



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
AND SUSTAINMENT

In reply refer to
DARS Tracking Number: 2022-O0007

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation–Defense Commercial Solutions Opening

Effective immediately, this class deviation rescinds and supersedes Class Deviation 2018-O0016 issued on June 26, 2018. Contracting officers may acquire innovative commercial products, technologies, or services using a general solicitation, called a commercial solutions opening (CSO), and the procedures provided in this class deviation. If existing CSOs contain references to Class Deviation 2018-O0016, contracting officers shall amend the CSOs as described in the next paragraph.

Use of a CSO is permanently authorized by section 803 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81). Section 803 of the NDAA for FY 2022 repealed section 879 of the NDAA for FY 2017 (Pub. L. 114-328); therefore, contracting officers shall—

- Amend existing CSOs to delete references to Class Deviation 2018-O0016 and section 879 of the NDAA for FY 2017; and
- Insert a reference to Class Deviation 2022-O0007. References to section 803 of the NDAA for FY 2022 are not necessary, since it is implemented by this class deviation.

Under a CSO, DoD may competitively select proposals received in response to a general solicitation, similar to a broad agency announcement, based on a review of proposals by scientific, technological, or other subject-matter expert peers. Use of a CSO in accordance with this class deviation is considered to be a competitive procedure for the purposes of 10 U.S.C. chapter 221 and Federal Acquisition Regulation (FAR) 6.102.

Contracting officers shall treat items, technologies, and services acquired using a CSO as commercial products or commercial services. Notwithstanding the limitation in Defense Federal Acquisition Regulation Supplement (DFARS) 235.006-71, a CSO may be used to fulfill requirements for research and development, ranging from advanced component development through operational systems development. When using a CSO in acquisitions for research and development, contracting officers shall use the procedures in this class deviation in conjunction with FAR part 35.

Contracting officers may use a CSO only—

- To obtain solutions or potential capabilities that fulfill requirements, close capability gaps, or provide potential technological advancements that are new as of the date of submission of a proposal or that is a new application as of the date of submission of a proposal of a technology, process, or method existing as of such date;
- When meaningful proposals with varying technical or scientific approaches can be reasonably anticipated; and
- When the contract entered into under the program will be fixed-price, including fixed-price incentive contracts.

When using a CSO, contracting officers shall ensure the CSO—

- Describes the agency's interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements;
- Describes the criteria for selecting proposals, their relative importance, and the method of evaluation, including, where applicable, the potential type of data rights that may be determined necessary to meet DoD's minimum needs;
- Specifies the period of time during which proposals submitted in response to the CSO will be accepted;
- Contains instructions for the preparation and submission of proposals; and
- Uses "S" in position 9 and "C" in position 10 of the procurement instrument identifier to identify the solicitation as a CSO.

Contracting officers shall publicize a notice of availability of a CSO through the Governmentwide point of entry at least annually, and, if authorized pursuant to FAR subpart 5.5, may also publish a notice in noted scientific, technical, or engineering periodicals. Synopsis under FAR subpart 5.2 of individual contract actions under the CSO is not required. The notice published pursuant to this paragraph fulfills the synopsis requirement.

The primary evaluation factors for selecting proposals for award shall be technical, importance to agency programs, and funds availability. Price shall be considered to the extent appropriate, but at a minimum, to determine that the price is fair and reasonable.

Proposals received as a result of a CSO shall be evaluated in accordance with evaluation criteria specified therein through the review of such proposals by scientific, technological, or other

subject-matter expert peers. Written evaluation reports on individual proposals are required, but proposals need not be evaluated against each other since they are not submitted in response to a common performance work statement or statement of work.

The requirements of DFARS 215.371-2 do not apply to acquisitions of innovative items, technologies, or services under a CSO pursuant to this class deviation.

Contracting officers shall not award contracts in excess of \$100 million pursuant to a CSO without a written determination from the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) or the cognizant service acquisition executive of a military department of the efficacy of the effort to meet mission needs of DoD or the relevant military department. In order to secure USD(A&S) approval, send the written determination, along with a request for USD(A&S) review and approval, via email to the Defense Pricing and Contracting (DPC) Contract Policy Directorate (CP) at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil. Requests for approval of the written determination by the cognizant service acquisition executive shall follow military department policy and procedures.

Not later than 45 days after the award of a contract under a CSO for an amount exceeding \$100 million, the USD(A&S) will notify the congressional defense committees of such award. To facilitate reporting, not later than 1 day after the award of a contract exceeding \$100 million under the CSO authority, the contracting officer shall—

- Prepare a notice of award for the congressional defense committees that includes—
 - A description of the innovative commercial product, commercial service, or technology acquired;
 - A description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial product, commercial service, or technology acquired provides a solution or a potential new capability;
 - The contract award amount; and
 - Identification of the contractor awarded the contract; and
- Submit the notice of award to USD(A&S) via the cognizant service acquisition executive of a military department for signature, if applicable.
 - In order to secure USD(A&S) signature, send the notice of award, along with a request for USD(A&S) signature, via email to DPC/CP at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.
 - Requests for approval of a notice of award by the cognizant service acquisition executive shall follow military department policy and procedures.

Contracting officers shall ensure that contract files document the market research and rationale supporting a conclusion that the requirements of this class deviation have been satisfied.

As used in this class deviation, “innovative” means any technology, process, or method, including research and development, that is new as of the date of submission of a proposal, or any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

This class deviation remains in effect until incorporated into the DFARS or until otherwise rescinded. My point of contact is Mr. Larry McLaury, DPC/CP, who may be reached at 703-697-6710.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting