

Multiple-Award Contracts and Governmentwide Acquisition Contracts Including Delivery Orders and Task Orders



Guiding Principles

- ❖ Individual delivery/task orders exceeding the simplified acquisition threshold (SAT) under a multiple-award contract require fair notice of intent to make a purchase, including a description of the work to be performed or the supply to be delivered and the basis on which the selection will be made, to all contractors offering the supply or service under the multiple-award contract.
- ❖ All contractors responding to the notice are afforded a fair opportunity to make an offer and have that offer fairly considered.
- ❖ Contract award synopsis require publication and posting of actions supported by exceptions to fair opportunity for task- and delivery-order contracts, except when disclosure would compromise national security or create other security risks.

References

Federal Acquisition Regulation (FAR) Subparts

- 1.1 Purpose, Authority, Issuance – 1.108 FAR conventions
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Acquisition Guide and Acquisition Letters

- Chapter 1.2 Head of Contracting Activity (HCA) Authority, Functions, and Responsibilities
- Chapter 6.1 Competition Requirements
- Chapter 42.15 Contractor Performance Information
- Chapter 42.16 Reporting Other Contractor Information into Federal Awardee Performance and Integrity Information System
- Acquisition Letter (AL) 2011-03 – Interagency Acquisitions

This chapter has two sections. Section I provides: an overview of the multiple-award contracts and governmentwide acquisition contracts awarded under FAR Part 16.5, Indefinite-delivery contracts; statutory requirements for acquisitions pursuant to multiple-award contracts, and a summary of Federal Acquisition Circular (FAC) 2005-50 revisions as it pertains to multiple-award contracts. Section II are revised and new questions and answers from Acquisition Guide Chapter 38.1 and interim rule 2007-012, changes published in FAC 2005-50.

Section I.

Overview

A multiple-award contract is a type of indefinite-quantity contract which is awarded to several contractors from a single solicitation. Delivery of supplies, or performance of services, is then made via an individual delivery/task order placed with one of the contractors pursuant to procedures established in the contract. All contractors receiving awards under a solicitation are given a fair opportunity to be considered for each task/delivery order issued during the life of the contract.

FAR Subpart 16.5, Indefinite-Delivery Contracts, provides the regulatory procedures and guidance regarding the award and administration of an indefinite-delivery contract to include the preference for multiple-award contracts.¹

This chapter includes guidance on Governmentwide acquisition contracts (GWAC) as these pertain to multiple-award contracts. A GWAC is a task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated by an executive agent designated by the Office of Management and Budget or under a delegation of procurement authority issued by the General Services Administration (GSA).

¹FAR 16.504(c)

Statutory Requirements for Acquisitions Pursuant to Multiple-Award Contracts

Effective May 16, 2011, Federal Acquisition Circular (FAC) 2005-50 amends FAR Parts 5, 8, 16, 18, and 38 to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) enacted on October 14, 2008, and Executive Policy for multiple-award contracts to include delivery/task orders.

➤ *Statutory Requirements*

Section 863 mandated the development and publication of regulations in the FAR to enhance competition for the award of orders placed under multiple-award contracts to include Federal Supply Schedule.² Section 863 specified enhancements included —

- Strengthening competition requirements for task and delivery orders in FAR Subpart 16.5, Indefinite-Delivery Contracts. The statute requires for placing orders under multiple-award contracts that the provision of fair notice to contract holders and the opportunity for contract holders to respond be met. (It is similar to the procedures implemented for section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107)).
- Providing notice in FedBizOpps of certain orders placed under multiple-award contracts.

➤ *More Details on Fair Notice Statutory Requirements*

- Individual purchase of supplies or services in excess of the simplified acquisition threshold (SAT) under a multiple-award contract section 863 requires:
 - Provision of fair notice of intent to make a purchase, including a description of the work to be performed or the supply to be delivered and the basis on which the selection will be made, to all contractors offering the supply or service under the multiple-award contract;
 - All contractors responding to the notice be afforded a fair opportunity to make an offer and have that offer fairly considered;
 - **Exception.** To provide fair notice to fewer than all contractors offering the supply or service under the multiple-award contract if the notice is provided to as many contractors as practicable. The contracting officer must:
 - Ensure offers were received from at least three qualified contractors; or

²For Federal Supply Schedule orders, Acquisition Guide Chapter 8.4 provides overview and guidance on the FAR changes.

- Determine in writing that no additional qualified contractors were able to be identified despite reasonable efforts to do so.
- **Waiver.** The notice requirements may be waived on the basis of a justification, including a written determination identifying the statutory basis for an exception to fair opportunity is prepared and approved at the levels specified in the FAR and in accordance with DOE approval levels.

Summary of FAC 2005-50 Revisions to the FAR that Affect FSS

Specifically, for FAR subpart 16.5, interim rule 2007-012 published in FAC 2005-50 —

- Revises the “fair opportunity” competition requirements in FAR 16.505(b) (applicable to multiple-award task- and delivery-order contracts for orders exceeding the SAT, agencies must provide fair notice of intent to make the purchase to all contract holders; afford all contract holders a fair opportunity to submit offers and have those offers fairly consider; and justify in writing an exception to fair opportunity.
- Amends the contract award synopsis provisions at FAR 5.301 and 16.505(b)(2)(ii)(D) to require publication and posting of actions supported by exceptions to fair opportunity at FAR 16.505(b)(2) for task- and delivery-order contracts, except when disclosure would compromise national security or create other security risks.

Brief overview on multiple-award contracts (indefinite-quantity)

For multiple-award contracts, the contracting officer should include in the master contract detailed ordering procedures and selection criteria to afford each contractor a “fair opportunity” for orders issued against the contract. The contracting officer should document the selection process for the multiple-award contracts and any subsequent orders in the contract files.

When ordering against multiple-award contracts, each contractor must be given a fair opportunity to be considered for each order that exceeds \$3,000 and a fair notice of intent for each order exceeding the simplified acquisition threshold. The file must document that the task/delivery order award decision used the selection criteria established in the contract and that adequate input from the user/customer was included in the decision. Sound business judgment is imperative and documenting the process provides the basis to support the award.

For multiple-award contract orders that take exception to the fair opportunity process, the contracting officer should be familiar with these exceptions describe at FAR 16.505 (b) (2) and how to properly justify and document these occurrences.

When the multiple-award contract permits decentralized ordering, the contracting officer should establish adequate control procedures that permit oversight of all decentralized orders to ensure that the fair opportunity selection criteria and procedures are applied to all orders.

Section II elaborates on the details to this overview.

Section II

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³ Gray shading throughout this section indicates this information is transferred from Guide Chapter 38.1.

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Multiple-award contracts

What are the benefits of using multiple-award contracts?

Multiple-award contracts offer many advantages that result in more efficient and effective buying of recurring supplies and services, including:

- Streamlining the awarding and ordering process.
- Ensuring fast delivery of the required supplies or quicker performance of required services.
- Allowing the Government to leverage its buying power to get best value, to receive high quality supplies and services, and to take advantage of latest technological changes in the marketplace.
- Streamlining the order closeout process.

How can I see if there are multi-agency Indefinite Delivery Vehicles (IDV) available for ordering?

The Interagency Contract Directory (ICD) is a central repository of Indefinite Delivery Vehicles (IDV) awarded by the Federal agencies where the IDV is available for use at both the intra agency and interagency levels. The website is www.contractdirectory.gov.

When should you use multiple-award contracts?

The FAR requires you to make multiple awards of indefinite-quantity contracts for recurring supplies and services to the maximum extent practicable.⁴

For advisory and assistance services, you are required to make multiple awards if the amount of the services exceeds \$12,500,000, including all options, and the period of performance will exceed three years.⁵

Proper advance planning and market research will help you make appropriate decisions regarding when to use multiple awards, as well as when multiple awards are not appropriate. FAR 16.504(c) identifies several conditions when you should not use multiple award contracting methods. Some of the factors to be considered in making these decisions include:

- Complexity and scope of the requirement.
- Duration of the effort.
- Required resources.
- Ability to achieve and maintain the competitive nature of a multiple award contract among awardees throughout the period of performance.

Before pursuing multiple awards, ensure that there are two or more contractors that are

⁴ FAR 16.504(b) and 16.504(c)(1)(i)

⁵ FAR 16.504(c)(2)(i)

capable of performing the required work. If you were to make awards to contractors that only specialize in certain areas of the requirement, the competitive nature of such contracts in the placement of orders after contract award would be impaired. Be sure to document the contract file with your rationale for the decisions you make in planning for and awarding multiple-award contracts, or, conversely, when multiple awards are determined not to be appropriate.

If the estimated amount of the indefinite-delivery/indefinite-quantity contract exceeds \$103 million, including all options, no contract may be awarded to a single source unless the head of agency determines in writing that a single award is approved.⁶ FAR 16.504(c)(1)(ii)(D) states what needs to be included in the determination and the Congressional notification requirements. This written determination by the head of agency, unless otherwise delegated, is in addition to the requirements of FAR Subpart 6.3.

How can opportunities for small businesses be maximized under multiple-award contracts?

- Opportunities for maximizing the use of small businesses under multiple-award contracts can be accomplished in several ways:
 - A solicitation must be structured as a total set-aside where market research has indicated there will be adequate competition.
 - Partial set-asides may also be appropriate.
 - Opportunities can also be made available by reserving the issuance of task or delivery orders under specific functional areas of the statement of work exclusively for award to small business concerns.
- In an unrestricted competition, small business participation can be maximized by employing several techniques:
 - Issuing sources sought synopsis in FedBizOpps inviting interested small businesses to submit comprehensive capability statements for specific functional areas of the statement of work.
 - Issuing a draft solicitation for industry comment.
 - Breaking down functional requirements of the statement of work to their lowest level (e.g., subfunctional elements) to increase small business opportunities to propose against discrete elements of a multiple award contract.
 - Conducting small business outreach conferences to market a program to the small business community.
 - Including provisions in the fair opportunity procedures of the solicitation/contract which permit the contracting officer to reserve the issuance of certain task or delivery orders

⁶ Dollar threshold is subject to change, see FAR 16.504(c)(ii)(D)(1) for current threshold.

among small businesses

How is price evaluated in awarding a multiple-award contract?

Although final pricing of supplies or services is not determined until orders are issued, you are still required to consider cost or price to the Government in the initial evaluation of offers leading to the award of multiple-award contracts. The Comptroller General has reiterated that competitive solicitations must include cost or price to the Government as an evaluation factor, and you must consider cost or price to the Government in evaluating competitive proposals, even for multiple-award contracts.

You can not eliminate proposals from consideration for award of a contract without taking into account the relative cost of that proposal to the Government. This is a statutory requirement that is not satisfied by the practice of considering cost or price only after contract award, when an individual task or delivery order is issued.

You must develop a basis upon which the evaluation of cost/price factors can be considered in the initial award of multiple contracts to assess the Government's best estimate of the likely relative cost to the Government.

For supplies, you can request offerors to submit fixed prices for the term of the contract, which would allow for an appropriate evaluation.

For services, you can use a combination of several approaches to provide the most comprehensive way to accomplish the required cost evaluation. Proposed labor rates and mark-up rates can be requested for evaluation purposes. Offerors may also be directed to provide a fully detailed cost proposal for a sample task order for one or more of the services to be performed under the contract. Agency historical information that addresses similar past projects can be used to estimate the labor mix and materials. Offerors' responses to the sample task order can provide insight into their technical and staffing approach and can therefore provide a reasonable basis to assess the relative cost of the competing proposals.

How should funds be obligated for multiple-award contracts?

The obligation of funds is against an individual order, not at contract execution. In the event some funds need to be obligated at contract execution, it should be only for the stated minimum quantity of supplies or services designated in the schedule. In the event minimum funds were obligated at contract execution, the Contracting Officer shall ensure that the minimum quantity of supplies was delivered or services were performed.

What are some helpful lessons learned for awarding and administering multiple-award contracts?

Be sure to consider bundling issues when planning for a multiple award contract. Government Accountability Office (GAO) has recently decided several cases where the agency bundled requirements traditionally acquired from small businesses. Awards were made to only

large companies, as small businesses were precluded from proposing effectively.

Be sure to include relevant clauses that address various contract types (i.e., firm-fixed price, time & material/labor-hour, cost reimbursement) in the master contract if you anticipate the issuance of task orders on these bases.

Be proactive. Conduct a postaward meeting with the technical team and a postaward conference with each contractor to communicate to the contractor and technical team the process of how tasks will be awarded and administered.

When key personnel are listed in the contract, be sure to state at the postaward conference that you will only authorize key personnel changes in advance of task proposals being submitted, if applicable.

Be sure to brief technical monitors on their roles and responsibilities as technical monitors. Also, make sure the contracting officer representatives (COR) and technical monitors are informed, in writing, that they aren't authorized to have the contractor perform services outside the scope of the task unless it has been priced out and approved by the contracting officer via a task modification in advance of the services being performed, otherwise the action is an unauthorized commitment and requires ratification.

The issuance of all task orders must adhere to the ordering procedures set forth in the contract to ensure that fair opportunity is provided to all awardees under a multiple-award contract. There are few exceptions to fair opportunity process for orders exceeding \$3,000. See FAR 16.505(b)(2) for these exceptions. For example, if a contractor has not received tasks sufficient to meet a minimum ordering guarantee of the contract, an order may be placed directly with the contractor without providing a fair opportunity to the other contractors under the multiple award contracts. Per GAO, this should only be applied at the end of an ordering period and not to the first few orders under the contract.

It should be noted that there is no statutory or regulatory authority which permits the issuance of a sole-source task order under a multiple-award contract on the basis of socioeconomic considerations (e.g., 8(a) concerns).

For an individual task order, you should include pricing for option periods when the initial task order is awarded to help the COR and technical monitors estimate funding requirements in advance. Remember that the task order needs to be issued during the effective period of the master contract. The completion of the task order shall be completed within the period specified in the task order.

What are the requirements to justify a decision to establish a single-award indefinite-quantity contract?

For indefinite-quantity contracts, the preference is to establish multiple-award contracts to the maximum extent practicable. The contracting activity should consider the factors at FAR 16.504(c) and document the decision in the acquisition plan or contract file.

When it has been determined that a single-award contract is required to fulfill the agency's needs, the contracting activity must:

- For a single-award contract with an estimated value exceeding the micro-purchase threshold but not exceeding \$103 million including options, prepare the Justification for Other than Full and Open Competition (JOFOC) in accordance with FAR Subpart 6.3, DEAR Acquisition Guide Chapter 6.1 Competition Requirements, and HCA's Delegation of Authority/Designation memorandum for additional guidance and approval thresholds.
- For a single-award contract with an estimated value exceeding \$103 million including any options, in addition, to the JOFOC described above, the requirement for a head of agency written determination is required. Within 30 days after the determination is made, Congressional notification is required. The head of agency determination addresses:
 - The delivery or task orders expected under the contract are so integrally related that only a single source can reasonably perform the work;
 - The contract provides only for firm-fixed priced delivery or task orders for—
 - Products with unit prices established in the contract; or
 - Services with prices established in the contract for specific tasks to be performed;
 - Only one source is qualified and capable of performing the work at a reasonable price to the Government; or
 - It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

Governmentwide Agency Contracts (GWAC)

What is a Governmentwide Agency Contract (GWAC)?

A Governmentwide Agency Contract (GWAC) is a multiple-award contract issued by one host agency that may be used by other Federal agencies to procure information technology supplies and services. GWACs offer total technology solutions including hardware, software, systems integration, asset management, and security and program management.

The use of GWACs is subject to the indefinite-delivery contracts requirements and ordering procedures prescribed at FAR Subpart 16.5. Orders issued by an ordering activity against a GWAC are direct acquisitions. Prior to placing an order against the GWAC, the ordering activity shall conduct an analysis and shall make a written determination that the use of the GWAC is the best procurement approach in accordance with FAR 17.502-1(a)(2). GWACs have a specific statutory authority and are not subject to the requirements and limitations of the

Economy Act, as specified in FAR Subpart 17.502-2 - The Economy Act. Refer to FAR 17.502 and DEAR Acquisition Letter 2011-03, Interagency Acquisitions for policy and procedures.

Host agencies are designated pursuant to the authority of the Director, Office of Management and Budget (OMB), to establish GWACs. Currently, there are six OMB designated GWAC agencies - GSA, National Institutes of Health, National Aeronautics and Space Administration, Environmental Protection Agency, Department of Defense and Department of Commerce.

Although DOE is not a designated GWAC agency, the Department can fully utilize GWACs that are administered by host agencies.

Are there any limitations imposed on the user agency?

Currently, each host agency has established a maximum value for their respective GWAC which is equal to the estimated Government usage for a ten-year period.

Each GWAC has an established limitation on how much of the total contract value one agency can use. This amount varies by GWAC and is determined by the host agency, which normally adds a small administrative, or user fee to cover its cost of administering the GWAC.

What are the advantages of using GWACs?

GWACs offer Federal agencies the advantage of flexibility in meeting their various information technology requirements through one umbrella contract. Specific advantages include -

- GWACs are administratively less burdensome than if an agency were to conduct its own series of individual procurements.
- Procuring agencies realize savings through reduced procurement and administrative costs and through volume buying pricing.
- GWACs utilize performance-based contracts focusing on outcome solutions.
- The host agency has already conducted the competition resulting in one or more contract awards to the best-in-class IT product and service providers.
- Provide the broadest availability of IT products and services.
- The ordering award process takes approximately one-fourth of the lead-time required for traditional competitive acquisitions, using FAR Part 15 procedures.
- Small, minority and women-owned businesses, as well as large businesses are represented.
- Task orders may be firm-fixed price, time and material, labor-hour, level of effort, or cost

reimbursement depending upon the specific GWAC and the nature of the work to be performed.

What total technology solutions are available on GWACs?

Hardware, software, and services can be purchased as a total technology solution. Task orders placed against GWACs may be customized to meet the full range of IT service solutions, including, but not limited to:

- Systems/Product/Service integration;
- Systems operation and management;
- Software/Information Systems engineering and management;
- Cybersecurity;
- Network management/telecommunications; and
- Web-enabled solutions.

What supplies are available on GWACs?

Many information technology supplies are available on GWACs, including --

- Mainframes;
- Desktop computers;
- Portable computers;
- Hardware;
- Peripherals;
- Software; and
- Bar coding systems.

What services are available on GWACs?

There are also many types of information technology services available on GWACs, including --

- Hardware/Software Maintenance;
- Training;
- Software Application;
- Digitizing; and
- Technical support.

What do user fees pay for?

User fees are the revenues collected by the host agency to cover the costs associated with awarding and administering the stable of GWAC contracts, as well as the administrative costs of servicing the use of the GWAC contract by other, ordering agencies.

User fees are higher for those agencies that require the host agency to award and administer

the tasks issued in support of the ordering agency, while user fees are lower for those agencies willing to administer the tasks that are awarded by the host agency.

How much are the user fees?

User fees that are paid to the host agency normally range between 0.5% and 4%. However, user fees are negotiable. Some GWACs provide for annual ceilings on user fees that can result in greatly reduced aggregate fee percentages. You should validate that the host agency is providing value commensurate with the fee charged.

For information technology integration service requirements, are GWACs preferred over the FSS program?

Yes. GWACs offer total information technology solutions through performance-based contracts. If agencies and contractors are focused on the desired outcome rather than the individual pieces involved, GWAC contractors can generally deliver better service. GWACs are specifically focused on providing for outcome-oriented solutions.

How do you ensure that the host agency complies with its commitments?

If the host agency is conducting an assisted acquisition, the agencies shall comply with FAR 17.5 – Interagency Acquisitions and DEAR Acquisition Letter 2011-03, Interagency Acquisitions. An assisted acquisition is a type of interagency acquisition where the servicing agency and requesting agency enter into a written interagency agreement (IA) pursuant to which the servicing agency performs acquisition activities on the requesting agency’s behalf, such as the awarding of a contract, task order, or delivery order. The IA should detail the performance expectations of the two agencies including the planning, execution, and administration of the contract. FAR 17.502-1(b) requires a written IA for assisted acquisitions.

Ordering Against Multiple-award Contracts and GWACs

When do you conduct market research for an order?

Conduct market research before awarding a task or delivery order in excess of the simplified acquisition threshold.⁷

What is “Fair Opportunity”?

“Fair opportunity” does not mean “competition” as that term is used in FAR Part 6. The concept of providing fair opportunity for all multiple-award contractors refers to the contracting officer’s responsibility to ensure that once a multiple-award contract is awarded, each contractor is given an opportunity to be considered for each task or delivery order that exceeds \$3,000 that is issued under the multiple-award contracts, e.g., multiple delivery-order contracts or multiple task-order contracts.⁸ FAR 16.505(b) prescribes requirements and guidelines you should follow

⁷ FAR 10.001(a)(2)(ii) & (v)

⁸ FAR 16.505(b)(1)(i)

for orders under multiple-award contracts.

How do you establish ordering procedures that provide for “Fair Opportunity”?

Solicitations and contracts for multiple awards must state the procedures and selection criteria that you will use to give awardees a fair opportunity to be considered for each task or delivery order. You have broad discretion in developing appropriate order placement procedures, and you should use streamlined procedures, including oral presentations and minimal information submission requirements whenever practicable.

- When developing the procedures, you should consider the following:⁹
 - The dollar value of the orders;
 - Past performance on earlier orders under the contract, including quality, timeliness and cost control;
 - Potential impact on other orders placed with the contractor;
 - Minimum order requirements;
 - The amount of time contractors need to make informed business decisions on whether to respond to potential orders;
 - Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as --
 - Seeking comments from two or more contractors on draft statements of work; or
 - Using a multi-phased approach when the effort required to respond to a potential order may be resource intensive (*e.g.*, requirements are complex or need continued development), where all contractors are initially considered on price considerations (*e.g.*, rough estimates), and other considerations as appropriate (*e.g.*, proposed conceptual approach, past performance); and
- For a task or delivery order that:
 - Does not exceed the simplified acquisition threshold (SAT), FAR 16.505(b)(1)(ii) prescribes that the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order, *e.g.*, fixed-priced contract line items.
 - Exceeds the SAT, FAR 16.505(b)(1)(iii) prescribes additional requirements to (1) provide a fair notice of the intent to make a purchase, including a clear description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made to all contractors offering the required supplies or services under the multiple-award contracts, and (2) afford all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

⁹ FAR 16.505(b)(1)(v)

- Exceeds \$ 5 million, FAR 16.505(b)(1)(iv) prescribes the requirement to provide all awardees a fair opportunity to be considered for each order. The minimum requirements are a notice of the task or delivery order that includes a clear statement of the agency's requirements; a reasonable response period; disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance; where award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and price or cost factors; and an opportunity for a postaward debriefing.¹⁰

How do you ensure that fair opportunity is provided to all contractors?

A contracting officer can ensure that fair opportunity exists for all awardees and still keep the multiple award process simple and streamlined by following these guidelines:

- Ensure that requiring program customers fully understand the concept of fair opportunity and their role in ensuring that it is achieved for each task or delivery order, e.g., evaluating contractor capabilities pursuant to the established ordering procedures. This is done through proper advance planning and adequate documentation of the decisions made in the award of multiple contracts and in the issuance of task or delivery order.
- Avoid using ordering practices that preclude fair opportunity - such as the *allocation of orders among awardees*, and the *direction of orders to preferred awardees*. These practices are prohibited and result in less than fair consideration being given to all awardees under a multiple award contract.
- Clearly spell out the entire ordering process in the solicitation and contract.
- Document the file for each task or delivery order that your ordering practices adhere to the ordering procedures set forth in the contract.
- Inform all awardees if you plan to use an exception to fair opportunity that may occur in the placement of a task or delivery order. Prepare the justification for the exception and get approvals as required. Post the justification as required.
- For orders exceeding \$3,000 but not exceeding the SAT, issue follow-on orders only when these orders constitute a logical follow-on exception. The rationale shall describe the relationship between initial order and the follow-on, e.g., in terms of scope, period of performance or value.
- Maximize the use of firm-fixed-price orders.
- Consider price or cost under each order as one of the factors in the selection decision.
- Keep in mind that formal evaluation plans and the scoring of quotes/offers are not

¹⁰ FAR 16.505(b)(4)

required. However, for a task or delivery order exceeding \$5 million, there are minimum requirements to consider and documentation for each task or delivery order including postaward notices and debriefing of awardees.

- Keep in mind that the placement of a task or delivery order (order) may be protested on the grounds that the order increases the scope, period of performance, maximum value of the contract under which the order is issued; or when an order is valued in excess of \$10 million. For an order in excess of \$10 million, a protest may only be filed with the Government Accountability Office. See 16.505(a)(9) for authority and its expiration.

What do you need to consider in placing orders under a multiple-award contract for services?

Consider the following when placing an order--

- Each task order must clearly describe all services to be performed so that the total cost or price of performance can be established;
- Use performance-based work statements to the maximum extent practicable;
- Keep contractor submission requirements, e.g., task order proposals, to a minimum;
- Past performance on earlier task orders under the contract, including quality, timeliness, and cost control;
- Potential impact on other task orders placed with the contractor, i.e., potential impacts on the contractor's resources;
- Minimum ordering requirements;
- The amount of time contractors will need to make an informed business decision on whether to respond to potential task orders;
- Whether contractors could be encouraged to respond to potential task orders by performing outreach intended to promote exchanges of information, e.g., request comments on draft work statements;
- Price or cost; and
- Basis for selection of an awardee. It can be based on best value or low cost/technically acceptable depending on the complexity of the requirement and the needs of the program. This basis is usually specified in the order, but could also be specified in the multiple-award contract.

How are orders priced under multiple-award contracts?

Multiple-award contracts usually allow using both fixed price and cost reimbursement type methods, depending on the degree in which the work requirements can be specified. However, you should use firm-fixed-price orders to the maximum extent practicable.

Are there concerns with limiting pass-through charges on task or delivery orders?

Yes. FAR 15.408(n) implements policy that minimizes excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no, or negligible, value. This limitation ensures that neither a contractor nor a subcontractor receives indirect costs or profit/fee (i.e., pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value. The master contract shall include the clause 52.215-23, Limitations on Pass-through Charges, when the total estimated value exceeds the simplified acquisition threshold and the contract type is a cost-reimbursement. When an order exceeds the simplified acquisition threshold, the clause requires the contractor to identify the percentage of work that will be subcontracted. When the subcontract costs will exceed 70 percent of the total cost of the work to be performed, the contractor must provide information on indirect costs, profit/fee and the value added with regard to the subcontract work.

What documentation is required when placing a task or delivery order?

For each task or delivery order (order) issued, the file shall contain a record which documents the rationale for placement of the order and cost/price of the order. Specifically, you should document the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision.

The file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical, e.g., in terms of scope, period of performance, or value.¹¹

Does the contracting officer need to issue postaward notices and conduct debriefings for task or delivery orders?

Yes, if the task or delivery order exceeds \$5 million, the contracting officer shall notify unsuccessful awardees. FAR 15.503(b)(1) describes the procedures for postaward notification to unsuccessful awardees. FAR 15.506 describes the procedures for postaward debriefing to unsuccessful awardees.

¹¹ FAR 16.505(b)(5)

Are orders issued against a multiple-award contract or a GWAC protestable?

Yes. Orders against GWACs are protestable on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or when an order is valued in excess of \$10 million. For an order in excess of \$10 million, a protest may only be filed with the Government Accountability Office. See 16.505(a)(9) for the authority.

Exception to fair opportunity**What should be considered in determining whether work is a logical follow-on to a previously issued task order?**

All awardees under the multiple-award contracts must have been provided a fair opportunity to receive the original task order (order) under which the work will be added. If another authority was used to issue the original order on a sole-source basis (e.g., to satisfy a minimum guarantee), then additional work can not be added to the original order as a logical follow-on.

A new requirement can be added to an existing order, if the requirement is within the scope of the initial task order and the work is not severable. For example, when a contractor is providing administrative support services to an organization and a new sub-organization is formed due to reorganization, an additional contractor employee may be required. It would then be prudent to have the same contractor perform the work, provided the order is modified to add this requirement.

The criteria contained in FAR 6.302-1(a)(ii) can be used as a guide in determining whether additional work constitutes a logical follow-on to a previously issued order. Specifically, if the issuance of a new order would result in a substantial duplication of costs to the Government that is not expected to be recovered through the “fair opportunity” process established for the contract, or in unacceptable delays in fulfilling the agency’s requirements, then such work would be considered as an appropriate logical follow-on to the original order.

What are the statutory exceptions to the fair opportunity process for orders placed under multiple-award contracts?

The statutory exceptions to the fair opportunity process for orders placed under multiple-award contracts, as described at FAR 16.505(b)(2)(i) are as follows:

- The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
- Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.
- The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided

that all awardees were given a fair opportunity to be considered for the original order.

- It is necessary to place an order to satisfy a minimum guarantee.
- For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source.

What is the documentation requirement for an exception to fair opportunity justification for an order?

For an order exceeding \$3,000 but not exceeding the simplified acquisition threshold, the ordering activity shall document the statutory basis described at FAR 16.505(b)(2)(i) for using an exception to the fair opportunity process.¹²

For an order exceeding the simplified acquisition threshold, at a minimum, the exception to fair opportunity justification must:¹³

- Identify the agency and the contracting activity, and specific identification of the document as a justification for an exception to fair opportunity;
- State the nature and/or description of the action to include the supplies or services required to meet the agency's needs including the estimated value being approved;
- State the statutory exception to fair opportunity and the supporting rationale to justify the exception to not provide fair notice of intent to all contractors offering the required supplies or services under the multiple-award contracts. The supporting rationale shall include a demonstration that the proposed contractor's unique qualifications or nature of the acquisition requires use of the statutory exception cited;
- Determine that the anticipated cost to the Government will be fair and reasonable;
- Present any other facts supporting the justification;
- State what action(s), if any, the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made;
- Certify that the justification is accurate and complete to the best of the contracting officer's knowledge and belief; and
- Provide evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government's minimum needs or requirements or other rationale for limited sources) and which form a basis for the

¹² FAR 16.505(b)(2)(i) and (ii)

¹³ FAR 16.505(b)(2)(ii)

justification have been certified as complete and accurate by the technical or requirements personnel.

What are the approval thresholds for an exception to fair opportunity justification for an order exceeding the simplified acquisition threshold?

For an exception to fair opportunity justification under 16.505(b)(2)(ii), the approval levels are based on the following dollar thresholds¹⁴:

- If the action is less than \$650,000, the Contracting Officer;
- Between \$650,000 but less than \$12,500,000, the Contracting Activity Competition Advocate;
- If the action is \$12,500,000 or greater but not exceeding \$50,000,000, the Head of the Contracting Activity (HCA), in accordance with the HCA's Delegation of Authority/Designation memorandum; and
- If the action is \$50,000,000 or greater, the Senior Procurement Executive.

What are the posting requirements for an exception to fair opportunity justification for a delivery or task order?

For exceptions to fair opportunity orders exceeding the simplified acquisition threshold, there is a posting requirement for the justification for a minimum of 30 days at the Governmentwide point of entry (GPE) <https://www.fbo.gov>; and on the Web site of the ordering activity agency, which may provide access to the justification by linking to the GPE. The DOE link to <https://www.fbo.gov> is at http://management.energy.gov/business_DOE.htm.

Depending on the circumstances for the exception to fair opportunity order justification, there are two posting timelines. These two timelines are as follows:

- To support circumstances described at FAR 16.505(b)(2)(i)(B) or (C) for either only one source is capable of providing the required supplies or services, or new work is a logical follow-on to an original FSS order, respectively, the ordering activity shall post the justification within 14 days after placing an order in accordance with FAR 5.301.
- To support circumstances described at FAR 16.505(b)(2)(i)(A) an urgent and compelling need exists and would result in unacceptable delay, the ordering activity shall post the justification within 30 days after placing an order in accordance with FAR 5.301.

In order to post an exception to fair opportunity justification on the www.fedbizopps.gov website, this website has a notice type called "Justification & Approval (J&A)" at the Opportunities section. Within DOE only the designated contracting activity personnel are allowed to post to the www.fedbizopps.gov website the standalone exception to fair opportunity justification. Note: The designated DOE personnel are not allowed to delete/modify a posted

¹⁴Acquisition Guide Chapter 6.1 and HCA's Delegation of Authority/Designation memorandum

exception to fair opportunity justification. The Office of Management Systems, MA-623, should be contacted for assistance.

The HCA shall ensure that each exception to fair opportunity justification document is redacted, as appropriate, and posted to the website at www.fedbizopps.gov. The contracting officer shall carefully screen an exception to fair opportunity justification for all contractor proprietary and other sensitive data and remove it if such data exists, including such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Also, the contracting officer shall be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in FAR 24.202 in determining whether other data should be removed. Before posting the justification, the contracting officer shall coordinate the redacted justification as needed with the local Counsel's Office and the local FOIA officer.

The posting requirement does not apply when disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception.

Contractor performance

Is a termination for default for a delivery or task order reported into the Federal Awardee Performance and Integrity Information System (FAPIIS)?

Yes. In accordance with FAR 42.1503(e) and Acquisition Guide Chapter 42.16, the contracting officer shall ensure that information related to termination for default notices and any amendments are reported within 3 business days into FAPIIS. This includes reporting any subsequent notice of the conversion to a termination for convenience or withdrawal.

Is a contractor performance evaluation required for a task or delivery order?

Yes. For each order exceeding the simplified acquisition threshold, the ordering activity prepares an evaluation of the contractor's performance using the Contractor Performance Assessment Reporting System (CPARS). This evaluation does not include an assessment of the contractor's performance against the contractor's small business subcontracting plan. Consolidation of the evaluation is appropriate if orders are similar in scope. See FAR 42.1502(c).