

Subchapter 3016.5 Indefinite-Delivery Contracts

3016.501-2 General.

(a) For the U. S. Coast Guard (USCG), see HSAM Subchapter 3017.204(e)(1) for ordering period limitations on task order or delivery order contracts awarded by USCG pursuant to 10 U.S.C. 3201.

(b)(2) The procurement request initiator must prepare a written statement outlining the basis and methodology for determining the estimated quantity under an indefinite-quantity contract and a requirements contract. Whenever possible and appropriate, all procurement offices must coordinate their indefinite delivery contract requirements with procurement offices of other Components.

3016.503 Requirements contracts.

(b)(2) All determinations for a single award contract estimated to exceed the threshold specified at FAR 16.503(b)(2) must also follow the requirements of HSAM 3016.504(c)(1)(ii)(D)(1) and (2).

3016.504 Indefinite-quantity contracts.

(c) Multiple award preference -

(1) *Planning the acquisition.*

(ii)(D)(1) *Determination.* The DHS Chief Procurement Officer (CPO) or designee shall make all determinations for any single award task or delivery order contract exceeding the threshold specified at FAR 16.504(c)(1)(ii)(D)(1). A written determination is required whether the solicitation will be issued competitively or non-competitively.

(i) For the USCG, in accordance with 10 U.S.C. 3403(d)(3)(A)(i), the CPO or designee shall determine that the task or delivery orders expected under the contract are so integrally related that only a single source can “efficiently perform the work,” instead of “reasonably perform the work” as required by the FAR.

(70) *Submission requirements.* Components shall submit the determination for OCPO approval not later than 14 days prior to issuance of the solicitation. The determination must be:

(i) Submitted in the format provided at Appendix L (for USCG, use the USCG version of Appendix L.)

(ii) Signed by the Component HCA as “Recommended for Chief Procurement Officer Approval”.

(iii) Accompanied by:

(A) Such background information as will allow evaluation of the proposed determination including any related justification and approval for other than full and open competition or, if applicable, the determination for advisory and assistance services under FAR 16.504(c)(2)(i)(A)-(C).

(B) The approved acquisition plan.

(C) Either the approved exception or the OCPO approved waiver request to using the mandatory strategic sourcing vehicles (see DHS Directive 060-01, Development and Use of Strategic Sourcing Contract Vehicles), as applicable.

(2) Title 10 U.S.C. §3403 does not require congressional notification; therefore, the notification requirement at FAR 16.504(c)(1)(ii)(D)(2) does not apply to the USCG. For all other Components, the DHS CPO shall make the notification to Congress required by FAR 16.504(c)(1)(ii)(D)(2) for single award task or delivery order contracts exceeding the threshold specified at FAR 16.504(c)(1)(ii)(D)(1) awarded on the basis that it is in the public interest to award the contract to a single source due to exceptional circumstances. The Component making the award shall provide notice to OCPO concurrent with submission of the draft CPO determination citing FAR 16.504(c)(1)(ii)(D)(1)(iv).

(3) For the USCG, in accordance with 10 U.S.C. 3403(d)(3)(B), the determination at FAR 16.504(c)(1)(ii)(D) is not required if a justification has been executed following FAR subpart 6.3 and HSAM subchapter 3006.3.

3016.505 Ordering.

(a) *General.*

(1) For orders valued in excess of \$4 million under a DHS multiple award contract, the Congressional notification procedures of HSAM subsection 3005.303-70 apply. Prior to issuing such an order, the contracting officer must comply with the Congressional notification requirements. This does not create a requirement to synopsise the order (see FAR 5.202(a)(6)).

(70) *Documentation.* If the price analysis technique at FAR 15.404-1(b)(2)(v) is used to compare proposed prices to an IGCE to determine fair and reasonable pricing, the contracting officer must document the basis for the comparison, including an explanation of the differences between the proposed prices and the IGCE.

(b) *Orders under multiple award contracts.*

(1) *Fair Opportunity.*

(iii) *Reporting requirements when only one offer received under competitive procedures.*

(A) If only one offer is received in response to a solicitation using competitive procedures, and the award exceeds \$250,000, see HSAM 3004.606-70.

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

(ii)(B)(70) *Preaward revisions to justifications for an exception to fair opportunity.*

(i) Contracting officers shall revise justifications for an exception to fair opportunity and obtain required approvals before award if –

(A) There are changes to the requirement that result in a substantive change to the description of the supplies or services being purchased even if there is no change to the final award amount;

(B) The final award amount is greater than twenty percent of the estimated value in the original justification for an exception to fair opportunity; or

(C) The increase in the total dollar value of the action now requires higher approvals (e.g., approval by the advocate for competition).

(ii) Preaward revisions to justifications for an exception to fair opportunity shall be reviewed and approved before award of the order –

(A) By the original approving authority when there is no impact to the dollar value of the action or the change to the dollar value does not change the approval requirement;

(B) By a higher approving authority when there is an increase to the dollar value of the action that changes the approval requirement (e.g., the original justification for an exception to fair opportunity was approved by the contracting officer, but the final award amount requires approval by the advocate for competition); and

(C) Be prepared, reviewed, and approved in accordance with FAR 16.505, HSAM 3004.7003, and HSAM 3016.505.

(iii) Revisions to justifications for an exception to fair opportunity may be made with change pages or by a complete revision of the justification. The revisions must be either highlighted or identified by the use of change bars alongside the revised text to facilitate identification of the changes.

(71) *Postaward justifications for an exception to fair opportunity.*

(i) Contracting officers shall prepare justifications for an exception to fair opportunity after award for sole source and competitively awarded actions if the modification makes a material change to the order.

(ii) Contracting officers shall consult legal counsel for modifications that increase the order's value by greater than twenty percent to determine if the modification makes a material change to the order. Contracting officers shall include their determination, with evidence of legal review, in the file.

(iii) Justifications for an exception to fair opportunity for each modification shall be prepared and approved in accordance with FAR 16.505, HSAM 3004.7003, and HSAM 3016.505.

(4) *Postaward Notices and Debriefing of Awardees for Orders Exceeding \$5 million.* If an offeror requests a postaward debriefing on orders valued at more than \$5 million or the contracting officer is considering an optional postaward debriefing, the contracting officer should consult the information in the Debriefing Guide for guidance on the debriefing process and appropriate timely information to provide to the offeror.

(70) *Evaluation practices.*

(i) When evaluating non-price factors in a competitive acquisition, and when the Government evaluation team includes more than one person, the team may collaboratively arrive at ratings or findings. It is not necessary for an evaluation team to first develop individual member evaluation ratings or findings before starting a consensus evaluation.

(ii) The advisory multi-step process described in FAR 15.202 may be adapted for use with acquisitions for orders under multiple-award contracts. This advisory process is based on a pre-solicitation notice and occurs before release of the notice (solicitation) required by FAR 16.505(b)(1)(iii)(B)(1) or (iv)(A).

(iii) *Down-select process.* When a large number of responses is anticipated in a competitive acquisition, the acquisition team may consider a phased evaluation. In a down-select, many offers are evaluated in the first phase under some of the evaluation factors and fewer offers are considered in one or more subsequent phases on the remaining evaluation factors.

(A) The notice (solicitation) may require a multiple-step offer submission (where the initial offer will address some evaluation factors and one or more subsequent offer updates will address the remaining evaluation factors). This is a matter for the contracting officer’s discretion and sound business judgment, considering the realities of the marketplace and the complexities of the acquisition. A notional two-phase scenario is described in the table below. This notional scenario describes or illustrates the down-select process. The contracting officer should not infer that this notional scenario must be followed without adjustment in any particular acquisition; rather, the process should be adapted to fit the particular acquisition.

Notional Scenario —Down-Select with Multiple-Step Offer Submissions		
Phase 1	1	Release Notice Describing all Evaluation Factors, and Request Offers Addressing Phase 1 Factors
	2	Receive Phase 1 Offers
	3	Evaluate Phase 1 Factors
	4	Down-Select a Subset of Offers to Proceed to Phase 2
Phase 2	5	Request Offer Updates Addressing Phase 2 Factors only from Offers Selected to Proceed to Phase 2
	6	Receive Offer Updates
	7	Evaluate Phase 2 Factors
	8	Select Awardee

(B) The notice (solicitation) should clearly detail the evaluation factors that are relevant for each evaluation phase.

(C) For acquisitions where the contracting officer is not the selecting official—

(1) the contracting officer may make the down-select decision, while the selecting official retains award decision; or

(2) the selecting official may make both the down-select decision as well as the award decision.

(D)

(1) An oral presentation or product demonstration may occur in any phase, but the contracting officer should consider holding these in a subsequent or final phase with a smaller number of offerors. The contracting officer should consider the oral presentation or demonstration as a stand-alone evaluation factor, rather than allowing the oral presentation or demonstration to affect other evaluation factors

(2) If the solicitation allows for briefing slides or submission of other written materials as part of the oral presentation or demonstration, the solicitation should establish a common cut-off date and time for receipt of these materials and limit the amount of written material permitted to avoid duplication with other written submission requirements and minimize the complexity of the oral presentation or demonstration evaluation process. The solicitation should also advise offerors that the submission of written materials for the oral presentation or demonstration does not constitute an opportunity to submit a revised offer.

(E) *Advisory*. In an advisory, soft, or voluntary down-select process, an offeror not selected to proceed to the next phase may still elect to participate in the next phase, and if so, will be considered for award. At the conclusion of an advisory down-select phase, the contracting officer shall inform each offeror either (1) that it is invited to participate in the next phase; or (2) that, based on the information it has already submitted, it is unlikely to be a viable competitor along with the general basis for that opinion. However, the notice should not restrict any offeror from submitting an offer in the next phase. The notices should inform offerors of the next submission requirements and deadlines.

(F) *Firm*. In a firm, hard, or involuntary down-select process, an offeror not selected to proceed to the next phase will not be further considered for award. At the conclusion of a firm down-select process, it is recommended that the contracting officer inform each offeror either (1) that it is invited to participate in the next phase and provide information on the next submission requirements and deadlines; or (2) that it is no longer considered eligible for award. While FAR 16.505(b)(6) does not require a pre-award notice to unsuccessful offerors, providing a notice in a down-select process is a preferred business practice.

(iv) Webinar recordings and additional resources on evaluation practices can be found on the DHS Procurement Innovation Lab (PIL) website. Search PIL on DHS Connect.