

pool, the contracting officer shall verify its approved status with the SBA District Office Director or other approving agency and document the contract file that the verification was made.

(d) Pools approved by the SBA under the Small Business Act are entitled to the preferences and privileges accorded to small business concerns. Approval under the Defense Production Act does not confer these preferences and privileges.

(e) Before awarding a contract to an unincorporated pool, the contracting officer shall require each pool member participating in the contract to furnish a certified copy of a power of attorney identifying the agent authorized to sign the offer or contract on that member's behalf. The contracting officer shall attach a copy of each power of attorney to each signed copy of the contract retained by the Government.

[48 FR 42142, Sept. 19, 1983, as amended at 61 FR 67410, Dec. 20, 1996]

### 9.703 Contracting with individual pool members.

(a) Pool members may submit individual offers, independent of the pool. However, the contracting officer shall not consider an independent offer by a pool member if that pool member participates in a competing offer submitted by the pool.

(b) If a pool member submits an individual offer, independent of the pool, the contracting officer shall consider the pool agreement, along with other factors, in determining whether that pool member is a responsible prospective contractor under subpart 9.1.

## PART 10—MARKET RESEARCH

Sec.

10.000 Scope of part.

10.001 Policy.

10.002 Procedures.

10.003 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

SOURCE: 60 FR 48237, Sept. 18, 1995, unless otherwise noted.

### 10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements the requirements of 41 U.S.C. 3306(a)(1), 41 U.S.C. 3307, 10 U.S.C. 3453, and 6 U.S.C. 796.

[60 FR 48237, Sept. 18, 1995, as amended at 74 FR 52849, Oct. 14, 2009; 79 FR 24199, Apr. 29, 2014; 87 FR 73896, Dec. 1, 2022]

### 10.001 Policy.

(a) Agencies shall—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting offers for acquisitions that could lead to consolidation or bundling (15 U.S.C. 644(e)(2)(A) and 15 U.S.C. 657q);

(v) Before awarding a task or delivery order under an indefinite-delivery-indefinite-quantity (ID/IQ) contract (*e.g.*, GWACs, MACs) for other than a commercial product or commercial service in excess of the simplified acquisition threshold 10 U.S.C. 3453(c); and

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; and

## 10.002

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities (see 26.205); and

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial products or commercial services, or, to the extent commercial products suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial products or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial products or commercial services, such as type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;

(v) Ensure maximum practicable use of recovered materials (see subpart 23.4) and promote energy conservation and efficiency;

(vi) Determine whether consolidation is necessary and justified (see 7.107-2) (15 U.S.C. 657q);

(vii) Determine whether bundling is necessary and justified (see 7.107-3) (15 U.S.C. 644(e)(2)(A));

(viii) Determine whether the acquisition should utilize any of the small business programs in accordance with part 19; and

(ix) Assess the availability of supplies or services that meet all or part of the applicable information and communication technology accessibility standards at 36 CFR 1194.1 (see subpart 39.2).

(b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.

(c) If an agency contemplates consolidation or bundling, the agency—

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(1) When performing market research, should consult with the agency small business specialist and the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see 19.402(a); and

(2) Shall notify any affected incumbent small business concerns of the Government's intention to bundle the requirement and how small business concerns may contact the appropriate Small Business Administration procurement center representative (see 7.107-5(a)).

(d) See 10.003 for the requirement for a prime contractor to perform market research in contracts in excess of \$6 million, other than contracts for the acquisition of commercial products or commercial services (section 826 of Pub. L. 110-181).

[60 FR 48237, Sept. 18, 1995, as amended at 64 FR 72443, Dec. 27, 1999; 65 FR 46054, July 26, 2000; 66 FR 20896, Apr. 25, 2001; 68 FR 4049, Jan. 27, 2003; 68 FR 60005, Oct. 20, 2003; 69 FR 8313, Feb. 23, 2003; 71 FR 36925, June 28, 2006; 71 FR 74676, Dec. 12, 2006; 74 FR 52849, Oct. 14, 2009; 75 FR 34278, June 16, 2010; 76 FR 14565, Mar. 16, 2011; 80 FR 38297, July 2, 2015; 81 FR 67772, Sept. 30, 2016; 84 FR 19837, May 6, 2019; 85 FR 11756, Feb. 27, 2020; 85 FR 62488, Oct. 2, 2020; 86 FR 44231, Aug. 11, 2021; 86 FR 61021, Nov. 4, 2021; 87 FR 73896, Dec. 1, 2022]

### 10.002 Procedures.

(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial products, commercial services, or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The contracting officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant. Market research involves obtaining information specific to the product or service being acquired and should include—