16.505 Ordering.

(a) *General*.

(1) In general, the *contracting officer* does not synopsize 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 $40,000, 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 $7.5 million*. For task or *delivery orders* in excess of $7.5 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 $900,000, 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 $900,000, but not exceeding $20 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 $20 million, but not exceeding $90 million (or, for DoD, NASA, and the Coast Guard, not exceeding $150 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 $90 million (or, for DoD, NASA, and the Coast Guard, over $150 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 $7.5 million.*The *contracting officer shall* notify unsuccessful awardees when the total price of a task or *delivery order* exceeds $7.5 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.

Parent topic: Subpart 16.5 - Indefinite-Delivery Contracts