Multiyear Procurements and Options Guideline - 1.5.G (08/09/04)

[Last Update: (08/09/04) BDenman:kma - 1.5.G.0]

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Last Update: (08/09/04) BDenman:kma - 1.5.G.0

This guideline was extensively revised to address administrative changes throughout the document.

Definitions

Cancellation means the cancellation of the total requirements of all remaining program years.

Cancellation Ceiling means the maximum amount that Sandia will pay the Contractor, which the Contractor would have recovered as a part of the unit price had the contract been completed. Cancellation charge is that amount which is actually paid to the Contractor upon settlement for unrecovered costs (which can only be equal to or less than the ceiling). This ceiling generally includes only nonrecurring costs.

Multiyear Contracts means contracts covering more than one years' requirements even though the total funds ultimately to be obligated are not available at time of contract award. Although total funds to be obligated may not be available at the time of contract award, total contract quantities and annual quantities are planned at the outset. The Anti-Deficiency Act, Title 31 of U.S. Code Section 13, et. seq., only applies to federal agencies. However, the act affects Sandia because it applies to the agencies providing Sandia funding. An order that is placed against an Ordering Agreement (OA), and there is no option, may be extended beyond the Period of Performance (POP) as long as it is within the POP of the OA.

If the order is critical and cannot be completed within the POP specified, the Sandia Contracting Representative (SCR) may issue the order with or without an option as long as the total POP of the order does not exceed the OA's POP by 12 months.

Note: The SCR must document the contract file justifying the requirement for the extension.

Nonrecurring costs means those production and service-related costs which are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, specialized work force training, and recruiting costs involved in furnishing labor.

An option is a unilateral right by which, for a specific time, Sandia may elect to purchase additional supplies or services called for by the Contractor to extend the term of a contract. Approval for commitment amounts for the option does not need to be received by the SCR until the option is exercised. Pricing of options may include but are not limited to: unfunded options; pre-priced options, or options utilizing the Department of Labor/Data Resources Inc. (DOL/DRI) provisions. The latter are considered priced options because there is an upfront agreement on the formula for pricing. Multiyear options can utilize either of the aforementioned pricing methodologies or involve a phased procurement with or without a limitation of obligation.

A **Period of Performance (POP)** end date is a mutually agreed upon date which will satisfy the Contractor's obligation to Sandia for delivery of supplies and/or services. It can be a date that an as-needed service will end; a delivery date for product(s) or data; or a completion date for a Research and Development (R&D) or performance-based contract.

Recurring costs means production or service-related costs that vary with the quantity being produced or furnished such as labor and materials.

Termination for Convenience means termination which can be effected at any time during the life of the contract and can be for the total quantity; whereas, cancellation is effected between fiscal years and must be for all subsequent fiscal years' quantities.

Multiyear Contracting Considerations -

1.5.G.1

Advantages of Multiyear Contracting - 1.5.G.1.a

Multiyear contracting can be used to take advantage of one or more of the following:

- lower costs,
- enhancement of standardization,
- reduction of administrative burden in the placement and administration of contracts,
- substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, phaseout costs, and costs of retraining,
- stabilization of Contractor work forces,
- avoidance of the need for establishing and "proving out" quality control techniques and procedures for a new Contractor each year, and/or
- providing incentives to Contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

Criteria for Multiyear Contracting - 1.5.G.1.b

Multiyear contracting may be used when it is advantageous to Sandia, and if applicable, the following criteria are present:

- the use of such a contract will result in reduced total costs,
- the minimum need for the item during the contract period can be adequately estimated in terms of production rate, acquisition rate, and total quantities,
- there is reasonable expectation that sufficient funding will be made available so as to avoid contract cancellation,
- there is a stable design for the item and the technical risks associated with such items are not excessive, and
- the estimates of both the cost of the contract and any anticipated cost avoidance are realistic.

Plant and Equipment and Multiyear Contracting - 1.5.G.1.c

In multiyear procurements involving an initial investment in plant and equipment which will constitute an appreciable portion of the cost of contract performance, the SCR shall, upon payment of the unamortized portion of the plant or equipment, take title.

Solicitation Requirements - 1.5.G.1.d

The solicitation shall contain all the factors to be considered for evaluation. The following list is provided for consideration by the SCR:

- requirements, by item or service, for the current one-year contract and for the multiyear contract including the requirements for each year (obtaining both provides reduced lead-time for making a one-year contract award in the event that the multiyear award is not advantageous to Sandia),
- requirements with respect to taking title to plant or equipment,
- requirements with respect to cancellation and cancellation charges,
- a detailed procedure for eliminating any competitive advantage when government property is provided,
- special clauses, and
- a provision that if Sandia determines before award that only the first contract year requirements are needed, Sandia may evaluate offers and make award solely on the basis of price offered on the year's requirements.

Note: Any amortization included in the cost of contract performance shall not exceed the ratio between the period of contract performance and the anticipated useful life of amortized equipment.

Evaluation Considerations - 1.5.G.1.e

In addition to the evaluation factors reflected in the solicitation, the evaluations of offers shall involve:

- the determination of the lowest overall estimated cost to Sandia of both the first year and the multiyear contract, and
- if government property is provided, the SCR shall, for evaluation purposes, add an amount for the use of such property to eliminate any competitive advantage. Such an amount shall be added to each Contractor's estimated unit price for the first contract year requirement and the estimated unit price for the multiyear requirements.

The cancellation ceiling shall not be a factor for consideration.

Multiyear Contract Funding - 1.5.G.1.f

When entering into a contract on a multiyear basis, funds may be obligated only as approved for the first year's procurement, including any previously agreed upon cancellation charges. Succeeding years may be funded annually thereafter by contract revision. When necessary, the SCR shall give consideration to the inclusion of an appropriate clause for price escalation. The SCR shall give consideration to the inclusion of an appropriate clause providing for price adjustments in the event the quantity of supplies or services vary significantly from predetermined levels set forth in the contract.

Multiyear Contract Extensions - 1.5.G.1.g

A contract may be extended up to ten (10) years as long as funds are available for contract performance for any subsequent year. The ten (10) year limitation includes the exercise of any options. Total funding for a multiyear procurement is not required. However, the contract should be funded with money that is immediately available as of the date of award.

Cancellation/Termination of Multiyear Contracts - 1.5.G.2

Cancellation - 1.5.G.2.a

All contract years except the first are subject to cancellation which may be affected either by:

- notification from the SCR to the Contractor of nonavailability of funds for any subsequent contract year, or
- failure of the SCR to issue a contract revision authorizing funds for the succeeding year.

Cancellation charges may be appropriate when substantial startup costs and substantial contingent expenses are involved. If cancellation occurs, the Contractor may be entitled to payment.

For each contract year subject to cancellation, the SCR may (on a percentage basis) establish a cancellation ceiling. Ceilings must exclude amounts for items included in prior contract years. The SCR shall reduce the cancellation ceiling for each contract year in direct proportion to the remaining requirements subject to cancellation.

Note: Nonfunded contracts which exceed five (5) years must include a contract cancellation clause.

Termination - 1.5.G.2.b

If the contract is terminated for convenience, Sandia's obligation shall not exceed the amount then obligated for contract performance (including any previously agreed upon cancellation ceiling).

Options or POP End Dates Changes -

1.5.G.3

Option Changes After Award - 1.5.G.3.a

Contracts written without options or contracts which have depleted all established options may be later revised to add options under the following circumstances:

- contract was awarded as a sole source requirement and the basis for the sole source is still valid, or
- contract was awarded as an 8(a) set-aside and Contractor has not yet graduated from its 8(a) status.

Options should not be added after award to contracts which were competitively awarded unless it can be demonstrated that it is in Sandia's best interest from a programmatic and cost standpoint.

Note: The SCR must document the contract file justifying the requirement for the extension.

Extensions After Award - 1.5.G.3.b

Certain situations may dictate the need to extend a POP end date. Examples of these situations include excusable delays or the need to avoid a lapse in support while an effort is being renewed or a follow-on contract is in process.

In some cases and at Sandia's discretion, it may be necessary to extend a POP end date after the contract has already expired. When a retroactive extension is necessary, the SCR shall document the file to explain the need for the extension and why it is in Sandia's best interest to extend the contract.

Options Clauses - 1.5.G.4

There is no standard procedure at Sandia for including options clauses in contracts. When viable options are identified by the SCR or Requester, the SCR may choose to use one of the suggested options clauses or draft an original clause for the documents.

Increased Quantity - 1.5.G.4.a

This clause is suggested when the option is for an increase in quantity.

Clause (#) - Option for Increased Quantity

Sandia may, at its own discretion, increase the quantity of supplies called for in this contract at the unit price specified; provided, that in no event shall the value of the increased quantities exceed $ (SCR's judgment). The SCR may exercise the option by revising the contract by (date).

Delivery of the added items shall continue at the same rate as other items called for under the contract, unless the parties otherwise agree.

Separately Priced Line Item - 1.5.G.4.b

When the contract calls for optional goods or services which are separately called out from the other goods or services being provided, this clause is suggested.

Clause (#) - Separately Priced Option Item(s)

Sandia may, at its own discretion, require the delivery of the option item(s) at the price stated in the contract. The SCR may exercise the option by amending the contract by (date). Delivery of option items shall continue at the same rate that other items are called for under the contract, unless the parties otherwise agree.

Extend Term of Contract for Services - 1.5.G.4.c

It is suggested that this clause be used when a contract for services requires an option to extend the period of performance. The clause does not refer to the price/rate for the extended period because that topic should be covered in the contract pricing clause.

Clause (#) - Option to Extend the Term of the Contract

Sandia may, at its own discretion, extend the term of this contract by amending the contract by (date). If Sandia exercises this option, the extended contract shall be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed (months/years).

Options Evaluation Criteria - 1.5.G.5

The following paragraphs are suggested wording for inclusion in the solicitation when defining the procurements evaluation criteria.

Options Excluded - 1.5.G.5.a

This paragraph is recommended for use when the contract options will not be considered when determining award:

> **Evaluation Exclusive of Options**
>
> Sandia will evaluate offers for award purposes by including only the price for the basic requirement, i.e., options will not be included in the evaluation for award purposes. Sandia may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based

on prices significantly less than cost for some work and prices which are significantly overstated for other work.

Exercised Options Included - 1.5.G.5.b

For solicitations where contract award will be determined by evaluating the options which will be exercised at the time of contract award, the following paragraph is recommended.

Evaluation of Options Exercised at Time of Contract Award

Sandia will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award. Sandia may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

Example: A Requester has $300K of equipment funding. With that money, a basic unit must be purchased. However, any portion of the $300K which is not required for the basic unit will be used to acquire additional desired capabilities. Use of this clause allows the SCR to make award based on the price of the basic unit and any additional capabilities that can be afforded.

Options Included in Evaluation Criteria - 1.5.G.5.c

When all options will be considered in determining contract award, the following paragraph is recommended:

Evaluation of Options

Sandia will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate Sandia to exercise the option(s). Sandia may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

Applicable Clauses - 1.5.G.6

- SC 266-MC - Multiyear Contracts
- SC 895-JIT - Contract Cancellation - JIT
- SC 896-AOA - Contract Cancellation - OA

References - 1.5.G.7

- Guideline 4.7 – Termination/Cancellation
- Guideline 6.8 – Incremental Funding

Send feedback on ideas and information on this page to the Process Expert, Bertie Denman.

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