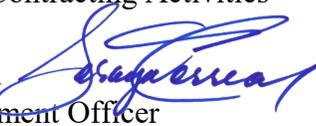




Homeland
Security

September 27, 2018

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Soraya Correa 
Chief Procurement Officer

SUBJECT: Federal Acquisition Regulation Class Deviation (Number 18-02) –
Implementation of Statutory Changes that Remove the
Requirement for a Determination of Best Procurement Approach
(FAR Parts 4, 8, 17, and 35)

Purpose: This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) 1.404 to remove the requirement at FAR 17.502-1(a) for a determination of best procurement approach for interagency acquisitions.

Effective Date: October 1, 2018.

Background: On August 13, 2018, the President signed into law the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, Pub. L. 115-232. Section 875 of that Act amends Section 865 of the FY 2009 NDAA to remove the requirement for a determination that an interagency acquisition is the best procurement alternative. FAR 17.502-1(a) implemented the requirements of Section 865 of the NDAA for FY 2009 to require a determination of best procurement approach for both assisted and direct interagency acquisitions.

Deviation: This Department of Homeland Security (DHS) FAR class deviation implements Section 875 of the NDAA for FY 2019 by removing the requirement at FAR 17.502-1(a) for a determination of best procurement approach for interagency acquisitions. Deletions and revisions to FAR text are shown in the attachment. While the requirement for a best procurement approach determination is deleted, contracting officers shall ensure the contract file reflects the contracting officer's rationale for obtaining acquisition assistance from another agency consistent with FAR 4.801(b).

Applicability: This class deviation applies to all interagency acquisitions.

Expiration Date: This deviation remains in effect until the FAR is revised to implement Section 875 of the NDAA for FY 2019.

Attachment: DHS FAR Deviation Text.

Additional Information: Questions or comments on this class deviation may be directed to Ellen Murray at 202 447-5311 or Ellen.Murray@hq.dhs.gov.

DHS FAR Deviation Text

Deviations are shown by **[bracketed bold additions]** and ~~strikeouts~~.

PART 4 – ADMINISTRATIVE MATTERS

Subpart 4.6 – Contract Reporting

4.603 Policy.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Program/Funding Agency and Office Codes from the applicable agency codes maintained by each agency at FPDS. These codes represent the agency and office that has provided the predominant amount of funding for the contract action. For assisted acquisitions, the requesting agency will receive socioeconomic credit for meeting agency small business goals, where applicable. Requesting agencies shall provide the appropriate agency/bureau component code as part of the written interagency agreement between the requesting and servicing agencies (see 17.502-1(~~a~~)(1)).

PART 8 – REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 8.4 – Federal Supply Schedule

8.404 Use of Federal Supply Schedules.

(b)(1) ***

(2) For orders over \$550,000, see subpart 17.5 for additional requirements for interagency acquisitions. For example, the requiring agency shall make a determination that use of the Federal Supply Schedule is the best procurement approach, in accordance with 17.502-1(a).

PART 17 – SPECIAL CONTRACTING METHODS

Subpart 17.5 - Interagency Acquisitions

FAR 17.502 Procedures.

17.502-1 General.

~~(a) Determination of best procurement approach. (1) Assisted acquisitions. Prior to requesting that another agency conduct an acquisition on its behalf, the requesting agency shall make a determination that the use of an interagency acquisition represents the best procurement approach. As part of the best procurement approach determination, the requesting agency shall obtain the concurrence of the requesting agency's responsible contracting office in accordance with internal agency procedures. At a minimum, the determination shall include an analysis of procurement approaches, including an evaluation by the requesting agency that using the acquisition services of another agency—~~

~~(i) Satisfies the requesting agency's schedule, performance, and delivery requirements (taking into account factors such as the servicing agency's authority, experience, and expertise as well as customer satisfaction with the servicing agency's past performance);~~

~~(ii) Is cost effective (taking into account the reasonableness of the servicing agency's fees); and~~

~~(iii) Will result in the use of funds in accordance with appropriation limitations and compliance with the requesting agency's laws and policies.~~

~~(2) Direct acquisitions. Prior to placing an order against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach and shall obtain the concurrence of the requesting agency's responsible contracting office. At a minimum, the determination shall include an analysis, including factors such as:~~

~~(i) The suitability of the contract vehicle;~~

~~(ii) The value of using the contract vehicle, including—~~

~~(A) The administrative cost savings from using an existing contract;~~

~~(B) Lower prices, greater number of vendors, and reasonable vehicle access fees; and~~

~~(iii) The expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle.~~

~~(b) Written agreement on responsibility for management and administration - (1) Assisted acquisitions. (i) Prior to the issuance of a solicitation, the servicing agency and the requesting agency shall both sign a written interagency agreement that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract execution, and administration and management of the contract(s) or order(s). The requesting agency shall provide to the servicing agency any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract. In the event there are no agency unique requirements beyond the FAR, the requesting agency shall so inform the servicing agency contracting officer in writing. For acquisitions on behalf of the Department of Defense, also see subpart 17.7. For patent rights, see 27.304-2. In preparing interagency agreements to support assisted acquisitions, agencies should review the Office of Federal Procurement Policy guidance, Interagency Acquisitions, available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/procurement/interagency_acq/iac_revised.pdf.~~

~~(ii) Each agency's file shall include the interagency agreement between the requesting and servicing agency, and shall include sufficient documentation to ensure an adequate audit consistent with 4.801(b).~~

~~(2) Direct acquisitions. The requesting agency administers the order; therefore, no written agreement with the servicing agency is required.~~

~~([b]e) Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts. In order to establish a multi-agency or governmentwide acquisition contract, a business-case analysis must be prepared by the servicing agency and approved in accordance with the Office of Federal Procurement Policy (OFPP) business case guidance, available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/procurement/memo/>~~

development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf. The business-case analysis shall—

- (1) Consider strategies for the effective participation of small businesses during acquisition planning (see 7.103(u));
- (2) Detail the administration of such contract, including an analysis of all direct and indirect costs to the Government of awarding and administering such contract;
- (3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, e.g., will it have a negative effect because it dilutes other existing contracts;
- (4) Include an analysis concluding that there is a need for establishing the multi-agency contract; and
- (5) Document roles and responsibilities in the administration of the contract.

PART 35 – RESEARCH AND DEVELOPMENT CONTRACTING

35.017 Federally Funded Research and Development Centers.

35.017-3 Using an FFRDC.

(b) Where the use of the FFRDC by a nonsponsor is permitted by the sponsor, the sponsor shall be responsible for compliance with paragraph (a) of this subsection.

(1) The nonsponsoring agency shall ~~prepare a determination in accordance with 17.502-1(a) and~~ provide the documentation required by 17.503(e) to the sponsoring agency.

(2) When a D&F is required pursuant to 17.502-2(c), the nonsponsoring agency ~~may incorporate the determination required by 17.502-1(a) into~~ **[shall prepare]** the D&F and provide the documentation required by 17.503(e) to the sponsoring agency.

(3) When permitted by the sponsor, a Federal agency may contract directly with the FFRDC, in which case that Federal agency is responsible for compliance with part 6.
