**EIS Contracting FAQs**

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* What is the process(es) for obligating funds to contractors at the Task Order level and then receiving / reviewing / approving / paying invoices, and what role (if any) GSA may play in the process(es). For example can this task order, funding and Invoice Process be followed?
* CO obligates funds to contractor through Prism/SAP on award documents/modifications with funds obligated on specific line items.
* Contractor provides goods & services, submits invoice through Treasury’s Invoice Processing Platform (IPP).
* Invoice routed internally to COR who reviews, creates electronic Goods Receipt/Service Entry Sheet at line item level and then routes invoice to CO who reviews and approves invoice in system.
* Agency System transmits payment through Treasury to contractor.

This process is very different from the way Networx invoices have been processed. Does GSA have a clear outline of how this will work under EIS, including the various ways this can be done?

* Please confirm that the agency will obligate funds to the contractor at the Task Order level.
* Where will the contractor submit its invoice? To the IPP system? If not, what system will be used? And how can funding obligated on the Task Order (in the agency’s system) interface with that other system?
* Does GSA anticipate an agency will IPAC any funding to GSA? If so, please explain the circumstances that will have IPAC funding and the processes that be used.
* If payment is somehow supposed to be routed through GSA, how can agencies legally issue a task order to a vendor and yet pay GSA for EIS contract services?
* If the obligation is to the vendor, then the payment has to be to the vendor.
* How will contractors submit invoices, how will agencies review and approve invoices, how will payment be made to contractors, and other aspects of the funding, invoicing, and payment processes.
* Why do CORs need to be Government employees?
* Can an agency issue multiple task orders for the same exact requirement, same service and for same locations?
* Can an agency use a “Not to Exceed Value” on a task order?
* Can an agency price all 15 years on a task order?
* Do we request Subcontracting Plans at the task order level?
* How does FAR Part 51 apply to EIS?

## **What is the legal authority for having service orders under a task order?**

**Answer:** Service Orders (SO) are a telecommunications specific term where the customer can place an order (service request) to the telecommunications service provider to install, move, or disconnect a service at a particular location or exercise other administrative activities relevant to the specific service. SOs are not task orders. A task order (TO) is a term of art defined in FAR part 16. Under EIS, SOs can be used to initiate services that have already been defined in the Task Order and funds have already been obligated on the TO. SOs are utilized under the authority of an awarded TO. EIS requires SOs to be associated with a specific TO number. They are not intended to obligate funds or modify TOs. The EIS RFP defines a SO in Section G.2 & G.3 and in Section J as the documentation that contains all information required to obtain a service.

FAR 16.505(a)(7) defines all of the elements that must be included in all TOs. Those include:

* Date of order.
* Contract number and order number.
* For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.
* Delivery or performance schedule.
* Place of delivery or performance (including consignee).
* Any packaging, packing, and shipping instructions.
* Accounting and appropriation data.
* Method of payment and payment office

GSA believes that a TO with all the elements required in FAR 16.505(a)(7) could be awarded with a not to exceed price (or ceiling price if TO is for T&M) if the requirement is described to allow for flexibility in the quantity of services. Because the requirement includes a maximum quantity, the quantity is not indefinite and therefore not an IDIQ under an IDIQ. For example, an agency may need up to 1000 IPVS(VOIP) lines in Washington, DC during the period of performance of the TO. The TO would include an obligation to cover all 1000 IPVS circuits. At TO award, the agency has 800 existing lines to be installed immediately. The remaining may be installed throughout the period of performance of the TO. If the OCO delegated authority to a COR to place SOs, then the cognizant COR could place SOs for up to the remaining 200 VOIP lines.

The EIS delegation of procurement authority specifically addresses SOs. It states that “all task orders awarded under this DPA shall be placed directly by the OCO. Task order CLINs and pricing shall be structured in accordance with Section B. CORs may only place service orders after the OCO has issued a fully funded task order. The service orders must be within scope and not exceed the funding on the task order.” Each OCO will determine their delegation of authority to CORs. Should an agency not approve of CORs placing SO, that authority could be withheld by the OCO.

FAR 1.102(d) states that “[t]he role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer’s needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.” Since the FAR doesn’t address SO and they don’t violate any laws or regulations, the OCO must determine if SOs are in the best interest of their organization.

## **Why is telecommunications not considered a utility?**

**Answer:** FAR part 41 is not applicable for cable television or telecommunication services because it is explicitly exempted from being a utility in FAR 41.102. The FAR states:

41.102 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the Government, including connection charges and termination liabilities.

(b) This part does not apply to—

(1) Utility services produced, distributed, or sold by another Federal agency. In those cases, agencies shall use interagency agreements (see [41.206](https://www.acquisition.gov/far/html/Subpart%2041_2.html#wp1074994));

(2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency’s marketing or distribution program;

(3) Cable television (CATV) and telecommunications services;

(4) Acquisition of natural or manufactured gas when purchased as a commodity;

(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility’s own distribution system, or construction/maintenance of Government-owned equipment and real property; or

(7) Third party financed shared-savings projects authorized by [42 U.S.C. 8287](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+250+1286++%2842%29%20%20AND%20%28%2842%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20). However, agencies may utilize [Part 41](https://www.acquisition.gov/far/html/FARTOCP41.html#wp228452) for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under [42 U.S.C. 8287](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+250+1286++%2842%29%20%20AND%20%28%2842%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20) for periods not to exceed 25 years.

## **Why do we need to establish task orders under EIS?**

**Answer:** EIS is an Indefinite-Delivery, Indefinite-Quantity (IDIQ) contract under FAR 16.5 (https://www.acquisition.gov/far/html/Subpart%2016\_5.html). As such, FAR part 16.505 includes the ordering procedures under IDIQ contracts which includes the requirement for task orders. The requirements of a task order are itemized in FAR 16.505(a)(7) listed below:

FAR 16.505(a)(7) states:

Orders placed under indefinite-delivery contracts must contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance schedule.

(v) Place of delivery or performance (including consignee).

(vi) Any packaging, packing, and shipping instructions.

(vii) Accounting and appropriation data.

(viii) Method of payment and payment office, if not specified in the contract (see [32.1110](https://www.acquisition.gov/far/html/Subpart%2032_11.html#wp1044007)(e)).

## **What are the benefits of having task orders?**

**Answer:** Task orders are in compliance with the FAR and provide a contractual relationship between an ordering entity and the contractor. Contract require the following elements: a) an offer; b) an acceptance of that offer which results in a meeting of the minds; c) a promise to perform; d) a valuable consideration (which can be a promise or payment in some form); e) a time or event when performance must be made (meet commitments); f) terms and conditions for performance, including fulfilling promises; g) performance.

Should there be some type of performance issue during the period of performance of the task order, the ordering entity can enforce the terms of the contract (i.e. service level agreement credits) or can terminate services under 52.249-8 Default (Fixed-Price Supply and Service) or a special agency clause for the cancellation or termination of orders under communication service contracts with common carriers in accordance with FAR 49.505(c).

## **How many years can a task orders period of performance last under EIS?**

**Answer:** FAR 16.505 does not prescribe a timeframe for period of performance for task orders other than a five-year limit on task orders for advisory and assistance services. Agencies should review their FAR supplements for additional agency-specific guidance.

FAR 17.204(e) states ”Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. **These limitations do not apply to information technology contracts.** However, statutes applicable to various classes of contracts, for example, the Contract Labor Standards statute (see 22.1002-1), may place additional restrictions on the length of contracts.” The Product Service Code (PSC) used for reporting information in FPDS combines Information Technology and Telecommunications in Category D. The agency should verify in their agency supplement, whether its organization considers telecommunications to be IT. If telecommunications is not considered IT, the agency may follow the agency procedures for exceeding the 5-year limit.

## **What are acceptable methods for producing a TO solicitation that takes into account the potential of future services that cannot at this time be forecasted for quantity and geography?**

**Answer:** FAR 16.505(a)(2) states in part that ”[i]ndividual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed.” Ordering entities may use priced options to include additional services, locations, or quantities. They may also define a dynamic requirement (i.e., inclusive of adds, moves, and changes) over the period of performance of the task order. A combination of both is also allowable. The obligation of funds for options will occur when the options are exercised.

## **Can an agency TO be incrementally funded?**

**Answer:** The FAR does not provide authority to incrementally fund fixed price and time and materials contracts with the exception of those agencies which have requested and received statutory authority to do so. FAR guidance on incremental funding is limited to Subpart 32.7, Contract Funding, and to the clauses that subpart prescribes for use in cost-reimbursement contracts. A general reference to the topic appears in FAR 32.703-1(b): “If the contract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee.” FAR 32.705-2(b) directs the Contracting Officer to insert the clause at FAR 52.232-22, Limitation of Funds External link to a government website, in solicitations and contracts “if an incrementally funded cost-reimbursement contract is contemplated.” The clause describes how to manage the funding of cost-reimbursement contracts and establishes the rights and responsibilities of the parties while the contract remains partially funded.

Agencies should review their FAR supplement to see if they have existing authority to fund fixed price and time and material contracts.

## **How can multiple task orders be awarded from a single fair opportunity solicitation?**

**Answer:** There is no prohibition against awarding multiple task orders from a single fair opportunity solicitation. An agency may want to award multiple TOs if their solicitation contained multiple services or requirements that can be awarded in specifically separate TOs as long as each TO complies with the FAR. FAR 16.505(a)(2) states in part that ”[i]ndividual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed.” FAR 16.505(a)(7) specifies the information required by each TO, especially the contract item number and description, quantity, and unit price or estimated cost or fee for the requirements included in the TO.

For example a solicitation that lists multiple geographic areas could award a TO to the best offeror for each geographic area. Multiple TOs can be administered by different OCOs.

## **How long can a task order last?  Do task orders expire at the end of the each base period?  Does that mean they have to recompete a task order during the 15 year period of performance on EIS?**

**Answer:** A TO can last the entire 15 years if it is not prohibited by the particular agency's FAR supplemental or policies, and prices have been submitted by the offerors and evaluated prior to award for the entire period. The POP and options will be designated by the OCO. If an agency uses yearly appropriated funds, the task order will need to be set up with options that are exercised on a yearly basis. While it is not required, we do recommend that agencies consider recompeting FOs over the 15 years in order to obtain better pricing and possibly move to more efficient technologies. Refer to FAR and your agency supplement and regulations for specific guidance on Task Order Period of Performance, Exercising Options, and obligating funds.

## **After a task order is awarded, what are the agency responsibilities?  Do they still have to submit service orders?**

**Answer:** If the TO contains all of the information required to provision the service(s), there is no need to place service orders. Section G.2.2.1 covers the agency's role in EIS as follows:

*Agency Role*

With regard to task orders (TOs), service orders and billing for services, agencies are responsible for:

1. Placing TOs according to FAR Subpart 16.505, and service orders in accordance with the terms and conditions of the contract.
2. Accepting or rejecting the services rendered by the contractor under TOs and service orders in accordance with Section E.2.2 EIS Services Verification Testing, and coordinating corrective actions with the contractor and GSA if required.
3. Coordinating resources and service providers to facilitate scheduling and communications for implementing and maintaining service. This includes:
4. Identifying the agency’s Local Government Contacts (LGCs) for each location involved in a particular project or other TO or service order activity, if possible.
5. Monitoring and facilitating coordination between the contractor and LGC and other agency vendors and service providers as appropriate.
6. Coordinating with users, and with other contractor(s) that are providing the location with telephone switching or other telecommunications facilities, upon notification by the contractor of changes regarding the date of scheduled activities or site requirements.
7. Paying the contractor for services provided.
8. Notifying the contractor of billing errors and facilitating the resolution thereof.
9. .Additional roles and responsibilities contained in any Delegation of Procurement Authority (DPA) issued by a GSA Contracting Officer (GSA CO) to a warranted agency Ordering Contracting Officer or authorized official.
10. Additional roles and responsibilities contained in any Contracting Officer’s Representative (COR) Designation Letter.

## **What are the roles/responsibilities of the agency and GSA when a delegation of procurement authority is given to the agency?**

**Answer:** The roles and responsibilities of the agency and GSA are covered in Section G.2 of the EIS RFP.  The agency OCO is responsible for all aspects of the TO acquisition process and the resulting TOs. See Section J.3 DPA of the EIS RFP.

## **When will DPA training be available on Defense Acquisition University (DAU)?**

**Answer:** The ETA for DPA training is January 2017.

## **Who is required to take DPA training?**

**Answer:** Any Ordering Contracting Officer who will issue task orders under EIS will need to take DPA training and be issued a Delegation of Authority letter by an EIS Contracting Officer.

## **Can GSA confirm how the task order process will work in terms of what GSA will provide after the award is done and what Agencies are expected to do?**

**Answer:** After the award of the EIS IDIQ contract by GSA, if agencies would like to use EIS for their requirement an Agency Ordering Contracting Officer (OCO) will need to take training and request a Delegation of Procurement Authority (DPA) from an EIS CO. The agency will then need to follow their internal acquisition process, define requirements, secure and obligate funding for the acquisition, prepare and issue a solicitation and offer Fair Opportunity in accordance with FAR 16.505, evaluate proposals and select the EIS contractor (or contractors if using one solicitation to award multiple TOs for separate requirements) that best meets the evaluation criteria, and document the selection decision and award a Task Order. The agency follows its own Task Order award, funding, and invoice process and forms. EIS RFP Section G.4.1.7 requires EIS Contractor’s to support electronic billing and provides several examples. The agency will need to specify the electronic billing method in the TO.

The agency’s OCO will be responsible for administering, and closing out the Task Order.

GSA will assist with in-scope solicitation reviews prior to solicitation release. GSA will provide agencies with a SOW Assist tool that can aid agencies with development of their Solicitations. GSA offers some transition assistance to those customers who currently have contracts under Networx or the Local LSAs. GSA will provide training, guides and handbooks on EIS. GSA will also provide agencies use of Tools, such as a tool similar to the Pricer under Networx, GSA will also provide access to the GSA Conexus system, which will house task order data and provide billing dispute and Service Level Agreement management reporting, among other capabilities. Further details are provided in the Fair Opportunity and Ordering Guide and the Management and Operations Handbook.

## **For each service under EIS, will GSA’s selection produce a list of vendors that can provide those services?**

**Answer:** Yes, the list of services offered by each contractor will be located on (EIS WEBSITE).

## **Will there be a “pricer tool” (similar to Networx)? How will the CLIN’s be structured? Will it list all the vendor prices?**

**Answer:** There will be a pricer tool for EIS, similar to Networx, that will host prices for all EIS Vendors for the Firm Fixed Price CLINS, Individual Case Basis CLINs, Task Order specific CLINs, Task Order Unique CLINs, and Catalog Item CLINs. . This could be useful for pricing well-defined services for which a like-for-like replacement is required. However, the agency should consider whether an alternative solution could meet the requirements; in such case, the agency could define the requirements functionally within a solicitation and release it for EIS contractors to propose their best solution at the best price.

## **What are Agencies expected to do with the output of the pricer tool?**

**Answer:** The agencies can use the pricer for research and budget development. If the requirement is below $150,000, simple and all CLINs exist as FFP in the pricer tool than the agency may use the pricer to make a fair opportunity selection for a Task Order in accordance with Fair Opportunity under FAR Subpart 16.505. This could be useful for pricing well-defined services for which a like-for-like replacement is required. However, the agency should consider whether an alternative solution could meet the requirements; in such case, the agency could define the requirements functionally within a solicitation and release it for EIS contractors to propose their best solution at the best price.

## **For certain remote geographical locations, the supplier base is limited and there is a Regional contract with a local supplier. The large providers will not have coverage in the remote location. If the local supplier today is not chosen as an overall EIS supplier, will an Agency have to purchase the same services from the local supplier but via a sub-contract through the larger supplier? How is this scenario addressed?**

**Answer:** If the local supplier is not chosen as an awardee under EIS, the EIS prime contractor will have to subcontract with the local supplier. The Task Order will be between the agency and the prime contractor.

One possible approach is for the agency to develop a single solicitation that lists multiple geographic areas and specify that each area will be awarded to the best offeror for that geographic area. This will allow offerors to identify the areas they can serve (either on their own or subcontracting with a local supplier). The agency may then award one or more TOs as needed by geographic area to get the best overall coverage at the best price.

## **What are structuring strategies for Task Orders to get the broadest coverage of services in a single task order?**

**Answer:** Agencies should begin by verifying existing IT and Telecommunications Inventory and consider which services are still needed, which services can be upgraded to newer technologies and which services are no longer needed. Agencies may consider grouping like services, grouping simple requirements vs. complex requirements, grouping services by location or grouping services by sub-agencies.

## **Is the GSA EIS schedule similar to other GSA schedules in that there are multiple awardees who can provide services under various SINs?**

**Answer:** The EIS contract is not a schedule contract. It is a multiple award IDIQ, under FAR Part 15. Fair Opportunity and the issuance of task orders must be done in accordance with FAR 16.505. FAR Part 8 is not applicable and shall not be used.

## **Is it allowable that an ordering agency can create a BPA with 1 or more schedule holders under EIS (as with other schedules) which will streamline the agency’s future ordering process and provide for continuity of related services from a limited pool of contractors?**

**Answer:** The EIS contract is not a schedule contract. EIS does not allow BPAs. Only Fixed Price or Time & Material Task orders are allowable under EIS. It is at the discretion of the agency ordering contracting officer as to whether to conduct multiple Fair Opportunity Solicitations and award multiple task orders to several EIS Contract Holders, provided each task order complies with the FAR. FAR 16.505(a)(2) states in part that ”[i]ndividual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed.” FAR 16.505(a)(7) specifies the information required by each TO, especially the contract item number and description, quantity, and unit price or estimated cost or fee for the requirements included in the TO.

## **What is meant by creating “fair opportunities” under the EIS schedule? Fair opportunity is a process to achieve an event or outcome (award of an order); however the way it is described by “creating” fair opportunities it is inferred as an outcome.**

**Answer:** Please refer to FAR 16.505 regarding the fair opportunity process.

## **There is some reference in the information to limiting fair opportunities. What is meant by this?**

**Answer:** Please see the information that was pulled from the FAR below on Fair Opportunity and the Exceptions.

FAR 16.505

(b) *Orders under multiple-award contracts--*

(1) *Fair opportunity*.

(i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding $3,500 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) The contracting officer may exercise broad discretion in developing appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. If the order does not exceed the simplified acquisition threshold, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. The competition requirements in Part 6 and the policies in [Subpart 15.3](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/15.htm#P223_35945) do not apply to the ordering process. However, the contracting officer must--

(A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(C) Tailor the procedures to each acquisition;

(D) Include the procedures in the solicitation and the contract; and

(E) Consider price or cost under each order as one of the factors in the selection decision.

(iii) Orders exceeding the simplified acquisition threshold*.*

(A) Each order exceeding the simplified acquisition threshold shall be placed on a competitive basis in accordance with paragraph (b)(1)(iii)(B) of this section, unless supported by a written determination that one of the circumstances described at [16.505](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/16.htm#P464_78690)(b)(2)(i) applies to the order and the requirement is waived on the basis of a justification that is prepared in accordance with [16.505](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/16.htm#P464_78690)(b)(2)(ii)(B);

(B) The contracting officer shall—

*(1)* Provide a fair notice of the intent to make a purchase, including a clear description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made to all contractors offering the required supplies or services under the multiple-award contract; and

*(2)* Afford all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(iv) *Orders exceeding $5.5 million*. For task or delivery orders in excess of $5.5 million, the requirement to provide all awardees a fair opportunity to be considered for each order shall include, at a minimum—

(A) A notice of the task or delivery order that includes a clear statement of the agency’s requirements;

(B) A reasonable response period;

(C) Disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance;

(D) Where award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and price or cost factors; and

(E) An opportunity for a postaward debriefing in accordance with paragraph (b)(6) of this section.

(v) The contracting officer should consider the following when developing the procedures:

(A)

*(1)* Past performance on earlier orders under the contract, including quality, timeliness and cost control.

*(2)* Potential impact on other orders placed with the contractor.

*(3)* Minimum order requirements.

*(4)* The amount of time contractors need to make informed business decisions on whether to respond to potential orders.

*(5)* Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—

*(i)* Seeking comments from two or more contractors on draft statements of work;

*(ii)* Using a multiphased approach when effort required to respond to a potential order may be resource intensive (*e.g*., requirements are complex or need continued development), where all contractors are initially considered on price considerations (*e.g*., rough estimates), and other considerations as appropriate (*e.g*., proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

(B) Formal evaluation plans or scoring of quotes or offers are not required.

(2) *Exceptions to the fair opportunity process.*

(i) The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding $3,500 unless one of the following statutory exceptions applies:

(A) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(B) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

(C) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(D) It is necessary to place an order to satisfy a minimum guarantee.

(E) For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source.

(F) In accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in [19.000](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/19.htm#P3_65)(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in part 19 apply.

(ii) The justification for an exception to fair opportunity shall be in writing as specified in paragraphs (b)(2)(ii)(A) or (B) of this section. No justification is needed for the exception described in paragraph (b)(2)(i)(F) of this section.

(A) *Orders exceeding $3,500, but not exceeding the simplified acquisition threshold.* The contracting officer shall document the basis for using an exception to the fair opportunity process. If the contracting officer 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).

(B) *Orders exceeding the simplified acquisition threshold.* As a minimum, each justification shall include the following information and be approved in accordance with paragraph (b)(2)(ii)(C) of this section:

*(1)* Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for an Exception to Fair Opportunity.”

*(2)* Nature and/or description of the action being approved.

*(3)* A description of the supplies or services required to meet the agency’s needs (including the estimated value).

*(4)* Identification of the exception to fair opportunity (see [16.505](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/16.htm#P464_78690)(b)(2)) and the supporting rationale, including a demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the exception cited. If the contracting officer 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).

*(5)* A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

*(6)* Any other facts supporting the justification.

*(7)* A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the exception to fair opportunity before any subsequent acquisition for the supplies or services is made.

*(8)* The contracting officer’s certification that the justification is accurate and complete to the best of the contracting officer’s knowledge and belief.

*(9)* Evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government’s minimum needs or requirements or other rationale for an exception to fair opportunity) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

*(10)* A written determination by the approving official that one of the circumstances in (b)(2)(i)(A) through (E) of this section applies to the order.

## **How can agencies begin market research with vendors?**

**Answer:** Agencies can gather market research as usual; release RFI's and sources sought inquiries, conduct industry days, meet with individual suppliers, explore suppliers’ websites, etc.

## **Can agencies reach other GSA NS2020 contracts via our EIS task order award?**

**Answer:** No. Task orders awarded under EIS will only apply to the EIS IDIQ contract and its Terms and Conditions. You will not be able to link EIS task orders to other contracts under NS2020. Offerings under EIS include many services previously available from other contracts (Networx & Regional Local Service Agreement Contracts, Satellite, Wireless and Cloud Services).

## **Does EIS have the capability of adding “new IT/Telecommunications services” as they are developed?**

**Answer:** Emerging technologies can be added as long as they are within scope of the EIS contract and the agency task order. The EIS RFP describes upgrades and enhancements in RFP Section C.1.6 but there is no clause or guidance in the contract that describes the process. The contractor would be required to submit a proposal to add the technology and/or service and it would be a bilateral modification to the EIS IDIQ contract.

**What is the process(es) for obligating funds to contractors at the Task Order level and then receiving / reviewing / approving / paying invoices, and what role (if any) GSA may play in the process(es). For example can this task order, funding and Invoice Process be followed?**

1. CO obligates funds to contractor through Prism/SAP on award documents/modifications with funds obligated on specific line items.
2. Contractor provides goods & services, submits invoice through Treasury’s Invoice Processing Platform (IPP).
3. Invoice routed internally to COR who reviews, creates electronic Goods Receipt/Service Entry Sheet at line item level and then routes invoice to CO who reviews and approves invoice in system.
4. Agency System transmits payment through Treasury to contractor.

**This process is very different from the way Networx invoices have been processed. Does GSA have a clear outline of how this will work under EIS, including the various ways this can be done?**

**Answer:** The Task Order (TO), funding, and invoice process is specific to the agency. The example provided above would be sufficient under EIS. EIS RFP Section G.4.1.7 requires EIS Contractor’s to support electronic billing and provides several examples, including Treasury’s IPP. The agency will need to specify the electronic billing method in the TO. This process is different from the current Networx process but due to changes in the FAR. The EIS process is required to follow the “typical” task order process.

**Please confirm that the agency will obligate funds to the contractor at the Task Order level.**

**Answer:** Yes, the agency must obligate sufficient funds on the task order to cover the base period of the task order. Please refer to the EIS Fair Opportunity and Ordering Guide (FOOG) and the Management and Operations Handbook.

**Where will the contractor submit its invoice? To the IPP system? If not, what system will be used? And how can funding obligated on the Task Order (in the agency’s system) interface with that other system?**

**Answer:** The contractor submits a billing invoice to the agency (via IPP) or other method specified in the TO and a copy of the invoice is sent to GSA. The funding obligation will follow the agency’s normal operating practices.

**Does GSA anticipate an agency will IPAC any funding to GSA? If so, please explain the circumstances that will have IPAC funding and the processes that be used.**

**Answer:** No. The agency will not need to IPAC funding to GSA. (Note: this assumes the agency is ordering the services from the EIS contractor. If the agency is ordering the services from GSA—as is done currently with the regional local service agreements, except for WITS—then there would be an interagency agreement, and the agency would IPAC funding to GSA.)

**If payment is somehow supposed to be routed through GSA, how can agencies legally issue a task order to a vendor and yet pay GSA for EIS contract services?**

**Answer:** Payment to the vendor will not route through GSA. An Agency will pay its vendor directly.

**If the obligation is to the vendor, then the payment has to be to the vendor.**

**Answer:** Correct. The agency will make direct payment to the vendor.

**How will contractors submit invoices, how will agencies review and approve invoices, how will payment be made to contractors, and other aspects of the funding, invoicing, and payment processes.**

**Answer:** The requirements for contractors are specified in the EIS RFP. Please see EIS Contract Section G.4 Billing and Section J.2.5 Billing for the billing processes contractors must follow. GSA does not require an agency to alter their internal invoice approval and payment processes.

**Why do CORs need to be Government employees?**

**Answer:** EIS follows the guidance in FAR Subpart 1.602-2(d)(1) that requires that the COR be a Government Employee unless otherwise authorized in the agency’s regulation. See FAR guidance below.

**1.60****2-2 -- Responsibilities.**

Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgment. Contracting officers shall --

(a) Ensure that the requirements of [1.602-1](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/01.htm#P956_42622)(b) have been met, and that sufficient funds are available for obligation;

(b) Ensure that contractors receive impartial, fair, and equitable treatment;

(c) Request and consider the advice of specialists in audit, law, engineering, information security, transportation, and other fields, as appropriate;

(d) Designate and authorize, in writing and in accordance with agency procedures, a contracting officer’s representative (COR) on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate, unless the contracting officer retains and executes the COR duties. See[7.104](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/07.htm#P59_10403)(e). A COR—

**(1) Shall be a Government employee, unless otherwise authorized in agency regulations;**

(2) Shall be certified and maintain certification in accordance with the current Office of Management and Budget memorandum on the Federal Acquisition Certification for Contracting Officer Representatives (FAC-COR) guidance, or for DoD, in accordance with the current applicable DoD policy guidance;

(3) Shall be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with agency procedures;

(4) May not be delegated responsibility to perform functions that have been delegated under [42.202](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/42.htm#P40_5059) to a contract administration office, but may be assigned some duties at [42.302](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/42.htm#P70_10070) by the contracting officer;

(5) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract nor in any way direct the contractor or its subcontractors to operate in conflict with the contract terms and conditions;

(6) Shall be nominated either by the requiring activity or in accordance with agency procedures; and

(7) Shall be designated in writing, with copies furnished to the contractor and the contract administration office—

(i) Specifying the extent of the COR’s authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR’s authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not redelegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

**Can an agency issue multiple task orders for the same exact requirement, same service and for same locations?**

**Answer**: Although there is no FAR prohibition on awarding multiple task orders, under this scenario it could appear to look like a second tier IDIQ and GAO does not approve of them. There is case law on protests for contracts that appear to look like second tier IDIQs. Please see the protest that was sustained by GAO for Harris IT Services - October 2015.

**Can an agency use a “Not to Exceed Value” on a task order?**

**Answer:** Yes, however the “Not to Exceed Value” must be realistic and cover actual cost of the services.

For example: If the NRCs to establish a network are one million dollars, but the Task Order has a “Not to Exceed Value” of $500,000, this is not realistic.

**Can an agency price all 15 years on a task order?**

**Answer:** There is no prohibition in EIS, however the contractors may object to having fixed prices for 15 years.

**Do we request Subcontracting Plans at the task order level?**

**Answer:** No. Per FAR Part 19, a contract may have no more than one subcontracting plan. Subcontracting plans are required from all large businesses that compete for an EIS contract. Agencies shall not request subcontracting plans at the task order level.

**How does FAR Part 51 apply to EIS?**

Only in very limited circumstances. Only Government COs can place orders and obligate funds on behalf of the Government. One exception to this is in Part 51. It states:

(a) If it is in the Government’s interest, and if supplies or services required in the performance of a Government contract are available from Government supply sources, contracting officers may authorize contractors to use these sources in performing—

(1) Government cost-reimbursement contracts;

Therefore, the supplies or services must be used in performance of the cost reimbursement contract. For instance, if an agency has a cost reimbursement contract with Company ABC to operate a data center, and the data center requires some type of telecomm service available under EIS, then an agency could authorize Company ABC to use EIS to acquire the service(s).  An agency may not authorize Company ABC to order telecomm services for the agency that are not used in performance of the cost reimbursement contract.