

Subpart 16.5 - Indefinite-Delivery Contracts

Parent topic: [Part 16 - Types of Contracts](#)

16.500 Scope of subpart.

- (a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts.
- (b) This subpart does not limit the use of other than competitive procedures authorized by [part 6](#).
- (c) Nothing in this subpart restricts the authority of the General Services Administration (GSA) to enter into schedule, multiple award, or task or *delivery order* contracts under any other provision of law. Therefore, GSA regulations and the coverage for the Federal Supply Schedule program in [subpart 8.4](#) and [part 38](#) take precedence over this subpart.
- (d) The statutory multiple award preference implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in [subpart 36.6](#). However, agencies are not precluded from making multiple awards for *architect-engineer services* using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with [subpart 36.6](#).
- (e) See [subpart 19.5](#) for procedures to set aside part or parts of *multiple-award contracts* for small businesses; to reserve one or more awards for small business on *multiple-award contracts*; and to set aside orders for small businesses under *multiple-award contracts*.

16.501 [Reserved]

16.501-1 Definitions.

As used in this subpart-

Delivery-order contract means a contract for *supplies* that does not procure or specify a firm quantity of *supplies* (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of *supplies* during the period of the contract.

Task-order contract means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

16.501-2 General.

- (a) There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract *may* be used to acquire *supplies* and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Pursuant to [10 U.S.C. 3401](#) and [41 U.S.C. 4101](#), requirements contracts and indefinite-quantity contracts are also known as *delivery-order*

contracts or task-order contracts.

(b) The various types of indefinite-delivery contracts *offer* the following advantages:

(1) All three types permit-

(i) Government stocks to be maintained at minimum levels; and

(ii) Direct *shipment* to users.

(2) Indefinite-quantity contracts and requirements contracts also permit-

(i) Flexibility in both quantities and delivery scheduling; and

(ii) Ordering of *supplies* or services after requirements materialize.

(3) Indefinite-quantity contracts limit the Government's obligation to the minimum quantity specified in the contract.

(4) Requirements contracts *may* permit faster deliveries when production lead time is involved, because contractors are usually willing to maintain limited stocks when the Government will obtain all of its actual purchase requirements from the contractor.

(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.

16.502 Definite-quantity contracts.

(a) *Description.* A definite-quantity contract provides for delivery of a definite quantity of specific *supplies* or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

(b) *Application.* A definite-quantity contract *may* be used when it can be determined in advance that-

(1) A definite quantity of *supplies* or services will be required during the contract period; and

(2) The *supplies* or services are regularly available or will be available after a short lead time.

16.503 Requirements contracts.

(a) *Description.* A requirements contract provides for filling all actual purchase requirements of designated Government activities for *supplies* or services during a specified contract period (from one contractor), with deliveries or performance to be scheduled by placing orders with the contractor.

(1) For the information of *offerors* and contractors, the *contracting officer shall* state a realistic estimated total quantity in the *solicitation* and resulting contract. This estimate is not a

representation to an *offeror* or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The *contracting officer* may obtain the estimate from records of previous requirements and consumption, or by other means, and *should* base the estimate on the most current information available.

(2) The contract *shall* state, if feasible, the maximum limit of the contractor's obligation to deliver and the Government's obligation to order. The contract *may* also specify maximum or minimum quantities that the Government *may* order under each individual order and the maximum that it *may* order during a specified period of time.

(b) *Application.*

(1) A requirements contract *may* be appropriate for acquiring any *supplies* or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of *supplies* or services that designated Government activities will need during a definite period.

(2) No requirements contract in an amount estimated to exceed \$100 million (including all *options*) *may* be awarded to a single source unless a determination is executed in accordance with 16.504(c)(1)(ii)(D).

(c) *Government property furnished for repair.* When a requirements contract is used to acquire work (e.g., repair, modification, or overhaul) on existing items of Government property, the *contracting officer shall* specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as "estimated" or "maximum" will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.

(d) Limitations on use of requirements contracts for *advisory and assistance services*.

(1) Except as provided in paragraph (d)(2) of this section, no *solicitation* for a requirements contract for *advisory and assistance services* in excess of three years and \$15 million (including all *options*) *may* be issued unless the *contracting officer* or other official designated by the *head of the agency* determines *in writing* that the services required are so unique or highly specialized that it is not practicable to make multiple awards using the procedures in 16.504.

(2) The limitation in paragraph (d)(1) of this section is not applicable to an *acquisition* of *supplies* or services that includes the *acquisition* of *advisory and assistance services*, if the *contracting officer* or other official designated by the *head of the agency* determines that the *advisory and assistance services* are necessarily incident to, and not a significant *component* of, the contract.

16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of *supplies* or services during a fixed period. The Government places orders for individual requirements. Quantity limits *may* be stated as number of units or as dollar values.

(1) The contract *must* require the Government to order and the contractor to furnish at least a stated minimum quantity of *supplies* or services. In addition, if ordered, the contractor *must* furnish any additional quantities, not to exceed the stated maximum. The *contracting officer should* establish a

reasonable maximum quantity based on *market research*, trends on recent contracts for similar *supplies* or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity *must* be more than a nominal quantity, but it *should* not exceed the amount that the Government is fairly certain to order.

(3) The contract *may* also specify maximum or minimum quantities that the Government *may* order under each task or *delivery order* and the maximum that it *may* order during a specific period of time.

(4) A *solicitation* and contract for an indefinite quantity *must*-

(i) Specify the period of the contract, including the number of *options* and the period for which the Government *may* extend the contract under each *option*;

(ii) Specify the total minimum and maximum quantity of *supplies* or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the *supplies* or services the Government will acquire under the contract in a manner that will enable a prospective *offeror* to decide whether to submit an *offer*;

(iv) State the procedures that the Government will use in issuing orders, including the ordering media, and, if multiple awards *may* be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) Include a description of the activities authorized to issue orders; and

(vi) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed *in writing*.

(b) *Application*. Contracting officers *may* use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of *supplies* or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The *contracting officer* *should* use an indefinite-quantity contract only when a recurring need is anticipated.

(c) Multiple award preference-

(1) Planning the *acquisition*.

(i) Except for indefinite-quantity contracts for *advisory and assistance services* as provided in paragraph (c)(2) of this section, the *contracting officer* *must*, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single *solicitation* for the same or similar *supplies* or services to two or more sources.

(ii)

(A) The *contracting officer* *must* determine whether multiple awards are appropriate as part of *acquisition planning*. The *contracting officer* *must* avoid situations in which awardees specialize

exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The *contracting officer should* consider the following when determining the number of contracts to be awarded:

(1) The scope and complexity of the contract requirement.

(2) The expected duration and frequency of task or *delivery orders*.

(3) The mix of resources a contractor *must* have to perform expected task or *delivery order* requirements.

(4) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The *contracting officer must* not use the multiple award approach if-

(1) Only one contractor is capable of providing performance at the level of quality required because the *supplies* or services are unique or highly specialized;

(2) Based on the *contracting officer's* knowledge of the market, more favorable terms and conditions, including *pricing*, will be provided if a single award is made;

(3) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(4) The projected *task orders* are so integrally related that only a single contractor can reasonably perform the work;

(5) The total estimated value of the contract is at or below the *simplified acquisition threshold*; or

(6) Multiple awards would not be in the best interests of the Government.

(C) The *contracting officer must* document the decision whether or not to use multiple awards in the *acquisition* plan or contract file. The *contracting officer may* determine that a class of *acquisitions* is not appropriate for multiple awards (see subpart [1.7](#)).

(D)

(1) No task or *delivery order* contract in an amount estimated to exceed \$100 million (including all *options*) *may* be awarded to a single source unless the *head of the agency* determines *in writing* that-

(i) The task or *delivery orders* expected under the contract are so integrally related that only a single source can reasonably perform the work;

(ii) The contract provides only for firm-fixed price (see [16.202](#)) task or *delivery orders* for-

(A) *Products* for which unit prices are established in the contract; or

(B) *Services* for which prices are established in the contract for the specific tasks to be performed;

(iii) Only one source is qualified and capable of performing the work at a reasonable price to the

Government; or

(iv) It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

(2) The *head of the agency* must notify Congress within 30 days after any determination under paragraph (c)(1)(ii)(D)(1)(iv) of this section.

(3) The requirement for a determination for a single-award contract greater than \$100 million-

(i) Is in addition to any applicable requirements of subpart [6.3](#); and

(ii) Is not applicable for *architect-engineer services* awarded pursuant to subpart [36.6](#).

(2) Contracts for *advisory and assistance services*.

(i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for *advisory and assistance services* exceeds 3 years and \$15 million, including all *options*, the *contracting officer* must make multiple awards unless-

(A) The *contracting officer* or other official designated by the *head of the agency* determines *in writing*, as part of *acquisition planning*, that multiple awards are not practicable. The *contracting officer* or other official *must* determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;

(B) The *contracting officer* or other official designated by the *head of the agency* determines *in writing*, after the evaluation of *offers*, that only one *offeror* is capable of providing the services required at the level of quality required; or

(C) Only one *offer* is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the *contracting officer* or other official designated by the *head of the agency* determines that the *advisory and assistance services* are incidental and not a significant *component* of the contract.

16.505 Ordering.

(a) *General*.

(1) In general, the *contracting officer* does not synopsise orders under indefinite-delivery contracts; except see [16.505\(a\)\(4\)](#) and (11), and [16.505\(b\)\(2\)\(ii\)\(D\)](#).

(2) Individual orders *shall* clearly describe all services to be performed or *supplies* to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders *shall* be within the scope, issued within the period of performance, and be within the maximum value of the contract.

(3) *Performance-based acquisition* methods *must* be used to the maximum extent practicable, if the contract or order is for services (see [37.102\(a\)](#) and subpart [37.6](#)).

(4) The following requirements apply when procuring items peculiar to one manufacturer:

(i) The *contracting officer must* justify restricting consideration to an item peculiar to one manufacturer (*e.g.*, a particular brand-name, product, or a feature of a product that is peculiar to one manufacturer). A brand-name item, even if available on more than one contract, is an item peculiar to one manufacturer. Brand-name specifications *shall* not be used unless the particular brand-name, product, or feature is essential to the Government's requirements and *market research* indicates other companies' similar *products*, or *products* lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.

(ii) Requirements for use of items peculiar to one manufacturer *shall* be justified and approved using the format(s) and requirements from paragraphs (b)(2)(ii)(A), (B), and (C) of this section, modified to show the brand-name justification. A justification is required unless a justification covering the requirements in the order was previously approved for the contract in accordance with [6.302-1\(c\)](#) or unless the base contract is a single-award contract awarded under *full and open competition*. Justifications for the use of brand-name specifications *must* be completed and approved at the time the requirement for a brand-name is determined.

(iii)

(A) For an order in excess of \$30,000, the *contracting officer shall*—

(1) Post the justification and supporting documentation on the agency website used (if any) to solicit *offers* for orders under the contract; or

(2) Provide the justification and supporting documentation along with the *solicitation* to all contract awardees.

(B) The justifications for brand-name *acquisitions may* apply to the portion of the *acquisition* requiring the brand-name item. If the justification is to cover only the portion of the *acquisition* which is brand-name, then it *should* so state; the approval level requirements will then only apply to that portion.

(C) The requirements in paragraph (a)(4)(iii)(A) of this section do not apply when disclosure would compromise the national security (*e.g.*, would result in disclosure of *classified information*) or create other security risks.

(D) The justification is subject to the screening requirement in paragraph (b)(2)(ii)(D)(4) of this section.

(5) When acquiring *information technology* and related services, consider the use of modular *contracting* to reduce program risk (see [39.103\(a\)](#)).

(6) Orders *may* be placed by using any medium specified in the contract.

(7) Orders placed under indefinite-delivery contracts *must* contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) For *supplies* and services, *line item number*, *subline item number* (if applicable), description,

quantity, and unit price or estimated cost and fee (as applicable). The corresponding *line item number* and *subline item* number from the base contract *shall* also be included.

(iv) Delivery or performance schedule.

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

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

(vii) Accounting and appropriation data.

(viii) Method of payment and payment office, if not specified in the contract (see [32.1110\(e\)](#)).

(ix) North American Industry Classification System code (see [19.102\(b\)\(3\)](#)).

(8) Orders placed under a task-order contract or delivery-order contract awarded by another agency (*i.e.*, a *Governmentwide acquisition contract*, or *multi-agency contract*)—

(i) Are not exempt from the development of *acquisition* plans (see subpart [7.1](#)), and an *information technology acquisition* strategy (see part 39);

(ii) *May* not be used to circumvent conditions and limitations imposed on the use of funds (*e.g.*, [31 U.S.C. 1501\(a\)\(1\)](#)); and

(iii) *Shall* comply with all FAR requirements for a consolidated or bundled contract when the order meets the definition at [2.101](#) of "consolidation" or "*bundling*".

(9) In accordance with section 1427(b) of Public Law 108-136 ([40 U.S.C. 1103](#) note), orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of *architect-engineer services*, as defined in [2.101](#), *shall*—

(i) Be awarded using the procedures at subpart [36.6](#); and

(ii) Require the direct supervision of a professional architect or engineer licensed, registered or certified in the State, Federal District, or outlying area, in which the services are to be performed.

(10)

(i) No protest under subpart [33.1](#) is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except—

(A) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(B)

(1) For agencies other than DoD, NASA, and the Coast Guard, a protest of an order valued in excess of \$10 million ([41 U.S.C. 4106\(f\)](#)); or

(2) For DoD, NASA, or the Coast Guard, a protest of an order valued in excess of \$25 million ([10 U.S.C. 3406\(f\)](#)).

(ii) Protests of orders in excess of the thresholds stated in [16.505\(a\)\(10\)\(i\)\(B\)](#) *may* only be filed with the Government Accountability Office, in accordance with the procedures at [33.104](#).

(iii) For protests of small business size status for set-aside orders, see 19.302.

(11) Publicize orders funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) as follows:

(i) Notices of proposed orders *shall* follow the procedures in [5.704](#) for posting orders.

(ii) Award notices for orders *shall* follow the procedures in [5.705](#).

(12) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the *micro-purchase threshold* are exempt from verification in the *System for Award Management* as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

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

(1) *Fair opportunity.*

(i) The *contracting officer must* provide each awardee a fair opportunity to be considered for each order exceeding the *micro-purchase threshold* issued under multiple delivery-order contracts or multiple task-order contracts, except—

(A) As provided for in paragraph (b)(2) of this section; or

(B) Orders issued under [19.504\(c\)\(1\)\(ii\)](#).

(ii) The *contracting officer may* exercise broad discretion in developing appropriate order placement procedures. The *contracting officer should* keep submission requirements to a minimum. *Contracting officers may* use streamlined procedures, including oral presentations. If the order does not exceed the *simplified acquisition threshold*, the *contracting officer* need not contact each of the multiple awardees under the contract before selecting an order awardee if the *contracting officer* has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. The competition requirements in part 6 and the policies in subpart [15.3](#) do not apply to the ordering process. However, the *contracting officer shall—*

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

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

(C) Tailor the procedures to each *acquisition*;

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

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

(F) Except for DoD, ensure the criteria at [15.101-2\(c\)\(1\)-\(5\)](#) are met when using the lowest price technically acceptable source selection process; and

(G) Except for DoD, avoid using the lowest price technically acceptable source selection process to acquire certain *supplies* and services in accordance with [15.101-2\(d\)](#).

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

(A) Each order exceeding the *simplified acquisition threshold* shall be placed on a competitive basis in accordance with paragraph (b)(1)(iii)(B) of this section, unless supported by a written determination that one of the circumstances described at [16.505\(b\)\(2\)\(i\)](#) applies to the order and the requirement is waived on the basis of a justification that is prepared in accordance with [16.505\(b\)\(2\)\(ii\)\(B\)](#);

(B) The *contracting officer* shall—

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

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

(iv) *Orders exceeding \$6 million*. For task or *delivery orders* in excess of \$6 million, the requirement to provide all awardees a fair opportunity to be considered for each order shall include, at a minimum—

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

(B) A reasonable response period;

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

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

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

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

(A)

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

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

(3) Minimum order requirements.

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

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

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

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

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

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

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

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

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

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

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

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

(F) In accordance with section 1331 of Public Law 111-240 ([15 U.S.C. 644\(r\)](#)), *contracting officers may*, at their discretion, set aside orders for any of the small business concerns identified in [19.000\(a\)\(3\)](#). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in [part 19](#) apply.

(G) For DoD, NASA, and the Coast Guard, the order satisfies one of the exceptions permitting the use of other than *full and open competition* listed in [6.302 \(10 U.S.C. 3406\(c\)\(5\)\)](#). The public interest exception *shall* not be used unless Congress is notified in accordance with [10 U.S.C. 3204\(a\)\(7\)](#).

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

(A) *Orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold.* The *contracting officer shall* document the basis for using an exception to the fair opportunity process. If the *contracting officer* uses the logical follow-on exception, the rationale *shall*

describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

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

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

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

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

(4) Identification of the exception to fair opportunity (see [16.505\(b\)\(2\)](#)) and the supporting rationale, including a demonstration that the proposed contractor's unique qualifications or the nature of the *acquisition* requires use of the exception cited. If the *contracting officer* uses the logical follow-on exception, the rationale *shall* describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

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

(6) Any other facts supporting the justification.

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

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

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

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

(C) Approval.

(1) For proposed orders exceeding the *simplified acquisition threshold*, but not exceeding \$750,000, the ordering activity *contracting officer's* certification that the justification is accurate and complete to the best of the ordering activity *contracting officer's* knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(2) For a proposed order exceeding \$750,000, but not exceeding \$15 million, the justification *must* be approved by the advocate for competition of the activity placing the order, or by an official named in paragraph (b)(2)(ii)(C)(3) or (4) of this section. This authority is not delegable.

(3) For a proposed order exceeding \$15 million, but not exceeding \$75 million (or, for DoD, NASA, and the Coast Guard, not exceeding \$100 million), the justification *must* be approved by—

(i) The head of the *procuring activity* placing the order;

(ii) A designee who—

(A) If a member of the armed forces, is a general or flag officer;

(B) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) An official named in paragraph (b)(2)(ii)(C)(4) of this section.

(4) For a proposed order exceeding \$75 million (or, for DoD, NASA, and the Coast Guard, over \$100 million), the justification *must* be approved by the *senior procurement executive* of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for *Acquisition* and Sustainment, acting as the *senior procurement executive* for the Department of Defense.

(D) Posting.

(1) Except as provided in paragraph (b)(2)(ii)(D)(5) of this section, within 14 days after placing an order exceeding the *simplified acquisition threshold* that does not provide for fair opportunity in accordance with 16.505(b), the contract officer *shall*—

(i) Publish a notice in accordance with 5.301; and

(ii) Make publicly available the justification required at of this section.

(2) The justification *shall* be made publicly available—

(i) At the GPE <https://www.sam.gov>;

(ii) On the Web site of the agency, which *may* provide access to the justifications by linking to the GPE; and

(iii) *Must* remain posted for a minimum of 30 days.

(3) In the case of an order permitted under paragraph (b)(2)(i)(A) of this section, the justification *shall* be posted within 30 days after award of the order.

(4) *Contracting officers shall* carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public *inspection*. *Contracting officers shall* also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data *should* be removed. Although the submitter notice process set out in Executive Order 12600 "Predisclosure Notification Procedures for Confidential Commercial Information" does not apply, if the justification appears to contain proprietary data, the *contracting officer should* provide the contractor that submitted the information an opportunity to review the justification for proprietary data before making the justification available for public *inspection*, redacted as necessary. This process *must* not prevent or delay the posting of the justification in accordance with the timeframes

required in paragraphs (b)(2)(ii)(D)(1) and (3) of this section.

(5) The posting requirement of this section does not apply—

(i) When disclosure would compromise the national security (*e.g.*, would result in disclosure of *classified information*) or create other security risks; or

(ii) To a small business set-aside under paragraph (b)(2)(i)(F)

(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](#).

(4) *Cost reimbursement orders*. For additional requirements for cost-reimbursement orders, see [16.301-3](#).

(5) *Time-and-materials or labor-hour orders*. For additional requirements for time-and-materials or labor-hour orders, see [16.601\(e\)](#).

(6) *Postaward Notices and debriefing of awardees for orders exceeding \$6 million*. The *contracting officer shall* notify unsuccessful awardees when the total price of a task or *delivery order* exceeds \$6 million.

(i) The procedures at [15.503\(b\)\(1\)](#) *shall* be followed when providing postaward notification to unsuccessful awardees.

(ii) The procedures at [15.506](#) *shall* be followed when providing postaward debriefing to unsuccessful awardees.

(iii) A summary of the debriefing *shall* be included in the task or *delivery order* file.

(7) *Decision documentation for orders*.

(i) The *contracting officer shall* document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision.

(ii) The contract file *shall* also identify the basis for using an exception to the fair opportunity process (see paragraph (b)(2) of this section).

(iii) Except for DoD, the *contracting officer shall* document in the contract file a justification for use of the lowest price technically acceptable source selection process, when applicable.

(8) *Task-order and delivery-order ombudsman*. The *head of the agency shall* designate a task-order and delivery-order ombudsman. The ombudsman *must* review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman *must* be a senior agency official who is independent of the *contracting officer* and *may* be the agency's advocate for competition.

(9) *Small business*. The *contracting officer should* rely on the small business representations at the contract level (but see [19.301-2\(b\)\(3\)](#) for order rerepresentations).

(c) Limitation on ordering period for task-order contracts for *advisory and assistance services*.

(1) Except as provided for in paragraphs (c)(2) and (3) of this section, the ordering period of a task-order contract for *advisory and assistance services*, including all *options* or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an *acquisition* of *supplies* or services that includes the *acquisition* of *advisory and assistance services* and the *contracting officer*, or other official designated by the *head of the agency*, determines that the *advisory and assistance services* are incidental and not a significant *component* of the contract.

(3) The *contracting officer* may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the *contracting officer*, or other official designated by the *head of the agency*, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

16.506 Solicitation provisions and contract clauses.

(a) Insert the clause at [52.216-18](#), Ordering, in *solicitations* and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) Insert a clause substantially the same as the clause at [52.216-19](#), Order Limitations, in *solicitations* and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(c) Insert the clause at [52.216-20](#), Definite Quantity, in *solicitations* and contracts when a definite-quantity contract is contemplated.

(d)

(1) Insert the clause at [52.216-21](#), Requirements, in *solicitations* and contracts when a requirements contract is contemplated.

(2) If the contract is for nonpersonal services and related *supplies* and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, use the clause with its *Alternate I*.

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar *products* may be acquired on a brand-name basis, use the clause with its *Alternate II* (but see paragraph (d)(5) of this section).

(4) If the contract involves a partial small business set-aside, use the clause with its *Alternate III* (but see paragraph (d)(5) of this section).

(5) If the contract-

(i) Includes subsistence for Government use and resale in the same schedule and similar *products* may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its *Alternate IV*.

(e) Insert the clause at 52.216-22, Indefinite Quantity, in *solicitations* and contracts when an indefinite-quantity contract is contemplated.

(f) Insert the provision at 52.216-27, Single or Multiple Awards, in *solicitations* for indefinite-quantity contracts that *may* result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for *advisory and assistance services* contracts that exceed 3 years and \$15 million (including all *options*).

(g) Insert the provision at 52.216-28, Multiple Awards for *Advisory and Assistance Services*, in *solicitations* for task-order contracts for *advisory and assistance services* that exceed 3 years and \$15 million (including all *options*), unless a determination has been made under 16.504(c)(2)(i)(A). Modify the provision to specify the estimated number of awards.

(h) See 10.001(d) for insertion of the clause at 52.210-1, *Market Research*, when the contract is over \$6 million for the *procurement* of items other than *commercial products* or *commercial services*.

(i) See 7.107-6 for use of 52.207-6, *Solicitation of Offers* from Small Business Concerns and *Small Business Teaming Arrangement* or Joint Ventures (*Multiple-Award Contracts*) in *solicitations* for *multiple-award contracts* above the substantial *bundling* threshold of the agency.

(j) Insert the clause at 52.216-32, Task-Order and Delivery-Order Ombudsman, in *solicitations* and contracts when a multiple-award indefinite-delivery indefinite-quantity contract is contemplated. Use the clause with its *Alternate I* when the contract will be available for use by multiple agencies (e.g., Governmentwide *acquisition* contracts or multi-agency contracts). When placing orders under the *multiple-award contract* available for use by multiple agencies, the ordering activity's *contracting officer shall* complete paragraph (d)(2) and include *Alternate I* in the notice of intent to place an order, and in the resulting order.