

Contract Formation

Activity 8: Basic Agreements and Basic Ordering Agreements

Establishing and using basic agreements and basic ordering agreements.

Related Flow Charts: [Flow Chart 8](#)

Tasks	FAR Reference(s)	Additional Information
1. Determine if the use of an agreement is appropriate for the acquisition.	FAR 16.702(a) Description [basic agreements]. FAR 16.703(a) Description [basic ordering agreements].	An agreement (whether it be a basic agreement (BA) or a basic ordering agreement (BOA)) is not a contract. It is a written instrument of understanding negotiated between an agency or contracting activity and a contractor. The rules that apply to the placement of contracts (i.e., synopsis, competition requirements, small business requirements, etc.) do not apply to a BA or BOA. Since BAs and BOAs are not contracts, the contractor is under no legal obligation to accept work from the Government. Conversely, the Government is under no obligation to issue work.
2. Determine the type of agreement that is appropriate for the acquisition.	FAR 16.702(b) Application [basic agreements]. FAR 16.703(b) Application [basic ordering agreements].	BAs and BOAs are used in different circumstances. BAs are used when the procuring activity anticipates awarding a “substantial number” of contracts to a contractor with whom it has experienced “significant recurring negotiating problems.” BOAs are used when the procuring activity anticipates acquiring substantial, but presently unknown, quantities of supplies or services. However, the two types of agreements are alike in that they must be reviewed annually before the anniversary of their effective dates. Additionally, their terms may be changed only by modifications of the agreement, not by any contracts incorporating the agreement or orders issued under it.

Tasks	FAR Reference(s)	Additional Information
3. Draft the BA.	FAR 16.702(b) Application [basic agreements].	<p>BAs must contain:</p> <ul style="list-style-type: none"> • Clauses required for negotiated contracts by statute, executive order, and this regulation; and • Other clauses prescribed in this regulation or agency acquisition regulations that the parties agree to include in each contract as applicable. <p>Each BA must provide for discontinuing its future applicability upon 30 days' written notice by either party.</p>
3a. Review the BA annually.	FAR 16.702(b) Application [basic agreements].	Each BA must be reviewed annually before the anniversary of its effective date and be revised as necessary to conform to the requirements of the FAR. BAs may need to be revised before the annual review due to mandatory statutory requirements. A BA may be changed only by modifying the agreement itself and not by a contract incorporating the agreement.
3b. When a contract incorporates a BA, include the scope of work and applicable clauses.	FAR 16.702(d) Contracts incorporating basic agreements [basic agreements].	<p>Each contract incorporating a BA must include a scope of work and price, delivery, and other appropriate terms that apply to the particular contract.</p> <p>The BA must be incorporated into the contract by specific reference (including reference to each amendment) or by attachment.</p> <p>Include clauses pertaining to subjects not covered by the BA but applicable to the contract being negotiated, in the same manner as if there were no BA.</p>

Tasks	FAR Reference(s)	Additional Information
4. Draft the BOA.	FAR 16.703(c) Limitations [basic ordering agreements]. FAR 13.303-3 Preparation of BPAs. FAR 13.303-4 Clauses [blanket purchase agreements (BPAs)].	The BOA must contain: <ul style="list-style-type: none"> • A description of the method for determining prices to be paid to the contractor for the supplies or services; • Delivery terms and conditions, or a description specifying how they will be determined (FAR 13.303-4); • One or more Government activities authorized to issue orders under the agreement; • The point at which each order becomes a binding contract (e.g., issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days); • A statement that failure to reach agreement on price for any order issued before its price is established is a dispute under the Disputes clause included in the BOA; and • The special data required by FAR 13.403 if fast payment procedures will apply to orders.
4a. Review the BOA annually.	FAR 16.703(c)(2) Limitations [basic ordering agreements].	Each BOA must be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. BOAs may need to be revised before the annual review due to mandatory statutory requirements. A BOA must be changed only by modifying the agreement itself and not by individual orders issued under it. Modifying a basic ordering agreement does not retroactively affect orders previously issued under it.
4b. Before issuing an order, obtain competition.	FAR 16.703(d)(1)(i) Orders [basic ordering agreements].	Because BOAs are not priced, are not contracts, and are not entered into pursuant to FAR Part 6, a contracting officer cannot issue an order against a BOA without first getting prices and competition. Obtain competition in accordance with FAR Part 6.
4c. Ensure that the use of a BOA is not prejudicial to other offerors.	FAR 16.703(d)(1)(ii) Orders [basic ordering agreements].	

Tasks	FAR Reference(s)	Additional Information
4d. Establish prices prior to making any final commitment or authorizing the contractor to begin work.	FAR 16.703(d)(3) Orders [basic ordering agreements].	Do not make any final commitment or authorize the contractor to begin work on an order until prices have been established.
4e. Sign or obtain any applicable justifications and approvals.	FAR 16.703(d)(1)(iii) Orders [basic ordering agreements].	
4f. Issue the order.	FAR 16.703(d)(2) Orders [basic ordering agreements].	<p>Issue orders under BOAs on Optional Form (OF) 347, Order for Supplies or Services, or on any other appropriate contractual instrument.</p> <p>Incorporate by reference the provisions of the BOA.</p> <p>If applicable, cite the authority under FAR 6.302 in each order.</p>
4g. Publicize the BOA order, if required.	FAR 16.703(d)(2)(iv) Orders [basic ordering agreements].	Comply with FAR 5.203 when a synopsis is required by FAR 5.201.