



3/18/2022

Class Deviation CD-2020-14

Supplement 2

MEMORANDUM FOR GSA CONTRACTING A

FROM:

JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

DocuSigned by:
Jeffrey A. Koses
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SUBJECT:

Unpriced Services Authority for FAS ITC Polaris Program

1. Purpose. This memorandum approves the Federal Acquisition Service (FAS) Information Technology Category (ITC) use of Class Deviation 2020-14 authority for awarding labor rates with no stated price on the line item or sub-line item at the contract level for its “Polaris Program” of indefinite delivery, indefinite quantity (IDIQ) multiple-award contracts.
2. Background. Class Deviation 2020-14 was issued effective 8/14/2020, which allowed for the use of “unpriced labor” categories at the contract level for certain IDIQ multiple-award contracts, after Senior Procurement Executive (SPE) approval.
3. Applicability. This Supplement 2 applies the Class Deviation 2020-14 authority to the FAS ITC “Polaris Program” family of IDIQs.
4. Limitations. This authority is limited to those IDIQs that are part of the “Polaris Program” of FAS ITC.
5. Conditions. To be eligible for the use of this authority, the “Polaris Program” IDIQ must establish regular post-award acquisition reviews to ensure compliance with the metrics attached as Attachment B. Additionally, FAS ITC must develop, implement, and report out, quarterly an appropriate metric to demonstrate this authority’s impact on competition. Such metrics must include, at minimum, the percent of orders and percent of dollars receiving competition.
6. Effective Date. This Supplement 2 and the authority provided are effective upon signature of this Supplement, and will remain active for the ordering period of the final awarded Polaris Program IDIQ unless otherwise rescinded by the SPE.
7. Cancellations. Not applicable.
8. Point of Contact. Questions regarding this class deviation may be directed to GSARPolicy@gsa.gov.

Attachments

Attachment A - [FAS ITC Polaris Request for Unpriced Services Authority](#)

Attachment B - [FAS ITC Polaris Unpriced Services Performance Metrics](#)

ATTACHMENT A
FAS ITC Polaris Request for Unpriced Services Authority

March 1, 2022

MEMORANDUM FOR: JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (M1V)

MARK LEE
ASSISTANT COMMISSIONER
OFFICE OF POLICY AND COMPLIANCE (QV)

FROM: ALEX WRISINGER AND ANGELA CHIU
SENIOR CONTRACTING OFFICERS
POLARIS GWAC PROGRAM
FAS/ITC/OFFICE OF INTERAGENCY CONTRACTS (QT2F2)

SUBJECT: APPROVAL REQUEST FOR CLASS DEVIATION CD-2020-14
FAR CLASS DEVIATION - ENHANCING COMPETITION AT THE
ORDER LEVEL FOR CERTAIN INDEFINITE DELIVERY,
INDEFINITE QUANTITY MULTIPLE-AWARD CONTRACTS

Purpose

The purpose of this memorandum is to request approval by the Senior Procurement Executive (SPE) for the use of GSA Class Deviation CD-2020-14, Federal Acquisition Regulation (FAR) Class Deviation - Enhancing Competition at the Order Level for Certain Indefinite Delivery, Indefinite Quantity Multiple-Award Contracts for the Polaris Governmentwide Acquisition Contract (GWAC) procurement.

Background

GSA Class Deviation CD-2020-14 provides a class deviation from the FAR requirement to consider price as an evaluation factor for the award of certain indefinite-delivery, indefinite-quantity (IDIQ) multiple-award contracts. CD 2020-14 also establishes the approval requirements for use of the authority.

The Polaris GWAC Program (Polaris) will be a collection of multiple-award IDIQ contracts for information technology services. The Polaris solicitation will be set-aside for competition amongst small businesses, as well as pools set-aside for specific socioeconomic categories such as Women-Owned Small Businesses (WOSB), Service-Disabled Veteran-Owned Small Businesses (SDVOSB) and HUBZone small businesses.

CD 2020-14 states the deviation is limited to new acquisitions that are -

- a. For the award of IDIQ multiple-award contracts for services that will be acquired on an hourly rate basis; and
- b. Approved by the SPE.

The deviation to FAR 16.501-3(a) states in relevant part,

A contracting officer need not consider price as an evaluation factor for award as required by 13.106-1(a)(2) and 15.304(c)(1) when all of the following conditions exist—

- (1) The solicitation is to establish multiple-award indefinite-delivery, indefinite-quantity contracts for services to be acquired on an hourly rate basis;
- (2) The solicitation states the Government intends to make award to each qualifying offeror and defines the criteria for what constitutes a qualifying offeror;
- (3) The resultant contracts will feature individually competed task or delivery orders based on hourly rates; and
- (4) Cost or price shall be considered in conjunction with the issuance of any task or delivery order issued under any contract resulting from the solicitation (see 16.505(b)).

Discussion

Polaris meets the above criteria based on the following -

- It is an IDIQ multiple-award contract for information technology services that will be acquired on an hourly rate basis. While Polaris will allow for a full range of order types, services acquired on an hourly rate basis are anticipated to be the predominant amount of the acquisition. This includes labor hour, time-and-materials, cost-reimbursement, and fixed-price type task orders based on an hourly rate build-up. Task orders through Polaris may also include a combination of these contract types.
- The solicitation will provide the definition of a qualifying offeror and state GSA's intent to make an award to each qualifying offeror. In accordance with CD-2020-14, the solicitation will also include additional detail on the criteria that constitutes a qualifying offer, such as -
 - i. The government's basis for determining responsibility (e.g., FAR subpart 9.1);
 - ii. The requirements of the solicitation to which an offeror must conform;
 - iii. All the technical requirements that an offer must meet; and
 - iv. Any other requirements for being eligible for award (e.g., an offeror must be within the specified number of rated offerors for the evaluated pool).

- The resultant Polaris contracts will feature individually competed task orders¹ based on hourly rates. Customer agency training and guidance will include a focus on encouraging competition along with performing price analysis of offered rates at the task order level.
- Cost² or price will be considered in conjunction with the issuance of any task order against the Polaris GWAC. This is in accordance with FAR 16.505(b)(1)(ii)(E) and will be included in ordering guidance for customers.

This approach is in the best interest of the government as the use of this authority will -

- Increase flexibility for customer agencies by allowing competition at the task order level to drive pricing rather than pricing being tied to contract ceiling rates. Contract ceiling rates for GSA GWACs have historically been based upon the highest qualified employee within a given labor category, working in the highest paid area within the contiguous United States, on a highly complex requirement, up to (and including) secret personnel clearances. However, not every task order requires the highest qualified employee or is performed in the highest paid area of the United States. While Ordering Contracting Officers (OCOs) have always had the ability to negotiate pricing based upon the specifics of the task order, eliminating the ceiling rates from the contract will shift the focus to competition at the task order level and evaluating price reasonableness based on the specifics of the task order.
- Decrease the possibility of contract ceiling rates being improperly used at the task order level. While OCOs are informed during Delegation of Procurement Authority (DPA) training³ that pricing must be established for each task order; there is the potential for task orders to be awarded with pricing equal to the contract ceiling rates. Elimination of contract ceiling rates requires pricing to be evaluated at the task order level and will most likely provide cost savings through the completion of the price analysis and potential negotiation of task order pricing.
- Eliminate the risk of protests that may be sustained at the time of contract award in relation to the price evaluation.⁴
- Expedite the Polaris awards by eliminating the requirement to conduct evaluation of price at the contract level. With the use of the authority, the Polaris award can be made earlier than if price analysis was required. This will also decrease cost to the government

¹ Task orders against Polaris will be competed in accordance with FAR 16.505(b) which requires each awardee be provided a fair opportunity to be considered for each task order exceeding the micro-purchase threshold; except when an exception to fair opportunity applies.

² In accordance with MV-16-04, Class Deviation to FAR 15.404-1(d)(2), no cost realism analysis will be performed at the Master Contract level for Polaris. Cost realism analysis shall be performed at the task order level for any cost-reimbursement task orders.

³ Prior to placing a task order against any GSA GWAC, including Polaris, Contracting Officers are required to receive training on proper use of the contract and receive a Delegation of Procurement Authority (DPA).

⁴ The evaluation of pricing was an element of the decision against the Government in *Citizant, Inc. v. United States Fed. Cl. No. 18-856C* in relation to the Alliant 2 Small Business GWAC procurement.

for the evaluation and award of the contracts as the price analysis for this volume of data would require several hundred hours to complete.

- Provide for greater attention on awarding to qualified offerors that are technically capable of successfully meeting customer needs.

Additionally, from an industry perspective, the use of this authority will -

- Decrease the effort associated with preparing an offer in response to the Polaris solicitation. Small businesses often have limited resources available for the preparation of proposals. By removing the requirement to develop and submit a price proposal, competition will potentially be increased as more small businesses will submit an offer in response to the solicitation.
- Allow flexibility for contractors to price as necessary to perform a specific task. Through use of this authority, competition is expected to improve with the elimination of ceiling rates at the contract level and increased focus on maximizing task order level competition. All contractors with the necessary capabilities will be able to make a bid/no-bid decision without concern for a ceiling rate that may have been established below what is required for the specific task order requirement. Contractors are much better positioned to develop pricing when the specifics of a task order; such as skill set, complexity, risk, and location; are known.

Admittedly, there are some considerations with this approach -

- The most critical concern with this approach is that customer agencies will no longer receive fair and reasonable pricing at the task order level with the removal of ceiling rates from the contract. While competition at the task order level is expected to produce fair and reasonable pricing, several additional actions are planned to address this concern:
 1. First, this is mitigated from the outset by clear FAR language at FAR 16.505(b)(3) which requires contracting officers to establish pricing for each task order and FAR 15.402(a) which requires contracting officers to purchase services at fair and reasonable prices.
 2. Second, through regular DPA training drawing upon GSA guidance such as PIN 2021-03 (or the latest guidance), OCOs will be informed how to perform market research, develop an independent government cost estimate (IGCE), and establish fair and reasonable pricing in the absence of contract level hourly rates when issuing requirements against the Polaris GWAC. The training will also share best practices for encouraging competition at the task order level and remind the OCOs of the plethora of price analysis techniques provided for within FAR 15.404.
 3. Third, to encourage task order competition, Polaris will also provide training for customer agencies on best practices in documenting and soliciting their

requirements. Training will also be provided to Polaris industry partners to encourage the submission of quality proposals.

4. Fourth, the Polaris GWAC ordering guide will expand on these topics from the training with additional instruction, links to online resources, and sample best practices.
 5. Fifth, consistent with existing GWACs, transactional data reporting requirements will be included in Polaris. This will include the reporting of hourly rates for time-and-materials and labor-hour type contract line item numbers (CLINs) for all task orders. GSA will review the reported pricing data on a quarterly basis to ensure customers are receiving reasonable pricing through task order competition. Additionally, this data will be available for OCOs as a reference through the Prices Paid Portal.
 6. Sixth, task order competition rates will be monitored on a semi-annual basis. Effective competition is considered the receipt of two or more proposals to satisfy the Government's requirement, to a task order competition. With this review, if effective competition is not being achieved at the order level, revisions to the above mentioned training or the necessity for an on-ramp could be considered.
- Another concern is that the use of this approach will increase the effort on customer agencies performing price analysis. First, it is important to note OCOs are already required to consider the price or cost under each task order in accordance with FAR 16.505(b)(1)(ii)(E) and to establish prices for each task order using the policies and methods in subpart 15.4 in accordance with FAR 16.505(b)(3). So while this may take away a reference point for OCOs, the price reasonableness determination is already required for each task order when the contract does not establish the price for the service (FAR 16.505(b)(3)). Through the fair opportunity process, fair and reasonable pricing will most often be able to be determined based on competition at the task order level (FAR 15.404-1(b)(2)(i)). To support OCOs in making their determinations of price reasonableness and for the preparation of IGCEs, online tools and resources will provide baseline pricing from historical GWAC prices paid data and/or price indices from entities such as the Department of Labor Bureau of Labor Statistics.
 - Customer agency adoption of Polaris with its use of this authority is also a primary consideration. Customers are accustomed to having ceiling prices as a reference on previous GWAC vehicles. As noted above, the planned pricing tools are anticipated to provide improved references for OCOs and will be more dynamic to the order requirements compared to the predecessor ceiling rates. The increased focus on hourly rates at the order level may also be a change in process for some customers. Ordering guidance and customer training will be critical to assist OCOs in adjusting to the new ordering procedures. While it will be an adjustment for some customers, the increased focus on competition and price analysis is ultimately expected to result in better pricing to the Government.
 - There has also been concern expressed of this approach possibly increasing the burden on contractors to prepare pricing for each task. Contractors should already be

developing rates specific to the requirements of each task order. As the contract ceiling rates are priced for the highest qualified employee working in the highest paid area on the most complex project, contractors should be developing pricing appropriate for the specifics of the task. If task order specific pricing is not currently being developed, use of the new authority should provide savings to the government as task order specific pricing will be forced without contract ceiling rates being used as a default. Additionally, contractors will be able to work from their own internal pricelists and can also utilize some of the same resources referenced above for OCOs, such as price indices from the Bureau of Labor Statistics. The use of this authority has been socialized with industry through two draft RFPs and within numerous meetings with industry; overall, the response from industry has been positive with no significant concerns expressed.

Additionally, it is understood this is a new authority and one goal of the deviation is to gain a better understanding of the success drivers and impacts when using the authority. In support of this, the following is planned -

- Following award, survey all awardees on cost/time savings with proposal preparation based on no cost/price proposal for the IDIQ.
- As noted above, through the collection of prices paid data for all time-and-materials and labor-hour type CLINs, task order pricing will be reviewed on a regular basis. This will provide visibility into the pricing received by OCOs and inform the success of the authority.
- Following task order awards, OCOs will be surveyed on their experience with the Polaris ordering process. This survey will include questions regarding their satisfaction with task order competition and ultimate awarded pricing.
- Polaris will also seek to better understand and rectify any issues hindering task order competition. Contractors will be surveyed on a regular basis to request general information on "no bid" decisions and task order proposal submittal experiences. Potential functionality to gather this information through task order management systems is also being explored.

Determination

Based on the above facts and reasoning, the use of the authority provided for by CD-2020-14 is determined to be in the best interest of the government and approval of its use is requested from the Senior Procurement Executive.

PREPARED BY:  3/4/2022
Alex Wrisinger
Polaris GWAC Contracting Officer
Date

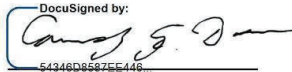
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Angela Chiu
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Carmody Daman
Office of General Counsel
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CONCURRENCE:  3/4/2022
Laura Stanton
Assistant Commissioner
Information Technology Category
Head of Contracting Activity
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3/4/2022
Date

I have reviewed this request and have determined to the best of my knowledge and belief, based on the information contained herein, that it complies with all applicable policies and regulations.

CONCURRENCE:  3/9/2022

Date
Mark Lee
Assistant Commissioner
Office of Policy and Compliance (QV)

APPROVED: _____
Jeffrey A. Koses
Senior Procurement Executive
Office of Acquisition Policy (M1V) _____
Date

FAS ITC Polaris Unpriced Services Performance Metrics

GSA Polaris GWAC Program
Unpriced Services - Performance Metrics

No.	METRIC	DEFINITION	BASELINE	GOAL	TOLERANCE LEVEL	FREQUENCY OF REPORTING
1	Order Level Effective Competition*	Average number of proposals per task order request	Effective competition is considered the receipt of two or more proposals to satisfy the Government's requirement, to a task order competition	Ensure effective competition	Average # of proposals per competed task order requests is two or more	Annual
2	Competitive Pricing	Awarded task order labor rates compared to external benchmarks reflected as a cost savings percentage based on Best-in-Class designation	Established for each labor category based on external pricing indices and/or prior prices paid data	Competition drives savings compared to the baseline	Cost savings for Polaris task orders are demonstrated through Best-in-Class cost avoidance measure	Annual
3	Industry Satisfaction 1 - IDIQ	Average score in response to a survey on Polaris proposal submittal experience	Average score of 3 (out of 5) indicates no change from previous experience submitting a proposal for a GSA procurement with master level contract pricing	Unpriced IDIQ leads to increased industry satisfaction with the proposal submittal process for GSA contract vehicles	Average survey score for Polaris indicates industry experience for proposal without master level contract pricing is equal to or better compared to submission requiring master level contract pricing	One time for each Polaris GWAC pool after the protest period ends
4	Industry Satisfaction 2 - Task Order	Average score in response to a survey on task order proposal submittal experience	Average score of 3 (out of 5) indicates no change from previous experience submitting a proposal for a GSA procurement with master level contract pricing	Unpriced IDIQ leads to increased industry satisfaction with the proposal submittal process for orders against GSA contract vehicles	Average survey score for Polaris indicates industry experience with task order proposal process without master level contract pricing is equal to or better compared to process with master level contract pricing	Annual
5	Customer Satisfaction	Average score in response to a survey on task order award experience	Average score of 3 (out of 5) indicates no change from previous experience awarding a task order for a GSA procurement with master level contract pricing	Unpriced IDIQ leads to increased customer satisfaction with the task order award process for GSA contract vehicles. Obtain ongoing feedback on	Average survey score for Polaris indicates customer experience with task order proposal process without master level contract pricing is equal to or better compared to process with	Survey the Ordering Contracting Officer within one month of each task order award being reported

				satisfaction with task order competition and ultimate awarded pricing	master level contract pricing	
6	Procurement Administrative Lead Time (PALT) - IDIQ	PALT will be defined by the following key acquisition milestones: 1) RFP released 2) Offers received 3) Pre-award Notification 4) Award 5) Notice to proceed	Number of calendar days in between key acquisition milestones in the award of the VETS 2 GWAC 1) 04/21/2016 2) 06/20/2016 3) 08/22/2017 4) 10/26/2017 5) 02/23/2018	Reduce PALT	PALT on the Polaris GWAC is less than or equal to PALT on the VETS 2 GWAC which contained master contract level pricing	One time only for each pool after Polaris GWAC awards are made
7	PALT - Task Order	Average number of days to award a services task order under an IDIQ - from Agency solicitation release to task order award	Average number of days to award an IT services task order under GWACs with master contract level pricing	Monitor Agency PALT	PALT on Polaris task orders are no more than or equal to PALT on task orders under ITC GWACs with master contract level pricing	Annual
8	Number of GAO protests at the IDIQ level	Pre-and-post award protests submitted to GAO where the basis was price	Number of protests where the basis was price under GSA IDIQs with master contract level pricing	Reduction in protest	Number of protests on Polaris where the basis is price is equal to or less than number of protests on GSA IDIQs with master contract level pricing	One time only after Polaris GWAC Notice to Proceed issued

*Order level competition metrics exclude sole source procurements.

**The definition of PALT IDIQ has been split into lead times for more specific steps of the larger acquisition process to better gauge the success of unpriced services at the IDIQ level.

Notes:

Order Level Competition:

- It is important to note that competition numbers vary greatly depending on other factors such as task order dollar value and the Small Business set-aside category.
- Some task orders will also be identified as not available for competition (through use of an exception to a fair opportunity to be considered), competed but with a single offer resulting, or effective competition (two or more offers).

Industry Satisfaction Survey 1:

- Surveys will be sent to industry after the Polaris GWAC award for each pool and the protest period is over for awarded vendors.
- The Polaris post-award survey score (1-5) on industry's experience compared to proposing on another GSA contract where the labor categories were priced at the IDIQ level.

Industry Satisfaction Survey 2:

- Surveys will be sent annually to Polaris GWAC awardees to request feedback on the order level solicitation process.
- The survey will gather industry's experience with the task order proposal process without master level contract pricing compared to the task order process on IDIQs with master level contract pricing.

Customer Satisfaction Survey:

- Customer is defined as an Ordering Contracting Officer (OCO).
- A survey will be sent to the OCOs one month following task order award reporting that gauges their satisfaction on issuing task orders under Polaris considering it is unpriced at the GWAC Master Contract level. The Polaris PMO will develop training to assist the OCOs in placing orders.
- The survey will gather industry's experience with the task order process without master level contract pricing compared to the task order process on IDIQs with master level contract pricing.



Effective as of Date of
Signature
Class Deviation CD-2020-14

3/25/2022

Supplement 1

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

FROM:

JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

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SUBJECT:

Unpriced Services Authority for FEDSIM ASTRO Program

1. Purpose. On August 14, 2020, Class Deviation 2020-14 authorized the Federal Acquisition Service (FAS), Office of Assisted Acquisition Services, Federal Systems Integration and Management Center (FEDSIM) to use the unpriced authority from Section 876 of the 2019 National Defense Authorization Act in the ASTRO program of indefinite delivery indefinite quantity IDIQs.

As GSA develops additional acquisition programs relying upon this authority, it is helpful to establish a numbering sequence to track and monitor GSA's use of this authority.

Therefore, the previously approved ASTRO deviation is now memorialized as Supplement One to Class Deviation 2020-14. Additional approvals will be added through additional supplements until and unless the 876 authority is incorporated into the FAR.

2. Background. Class Deviation 2020-14 was issued effective 8/14/2020, which allowed for the use of "unpriced labor" categories at the contract level for certain IDIQ multiple-award contracts, after Senior Procurement Executive (SPE) approval. The request for this authority by the FEDSIM ASTRO program and its approval by email were provided on August 14, 2020.
3. Applicability. This Supplement One applies the Class Deviation 2020-14 authority to the FAS FEDSIM "ASTRO" program family of IDIQs.
4. Limitations. This authority is limited to those IDIQs that are part of the "ASTRO" program of FAS FEDSIM.
5. Effective Date. This Supplement One is effective as of the date of signature as the authority provided has been effective since 08/14/2020, and will remain active for the ordering period of the final awarded ASTRO program IDIQ unless otherwise rescinded by the SPE.
6. Cancellations. Not applicable.
7. Point of Contact. Questions regarding this class deviation may be directed to GSARPolicy@gsa.gov.



8/14/2020

Class Deviation CD-2020-14

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

FROM:

JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

DocuSigned by:

Jeffrey Koses

SUBJECT:

FAR Class Deviation - Enhancing Competition at the Order level for
Certain Indefinite Delivery, Indefinite Quantity Multiple-Award
Contracts

1. Purpose. This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) requirement to consider price as an evaluation factor for the award of certain indefinite delivery, indefinite quantity (IDIQ) multiple-award contracts and establishes the approval requirements for use of the authority.
2. Background. Section 876 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 ([Pub. L. 115-232](#)) amended [41 U.S.C. 3306\(c\)](#) for purposes of increasing competition at the task order level. The amendment to 41 U.S.C. 3306(c) provides executive agencies an exception to the requirement to consider price as an evaluation factor for award of certain IDIQ multiple-award contracts and certain Federal Supply Schedule (FSS) contracts for services acquired on an hourly rate basis. [FAR Case 2018-014](#) has been opened by the FAR Council to implement this statutory change in the FAR.

This class deviation implements only part of the authority provided in 41 U.S.C. 3306(c)(3). Specifically, this class deviation implements the exception related to the award of certain IDIQ multiple-award contracts for services acquired on an hourly rate basis. This class deviation does not implement the authority provided under 41 U.S.C. 3306(c)(3) for FSS contracts. The goal is to obtain insight into and understanding of the success drivers and impacts when using this authority to inform future rulemaking. The Senior Procurement Executive (SPE) is also issuing an Advanced Notice of Proposed Rulemaking (ANPR) in the Federal Register for purposes of gathering feedback from all stakeholders.

3. Applicability. This class deviation applies to all GSA contracting activities.
4. Limitations. This class deviation is limited to new acquisitions that are—
 - a. For the award of indefinite delivery, indefinite quantity (IDIQ) multiple-award contracts for services that will be acquired on an hourly rate basis; and
 - b. Approved by the SPE.

5. Condition. To be eligible for consideration by the SPE, the predominant amount of the acquisition must be for services that will be acquired on an hourly rate basis.
6. Instructions.
 - a. The SPE will coordinate with the Services to identify acquisitions that could benefit from the use of the authority as authorized under this class deviation.
 - b. Contracting activities shall submit requests in accordance with GSAM 504.7104 and Service-level policy.
7. Authority. This class deviation is issued under the authority of FAR 1.404 and GSAM 501.404. This class deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and GSAM 501.404(a).
8. Deviation. See Attachment A for the Line-In/Line-Out FAR text as being amended by this class deviation. The following is a summary:
 - a. Amending FAR 4.1005-2(a)(2) to add an exception for these actions;
 - b. Amending FAR 13.106-1 and 15.304 to add citations to FAR 16.501-3; and
 - c. Amending FAR subpart 16.5 to implement the exception provided by 41 U.S.C. 3306(c)(3) for certain IDIQ multiple-award contracts.
 - d. Amending FAR 16.601(c) to add order for purposes of specifying fixed hourly rates.
9. Effective Date. This class deviation is effective upon signature and remains in effect until rescinded, amended, or otherwise incorporated into the FAR or GSAR.
10. Cancellations. Not applicable.
11. Additional information. Additional information about this class deviation will be made available on GSA's Acquisition Portal at <https://insite.gsa.gov/acquisitionportal>.
12. Point of Contact. Questions regarding this class deviation may be directed to GSARPolicy@gsa.gov.

Attachments

Attachment A - FAR Deviation Line-In/Line-Out Text

Attachment B - Excerpt of 41 U.S.C. 3306(c)

**ATTACHMENT A
FAR DEVIATION LINE-IN/LINE-OUT TEXT
FOR CLASS DEVIATION CD-2020-14**

FAR Baseline: FAC 2020-08 published on 08/13/2020

- Additions to baseline made by deviation are indicated by [bold text in brackets]
- Deletions to baseline made by deviation are indicated by ~~strikethroughs~~
- Five asterisks (*****) indicate that there are no revisions between the preceding and following parts, subparts, or sections
- Three asterisks (***) indicate that there are no revisions between the material shown within a section or subsection

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

Subpart 4.10 - Uniform Use of Line Items

4.1005–2 Exceptions.

(a)***

(2) *Indefinite-delivery indefinite-quantity (IDIQ) and requirements contracts.* (i) IDIQ and requirements contracts may omit the quantity at the line item level for the base award provided that the total contract minimum and maximum, or the estimate, respectively, is stated.

~~(ii) Multiple-award IDIQ contracts awarded using the procedures at 13.106-1(a)(2)(iv)(A) or 15.304(c)(1)(ii)(A) may omit price or cost at the line item or subline item level for the contract award, provided that the total contract minimum and maximum is stated (see 16.504(a)(1)).~~

[(ii) Multiple-award IDIQ contracts awarded using the price evaluation exception provided at 16.501-3 may omit price or cost at the line item or subline item level for the contract award.]

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 13.1—Procedures

13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

13.106-1 Soliciting competition.

(a) * * *

(2)(i) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, e.g., past performance and quality). **[See 16.501-3 for an exception to the consideration of price as an evaluation factor when awarding certain indefinite-delivery, indefinite-quantity multiple-award contracts.]**

(ii) Contracting officers are encouraged to use best value.

(iii) Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

* * *

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

* * * * *

Subpart 15.3—Source Selection

* * *

15.304 Evaluation factors and significant subfactors.

* * *

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1)(i) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 3306(c)(1)(B)) (also see part 36 for architect-engineer contracts), subject to the exception **[provided in 16.501-3 and the exception]** listed in paragraph (c)(1)(ii)(A) of this section for use by DoD, NASA, and the Coast Guard.

* * *

(e) Unless the exception at paragraph (c)(1)(ii)(A) **[or the exception at paragraph (c)(1)(i)]** of this section applies, the solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 3306(c)(1)(C)).

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PART 16—TYPES OF CONTRACTS

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Subpart 16.5—Indefinite-Delivery Contracts

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16.501-2 General.

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(c) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under part 16. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the appropriate procedures of this subpart. **[Cost or pricing arrangements may be established at the order level for certain indefinite-delivery, indefinite-quantity multiple-award contracts, see 16.501-3.]**

* * * * *

[16.501-3 Exception to consideration of price as an evaluation factor.

(a) **General.** A contracting officer need not consider price as an evaluation factor for award as required by 13.106-1(a)(2) and 15.304(c)(1) when all of the following conditions exist—

(1) The solicitation is to establish multiple-award indefinite-delivery, indefinite-quantity contracts for services to be acquired on an hourly rate basis;

(2) The solicitation states the Government intends to make award to each qualifying offeror and defines the criteria for what constitutes a qualifying offeror;

(3) The resultant contracts will feature individually competed task or delivery orders based on hourly rates; and

(4) Cost or price shall be considered in conjunction with the issuance of any task or delivery order issued under any contract resulting from the solicitation (see 16.505(b)).

(b) **Definition.** As used in paragraph (a)(2) of this subsection, the term "qualifying offeror" means an offeror that meets all of the following criteria—

(1) Is determined to be a responsible source;

(2) Submits a proposal that conforms to the requirements of the solicitation;

(3) Meets all technical requirements; and

(4) Is otherwise eligible for award.

(c) **Solicitation requirements.** The contracting officer shall include the following content within the solicitation:

(1) The definition provided in paragraph (b) of this subsection;

(2) A statement that the Government intends to make an award to each qualifying offeror; and

(3) Language describing in additional detail each of the four criteria that constitutes a qualifying offeror, such as—

(i) The Government's basis for determining responsibility (e.g., FAR subpart 9.1);

(ii) The requirements of the solicitation to which an offeror must conform;

(iii) All the technical requirements that an offer must meet; and

(iv) Any other requirements for being eligible for award (e.g., an offeror must be in top 45 rated offerors).

(d) **Pricing orders.** When pricing for services to be acquired on an hourly rate basis is not established by the contract and the resultant order is to include such pricing, the ordering activity contracting officer shall—

(1) Evaluate all quotes or offers received using the evaluation criteria provided to the offerors, considering the level of effort and the mix of labor proposed to perform the services being ordered; and

(2) Make a determination of fair and reasonable price concerning the services being acquired on an hourly rate basis.

(e) *Exceptions to the fair opportunity process.* This subsection does not prohibit the use of the exceptions to the fair opportunity process described in 16.505(b)(2).]

* * *

16.505 Ordering.

* * *

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

(2) *Exceptions to the fair opportunity process.* [When pricing for services to be acquired on an hourly rate basis is not established by the contract, see 16.501-3(c).]

* * *

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in subpart 15.4. [See also 16.501-3(c) if the order includes services to be acquired on an hourly rate basis and pricing was not established by the contract.]

* * *

16.601 Time-and-materials contracts.

* * *

(c) Application. * * *

(2) *Fixed hourly rates.*

(i) The contract [or order] shall specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor (see 16.601(f)(1)).

(ii) For acquisitions of noncommercial items awarded without adequate price competition (see 15.403-1(c)(1)), the contract [or order] shall specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by— * * *

* * * * *

ATTACHMENT B EXCERPT OF 41 U.S.C. 3306(c)

§3306. Planning and solicitation requirements

“(c) Evaluation Factors.-

(1) In general.-In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency shall-

(A) establish clearly the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) except as provided in paragraph (3), include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) except as provided in paragraph (3), disclose to offerors whether all evaluation factors other than cost or price, when combined, are-

- (i) significantly more important than cost or price;
- (ii) approximately equal in importance to cost or price; or
- (iii) significantly less important than cost or price.

(2) Restriction on implementing regulations.-Regulations implementing paragraph (1)(C) may not define the terms "significantly more important" and "significantly less important" as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(3) Exceptions for certain indefinite delivery, indefinite quantity multiple-award contracts and certain federal supply schedule contracts for services acquired on an hourly rate.-If an executive agency issues a solicitation for one or more contracts for services to be acquired on an hourly rate basis under the authority of sections 4103 and 4106 of this title or section 152(3) of this title and section 501(b) of title 40 and the executive agency intends to make a contract award to each qualifying offeror and the contract or contracts will feature individually competed task or delivery orders based on hourly rates-

(A) the contracting officer need not consider price as an evaluation factor for contract award; and

(B) if, pursuant to subparagraph (A), price is not considered as an evaluation factor for contract award, cost or price to the Federal Government shall be considered in conjunction with the issuance pursuant to sections 4106(c) and 152(3) of this title of any task or delivery order under any contract resulting from the solicitation.

(4) Definition.-In paragraph (3), the term "qualifying offeror" means an offeror that-

- (A) is determined to be a responsible source;
- (B) submits a proposal that conforms to the requirements of the solicitation;
- (C) meets all technical requirements; and
- (D) is otherwise eligible for award."