

Featured Article

Why it's Important to Stay in Your Lane FAR 16.505 Ordering versus FAR 15.3 Negotiated Procurements

GWACs follow the streamlined ordering procedures in FAR Subpart 16.505 and NOT the processes in Subpart 15.3

Every day we are challenged with doing more with less. So, what choices are we given to help manage our workload efficiently and effectively? Well, one choice is to look at existing contracts such as GSA's Alliant GWAC that supports federal agencies in meeting their IT requirements in a streamlined manner. You have heard us say many times "GWACs follow the streamlined ordering procedures in FAR Subpart 16.505 and NOT the processes in Subpart 15.3". But, that statement may not resonate unless we better understand what it means at the task order level. Remember FAR 16.505 affords the Contracting Officer broad discretion in determining the process for selecting awardees for individual task orders. The key is to ensure that the procurement process and evaluation criteria are included in the task order solicitation and that you, the Ordering Contracting Officer, follow through on your stated solicitation process. Perhaps, the struggle for most of us is visualizing what a FAR 16.505 streamlined task order acquisition looks like. The following information will help point to what typical mistakes to avoid so to better stay in your lane when ordering off GWACs and other IDIQ-type contracts.



COMPETITIVE RANGE - There is no requirement to set a Competitive Range in FAR 16.505. In fact, never mention that term in writing or orally when contracting off a GWAC. This means that you can save yourself, the contracting officer and the Industry Partners considerable time and money by conducting multiphased procurement in a manner that uses the least costly factors to initially down select the offerors. For example, you may initially phase your procurement based upon a capability demonstration, a white paper submission, or a 10 minute telephonic presentation of an overall concept and its associated risk/s.



DISCUSSIONS - Since a Competitive Range is not established, there is no need to be concerned with the nature of exchanges between government and offerors. Ordinarily in FAR 15.3 procurement, the contracting officer draws a distinction between Clarifications, Communications, and Discussions. The Contracting Officer can engage in detailed exchanges about any aspect of an offer at any time as long each offer is treated equitably avoiding any perception of unfairness in the process.



SCORING, GRADING, OR RANKING OF OFFERS/QUOTES – The regulation states that "Formal evaluation plans or scoring of quotes or offers are not

required.” FAR 16.505 (b)(1)(v)(B). There is no reason to follow the FAR Subpart 15.3 process model when FAR 16.505 permits the use of a much simpler and sufficient procurement process. This means that an evaluation system can be truly streamlined. For example, a contracting officer can use any evaluation system they wish such as pluses and minuses or simply narrative statements so long as he/she can fully justify the ultimate selection.



INCORRECTLY DEFINE “BEST VALUE” – Interpret the meaning of Best Value only by the broad definitions in the FAR, not the definitions as applied in negotiated procurements specific to contracting methods under FAR Part 15. The broad definitions applicable to the entire FAR are: “Best value” means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement - (FAR 2.101 Definitions); The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives - (FAR 1.102(a) Statement of guiding principles for the Federal Acquisition System).



EVALUATE TECHNICAL FACTORS UNLESS ABSOLUTELY NECESSARY - Technical Capability is sometimes very costly to evaluate for the award of a task order to both the contractor and the government. It also adds extra time to the process due to the increased complexity of the evaluation. The government had previously evaluated the contractors’ technical abilities prior to the award of the GWAC. Thus, the government already determined that the awardees are generally capable of doing any work ordered under the GWAC. Nonetheless, there are requirements that will arise, which will demand that a contractor’s business/management approach be proposed and evaluated. In those cases, they certainly should be evaluated. Remember to consider only those evaluation factors that will truly discriminate among the contractor pool.



EVALUATE PAST PERFORMANCE IN ACCORDANCE WITH FAR 15.3 REQUIREMENTS – It is important to always evaluate Past Performance; however, there is no need to go overboard. The requirement to provide a neutral rating to an offeror without any past performance, as an example, is not required. Further, there is no requirement to document the file with your comprehensive rationale in the same manner as FAR 15.3. Yet, the streamlined approach in FAR 16.505(b (1)(v)(A)(1) recommends that the contracting officer should consider Past Performance on earlier orders under the contract, including quality, timeliness and cost control.

“The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives “

In summary, not using the FAR 16.505 streamlined acquisition processes diminishes the significant advantages afforded to the government in saving time, money, and resources. For further information on contracting under FAR 16.505, please contact Mimi Bruce, Director of Client Support at 1-925-735-1641.

On the next page is a table listing the major differences between FAR 16.505 and FAR 15.3:

Table listing the major differences between FAR 16.505 and FAR 15.3

	FAR 15.3 Open market negotiated procurement	MA/IDIQ (e.g., GWAC) FAR 16.505
REQUEST METHOD	RFP	Task Order Request/Delivery Order Request issued to all contract awardees in the GWAC pool.
BEST VALUE	Best Value Continuum: Best Value Lowest Priced Technically Acceptable or Best Value Trade Off	Only reference to Best Value is in 16.505(b)(iv)(D) for orders over \$5M.
COMPETITION	FULL & OPEN (See FAR 6 for sole sourcing)	Fair opportunity/ See FAR 16.505(b)(2) for exceptions. Must provide each awardee a fair opportunity to be considered for each order exceeding \$3,000 Exception to Fair Opportunity- >\$3000 </= Simplified Acquisition Threshold (SAT): " Fair Opportunity Exception only need be documented by CO >Simplified Acquisition Threshold (SAT): Do not have to follow format at FAR 6.303-2 but additional justification narrative required IAW FAR 16.505(b)(2)(ii)(B). Justification approved IAW FAR 16.505(b)(2)(ii)(C).
EVALUATION FACTORS	Main and Subfactors-rank ordered. Price/non-price order.	You will usually use price or cost and non-cost factors. 16.505(b)(1) states: >Simplified Acquisition Threshold (SAT): Basis upon which award will be made 16.505(b)(1)(iii)(B)(1) >\$5M Significant factors and subfactors, including cost or price and their relative importance 16.505(b)(1)(iv)(C) Suggest you always follow the >\$5M guidance.
SCORING SYSTEM	Color, numerical, adjectival. Anything.	Not required per 16.505(b)(1)(v)(B). When using a comparative evaluation approach, scoring is not necessary.
EVALUATION METHODOLOGY	First evaluate offers to stated evaluation criteria ; then rank order	No requirement to first evaluate to stated evaluation factor and then rank order. May use comparative analysis as described in FAR 13.106-2 Evaluation of quotations or offers "Scoring" systems not required or necessary. "Comparative analysis" means that you can immediately begin to compare the specifics of the offers without having to "score" them independently without reference to other offers. This is a very intuitive process that allows you to document offer differences (under each evaluation factor) without first having to construct and then utilize an artificial scoring system, e.g., colors, adjectives, etc.
SOURCE SELECTION PLAN	No FAR requirement, but usually a formal evaluation plan is used	Formal evaluation plans or scoring not required per 16.505(b)(1)(v)(B)
SELECTION DOCUMENTATION	Ranking w/ trade-off rationale/ Strengths, Significant Weaknesses, Deficiencies, Risks.	16.505(b)(5):(i): The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. (ii) The contract file shall also identify the basis for using an exception to the fair opportunity process (see paragraph (b)(2)) Use Best Value Trade off narrative that compares proposal specifics of the selectee with each of the non-selectees by evaluation factor. This requirement is based upon case law. FAR 16.505(b)(1)(iv)(D) is the only other specific reference to selection documentation: >\$5M: 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.

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	FAR 15.3 Open market negotiated procurement	MA/IDIQ (e.g., GWAC) FAR 16.505
REQUIRED TERMINOLOGY	Extensive list of terms and unique definitions (e.g. competitive range, discussions, communications, etc)	Fair Opportunity
COMPETITIVE RANGE	“Most highly rated” offers	Not required per 16.505
DEBRIEFING	FAR 15.505 and 15.506	Required for >\$5M: IAW 16.505(b)(4)(ii) Certainly, can be provided at any dollar value.
EXCHANGES BETWEEN GOVERNMENT & OFFEROR	<p>Specific rules regarding exchanges:</p> <p>Clarifications (only if award made without discussions)</p> <p>Communications (occur before competitive range but no revisions allowed)</p> <p>Discussions (Must be meaningful, i.e., reveal deficiencies, and significant weaknesses)</p>	<p>Since FAR 15.3 does not apply to FAR 16.505 procurements, there is no need to establish a competitive range in order to hold Discussions. In fact, the entire vocabulary of FAR 15.3 and the rules associated with each do not apply to 16.505 GWAC orders. The above also mentions the CO can contact the offerors at any time during the evaluation process without ever setting the competitive range.</p> <p>The overriding emphasis should be on fairness and obtaining maximizing the best value for the Government when offer revisions are submitted.</p>

- Mimi Bruce and John Cavadias