



# HEADQUARTERS POLICY FLASH

**POLICY FLASH 2004-24**

DATE: September 2, 2004  
TO: Procurement Directors  
FROM: Office of Procurement and Assistance Policy, ME-61  
Office of Procurement and Assistance Management

SUBJECT: Department of Energy (DOE) Acquisition Guide Chapter Revisions

SUMMARY: Several chapters of the DOE Acquisition Guide have been revised and posted to the Home Page. The next page lists the chapters and summarizes the nature of the changes.

## Summary

### DOE Acquisition Guide 2004 Revision Installment 3

Number	Title	Nature of Change	Date
4.2	Public Relations Contracts	New	August 2004
15.3	Evaluation Criteria	Editorial	August 2004
15.4	Source Selection	Editorial	August 2004
33.1	Protests	Editorial	August 2004
33.2	Alternate Dispute Resolution	Editorial	August 2004
38.1	Federal Supply Schedule Contracting	Substantive/Editorial	August 2004

Chapter 4.2, Public Relations Contracts is a new chapter replacing Acquisition Letter 2002-03. It requires coordination with the Office of Public Affairs, DOE or National Nuclear Security Administration (NNSA), prior to contracting for public relations or communication services requirements.

Chapter 38.1, Federal Supply Schedule Contracting is an update of the Strategic Acquisition Transactions Guide of 2002, in response to Policy Flash 2004-23, "Proper Use of Other Agencies Contracts". It clarifies and improves procedures to be followed when placing awards under other Agency contracts, such as Federal Supply Schedules (FSS) and Government-wide Agency Contracts (GWACs), as well as ordering procedures under Multiple Award Contracts. It provides that the Contracting Officer placing an order on another agency's behalf is responsible for including that agency's regulatory and statutory requirements and that the requiring agency must furnish such information to the ordering agency. It also states that Blanket Purchase Agreements (BPAs) under FSS are generally limited to five years and requires the agency establishing the BPA under a schedule contract to conduct an annual review to assure that the circumstances justifying the initial award remain current. While not prohibiting sole source awards under FSS orders, the Chapter does require they be justified in writing. The Chapter further provides that ordering agencies rely on the small business representation originally furnished at the contract level and clarifies steps that may be taken in the case of poor performance under an FSS order.

The changes to the other Chapters are only editorial in nature.

The revised chapters are not attached but have been posted to the Home Page at <http://professionals.pr.doe.gov/ma5/ma-5web.nsf/?Open> Questions may be addressed to Richard Langston (202) 287-1339 or [Richard.Langston@il.hg.doe.gov](mailto:Richard.Langston@il.hg.doe.gov).

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cc: PPAG

## Requirements for Contracting with Public Relations Firms



### Guiding Principles

- ▶ Be Aware of Requirement
- ▶ Ensure Coordination

### Overview

This section discusses the Department of Energy's (DOE's) procedures when obtaining contractual services from public relations firms.

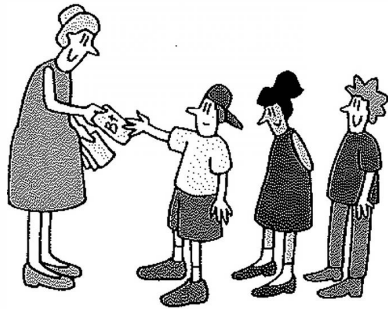
### Background

The Office of Public Affairs is responsible for collecting and disseminating information about the Department's programs, missions, and activities. The Office of Public Affairs establishes guidelines for the review and coordination of activities for that mission. These activities include coordination on contracts to public relations firms that assist program offices in collecting and disseminating information.

### Current Requirements

All DOE contract actions for the acquisition of public relations or communications tasks are to be coordinated with the Headquarters Office of Public Affairs, PA-40 prior to being initiated. National Nuclear Security Administration offices should coordinate through NA-3.5, Office of Congressional, Intergovernmental and Public Affairs. The procurement request initiator is responsible for this coordination prior to submitting the procurement request to the cognizant procurement office. Contracting Officers should not process any requirement for public relations or communications tasks without the consent of the Office of Public Affairs. Requests received without said consent should be returned to the initiator for action. Communications tasks do not encompass contracts for telephone service.

## Establishing Evaluation Criteria



[Reference: FAR 15.304]

### Overview

This section discusses the development of evaluation criteria for use in best value, competitive source selection.

### Background

The purpose of the proposal evaluation process is to provide a mechanism to determine which offers submitted in response to a solicitation best meet the Government's stated needs. The proposal evaluation results in an assessment of the offeror's ability to successfully accomplish the contract. Because the source selection decision is based on the proposal evaluation, it is important that the evaluation criteria *clearly reflect the Government's need and facilitate preparation of proposals that best satisfy that need; provide for an accurate evaluation of an offeror's proposal; represent key areas of importance and emphasis to be considered in the source selection decision; and support meaningful discrimination and comparison between and among competing proposals.*

### Establishing Evaluation Criteria

The evaluation criteria used to assess proposals consist of the factors and sub-factors that reflect the areas of importance to an agency in its selection decision. Through the evaluation factors, the Government is able to assess the similarities and differences and strengths and weaknesses of competing proposals and, ultimately, use that assessment in making a sound source selection decision. A well-integrated evaluation scheme provides consistency, discipline, and rationality to the source selection process.

Consistent with the FAR, the evaluation criteria and their relative importance shall be expressed in the solicitation and proposals shall be evaluated only on the basis of those criteria. In addition, the solicitation must state the relative importance of price to all of the other evaluation criteria. In doing so, offerors are informed of the factors that the Government will consider in determining

#### Guiding Principles

Evaluation criteria must represent the key areas of importance.

Always include cost/price and quality.

More important criteria should be weighted greater than less important criteria.

Proposals are to be evaluated solely on the factors and sub-factors stated in the solicitation.

which proposal best meets its needs, and may use this information to determine how to best prepare their proposals.

The FAR provides broad guidance on establishing evaluation criteria. In summary, this guidance (see 15.304) provides that:

Evaluation criteria should be tailored to each acquisition and include only those factors which will have an impact on source selection.

The nature and types of evaluation criteria to be used for an acquisition are within the broad discretion of the agency.

Price or cost must be an evaluation factor in every source selection.

Past performance must be an evaluation factor (in accordance with the FAR criteria in 15.304), unless the contracting officer, *in writing*, determines otherwise.

Quality must be addressed in every source selection in "non-cost factors."

As a rule of thumb, evaluation criteria should reflect areas *necessary* to determine the merit of a proposal, *pertinent* to the Government's stated requirements, and *measurable* to permit qualitative and quantitative assessment against the rating plan.

*Cost Factors* - As previously noted, the FAR requires that cost or price must be evaluated in every source selection. Because contracts can only be awarded at costs or prices that have been determined to be reasonable, cost reasonableness always must be evaluated. In addition, cost realism (an assessment of whether the costs proposed by an offeror are realistic, reflect a clear understanding of the work, and are consistent with other parts of the proposal) must be considered when a cost-reimbursement contract is contemplated.

In some instances, the evaluation of cost or price may include not only consideration of the cost or price to be paid to the contractor, but other costs that the Government may incur as a result of awarding the contract. Examples of these latter costs include re-training costs, system or software conversion costs, power consumption, life cycle costs, and transportation costs. In these cases, the solicitation should clearly identify other costs that will be considered in the evaluation.

*Non-Cost Factors* - Non-cost factors address the evaluation areas associated with technical and business management aspects of the proposal. Examples of non-cost factors include technical and business management related areas such as technical approach and understanding, capabilities and key personnel, transition plans, management plan, management risk, and corporate resources. The level of quality needed by the Government in performance of the contract is an important consideration in structuring non-cost factors.

## Evaluation Standards

The development and use of standards is the key to uniform application of evaluation criteria. Standards establish the minimum level of acceptability for a requirement and provide the basis on which the ratings above and below the minimum level are set. Stated another way, a standard is the measurement baseline that will be used by the Government evaluator to determine whether a proposal meets, exceeds, or fails to meet a solicitation requirement. Standards, by providing a consistent and uniform measurement target, promote an objective evaluation of proposals.

Standards may be quantitative or qualitative in nature. Regardless of whether a standard is quantitative or qualitative in nature, the standard should be:

- Structured to specify the minimum acceptable level and the levels above and below the minimum that ratings can be assigned.

- Developed using precise language that is clearly and easily understood by the evaluators.

- Structured to evaluate substance, not form.

- Consistent with the minimum requirements of the Statement of Work.

In developing standards, there sometimes is a tendency to be overly aggressive by establishing highly detailed, or a large number of, standards under the assumption that this approach will improve the quality of the evaluation. In most cases, the result is just the opposite. Too many, or overly detailed, evaluation standards may lead to a leveling of ratings and thereby result in an inability to meaningfully discriminate among proposals. Conversely, standards that are overly broad also may make differentiation between proposals difficult and frustrate evaluators' efforts to agree on ratings. Likewise, "go/no go" standards are not as effective in best value decisions because they do not adequately identify varying degrees of superiority or inferiority.

## Relative Importance of Evaluation Criteria

After determining the evaluation criteria, their relative importance must be established. The relative importance of the factors and sub-factors that comprise the evaluation criteria must be consistent with the source selection objectives and the solicitation requirements. There are several methods that may be used to establish the relative importance of the evaluation criteria. The first approach involves statements that establish a prioritization or tradeoff between factors. For example, the evaluation scheme may provide that cost is slightly more important than "technical approach" but less important than "key personnel." The relative importance of criteria also may be structured through the use of numerical weights, such as points or percentages. Using the previous example, cost would be "twice as important as performance risk, but half as important as technical approach." A third way to express the relative importance of evaluation criteria is through the use of decision rules. Essentially, a decision rule is a judgmental statement that is used to determine how a criterion will be treated under certain conditions. One way of expressing a decision rule would be "if the management factor is rated less than satisfactory, then

the entire proposal is unacceptable." Of these three possible approaches, the use of a prioritization or trade-off technique provides greatest flexibility for the source selection official when making trade-off decisions between non-cost factors and the evaluated cost/price.

### **Rating Mechanisms**

The FAR does not prescribe one best approach for rating proposals. Accordingly, agencies are free to design rating plans which best meet their needs in light of the facts, circumstances, and requirements of a particular procurement. Typically, numerical, adjectival, or color coding rating schemes have been relied on for proposal evaluations. The key in using a rating system is consistent application by the evaluators. Regardless of the approach selected, supporting narrative documentation should be developed which explains the basis for the ratings, and identifies strengths, weaknesses and discriminators.

### **Special Considerations for Management and Operating Contract Solicitations**

Because of the unique nature of the Department's management and operating contracts, care must be taken to ensure that the evaluation criteria accurately embody DOE's fundamental requirements and expectations for successful management of the facility or site in the future, consistent with contract reform. In the past, solicitations have been structured to reward offerors for past performance and management team experience directly related to the mission of the facility or site (i.e., weapons production).

As the Department undergoes radical change both in the nature of many of its missions and in the way it accomplishes those missions, DOE's requirements for management experience and approaches are different from what was required of offerors in the past. Accordingly, an offeror's direct past management experience and expertise in operating Department of Energy facilities and sites may be less important than experience and expertise in such areas as managing organizations during periods of change, cost containment, innovation, economic development, workforce restructuring, and technology development.



## Source Selection Guide



### Overview

Recent regulation changes have introduced greater flexibility and discretion into the source selection process. This section provides guidance to contracting staff on conducting source selection.

### Background

The last decade has seen significant change in many areas of procurement, particularly in the introduction of new tools and processes that help the procurement professional better meet the needs of demanding customers. The passage of the Federal Acquisition Reform Act in 1995 and the Federal Acquisition Streamlining Act in 1994, coupled with Government-wide and Department of Energy (DOE) contract reform efforts have not only changed traditional procurement processes but have also changed the role of the procurement professional. No longer are procurement professionals merely the keepers of what some view as an arcane process called Federal contracting.

One area that has received considerable attention in most all of the reform initiatives is source selection, as set forth in Part 15 of the Federal Acquisition Regulation (FAR).

In 1998, significant, and sometimes subtle, changes were made to long-standing policies, practices and procedures relating to competitive negotiation. These included the introduction of oral presentations, changes in the standards for determining competitive range, and new rules governing communications and the submission of best and final offers. These changes place an even greater responsibility on today's procurement professional to ensure that the integrity and fairness of procurement is maintained and that the contract ultimately awarded delivers high-quality goods and services to the customer.

### General

In today's world, the procurement professional needs to be not only an expert in procurement laws, regulations and policies, but also an expert in business and market areas. The procurement

professional is now an integral part of a team that manages all phases of the acquisition process, from requirements identification to contract close-out. This is reinforced in guiding principles for the Federal Acquisition System (see FAR 1.102).

This guide provides a series of topics-focused dissertations on key areas of source selection. The intent of the guide is to present DOE procurement professionals with useful "hands-on" information on key principles and practices that will enhance the effectiveness of the source selection process. The guide does not present a road map of the source selection process, nor does it mandate activities or actions. The source selection process is adequately set out in regulation and other instruction material. This guide should not be construed to convey any rights to third parties.

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## **PART I DRAFT REQUEST FOR PROPOSAL (DRFP)**

### **Background**

The Draft Request For Proposal (DRFP) is the initial, informal document(s) that communicates the Government's intentions/needs to industry and requests questions, comments, suggestions, and corrections that improve the final product. It is a communication tool used early in competitive acquisitions to promote a clearer understanding of the Government's requirements to industry and to obtain industry feedback on the planned acquisition. The DRFP need not include all of the sections of the Request For Proposal (RFP), but should contain as much as possible of the "business" sections necessary for industry to provide meaningful comments. As a minimum, the DRFP should include Section L (Instructions to Offerors) and Section M (Evaluation Criteria), and the Specification/Statement of Work.

No hard and fast rule exists as to when it is desirable to issue a DRFP; however, in the early stages of acquisition planning/procurement strategy development, the program officer(s), advisory (legal) staff and Contracting Officer/Contract Specialist are strongly encouraged to address the desirability of issuing a DRFP in advance of the final RFP. Likewise, no formal process for comment resolution presently exists. However, a methodology should be established to ensure implementation of beneficial comments in the final RFP as well as ensuring fair disposition of all comments.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 3.104-2 (General [Procurement Integrity]); FAR 15.201 (Exchanges with Industry Before Receipt of Proposals); and FAR 5.101(b) (Methods of Disseminating Information)

### **Issues/Questions**

- When is it appropriate to issue a DRFP?
- What should a DRFP include?
- What are the requirements for publicizing a DRFP?
- What benefits are accrued from issuing a DRFP in advance of issuing a final RFP?
- How should comments received in response to the DRFP be handled?

### **Discussion Topics**

#### **When is it appropriate to issue a Draft Request for Proposal (DRFP)?**

It is appropriate to use DRFP's whenever, in the Contracting Officer's (CO's) judgment, the acquisition will benefit significantly from early involvement from interested parties. Considerations in determining the feasibility of issuing a DRFP in advance of an RFP for an acquisition include: complexity and dollar value, introduction of new business and/or technical

requirements, timing and/or uncertainties as to the clarity of the proposed Statement of Work/Statement of Objective. DRFP's are not used for a noncompetitive procurement.

### **What should a Draft Request for Proposal (DRFP) include?**

To the extent practicable, the DRFP should include all relevant parts of the solicitation, including the model contract, Statement of Work (SOW), technical requirements, instructions to offerors (Section L), and the evaluation criteria (Section M). The DRFP should identify the point of contact to which comments should be directed, the preferred method by which contact may be established, i.e., via e-mail, facsimile, and the date by which all comments are due, etc. The DRFP should include a statement to the effect that "information presented in the DRFP is subject to change and that incurring expenses or beginning to formulate an approach in preparation for the acquisition based on information presented in the DRFP is solely at the potential offerors risk".

### **What are the requirements for publicizing a DRFP?**

The Contracting Officer/Contract Specialist should publicize the DRFP in much the same manner as the final RFP would be publicized, using a variety of methods, such as posting announcements on the INTERNET using Federal Business Opportunities for Vendors (FBO for Vendors) at <http://www.eps.gov/spg/>, posting the DRFP on the DOE Industry Interactive Procurement System (IIPS) at <http://e-center.doe.gov> and those methods addressed at FAR 15.201(c) and FAR 5.101(b). Publication and response times for proposed contract actions at FAR 5.203 are not mandatory for DRFPs. The Contracting Officer should establish reasonable times for receipt of responses to DRFPs that reflect the nature of the product or service, the supply base, and the specifics of the individual procurement. Requirements shall be synopsized in accordance with FAR 5.203 prior to issuance of the solicitation. Alternatively, the notice of availability of a DRFP and a future date when the solicitation will be issued may be included in the same synopsis.

### **What benefits are accrued from issuing a DRFP in advance of issuing a final RFP?**

DRFP's provide an effective means to resolve potential contract issues and obtain feedback from prospective offerors in advance of issuing the final RFP. In certain cases, such information can lead to (1) significant cost savings and productivity enhancements; (2) reduce proposal preparation and evaluation time; (3) reduce the need for solicitation amendments and preclude other delays that disrupt timely completion of the acquisition; or (4) result in better proposals, end products and services.

### **How should comments received in response to the DRFP be handled?**

The Contracting Officer/Contract Specialist, in conjunction with support from appropriate technical or other functional advisory staff as merited (i.e., cost price analysts, legal counsel, Small and Disadvantaged Business Specialist) should carefully review each question to: (1) determine whether the suggestion has merit and should be pursued; (2) develop a recommended

course of action considering the impact to other processes and elements of the RFP or program; and (3) develop a proposed Government response. Care must also be taken to ensure that incorporating a comment into the RFP does not give an unfair competitive advantage to an offeror.

Though not mandatory, two suggested means by which the Contracting Officer/Contract Specialist may disseminate the government's response to industry are:

(1) A DRFP Amendment or letter may be prepared that formally responds to the comments received. This response may group similar questions together for a single response. The amendment or letter should not attribute comments to any particular offeror. The amendment or letter should include a clear statement as to the comments disposition, i.e., accepted, rejected, deferred, etc., along with an explanation as to why that action was taken. The response should be made publicly available in the same manner as the DRFP.

(2) If the nature of the comment or the government response is complex, it may be beneficial for the government to convene a presolicitation conference to discuss the responses to the DRFP comments. Notice of the conference should be publicly announced in a manner to ensure that all interested parties/potential offerors have an opportunity to respond/attend. Minutes of the conference should be maintained which include a written response to all of the DRFP comments received. Copies of these minutes should be publicly distributed in the same manner as the DRFP, e.g., through posting on the website.

Regardless of which response method or combination of methods is used, it is critical that all potential offerors be treated fairly and given identical information so as not to provide a basis for a perception of unfair competitive advantage by any one offeror or group of offerors.

If a private conference is requested, the Contracting Officer/Contract Specialist must take special care to ensure that either: (1) no additional information is provided during the conference which would give the offeror an unfair competitive advantage; or (2) ensure that any new information provided during the conference is provided to all potential offerors.

## **PART II PREPROPOSAL CONFERENCES**

### **Background**

A preproposal conference is a technique to promote early exchange of information with industry after the solicitation is issued, and prior to receipt of proposals. The principal purpose of a preproposal conference is to provide for uniform interpretation and understanding of work statements, specifications, and other technical and administrative requirements by all prospective contractors responding to competitive solicitations.

Additionally, in conducting the preproposal conference, remember the following: (1) release information on a fair and equitable basis consistent with regulatory and legal restrictions; (2) establish clear ground rules for the conduct, timing, and documentation of preproposal conferences; (3) protect any proprietary information you may be given during this process; and (4) request legal counsel advice if any questions arise about any preproposal exchanges.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 3.104-2 (General [Procurement Integrity]); and FAR 15.201 (Exchanges with Industry Before Receipt of Proposals)

### **Issues/Questions**

- When is it appropriate to conduct a preproposal conference?
- What should preproposal conferences accomplish?
- How should the preproposal conference be conducted?

### **Discussion Topics**

#### **When is it appropriate to conduct a preproposal conference?**

It is appropriate to conduct a preproposal conference when issues exist which make a government and industry dialogue necessary. The following factors often drive a need to conduct a preproposal conference: (1) the complexity of the project; (2) the desirability of having prospective contractors visually examine Government owned facilities (Site visits are normally conducted in conjunction with preproposal conferences); (3) the need to disseminate additional background data; (4) exceptional demands on a contractor's capability; (5) unavoidable ambiguities in the statement of work; or (6) complications involving access to classified material.

#### **What should preproposal conference accomplish?**

The preproposal conference should accomplish the following: (1) outline principal features of the project, (2) fully describe all details of the work statement and specifications, (3) explain and clarify instructions for completing the proposal, (4) provide an opportunity for offerors to ask

questions and receive answers, thus providing them with a better understanding of the government's requirements, and (5) stress the importance of significant elements of the solicitation.

### **How should the preproposal conference be conducted?**

The Contracting Officer should publicize the arrangements for the conference in the solicitation. Attendees should be advised that remarks and explanations made by government personnel do not qualify, change, or otherwise amend the terms of the solicitation, and that only a formal, written amendment to the solicitation is binding. A written record of the conference proceedings should be kept. This record of proceedings, including any new material provided at the conference and questions and answers addressed should be provided to all potential offerors, regardless of whether they attend the conference.

Where possible, written questions should be requested in advance, and answers should be prepared in advance and delivered during the conference. Questions answered during the conference should be included in the record of conference proceedings.

As soon as possible after the preproposal conference, the Contracting Officer should ensure that all potential offerors receive the written record of the conference proceedings, including any new material provided, and any questions and answers addressed. If any of the terms and conditions or requirements of the solicitation were changed, a formal solicitation amendment should be issued.

Additionally, a site tour should be part of any preproposal conference if there is a site to tour.'

### **Alternatives or In Addition to a Preproposal Conference**

In addition to a preproposal conference, or in lieu thereof, the following approaches may also be used:

- Establish a reading room that contains public information regarding the requirement. A reading room is mandatory for any procurement. This can be accomplished either through a web-based electronic reading room, a walk-in reading room, or both.
- The Request for Proposal (RFP) should identify how questions regarding the RFP are to be submitted, and if a response to a question is appropriate, it should be conveyed to all potential offerors either by using the web, by letter, or by an amendment to the RFP when appropriate.
- One on one meetings can be held with potential offerors prior to submission of proposals with the express intent to receive feedback from potential offerors regarding the RFP. Based on these meetings, public information and exchanges

should be provided to all parties by using the web, by letter, or by an amendment to the RFP when appropriate. Note: Care must be taken during these one on one meetings to not provide information that might give a potential offeror an unfair competitive advantage.



**PART III SCORING METHODOLOGIES****Background**

The objective of an acquisition conducted under source selection procedures is to select the source or sources which represent the best value to the Government. FAR Part 15 discusses source selection processes and techniques, including tradeoff processes. The tradeoff process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. FAR 15.305 (a) Proposal Evaluation, states: "(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and sub-factors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file."

The Source Selection Authority (SSA) is required to follow the evaluation criteria and relative weighting factors set forth in the solicitation. How the SSA achieves this objective is not prescribed by the Regulations. In fact, the FAR specifically states that the rating method need not be disclosed in the solicitation. GAO has repeatedly held that Rating Plans are internal documents, and that offerors are not entitled to enforce the provisions of a Rating Plan that were not included in the solicitation. Beyond the implications in the FAR that a rating method will be used, there is no known regulatory requirement for creation of a Proposal Scoring or Rating Plan. In theory, an SSA could review the proposals, identify the strengths and weaknesses of the proposals and based on his/her judgment, following the evaluation factors and weightings in the solicitation, reach a selection decision. This approach is simply not practical and SSAs normally employ the use of an advisory board, team or panel to evaluate the proposals. Scoring/Rating Plans have evolved as the structured means of communicating the relative standings of each offeror to the SSA. In the end however, the SSA must base the selection decision on the strengths, deficiencies, and weaknesses of the proposals submitted - not merely on the score derived through use of a Proposal Scoring or Rating Plan.

A Proposal Scoring or Rating Plan helps evaluators assess a proposal's merit with respect to the evaluation factors and significant sub-factors in the solicitation. It uses a scale of words, colors, numbers, or other indicators to denote the degree to which proposals meet the standards for the non-cost evaluation factors. Some commonly used rating systems are adjectival, color coding, and numerical. What is key in using a rating system in proposal evaluations is not the method or combination of methods used, but rather the consistency with which the selected method is applied to all competing proposals and the adequacy of the narrative used to support the rating.

A traditional Scoring or Rating Plan is comprised of three basic elements: (1) evaluation factors and sub-factors set forth in the solicitation; (2) a rating system (e.g., adjectival, color coding, numerical, or ordinal); and (3) evaluation standards or descriptions which explain the basis for assignment of the various rating system grades/scores.

**Applicable statutes, procurement regulations, or small business regulations**

FAR 15.305 (Proposal Evaluation); FAR 15.505 (Preaward Debriefing of Offerors); and FAR 15.506 (Postaward Debriefing of Offerors)

**Issues/Questions**

- What should be considered when developing evaluation standards?
- What are the most common types of rating systems?
- What does a sample rating scale look like?
- Does an evaluation need to include the identification of strengths and weaknesses?

**Discussion Topics**

**What should be considered when developing evaluation standards?**

Evaluators must be able to determine the relative merit of each proposal with respect to the evaluation factors. Evaluation standards/descriptions provide guides to help evaluators measure how well a proposal addresses each evaluation factor and sub-factor identified in the solicitation. (Standards must not introduce unstated evaluation criterion.) Standards permit the evaluation of proposals against a uniform objective baseline rather than against each other. The use of evaluation standards minimizes bias that can result from an initial direct comparison of proposals. Standards also promote consistency in the evaluation by ensuring that the evaluators evaluate each proposal against the same baseline. In developing standards for each evaluation factor and sub-factor, you should consider the following:

- o As you develop your evaluation factors, concurrently draft a standard for each factor and sub-factor.
- o Define the standard by a narrative description that specifies a target performance level that the proposal must achieve in order to meet the standard for the factor or sub-factor consistent with the requirements of the solicitation.
- o Describe guidelines for higher or lower ratings compared to the standard "target."
- o Overly general standards should be avoided because they make consensus among evaluators more difficult to obtain and may obscure the differences between proposals. A standard should be worded so that mere inclusion of a topic in an offeror's proposal will not result in a determination that the proposal meets the standard.
- o While it is sometimes easier to develop quantitative standards because of their definitive nature, qualitative standards are commonly used in source selections.

## **What are the most common types of rating systems?**

### **Common Rating Systems**

#### **Adjectival Ratings**

Adjectival ratings are a frequently used method of scoring or rating an offeror's proposal. Adjectives are used to indicate the degree to which the offeror's proposal has met the standard for each factor evaluated. Subsequent to, and consistent with, the narrative evaluation, an appropriate adjective rating may be given to each factor and sometimes to each significant sub-factor. Adjectival systems may be employed independently or in connection with other rating systems.

#### **Color Coding**

This system uses colors to indicate the degree to which the offeror's proposal has met the standard for each factor evaluated. For instance, the colors blue, green, yellow, amber, and red may indicate excellent, good, satisfactory, marginal, or unsatisfactory degrees of merit, respectively.

**Note:** It should be noted that while the adjectival and color coding systems may be the most difficult to use; they may be the most effective. The reason for the difficulty in use results from having to derive a consensus rating when, for example, one element is weighted at 50% with a Good (Green) rating and one element is weighted at 40% with a Excellent (Blue) rating. Under these systems, there is not a simple process to aid the evaluators to reach the consensus rating. The evaluators must assess the collective impact of evaluation sub-factors on each higher tier factor, and then assess the totality of the evaluation factors as they related to each other under the weighting methodology set forth in the solicitation. This complexity forces the evaluators to thoroughly understand the strengths and weaknesses of each individual proposal in relation to the evaluation criteria and standards in order to reach consensus. While it is critical that this understanding is reflected in the narrative of the evaluation, this depth of understanding aids in the writing of the competitive range and source evaluation report.

#### **Numerical**

This system assigns point scores (such as 0-10 or 0-100) to rate proposals. This rating system may appear to give more precise distinctions of merit; however, numerical systems can have drawbacks as their apparent precision may obscure the strengths and weaknesses that support the numbers. As opposed to the adjective and color coding systems, numeric systems can provide a false sense of mathematical precision which can be distorted depending upon the evaluation factors used and the standards therefore. For example, if a standard indicated there could be no weaknesses, a very minor weakness in a proposal would force assignment of the next lower level rating. This would potentially cause a significant mathematical difference in the proposals.

In any evaluation process, the source evaluation board should first identify the strengths and weaknesses involved with a proposal, and then assign the adjective, color or numeric ratings to the criteria. However, this is particularly important when using numeric system because it is too easy to fall into the trap of relying on the numeric rating as opposed to the actual merits or weaknesses of the proposal. Due to the potential pitfalls with the use of numeric ratings, some organizations do not permit the use of numerical rating systems.

It is strongly suggested that if a numerical system is used, the point system used should be a staggered numeric rating system (e.g., 1, 3, 5, 8 and 10) representing the various ratings and not use a full sequential scale (i.e., 0, 1, 2, 3 . . . 10) to represent the various ratings. If the sequential system is used, it forces the evaluation team to differentiate the rating of each evaluation factor within a range of points (e.g., a satisfactory element of a proposal must receive either 4, 5 or 6 rating points) as opposed to the assignment of a standard 5 point rating for a satisfactory rating. The sequential system also can result in generating overall proposal ratings which are numerically close in the total rating which may disguise the proposal differences. Moreover, using a 1-100 scale often results in using "public school" types of grading levels, even if the rating plan provides differently-that is, an A proposal gets a 90-100, a B proposal gets 80-89, a C proposal gets 70-79, and so on. This results in over half of the rating scale [59 and below] effectively not being used. In our experience, using a 1-100 rating scale usually results in ratings being clustered in the 85 to 90 range and blurs the real distinctions between proposals. It also makes the cost-technical tradeoff more difficult, where the technical difference amounts to just a few percentage points.

### **What does a sample rating scale look like?**

The following is a sample of a rating scale that could be used to evaluate technical and management factors and significant sub-factors. A proposal need not have all of the characteristics of a rating category in order to receive that rating. The evaluators must use judgment to rate the proposal using one of the three systems: numeric, adjectives or colors.

Typical Ratings and Descriptors

**Each rating must have a definition.**

TECHNICAL MERIT ratings reflect the government's confidence in each offeror's ability, as demonstrated in its proposal, to perform the requirements stated in the RFP. Choose one method (e.g., numerical, adjectival, or color) to evaluate technical merit.

NUMERICAL	ADJECTIVAL	COLOR	DEFINITION/STANDARDS
10	Excellent	Blue	Proposal demonstrates excellent understanding of requirements and approach that significantly exceeds performance or capability standards. Has exceptional strengths that will significantly benefit the Government.
8	Good	Green	Proposal demonstrates good understanding of requirements and approach that exceeds performance or capability standards. Has one or more strengths that will benefit the Government.
5	Satisfactory	Yellow	Proposal demonstrates acceptable understanding of requirements and approach that meets performance or capability standards. Acceptable solution. Few or no strengths.
3	Marginal	Amber	Proposal demonstrates shallow understanding of requirements and approach that only marginally meets performance or capability standards necessary for minimal but acceptable contract performance.
0	Unsatisfactory	Red	Falls to meet performance or capability standards. Requirements can only be met with major changes to the proposal.

COST - NOT "RATED." Reflects the evaluated cost. RFP must describe method by which cost will be evaluated (e.g., how probable cost or life cycle cost will be evaluated.)

Alternate language for defining the Standards might be:

**Outstanding: An outstanding proposal is characterized as follows:**

The proposed approach indicates an exceptionally thorough and comprehensive understanding of the program goals, resources, schedules, and other aspects essential to performance of the program.

In terms of the specific factor (or significant sub-factor), the proposal contains major strengths, exceptional features, or innovations that should substantially benefit the program.

There are no weaknesses or deficiencies.

The risk of unsuccessful contract performance is extremely low.

**Good: A good proposal is characterized as follows:**

The proposed approach indicates a thorough understanding of the program goals and the methods, resources, schedules, and other aspects essential to the performance of the program.

The proposal has major strengths and/or minor strengths which indicate the proposed approach will benefit the program.

Weaknesses, if any, are minor and are more than offset by strengths.

Risk of unsuccessful performance is very low.

**Satisfactory: A satisfactory proposal is characterized as follows:**

The proposed approach indicates an adequate understanding of the program goals and the methods, resources, schedules, and other aspects essential to the performance of the program.

There are few, if any, exceptional features to benefit the program.

The risk of unsuccessful performance is low.

Weaknesses are generally offset by strengths.

**Marginal: A marginal proposal is characterized as follows:**

The proposed approach indicates a superficial or vague understanding of the program goals and the methods, resources, schedules, and other aspects essential to the performance of the program.

The proposal has weaknesses that are not offset by strengths.

The risk of unsuccessful contract performance is moderate.

**Unsatisfactory: An unsatisfactory proposal is characterized as follows:**

The proposed approach indicates a lack of understanding of the program goals and the methods, resources, schedules, and other aspects essential to the performance of the program.

Numerous weaknesses and deficiencies exist.

The risk of unsuccessful performance is high.

**Does an evaluation need to include the identification of strengths and weaknesses?**

**Strengths and Weaknesses**

Regardless of whether an adjectival, color, or numerical rating system is used, proposal evaluations must be supported with narrative statements which describe each strength and weakness associated with each aspect of a proposal in relation to the evaluation criteria. The identification of the specific strengths and weaknesses provides the SSA the information needed to make a reasonable and rational basis for the selection decision. The detailed information on strengths and weaknesses is also required by the contracting officials in order to provide the debriefings to unsuccessful offerors required by FAR 15.506(d), as well as contracting and legal

personnel in order to defend any protests which might be filed with the agency or the General Accounting Office.

**PARTIV CONTRACTING OFFICER ROLE AND ROLE OF COUNSEL IN  
THE ACQUISITION PROCESS**

**Background**

One important role of the contracting officer and counsel is to provide business, procurement and legal advice and guidance to the Source Selection Official and Source Evaluation Board Chair. Prior to the initiation of a procurement in a Federal Acquisition Regulations (FAR) Part 15 competitive procurement, the contracting officer and counsel should brief the source evaluation board or the technical evaluation committee (SEB/TEC) on the workings of the source selection process. The briefing should include an explanation of the evaluation process and pertinent documents, conflicts of interest, proposal security, and procurement integrity. The briefing should be designed to inform the evaluators of their responsibilities and provide guidance to the evaluators on how to review the proposals. If there are non-voting members on the SEB/TEC, the contracting officer should explain the limits of their involvement in the selection process. The contracting officer should also advise the SEB/TEC members of the planned schedule for the evaluations, including the time allotted for individual evaluations, consensus discussions, completion of a draft evaluation report, and the anticipated date for completion of the final report. If the solicitation included a requirement for oral presentations by the offerors, the contracting officer must explain the evaluation process for the oral presentations.

In any acquisition the contracting officer should involve the counsel to the greatest extent possible, and as early in the process as possible. The counsel should act as part of the team engaged in making this acquisition occur. At the latest, the counsel should be consulted while the Request for Proposals (RFP) is being drafted. By proceeding in this way, the contracting officer informs the counsel about the requirements of the acquisition, and anticipates problems which may arise in the award. Further, involving the counsel at the earliest part of the process so that he or she is fully informed regarding the program office's needs permits the counsel to suggest options available to accomplish those needs, which may result in changes to the RFP and model contract.

Time consuming activities associated with rework of the evaluation process can be avoided by taking the time for a thorough briefing prior to allowing the evaluators to open the proposals. The contracting officer leads the pre-evaluation briefing; however, the legal advisor to the SEB/TEC should attend and may take the lead for pieces of the briefing. For example, the contracting officer may ask the legal advisor to explain the procurement integrity or conflicts of interest provisions to the evaluators. Additionally, the counsel should be involved in reviewing solicitation strategy; reviewing the RFP (evaluation criteria, award criteria, applicable contract clauses) reviewing the rating plan; overseeing the evaluation; reviewing the competitive range determination (if any); overseeing the discussions (if any); and reviewing the selection, and the selection statement.



**Applicable statutes, procurement regulations, or small business regulations:**

FAR 3.104 (Procurement Integrity); FAR 15 (Contracting by Negotiation); DEAR 915 (Contracting by Negotiation); FAR Part 9.5 (Organizational and Consultant Conflicts of Interest); DEAR 909.5 (Organizational and Consultant Conflicts of Interest); DEAR 952.209-72 (Organizational Conflicts of Interest); DEAR 970.0905 (Organizational Conflicts of Interest); and DEAR 903.104-10 (Violations or Possible Violations)

**Issues/Questions**

- What aspects should the contracting officer brief the SEB/TEC prior to evaluation of proposals?
- What is the role of counsel in the procurement process?

**Discussion Topics**

What aspects should the contracting officer brief the SEB/TEC prior to evaluation of proposals?

Certification requirements for evaluators

The briefing is a good opportunity to make sure that all evaluators have signed the required certifications. Prior to commencing evaluations, evaluators are required to complete confidentiality certificates, conflict of interest certificates, or other certifications established in the rating plan.

Security of proposals

The proposals and any other proprietary or source selection information need to be kept in locked cabinets or locked rooms. The SEB/TEC chairman should arrange for appropriate facilities for safeguarding the proposals and other source selection information prior to the receipt of the proposals. Copies of proposals and proprietary/source selection information should be numbered and tracked by the SEB/TEC chairman or other clearly designated member of the evaluation board (for example, the contracting officer). The contracting officer should inform the evaluators that proposals shall not be taken home. The evaluation and contents of proposals shall not be discussed outside the SEB/TEC with the exception of ex-officio members, procurement advisors, legal advisors, and other selection officials.

Potential individual conflicts of interest

Individual conflicts of interest need to be resolved prior to commencing evaluation. The evaluators need to be reminded to review all contractors, subcontractors, consultants, and teaming arrangements proposed under the procurement and report any potential conflicts of interest to the contracting officer, legal advisor, and the SEB/TEC chairman. Evaluators need to report any relatives employed by the proposing entities, friendships, financial interests, pension benefits, and prior employment. The existence of these relationships does not necessarily mean that a conflict of interest exists, but legal counsel will review the specifics of the situation to determine if a potential conflict exists. The evaluator will then be informed if any actions need to be taken to avoid the conflict of interest. Actions that may be taken include divestment of stock, recusal from review of selected offerors, or removing the evaluator from the source evaluation process.

The evaluators need to be advised against the appearance of a conflict of interest. For example, evaluators should not have lunch or go golfing with offerors or prospective offerors, or engage in any other activity that could give the appearance of a conflict of interest. Evaluators should be encouraged to discuss any questions regarding the appearance of a conflict of interest with the contracting officer and legal advisor.

Procurement Integrity Act

The procurement integrity provisions of the Office of Federal Procurement Policy Act (OFPP Act) (41 USC 423) (commonly referred to as the Procurement Integrity Act) address a variety of issues, but the two of most concern to evaluators are the prohibitions against employment discussions and the release of information regarding a procurement. The provisions of the Procurement Integrity Act are implemented in FAR Part 3.104. The contracting officer should inform the evaluators that civil and criminal penalties, and administrative remedies, may apply to conduct that violates the Procurement Integrity Act and related statutes and regulations. The procurement integrity piece of the briefing to evaluators can either be provided by the contracting officer or the legal advisor to the SEB/TEC.

Employment prohibitions

Evaluators should be instructed to consult with the legal advisor and the legal staff of the agency ethics office regarding any contact with an offeror regarding non-Federal employment as well as questions related to post employment restrictions. In general, evaluators need to be informed that they can't be involved in the source selection process and discuss potential employment with any offerors, including subcontractors and consultants, proposing under the solicitation. This includes submitting resumes to firms. Evaluators need to be told that if they are approached by a firm, they can't leave the door open for employment discussions and tell the firm that conversations about employment will resume after the evaluation is completed.

In fact, the FAR requires that if an agency official is contacted by a person who is an offeror under the solicitation that official must report that contact, in writing, to the official's supervisor and the agency ethics official. The FAR further states that the agency official must either reject

the offer of employment or disqualify himself from further participation in that procurement.

Evaluators should be advised that participation in a Federal agency procurement will result in some post-employment restrictions. Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR Parts 2637 and 2641 and Subsection 27(d) of the OFPP Act and FAR 3.104-3(d). Former Government employees are prohibited from engaging in certain activities, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific activities in which the former employee participated personally or substantially while employed by the Government. Evaluators who have concerns about the post-employment restrictions should be instructed to discuss their situation with the legal staff within the agency responsible for interpreting post-employment restrictions prior to commencing evaluation of the proposals or becoming further involved with the procurement.

### **Disclosure of proprietary or source selection information**

The second area of concern to evaluators is the disclosure of any proprietary or source selection information during the conduct of a procurement. The Procurement Integrity Act prohibits the disclosure of contractor bid or proposal information or source selection information prior to the award of a Federal contract. Evaluators should be informed that source selection information includes: 1) proposed costs or prices; 2) source selection plans; 3) technical evaluation plans; 4) technical evaluation of proposals; 5) cost or price evaluation of proposals; 6) competitive range determinations; 7) ranking of bids, proposals, or competitors; 8) reports and evaluations of source selection panels, boards, or advisory counsel; and 9) any other information marked source selection.

Evaluators should be reminded that they can only discuss contractor bid or proposal information or source selection information with individuals who are authorized, in accordance with applicable agency regulations or procedures, to receive such information. It is useful for evaluators to keep in mind what is public information and what is not. For example, information in the solicitation is public, but the rating plan is not. The weights assigned to the evaluation criteria are not public unless they are identified in the solicitation. Once a competitive range is established, even though the Government has written letters to offerors letting them know whether or not they are in the competitive range, that is not public information. Evaluators should be cautioned against holding any conversations with or answering any questions from offerors. All questions should be referred to the contracting officer.

If a potential violation of the Procurement Integrity Act is reported, the contracting officer is required to determine if there is any impact on the pending award or selection of the contractor.

FAR Part 3.104-7 identifies the procedures the contracting officer and agency are required to follow. Evaluators should be advised that the earlier a potential procurement integrity violation is reported, the greater is the contracting officer's ability to mitigate its effect on the procurement. For example, the contracting officer may be able to mitigate an unauthorized disclosure of information by making that information available to all offerors or by taking other appropriate action. Additionally, evaluators should be advised that if they are asked to prepare information

related to solicitation or the evaluation that they cannot re-delegate the action to a contractor, even if the action appears to be clerical.

It is helpful to provide examples of procurement integrity violations in the briefing so that the evaluators can relate the procurement/legal jargon to real situations they may encounter. For example, in one case a SEB/TEC evaluator allegedly communicated to an offeror in the competitive range, in general terms, how it needed to revise its technical and price proposals in order to receive an award. The potential violation was reported by the offeror and the case was referred to the appropriate criminal investigative organization for further investigation. As another example, a senior level program official asked a support service contractor to assist in developing the statement of work and required labor mix for the re-compete of its own contract. After the violation was reported, the program official attempted to argue that the documents prepared by the support service contractor were only an outline and the information was significantly modified prior to release of the solicitation. This argument was not found to be convincing by the investigative organization.

### **Evaluation process**

The contracting officer should provide an overview of the evaluation process and the steps to be followed. The evaluators should be instructed to review the pertinent documents prior to evaluating the proposals. Evaluators should review and become familiar with the source selection plan/rating plan, statement of work, evaluation scoring sheets, the evaluation criteria in sections L and M of the solicitation, and the established weights for each criterion and sub-criterion.

The proposals need to be individually evaluated by each SEB/TEC member. Evaluations shall be based on the evaluation criteria in the solicitation, and evaluators need to be cautioned against deviating from the evaluation criteria or substituting evaluation criteria.

The contracting officer should discuss the unique aspects of the past performance criteria, and how evaluation of past performance differs from the other criteria. Evaluation under this criterion relies on information provided by the offeror's previous customers.

Evaluators shall be instructed to develop strengths and weaknesses for each criteria that are sufficiently detailed to support the assigned score or adjectival rating. This does not mean that evaluators will assign individual scores or ratings. This depends on the evaluation process established in the source selection plan/rating plan.

Commonly, individual evaluators develop individual strengths and weaknesses, and then the SEB/TEC meets to develop consensus strengths and weaknesses prior to assigning scores. This is the preferred method at the Department of Energy. Evaluators should also be encouraged to use the full range of adjectival ratings or scores.

Evaluators must be cautioned not to compare proposals against each other. Proposals shall be evaluated against the criteria and standards established in the solicitation. FAR Part 15

specifically states that competitive proposals shall be evaluated solely on the factors and sub-factors identified in the solicitation. Evaluators should be instructed that if the information sought does not exist where it is expected, that they should check if it exists elsewhere, such as in the introduction, on a diagram, or in the appendices.

The briefing should advise evaluators to be consistent during the evaluations, scoring, and developing of questions. The contracting officer should instruct the evaluators to discuss questionable issues as a group. Evaluators should be instructed to only credit or fault an offeror once for the same fact or idea unless the solicitation has a redundancy in the criteria. Similarly, evaluators need to evaluate the same fact or idea consistently. If something is noted as a weakness under one proposal, it must be designated as a weakness in other proposals with the same fact or idea.

#### SEB/TEC report and documentation of evaluation

FAR Part 15 states that the source selection records must include "a summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors." The consensus strengths and weaknesses by criterion are included in the SEB/TEC report. The contracting officer should advise the SEB/TEC that the report needs to be complete, accurate, and contain sufficient detail on strengths, weaknesses, deficiencies, and risks to demonstrate to an outside reviewer that the Government's evaluation was fair, reasonable, and unbiased. The evaluators should be informed that the reports prepared by the SEB/TEC must be clear, convincing and supportable, and may be reviewed by the General Accounting Office or a judge during a protest. Some contracting officers encourage evaluators to reference the pertinent part of the applicable evaluation criteria and the applicable page of the offeror's proposal for each strength or weakness. Evaluators should be told to avoid generalizations of a proposal's merits or problems, and instead state the facts that support the conclusions.

The contracting officer must instruct the evaluators to refrain from making personal notes in the proposals and on other documents that are retained. These documents may become part of the source selection record, and personal notes may be used during a protest to show inconsistencies. Evaluators must be advised to stamp all documents and worksheets with "Source Selection Information - See FAR 2.101 and 3.104."

### **What is the role of counsel in the procurement process?**

#### **Counsel Advisory Role**

In some applicable cases, the Assistant General Counsel for Procurement and Financial Assistance, GC-61 acts by advising the Office of Contract Management, ME-62 in relation to all the above actions when the acquisition has been selected for headquarters review. In those cases, GC-61 advises ME-62, in addition to the advice given to the SEB/TEC and Source Selection Official by the applicable field attorney. In this situation, each attorney has a different client: the field attorney advises the SEB/TEC, and the Headquarters attorney advises ME-62. In most

cases, the advice is similar. Nothing prohibits field personnel from consulting the office of the Assistant General Counsel for Procurement and Financial Assistance at any time, but that office generally prefers that field personnel consult with the field counsel in the first instance, and that field consult contact GC-61 when necessary. Furthermore, both the field attorney and GC-61 are involved if there is a protest of any sort.

**PARTV PAST PERFORMANCE AS AN EVALUATION FACTOR**

**Background**

The use of past performance as an evaluation factor adds a new aspect to the evaluation process. As required by FAR 9.1, past performance was generally examined only in the context of a determination of responsibility. Contractors with a history of unsatisfactory performance were considered not responsible contractors. This type of determination generally involved a minimum of paperwork and time. Formal documentation is required only if the contractor is found to be not responsible.

Now past performance must also be examined through a comparative assessment during the evaluation process. The examination is of information regarding a contractor's actions and performance under previously awarded contracts. It is a review of deeds not words. The currency and relevance of information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This assessment is compared with the assessment of the past performance of the competing contractors to help determine which contractor is offering the best value.

Key to the successful use of past performance - and any factor - in the source selection process is the establishment of a clear relationship between the statement of work (SOW), Section L (instructions to offerors), and Section M (evaluation criteria). The factors chosen for evaluation must track back to the requirements in the SOW. They should be reasonable, logical, and coherent.

The use of past performance as an evaluation factor potentially increases the workload and paperwork related to the evaluation effort. The problem is that evaluating past performance requires gathering and evaluating additional information - information not found in proposals. The evaluation of past performance requires making inquiries of third parties about contractor performance on other contracts and evaluating the responses.

Use of past performance as an evaluation factor is mandatory unless the contracting officer documents in the contract file why the evaluation of past performance is not appropriate. It is up to the contracting officer to document the reason that the use of past performance as an evaluation factor is inappropriate.

Using past performance as an evaluation factor depends on the significance of past performance as a discriminator. The purpose of an evaluation factor is to enhance the evaluator's ability to distinguish one proposal from another in terms of its relative worth or value to the government. An evaluation factor that does not help discriminate between proposals should not be used as an evaluation factor.

**Applicable statutes, procurement regulations, or small business regulations**

FAR 8.404 (b) ( Using Schedules); FAR 15.101-2 (b) (Lowest Price Technically Acceptable Source Selection Process); FAR 15.102 (c) (Oral Presentations); FAR 15.202 (a) (Advisory Multi-Step Process); FAR 15.304 (Evaluation factors and significant sub-factors); FAR 15.305 (Proposal evaluation); FAR 15.306 (Exchanges with offeror after receipt of proposals); FAR 16.505 (b) (Order under multiple award contract; and FAR 42.15 (Contractor Performance Information)

**Issues/Questions**

- What past performance information should be requested?
- How should the solicitation aspects regarding past performance be structured?
- How much past performance information should be requested?
- How much weight should be placed on past performance information?
- When and what information can be discussed with offerors regarding past performance?

**Discussion Topics**

**What past performance information should be requested?**

Information requested under section L should be focused on contracts for similar efforts that have been awarded and in place for at least three months. Similar efforts should be defined by the size, scope, complexity, contract type, etc ...

Information concerning past performance by subcontractors should not be requested unless they are a major subcontractor.

It is important to ask for at least two references on each contract. In addition to ensuring that all aspects of the contractor's performance will be discussed, it also ensures that the anonymity of the references can be maintained. FAR 15.306(e)(4) prohibits release of the names of individuals providing reference information about an offeror's past performance.

**How should the solicitation aspects regarding past performance be structured?**

The solicitation should explain that past performance information that is not similar will be considered when a contractor has no past performance information from contracts for similar efforts.

Information from previously established companies and the key personnel from which newly formed companies and mergers are formed should be used to mitigate the newly formed company and merger not having past performance information. Additionally, if there is no Federal contract information, past performance information should be reviewed from other



sources such as state and local government contracts and private sector contracts and subcontracts.

The RFP section M should identify if the information requested to mitigate a company not having relevant past performance information will be rated lower than relevant past performance information.

The RFP section M should indicate that newly formed companies, which cannot mitigate having no past performance information, shall not be given a rating of favorable or unfavorable. What constitutes a not being given a rating of favorable or unfavorable should be included in the rating plan.

The RFP section M should state that, if the government's attempts at gathering and verifying the offerors referenced past performance information fails, and the offeror has been notified and not been able to correct this problem, the offeror will be not be given a rating of favorable or unfavorable.

The RFP section M must stipulate the relative importance of past performance information.

If corporate experience and past performance are separate evaluation criteria do not ask for the same information under each of these criteria, in order to avoid the potential for double counting the same information. Do not confuse evaluation of past experience with evaluation of past performance.

Make certain that section L explains that offerors shall be defined as business arrangements, and each firm in the business relationship (i.e., joint venture, teaming partners, and major subcontractors) will be evaluated on its past performance.

Section L should include a statement that the government may use past performance information obtained from other than the sources identified by the offeror and that the information obtained will be used for both the responsibility determination and the best value decision.

Since past performance evaluation is essentially an informed judgmental decision of the government, in order for the government's decision to withstand scrutiny, the contract file should contain detailed documentation identifying that the past performance information has been appropriately analyzed and verified by the government.

Attempts at gathering and verifying information from the references on how the contractor performed is the responsibility of the government. Questionnaires followed up by telephone interviews have the most success in getting useful and timely responses from references.

Questionnaires that will be forwarded to reference checks should be provided in the RFP for informational purposes only. This allows offerors to know what is important to the government on this contract and helps offerors in their proposal decisions. The questionnaire should be listed as an attachment in Section J, and Section L should note that it will be used to collect past

performance information. The questionnaire should be short. No more than a page to a page and a half of questions should be asked.

Information that supports an entity's past performance, such as awards of excellence presented to the companies that will be performing the work, should be requested.

Avoid formula driven past performance decisions, as past performance is essentially a subjective best value decision.

### **How much past performance information should be requested?**

Be prudent about the amount of past performance information that is requested. It should be a reasonable amount that does not cause excessive burdens for the contractor and the government. Additionally, FAR 42.1503(e) states that past performance information shall not be retained to provide source selection information for longer than three years after completion of the contract. Therefore, the information requested should not go beyond three years past completion of the contract.

### **How much weight should be placed on past performance information?**

It is recommended that under the evaluation criteria of the RFP, past performance should be given a weighting of 25% or be equal to the most heavily weighted non-cost evaluation factors. However, if knowledge and information about the market place reveal that there is strong reason to believe that there are only a few capable offerors, there is substantially no discrimination among these potential offerors' past performance, the Source Selection Board should consider assigning a lesser weight for past performance. This type of situation is more likely to occur under requirements for complex scientific efforts.

Contractor successful performance of relevant past performance information should be rated higher than a contractor that has no past performance information.

For administrative requirements and the less complex scientific requirements, where there tends to be a greater market of capable offerors, past performance should be a very significant factor in the evaluation criterion.

Contracting activities should not downgrade a contractor for filing protests or claims or not agreeing to use alternative dispute resolution (ADR) techniques. Conversely, contracting activities should not rate a contractor positively for not having filed protests or not having made claims or agreeing to use ADR techniques. However, the quality of a contractor's performance that gave rise to the protest or claim may be considered. In other words, while performance must be considered, a contractor exercising its rights may not.

### **When and what information can be discussed with offerors regarding past performance?**

Past performance information is proprietary source selection information. Therefore, section L should explain that the government will only discuss past performance information directly with

the prospective prime or sub-contractor that is being reviewed. If there is a problem with the past performance entities that have formed business arrangements with the prime contractor, such as subcontractors, joint ventures, and teaming partners, the prime contractor can only be informed that there is a problem with the entity under review. The details of the problem cannot be provided, unless the affected entity agrees.

The offeror should be asked to discuss any major problems encountered on the contracts listed and the corrective actions taken to resolve them.

If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond).

The questions asked of the past performance points of contract should be the same. Inconsistency in questions can lead to the potential issue of unequal evaluation of offerors. However, if there is a concern raised based on the responses to questions, then it may be necessary to hold discussions to resolve the matter.

## **PART VI ORAL PRESENTATIONS**

### **Background**

This topic is a digest of the 1996 Office of Federal Procurement Policy Guidelines For The Use Of Oral Presentations. This digest provides the most salient aspects of these Guidelines.

The use of oral presentations is a technique which provides offerors with an opportunity to present information through verbal means as a substitute for information traditionally provided in written form under the cover of the offeror's proposal. Oral presentations can be used as a substitute for written proposals or can be used to augment written proposals and may occur at any time during the acquisition process. Oral presentations are subject to the same restrictions as written information, regarding timing FAR 15.208 and content FAR 15.306. Its major use has been to permit evaluators to receive information as to the capability of the offeror - generally demonstrating its understanding of the work or describing how the work will be performed - directly from the key members of the offeror's team that will actually perform the work. In a number of cases, the evaluators have conducted the oral presentation in the form of an interview, probing for additional information, posing sample tasks or using other techniques to test the ability of the offeror's team.

Certain types of written proposal information, particularly in the technical and management areas, are costly to prepare and time consuming to evaluate. In addition, oral presentations avoid the use of lengthy written marketing pitches and essays. The use of oral presentations allows for greater communication between the government personnel and the offerors' key personnel and often can be used as essentially a "job interview" of the proposed key personnel. Using oral presentations can have the effect of greatly reducing procurement acquisition lead time and costs associated with the source selection process. These advantages are realized by both government and industry.

A list of the advantages is as follows:

- Can save significant procurement lead time;
- Can improve communication and the exchange of information between government and offerors;
- Can reduce government costs;
- Can reduce offerors' costs and increase competition;
- Can make customers feel more involved in contract selection and award; and,
- Can improve ability to select the most advantageous offer.

There is not one best approach for using oral presentations. There are variations in the approach for oral presentations to be considered by the acquisition team when developing the oral presentation methodology. The acquisition team should consider the following when developing the oral presentation methodology:

- media used to record the presentation;
- restrictions on the extent and nature of material used in the presentation;
- the Government participants; the offeror's presentation team; and,
- the amount of time permitted for the presentation.

Additional concerns to be considered are as follows:

- The influence of presentation mannerisms, as distinguished from technical content, on the evaluators' decisions;
- The failure to allow an effective exchange between evaluators and presenters; and
- In some cases, the redundant effort involved in preparing the same material for both oral and written formats.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.102 (Oral Presentations); FAR 15.208 (Submission, Modification, Revision and Withdrawal of Proposals); FAR 15.306 (Exchanges With Offerors After Receipt of Proposals); FAR 15.307 (Proposal Revisions); and the Office of Federal Procurement Policy Guide For The Use Of Oral Presentations.

### **Issues/Questions**

- What instructions should be provided regarding oral presentations?
- How should oral presentations be prepared for?
- How should the oral presentations be handled?
- How should oral presentations be evaluated?

### **Discussion Topics**

**What instructions should be provided regarding oral presentations?**

### **Proposal Preparation Instructions**

The instructions governing the oral presentation should encourage the offeror to not develop overly elaborate presentations or presentation material. The instructions for oral presentation should include the following:

- Description of the topics that the offeror must address and the technical and management factors that must be covered;

- Statement concerning the total amount of time that will be available to make the presentation;
- Description of limitations on Government-offeror interaction during, and, if possible after, the presentation;
- Statement whether the presentation will constitute discussions as defined in FAR 15.306(d);
- Statement whether the presentation will encompass price or cost and fee;
- Description and characteristics of the presentation site;
- Rules governing the use of presentation media;
- The anticipated number and types of positions of the Government attendees;
- Description of the format and content of presentation documentation, and their delivery; and
- Statement whether the presentation will be recorded (e.g., videotaped).

The solicitation should require that, as part of the presentation, the offeror will provide a listing of names and position titles of all presenters and copies of all slides and other briefing materials that will actually be used in the presentation. It is preferable that such materials be provided to the evaluation team prior to the presentation to permit the evaluators to familiarize themselves with the information. Materials referenced in a presentation, but not an actual part of the presentation, must not be accepted, or used in, evaluations.

### **How should oral presentations be prepared for?**

#### **Initial Preparation**

The order of presenters must be determined. A lottery is most often used to determine the sequence of presentations by offerors. The time between the first and the last presentation should be as short as practicable to minimize any advantage to the later presenters. In addition, oral presentations should be scheduled as soon as practicable after receipt of proposals.

The facility in which the presentation is to occur must be determined. In most cases the facility is one selected and controlled by the buying activity. However, nothing would preclude an oral presentation being given at an offeror's facility.

The selection of a facility can be reduced to the following:

- Make it comfortable for both the presenters and the Government evaluators. The room should be large enough to accommodate all of the participants, the recording equipment, lighting, audio-visual aids, and furniture.
- Make it accessible.
- Make it available, if possible, for inspection by the offerors prior to the time set for the actual presentation.

The solicitation should, to the extent practicable, describe the physical characteristics of the facility and resources available to the offeror. In addition, the solicitation should be clear as to what types of equipment will be available to the offeror for use in the presentation, what equipment, if any, should be provided by the offeror, and any prohibitions regarding equipment types and uses.

Prior to the presentation, the Contracting Officer should review the ground rules of the presentation session with the offeror. Additional matters for discussion include any restrictions on Government-offeror communications, information disclosure rules, documentation requirements, and housekeeping items.

Also, prior to the commencement of the presentation, the contracting officer should remind the Government participants of their responsibilities during and following the presentation. They should be advised that an oral presentation is procurement sensitive and that they may not discuss, within or outside the agency, (except among themselves) anything that occurred or was said at a presentation.

As a general rule, all of the Government evaluators should be present at every presentation. The Contracting Officer must attend and should chair every presentation. In a GAO case the offeror protested that the agency erred in not having the Source Selection Official (SSO) attend the presentation. The GAO stated that they are unaware of any requirement that an SSO attend presentation sessions.

Presentations by the offeror should to be made in person since, through the use of video conferencing a measure of government control of the meeting may be diminished. Accordingly, the submission of video tapes or other forms of media should not be authorized and should be rejected.

In addition, it is strongly recommended that the presenters should be the actual key personnel who will perform or personally direct the work being described, such as project managers, task leaders, and other in-house staff.

There are two tools available to manage the time each offeror is allotted for the oral presentation. First, and most obvious, is the imposition of a firm time limit. Firm time limits for the presentation must be established in the RFP, and each offeror must be allotted the same amount of time. Second, time may be controlled by restricting the amount of presentation material that an offeror may use during the presentation. Agencies used a combination of both a firm time limit and restrictions on information to control the time. There is no single or ideal amount of time to be allotted. The general rule of using the complexity of the procurement requirement to determine the time needed for the oral presentation may not be a reliable indicator. Another factor to consider when determining the proper amount of time is the effect on both the presenters and the evaluation team. The longer the presentation goes on the harder it is on both parties to stay focused on the presentation. Furthermore, by limiting the amount of time available for the presentation, sales pitches and theatrics can be minimized. The length of time spent on each part of the presentation should be left to the offeror's discretion. It is not generally advisable

to limit the time of individual topics or sections within the presentation; that can be the responsibility of the presenter.

### **How should the oral presentation be handled?**

#### **The Presentation**

One of the more problematic areas of the oral presentation approach is the nature and extent of communications between the offeror and the Government evaluation team. This is largely due to the strict rules established in regulation regarding communications with offerors during the course of the solicitation process.

The term "oral presentation" is not synonymous with "oral discussions" as defined in Section 15.306 of the Federal Acquisition Regulation. Oral discussions, as envisioned by the FAR, generally consist of verbal communications between the Government and an offeror that provides an opportunity for an offeror to explain, supplement, or enhance written material previously provided to address evaluated deficiencies and significant weaknesses in the proposal, with the end objective being the submission of a revised proposal by the offeror. The FAR prescribes strict controls (see FAR 15.306, 15.306(d), and 15.307) over when, where, and to what extent, the Government can communicate with an offeror regarding its proposal.

This is done in order to ensure fairness in the evaluation process. The result is a very rigid and somewhat unnatural communication process. As such, oral presentations, by their very nature can become problematic because of the concern about inadvertently triggering the rules regarding discussions. As stated earlier, restrictions on communications between the Government and the offeror should be addressed by the Contracting Officer to all parties prior to the commencement of the presentation.

Another significant area of concern is the record of the oral presentation. FAR 15.102(e) states that the Contracting Officer shall maintain a record concerning what the government relied upon to make a source selection decision. The method and level of detail is up to the agency and must be communicated to the offerors prior to commencement of the oral presentation. Some examples of records include videotaping, audio tape recording, a written record, Government notes, and copies of briefing slides or presentation notes. A caution on the use of video- and audio-taping is needed. Since the tape will become part of the official record, it may be available to the public under the Freedom of Information Act. Like a written proposal, the tape must undergo review by both the Government and the offeror whose presentation is being requested, and a redacted version of the tape must be generated. Because of the tape media, this can be both difficult and time consuming.

In a GAO case, a protestor claimed that the presentation/discussion sessions had not been recorded. In this case, the contemporaneous record consists of handwritten notes taken by the agency. The offeror did not provide the agency with any presentation materials during its presentation. The GAO ruled that given that "government notes" are specifically mentioned in FAR 15.102(e) as a permissible method of maintaining a record of oral presentations, and given



the lack of any prejudicial disagreement between the parties as to what was said during the presentation, the protestors complaint provides no basis to challenge the award.

### **How should the oral presentation be evaluated?**

#### **Evaluation**

There is no firm rule regarding the most appropriate time to evaluate the presentation. Some agencies have elected to perform the evaluation immediately upon conclusion of each presentation. Other agencies have performed the evaluations of presentations after all of the presentations have been made. If practicable, it is recommended to score the oral presentations immediately after each presentation is made. If the latter approach is chosen, it is recommended that the evaluators should caucus following each presentation to exchange reactions, summarize potential strengths and weaknesses, and verify perceptions and understandings.

**PART VII**

**CLARIFICATIONS VERSUS COMMUNICATIONS**

**Background**

Clarifications and Communications are defined in the Federal Acquisition Regulation (FAR) as follows:

**Clarifications** are limited exchanges between the Government and offerors that may occur when award without discussions is contemplated (see FAR 15.306 (a)).

**Communications** are exchanges between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range (see FAR 15.306 (b)).

**Discussions** are negotiations conducted in a competitive acquisition, that take place after establishment of the competitive range (see FAR 15.306(d)).

The difference between what constitutes discussion or clarification has been a prominent problem within government contracting activities. A discussion between the Contracting Officer (CO) and an offeror obligates the CO to conduct discussions with all offerors in the competitive range, however, a request for clarification does not. When a CO communicates with some but not all offerors in the competitive range, other offerors may allege that they have been improperly excluded from discussions and thereby denied an equal opportunity to compete and may protest the source selection.

The CO may enter into communications with offerors who may or may not be included in the competitive range and not be obligated to communicate with the other offerors. The exchange may include critical information pertaining to the acceptability of the proposal or past performance concerns.

The objective of exchanges, including clarifications and communications, is to allow the Government to meet its needs in the most effective, economical and timely manner. However, there are limitations as to how this can be accomplished. Prior to the Clinger-Cohen Act, there were prohibitions on technical leveling and auctioning that have been removed from the FAR. However, there are new prohibitions in FAR 15.306 (e) specifically forbidding: (1) favoring one offeror over another; (2) revealing an offeror's technical solution including unique technology, innovative and unique uses of commercial items, or any other information that would compromise an offeror's intellectual property; (3) revealing the names of individuals proving past performance information, knowingly furnishing source selection information; or (5) revealing an offeror's price without permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable.

Another important limitation during pre-competitive range exchanges of information is that clarifications and communication shall not provide an opportunity for proposal revisions. If this happens, all other offerors must also be allowed to revise their proposals. This can become especially complicated during oral presentations since an important goal of oral presentations is to provide an opportunity for dialogue among the parties. Since oral proposals generally include a session of questions and answers, care must be taken that the questions asked and the answers received do not modify the oral proposal presented. The CO must anticipate problems, take care to treat all offerors equally and keep records of all such communications.

Clarifications are used to enable the Contracting Officer to clarify certain aspects of proposals in order to proceed to award without discussions. Communications are used to clarify areas of ambiguity in order to determine whether the affected proposal should be included in the competitive range.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.306 (Exchanges with Offerors after Receipt of Proposals); and FAR 52.215-1 (Instructions to Offerors--Competitive Acquisition)

### **Issues/Questions**

- What should clarifications include?
- What should communications be used to accomplish?
- What are the limitations on pre-competitive range communications?
- How are clarifications and communications appropriately used?

### **Discussion Topics**

#### **What should clarifications include?**

1. To learn the relevance of past performance information
2. To respond to adverse past performance information if the offeror has not previously had that opportunity
3. To resolve minor or clerical errors such as
  - Obvious misplacement of decimal point in proposed price or cost information
  - Obviously incorrect prompt payment discount
  - Obvious reversal of price f.o.b. destination and f.o.b. origin or
  - Obvious error in designation of the product unit
4. Resolve issues of offeror responsibility or acceptability of the proposal as submitted.

The key word in applying clarifications is "limited" communication. Clarifications are permitted to give the offeror an opportunity to make clear and obvious key points about the proposal as originally submitted. The offeror may not revise, expand (by adding new information that enhances the proposal), or amplify its proposal. The intent of clarifications is to remove obvious ambiguity, not to permit the offeror to improve its position by drawing inferences from the Government's questions/information gathering exchanges and using those inferences to shade the meaning of the original proposal so that it becomes more attractive and more beneficial to the Government.

Of course, any opportunity for revision or enhancement must be made available to all offerors with proposals deemed acceptable for inclusion in a competitive range.

Communications are exchanges between the Government and offerors after receipt of proposals with the purpose of establishing a competitive range. Communications are authorized only when the offeror is not clearly in or clearly out of the competitive range. In other words, communications are used to determine whether an offer has a reasonable chance for award, i.e., should be included in the competitive range.

Specifically, communications:

- must be held with offerors whose past performance information is the determining factor that would prevent them from being in the competitive range. Adverse past performance must be addressed if the offeror has not had a prior opportunity to respond
- may be held with other offerors whose exclusion from or inclusion in the competitive range is uncertain.

#### **What should communications be used to accomplish?**

- Enhance the Government's understanding of the proposal (again, in order to determine whether to include the proposal in the competitive range):
- May address ambiguities of concern in the proposal (perceived deficiencies, weaknesses, errors, obvious omissions or mistakes)
- May address information relating to relevant experience
- Allow reasonable interpretation of the proposal (but not to enhance or revise it)
- Facilitate the Government's evaluation process

As stated previously, neither clarifications nor communications are permitted to be discussions in the pre-competitive range phase. Once a competitive range has been established, communications will be expanded to include discussions and may also include additional clarifications.

#### **What are the limitations on pre-competitive range communications?**

- Cure proposal defects or material omissions.

- Materially alter the technical or cost elements or the proposal .
- Otherwise revise the proposal.

Should any of the above circumstances occur, discussions have ensued. The Contracting Officer must then hold the same level of discussions with all offerors. For all practical purposes, the Contracting Officer has then established a competitive range that consists of all offerors. This could lead to holding discussions with offerors that do not have acceptable proposals and most probably would not be included in the competitive range. Accordingly, it is important not to let pre-competitive range communications stray into discussions.

### **How are clarifications and communications appropriately used?**

Clarifications and communications are effective tools when used appropriately and well documented. They allow some limited exchanges with offerors to facilitate the Government's decisions concerning award without discussions or inclusion in the competitive range. Invocation of either clarifications or communications with one offeror does not require exchanges with all offerors - if they are handled correctly and documented carefully.

Care needs to be taken by the Contracting Officer to ensure that the exchanges are within the limits defined in FAR 15.306 (a) and (b) and that no offeror is allowed to revise its proposal as the result of these types of exchanges.

As with all elements of the source selection/negotiation process, clarifications and communications must be carefully documented by the Contracting Officer to insure that there is no appearance that one offeror is favored over another. The nature and extent of the exchanges needs to be set out clearly for the record.

## **PART VIII COST OR PRICE ANALYSIS**

### **Background**

Probable cost to the Government is a mandatory evaluation factor, FAR 15.404-1 (d). Thus, this element must be evaluated in all procurements. There are two aspects of this evaluation. First, the contracting officer must ensure that the contract price, or cost and fee, is fair and reasonable. Second, in cost-reimbursement contracts the contracting officer must determine the probable cost of performance and use that cost in the selection process. The contracting officer shall use cost or price analysis to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the work. The contracting officer shall document the cost or price evaluation.

The term "cost or pricing data" means all facts that, as of the date of agreement on the price of a contract, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.401 (Definitions); FAR 15.403 (Obtaining Cost or Pricing Data); FAR 15.404-1 (Proposal Analysis Techniques); and FAR 31.201-4 (Determine Allocability)

### **Issues/Questions**

- What is price analysis and when should it be performed?
- What is cost analysis and when should it be performed?

### **Preferred Approaches**

#### **What is price analysis and when should it be performed?**

##### **Price Analysis**

The contracting officer is required to make a price analysis on every procurement to ensure that the overall price to be included in the contract is fair and reasonable.

In the competitive negotiation process, price analysis is the preferred technique for determining price reasonableness because it permits the contracting officer to make the determination without a detailed analysis of the cost and profit elements of each proposal using cost analysis techniques,

Price analysis is generally based on data obtained from sources other than the prospective contractor. This data is gathered by the Government negotiating team from as many sources as

possible. Generally, to assure that the price being included in the contract is reasonable, a sound price analysis will be based on several different types of data.

The contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis.

Comparison of proposed prices received in response to the solicitation. In this case competition is relied on to ensure that the costs are fair and reasonable.

Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity and the reasonableness of the previous prices can be established. A determination must be made that ensures that the price that is being compared to the proposed price has been determined to be fair and reasonable, either through presence of adequate price competition or some other manner such as cost or price analysis.

Use of parametric estimating. This analysis tool is used to identify inconsistencies in pricing that require further review. It is a technique used to estimate a particular cost or price by using an established relationship with an independent variable. Steps to follow when using this technique are:

- Define the dependent variable (e.g. cost dollars, hours, and so forth.)
- Select the independent variable to be tested for developing estimates of the dependent variable.
- Collect data concerning the relationship between the dependent and independent variables.
- Explore the relationship between the dependent and independent variables.
- Select the relationship that best predicts the dependent variable.
- Document your findings.

Comparison between competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

Comparison of proposed prices with independent Government cost estimates.

Analysis of pricing information provided by the offeror. Sufficient information must be obtained to determine the reasonableness of the proposed price. When there is insufficient information available from other sources, information must be requested from the contractor that is sufficient to determine a fair and reasonable price. Care must be taken to ensure that you request only the required information and not certified cost and pricing.

## **What is cost analysis and when should it be performed?**

### **Cost Analysis**

Cost analysis is used to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Cost analysis is: (1) the review and evaluation of the separate cost elements and profit/fee in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and (2) Application of judgment.

A cost analysis must be performed anytime that certified cost and pricing data is required as defined in FAR 15.403-(4)(a)(1). A proposal must be analyzed to determine what costs to use in developing your negotiation objective and what price you determine to be fair and reasonable. When using cost analysis to negotiate contracts a price analysis must also be performed as it is possible to assure that all of the specific cost elements in a proposal are reasonable and determine that the overall price is not.

In accordance with FAR 15.404-1(d)(2), a cost realism analysis when awarding a cost type contract must be performed. This is a special analysis required primarily to ensure that proposed costs are not unrealistically low. In addition, this analysis provides the foundation for estimating the fee. Furthermore, a cost realism analysis may also be used on competitive fixed-priced incentive contracts or, in exceptional cases, on other competitive fixed-price type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors proposed costs have resulted in quality or service shortfalls (See FAR 15.404-1(d)(3)). Additionally, one of the criteria required for the determination of reasonableness and allocability is the determination that the cost is allocable to the contract. The FAR at 31.201-4 states that "a cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship.

Subject to the foregoing a cost is allocable if it (a) Is incurred specifically for the contract; (b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or (c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown".

**Direct Costs:** Those costs that are incurred specifically for the contract are identified as direct costs. These costs take the form of material, labor, tooling, subcontract costs and other direct costs. There are two aspects of these costs that must be analyzed, volume and unit price. As an example, the amount of labor hours, rates and skill mix proposed must be analyzed to determine if they are reasonable to perform the contract.

**Indirect Costs:** Indirect costs are (1) costs that cannot practically be assigned directly to the production or sale of a particular product. In accounting terms such costs are not directly identifiable with a specific cost objective, or (2) direct costs of such minor amount that the costs associated with directly accounting for them exceed the benefit of directly accounting for them.



These costs may be treated as indirect costs provided that the accounting treatment is consistently applied and it produces substantially the same results as treating the cost as a direct cost.

The term indirect cost covers a wide variety of cost categories and the costs involved are not all incurred for the same reasons. A firm may have as few as one or as many as one hundred cost accounts. In general indirect cost accounts fall into two major categories:

**Overhead:** These are indirect costs incurred primarily to support specific operations. Examples include: material overhead; manufacturing overhead; engineering overhead; field service overhead; and site overhead.

**General and Administrative Costs (G&A):** These are management, financial, and other expenses related to the general management and administration of the business unit as a whole. These costs may be either incurred by or allocated to the general business unit. Allocation occurs when home office expenses are allocated to a division as a business unit. Examples of G&A costs include; salary and other costs of the executive staff of the corporate or home office; salary and other costs of such staff services as legal, accounting, public relations, and financial offices; selling and marketing expense.

## **PART X COST/TECH TRADEOFFS UNDER "BEST VALUE" PROCUREMENTS**

### **Background**

Under a "Best Value" continuum there is a recognition that the Government always seeks to obtain the best value in negotiated acquisitions using any one, or a combination, of source selection approaches, and that the acquisition should be tailored to the requirement. At one end of this continuum is the low priced technically acceptable strategy, and at the other end is a process by which cost or price, past performance, and technical considerations can be traded off against each other to identify the proposal that provides the Government with the overall best value. Tradeoffs are used when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

A best value analysis lends itself to determining the lowest cost alternative. Best value procurements involve tradeoffs between cost, technical and past performance--For example, if the government's requirement needs are to increase efficiency and thereby reduce the agencies operating cost, the purchase of a high end computer at a high price may be a better value than a low end computer at a low price in achieving these requirements.

Establishing the evaluation scheme allowing for a cost/technical tradeoff decision allows for a great deal of discretion and the exercising of judgment by the Source Selecting Official (SSO).

### **Applicable statutes, procurement regulations, or small business regulations**

Federal Acquisition Regulation (FAR) 15.101-1 (Tradeoff Process) and FAR 15.308 (Source Selection Decision)

### **Issues/Questions**

- What are the steps in performing a cost/tech tradeoff?
- What documentation is needed for a tradeoff decision?

### **Discussion Topics**

#### **What are the steps in performing a cost/tech tradeoff?**

#### **Steps in Performing a Cost/Tech Tradeoff**

The Request For Proposal (RFP) should contain language which establishes the procedures that allow award to other than the lowest price offeror or other than the highest technically rated offeror. After establishing all factors to be evaluated and their relative importance, the RFP must state whether all evaluation factors other than cost or price, when combined, are significantly

more important than, approximately equal to, or significantly less important than cost or price." See FAR 15.101-1(b)(2).

An evaluation of all the technical and management criteria should be performed in accordance with the evaluation scheme provided for in the RFP. It is important for the source evaluation team to develop written narratives which describe the strengths and weaknesses of each offer as they are important tools in making and documenting a tradeoff decision.

The price the Government will use in making a tradeoff decision should be defined in the RFP. For a fixed price offer, this will usually be the offered price. For a cost reimbursable contract, this may be calculated as a "most probable cost" under cost realism procedures.

If the Government receives an offer which, when evaluated offers both the lowest evaluated price and the highest rated technical/management offer, no tradeoff analysis is required. If however, that is not the case, the SSO should determine whether the value of technical and management differences between proposals justifies paying the cost differential between the proposals. The ability to differentiate meaningfully among the proposals is very important in making this decision. Often an RFP will state that the closer the technical score is, the more important cost will become.

### **What documentation is needed for a tradeoff decision?**

#### **Documentation of Tradeoff Decision**

In accordance with FAR 15.308, source selection decision, "The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSO, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision".

The agency files should contain documentation which demonstrates that its evaluation of the offerors responses to a Request for Proposals was reasonable and in accordance with the criteria outlined in the RFP. In a protest, given the discretion granted to agencies in conducting best value procurements, disappointed offerors generally will have only two legal bases for challenging an agency's cost/technical tradeoff analysis-first, that the agency's underlying cost and technical evaluations that formed the basis for the cost/technical tradeoff are inconsistent with the terms of the solicitation, and second that the cost/technical tradeoff decision was unreasonable. There is no legal requirement that the agency quantify any cost/technical tradeoffs in dollars. An agency should use whatever evaluation approach (e.g., narrative, quantification) that best fits its needs. For example, agencies can use narrative explanations of its cost/technical tradeoff so long as it is reasonable and consistent with the criteria identified in the RFP. Some examples of rationale for the business judgments and tradeoffs made by the Source Selection Authority include, but are not limited to, the amount of cost differential, project or service criticality, and potential consequences to the DOE in the event of poor performance. The

Include scores, adjectival ratings, and relative rankings of offerors in the evaluation report.

The level of detail of the evaluation documentation is dependent on the nature, scope, and complexity of the acquisition. Evaluated strengths, weaknesses, and deficiencies must be addressed in sufficient detail to support the rating or ranking given.

The report should reflect the process used to evaluate proposals (consistent with the rating or source selection plan).

The evaluation report should either incorporate, attach, or reference all relevant evaluation information upon which the panel or board used to arrive at its consensus evaluation, e.g., audits reports, technical evaluation reports, etc.

Develop a comparative assessment of proposals that can be used by the source selection authority (SSA) as a basis for making a selection decision.

Provide sufficient information so that the SSA can clearly understand the area being evaluated and how it relates to the stated evaluation criteria.

Provide information that helps the SSA appreciate distinctions among proposals and the relative significance of those distinctions.

Develop documentation which the Government can use as a basis for debriefing unsuccessful offerors.

The report can become either the "script" for the oral debriefing or written excerpts from the report can be provided to individual offerors as a part of a written debriefing.

Consider that the evaluation report may be reviewed by a third party, e.g., GAO or a court, and the report needs to be very definitive as to its conclusions reached and the basis for such conclusions.

### **What does an evaluation address and what does a sample resemble?**

#### **Sample Evaluation Report Outline**

##### **Executive Summary**

Description of Acquisition and Solicitation

Proposals Received

Summary Evaluation and Ratings

Competitive Range Determination or Award Without Discussions

Special Considerations

Award Recommendation

**Description of Acquisition**

Mission Need and Scope of Work

Programmatic Approvals

Funding

Development of Acquisition Strategy

Procurement History

Development of Source List

**Evaluation Panel/Board Membership**

Name, Functional Title, and Organization

**Chronology of Major Events**

**Description of Request for Proposals (RFP)**

Qualification Criteria

Technical Evaluation Criteria, Sub-criteria, and Relative Weights

Business Management Evaluation Criteria, Sub-criteria, and Relative Weights

Cost/Price Evaluation Criteria and Relative Weight

Fee Evaluation Criteria and Relative Weight

Basis for Award

Amendments to RFP

**Evaluation Process**

Rating/Evaluation Plan

Scoring or Rating Methodology

Use of Committees and Advisors

**Preproposal Conference and Site Tour**

Date and Place

Number of Firms Attending

**Elimination of Proposals Before Initial Ratings**

Late Proposal

Not Meet Qualification Criteria

Totally Unacceptable Proposal

**Proposal Evaluation**

Technical Proposal Evaluation

Strengths and Weaknesses

Scoring or Rating - Initial and final

Business Management Proposal Evaluation

Strengths and Weaknesses

Scoring or Rating - Initial and final

Past Performance Evaluation

Means of Obtaining Information

Results of Past Performance Information

Cost/Price Evaluation

Audit Results

Comparison to Independent Government Cost Estimate

Scoring or Rating - Initial and final

Fee Evaluation

Weighted Guidelines Analysis

Comparison with DOE Fee Curves

Assumption of Risk

**Other Considerations**

Organizational Conflicts of Interest

Foreign Ownership, Control, or Influence

Intellectual Property

Offer and Other Documents

Financial Capability

Responsibility of Prospective Contractors

Special Areas of Concern

**Competitive Range Recommendation**

Included in Competitive Range Report

**Competitive Range Determination**

Included in Final Evaluation Report

**Discussions with Offerors in the Competitive Range**

Principal Areas Covered During Written or Oral Discussions

Summary of Differences Between Initial and Final Proposals

**Award Recommendation**

If Requested by the SSA

**Signature Page for Evaluators**

## **PART XIII PROPERLY DOCUMENTED RECORD**

### **Background**

Proper documentation of the entire Source Selection Process is a critical aspect of source selection that can seriously affect the success of the procurement.

The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

The source selection process requires proper documentation. Proper documentation can greatly assist the SSA in understanding the rationale employed by the evaluation team and give confidence to the SSA that the findings of the Source Evaluation Board (SEB) were consistent with the stated evaluation criteria and rating plan and are reliable. The documentation can also demonstrate to any third-party forum that the evaluation is performed in a fair and honest manner and in a manner consistent with the solicitation. Also, a properly documented record will greatly assist those called on to justify the selection decision.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.308 (Source Selection Decision); FAR 15.102 (Oral Presentations); and 15.305 (Proposal Evaluation)

### **Issues/Questions**

- What documentation should be used to support the selection decision?
- What evidence should be provided regarding proposal evaluations?
- How are oral presentations documented?
- What documentation is necessary regarding electronic communications?



## Discussion Topics

### What documentation should be used to support the selection decision?

#### Documentation for the Selection Decision

FAR 15.308 requires that the "documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the [Source Selection Authority], including benefits associated with additional costs.

In ITT Federal Services International Corp., Comp. Gen. Dec. B-283307.2, Nov 3, 1999, the Comptroller General has interpreted this requirement as follows:

ITT contends that the selection decision document here is inadequate, on its face, to support the cost/technical tradeoff it purports to make. Where a cost/technical tradeoff is made, the selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, "including benefits associated with additional costs." Federal Acquisition Regulation (FAR) sect. 15.308; Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD para. 61 at 5.... The selection decision document here fails to meet the standard set forth in the FAR for explaining the rationale for tradeoffs that lead to incurring of additional costs. As quoted above, the document first concludes that overall the proposals were technically equal, then that CSA's costs were reasonable, and that the quality of CSA's proposal outweighs its higher cost. Not only are these findings inconsistent, but there is no explanation of the benefits associated with the allegedly higher costs of the CSA proposal.

In the above case, the protest was sustained and the decision recommends, in part, that the agency perform a new best value determination.

The Source Evaluation Board (SEB) must bear in mind that while the SSA has a great deal of discretion in making the source selection decision, he/she must first have a full understanding of the evaluations. For this reason the SSA must be presented with sufficient information on each of the competing offerors and their proposals in order to make a comparative analysis and arrive at a rational, fully supportable selection decision. Narrative statements serve as the most important part of the documentation supporting the decision. The selection decision must show the relative differences among proposals and their strengths, weaknesses and risks in terms of the evaluation factors. Each of these is an essential part of providing adequate support for the ultimate selection decision. Narrative statements serve to communicate specific information concerning relative advantages or disadvantages of proposals to the SSA that the rating scheme alone (whether adjectival or numerical) obviously cannot.

Such documentation need not be lengthy, as long as it effectively conveys the basis for the evaluator's assessment.

Proposals receiving the same rating can still have obvious distinctions, requiring an assessment of the offeror's ability to accomplish the task; these distinctions could have a direct impact on the source selection decision.

Preparation of such statements provides an excellent discipline for the evaluators because it forces them to justify their ratings and be consistent with the stated evaluation criteria.

With the high costs for the preparation of a proposal, offerors want to be assured that the evaluation was fair and impartial. Protests often arise when an offeror feels that this was not the case.

The Comptroller General has ruled that an award will not be overturned unless there is no rational basis for the award decision or unless the RFP criteria are not adhered to. See 51 Com. Gen. 272 (1971). Procuring agencies have an obligation to adequately document their source selection decisions so that a reviewing body can determine whether those actions were in fact proper. See KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD

### **What evidence should be provided regarding proposal evaluations?**

#### **Proposal Evaluation**

Evaluation decisions must be based on tangible evidence to support an agency's decision. In *Amtec Corp.*, Comp. Gen. Dec. B-240647, 91-2 CPD, the Comptroller overturned a marginal technical evaluation because the agency record contained no evidence supporting such a grading. Similarly, in *Compuware Corp.* GSBGA 9533-P, 88-3 BCA, the board rejected a cost realism evaluation in which the contracting officer refused to accept auditor conclusions. The board commented that the contracting officer's decision was not supported by any evidence. Therefore, it is clear that proposal evaluations conducted in accordance with FAR 15.305 must be appropriately documented in order to withstand scrutiny.

### **How are oral presentations documented?**

#### **Oral Presentations and Documentation**

There are numerous instances where the source selection decision was overturned because it lacked a reasoned analysis (e.g., there was no documentation of the relative strengths and weakness of the proposals or not being able to furnish sufficient supporting documentation).

Complicating even further the matter of sufficient documentation is the use of oral presentations. FAR 15.102(e) requires that the CO keep a record of oral presentations, but allows wide discretion as to type and degree of documentation required. This places a greater burden on the SEB to be able to capture the data provided by the proposer. To document the oral presentation,

To document the oral presentation, the SEB can either rely on all offerors presenting a sufficient amount of detailed graphics, the dictation skills of evaluators, or by preserving a record of the oral presentation proceedings through the use of video or audio recording. Remember, where an agency fails to create or retain such documentation, it bears the risk that the GAO will not conclude that the agency had a reasonable basis for its procurement decisions. See American President Lines, B-236834.2, July 20, 1990.

### **What documentation is necessary regarding electronic communications?**

#### **Electronic Record Documentation**

Given the need for proper documentation, the advent of the electronic age requires that additional measures be taken to ensure adequacy of the record. Given the requirement for proper documentation, the contract file must still contain the final record. Some offices have been using electronic media for storage of these records. With the rapid changes in information technology, will that media be readable in five or ten years? All critical documents (Source Selection Statements, SEB Reports, approvals, protest decisions, etc.) should still be kept in the official contract file. E-mail correspondence and electronic approvals must still be printed and kept in the official contract file. The electronic age has also revolutionized the way we do business and raises concerns regarding the safeguarding and protecting of procurement sensitive data. When transmitting procurement sensitive data electronically, adequate precautions must be taken to ensure data does not end up in the wrong hands. In those rare cases when sensitive data is transmitted, the use of password is essential.

**PART XV**

**FOREIGN OWNERSHIP, CONTROL OR INFLUENCE  
(FOCI)**

**Background**

Before awarding a contract the performance of which requires access to classified information or a significant quantity of special nuclear material, the Department of Energy (DOE) must insure that the contractor has a Facility Clearance. In deciding whether or not to grant such a Facility Clearance, DOE must determine whether or not the contractor is subject to Foreign Ownership, Control or Influence that could pose an undue risk to the common defense and security.

In addition to these regulatory FOCI situations, the DOE is also prohibited by statute from awarding a DOE contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract. Such an award can be made only after obtaining a Secretarial waiver in accordance with the statutory provisions.

Before awarding a contract the performance of which requires access to classified information or a significant quantity of special nuclear material, DOE must determine whether or not the contractor possesses a "Facility Clearance." A "Facility Clearance" is an administrative determination that a facility is eligible for access to classified information or special nuclear material. In deciding whether or not to grant a Facility Clearance, DOE must determine whether the contractor is subject to Foreign Ownership, Control or Influence.

Foreign ownership, control, or influence means the situation where the degree of ownership, control, or influence over an offeror by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may possibly result.

In order to make this determination, DOE obtains FOCI information from offerors using the solicitation provision at DEAR 952.204-73, Standard Form 328, Certificate Pertaining to Foreign Interests, (and various other documents relating to the company's finances; owners, officers and directors, etc.). Based on the information disclosed by the offeror, and after consulting with the DOE Office of Safeguards and Security, the contracting officer must determine that award of a contract to an offeror will not pose an undue risk to the common defense and security.

In those cases where FOCI is present, and the DOE determines that an undue risk to the common defense and security may exist, the offeror or contractor shall be requested to propose within a prescribed period of time a plan of action to avoid or mitigate the foreign influences by isolation of the foreign interest.

The types of plans that a contractor can propose are: (1) measures which provide for physical or organizational separation of the facility or organizational component containing the classified information or special nuclear material; (2) modification or termination of agreements with foreign interests; diversification or reduction of foreign source income; (3) assignment of

specific security duties and responsibilities to board members or special executive level committees; or (4) any other actions to negate or reduce FOCI to acceptable levels. The plan of action may vary with the type of foreign interest involved, degree of ownership; and information involved so that each plan must be negotiated on a case by case basis.

If the offeror and the DOE cannot negotiate a plan of action that isolates the offeror from FOCI satisfactory to the DOE, then the offeror will not receive a Facility Clearance and shall not be considered for contract award.

### **National Security Program Contracts**

In addition to the general FOCI situations described above, which are governed by regulatory provisions (i.e., DEAR), there is also a special FOCI situation that is governed by statute.

Specifically, 10 U.S.C. § 2536, prohibits the award of a Department of Energy contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract. (Note that the entity must be controlled by a foreign government for this statute to apply.)

"Entity controlled by a foreign government" means any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government or any individual acting on behalf of a foreign government. "Effectively owned or controlled" means that a foreign government or an entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control or influence the election or appointment of the Offeror's officers, directors, partners, regents, trustees, or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law. "Proscribed categories of information" include: (1) Top Secret information; (2) Communications Security (COMSEC) information; (3) Restricted Data, as defined in the Atomic Energy Act of 1954, as amended; (4) Special Access Program (SAP) information; or, (5) Sensitive Compartmented Information (SCI).

The Secretary of Energy may waive this prohibition, pursuant to 10 U.S.C. 2536(b)(1)(A), if the Secretary determines that waiver is essential to the national security interests of the United States.

The Secretary may also waive this prohibition in the case of a contract awarded for environmental restoration, remediation, or waste management at a Department of Energy facility, if the Secretary determines that the waiver will advance the environmental restoration, remediation, or waste management objectives of the Department and will not harm the national security interests of the United States, and the entity to which the contract is awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144c of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)) (10 U.S.C. 2536(b)(1)(B)).

**Applicable statutes, procurement regulations, or small business regulations**

10 U.S.C. § 2536; Executive Order 12829, Jan 6, 1993, National Industrial Security (NISIP); National Industrial Security Program Manual, DOD 5220.22-M; Department of Energy Acquisition Regulations (DEAR) 904.70 (Foreign Ownership, Control or Influence over Contractors); DEAR 952.204-2, (Security Clause); DEAR 952.204-73 (Facility Clearance); DEAR 952.204-74 (Foreign Ownership, Control or Influence over Contractors); and Standard Form 328, (Certificate Pertaining to Foreign Interests);

**Issues/Questions**

What procedures are followed when a contractor requires access to classified information or a significant quantity of special nuclear material?

**Discussion Topics**

**What procedures are followed when a contractor requires access to classified information or a significant quantity of special nuclear material?**

The contracting officer should receive a Procurement Request-Authorization (DOE F 4200.33 or equivalent) and Contract Security Classification Specification (CSCS) (DOE F 5634.2) from the procurement request originator.

Upon receipt of these forms, the contracting officer must include the appropriate terms and conditions in the solicitation [DEAR 952.204-73, Facility Clearance], and should state in the solicitation that if an offeror is included in the competitive range, they may be required to complete the FOCI Certificate Pertaining to Foreign Interests, SF 328, which contains questions concerning the degree and extent of foreign ownership and control over the offeror.

Once the contracting officer identifies a competitive range, the Defense Security Service/ Central Verification Activity should be reviewed and the local safeguards and security office should be contacted to determine if the possible offerors have an approved facility clearance.

If an offeror possesses a facility clearance, the contracting officer will send the CSCS (DOE F5634.2) to the local DOE safeguards and security office for approval. Once the local DOE safeguards and security office signs and returns the CSCS to the contracting officer, an award of the contract can be made.

If an offeror in the competitive range does not possess a facility clearance, the contracting officer shall forward a FOCI package to the offeror (and any tier parents, if applicable). This package includes the Certificate Pertaining to Foreign Interests (SF 328).

After obtaining the Certificate Pertaining to Foreign Interests (SF 328) and accompanying documents from an offeror, the contracting officer must review the submission to ensure that the

SF 328 as well as all supporting documentation are attached prior to submitting the package to safeguards and security.

Upon receipt of the complete FOCI package, the contracting officer forwards the FOCI package to safeguards and security for processing.

Upon completion of DOE's review of the offeror's foreign involvement, the local safeguards and security office should provide the contracting officer with written notification of the results of the FOCI review. If the FOCI determination is favorable and the offeror is granted a DOE-approved facility clearance, the local DOE safeguards and security office will sign and return the DOE F 5634.2 (CSCS) to the contracting officer. (If the FOCI determination is unfavorable, the safeguards and security office will attempt to negotiate a plan to negate or mitigate FOCI. If a satisfactory plan cannot be negotiated then the offeror will not receive a Facility Clearance and the offeror shall not be considered for contract award.)

Contract award can be made upon: (1) receipt of notification of a favorable FOCI determination from the local safeguards and security office, (2) receipt of the signed DOE F 5634.2 (CSCS) from the local DOE safeguards and security office, and (3) assurance from the contracting officer that the appropriate security clauses are included in the contract.

It should be noted that if, after contract award, a contractor's FOCI situation changes so that it becomes subject to FOCI for the first time or the extent and nature of FOCI changes, DOE must assess whether those changes will pose an undue risk to the common defense and security.

In making this determination, the Department considers proposals made by the contractor to avoid or mitigate foreign influences. If these foreign influences cannot be avoided or mitigated, the contracting officer may terminate the contract.

The contracting officer may terminate the contract for default if the contractor fails to meet obligations imposed by the FOCI clause (e.g., provide the information required by the clause, or make the clause applicable to subcontractors), or if, in the contracting officer's judgment, the contractor creates a FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate the contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem. In any event, without an adequate mitigation plan, the contractor's Facility Clearance will be terminated and they can no longer perform work requiring access to classified information or a significant quantity of nuclear material.

## **PART XVI DEBRIEFINGS**

### **Background**

For FAR Part 15 procurements, contracting officers are required to offer debriefings to all unsuccessful offerors. The debriefing is the method by which the offerors obtain information to decide whether to protest and is a possible venue for heading off a protest. Debriefings need to be informative and professionally presented. They should never degenerate into debates over the propriety of the source selection process or the accuracy of the government's evaluation. The general approach to a debriefing should be to provide all required information, satisfy the debriefed offeror's reasonable questions about the procurement, and provide as much information as possible without prejudicing the procurement in the event it must be reopened for any reason. The timing of a debriefing affects both the timeframe for filing a GAO protest and also the time within which a protest will require the protested contract performance to be suspended. Because most of DOE's Part 15 procurements are for services, this guidance is written with services procurements in mind.

When a contract is awarded on a basis other than price alone, unsuccessful offerors, upon their written request, shall be debriefed as soon as possible and furnished the basis for the selection decision and contract award.

However, the debriefing requirements only apply to procurements carried out under FAR Part 15 requirements. There is no requirement for a debriefing for placement of an order under a schedule contract pursuant to FAR Subpart 8.4, for placement of a contract using simplified acquisition procedures under FAR Part 13 (including the test program for certain commercial items in FAR Subpart 13.5), for placement of a task or delivery order under an indefinite delivery contract pursuant to FAR Subpart 16.5, for a contract issued pursuant to the sealed bid procedures of FAR Part 14, or at the time an option is exercised.

The debriefing should provide the unsuccessful offeror with sufficient information to enable him to understand why his proposal was not selected and to enable him to present a better proposal in a future competition. In other words, the information should be of "value" to the unsuccessful offeror.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.503 (Notifications to Unsuccessful Offerors); FAR 15.505 (Preaward Debriefing of Offerors); FAR 15.506 (Postaward Debriefing of Offerors); FAR 15.507 (Debriefing Available When Procurement Reopened); FAR 33.104(c) (Relationship of Debriefing and Stay/Suspension of Contract); 4 C.F.R. § 21.2(a)(2); 31 U.S.C. § 3553(d)(4)(B) (Requiring Suspension of Protested Contract Performance if Protest is Filed Within Five Days of Required and Requested Debriefing); and 41 U.S.C. § 253b(e), (t), (g) (Preaward and Postaward Debriefing Requirements).



**Issues/Questions**

- What should be the contracting officer's strategy?
- When should debriefings be held and how should they be scheduled?
- What is the effect of the debriefing schedule on potential protests?
- What are the special considerations for preaward debriefings?
- What the clocks start when debriefings are conducted?
- What information is to be provided and when should it be provided?
- What information may not be provided?
- Who should attend debriefings?
- What are "Open Book" debriefings?
- What common questions or problems are associated with debriefings?

**Discussion Topics**

**What should be the contracting officer's strategy?**

**The Contracting Officer's strategy**

The contracting officer should plan for the debriefing well before award is made. Based on the particular circumstances of the procurement, the contracting officer should devise a debriefing strategy to provide as much information as the offeror might reasonably request and should prepare for likely offeror questions. Some contracting officers have found it useful to request the offerors to provide any questions in writing a day or so before the debriefing. This gives the agency time to review the questions and provide a more cogent answer to the questions. Even if the offeror provides questions in advance, it should not and cannot be prohibited from posing additional questions at the debriefing. The offeror should come away from the debriefing with an understanding of why its proposal was not selected. Oftentimes there are one or two elements of the offeror's strategy that negatively affected the evaluation and that can be summarized for the offeror's benefit. For example, an offeror might have decided that it understood the government's requirements better than the government and pursued a strategy of offering the government what the offeror believed was best notwithstanding the requirements in the solicitation.

In this instance, it can be helpful to be prepared to review the portion of the solicitation that stated these requirements. Where discussions were held, it can be very helpful to point out to an offeror where the issue that led to its lack of success was raised in discussions.

An understanding of the perspective of a disappointed offeror is sometimes useful in conducting a debriefing. Preparation and submission of a proposal may be a time consuming, costly, and a sometimes emotional exercise for the offeror's proposal team. Nonacceptance of a proposal under such circumstances can produce a degree of emotional and professional trauma in the team members. In response disappointed offerors may react with resentment ("How could I not win?!"), suspicion ("This process must be rigged!"), and anger ("The agency has it in for me!"). As a consequence, many debriefings are not viewed by disappointed offerors as an opportunity

to learn how to improve the next time, but rather as an opportunity to vent, demonstrate the poor judgment of the selecting official and evaluators, and identify a basis to overturn the decision through a bid protest. Although government personnel frequently respond to this reaction by offering as little information as possible, this is not a desirable strategy for the debriefing. Indeed it is frequently more productive to use the debriefing to discharge the emotion, demonstrate the procedural credibility of the decision, and convince the disappointed offeror that a basis for protest does not exist. Strategies for doing so should be fully considered in preparing for the debriefing.

### **When should debriefings be held and how should they be scheduled?**

The general principle applicable to debriefings is that an unsuccessful offeror should be offered a debriefing soon after DOE determines that the offeror is unsuccessful. The FAR distinguishes between preaward and postaward debriefings, depending on when the debriefing is held. The FAR establishes a clear preference that an offeror excluded from the competitive range be provided with a preaward debriefing, and we address the implications of this choice in the next section. A postaward debriefing should be held as soon as possible after the award.

The optimum schedule has the contracting officer faxing a letter to the unsuccessful offeror on day 0, informing the unsuccessful offeror of its right to request a debriefing within three days and, in the same letter, informing the unsuccessful offerors of the offered date for their debriefings should they choose to request a debriefing. The offered date should optimally be a date between four and eight days after the unsuccessful offeror letter is faxed. An unsuccessful offeror does not have the right to any particular schedule or location for the debriefing. For postaward debriefings, the letter offering the debriefing optimally should be sent to the offeror on the day of award. For preaward debriefings, the letter should be sent as soon as DOE makes a determination that the offeror is no longer under consideration for award.

### **What is the effect of the debriefing schedule on potential protests?**

#### **Effect of the debriefing schedule on potential protests**

In a FAR Part 15 procurement, a company cannot pursue a GAO protest on an issue other than a solicitation issue before its debriefing, if that debriefing was "requested and required." GAO will dismiss a protest filed before the debriefing as premature. Therefore, it is generally best to schedule the debriefing very soon after the offeror is no longer under consideration for award.

### **What are the special considerations for preaward debriefings?**

#### **Special considerations for preaward debriefings**

If the offeror was excluded from the competitive range, the debriefing generally should be held as a preaward debriefing soon after the offeror is notified of its exclusion from the competitive range. The debriefing may be held as a postaward debriefing based on the CO's decision or the offeror's request, but these choices have different consequences.

### **If the contracting officer delays the preaward debriefing**

The contracting officer has the discretion to delay the debriefing until after award, based on "compelling reasons" that holding a preaward debriefing is not in the best interests of the government. The contracting officer is required to document the rationale for delaying the debriefing. If the government decides to delay the debriefing until after award, the unsuccessful offeror cannot protest until after the debriefing and, if there is a successful protest, the procurement actions after the offeror was excluded may be nullified.

### **If the offeror requests that the preaward debriefing be delayed**

The offeror can request that the government delay a preaward debriefing until after award. In the event that the debriefing is delayed due to the offeror's request, the contracting officer should indicate in writing that debriefing is being postponed at the offeror's request. In the event the offeror requests the government to delay the debriefing from preaward to postaward, GAO generally will not find a protest based on the debriefing to be timely.

### **What clocks start when debriefings are conducted?**

#### **Clocks**

Once a "required and requested" debriefing is held, two clocks start to run on the offeror's time for filing a protest. The first clock determines whether GAO will consider the protest. Generally, for a protest to be timely filed at GAO, it must be filed within ten days after the debriefing. If the protester waits until more than ten days after it learned of the basis for its protest and that date is more than ten calendar days after the debriefing, GAO will dismiss the protest as untimely. Please note that protesters can also pursue protests at the Court of Federal Claims, which does not have a ten calendar day time limit for filing protests. The second clock determines whether the agency will have to stay the award of the protested contract or suspend performance on the protested contract. If a protest is filed at GAO and GAO notifies DOE of the protest within either five calendar days after debriefing or ten calendar days after contract award, whichever is later, DOE must suspend performance of the protested contract. If GAO notifies DOE of a protest filed before award is made, DOE must stay the award of the protested contract. In both cases, the stay is in place until GAO decides the protest or until DOE overrides the stay.

### **What information is to be provided and when should it be provided?**

FAR 15.506(d) and 15.505(e) set forth detailed lists of information to be provided and the applicable list provides a fairly good agenda for the debriefing.

#### **Information in advance**

Much of this information can be provided in advance of the actual debriefing, either in the unsuccessful offeror letter or in a later written communication prior to the debriefing. It is a

better practice to provide the debriefed offeror with a copy of its own evaluated strengths and weaknesses before the debriefing. This practice saves time for everyone, and prevents disagreement over what was said, gives the offeror a chance to get past any emotional reaction to the strengths and weaknesses in the privacy of its offices, and usually improves the cogency of the questions asked at the debriefing.

### **Dialogue**

Because the debriefing rules require the government to provide reasonable responses to relevant questions about whether source selection procedures were followed, it is virtually impossible to provide a complete debriefing to an offeror without an opportunity for dialogue, either in person or by telephone.

### **Interpretation of "overall ranking" and "technical rating"**

When FAR 15.506(d)(3) refers to providing the "overall ranking of all offerors," it means the ranking when there was a combined ranking including cost/price and technical factors and does not require the CO to provide just the technical rankings or just the cost/price rankings. DOE generally has not performed such rankings in its source selection process, nor are such rankings required. When FAR 15.506(d)(2) refers to providing the "technical rating" of the awardee and of the debriefed offeror, it does not mean that every factor and sub-factor score must be revealed. If a competitive range was drawn and discussions were held, there is no requirement to provide the offeror with its or the awardee's pre-discussions scores. There is no requirement to provide the offeror with the awardee's sub-factor scores. Providing more than the required information concerning the awardee's scores can be regrettable if the procurement must be reopened for corrective action, a change in requirements, or some other reason. Moreover, in some instances, providing specific scoring information could amount to a violation of the prohibition against providing point-by-point comparisons between the awardee's and the debriefed offeror's proposals.

### **Whose ratings should be provided?**

In the unlikely and hopefully rare event that the source selection official disagrees with aspects of the technical evaluation committee's report, either with respect to scores or to the strengths and weaknesses, the information that is required to be provided to the offeror is the evaluation on which the selection was based, that is, the source selection official's evaluation.

### **What information may not be provided?**

FAR 15.505(f) and 15.506(e) provide detailed lists of information that must not be provided in the debriefing. The usual item that comes up is the prohibition on providing "point-by-point comparisons of the debriefed offeror's proposal with those of other offerors." For this reason, it is advisable that the government not have the other offerors' proposals or the evaluation of the other offerors in the debriefing room. Some agencies take the position that revealing detailed score

information about the awardee may constitute providing point-by-point comparisons. An exception to these limitations exists in the form of an "open book debriefing" described below.

### **Who should attend debriefings?**

The FAR provides that the contracting officer is in charge of the debriefing and anticipates that he or she will get support from technical and legal personnel as needed. Neither the Source Selection Authority (SSA), nor the SEB Chair, or the individual SEB team members are required to attend. Normally it may be sufficient to have the contracting officer, a technical evaluator (to ensure that communication conveying the technical evaluation are accurate), and counsel to the procurement attend the debriefing. It is a good practice to have counsel present, especially if the offeror indicates it is bringing legal counsel to the debriefing, there are indications that a protest may be filed, or the procurement is significant based on dollar size, complexity, or other sensitivity. On those occasions where the contracting officer does not have the knowledge or expertise to explain the cost evaluation, it is advisable to bring someone who has that knowledge and expertise. Notwithstanding the foregoing, it should be noted that the presence of other critical officials in the source selection process such as the SSA and the SEB chair may aid in the presentation to the disappointed offeror and add to the credibility of the source selection.

These officials are particularly useful in explaining the basis for the selection decision and the results of the SEB's evaluation of the offeror's proposal. As the number and type of participants in the debriefing grows, however, the contracting officer must take particular care in preparing for and controlling the communication. Coordination with counsel is critical.

### **What are "Open Book" debriefings?**

#### **"Open Book" debriefings**

In some very large, complex procurements, generally M&O procurements, DOE has used a technique called open book debriefings, in which DOE and all the offerors enter into a confidentiality agreement that permits DOE to reveal more information in the debriefing than is normally permitted. This technique has been extremely successful, but it is properly reserved for very large, complex procurements that do not involve repetitive requirements. If used improperly, this technique may conflict with the FAR and/or result in potential violations of the Trade Secrets Act (which subject the government personnel to personal criminal penalties as well as significant potential fines). Therefore, this technique should only be used after consultation with DOE counsel who can draft the appropriate agreements and ensure that all necessary consents are obtained.

## **What common questions or problems are associated with debriefings?**

### **Common questions and problems**

#### **Do not debate the evaluation or the selection**

The job of the debriefer is to provide information to the offeror about the procurement and not to reconsider the evaluation or debate it. This means that it is more important to listen to complaints about the evaluation results than to respond to them. It is especially important not to speculate about what would have happened if the offeror had proposed something different or a lower price.

#### **Be sure the debriefing has a definite conclusion**

The debriefing should have a definite conclusion so that the time when the offeror's two protest clocks begin to run is clear. Once DOE has provided the required information and the offeror has finished asking its "relevant questions about whether the source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed," the contracting officer should indicate that the debriefing is concluded. This means that it is strongly ill-advised to tell a protester that "we'll get back to you" on a topic. If necessary, take a short break during the debriefing and seek whatever advice or information or document is needed. A well-prepared debriefing team almost never needs an additional day to provide required information or respond to relevant questions.

#### **Recording the debriefing**

The government is not required to record the debriefing nor to permit the debriefed offeror to make an audio or video recording. DOE contracting officers have generally denied offerors' requests to record a debriefing. If the contracting officer considers agreeing to a request to record the debriefing, he or she should insist that two identical recordings be made and one left with the agency. This will avoid disputes over whether the recording was altered in some way. The contracting officer is required to prepare a summary of the debriefing and include it in the contract file.

#### **Even untimely debriefing requests should be accommodated**

If an offeror does not request a debriefing in a timely fashion, but later requests a debriefing, the better practice is to provide the debriefing but to be clear that it is an accommodation and not a "requested and required" debriefing. The contracting officer should, however, insist that the request be in writing and should include documentation in the file that the debriefing was not timely requested.

**The awardee is also entitled to a debriefing**

Although debriefings are commonly provided to unsuccessful offerors, FAR 15.506(a)(1) provides that offerors can request debriefings and does not exclude the awardee.

**Debriefings go forward even if there is a protest**

Sometimes an offeror will protest or state its intent to protest before the debriefing. This does not affect the offeror's right to a debriefing. In these instances, it is obviously prudent to have counsel present and involved in the debriefing planning.

**Take a break**

It is generally advisable to take breaks during the debriefing if the government attendees need to caucus concerning a question. Such discussion should take place in a different room and out of the hearing of the offeror. In addition, a break can be useful to permit the offeror to consolidate its questions and recover its composure.

**Finally, do not obsess**

While the debriefers should make every effort to be accurate during the debriefing, keep in mind that the statements made in a debriefing will virtually never form the basis of a GAO decision to sustain a protest. There are legions of denied protests where the information provided at the debriefing was inaccurate in some way or where the protester claims it was told one thing at the debriefing while the evaluation record shows the opposite. Moreover, GAO will not address the quality of the debriefing in a protest decision.

## PROTESTS



### Guiding Principles

- ▶ Resolving solicitation issues before a protest is lodged may avoid a protest and associated costs and delays in contract award.
- ▶ When a protest is lodged, prompt action by the Contracting Officer will help to assure efficient and timely resolution of the protest.

*[Reference: FAR 33.1, DEAR 933.1, GAO Regulations at 4 CFR 21]*

### Overview

This chapter discusses the processing of documents in response to a protest against award lodged with the contracting activity, the Procurement Executive, the General Accounting Office, or the Federal courts.

### Background

While the FAR, DEAR and GAO regulations referenced above provide detailed direction for the handling of protests, this Guide section presents additional information which may be helpful to those personnel who are involved with the protest process.

Protests are a structured means by which offerors challenge some aspect of the Department's handling of a procurement. Protests can also provide the Department with an opportunity to remedy significant errors in a procurement.

### Levels of Protests

In order to maximize the opportunity to remedy any procurement errors, to reduce costs and delays in procurements, and to enhance the ability of the Department to meet the needs of its customers, protests are handled at the least formal level possible.

Currently, protests can be filed at three levels: to the agency (which includes both protests to the Head of the Contracting Activity and to the Procurement Executive); to the General Accounting Office (GAO); and, to federal courts (including the United States Court of Federal Claims and United States District Courts).

If an offeror contacts the Contracting Officer or the Contract Specialist prior to filing a protest, the Contracting Officer or specialist should attempt to address the offeror's concerns in order to avoid the filing of a protest, and should encourage the potential protester to pursue any protest within the agency before filing a protest with GAO or a suit with the appropriate Federal court. The Contracting Officer coordinates the handling of any protest with their appropriate Counsel office.



**Processing Protests**

Upon receiving notice of a protest, the Contracting Officer withholds award or suspends contract performance in accordance with the provisions at FAR 33.103(f), 33.104(b), (c), and (d), and DEAR 933.103(f), 933.104(b) and (c).

**I. Protests to the Department of Energy Contracting Activity or Procurement Executive**

Protests to DOE will be decided either by the Head of the Contracting Activity or the Procurement Executive. Unless the protester requests that the protest be decided by the Procurement Executive, or the circumstances at DEAR 933.103 (i)(1)(i), (ii), or (iii) exist, protests to DOE will be decided by the Head of Contracting Activity (HCA).

The Procurement Executive or the HCA (whichever is the deciding authority) will issue a decision on the protest within 35 calendar days, unless a longer period of time is determined to be needed.

Protest decisions must be in writing. Even if the decision is to dismiss the protest on a procedural ground (such as lack of timeliness, lack of interested party status, etc.), the protest decision should note the allegations of the protest. Protest decisions should be sent by fax to the protester (if the protester has designated representation, the decision should be sent to the representative), or if the protester does not have a fax, the decision should be sent by certified mail with a return receipt or other means that provides evidence of receipt.

The contract file should include the protest decision and evidence of the protester's receipt of the protest decision (e.g., fax confirmation printout or handwritten notation of oral confirmation of fax receipt).

**Protests to Be Resolved by the Contracting Activity**

The Contracting Officer makes every attempt to resolve the protest through direct negotiations with the offeror with due regard to the need for amending the solicitation. The Contracting Officer prepares a report including the elements at FAR 33.104(a)(3)(iii) and assembles the information necessary to enable review of the protest and the issuance of a decision by the HCA. The Contracting Officer provides a copy of the protest and the protest decision of the HCA to the Office of Contract Management.

**Protests to Be Resolved by the Procurement Executive**

The Office of Contract Management is notified immediately and provided a copy of any protest that is to be decided by the Procurement Executive.

The Contracting Officer prepares a report similar to that discussed in FAR 33.104(a)(3)(iii). The report is forwarded to the Office of Contract Management within 21 calendar days of receipt of a

protest. The Contract Specialist consults with the Office of Contract Management concerning the number of copies needed and any other information required.

The Office of Contract Management will explore with the protester whether the use of alternative dispute resolution techniques may assist in the resolution of the protest decision.

## **II. Protests to the General Accounting Office (GAO)**

Not later than one (1) day after a protest is filed with the GAO, the protester provides a copy of its complete protest to the contact person stated in the solicitation or to the Contracting Officer. Within one (1) day of receipt of a protest, the Contracting Officer must give notice of the protest to the contractor, if an award has been made, or, if no award has been made, to all offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The protest submissions are provided to all such parties unless one or more of the parties has identified sensitive information and requests a protective order. In that event, the Contracting Officer obtains a redacted version from that party(ies) for appropriate dissemination. The Contracting Officer works with the assigned protest attorney from the cognizant Counsel office in reviewing the merits of the protest, and preparing the agency report.

The GAO typically schedules a status conference among the parties to discuss the protest within a week after the protest is filed, so it is important to coordinate with the protest attorney quickly. In many protests, DOE will produce documents to the protester's counsel within ten days after the protest is filed, and may also be required to submit a list of all relevant documents to the GAO and the protester within 25 days after the protest is filed.

A complete report is submitted to the GAO within 30 days from the date of receipt of the telephonic notice of the protest from GAO (or within 20 days after receipt of notification of a determination to use the express option). The report to GAO includes the elements addressed at FAR 33.104(a)(3)(iii).

GAO makes every effort to issue a decision on the protest within 100 calendar days after the initial protest is filed, even if the protester has filed a supplemental protest after the initial protest.

## **III. Protests in Federal Courts**

When a suit protesting the award of a DOE contract is filed with the appropriate Federal court, the Department will be represented by the United States Attorney having jurisdiction in the court where the protest suit was filed.

The cognizant Counsel office acts as liaison for the Department. The Contracting Officer provides all necessary support as promptly as possible as requests are made during the pendency of the litigation.

## Alternative Dispute Resolution



### Guiding Principle

Employing alternate dispute resolution techniques in contractual disagreements may result in equitable settlements without going through the formal litigation process, resulting in less costly, and more timely, resolutions.

[Reference: FAR 33; DEAR 933]

### Overview

This section provides guidance for the use of alternative dispute resolution techniques in connection with disputes that arise under the Contract Disputes Act of 1978 (CDA), 41 U.S.C. sections 601-613.

### Background

Alternative Dispute Resolution (ADR) refers to a range of procedures intended to resolve disputes at less cost, more quickly, and with greater satisfaction for the parties involved than is possible through formal litigation.

The techniques are flexible and adaptable to the particularities of each individual case and permit the parties to take into account their respective litigation risks. The employment of ADR is a consensual matter and cannot be instituted without the agreement of both DOE and the contractor.

### Policy

It is DOE policy to make maximum use of ADR as an alternative to formal litigation where it appears such an approach will facilitate dispute resolution. The goal is to resolve the dispute at the earliest stage feasible, preferably before the contracting officer's final decision, by the fastest and least expensive method possible and at the lowest appropriate organizational level. A preference for the early application of ADR is reflected at FAR 33.204, which states, "The Government's policy is to try to resolve all contractual issues by mutual agreement at the contracting officer's level."

The contracting officer is key to resolving contentious issues before they become unnecessary contract disputes. By exploring all reasonable avenues for a negotiated settlement with the contractor, the contracting officer can avoid most disputes.

When all possibilities for negotiation have failed, the contracting officer should endeavor to move the potential dispute into ADR.

The Contract Disputes Act (CDA), as amended by the Federal Acquisition Streamlining Act of 1994, requires that, for small businesses, "In any case in which the contracting officer rejects a contractor's request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5, United States Code, the Alternative Means of Dispute Resolution Act, or such other specific reasons that alternative dispute resolution procedures are inappropriate for the resolution of the dispute."

In any case in which a contractor rejects a request of an agency for alternative dispute resolution proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

ADR should also be considered for disputes that are before the Energy Board of Contract Appeals (EBCA) and disputed claims before they have been appealed to either the EBCA or the United States Court of Federal Claims. Since United States Federal Claims Court cases are under the control of the Justice Department rather than DOE, DOE needs to coordinate ADR in those actions with DOJ.

## **Attachment**

The attached guidance is used for all contract claims pursuant to the CDA or appeals before the Energy Board of Contract Appeals, whether in advance of litigation or after litigation has commenced. If the parties are unable to satisfactorily resolve the dispute using ADR, or cannot agree on its application, they resume the formal litigation process.

## **ATTACHMENT 1**

### **Alternative Dispute Resolution Guidance**

#### **When should ADR be used?**

Generally, ADR should be considered whenever a dispute arises as to the parties' rights or obligations under a government contract and that dispute remains unresolved after exploration of issues by the parties. The use of ADR represents a business decision on the part of the parties, divorced from the emotions surrounding a particular dispute, that an alternative method of resolving a claim is preferable to the expense, delay, and risks associated with formal litigation. It should be remembered that ADR is in many cases risk-free; if no resolution is reached, the parties retain all of their legal rights.

The best candidates for ADR treatment are those cases in which only facts are in dispute, while the most difficult are those in which disputed law is applied to uncontested facts. However, the fact that resolution of the dispute may involve legal issues, such as contract interpretation, does not preclude that case from consideration. Likewise, the amount in controversy is a relevant, but not controlling, factor in the decision whether to use ADR. It is strongly suggested, however, that the parties give serious consideration to using ADR in all disputes where the amount in controversy is less than \$100,000. ADR may also be particularly effective in large, complex, multi-claim construction-related disputes.

As a general rule, and subject to the qualifications discussed below, if the responsible agency official answers yes to one or more of the following questions, then ADR is the preferred way to resolve the dispute:

- (1) Have settlement discussions reached an impasse?
- (2) Have ADR techniques been used successfully in similar situations, so far as we know?
- (3) Is there a significant disagreement over technical data, or is there a need for independent, expert analysis?
- (4) Does the claim have merit, but is its value overstated?
- (5) Are there multiple parties, issues, and/or claims involved that can be resolved together?
- (6) Are there strong emotions that would benefit from the presence of a neutral?
- (7) Is there a continuing relationship between the parties that the dispute adversely affects?
- (8) Does formal resolution require more effort and time than the matter may merit?

This is by no means an exhaustive list of issues to consider when determining whether or not to use ADR. Each case will have its own individual characteristics that might influence the official's decision whether or not to use ADR. Each case, therefore, should be evaluated on its own merits, with the caveat that it is the policy of DOE to resolve disputes by ADR whenever feasible.

Because of its ADR experience, ability to assist in developing ADR agreements and protocols, and cost-effectiveness, EBCA is often an obvious choice to provide/conduct all forms of ADR services, as required, for DOE whether prior to or after the issuance of a final decision by the contracting officer, so long as the contractor agrees. The EBCA should be consulted by the contracting officer and/or the contractor in the earliest stages of ADR planning whenever the EBCA may become a source of ADR services. Contracts for the services of third party neutrals are also authorized, the costs of which should ordinarily be shared by the parties. Other federal agencies can also provide neutrals at low cost.

### **When Is Use of ADR Less Likely To Be Effective?**

Although the use of ADR in any case should not be precluded, the following types of cases have generally proven to be less likely candidates for ADR:

- (1) Those involving disputes controlled by clear legal precedent, making compromise difficult.
- (2) Those whose resolution will have a significant impact on other pending cases or on the future conduct of business.

In these cases, the value of a definitive or authoritative resolution of the matter may outweigh the short-term benefits of a speedy resolution by ADR.

In general, if an agency official answers yes to any of the following questions, then the dispute is not one that is appropriate for ADR, and the parties should prepare for litigation:

- (1) Is the dispute primarily over issues of disputed law rather than fact?
- (2) Is a decision with precedential value needed?
- (3) Is a significant policy question involved?
- (4) Is a full public record of the proceeding important?
- (5) Would the outcome significantly affect nonparties?
- (6) Are the costs of pursuing an ADR procedure greater (in time and money) than the costs of pursuing litigation?
- (7) Is the nature of the case such that ADR might be used merely for delay?

### **What are the Steps in the Process?**

The following six steps are associated with using ADR concepts:

**Step One** - Unassisted negotiations. Parties try to work out disagreement among themselves.

**Step Two** - Before issuing a final decision (decision) on a claim, the contracting officer consults with the DOE ADR specialist concerning whether the disagreement appears susceptible to resolution by ADR. The FAR recognizes the potential usefulness of ADR at this early stage in the process by recommending the use of informal discussions between the parties. In particular, the CO may want to propose to the other party, one, or a combination, of the following ADR

techniques, and the parties may request the Chair of EBCA, or any other acceptable federal or nonfederal neutral, to provide/conduct:

- (a) Mediation
- (b) Neutral Evaluation
- (c) Settlement Judge
- (d) Mini-trial

**Step Three** - If the claim either cannot be settled by the parties at Steps One or Two, the CO must prepare to issue a decision. If the claim involves a factual dispute, the CO shall send the contractor a copy of the proposed findings of fact and advise him that all supporting data may be reviewed at the CO's office. The contractor shall be requested to indicate in writing whether it concurs in the proposed findings of fact and, if not, to indicate specifically which facts it is not in agreement with and submit evidence in rebuttal. The CO shall then review the contractor's comments and make any appropriate corrections in the proposed findings of fact.

**Step Four** - The CO shall issue a decision on each contract dispute claim within sixty (60) days from the receipt of the written request from the contractor, or within a reasonable time if the submitted claim is over \$100,000. The decision is a written document furnished the contractor, which contains the final findings of fact and reasons upon which the conclusion of the CO is based.

**Step Five** - The contractor may appeal the CO's decision to the EBCA or to the United States Court of Federal Claims. EBCA recognizes that resolution of the dispute at the earliest stage feasible, by the fastest and least expensive method possible, benefits both parties. The Board has several model procedures available. The Federal Claims Court also has ADR procedures available to the parties. The Justice Department is responsible for entering into such procedures, but ordinarily consults with DOE before doing so. DOE fully supports the use of ADR in appropriate cases before the Federal Claims Court.

**Step Six** - DOE's decision whether to use ADR at this stage should be made by assigned counsel, in consultation with the CO. If DOE and the contractor agree that the claim is susceptible to resolution by ADR, then the next step is to select and consult with the contractor and attempt to reach agreement on an appropriate procedure.

### **What are Examples of ADR Techniques?**

**Mini-trial.** Brings together an official from each of the contracting parties with authority to resolve the dispute. Neither official should have had responsibility for either preparing the claim (in the case of the contractor), denying the claim (in the case of DOE), or preparing the case for trial. They hear abbreviated, factual presentations from a representative of each party and then they discuss settlement. It is governed by a written agreement between the parties, which is tailored to the particular needs of the case. It generally has three stages, which usually can be completed within 90 days.

(1) **The prehearing stage.** Covers the time between agreement on written procedures and commencement of hearing. Parties, with assistance of a neutral, complete whatever preparation is provided for in agreement, such as discovery and exchange of position papers. This consumes the bulk of the time to complete the mini-trial.

(2) **The hearing stage.** Representatives present their respective positions to the officials. Each representative is given a specific amount of time within which to make the presentation. How that time is utilized is solely at the discretion of the representative. There may also be an opportunity for rebuttal and a question and answer period for the officials. This stage usually takes 1 to 3 days.

(3) **The posthearing discussion stage.** Officials meet to discuss resolving the dispute. The mini-trial agreement should establish a time limit within which officials either agree or settle the matter or agree to resume the underlying litigation. These discussions are settlement negotiations and, as such, may not be used by either party in subsequent litigation as an admission of liability or any aspect of settlement.

The agreement may provide for services of a neutral advisor. A potential source of a neutral advisor is the EBCA, which has substantive experience and established reputation for objectivity and cost effectiveness. Other federal agencies can provide neutrals at minimum cost. It should be noted that the employment of a neutral advisor from the private sector will necessitate cost-expenditure by DOE.

**Mediation.** Mediation is a process in which the disputing parties select a neutral third party to assist them in reaching a settlement of the dispute. The process is private, voluntary, informal and nonbinding. It provides an opportunity to explore a wide range of potential solutions and to address interests that may be outside the scope of the stated controversy or could not be addressed by judicial action. The mediator has no power to impose a settlement. The function of the mediator is determined in part by the desires of the parties and in part by the attitude of the individual chosen to mediate. Some mediators propose settlement terms and attempt to persuade parties to make concessions. Other mediators work only with party-generated proposals and try to help parties realistically assess their options. Some mediators work primarily in joint sessions with all parties present while others make extensive use of private caucuses. At a minimum, most mediators will provide an environment in which the parties can communicate constructively with each other and assist the parties in overcoming obstacles to settlement.

**Settlement Judge.** An administrative judge (or EBCA hearing officer) who is appointed by the Chair of the EBCA for the purpose of assisting the parties in reaching a settlement. The settlement judge will not hear or have any formal or informal decision-making authority in the case, but can promote settlement through frank, in-depth discussion of the strengths and weaknesses of each party's position. The agenda for meetings will be flexible to accommodate the requirements of the individual case. The settlement judge may meet either jointly or separately with the parties to further the settlement effort. Settlement judges' recommendations are not binding on the parties. If a dispute or appeal to the EBCA is not resolved through use of



the settlement judge, it will be restored to the EBCA docket. This process is also available at General Services Board of Contract Appeals (GSBCA) and many other tribunals, including the Federal Claims Court.

## FEDERAL SUPPLY SCHEDULE CONTRACTING



# **Strategic Acquisition Transactions:**

*A Guide for Using Federal Supply Schedules;  
Multiple Award Contracts; and  
Government-wide Agency Contracts*

August2004

*"... In your continuing role as business advisors, we recognize that procurement is not just following rules and regulations. Rather, it is a process of making sound business decisions. Today we have new rules and operate in a different kind of environment. Your task now is to implement these new tools and develop efficient acquisition strategies ... "*

*- Excerpt from GSA 's Multiple Award Schedules Program  
Owner's Manual*

## Introduction

The most important step in the acquisition process is selecting and developing the acquisition strategy. A primary goal in selecting an acquisition strategy is to minimize the time and cost of satisfying an identified need, consistent with common sense and sound business practices.

Over the past decade, the acquisition environment has experienced dramatic change as a result of legislative and regulatory reforms. These changes have led to the introduction of new and innovative acquisition methodologies that afford the acquisition community unprecedented flexibility in the manner in which goods and services can be acquired. More specifically, the ever increasing universe of goods and services that are available under the General Services Administration's Multiple Award Schedules program, and the new acquisition strategies for acquiring services via Multiple-Award Contracts and Government-wide Acquisition Contracts, provide contracting professionals and their clients practical strategic alternatives to more costly and time-consuming traditional approaches.

In lieu of overly prescriptive rules and regulations, these new methodologies rely heavily on the exercise of sound business judgment and the principles that ensure the integrity and fairness of the Federal acquisition system. However, the lack of specific procedural requirements has led to some uncertainty within the acquisition community regarding the most effective means to exercise this new discretionary authority, as well as inconsistencies in the manner in which these new strategies have been employed from agency to agency, and even within agencies. In some cases, these uncertainties and inconsistencies have resulted in increased Congressional scrutiny, or have been resolved by judicial fora, such as the General Accounting Office and Boards of Contract Appeals.

Accordingly, this *Strategic Acquisition Transactions Guide* has been developed as a tool to assist acquisition professionals and their clients through the process of identifying, analyzing and choosing among the available alternatives. Moreover, the *Guide* highlights lessons learned and provides information on best practices that is intended to ensure a level of uniformity and consistency to eliminate or mitigate some of the "growing-pains" that have been encountered thus far in using these strategies (e.g., protests, poor quality goods or services).

Consistent with the principles of continuous learning and improvement, this *Guide* is a "living" document. The *Guide* will be periodically updated to provide new information and guidance as issues arise, and to share additional best practices as they are identified.

*John R. Bashista, Director  
Office of Headquarters Procurement Services*

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## Part I - Federal Supply Schedules (FSS)

### What is a Federal Supply Schedule?

Federal Supply Schedules (FSS), also known as Multiple Award Schedules (MAS), are listings of vendors awarded contracts for supplies or services by the General Services Administration (GSA). These schedules are available for use by any Federal agency requiring the identified supplies or services. There are also specialized schedules, such as the Management, Organizational and Business Improvement Services (MOBIS) schedule, the Professional Engineering Services schedule, the Information Technology schedule and the Environmental Services and Products schedule, that allow procuring activities to focus their selection of contractors to special areas of interest.

In a competitive procurement process, the GSA awards schedule contracts to commercial firms that give the Government the same or better discounts than they give their best customers. These discounts are then passed on to other agencies through the various FSS schedules. This program mirrors commercial buying practices more than any other procurement process in the Federal Government, and offers federal agencies a simplified process for getting their required products and services at volume buying prices.

### Why should you use the FSS?

Advantages of using the FSS include -

- Significantly reduced acquisition time.
- GSA has already complied with competition requirements.
  - Pre-solicitation and pre-award requirements like the synopsis, the Service Contract Act review, the Small Business/Labor Set-Aside review, and
  - Equal Employment Opportunity review have already been performed by GSA.
- Volume purchase prices that are fair and reasonable.
- Quick delivery.
- Schedule orders count toward small business goals.
- Access to state-of-the-art technology and quality services and products.
- Compliance with environmental requirements for applicable services and products.
- Agencies can establish Blanket Purchase Agreements (BPA) for recurring needs.

### What does the "Maximum Order Threshold" of a schedule tell you?

Each schedule in the FSS has an identified *maximum order threshold*.

This threshold is not meant to limit the amount of your purchase, but represents the level at which you could benefit from better pricing. This threshold is the trigger point for you to seek additional price reductions from the schedule vendor. Vendors can therefore accept any size order, reducing the need for you to conduct duplicative and repetitive procurements for items/services already under order. When asked about further reductions, FSS contractors may either offer you a lower price, offer you the current price, or decline your order.

This threshold is also the point at which you should consider or solicit, as appropriate, more than

three FSS vendors for your required supplies or services.

*Best Practice* - Regardless of the value of the order you should:

- Always seek a price reduction from FSS vendors; and
- Consider or solicit more than three schedule vendors to improve the competitive nature of the purchase.

**Must agencies conduct Procurement Planning and Market Research before using an FSS contract?**

Not necessarily. As a general rule, obtaining information from the FSS program and FSS vendors themselves is sufficient to satisfy the agency's obligations to conduct procurement planning and market research. However, be sure you select the most appropriate schedule for your program's requirement. For instance, don't use the MOBIS schedule if professional engineering services are required.

**What services are available through the FSS?**

FSS schedules are categorized by the type of product or services available. Some of the particular types of FSS schedules are -

- Engineering services - including planning, design, integration and testing.
- Financial services - including auditing, management and reporting.
- Environmental advisory services - including planning, compliance, and waste management.
- Energy management services.
- Management and organizational improvement services.
- Document and records management services.
- Personal property management services.
- Information technology services.
- Travel and Transportation services.
- Marketing, media, and public information services.
- Laboratory, scientific and medical services and products.
- Language services.
- Vehicle acquisition and leasing services.

**How do you place Orders for Services under the FSS?**

The ordering procedure that you use depends on whether or not the type of services you are acquiring requires a Statement of Work (SOW), as well as the dollar amount of your order.

Procedures for services that require a SOW (e.g., professional services based on hourly rates) -

For purchases at or below the micro-purchase threshold of \$2,500, you can place orders directly with any FSS contractor that best meets your needs.

For purchases over the micro-purchase threshold of \$2,500, but under the Maximum Order Threshold, you need to send a Request for Quotes (RFQ), including the SOW, to a minimum of three schedule contractors, conduct an evaluation of offers, and then make a "Best Value" selection.

For services over a specific schedule's Maximum Order Threshold, you must solicit more than 3 schedule contractors and seek price reductions to determine the Best Value selection.

Procedures for services that do not require a SOW (e.g., services that are priced on a firm-fixed-price basis for a specific task, such as transcription services, printing and binding services) -

For purchases at or below the micro-purchase threshold of \$2,500, you can place orders directly with any FSS contractor that best meets your needs.

For purchases over the micro-purchase threshold of \$2,500, but under the Maximum Order Threshold, you need to review the GSA Advantage online electronic ordering system, then make a Best Value determination, or review 3 schedule contractor price lists and select the Best Value.

For services over a specific schedule's Maximum Order Threshold, you must review more than 3 schedule contractor price lists and seek price reductions to determine the Best Value selection. Attachments A and B to this Guide include GSA's detailed ordering procedures for both services and supplies. You can also find this information at GSA's website

[http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=8106&contentType=GSA\\_OVERVIEW](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=8106&contentType=GSA_OVERVIEW)

**What must be included in a Request for Quotes for services?**

For professional services based on hourly rates, you must prepare an RFQ that includes a *performance-based* description of the work you want performed.

Include the basis of award (e.g., how the vendor's technical qualifications will be determined, the use of past performance/experience information, price).

GSA also encourages you to request oral presentations from the contractors when appropriate.

You may use incentive or award fee arrangements only if the schedule's terms allow it, and a fixed-price order is issued.

**Can you obtain discounts from the established FSS pricing when acquiring services?**



As stated previously, you should always attempt to obtain price discounts, regardless of the amount of the order. However, when exceeding the Maximum Order Threshold identified in individual schedules, you must solicit price discounts from the vendors.

When acquiring services via the issuance of an RFQ, rather than requesting one discount rate for all labor categories, you should request the vendors to propose discounts by individual labor category. This will allow vendors the opportunity to propose varying discounts across the different labor categories. Frequently, you can obtain larger price discounts on the higher priced labor categories.

When teaming arrangements are proposed, each Schedule contractor should be required to propose their individual labor category rates and individual discount rates. Quotes that offer an average discount rate for all team members may not result in the greatest savings for the Government. Additionally, FSS contracts require team members to propose only their own rates and, therefore, may discount only their own prices.

### **What about supplies on the FSS?**

The FSS offers many categories of products for federal agencies to buy, including:

- Office supplies.
- Paper products.
- Furniture.
- Office equipment.
- Scientific equipment.
- Hardware, tools and appliances.
- Information technology products.
- Software.
- Copying equipment and supplies.
- Telecommunications equipment.

### **How do you place orders for supplies under the FSS?**

The ordering procedure that you use under the FSS schedules depends on the dollar amount of the supplies you are acquiring, as follows -

For purchases at or below the micro-purchase threshold of \$2,500, you can place orders directly with any FSS contractor that meets your needs.

For supplies over the micro-purchase threshold of \$2,500, but under the Maximum Order Threshold, you need to review a minimum of three price lists to select the "Best Value" taking into consideration price plus administrative costs.

For supplies over a specific schedule's Maximum Order Threshold, you must review more than 3 price lists to determine the Best Value. At this threshold, GSA's procedures require you to seek additional price reductions from the vendors. Regardless of whether the acquisition will be at or above the Maximum Order Threshold, you should always seek price reductions from vendors.

In repetitive buys, you should attempt to vary the contractor and price lists selected. A selection based on the Best Value means that you consider factors other than just the lowest price in determining which contractor receives your order. These other factors may include criteria such as past performance, probable life, warranty, environmental and energy efficiency considerations, maintenance availability, technical qualifications, and trade-in considerations. (Best Value considerations are discussed in more detail below.)

**Do orders for supplies also require a statement of work?**

No. Statements of Work are not required to be developed for the purchase of products under the FSS. Neither are an RFQ or evaluation factors. When ordering products over \$2,500, the Contracting Officer is required to either -

Review the GSA Advantage online shopping service and make a best value determination.

Or, review 3 Schedule contractors' price lists (more than 3 if the order will exceed the Maximum Order Threshold), select the best value, and place the order directly with the Schedule contractor.

**Are there any other special ordering procedures?**

Yes. FAR 8.402 contemplates that GSA may occasionally find it necessary to establish special ordering procedures for individual Schedules, or, for some Special Item Numbers (SINs) within a Schedule. You can find these special ordering procedures in the individual affected schedules.

One example of a schedule that contains unique ordering procedures is Schedule #70 for Information Technology (IT) Professional Services. When procuring IT services under SIN 132-51, for instance, you are allowed to reserve the order for award to only small business concerns.

Additionally, FAR 8.404(c) outlines the ordering procedures you must follow for mandatory use schedules. These schedules do not allow certain agencies to test the market solely for the purpose of seeking alternative sources to the FSS program. Presently, DOE is not required to use any of the mandatory FSS schedules.

As previously addressed, GSA has also established special ordering procedures for services that require a Statement of Work. These special ordering procedures take precedence over the procedures in FAR 8.404(b)(2) through (b)(3). Attachment A outlines these ordering procedures for services.

A contracting officer placing an order on another agency's behalf is responsible for applying that agency's regulatory and statutory requirements and the requiring activity is required to provide information on the applicable regulatory and statutory requirements to the contracting officer.

**Can you place multiple awards under the FSS?**

No, but GSA does encourage agencies to establish blanket purchase agreements (BPA) under FSS schedules when an agency needs a simplified method for filling anticipated repetitive needs for services or supplies. BPAs are actually a type of an account established with Schedule

contractors to allow agencies to leverage their buying power. Based upon the potential volume of sales, Schedule contractors may offer increased discounts over the prices identified in their FSS contracts. If you do pursue a BPA, remember that -

- Prices must be compared among at least three schedule vendors (more than three if the total value of the order is expected to exceed the Maximum Order Threshold) before issuing a BPA.
- All BPA-holders must be given an opportunity to submit a quote whenever a requirement arises.
- BPAs generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.
- The ordering activity that established the BPA shall review it at least once a year to determine whether the schedule contract, upon which the BPA was established, is still in effect; the BPA represents the best value; and estimated quantities/amounts have been exceeded and additional price reductions can be obtained. The ordering activity shall document the results of its review.

You can find a sample BPA on the GSA website

[http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=8106&contentType=GSA\\_OVERVIEW](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=8106&contentType=GSA_OVERVIEW).

### **Can you buy products or services that are not identified on a particular schedule?**

Yes, but only with certain restrictions. According to FAR 8.401(d), you may add items that are not included on the schedule contract, called *open market items*, to an FSS BPA or an individual task/delivery order only if -

- All applicable FAR regulations pertaining to the purchase of the items that are not on the Schedule have been followed, including publicizing (FAR Part 5), competition (FAR Part 6), commercial items (FAR Part 12), contracting methods (FAR Parts 13, 14, and 15), and small business programs (FAR Part 19).
- The Contracting Officer has determined the price for the items that are not on the FSS is fair and reasonable.
- The items are clearly labeled on the order as items that are not on the FSS.
- All clauses that are applicable to the items that are not on the FSS are included in the order.

### **Are teaming partners all required to be FSS contractors?**

Yes. To ensure that agencies receive the streamlining advantages of the FSS program, all

teaming partners and subcontractors must be FSS contractors.

**Do FAR Part 15 requirements apply to FSS orders?**

No. But GAO has stated that where an agency conducts a competition under the MAS Program, it will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation (i.e., the RFQ). When GAO does review an agency's actions, it tends to look at the agency's use of competitive procedures, and whether the agency's evaluation and award process is consistent with the RFQ.

*The simple rule is - you should not use the formal FAR Part 15 competitive negotiated process, or anything similar to it, when buying under the MAS program.*

If you do adopt FAR Part 15 procedures when placing an FSS order, GAO will likely consider any protest actions in light of the FAR Part 15 requirements, as well as its own previous decisions on competitive negotiated acquisitions.

**Must agencies consider alternative offers from vendors that do not have an FSS contract?**

No. The GAO has repeatedly found that, when an agency intends to acquire products or services under the MAS Program, that agency is not required to consider products or services that are offered by contractors that are not available under an FSS contract.

**Do you need to "equalize" information gathering, or be concerned with equal treatment of vendors being considered for FSS orders?**

No. While all potential offerors should certainly be treated fairly, the GAO has found that agencies may properly place an Order under the MAS Program without meeting any of the statutory and regulatory requirements associated with conducting a negotiated, competitive procurement. So, you need not engage in "equal interactions" with FSS vendors, nor must you equalize the information gathering process among FSS vendors.

You may have further "interactions" with offerors prior to award of an FSS order to solicit clarifying information from one or more vendors. You can also solicit such information from only one vendor without affording another FSS vendor a similar opportunity if there is no basis to do so.

You should, however, be careful to ensure that such further interactions do not enter the realm of holding "discussions," as that term is used in FAR 15.306(d). Such interactions should not be undertaken with the intent of allowing offerors to revise their proposals (e.g. do not advise vendors of weaknesses in their technical proposal or enter into negotiations that would result in revisions of its proposals, permitting an offeror to improve its standing in the evaluation).

Further interactions with vendors should be conducted for the purposes of permitting vendors an opportunity to clarify any ambiguities or inconsistencies found in one or more parts of its proposal/quotation, so that the agency can make a clear and objective evaluation.

**Can you award a Sole Source Order under the MAS Program?**

Orders placed under Federal Supply Schedules are exempt from the requirements in FAR Part 6. However, ordering activities shall procure sole source requirements only if the need to do so is justified in writing and approved at the levels specified at FAR 8.405-6(b).

Although the products/services that are available under the MAS program are considered commercial, you must ensure that the Government's requirements are not unduly restrictive and that the minimum salient characteristics of the products/services being acquired are necessary and justified.

**Can an agency count awards under the MAS to small business concerns toward agency socioeconomic goals?**

Yes. Awards to FSS vendors which fall into the various socioeconomic groups may be reported against an agency's annual socioeconomic accomplishments. However, for purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed. Ordering activities should rely on the small business representations made by schedule contractors at the contract level.

**How can you maximize opportunities for Small Businesses under the MAS?**

FAR Parts 8 and 38 prescribe that small businesses holding contracts under the FSS program are to be afforded the maximum practicable opportunity to compete for, and receive, orders. This FAR guidance encourages Contracting Officers to consider the availability of small business concerns when planning for FSS acquisitions and placing FSS orders.

DOE Acquisition Letters 2000-02 and 2001-05 set forth Departmental policy addressing small business programs and strategies for maximizing contracting opportunities for small businesses.

AL 2000-02 requires Contracting Officers to maximize the award of purchases to those small businesses holding contracts with the FSS. Contracting Officers are required to target FSS order competitions to small business firms, and must coordinate with program offices to identify three or more small businesses that hold relevant FSS contracts. FSS order competitions should be further limited, when appropriate, to specific socio-economic categories of small businesses, such as woman-owned or small disadvantaged businesses.

When necessary, program and procurement personnel should coordinate with DOE's Office of Economic Impact and Diversity (ED) and SBA representatives to identify responsible and qualified small businesses for their services and supplies requirements.

The SBA and GSA have teamed to further help small businesses participating in SBA's 8(a) Business Development program to become more competitive and more profitable. This partnership agreement, originally signed in June 2000, is a joint effort by both SBA and the GSA to increase participation of 8(a) firms in the FSS program, boost the number of contract dollars awarded to 8(a) firms, and allow Federal agencies to count the awards given to 8(a) firms toward their own 8(a) goals.

Orders placed under GSA's FSS schedules to small businesses are counted as DOE accomplishments for its socioeconomic contract goaling purposes. Contracting Officers should actively assist their program customers in identifying vendors that will help meet the program's procurement requirements.

The integration of PRO-Net and DOD's Central Contractor Registration (CCR) databases has created one portal for entering and searching small business sources. This integration assists small businesses with marketing their goods and services to the federal government.

<http://www.ccr.gov/>

### **Is it appropriate to set-aside an Order under the MAS for Small Businesses?**

No - it is neither appropriate nor necessary. FAR Part 19 does not apply to FSS orders, therefore set-aside requirements are not appropriate. However, certain GSA schedules allow orders to be reserved exclusively for small business vendors under the schedule. Moreover, if FAR Part 19 procedures or provisions are used, such as the limitation on subcontracting, incorporation of NAICS codes, or request for small business representation, the Small Business Administration (SBA) will likely view the transaction as a set-aside. This practice would open up the deal for a potential size protest under which SBA would take jurisdiction.

When selecting only small business contractors for potential award of an FSS order, you should -

- Rely on size certifications made by the contractor to GSA at award of the FSS contract.
- Rely on the NAICS code identified in the GSA FSS contract.
- Not include a NAICS code in an FSS Order.
- Not use the term "small business set-aside" in the RFQ.
- Not use set-aside provisions or clauses in the RFQ or contract.
- Not do anything that may imply the order is a formal small business set-aside.

### **How can you ensure that an order placed with a small business prime is not a "pass-through" for large business subcontractors?**

GSA is responsible for administering the FSS contracts to ensure that the majority of the work that is performed by a small business vendor is accomplished over all of their orders, not just a single order.

Notwithstanding that neither GSA's procedures nor a vendor's contract require that an FSS small business contractor perform 51% of the work on individual orders to preclude a pass through of funds from small business contractors to large business contractors, you may include a requirement that the small business prime contractor make its best effort to accomplish the majority of the work on individual orders. A valuable tool would be the use of an evaluation criterion defining the amount of small business participation that the vendor must commit to.

A model clause you may use to accomplish this is -

#### Principal Performance of the Effort

To ensure technical efficiency and accountability in the performance of this task order, at

least fifty-one percent of the total price paid under this task order (excluding the amount paid for other direct costs) shall be paid for work performed by the employees of the prime contractor.”

In lieu of specifying a minimum percentage, you may wish to adjectivally describe a minimal level of performance by the prime (e.g., ...a majority of the total price...).

### **Do you need to get Representations and Certifications from FSS contractors?**

No. Contractor Representations and Certifications have already been received and reviewed by GSA during the competitive process prior to awarding FSS contracts. However, agency-specific Representations and Certifications may need to be obtained for agency-specific requirements such as Facility Clearance/Foreign Ownership, Control or Influence over Contractors, and Organizational Conflicts of Interest.

### **Can companies without an MAS Contract protest an agency's decision to use the FSS Program ?**

No. GAO has held that a protestor who does not have an FSS contract is not an interested party, and therefore, does not have standing to challenge an agency's determination to use the MAS program.

### **Can an incumbent contractor, previously awarded an order under the MAS program, protest its exclusion from a follow-on competition?**

No. The ordering agency determines which vendor sources are solicited. In a U.S. Court of Federal Claims decision (48 Fed. Cl. 638, filed February 14, 2001, Cybertech Group, Inc. v. the U.S. and Intellidyne), the court concluded that the Government was under no obligation to solicit an incumbent contractor. The court's decision states, in part, *“plaintiff has been unable to cite any regulation, statutory provision, or applicable precedent requiring an incumbent to be solicited on delivery orders from an FSS schedule contract.”*

### **How does a “Best Value” Selection work under the MAS Program?**

A best value selection is a process used to select services or products that best meet the buyer's need. A best value selection trades off price and other evaluation factors such as past performance, understanding the requirement, technical qualifications, trade-in considerations, warranty, and environmental and energy efficient considerations, if applicable. In a best value selection, low price does not necessarily assure selection.

In following the procedures set forth in FAR Subpart 8.4, GSA's MAS Program owners manual, and schedule-specific ordering procedures to place orders under the MAS program, Contracting Officers should consider the following in making Best Value selections -

- The basis on which an agency will make its selection must be identified in the RFQ.
- Use oral presentations in lieu of written proposals to maximum extent practicable.

- Evaluation criteria should be kept to the minimum necessary to objectively evaluate a contractor's ability to successfully fulfill the government's stated requirements.
- Formal rating plans are not required, but in certain circumstances may be helpful to ensure consistency with the evaluation factors for award that are stated in the RFQ.
- Contractor quotations need not be point scored.

**What Best Value criteria can you use when ordering services?**

The following are sample best value criteria which may be used for ordering services off the FSS

- *Understanding the requirement* - To what extent does the contractor's technical approach demonstrate full understanding of the effort to be performed under the task?
- *Quality of performance/past performance* – To what extent did the contractor demonstrate compliance with prior contract requirements for similar work and scope, accuracy of reports, timely delivery, and technical excellence?
- *Cost performance* – To what extent did the contractor perform within or below cost on past similar requirements?
- *Schedule performance* – To what extent did the contractor meet milestones, was responsive to technical direction, and completed services on time and in accordance with established schedules?
- *Business relations* – To what extent is the contractor flexible, cooperative, proactive, and committed to customer satisfaction?

**Should "Key" Personnel be evaluated when placing an Order for Services?**

Yes, when certain personnel are considered critical to the success of the project. Key Personnel may be evaluated, for both the prime contractor and subcontractors/team members. Examples of efforts requiring the identification of Key Personnel may include: the Program Manager and Quality Assurance Engineer developing Environmental Impact Statements; and, the Senior Nuclear Engineer conducting and managing research studies.

**How is price evaluated in a Best Value Selection when acquiring services?**

For requirements in excess of the micro-purchase threshold, the Contracting Officer should document the evaluation of the vendor's price quotations that formed the basis for the selection, and document the rationale for any trade-offs in making the selection.

While you may rely on GSA's determination that the fixed hourly rates on a schedule contract are fair and reasonable, GSA has not determined that the level of effort or mix of labor proposed in response to a specific requirement are adequate and appropriate, nor that they represent the best value.



Relying on the predetermined reasonableness of an FSS vendor's labor rates alone does not provide an adequate basis for determining which vendor is the most competitive since it does not reflect the full cost of the potential Order, or critical aspects of the services offered, such as the level of effort and the skill mix of labor required to complete the work.

When using a performance-based SOW, you should generally avoid dictating the number of labor hours and skill mix against which FSS vendors should propose. Rather, vendors should be permitted to propose the labor skill mix and the level of effort (LOE) it considers necessary against the performance-based SOW. In selecting the contractor which offers the best value and the lowest cost alternative to meet the department's needs, the Contracting Officer should evaluate the vendor's proposed skill mix and LOE.

**What level of detail is required to document a Best Value selection under the MAS Program?**

You should document the files sufficiently to demonstrate that your evaluation of the vendor's response to an RFQ was reasonable and in accordance with the criteria outlined in the RFQ. The extent of the documentation is largely dependent upon the size, scope and complexity of the acquisition.

There is no requirement that you quantify a cost/technical tradeoff in dollars.

Agencies should use whatever evaluation approach, such as narrative or adjectival ratings, that are appropriate to the acquisition bearing in mind the intended streamlined nature of the FSS process.

Attachment C illustrates a sample selection statement.

**Are FSS vendors entitled to a debriefing at any time before or following the placement of a competitive order under the MAS Program?**

As stated above, the statutory/regulatory requirements associated with competitive negotiated acquisitions in FAR Part 15, do not apply to orders placed against an FSS contract. However, if an unsuccessful offer requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided. It may be in the Department's best interest to provide an unsuccessful FSS vendor information about the evaluation of the vendor's offer (e.g., to avoid a potential protest; provide the vendor relevant information that may improve its competitive capabilities for future DOE requirements).

While not required, the Contracting Officer may, at his/her sole discretion, elect to provide additional information to an unsuccessful FSS vendor(s). When electing to do so, the Contracting officer should consider the following -

- The timing for conducting such interactions are at the convenience of the agency, but should be conducted after the award of an order.
- Such post-award interactions may be conducted in whatever format is considered appropriate by the Contracting Officer (i.e., in writing, face-to-face, or via telephone).

- The level of information conveyed is at the discretion of the Contracting Officer and should be limited to that necessary for the vendor to understand why it wasn't selected for the Order. As stated above, such interactions need not comply with the requirements set forth in FAR 15 pertaining to the debriefing of unsuccessful offerors.

You should consult with your procurement attorney about your planned approach.

A best practice that has been successful on prior FSS acquisitions has been to communicate relevant information regarding the Government's evaluation of an unsuccessful FSS vendor's proposal, in writing, when providing notice to a vendor that it was not the successful offeror. Information may include the following:

Name and address of the successful FSS vendor.

Total award value for the Order.

The basis for award to the successful FSS vendor (e.g., lowest priced-technically acceptable offer).

Although not required, if quotes are rated during the evaluation, include the unsuccessful offeror's rating.

A summary of the unsuccessful vendor's evaluated strengths and weaknesses.

Information that is provided should relate only to the successful FSS vendor and the unsuccessful FSS vendor receiving the notice. That is, do not include technical ratings or evaluated prices for any other unsuccessful FSS vendor(s). However, you may elect to identify the relative ranking of the unsuccessful FSS vendor's evaluated technical rating and price (e.g., third highest technical score and highest evaluated price).

### **What is "Scope Creep?"**

Task Orders are awarded for a specific pre-determined and authorized effort to be performed by the contractor. "*Scope creep*" refers to an undesired and unauthorized expansion of the scope of work under a task order. For example, if the scope of work for an Order were for environmental restoration work, expanding the work to include fossil energy support services would be considered scope creep, and not authorized.

### **What happens if the FSS Contractor doesn't perform adequately?**

The GSA's FSS contracts include the same termination provisions that are prescribed in FAR Part 12.

If a contractor delivers a supply or service, but it does not conform to the order requirements, the ordering activity shall take appropriate action in accordance with the inspection and acceptance clause of the contract, as supplemented by the order. If the contractor fails to perform an order, or take appropriate corrective action, the ordering activity may terminate the order for cause or modify the order to establish a new delivery date (after obtaining consideration as appropriate).

As an alternative to terminating an order, the Contracting Officer may elect to not exercise any remaining options under the order.

## Part II - Multiple Award Contracts

### What is a Multiple Award Contract?

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 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 provides the regulatory procedures and guidance regarding the award and administration of 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 products/services.
- Allowing the Government to leverage its buying power to get best value, to receive high quality goods and services, and to take advantage of latest technological changes in the marketplace.
- Streamlining the Order closeout process.

### When should you use multiple award contracts?

The FAR requires you to make multiple awards for recurring supplies and services *to the maximum extent practicable*.

For advisory and assistance services, you are *required* to make multiple awards if the amount of the services exceeds \$10,000,000 and the period of performance will exceed three years.

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 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 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.

**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 your responsibility as the Contracting Officer to ensure that once a multiple award contract is awarded, each contractor is given an opportunity to receive every Order that exceeds \$2,500 that is issued under the multiple award contract.

**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 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 as you determine are necessary.

FAR 16.505(b) prescribes requirements and guidelines you should follow for developing Ordering procedures.

Attachment D illustrates a sample multiple award Ordering clause that establishes procedures for providing each awardee “fair opportunity”.

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

Contracting Officers 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 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/delivery Orders thereunder.

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 Order to evidence 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 an Order.

Issue follow-on/add-on Orders only when they constitute a logical follow-on, provided that all awardees were given a fair opportunity to be considered for the original Order.

Maximize the use of firm-fixed-price Orders.

Keep in mind that formal evaluation plans and the scoring of quotes/offers is not required.

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

Each 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.

At a minimum, the following should be considered when making a selection for the issuance of an Order -

- Past performance on earlier Orders under the contract, including quality, timeliness, and cost control.
- Potential impact on other Orders placed with the contractor (i.e., potential impacts on the contractor's resources).
- Minimum Ordering requirements of the contract.
- The amount of time contractors will need to make an informed business decision on whether to respond to potential Orders.
- Whether contractors could be encouraged to respond to potential Orders by performing outreach intended to promote exchanges of information (e.g., request comments on draft work statements).
- Price or cost.

The basis for selection of an awardee for individual task Orders can be based on Best Value or Low Cost/Technically Acceptable depending on the complexity of the requirement and the needs of the program. The basis for selection is usually specified in the request for task Order but could also be specified in the multiple award contract.

**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 to the Government in the initial evaluation of offers leading to the

award of multiple 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 individual task/delivery Orders are 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 products, 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 are Orders priced under multiple awards?**

Orders that are placed under multiple award contracts are usually priced 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.

### **What documentation is required when placing an Order?**

For each Order issued, the contract 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 contract 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).

**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 contract must have been provided a fair opportunity to receive the original 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 task, 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 a reorganization, an additional contractor employee may be required. It would then be prudent to have the same contractor perform the work, provided the task 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 task. 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.

**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 can 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 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 a sources sought synopsis in FEDBIZOPS 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 Orders among small businesses (see Attachment D, paragraph b.5.).

**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. 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 Reimbursable) in the master contract if you anticipate the issuance of Task Orders on these bases.

Be pro-active. Conduct a post-award meeting with the technical team and a post-award 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 post-award 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 a 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 very few instances when sole source task Orders/modifications are appropriate (See FAR 16.505(b)(2)).

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 contract.

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

For individual Orders, you should include pricing for option years when the initial task Orders are awarded to help the COR and technical monitors estimate funding requirements in advance.

## Part III - Governmentwide Agency Contracts

### **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 products 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 prescribed in FAR Subpart 16.5. However, GWACs are not subject to the requirements and limitations of the Economy Act, as specified in FAR Subpart 17.5 - Interagency Acquisitions Under the Economy Act.

Host agencies are designated pursuant to the authority of the Director, Office of Management and Budget, to establish GWACs. Currently there are only four OMB designated GWAC agencies - GSA, National Institutes of Health, National Aeronautics and Space Administration, and the 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.
- Orders against GWACs are not protestable.
- 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.
- Individual prices are based upon competition in establishing the umbrella GWAC and are predetermined to be fair and reasonable for the placement of orders.
- Small, minority and women-owned businesses, as well as large businesses are represented.
- There are no FedBizOpps posting requirements for the ordering agency.
- 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.
- There are over 60 GWACs from which an agency can choose its specific requirements. Attachment D. provides a listing of all current GWACs that have been established and are available for use by DOE and other agencies.

**What types of products are available on GWACs?**

Many IT products are available on GWACs, including -

- Mainframes
- Desktop computers
- Portable computers
- Hardware
- Peripherals
- Software
- Bar coding systems

**What services are available on GWACs?**

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

- Hardware/Software Maintenance
- Training
- Software Application
- Digitizing
- Technical support

**What do user fees pay for?**

User fees are the revenue 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 .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.

**For IT integration service requirements, are GWACs preferred over the FSS program?**

Yes. GWACs offer total IT 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?**

This may be accomplished through the Interagency Agreement (IA) between the host agency and user agency and an accompanying memorandum of understanding (MOU) between the two agencies. The IA/MOU should detail the performance expectations of the two agencies. The IA/MOU may be negotiated to provide for a reduction in the fee paid to the host agency, in the event that the expectations committed to by the host agency are not maintained.

## References

As this Guide will be published in an electronic format,  
the attached references will be available via electronic links.

### REFERENCE DOCUMENTS

Doing Business with GSA

GSA Multiple Award Schedules Program Owners Manual (Spring 2001)

GSA Information Technology Acquisition Center Group To Information Technology  
Multiple Award Schedule

GSA Federal Supply Schedules Briefing Prepared by Jeffrey Rubenstein U.S. Department of Energy  
Office of Headquarters Procurement Services (January 2002)

Office of Federal Procurement Policy Guide Best Practices for Multiple Award Task and Delivery  
Order Contracting (February 1999 Revision)

U.S. Department of Commerce Office Of Acquisition Management Draft Report Titled "Review of  
GSA/GWAC Orders Within the Department of Commerce (January 2002)

Federal Acquisition Regulation (Parts 6,8,9,12,13,16,19,23,33,27, and 49)

U. S. Department of Energy Acquisition Letter 2000-07 (8-17-00) Subject: Multiple Award Contracts  
(MAC: Government-Wide Agency Contracts (GW AC); and Federal Supply Schedules (FSS)

2002 Listing of Government-Wide Acquisition Contracts (GWACS) and Multi-Agency Contracts

Federal Register/V67, No. 62/Monday, April 1, 2002/Proposed Rule and Summary of comments  
Received

Testimony of Robert J. Lieberman, Assistant Inspector General for Auditing,  
Department of Defense (March 2000)

U.S. General Accounting Office Report Titled "Contract Management – Few Competing Proposals  
for Large DOD Information Technology Orders" (March 2000)

U.S. General Accounting Office Report Titled "Contract Management – Not Following Procedures  
Undermines Best Pricing Under GSA's Schedule" (November 2000)

U.S. General Accounting Office Letter to House of Representatives Subcommittee on Technology  
and Procurement Policy (August 2001)

U.S. General Accounting Office Testimony Before the House Subcommittee on Technology and  
Procurement Policy (November 2001)

U.S. General Accounting Office Testimony Before the Senate Subcommittee On readiness and

Management Support, Committee on Armed Services, U.S. Senate (February 2002)

A Legal View, Roger Waldron, Senior Assistant General Counsel, general Counsel, General Services Administration - Issues and Answers

U.S. Small Business Administration Size Determination Case File (No. 6-2002-013) Mangi Environmental Group, Inc., Department of Energy

U.S. Small Business Administration Size Determination Case File (No.2-2002-028) Project Enhancement Corporation/Department of Energy

U.S. Small Business Administration Size Determination Case File (No. 2-2002-86) Client Network Services, Inc./Department of Energy

Federal Times, March 2002

Article - New Rule Imperils Fast Procurements

Article - Defense Bill Aids Competition - New Rule Need  
Not Slow Purchases

Federal Times, May 2002

Article - DOD Buying rule Will Cripple Contracting

Article - GSA Touts Online Tool to Comply with Procurement Law


Article -Army, AF Buyers Urged to Use Own Contracts

**Attachment A**

**Ordering Procedures for Services  
(Services that Require a Statement of Work)**

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### **Ordering Procedures for Services** **(Services that Require a Statement of Work)**

GSA developed these special instructions for ordering services when a Statement of Work is required. FAR 8.402 contemplates that GSA may occasionally find it necessary to establish special ordering procedures for individual Schedules or for some Special Item Numbers (SINs) within a Schedule. These procedures take precedence over the procedures in FAR 8.404(b)(2) through (b)(3) [www.arnet.gov/far](http://www.arnet.gov/far).

GSA has determined that the rates for services contained in the contractor's price list are fair and reasonable. However, if you are using these Schedule contracts, **you are still responsible for:**

- considering the level of effort and mix of labor proposed to perform a specific task being ordered
- making a determination that the total firm-fixed price or ceiling price is fair and reasonable

Based on quotes requested from three Schedule contractors that appear to offer the Best Value (considering scope of services offered, hourly rates, contractor's locations, and other factors, as appropriate), you are instructed to select the one that best meets your needs.

When ordering services, ordering offices shall -

- Prepare a Request for Quotes (RFQ)
  - Transmit the RFQ to Schedule contractors
  - Evaluate quotes and select the Schedule contractor to receive the order.
-

➡ **Prepare a Request for Quotes (RFQ)**

At a minimum, prepare a performance-based statement of work that outlines, the work to be performed

- location of work
- period of performance
- deliverables
- applicable standards
- acceptance criteria, and any special requirements (i.e., security clearances, travel, special knowledge, etc.).

Prepare an RFQ which includes the performance-based statement of work and requests the Schedule contractors to submit either a firm-fixed price or a ceiling price to provide the services outlined in the statement of work.

A firm-fixed price order shall be requested, unless the buying member makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work or to anticipate cost with any reasonable degree of confidence. When such a determination is made, a labor hour or time-and-materials proposal may be requested.

The firm-fixed price shall be based on the hourly rates in the Schedule contract and shall consider the mix of labor categories and level of effort required to perform the services described in the statement of work.

The firm-fixed price of the order should also include any travel costs or other incidental costs related to performance of the services ordered, unless the order provides for reimbursement of travel costs at the rates provided in the Federal Travel or Joint Travel Regulations.

A ceiling price must be established for labor-hour and time-and-materials orders.

The RFQ may request the Schedule contractors, if necessary or appropriate, to submit a project plan for performing the task and information on the Schedule contractor's experience and/or past performance performing similar tasks.

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## ***Strategic Acquisition Transactions Guide***

The RFQ shall notify the Schedule contractors what basis will be used for selecting the Schedule contractor to receive the order.

The notice shall include the basis for determining whether the Schedule Contractors are technically qualified and provide an explanation regarding the intended use of any experience and/or past performance information in determining technical acceptability of responses.

### **➡ Transmit the RFQ to Schedule Contractor**

- Based upon an initial evaluation of catalogs and price lists, the buying member's office should identify the Schedule contractors that appear to offer the Best Value (considering the scope of services offered, hourly rates and other factors such as Schedule contractors' locations, as appropriate).
- The RFQ should be provided to three Schedule contractors if the proposed order is estimated to exceed the micro-purchase threshold, but not exceed the maximum order threshold.

For proposed orders exceeding the maximum order threshold, the request for quotes should be provided to additional Schedule contractors that offer services that will meet the agency's needs. Buying members should strive to minimize the Schedule contractors' costs associated with responding to RFQs for specific orders.

Requests should be tailored to the minimum level necessary for adequate evaluation and selection for order placement. Oral presentations should be considered, when possible.

### **➡ Evaluate Quotes and Select the Schedule Contractor to Receive the Order**

After responses have been evaluated against the factors identified in the RFQ, the order should be placed with the Schedule contractor that represents the , Best Value and results in the lowest overall cost alternative (considering price, special qualifications, administrative costs, etc.) to meet the Government's needs.

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## ***Strategic Acquisition Transactions Guide***

### ***Documentation***

- Buying members, at a minimum, should document orders by identifying the Schedule contractor from which the services were purchased, identify the services purchased, and the amount paid.

If other than a firm-fixed priced order is placed, such documentation should include the basis for the determination to use a labor-hour or time-and-materials order.


For agency requirements in excess of the micro-purchase threshold, the order file should document the evaluation of Schedule contractors' quotes that formed the basis for the selection of the contractor that received the order and the rationale for any trade-offs made in making the selection.

- When the buying member's office's requirement involves both products as well as executive, administrative and/or professional services, the buying member's office should total the prices for the products and the firm-fixed prices for the services and select the Schedule contractor that represents the greatest value in terms of meeting the agency's total needs.
-

**Attachment B**

**Ordering Procedures for Services and Products  
(No Statement of Work Required)**

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## Procedures for Services and Products (No Statement of Work Required)

The following ordering procedures **must** be followed, as required by FAR 8.404 [www.acquisition.gov/far](http://www.acquisition.gov/far) when ordering products and/or services that do **not** require a Statement of Work when using the MAS Program.

### Orders under the \$2,500 micro-purchase threshold

You can place the order directly with contractor for the item that best meets your needs.

### Orders over the \$2,500 micro-purchase threshold

As required by FAR 8.404, you are required to:

- Review the GSA *Advantage!* or online shopping service
- Schedule Contractors' price lists
- Select the Best Value (considering price, plus administrative cost)

### Orders over the maximum order threshold

Each Schedule contract has an established maximum order threshold.

- Follow the procedures for orders over \$2,500
- Review additional price lists or use "GSA *Advantage!*" online shopping service
- Seek price reductions from Schedule contractors that represent Best Value
- Place your order with the Schedule contractor offering the Best Value.

You should follow the ordering procedures explained above. If further price reductions are not offered, an order may still be placed if you determine that it is appropriate.

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**Documentation**

- Minimum documentation is generally all that is required (e.g. contractor's name, items purchased and prices paid).
  - Additional documentation is necessary when your requirement is defined to a particular brand name and only for orders exceeding the micro-purchase threshold.
  - When you follow the procedures of FAR 8.4 [www.arnet.gov/far](http://www.arnet.gov/far), buying members **should limit your review** to the information provided by **Schedule contractor**
-

**Attachment C**

**Sample Selection Statement for FSS Services Acquisition**

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**SELECTION/AWARD MEMORANDUM****[Insert Program] Support Services**

The Department of Energy issued an invitation to four GSA MOBIS Schedule vendors to attend a pre-proposal conference to discuss providing support services for [program mission] for the Office of Administrative Support (MA-XX). A Request for Quotation (RFQ) was issued via the DOE Industry Interactive Procurement System (IIPS) on [insert date]. Due to projected budget restraints for FY 03, the anticipated period of performance of sixty (60) months will consist of one 8-month base period, one 4-month option period and four 12-month option periods. An award will be made in accordance with FAR 8.4, GSA Schedules. The preproposal conference was conducted on [insert date].

The competition was reserved for small business firms from the GSA FSS MOBIS vendor list. However, the DOE permitted a teaming arrangement by small businesses with large business firms who are also on the GSA FSS MOBIS schedule. The solicitation informed all offerors that the following labor categories were considered critical services and must be provided as employees of the small business offeror as the prime. In total, the small business prime must provide at least 75% of the labor hours:

- Project Manager
- Site Supervisor – Germantown
- Site Supervisor – Washington
- (labor category) - Germantown (2)
- (labor category) - Washington (3)

Based on MA-XX's review of the GSA MOBIS Schedule vendors, a recommendation was made by MA-XX to invite the following firms to the preproposal conference:

Company 1  
Company 2  
Company 3  
Company 4

It is noted that Company 4 did not attend the preproposal conference.

The solicitation requested that the offeror prepare proposals based on technical approach, key personnel, past performance, and price. The solicitation stated that past performance will be evaluated on a pass (satisfactory) /fail (unsatisfactory) basis to determine that the firm (and their GSA MOBIS Schedule team member) has (have) been successful in providing support services under their largest three awards, within the last three years, from U.S. Government clients or other clients from commercial sources. Experience in [insert key programmatic responsibilities] would be a priority for past performance. The DOE anticipated that the award would be a Time-and-Materials instrument. Proposals were due via the DOE IIPS on [insert date].

DOE received proposals from:

Company 1 (teamed with MOBIS vendor Z)  
Company 2  
Company 3

The Technical Evaluation Panel (TEP) reviewed Companies 1, 2, and 3 relative to determining the best value recommendation under the solicitation. The TEP completed the evaluation of the following three firms (1) Company 1; (2) Company 2; and, (3) Company 3 in accordance with the technical evaluation criteria under solicitation DE-RQ01-03ADXXXXX. The attached evaluation report demonstrated that the technical proposal from Company 1 is superior under the Technical Approach and Key Personnel criteria. All three firms are equivalent under the Past Performance criterion. All references gave a passing evaluation for each of the three firms.

All three firms complied with the solicitation that at least 75% of the labor hours were to be provided by the prime small business.

A revision to the offeror's technical proposal was not solicited.

Company 2 offered the highest price of the three firms under the solicitation. The evaluation of the proposal identified significant weaknesses within the proposal as follows:

- Company 2 did not demonstrate how they would actually perform the services in any of the functional areas in the statement of work.
- Company 2 lacks extensive experience in providing [insert type of services being acquired] services.
- Company 2 proposed several key personnel who did not meet the position requirements.

Based on Company 2's higher price, identified weaknesses, and the lack of any significant strengths, Company 2's proposal is not considered the best value.

The price proposal offered by Company 3 is less expensive than Company 1's price proposal. However, the technical proposal provided by Company 3 contained the following significant weaknesses that would not make the Company 3's offer a best value:

- Company 3 supplements their management experience by discussing a team arrangement with a known (specialty) contractor, Company X. However, the proposal does not develop the arrangement nor does Company X provide personnel based on their schedule.
- The proposed personnel are Company 3 employees; however, the offeror failed to demonstrate that most of the personnel proposed meet the requisite experience contained in the position descriptions of the solicitation.
- Company 3 failed to demonstrate how they would actually perform each of the functional areas of the statement of work.

Company 1 provided a superior Technical Approach and Key Personnel to provide services for DOE in Washington, DC and Germantown, MD. Company 1's price exceeds Company 3's price by 8.4% but is lower than the price offered by Company 2. The TEP recommended in their evaluation that the price differential is justified by the superior Technical Approach and Key Personnel demonstrated in their proposal. The price differential is justified by the superior Technical Approach and Key Personnel proposed by Company 1, as addressed below. In addition, Company 1 has teamed with the incumbent contractor, Company Z):

- Clear and concise methodology to perform each of the functional task areas of the statement of work. Company 1 proposed several innovations in the operations of the XX. For example, Company 1 has extensive experience in marketing their training services throughout the DOE. This marketing experience will be used to expand the use of the XX and attract more revenue for services. Company 1 will be using Company Z sources that have historically provided DOE over \$150,000 in discounts to date.
- Company 1 proposes to design a [XX] liaison program to help to insure DOE Program Offices do not duplicate the purchase of services already being provided through the client office.
- Company 1 will use consortium site licenses, which have in the past saved the DOE \$1.2 million in FY 2001. These savings will continue by Company 1 negotiating future consortium site licenses.
- Company 1 has gained hands-on experience in DOE's policies, procedures, systems, databases, customer bases and on-going initiatives by acquiring the staffing the effort entirely with

employees who are currently providing these services. There will be no start-up expense of training new personnel.

- Company 1 has acquired all incumbent employees with security clearances. The DOE will not have to spend several thousand dollars in processing new security clearances.
- Technical innovations are critical to the MA-XX mission. Automation of materials constitutes the largest expenditures. Company 1 has an established subcontractor, Company Z, who is the incumbent contractor. Company Z's knowledge of MA-XX services is state-of-the-art and will continue providing innovative approaches to MA-XX services and most importantly, cost cutting recommendations that exploit the electronic MA-XX systems and services.
- Company 1 has proposed several enhancements to MA-XX's systems. These improvements have the result of increasing MA-XX's client base, and streamlining electronic systems. These are considered innovative cost savings recommendations.
- Company 1 has recommended another cost savings initiative that involves a free services called "XX" for non-technical documents. DOE currently uses a fee for the service under the contract.
- Company 1 has acquired all Key Personnel from the incumbent contractor Company Z. The existing Key Personnel are fully trained in DOE MA-XX operations. Their enthusiasm for the work has been demonstrated continuously by DOE customers providing hundreds of accolades for expert MA-XX services. Keeping customers satisfied translate in cost savings by repeat customers. The customer's program offices provide a large amount of MA-XX funding.
- Company 1's entire Key Personnel staff meets DOE Position Descriptions. There will be no lost time filling vacancies.
- Company 1 has proposed an acceptable methodology to insure that staff members receive continuous education to maintain their state-of-the-art expertise. The continuous education (seminars, course instruction) will be provided at no cost to DOE.
- The Company 1 acquisition personnel represent the best of the lessons learned in acquiring [XX] services. These individuals have a proven track record in saving DOE thousands of dollars.

The proposal strengths noted above are unique to Company 1's proposal.

Based on the numerous potential cost saving elements offered by the Company 1 proposal, Company 1 provided a proposal offering a detailed understanding of DOE's MA-XX operations and innovative recommendations to improve services and increase the customer base. At the same time, much of the proposed work provides for new cost savings and carries on the best time proven savings initiatives. Company 1's Core Personnel and Key Personnel will provide a seamless transition to the new contract, while maintaining a relationship to the incumbent contractor who created most of the MA-XX software system and operational procedures.

The Contract Specialist evaluated the labor rates for Company 1/Company Z and confirmed that the proposed rates are in accordance with their respective GSA MOBIS Schedule published rates. The labor rates and discounts are considered fair and reasonable when compared to their GSA Schedule contracts (See price evaluation, Attachment 2 to this memorandum).

Price proposals were due via the DOE HPS on (date), and were received on time from all three offerors:

Company 3	\$10,800,000.00
Company 1	\$11,700,000.00
Company 2	\$13,000,000.00

As noted above, Company 1 provided a superior Technical Approach and Key Personnel to provide MA-XX services for DOE in Washington, DC and Germantown, MD. Company 1's price of [insert date], exceeded Company 3's price by 8.4% but is less than the price offered by Company 2. The TEP already recommended in their evaluation that the price differential between Company 3 and Company 1, and Company's 1 price proposal of [insert date] was reasonable as a best value of the three offerors.

The Contract Specialist performed a final evaluation of the labor rates for Company 1/Company Z and confirmed that the proposed rates are in accordance with their respective GSA MOBIS Schedule published rates. Company 1 provided a 41.5% discount rate for all labor categories. It is hereby determined that the labor rates and discounts contained in Company 1's final proposal are fair and reasonable and represents the best value to the government.

Based on the above, it is hereby recommended that Company I/Company Z be selected as the best value vendor for the proposed statement of work under DE-RQ01-03XXXXXX.

\_\_\_\_\_  
Contract Specialist

\_\_\_\_\_  
Date

CONCUR:

\_\_\_\_\_  
Contracting Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Independent Review

\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Director

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
Head of the Contracting Activity

\_\_\_\_\_  
Date

Attachment:

1. Technical Evaluation Panel Recommendation.
2. Price Evaluation

**Attachment D**

**Sample Ordering Clause for Multiple Award Contracts**

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*Strategic Acquisition Transactions Guide*

**H.12 PROCEDURES FOR ISSUING TASK ORDERS -- PCO AND ACO ORDERING**

Only DOE Procuring Contracting Officers (PCO)s and Administrative Contracting Officers (ACO)s are authorized to place Task Orders under this contract. The term contracting officer, as used in this clause, means PCO or ACO.

If the Government has awarded more than one contract for the work specified in the Statement of Work of this contract, the Contracting Officer will periodically issue Task Orders to one or more of these contractors, pursuant to the procedures set forth in paragraph (a) or (b) below:

- (a) The Contracting Officer may issue a task to any one of the contractors if he/she determines, in his or her sole discretion that:
  - 1. Following any of the procedures of paragraph (b) would result in unacceptable delays in fulfilling the requirement which is the subject of the Task Order;
  - 2. The task requires services that are unique or highly specialized and that only one contractor can provide the services to the level of quality required;
  - 3. The task is a logical follow-on to a Task Order previously issued to a contractor pursuant to paragraph (b) (1) below; or
  - 4. It is necessary to issue the Task Order to a contractor to fulfill a minimum guarantee.
- (b) The Contractor agrees that issuance of a Task Order in accordance with the procedures listed in this paragraph is deemed to have provided the Contractor a "fair opportunity to be considered" as that phrase is used in Section 303J(b) of the Federal Property and Administrative Services Act of 1949, as amended, for this issuance of Task Orders under the contract.

1. Issuance of Task Orders Based Substantially on Performance of Previous Task Orders With Cost a Considered Factor

In issuing tasks based substantially on performance of previous tasks, the Contracting Officer will evaluate records of the contractors' technical performance and cost control on previous tasks issued for the work specified in the Statement of Work of this contract, taking into account performance under tasks most comparable to the prospective task. In order to issue initial tasks under this contract on this basis, the Contracting Officer may consider the quality of the contractors' technical proposals under the solicitation leading to the award of this contract, taking into account the portion of the proposal most comparable to the prospective task.

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### ***Strategic Acquisition Transactions Guide***

After such an evaluation, the Contracting Officer will make award to the contractor he or she believes most likely to perform the task at the highest quality at the best value. If issuance of a task will be based substantially on performance of previous tasks, cost proposals will be requested.

#### **2. Issuance of Task Orders Based on Cost/Price**

(i) When the issuance of a Task Order is to be based entirely on cost or price, the Contracting Officer will provide each contractor information as delineated in the clause entitled, "Task Orders," of this contract relating to the prospective task, specifying that the award will be based entirely on cost/price. The Contractor will provide a task proposal as specified in the "Task Orders" clause. The Contracting Officer will exercise his/her best judgment in determining whether elements of cost reasonably reflect the nature of the prospective task. To the extent required, the Contracting Officer will negotiate the proposals.

(ii) The Contracting Officer may choose to base award substantially on cost or price, in which case the Contracting Officer will issue a request for task proposals which specifies any additional selection factors, and their relative importance, to be used in the selection of the recipient of the task.

#### **3. Issuance of Task Orders Based Substantially on Technical Merit**

In issuing tasks based substantially on technical merit, the Contracting Officer, along with the DOE Technical Manager(s) named elsewhere in this contract, will request technical and cost/price proposals on the Statement of Work required for the Task Order. The request for task proposal will specify the selection factors and the means of submission of the proposal. After evaluation, the Contracting Officer will make award to the contractor he or she believes most likely to perform the task at the highest quality and reasonable cost/price.

#### **4. Issuance of Task Orders Based upon Other Criteria**

In issuing tasks under this procedure, the Contracting Officer may base the issuance on any other factor(s) which he or she deems appropriate in the exercise of sound business judgment. Such factors include, but are not limited to, selection based upon best value (cost/technical tradeoffs) for performance of a prospective task. If the selection factor or factors require the submission of task proposals from the contractors, the factor or factors to be used in selecting the recipient of the task, and their relative importance, will be specified in the request for a task proposal by the Contracting Officer.

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***Strategic Acquisition Transactions Guide***

**5. Issuance of Task Orders Utilizing Limited Competition**

(i) The Contracting Officer may offer a fair opportunity for a task award solely among small business or small disadvantaged business within a particular functional or sub-functional area.

(ii) Task Orders issued under pursuant to paragraph 5.(i) will be awarded based on one of the award scenarios described in paragraphs 1 through 4 of this paragraph b.

(c) An Ombudsman has been designated for the contracting activity awarding this contract to ensure that all contractors are afforded a fair opportunity to be considered for task or delivery orders pursuant to FAR 16.5. The purpose of the Ombudsman is not to diminish the authority of the Contracting Officer, but to receive on behalf of and to communicate to the appropriate Government personnel concerns and disagreements of contractor(s) not receiving a specific task and to work to resolve the matter. When requested, the Ombudsman will maintain strict confidentiality as to the source of the concern. The Ombudsman does not participate in the original selection of contractors or in the evaluation or determination of the issuance of task or delivery orders under this contract, does not act in the capacity of a Contracting Officer, and does not participate in the adjudication of contract disputes, in regard to multiple award task or delivery order contracts awarded pursuant to FAR 16.5. Interested parties may contact the Contracting Activity Ombudsman, at (202) XXX-XXXX or by email: [ ] with concerns or disagreements. Those issues which cannot be resolved at the level of the Contracting Activity Ombudsman may be referred to the DOB Task and Delivery Order Ombudsman.

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**Attachment E**

**Governmentwide Acquisition Contracts  
and Multi-Agency Contracts**

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**(GOVERNMENT-WIDE ACQUISITION CONTRACTS GWACS) and MULTI-AGENCY CONTRACTS**

05/31/02

Host Agency	Type	Fee	Compete?	Lead Time	Comments
FLETC Non-toxic Ammunition (ends 2003)	IDIQ	No	Yes	3 weeks	Contracts awarded to Blount Inc., Delta Frangible Ammunition, Federal Cartridge Co., Longbow, Inc., Remington Arms Co., Simunition, and Olin Corp./Winchester Division. Various sizes of frangible and non-frangible cartridges are available. Orders must be placed by the Federal Law Enforcement Training Center. Contact Patricia Newman at 912/267-3171 to obtain information on establishing an MOU for Orders
Veterans' Affairs (Ends 9/2002)	BPA	1% incl.	Limited. Review other prices	Very fast-3 days	Very flexible and easy to use. BPAs are based on GSA Schedule contracts with A&T Systems, NCI Information Systems and Pulsar Data Systems. No per order ceiling. Suppliers: Dell, IBM, HP, Compaq, etc., Trng & svcs. also avail. Call Fred Sanders, A&T (301/384-1425, ext320); call Denise McKenzie, Pulsar (301/853-5112) or Laura Thomas, NCI (703/287-8221). No fee if agency issues its own orders
NIH CIO-SP II (10 years)	IDIQ	1% max.	Yes	2-3 weeks	Must follow NIH procedures, which are explained on web site below. Must fax/e-mail SOW and "TORP" (task order request for proposal) to NIH; NIH must approve SOW and source selection docs. There are 48 primes, MANY subs. Nine task areas: CIO Support, Outsourcing, IT operations & maintenance, Integration Svcs, Critical Infrastructure & Information Assurance, Digital Gov't, Enterprise Resource Planning, Clinical Support/Research Svcs, and Software Development. Fees: 1% if prime is lg. bus; if sm. bus, fee is 1% up to \$5M; .75% up to 10M; .5% over \$10M. See ( <a href="http://nitaac.nih.gov/Nhome/cio2">http://nitaac.nih.gov/Nhome/cio2</a> ) or phone 1-888-773-6542
CECOM's Boundary Security Device BPA's (Ends 1/2004)	IDIQ	0%	Yes	2-3 weeks	BPAs awarded to Electronic Systems of Richmond ( <a href="http://www.esr.com">http://www.esr.com</a> ) GTSI ( <a href="http://www.gtsi.com/ArmySecurity">http://www.gtsi.com/ArmySecurity</a> ) Paragon Systems ( <a href="http://www.paragon-systems.com">http://www.paragon-systems.com</a> ) and Patriot Technologies ( <a href="http://www.patriot-tech.com">http://www.patriot-tech.com</a> ). Contact Julia Conyers-Lucero at 520/838-8259.
CECOM's Rapid Response (R2) (Ends 7-2003)	IDIQ	1%	Yes	19 days	Contracts awarded to ARINC and Lear Siegler Services for services, training and support see ( <a href="http://r2csr.mornmouth.army">http://r2csr.mornmouth.army</a> ) or contact Laura Hanke, 405/605-7137.

DISA's Encore Information Technology Solutions (Ends 3/2009)	IDIQ	2%	Yes	2-4 weeks	Contracts awarded to Analytical Services Inc., CSC, EDS, Lockheed-Martin Integrated Systems, Northrup Grumman Information Technology, Pragmatics, Inc., TranTech Inc., TRW and Unisys Federal. Under these contracts, the contractors provide services, hardware, software and associated enabling products to satisfy IT activities at all operating levels. Areas supported by these contracts include Command and Control, Intelligence and Mission Support areas, as well as all elements of the Global Information Grid (GiG). DISA will conduct competition, though customer agency can have input on source selection. Contact Major Doug Armstrong, 618/229-9302. See <a href="http://www.disa.mil/D4/diioss/encorchar.html">http://www.disa.mil/D4/diioss/encorchar.html</a>
DISA's Enhanced Mobile Satellite Service (Ends 12/2002)	IDIQ	2%	No	1-3 weeks	Contract awarded to General Dynamics Decision Systems for Iridium satellite network equipment and services. Contact Augustine Ponturiero, 703-607-6292. See <a href="http://www.ditco.disa.mil">http://www.ditco.disa.mil</a>
FBI Pistols (Ends 5/02 and 5/03)	IDIQ	No	No	1-2 weeks	Contract awarded to Glock for .40 caliber DA pistol (ends 5/02) and to Springfield, Inc. for .45 SA pistol (ends 5/03). Contact Theresa Powell at 703-632-1640.
Justice Legal Support Services (Ends 12/03)	IDIQ	No	No	1-2 weeks	Contract awarded to Dyncorp for asset forfeiture and paralegal services. Contact Dave Johnson at 202-307-1967.
Justice Gen. Support Svcs. (Ends 9/03)	IDIQ	No	Yes	2-3 weeks	Contracts awarded to DDD company and Vistrionix for general support services. Contact Joyce McCoy at 202-307-1972.
Justice ASSIST-2 (Ends 9/06)	IDIQ	Yes	Yes	2-3 weeks	Contracts awarded to Compaq Federal, DynCorp, and Unisys Corp. to obtain hardware maint., help desk, config./asset management, and operations support. See <a href="http://www.usdoj.gov/jmd/irm/sts/assist/doj2.htm">http://www.usdoj.gov/jmd/irm/sts/assist/doj2.htm</a> for ordering procedures and fee. Must establish agreement with DoJ; they will award on your OF-347 once funds are certified as being available. Contact Mark Selweski at 202-307-1968.
Justice IT Support Svcs. (Ends 5/04)	IDIQ	3.5% 2% .5%	Yes	2-3 weeks	Contracts awarded to CSC, DynCorp, Keane Federal, Lockheed Martin, Logicon, and Pragmatics for IT support services. Range in fee depends on task order amount (up to \$ 1M, 3.5 %; over \$ 1M to \$ 10M, 2 %; over \$ 10M, .5 %). Must establish reimbursable agreement w/ DoJ. See <a href="http://www.usdoj.gov/jmd/irm/sts/itss2001/itss.htm">http://www.usdoj.gov/jmd/irm/sts/itss2001/itss.htm</a> Contact Nancy Feeney at 202-307-1976.

NASA SEWP III (Awarde 7/01)	IDIQ	0% under \$2500. 75% over \$2500	Limited. Review other prices; compete if mult. awards	2-5 days	Easy to use. Program ofc must get faxed quote to submit w/ req. We fax orders to NASA and NASA forwards to vendor. Primes are H-P (Classes 1 and 8); GTSI/Sun Microsystems (Class 2); IBM (Class 4); Silicon Graphics (Class 5); Silicon Graphics, GMR and Cray (Class 6-mult. award); GTSI, Unisys, Logicon/FDC (Class 11-mult. award); GTSI, Logicon/FDC, & GMR (Class 13-mult. award). For explanations of Class designations, click on "What's in SEWP?" See <a href="http://www.sewp.nasa.gov">http://www.sewp.nasa.gov</a> Call SEWP Bowl Help Line, 301/286-1478. Ordering guide is available on-line, with detailed instructions.
NASA ODIN (Ends 2007)	IDIQ	1%	Limited.	2-4 weeks	Contracts with Boeing, CSC, DynCorp, FDC, Intellisource Info. Systems, OAO, and Wang. "Seat management" concept. Orders must go through FEDCAC w/ 1 % fee. Contact Chris Wren, 703/605-9811. NASA's web site is <a href="http://www.odin.nasa.gov/homepage.html">http://www.odin.nasa.gov/homepage.html</a>
NIH ImageWorld II	IDIQ	1% max.	Limited. Review other prices	2-3 days	Easy to use. Contracts are for medical imaging hardware/software, electronic document mgmt, and GIS. 24 primes and 200 subs include Unisys, Universal Hi-Tech Development, EDS, Lockheed Martin, Sytel, Seta. See <a href="http://nitaac.nih.gov/Nhome/TW2">http://nitaac.nih.gov/Nhome/TW2</a> or call hotline at 1-888-773-6542. Fee structure same as NIH CIO-SP II.
DoJ ITSS (Ends 2004)	IDIQ	.5-3.5%	Yes	1-2 weeks	Requires establishment of a reimbursable agreement with DoJ (though a possible option is to have DoJ use your fiscal strip on the task order). Primes are CSC, DynCorp, Keane Federal Systems, Lockheed-Martin, Logicon, and Pragmatics. Contact Nancy Feeney at DoJ on 202/307-1976. See <a href="http://www.usdoj.gov/jmd/irm/sts/itss2001/itss.htm">http://www.usdoj.gov/jmd/irm/sts/itss2001/itss.htm</a>
DoT ITOP II (Ends 1/2006)	IDIQ	.75-2.75% (depends on level of support)	Yes	2-3 weeks	Three functional areas: Information systems engineering, systems ops. & mgmt, and info. sys. security support svcs. Primes include EDS, Booz Allen, Wang Gov't Svcs., SRA, Litton/TASC, DynCorp, Logicon, Lockheed Martin, SAIC, Unisys (26 awards), etc., including 8 8(a) firms. Contact ITOP program office, 202/366-6338. See <a href="http://itol.dot.gov">http://itol.dot.gov</a> (web site is very complete in terms of step-by-step ordering procedures, fees, etc.)
DoT VANITS (Ends 8/2007)	IDIQ	.75-2.75%	Yes	2-3 weeks	Value-Added Niche Information Technology Services contracts awarded to over 100 contractors in the following 11 functional areas: Business intelligence services (data warehousing/mining); e-commerce services; e-mail/messaging services; enterprise resources processes services; remote maintenance monitoring services; e-Learning services; systems transition/migration/remediation services; assistive technology services; Government financial systems services; secure communications services; and operational maintenance support. Contact Ames Owens, 202/366-9614. See <a href="http://vanits.dot.gov">http://vanits.dot.gov</a>

DoT STATUS (Ends 5/2006)	IDIQ	.75- 2.75%	Yes	2-3 weeks	Specialized and Technology User Services (STATUS) program awarded to over 100 companies, in 5 technical areas: geographic information systems, artificial intelligence, wireless/technologies/networks, e-learning and learning management systems, and operational maintenance support. Contract is open to Federal, state and local governments. Contact the program office at 202/385-6789. See <a href="http://status.dot.gov">http://status.dot.gov</a>
Defense Message System (Ends 4/2003)	IDIQ	N	N	2-3 weeks	Contract awarded to Lockheed-Martin for secure messaging infrastructure hardware and software (Unix and NT workstations, MS Exchange and Lotus E-mail, etc.). Provides complete systems integration, training, and technical support. Contact Jerry Bennis, 703/681-0921. See <a href="http://www.disa.mil">http://www.disa.mil</a> (click on contract vehicles; select DMS).
DISA's DEIS II (Ends 6/30/2002)	IDIQ	2	Yes	1-3 weeks	(DEIS= Defense Enterprise Integration Svcs) Contracts awarded to CSC, EDS, Lockheed-Martin, SAIC, TRW, and Unisys for BPR, systems development and implementation/deployment, etc. Contact Mark Schneider, 618-229-9137. See <a href="http://www.disa.mil/D4/diioss/deischer.html">http://www.disa.mil/D4/diioss/deischer.html</a>
DISA's Infor- mation Assure (I ASSURE) I (Ends 7/2007)	IDIQ	2	Yes	3-4 weeks	Eleven performance-based contracts awarded to ACS Defense (8 subs), ATREL Inc. (10 subs), CSC, EDS (15 subs), Logicon (23 subs), Pragmatics Inc. (8 subs), SAIC (15 subs), SRA Corp. (14 subs), TASC (10 subs), Veridian (37 subs incl. 4 universities), and Getronics Gov't Solutions (21 subs). Contractors will provide a full range of IT/IA services to protect and defend information and information systems by ensuring their availability, integrity, authentication, confidentiality and non-repudiation. Includes h/w, s/w, dissemination devices, etc. Contact Bill Keely (703/882-1504). See <a href="http://www.disa.mil/D4/diioss/iachar.html">http://www.disa.mil/D4/diioss/iachar.html</a>
FAA BITS (Ends 2003)	IDIQ	1%	Yes	1-3 weeks	All awardees are small or 8(a) firms. Can set work aside for one group or the other. 15 primes. FAA extremely helpful for smooth processing. Call Jack Handrahan, 202/267-9781, or Regina Fletcher, 202/267-7806. See <a href="http://www.faa.gov/ait/bits">http://www.faa.gov/ait/bits</a>
GSA FAST, Heartland Region (Ends 10/2004)	IDIQ	1% incl. in pric	Yes	1-3 wks. (11 regional ofcs)	Federal Acquisition Svcs for Technology (FAST). Service provided by your closest GSA regional office. They will use the multiple award schedules, GWACs, and a number of 8(a) contracts they awarded-whatever gets you what you need fastest. Contact Delta Helm, 877/FAST SDC. Fee is negotiable. See <a href="http://www.fast.sdc.gsa.gov">http://www.fast.sdc.gsa.gov</a>
GSA's ENIGMA	IDIQ	2-4%	Yes	1-3 weeks	ENIGMA is a multiple award program that arose from PDD-63 and the Government Information Security Reform Act. "Trusted neutral" partner (contractors) will assess the critical infrastructure security (classified or unclassified); NSA's INFOSEC assessment methodology is used. Prepares agency for audit; helps establish baseline program information. Contact Jack Bowers, 202/708-7685. See <a href="http://www.fts.gsa.gov/enigma.enigmamain.htm">http://www.fts.gsa.gov/enigma.enigmamain.htm</a>

DIA's SS-II Program (Contracts may have ended 4/02)	IDIQ	0%	Yes	2 weeks	Contracts are in place with Compaq Federal, Northrup Grumman, Sun Microsystems, Sytel, Inc., and Tracor-ES for Tempest hardware/systems. Contact Jim Dashiell at 202/231-2670. See <a href="http://assess.dia.mil">http://assess.dia.mil</a> (click on SASS II).
Navy's NAVICPmart	IDIQ	0%	No	1 day-1 week	Navy has awarded requirements contracts for a number of electrical tools and test equipment, including network analyzers. All government agencies can use these vehicles. Orders can be placed on the Internet, by using a purchase card, or a hard-copy order. Items included have been tested and approved by the Navy. Delivery time is long - 45 to 120 days, depending on the items. Call 1-888-665-3454 for more information, or visit <a href="http://www.navicpmart.com">http://www.navicpmart.com</a>
NM ECS H (Ends 9/2002)	IDIQ	1% incl.	Yes	5 days	MANY vendors (45!) & products all viewable on the web. See <a href="http://nitaac.nih.gov">http://nitaac.nih.gov</a> Intelligent Decisions carries Tempest and zoned equipment (contact Michael Phu, 703/689-9908). Contact Millicent Carr-Manning in the NIH program office, at 301/402-3072.
GSA WACS (Ends 2002)	IDIQ	2.5%	No	2-3 weeks	Wire and cable services domestic and overseas. Call Sabrina Craine, 703/904-2810. See <a href="http://www.fts.gsa.gov/html/fts_mall/Wiring_Cabling.html">http://www.fts.gsa.gov/html/fts_mall/Wiring_Cabling.html</a>
GSA's ANSWER (Ends 2008)	IDIQ	1% incl.	Yes	2-4 weeks	Contracts w/ Anteon, Booz-Allen, CSC, DynCorp, EER, Info. Systems Support, ITS Corp., Litton/PRC, Logicon, and SAIC. Provides wide range of software support and other IT services. Contact Thelma Riusaki, 510/637-3880. See <a href="http://answer.gsa.gov">http://answer.gsa.gov</a> Complete ordering guide on web site. Agencies can direct order/direct bill once GSA's C.O. gives authorization.
GSA's Safeguard	IDIQ	1% incl.	Yes	2-4 weeks	GSA has awarded 27 BPA's to help agencies comply with PDD 63 and critical infrastructure protection requirements. Six functional areas include critical infrastructure asset identification, risk management, critical infrastructure continuity and contingency planning, physical infrastructure protection, information systems security and information assurance, and emergency preparedness, awareness training, exercises and simulation. Contact Donald Carlson (program mgr) on 202/708-7531, or <a href="mailto:donald.carlson@gsa.gov">donald.carlson@gsa.gov</a> See <a href="http://www.fts.gsa.gov/safeguard">http://www.fts.gsa.gov/safeguard</a> GSA will issue the order for you or issue a DPA for direct orders. Customer guide and base SOW are on web site.
GSA's Business Architecture Modernization (BAM) (Ends 6/2002)	IDIQ	Varies	Yes	2-6 weeks	Contracts with CSC, Litton PRC, SETA Corp., Booz, Allen & Hamilton, SRA International, Wizdom, and Abacus Technology. Services include strategic planning assistance, infrastructure management/planning/oversight, BPR, training, etc. Contact Rian Block, FEDSIM, 703/216-8284. See <a href="http://fedsim.gsa.gov/bam">http://fedsim.gsa.gov/bam</a>

GSA's CINEMA (Ends 2002)	IDIQ	1% incl.	No	2-4 weeks	Contracts with BTG and AT&T Global Networks for Internet access, e-mail, and EC activities. Contact Mary Kenney, 703/306-6307. See <a href="http://www.fts.gsa.gov">http://www.fts.gsa.gov</a> [in the left-hand column, click on the program pull-down list and then on "Internet Services (CINEMA)".] Contract is direct order-direct bill; competition not required, but may want to obtain quote depending on anticipated services type(s). If requirements are international, select AT&T.
GSA Millennia (Ends 2009)	IDIQ	1%	Yes	2-4 weeks	Contracts with Boeing, Booz-Allen, CSC, DynCorp, Lockheed Martin, Litton/PRC, Logicon, OAO, Raytheon, SAIC, SRA, and Unisys. Three functional IT service areas: Software engineering, communications, and systems integration. Contact Sandye Simpson, 703/605-9808. See <a href="http://fedcac.gsa.gov/Millennia.htm">http://fedcac.gsa.gov/Millennia.htm</a> Orders must be placed by an FTS office; competition required among all 12 vendors, but if there is an incumbent, firms are so notified.
GSA Millennia Lite (Ends 2010i)	IDIQ	1%	Yes	2-4 weeks	Contracts with Abacus Technology Corp, Anteon Corp, Calibre System Inc, C-EXEC, Data Networks Corp, EDSI, SI International Inc, Soza & Co. Ltd, Sytex Inc, User Technology Associates Inc., et al (over 30 firms). Four functional areas: IT planning/studies/assessment (contact Angela Joslin, 404-331-0156); high-end IT svcs (contact Patricia Renfro, 817-978-0039); mission support svcs (contact Angela Joslin, 404-331-0156); and legacy systems migration/new systems dev. (contact Greg Norman, 817-978-0027). Ceiling is \$20B. See <a href="http://lite.gsa.gov">http://lite.gsa.gov</a> . GSA can order or agency can order with delegation of authority from PCO. Contracts are award-term.
GSA ACES	IDIQ	1%	No	2 weeks	(Access Certificates for Electronic Services) GSA will assist Government agencies and citizens with authenticating digital signatures. Agencies must obtain a delegation of procurement authority from GSA, by submission of C.O. Warrant information. PKI and other types of e-commerce needs can be served under this program. Contact Reva Hutchinson, 202-501-1520. See <a href="http://www.gsa.gov/aces">http://www.gsa.gov/aces</a> for more information.
GSA Computing & Communications Recovery Services	IDIQ	.5%	Yes	2-4 weeks	Three contracts awarded by FEDCAC for disaster recovery services. Contractors are IBM Business Continuity and Recovery Services, Comdisco Continuity Services, and SunGard Recovery Services. Services include testing to help refine agency contingency plans, restore and recover operations, business impact analysis, and recovery planning. A no-cost, no-obligation proposal may be requested from the program manager, David Krohmal, by sending the request via e-mail to <a href="mailto:david.krohmal@gsa.gov">david.krohmal@gsa.gov</a> (or 703-619-6197). See <a href="http://fedcac.gsa.gov/disaster.htm">http://fedcac.gsa.gov/disaster.htm</a> (scroll down to "contracts" section)



GSA OBIS	IDIQ	1% incl.	Yes	2-4 weeks	These GSA Schedule contracts for consulting svcs., facilitation svcs., survey svcs., trng. svcs., and support products. MOBIS stands for Management, Organizational and Business Improvement Svcs. Schedule. Contracts w/ dozens of firms. Contact Warren Hayashi, 253/931-7050. See <a href="http://www.gsa.gov/Portal/content/offering_content.jsp?contentOID=115565&amp;content Type=1004">http://www.gsa.gov/Portal/content/offering_content.jsp?contentOID=115565&amp;content Type=1004</a>
GSA Seat Mngmt. (Ends 6/2008)	IDIQ	1% incl.	Yes	2-6 weeks	Contracts with DynCorp, EER Systems, FDC, IBM, Litton/PRC, Multimax, SAIC, and Wang. Operation/management of desktop computers/LANs. Contact Chris Wren, 703/605-9811. See <a href="http://seatmanagement.gsa.gov">http://seatmanagement.gsa.gov</a> This is a direct order-direct bill arrangement, but GSA must first issue a delegation letter to the agency C.O.
GSA TELIS (Ends 6/2002)	IDIQ	0%	No	1 week	Telecommunications systems and services, provided by EDS. Call Jeanne Davis, 781/860-7138. This is a direct order-direct bill arrangement, but GSA must first issue a delegation letter to the agency C.O. See <a href="http://fedcac.gsa.gov/Telis.htm">http://fedcac.gsa.gov/Telis.htm</a> (scroll down to "contracts" portion)
GSA's FEDSIM	IDIQ	2-6%	Varies	1-4 weeks	Various IT services can be contracted for by GSA on a fee-for-service basis. Drawback is high fee; advantage is that funds get transferred to GSA and become no-year money. Contact Linda Leicht, 703/756-4005, or Chip Ward, 703/756-4120.
Wireless Phones and Service	IDIQ	1%	No*	1-3 weeks	*Several vehicles are now in place to acquire wireless phones/air time. GSA in Boston has a BPA w/ Sprint (Motorola phones) (contact Mattie Buford, 617/565-5770); GSA in D.C. has a contract w/ Hughes Global Systems (Motorola and Kyocera phones) (contact Brian Johnson, 310/606-9508); DISA has a contract w/ Motorola for their phones (contact Deb Wellan, 618/229-9547)
GSA's Satellite Services (Ends 2006)	IDIQ	2% (incl.)	No	1 day-3 weeks	GSA's Fed. Technology Service awarded a contract to Hughes Global Services for commercial satellite communications services and products (space segment, teleport service, end-to-end satellite circuits, satellite networks, VSAT networks, video and data broadcast networks, etc.). GSA's fee is built into the prices (KTR pays GSA). Contact Peter Cunniffe at Hughes, 703/875-0545. See <a href="http://www.hughesglobal.com/gsa">http://www.hughesglobal.com/gsa</a>
GSA's WITS 2001 (Ends 2008)	IDIQ	varies	No	30 days	Contract awarded to Bell Atlantic, for services to be provided to the Washington, DC metropolitan area. See <a href="http://www.fts.gsa.gov">http://www.fts.gsa.gov</a> In the left-hand column, click on the programs pull-down menu and then on "WITS 2001." Services include Internet access, frame relay and asynchronous transfer mode data svcs, voice and video teleconferencing, purchase of customer premise equipment, etc. Ceiling is \$1B. Contact Bill Beardon, 202-501-1231.

GSA's Fed. Wireless Telecom Svcs (Ends 2005)	IDIQ	1%	No	1-2 weeks	Contract w/ DynCorp for wireless telecommunications services and equipment including pagers). Contact the Federal Wireless Center, 1-888/333-9473. See <a href="http://www.fedwireless.com">http://www.fedwireless.com</a> . Available nationwide & US Territories; includes provisioning, monitoring, reporting and billing. Verizon Wireless provides phone service. Fee is 4% monthly on SkyTel paging svcs. Direct order/direct billing (GTE bills for telephone svcs and SkyTel bills for pagers). Wide variety of phones and plans available.
Air Force's IT-2 BPA's - DoD Only (See Comments) (Ends 12/02)	IDIQ	1.54% + 1% GSA (latter is included in CLINs)	Limited (BPA's have been competed)	1-3 weeks	While contracts are primarily for DoD, permission can be obtained for use by other agencies by contacting <a href="mailto:ssg.ito@gunter.af.mil">ssg.ito@gunter.af.mil</a> , or 334-416-5608. Contracts with GTSI, Gateway, Westwood Computer Corp (veteran-owned) and CDW-G, Dell and Micron for PC's and servers; workstations available from GTSI and Compaq-Federal; software available from Logicon, FDC, GTSI, qTech, Sytel, and Lockheed Martin. IT services available for DoD only from Centech, EDS, General Dynamics, Lockheed-Martin, Multimax, Northrup Grumman, RS Information Systems, Sumaria, and TRW. Items available include desktops, laptops, servers, networking equipment, accessories, printers, and services. Contact customer support at <a href="mailto:ssg.ito@gunter.af.mil">ssg.ito@gunter.af.mil</a> . See <a href="http://www.itsuperstore.af.mil">http://www.itsuperstore.af.mil</a> (NOTE: Website will be changing over 6/1/2002 to <a href="https://afway.af.mil">https://afway.af.mil</a> )
Air Force's ULANA H	IDIQ	1.74%	No	1-3 weeks	Contract with Sun Microsystems expires for purchase 3/2001. Contract with TRW is active until 8/2002. Both offer a myriad of networking hardware and software products, as well as services. (ULANA=Unified Local Area Network Architecture). Contact Michael Glennon, 334-416-4215. See <a href="http://web1.gunter.af.mil/CIT-PAD">http://web1.gunter.af.mil/CIT-PAD</a> or <a href="http://www.ulana2.com">http://www.ulana2.com</a> (latter is TRW's site)
Army's ADMC-I Program (Ends 5/2004)	IDIQ	incl	Yes	1-2 weeks	Army Desktop and Mobile Computing BPA's replace Portable-3 and PC-3 programs. BPA's awarded to CWD-G, GovConnection, Comark Inc., Dell, GTSI, iGov.com, Intelligent Decisions, Micron, and PlanetGov.com. Desktops and notebooks have on-site, 3-year warranty, worldwide. Desktops include Acer (Comark), Apple (CDW-G), Compaq (CDW-G), Dell, Gateway (PlanetGov), HP (GTSI), IBM (iGov), and Micron. Notebooks include Compaq, Dell, GETAC (Micron), Gateway (PlanetGov), HP (GTSI), IBM (iGov), Micron, Sony (Intell. Decisions), and Toshiba (Comark). Also includes Palm, NEC and HP organizers and Blackberry products. Vehicles are available to all agencies and agency contractors. See <a href="http://pmscp.monmouth.army.mil">http://pmscp.monmouth.army.mil</a> or call 1-888-232-4405.

Army's AIT II Program (Ends 7/2009)	IDIQ	No fee!	No	1-3 weeks	(Automatic Identification Technology) Contract awarded to Symbol Technology, Inc. for bar code equipment, microcircuitry, and ancillary services (installation, training, maintenance). Use purchase card or SF-1449. Orders for equipment and services must be separate, unless on a task order, equipment needed is under \$25K. All orders must go through the Central Order Processing Ofc (COPO). Contact Clarence Magwood, 703/806-3979. See <a href="http://www.peostamis.belvoir.army.mil/ait/homepageC.htm">http://www.peostamis.belvoir.army.mil/ait/homepageC.htm</a>
Army's Human Resources XXI (HR21) (Ends 2003)	IDIQ	2%	Yes	2-4 weeks	Contracts with Litton PRC and Resource Consultants, Inc. Provides a full range of HR resources, including administrative, technical and HR functions. All orders are issued by Army, so funds must be transferred to them to process order. Once issued, customer determines level of control over contractor's work, over and above QA of HRXXI staff. Contact Katie Cohen, 703/602-1303 or Naomi Lynch, 703/602-2982. See <a href="http://www.hrxxi.army.mil">http://www.hrxxi.army.mil</a>
Army's Small Computer Program (MMAD-G) Ends 5/2006	IDIQ	1% incl.	No	1-2 weeks	Contract with GTSI for high- and low-end Compaq servers and workstations. Includes lease options, mass storage items, software, routers, LAN items, printers, services, and total solution. 5-year warranty, worldwide. Payment by credit card is accepted. Contact Brian Rieth, 732-427-6589 (Army) or Carole Dunn, 703-502-2689 (GTSI). See <a href="http://pmscp.monmouth.army.mil/contracts/mmadv_gtsi/mmadv_gtsi.asp">http://pmscp.monmouth.army.mil/contracts/mmadv_gtsi/mmadv_gtsi.asp</a> or <a href="http://www.gtsi.com/mmadv">http://www.gtsi.com/mmadv</a>
GSA's	IDIQ	1%	Yes	1-2 weeks	Tempest and zoned equipment is available from Office Solutions ( <a href="http://www.officesolutionsinc.com">http://www.officesolutionsinc.com</a> ) and from Intelligent ( <a href="http://www.intelligent.net">http://www.intelligent.net</a> ). Both firms sell equipment manufactured by Hetra Secure Solutions. Contact Jim Jacobs, 703/642-1551,x12 or Phil Beaulieu, 703/803-8070, x325.
GSA MAS	IDIQ	0%	Yes	1-2 weeks	Computers and Security Solutions sells Tempest equipment on the open market (small, woman-owned business). No Gov't contracts except a BOA with NATO. Contact Karen Azoff, 703/922-0633. Very competitive pricing. Manufacturer is Emcon.
US Customs Wireless (Ends 2003)	IDIQ	0%	No	1-2 weeks	Motorola, Inc. provides land mobile radios and related services. Users must be delegated ordering authority by host agency before ordering. Contact Nellie Potocki-Reeves, 202/927-4901.
US Customs Vessel Maint. (Ends 2003)	IDIQ	0%	No	1-2 weeks	General Offshore Specialized Svcs. provides nationwide vessel maintenance services (CONUS, Puerto Rico, Virgin Islands). Authorized users have interagency agreements with Customs. Contact Randy Ash, 202/927-2554.
US Customs Helicopters (Ends 2003)	IDIQ	0%.	No	1-3 weeks	American Eurocopter provides helicopters and components. Requirements contract for Customs. Users must be delegated ordering authority by host agency. Open to all state and federal agencies. Contact Pansy Bradley-Cooper, 202/927-0073.

US Customs Interceptors (Ends 2003)	IDIQ	0%	No	1-3 weeks	Fountain Power Boats provides interceptor vessels, open cockpit. Requirements contract for Customs. Users must be delegated ordering authority by host agency. Open to all state and federal agencies. Contact Pansy Bradley-Cooper, 202/927-0073.
US Customs Interceptors (Ends 2004)	IDIQ	0%	No	1-3 weeks	Midnight XP provides interceptor vessels, mono hull. Requirements contract for Customs. Users must be delegated ordering authority by host agency. Open to all state and federal agencies. Contact Pansy Bradley-Cooper, 202/927-0073.
US Customs Tracking Dev. (Ends 2003)	IDIW	0%	No	1-3 weeks	Star Trac provides vehicle communications tracking devices. Users must be delegated ordering authority by host agency. Open to all state and federal agencies. Contact Mark Weinstein, 202/927-0567.
US Customs (Ends 9/2003)	IDIQ	0%	No	1-3 weeks	Production Contracting, Inc. provides construction/renovation services in AZ and surrounding counties. Users must be delegated ordering authority by Customs. Contact Bill Mynatt, 317-298-1180, ext. 1270.
*Treasury's Financial Mgmt & Auditing (Ends 6/2004)	IDIQ	0%	No	1 week	Contracts awarded to Teldata Control, PriceWaterhouseCoopers, and The Profit Recovery Group Internat'l. See <a href="http://www.gcfeb.com/fbac">http://www.gcfeb.com/fbac</a> . Administering office is Franchise Business Activity, reporting to Treasury's CFO. Provides recovery audit svcs, on a firm-fixed recovery fee percentage basis; fee-for-svc work also available (hourly rates). Contact Dave Zingo, 513-684-6764.
*Treasury's Document Automation & Copier Svcs. (Ends 9/2002)	FFP & BPAs	0%	No	1 week	Contracts awarded to OCE USA, Minolta, Xerox, Ricoh, etc. See <a href="http://www.fedsources.gov">http://www.fedsources.gov</a> . Administering office is Franchise Business Activity, reporting to Treasury's CFO. Lease or buy or LTOP analog, digital, and/or color copiers; flexible arrangements, multiple types of copiers/capacities. Most plans incl. maintenance and consumables (not paper). Contact Linda Valentino, 312-886-9358.
*Treasury Franchise FBA- Global Svcs.' Staff Support svcs.	IDIQ	3%	No	1 week	Contract for staff support services with Star Digital, Software Professionals and Professional Performance Development Group. Call 210-308-4522. See <a href="http://www.fba.satx.disa.mil">http://www.fba.satx.disa.mil</a>
*Treasury Franchise FBA- Global Svcs.' IT Support Svcs.	BPA	3%	No	1 week	Contract for IT support services with Software Professionals and McBride & Assoc. Call 210-308-4522. See <a href="http://www.fba.satx.disa.mil">http://www.fba.satx.disa.mil</a>

*Treasury Franchise-FBA Global Svcs.' Project Mngmt. Support Svcs.	IDIQ	3%	No	1 week	Contracts awarded for project management support services, to Global Technical Systems, and Systems Integration Management. Call 210/308-4522. See, <a href="http://www.fba.satx.disa.mil">http://www.fba.satx.disa.mil</a>
*Treasury FedSource FBA-Central/GoTo.Gov Human Resources Svcs.	BPA	Incl.	No	1 week	Full range of HR services is available through a variety of vendors. Includes recruitment, pre-employment screening, classification, outplacement, ADR, Workers Comp, EEO counseling/reporting/case management. Nine awards, all small, SDB, or woman-owned (ordering agency gets credit). Nationwide coverage. Contact Karen Blum, 314-539-6016. See <a href="http://www.fedsources.gov">http://www.fedsources.gov</a>
*Treasury FedSource FBA-Central/GoTo.Gov - IT Equipmt & Project Support Svcs.	BPA	Incl.	No	1 week - 1 month	Convenient access to a full line of Tier 1 IT equipment through 8(a) vendors. Includes wide variety of skill categories to staff IT projects. Nationwide coverage. Contact Karen Blum, 314/539-6015. See <a href="http://www.fedsources.gov">http://www.fedsources.gov</a>
*Treasur FedSource FBA-Central/GoTo.Gov Management Advisory Svcs.	BPA	Incl.	Yes	1 week to 1 month	Access to vendors to meet Congressional requirements for performance, financial management, outsourcing and overall management improvement. Nationwide coverage. Contact Rick Rider, 410/962-2283. See <a href="http://www.goto.gov">http://www.goto.gov</a>
*Treasury FBA-SC's Technical and Administrative Svcs.	BPA	3-5%	No	2 weeks	BPA's for technical and administrative services with ADI Technology Corp., Blackhawk Management Corp., Columbia Research Corp., Crystalview Technology Corp., End to End, Jardon & Howard Technologies, Professional Services Unlimited, ManTech, Progency Systems, Breil Worldwide Management, Engineering Solutions and Products. Fee goes down as volume goes up; 3 % minimum. Contact Marie Larson, 843/524-1541 or Jackie Coleman, 843/524-1136. (No web site available yet.)
*Treasury FBA-Global Svcs' Copier Mngmt Support Svcs.	BPA	3%	Yes	30 days	BPA's for copier management support services with Canon, Konica, Xerox, OCE and Ricoh. Call 210/308-4522. See <a href="http://www.fba.satx.disa.mil">http://www.fba.satx.disa.mil</a>
*Treasury FBA-SC's IT Services	BPA	3-5%.	No	2 weeks	BPA's for IT services with Automation Precision Technology LLC and Computer Temporaries, Inc. Fee goes down as volume goes up; 3% minimum. Contact Marie Larson, 843/524-1541. (No web site available yet.)

Treasury, FBA-SC's Medical Svcs.	BPA	3-5%	No	2 weeks	BPA for medical services with StarMed Staffing Group. Contact Marie Larson, 643/524-1541. Fee goes down as volume of work goes up; 3% minimum. (No web site available)
Treasury's Employee Assistance Program (Ends 9/2002)	FFP	0%	No	1 day - 1 week	Contract with Green Spring Health Services. See <a href="http://www.fedsources.gov">http://www.fedsources.gov</a> . Administering office is Franchise Business Activity, reporting to Treasury's CFO. Typical EAP services are provided nationwide; billed on a per-capita basis, but hourly-rate and per-incident services are also available. Contact Diane Ridgway, 206-220-6129.
Treasury's Fed. Benefits Information System (Ends 9/2004)	IDIQ	Var.	No	30 days	Contracts awarded to Gov't Retirements & Benefits for software support; Bureau of Public Debt for hardware and Internet support. See <a href="http://www.gcfeb.com/fbac">http://www.gcfeb.com/fbac</a> . Internet-based application on Fed. Gov't Retirement, specific to individual employees (retirement estimates, disability benefits, survivor benefits, life/health insurance coverage, etc.). Fee is based on no. of employees/agency + one-time set-up charge. Contact Bill Quaine or Dave Zingo, 513-684-6764.
Commerce's COMMITS (Ends 2004)	IDIQ	5-1%	Yes	1-3 weeks	Commerce Information Technology Solutions contracts awarded to 29 small, small disadvantaged and women-owned small businesses. Ceiling is \$1.5B. Solutions-based and performance-based contracts are in 3 business areas: Systems engineering, systems security, and systems operations and maintenance. See <a href="http://www.commits.doc.gov">http://www.commits.doc.gov</a> .
*Treasury's Project Support Svcs (Ends 9/2002)	FFP & BPAs	0%	No	3 days - 1 week	Contracts with Kelly Services, Westaff, National Systems & Research, etc. See <a href="http://www.fedsources.gov">http://www.fedsources.gov</a> . Administering office is Franchise Business Activity, reporting to Treasury's CFO. Services include clerical/administrative, IT, medical, technical/professional and industrial, to assist agencies in complying with GPRA, streamlining, downsizing, privatization, strategic sourcing, etc. Contact Karen Blum, 314-539-6015.
Air Force's Standard Systems Group (SSG)	IDIQ				SSG offers CMM Level III development capability. They are a franchise organization, offering services in the areas of program management; software development; acquisition of hardware; software and services; life cycle management support services for IT systems; and quality assurance testing for software. Contact Cheryl Cannday at 334-416-3203, or <a href="mailto:cheryl.cannday@gunter.af.mil">cheryl.cannday@gunter.af.mil</a> . Web site is <a href="http://www.ssg.gunter.af.mil">http://www.ssg.gunter.af.mil</a>
DLA BPA Ends 2002	IDIQ	2%	Limited	1-2 weeks	NCI Information Systems provides IT products and services. DLA must issue orders, so 2% fee is mandatory. Contact Dick Frederick, 703/767-1212. See <a href="http://www.nciinc.com">http://www.nciinc.com</a>

\*Treasury's Franchise Business Activity programs that have multiple awards were done by geographic region. Therefore, within a particular region, there is no need to further compete your requirement.

QUESTIONS? Call Ronne Rogin, 202.622.0378. Email address is [Ronne.Rogin@do.treas.gov](mailto:Ronne.Rogin@do.treas.gov)

Or you can go to <http://www.arnet.gov/gwac/govurls.html> or <http://policyworks.gov/intergov/> for another view of what's going on across the Government (GWACs/MACs not "findable" on the latter site)

For another listing of interagency contracts, check <http://ec.msfc.nasa.gov/hq/ccf/adpmass.html> (arnet site has more current info than this one)