




**Homeland
Security**

October 22, 2019

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Soraya Correa 
Chief Procurement Officer

SUBJECT: Department of Homeland Security – United States Coast Guard,
Federal Acquisition Regulation Class Deviation (Number 20-01)
Implementing Statutory Revisions to Design-Build Selection
Procedures

Purpose: This class deviation is issued to implement the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018, Title VIII, § 823 (Pub. L. 115-91), which amended 10 U.S.C. § 2305a, Design-build selection procedures. Title 10 of the U.S. Code applies to the Department of Defense but, by operation of 10 U.S.C. § 2303(a)(5), Chapter 137 of Title 10 applies to the United States Coast Guard (USCG) and 10 U.S.C. § 2305a is part of Chapter 137.

The section 823 amendment to 10 U.S.C. § 2305a will now allow USCG to consider more than five (5) offerors for phase two requests for proposals for design-build construction actions, without a justification, when the solicitation contemplates an indefinite delivery-indefinite quantity (IDIQ) contract.

Effective: Immediately.

Background: DHS, except for USCG, is subject to the design-build procedures at 41 U.S.C. § 3309. As noted above, however, the USCG must comply with the design-build procedures of 10 U.S.C. § 2305a. Prior to the FY 2018 NDAA, 10 U.S.C. § 2305a limited the number of offerors for phase two requests for proposals to five (5) unless the contracting officer prepared a written justification detailing how providing for greater than five (5) offerors is consistent with the purposes and objectives of the two-phase selection procedures. As a result of the FY 2018 NDAA, a USCG contracting officer may consider more than five (5) offerors without justification when an IDIQ contract is anticipated, as provided in the new subsection 2305a(d)(1). For all other situations, more than five (5) offers must still be justified, as provided in the new subsection 2305a(d)(2).

Federal Acquisition Regulation (FAR) 36.303-1, Phase One, limits the maximum number of offerors that will be selected to submit phase-two proposals to five (5) unless the contracting officer provides a justification. This deviation is needed until such time as the FAR is amended to implement 10 U.S.C. § 2305a for agencies subject to 10 U.S.C. 2305a.

Deviation: This class deviation authorizes USCG contracting officers to select more than five (5) offerors for invitation to submit phase-two proposals, without justification, when an IDIQ contract is anticipated. However, prior to exercising this authority, the Head of the Contracting Activity (HCA) for the USCG must notify the Executive Director, Acquisition Policy and Oversight Division (APO), in writing, that the agency will be using the authority.

Expiration: This class deviation remains in effect until section 823 is incorporated in the FAR or the Homeland Security Acquisition Regulation.

Questions or comments about this class deviation may be directed to Nancy Harvey at (202) 642-0500 or email at Nancy.Harvey@hq.dhs.gov.

**Class deviation from Federal Acquisition Regulation (FAR) 36.303-1, to implement
Statutory Revisions to Design-Build Selection Procedures for the Department of Homeland
Security, United States Coast Guard**

Findings

Section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 modified 10 U.S.C. § 2305a to allow agencies subject to 10 U.S.C. 2305a to consider more than five (5) offerors for design-build construction contracts, without justification, when the solicitation prescribes an indefinite delivery-indefinite quantity contract. In DHS, 10 U.S.C. § 2305a applies only to the United States Coast Guard (USCG).

Determination

As authorized by FAR 1.404, I hereby issue a waiver to the requirements at FAR 36.303-1 to implement section 823 of the NDAA for FY 2018. Section 823 allows USCG contracting officers to consider, without justification, more than (5) offerors for phase two requests for competitive proposals when the solicitation is issued pursuant to an indefinite delivery-indefinite quantity contract for design-build construction. However, prior to exercising this authority, the Head of the Contracting Activity (HCA) for the USCG must notify the Executive Director, Acquisition Policy and Oversight Division (APO), in writing, that the agency will be using the authority.

As required by FAR 1.404, OCPO has consulted with the Chair of the Civilian Agency Acquisition Council.

This class deviation remains in effect until section 823 is incorporated in the FAR or the Homeland Security Acquisition Regulation.



Soraya Correa
Chief Procurement Officer
Department of Homeland Security

October 22, 2019

Date