



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

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Department of the Interior Acquisition Policy Release (DIAPR) 2008-06

Subject: Enhanced Competition for Task and Delivery Orders

Reference: Federal Acquisition Regulation (FAR) Part 16

1. **Purpose:** This DIAPR grants permission to deviate from FAR 16.504 and 16.505 in order to implement Section 843 of the Fiscal Year (FY) 2008 National Defense Authorization Act.
2. **Effective Date:** The instructions contained in this release are applicable to awards made after May 27, 2008.
3. **Expiration Date:** This class deviation will remain in effect until publication of the corresponding revisions to the FAR.
4. **Background and Explanation:** Section 843 of the FY 2008 National Defense Authorization Act mandates several new procedures designed to enhance competition. Key provisions are:
 - a. a limitation on single award task and delivery order contracts valued greater than \$100 million;
 - b. enhanced competition for orders in excess of \$5 million;
 - c. institution of protests of award of orders valued above \$10 million that will be within the exclusive jurisdiction of the Comptroller General.

FAR 16.504 and 16.505 prescribe procedures that are inconsistent with current law. Revisions are underway, but were not issued in time to comply with the statute's implementation date of May 27, 2008. Therefore, this class deviation authorizes the temporary procedures necessary to ensure compliance with Section 843.

5. **Action Required:** Contracting officers must comply with the attached versions of FAR 16.504 and 16.505 in lieu of those currently published in the FAR.

When contracting on behalf of another agency, the determination required by the attached paragraph 16.504(c)(1)(ii)(D)(1) and the Congressional notification required by the attached paragraph 16.504(c)(1)(ii)(D)(2) may be made by the requiring agency an agreement between the agencies specifically adopts that procedure.

Bureau Procurement Chiefs will provide a copy of this policy and any supplemental bureau information to all acquisition and other key personnel within their organizations.

Questions may be referred to Dee Emmerich on (202) 208 3348.

Debra E. Sonderman, Director
Office of Acquisition and Property Management and
Senior Procurement Executive

Attachment

TEMPORARY PROCEDURES IMPLEMENTING
SECTION 843 OF THE FY 20080 NATIONAL DEFENSE AUTHORIZATION ACT

Substitute the following guidance for that currently published in FAR.

Part 16 – Types of Contracts.

Subpart 16.504 – Indefinite-Delivery Contracts.

16.504(c)(1)(ii)(D) No task or delivery order contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single source unless –

(1) The Bureau Procurement Chief determines in writing that:

(a) The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(b) The contract provides only for firm-fixed price (see FAR 16.202) task or delivery orders for:

(i) Products for which unit prices are established in the contract; or

(ii) Services for which prices are established in the contract for the specific tasks to be performed.

(c) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or

(d) It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

(2) The Bureau Procurement Chief notifies Congress within 30 days after any determination under (D)(1)(d).

(3) The requirement for a determination for a single award contract greater than \$100 million applied in addition to the requirements of Subpart 6.3.

16.505 Ordering.

(a) General.

(9)(i) No protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for:

(A) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(B) A protest of an order valued in excess of \$10 million. Protests of orders in excess of \$10 million may only be filed with the General Accountability Office, in accordance with the procedures at 33.104.

(ii) The authority to protest the placement of an order under this subpart expires on May 26, 2011 (10 U.S.C. 2304a(d) and 2304c(d), and 41 U.S.C. 253h(d) and 253j(d)).

(b) Orders under multiple award contracts.

(1) Fair opportunity.

(i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,000 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) *****

(iii) Orders exceeding \$5million. For task or delivery orders in excess of \$5 million, the requirement to provide all awardees a fair opportunity to be considered for each order shall include, at a minimum,

(A) A notice of the task or delivery order that includes a clear statement of the agency's requirements;

(B) A reasonable response period;

(C) Disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance;

(D) Where award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and price or cost factors; and

(E) An opportunity for a postaward debriefing in accordance with

(b)(4).

(4) Postaward Notices and Debriefing of Awardees for Orders Exceeding \$5 million. The contracting officer shall notify unsuccessful awardees when the total price of a task or delivery order is \$5 million or more, including options.

(i) The procedures at 15.503(b)(1) shall be followed when providing postaward notification to unsuccessful awardees.

(ii) The procedures at 15.506 shall be followed when providing postaward debriefing to unsuccessful awardees.

(iii) A summary of the debriefing shall be included in the task or delivery order file.

Current paragraphs (4) and (5) are renumbered (5) and (6).
