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PART 1817

SPECIAL CONTRACTING METHODS

(Revised November 25, 2015)

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PART 1817

SPECIAL CONTRACTING METHODS

(Revised November 25, 2015)

Subpart 1817.1—Multiyear Contracting

1817.105 Policy.

1817.105-1 Uses.

(b) The Assistant Administrator for Procurement, Program Operations Division, is the approval authority for the use of the multiyear contracting technique. Requests for approval shall be signed by the procurement officer and shall include a description of the acquisition, identification of anticipated contract costs and funding, and a determination, with supporting rationale, that each of the criteria in [FAR 17.105-1\(b\)](#) is met by the proposed use of multiyear contracting.

Subpart 1817.2—Options

1817.200 Scope of subpart.

[FAR Subpart 17.2](#) applies to all NASA contracts.

1817.203 Solicitations.

(g)(2) The procurement officer is authorized to approve option quantities greater than 50 percent.

1817.204 Contracts.

(e)(1) The 5-year period of performance limitation (basic plus option periods) applies to all NASA contracts regardless of type and other procurement award instruments, except as stated in (e)(2). This includes agreements (e.g. basic ordering agreements, blanket purchase agreements), interagency acquisitions, and orders placed under agreements or awarded under a Federal Supply Schedule or other indefinite delivery/indefinite quantity contracts awarded by other agencies. See 1816.505-71 for limitations on the ordering period of task and delivery order contracts.

(2) The 5-year period of performance limitation in paragraph (e)(1) does not apply to the following circumstances:

(i) Acquisitions for the design, development, test, and evaluation (DDT&E) of end-item systems development and/or hardware production. The period of performance for DDT&E should be consistent with the time needed to complete system development or for hardware production efforts to perform Phase A (concept studies, concept & technology development phase), Phase B (preliminary design & detailed engineering/technology completion phase), Phase C (final design, components/systems fabrication and testing phase), Phase D (system assembly, integration, testing, and launch phase), Phase E (systems and mission operations, sustaining engineering, maintenance support), and Phase F (close-out/decommissioning efforts). It is NASA policy to procure Phase E and F efforts separately from Phase A through D to allow for the maximum number of industry opportunities to compete for awards so long as awards to different contractors will not pose critical integration risks to NASA. For those acquisitions where it is justified to procure Phases A through D or A through F and the period of performance is expected to exceed 5 years, a deviation is not required if the period of performance is approved as part of the original acquisition plan and the work included in the scope of the contract.

(ii) Phase-in periods of up to 90 days where required for the efficient transition of contracting activities for a period that is concurrent with the predecessor contract in accordance with the use of FAR Clause 52.237-3, Continuity of Services. Phase-in periods may be in addition to the 5-year period of performance limitation.

(iii) Periods of up to 6 months beyond the 5-year period of performance limitation when permitted by FAR Clause 52.217-8, Option to Extend Services, for unplanned, unforeseen circumstances or events that are beyond the control of the Contracting Officer, such as a protest, provided that the option is exercised consistent with the limits outlined in FAR 37.111 and 17.207(f).

(3) Deviations are not required for the aforementioned circumstances provided the entire period of performance, to include options and phase-in periods for the acquisition are justified and approved in the original written acquisition plan or procurement strategy meeting (PSM) by the appropriate approving authority, e.g., Assistant Administrator for Procurement approval is required for PSMs held at Headquarters. For any periods beyond those specifically permitted by (e)(2), an approved deviation addressing the requirements in (e)(5) is required.

(4) The program/project office and the contracting officer shall review the requirement at the mid-point of the performance period to ensure that the products or services continue to fulfill NASA's mission needs and that the procurement award instrument continues to provide the best means of satisfying the requirement.

(5) Requests for deviations from the 5-year period of performance limitation policy or for periods beyond those permitted by (e)(2) shall be submitted to the cognizant analyst in the Office of Procurement, Program Operations Division for approval by the Assistant Administrator for Procurement. The deviation request shall include justification for exceeding five years or additional periods beyond those permitted by (e)(2). The deviation request and other required documentation, e.g., JOFOC, synopsis, etc. shall identify the specific period of extension to the period of performance. At a minimum, the justification shall discuss planned future assessment of continued performance either prior to exercise of options or at the mid-point of a basic contract with no options. Evidence shall also be included showing that the extended years can be reasonably priced. The justification shall explain why longer than a 5-year period of performance is the most prudent business course of

action. The justification shall also address how the longer period of performance will result in obtaining the best value for the Government if the supply or service is readily available in the open market by considering the current market and the uncertainties in future market conditions and by explaining why competition, which acts as a primary guarantor of best value to the Government, is not appropriate for the acquisition.

1817.206 Evaluation.

(a) The contracting officer shall ensure all offers are evaluated, including the basic contract and any option quantities or periods included in the solicitation, as well as any period permitted by [FAR 52.217-8](#) Extension of Services and any other additional options for quantities or services clauses included in the solicitation (See [FAR 17.208](#)) except as provided in paragraph (b) of this section.

(b)(i) The procurement officer is the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

(ii) Unless a determination has been approved under [1817.206\(b\)\(i\)](#), the selection statement for each acquisition involving an option shall address the source selection authority's consideration of the option as part of the initial competition.

1817.207 Exercise of options.

(c)(2) In addition to determining the option fulfills an existing need, the contracting officer shall determine that there is no change in the scope of the option requirements.

(f) Options under cost type contracts shall contain an estimated cost for the option period(s).

(f)(2) Use of the provision (or formula) for determining the price of a fixed price option requires advance approval by the Assistant Administrator for Procurement, Program Operations Division

(f)(3)(ii) Use of a formula to determine the fee of an option in a cost-type contract requires advance approval of the Assistant Administrator for Procurement, Program Operations Division. The formula shall preclude the contractor from increasing costs for the purpose of earning additional fee.

1817.207-70 Analysis to support exercise of options.

(a) The contracting officer's determination that exercise of the option is the most advantageous method of fulfilling the requirement shall be based on input and information from the requiring organization. The contracting officer and the requiring organization shall ensure that analysis sufficient to support the determination that option exercise is the most advantageous method is completed in advance of providing the notice to the contractor required by FAR 17.207(a). Sufficient time shall remain in the performance period to allow the acquisition team to pursue appropriate alternative approaches with minimal impact to the program or project in terms of technical, cost, or schedule risk should the analysis conclude that the best programmatic path is not exercising the option.

(b) The analysis required to support the option exercise determination must include consideration of other factors in addition to price. In addition to the other factors contained in FAR 17.207(e), the determination to exercise the option should include, but is not limited to, consideration of—

(1) The contractor's performance in satisfying contract requirements, for example, receiving satisfactory performance ratings (see subpart 1842.15) and the contractor's level of success in implementing and maintaining small business programs (including mentoring arrangements), which were evaluated as part of the source selection process and incorporated into the awarded contract; and

(2) The results of market research activities to identify any technical, engineering or scientific

advances that offer programmatic benefits or performance improvements beyond those that are contractually available under the option to be exercised.

1817.208 Solicitation provisions and contract clauses.

(c)(3) The contracting officer shall insert a provision substantially the same as [FAR 52.217-5](#) in cost reimbursement contracts when the other conditions of [FAR 17.208\(c\)](#) are met.

Subpart 1817.4—Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5—Interagency Acquisitions

1817.500 Scope of subpart.

(a) The policies and procedures in FAR 17.5 and this subpart apply to all interagency acquisitions where NASA is the servicing or requesting Agency.

(b)(1) This subpart applies to interagency acquisitions. Interagency acquisitions involve those transactions where the supplies or services are ordered or placed against a contract of another agency and the work is performed by a contractor of the federal agency.

(c) NFS 1817.5 does not apply to interagency reimbursable work performed by Federal employees and orders placed against GSA Federal Supply Schedule value less than \$550,000.

1817.502 Procedures.

1817.502-1 General.

(a) Determination of best procurement approach.

(1) Assisted acquisition. When NASA is the requesting agency of an assisted acquisition, the best procurement approach determination (BPAD) shall be approved one level above the Contracting Officer. Whether NASA is the requesting or servicing agency a signed copy of the BPAD shall be provided to the Procurement Officer and a copy retained in the contract file.

(2) Direct acquisition. Prior to placing an order against another agency's indefinite delivery contract vehicle, a BPAD is required to be approved by a Contracting Officer.

(b) Written agreement on responsibility for management and administration.

(1) *Assisted acquisitions.* When NASA is the requesting agency of an assisted acquisition, the written interagency agreement outlining each agency's roles and responsibilities for the management and administration of the contract or order shall be approved one level above the Contracting Officer. Whether NASA is the requesting or servicing agency a signed copy of the agreement shall be provided to the Procurement Officer and a copy retained in the contract file.

(c) The business-case analysis required by FAR 17.502-1(c) shall be prepared by the Center Procurement Officer and approved by the Assistant Administrator for Procurement submitted through the cognizant analyst in the Program Operations Division before submission to the OMB/Office of Federal Procurement Policy.

1817.502-2 The Economy Act.

(a) The Economy Act authorizes NASA to enter into agreements to obtain supplies or services from another agency. The NFS applies when one agency uses another agency's contract to obtain supplies or services. If the interagency business transactions does not result in a contract or order, then the NFS does not apply.

(b) The Solutions for Enterprise-Wide Procurement (SEWP) is a government-wide acquisition contract (GWAC) for information technology for government-wide use that is managed by NASA as NASA has been designated an executive agent by OMB pursuant to the Clinger-Cohen Act, 40 U.S.C. 11302(e). NASA Centers are not required to make a BPAD as SEWP is an agency contract. When external agencies (non-NASA) place orders against the SEWP contract, the ordering activity is required to comply with the requirements of a best procurement approach determination in accordance with 17.502-1(a)(2)).

(c) Requirements for determination and findings.

(1)(ii) To satisfy the D&F requirement identified in FAR 17.502-2(c)(1)(ii), current market prices, recent acquisition prices, or prices obtained by informational submissions as provided in FAR 15.201 may be used to ascertain whether the acquisition can be accomplished as conveniently and economically by contracting directly from commercial sources.

(iv) In addition to the requirements in FAR 17.502-2(c)(1), the D&F must identify the period of performance and explain whether the acquisition is a non-competitive follow-on for the same services from the same servicing agency.

(2) All D&Fs for a servicing agency not covered by the FAR shall be approved by the Assistant Administrator for Procurement submitted to the cognizant analyst in the Office of Procurement, Procurement Operations Division.

(3) When NASA is the servicing agency, a copy of the executed Economy Act determination and findings required by FAR 17.502-2 shall be obtained from the requesting agency and retained in the contract file.

(e) Individual orders or successive non-competitive interagency orders for the same requirement with the same servicing agency shall not exceed five years. Requests for deviation from the five-year limitation of this section shall require the approval of the Center Director if the estimated value of the order is \$5 million or less, or the Assistant Administrator for Procurement, Program Operations Division if the estimated value of the order exceeds \$5 million. Requests for deviation shall address:

- (1) Why more than five years is required;
- (2) Why the work must be performed by the same servicing agency; and

(3) How long beyond the current order the requirement is expected to continue.

(f) A D&F is required for each individual contract action (see FAR 1.702) and any increase permitted by options (see FAR 17.2).

1817.503 Ordering procedures.

(b) The NASA-Interagency Purchase Request (NIPR) (NF-523) or other interagency acquisition form mutually agreed to by the agencies (e.g. SF-1449, OF-347, etc.) shall be used by all NASA Contracting Officers for placing an order for supplies or services from another agency. If an alternate form is used, it must provide information consistent with FAR 17.503, NFS 1817.503-70, and NIPR/NF-523 to include the purchase request number. Individual NF-523's shall be prepared in accordance with the instructions contained in the NF-523 and shall be numbered in accordance with Subpart NFS 1804.71.

(d)(1) When NASA is the servicing agency awarding a contract, the requesting agency shall provide the appropriate information to the NASA CO to execute the justification and approval or determination and findings. A copy of the justification or determination shall be retained in the contract file.

(d)(3) When NASA is the servicing agency and is required to award a contract on behalf of another agency (requesting agency), in addition to the requirements identified in FAR 17.503(d)(3) the NASA CO shall ensure compliance with the requesting agency's regulations, the requesting agency's funding and appropriation limitations, unique agency terms and conditions, the requesting agency's unique statutes, directives, and reporting requirements.

1817.503-70 Order requirements and provisions.

In addition to the requirements identified in FAR 17.503 the following information shall be included in the order, as appropriate:

(a)(1) Provision for acceptance. Include a provision for acceptance, such as, the servicing agency shall provide acceptance of this order no later than 30 days after receipt of the order. The acceptance shall be sent to: Insert NASA installation, office code, and address. The acceptance shall cite the order number and have a typed name, title, and signature of the accepting official, including address, phone number, email address, and facsimile number.

(2) If the servicing agency is a Military Department, the Military Department concerned will, within 30 days after receipt of a NASA-Interagency Purchase Request (NIPR), forward to the initiator of the request an Acceptance of MIPR, DD Form 448-2. Each DD Form 448-2 will show the action being taken to fill the requirement and the name and complete address of the DOD contracting activity.

(3) If the servicing agency is a Civilian Agency, acceptance should occur within 30 days after receipt of the NIPR and may be accomplished by some other form or method of establishing acceptance other than the DD Form 448-2, Acceptance of MIPR.

(b) Provision for Payments. Provide instructions for submitting invoices/billings and payment terms related to payments to be made by the requesting agency. Provide instructions on the level of detail necessary to make payment of the NIPR, to include how often payments will be made, and any other pertinent information. Payment provisions should identify the address of the requesting agency for

the servicing agency to submit invoices to, to include, providing detailed instructions for transmitting the funds, and whether the servicing agency shall submit invoices via the online Intra-Governmental Payment and Collection (IPAC) System or SF1080/SF1081 or equivalent form to be utilized. Information about IPAC is available at <http://fms.treas.gov/goals/ipac/index.html>. Except when agreements provide that reimbursement is not required, payments to the Civilian Agencies or Military Departments shall be made by the NASA office designated in Block 9 of the NASA-Interagency Purchase Request upon receipt of Standard Form 1080.

(c) Provisions for contract administration, audit, oversight, and reporting requirements. Provide contract administration requirements and responsibilities appropriate for the type of contract and scope of work for the particular acquisition.

(d) *FAR and NFS clauses*. The order shall include appropriate FAR and NFS clauses for: the accountability and reporting of property; relating to intellectual property, including data rights, patent rights, and reportable new technology property; security; occupational health and safety; environmental requirements; and other clauses appropriate for the particular acquisition, as applicable.

(e) Technical representative and contact information. The order shall identify the technical representative as well as describe the individual's roles, responsibilities, and limitations.

(f) *Description of the effort*. The order shall include a complete description of the supplies or services to be delivered, the scope of work, including deliverable requirements with delivery dates, and a reference to any proposal received from the servicing agency.

(g) *Authority of the Order*. The order shall cite the authority for each agency to enter into the interagency acquisition. The Economy Act (31 U.S.C 1535) shall be cited when NASA is the requesting agency;

(h) *Amount of the Order*. Identify funding (incremental or fully-funded) amount(s) and accounting and appropriation data (e.g., purchase request number, funds citation.).

(i) *NIPR number*: To the extent feasible, all documents (including acceptances, contracts or orders, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer between Appropriations and/or Funds) billings) should reference the NIPR number and the item number.

(j) *Changes in estimated total prices*. When another agency determines that the estimated total price (Block 7, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement or is in excess of the amount required, a request for an amendment or modification will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, the Cognizant NASA contracting office shall forward to the Civilian or DOD contracting activity an amendment or modification to the NASA-Interagency Purchase Request.

1817.504 Agency reporting requirements.

Upon request, Center Procurement Officers shall submit information on interagency acquisitions to be included in the Agency's annual report to OMB to the Office of Procurement, Contract and Grant Policy Division.

Subpart 1817.70--Phased Acquisition

1817.7000 Definitions.

(a) *Down-selection.* In a phased acquisition, the process of selecting contractors for later phases from among the preceding phase contractors.

(b) *Phased Acquisition.* An incremental acquisition implementation comprised of several distinct phases where the realization of program/project objectives requires a planned, sequential acquisition of each phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(c) *Progressive Competition.* A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1817.7001 Down-selections in phased acquisitions.

1817.7001-1 Pre-solicitation planning.

(a) The rationale for the use of the down-selection technique shall be thoroughly justified in the acquisition planning requirement. Because the initial phase solicitation will also lead to subsequent phase award(s), the decision to use a down-selection strategy must be made prior to release of the initial solicitation. Accordingly, all phases must be addressed in the initial acquisition strategy planning and documented in the acquisition plan or PSM minutes.

(b) If there is no direct link between successful performance in the preceding phase and successful performance in a subsequent phase, down-selection is inappropriate. In this case, the phases should be contracted for separately without a down-selection.

(c) With one exception, both the initial and subsequent phase(s) of an acquisition down-selection process are considered to be full and open competition if the procedures in 1817.7001-4 and 1817.7001-5 (if using the progressive competition technique) are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in [FAR 6.302](#) or one of the exclusions in [FAR 6.2](#), and only after compliance with the synopsis requirements of [FAR 5.202](#) and [5.205](#) and [1804.570-2](#).

1817.7001-2 Evaluation factors.

A separate set of evaluation factors must be developed for each phase in a down-selection competition. Since these competitive down-selection strategies anticipate that a preceding phase contractor will be the subsequent phase contractor, the evaluation factors for initial phase award must specifically include evaluation of the offerors' abilities to perform all phases.

1817.7001-3 Down-selection milestones.

(a) When sufficient programmatic and technical information is available to all potential offerors,

proposal evaluation and source selection activities need not be delayed until completion of a given phase. These activities should commence as early as practicable. The initial phase contracts should be structured to allow for down-selection at a discrete performance milestone (e.g., a significant design review or contract completion) of a design maturity sufficient to allow for an informed selection decision. This will avoid time gaps between phases and eliminate unnecessary duplication of effort.

(b) The appropriate contract structure must reflect program technical objectives as well as schedule considerations. For example, if a two-phased acquisition strategy calls for formal completion of initial phase effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary for subsequent phase award and performance to carry all initial phase contractors through PDR, the initial phase contracts should be structured with a basic period of performance through a significant, discrete milestone before PDR with a priced option for effort from that milestone to PDR. The down-selection would occur at the earlier milestone, the PDR option exercised only for the down-selection winner, and the subsequent phase performance begun at the completion of the PDR option.

1817.7001-4 Synopsis.

(a) Each phase of a phased acquisition not performed in-house must be synopsisized in accordance with [FAR 5.201](#) and must include all the information required by [FAR 5.207](#). Time gaps between phases should be minimized by early synopsis of subsequent phase competition. The synopsis for the initial competitive phase should also state the following:

- (1) The Government plans to conduct a phased acquisition involving a competitive down-selection process. (Include a description of the process and the phases involved).
- (2) Competitions for identified subsequent phases will build on the results of previous phases.
- (3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.
- (4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be requested from these contractors.
- (5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). If new solicitations are not planned, the acquisition must be identified as a "progressive competition" (see 1817.7001-5), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described.
- (6) Each subsequent phase of the acquisition will be synopsisized in accordance with FAR 5.201 and 5.203.
- (7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(b) In addition to the information in paragraph (a) of this section, the synopsis for the subsequent phase(s) must identify the current phase contractors.

1817.7001-5 Progressive competition.

(a) To streamline the acquisition process, the preferred approach for NASA phased acquisitions is the "progressive competition" down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(b) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal preparation instructions and evaluation factors. In addition, the prospective offeror must be advised of all requirements necessary for demonstration of a design maturity equivalent to that of the preceding phase contractors.

(c) A key feature of the progressive competition technique is that a formal solicitation is normally not required. However, when the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is no longer valid, a new solicitation shall be issued for the next phase.

(d) Subsequent phase proposals should be requested by a letter including the following:

(1) A specified due date for the proposals along with a statement that the late proposal information in paragraph (c)(3) of [FAR 52.215-1](#), Instructions to Offerors -- Competitive Acquisition, applies to the due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specifications, or other contract requirements that have changed since the initial solicitation.

(5) All required clause changes applicable to new work effective since the preceding phase award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates (e.g., small and small disadvantaged business goals).

(e) Certain factors may clearly dictate that the progressive competition technique should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the preceding phase contractors, it is also likely that a new, formal solicitation is necessary for the subsequent phase and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate.

1817.7002 Contract clauses.

(a) The contracting officer shall insert the clause at [1852.217-71](#), Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at [1852.217-72](#), Phased Acquisition Using

Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.