

DEPARTMENT OF HOMELAND SECURITY

Commercial Solutions Opening Pilot Program Guide



OFFICE OF THE CHIEF PROCUREMENT OFFICER
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I. Overview of the Commercial Solutions Opening Pilot Program

- A. Statutory Authority. The National Defense Authorization Act for Fiscal Year 2017, Title VIII, § 880 (Pub. L. 114-328), Pilot Programs for Authority to Acquire Innovative Commercial Items Using General Solicitation Competitive Procedures, authorizes the Secretary of the Department¹ to carry out a “commercial solutions opening pilot program” (CSOP) to competitively procure innovative commercial items. Innovative, within the meaning of this statute, is any new technology, process, or method, including research and development; or any new application of an existing technology, process, or method.

The authority to enter into a contract under this pilot program terminates on September 30, 2022 (see Appendix A, Commercial Solutions Opening Pilot Program Statute, for the statutory language.)

- B. Purpose of CSOP. The CSOP is a merit-based solution selection strategy for the Department of Homeland Security (DHS) to acquire innovative commercial items through the award of a contract. The CSOP vests contracting officers with additional procedural discretion and flexibility so that commercial item acquisitions for innovative commercial items may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry. DHS has determined that under this pilot program, a general solicitation can be executed with a broad agency announcement (BAA)-type document. Each proposal is evaluated on its individual merits rather than on a comparative basis, and the Government has considerable latitude in determining which of the submitted proposals it will fund.

Success of the program will be measured by the following:

1. The impact of CSOP procedures on competition;
2. A comparison of the acquisition timelines for procurements made using the CSOP procedures and procurements made using other competitive procedures that do not use BAAs (i.e., general solicitations); and
3. An assessment to determine if the quality of performance and deliverables to meet mission needs remain equal to or better than traditional procurement methods using CSOP procedures.

¹ The authority has been granted to the Secretary of DHS and the Administrator of the General Services Administration.

II. Definitions

Commercial Item has the same meaning as commercial item under Federal Acquisition Regulation (FAR) 2.101.

Innovative, within the meaning of the statute, is any new technology, process, or method, including research and development; or any new application of an existing technology, process, or method.

III. Roles and Responsibilities

- A. Chief Procurement Officer (CPO). The CPO is the DHS Senior Procurement Executive (SPE) responsible for setting policy, conducting oversight on the use of CSOP contracts, and delegating CSOP authority to HCAs.
- B. Head of the Contracting Activity (HCA) or designee. The HCA is the senior official within the Component, designated by the CPO and the Senior Procurement Executive, who is responsible for management and oversight of all Component CSOP functions, such as reviewing and approving CSOP contracts during the clearance process. The HCA or designated official must comply with the policies and procedures of this Guide when executing CSOP authority.
- C. Contracting Officer (CO).
 1. COs are responsible for the preparation of solicitations, the preparation and execution of CSOP contracts, and maintaining the CSOP file.
 2. To be designated as a CO by the HCA, the individual must:
 - a. Be a senior level, warranted CO, with a Level III Federal Acquisition Certification in Contracting (FAC-C) in accordance with Acquisition Workforce policy 064-04-002, Revision Number 01, “Professional (GS-1102) Career Information and Federal Acquisition Certification in Contracting Program”, or similar successor policy.
 - b. Have demonstrated R&D contracting experience.
 - c. Have successfully completed mandatory DHS Commercial Solutions Opening Pilot Program training located at:
<http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Training/Commercial%20Solutions%20Opening%20Pilot%20Program%20Training.ppt>
[x](#)
 3. COs may bind the Government only to the extent of the authority delegated to them.

IV. Procedures

- A. Appropriate Use of CSOP Authority. Within DHS, use of CSOP authority is appropriate where:
1. Proper delegation of authority has been made. The CPO may delegate CSOP authority to an HCA either for one-time or continuing use. In each case, the HCA shall request in writing a CSOP delegation of authority and submit the written request to the Director, Acquisition Policy and Legislation. If approved, the CPO will delegate the requested authority to the HCA. The written request shall address at minimum:
 - a. Benefits expected from use of the authority related to supporting mission needs; and
 - b. Availability of sufficient and appropriately trained, contracting staffing resources to award and administer CSOPs.
 2. A Peer Review Team (PRT) is established.
 3. The procurement is for innovative commercial items.
 4. Appropriate funding is obtained for obligation before costs are incurred.
 5. The acquisition, including options, does not exceed \$10,000,000.
 6. The requirement is competed in accordance with the CSOP statute.
 7. The contract type is primarily firm fixed price. Use of any other contract type requires CPO prior approval.
- B. Peer Review.
1. Definition. Peer review is an evaluation process using subject matter experts to evaluate the technical, scientific, and business merit of proposals in meeting agency needs as stated in the BAA-type general solicitation.
 2. Peer Review Team (PRT). The PRT shall be comprised of program officials with technical expertise in the technology area, and Component legal counsel to serve as advisors to the PRT.
- C. Acquisition Strategy Statement. The contract file shall include a written acquisition strategy statement that is prepared by the CO and program manager that provides the following information:
1. A summary of the problem statement or objective, and the mission need that the CSOP project will support;

2. Members of the PRT;
3. Any unique security concerns;
4. IT considerations, including OCIO coordination and needed approvals (e.g., Authority to Operate, Appendix G of HSAM);
5. Evaluation criteria; and
6. A procurement schedule that includes the solicitation release date; the schedule for conducting peer reviews, and the anticipated award date.

D. General Solicitation Procedures.

1. DHS has determined that under this pilot program, a general solicitation for a CSOP project can be executed using a BAA-type of solicitation.
2. The CO shall post the requirement on any venue typically used by the commercial marketplace of interest, and may post on FedBizOpps (<https://www.fbo.gov>). For classified CSOP procurements, the CO shall post the solicitation on the appropriate government portal.
3. The CSOP general solicitation shall, at a minimum:
 - a. Describe the problem statement or objective.
 - b. Provide proposal submission procedures and evaluation criteria that will be used by the PRT.
 - c. Clearly state that the procurement is limited to innovative commercial items as defined in the CSOP statute as follows:
 - i. Any new technology, process, or method, including research and development; or
 - ii. Any new application of an existing technology, process, or method.
 - d. Include notification that in order to facilitate the payments process, all recipients of CSOP awards must be registered in the System for Award Management (SAM) before the recipient is awarded the CSOP contract.

E. Evaluation of Proposals and Awardee Selection and Notification.

1. Proposals shall be safeguarded from unauthorized disclosure throughout the evaluation process in accordance with FAR 3.104-4. The procurement integrity requirements of FAR Sections 3.101 through 3.108 shall be followed.
2. The PRT shall evaluate proposals in accordance with the evaluation criteria specified within the general solicitation. Proposals shall not be evaluated against each other. The PRT may recommend more than one proposal for award.

The evaluation criteria shall include an assessment of whether the proposed commercial item is innovative within the meaning of the statute. The following evaluation criteria may also be included and tailored as needed:

- a. **Responsiveness to Technical Topic and Potential Impact.** The commercial item's potential for meeting the project goals as outlined in the BAA-type general solicitation, to include an assessment of both the breadth of the responsiveness to the topic area goals the commercial item represents, and the potential impact of successful implementation of the proposed commercial item.
 - b. **Technical Merit.** Sound technical and managerial approach to the proposed work, including a demonstrated understanding of the critical scientific, technology, or engineering challenges required for achieving the project goals of the BAA-type general solicitation.
 - c. **Business Viability.** The offeror's prior experience in similar efforts to determine if the offeror clearly demonstrates an ability to deliver products that meet the proposed technical performance and schedule. In addition, the offeror's proposed team should be reviewed to determine whether the personnel have the expertise to perform the proposed work, manage the project cost, and complete the project within the proposed schedule.
 - d. **Assessment of Price.** Whether the price (1) reflects a sufficient understanding of the technical goals and objectives of the solicitation; (2) is consistent with the offeror's technical/management approach (as outlined in the proposed SOW); and (3) is based on realistic assumptions.
3. The PRT shall confirm in writing that any proposed commercial item selected for award meets the statutory definition of innovative.

4. The CO shall prepare a contractor responsibility determination. To be determined responsible, the contractor must:
 - a. Have adequate financial resources to perform the contract or the ability to obtain them;
 - b. Be able to comply with required or proposed delivery schedule;
 - c. Have necessary experience, facilities and operational controls or the ability to obtain them; and
 - d. Have not been suspended, debarred, or ineligible for a contract as identified in the SAM.

In the absence of information indicating that the prospective contractor is responsible, the CO shall make a determination of non-responsibility.

5. The CO shall inform the offerors whether they have been selected for award and provide a brief explanation of the basis for award or non-selection.

F. Award Package Documentation. Upon favorable review and available funds, the Government may choose to make an award.

1. Documentation. The CO shall include, in the award package, the following documents:
 - a. A funding document that is certified by the budget official; identifies the project; and, includes language indicating that the funding is available for the CSOP award, and is appropriate for a contract.
 - b. A memorandum describing:
 - i. The proposed commercial item that is either a new technology, process, or method, or a new application of an existing technology, process, or method;
 - ii. The procedures used in awarding the contract;
 - iii. The number of offers received;
 - iv. The basis for the contract award decision; and

- v. The PRT confirmation that the commercial item meets the statutory definition of innovative.
2. Terms and conditions. It is essential to negotiate terms and conditions appropriate for the contract, and to incorporate good business judgement and appropriate safeguards to protect the Government's interest. In preparing contract terms, the CO shall ensure the price is reasonable to the Government, the schedule and other requirements are enforceable, the payment arrangements promote on-time performance (Note: The CSOP statute does not authorize advance payments), and any additional risks are mitigated.

A terms and conditions template is provided at Appendix C, DHS CSOP-Terms and Conditions. To avoid unnecessary barriers to competition, practical applicability should be assessed prior to including any clause. In this assessment, the contracting officer in consultation with legal counsel, should consider whether the clause requires compliance plans or other documentation that could lead a contractor, especially a small contractor, to hire outside legal counsel or other support to ensure compliance. These additional costs to the contractor may act as a deterrent and may not result in a real benefit to the particular project.

- G. Review, Approval, Clearance. The CSOP award package shall be submitted to Component legal counsel for review, and to the HCA and CPO for review and approval.
 1. Legal Counsel Review. Regardless of dollar value, and prior to award (including substantive modifications) and Congressional notification (if applicable), the CO shall submit the award package to the Component legal counsel to obtain legal review, and shall reconcile any comments or recommendations received.
 2. HCA Review and Approval. Prior to award, the HCA must review and approve all award packages. The HCA review and approval occurs after legal counsel review, and before Congressional notification.
 3. CPO Review and Approval. Prior to award, the CPO must review and approve all CSOP contracts. The CPO review and approval occurs after legal counsel and HCA review, and before Congressional notification.
- H. Congressional Notification of CSOP Contracts. COs are required to provide Congressional notification for any contract in excess of \$1,000,000, including options, using the procedures at HSAM Chapter 3005. Such contracts shall not be

awarded or distributed, nor any information released regarding the contract to any source outside of DHS until the procedures in HSAM Chapter 3005 have been accomplished.

- I. Post-award Reporting of Use of CSOP Authority. Within ten (10) days of award, the CO shall report the CSOP award at:
[http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Reports/Commercial%20Solutions%20Opening%20Pilot%20Program%20\(CSOP\)%20Award%20Data%20Report.xlsx](http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Reports/Commercial%20Solutions%20Opening%20Pilot%20Program%20(CSOP)%20Award%20Data%20Report.xlsx)

- J. Contract Closeout. The CO is responsible for contract closeout, and shall close the contract within sixty (60) days of when the CSOP award's period of performance ends. The CO should review the official award files to ensure that all required documentation has been included; and determine whether the deobligation of excess residual funds is warranted and subsequently deobligate these funds, if appropriate.

- K. End of CSOP Contract Term Survey: When the CSOP contract period of performance ends, the OCPO will survey those involved with the CSOP award to determine the effectiveness of the CSOP procedures. These survey responses will assist with measuring the overall success of the pilot and support the statutorily required report to Congress.

Appendix A — Commercial Solutions Opening Pilot Program Statute

The National Defense Authorization Act for Fiscal Year 2017, Title VIII, § 880 (Pub. L. 114-328) “Pilot Programs for Authority to Acquire Innovative Commercial Items Using General Solicitation Competitive Procedures”, reads as follows:

(a) Authority.—

(1) In general.--The head of an agency may carry out a pilot program, to be known as a “commercial solutions opening pilot program”, under which innovative commercial items may be acquired through a competitive selection of proposals resulting from a general solicitation and the Peer Review of such proposals.

(2) Head of an agency.--In this section, the term “head of an agency” means the following:

- (A) The Secretary of Homeland Security.
- (B) The Administrator of General Services.

(3) Applicability of section.--This section applies to the following agencies:

- (A) The Department of Homeland Security.
- (B) The General Services Administration.

(b) Treatment as Competitive Procedures.--Use of general solicitation competitive procedures for the pilot program under subsection (a) shall be considered, in the case of the Department of Homeland Security and the General Services Administration, to be use of competitive procedures for purposes of division C of title 41, United States Code (as defined in section 152 of such title).

(c) Limitation.--The head of an agency may not enter into a contract under the pilot program for an amount in excess of \$10,000,000.

(d) Guidance.--The head of an agency shall issue guidance for the implementation of the pilot program under this section within that agency. Such guidance shall be issued in consultation with the Office of Management and Budget and shall be posted for access by the public.

(e) Report Required.--

(1) In general.--Not later than three years after the date of the enactment of this Act, the head of an agency shall submit to the congressional committees specified in paragraph (3) a report on the activities the agency carried out under the pilot program.

(2) Elements of report.--Each report under this subsection shall include the following:

- (A) An assessment of the impact of the pilot program on competition;

(B) A comparison of acquisition timelines of procurements made using the pilot program; and procurements made using other competitive procedures that do not use general solicitations.

(C) A recommendation on whether the authority for the pilot program should be made permanent.

(3) Specified congressional committees.--The congressional committees specified in this paragraph are the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(f) Innovative Defined.--In this section, the term "innovative" means--

(1) any new technology, process, or method, including research and development; or

(2) any new application of an existing technology, process, or method.

(g) Termination.--The authority to enter into a contract under a pilot program under this section terminates on September 30, 2022.

Appendix B — DHS CSOP—Contract Template

**Commercial Solutions Opening Pilot Program (CSOP) Contract between the
Department of Homeland Security and _____**

CSOP Title: _____

Contract Number: _____

1. FUNDING:

Requisition Number: _____

Total Amount of the Contract: _____

2. PARTIES: The parties to this contract are the Department of Homeland Security (DHS) and
[contractor name and address].

3. AUTHORITY: This CSOP is authorized under the provisions of:

National Defense Authorization Act for Fiscal Year 2017, Title VIII, § 880 (Pub. L. 114-328),
Pilot Programs for Authority to Acquire Innovative Commercial Items Using General
Solicitation Competitive Procedures.

4. TERM OF THE CONTRACT: The term of this contract is ____ months,
from ____ [Month, Day, Year] to ____ [Month, Day, Year].

5. PURPOSE: The purpose of this contract is to set forth terms by which
[contractor name] will provide:

____ [description of commercial item(s)]

6. DUNS NUMBER:

7. ACCOUNTING AND APPROPRIATIONS DATA:

8. OTHER PROVISIONS. Nothing in this contract is intended to conflict with current law or
regulation or the directives of the DHS. If a term of this contract is inconsistent with such

authority, then that term shall be invalid, but the remaining terms and conditions of this contract shall remain in full force and effect.

This contract is entered into between the United States of America, hereinafter called the Government, represented by The Department of Homeland Security (GOVERNMENT), and the (INSERT NAME of AWARDEE) pursuant to and under U.S. Federal law.

FOR: (INSERT NAME of AWARDEE)

FOR: the UNITED STATES of AMERICA)

(Signature)

Date

(Signature)

Date

(Name, Title)

(Name, Title)

Appendix C — DHS CSOP Contract—Terms and Conditions

- A. General. The clauses in this template may be tailored as needed for each CSOP contract. The CO, in consultation with legal counsel, shall assess the practical application of the Foreign Nationals Clause, considering whether inclusion of the Clause imposes barriers to competition because of the need for potentially costly compliance measures, while offering no meaningful benefits (e.g., the nature of the CSOP contract poses no risks related to foreign nationals and export control.)
- B. Security requirements for contractor access to unclassified facilities, IT resources, and sensitive information. In accordance with HSAM 3004.470-1, paragraphs (d) and (e), the program office shall determine the need for access to classified information and work collaboratively with the security office to identify required documentation and clauses to include in the solicitation.
- C. Intellectual Property. The CO shall prepare required IP clauses in consultation with legal counsel.
- D. Protests. The CO shall amend the Protests Clause to prescribe Component-level protest procedures.
- E. Advance Payments. The CSOP Contract cannot provide for advance payments. Advance payments are prohibited unless a statute specifically authorizes the advance payment. The CSOP statute does not authorize advance payments.
- F. Considerations for additional clauses. The CO, in consultation with legal counsel, shall determine what additional provisions and clauses, including the provisions and clauses at FAR Clause 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items, may be required based on an assessment of their practical application to the CSOP contract (e.g., barriers to competition, not applicable to or appropriate for the CSOP award, etc.) At a minimum, the CO, in consultation with legal counsel, shall assess:
 - 1. FAR Clause 52.203-16, Preventing Personal Conflicts of Interest;
 - 2. FAR Clause 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
 - 3. FAR Clause 52.222-50, Combating Trafficking in Persons; and
 - 4. FAR Clause 52.222-54. Employment Eligibility Verification.

CSOP Contract Terms and Conditions

1. SCOPE OF WORK

Scope of Work: The contractor shall perform in accordance with Attachment X (insert appropriate Attachment indicator), Statement of Work entitled (insert title of Statement of Work) and dated (insert date of Statement of Work).

2. DEFINITIONS

1. **Administrative Modification:** Changes that do not affect the substantive rights of the parties, such as changes in the paying office, appropriations errors and typographical errors.

2. **Head of the Contracting Activity (HCA)** means the official delegated by the Chief Procurement Officer and the Senior Procurement Executive who is responsible for managing a Component's procurement.

3. **Government** refers to the United States Government, including the DHS.

4. **Parties**, as used herein, shall refer to [CONTRACTOR NAME] and the United States of America, hereinafter called the Government, represented by DHS.

5. **Contracting Officer (CO):** Individual who can bind the Government to a contract within the scope of the authority delegated to the CO by the HCA.

3. ORDER OF PRECEDENCE

In the event of a conflict between the terms of this contract and other governing documents, the conflict shall be resolved by giving precedence in descending order as follows:

1. The clauses of this contract.
2. Any attachments to this contract.

4. MODIFICATIONS

- A. Modifications to the contract may be proposed by either party. Only a CO has the authority to modify this contract on behalf of the Government.
- B. The CO may unilaterally issue administrative modifications to the contract.

5. SUSPENSION AND TERMINATION PROCEDURES

- A. The Government reserves the right to terminate the CSOP for cause or for convenience of the Government.

1. The CO may suspend performance of this contract at any time by providing written notice to the contractor. Upon receipt of such a notice, the contractor shall cease performance until the CO either (1) withdraws the suspension of work in writing or (2) notifies the contractor in writing of his or her intention to terminate this contract whether for convenience of the Government or for cause. If the suspension results in the incurrence of costs that the contractor was unable avoid, the contractor may request an equitable adjustment in writing to the CO.

2. If the CO fails to provide further instructions within sixty (60) days from the notice to suspend work, this contract will be considered terminated for the convenience of the Government, and the contractor will cooperate with the Government with closing out his contract.

3. The CO may terminate this contract in whole or in part for the convenience of the Government at any time by written notice. The contractor shall then cease further performance and take all reasonable measures to minimize any further incurrence of costs.

4. If the contractor fails to comply with the terms and conditions of this contract, the CO will provide written notice of breach or deficiency to the contractor and will provide the contractor an opportunity to explain or correct the breach or deficiency within thirty (30) days from receipt of notice. As a result of any response by the contractor, the CO may (1) proceed with the termination for cause; (2) convert the termination to one for the convenience of the Government; or (3) direct the contractor to continue performance.

B. This contract may be terminated by the CO at the request of the contractor under the following conditions:

1. The contractor shall notify the CO at least 30 days prior to the termination requested effective date.

2. The notification shall state the reasons for the termination, the requested effective date, and, if a partial termination, the portion to be terminated. If the CO determines, in the case of a partial termination, that the reduced or modified portion of the award will not accomplish the purpose for which the award was made, the CO may terminate the award in its entirety.

C. The Government and the contractor will negotiate in good faith an equitable reimbursement for work performed for which the contractor has not received payment.

6. PROTESTS

A. Protests under CSOP awards shall be adjudicated as prescribed under DHS Component-level protest procedures.

B. Contractors may seek assistance from the agency Advocate for Competition. The Department Advocate for Competition and Procuring Activity Advocates for Competition are shown on the Doing Business with DHS page, and is accessible at:

<https://www.dhs.gov/competition-advocates-and-task-order-and-delivery-order-ombudsman>.

7. PAYMENTS

A. Invoice. The contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

1. Contract Number
2. Invoice Number
3. A description of the innovative commercial item(s)
4. Quantity received
5. The period of performance covered by the invoice
6. Terms of Payment
7. Payment Office
8. Amount claimed
9. Bank Account of Payee:
10. Bank:
11. Address:
12. Routing Transit Number:
13. Depositor Account Title:
14. Depositor Number:

8. RETENTION AND ACCESS TO RECORDS

The contractor shall retain and maintain all records of performance, whether technical, business, and financial or other under this contract for a period of three years after the completion of this contract. Those records shall be maintained in a manner that will provide easy access, use, and search by representatives of the CO or the Government Accountability Office.

9. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System for Award Management (SAM): The contractor must maintain the currency of the contractor's information in the SAM until the contractor submits the

final financial report required under this award or receive the final payment, whichever is later. This requires that the contractor review and update the information at least annually after the initial registration, and more frequently if required by changes in the contractor's information or another award term.

- B. Requirement for Data Universal Numbering System (DUNS) Numbers: If you are authorized to make subawards under this award, you:
 - 1. Must notify potential subcontractors that no entity may receive a subcontract from you unless the entity has provided its DUNS number to you.
 - 2. May not make a subcontract to an entity unless the entity has provided its DUNS number to you.
 - 3. Contractor's financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained by the contractor for the term of the contract. The CO shall be allowed access to these records.

10. FOREIGN NATIONALS

- A. For purposes of this clause, foreign nationals are all persons not citizens of, not nationals of, nor immigrant aliens to, the United States of America. Nothing in this clause is intended to waive any requirements imposed by any other U.S. Government agency with respect to employment of foreign nationals or export control.
- B. The contractor acknowledges that the technical data generated under this contract may be subject to export control, including disclosure to foreign nationals, whether such data is provided orally or in written form.
- C. The contractor agrees to obtain written approval from the CO before assigning any foreign national to perform work under this contract or before granting foreign nationals access to data related to this contract, whether such data is provided by the Government or generated under this contract.