



# **Commercial Solutions Opening (CSO) Guide**

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## A. Background

The Commercial Solutions Opening (CSO) pilot program was created to provide opportunities for start-up companies to fulfill new innovative commercial products and/or commercial services for the Federal Government using streamlined procedures. This guide was created to assist the Federal Government with acquiring innovative technologies through the CSO pilot program to competitively procure new innovative commercial products and/or commercial services.

This CSO pilot program will assist GSA and other Federal agencies, through assisted acquisitions, with procuring emerging technologies to improve services for citizens and make them more cost-effective for taxpayers.

The goal of the CSO pilot program is to implement a competitive solicitation methodology outside the normal Federal Acquisition Regulation (FAR) procurement methods to provide a streamlined approach for acquiring new innovative commercial solutions.

Success will be measured by the following metrics:

- Comparing the average Procurement Action Lead Time (PALT) for contracts using this authority with the PALT for FAR-based acquisitions with the same NAICS;
- Determining if the CSO procurement included the negotiation of intellectual property;
- Identifying the percentage of contractors receiving an award that have not previously worked with GSA or the Federal Government; and
- Evaluating the effectiveness of each procurement (e.g., whether procurement needs are met, satisfaction of contractor and the GSA acquisition team) through the CSO Pilot Survey issued at the end of the procurement.

The CSO pilot program is authorized by Section 880 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328) and as amended by Section 7227 of the FY23 NDAA. In accordance with Section 7227 of the FY23 NDAA, the CSO pilot program total award limitation is \$25M. This Guide supplements the guidance provided in General Services Acquisition Manual (GSAM) Part 571. The pilot will sunset in accordance with Section 7227 of the FY23 NDAA (Pub. L. 117-263) on September 30, 2027. Notable amendments to definitions were made through the FY23 NDAA as follows:



## Definitions<sup>1</sup>

- **Commercial Product or Service** has the meaning given the term “commercial item” includes a commercial product or a commercial service, as defined in sections 103 and 103a, respectively, of title 41, United States Code.<sup>2</sup>
- **Innovative** means any new technology, process, or method, including research and development or any new application of an existing technology, process, or method.
- An additional definition for this CSO guide is provided below:
  - Peer Review - Peer Reviews are a process where scientific, technological, or other subject matter experts within the U.S. Government evaluate solution briefs submitted against specified selection criteria (see GSAM 571.103).

GSA developed this pilot program to be implemented outside the normal FAR requirements. The CSO pilot program offers a range of advantages to start-up companies and others who may not have significant work experience with the U.S. Government. Implementation procedures and guidance are contained in GSAM Part 571 and are supplemented by this CSO Guide.

The CSO pilot program promotes competition with a streamlined solicitation and evaluation approach to address specific needs for innovative commercial solutions. This pilot program offers a range of advantages including:

- Streamlined solicitation requiring only minimal corporate and technical information;
- Fast track vendor selection timelines;
- Simplified contract administration procedures and requirements;
- Preference for the company retaining core intellectual property, as appropriate.

## **B. Acquisition Planning and Market Research**

### **B.1 Acquisition Planning Overview**

Acquisition planning is an essential component of a successful CSO project. CSO projects should include an integrated acquisition team approach and should promote early and continued communication among all stakeholders in the acquisition process given the unique attributes of the solicitation and evaluation.

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<sup>1</sup> These definitions are derived from the FY23 NDAA.

<sup>2</sup> The FY23 NDAA defines “commercial product” by referencing the term “commercial item” in FAR 2.101, as part of the definition. However, “commercial item” is no longer defined in the FAR.



## **B.2 Market Research**

Market research is an integral part of the development of the acquisition strategy and should be conducted early in the acquisition planning process. Using the CSO procedure is key to attracting nontraditional Government contractors' participation. In order to attract these companies, the acquisition planning team should research the appropriate commercial marketplace and publicize the project in a venue typically used by that commercial marketplace. Government acquisition teams should ensure that CSO vendors are registered in relevant systems (e.g., [sam.gov](https://sam.gov)) ensuring they are award eligible for a CSO acquisition.

## **B.3 GSA Information Technology Coordination**

Requirements for GSA information technology internal procurements must be coordinated with the GSA Office of the Chief Information Officer (OCIO) in accordance with GSAM 511.170. Guidance for identifying the applicable GSA CIO point of contact is located on the Acquisition Portal at <https://insite.gsa.gov/itprocurement>. For interagency acquisitions, when required by the requesting agency's information technology policy, the requesting agency is responsible for any applicable or required information technology coordination and approval.

## **B.4 Written Acquisition Plan**

After conducting market research, a written acquisition plan using the CSO Streamlined Acquisition Plan template must be developed that discusses the overall strategy and how the CSO procedure will be utilized. The plan must state how the solution being procured is innovative in accordance with the definition in GSAM Part 571.103.

## **B.5 Funding**

CSO's allow funding for acquiring innovative commercial products and commercial services, including products, technologies, and services. No Contracting Officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law.

The Contracting Officer has discretion for the contract structure (e.g., definitized contract, Indefinite Delivery Indefinite Quantity, Blanket Purchase Agreement) for CSO procurements as long as the resultant contract, task/delivery order or call order complies with the Anti-Deficiency Act.



## C. Approval Process

In order to utilize the CSO procedure within GSAM Part 571, the GSA Contracting Officer must:

- Receive confirmation that funds are available.
- Receive written approval from the GSA Acquisition Innovation Advocates<sup>3</sup> to use the CSO procedures. The contact information for the GSA Innovation Advocates CSO coordination and approval is [cso@gsa.gov](mailto:cso@gsa.gov).
- Develop an acquisition plan that is approved in accordance with GSAM 507.103(b).
- If the acquisition involves internal procurement of information technology for GSA, ensure acquisition plans are also approved by the appropriate individual in the GSA Office of the Chief Information Officer.

After confirming that funds are available through an approved purchase request or other obligating document (e.g., interagency agreement 7600B) and receiving approval for the acquisition plan from the applicable approving official, the Contracting Officer or delegated member of the acquisition team must email the approved acquisition plan to the GSA Acquisition Innovation Advocates using GSA Acquisition Innovation Advocates group email address ([cso@gsa.gov](mailto:cso@gsa.gov)) and request approval to use the CSO procedure. The email must include the following information:

- The subject line of the email must state “CSO Request.”
- The body of the email shall state:

“In accordance with the GSAM 571 and the CSO Guide, I [Contracting Officer] would like to request use of the CSO procedure for the following procurement:

  - Brief Description of Procurement: XX
  - Anticipated Award Total Cost: XX
  - GSA Contracting Office: XX
  - GSA Contracting Officer Name: XX
  - GSA Project Manager Name: XX
  - GSA Supervisor Name: XX”
  - GSA Head of Contracting Activity Name: XX
- The approved acquisition plan must be included as an attachment.

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<sup>3</sup> The GSA Acquisition Innovation Advocate may use the Peer Review Advisory Group to determine if the procurement is innovative.



## D. Solicitation Development

### D.1 General

The Contracting Officer must ensure the solicitation complies with the requirements in GSAM Part 571, mitigates cyber-supply chain risks (GSAM subpart 504.70), and includes the appropriate Controlled Unclassified Information (CUI) markings. CUI guidance is located on the Acquisition Portal at: <https://insite.gsa.gov/employee-resources/information-technology/it-privacy-security/controlled-unclassified-information/cui-guide?term=>. When developing the contract and negotiating terms, it is essential to ensure the cost to the Government is reasonable, the schedule and other requirements are enforceable, and the payment arrangements promote on-time performance, as well as to mitigate other major risks. The CSO Solicitation Template shall be used in creating the solicitation and shall be tailored for each procurement in accordance with GSAM Part 571 and this CSO Guide. Consult with the Office of General Counsel if you have any questions about which terms and conditions in the solicitation template that can be tailored.

The following best practices should be incorporated when creating the solicitation:

- Provide guidance for the offeror to avoid unnecessarily elaborate solution briefs and encourage the offeror to depict the essence of the proposed solution as simply as possible; and
- Specify all solution briefs shall be unclassified and not contain personally identifiable information.

### D.2 General Solicitation Procedures

At a minimum, a solicitation shall include the following:

- Describe the problem statement or objective
- Clearly describe that the resulting procurement is limited to innovative commercial products or services as follows:<sup>4</sup>
  - Any new technology, process, or method, including research and development, or
  - Any new application of an existing technology, process, or method.
- Describe additional criteria for selecting the solution briefs;
- Specify applicable Intellectual Property (IP) terms, carefully assess the intellectual property needs of the Government, and protect the offeror's rights in

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<sup>4</sup> The sub-bullets within this Section are the definitions of "innovative" from the FY23 NDAA and GSAM 571.103(a).





the IP it currently owns and retaining, as possible, new core IP created as part of the CSO solution;

- Specify the period of time during which solution briefs submitted in response to the solicitation will be accepted;
- Contain instructions for submission of solution briefs;
- Identify the basis and procedures for payment; and
- Include other necessary terms as required for the protection of the Government and offeror.

### **D.3 Intellectual Property**

The Contracting Officer can negotiate terms and conditions different from those typically used in procurement contracts. Intellectual property collectively refers to rights governed by a variety of different laws, such as patent, copyright, trademark, and trade secret laws. There is a preference for companies to retain core intellectual property when appropriate.

Due to the complexity of intellectual property law and the critical role of intellectual property, Contracting Officers shall obtain the assistance of Legal Counsel early in the acquisition process. A legal review is required if the Contracting Officer negotiates intellectual property terms and conditions that deviate from standard clauses typically used in Federal procurement contracts.

The Contracting Officer shall assess the impact of intellectual property rights on the Government's total life cycle cost (e.g., installation, operating, and maintenance costs) of the product or service. For example, where the Government overestimates the intellectual property rights it will need, the Government might pay for unused rights and dissuade new businesses from entering into a contract. If the intellectual property rights are underestimated, the Government may not acquire sufficient rights for use during the item's life cycle (e.g., operations, maintenance, follow-on procurements). As a result, the Contracting Officer must carefully assess the intellectual property needs of the Government. Overly burdensome IP terms will disincentivize start-ups and new entrants from engaging and competing for CSO requirements. When appropriate, consider providing the contractor the IP rights for new adaptations of existing commercial products.

### **D.4 Evaluation Criteria**

Evaluation criteria must include an evaluation of technical factors, and the technical factors must be stated in the solicitation. The evaluation must include a written solution brief and may include oral presentation, product demonstration, and/or other appropriate method of evaluation. Solutions may be evaluated based on individual



merits, without considering trade-offs. The CSO Solicitation Template contains sample technical evaluation criteria that may be tailored for use within solicitations.

#### **D.5 Methods of Changes**

The solicitation shall address how changes to the contract will be handled. See the standard language in Section 7.15 within CSO Solicitation Template.

#### **D.6 Termination**

The solicitation shall address how the contract can be terminated. The termination expectations can be negotiated with the offeror. Changes to the standard termination language (i.e., through negotiations) should be coordinated with assigned legal counsel. See the standard language in Sections 7.16 and 7.17 within the CSO Solicitation Template.

#### **D.7 Disputes**

The solicitation shall address how disputes will be handled. See the standard disputes language in Section 7.19 within CSO Solicitation Template. Changes to the standard language should be coordinated with assigned legal counsel.

#### **D.8 Additional Terms and Conditions**

The CSO Solicitation Template (Sections 6-7) contains additional terms and conditions that are important to address in the contract and should be tailored for each procurement.

### **E. Synopsis**

The solicitation for a CSO shall be publicized through the Governmentwide point of entry (<https://sam.gov>) and, as appropriate, published on relevant commercial websites in order to engage and notify innovative traditional and non-traditional Government contractors, including start-up companies the CSO pilot program seeks for solutions.

### **F. Evaluation**

To allow for a streamlined evaluation process for selection to reduce a pool of competitive offerors to those most highly likely to fulfill the requirements, the Government intends to make an award using a two-phase process. Phase I will require the offer to submit a solution brief in accordance with the requirements below. Phase I may also require the offeror to participate in a solution brief oral presentation and/or submit additional information regarding their solution brief. Phase II will require the offeror to submit a Final Contract Solution (see Section F.1 below).



## F.1 Process of Evaluation

### ***Phase I includes:***

- Written Solution Brief; and
- Solution Brief Oral Presentation/Other Supplemental Information (at the Government's discretion)

#### Written Solution Brief

Phase I will require the submission of a solution brief. The solution briefs may or may not be evaluated against each other. More than one solution brief may be accepted from different offerors. Solution briefs received shall be evaluated in accordance with evaluation criteria specified within the solicitation through a peer review (see Section F.2) evaluation process.

#### Solution Brief Oral Presentation/Other Supplemental Information

***At the Government's discretion***, Phase I of the evaluation may also include the invitation of one or more offerors to participate in an oral presentation after submission of the Written Solution Brief, and/or invite one or more offerors to submit additional information to supplement the Written Solution Brief. The use of Oral Presentations or the need to receive Other Supplemental Information needs to be clearly detailed in the solicitation. This additional step in the evaluation process can be used as a down selection tool and/or allow the Government to gain further detail, clarification, and understanding on the proposed solution outlined in the initial Written Solution Brief prior to selection of a proposed awardee.

When a down selection is used, the Government team may choose to invite one or more offerors for this step based on initial evaluation of the Written Solution Brief. For example, the Government may eliminate offerors from award consideration resulting from the evaluation of their initial Written Solution Brief and/or the evaluation of offerors solution brief oral presentation/supplemental information. As part of the down selection process, the GSA Acquisition team shall notify the company whether its Solution Brief is considered for award.

When, as a part of the request for an oral presentation or submission of additional information, the GSA acquisition team shall notify the company if their solution brief is being considered for award. The GSA acquisition team shall notify the company whether their solution brief is being considered for award in addition to the potential need for a solution brief oral presentation, or solution brief supplemental information to assist the Government's evaluation. The GSA acquisition team shall notify the offeror if their solution brief was not selected for award.



A written evaluation report shall be prepared by the Peer Review subject matter experts (see Section F.2) and the GSA acquisition team for each solution brief evaluated. The written report shall be a standalone document containing a detailed rationale for accepting or rejecting the solution brief. If applicable, the written evaluation report shall also contain the evaluation of solution brief oral presentations and any additional solution brief supplemental information.

If a company is requested to participate in a solution brief oral presentation or provide additional solution brief supplemental information, the GSA acquisition team shall incorporate the peer review of the solution brief supplemental information into the written evaluation report.

### ***Phase II: Final Contract Solution***

The purpose of the Phase II is to require the offeror to submit a Final Contract Solution and to enable the Government to negotiate and finalize the requirements, deliverables, schedule, pricing, and terms and conditions with one or more prospective awardees prior to award.

After an evaluation of Phase I Solution Briefs, one or more prospective awardees may be invited by the Government to develop and submit a Final Contract Solution under Phase II. The Final Contract Solution shall consist, at a minimum, the following two Sections:

- Section 1: The Commercial Solution
  - Detailed Commercial Solution being provided;
  - Requirements associated with the project;
  - Deliverables;
  - Project Schedule;
  - Pricing; and
  - Terms and conditions.
- Section 2: Price Information
  - Total price to complete the project; and
  - Any other data or supporting information that the parties agree is necessary for the determination of a fair and reasonable price.

The Final Contract Solution shall be evaluated in accordance with the evaluation criteria and documented within the evaluation report. The offeror shall be notified whether their proposal has been accepted for award, if further negotiation is requested, or if the proposal is not accepted for award.



If negotiations are required, the Contracting Officer may negotiate to finalize the requirements, deliverables, schedule, pricing, and terms and conditions with one or more prospective awardees. The Offeror may be required to resubmit its Final Contract Solution that addresses aspects agreed to during negotiations. Negotiations with the offeror shall be documented within the evaluation report.

Solution briefs and Final Contract Solution shall be safeguarded from unauthorized disclosure throughout the source selection process. Procurement integrity requirements shall be followed in accordance with 41 USC 423.

## **F.2 Peer Review Advisory Group**

1. Scope: The competitive selection from a general solicitation and the peer review of such solution briefs by scientific, technological, or other subject matter experts within the U.S. Government is considered to be a competitive procedure (see GSAM 571.101(b)).
2. Definition: Peer Reviews are a process where scientific, technological, or other subject matter experts within the U.S. Government evaluate solution briefs submitted against specified selection criteria (see GSAM 571.103).
3. Peer Review Advisory Group Roles:
  - a. Each CSO procurement must assign the Peer Review Advisory Group with roles determined appropriate for the requirement (e.g., scientific, technological, or other subject matter experts within the U.S. Government).
  - b. The Contracting Officer must serve as the chairperson of the peer review advisory group and ensure the evaluation of each solution brief is performed in a fair, integrated and comprehensive manner in accordance with the specified selection criteria.
  - c. The Contracting Officer shall verify, through a signed conflict of interest certification, that no party within the Peer Review Advisory Group has a Conflict of Interest with offerors who submit solution briefs in response to the solicitation.
4. Evaluation: The Peer Review Advisory Group shall document the evaluation of the solution brief submission(s) against the solicitation criteria. Also see Section 4 of the CSO Solicitation template for additional details.



## **G. Award**

### **G.1 Responsibility Determination**

The offeror must be considered a responsible party by the Contracting Officer before making the award selection. To be determined responsible, the contractor must:

- Have adequate financial resources<sup>5</sup> to perform the contract or the ability to obtain them;
- Be able to comply with required or proposed delivery schedule; and
- Have necessary experience, facilities and operational controls or the ability to obtain them.

In addition, the offeror must not be suspended, debarred, or ineligible for a contract as identified in the System for Award Management. Awardees shall be able to comply with relevant security standards including non-foreign adversaries prohibited within Section 889 (Pub. L. 115-232) and Federal Acquisition Supply Chain Security Act orders applicable to FAR and non-FAR based awards.

In the absence of information indicating that the prospective contractor is responsible, the Contracting Officer must make a determination of nonresponsibility.

### **G.2 Legal Reviews**

Legal reviews are required as mandated in GSA Order ADM 5000.4B, Office of General Counsel Legal Review for any acquisition over \$5M. If necessary, it is recommended that legal counsel be consulted throughout the acquisition process for requirements under \$5M with special attention given to the unique aspects covered in section 7 which may deviate from traditional Government standards. Furthermore, Legal reviews should be requested when negotiating terms and conditions that deviate from the standard CSO terms and conditions (see CSO Solicitation Template, Section 7, terms and conditions).

### **G.3 Procurement Instrument Identifier (PIID)**

The contract must be assigned a uniform Procurement Instrument Identifier (PIID) in accordance with GSAM 504.605.

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<sup>5</sup> Adequate financial resources to perform the contract refers to the offeror's availability of sufficient funds and financial stability to fulfill all obligations and commitments specified in the contract. This ensures that the offeror can cover costs, complete the required tasks, and compensate for any potential risks or unforeseen expenses without defaulting or experiencing financial strain.



#### **G.4 Finance Notification**

The contract award must be shared with the GSA Finance point of contact for recording and obligation. Depending on your GSA service, this may be accomplished through your system of award. Follow your internal procedures.

#### **G.5 Award Analysis and Award Recommendation**

Prior to award of the contract, the Contracting Officer must complete an award decision analysis that includes the rationale for the award recommendation. This must include the following:

- Responsibility of the offeror;
- Confirmation the intended award meets the definition of an innovative commercial product or service;
- Reasonableness of the negotiated price; and
- Significant terms and conditions.

A price shall be considered reasonable if it reflects fair market value or is a price that a prudent buyer would pay considering market conditions, requirements alternatives, and non-price factors

#### **G.6 Contract Award**

The Contracting Officer must ensure that the Final Contract Solution and all terms and conditions are incorporated into the contract award documents (e.g., Delivery and Pricing Schedule, End User Licensing Agreements, etc.).

### **H. Contract File**

The contract file shall contain applicable documents and correspondence using the following organizational structure:

- Acquisition Plan
  - Market Research
  - Acquisition Plan
- Solicitation
- Funding
- Award Documents
  - Evaluation Report
  - Award Analysis
- Notification to Offerors



- CSO Contract Award Form
- Contract Administration Documents (e.g., modifications, invoices, performance information)
- CSO Close-Out Survey
- Other documents as required per your GSA Service

## **I. Notification to Offerors**

Notifications to the Offeror shall be in writing and provided to the offeror by the Contracting Officer in accordance with Section F.1 of this guide.

## **J. Request for Technical Feedback**

Offerors not selected for an award may request technical feedback regarding the review of their solution brief, within three business days of notification of non-selection. It is recommended that the Government's response should be provided in a timely manner.

## **K. Protests to GSA**

An offeror may file a protest to the agency in accordance with the procedures in GSAM 533.103.

## **L. Post-Award Administration**

CSO post-award administration techniques can be borrowed from traditional FAR based Government acquisition standards, should ensure sound post award administration of the CSO procurement, and be commensurate with agency policy and guidance. For example:

- The Contracting Officer is ultimately responsible for ensuring compliance with the terms of the contract. The Contracting Officer shall ensure that post award administration is in accordance with policies and procedures set forth by GSA.
- A Contracting Officer Representative (COR) should be appointed by the Contracting Officer prior to award of the contract and the COR appointment letter should completely detail all roles and responsibilities. These roles and responsibilities should also be clear to the contractor.
- All post-award deliverables should be kept in the Electronic Contract File.
- The Contractor Performance Assessment Reporting System (CPARS) is the Federal Government-wide solution for collection of contractor performance information. The entire CPARS evaluation process must be completed within *120 days following the end of the period of performance*. This time frame includes the Contractor's 60-day comment period.





- Modifications to the contract may be proposed by either party. Only a Contracting Officer has the authority to modify this contract on behalf of the Government. The Contracting Officer may unilaterally issue administrative modifications to the contract.
- Any discrepancies in the products or services provided by the contractor should be escalated to the Contracting Officer.

Post-award administration may be tailored to ensure proper contract oversight and administration for unique CSO requirements.

### **M. CSO Close-Out Survey**

Members of the acquisition team, including any representatives from the requirements office, should complete and submit the CSO Close-Out Survey to your GSA service AIA using the online submission process no later than 20 calendar days after the contract period of performance ends. If the close-out survey is not used by the GSA service, the data points within the survey should be captured by the GSA service office to inform CSO pilot metrics.

This survey will capture the effectiveness of using this CSO procedure for this Acquisition utilizing the metrics outlined in Section A. The Contracting Officer is responsible for incorporating applicable feedback from the GSA acquisition team, Peer Review subject matter experts (as applicable), and contractor in the survey submission. The results will be used to measure the overall success of the pilot. The link to this survey is located in the [CSO Closeout Survey Form](#).