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Streamlining Task and Delivery Order Solicitations under MA/IDIQ Contracts

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This Advisory *offers ideas for streamlined approaches that can be used at the order level, leveraging the flexibilities offered by FAR subpart 16.5 while avoiding the complex procedures of FAR subpart 15.3.*

Federal Acquisition Regulation (FAR) 16.505(b) establishes ordering requirements for orders under multiple award indefinite-delivery, indefinite-quantity (MA/IDIQ) contracts, such as government-wide acquisition contracts (GWACs) and multiagency contracts (MACs). While the FAR provides considerable flexibility to contracting officers to fashion appropriate ordering procedures, and encourages a streamlined approach, it does not offer more than very general guidance on what a streamlined approach might be. Rather, it primarily states that the competition requirements in FAR part 6 and the policies in FAR subpart 15.3 do not apply to the MA/IDIQ ordering process.

From the standpoint of an ordering contracting officer, Federal Supply Schedule (FSS) contracts—issued and managed pursuant to FAR subpart 8.4—are very much like MA/IDIQs, GWACs, MACs, and agency-specific IDIQ contracts in that they provide an opportunity to procure specific types of needs in a potentially streamlined and efficient process, from prequalified sources, with some or all of the pricing parameters that often are established in the basic IDIQ contract. Therefore, even though the requirements for ordering goods and services under FSS contracts are less flexible than the ordering requirements of FAR 16.505(b), this *Advisory* includes a few references to FAR 8.405 ordering procedures to illustrate concepts contracting officers may consider within the flexibilities of FAR 16.505(b) ordering within MA/IDIQ venues. Both the FAR 16.505(b) streamlining flexibilities and the FSS procedures are available to contracting officers as a result of (1) their respective, specific statutory authorizations, and (2) the fact that competition is limited to prequalified holders of IDIQs. Often, an additional opportunity to streamline the ordering process arises from the fact that some pricing parameters or constraints have been established in the awarded IDIQ contracts.

MA/IDIQ contracts are now being used for multimillion dollar orders for complex supplies and services. Many agencies regularly fall back on the more familiar but complex FAR subpart 15.3 procedures when placing orders under MA/IDIQs, thereby obviating a streamlined approach that could be used to facilitate order placement, as well as the potential time and resource savings for all parties. Because there is little practical guidance and no officially published examples on how to structure a streamlined approach, contracting officers and agency policy often revert to the only process that is well understood, with adequate "guideposts" and models—the FAR subpart 15.3 process. Critics have said that use of these complicated procedures at the order level makes use of MA/IDIQs less desirable. After all, if you have to go to all that trouble, why not just do your own standalone contract? What's the value of issuing an order under a MA/IDIQ? Analogous questions also apply from the perspective of contractors, who must expend significant resources first to obtain MA/IDIQ contracts and still more each time they vie for an order—costs that eventually are passed to the government through higher prices.

This *Advisory* explores these questions and offers ideas for streamlined approaches that can be used at the order level, leveraging the flexibilities offered by FAR subpart 16.5 while avoiding the complex procedures of FAR subpart 15.3. In developing this Advisory, ASI spoke with several government officials who manage MA/IDIQ contracts and who place orders against such contracts. All are passionate about streamlining the ordering process, and some are using innovative approaches to do so. Although all noted that the views expressed were their own and not those of their respective agencies, these officials generously agreed to share their experiences and thoughts for the benefit of the acquisition community.

So let's start with a quick refresher on what IDIQ contracts are and why they can be advantageous for the government before laying the groundwork for the development of a streamlined approach.

IDIQ BASICS & ADVANTAGES

What is an IDIQ contract?

An IDIQ contract is used to fulfill recurring needs when the government cannot determine in advance the precise quantities or specific delivery dates of the supplies or services it will require during the contract period. An IDIQ essentially is an "umbrella" contract for an undefined quantity (within stated limits) of a defined list or generally described "class" of supplies or services that will be furnished when ordered, during a specific period, with deliveries to be scheduled (or services to be provided) by placing orders with the contractor when specific needs arise during the contract term. An IDIQ contract must indicate minimum and maximum quantities that will be ordered under the contract, either in terms of number of units or dollar values. The list or class of supplies, quantity limitations, and ordering period define the scope of the IDIQ.

The FAR requires contracting officers to give preference to making multiple awards when awarding IDIQ contracts. These are called multiple-award contracts, which, as the name implies, are contracts awarded to multiple contractors under a single solicitation for the same or similar supplies or services. When a specific need arises, an agency conducts what is essentially a "mini" competition among only those contractors that have an established IDIQ contract for the required supplies or services. This provides a way to satisfy competition requirements without the lengthy process often involved in a more expanded competitive process. These competitions at the order level are the focus of this *Advisory*.

Please refer to ASI's April 2012 *Advisory*, "Multiple-Award IDIQ Contracting: A Guide to the New Regulatory Requirements and Other FAQs," for more background information and a general discussion of IDIQ contracts.[1]

What are the advantages of using an IDIQ contract?

The FAR outlines several advantages of an IDIQ contract:

- Allows the government to maintain minimum stock levels
- Provides direct shipment to users
- Permits flexibility in quantities and delivery scheduling
- Allows for ordering of supplies or services after requirements materialize

But perhaps the biggest advantage is the time and resource savings that may be realized when issuing an order against a MA/IDIQ contract versus awarding a standalone contract. In 2013, a federal agency contracted with ASI Government to analyze the potential savings that could be realized by placing an order under a GWAC versus doing a full and open procurement under FAR subpart 15.3 to fulfill a large information technology requirement. Using our Resource Projection Model, which produces a theoretically optimal estimate of direct labor hours required for each transaction type according to Federal Acquisition Certification–Contracting (FAC-C) levels, we determined that, on average, awarding a new standalone contract took between 405 and 495 hours, while awarding a task order took between 119 and 168 hours—a significant time savings, as shown in figure 1 on page 3.

A comparison of acquisition strategies (see figure 2 on page 3), part of the same contract effort, revealed that issuing a standalone contract versus awarding an order under a GWAC for a transaction exceeding $12.5 million:

- Increased the total amount of work by 121 percent
- Increased the amount of work done by experts from 14 percent to 80 percent
- Reduced the amount of work done by journeymen and entry levels from 86 percent to 20 percent
- Required a GS-14/15 supervisor as expert for approximately .92 staff years versus .07 staff years, or a non-supervisory expert for .36 staff years versus .03 staff years

Based on these findings, we concluded: (1) awarding a new contract under FAR subpart 15.3 was much less efficient than issuing a MA/IDIQ order; (2) FAR subpart 15.3 is less efficient because it requires a higher commitment of scarce experts; and (3) placing orders against MA/IDIQ contracts is more suitable for a workforce primarily composed of journeyman and entry level specialists. With

respect to the last finding, we would note the increasing use of MA/IDIQ vehicles—particularly GWACS—for major, complex requirements. In such cases, particularly when agencies are not able to incorporate streamlined ordering procedures, the personnel needs would tend back toward the upper end of the spectrum: experts and journeymen.

Keep in mind that the model's estimates count the number of hours actually worked on the transaction, not the length of time from release of the solicitation to award. For example, it does not include hours (or days) associated with leaving the solicitation "on the street," which can account for a significant amount of elapsed time. Published procurement action lead time (PALT) figures show that the average time to award orders under MA/IDIQs is 30 to 60 days, whereas competitive, negotiated acquisitions take from 144 to 360 days.[2] These PALT figures are from the date of the receipt of a complete requisition to award.

Some GWACs and MACs have more than 50 contractors. Won't I receive a lot of offers when placing orders under them?

Surprisingly, no. In fact, the government officials we spoke with said the average number of offers received for orders is three to five. "Contractors are always very strategic in what they bid on," noted one official. "They know what's going on. They know what their competition is. They know . . . where their strengths are." Of course, they also acknowledged that some order requests may receive many more offers, but as an average, three to five is a manageable number—and often fewer than the number received when issuing a solicitation on the open market.

ORDERING PROCEDURE REQUIREMENTS

What does the FAR allow or require agencies to do when establishing ordering procedures?

Table 1 on page 4 outlines the mandatory and optional ordering procedure elements as stated in FAR 16.505(b).

What should the contracting officer consider when establishing ordering procedures?

In addition to the mandatory and optional elements listed in table 1, FAR 16.505(b)(1)(v) identifies other elements the contracting officer should consider in developing the procedures, including:

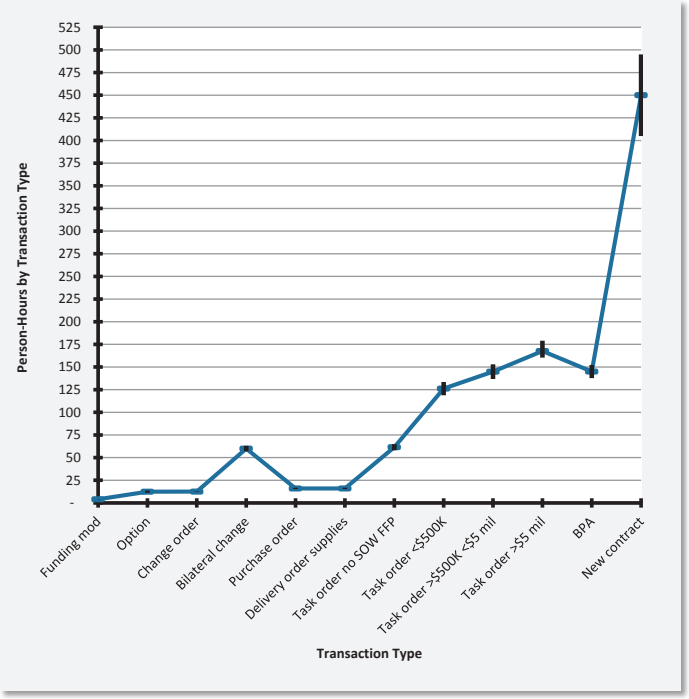

Figure 1: Person Hours by Transaction Type

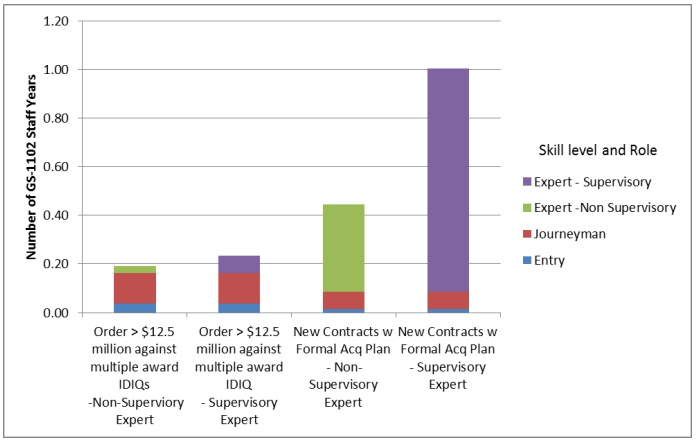

Figure 2: Comparison of Acquisition Strategies

- Past performance on earlier orders, including quality, timeliness, and cost control
- Potential impact on other orders placed with the contractor (workload)
- Minimum order requirements
- Time contractors need to make informed business decisions on whether to respond to potential orders
- Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as seeking comments from two or more contractors on draft statements of work or using a multiphased approach when response to an order might be resource intensive

What kind of language needs to be in the basic IDIQ contracts regarding the ordering procedures?

FAR 16.505(b)(1)(ii)(D) requires that the ordering procedures be included in both the solicitation for the award of the basic MA/IDIQ contracts and the resultant contracts. In reviewing various MA/IDIQ contracts, we noted that most do not provide any specific procedures; rather, they just paraphrase the FAR requirements listed above.

This has both good and bad aspects. On the plus side, it maintains flexibility for the ordering contracting officers. Without specific procedures that must be followed, ordering contracting officers may fashion their order solicitations in any manner that does not violate the FAR or the MA/IDIQ contracts. On the negative side, because many contracting officers do not know just how much flexibility they can exercise, they resort to using FAR subpart 15.3 procedures. Also, particularly in the case of agency-specific MA/IDIQ contracts, it may be feasible to prescribe many aspects of how the fair opportunity ordering procedures will be conducted, including some preset limitations on what the government will request under fair opportunity ordering procedures. After all, the MA/IDIQ pool of competitors has already been prequalified to merit the IDIQ award. We have more about this later.

Nevertheless, we like the idea of providing flexibility. That is, after all, what the Federal Acquisition Streamlining Act (FASA, the underlying statute) envisioned. All of the government officials we spoke with agreed that the first step is getting people to embrace the fact that there is a difference between FAR subparts 15.3 and 16.5 and that the difference is intentional. "There is a difference, and we want to make sure we can exploit that difference," said one official. The Office of Federal Procurement Policy (OFPP) made a similar statement in 1997 that still holds true today: "Congress recognized that without streamlined order placement, the quality benefits and cost savings made possible by continuous competition might be outweighed by excessive expenditures of time and administrative resources."[3] Well said.

So is it wrong to use FAR part 15 procedures?

No, it isn't wrong to use FAR part 15 procedures when placing orders. The FAR states that the subpart 15.3 source selection process does not apply but does not go so far as to mandate that you must stay out of it. Rather, ordering contracting officers have the flexibility to use FAR subpart 15.3 in whole or in part, when appropriate for a specific MA/IDIQ ordering procedure. The problem is that FAR part 15 procedures are adopted at the order level more often than needed, resulting in more work—and rigor—than necessary. Also, whenever FAR part 15.3 procedures are followed, either explicitly or de facto, the Government Accountability Office (GAO) will apply them when considering a protest. As one official pointed out by way of analogy, "Why use a sledge hammer to kill a fly when a fly swatter will do?"

GAO also has reiterated in numerous decisions that FAR part 15 does not apply to orders under MA/IDIQ con-

Table 1: Mandatory and Optional Ordering Procedures Elements

Mandatory FAR 16.505 Ordering Procedure Elements
Must provide each awardee a fair opportunity to be considered for each order over the micropurchase threshold (MPT)
Must not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order over the MPT (exceptions to fair opportunity identified at FAR 16.505(b)(2))
Must reflect the requirement and other aspects of the contracting environment, i.e., be tailored to each acquisition
Must consider price/cost as part of the selection process
Must use performance-based acquisition methods, to the maximum extent practicable, if the order is for services
Optional FAR 16.505 Ordering Procedure Elements
May keep submission requirements to a minimum
May use streamlined procedures, including the use of oral presentations
Should not apply FAR part 6 competition requirements
Should not apply FAR subpart 15.3 source selection procedures, e.g., competitive range, discussions, etc.
Do not require formal evaluation plans or scoring of quotes or offers

tracts. In a November 2008 decision, the protestors contended the agency's failure to perform a more detailed cost-technical trade-off among offers violated FAR subpart 15.3 and related provisions describing best value and trade-off requirements. GAO noted:

> Although the protestors argue that excluding the "policies" of FAR Subpart 15.3 does not prohibit the import of the "procedures" set forth in those provisions, we conclude that FAR Part 15 procedures do not, as a general rule, govern task and delivery order competitions conducted under FAR Part 16. Instead, we will review task order competitions to ensure that the competition is conducted in accordance with the solicitation and applicable procurement laws and regulations.[4]

In a decision published January 4, 2016, a protestor challenged the agency based on, among other things, the agency's failure to conduct "meaningful negotiations" within its oral presentation that was a stated portion of the proposal/evaluation process. GAO looked to the FAR 15.3 characterization of negotiations, or competitive discussions, to determine that the agency had not engaged in discussions and that, even if it had, its actions were proper. Also within that decision, GAO reiterated with similar language the fact that FAR 15.3 procedures are not required to be followed under FAR 16.505(b) ordering procedures:

> The test for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to revise or modify its proposal. Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ 300 at 12; TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4. The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule govern task and delivery order competitions conducted under FAR part 16, such as the procurement here. See NCI Info. Sys. Inc., B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 9. Nonetheless, we have determined that exchanges in the context of a task order competition must be fair and not misleading. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9. For the reasons explained below, we find that here, discussions did not occur.
>
> As described above, the exchange that [the protestor] characterizes as discussions occurred entirely within the confines of the three-hour oral presentation session. [The protestor] has not shown, and it is not clear to us, that anything said during the exchange revised some aspect of the firm's previously submitted proposal. Further, at the conclusion of the session, [the protestor] was not permitted to submit anything further to the agency. Thus, following the oral presentation, [the protestor] was not afforded an opportunity to revise anything that was said during the oral presentation or any part of the firm's previously submitted proposal.* Under these circumstances, we do not consider the exchange to have been discussions; rather, we view it simply as a component of the oral presentation itself.[5]
>
> *[The protestor] apparently concedes that the agency's questions during the oral presentation did not pertain to the firm's previously submitted proposal. . . . This is consistent with the solicitation, which provided that the proposal was to address the corporate experience, technical approach, management approach, and price factors, not the oral presentation factor.[5]

FAIR OPPORTUNITY

What does fair opportunity mean?

The most basic tenet of the MA/IDIQ ordering process is the concept of "fair opportunity." The FAR does not provide a definition of fair opportunity but rather defines the requirement in terms of procedures that must be followed. The fair opportunity process and exceptions stem from FASA and merely state that all MA/IDIQ contractors must be afforded a fair opportunity to be considered for award for each order exceeding the micropurchase threshold, unless an exception applies (see FAR 16.505(b)(2)(i) for a list of exceptions).[6]

While contracting officers have broad discretion to determine how orders will be awarded, the procedures must result in all of the MA/IDIQ contractors being provided an opportunity to be considered for orders above the micropurchase threshold (unless justified under one of the exceptions). If the work is for simple services or supplies and adequate pricing information has been established in the respective MA/IDIQ contracts, fair opportunity may be satisfied by comparing the various prices and products/services offered. Requiring each contractor to develop a separate response is not necessary, unless the contracting officer believes the information provided in the contracts is insufficient to make an award in the best interest of the government (see FAR 16.505(b)). We recognize, of course, that the purpose and scope of many MA/IDIQ venues, especially GWACs and MACs, often include a broad spectrum of requirements and that pricing information that enables this level of streamlining is difficult or impossible to define at the MA/IDIQ level.

Also, in the case of more complex requirements, the receipt and evaluation of responses typically is necessary. As such, contracting officers will issue some sort of request (e.g., a task order request or a fair opportunity notice) to all MA/IDIQ contractors outlining the requirements

and requesting responses from interested IDIQ holders. All responses received are then evaluated to determine which contractor will receive the order.

Has GAO offered any clarification of what constitutes fair opportunity?

While the concept of fair opportunity seems fairly straightforward, agencies sometimes have struggled with determining whether a particular course of action or methodology constitutes fair opportunity (see the next question on multiphase or multistep approaches). Unfortunately, there are not many GAO protest decisions involving awards at the order level for us to draw definitive, bright line conclusions. However, we do have some ideas with respect to how GAO may view fair opportunity with respect to downselections, the multiphase process, and the multistep process—although there are areas of uncertainty that will not be made clear unless and until such processes themselves become the subject of a protest.

Can you describe the downselection, multiphase, and multistep processes?

Downselection, as the term is used by GAO, means an action or process that results in the exclusion of one or more MA/IDIQ contractors from consideration (or further consideration) within a solicitation for an order or in advance of a future acquisition. GAO appears to characterize downselections as occurring either by the contractor's own decision (i.e., "voluntary," where a contractor makes a decision to withdraw or exclude itself from further consideration or decides to not participate at all) or by government action, where the government "weeds out" one or more contractors (or downselects) in its consideration of which contractor will receive the order.

A **multiphase process** is a process designed to allow for downselects at certain points (phases) in the process. In a multiphase process, the design usually would be such that downselects may occur at each phase. Depending on the specifics of the process, any downselection "opportunity" could be designed to be either a voluntary or a government downselect.

A **multistep process** is discussed in the FAR only in the context of the advisory multistep process of FAR 15.202. In this process, the government publishes a presolicitation notice that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the government to advise the offerors about their potential to be viable competitors. The government evaluates all responses and advises each respondent in writing either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. However, any and all respondents may still participate in the resultant acquisition, notwithstanding the advice provided by the government in response to their submissions. Conversely, respondents receiving information indicating that they may not be viable competitors may choose to not participate in the resultant acquisition, i.e., a voluntary downselect.

Fair Opportunity Procedural Requirements by Order Value per FAR 16.505(b)(1)	
Orders below the micropurchase threshold	No competition required; place order with suitable IDIQ holder
Orders between micropurchase threshold and simplified acquisition threshold (SAT)	Contracting officer need not contact each IDIQ holder before placing an order, *provided* the contracting officer has information available to ensure each IDIQ holder is provided a fair opportunity to be considered
Orders above the SAT up to $5.5M	Competitive process is required that results in each IDIQ holder being given notice of the intent to make a purchase, clear description of the requirement, and fair consideration of all responses received before order placement*
Orders exceeding $5.5M	Fair opportunity to be considered must include at least:* • Notice to each IDIQ holder with a clear statement of the requirements • Reasonable response period • Factors and relative importance for evaluation and award selection Documentation and opportunity for debrief if award was based on best value

* Unless supported by an approved limited source justification per FAR 16.505(b)(2)(ii)(B)

Can you elaborate on the recent GAO decision (B-411699) on downselections?

Yes. This decision was not on the basis of a downselection process used to select the winning contractor; rather, it was on the issuance of what amounted to an IDIQ-type ordering instrument under a MA/IDIQ contract.

The agency had issued two solicitations for communications equipment and services, both of which contemplated award of a single delivery order and defined only

estimated quantities and types of equipment to be delivered for each year of a five-year period of performance. The protestor alleged the solicitations would remove the agency's requirements from competition for an extended period and amounted to a de facto downselect to a single vendor. The agency countered that each solicitation properly contemplated award of a single delivery order and specified estimated quantities to be delivered during the base and option years, and that FAR 16.505(b)(1)(ii) provides agencies considerable discretion for determining procedures for placing orders. It explained that its approach would allow it to avoid having to individually compete potentially dozens of delivery orders for varying quantities of equipment over a five-year period.

However, GAO determined the solicitations would result in impermissible single, multiyear, second-tier IDIQ instruments. GAO noted the solicitations did not identify a specific quantity of property to be acquired and expressly provided for the separate, periodic issuance of orders for delivery during the performance period, and therefore were solicitations for undefined—or IDIQ-type—delivery order instruments. It also noted that FAR 16.505(b) obligates the agency to afford each MA/IDIQ contractor a fair opportunity to compete for orders. Further, although the FAR allows agencies wide discretion to tailor ordering procedures, it does not allow them to use a contract vehicle other than a delivery order. Because the order solicitations did not include specific quantities to be delivered, lacked a delivery schedule, and failed to identify a place of delivery or performance, GAO found orders contemplated under these solicitations did not meet the FAR definition of a task or delivery order.

Summing up its findings, GAO stated:

> . . . while the agency has significant discretion to tailor the procedures that it will use in placing delivery orders, it does not have discretion to use instruments that do not satisfy the requirements of FAR §16.505(a)(7). [The agency's] contemplated award of a 5-year second-tier IDIQ instrument to a single contractor is inconsistent with the requirements of the applicable statutes and FAR provisions regarding what constitutes a "delivery order." Those requirements are, at a minimum, that the delivery order be defined as to quantity, place of delivery, and schedule. In essence, the two orders contemplated under these RFPs will deprive all the other [MA/IDIQ] contractors of a fair opportunity to compete for each of the delivery orders that will be issued in the future, despite their aggregate value of approximately $335 million. We therefore sustain this aspect of [the protestor's] protest.[7]

In essence, while the agency undoubtedly was attempting in part to use ordering flexibilities accorded under FAR 16.505 to reduce administrative lead-time and afford it the ability to obtain better pricing through leveraged buying power as future requirements were defined, GAO held that the ordering vehicle approach did not conform to the FAR definition of a task or delivery order as it would not allow for the full cost or price to be established at the time the order is placed. Moreover, in the specific instances, the duration of the planned ordering vehicles would eliminate other competitors from fair opportunity consideration for the duration of the underlying MA/IDIQ.

Can a multiphase/multistep process be used and still constitute fair opportunity?

Yes. Both a multiphase and advisory multistep process provide the framework for some form of downselection to take place, and both may be used in the context of order placement procedures. The advisory multistep process consists of only one voluntary downselection point, so we conclude it may be used in order placement procedures without conflicting with FAR 16.5 (nor does it constitute following FAR 15.3).

Contracting officers are provided broad discretion to fashion appropriate order placement procedures. When using the multiphase approach, the key is to clearly describe all downselect points at the outset and whether they are voluntary or government-initiated. The description may appear in the ordering procedures in the underlying MA/IDIQ contracts or in the task order request (as long as this is not inconsistent with the underlying contracts). Then, the government's downselection decisions (or enforcement of voluntary downselects) must be consistent with that defined, stated process.

Fair opportunity consists of affording all MA/IDIQ contractors an opportunity to be considered in award of an order for a prospective requirement. If all MA/IDIQ contractors are afforded an opportunity to participate at the outset of an ordering procedure, there is no requirement to give all MA/IDIQ contractors an opportunity to participate at every phase of a multiphase selection process. All contractors need not be given more than one "fair opportunity" merely because the government has selected a multiphase approach.

Must you consider cost/price prior to the final phase of a multiphase approach?

Inherent in any government-initiated downselect point is consideration of cost/price. Until recently, GAO was consistent in stating that consideration of cost or price must be a factor in any government downselect, i.e., a

point in the process where the government determines that one or more offerors no longer will be considered for award. However, in a December 2013 protest decision, GAO did not object to a government prequalification process in which price was not a criterion.[8] The two-step process used in the solicitation was based on consideration of a vendor's security requirements and staffing considerations, followed by a source selection phase.

However, the two-step process was not the subject of the protest, so GAO's silence in this case provides no definitive indication that GAO changed its position that cost or price needs to be considered when the government determines an offeror will be excluded from any further consideration in a source selection process. Thus, we conclude that to minimize the risk of a successful protest, any government downselection point should consider cost or price. The cost/price information to be considered does not necessarily need to be definitive price offers. Projected ceiling values or even rough order-of-magnitude estimates could be used as part of the process and still meet GAO's interpretation of statutory intent, e.g., per FAR 16.505(b)(1)(ii)(E).

TECHNIQUES & BEST PRACTICES

What are some techniques and best practices agencies are using to streamline the MA/IDIQ ordering process?

Agencies are employing a number of techniques and best practices to streamline the ordering process.

- **Use terminology that is unique to subpart 16.5**

We've been asked this question several times, i.e., if we don't call it a request for proposals, if we don't call it discussions, we're safe, right? Not necessarily. When GAO looks at a protest, in addition to the language choices, the methods used when asking for information from contractors, evaluating the information provided, and selecting the source greatly influence how GAO will judge the agency's actions. An agency may find itself in a "FAR subpart 15.3 bind" if it applies some or all of the procedures described in subpart 15.3—or procedures so similar as to not differ in substance—regardless of what the agency calls it. As we saw in the January 4, 2016, GAO decision summarized on page 5, in deciding what yardstick to use in judging each protest, GAO looks at the substance of the actions more than the form or terminology.

That being said, terminology can be important in keeping agencies in the subpart 16.5 mind-set. So, for example, one official said his agency doesn't call the request to the MA/IDIQ contractors a "solicitation" but rather a "fair opportunity notice." (We've also seen "task order request.") It doesn't call the responses "proposals;" they are "submissions." Again, mere use of such terminology, in and of itself, won't keep you out of the woods if your actual procedures and actions don't also stay out of subpart 15.3, but it does help to underscore and keep those differences in mind.

- **Develop clear, concise requests**

The basic premise is to not ask for more information than you need. Detailed cost and technical responses for the award of individual orders should be avoided. Remember that these contractors already have gone through an extensive competition and evaluation process to establish that they are qualified to do the work within the scope of the MA/IDIQ contract. Consequently, it's not necessary to have lots of evaluation factors and subfactors to determine whether the contractor can meet your need—that essentially has been done for the entire class of expected requirements.

Instead, start with the premise that all of the MA/IDIQ contractors can fulfill your requirement, but you want to find the one that will *best* fulfill your specific requirement. Also, as noted before, depending on the MA/IDIQ, prices or key elements of pricing such as labor rates may have been predetermined to be reasonable, which can enable you to minimize pricing details required to assess the requirement-specific offer prices. Information requested from contractors should be the minimum necessary to ensure they understand the order requirement and enable you to determine who is offering the best-value solution to meet the specific need and should receive the order. Nearly all the officials in our interviews said they limit the number of pages contractors can provide when they request this information. This challenges offerors to write efficiently, but it also is consistent with the government asking for only the minimum information necessary to discern the best value offeror from among already qualified potential sources.

In some cases, it may be the contractor's understanding of the requirement that will be a key discriminating factor; in others, it may be the qualifications of the key personnel. It isn't necessarily easy to think about what information should be considered and what information is extraneous in making an order award, but the effort is worth it. "We'd rather sweat up front than bleed later," noted one official. Asking for more information creates more complex responses and evaluations. But asking only for the necessary information is a win-win on both sides.

Contractors love it because they don't have to spend lots of time and effort putting together information that already was provided when the basic MA/IDIQ contract was awarded; agencies love it because the evaluation is more simplified, usually requiring less time and fewer people.

- **Use a multiphase or advisory multistep approach**

These techniques have been used by some of the officials we spoke with, and we believe both to be consistent with fair opportunity, as long as the downselect points are clearly described and implemented as described in the task order solicitation (or prescribed in the base IDIQ). One official, who said he used the multiphase process only occasionally, thought it tended to be a bit more work because you have more steps to go through. "We think if we can get everything done up front, why do it in two steps when you can do it in one step?" he remarked. Absolutely true, but if you are anticipating a lot of responses, it could prove useful to be able to sort through less information from the large quantity of potential respondents, but more extensive submissions from a smaller number of respondents after either a voluntary or government-initiated downselection. It is a judgment call—and necessitates a predictive trade-off. A phased approach will *not* save time, but it ultimately may reduce the burden on scarce personnel resources.

- **Say what you are going to do and do what you said**

This is a fundamental lesson for all types of acquisitions—not just for MA/IDIQ orders—and still one of the most common areas of protest. It bears repeating here because if you are using a streamlined ordering procedure that is outside the "norm" of what contractors may be used to, you want to clearly and unambiguously explain the process you are using, and, of course, stick to that process. "Be transparent about the process," advised one official.

- **Hold a presolicitation, presubmission conference**

Whatever you decide to call your procedure or the responses sought, you may wish to conduct a conference before responses are due. This may not be required in every case, but one official said he routinely conducts these conferences. Typically, they are scheduled a few days after the order request has been sent to the contractors. This official stated that the purpose is to provide an opportunity "to explain what's in the fair opportunity notice, what the procedure is, why it's there, why we're doing it,. . . it really basically brings it home, so to speak, and it allows the contractors to fully, fully, fully understand." It is not meant to allow contractors to ask questions about the specific work requirements in the order, but rather to provide the government with a venue to explain the process that will be used to select the contractor for the order award. According to this official, the contractors have found these conferences to be extremely helpful to their understanding of the process.

- **Use oral presentations**

Oral presentations, as discussed in FAR 15.102, provide offerors an opportunity to present information verbally, as a substitute for, or augmentation of, information traditionally provided in written form. Oral presentations are not merely a restatement or replication of written submission information but are in lieu of a written submission of all or part of an offer. The purpose of using the oral presentation technique is to eliminate, or greatly reduce, the need for written material when information can be conveyed in a more meaningful and efficient way through verbal means. Its major use has been to permit evaluators to receive information as to the capability of the offerors—generally demonstrating their understanding of the work or describing how the work will be performed—directly from key members of the offeror's team who actually would perform the work. In a number of cases, agencies have conducted oral presentations as interviews, posing sample tasks or using other techniques to test the ability of the offeror's team.

Oral presentations are mentioned specifically as a potential streamlining approach that can be used in awarding orders (see FAR 16.505(b)(1)(ii)). Much has been written about oral presentations in the context of FAR part 15, but remember, we're not in part 15.[9] Consequently, agencies have flexibility to use oral presentations in a manner that best fits their requirement.

We received a lot of feedback from the officials we spoke with on the use of oral presentations. All agreed it is a great time saver and that contractors like it because they don't have to put so much effort into writing a response. And very important, "it lets you connect with [the] real key personnel who are going to perform on your task orders," one official noted.

Another official indicated his team uses "interview-style orals." These presentations often take the place of written technical submissions, but pricing, past performance, and special requirements information still is received in writing, as well as any agency-specific certifications and representations that were not executed for the award of the basic MA/IDIQ contract. Questions are developed, but in most oral proposal processes, while the contractors know the basic topic areas, they do not receive the actual questions in advance.

Commonly, the key personnel who actually will perform the work under the order participate in the oral presentations, to give the agency a means of assessing them in action, but this need not be required if the government deems it is not necessary. The government also can leave it up to the contractor to select its participants in the process, although the government can limit the number of staff who can participate, for reasons such as space or time constraints. The sessions are recorded for voice only, not videotaped, and the government officials also take notes. The recording is considered government property and is not provided to the contractors; it is used only for accurate recall and to enhance the notes.

Another official we interviewed uses oral presentations as part of an advisory multistep process. The oral presentation provides a preliminary look at how the contractor will approach the task. The contractor's staff who will perform the work must participate in the presentation, and the ordering contracting officer may ask questions. The ordering contracting officer then provides feedback on whether he/she believes the contractor will be a viable competitor, but the contractor still may participate if desired. This official's experience has been that if the initial reaction is that the contractor is not a viable competitor, the contractor does not continue to participate, i.e., it voluntarily downselects. This has proven to be a time saver on both sides, and the contractors have expressed gratitude that they were told of their competitive possibilities early on, before investing time and resources in preparing responses.

- **Perform a comparative analysis**

Comparative analysis allows the immediate comparison of responses received without having to "score" them independently. It requires documentation of the differences under each evaluation factor but without having to use a scoring system, such as colors, adjectives, or points. Rather, the evaluators collect and document "facts" about each response, which allows them to quickly determine who is best suited and with whom to place the order. There is no need to first rate each contractor independently against the evaluation factors before making a comparison, so long as the stated evaluation factors are used as the basis for selecting among offerors.

Compare responses against each other as an initial evaluation approach? You can't do that! No, you can't—under FAR part 15 procedures; you can only compare the proposals against the stated evaluation criteria. However, there is nothing prohibiting you from doing it under FAR subpart 16.5 procedures.

Comparative analysis has been used successfully by several of the officials with whom we spoke when placing orders. While this concept may be foreign to those who have worked only in the FAR part 15 environment, it is explicitly recognized as an acceptable approach when doing simplified acquisitions under FAR part 13 (see FAR 13.106-2(b)(3)). So why not apply it to the subpart 16.5 ordering process?

As explained by one official, the purpose is to arrive at a "reasonable" determination of the contractor best suited to fulfill the order requirements.

- **Use a streamlined evaluation methodology**

Unlike FAR subpart 15.3, there is no requirement in subpart 16.5 to capture the relative strengths, deficiencies, significant weaknesses, and risks supporting the evaluation of the responses. This means you can use a streamlined evaluation methodology, such as pluses and minuses, narrative statements, acceptable/unacceptable, and pass/fail. For orders over $5.5 million, FAR 16.505(b)(1)(iv) requires the government to disclose significant factors and subfactors, including cost or price, that the agency will use in evaluating responses and their relative importance. However, this does not imply or require the application of a FAR 15.3 evaluation framework. There is nothing in this requirement that prohibits or constrains the use of a streamlined evaluation methodology, including the comparative analysis described above.

Also keep in mind that there is no requirement to evaluate past performance in the same manner as you would if using subpart 15.3 procedures, such as providing a neutral rating to a contractor without any past performance. Further, if you choose not to use past performance as an evaluation factor (remember that FAR 16.505(b)(1)(v)(A)(1) states that past performance should—not shall—be considered), there is no requirement to document the file with your rationale. Past performance already was evaluated when the contractors received the basic MA/IDIQ contracts; determining how well they have performed on any orders issued to date should be relatively simple and may be sufficient in the MA/IDIQ environment.

- **Communicate only with the selected contractor to clear up final terms and conditions**

Here's another technique about which we can hear a collective gasp. But these are not FAR subpart 15.3 discussions or negotiations, which must be conducted with all offerors in the competitive range to determine the eventual awardee. Here is how this process works.

Once the best-suited contractor has been selected, the agency determines if it needs to communicate with that contractor to address any remaining issues and settle the final terms of the order. These issues may be either tech-

nical or price-related. If the contractor will not address the remaining issues to the agency's satisfaction, the agency may then move to the next best-suited contractor and address any issues with that contractor. This is somewhat analogous to the architect-engineer award process under the Brooks Act, where firms are ranked and negotiations are held only with the highest ranked firm; if those negotiations fail, the agency moves on to the next firm in line. Therefore, this process seems to fall within the flexibility afforded to contracting officers under FAR 16.505.

One official was quick to point out that, if your request is streamlined and clear, you probably won't need to address anything with the selected contractor. Clear, well-written descriptions result in better responses and less chance of ambiguities that need to be cleared up later in the evaluation process. "But we're telling contractors that since we're in [FAR] 16.505, if there's something hanging out there, or if there is an extra issue or two, or if we have to talk to the contractor in any way, we can do it," he explained.

Whether GAO would consider such exchanges to be discussions is unknown at this point. If the exchanges serve only to clarify certain areas of the contractor's response, without allowing the contractor to change its response, you are on safer ground. But if the exchanges allow for a change in the response, such as a lowering of price, we're not convinced GAO wouldn't view this as discussions. On the other hand, these exchanges are not for the purpose of determining which contractor will receive the award—that already has been done. Consequently, none of the other respondents are prejudiced because they were determined to not be the order awardee based on other grounds.

- **Don't be afraid to award on initial responses**

Those of us who have been in the acquisition field for a while have all known a contracting officer or contract specialist who insisted on negotiating because they believed they could get a "better price." But those individuals probably don't consider the time and effort that it takes to do that—for both the contractor and government staff. Remember that the objective should not necessarily be to get the lowest price; it should be to arrive at a fair and reasonable price. Indeed, we all should strive to create clear requests that, in turn, generate clear responses such that there are no remaining issues to address or clarify. When that happens, then by all means, award on the initial response. Yes, you might get a lower price if you talk to the selected contractor, but you've now added time to your process and made it less streamlined, and there is no guarantee any price reductions will result

What would a basic streamlined process look like? Do you have a template?

Before we address this, let us point out that any or all of the techniques discussed here can be used in crafting an ordering process, and the process can and should vary depending on the specifics of the order requirement.

We also note that several of the techniques have not themselves been the subject of a protest, so we cannot say with certainty their use is 100 percent protest-proof. However, we do know that GAO repeatedly has opined that as long as the procedures are clear and do not violate regulation or law, and the agency follows those procedures, GAO will not object to their use. Indeed, since FAR subpart 16.5 is relatively devoid of mandatory procedures, there is ample room to test the waters. As long as you provide all MA/IDIQ contractors a fair opportunity to be considered, treat them fairly and in accordance with your clearly described process, we believe you will be on solid ground.

Attachment 1, on pages 18-23, of this *Advisory*, is a template we have developed based on information provided by the officials we spoke with as well as years of research we have conducted on this topic. Keep in mind this template is only one approach and should not be seen as a definitive model applicable in all circumstances. It should be tailored when appropriate for specific requirements to even further streamline the ordering process, which benefits all involved parties. It sets out a process where technical factors will be considered in addition to cost/price to determine which contractor will receive the award. For ease of development, we have called the document a "task order request"; however, if you use different terminology, such as fair opportunity notice, be sure to use your terminology consistently throughout. A Word version of this document is available on the Virtual Acquisition Office™ (VAO) website under "Samples and Templates."[10]

PRICING ISSUES

If price reasonableness is determined when the basic MA/IDIQ contracts are awarded, must a separate determination be made before placing each order?

The answer is that classic federal procurement response: it depends. As stated in FAR 16.505(b)(3):

> Pricing orders. If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in Subpart 15.4.

Before a contracting officer awards an IDIQ contract, he or she must determine whether the offered prices that it includes are fair and reasonable. Therefore, any definitive prices, ceiling prices, or benchmark pricing included in the awarded IDIQ have been judged fair and reasonable by the awarding contracting officer.

In MA/IDIQs, if the price of the items or services being ordered was established at the time of contract award—such as a fixed price for a specific task—then the price reasonableness determination was performed and documented by the contracting officer prior to award of the basic IDIQ contract and it is not necessary to perform another price reasonableness determination at the order level.

However, in many instances, the terms of the MA/IDIQ establish only certain pricing elements or contain no preset pricing parameters. This is the case when labor categories and labor rates have been negotiated and determined to be reasonable but an order request contains a statement of work, performance work statement, or statement of objectives requiring each contractor to address how it will perform the work and propose a mixture of labor to accomplish its proposed approach. In that case, it will be necessary to carry out an analysis of the labor mix. It also is not prohibited for an awarded IDIQ to contain no preset pricing parameters, so that all aspects of ensuing orders must be priced as a part of each evaluation process.

The degree and complexity of the analysis will depend on many factors, including the estimated cost of the order and how it is priced (fixed-price, cost-reimbursement, labor-hour, etc.). This analysis often will include a comparison of the cost/price response with the independent government cost estimate and any other analytical methods the contracting officer decides are necessary or that may be required by regulation. Certainly, the proposed labor rates and labor categories will be compared with those in the basic IDIQ contract where they exist. Moreover, the total proposed number of hours for each labor category, the proposed mix of labor categories, and any other cost elements that are included in the overall proposed order price will be subject to analysis to ascertain if they are reasonable (and realistic) in view of the requirement and the proposed approach.

Can an agency perform price analysis for the basic MA/IDIQ contracts and then perform cost analysis at the order level?

We believe it is permissible for an agency to perform price analysis to award the basic MA/IDIQ contracts and then perform cost analysis at the order level. Although our research did not produce any specific FAR language or GAO decisions addressing this issue, GAO has acknowledged that the meaningful price competition takes place at the order level under MA/IDIQ contracts.

We have observed that price analysis is used in many instances for awarding the basic MA/IDIQ contracts, and we see nothing indicating that cost analysis has to be performed on the basic contracts if the contracts authorize various types of orders, such as fixed-price and cost-reimbursement. Nor did we find any prohibitions on performing price analysis for the basic contracts and then cost analysis for a specific order.

Note that if a cost-reimbursement order is issued, the ordering activity must conduct a cost analysis, including cost realism, of responses received, in accordance with FAR 15.404-1(d)(2).

Can the basic MA/IDIQ contracts contain ceiling rates for labor categories where the ceiling rates would apply to all types of orders issued under the contracts?

Yes, there is precedent for establishing ceiling rates in MA/IDIQ contracts, and this concept can help ordering contracting officers in streamlining their ordering procedures. Thus, it is important for ordering contracting officers to fully assess the preestablished pricing parameters in the MA/IDIQs in developing their order requests. For example, one MA/IDIQ solicitation required that the labor rates established by offerors be ceiling rates, from which contractors may or may not offer discounts when competing at the order level, as described by GAO in a decision on a protest of the RFP:

> With respect to price proposals, the RFP identified 40 labor categories, for each of which offerors were instructed to provide a loaded hourly rate. The offeror's loaded hourly rates were stated to be ceiling rates, from which offerors could elect to propose lower rates on a task-by-task basis.[11]

The solicitation contained the following language in clause B.3 regarding the establishment of prices under the firm-fixed-price (FFP), time-and-materials (T&M), and labor-hour (LH) orders to be issued under the solicitation:

> **T&M, LH, and FFP Price Schedule**
>
> The hourly rates set forth in Section B shall be used on T&M, LH, and FFP task orders. The prices will be applied to individual task orders types as follows:
>
> **FFP Task Orders**
>
> (1) For FFP task orders, the quantity of each item or labor category ordered will be multiplied against the loaded hourly rate listed in this schedule, which is a "ceiling

rate" for the time period (or at any lower rate offered by the contractor and negotiated for the task). The cumulative extended total of all items ordered will define the FFP for the task. Travel and ODCs [other direct costs], if applicable, may be estimated for each task order, burdened with the ODC multiplier specified in this schedule. Any total rate negotiated for travel and ODCs, will be added to the extended price of all ordered items to arrive at the total FFP for the task order. Payment of FFP task orders may be negotiated. Payment will be based on the completion of milestones.

T&M and LH Task Orders

(2) For T&M and LH task orders, the quantity of hours ordered of each labor category will be specified as deliverable hours billable at the rates specified in the schedule or as negotiated, if lower rates are proposed for the task order. For T&M task orders, travel and ODCs will be estimated for each task order and burdened with the ODC multiplier specified in this schedule. Profit on travel and ODCs is not allowable. The cumulative extended total of all labor categories ordered plus travel and ODCs will define the task order ceiling price. The government will not reimburse the contractor for costs incurred beyond the ceiling price, for hours not delivered, for hours delivered but in excess of the quantities ordered for a particular labor category, or for travel and ODCs exceeding the ordered pool amount. Labor dollars will not be used to pay for ODCs nor ODC dollars used to pay for labor without a contract modification.[12]

GAO did not take issue with the establishment of such ceiling rates, which is much like the model invoked in the Federal Supply Schedule (FSS) program (see FAR 8.405-4 regarding price reductions). As noted, many MA/IDIQs do not establish ceiling rates, as deemed appropriate for the specific scope of those vehicles. However, when benchmark, ceiling, or definitive pricing parameters are established, ordering contracting officers should avail themselves of the advantages these features can offer in establishing streamlined ordering procedures. Evaluation of responses submitted at the order level also will be easier, since the maximum rates are specified in the contracts and it will be easy to verify whether the proposed rates exceed the ceilings. In addition, agencies will be better able to estimate the costs of orders when they know the maximum labor rates that may be charged by contractors, which would be of great assistance in the budgeting process.

What about ceiling rates for cost-reimbursement orders?

When responding to a cost-reimbursement order request, contractors generally propose the labor categories, hourly rates, and level-of-effort necessary to perform the work. Added to the labor costs are the contractor's overhead, general and administrative expenses, profit, and other direct costs, such as travel. It differs from T&M and LH hourly rates, which are fully loaded rates containing the overhead, general and administrative expenses, and profit costs within the offered hourly rate.

For example, in one agency MA/IDIQ solicitation we reviewed, offerors were required to provide fully loaded rates to be used for pricing T&M and LH orders. However, the solicitation did not require that rates be established in the basic contract for cost-reimbursement orders but allowed those rates to be proposed at the time of order placement:

B.3.3. Cost Plus Fixed Fee (CPFF) or Cost Plus Award Fee (CPAF) Type Task Orders

All TOs issued on a Cost Reimbursement basis will be priced in accordance with approved DCAA [Defense Contract Audit Agency] (or FAR Part 31) rates. Direct and indirect cost rates will be established on a TO basis. For Cost Reimbursement task orders, the Contractor will provide complete supporting information identifying all applicable direct and indirect rate estimates building up to the TO cost. Offerors with approved DCAA rates should submit their most recent provisional indirect billing and actual rates for both direct and indirect rates. Offerors without audited rates shall propose indirect rates in accordance with FAR Part 31. The fee will be negotiated for each TO consistent with statutory limitations. If the TO type is to be CPAF, the fixed portion of fee and the award portion will be clearly differentiated. Payment from the award fee pool will be based on the standards and procedures outlined in Section I.15, I.16 and I.17.[13]

Although this solicitation was protested, and the protest was sustained on several grounds, none of the protested grounds dealt with the issue of establishing ceiling values in the basic contracts that would constrain the pricing of cost-reimbursement orders.[14]

Can the basic MA/IDIQ contracts require contractors to submit prices lower than the ceiling rates when responding to order requests? If not, can we require it at the order level?

We have no examples of such language being used by agencies or reviewed by GAO outside of the practice established in the FSS program. We believe the government cannot require contractors to submit responses with rates lower than the ceilings. Arguably, it raises questions about the value and purpose of expending the effort and

resources to propose, evaluate, and establish in the MA/IDIQ pricing that can never be used in an actual order.

However, we believe the FSS program model, in which contractors are requested—even "encouraged" but not required—to submit order pricing discounted from the IDIQ, could be extended to other MA/IDIQ venues. Use of any such approach will need to be in consonance with whatever pricing parameters have been established by the issuing agency in the basic MA/IDIQs. IDIQ holders developing their pricing for a specific order can consider whether they can offer lower prices as a means of enhancing their competitive status for a specific requirement.

Obviously, FSS contracts are set up with the appropriate pricing provisions. At least some GWACS can accommodate such an approach. Instead, at the IDIQ level they may contain "benchmark rates." Contractors may propose above the benchmark rates if they provide supporting rationale. In cases when the MA/IDIQ contracts contain labor rates, it is important to conform to the terms of the MA/IDIQs when soliciting for task (or delivery) orders in defining the pricing instructions. For example, if the rates in the MA/IDIQ have been established as ceiling rates, the order requests may contain language similar to that below; the last sentence is derived from FAR 8.405-4 for FSS contracts and may help allay contractor concerns that they will be required to offer reductions on all orders if they do so for one:

> **Pricing Individual Task/Delivery Orders**
>
> When responding to requests for specific task or delivery orders, the contractor may not propose labor rates in excess of those specified in [insert appropriate section] of the basic contract. To enhance its competitive standing, the contractor is encouraged to offer rates lower than those specified in the basic contract. The contractor is not required to pass on to all ordering activities a price reduction offered to an individual ordering activity for a specific order.

The bottom line for pricing: make sure you know what the basic MA/IDIQ contracts already provide and require with respect to pricing and ensure the contractors responding to your request adhere to those requirements, as well as any contained in the order request.

DOCUMENTATION REQUIREMENTS

What documentation must be developed for individual orders?

FAR 16.505(b)(5) requires that the contracting officer document, for all orders, the rationale for placement and price of each order, including the basis for award and the rationale for any trade-offs among cost or price and non-cost considerations in making the award. This documentation need not quantify the trade-offs that led to the decision, but it needs to clarify the decision-making process.

If prices are not established in the basic contract, the contracting officer will need to establish and document prices in accordance with the policies and methods in FAR subpart 15.4. In addition, for orders exceeding $5.5 million, when award is made on a trade-off basis (where the government may consider award to other than the lowest priced contractor or highest technically rated contractor), prepare a written statement documenting the basis for award and the relative importance of quality and price or cost factors, per FAR 16.505(b)(1)(iv)(D).

If we're using a streamlined procedure, can our documentation be streamlined?

To some degree. While not as formal as a source selection decision document in a FAR part 15 negotiated process, the order documentation needs to support the decision in the event of an audit or protest. There is no requirement to capture relative strengths, deficiencies, significant weaknesses, and risks as outlined in FAR 15.305. You can really streamline the evaluation by using pluses/minuses, acceptable/unacceptable, or simple narrative statements as long as you fully justify your ultimate award decision. Also, keep in mind that, in the event of a protest or other challenge, the contemporaneous documentation of the decisions made and their basis will be the best evidence of the propriety of your actions.

Document accurately and as completely as the situation warrants. Think about what you need to capture to show you followed the terms of the solicitation and treated all firms fairly and reasonably. "[I]t's . . . more of an art than a science. You have to do enough to ensure that everybody knows what you did. But you don't want to write a book about it," one official noted. A template for this document is available on the VAO website.[15]

PROTESTS

Can task and delivery order awards be protested?

Yes. Contractors may protest:

- Increases in contract scope, period, or maximum value
- Any order over $10 million. This authority expires on September 30, 2016, for agencies other than the Depart-

ment of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard (41 U.S.C. 4103(d) and 41 U.S.C. 4106(f)). The authority to protest the placement of an order exceeding $10 million does not expire for DoD, NASA, and the Coast Guard.

GAO has exclusive jurisdiction to consider task and delivery order protests over $10 million. This means that protests of task and delivery orders exceeding $10 million may be filed only with GAO and not with the Court of Federal Claims (COFC). A protestor unsatisfied with a GAO decision may not refile a protest with the COFC. GAO can resolve procurement controversies more quickly and less expensively due to its stricter deadlines and informal procedures; however, it can only recommend a remedy upon finding a procurement violation, as its rulings do not legally bind the parties involved in a protest.

Has GAO's authority to hear task and delivery order protests affected the number of protests filed?

Yes, and the numbers have been rising. In the past several years, the total number of protests filed at GAO that pertain to task and delivery orders has approximately doubled to about 11 to 13 percent of the overall total number of protests received. This actually may not be as significant as it first appears, given the large total quantity of task and delivery order competitions versus all competitions and the number of times that FAR part 15 or 15-like procedures are found to have been used, but it is worthy of note.

	# Protests Filed	# Task/Delivery Order Protests	Task/Delivery Order Protest % of Total
FY15	2,496	335	13.4%
FY14	2,445	292	11.9%
FY13	2,298	259	11.3%
FY12	2,339	209	8.9%
FY11	2,353	147	6.2%

Source: GAO Annual Reports to Congress: FY 2011–2015

Are there any lessons learned about a streamlined ordering process from protests for task and delivery orders?

Our research did not produce any lessons learned specifically related to the use of a streamlined ordering process. As previously stated, some of the streamlined techniques discussed in this *Advisory* have not yet been the subject of protests. However, many contracting officers are using FAR part 15 procedures to award orders, as evidenced by the fact that the protests we reviewed for task and delivery orders did appear to involve using FAR part 15 (or 15-like) procedures. Consequently, the issues and lessons learned are essentially the same as for acquisitions conducted under FAR part 15 procedures.

Many protests of task and delivery order awards related to the agency's evaluation of the technical responses and were denied on the following basis:

> The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶63 at 6; Optimal Solutions & Techs., B-407467, B-407467.2, Jan. 4, 2013, 2013 CPD ¶20 at 6. In reviewing protests challenging an agency's evaluation of proposals, even in a task order competition, we do not reevaluate proposals, but rather we examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Technology Concepts & Design, Inc., B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD ¶78 at 8. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶48 at 7.[16]

In its 2015 report to Congress, GAO outlined the most prevalent reasons for sustained protests overall:

> Of the protests resolved on the merits during fiscal year 2015, our Office sustained 12 percent of those protests. Our review shows that the most prevalent reasons for sustaining protests during the 2015 fiscal year were: (1) unreasonable cost or price evaluation; (2) unreasonable past performance evaluation; (3) failure to follow evaluation criteria; (4) inadequate documentation of the record; and (5) unreasonable technical evaluation.

GAO provided an illustrative case for each of the five reasons. We provide those below for your information.

- **Unreasonable cost or price evaluation.** GAO decision B-408694.7 (November 3, 2014). GAO found that the agency's cost realism analysis was unreasonable where the record failed to show the agency conducted an independent assessment of whether proposed labor hours, skill mix, and labor mix were sufficient to successfully perform the requirement.
- **Unreasonable past performance evaluation.** GAO decision B-411015.2; B-411015.3 (April 22, 2015). GAO

found the agency failed to consider available past performance information concerning key personnel.

- **Failure to follow evaluation criteria.** GAO decision B-411608; B-411608.3 (September 14, 2015). GAO found the agency unreasonably failed to consider whether the awardee's proposal to relocate employees posed a risk inconsistent with the solicitation requirement to evaluate the extent to which the proposed staffing plan ensured that appropriately qualified staff members would be available on an ongoing basis.
- **Inadequate documentation of the record.** GAO decision B-410486 (January 2, 2015). GAO found the agency failed to document why it changed its ratings where the offerors did not increase proposed staffing levels commensurate with the agency's discussion questions.
- **Unreasonable technical evaluation.** GAO decision B-410454.2 (January 15, 2015). GAO found the agency erred in concluding that the labor categories included on the awardee's Federal Supply Schedule contract encompassed the requirements of the task order.

The last GAO decision is an important one, as the lesson learned is directly applicable to MA/IDIQ contracts, that is, make sure the proposed order falls within the MA/IDIQ's scope. Several of the MA/IDIQ-awarding agencies offer "scope reviews" to ensure an ordering agency's proposed requirement appropriately falls under the MA/IDIQ before an agency goes too far down the road.[17] We encourage ordering contracting officers to take advantage of this service, where offered.

ASI Government's protest lessons learned module offers a unique way to build and showcase your protest intelligence using our lessons learned center, case studies, protest risk meter, and traceability matrix, as well as our existing library of 1,000-plus protest case decisions summarizing the key takeaways.[18] The protest case decisions have keywords that identify protests related to task and delivery orders, so it's easy to find those quickly.

Conclusion

Agencies should take advantage of the flexibilities offered by FAR subpart 16.5. We understand that many contracting officers are reluctant to award orders for millions of dollars in a streamlined fashion, but that is exactly what FASA and, by extension, the FAR envision. We hope this *Advisory* provides food for thought about how the ordering process can be streamlined, and that readers take notice that some individuals have accomplished just that.

As a parting thought, consider this quote from one of the officials we spoke with: "Why would FAR subpart 16.5 exist if it isn't different from FAR subpart 15.3?" Why indeed. ♦

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Endnotes

1 "Multiple-Award IDIQ Contracting: A Guide to the New Regulatory Requirements and Other FAQs," ASI Government Advisory, April 2012; https://www.gotovao.com/index.cfm?action=comment&id=0430047185000443#.

2 See Inquiry Research Response dated February 27, 2015; https://www.gotovao.com/index.cfm?action=comment&v2&id=0200055974000443#.

3 "Best Practices for Multiple Award Task and Delivery Order Contracting," Interim Edition, Office of Federal Procurement Policy, July 1997; https://www.whitehouse.gov/omb/best_practices_multi_award/.

4 Matter of: Bay Area Travel, Inc.; Cruise Ventures, Inc.; Tzell-AirTrak Travel Group, Inc. (B-400442; B-400442.2; B-400442.3; B-400547; B-400547.2; B-400547.3; B-400564; B-400564.2; B-400564.3), Government Accountability Office, November 5, 2008; http://www.gao.gov/decisions/bidpro/400442.pdf.

5 Matter of: Sapient Government Services, Inc. (B-412163), January 4, 2016; http://www.gao.gov/assets/680/674778.pdf.

6 Available at https://www.congress.gov/103/bills/s1587/BILLS-103s1587enr.pdf.

7 Matter of: Harris IT Services Corporation (B-411699; B-411796), Government Accountability Office, October 2, 2015; http://www.gao.gov/products/D12018.

8 Matter of: AMEC Programs, Inc.; Bechtel National, Inc. (B-408708; B-408708.2), December 4, 2013; http://www.gao.gov/assets/670/661221.pdf. GAO did not take issue with the approach under which the agency established a prequalification phase consisting of the evaluation of proposals based on two factors: security requirements and staffing considerations, not price. Offerors were informed that only the five "most qualified offerors" would be invited to compete for the second phase. The decision documents without comment that the downselect to five offerors was conducted and the agency proceeded to conduct the source selection phase, and the basis of the second phase selection, i.e., the award decision, was protested.

9 For example, see "Oral Presentations: Decisions, Considerations, and Best Practices," ASI Government *Advisory*, December 1997; https://www.gotovao.com/index.cfm?action=comment&v2&id=0430003464000443.

10 Template available at https://www.gotovao.com/index.cfm?action=comment&id=0570060035000443.

11 Matter of: I.M.Systems Group (B-404583, B-404583.2, B-404583.3), Government Accountability Office, February 25, 2011; http://www.gao.gov/assets/400/391718.pdf.

12 Department of Commerce, National Oceanographic and Atmospheric Administration, Solicitation DG133E-10-RP-0038; https://www.fbo.gov/?s=opportunity&mode=form&id=c12dca0b5fd4d39d0d59d6e8a00a1106&tab=core&_cview=1.

13 Department of Homeland Security, Solicitation HSHQDC-09-R-00001; https://www.fbo.gov/?s=opportunity&mode=form&id=7608f9725a6ecae4d222a331f3d971fa&tab=core&_cview=1.

14 Matter of: Global Computer Enterprises, Inc.; Savantage Financial Services, Inc. (B-404597; B-404597.2; B-404597.3), Government Accountability Office, March 9, 2011; http://www.gao.gov/decisions/bidpro/404597.pdf.

15 Template available at https://www.gotovao.com/index.cfm?action=comment&id=0570043457000443#.

16 Matter of: Booz Allen Hamilton, Inc.; Leidos Inc. (B-410032.4; B-410032.5; B-410032.6), Government Accountability Office, March 16, 2015; http://www.gao.gov/assets/670/669211.pdf.

17 For example, see scope reviews offered under the Alliant GWAC at http://www.gsa.gov/portal/content/308693.

18 From the VAO Home Page, click on the Protest Lessons Learned Module tile or tab.

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Attachment 1

TEMPLATE for TASK ORDER REQUEST

This template provides ideas and suggestions for streamlined task order requests. It is *not* a minimum requirement format; both our recommended structure and the majority of the specific content entries— including both the requirement and the specific MA/IDIQ requirements—in the attached are subject to tailoring whenever appropriate to the specific situation.

Consider the following:

- *What is the dollar value?*
- *What requirements are imposed/flexibilities are allowed by the terms of the MA/IDIQ?*
- *What does the government need to know to discern among potential sources and select the best value solution?*
- *How does the specific nature and complexity of the requirement drive this?*

FAR 16,505(a) requires certain specific information to be included in any IDIQ order; at least the following elements of those requirements for the ultimate order should be a part of the agency's task order request:

> (2) Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. ...
>
> (7) ... (ii) Contract number and order number.
>
> (iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.
>
> (iv) Delivery or performance schedule.
>
> (v) Place of delivery or performance (including consignee).
>
> (vi) Any packaging, packing, and shipping instructions.
>
> (viii) Method of payment and payment office, if not specified in the IDIQ

TASK ORDER REQUEST

I. IDENTIFYING INFORMATION

Order Request Number: *[Insert an agency-designed order request number, identification number, etc.]*

Order Request Date: *[Insert the date of the order request.]*

Project Title: *[Insert the title of the order requirement, e.g., Information Technology Support Services.]*

Ordering Agency: *[Insert the ordering agency.]*

Ordering Agency Point of Contact: *[Insert the name and contact information for the ordering agency point of contact. This will generally be the ordering contracting officer or contract specialist.]*

Contract Instrument: *[Insert the MA/IDIQ contracts against which this order will be issued, e.g., GSA's Alliant GWAC, NASA's Solutions for Enterprise-wide Procurement GWAC, etc. If there are separate pools, such as an unrestricted pool and a small business pool, also identify the applicable pool.]*

NAICS Code and Size Standard: The North American Industry Classification System (NAICS) code for this acquisition is *[insert NAICS code]*. The small business size standard is *[insert size standard]*.
{If applicable – may not be required for some MA/IDIQs or specific requirements.}

II. GENERAL INFORMATION

a. Purpose

This is a task order request for a task order to be awarded under the contract instrument identified above *[or specifically identify the instrument as it was stated above]*. The task order will be awarded on a fair opportunity basis pursuant to the Federal Acquisition Regulation (FAR) 16.505 ordering procedures, the applicable terms and conditions of the *[contract instrument]*, and the specific requirements of this task order request.

b. Scope

The government is seeking responses from contractors describing their technical approach and the cost/price for meeting the government's requirements as outlined in the *[insert statement of work (SOW), performance work statement (PWS), or statement of objectives (SOO)]*. The scope of the requirement is *[insert a brief description of the scope and general purpose of the project, e.g., modernization and maintenance support for specific agency systems, etc.].*

c. Task Order Type

The government contemplates award of a *[insert the anticipated order type, e.g., firm-fixed-price, cost-reimbursement, time-and-materials, labor-hour, hybrid, etc.]* type order.

d. Notice of Order Set-Aside *[if applicable]*

This task order request is set aside for small business *[or applicable small business category, such as service-disabled-veteran-owned small business]* concerns. Responses received from concerns that are not *[insert applicable small business category]* shall be rejected. Only contract holders that are currently identified as *[insert applicable small business category]* may submit a response to this task order request.

OR

d. Notice of Unrestricted Order

This task order request is issued on an unrestricted basis. All contract holders, whether large or small business concerns, may submit responses. {For some MA/IDIQ venues, e.g., total set-aside venues, neither version of d. will be necessary.}

e. Submission of Written Questions

All questions regarding this task order request shall be submitted *[insert the format, e.g., e-mail, etc.]* no later than *[insert date and time]* to *[insert point of contact name and contact information, e.g., e-mail address; or, if the point of contact is the individual named above, refer to that individual]*. Questions received after this date and time may not be answered prior to the closing date/time for receipt of responses.

III. STATEMENT OF WORK, PERFORMANCE WORK STATEMENT, STATEMENT OF OBJECTIVES

[Insert the SOW, PWS, or SOO for the task order requirement. Include performance standards and metrics that will apply to a performance-based PWS, or performance measurements that will be used to verify non-performance-based services.

If there is a schedule of deliverables, include a table showing the deliverables and due dates or timeframes.]

IV. PERIOD OF PERFORMANCE

[Insert the period of performance, including whether options are contemplated, e.g., a one-year base period and four, one-year option periods. If there is an estimated or required start date, identify that date.]

V. CONTRACT CLAUSES

[Insert any provisions or contract clauses that are applicable to this TOR and not identified in the MA/IDIQ contracts order. These will most commonly be agency-specific clauses. If the order will include options, insert the appropriate option clause(s) and ensure all blanks are filled in with unambiguous terms.

Ensure that any added clauses do not conflict with the basic MA/IDIQ contracts.

Do not insert clauses that are already contained in the basic MA/IDIQ contract and identified to automatically flow-down unless a fill-in is required. Clauses that are not specifically identified in the MA/IDIQ contract as automatically flowing down to orders may need to be included.

Minimize this section as much as possible – unnecessary and nice-to-have provisions and clauses are the bane of streamlined ordering procedures and often cost the agency through higher-than-necessary prices for compliance.]

VI. EXHIBITS AND ATTACHMENTS

[Insert any required exhibits and attachments, if applicable.]

VII. RESPONSE PREPARATION INSTRUCTIONS AND SUBMISSION

a. General Instructions for Responses

[Describe how the responses are to be submitted. Be sure to keep submission requirements to a minimum. If there is a specific format that must be used, such as for preparation of the cost/price information, provide it to the contractors. Indicate if there are any page limitations.

Some sample language is provided below for illustrative purposes only. Tailor your needs to your specific requirements and factors.]

Contractors are strongly encouraged to carefully review the *[SOW, PWS, or SOO]*, evaluation factors, and these submittal instructions when providing the written response.

Contractors must submit their written response in two separate documents: technical and price. Use letter-sized (8-1/2" X 11") pages, single-spaced, with one inch (1") margins. One page equals one side of a sheet of paper. Any pages in excess of the page limitations imposed on the technical submission herein will not be considered.

Number the pages consecutively and use an 11-point font size in an easily readable font, such as Calibri or Arial. Nine (9) point font size and single spacing is acceptable for any tables, graphics, and illustrations; however, do not submit an abundance of information in chart format. The page limitations shown below do not include any "front matter" information such as a cover letter, table of contents, and definitions or acronyms. Any technical or pricing information submitted within the "front matter" will not be considered.

b. Technical Submission Instructions

[The instructions below address some relatively common needs for receiving and evaluating responses. Very often, ordering contracting officers may not need to obtain contractor qualifications information since MA/IDIQ contractors have been "prequalified" as capable through the award process for the MA/IDIQ. If specific licenses or certifications are required for a given order, identify them—unless those requirements are already required in the qualifications for MA/IDIQ holders. Minimize, don't replicate, the MA/IDIQ, but don't omit specific needs.

Some information portraying the technical methodology/approach and displaying the contractor's understanding of the requirement will most often be appropriate. For some very familiar types of requirements, only resumes of key personnel or past performance may be necessary. For other requirements, resumes may be omitted.

When following a lowest price technically acceptable (LPTA) source selection ensure that clear, objective, measurable technical acceptability standards are fully articulated with nothing unnecessarily identified.

For requirements focusing on obtaining innovative/unique approaches, the contractor's proposed deliverables and internal schedules for completing the effort by the government-defined completion date may be very important; for others, a commitment to meet the government's specified deliverables and schedules may be sufficient.

This is a major area that should be considered ripe for tailoring to streamline the entire process. For example, technical and price factors need not be evaluated separately, in which case, simplifications will dovetail into the proposal preparation instructions in VII.a. above (two separate sections would not be required) and into evaluation and selection, Sections IX and X below.

Sample language is provided below for illustrative purposes only. Tailor your needs to your specific requirements and factors.]

Contractors must address the following elements:

- Technical understanding of the requirements
- Technical and qualitative descriptions of the proposed methodology, deliverables, and delivery schedule that will be used to accomplish the requirement
- Past performance

Contractors are requested to describe the proposed methodology and personnel or staffing assumptions with respect to this effort, showing a direct relationship between the approach and meeting the identified requirements. This section may not exceed *[insert number of pages]*.

Submit resumes of proposed key personnel. Each resume may not exceed *[insert number of pages.]*
{Or use agency-provided templates to be submitted to simplify evaluation – especially comparative.}

Contractors are requested to submit descriptions of no more than two (2) projects similar in scope and size performed during the past two (2) years under this MA/IDIQ contract, including references. Sufficient information should be included to allow the government to contact the agencies served and assess the quality of the services provided. If no orders have yet been awarded under this MA/IDIQ contract, information may be submitted on work performed outside of this MA/IDIQ contract. This corporate experience/ past performance information may not exceed *[insert number of pages]*.

{This is another area where using a template can simplify for offerors and evaluators}

c. Price Submission Instructions

[Describe how you want the contractors to submit their pricing information and any other pricing information that you will need, such as current Defense Contract Audit Agency (DCAA) rate approvals, pricing template, etc.

Because of the variety of order types that can be issued against most MA/IDIQ contracts, the submission requirements must be tailored to the specific contract type for the order. For example, pricing information for a cost-reimbursement task order will be more detailed than pricing information for a firm-fixed-price task order. However, do not ask for information that was already submitted and approved for the award of the basic MA/IDIQ contracts.

Generally, page limitations are not imposed on the pricing information].

d. Oral Presentation *[if applicable]*

[If oral presentations are used, describe what their purpose is, e.g., they will be used to determine the contractor's technical understanding of the requirement, in which case, don't ask for that information in writing; or they will be used to augment the written response.

Advise the contractors that a notice of the oral presentation will be provided after receipt of the responses that will provide the date, time, location, and other particulars of the oral presentation, such as recording of the presentations.]

VIII. RESPONSE DUE DATE, SUBMISSION MODE AND LOCATION

[Insert the date and time the written responses are due. Insert the location to which the responses must be sent and the manner in which they may be provided, e.g., electronically, paper, etc.

Indicate whether responses received after the established date and time will still be accepted for consideration.]

IX. EVALUATION FACTORS AND EVALUATION METHODOLOGY

[Describe the evaluation factors that will be used to determine best value. Limit factors to those that are necessary to effectively discriminate among the responses.

If trade-offs will be used, indicate the relative importance of the technical factors and cost/price.

For price evaluation, indicate that prices will be (1) evaluated based on established prices in the basic MA/IDIQ contract for a specific supply or service; or (2) if the MA/IDIQ contract did not establish the price for the supply or service, the prices MUST BE established using the policies and methods in FAR subpart 15.4 – see FAR 16.505(b)(3).

Some sample language is provided below for illustrative purposes only. Tailor your needs to match your specific requirements and factors.]

Evaluation will consider technical factors and price. In the evaluation, technical is significantly more important than price. However, price will become more important when technical among the responses is more equal. The government will perform a price/technical trade-off analysis to select the best-suited contractor that provides the best value.

The government will evaluate the written responses, oral presentations (if used), and price submissions to select the best-suited contractor. The contractor that, in the government's estimation, provides the greatest overall benefit in response to the requirement will be selected for the task order award. The government will base this determination of which contractor provides the greatest overall benefit in terms of the evaluation factors stated below and will use the evaluation process described below to arrive at this determination.

a. Technical Evaluation Factors and Evaluation Methodology

Responses will be evaluated in terms of quality, depth, and relevance of information presented in response to this task order request. In evaluating the technical response, the three technical factors (technical understanding of the requirements, key personnel, and corporate experience/past performance) are listed in descending order of importance. Technical understanding is moderately more important than the other two technical factors combined, and key personnel is slightly more important than corporate experience/past performance.

Technical Factor	Basis of Evaluation
Technical Understanding of the Requirements, Deliverables, and Delivery Schedule	The government will evaluate the contactor's technical approach to ensure a complete understanding of the services to be performed and to ensure the methodology successfully meets the requirements of the task order *[SOW, PWS, or SOO]*.
Key Personnel	The resumes submitted by the contractor will be evaluated to assess the availability and qualifications of the proposed staff, their experience in similar projects, and their capability to fully and professionally accomplish the requirements stated herein.
Key Personnel Corporate Experience/Past Performance	Responses will be evaluated to assess corporate experience with respect to projects similar in scope and size to the work described herein. Past performance will be evaluated to determine the contractor's quality, timeliness, and cost control on previous work.

b. Price Evaluation Factor and Evaluation Methodology

Information in the price response will be shared with the technical evaluators for consideration in determining which contractor is best suited to perform the work.

Responses will be evaluated using the cost/price analysis methods of FAR subpart 15.4. The contractor may not offer hourly rates in excess of those established in the basic MA/IDIQ contract. To enhance its competitive standing, the contractor is encouraged to offer rates lower than those specified in the basic contract.

The contractor's proposed labor mix, number of hours proposed for each labor category, and hourly rates for each labor category will be evaluated to determine cost/price reasonableness.

X. SELECTION AND AWARD

a. Fair Opportunity

This task order request is conducted under the fair opportunity guidelines of FAR 16.505, which outlines the ordering procedures for orders issued under MA/IDIQ contracts and section *[insert applicable contract section]* of the contract. Award will be based on a determination of best value to the government, price and other factors considered. "Best value" means the expected outcome of an acquisition that, in the government's estimation, provides the greatest overall benefit in response to the requirement. Best value evaluation is, in and of itself, a subjective assessment by the government of the proposed solution that provides the optimal results to the government.

This method does not use any aspects of FAR subpart 15.3. The use of this fair opportunity process does not obligate the government to determine a competitive range, conduct discussions with any contractors, solicit proposals or revisions thereto, or use any other source selection techniques associated with FAR subpart 15.3.

b. Comparative Analysis

Following receipt of responses (including oral presentations, if used) to this task order request, the government will perform a comparative analysis (comparing contractor responses to one another) to select the contractor that is best suited to fulfill the requirements, based on the contractors' responses to the factors outlined in this task order request and their relative importance.

c. Award on Initial Responses

The government anticipates selecting the best-suited contractor from initial responses, without engaging in exchanges with contractors. Contractors are strongly encouraged to submit their best technical solutions and price in response to this task order request.

d. Exchanges with Best-Suited Contractor

Once the government determines the contractor that is the best-suited (i.e., the apparent successful contractor), the government reserves the right to communicate with *only* that contractor to address any remaining issues, if necessary, and finalize a task order with that contractor. These issues may include technical and price. If the parties cannot successfully address any remaining issues, as determined pertinent at the sole discretion of the government, the government reserves the right to communicate with the next best-suited contractor based on the original analysis and address any remaining issues. Once the government has begun communications with the next best-suited contractor, no further communications with the previous contractor will be entertained until after the task order has been awarded. This process shall continue until an agreement is successfully reached and a task order is awarded.

e. Pre-Submission Conference

[If a pre-submission (or pre-response) conference will be held, provide the necessary information, such as date, time, location (or if virtual, so indicate), etc. Clarify the purpose of the conference, e.g., whether the purpose is only to explain the award process or whether contractors will be provided an opportunity to ask questions about the work requirements.]

[Some sample language is provided below for illustrative purposes only.]

The government will conduct a virtual pre-submission conference on *[insert date and time; be sure to indicate time zone, e.g., 10:00 AM Eastern Time]* to allow contractors the opportunity to hear the government's explanation of the fair opportunity award process used in this task order request.

This virtual pre-submission conference will not be an opportunity to ask questions regarding the requirement set forth in the *[insert SOW, PWS, or SOO]*. The government intends to only address questions pertaining to the fair opportunity award process. While attendance is not mandatory, information presented during this conference may be valuable and will not be provided by other means or at any other time. Contractors who choose not to participate do so at their own risk.

Contractors wishing to participate in the conference must contact *[insert contact information, e.g., name, e-mail, telephone number, etc. of government official]* by *[insert date and time for requests to participate]*. That individual will issue an e-mail to all interested contractors containing the virtual pre-submission conference dial-in instructions.

XI. REPRESENTATIONS AND CERTIFICATIONS

[Insert any representations and certifications that will be applicable to the order. These will most commonly be agency-specific provisions. Do not include representations and certifications that were already provided for the award of the basic MA/IDIQ contracts.]