

Fair Opportunity Guidance for Designated Agency Officials (DAO's) under the CONNECTIONS Contracts

Overview

There are seventeen Indefinite Delivery - Indefinite Quantity (IDIQ) multiple award CONNECTIONS contracts. Therefore the Fair Opportunity process described in the Federal Acquisition Regulation (FAR) 16.505(b) applies.

This document is intended to serve as guidance and advice based upon practical experience. It does not supercede any requirements of the FAR or any Department/Agency policies. It is the responsibility of the Designated Agency Official (DAO) to ensure complete adherence to the FAR and any additional internal procedures.

The Federal Technology Service (FTS) has gained significant familiarity and knowledge of the fair opportunity process. This experience is captured herein as it applies to CONNECTIONS. The general guidance falls into three areas. First, the process should be planned, fair and consistent. Second, the total cost should be considered over the full life of the Delivery or Task Order. Third, full and complete documentation is vitally important and must be able to withstand the scrutiny of an audit.

The DAO must provide a fair opportunity to all CONNECTIONS awardees in a given category: Category 1 - Equipment and Services; Category 2 - Support Services; or Category 3 - Solutions. The DAO will exercise sound judgment, consistent with the business and mission requirements of the customer agency when considering a Delivery or Task Order award. The fair opportunity process should be straightforward, simple, and reflective of the nature of the telecommunications infrastructure product, service or solution being procured.

NOTE:

There is no FAR requirement to communicate any ordering award decision to the contractor(s) that did not receive a particular order. However, it is good business practice and will serve to strengthen communications and relationships with our industry partners. It may also help our industry partners to improve their competitiveness on future awards. Providing information to industry partners across the process, particularly on large orders, is encouraged. This would include informing all vendors of planned fair opportunity criteria in advance and informing all vendors when an order has been awarded. It would be appropriate for the DAO or their appointee to notify vendors via written communication (i.e. email or letter).

Potential Sources of Information for Orders Requiring Fair Opportunity (DAO's need to adequately document)

For each proposal, consult the latest available sources of information in relation to equipment, support service or solution requirements. Sources of data may include, but are not limited to the following:

- Published contract prices and any other current contractor-provided information (i.e., marketing materials, product specifications, etc.).
- Information sought and received from the contractors (i.e., price quotes, proposals, technical or price analyses, oral presentations, oral discussions, past performance, etc.).
- Related analyses or other information relevant to decision-making.

When requesting proposals from the awardees, the DAO should indicate the criteria being used in the fair opportunity determination. Note that price or cost must be considered under each order as one of the factors in the selection decision. If the DAO has sufficient information available on-hand to ensure that each awardee is provided a fair opportunity to be considered for an order then the DAO need not distribute a Delivery/Task Order Request before issuing the order. This is not generally recommended under CONNECTIONS, however, because contract ceiling prices can often be negotiated lower and because technical complexities can make direct comparisons using on-hand information difficult.

Decision Methods / Award Methodology (DAO needs to adequately document)

DAO's should approach all orders in a consistent manner. Based on consideration of the available information, one of the following methods will be used in the award decision for each order:

1. The decision may be based solely on relative contract prices without further consideration of other factors. However, the contract prices are ceiling prices and might benefit from further competition.
2. The decision may be based on a combination of price, technical, and past performance considerations appropriate to the particular decision being considered.
(For example, a decision to implement a complex design may weigh technical issues more heavily than a decision to install a single piece of equipment.)

Some awards may be based on low price while others may be based on best value. In a request for quotes, DAO's should tell vendors in advance what the evaluation criteria will be for award. If DOA's plan to use weighted factors, they might list them in descending order of value in lieu of showing percentages.

Preference of a specific vendor **can not** be the basis of an award decision. Sometimes, however, this has been articulated incompletely by the end-customer and it in fact may be based upon sound technical considerations. It is incumbent upon the DAO to determine if this is truly the case, and if so, include these requirements in the fair opportunity analysis. If the end-customer cannot articulate, or the DAO cannot determine legitimate requirements, then an order cannot be placed under the CONNECTIONS contracts.

Criteria for Recommended Documentation

The central theme in complying with Fair Opportunity is proper analysis and documentation. Documentation of the above mentioned items can be unique to the individual but it must contain clear evidence of the rationale used to make the award decision. This evidence must encompass sufficient detail to easily remove any doubt in the mind of a reasonable person that Fair Opportunity methods were utilized.

- In the situation where the sole criterion of the award is lowest price, this must be documented to include evidence that a pricing analysis was developed.
- Price analyses can either be based on contract award prices or responses to a request for quotes from the vendors of the appropriate CONNECTIONS contract category. The request for quotes could secure a lower price but might be weighed against the time/resources it would take to complete the process.
- Price analyses should be all inclusive over the full life of the requirement. (Costs to change from another contract's vendor to a CONNECTIONS vendor should not be included in the analysis.)
- Technical and/or past performance considerations must be thoroughly explained. The rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision must be documented.
- Local conditions can warrant special consideration. Document and disclose.

Department of Defense – Section 803

For all orders exceeding \$100,000 placed against multiple award contracts, which are not part of the Federal Supply Service (FSS) schedules, the contracting officer(s) must contact all awardees that are capable of performing the work and provide them an opportunity to submit a proposal. These proposals then must be fairly considered for the award. The ruling applies to all orders for services placed under multiple award contracts on or after October 25, 2002, regardless of whether the multiple award contracts were awarded before, on, or after, that date. The ruling applies to all orders placed by the Department of Defense (DOD) and non-DOD agencies on behalf of DOD.

Defense Federal Acquisition Regulation Supplement (DFARS) Section 803 language reads that for multiple award contracts, other than FSS Schedule contracts [208.505-70]:

- (c) An order for services exceeding \$100,000 is placed on a competitive basis only if the contracting officer—
- (1) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor shall perform and the basis upon which the contracting officer will make the selection, to all contractors offering the required services under the multiple award contract; and
 - (2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

Exceptions to Fair Opportunity

The Government may issue orders without the fair opportunity process whenever circumstances warrant the exercise of any exception set forth in 41 USC §253j. In the event that any of the Exceptions to Fair Opportunity are employed, the rationale must be thoroughly documented. If the logical follow-on exception is used, the rationale shall describe why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period of performance, or value). In accordance with 41USC §253j, fair opportunity does not apply to orders that are under \$2,500, although to the extent practicable, such micro-purchases shall be distributed equitably among qualified suppliers. Fair opportunity also does not apply to service orders above \$2,500 where the Contracting Officer determines that:

- (1) the need for the equipment or services ordered is of such unusual urgency that providing such opportunity to all contractors would result in unacceptable delays in fulfilling that need;
- (2) only one contractor is capable of providing the equipment or services required at the level of quality required because the equipment or services ordered are unique or highly-specialized;
- (3) the delivery or task order should 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 on a competitive basis; or
- (4) it is necessary to place the order with a particular contractor to satisfy a minimum revenue guarantee.

Examples of Fair Opportunity Exceptions

Exception Provided for by 41 USC §253j [abbreviated description]	Examples of Delivery or Task Order Types that Qualify As Exceptions
Unusual urgency that would lead to unacceptable delays	<input type="checkbox"/> Natural disaster or other emergency needs <input type="checkbox"/> Military/mobilization needs <input type="checkbox"/> Immediate short-term need arising on short notice
Only one capable contractor	<input type="checkbox"/> Only one contractor offers the equipment/service <input type="checkbox"/> Only one contractor offers the equipment/service to the locations where the equipment/service is needed <input type="checkbox"/> Only one contractor can demonstrate that it is capable of providing equipment/service in the manner required by the user or to the required locations
Economy, efficiency and logical follow-on to an order already issued under fair opportunity	<input type="checkbox"/> Orders associated with any moves, additions, changes, or similar needs <input type="checkbox"/> Incremental orders for the same or a new equipment/service to locations where equipment/service already exists or has been ordered <input type="checkbox"/> Orders placed to minimize inefficiencies or additional costs that would result from introducing multiple maintenance, operations, training network management, or other support systems <input type="checkbox"/> Orders placed to maintain the engineering and operational integrity of, or to augment an established telecommunications capability within an organization
Meet a minimum revenue guarantee	<input type="checkbox"/> No examples provided. Self-explanatory.