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FROM THE AMERICAN PEOPLE

USAID PROCUREMENT EXECUTIVE

PROCUREMENT EXECUTIVE'S BULLETIN NO. 2014-01

SUBJECT: ADAPTABLE AND FLEXIBLE CONTRACTING TYPES

1. Scope: This Bulletin applies to all USAID staff overseas.

2. Purpose: The purpose of this bulletin is to provide guidance on how to allow for learning, flexibility and adaptability in contracts. The two contract types described below will enable Missions to adapt to new evidence and changing circumstances, in support of Mission strategies and projects and to respond to other impacts relating to project and contract objectives.

Note: This PEB is for Acquisition contracts only and does not cover Assistance instruments. Grants and Cooperative Agreements are also flexible instruments and can be modified by the parties within the scope and the total estimated amount of the award to adapt to learning and changing circumstances.

3. Background: Per ADS 201, the Agency is committed to enhancing design leadership within the Agency and designing projects that are both more firmly grounded in rigorous analysis and evidence, and more able to adapt to new evidence and changing circumstances. Effective planning, project design, implementation, assessing and learning require missions to apply analytic rigor, utilize the best available evidence, and incorporate continuous learning for adaptive project management. In support of policy objectives outlined in ADS 203, the Agency is committed to identifying approaches that allow for learning and adaptation, while still complying with statutory and regulatory requirements.

The Federal Acquisition Regulation (FAR Part 16) makes a wide selection of contract types available in order to provide needed flexibility in acquiring services and supplies. The FAR recognizes that in the course of an acquisition program, or a series of contracts, or a single long term contract, that changing circumstances may make a different contract type more appropriate in later periods of performance that used at the outset. This bulletin describes two contract types that require and contribute to rigorous project and activity design while allowing for learning, flexibility and adaptability over time.

4. Responsibilities and Requirements:

The Federal Acquisition Regulation (FAR) provides Agencies with a variety of contract types and types to choose from depending on the specific needs and circumstances. In circumstances where there is evidence that all requirements cannot be defined with a reasonable level of confidence in advance, the Contracting Officer and Operating Unit may consider using:

- A. a single-award, project-based IDIQ contract to enable shorter, more iterative planning cycles in support of project objectives; or
- B. a hybrid CPFF Completion-IDIQ contract to allow for supplemental technical assistance to be available to respond to changing needs in support of successful completion of the contract.

Both methods allow the Operating Unit to build adaptability and flexibility into implementation of activities under the award.

Variations of the hybrid contract type described below have previously been referred to as a “crisis modifier,” a “program modifier” or a “rapid response modifier.” Future use of “modifiers” of this nature or other “contingency-like” line items in contracts or task orders that do not conform to this PEB is prohibited.

A. Type 1 – Single-award (Project-Based) Indefinite Delivery/Indefinite Quantity (IDIQ) contract

(i) Applicability:

Multiple award IDIQs are the preference as established in FAR Part 16.5; however, a single-award IDIQ contract may be considered when it is limited to a single discrete project where normally a stand-alone contract would be used. Pursuant to FAR 16.504(C)(1)(ii)(B), there are a number of situations where a single award project-based IDIQ is preferred to a multiple award approach, such as where “the expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards” or “the projected orders are so integrally related that only a single contractor can reasonably perform the work.”

When planning a stand-alone contract or task order, the CO and OU should consider the stability of the project or activity environment to determine if the environment is relatively stable, certain and predictable or whether there is a greater possibility for changes. COs may determine to use a single-award, project-based IDIQ where:

- (a) the overall project landscape is shifting in complex ways, cause and effect relationships are unclear or are non-linear, and/or there is the potential for external influences that could have a significant, but unknown effect on development results, and
- (b) the expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards or the projected orders are so integrally related that only a single contractor can reasonably perform the work.

Such an award will enable shorter, more iterative planning cycles while avoiding the time and expense of competing and awarding a series of successive, stand-alone contracts. The single-award project-based IDIQ must be linked to the achievement of specific objectives and must be authorized in a Project Appraisal Document (PAD) or PAD Amendment.

(ii) Solicitation/Contract Requirements

The Statement of Work in the basic IDIQ award must establish the specific objectives of the project as approved in the PAD. The portion of the project or activity with requirements that can be defined with certainty should be included in the IDIQ solicitation as Task Order 1, and be part of the cost evaluation. Successive TOs can be executed to provide additional contractor technical assistance and effort as determined necessary to accomplish the original specific objectives. Alternatively, Operating Units can build adaptation into implementation by developing a phased approach to implementation by executing Task Order 1 for the first phase of the work and including indicators and targets triggering successive stages of the project that support specific objectives of the IDIQ. Subsequent TOs may be executed based on monitoring, evaluation and learning during implementation of the TOs. Essentially, the project can be sub-divided into components. Key events during implementation can be identified to incorporate learning throughout implementation to encourage adaptation. For example, quarterly reports and/or meetings can be used to reflect on project implementation to date and any adjustments that need to be made when issuing future TOs. Successive orders can initiate separate components developed during Task Order 1, which are linked to the original IDIQ objectives. TOs can be executed for any part of the IDIQ SOW at any time during the period of performance.

If this contract type is selected, the acquisition plan must include documentation to show why a single-award project-based, IDIQ was selected, citing the appropriate justification in FAR 16.504(c)(1)(ii)(B). (Only one justification from the list needs to be addressed by the CO.) For example, (4) *The projected task orders are so integrally related that only a single contractor can reasonably perform the work.*) Awards anticipated to be \$103 Million or more require additional approval as stated in FAR Part 16.5. The maximum ordering limitation of the IDIQ must be based on the Government's maximum estimate for implementing the project and its specific deliverables as estimated in the PAD.

(iii) Illustrative example for use of a single-award project-based IDIQ:

A project to strengthen local governance is being designed at a time when there are potential watershed elections on the horizon and the country is in the process of negotiating a new constitution that may devolve significant but still unestablished responsibilities to newly-created local government bodies. The nature of these challenges requires shorter planning cycles, active monitoring, and robust feedback systems so that managers can learn from implementation at every stage. There are no instant solutions to achieve project objectives, and managers will need to plan for iterative adjustments as necessary to achieving project objectives.

B. Type 2 – Hybrid - CPFF Completion-IDIQ Contract

(i) Applicability

The Federal Acquisition Regulations (FAR) Part 16 allows contracts negotiated under **Part 15** to be of any type or combination of types described in Part 16 that will promote the Government's interest except as restricted in this part. A combination of a CPFF Completion-IDIQ contract may be used to enable supplemental technical assistance to be available to respond to changing circumstances within the statement of work and other terms and conditions of the contract. To streamline and simplify the

structure and use of the contract, supplemental technical assistance may be ordered by only CPFF Term (LOE) Task Orders under the IDIQ CLIN of the contract.

When eighty percent (80%) or more of the work can be predicted with reasonable certainty, but there is some performance risk due to changing circumstances or emerging evidence that may necessitate additional requirements to achieve contract objectives, COs may use a combination of a CPFF Completion-IDIQ type contract to achieve the contract objectives. If this combination contract type is selected, the acquisition plan (Individual Acquisition Plan, see ADS 300) must include documentation to show why a combination of a Completion-IDIQ type contract was selected. The use of this type of combination contract must be documented in the choice of instrument selection.

The objectives and requirements that can be designed with reasonable certainty may be awarded on a Completion basis, in accordance with FAR Part 16. Requirements that lack definition and can only be determined on an illustrative basis depending on circumstances during activity implementation, may be awarded as a separate IDIQ Contract Line Item Number (CLIN) in the contract. In instances where this combination CPFF Completion-IDIQ type contract is used, the contract must include two separate CLINs – one for the completion portion of the basic contract and the other for the IDIQ portion of the contract, to be ordered if and when the need arises. The IDIQ CLIN must be identified as “Supplemental Technical Assistance (STA)”. When the supplemental technical assistance is needed the CO must place task orders in accordance with FAR 16.505 and as required in the contract.

These combination type awards may be used only where appropriate and when the IDIQ portion is no more than twenty percent (20%) of the total estimated cost of the award.

COs must adhere to the requirements in FAR Part 16 applicable to each CLIN type when preparing a combination type solicitation and award; specifically, FAR Part 16.306(d) for CPFF Completion award requirements and FAR 16.501-2(c) and FAR 16.504 for Indefinite-Delivery Indefinite-Quantity (IDIQ) Contracts.

(ii) Solicitation/Contract Requirements and procedures when using the combination contract method:

- a. Solicitation/Contract language and guidance for Sections B, C, L, and M are provided in Attachment A.
- b. Clauses: The CO must incorporate the appropriate clauses for CPFF service contracts and an additional section for the appropriate clauses for IDIQ contracts to be labeled as CLIN 0002 clauses.
- c. Minimum guarantee for IDIQ CLIN: As this CLIN is part of the combination contract and not a stand-alone award, the Government is not required to state or order any minimum number of person-days as otherwise provided in FAR 16.504(a)(1). The Other CLIN(s) contained in this Contract provide(s) sufficient consideration to make this a legally binding contract, and the Government has no obligation to fund or order under this CLIN.

d. Proposal evaluation must assess each offeror's ability to perform services specified under both the CPFF CLIN and the IDIQ CLIN. COs must conduct analysis to determine validity and realism of proposed costs for both CLINs and the extent to which they reflect potential technical assistance addressed in the technical proposal. The CO must ensure that Sections L and M appropriately require that cost and technical proposals address cost and technical factors for both CLINs in order to comply with competition requirements as well as select the proposal that represents the best overall value. (*See solicitation language (Sections L and M) in Attachment A*).

e. The CO must document their decision to use a single-award IDIQ CLIN in accordance with FAR 16.504(c)(1). Note also that no IDIQ CLIN in an amount estimated to exceed \$103 million (including all options) may be awarded unless the head of the agency makes a determination in writing as required by this part.

f. GLAAS - IMPORTANT: In order to enable GLAAS to process task orders under this type of award, COs must select the "Hybrid Contract" numbering mask, NOT a "Contract" or an "Indefinite Qty Contract," in the Document Create screen for a Contract. COs must then set-up each Line Item as either "Indefinite-quantity" or "Cost-plus-fixed-fee". The system will only allow orders to be issued against the CLIN(s) set up as "Indefinite-quantity". Specific steps for processing the award and task orders correctly in GLAAS will be provided separately in a GLAAS notice.

(iii) Illustrative examples for a Combination of a Cost-Reimbursement (completion) and IDIQ type contract:

- (a) A contract to help smallholder avocado farmers increase their income is focusing on a number of defined interventions to expand exports of avocados to the European market. However, during implementation, the European market changes its preferences from Fuerte avocados, which are abundant in homesteads across the target districts, to higher-quality Hass avocados. As smallholders begin the process of shifting to Hass, the contractor may have to perform additional work or provide unanticipated technical assistance that would have been difficult to predict at the time of design, in order to assist the farmers in processing surplus Fuerte avocados into oil. By adding this intervention, smallholders can continue to generate revenue during the transition period so that the contract objectives may still be achieved.
- (b) A contract to improve the learning outcomes of girls in primary schools was successfully operating in three provinces which were demonstrating a marked increase in girls attendance, retention and improved reading skills. Civil war broke out severely affecting one of the provinces. Many of the families fled the area, some moving in with relatives in other provinces. Rather than abandoning these children, the USAID Mission was able to place a Task Order under the IDIQ CLIN to enable the contractor to increase their level of effort in the neighboring provinces. Additionally, the contractor was able employ additional resources and establish new activities in one additional province where many original project beneficiaries had fled thereby providing these children with some stability and the opportunity to continue school attendance.

5. Effective Date: This Bulletin is effective immediately and shall remain in effect until cancelled by the Procurement Executive.

03/31/2014
Date

_____/S/_____
Aman S. Djahanbani
Senior Procurement Executive

ATTACHMENT A – Solicitation/Contract language – Combination CPFF/IDIQ Contract

Solicitation and Contract Language for a Separate Indefinite Delivery Indefinite Quantity (IDIQ) CLIN to be called, “Supplemental Technical Assistance” under which CPFF-Term (LOE) Task Orders will be issued.

[This sample language contains numbers and text that are intended to help illustrate practical uses of this language. You will see them displayed in brackets and in italics to assist you. You must enter your own values and language specific to your requirement and remove all brackets. The example text provided is based on the addition of 4,000 person days.]

Section B:

B.X. TYPE OF CONTRACT

This is a FAR 16.102(b) combination award consisting of a Cost Reimbursement-Completion (*CLIN 0001*) and a single-award Indefinite Delivery/Indefinite Quantity (IDIQ) type contract (*CLIN 0002*) for the purpose of providing [*insert description of service here*]

Under the Cost Reimbursement Completion portion of the contract (**CLIN 0001**), the contractor shall furnish all personnel, materials, equipment, supplies, facilities, services (except as expressly set forth in this contract as furnished by the Government) and perform all activities necessary for, or incidental to, the performance of work described in Section C.x.x. and other sections of the contract not specifically identified under *CLIN 002* as the IDIQ Supplemental Technical Assistance.

Under the IDIQ portion of the contract (*[CLIN 002]*), the contractor must furnish additional technical assistance arising out of or related to the completion portion of the contract, as required by Government-issued Task Orders. The services shall be ordered in accordance with Section H entitled “Ordering Supplemental Technical Assistance (*CLIN 0002*)” and the IDIQ clauses in Section I [reference the portion of Section I that contains the IDIQ clauses]. - As this CLIN is part of this contract and not a stand-alone award, the Government is not required to state or order any minimum number of person-days as otherwise provided in FAR 16.504(a)(1)). The Other CLIN[s] contained in this Contract provide[s] sufficient consideration to make this a legally binding contract, and the Government has no obligation to fund or order under this CLIN.

B.X ESTIMATED COST AND FIXED FEE FOR CLIN 0002

The total estimated ceiling cost of this CLIN is \$_____, exclusive of the associated maximum fee of \$_____. The total estimated ceiling cost and maximum fee is \$_____.

B.X, OTHER DIRECT COST LIMITATIONS UNDER CLIN 000X

The estimated cost of this CLIN includes estimates for material, equipment, subcontracts, travel, and training required for performance of the total amount of work that can be ordered by the Government under this CLIN during the life of this contract. The amount of ordered Other Direct Costs will not exceed \$1,000,000.00.

B.X LEVEL-OF-EFFORT

A. In performing Government orders for Technical Assistance under this CLIN, the Contractor is obligated to provide up to a maximum of [4,000] person-days.

B. The fee set forth in B.X. is based upon furnishing the level-of-effort specified in paragraph A. The total estimated cost and fixed fee will be established in the individual Government-issued Task Orders and shall not exceed the amounts set forth in Section B.X. IDIQ CLIN 0002.

Section C

[This is a sample only - the CO must tailor this section to include the particular needs and provide the details requested pursuant to FAR 16.504(a)(4)(iii).]

Supplemental Technical Assistance (CLIN 0002)

In addition to the activities described above, and in accordance with Section B.[X] *[specify sections relating to this CLIN]* of this Contract, the Contractor must respond to unanticipated events impacting on or related to the achievement of the objectives set forth in the Contract Statement of Work using the Supplemental Technical Assistance ordered by the Contracting Officer in accordance with Section H.[X] this contract.

[The CO must specify the range of activities to be performed under this CLIN. Supplemental capacity must be within the overall objectives of the contract and may be required in any of the subject areas covered by the contract and any subsequent modifications. Activities may include technical assistance, training, logistics support, preparation of reports, monitoring, planning, analysis and assessments; as well as promoting dialogue between stakeholders and partners.]

Section H:

H.X ORDERING SUPPLEMENTAL TECHNICAL ASSISTANCE (CLIN 000X)

(a) Only the Contracting Officer may issue Task Orders under this CLIN, providing specific authorization or direction to perform work within the scope of the contract and as specified in the Schedule. The Contractor may incur costs under this CLIN in performance of task orders and task order modifications issued under the "IDIQ Supplemental Technical Assistance" portion of this contract.

(b) Prior to ordering work under this IDIQ Supplemental Technical Assistance CLIN, the Contracting Officer must request a task order proposal from the Contractor to include the technical approach, period of performance/schedule, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal. The Contracting Officer must provide the Contractor with the following:

- (1) A functional description of the work identifying the objectives or results desired from the contemplated order.

- (2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(c) Within 14 calendar days or less, as determined by the Contracting Officer, after receipt of the Contracting Officer's request, the Contractor must submit a task order proposal which must include, but not be limited to, technical approach for completing the work including a staffing plan, proposed subcontracts including consultants, proposed level-of-effort and staffing mix, proposed cost and fee, rationale to support pricing for subcontracts, travel, and Other Direct Costs, period of performance/schedule, and any other information pertinent to the completion of the task order as required in the task order request.

(d) After review and any necessary discussions, the Contracting Officer may issue a Task Order under this Contract containing the following:

- (i) Date of order.
- (ii) Contract number and order number.
- (iii) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.
- (iv) Performance standards, and where appropriate, quality assurance standards.
- (v) Delivery/performance schedule including start and end dates.
- (vi) Place of delivery or performance.
- (vii) Total level-of-effort being ordered.
- (viii) Maximum dollar amount authorized (Cost plus Fixed Fee) for the task order, not to exceed the maximum Cost Plus Fixed Fee of the IDIQ CLIN set forth in Section B.[x].
- (ix) Any Mission-furnished resources (travel, materials, equipment, facilities, etc.) authorized in the task order.

- (x) Funding (Accounting and appropriation data).
- (xi) Method of payment and payment office, if not specified in the contract.

(e) The contractor shall provide acknowledgement of receipt to the Contracting Officer within five (5) calendar days after receipt of the task order.

(f) The Contracting Officer may modify task orders in the same manner in which they were issued.

(g) In the event of a conflict between the requirements of the task order and the Contractor's task order proposal, the task order shall prevail.

Sample Technical Evaluation Criteria to be added to the solicitation evaluation criteria:

Section L (Technical)

Offeror must describe its capacity to respond to requests for task order proposals and perform task orders under the Supplemental Technical Assistance IDIQ CLIN, and describe how it will mobilize and augment resources should the Government order level-of-effort under the IDIQ CLIN. Offerors must also describe how potential orders would relate to, or affect, efforts being carried out under other contract CLINs in terms of management and technical performance.

Section L (Cost)

In this request for proposal, the Government has specified [specific total amount of LOE here] person-days of labor, to include subcontractor and consultant hours, as the maximum level of effort that may be required during the contract period for performance for authorized work under IDIQ CLIN 0002, "Supplemental Technical Assistance." Accordingly, the offeror must propose costs associated with the above number of person-days of level-of-effort, as follows:

[Illustrative sample for this section: Offeror must propose four ceiling daily rates for each of the following illustrative positions for a total of 1000 days for each position (250 days/year). List all potential labor categories in this section.]

- *an expatriate Senior Education Advisor (minimum qualifications of 10 years working in education sector with a master's degree)*
- *an expatriate mid-level Education Advisor (minimum qualifications of 5 years working in education sector with a bachelor's degree)*
- *a local Senior Education Advisor (minimum qualifications of 10 years working in education sector with a master's degree)*
- *a local mid-level Education Advisor (minimum qualifications of 5 years working in education sector with a bachelor's degree)]*
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The Offeror must include in its cost proposal sufficient detail to support and explain all costs proposed, giving figures and narrative explanation. For example, labor costs should be proposed for the above listed categories supported by daily rates and specified labor escalation; with supporting documentation. All proposed indirect rates must be consistent with those proposed in CLIN 0001.

For estimating purposes, the offeror must propose costs for a total of [800] person-days equally distributed across all labor categories for each year of the five-year contract.

There is an ODC limitation of [\$1,000,000] over the life of this contract (see section B.X).

Section M (Technical)

As part of the overall technical approach, the Government will evaluate the capability of the offeror to respond rapidly to requests for task orders and perform required supplemental technical assistance without hindering performance under the completion portion of the contract.

Section M (Cost)

The analysis will include the proposed maximum cost and fee for the IDIQ CLIN for complete performance of the maximum level-of effort, if ordered, and all other direct costs. This analysis will be conducted to determine reasonableness and realism of proposed costs and the extent to which they reflect potential technical assistance addressed in the technical proposal. An assessment will be made of the offeror's capability to accomplish any ordered Supplemental Technical Assistance tasks and objectives within the estimated cost proposed. A probable cost will be developed and evaluated.

The reasonableness of the proposed fee will also be determined in accordance with the guidelines set forth in FAR Part 15 and 16.