

# Why COs love FAR 16.5

---

Knowledge & Insights From Contracting Officers



**SKYWAY  
ACQUISITION  
SOLUTIONS**

**WHY**



**SKYWAY  
ACQUISITION  
SOLUTIONS**

The government (all players) have more flexibility  
when using IDIQ contracts

They have even MORE flexibility when using  
multiple award IDIQ contract



# Key elements of IDIQ Orders...16.505(a) (3 of 12)

- (1) In general, the CO **does not synopsise orders** under IDIQ contracts
  
- (2) Orders **shall be within the scope**, issued within the period of performance, and be within the maximum value of the IDIQ contract.
  
- (10) (i) **No protest** under [subpart 33.1](#) over issuance of an order, **except** for—
  - (A) A protest on the grounds that the order is out of scope (POP, or maximum value, etc)
  - (B) over \$25M for DoD, NASA, or the Coast Guard and over \$10 for everyone else



**HOW**



# The decision path to Fair Opportunity contract

**Decision 1:** IDIQ contracts. flexible contract type that includes one overarching set of rules against which ORDERS are made (see CO Podcast ep 066)

**Decision 2:** IDIQ as MULTIPLE award

**Decision 3:** The Fair Opportunity Process (how to compete the orders)

A: Application

B: Shalls vs Shoulds vs "best practices" in Fair Opportunity

C: Awarding without competition in Fair Opportunity



# Fair Opportunity application...FAR 16.505(b)(1)

(i) CO **must** provide each awardee a fair opportunity to be considered for each order >\$3,500 under MAC IDIQs, unless awarding w/o competition (see FAR 16.505(b)(2))

(ii) CO **may** exercise **broad discretion** in developing **appropriate** order placement procedures and **should** keep submission requirements **to a minimum**. CO **may** streamline procedures...



## 5 Fair Opportunity “musts” FAR 16.505(b)(1)(ii)(A-E)

- (A) Develop placement procedures that provide each awardee a fair opportunity and reflect the requirement and ***other aspects of the contracting environment***;
- (B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration for all;
- (C) ***Tailor*** the procedures to each acquisition;
- (D) Include the procedures in the solicitation and the contract; and**
- (E) Consider price or cost under each order.





# Questions

- Kevin Jans – look me up on LinkedIn  
kevin@skywayacquisition.com
- FREE Contracting Officer Podcast –  
[contractpodcast.com](http://contractpodcast.com)
- Skyway Acquisition – [skywayacq.com](http://skywayacq.com)

# NOTES



# Fair Opportunity “SHALLS” (Part 2.1)

- 16.505(b)(1) (iii) Orders exceeding the simplified acquisition threshold.
- (A) Each order exceeding the simplified acquisition threshold shall be placed on a competitive basis...unless supported by a written determination to not compete it
- (B) The contracting officer **shall**—
  - (1) Provide a fair notice of the intent to make a purchase, including a clear description of what is being bought and how selection will be made; and
  - (2) Afford all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.
  - (iv) **Orders exceeding \$5.5 million. For task or delivery orders in excess of \$5.5 million**, the requirement to provide all awardees a fair opportunity to be considered for each order shall include, at a minimum—
    - (A) A notice of the task or delivery order that includes a clear statement of the agency’s requirements;
    - (B) A reasonable response period;
    - (C) Disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance;
    - (D) Where award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and price or cost factors; and
    - (E) An opportunity for a postaward debriefing in accordance with paragraph (b)(6) of this section.



# Fair Opportunity "shoulds" (Part 2.2)

- 16.505(b)(1)(v)(A) The contracting officer **should** consider the following when developing the procedures:
  - (1) Past performance on earlier orders under the contract, including quality, timeliness and cost control.
  - (2) Potential impact on other orders placed with the contractor.
  - (3) Minimum order requirements.
  - **(4) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.**
  - **(5) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—**
    - **(i) Seeking comments from two or more contractors on draft statements of work;**
    - **(ii) Using a multiphased approach when effort required to respond to a potential order may be resource intensive (e.g., requirements are complex or need continued development), where all contractors are initially considered on price considerations (e.g., rough estimates), and other considerations as appropriate (e.g., proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.**



# Fair Opportunity Orders w/o competition (Part 3)

- 16.505(b)(2) *Exceptions to the fair opportunity process.*
- (i) exceptions include:
  - (A) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
  - (B) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.
  - (C) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.
  - (D) It is necessary to place an order to satisfy a minimum guarantee.
  - (E) For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source.
  - (F) In accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in [19.000\(a\)\(3\)](#). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in part 19 apply.

