chapter 3.2. Formal Contracting

3.201. Scope

This chapter provides policy for acquiring products and services using formal contracting procedures.

3.202. Definitions

Formal Contracting Procedures: Formal, structured solicitation process used for acquiring large or complex products and services.

Competitive Range: Offerors determined by the Contracting Officer to have a reasonable chance of receiving an award of a contract.

Non-Responsive Proposal: Proposal that does not meet all key solicitation requirements, such as terms and conditions, representations and certifications, and technical requirements, in addition to those identified as evaluation factors or sub-factors.

Request for Proposal (RFP): Document sent to prospective Offerors to request a formal proposal to provide the products and services required by the Gallery, under stated terms and conditions.

Source Selection Plan (SSP): Document that specifies how source selection activities are organized, initiated, and conducted. It defines the evaluation factors to be used to analyze proposals and serves as the guide for conducting the analysis of proposals and the selection of

source(s) that will receive an award.

Technical Evaluation Panel (TEP): Panel assembled to review and evaluate technical proposals received in response to the solicitation.

Cost Evaluation Panel (CEP): Panel assembled to review and evaluate cost proposals received in response to the solicitation.

3.203. Policy

The Gallery requires use of Formal Contracting Procedures for competitive procurements that are at or above –

- (a) the Simplified Acquisition Threshold, except for when A/E services are procured using Qualification Based Selection as further described under Chapter 4.3 Architect and Engineering Contracting; or
- (b) the Commercial Items Threshold, when Commercial Items are purchased.

3.204. Responsibilities

Under Formal Procurement Procedures, Contracting Officers must conduct the procurement as described below. Contracting Officers may adjust the steps, the amount of detail required under any section to reflect the complexity of the contract, and the level of associated risk.

3.204(a) *Communications with Offerors*

Once a procurement is established, the Contracting Officer must be the single point of contact with potential Offerors and industry regarding the acquisition. The Contracting Officer must provide clear direction to the Divisions and Departments about how to engage with industry during the procurement. Communications must not afford any Offerors an unfair competitive advantage. The procurement is deemed to be established upon the issuance of the RFP, or at an earlier date at the discretion of the Contracting Officer.

3.204(b) *Acquisition and Source Selection Plans*

The Contracting Officer must prepare –

- (1) An Acquisition Plan, if required under [Acquisition Policy #2014-2 – Acquisition Plans](#), and;
- (2) A Source Selection Plan for all best value, negotiated, acquisitions at or above the Large Contract Threshold.

3.204(c) *Identification of Potential Sources*

Divisions and Departments must identify an adequate number of potential sources sufficient to ensure Adequate Competition.

3.204(d) *Preparing and Releasing the RFP*

The Contracting Officer must prepare and release the RFP. The RFP must provide potential Offerors with the information needed to prepare a proposal, including guidance on proposal format, content, and evaluation factors and methodology; dates and times for receipt of proposals and other milestones; and a description of the products and/or services to be purchased.

Divisions and Departments must provide a description of the products and services to the Contracting Officer. Divisions and Departments are responsible for coordinating the assistance of program and technical personnel as needed to ensure that all programmatic requirements and technical requirements are adequately addressed in the description.

3.204(e) *Technical Evaluation Panel*

The Contracting Officer must convene a TEP for technical proposal evaluation. The objective of the TEP is to evaluate technical proposals in a manner that is consistent with the source selection methodology and evaluation factors stated in the solicitation. The size and membership of the TEP are at the discretion of the Contracting Officer and should be commensurate with the complexity of the technical proposal and importance of the solicitation, provided that one voting member of the TEP must be designated as chairperson. Voting members generally consist of Gallery employees, however, the Contracting Officer may elect to name non-Gallery employees as voting members when certain knowledge and skill sets are not readily available within the Gallery. The Contracting Officer may name individuals as non-voting members of the TEP (Advisors). Division and Departments Heads typically recommend personnel to be assigned to the TEP.

3.204(f) *Cost Evaluation Panel*

The Contracting Officer may convene a CEP. The purpose of the CEP is to analyze complex or sensitive cost information and to present that information to the Contracting Officer in a concise, meaningful manner, for possible use in negotiations.

3.204(g) *Safeguarding Procurement Sensitive Information*

All persons engaged in the solicitation, evaluation, and award of contracts must protect Procurement Sensitive Information. Additional policy, procedures and information on the protection of Procurement Sensitive Information is provided in this APM under Chapter 5.1 Procurement-sensitive Information and Confidentiality.

3.204(h) *Receipt and Distribution of Proposals*

The Contracting Officer is responsible for receiving proposals and distributing proposals to the TEP and, if convened, to the CEP. Each panel member must read and sign a Confidentiality Agreement and a Conflict of Interest Certification prior to receiving proposals and beginning the technical evaluation process. If for any reason, a member cannot evaluate a proposal objectively, that member must notify the Contracting Officer immediately, who will determine whether they can remain on the panel.

3.204(i) *Proposal Evaluation*

The TEP Chairperson is responsible for the day-to-day operations of the TEP. The TEP Chairperson must ensure that the evaluation of proposals is completed in a timely manner, consistent with the source selection methodology and evaluation factors stated in the solicitation.

3.204(j) *Technical Evaluation Panel Report*

The TEP Chairperson must provide the Contracting Officer a TEP report at the conclusion of the evaluation, which documents the panel's consensus ratings of each technical proposal and the strengths and weaknesses of each by factor. The Contracting Officer must review this report to ensure that the evaluation is consistent with the source selection methodology and evaluation

factors stated in the solicitation.

3.204(k) *Competitive Range*

The Contracting Officer may establish a competitive range comprised of the most highly rated proposals that have a reasonable chance of being selected for award, unless the range is further reduced for purposes of efficiency.

3.204(l) *Negotiations and Discussions*

The Contracting Officers must conduct negotiations and discussions with Offerors in a way that does not favor one Offeror over another, reveal an Offeror's technical solution or price to another Offeror, or provide any information that would compromise an Offeror's proprietary information.

3.204(m) *The Award Decision*

The Contracting Officer is responsible for making the award decision, unless the Administrator or the APC Chief or the Deputy Chief appoints a different person. The Contracting Officer must prepare a Source Selection Report that explains the basis of their decision or recommendation.

3.204(n) *Contract Execution*

The Contracting Officer is responsible for finalizing each contract, which involves making sure that all necessary matters are addressed in the final contract; briefing stakeholders as required; obtaining the required approvals; and arranging for contract signing.

3.204(o) *Notification to Unsuccessful Offerors and Debriefings*

Within 15 calendar days after award, the Contracting Officer must send a written or electronic notice of the award to all unsuccessful Offerors, and provide procedures for requesting a debriefing. The debriefing provides the Offerors feedback on the rationale for the source selection decision. Debriefings are not required for price-only competitions.

3.204(p) *Solicitation Cancellation*

The Contracting Officer may cancel a solicitation with the concurrence of the applicable Divisions and Departments.

3.204(q) *Proposal Withdrawal*

Offerors may withdraw proposals by notice at any time before award unless otherwise specified in the solicitation.

3.204(r) *Non-Responsive Proposals*

The Contracting Officer may reject a proposal as non-responsive in lieu of distributing it to the TEP. The rejection must be explained in writing to the Offeror with a copy placed in the Official Contract File.

Chapter 3.3. Government-wide Contracts

3.301. Scope

This chapter provides policy associated with Government-wide Contracts.

3.302. Definitions

Government-wide Contract: Contract in which multiple government agencies and other permitted organizations align their needs to purchase goods and/or services. Government-wide Contracts provide the agreement on most of the terms, including price terms and rates, that will govern future transactions. Since the parties can rely on the terms of a Government-wide Contract, the same terms need not be repetitively negotiated, and only deal-specific terms become the subject of negotiation when purchases are made. Government-wide Contracts also allow for economies of scale, which usually reduce per unit costs.

3.303. Policy

The Gallery's policy and procedures for use of Government-wide contracts is based on Acquisition Policy #2014-1 - GSA Schedule Procurements, which serves as an example of a Government-wide contract.

Module 4. SPECIAL CATEGORIES OF CONTRACTING

Chapter 4.1. Acquisition of Information Technology

4.101. Scope

This chapter provides policies specific to the acquisition of Information Technology.

4.102. Definitions

Information Technology (IT): Equipment or interconnected systems of equipment used in the acquisition, storage, management, and movement of information.

4.103. Policy

The Gallery is a highly interconnected organization and is dependent upon secure and reliable technology. The Chief Information Officer (CIO) establishes IT policies, processes, and internal controls that apply across the Gallery, and that are designed to ensure that IT related purchases –

- (a) are compatible with the Gallery’s enterprise architecture;
- (b) are compatible with the Gallery’s network environment;
- (c) are compatible with the Gallery’s computer security policy;
- (d) are licensed under terms that are in the Gallery’s best interests; and
- (e) have hardware and software that can be efficiently supported.

4.104. Responsibilities

Divisions and Departments must include Technology Solutions (TTS) in their Acquisition Planning. CORs must coordinate their IT requirements with TTS and request assistance of TTS personnel as needed to ensure that all TTS programmatic requirements are adequately addressed in the contract specifications before providing them to APC for solicitation. After award, TTS must work with CORs to review contract deliverables, work products, and final products to ensure that IT requirements are properly implemented.

Chapter 4.2. Construction Contracting

4.201. Scope

This chapter provides policy on incorporation of construction requirements into contracts.

4.202. Definitions

National Gallery of Art Master Facilities Plan (MFP): Long-term program of Federally funded capital improvements developed to renew the useful life of the Gallery's buildings and engineered systems.

Construction Specifications Institute (CSI) Division Format (also known as the Master Format): Standard for organizing specifications and other written information for commercial and public building projects. The purpose of this format is to assist the user to organize information into distinct divisions and sections when creating contract documents, and to

assist the user when searching for specific information in consistent locations.

4.203. Policy

The Gallery recognizes Federal construction and other public works practices as a source of Best Practices. These practices include without limitation issuance of construction contract documents such as –

- (a) Indefinite Delivery Indefinite Quantity Construction (IDIQ) contracts: Task-Order-driven contractual instruments designed for ongoing, smaller projects.
- (b) Firm Fixed-Price (FFP) construction contracts for specific one-time repair and renovation projects.
- (c) FFP construction contracts for large-scale Gallery building renovation projects identified in the NGA Master Facilities Plan (MFP) for facility renovation and renewal.

The Gallery’s policy recognizes the CSI Division Format as a source of Best Practices to promote completion of projects according to Gallery requirements, timelines, and budgets. Standardizing the presentation of construction requirements improves communication among all parties involved in construction projects.

Additional construction policies, practices, and internal controls are included in Circulars issued by the Administrator and in the various Chapters of this APM, including, but not limited to –

Circular No. 6 –	Access Control Policy
Circular No. 40 –	Fire and Life Safety
Circular No. 49 –	Occupational Safety and Health
Circular No. 74 –	Installation Standards for Electrical, Telecommunication, Security, Computer LAN, and Other Wiring
Circular No. 79 –	Work and Equipment Restrictions in Art-Containing Spaces
APM Chapter 5.3	Security and Safety
APM Chapter 5.7	Bonds
APM Chapter 5.8	Insurance
APM Chapter 5.10	Warranties and Annual Support Agreements
APM Chapter 5.11	Labor Standards

4.204. Responsibilities

Contracting Officers and Divisions and Departments that contract for the construction or renovation of Gallery buildings or facilities should use Federal construction and other public works contracting practices for Gallery construction projects.

Division and Department Heads must ensure that all staff involved in the contracting process for construction projects are familiar with construction policies, processes, and internal controls.

CORs must include appropriate construction requirements in the contract specifications that they provide to Contracting Officers. After award, as part of contract administration, CORs must review work products and final products to ensure that these requirements have been

properly implemented by the Contractors. CORs must include AAE and AFM as applicable in their Acquisition Planning. CORs must coordinate their construction requirements with other Divisions and Departments and request assistance of personnel as needed to ensure that all construction requirements are adequately addressed in the contract specifications before providing them to APC for solicitation.

For construction contracts valued at or above the Large Contract Threshold: Contracting Officers, in conjunction with Divisions and Departments, must generate a formal Acquisition Plan and a Source Selection Plan that establishes contract milestones, identifies key stakeholders, and ensures that most qualified contractors are solicited, evaluated, and awarded. Such plans should be consistent with Federal construction and other public works Best Practices. Additional policy, procedures and information is provided under Acquisition Policy #2008-1 – Best Value Approach and Acquisition Policy #2014-2 – Acquisition Plans.

Contracting Officers should use Selected Bidders List for MFP contracts.

Chapter 4.3. Architect and Engineering Contracting

4.301. Scope

This chapter provides policies specific to Architect and Engineering (A/E) contracting.

4.302. Definitions

The Brooks Act: Governs selection of A/E services in public design projects and mandates selection of A/E firms be based on competency, qualifications, and experience rather than price.

4.303. Policy

The Brooks Act and QBS are sources of Best Practices for Gallery A/E contracts. The Gallery's policy encourages use of QBS for A/E contracts that are at or above the Simplified Acquisition Threshold.

4.304. Responsibilities

Under QBS, Contracting Officers should conduct the procurement using the procurement steps described below –

- (a) Issue a request for qualification for architectural and engineering services.
- (b) Receive A/E firms' statements of qualifications and supplemental statements of ability to design specific projects.
- (c) Evaluate qualifications and any project-specific statements.
- (d) Develop a short list of the most highly qualified firms to interview.
- (e) Interview the most highly qualified firms.
- (f) Negotiate with the top-ranked firm.

If a satisfactory contract on fair and reasonable terms is not reached within a reasonable time, the Contracting Officer may conclude negotiations with the top-ranked firm and initiate negotiations with the second-ranked firm.

If a satisfactory contract is not worked out with this firm, then this procedure may be continued down the list of most highly qualified firms until a mutually satisfactory contract is negotiated.

Contracting Officers may adjust the steps and the amount of detail required under any step to reflect the complexity of the contract, and the associated risk.

Module 5. GENERAL CONTRACTING REQUIREMENTS

Chapter 5.1. Procurement-sensitive Information and Confidentiality

5.101. Scope

This chapter provides policy on protection of Procurement-sensitive Information and Confidentiality.

5.102. Definitions

Personally Identifiable Information (PII): As defined under Circular No. 2 – Protection of Personally Identifiable Information.

Procurement-sensitive Information: Information that Offerors submit in their proposals and the information generated throughout or related to the source selection process.

5.103. Policy

The Gallery protects Procurement-sensitive Information and collects, maintains, and disseminates Procurement-sensitive Information only when necessary in the award and administration of contracts.

5.104. Responsibilities

Contracting Officers and the Division and Departments they support must comply with the policy regarding protection of Procurement-sensitive Information discussed in this chapter.

5.105. Contractor Confidentiality Agreements

For any Procurement-sensitive Information that the Gallery provides, Contracting Officers must require contractors or any person who performs services on behalf of the Gallery to maintain the confidentiality of the information, and to not disclose the information to a third party unless –

- (a) The contract specifically authorizes use and disclosure of the information;
- (b) The information is generally available to the public; or
- (c) Disclosure of the information is required by law or court order.

Contracting Officers may require contractors to sign confidentiality agreements prior to receiving, collecting, or being privy to Procurement-sensitive Information. Confidentiality agreements must be maintained in the official contract file.

Contracting Officers may prohibit any contractor personnel who are required to sign a confidentiality agreement but fail to do so from working on the applicable contract and/or otherwise being privy to Procurement-sensitive Information.

Additional policy, procedures and information on the protection of Procurement-sensitive Information, including contractor proposals and source selection information, is provided in the Technical Evaluation Panel Instructions issued by APC.

Sample confidentially clauses and provisions are provided in the Contract Writing System (CWS) and are recommended as Best Practices.

5.106. Procurement-sensitive Information

All persons engaged in the solicitation, evaluation, and award of contracts must protect Procurement-sensitive Information, which includes –

- (a) Business information included in proposals submitted in response to Gallery solicitations that the Offeror marks confidential;
- (b) Information generated by the Gallery during its analysis of contractor proposals, such as source selection information; and
- (c) Information otherwise marked by a third party as confidential, company confidential, procurement sensitive, or with a similar marking.

When Procurement-sensitive Information is not in use or not otherwise under the control of the engaged person, the information must be stored to prevent unauthorized access, such as in a locked room, drawer, cabinet, or desk.

Chapter 5.2. Use of the Gallery Name

5.201. Scope

This chapter provides policy on use of the Gallery name for commercial purposes.

5.202. Definitions

Reserved.

5.203. Policy

The Gallery strictly limits any person who performs services on behalf of the Gallery from using the name of the Gallery in advertising, for promotion, or for any other commercial purpose.

5.204. Responsibilities

Contracting Officers must prohibit contractors performing under Contracts from using the Gallery's name, with the exception of listing the Gallery as a client on its client list.

Additional Policy, procedures and information on use of the Gallery's name is set forth under Acquisition Policy #2011-1 – Advertising/Publicity.

Chapter 5.3. Security and Safety

5.301. Scope

This Chapter provides policy on incorporating security and safety requirements into contracts.

5.302. Definitions

Reserved

5.303. Policy

Security and safety policies are incorporated into Circulars issued by the Administrator. In addition to these policies, a number of security and safety processes and internal controls apply across the Gallery. These policies, processes, and internal controls regulate and control all entry into and egress from the Gallery while providing protection to its assets, staff, and visitors. Key security and safety policies are included in the following Circulars issued by the Administrator –

Circular No. 6 – Access Control Policy

Circular No. 40 – Fire and Life Safety

Circular No. 79 – Work and Equipment Restrictions in Art-Containing Spaces.

5.304. Responsibilities

Division and Department Heads must ensure that all staff are familiar with security and safety policies, processes and internal controls.

CORs must include appropriate security and safety requirements in the contract specifications that they provide to Contracting Officers. After award, as part of contract administration, CORs must review work products and final products to ensure that security and safety requirements have been properly implemented by Contractors.

Chapter 5.4. Reasonable Accommodation for Individuals with Disabilities

5.401. Scope

This chapter provides policy on incorporating accessibility requirements into contracts.

5.402. Definitions

Accessibility: Design of products, devices, services, or environments for people with disabilities.

5.403. Policy

The reasonable accommodation policy for persons with disabilities is stated in the Gallery's Circular No. 87 - Reasonable Accommodation and Personal Assistance Services for Individuals with Disabilities.

5.404. Responsibilities

CORs must include appropriate accessibility requirements in the contract specifications to Contracting Officers. After award, as part of contract administration, CORs must review work products and final products to ensure that accessibility requirements have been properly implemented by Contractors.

Chapter 5.5. Intellectual Property

5.501. Scope

This chapter provides policy on acquiring rights to Intellectual Property (IP) supplied under

contracts.

5.502. Definitions

Intellectual Property (IP): Knowledge, mostly explicit, which is protected by standard legal constructs, including copyright.

5.503. Policy

The Gallery strives for a balance of competing interests when negotiating IP rights. Unless the Contracting Officer determines that a different balance is in the Gallery's best interest, the Gallery expects to retain ownership of the IP that contractors develop or deliver under Gallery contracts.

Notwithstanding the foregoing, there are important instances where the Gallery should require greater IP rights than are discussed above.

Examples of where acquisition of greater IP rights may be in the Gallery's best interest: Situations where the Gallery requires for its own internal operations the ability to maintain, modify, or improve on the products provided under Gallery contracts.

Examples of where the Gallery may require a contractor to assign all IP rights to the Gallery: Work that is commissioned entirely by the Gallery or in which a contractor and Gallery employee have jointly created the work. In particular, the Gallery normally obtains complete ownership interests in IP funded by and developed solely for the Gallery.

Whether a contractor is willing to grant the IP rights that the Gallery desires may depend on the practice in the applicable industry, the competitive value of the intellectual property, and the contractor's policies. When negotiating IP rights, Contracting Officers and other members of the Acquisition Team should recognize that IP has an intrinsic value to its creators, along with monetary value for those materials that can be sold or licensed to multiple customers. The scope of the Gallery's license will depend on the nature of the IP and the outcome of negotiations between the parties.

5.504. Responsibilities

Contracting Officers must ensure that appropriate IP clauses are incorporated into solicitations and awards.

CORs must carefully anticipate and define the Gallery's need to use and/or modify the materials provided under contracts, or to disseminate the materials to others.

Chapter 5.6. Incentive Contracting

5.601. Scope

This chapter provides policy on Incentive Contracting.

5.602. Definitions

Incentive Contracting: Contracting method that provides a mechanism to reward a contractor

for superior performance.

5.603. Policy

Incentive Contracting may be used in Gallery contracts. Award term, a type of Incentive Contracting, is recommended when practical for a requirement. The award term process rewards superior performance by extending the term of the contract.

5.604. Responsibilities

Contracting Officers may include incentive contracting provisions in their contracts in their discretion, exercising sound business judgment and considering the best interests of the Gallery.

Contracting Officers should consult with CORs before making decisions regarding incentive contracting. CORs are in the best position to make recommendations regarding whether project requirements have been accomplished with superior performance.

Chapter 5.7. Bonds

5.701. Scope

This chapter provides policy on the use of Bonds for financial protection against losses.

5.702. Definitions

Bond: Written promise to pay money or do some act if certain circumstances occur or a certain time elapses. The distinguishing feature of a bond is the obligation to pay a fixed sum of money at a definite time and with a stated interest, usually executed by a principal, the person with the primary obligation, and a second party, identified as the surety. Bond types include –

- (a) Payment bond: Bond that assures payments are made to all persons working on or supplying material for a construction contract.
- (b) Performance bond: Bond that guarantees completion of work that is required by the contract.

5.703. Policy

The Miller Act is a source of Best Practices in Gallery contracts for use of Bonds in construction contracts as financial protection against loss. The Act requires payment and performance bonds for construction contracts expected to exceed \$100,000. The regulations implementing the Act require that –

- (a) the contractor furnish payment and performance bonds before the Contracting Officer issues a notice to proceed with the work;
- (b) the penal amount of payment bonds should be equal to 50 percent of the original amount of the contract and the penal amount of performance bonds should be equal to 100 percent of the original amount of the contract;
- (c) and when a contract value or price is increased, the contract should require additional bond protection in an amount adequate to protect subcontractors or suppliers.

5.704. Responsibilities

Contracting Officers may make decisions regarding requiring Bonds in their discretion

considering the best interests of the Gallery and exercising sound business judgment.

Contracting Officers may use the Miller Act for information purposes (e.g., to establish requirements for Bonds and appropriate penal amounts).

Chapter 5.8. Insurance

5.801. Scope

This chapter provides policy on Insurance for financial protection against losses.

5.802. Definitions

Insurance: Financial product with the promise of reimbursement in the event of loss.

5.803. Policy

Gallery contracts may require contractors to purchase Insurance when –

- (a) performance under a contract has the potential to cause injury to a person,
- (b) where Gallery property could be damaged by acts of the contractor, or
- (c) when it is otherwise in the best interest of the Gallery.

APC will seek review of Gallery insurance requirements from the appropriate staff in the Gallery's Treasurer's Office to ensure that policy coverages identified in Gallery contracts are appropriate.

Examples of the types of insurance policies typically included in Gallery contracts –

- (a) Worker's Compensation and Employer's Liability Insurance
- (b) Comprehensive Bodily Injury and Property Damage Liability Insurance (general liability)
- (c) Automobile Public Liability and Property Damage Insurance (if vehicles are to be used in connection with work under the contract)
- (d) Errors and Omissions insurance coverage for losses sustained because of a contractor's mistake or oversight, such as a negligent act. This insurance does not cover intentional wrongdoing. (Recommended if engaging architects or similar professions and there is a risk of harm to the Gallery should the contractor or its employees negligently perform services under the contract.)

5.804. Responsibilities

Contracting Officers may make decisions regarding Insurance in their discretion considering the best interests of the Gallery and exercising sound business judgment.

Contracting Officers must consult with CORs before making decisions regarding Insurance. CORs are in the best position to weigh the risk of harm unique to a requirement and recommend appropriate policy types and limits. Any deviations from standard insurance coverages currently adopted into Gallery contracts must be approved in writing from appropriate staff in the Treasurer's Office.

When requiring a contractor to purchase insurance for contracts with a value at or above the Large Contract Threshold, the Gallery must be named as an additional insured on the comprehensive general liability and automobile liability insurance policies.

When requiring a contractor to purchase insurance –

- (a) Insurance purchased must be at the Contractor's expense; and
- (b) Contracting Officer may require contractors to provide certificates of insurance after execution of the contract.

Chapter 5.9. Taxes

5.901. Scope

This chapter provides policy regarding Federal, state, and local taxes.

5.902. Definitions

Reserved

5.903. Policy

The Gallery is exempt from taxation by Federal, state, and local taxing authorities, including all sales taxes. While the Gallery itself is tax-exempt, its contractors generally are not tax-exempt. Sales taxes charged to a contractor on goods and/or services used in performing a contract are not reimbursed by the Gallery.

5.904. Responsibilities

Reserved

Chapter 5.10. Warranties and Annual Support Agreements

5.1001. Scope

This chapter provides policy on Warranties and Annual Support Agreements.

5.1002. Definitions

Warranty: Promise or affirmation regarding the nature, usefulness, or condition of the goods or performance of services furnished under a contract.

Extended Warranty: Prolonged warranty offered by the manufacturer or third parties to consumers in addition to the standard warranty on new items.

Annual Support Agreement: Contractual agreement that typically provides access to various resource levels including the repair and replacement of defective products and services for one year after their delivery, with annual option and renewal periods.

5.1003. Policy

The Gallery's policy is to –

Take advantage of commercial warranties where appropriate and in the best interests of the Gallery for the repair and replacement of products and services.

Consider the economic advantages of other business arrangements in lieu of Warranties for the repair and replacement of products and services after delivery, such as Annual Support Agreements, particularly where use of Warranties is not consistent with industry practice.

Use a construction warranty clause where appropriate for construction to ensure that performance and delivery conform to the contract requirements and are free of any defect in equipment, material, design, or workmanship, by the contractor, subcontractors, or suppliers, at any tier. A warranty for construction contracts is typically no less than one year from the date of final acceptance of the work.

Take advantage of Extended Warranties where appropriate, consistent with industry practice and in the best interests of the Gallery for manufactured items, services, and equipment provided for construction and facilities maintenance, such as roofing materials, windows, skylights, HVAC (heating, ventilating and air conditioning), and other building-related systems.

5.1004. Responsibilities

Contracting Officers may incorporate Warranties and Annual Support Agreements into their contracts and make related decisions in their discretion exercising sound business judgment and considering the best interests of the Gallery.

Contracting Officers should consult with CORs before making decisions regarding Warranties and Annual Support Agreements. CORs are in the best position to estimate the risk of failure unique to a particular requirement and to recommend appropriate types of Warranties and Annual Support Agreements.

Chapter 5.11. Labor Standards

5.1101. Scope

This chapter provides policy on contract labor standards and payment of prevailing wages.

5.1102. Policy

The Service Contract Act, the Construction Wage Rate Requirements statute (formerly the Davis-Bacon Act), and the Walsh-Healey Public Contracts Act should be followed as Best Practices in Gallery contracts regarding labor standards and payment of prevailing wages.

5.1103. Responsibilities

Contracting Officers may use the Service Contract Act, the Construction Wage Rate Requirements statute (formerly the Davis-Bacon Act), and Walsh-Healey Public Contracts Act as appropriate.

Chapter 5.12. Contract Payment

5.1201. Scope

This chapter provides policy on payments made to contractors.

5.1202. Definitions

Advance Payments: Any payment of funds to a contractor before receiving goods and/or services under the contract, or before the contractor begins performance and incurs costs under the contract. Advance Payments differ from partial, progress, performance, or other payments, which are based on the performance or partial performance of a contract.

Performance-based Payments: Payments made on the basis of events or milestones successfully accomplished. Also referred to as milestone payments.

Progress Payments: Payments based on the estimate of work accomplished that meets the standard of quality established under the contract.

Firm-fixed-price Payments: Payment of the amount specified in the contract. The amount is not subject to any adjustment based on the contractor's cost experience in performing the work.

Time-and-materials Payments: Payments based on the time spent by the contractor's employees performing the work, and for materials supplied by the contractor.

Labor-hour Payments: Variation of the Time-and-materials Payment, differing only in that the contractor supplies labor and does not supply materials.

Prompt Payment Act: Governs the timing of invoice payment. The Act requires payment of proper invoices, either on the date specified in the contract, or if there is no such date, within 30 calendar days after receipt of an acceptable invoice. In the event the invoices are not paid in the allotted time, interest begins to accrue at a rate set by the US Department of the Treasury and the obligation to pay interest is automatic, until the invoice is paid, without request from the contractor, except that interest penalties will not accrue for Performance-based Payments and where payment delays are due to a disagreement between the Gallery and the contractor concerning the payment amount, contract compliance, or amounts temporarily withheld or retained in accordance with the terms of the contract.

5.1203. Policy

The Gallery's procurement policy on payment types, withholding, electronic invoicing, and payment is provided under this section.

5.1203(a) *Payment Types*

Advanced Payments: Advanced payments for other than the exceptions listed below are not permitted. Exceptions may be approved on a case-by-case basis by the Administrator.

- Tuition.
- Extension or connection of public utilities for Gallery facilities.

- Subscriptions to online or hard-copy periodicals.
- Software maintenance and licenses.

Firm-fixed-price Payments: Firm-fixed-price Payments are recommended whenever practical. The Gallery normally uses these types of payments in projects in which the Gallery can accurately estimate the size of the project and expects that the project requirements will not change.

Performance-based Payments: Performance-based Payments are a type of Firm-fixed-price Payment. This type of payment is permitted if based on –

- Performance measured by objective quantifiable methods;
- Accomplishment of defined events; or
- Other quantifiable measures of results.

Progress Payments: Progress Payments are a type of Firm-fixed-price Payment. The Gallery normally allows contractors to invoice this type of payments on a monthly basis; however, Progress Payments may be invoiced more or less often when provided for in the contract. This form of contract payment includes payments based on the percentage or stage of work completed.

Time-and-materials and Labor-hour Payments: The Gallery normally uses these types of payments in projects for which accurately estimating the size of the project is not practical, or when the Gallery expects that project requirements will most likely change.

5.1203(b) *Withholding*

Payment to contractors may be withheld under the following circumstances –

- The contract contains a payment withholding provision, such as retention fees;
- A material breach of the contract by the contractor has occurred;
- The Contracting Officer or COR has been notified in writing of an allegation of fraud against the contractor or subcontractor by DIA, or otherwise has reason to suspect fraud; or
- The contractor's performance is nonconforming or not acceptable.

5.1203(c) *Invoices*

Contracting Officers, CORs, and the Treasurer's Office should process invoices in accordance with the Prompt Payment Act. This obligation implements a Best Practice.

5.1203(d) *Electronic invoicing and payment*

Electronic invoicing is the preferred method of invoicing. Payments are normally made by electronic funds transfer, but may be made by check or purchase card at the option of the Contracting Officer.

5.1204. Responsibilities

Contracting Officers must establish clear payment terms and invoicing requirements in

solicitations and awards.

Contracting Officers must not contractually obligate the Gallery to make a payment in excess of the amount available on a purchase requisition. If the Gallery needs to enter into a contract before the proper funds become available, usually to ensure that essential Gallery services are in place during periods of an extended continuing resolution or ensure timely delivery of goods and/or services, Contracting Officers may make contract actions subject to the availability of funds. If a subject to the availability of funds clause is used, the Gallery is not contractually obligated to make a payment and must not accept goods and/or services until funds are made available. These constraints implement Legal Requirements consistent with Circular No. 81 – Administrative Control of Federal Funds.

Contracting Officers may make decisions regarding payment types in their discretion exercising sound business judgment and considering the best interests of the Gallery.

Contracting Officers should consult with CORs before making decisions regarding payment types. CORs are in the best position to estimate accurately the size of the project and to make recommendations regarding whether project requirements most likely will or will not change.

Contracting Officers must make all final decisions regarding the withholding of payment. Contracting Officers must protect the interests of Gallery in this regard, and at the same time, must not act in violation of the contractor's rights.

The Treasurer's Office is responsible for receiving contractor invoices and processing them in the Gallery's financial management system (FMS). CORs must review and approve invoices in FMS in compliance with the terms of the contract and the Prompt Payment Act, as applicable. CORs must reject any invoice that is incomplete or otherwise unacceptable and request a revised invoice from the contractor.

Chapter 5.13. Protests, Disputes, and Appeals

5.1301. Scope

This chapter provides policy on Protests, Disputes and Appeals regarding Gallery contracting actions and decisions affecting contractor performance.

5.1302. Definitions

Protest: Written complaint objecting to a contracting action before award.

Dispute: Written complaint objecting to a contracting action after award.

Interested Party –

- (a) Prior to submission of Proposals: Prospective Offeror whose direct economic interest would be affected by the procurement.
- (b) After submission of Proposals but before Award: An actual Offeror.

- (c) After Award: The Contractor.
- (d) Interested Party does not include –
 - (1) Prospective or actual subcontractors or suppliers.
 - (2) Where the solicitation is limited to a bidders list, any person, firm, or entity not on the list.

5.1303. Policy

Protests and Disputes may be submitted to the Gallery for administrative determination to remedy a perceived wrong. The Gallery's policy is to resolve Protests and Disputes efficiently and fairly in the attempt to avoid litigation.

Only Interested Parties may submit Protests and Disputes. To be considered, Protests and Disputes must contain a complete and concise statement of the perceived wrong and the relief requested, each supported by relevant documents.

Protests and Disputes must be received by the Contracting Officer within 10 calendar days after the facts that form the basis of the complaint are known, or should have been known, unless a different period is specified under the applicable solicitation or contract. The Contracting Officer has the authority to resolve Protests and Disputes and must issue a decision within 30 calendar days after receiving the complaint.

If the course of action under the paragraph above does not result in a satisfactory resolution, a written appeal may be made to the APC Chief or Deputy Chief within 10 calendar days after the Contracting Officer issues a decision. The APC Chief or Deputy Chief must issue a decision within 30 calendar days after receiving the appeal.

If the course of action under the paragraph above does not result in a satisfactory resolution, a written final appeal may be made to the Administrator within 10 calendar days after the APC Chief or Deputy Chief issues a decision. The Administrator, or his designee, must issue a decision within 30 calendar days after receiving the appeal.

Chapter 5.14. Advanced Authorizations

5.1401. Scope

This chapter provides policy on use of Advanced Authorizations.

5.1402. Definitions

Advanced Authorization: Contracting action that permits contractors to start work before all of the terms, specifications, and prices of a contract have been agreed upon between the Gallery and the contractor.

5.1403. Policy

The Gallery's policy is to use Advance Authorizations only in unusual or urgent circumstances.

5.1404. Responsibilities

Contracting Officers may use Advanced Authorizations, provided that –

- (a) The contract action identifies a ceiling price that the contactor exceeds at its own risk;
- (b) A purchase requisition with adequate funding to cover the ceiling price is received in CWS from the applicable Division or Department; and
- (c) The APC Chief or Deputy Chief has been advised of the unusual or urgent circumstances and concurs.

Constraints described under (a) and (b) above implement a Legal Requirement, which is more fully described under Circular No. 81 – Administrative Control of Federal Funds.

Module 6. CONTRACT MANAGEMENT AND ADMINISTRATION

Chapter 6.1. Contract Writing System

6.101. Scope

This chapter provides policy on use of the Contract Writing System (CWS).

6.102. Definitions

Reserved

6.103. Policy

The Gallery's procurement policy is to maximize efficiency through automation of contract writing.

6.104. Responsibilities

Contracting Officers and other authorized users must use CWS for all functional areas.

Chapter 6.2. Contract Administration

6.201. Scope

This chapter provides policy on roles and responsibilities of Contracting Officers, CORs and others in the administration of Gallery contracts.

6.202. Definitions

Contract Administration: Process of ensuring that all aspects of a contract are fulfilled, beginning after the award of the contract and continuing through the closeout of the contract.

Oversight Management: Part of Contract Administration. The management of the technical performance requirements of the contract. Oversight Management ensures that the contractor delivers the required goods or performs the work according to the delivery schedule in the contract. Oversight Management also includes monitoring funds expenditure in relation to the contract ceiling.

Contracting Officer's Representative (COR): Gallery employee who monitors and evaluates contractor performance. Gallery employees must meet the standards for Gallery COR Training and Certification to be eligible for appointment. CORs are identified by Division and Department Heads and appointed by the Contracting Officer. CORs must have knowledge and experience commensurate with the complexity and importance of the work they monitor and evaluate.

Task Manager: Gallery employee identified by a Division or Department Head and appointed by a Contracting Officer, to assist the COR in monitoring and evaluating contractor performance.

Ordering Official: Gallery employee identified by a Division or Department Head and appointed by a Contracting Officer, who is permitted under the terms of a contract to order products and services. Ordering authority is not delegable. Ordering Officials are identified by name in the contract under which they are permitted to order.

6.203. Policy

Contract Administration begins after the contract has been awarded, and continues through acceptance of the goods and/or services and final payment, and ends when the contract has been closed out. All procurement actions require some levels of Contract Administration and Oversight Management by the Contracting Officer and the Divisions and Departments. The levels vary based upon many factors, including contract type, complexity of the requirement, and dollar amount of the contract action. The Contracting Officer and COR jointly perform Contract Administration and Oversight Management.

6.204. Responsibilities

6.204(a) *Contract Administration and Oversight Management*

The Contracting Officer has overall responsibility and control over all aspects of Contract Administration. Division and Department Heads must ensure that adequate resources are available for Oversight Management, which is typically delegated to and primarily the responsibility of the COR. Task Managers and Ordering Officials may be appointed to assist CORs in carrying out the CORs' responsibilities.

6.204(b) *Appointment of CORs, Task Managers and Ordering Officials*

Only a Contracting Officer may enter into a contract or change a contractual commitment. The Contracting Officer is responsible for ensuring compliance with the contract and may delegate certain authorities to other qualified personnel.

In order to facilitate proper Contract Administration for all contracts over the Simplified Acquisition Threshold, the Contracting Officer should appoint a COR, and Task Manager if needed, to monitor contract performance, and use an official appointment memorandum to appoint the COR. In all cases when a COR is appointed, the COR must be identified in CWS.

In order to simplify logistics of ordering products and services from a contractor under pre-negotiated terms, the Contracting Officer may appoint an Ordering Official. Guidance on the roles and responsibilities of Ordering Officials is included in the Ordering Official Guidance Letter.

6.204(c) *Post-award Conference*

A Contracting Officer may convene a post-award conference when needed to ensure mutual understanding of all contract terms and conditions, and for clarification of any potential issues between the Gallery and the contractor. The Contracting Officer and COR work together to determine the need for a post-award conference. Their determination is based on the dollar value of the award, the complexity of the work, any projected difficulties in contractor performance, and other factors relating to successful and timely contract performance.

Chapter 6.3. Contract Modifications

6.301. Scope

This chapter provides policy on contract modifications.

6.302. Definitions

Administrative Change: Unilateral contract modification that does not substantially affect the rights of the parties, such as a change in the paying office or accounting office.

Bilateral Modification: Contract modification signed by the contractor and the Contracting Officer.

Constructive Change: Act or failure to act by the Contracting Officer, COR or other Gallery official that the contractor construes as an order under the contract.

Contract Modification: Written alteration in the specifications, delivery point, rate of delivery, contract period, cost, quantity, or other provision of an existing contract that creates a change to the contract, either unilateral under a provision in the contract or bilateral by agreement of the parties.

Novation: Process for changing the name of the contractor on a contract when the responsible contractor is acquired by another firm, merged with another firm, or otherwise changes its business name in the ordinary course of commerce.

Option: Unilateral right of the Gallery to extend the period of performance of a contract or to purchase additional quantities of a specific product or service under predetermined conditions defined in the contract.

Substantive Change: Bilateral contract modification that generally involves changes in the rights or obligations of the parties to the contract, such as extensions to the period of performance.

Unilateral Modification: Contract modification signed only by the Contracting Officer.

6.303. Contract Modification Policy

Only Contracting Officers acting within the scope of their authority are empowered to execute contract modifications. No other Gallery staff have the authority to –

- (a) Execute contract modifications;
- (b) Act in such a manner as to cause the contractor to believe that it has authority to bind the Gallery; or
- (c) Direct or encourage the contractor to perform work that should be the subject of a contract modification, such as work outside of the scope of the requirements stated in the contract.

6.304. Types of Contract Modifications

There are two types of contract modifications, unilateral and bilateral. Modifications to incorporate administrative changes or other changes permitted by contract clauses are generally unilateral. Substantive changes are generally bilateral.

6.304(a) *Unilateral Changes*

Unilateral changes are of a nature that does not require agreement of the contractor. Examples of unilateral changes –

- (a) Appointment or change in either the Contracting Officer, COR or Task Manager;
- (b) Changes permitted by specific contract clauses, such as the changes clause or exercising an option period; and
- (c) Administrative changes, such as corrections of typographical errors that do not affect the substance of the contract, or changes in billing instructions or address.

6.304(b) *Bilateral Changes*

Bilateral changes are substantive in nature and alter the rights and obligations of the parties. The COR identifies the need and provides the Contracting Officer with the requirements, documentation and funding. The Contracting Officer is responsible for issuing a modification to the contract. Examples of bilateral (substantive) changes –

- (a) Change in the dollar amount.
- (b) Change in the delivery schedule.
- (c) Change in the quantity and nature of deliverables.
- (d) Extension of the contract not contemplated by the contract.
- (e) Change in performance requirements.
- (f) Changes to key personnel.

6.304(c) *Constructive Changes*

Gallery policy is to manage contracts carefully and professionally to eliminate the cost and inefficiencies caused by constructive changes. Both the Contracting Officer and COR are responsible for guarding against the possibility of constructive changes by careful Contract Administration and Oversight Management.

6.304(d) *Consent-to-assignment: Novation*

Contracts must contain language prohibiting contractors from assigning their contracts with the Gallery without the consent of the Gallery. Requests to assign a contract usually come from contractors when –

- (a) A contractor changes its form of doing business, such as from a sole proprietorship to a corporation;
- (b) A contractor sells its business or merges with another company; or
- (c) A contractor proposes to add a joint-venture partner to the contract.

The Contracting Officer should consent to the assignment of a contract and to enter into a novation with the current contractor, and the substituted contractor, when novation is in the best interest of the Gallery. A novation must meet the requirements of the Gallery and must

not increase its liability.

6.304(e) *Stop Work Orders*

Stop work orders may be used in any contract for goods or services if work stoppage is in the best interest of the Gallery. Stop work orders require the contractor to immediately comply with the terms of the stop work order and take all reasonable steps to minimize costs associated with the contract during the period of the stop work order.

Generally, a stop work order should be issued only if it is advisable to suspend work pending a decision by the Gallery and a negotiated modification providing for the suspension is not feasible. Issuance of a stop work order must be approved by the APC Chief or Deputy. Stop work orders must not be used in place of a termination notice after a decision to terminate has been made.

As soon as feasible after a stop work order is issued, but before its expiration, the Contracting Officer must take appropriate action to –

- (a) Terminate the contract.
- (b) Cancel the stop work order. Cancelling a stop work order is subject to the same approval level as was required for issuing a stop work order.
- (c) Extend the period of the stop work order if necessary and if the contractor agrees.

Chapter 6.4. Contract Termination

6.401. Scope

This chapter provides policy for –

- (a) Termination of contracts, in whole or in part, for the convenience of the Gallery or for default; and
- (b) The Gallery's responsibilities after issuing a notice of termination.

6.402. Definitions

Termination for Convenience: Cancellation of all or any portion of the unfinished remainder of the performance obligations set forth in a contract for the convenience of the Gallery.

Termination for Default: Termination of a contract because the contractor failed to perform a material obligation under the contract, such as failing to deliver within the prescribed time or failing to make satisfactory progress.

6.403. Policy

6.403(a) *Termination for Convenience*

Contracts must contain language permitting the Gallery to terminate a contract for convenience. Termination for Convenience most often is used when complete performance by the contractor may not be needed, or when Gallery requirements have changed to such an extent that continued performance is not in the best interest of the Gallery. Termination for Convenience generally is not used for off-the-shelf items, or for contracts with short delivery times.

6.403(b) Termination for Default

Contracts must include language permitting the Gallery to terminate a contract completely or partially for default, if the contractor fails to –

- (a) Deliver goods or perform services within the time specified in the contract or any extension;
- (b) Make progress, so as to endanger performance of the contract;
- (c) Perform any of the other provisions of the contract; or
- (d) Resolve a conflict of interest or other ethics violations.

6.404. Responsibilities

Decisions regarding Termination for Convenience are made by the Contracting Officer, after consultation with, and concurrence from the APC Chief or Deputy Chief. When a contract is terminated for the convenience of the Gallery, the Contracting Officer must negotiate a settlement with the contractor that compensates the contractor for work performed and reimburses the contractor's reasonable termination expenses incurred prior to the effective date of the termination. Special cases that do not require a settlement include situations where both parties agree to a no-cost termination with each party bearing its own costs with respect to the termination. Special cases must be memorialized in a final bilateral modification to the contract.

Decisions regarding Termination for Default are made by the APC Chief or Deputy Chief in consultation with the Administrator and SG. When a contract has been terminated for default, the APC Chief or the Deputy Chief may decide to assess the contractor any excess cost incurred in re-procuring the contract goods or services from another source.

Chapter 6.5. Gallery-furnished Property**6.501. Scope**

This chapter provides policy for –

- (a) Providing Gallery property to contractors for their use and management in performing Gallery contracts.
- (b) Reporting, redistributing, and disposing of contractor property inventory.

6.502. Definitions

Gallery-furnished Property: Gallery property made available to a contractor.

Property: Anything in which title may vest. Property can be tangible or intangible. Tangible property generally refers to items, equipment, and other things that can be touched. Intangible property generally refers to intellectual property, such as copyrighted software or other works of authorship.

6.503. Policy

Contractors ordinarily should furnish all Property necessary to perform Gallery contracts. The Gallery may provide Gallery-furnished Property to a contractor when necessary to achieve

significant economy, standardization, expedited production, or when it is otherwise in the best interest of the Gallery.

6.504. Responsibilities

CORs must include a description of the Gallery-furnished Property, and how Gallery-furnished Property will be controlled and returned to the Gallery or otherwise disposed of in their contract specifications.

CORs must include safeguards appropriate to protect Gallery-furnished Property in their contract specifications. Such safeguards may include –

- (a) Requiring contractors to be responsible for, and to keep official records of Gallery-furnished Property in their possession or control.
- (b) Specifying whether the Gallery-furnished Property is to be returned to the Gallery upon completion of the contract. If the Gallery-furnished Property is not to be returned upon contract completion, the contract must state the final disposition of the Gallery-furnished Property.

CORs must work with contractors in controlling Gallery-furnished Property in accordance with the specifications or the Contracting Officer's instructions.

CORs must maintain the official records for Gallery-furnished Property and must monitor the disposition of Gallery-furnished property throughout the life of the contract.

Chapter 6.6. Contract Closeout

6.601. Scope

This chapter provides policy on closing out contracts.

6.602. Definitions

Completion: A contract is completed when all goods and/or services have been received and accepted, all reports have been delivered and accepted, all administrative actions have been accomplished, all Gallery-furnished Property has been returned when required and accounted for, and final payment has been made to the contractor.

Contract Closeout: Final contract administration process undertaken to complete a contract and close out the official contract file.

6.603. Policy

Contract Closeout is required for contracts awarded by APC. The purpose of Contract Closeout is to verify that both parties to the contract have fulfilled their contractual obligations with no open issues or responsibilities remaining. Efficient closeout procedures are recommended, when appropriate, to reduce administrative costs and to enable de-obligation of excess funds.

Contract Closeout must not occur if –

- (a) Outstanding performance or payment is due;
- (b) Contract is in litigation or under appeal;
- (c) Audit activities are pending; or
- (d) In the case of a termination, all termination actions have not been completed.

6.604. Responsibilities

For contracts valued below the Simplified Acquisition Threshold, closeout activities must include confirmation from the COR that work contemplated under the contract was satisfactorily completed, goods were received and accepted, and a final invoice was received and paid. For contracts valued above the Simplified Acquisition Threshold, closeout activities must also include a reconciliation of obligations and payments and a release of claims executed by the Contractor. The Contracting Officer's closeout statement should be completed by the CO and filed in the official contract folder.

6.605. Documentation

The official contract closeout documentation should include, at a minimum –

- (a) COR closeout statement;
- (b) Contractor's release of claims;
- (c) Contracting Officer's closeout statement;
- (d) Past performance report: Required only if the contract performance is greater than one year; and
- (e) Final invoice.