



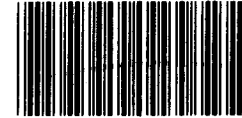
UNITED STATES GENERAL ACCOUNTING OFFICE

REGIONAL OFFICE

Room 1992, Federal Building
Seattle, Washington 98174

NOV 12 1982

Mr. Stephen J. Hall, Regional Administrator
Small Business Administration
710 Second Avenue
Seattle, Washington 98104



119987

Dear Mr. Hall:

Subject: Division of Responsibilities Between SBA and
Procuring Agencies in Evaluating Proposals and Negotiating
Section 8(a) Contracts over \$100 (PLRD-83-14)

In November 1981, we wrote a letter to the Pacific Northwest Regional Forester questioning the adequacy of the Forest Service's procedures in negotiating and awarding Small Business Administration (SBA) Section 8(a) contracts valued over \$100,000 (see enclosure I). Forest Service officials, however, disagreed with our conclusions and we requested our Office of General Counsel to review contracting responsibilities under 8 (a) contracts. The purpose of our letter to you is to disclose the findings of our General Counsel's review.

Our examination of four section 8(a) contracts valued over \$100,000 awarded by the Forest Service through SBA's Seattle and Portland district offices disclosed that:

- None of the contracts contained defective pricing or audit clauses.
- None of the contract files contained negotiation memorandums.
- None of the contract proposals received preaward contract audits.
- Two contract files did not contain certificates of current cost or pricing data.
- One contract was negotiated without written cost or pricing data.

In his letter dated February 11, 1982, the Regional Forester stated that the requirements for defective pricing or audit clauses, negotiation memorandums, preaward contract audits, and certificates of current cost or pricing data did not apply to their 8(a) negotiated contracts because

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1. the Forest Service is entering into a contract with SBA, not the 8(a) subcontractor, and therefore SBA must assure compliance with the procurement regulations; and
2. the regulations "appear" to apply only to supply contracts, not the 8(a) construction contracts that we reviewed.

To resolve this conflict, our Office of General Counsel reviewed applicable Federal laws and regulations to determine the following:

- Are the Federal Procurement Regulations for defective pricing and audit clauses, negotiation memorandums, preaward contract audits, and certificates of current cost or pricing data required for 8(a) negotiated construction contracts over \$100,000.?
- Who must assure that 8(a) negotiated contracts over \$100,000 contain defective pricing and audit clauses and that negotiation memorandums, preaward contract audits, and certificates of current cost or pricing data are properly prepared--the SBA or the procuring agency?
- Considering the situations described in our letter to the Forest Service, were Forest Service contracting officers delinquent in their contracting procedures?

In their memorandum of August 13, 1982 (see enclosure II), our Office of General Counsel reported the following:

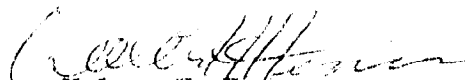
1. Federal Procurement Regulations for defective pricing and audit clauses, negotiation memorandums, preaward contract audits, and certificates of current cost or pricing data are applicable to 8(a) negotiated construction contracts valued over \$100,000.
2. The procuring agency's contracting officers are responsible for
 - reviewing and evaluating the cost or pricing data submitted by the 8(a) contractor;
 - inserting defective pricing and audit clauses into contracts with SBA and into contracts between SBA and the 8(a) contracts;
 - arranging for preaward contract audits; and
 - writing, or helping to write, negotiation memorandums at the conclusion of contract negotiations.

3. SBA is responsible for obtaining the cost or pricing data needed by the procuring agency and any necessary supporting certificates from the 8(a) contractor.
4. The Forest Service's contracting officers did violate the Federal Procurement Regulations in failing to provide for preaward contract audits, negotiation memorandums, and defective pricing and audit contract clauses.
5. The SBA failed to obtain written cost or pricing data on one contract and certificates of current cost or pricing data on two contracts.

Regarding this last finding, we recommend that you emphasize the need for SEA contracting staff to obtain (1) all cost and pricing data needed by the procuring agencies, and (2) appropriate certificates of current, complete, and accurate cost or pricing data on 8(a) contracts over \$100,000.

We appreciate your staff's cooperation during our visit. If you have questions concerning these matters, please call Bill Henderson or Bill Hanson at 442-5356.

Sincerely yours,


Walter H. Henson
Regional Manager

Enclosures - 2



UNITED STATES GENERAL ACCOUNTING OFFICE

REGIONAL OFFICE

Room 1992, Federal Building
Seattle, Washington 98174

NOV 24 1981

Mr. R. E. Worthington, Regional Forester
Pacific Northwest Region
U.S. Forest Service
P.O. Box 3623
Portland, Oregon 97208

Dear Mr. Worthington:

The General Accounting Office recently surveyed the procedures and practices of Federal agencies for negotiating contracts under the Small Business Administration's (SBA) 8(a) program. On October 22, 1981, as part of this survey, we visited the Forest Service's Northwest Regional Office. Our examination of four Forest Service 8(a) contracts over \$100,000 revealed the following deficiencies:

- None of the contracts contained defective pricing or audit clauses.
- None of the contract files contained negotiation memorandums.
- None of the contract proposals received preaward contract audits.
- Two contract files did not contain certificates of current cost or pricing data.
- One contract was negotiated without written cost or pricing data.

The objective of the 8(a) program is to foster business ownership by socially and economically disadvantaged individuals through government procurement assistance and other means and thereby help them develop their ability to compete effectively on the open market. In this program, SBA is authorized to contract with other Federal agencies and to subcontract the work to small disadvantaged businesses. The responsibility for reviewing and evaluating 8(a) contractor proposals, however, rests with the procuring agency. The Federal Procurement Regulations (FPR) specify the requirements for negotiated contracts. According to a Forest Service attorney in the region's Office of General Counsel, these regulations apply to the Forest Service's 8(a) contracting.

CONTRACT DEFICIENCIES

During our visit to the Forest Service's Northwest Regional office, we examined the contract files of all four 8(a) contracts valued over \$100,000 that regional contracting officers negotiated through the Seattle and Portland district SBA offices in fiscal years 1980 and 1981. We describe our findings in the following sections.

No defective pricing and
and audit clauses

None of the contracts we reviewed contained the defective pricing clause or the audit clause required by FPR 1-3.814-1 and 1-3.814-2. According to FPR 1-3.814, whenever cost or pricing data is required, an agency must include these clauses in the solicitation package and any resulting contract. FPR 1-3.807-3 in turn requires the submission of cost or pricing data for any negotiated contract expected to exceed \$100,000. The contracting officer can waive this requirement if he determines, in writing, that the negotiated price is based on adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. Also, in exceptional circumstances, the agency head or his authorized designee can waive the requirement for written cost or pricing data; however, he must document his reasons for granting such a waiver. The contract files we reviewed did not contain waivers of the cost or pricing data requirement.

According to one contracting officer, he omitted these clauses because he believed they were not required in Forest Service contracts. However, the contracting officer provided no support for his assertion, and his statement conflicts with statements of an attorney in the region's Office of General Counsel. We believe the cost or pricing data requirements apply, and solicitations and contracts should have contained the defective pricing and audit clauses.

No negotiation memorandums

FPR 1-3.811 requires the contracting officer to prepare a negotiation memorandum at the conclusion of negotiations on an initial, revised, or final price. However, the four contract files we reviewed did not contain negotiation memorandums. The region had just recently awarded two of these contracts and the responsible contracting officers told us that they had not yet written the negotiation memorandums for these contracts. The contracting officer responsible for the other two contracts could give no reason why those contracts, which the region awarded in July 1980, did not contain adequate negotiation memorandums.

No preaward contract audits

The Forest Service did not make preaward audits of the four contractors' proposals. FPR 1-3.809(b)(1) states that the contracting officer or his authorized representative shall request the contract audit activity to audit the contractor's proposal before he negotiates any contract or modification resulting from firm, fixed-price proposals over \$100,000. The Federal Procurement Regulations allow contracting officers to waive the audit requirement when the available information clearly is adequate. However, the contracting officer must document his reasons for waiving the audit requirement in the contract file. Pacific Northwest Region contracting officers told us that such audits were not needed because, in their opinion, adequate information was available. But only one contract file contained a statement indicating the contracting officer waived the audit requirement and that statement gave no reason for the waiver. Based

on our analyses of the contract files, we believe no adequate justification existed for not auditing the contract proposals.

Cost and pricing data
not certified

Two of the four contract files we reviewed contained neither a signed certificate of current cost or pricing data, nor a waiver of the cost or pricing data requirement. FPR 1-3.807-3(a) requires that before a contracting officer awards any negotiated contract expected to exceed \$100,000, the contractors must certify that they based their proposed contract prices on accurate, current, and complete data. The text of this certification is given in FPR 1-3.807-4. The contracting officer responsible for these contracts told us that he did not obtain the certification because he believed the requirement did not apply. Again, this is contrary to the position of the region's Office of General Counsel. This certification is required unless the contracting officer or agency head waives the requirement for cost or pricing data.

Lack of cost and pricing data

The Forest Service negotiated and awarded one contract before the 8(a) contractor prepared a written proposal or submitted written cost or pricing data. This action violates FPR 1-3.807-3(a), which states that before the contracting officer awards any negotiated contract over \$100,000, he shall require the prospective contractor to submit written cost or pricing data.

In the past, some confusion existed over the responsibilities of SBA and the procuring agencies on 8(a) contracts. However, since February 1980, FPR 1-1.713-2(d) has clearly stated that the procuring agency is responsible for reviewing and evaluating 8(a) contractor proposals and the accompanying cost or pricing data, when cost analysis is required. The procuring agency must also arrange for the required contract audits.

Furthermore, FPR 1-1.403 specifies that "No contract shall be entered into unless all applicable requirements of law, Executive orders, and regulations have been met." Accordingly, we recommend that you take action to make contracting officers fully cognizant of the Federal requirement for negotiated contracts, and that you make sure the requirements are met before the award of any negotiated contracts.

We appreciate the cooperation of your staff during our visit. If you have any questions concerning these matters, please call Bill Henderson or Dave Cram at FTS 399-5356. Please inform us of any action taken to correct these deficiencies.

Sincerely yours,

W. H. Henson

Walter H. Henson
Regional Manager

Memorandum

August 13, 1952

TO : Regional Manager, Seattle - Walter H. Henson

FROM : Associate General Counsel, OGC - Richard R. Pierson *RRP*

SUBJECT: Division of Responsibilities Between SBA and Procuring Agencies in Evaluating "8(a)" Contractor Proposals for Negotiated Contracts over \$100,000 (File B-207532; Code 942011)

Mr. D'Addario has asked us three questions concerning the division of responsibilities between the Small Business Administration (SBA) and a procuring agency in construction procurements under the "8(a)" program by means of which certain Government procurements are "set aside" for socially and economically disadvantaged small businesses, 15 U.S.C. §637(a). The questions arose after your review of four 8(a) contracts of the Pacific Northwest Region of the Forest Service and a subsequent dispute between you and officials of the Forest Service over your conclusions.

QUESTION 1: Who must assure that 8(a) negotiated contracts over \$100,000 contain defective pricing and audit clauses, and that negotiation memoranda, preaward contract audits, and certificates of current cost or pricing data are properly prepared, the Small Business Administration or the procuring agency?

ANSWER: The Small Business Administration has the responsibility to get from the 8(a) contractors cost or pricing data and any necessary supporting certificates. The procuring agency has the responsibility to evaluate and review the cost or pricing data, insert defective pricing and audit clauses into contracts between it and the Small Business Administration and between the Small Business Administration and the 8(a) contractor where appropriate, arrange for preaward contract audits, and write or participate in writing negotiation memoranda at the conclusion of each negotiation of an initial, revised, or final price.

QUESTION 2: Are the Federal Procurement Regulations for defective pricing and audit clauses, negotiation memoranda, preaward contract audits, and certificates of current cost or pricing data applicable to 8(a) negotiated construction contracts over \$100,000?

ANSWER: Yes.

QUESTION 3: Given our findings described in our letter to the Forest Service Regional Office, did Forest Service contracting officers violate Federal Procurement Regulations' contracting procedures?

ANSWER: Forest Service contracting officers did violate Federal Procurement Regulations' contracting procedures for the four contracts you reviewed in the manner discussed in the attachment. However, it should be noted that SBA failed to get cost or pricing data and the necessary certificates from several of the 8(a) contractors.

A detailed analysis follows.

Attachment

ATTACHMENTDIVISION OF RESPONSIBILITIES BETWEEN SBA
AND PROCURING AGENCIES IN EVALUATING
"8(a)" CONTRACTOR PROPOSALS FOR
NEGOTIATED CONTRACTS OVER
\$100,000DIGESTS:

- (1) Section 8(a) of Small Business Act, 15 U.S.C. §637(a), authorizes any Government agency having procurement powers to enter into contracts with Small Business Administration. Small Business Administration, in turn, arranges for performance of contracts by letting subcontracts to socially and economically disadvantaged small business concerns. In 8(a) negotiated contracts over \$100,000, Small Business Administration, rather than procuring agency, has responsibility to get from 8(a) contractor cost or pricing data and any necessary supporting certification.
- (2) Section 8(a) of Small Business Act, 15 U.S.C. §637(a), authorizes any Government agency having procurement powers to enter into contracts with Small Business Administration. Small Business Administration, in turn, arranges for performance of contracts by letting subcontracts to socially and economically disadvantaged small business concerns. In 8(a) negotiated contracts over \$100,000, procuring agency has responsibility to evaluate and review cost or pricing data, insert defective pricing and audit clauses into contracts between it and Small Business Administration and between Small Business Administration and 8(a) contractor, arrange for pre-award contract audits, and write or participate in writing negotiation memoranda.

- (3) Section 8(a) of Small Business Act, 15 U.S.C. §637(a), authorizes any Government agency having procurement powers to enter into contracts with Small Business Administration. Small Business Administration, in turn, arranges for performance of contracts by letting subcontracts to socially and economically disadvantaged small business concerns. In negotiated 8(a) contracts over \$100,000, procuring agency, not SBA, should decide whether to waive submission of cost or pricing data.
- (4) Section 8(a) of Small Business Act, 15 U.S.C. §637(a), authorizes any Government agency having procurement powers to enter into contracts with Small Business Administration. Small Business Administration, in turn, arranges for performance of contracts by letting subcontracts to socially and economically disadvantaged small business concerns. Federal Procurement Regulations for defective pricing and audit clauses, negotiation memoranda, preaward contract audits, and certificate of current cost or pricing data are applicable to 8(a) negotiated construction contracts over \$100,000.

ANALYSIS

The Pacific Northwest Regional Office of the U.S. Forest Service, in replying to a letter GAO sent concerning procurement practices under the Small Business Administration's (SBA) 8(a) program, disagrees over the applicability of certain Federal Procurement Regulations (FPRs) to its procedures for negotiating 8(a) contracts over \$100,000.

Section 8(a) of the Small Business Act, 15 U.S.C. §637(a), authorizes any Government agency having procurement powers to enter into contracts with the SBA. The SBA, in turn, arranges for the performance of the contracts by subcontracting to socially and economically disadvantaged small business concerns.

During a survey, it was found that the Forest Service's Pacific Northwest Regional Office had failed to comply with the FPRs in four negotiated construction contracts for over \$100,000 and so notified it. Specifically, Forest Service negotiated and awarded one contract before the 8(a) contractor prepared a written proposal or submitted written cost or pricing data. Two of the contracts contained neither a signed certificate of current cost or pricing data, nor a waiver of the cost or pricing data requirement.

The Regional Office responded that under the 8(a) program its contracts were with the SBA and, therefore, the SBA had to ensure compliance with the FPRs. It stated, furthermore, that the FPRs "appeared" to apply only to supply contracts, and not the 8(a) construction contracts.

QUESTION 1: Who must ensure that 8(a) negotiated contracts over \$100,000 contain defective pricing and audit clauses, and that negotiation memoranda, preaward contract audits, and certificates of current cost or pricing data are properly prepared, the Small Business Administration or the procuring agency?

ANSWER: FPR 1-3.807-3 makes it clear that the 8(a) contractors for the four Forest Service contracts had to submit cost or pricing data unless submission was properly waived. FPR 1-3.807-3 states in pertinent part:

"(a) The contracting officer shall * * * require the prospective contractor, or contractors, as the case may be, to submit written cost or pricing data * * * or to specifically identify such data in writing if actual submission of the data is impracticable, and to certify, by the use of the certificate set forth in §1-3.807-4, that, to the best of his knowledge and belief, the cost or pricing data submitted or identified was accurate, complete, and current prior to:

"(1) The award of any negotiated contract (other than a letter contract) expected to exceed \$100,000 in amount * * *."

The issue then becomes which agency, the SBA or the Forest Service, had the responsibilities to collect the data and analyze them.

FPR 1-1.713 is entitled "Contracts with the Small Business Administration." FPR 1-1.713-4, "Procurement of Construction," lists some of the duties the SBA and the procuring agency must perform under an 8(a) procurement of construction. FPR 1-1.713-4(d) states:

"(d) Cost or pricing data: When required by §1-3.807-3, the SBA shall secure from its prospective subcontractor cost or pricing data, together with any necessary supporting certificate."

While the SBA would have been required to obtain the data and the accompanying certificates from the contractors, the Forest Service had the duty to analyze the data:

"Procuring agency contracting officers are responsible for reviewing and evaluating section 8(a) subcontract price proposals and accompanying cost or pricing data in support of negotiations with SBA subcontractors when cost analysis is required * * *." FPR 1-1.713-2(d). 1/

The contractor's submission of cost or pricing data and the certificate can be waived by the contracting officer when he determines, in writing, that the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. FPR 1-3.807-3(b)(1). The head of an agency or his authorized designee can also waive those requirements in exceptional cases, where he states in writing the reasons for his determination. FPR 1-3.807-3(b)(2).

The FPRs do not explicitly state whether it is the SBA or the procuring agency which can grant such a waiver in the 8(a) program. It seems clear, however, that the procuring

1/ The General Services Administration inserted FPR 1-1.713-2(d) into the Federal Procurement Regulations as a result of a recommendation by GAO in its report "Civil Agencies Can Do a Better Job of Negotiating Noncompetitive Contracts Priced Over \$100,000," PSAD-79-93, August 21, 1979. See 45 Fed. Reg. 8602 (February 8, 1980). GAO made the recommendation when it discovered there was confusion over which Government agency should arrange for a cost analysis for an award authorized by section 8(a).

agency would be the party to do it. First of all, SBA, under the 8(a) program, is considered to be the contractor. It is illogical to assume, and contrary to the intent of the FPRs, that the contractor in a procurement will be the party to grant the waiver. Secondly, the procuring agency would be in a more knowledgeable position in a decision to waive the submission of cost or pricing data since it would be more familiar than the SBA with the goods or services and their costs.

It did not do so, but the Forest Service should also have performed preaward contract audits, assuming that the four contracts resulted from proposals in excess of \$100,000 which were firm fixed price or fixed price with economic price adjustment. FPR 1-3.809(b)(1) states in pertinent part:

"(1) The contracting officer or his authorized representative shall request an audit review by the contract audit activity in accordance with this paragraph (b). Audit reviews shall be requested prior to the negotiation of any contract or modification resulting from proposals in excess of \$100,000 which are firm fixed-price or fixed price with economic price adjustment
* * *."

FPR 1-1.713-2(d) makes it clear whose responsibility it is to arrange for such an audit under the 8(a) program.

"Procuring agency contracting officers also are responsible for arranging for any preaward or post-award contract audits required by §1-3.809 to assist in evaluating section 8(a) subcontract proposals, related cost or pricing data, and cost submissions."

None of the contracts contained the defective pricing clause or auditing clause. FPR 1-3.814 requires that these clauses be included in the solicitation and in any resulting contract where cost or pricing data must be submitted. FPR 1-1.713-4(g)(1) and (h)(1) assign the responsibility of drawing up the 8(a) contracts:

"(g)(1) The contract to be executed between the SBA and the procuring agency shall be prepared by the procuring agency
* * *. The contract shall be prepared in

the same detail as would be required for a normal procurement contract to be awarded by the procuring agency to a private business * * *.

* * * * *

"(h)(1) The subcontract which will be executed by SBA and its subcontractor shall be prepared by the procuring agency * * *. It shall be prepared in the same detail as would be required for a normal procurement contract awarded by the procuring agency * * *." (Emphasis supplied.)

The Forest Service, then, had the responsibility to insert the defective pricing and audit clause into its contracts with the SBA and into the SBA's contracts with its contractors.

Finally, none of the contract files contained negotiation memoranda. The Forest Service Regional Office had just recently awarded two of the contracts and the responsible contracting officers said that they had not yet written the memoranda for those contracts. The contracting officer responsible for the other contracts, which the region awarded in July, 1980, did not write negotiation memoranda and gave no reason for the omission.

FPR 1-3.811 states in pertinent part:

"(a) At the conclusion of each negotiation of an initial, revised, or final price, the contracting officer shall prepare a memorandum setting forth the principal elements of the price negotiation, for inclusion in the contract file and for the use of any reviewing authorities."

FPR 1-1.713-(2)(d) quoted above, which sets forth procuring agency contracting officers' responsibilities in negotiation of 8(a) contracts, does not specifically mention FPR 1-3.811 in its detailing of the procuring agencies' responsibilities. However, as pointed out above, under FPR 1-1.713-2(d) the contracting officers of the procuring agencies are explicitly given the responsibility for reviewing and evaluating section 8(a) subcontract price proposals and accompanying cost or pricing data when such data are required to be submitted. In addition, at SBA's request, the procuring agency contracting officer

may actually conduct negotiations with eligible concerns (although agreements reached are subject to SBA approval). Under those circumstances, the contracting officer of the procuring agency has the appropriate information to write the negotiation memorandum.

According to FPR 1-3.811, the negotiation memorandum must reflect the extent to which cost and pricing data, if they were required to be certified and submitted, were not relied upon by the contracting officer in negotiating the price. The contracting officer must also note in the negotiation memorandum any cost or pricing data submitted by the contractor that were inaccurate, incomplete, or noncurrent. The contracting officer of the procuring agency, as the official analyzing the cost or pricing data, is in position to fulfill those requirements.

Furthermore, FPR 1-3.811(a)(4) requires that the memorandum include an explanation why the requirement of submitting cost or pricing data was waived in the case of any price negotiation in excess of \$100,000. As pointed out above, the contracting officer of the procuring agency is responsible for waiving the submission of the data. Therefore, once again, he is the official who would have the appropriate information to write the negotiation memorandum.

The regulation nowhere specifically requires the procuring agency contracting officer to prepare the negotiation memorandum. Certainly, when he has conducted the negotiations at SBA's request, as discussed above, he is in the best position to do so. Moreover, even when he has not actually conducted the negotiations, he has evaluated the subcontract price proposals and accompanying cost or pricing data. In those circumstances, the procuring agency contracting officer should at the least be a major participant in the preparation of the negotiation memorandum, although SBA's assistance may be needed.

QUESTION 2: Are the Federal Procurement Regulations governing defective pricing and audit clauses, negotiation memoranda, preaward contract audits, and certificates of current cost or pricing data applicable to 8(a) negotiated construction contracts over \$100,000?

ANSWER: FPR 1-1.713-4 governs construction procurements under the 8(a) program. FPR 1-1.713-4(d) states that when required by FPR 1-3.807-3, the SBA shall secure cost or pricing data from its prospective subcontractor, along with any supporting certificate. The four contracts you reviewed all required the contractor to submit cost or pricing data since they were for over \$100,000.

If a contractor must submit cost or pricing data and certificates, then, as discussed above, the contracting officer must ensure that defective pricing and audit clauses are included in the solicitation and in any resulting contract, and request pre-award contract audits. Additionally, under FPR 1-3.811, a memorandum must be written at the conclusion of negotiations of initial, revised, or final prices for the performance of contracts, including construction contracts. 2/

Federal Procurement Regulations requirements for defective pricing and audit clauses, negotiation memoranda, preaward contract audits, and certificates of current cost or pricing data are therefore applicable to 8(a) negotiated construction contracts over \$100,000.

QUESTION 3: Did Forest Service contracting officers violate Federal Procurement Regulations contracting procedures?

ANSWER: Forest Service contracting officers did violate Federal Procurement Regulations governing contracting procedures for the four contracts as discussed above. However, it should be noted that SBA failed to get cost or pricing data and the necessary certificates from several of the 8(a) contractors.

SPECIAL STUDIES AND ANALYSIS

By: John T. McGrail

2/ FPR 1-1.2 defines several terms for the purpose of chapter 1 of the Federal Procurement Regulations which includes both regulations for the 8(a) program and negotiated contracts. FPR 1-1.218 defines "negotiation" as

"* * * the procedure for making contracts without formal advertising."

FPR 1-1.208, in turn, defines "contracts:"

"'Contract' means establishment of a binding legal relation basically obligating the seller to furnish personal property or nonpersonal services (including construction) * * *." (Emphasis supplied.)