

**SENIOR PROCUREMENT EXECUTIVE SIGNATURE
FOR
CITY PAIR PROGRAM ACTIONS 2021-2025**

GSA Senior Procurement Executive: I hereby approve City Pair Program request for determinations and findings and class deviations, to include :

- Issuance of a waiver for a Determination and Findings (provided for reference to CAAC) regarding the differing of terms and condition where standard commercial practices will not be followed such as:
 - Incorporation of DOD safety approval
 - Controls place on fuel surcharges e.g. fuel surcharges not in effect until after 14-day waiting period
 - Added requirement for contractors to participate in Civil Reserve Air Fleet program
 - Incorporation of GSAs ability to make unilateral changes, when appropriate
- Issuance of a five year deviation for changes to select FAR clauses that are not appropriate for CPP
- Deviation from four (4) subparagraphs listed in the FAR clause 52.212-4, Contract Terms and Conditions - Commercial Items (OCT 2018):
 - Subparagraph (c) Changes
 - Subparagraph (g) Invoice
 - Subparagraph (i) Payment
 - Subparagraph (k) Taxes
- Replace FAR clause 52.212-4,(c) with Alternate I 52.243-1 Changes - Fixed Price (AUG 1987) (ALTERNATE I - APR 1984) and requests a deviation to paragraphs (a)(2) and (a)(3)
- Deviation to four subparagraphs listed in FAR 52.216-21 Requirements (OCT 1995)

JEFFREY
KOSES

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SPE: _____

Date: _____



General Services Administration
Office of Travel, Transportation and Logistics/Center for
Travel and Transportation Acquisition
Determination and Findings for the
FY2021-FY2025 GSA City Pair Program Contract
Five (5) Year Approval

FINDINGS

1. The Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103-355, requires that the Government follow commercial practices to the maximum extent practicable in the acquisition of commercial supplies or services.
2. FAR 12.302(c) states that, “[t]he contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice, and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.”
3. Subsection 512.301(c) of the General Services Administration Acquisition Manual (GSAM) states that, “[t]he Senior Procurement Executive must approve the use of a provision or clause that is either not: (1) Prescribed in the FAR or GSAR for use in contracts for commercial items; or (2) Consistent with customary commercial practice.”
4. This Determination and Findings (D&F) outlines terms and conditions of the contract for Scheduled Air Passenger Transportation Services, also known as the GSA City Pair Program and referred to herein as “City Pair Program” or “CPP,” which differ from commercial practices. A separate Class Deviation will be submitted requesting a five year deviation from four subparagraphs listed in FAR Clause 52.212-4, Contract Terms and Conditions – Commercial Items (OCT 2018), as well as a deviation from one subparagraph in FAR Clause 52.243-1, Changes - Fixed Price (AUG 1987) (ALTERNATE I - APR 1984). The Class Deviation also includes a deviation from FAR Clause 52.216-21, Requirements (OCT 1995).

**U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405**

The CPP requirement is solicited annually and the D&F has been perpetually submitted for approval with little to no updates. A five year approval is being requested to enhance the overall efficiency and reduce the amount of time and effort that is being utilized to review and re-approve this document annually. The D&F will be reviewed annually within this five year time frame to ensure that no changes are needed; however, if substantial unforeseen changes do transpire, the D&F will be updated and resubmitted for approval if/when necessary. While the circumstances giving rise to the D&F request are unlikely to change during the upcoming procurement cycles, the potential transformative nature of the commercial airline industry makes a FAR revision potentially too restrictive in the face of uncertain changes. Nevertheless, CPP's 5-year D&F request is predicated upon the basis that the previous D&F's have been approved annually with little to no updates, and forecasts that minimal change is likely to happen within the next 5 years.

This D&F explains the rationale for each differing term and condition and their relative importance to the purpose and performance of CPP, as well as the rationale for approving the waiver for FY21 through completion of the FY25 CPP contracts. The expiration date of this D&F is December 31, 2025 (to encompass all option periods, if exercised). The area where standard commercial practices will not be followed are: (i) added requirement for Department of Defense (DoD) safety approval; (ii) added requirement for contractors to participate in the Civil Reserve Air Fleet (CRAF) Program; (iii) the changes clause; and (iv) the provision allowing fuel surcharges subject to certain terms and conditions.

A. Department of Defense approval is required for all participating carriers and their U.S. air carrier code-share partners.

Commercially, safety approval from the Federal Aviation Administration (FAA) is required before airlines are certified. To be considered for a CPP contract award, offerors must have approval from both the FAA and the DoD Air Carrier Survey and Analysis Office.

The DoD safety approval requirement arises out of 32 C.F.R. Part 861, DoD Directive 4500.53, and 10 U.S.C. § 2640. There is no similar requirement for civilian agencies. In order to permit the DoD to use the contracts, the DoD safety approval requirement must be included and, thereby, would apply to this solicitation for both DoD and civilian agency use of scheduled air passenger transportation services. Based on past years, DoD has been the largest customer of scheduled air passenger transportation services contract awards. This volume provides greater leveraging of both civilian and DoD requirements, thereby increasing the likelihood of carrier participation and the potential benefits of competition. In addition, by permitting DoD use of the contracts, the Government avoids the expense of separate solicitations and contracts for DoD and civilian agencies.

Therefore, the commercial practice will not meet the minimum needs of the Government. The following two (2) requirements and one (1) certification will be included in the CPP FY21-25 solicitations and contracts:

1) H.3 AIR CARRIER QUALITY AND SAFETY

Prior to award, in accordance with the provisions of 32 CFR 861.4, DoD Air Transportation Quality and Safety Requirements, DoD approval is required for all offerors and their U.S. air carrier code-share partners proposed for service on offered line items. All offerors and their U.S. air carrier code-share partners proposed for service on offered line items shall remain in an approved status throughout the period of performance for the contract.

In accordance with 32 CFR 861.6(b), foreign air carriers performing any portion of a line item awarded to a U.S. air carrier under this solicitation pursuant to a code-sharing agreement with that U.S. air carrier, are generally not subject to DoD survey and approval under Sections 861.4 and 861.5. However, DoD will periodically review the performance of such foreign carriers. This review may consist of recurring performance evaluations, periodic examination of the U.S. code-sharing carrier's operational reviews and assessments of the foreign carrier, and, where appropriate and agreed to by the air carriers concerned and DoD, on-site surveys of the foreign air carrier. Such carriers must also meet the 12 months prior experience requirement of 32 CFR 861.4(e)(1).

See **§K.8** to submit offeror certification of air carrier quality and safety.

2) H.4 DOD TEMPORARY NONUSE STATUS OR SUSPENSION

1. If at any time during the term of the contract, a carrier serving an awarded line item(s) is placed in temporary nonuse status by the DoD, or suspension by the DoD in accordance with 32 CFR 861.4(e)(1)(iv), the Government may, with no cost or liability to the Government or any department, agency, entity, or official therein:
 - (a) Discontinue DoD use of services under the contract for the duration of the period of temporary nonuse/suspension in the case of a U.S. air carrier in such status; and/or
 - (b) Discontinue Government use of services under the contract for the duration of the period of temporary nonuse/suspension in the case of a foreign code-share air carrier in such status.
2. If, during the term of this contract, such period of temporary nonuse and/or suspension is terminated by DoD, through reinstatement or otherwise, use of services will resume in accordance with the terms of the contract.

3) K.8 AIR CARRIER QUALITY AND SAFETY

(a) By checking the box below, the offeror proposing to serve a line item through a code-share arrangement with a foreign air carrier represents that the offeror has reviewed the foreign carrier's operations and maintenance and based on that review has determined

that the foreign air carrier provides a substantially equivalent level of quality and safety as that provided in the offeror's commercial practice. For purposes of this certification, substantially equivalent means that the foreign air carrier's operations and maintenance function largely, but not wholly, in the same manner as the offeror's operations and maintenance. To be eligible for award on international routes (line items), the offeror must make the representation below if the offeror proposes to provide service through foreign code-share air carriers.

The offeror represents that it has reviewed the operations and maintenance of each foreign code-share air carrier to be used by the offeror to provide service under this contract and based on the review(s) has determined that the foreign air carrier(s) provide(s) a substantially equivalent level of quality and safety as that provided in the offeror's commercial practice.

(b) Prior to award, DoD shall review and approve all offerors and their U.S. air carrier code-share partners proposed for service on offered line items. Foreign air carriers performing any portion of a route (line item) awarded to a U.S. air carrier under this solicitation pursuant to a code-sharing agreement with that U.S. air carrier, are generally not subject to DoD survey and approval. DoD review of offerors and their U.S. and foreign code-share air carriers will be based on the criteria specified in 32 CFR Subparts 861.4 and 861.6, respectively. The 12 month experience requirement at 32 CFR 861.4(e)(1) as provided in 32 CFR 861.6(b) must be met by foreign code-share air carriers by the date of contract award.

(c) At any time during the period of performance, if the servicing carrier (the contract carrier or code-share partner) loses DoD approval for any reason related to 32 CFR Part 861, then GSA may re-award the affected contract line item(s) until such time as DoD approval of the servicing carrier is restored.

B. The solicitation requires offerors to participate in the Civil Reserve Air Fleet (CRAF) Program or to obtain a Letter of CRAF Technical Ineligibility.

The CRAF Program is made up of U.S. commercial air carriers that voluntarily commit cargo and passenger aircraft to support military airlift requirements during national security emergencies. Initially, CPP contract carriers were not required to participate in the CRAF program as it was not considered to be standard commercial practice. However, participation in the CRAF program became required in order to strengthen DoD's ability to meet the Government's airlift requirements during national security emergencies. As a result of the CPP's requirement to participate in the CRAF Program, all offerors must participate in the CRAF Program or receive a Letter of Technical Ineligibility from the United States Transportation Command (USTRANSCOM).

The following language will be included in the contract:

H.5 CIVIL RESERVE AIR FLEET (CRAF) PROGRAM

- (a) In order to receive a contract award under this solicitation, all offerors shall participate in the CRAF Program or, in the alternative, receive a Letter of CRAF Technical Ineligibility from the United States Transportation Command (USTRANSCOM).
- (b) CRAF eligible carriers are Federal Aviation Regulations Part 121 certified carriers with international over water or domestic only capability. Carriers not eligible to execute a CRAF contract will be certified as not eligible and receive a LETTER OF CRAF TECHNICAL INELIGIBILITY. For a copy of the solicitation, or to determine technical eligibility, contact:

Contract Airlift Division
Building 1900 W
508 Scott Drive
Scott AFB, IL 62225-5357
(618) 220-7058

DoD Commercial Airlift Division
HQ AMC/A3B
402 Scott Drive Unit 3A1
Scott AFB, IL 62225-5302
(618) 229-4801

During the entire period of this contract, the contract carrier shall participate in the CRAF Program or have been certified as technically ineligible for CRAF membership. GSA will terminate this scheduled air passenger transportation services contract for cause in accordance with FAR 52.212-4 (m) Contract Terms and Conditions—Commercial Items (OCT 2018), Termination for Cause, of this contract for failure of the contract carrier to maintain the conditions set-forth above.

See §K.9 to submit offeror certification of CRAF status.

K.9 CRAF CERTIFICATION

The offeror hereby certifies that it:

Has a CRAF contract; or

Has offered to participate in the Civil Reserve Air Fleet

OR

Has a Letter of CRAF Technical Ineligibility; or

Has applied for a Letter of CRAF Technical Ineligibility.

C. The Changes Clause: FAR Clause 52.212-4(c), Changes, reads:

Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

This clause means that only bilateral changes can be made.

From time to time under CPP, the Government may need to make unilateral changes due to enactment of legislation or new/revised regulatory requirements issued by FAA or DoD, etc.

In place of 52.212-4(c), a deviated version of FAR Clause 52.243-1 Changes – Fixed Price (AUG 1987) (Alternate I – APR 1984) will be utilized. The deviation from the FAR Clause deletes subparagraphs (a)(2) and (a)(3), which would allow the Contracting Officer to make changes in the time and place of performance. This is a contract for scheduled commercial air passenger transportation services, and thus, the Government cannot establish the times or routes of flights. The clause will read as follows:

I.2 FAR 52.243-1 Changes – Fixed Price (AUG 1987) (Alternate I – APR 1984)
Deviation

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- ~~(2) Time of performance (i.e., hours of the day, days of the week, etc.).~~
- ~~(3) Place of performance of the services.~~

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of Clause)

D. Fuel surcharges are not effective immediately, but only allowed after a 14-day waiting period.

Commercially, airlines routinely implement fuel surcharges in line items and remove them with little or no notice if no other carrier(s) match the fees. This commercial practice would result in volatility and potential administrative costs for CPP. Therefore, in the solicitation, fuel surcharges must be in place for a minimum of 14 consecutive days commercially before the surcharges may be applied to CPP contract fares. This deviation from commercial practice ensures greater fare stability within CPP, enables travel agents to be properly notified, and adjustments made to electronic systems, such as the Defense Travel System (DTS) and the E-Gov Travel Service 2 (ETS2), to prepare for the fuel surcharge changes.

The language in C.11 (c) TAXES, FEES AND FUEL SURCHARGES and I.2, I-FBG-LS001 ECONOMIC PRICE ADJUSTMENT FOR FUEL SURCHARGES- CITY PAIR PROGRAM (CPP) (JAN 2016) is as follows:

C.11 (c) Fuel surcharges are governed by §I.2, I-FBG-LS001 Economic Price Adjustment for Fuel Surcharges - City Pair Program (CPP) (JAN 2016).

I.2 I-FBG-LS001 ECONOMIC PRICE ADJUSTMENT FOR FUEL SURCHARGES - CITY PAIR PROGRAM (CPP) (JAN 2016)

During the contract period and any exercised option periods, a fuel surcharge may be assessed as part of a contract fare at the time of ticketing under the following conditions:

- (1) A fuel surcharge is allowed on a line item where a fuel surcharge has been imposed commercially to all customers in the booking inventories (buckets) in either the fares or as miscellaneous fees. The changes shall correspond to the YCA, _CA, and _CB contract fares for a minimum of 14 consecutive days. A fuel surcharge that has been imposed and terminated can only be re-instated after being imposed commercially for 14 consecutive days. Fuel surcharge requests may be submitted to GSA at any time after contract award and throughout the contract period. Fuel surcharge requests submitted after contract award and before the start of the contract period will be effective on the effective date of the contract or 14 days after the fuel surcharge was imposed commercially, whichever date is later and after approval by the Contracting Officer. A fuel surcharge may be applied to contract fares if the fuel surcharge was imposed commercially after submission of offers but before the effective date of the contract. Any fuel surcharge commercially in place at the time of offer submission must be included in the offered fare. To the extent possible, all anticipated fuel surcharges should be included in the fare offered at the time of offer submission.
- (2) A carrier shall report to the GSA Contracting Officer in writing when a fuel surcharge is imposed, identifying the start date of that commercial fuel surcharge and the amount of the fuel surcharge on a line items by line item basis. A carrier shall also identify the booking inventories (buckets) corresponding to the YCA, _CA, and _CB to which the fuel surcharge applies commercially. When notifying

GSA of fuel surcharge implementation, for any fuel surcharge that was initiated after the date of submission of the carrier’s offer to GSA but before the contract effective date, the carrier shall include in its submission a written representation that the original offer price did not include any amount for anticipated fuel surcharges. If the offered price did include an amount to offset anticipated fuel surcharge, the carrier must state the dollar amount included in the offer and GSA will address the matter with the carrier. When notifying GSA of a new (or updated) fuel surcharge, the carrier must submit the fuel surcharge information in a spreadsheet of the following format (enter 0 for no fuel surcharge) and obtain written approval, prior to imposing fuel surcharges on CPP fares, from the CPP Contracting Officer that the fuel surcharge application is verified and acceptable:

Airline	Item #	Origin City Code or Airport Code and Name	Destination City Code or Airport Code and Name	YCA FSC 1 way in USD	CA FSC 1 way in USD	CB FSC 1 way in USD	Date when imposed commercially	Date when applicable to CPP
Airline name	1855	DCA	LAX	\$10	\$0	\$0	9/1/20XX	10/1/20XX
Airline name	5866	WAS	FRA	\$50	\$30	\$0	10/15/20XX	10/29/20XX

Note: Where applicable, domestic is always first when listing origin city/airport code, and international is always second when listing destination city/airport code.

Whenever a fuel surcharge is updated (whether an increase or a decrease), the complete spreadsheet must be submitted in its entirety. The spreadsheet must include both changed fuel surcharge amounts and effective dates and also unchanged fuel surcharge amounts and effective dates. In addition, the carrier shall provide substantiating documentation that the fuel surcharge has been applied commercially for the 14-day period. Upon receipt of the documents, the GSA Contracting Officer shall acknowledge receipt of the required materials within 2 business days and complete the review of the fuel surcharge request within 10 business days, unless otherwise notified by the GSA Contracting Officer. If the Government requires more time for review, it shall indicate in the receipt acknowledgement what the alternative review schedule will be. A carrier shall not impose any fuel surcharge unless written approval from the Contracting Officer is received.

- (3) A carrier must cease any fuel surcharge on contract fares when the fuel surcharge is no longer imposed commercially. The carrier must also notify the GSA Contracting Officer in writing when the fuel surcharge is removed, identifying the end date of the fuel surcharge. In no instance shall the Government be charged a higher fuel surcharge than that imposed commercially.
- (4) Should a carrier not comply with the above terms, the Government may terminate for cause the line item(s) for which the carrier failed to comply with the

provisions of §C.11. Audits of contract fares will include a review of fuel surcharges. Improperly assessed surcharges on contract fares shall be reimbursed to the Government, or, if not, subject to the issuance of an overcharge under §G.2, Audit of Contract Fares.

(End of clause)

[Signature Page Follows]

DETERMINATION

I hereby determine that based on the foregoing, a waiver from the requirements of FAR 12.302(c) should be approved as being in the best interests of the Government.

PREPARED BY

Corey D. Gerst 10/3/19
Corey D. Gerst Date
Contracting Officer
Travel Acquisition Support Branch (QMACB)

CONCURRENCE:

KWANITA BROWN Digitally signed by KWANITA BROWN
Date: 2019.10.22 09:58:02 -04'00'
Kwanita A. Brown 10/22/2019
Kwanita A. Brown Date
Branch Chief
Travel Acquisition Support Branch (QMACB)

CONCURRENCE:

GREGORY POPE Digitally signed by GREGORY POPE
Date: 2019.10.23 15:55:58 -04'00'
Gregory J. Pope Date
Director
Center for Travel and Transportation Acquisition (QMAC)

CONCURRENCE:

REBECCA KOSES Digitally signed by REBECCA KOSES
Date: 2019.10.24 08:53:27 -04'00'
Rebecca A. Koses Date
Director
Office of Acquisition Operations (QMA)

CONCURRENCE:

MARY MORRISON Digitally signed by MARY MORRISON
Date: 2019.10.24 09:27:43 -04'00'
Mary Morrison Date
Director
Air, Training and Travel Solutions (QMCFA)

LEGALLY
SUFFICIENT:

**STEPHAN
POLSDOFER**

Digitally signed by STEPHAN
POLSDOFER
Date: 2019.11.26 15:21:56
-05'00'

Stephan Polsdofer
Assistant General Counsel
Personal Property Division (LP)

Date

CONCURRENCE:

TIMOTHY BURKE

Digitally signed by TIMOTHY
BURKE
Date: 2019.11.27 10:49:03 -05'00'

Timothy J. Burke
Director
Office of Travel, Employee Relocation and Transportation (QMC)

Date

CONCURRENCE:



Charlotte Phalen
Head of the Contracting Activity (HCA)
Assistant Commissioner
Office of Travel, Transportation & Logistics (TTL)

11/27/2019

Date

APPROVED:

Jeffrey Koses
Senior Procurement Executive
Office of Acquisition Policy (MV)

Date



MEMORANDUM FOR JEFFREY A. KOSES

SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

THRU:

WILLIAM TOTH
HEAD OF CONTRACTING ACTIVITY (HCA)
ACTING ASSISTANT COMMISSIONER
OFFICE OF TRAVEL, TRANSPORTATION & LOGISTICS

REBECCA A. KOSES
DIRECTOR
OFFICE OF ACQUISITION OPERATIONS (QMA)

GREGORY J. POPE
DIRECTOR
CENTER FOR TRAVEL AND TRANSPORTATION ACQUISITION
(QMAC)

KWANITA A. BROWN
BRANCH CHIEF
TRAVEL ACQUISITION SUPPORT BRANCH (QMACB)

FROM:

COREY GERST
CONTRACTING OFFICER
TRAVEL ACQUISITION SUPPORT BRANCH (QMACB)

SUBJECT:

Class Deviation for FAR Contract Terms and Conditions - Commercial Items and Requirements, for Scheduled Air Passenger Transportation Services, for City Pair Program (CPP) contracts for FY21-FY25 (Five Year Approval)

In accordance with Subpart 501.404 of the General Services Administration Acquisition Manual (GSAM), your approval is requested for a five year class deviation that is effective upon the start of the FY21 CPP contract period of performance through expiration of the FY25 CPP contract (including option periods, as applicable). Accordingly, CPP requests to deviate from:

1. Four subparagraphs listed in FAR Clause 52.212-4, Contract Terms and Conditions - Commercial Items (OCT 2018). Subparagraph (c) of clause 52.212-4, Changes, does not fulfill the Government's needs and it is requested that the subparagraph be replaced with a deviated version of clause 52.243-1 Changes – Fixed Price (AUG 1987) (Alternate I – APR 1984). The remaining three subparagraphs of clause 52.212-4, Invoice, Payment, and Taxes, as written, do not reflect the airline industry's commercial practice; and

2. Four subparagraphs listed in FAR Clause 52.216-21 -- Requirements (OCT 1995). These do not fulfill the Government's needs, as written, and thus removes and/or replaces certain language with deviated versions that better align with the requirements of the CPP contract.

This deviation request does not violate the regulatory provisions' underlying statute(s) nor defeat the FAR and GSAM approval requirements.

Justification

Approval of this five year class deviation will permit CPP to incorporate a Changes Clause that more closely aligns with the Government's needs and industry practice. The CPP requirement is solicited annually and the Class Deviation has been perpetually submitted for approval with little to no updates. A five year approval is being requested to enhance the overall efficiency and reduce the amount of time and effort that is being utilized to review and re-approve this document annually. The Class Deviation and clauses therein will be reviewed annually within this five year time frame to ensure that no changes are needed; however, if substantial unforeseen changes do transpire, the Class Deviation will be updated and resubmitted for approval if/when necessary. Per FAR 1.404, "[w]hen an agency knows that it will require a class deviation on a permanent basis, it should propose a FAR revision, if appropriate." While the circumstances giving rise to the deviation request are unlikely to change during the upcoming procurement cycles, the potential transformative nature of the commercial airline industry, makes a FAR revision potentially too restrictive in the face of uncertain changes. Nevertheless, CPP's 5-year deviation is predicated upon the basis that the previous deviations have been approved annually with little to no updates, and forecasts that minimal change is likely to happen within the next 5 years. Thus, given this forecast of stability, FAS will consider proposing a FAR revision prior to the expiration of this class deviation, insofar industry practices do not substantially change in the interim.

Additionally, approval of this deviation request will enable the procurement for scheduled air passenger transportation services to align with the standard practices of the commercial airline industry in the area of invoicing, payments, and taxes. The inability of the airline industry to follow commercial practices in these three areas could potentially limit participation in CPP, thus reducing competition and the Government's ability to negotiate deeply discounted airfares for Government travelers.

In addition, approval of this deviation will permit CPP to incorporate a Requirements Clause that more closely aligns with the Government's needs and industry practice. Approval of this deviation request will remove and/or replace any inapplicable language for the Clause as it is written.

Name, organization and role of the team members preparing the deviation request

Travel Acquisition Support Branch (QMACB)

- Corey Gerst, Contracting Officer (QMACB)
- Andrea Anderson, Contract Specialist (QMACB)

Number of contracts affected in the previous fiscal year

8 contracts for FY20

FAR Clause 52.212-4, Contract Terms and Conditions – Commercial Items (OCT 2018) - Deviation

Effect on the agency or Contracting Officers and the acquisition team (costs/benefits)

QMACB is requesting a deviation from the following subparagraphs in FAR Clause 52.212-4, Contract Terms and Conditions – Commercial Items (OCT 2018):

- Subparagraph (c) Changes
- Subparagraph (g) Invoice
- Subparagraph (i) Payment
- Subparagraph (k) Taxes

Additionally, a deviation is requested for FAR Clause 52.243-1, Changes – Fixed Price (AUG 1987) (ALTERNATE I – APR 1984).

FAR 12.302(a) states that to the maximum extent practicable, the clause at 52.212-4 addresses customary commercial practices. However, because of the broad range of commercial items acquired by the Government, contracting officers may, after appropriate market research, tailor certain paragraphs of the provision at 52.212-1, Instructions to Offerors—Commercial Items (OCT 2018), and the clause at 52.212-4, Contract Terms and Conditions—Commercial Items (OCT 2018), to adapt to the market conditions for each acquisition.

FAR 12.302(b) also states, however, that certain paragraphs of clause 52.212-4 that implement statutory requirements shall not be tailored. They include the paragraphs addressing assignments, disputes, payment, invoice, other compliances, compliance with laws unique to Government contracts, and unauthorized obligations.

The subparagraph of Clause 52.212-4 regarding changes does not adequately meet CPP's needs; therefore, it is requested that the subparagraph be replaced with a deviated version of Clause 52.243-1 that better aligns with commercial practice. The remaining three subparagraphs of Clause 52.212-4 regarding invoices, payment and taxes, as written, are not the airline industry's commercial practice.

a. FAR 52.212-4, Subparagraph (c), Changes

FAR 52.212-4(c), Changes, currently states:

Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

As written, this clause means that only bilateral changes can be made. From time to time under CPP, the Government may need to make unilateral changes, either due to time constraints or due to the contractor's objection to a new requirement (*e.g.*, enactment of Congressional legislation or new/revised regulatory requirements issued by the Federal Aviation Administration (FAA), Department of Transportation (DOT), Transportation Security Administration (TSA), or the Department of Defense (DoD)). The language in 52.212-4(c) does not allow the Government to act in the best interest of the public by restricting contract changes to only bilateral changes.

In place of 52.212-4(c), a deviation is requested to utilize Alternate I of FAR Clause 52.243-1 (APR 1984), which would allow the Government to make unilateral changes to the contract as needed. FAR 52.243-1 Changes – Fixed Price (Alternate I) (APR 1984) currently states:

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

This FAR clause requires a deviation to strike out paragraphs (a)(2) and (a)(3), which would allow the Contracting Officer to make changes in the time and place of performance. This is a contract for scheduled commercial air passenger transportation services, and thus, the Government cannot establish the times or routes of flights. Time and place of performance is determined by the commercial industry practice. The deviated clause will read in its entirety as follows:

FAR 52.243-1 Changes – Fixed Price (AUG 1987) (Alternate I – APR 1984) (Deviation)

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) Description of services to be performed.
 - ~~(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).~~
 - ~~(3) Place of performance of the services.~~
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed

by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

b. FAR 52.212-4, Subparagraph (g), Invoice

FAR 52.212-4(g), Invoice, currently states:

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.
 - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

The above invoicing procedure is not applicable because airline tickets under CPP are purchased through commercial charge card services under contract with GSA or through Government Transportation Requests (GTRs) and because tickets are normally purchased through GSA's E-Gov Travel Service contracts, Travel Management Centers, or a Commercial Travel Office. This deviation request will simply remove this subparagraph of FAR 52.212-4 from the contract.

c. FAR 52.212-4, Subparagraph (i), Payment

FAR 52.212-4(i), Payment, currently states:

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

- (B) Affected contract number and delivery order number, if applicable;
- (C) Affected line item or subline item, if applicable; and
- (D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

For CPP, the primary means of payment are (1) the use of individually- or centrally-billed accounts established under a GSA contract for travel card services and (2) GTRs.

Limiting the available forms of payment affords the Government the control necessary to permit only authorized users access to the GSA contract fares, thereby helping to ensure that the airlines participate in CPP. This deviation request will remove the subparagraph as written and substitute it with the following language that more accurately addresses payment provisions:

C.12 METHOD OF PAYMENT

1. GSA contracts for commercial travel card services provide individual travel cards (contractor-issued travel cards) to Federal employees to cover transportation and other related expenses incurred during official travel. GSA travel card contract(s) also provide(s) for the use of centrally billed accounts by Federal agencies to purchase airline tickets. **THE ONLY CHARGE CARD(S) OR CENTRALLY BILLED ACCOUNT(S) THE CONTRACT CARRIER(S) IS (ARE) OBLIGATED TO ACCEPT ARE THOSE AWARDED** under a GSA contract for travel card services. If there are any questions as to the offered form of payment, the contract carrier's contract administrator (as listed in [§K.2 Contact for Contract Administration](#)) should contact the GSA Contracting Officer.
2. The contract carrier agrees to accept payment through all of the following methods: 1) individually or centrally billed Government travel accounts issued under a GSA contract (see Federal Travel Regulation (FTR) 301-72.3 (41 CFR 301-72.3)); and 2) Government Transportation Requests (GTRs). GTRs may be used to pay for international air travel and other travel related expenses. For domestic air travel (other than §C.12(4)), GTRs may be used only under special circumstances and for travel related expenses. Special domestic circumstances are defined as acts of God, emergency situations, and when purchasing a domestic ticket in the USA in conjunction with travel that originated overseas.

Individually- or centrally-billed travel account charge transactions shall be processed by carriers in the same manner as commercial charge transactions. GTRs shall be processed according to the Federal Management Regulation (FMR) Part 102-118 ([41 CFR Part 102-118](#)).

3. The American Red Cross National Sector shall pay for services only through the use of a centrally-billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.
4. Members and employees of the U.S. House of Representatives and Senate pay for services with a travel card or centrally-billed account established under a GSA contract for commercial travel card services, a GTR, cash, money order, or personal credit card (the acceptance of non-GSA contractor issued travel cards, cash, or money orders for payment is at the option of the contract carrier).
5. Employees of a tribe or tribal organizations performing travel necessary to carry out a contract, grant, funding or cooperative agreement under the Indian Self-Determination and Education Assistance Act, pursuant to 25 U.S.C. 5324(k), shall pay for services only through the use of a travel card or a centrally billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.
6. Military reservists traveling to and from inactive duty training when authorized by the Department of Defense shall pay for services through the use of a travel card established under a GSA contract for commercial travel card services in effect during the term of this contract. The Government does not reimburse airline travel costs to military reservists.
7. Employees of and participants in the Eisenhower Exchange Fellowship Program when performing travel necessary to carry out the provisions of 20 U.S.C. 5201 shall pay for services through the use of a travel card or a centrally billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.
8. Employees of the foundations established by Acts of Congress to solicit private sector funds on behalf of Federal land management agencies, shall pay for services through the use of a centrally billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.
9. Employees of a tribe or tribally designated housing entity performing travel necessary to carry out a block grant under the Native American Housing Assistance and Self-Determination Act, pursuant to 25 U.S.C. 4111(j), shall pay for services only through the use of a travel card or a centrally-billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.

Fares offered under CPP are heavily discounted compared to standard commercial fares, as such, airlines are concerned that CPP fares will become accessible to users other than those authorized by the contract. The Travel and Transportation Reform Act of 1998 (Public Law 105-264) directs Federal employees to use Federal travel charge cards (*i.e.*, the GSA SmartPay® card) for all payments of expenses of official Government travel. The GSA SmartPay® card is an effective form of payment to control access to deeply discounted CPP fares as the card number denotes mandatory users versus non-mandatory users. The airline carriers programmed their automated sales systems to recognize the GSA SmartPay® account structure in order to display the contract fares. This automation results in point-of-sale discounts world-wide. In addition, GSA's E-Gov Travel Systems have been programmed to recognize the GSA SmartPay® card as an authorized form of payment.

d. FAR 52.212-4, Subparagraph (k), Taxes

FAR 52.212-4(k), Taxes, currently states:

The contract price includes all applicable Federal, State, and local taxes and duties.

CPP contract fares in international and fifth freedom of the air¹ line items are not exempt from taxes imposed by foreign governments. The above clause does not encompass taxes and fees applicable to international and fifth freedom of the air line items. This deviation request will strike out the subparagraph as written and substitute it with the following language that more accurately addresses tax provisions. Please note, the text relating to fuel surcharges, §C.11(c), does not require a deviation request and, thus, is not necessary to address in the approval of this waiver request.

C.11 TAXES, FEES, AND FUEL SURCHARGES

- (a) All fares for domestic line items include all existing Federal, state, and local taxes. Airport maintenance fees, administrative fees (*e.g.*, fees charged for route and schedule changes), fuel surcharges currently in place commercially, and other similar charges are to be included in all fares offered, where applicable. Passenger facility charges (PFC), segment fees, and passenger security service fees are not included in the offered fares, but are listed separately on the ticket at the time of issuance.
- (b) For international, fifth freedom of the air, and international business class line items, all fares are exclusive of taxes. Fuel surcharges are to be included in all fares offered. All line items included under the international tariff of the International Air Transport Association may be treated as international line items for purposes of this section.
- (c) Fuel surcharges are governed by §I.2 I-FBG-LS001 Economic Price Adjustment for Fuel Surcharges - City Pair Program (CPP) (JAN 2016).

FAR Clause 52.216-21 Requirements (OCT 1995) – Deviation

The Travel Acquisition Support Branch (QMACB) is requesting a deviation from the following subparagraphs in FAR Clause 52.216-21 -- Requirements (OCT 1995):

- Subparagraph (b)
- Subparagraph (d)
- Subparagraph (e)
- Subparagraph (f)

The above-mentioned subparagraphs of Clause 52.216-21 regarding performance and purchase requirements do not adequately meet CPP's needs; therefore, it is requested that the

¹ Fifth Freedom of the Air –A scheduled air service right or privilege, granted by a foreign country to American carriers to put down and take on passengers in its territory, where the American carrier flies between two (2) foreign countries on a flight which either originated in or is ending in the United States (*e.g.*, an American carrier moving traffic between Japan and Thailand on scheduled service from the United States to Japan to Thailand). The use of the terms “freedom” and “right” confer entitlement to operate such scheduled air passenger services only within the scope of the multilateral and bilateral treaties (air service agreements) that allow them and which carriers have authority.

subparagraphs be removed and replaced with deviated versions that better align with the requirements of the CPP contract.

e. FAR 52.216-21, Subparagraph (b)

FAR 52.216-21(b), currently states:

Delivery or performance shall be made only as authorized by orders² issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

As written, this language contemplates that orders will be issued in accordance with the Ordering clause. The Ordering clause (FAR 52.216-18 – Ordering) is not included in the CPP solicitation/contract as it contemplates the issuance of delivery orders and/or task orders, neither of which are issued against the CPP contract. A deviation is requested to replace “Ordering clause” in the first and second sentences of FAR 52.216-21(b) with:

“terms and conditions of the City Pair Program contract.”

The second sentence of FAR 52.216-21(b) also references the Order Limitations clause (FAR 52.216-19 – Order Limitations). The CPP contract does not include FAR 52.216-19 – Order Limitations, which establishes minimum and maximum order thresholds. As CPP does not establish any order limitations, this language is not applicable. As such, this portion of the FAR clause requires a deviation to strike out the “Order Limitations clause or elsewhere” language.

The deviated subparagraph will read in its entirety as follows:

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ~~Ordering Clause~~ terms and conditions of the City Pair Program contract. Subject to any limitations in ~~the Order Limitations clause or elsewhere in this contract~~, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the ~~Ordering Clause~~ terms and conditions of the City Pair Program contract. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

f. FAR 52.216-21, Subparagraph (d)

FAR 52.216-21(d), currently states:

The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

² For the purposes of this document, “orders” as referenced herein, are defined as flights ordered against the City Pair Program contract and are not considered to be Delivery or Task Orders.

This language is not applicable to the CPP contract as it does not establish any limits on total orders. As such, this portion of the FAR clause requires a deviation to strike out the aforementioned language.

g. FAR 52.216-21, Subparagraph (e)

FAR 52.216-21(e), currently states:

If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

The Government does not have a need for accelerated delivery of services under the CPP contract as the CPP contract's scope provides for air passenger transportation that is already "scheduled" by industry as commercial service. This deviation will remove this subparagraph of FAR 52.216-21 from the contract, as it is not applicable.

h. FAR 52.216-21, Subparagraph (f)

FAR 52.216-21(f), currently states:

Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after _____ [*insert date*].

Flights may be procured through the CPP contract from the commencement of the period of performance as stated in the contract or date of award (whichever is later) through its expiration, including option periods. The contract has two (2) option periods that, if exercised, could extend the contract by up to an additional three (3) months. A flight could be purchased on the last day of the CPP contract and not occur until after the CPP contract expires. A deviation is necessary to require the contract carrier to honor any tickets issued prior to contract expiration for flights occurring after contract expiration.

In place of 52.216-21(f), a deviation is requested to replace the "Ordering clause" language with:

Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to perform under this contract after the date in which all orders issued prior to contract expiration with dates(s) of order fulfillment after contract expiration have been completed.

i. Revised Clause with deviations

The deviated clause, **FAR 52.216-21 Requirements (OCT 1995)**, will read in its entirety as follows:

(a) This is a requirements contract for the supplies or services specified and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ~~Ordering clause~~ terms and conditions of the City Pair Program contract. Subject to any limitations in the ~~Order Limitations clause or elsewhere~~ in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the ~~Ordering clause~~ terms and conditions of the City Pair Program contract. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) ~~The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.~~

(e) ~~If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.~~

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to ~~make any deliveries perform under this contract after the contract period of performance has expired.~~ _____ ~~[insert date].~~ after the date in which all orders issued prior to contract expiration with date(s) of order fulfillment after contract expiration have been completed.

Effect on contractors (costs/benefits), including:

- Number of contractors affected:
 - 8 contractors affected for FY21 (estimated)
 - 8 contractors affected for FY22 (estimated)
 - 8 contractors affected for FY23 (estimated)
 - 8 contractors affected for FY24 (estimated)
 - 8 contractors affected for FY25 (estimated)

- Number of small businesses affected
 - 1 small business affected for FY21 (estimated)
 - 1 small business affected for FY22 (estimated)
 - 1 small business affected for FY23 (estimated)
 - 1 small business affected for FY24 (estimated)
 - 1 small business affected for FY25 (estimated)

- Impact on small businesses (positive or negative)
 - No estimated impact on small businesses, as no two small businesses for scheduled air passenger transportation services are expected to compete on the same route.

Potential impact on another Service:

No impact on another service.

Opportunities for efficiency under the proposed Deviations:

Approval of the deviation request will enhance competition by more closely aligning with commercial practices in these areas. It will also afford seamless integration among multiple Government programs/contracts, including the E-Government Travel System and GSA SmartPay® travel charge cards.

Analysis of alternatives, identifying risks, and risk mitigation:

The alternative is to proceed with the current acquisition strategy by including the unaltered FAR Clause 52.212-4, Contract Terms and Conditions - Commercial Items (OCT 2018). This alternative is not recommended because not deviating from 52.212-4(c) to use FAR Clause 52.243-1, Changes – Fixed Price (AUG 1987) (ALTERNATE I – APR 1984) could result in detrimental delays or difficulties in implementing certain contract changes. This alternative would not meet the Government’s needs as it overly restricts the Government’s ability to act in the public interest. In addition, it is not recommended because the procurement would not align with the standard practices of the commercial airline industry. As a result, the airline carriers’ participation may decrease. Reduced competition and requiring carriers to build special processes to accommodate the clause as written would likely result in increased fare prices.

For FAR Clause 52.216-21 -- Requirements (OCT 1995), the alternative is to proceed with the current acquisition strategy by including the unaltered clause. This alternative is not recommended because not deviating from 52.216-21 could result in confusion or difficulties in implementing certain aspects of the CPP contract as there is language included in the clause that is not applicable to CPP requirements.

Any effects on automated systems (i.e., financial and procurement):

Current contractor and Government systems have already adapted to this process.

Proposed milestones for initiation, including training:

Initiation for this class deviation request is immediate for the upcoming procurement cycles. All contractors and customers understand the deviations as most have been in place for numerous years. All contractors are in compliance with the terms of the deviations as written because all reflect commercial airline industry standard practices.

Approach to monitoring success and determining whether or not the Deviations will continue:

Continual monitoring of commercial airline industry standards regarding these deviations will occur throughout the procurement cycles. Changes to industry standards will be noted and appropriate adjustments will be made, if necessary. However, most deviations in this request are long standing and are unlikely to change during the upcoming procurement cycles.

Any Federal Strategic Sourcing Initiative team interaction or recommendation should be provided in order to support the overall strategic sourcing goals being sought:

N/A

[Signature Page Follows]

TIMOTHY BURKE Digitally signed by TIMOTHY
BURKE
Date: 2019.11.22 10:54:38 -05'00'

CONCURRENCE:

Timothy J. Burke Date
Director
Office of Travel, Transportation and Logistics (QM)

WILLIAM TOTH Digitally signed by WILLIAM
TOTH
Date: 2019.11.25 08:25:32 -05'00'

CONCURRENCE:

William Toth Date
Head of the Contracting Activity (HCA)
Acting Assistant Commissioner
Office of Travel, Transportation & Logistics (QM)

I have reviewed this contract action and I have determined to the best of my know and belief based upon the information contained herein, that it complies with all applicable policies and regulations.

CONCURRENCE:  _____ 12/12/19
Mark Lee Date
Assistant Commissioner
Office of Policy and Compliance (OPC)

APPROVED:

Jeffrey A. Koses Date
Senior Procurement Executive
Office of Acquisition Policy (MV)



Johnnie McDowell - M1V1AC <johnnie.mcdowell@gsa.gov>

Request for Concurrence for Class Deviation for Federal Acquisition Regulation (FAR) clause 52.216-21, Requirements (OCT 1995)

William Clark - M1V1C <william.clark@gsa.gov>

Tue, Feb 12, 2019 at 11:29 AM

To: Johnnie McDowell - M1V1AC <johnnie.mcdowell@gsa.gov>

Cc: Chris Mullins - 3PQCB <christina.mullins@gsa.gov>, Janet Fry - M1V1AC <janet.fry@gsa.gov>, Deborah Erwin <deborah.erwin@gsa.gov>, Jeffrey Koses <jeffrey.koses@gsa.gov>

Johnnie:

On January 31, 2019, I received the request for consultation on a proposed FAR class deviation to cover the FY 2020 GSA Airline City Pair Program. This email constitutes the consultation required by FAR 1.404(a)(1) for class deviations.

FAS requests a class deviation from four paragraphs of FAR 52.212-4 Contract Terms and Conditions – Commercial Items (OCT 2018). FAR 12.302(a) states that to the maximum extent practicable, the clause at FAR 52.212-4 addresses customary commercial practices. However, because of the broad range of commercial items acquired by the Government, contracting officers may, after appropriate market research, tailor certain paragraphs of the clause at 52.212-4. FAR 12.302(b) also states, however, that certain paragraphs of clause 52.212-4 that implement statutory requirements shall not be tailored. The paragraphs that cannot be tailored include: Paragraph (g) Invoice; Paragraph (i) Payment; and Paragraph (k) Taxes. FAS wishes to tailor or delete these three paragraphs because they are not the airline industry's commercial practice. FAS also requests the addition of language requesting a deviation for subparagraph (c), Changes, from FAR 52.212-4.

In addition, this year FAS requests an additional deviation to deviate from four (4) subparagraphs listed in the Federal Acquisition Regulation (FAR) clause 52.216-21, *Requirements* (OCT 1995). The Head of the Contracting Activity (HCA) concurrence and other appropriate approvals have been obtained.

I see nothing that would preclude approval of this class deviation, especially given GSA OGC has provided approval. The request for this deviation has been submitted annually (except the new request for 52.216-21), and the CAAC Chair has provided consultation without any concerns in the past. (I note a concern expressed by CAAC Counsel that the deviation in 52.212-4 regarding a deletion of paragraph (i) Payment, which includes Prompt Payment coverage, Overpayment reporting, and setting the interest rate on monies the contractor owes the government --- subparagraphs (i)(2), (i)(5) and (i)(6). CAAC Counsel expressed an objection to deleting those subparagraphs, citing that FAS has not sufficiently justified the need to be deleted. Prompt Payment may apply anyway because it is statutory, but the Overpayment and Interest paragraphs might not.)

If you have any questions, let me know.

Thanks,

Bill

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