Subpart 17.2 - Options

Parent topic: Part 17 - Special Contracting Methods

17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of *option solicitation* provisions and *contract clauses*. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the *construction*, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) *architect-engineer services*; and (c) research and development services. However, it does not preclude the use of *options* in those contracts.

17.201 [Reserved]

17.202 Use of options.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, for both sealed bidding and *contracting* by negotiation, the *contracting officer may* include *options* in contracts when it is in the Government's interest. When using sealed bidding, the *contracting officer shall* make a written determination that there is a reasonable likelihood that the *options* will be exercised before including the provision at 52.217-5, Evaluation of *Options*, in the *solicitation*. (See 17.207(f) with regard to the exercise of *options*.)

(b) Inclusion of an *option* is normally not in the Government's interest when, in the judgment of the *contracting officer*-

(1) The foreseeable requirements involve-

(i) Minimum economic quantities (*i.e.,* quantities large enough to permit the recovery of startup costs and the production of the required *supplies* at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive *acquisition*, production, and delivery.

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with *options*. However, this does not preclude the use of an indefinite quantity contract or requirements contract with *options*.

(c) The *contracting officer shall* not employ *options* if-

(1) The contractor will incur undue risks; *e.g.,* the price or availability of necessary materials or labor is not reasonably foreseeable;

(2) Market prices for the *supplies* or services involved are likely to change substantially; or

(3) The *option* represents known firm requirements for which funds are available unless-

(i) The basic quantity is a learning or testing quantity; and

(ii) Competition for the *option* is impracticable once the initial contract is awarded.

(d) In recognition of-

(1) The Government’s need in certain service contracts for continuity of operations; and

(2) The potential cost of disrupted support, *options may* be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.

17.203 Solicitations.

(a) *Solicitations shall* include appropriate *option* provisions and clauses when resulting contracts will provide for the exercise of *options* (see 17.208).

(b) *Solicitations* containing *option* provisions *shall* state the basis of evaluation, either exclusive or inclusive of the *option* and, when appropriate, *shall* inform *offerors* that it is anticipated that the Government *may* exercise the *option* at time of award.

(c) *Solicitations* normally *should* allow *option* quantities to be offered without limitation as to price, and there *shall* be no limitation as to price if the *option* quantity is to be considered in the evaluation for award (see 17.206).

(d) *Solicitations* that allow the *offer* of *options* at unit prices which differ from the unit prices for the basic requirement *shall* state that *offerors may offer* varying prices for *options*, depending on the quantities actually ordered and the dates when ordered.

(e) If it is anticipated that the Government *may* exercise an *option* at the time of award and if the condition specified in paragraph (d) of this section applies, *solicitations shall* specify the price at which the Government will evaluate the *option* (highest *option* price offered or *option* price for specified requirements).

(f) *Solicitations may*, in unusual circumstances, require that *options* be offered at prices no higher than those for the initial requirement; *e.g.,* when-

(1) The *option* cannot be evaluated under 17.206; or;

(2) Future competition for the *option* is impracticable.

(g) *Solicitations* that require the offering of an *option* at prices no higher than those for the initial requirement *shall*-

(1) Specify that the Government will accept an *offer* containing an *option* price higher than the base price only if the acceptance does not prejudice any other *offeror*; and

(2) Limit *option* quantities for additional *supplies* to not more than 50 percent of the initial quantity of the same *line item*. In unusual circumstances, an authorized person at a level above the *contracting officer may* approve a greater percentage of quantity.

(h) Include the value of *options* in determining if the *acquisition* will exceed the World Trade

Organization Government *Procurement* Agreement or Free Trade Agreement thresholds.

17.204 Contracts.

(a) The contract *shall* specify limits on the purchase of additional *supplies* or services, or the overall duration of the term of the contract, including any extension.

(b) The contract *shall* state the period within which the *option may* be exercised.

(c) The period *shall* be set so as to provide the contractor adequate lead time to ensure continuous production.

(d) The period *may* extend beyond the contract completion date for service contracts. This is necessary for situations when exercise of the *option* would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.

(e) Unless otherwise approved in accordance with agency procedures, the total of the basic and *option* periods *shall* not exceed 5 years in the case of services, and the total of the basic and *option* quantities *shall* not exceed the requirement for 5 years in the case of *supplies*. These limitations do not apply to *information technology* contracts. However, statutes applicable to various classes of contracts, for example, the Service Contract Labor Standards statute (see 22.1002-1), *may* place additional restrictions on the length of contracts.

(f) Contracts *may* express *options* for increased quantities of *supplies* or services in terms of-

(1) Percentage of specific *line items*,

(2) Increase in specific *line items*; or

(3) Additional numbered *line items* identified as the *option*.

(g) Contracts *may* express extensions of the term of the contract as an amended completion date or as additional time for performance; *e.g.,* days, weeks, or months.

17.205 Documentation.

(a) The *contracting officer shall* justify *in writing* the quantities or the term under *option*, the notification period for exercising the *option*, and any limitation on *option* price under 17.203(g); and *shall* include the justification document in the contract file.

(b) Any justifications and approvals and any determination and findings required by part 6 *shall* specify both the basic requirement and the increase permitted by the *option*.

17.206 Evaluation.

(a) In awarding the basic contract, the *contracting officer shall*, except as provided in paragraph (b) of this section, evaluate *offers* for any *option* quantities or periods contained in a *solicitation* when it has been determined prior to soliciting *offers* that the Government is likely to exercise the *options*. (See 17.208.)

(b) The *contracting officer* need not evaluate *offers* for any *option* quantities when it is determined that evaluation would not be in the best interests of the Government and this determination is approved at a level above the *contracting officer*. An example of a circumstance that *may* support a determination not to evaluate *offers* for *option* quantities is when there is a reasonable certainty that funds will be unavailable to permit exercise of the *option*.

17.207 Exercise of options.

(a) When exercising an *option*, the *contracting officer shall* provide written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the *contracting officer shall* determine the effect of the adjustment on prices under the *option* before the *option* is exercised.

(c) The *contracting officer may* exercise *options* only after determining that-

(1) Funds are available;

(2) The requirement covered by the *option* fulfills an existing Government need;

(3) The exercise of the *option* is the most advantageous method of fulfilling the Government’s need, price and other factors (see paragraphs (d) and (e) of this section) considered;

(4) The *option* was synopsized in accordance with part 5 unless exempted by 5.202(a)(11) or other appropriate exemptions in 5.202;

(5) The contractor does not have an active exclusion record in the *System for Award Management* (see FAR 9.405-1);

(6) The contractor’s *past performance* evaluations on other contract actions have been considered; and

(7) The contractor’s performance on this contract has been acceptable, e.g., received satisfactory ratings.

(d) The *contracting officer*, after considering price and other factors, *shall* make the determination on the basis of one of the following:

(1) A new *solicitation* fails to produce a better price or a more advantageous *offer* than that offered by the *option*. If it is anticipated that the best price available is the *option* price or that this is the more advantageous *offer*, the *contracting officer should* not use this method of testing the market.

(2) An informal analysis of prices or an examination of the market indicates that the *option* price is better than prices available in the market or that the *option* is the more advantageous *offer*.

(3) The time between the award of the contract containing the *option* and the exercise of the *option* is so short that it indicates the *option* price is the lowest price obtainable or the more advantageous

offer. The *contracting officer shall* take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such *supplies* or services.

(e) The determination of other factors under paragraph (c)(3) of this section-

(1) *Should* take into account the Government's need for continuity of operations and potential costs of disrupting operations; and

(2) *May* consider the effect on small business.

(f) Before exercising an *option*, the *contracting officer shall* make a written determination for the contract file that exercise is in accordance with the terms of the *option*, the requirements of this section, and part 6. To satisfy requirements of part 6 regarding *full and open competition*, the *option must* have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, *e.g.-*

(1) A specific dollar amount;

(2) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;

(3) In the case of a cost-type contract, if-

(i) The *option* contains a fixed or maximum fee; or

(ii) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract (but see 16.102(c));

(4) A specific price that is subject to an economic price adjustment provision; or

(5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the Secretary of Labor.

(g) The *contract modification* or other written document which notifies the contractor of the exercise of the *option shall* cite the *option* clause as authority.

17.208 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of *Options*, in *solicitations* when the *solicitation* includes an *option* clause and does not include one of the provisions prescribed in paragraph (b) or (c) of this section.

(b) Insert a provision substantially the same as the provision at 52.217-4, Evaluation of *Options* Exercised at Time of Contract Award, in *solicitations* when the *solicitation* includes an *option* clause, the *contracting officer* has determined that there is a reasonable likelihood that the *option* will be exercised, and the *option may* be exercised at the time of contract award.

(c) Insert a provision substantially the same as the provision at 52.217-5, Evaluation of *Options*, in *solicitations* when-

(1) The *solicitation* contains an *option* clause;

(2) An *option* is not to be exercised at the time of contract award;

(3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and

(4) The *contracting officer* has determined that there is a reasonable likelihood that the *option* will be exercised. For sealed bids, the determination *shall* be *in writing*.

(d) Insert a clause substantially the same as the clause at 52.217-6, *Option* for Increased Quantity, in *solicitations* and contracts, other than those for services, when the inclusion of an *option* is appropriate (see 17.200 and 17.202) and the *option* quantity is expressed as a percentage of the basic contract quantity or as an additional quantity of a specific *line item*.

(e) Insert a clause substantially the same as the clause at 52.217-7, *Option* for Increased Quantity-Separately Priced *Line Item*, in *solicitations* and contracts, other than those for services, when the inclusion of an *option* is appropriate (see 17.200 and 17.202) and the *option* quantity is identified as a separately priced *line item* having the same nomenclature as a corresponding *line item*.

(f) Insert a clause substantially the same as the clause at 52.217-8, *Option* to Extend Services, in *solicitations* and contracts for services when the inclusion of an *option* is appropriate. (See 17.200, 17.202, and 37.111.)

(g) Insert a clause substantially the same as the clause at 52.217-9, *Option* to Extend the Term of the Contract, in *solicitations* and contracts when the inclusion of an *option* is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract any or all of the following:

(1) A requirement that the Government *must* give the contractor a preliminary written notice of its intent to extend the contract.

(2) A statement that an extension of the contract includes an extension of the *option*.

(3) A specified limitation on the total duration of the contract.