GSA Senior Procurement Executive: I hereby approve the following City Pair Program actions:
- Class Deviation for FAR clause 52.216-21, Requirements (OCT 1995)
- Determination and Findings (D&F) waiver request
- Class Deviation for FAR Clause 52.212-4, Contract Terms and Conditions - Commercial Items (OCT 2018) and 52.243-1

SPE: ________________________________ Date: 2/13/19

FAR Team Concurrence:

FAR Team Representative: ________________________________ Date: ______________
FINDINGS

1. The Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103-355, requires that the Government follow commercial practices to the maximum extent practicable in the acquisition of commercial supplies or services. Furthermore, the Federal Acquisition Regulation (FAR) provides for a waiver “in accordance with agency procedures” for the use of non-commercial terms and conditions.

2. FAR 12.302(c) states that, “[t]he contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice, and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item."

3. Subsection 512.301(c) of the General Services Administration Acquisition Manual (GSAM) states that, “[t]he Senior Procurement Executive must approve the use of a provision or clause that is either not: (1) Prescribed in the FAR or GSAR for use in contracts for commercial items; or (2) Consistent with customary commercial practice.”

4. This Determination and Findings (D&F) outlines terms and conditions of the contract for Scheduled Air Passenger Transportation Services, also known as the GSA City Pair Program and referred to herein as “City Pair Program” or “CPP,” which differ from commercial practices. A separate Class Deviation will be submitted requesting a deviation from four subparagraphs listed in FAR Clause 52.212-4, Contract Terms and Conditions – Commercial Items (OCT 2018), as well as a deviation from one subparagraph in FAR Clause 52.243-1, Changes - Fixed Price (AUG 1987) (ALTERNATE I - APR 1984). This D&F explains the rationale for each differing term and condition and their relative importance to the purpose and performance of CPP, as well as the rationale for approving the waiver. The area where standard commercial
practices will not be followed are: (i) added requirement for Department of Defense (DoD) safety approval; (ii) added requirement for contractors to participate in the Civil Reserve Air Fleet (CRAF) Program; (iii) the changes clause; and (iv) the provision allowing fuel surcharges subject to certain terms and conditions.

A. Department of Defense approval is required for all participating carriers and their U.S. air carrier code-share partners.

Commercially, safety approval from the Federal Aviation Administration (FAA) is required before airlines are certified. To be considered for a CPP contract award, offerors must have approval from both the FAA and the DoD Air Carrier Survey and Analysis Office.

The DoD safety approval requirement arises out of 32 C.F.R. Part 861, DoD Directive 4500.53, and 10 U.S.C. § 2640. There is no similar requirement for civilian agencies. In order to permit the DoD to use the contracts, the DoD safety approval requirement must be included and, thereby, would apply to this solicitation for both DoD and civilian agency use of scheduled air passenger transportation services. Based on past years, DoD has been the largest customer of scheduled air passenger transportation services contract awards. This volume provides greater leveraging of both civilian and DoD requirements, thereby increasing the likelihood of carrier participation and the potential benefits of competition. In addition, by permitting DoD use of the contracts, the Government avoids the expense of separate solicitations and contracts for DoD and civilian agencies.

Therefore, the commercial practice will not meet the minimum needs of the Government. The following two (2) requirements and one (1) certification will be included in the CPP’ FY20 solicitation:

1) H.3 AIR CARRIER QUALITY AND SAFETY

Prior to award, in accordance with the provisions of 32 CFR 861.4, DoD Air Transportation Quality and Safety Requirements, DoD approval is required for all offerors and their U.S. air carrier code-share partners proposed for service on offered line items. All offerors and their U.S. air carrier code-share partners proposed for service on offered line items shall remain in an approved status throughout the period of performance for the contract.

In accordance with 32 CFR 861.6(b), foreign air carriers performing any portion of a route awarded to a U.S. air carrier under this solicitation pursuant to a code-sharing agreement with that U.S. air carrier, are generally not subject to DoD survey and approval under Sections 861.4 and 861.5. However, DoD will periodically review the performance of such foreign carriers. This review may consist of recurring performance evaluations, periodic examination of the U.S. code-sharing carrier’s operational reviews and assessments of the foreign carrier, and, where appropriate and agreed to by the air
carriers concerned and DoD, on-site surveys of the foreign air carrier. Such carriers must also meet the 12-months prior experience requirement of 32 CFR 861.4(e)(1).

See §K.8 to submit offeror certification of air carrier quality and safety.

2) H.4 DoD TEMPORARY NON-USE STATUS OR SUSPENSION

1. If at any time during the term of the contract, a carrier serving an awarded line item(s) is placed in temporary non-use status by DoD or suspension by DoD in accordance with 32 CFR Part 861.4(e)(1)(iv), the Government may, with no cost or liability to the Government or any department, agency, entity, or official therein:

   (a) Discontinue DoD use of services under the contract for the duration of the period of temporary non-use/suspension in the case of a U.S. air carrier in such status; or

   (b) Discontinue Government use of services under the contract for the duration of the period of temporary non-use/suspension in the case of a foreign code-share air carrier in such status.

2. If, during the term of this contract, such period of temporary non-use and/or suspension is terminated by DoD, through reinstatement or otherwise, use of services may resume in accordance with the terms of the contract.

3) K.8 AIR CARRIER QUALITY AND SAFETY

(a) By checking the box below, the offeror proposing to serve a line item through a code-share arrangement with a foreign air carrier represents that the offeror has reviewed the foreign carrier’s operations and maintenance and based on that review has determined that the foreign air carrier provides a substantially equivalent level of quality and safety as that provided in the offeror’s commercial practice. For purposes of this certification, substantially equivalent means that the foreign air carrier’s operations and maintenance function largely, but not wholly, in the same manner as the offeror’s operations and maintenance. To be eligible for award on international routes, the offeror must make the representation below if the offeror proposes to provide service through foreign code-share air carriers.

   ☐ The offeror represents that it has reviewed the operations and maintenance of each foreign code-share air carrier to be used by the offeror to provide service under this contract and based on the review(s) has determined that the foreign air carrier(s) provide(s) a substantially equivalent level of quality and safety as that provided in the offeror’s commercial practice.

(b) Prior to award, DoD shall review and approve all offerors and their U.S. air carrier code-share partners proposed for service on offered line items. Foreign air carriers performing any portion of a route (line item) awarded to a U.S. air carrier under this
solicitation pursuant to a code-sharing agreement with that U.S. air carrier, are generally not subject to DoD survey and approval. DoD review of offerors and their U.S. and foreign code-share air carriers will be based on the criteria specified in 32 CFR 861.4 and 861.6, respectively. The 12 month experience requirement at 32 CFR 861.4(e)(1) as provided in 32 CFR 861.6(b) must be met by foreign code-share air carriers by the date of contract award.

(c) At any time during the period of performance, if the servicing carrier (the contract carrier or code-share partner) loses DoD approval for any reason related to 32 CFR Part 861, then GSA may re-award the affected contract line item(s) until such time as DoD approval of the servicing carrier is restored.

B. The solicitation requires offerors to participate in the Civil Reserve Air Fleet (CRAF) Program or to obtain a Letter of CRAF Technical Ineligibility.

The CRAF Program is made up of U.S. commercial air carriers that voluntarily commit cargo and passenger aircraft to support military airlift requirements during national security emergencies. Initially, CPP contract carriers were not required to participate in the CRAF program as it was not considered to be standard commercial practice. However, participation in the CRAF program became required in order to strengthen DoD’s ability to meet the Government’s airlift requirements during national security emergencies. As a result of the CPP’s requirement to participate in the CRAF Program, all of the major U.S. airlines must participate in the CRAF Program or receive a Letter of Technical Ineligibility from the United States Transportation Command (USTRANSCOM).

The following language will be included in the contract:

**H.5 CIVIL RESERVE AIR FLEET (CRAF) PROGRAM**

(a) In order to receive a contract award under this solicitation, all offerors shall participate in the CRAF Program or, in the alternative, receive a Letter of CRAF Technical Ineligibility from the United States Transportation Command (USTRANSCOM).

(b) CRAF eligible carriers are Federal Aviation Regulations Part 121 certified carriers with international over water or domestic only capability. Carriers not eligible to execute a CRAF contract will be certified as not eligible and receive a LETTER OF CRAF TECHNICAL INELIGIBILITY. For a copy of the solicitation, or to determine technical eligibility, contact:

<table>
<thead>
<tr>
<th>Contract Airlift Division</th>
<th>DoD Commercial Airlift Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building 1900 W</td>
<td>HQ AMC/A3B</td>
</tr>
<tr>
<td>508 Scott Drive</td>
<td>402 Scott Drive Unit 3A1</td>
</tr>
<tr>
<td>Scott AFB, IL 62225-5357</td>
<td>Scott AFB, IL 62225-5302</td>
</tr>
<tr>
<td>(618) 220-7058</td>
<td>(618) 229-4801</td>
</tr>
</tbody>
</table>
During the entire period of this contract, the contract carrier shall participate in the CRAF Program or have been certified as technically ineligible for CRAF membership. GSA will terminate this scheduled air passenger transportation services contract for cause in accordance with FAR 52.212-4 (m) Contract Terms and Conditions—Commercial Items (OCT 2018), Termination for Cause, of this contract for failure of the contract carrier to maintain the conditions set-forth above.

See §K.9 to submit offeror certification of CRAF status.

C. The Changes Clause: FAR Clause 52.212-4(c), Changes, reads:

Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

This clause means that only bilateral changes can be made.

From time to time under CPP, the Government may need to make unilateral changes, either due to time constraints or due to the contractor’s objection to a new requirement (e.g., enactment of Congressional legislation or new/revised regulatory requirements issued by FAA or DoD).

In place of 52.212-4(c), a deviated version of FAR Clause 52.243-1 Changes – Fixed Price (AUG 1987) (Alternate I – APR 1984) will be utilized. The deviation from the FAR Clause deletes subparagraphs (a)(2) and (a)(3), which would allow the Contracting Officer to make changes in the time and place of performance. This is a contract for scheduled commercial air passenger transportation services, and thus, the Government cannot establish the times or routes of flights. The clause will read as follows:


(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.
(2) Time of performance (i.e., hours of the day, days of the week, etc.).
(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor’s proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of Clause)

D. Fuel surcharges are not effective immediately, but only allowed after a 14-day waiting period.

Commercially, airlines routinely implement fuel surcharges in line items and remove them with little or no notice if no other carrier(s) match the fees. This commercial practice would result in volatility and potential administrative costs for CPP. Therefore, in the solicitation, fuel surcharges must be in place for a minimum of 14 consecutive days commercially before the surcharges may be applied to CPP contract fares. This deviation from commercial practice ensures greater fare stability within CPP, enables travel agents to be properly notified, and adjustments made to electronic systems, such as the Defense Travel System (DTS) and the E-Gov Travel Service 2 (ETS2), to prepare for the fuel surcharge changes.

The language in C.11 (c) TAXES, FEES AND FUEL SURCHARGES AND I.2, I-FBG-LS001 ECONOMIC PRICE ADJUSTMENT FOR FUEL SURCHARGES- CITY PAIR PROGRAM (CPP) (JAN 2016) is as follows:

C.11 (c) Fuel surcharges are governed by §I.2, I-FBG-LS001 ECONOMIC PRICE ADJUSTMENT FOR FUEL SURCHARGES- CITY PAIR PROGRAM (CPP) (JAN 2016)

I.2 I-FBG-LS001 ECONOMIC PRICE ADJUSTMENT FOR FUEL SURCHARGES - CITY PAIR PROGRAM (CPP) (JAN 2016)

During the contract period and any exercised option periods, a fuel surcharge may be assessed as part of a contract fare at the time of ticketing under the following conditions:

(1) A fuel surcharge is allowed on a line item where a fuel surcharge has been imposed commercially to all customers in the booking inventories (buckets) in either the fares or as miscellaneous fees. The changes shall correspond to the YCA, _CA, and _CB contract fares for a minimum of 14 consecutive days. A fuel surcharge that has been imposed and terminated can only be re-instated after
being imposed commercially for 14 consecutive days. Fuel surcharge requests may be submitted to GSA at any time after contract award and throughout the contract period. Fuel surcharge requests submitted after contract award and before the start of the contract period will be effective on the effective date of the contract or 14 days after the fuel surcharge was imposed commercially, whichever date is later and after approval by the Contracting Officer. A fuel surcharge may be applied to contract fares if the fuel surcharge was imposed commercially after submission of offers but before the effective date of the contract. Any fuel surcharge commercially in place at the time of offer submission must be included in the offered fare. To the extent possible, all anticipated fuel surcharges should be included in the fare offered at the time of offer submission.

(2) A carrier shall report to the GSA Contracting Officer in writing when a fuel surcharge is imposed, identifying the start date of that commercial fuel surcharge and the amount of the fuel surcharge on a line items by line item basis. A carrier shall also identify the booking inventories (buckets) corresponding to the YCA, _CA, and _CB to which the fuel surcharge applies commercially. When notifying GSA of fuel surcharge implementation, for any fuel surcharge that was initiated after the date of submission of the carrier’s offer to GSA but before the contract effective date, the carrier shall include in its submission a written representation that the original offer price did not include any amount for anticipated fuel surcharges. If the offered price did include an amount to offset anticipated fuel surcharge, the carrier must state the dollar amount included in the offer and GSA will address the matter with the carrier. When notifying GSA of a new (or updated) fuel surcharge, the carrier must submit the fuel surcharge information in a spreadsheet of the following format (enter 0 for no fuel surcharge) and obtain written approval, prior to imposing fuel surcharges on CPP fares, from the CPP Contracting Officer that the fuel surcharge application is verified and acceptable:

<table>
<thead>
<tr>
<th>Airline name</th>
<th>Item #</th>
<th>Origin City Code or Airport Code and Name</th>
<th>Destination City Code or Airport Code and Name</th>
<th>YCA FSC 1 way in USD</th>
<th>CA FSC 1 way in USD</th>
<th>CB FSC 1 way in USD</th>
<th>Date when imposed commercially</th>
<th>Date when applicable to CPP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airline name</td>
<td>1855</td>
<td>DCA</td>
<td>LAX</td>
<td>$10</td>
<td>$0</td>
<td>$0</td>
<td>9/1/20XX</td>
<td>10/1/20XX</td>
</tr>
<tr>
<td>Airline name</td>
<td>5866</td>
<td>WAS</td>
<td>FRA</td>
<td>$50</td>
<td>$30</td>
<td>$0</td>
<td>10/15/20XX</td>
<td>10/29/20XX</td>
</tr>
</tbody>
</table>

Note: Where applicable, domestic is always first when listing origin city/airport code, and international is always second when listing destination city/airport code.

Whenever a fuel surcharge is updated (whether an increase or a decrease), the complete spreadsheet must be submitted in its entirety. The spreadsheet must include both changed fuel surcharge amounts and effective dates and also unchanged fuel surcharge amounts and effective dates. In addition, the carrier shall provide substantiating documentation that the fuel surcharge has been
applied commercially for the 14-day period. Upon receipt of the documents, the GSA Contracting Officer shall acknowledge receipt of the required materials within 2 business days and complete the review of the fuel surcharge request within 10 business days, unless otherwise notified by the GSA Contracting Officer. If the Government requires more time for review, it shall indicate in the receipt acknowledgement what the alternative review schedule will be. A carrier shall not impose any fuel surcharge unless written approval from the Contracting Officer is received.

(3) A carrier must cease any fuel surcharge on contract fares when the fuel surcharge is no longer imposed commercially. The carrier must also notify the GSA Contracting Officer in writing when the fuel surcharge is removed, identifying the end date of the fuel surcharge. In no instance shall the Government be charged a higher fuel surcharge than that imposed commercially.

(4) Should a carrier not comply with the above terms, the Government may terminate for cause the line item(s) for which the carrier failed to comply with the provisions of §C.11. Audits of contract fares will include a review of fuel surcharges. Improperly assessed surcharges on contract fares shall be reimbursed to the Government, or, if not, subject to the issuance of an overcharge under §G.2, Audit of Contract Fares.

(End of clause)
DETERMINATION

I hereby determine that based on the foregoing, a waiver from the requirements of FAR 12.302(c) should be approved as being in the best interests of the Government.

PREPARED BY

Corey Gerst
Contracting Officer
Travel Acquisition Support Branch (QMACB)

10/18/18

Date

CONCURRENCE:

Kwanita A. Brown
Branch Chief
Travel Acquisition Support Branch (QMACB)

Digitally signed by
Kwanita Brown
Date: 2018.10.23
18:39:44 -04'00'

10/23/2018

Date

Gregory J. Pope
Director
Center for Travel and Transportation Acquisition (QMAC)

Digitally signed by GREGORY POPE
Date: 2018.10.25 08:25:30
-04'00'

CONCURRENCE:

Rebecca A. Koses
Director
Office of Acquisition Operations (QMA)

Digitally signed by REBECCA KOSES
Date: 2018.10.29 10:41:46
-04'00'

CONCURRENCE:

Lauren Concklin
Director
Air, Training and Travel Solutions (QMCFA)

Digitally signed by LAUREN CONCKLIN
Date: 2018.10.29 12:52:05
-04'00'
LEGALLY SUFFICIENT:

AMANDA GRAMLICH

Date: 2018.12.21 12:58:26 -04'00"

Amanda Gramlich
Assistant General Counsel
Personal Property Division (LP)

TIMOTHY BURKE

Digitally signed by TIMOTHY BURKE
Date: 2018.11.08 16:23:23 -05'00"

Timothy J. Burke
Director
Office of Travel, Employee Relocation and Transportation (QMC)

WILLIAM TOTH

Digitally signed by WILLIAM TOTH
Date: 2018.11.13 10:27:14 -05'00"

William Toth
Head of the Contracting Activity (HCA)
Acting Assistant Commissioner
Office of Travel, Transportation & Logistics (TTL)

APPROVED:

Jeffrey Koses
Senior Procurement Executive
Office of Acquisition Policy (MV)

Date: 12/20/10
ROUTE: (Name, Office Symbol, Room Number, Building, Agency/Post)

1. Candelle Campbell
2. Robin Bourne
3. Leah Price
4. Mark Lee
5. Jeff Koses

TO: (Name, Office Symbol, Room Number, Building, Agency/Post)

DATE
Wednesday, November 21, 2018

REMARKS
Summary:
Contract Type - Fixed-price with an economic price adjustment (permitting fuel surcharges)
Estimate - $2,720,292,377
POP - Base October 1, 2019 through September 30, 2020
Option 1 - October 1, 2020 - November 30, 2020
Option 2 - December 1 - December 31, 2020

TTL submitted the attached D&F in support of the FY 2020 GSA City Pair Scheduled Air Passenger Transportation Services Contract. The D&F outlines three (3) areas of the terms and conditions of the contract that will not follow commercial standards -
1. The added requirement for DoD safety approval
2. The added requirement for vendors to participate in the Civil Reserve Air Fleet (CRAF) Program
3. The application of specific terms and conditions for fuel surcharges

There are no questions or concerns based on the information presented. Concurrence is recommended.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions.

FROM: (Name, Organization Symbol, Agency/Post)

MALEKA GREENE
Digitally signed by MALEKA GREENE
Date: 2018.11.21 12:27:08 -05'00'

Authorized for Local Reproduction
Previous Edition is Usable

OPTIONAL FORM 41 (REV. 8/2017)
MEMORANDUM FOR JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

THRU: REBECCA A. KOSES
DIRECTOR
OFFICE OF ACQUISITION OPERATIONS (QMA)

GREGORY J. POPE
DIRECTOR
CENTER FOR TRAVEL AND TRANSPORTATION ACQUISITION (QMAC)

KWANITA A. BROWN
BRANCH CHIEF
TRAVEL ACQUISITION SUPPORT BRANCH (QMACB)

FROM: COREY GERST
CONTRACTING OFFICER
TRAVEL ACQUISITION SUPPORT BRANCH (QMACB)

SUBJECT: Class Deviation for FAR Contract Terms and Conditions - Commercial Items, for Scheduled Air Passenger Transportation Services, Solicitation No. QMAC-CG-190002-D

In accordance with Subpart 501.404 of the General Services Administration Acquisition Manual (GSAM), your approval is requested for a class deviation from four subparagraphs listed in FAR Clause 52.212-4, Contract Terms and Conditions - Commercial Items (OCT 2018). One subparagraph of clause 52.212-4, Changes, does not fulfill the Government’s needs and it is requested that the subparagraph be replaced with a deviated version of clause 52.243-1 Changes – Fixed Price (AUG 1987) (Alternate I – APR 1984). The remaining three subparagraphs of clause 52.212-4, Invoice, Payment, and Taxes, as written, are not the airline industry’s commercial practice.

This deviation request does not violate the underlying statute nor defeat the FAR and GSAM approval requirements.

Justification:
Approval of this deviation will permit the City Pair Program (CPP) to incorporate a Changes Clause that more closely aligns with the Government’s needs. Additionally, approval of this deviation request will enable the procurement for scheduled air passenger transportation services
to more closely align with the standard practices of the commercial airline industry in the area of invoicing, payments, and taxes. The inability of the airline industry to follow commercial practices in these three areas could potentially limit participation in CPP, thus reducing competition and the Government’s ability to negotiate deeply discounted airfares for Government travelers.

Name, organization and role of the team members preparing the deviation request
Travel Acquisition Support Branch (QMACB)
- Corey Gerst, Contracting Officer (QMACB)
- Andrea Anderson, Contract Specialist (QMACB)

Number of contracts affected in the previous fiscal year
8 contracts for FY19

Effect on the agency, or Contracting Officers and the acquisition team (costs/benefits)
The Travel Acquisition Support Branch (QMACB) is requesting a deviation from the following subparagraphs in FAR Clause 52.212-4, Contract Terms and Conditions – Commercial Items (OCT 2018):
- Subparagraph (c) Changes
- Subparagraph (g) Invoice
- Subparagraph (i) Payment
- Subparagraph (k) Taxes

Additionally, a deviation is requested for FAR Clause 52.243-1, Changes – Fixed Price (AUG 1987) (ALTERNATE I – APR 1984).

FAR 12.302(a) states that to the maximum extent practicable, the clause at 52.212-4 addresses customary commercial practices. However, because of the broad range of commercial items acquired by the Government, contracting officers may, after appropriate market research, tailor certain paragraphs of the provision at 52.212-1, Instructions to Offerors—Commercial Items (OCT 2018), and the clause at 52.212-4, Contract Terms and Conditions—Commercial Items (OCT 2018), to adapt to the market conditions for each acquisition.

FAR 12.302(b) also states, however, that certain paragraphs of clause 52.212-4 that implement statutory requirements shall not be tailored. They include the paragraphs addressing assignments, disputes, payment, invoice, other compliances, compliance with laws unique to Government contracts, and unauthorized obligations.

The subparagraph of Clause 52.212-4 regarding changes does not adequately meet CPP’s needs; therefore, it is requested that the subparagraph be replaced with a deviated version of Clause 52.243-1 that better aligns with commercial practice. The remaining three subparagraphs of Clause 52.212-4 regarding invoices, payment and taxes, as written, are not the airline industry’s commercial practice.

a. FAR 52.212-4, Subparagraph (c), Changes

FAR 52.212-4(c), Changes, currently states:
Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

As written, this clause means that only bilateral changes can be made. From time to time under CPP, the Government may need to make unilateral changes, either due to time constraints or due to the contractor’s objection to a new requirement (e.g., enactment of Congressional legislation or new/revised regulatory requirements issued by the Federal Aviation Administration (FAA) or the Department of Defense (DoD)). The language in 52.212-4(c) does not allow the Government to act in the best interest of the public by restricting contract changes to only bilateral changes.

In place of 52.212-4(c), a deviation is requested to utilize Alternate I of FAR Clause 52.243-1 (APR 1984), which would allow the Government to make unilateral changes to the contract as needed. FAR 52.243-1 Changes – Fixed Price (Alternate I) (APR 1984) currently states:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.
(2) Time of performance (i.e., hours of the day, days of the week, etc.).
(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor’s proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

This FAR clause requires a deviation to strike out paragraphs (a)(2) and (a)(3), which would allow the Contracting Officer to make changes in the time and place of performance. This is a contract for scheduled commercial air passenger transportation services, and thus, the Government cannot establish the times or routes of flights. Time and place of performance is determined by the commercial industry practice. The deviated clause will read in its entirety as follows:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.
(2) Time of performance (i.e., hours of the day, days of the week, etc.).
(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor’s proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

b. FAR 52.212-4, Subparagraph (g), Invoice

FAR 52.212-4(g), Invoice, currently states:

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;
(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

Because airline tickets are purchased through commercial charge card services under contract with GSA, or through Government Transportation Requests (GTRs), and tickets are normally purchased through GSA’s E-Gov Travel Service contracts, Travel Management Centers, or a Commercial Travel Office, the above invoicing procedure is not applicable. This deviation request will simply remove this subparagraph of FAR 52.212-4 from the contract.

c. FAR 52.212-4, Subparagraph (i), Payment

FAR 52.212-4(i), Payment, currently states:

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the
payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

   (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

   (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

   (B) Affected contract number and delivery order number, if applicable;

   (C) Affected line item or subline item, if applicable; and

   (D) Contractor point of contact.

   (ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

   (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

   (ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

   (iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

   (A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

   (B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

   (C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).
(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

For CPP, the primary means of payment are (1) the use of individually or centrally billed accounts established under a GSA contract for travel card services and (2) GTRs.

Limiting the available forms of payment affords the Government the control necessary to permit only authorized users access to the GSA contract fares, thereby helping to ensure that the airlines participate in CPP. In addition, payment via a travel card reflects the commercial practice in the industry. This deviation request will remove the subparagraph as written and substitute it with the following language that more accurately addresses payment provisions:

C.12 METHOD OF PAYMENT

1. The GSA contracts for commercial travel card services to provide individual travel cards (contractor-issued travel cards) to Federal employees to cover transportation and other related expenses incurred during official travel. The GSA travel card contract(s) also provide(s) for the use of centrally billed accounts by Federal agencies to purchase airline tickets. THE ONLY CHARGE CARD(S) OR CENTRALLY BILLED ACCOUNT(S) THE CONTRACT CARRIER(S) IS (ARE) OBLIGATED TO ACCEPT ARE THOSE AWARDED under a GSA contract for travel card services. If there are any questions as to the offered form of payment, the contract carrier’s contract administrator (as listed in §K.2 Contact for Contract Administration) should contact the GSA Contracting Officer.
2. The contract carrier agrees to accept payment through all of the following methods: 1) individually or centrally billed Government travel accounts issued under a GSA contract (see Federal Travel Regulation (FTR) 301-72.3 (41 CFR 301-72.3)); and 2) Government Transportation Requests (GTRs). GTRs may be used to pay for international air travel and other travel related expenses. For domestic air travel (other than §C.12(4)), GTRs may be used only under special circumstances and for travel related expenses. Special domestic circumstances are defined as acts of God, emergency situations, and when purchasing a domestic ticket in the USA in conjunction with travel that originated overseas.

Individually or centrally-billed travel account charge transactions shall be processed by carriers in the same manner as commercial charge transactions. GTRs shall be processed according to the Federal Management Regulation (FMR) Part 102-118 (41 CFR Part 102-118).

3. The American Red Cross National Sector shall pay for services only through the use of a centrally billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.

4. Members and employees of the U.S. House of Representatives and Senate pay for services with a travel card or centrally-billed account established under a GSA contract for commercial travel card services, a GTR, cash, money order, or personal credit card (the acceptance of non-GSA contractor issued travel cards, cash, or money orders for payment is at the option of the contract carrier).

5. Employees of a tribe or tribal organizations performing travel necessary to carry out a contract, grant, funding or cooperative agreement under the Indian Self-Determination and Education Assistance Act, pursuant to 25 U.S.C. 5324(k), shall pay for services only through the use of a travel card or a centrally billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.

6. Military reservists traveling to and from inactive duty training when authorized by the Department of Defense shall pay for services through the use of a travel card established under a GSA contract for commercial travel card services in effect during the term of this contract. The Government does not reimburse airline travel costs to military reservists.

7. Employees of and participants in the Eisenhower Exchange Fellowship Program when performing travel necessary to carry out the provisions of 20 U.S.C. 5201 shall pay for services through the use of a travel card or a centrally billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.

8. Employees of the foundations established by Acts of Congress to solicit private sector funds on behalf of Federal land management agencies, shall pay for services through the use of a centrally billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.

9. Employees of a tribe or tribally designated housing entity performing travel necessary to carry out a block grant under the Native American Housing Assistance and Self-
Determination Act, pursuant to 25 U.S.C. 4111(j), shall pay for services only through the use of a travel card or a centrally billed account established under a GSA contract for commercial travel card services in effect during the term of this contract.

Prices offered under CPP are the envy of the commercial industry and as such airlines are very concerned that scheduled air passenger transportation sales will occur to users other than those authorized by the contract. The form of payment, the GSA SmartPay® card, was determined to be the most effective way to control access to deeply discounted CPP fares as the card number denotes mandatory users versus non-mandatory users. The airline carriers have all programmed their automated sales systems to recognize the GSA SmartPay® account structure in order to trigger the contract fares. This automation results in point-of-sale discounts at ticket counters world-wide. In addition, GSA’s E-Gov Travel Systems have all been programmed to recognize the GSA SmartPay® card as the authorized form of payment.

d. FAR 52.212-4, Subparagraph (k), Taxes

FAR 52.212-4(k), Taxes, currently states:

The contract price includes all applicable Federal, State, and local taxes and duties.

CPP contract fares in international and fifth freedom of the air line items are not exempt from taxes imposed by foreign governments. The above clause does not encompass taxes and fees applicable to international and fifth freedom of the air line items. This deviation request will strike out the subparagraph as written and substitute with the following language that more accurately addresses tax provisions. Please note, the text relating to fuel surcharges, §C.11(c), does not require a deviation request and, thus, is not necessary to address in the approval of this waiver request.

C.11 TAXES, FEES, AND FUEL SURCHARGES

(a) All fares for domestic line items include all existing Federal, state, and local taxes. Airport maintenance fees, administrative fees (e.g., fees charged for route and schedule changes), fuel surcharges currently in place commercially, and other similar charges are to be included in all fares offered, where applicable. Passenger facility charges (PFC), segment fees, and passenger security service fees are not included in the offered fares, but are listed separately on the ticket at the time of issuance.

(b) For international, fifth freedom of the air, and international business class line items, all fares are exclusive of taxes. Fuel surcharges are to be included in all fares offered. All line items included under the international tariff of the International Air Transport Association may be treated as international line items for purposes of this section.

(c) Fuel surcharges are governed by §I.2 I-FBG-LS001 Economic Price Adjustment for Fuel Surcharges - City Pair Program (CPP) (JAN 2016).

---

1 Fifth Freedom of the Air – A scheduled air service right or privilege, granted by a foreign country to American carriers to put down and take on passengers in its territory, where the American carrier flies between two foreign countries on a flight which either originated in or is ending in the United States (e.g., an American carrier moving traffic between Japan and Thailand on scheduled service from the United States to Japan to Thailand). The use of the terms “freedom” and “right” confer entitlement to operate such scheduled air passenger services only within the scope of the multilateral and bilateral treaties (air service agreements) that allow them and which carriers have authority.
Effect on contractors (costs/benefits), including:
- Number of contractors affected:
  - 8 contractors affected for FY19.

- Number of small businesses affected
  - 1 small business affected for FY19.

- Impact on small businesses (positive or negative)
  - No impact on small businesses, as no two small businesses for scheduled air passenger transportation services compete on the same route.

Potential impact on another Service:
No impact on another service.

Opportunities for efficiency under the proposed Deviation:
Approval of the deviation request will enhance competition by more closely aligning with commercial practices in these areas. It will also afford seamless integration among multiple Government programs/contracts, including E-Government Travel System and GSA SmartPay® travel charge cards.

Analysis of alternatives, identifying risks, and risk mitigation:
The alternative is to proceed with the current acquisition strategy by including the unaltered FAR Clause 52.212-4, Contract Terms and Conditions - Commercial Items (OCT 2018). This alternative is not recommended because not deviating from 52.212-4(c) to use FAR Clause 52.243-1, Changes – Fixed Price (AUG 1987) (ALTERNATE I – APR 1984) could result in detrimental delays or difficulties in implementing certain contract changes. This alternative would not meet the Government’s needs as it overly restricts the Government’s ability to act in the public interest. In addition, it is not recommended because the procurement would not align with the standard practices of the commercial airline industry. As a result, the airline carriers’ participation may decrease; thus reducing competition and possibly resulting in increased fares as carriers would need to build special processes to accommodate the clause as written.

Any effects on automated systems (i.e., financial and procurement):
Current contractor and Government systems have already adapted to this process. This deviation request for CPP has been constant for multiple years.

Proposed milestones for initiation, including training:
Initiation for this class deviation request is immediate for the upcoming procurement cycle. All contractors and customers understand the deviations as they have been in place for numerous years. All contractors are in compliance with the terms of the deviation as written because all are commercial airline industry standard practices.

Approach to monitoring success and determining whether or not the Deviation will continue:
Continual monitoring of commercial airline industry standards regarding these deviations will occur throughout the procurement cycle. Changes to industry standards will be noted and appropriate adjustments will be made, if necessary. However, the deviations in this request are long standing and are unlikely to change during the upcoming procurement cycle.
Any Federal Strategic Sourcing Initiative team interaction or recommendation should be provided in order to support the overall strategic sourcing goals being sought:
N/A

[Signature Page Follows]
PREPARED BY:  
Corey Gept
Contracting Officer
Travel Acquisition Support Branch (QMACB)

10/30/18  
Date

Kwanita Brown
Branch Chief
Travel Acquisition Support Branch (QMACB)

11/05/2018  
Date

Gregory J. Pope
Director
Center for Travel and Transportation Acquisition (QMAC)

2018.11.06 09:19:46 -05'00'  
Date

Rebecca A. Koses
Director
Office of Acquisition Operations (QMA)

2018.11.08 10:08:22 -05'00'  
Date

Lauren Concklin
Director
Air, Training and Travel Solutions (QMCFA)

2018.11.08 11:44:39 -05'00'  
Date

Amanda Gramlich
Assistant General Counsel
Personal Property Division (LP)

2018.11.14 16:05:52 -05'00'  
Date

QMAC-CG-190002-D FY20 Class Deviation   Page 12
Enclosed for your approval is a request to deviate from four sub-paragraphs listed in FAR Clause 52.212-4, Contract Terms and Conditions - Commercial Items (OCT 2018). This request is a routine operating procedure for the annual City Pair Program (CPP). One subparagraph of clause 52.212-4, Changes, does not fulfill the Government’s needs and it is requested that the subparagraph be replaced with a deviated version of clause 52.243-1 Changes – Fixed Price (AUG 1987) (Alternate I – APR 1984). The remaining three sub-paragraphs of clause 52.212-4, Invoice, Payment, and Taxes, as written, are not the airline industry’s commercial practice. With respect to invoice and payment, purchases are generally made with the travel charge card and not separately invoiced by airlines for payment. With respect to taxes, the airline industry standard practice is to charge them separate from the airfare. Your approval will permit the GSA to purchase air passenger transportation services in accordance with standard commercial practices.
# ROUTING SLIP

<table>
<thead>
<tr>
<th>TO</th>
<th>✔ CO</th>
<th>RW</th>
<th>R1</th>
<th>R2</th>
<th>R3</th>
<th>R4</th>
<th>R5</th>
<th>R6</th>
<th>R7</th>
<th>R8</th>
<th>R9</th>
<th>R10</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NAME/TITLE</td>
<td>CORRES. SYMBOL</td>
<td>RECEIVED</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NAME/TITLE</td>
<td>INITIAL</td>
<td>DATE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Timothy J. Burke</td>
<td>TIMOTHY BURKE</td>
<td>Digitally signed by TIMOTHY BURKE Date: 2018.11.16 16:08:34 -05'00'</td>
<td>QMC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. William Toth</td>
<td>WILLIAM TOTH</td>
<td>Digitally signed by WILLIAM TOTH Date: 2018.11.19 13:26:29 -05'00'</td>
<td>TTL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Jeffrey A. Koses</td>
<td></td>
<td></td>
<td>MV</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Necessary Action</td>
<td>Recommendation</td>
<td>As Requested</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For Signature</td>
<td>Comment</td>
<td>See Me</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concurrence</td>
<td>Initial and Return</td>
<td>Your Information</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval</td>
<td>Per Conversation</td>
<td>Other (Specify)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## REPLY OR INTERIM REPLY

<table>
<thead>
<tr>
<th>FOR SIGNATURE OF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jeffrey A. Koses</td>
</tr>
</tbody>
</table>

## REMARKS

See page 1.
REMARKS

The FAS Office of Travel, Transportation, and Logistics (TTL) Categories City Pair Program (CPP) team submitted the attached request to deviate from four (4) sub-paragraphs listed in the Federal Acquisition Regulation (FAR) Clause 52.212-4, Contract Terms and Conditions - Commercial Items (OCT 2018). This is an annual routine request that will allow for the incorporation of a Changes clause that more closely aligns with the Government’s needs for this program/requirement. Additionally, the deviation request, if approved, will enable the procurement for scheduled air passenger transportation services to more closely align with the standard practices of the commercial airline industry in the area of invoicing, payments, and taxes. The inability of the airline industry to follow commercial practices in these three (3) areas could potentially limit participation in CPP, thus reducing competition and the Government’s ability to negotiate deeply discounted airfares for Government travelers.

The attached deviation meets all regulatory requirements as outlined in GSA Acquisition Letter MV-2011-06, Requirements for Preparation of Class Deviations to the GSAM (dated September 27, 2011). There were additional revisions this year to the deviation request that resulted from regulatory (i.e., FAR) and administrative (i.e., internal staffing) changes. These revisions did not change the basis of the deviation or violate the intent of the underlying statute.

QVOE recommends concurrence of the deviation request as presented.
MEMORANDUM FOR: JEFFREY A. KOSES  
SENIOR PROCUREMENT EXECUTIVE  
OFFICE OF ACQUISITION POLICY (MV)

THRU: REBECCA A. KOSES  
DIRECTOR  
OFFICE OF ACQUISITION OPERATIONS (QMA)

GREGORY J. POPE  
DIRECTOR  
CENTER FOR TRAVEL AND TRANSPORTATION ACQUISITION (QMAC)

KWANITA A. BROWN  
BRANCH CHIEF  
TRAVEL ACQUISITION SUPPORT BRANCH (QMACB)

FROM: COREY GERST  
CONTRACTING OFFICER  
TRAVEL ACQUISITION SUPPORT BRANCH (QMACB)

SUBJECT: Class Deviation for FAR 52.216-21 – Requirements, for Scheduled Air Passenger Transportation Services, Solicitation No. QMAC-CG-190002-D

In accordance with Subpart 501.404 of the General Services Administration Acquisition Manual (GSAM), your approval is requested for a class deviation from four subparagraphs listed in FAR Clause 52.216-21 Requirements (OCT 1995) as these do not fulfill the Government’s needs.

This deviation request does not violate the underlying statute nor defeat the FAR and GSAM approval requirements.

Justification:
Approval of this deviation will permit the City Pair Program (CPP) to incorporate a Requirements Clause that more closely aligns with the Government’s needs. Additionally, approval of this deviation request will remove any inapplicable language for the Clause as it is written.

Name, organization and role of the team members preparing the deviation request
Travel Acquisition Support Branch (QMACB)
- Corey Gerst, Contracting Officer (QMACB)
Andrea Anderson, Contract Specialist (QMACB)

Number of contracts affected in the previous fiscal year
8 contracts for FY19

Effect on the agency, or Contracting Officers and the acquisition team (costs/benefits)
The Travel Acquisition Support Branch (QMACB) is requesting a deviation from the following subparagraphs in FAR Clause 52.216-21 Requirements (OCT 1995):

- Subparagraph (b)
- Subparagraph (d)
- Subparagraph (e)
- Subparagraph (f)

The above-mentioned subparagraphs of Clause 52.216-21 regarding performance and purchase requirements do not adequately meet CPP’s needs; therefore, it is requested that the subparagraphs be removed and replaced with deviated versions that better align with the requirements of the CPP contract.

a. FAR 52.216-21, Subparagraph (b)

FAR 52.216-21(b), currently states:

Delivery or performance shall be made only as authorized by orders\(^1\) issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

As written, this language contemplates that orders will be issued in accordance with the Ordering clause. The Ordering clause (FAR 52.216-18 – Ordering) is not included in the FY20 CPP solicitation/contract as it contemplates the issuance of delivery orders and/or task orders, neither of which are issued against the CPP contract. A deviation is requested to replace “Ordering clause” in the first and second sentences of FAR 52.216-21(b) with:

“terms and conditions of the City Pair Program contract.”

The second sentence of FAR 52.216-21(b) also references the Order Limitations clause (FAR 52.216-19 – Order Limitations). The CPP contract does not include FAR 52.216-19 – Order Limitations, which establishes minimum and maximum order thresholds. As CPP does not establish any order limitations, this language is not applicable. As such, this portion of the FAR clause requires a deviation to strike out the “Order Limitations clause or elsewhere” language.

The deviated subparagraph will read in its entirety as follows:

\(^1\) For the purposes of this document, “orders” as referenced herein, are defined as flights ordered against the City Pair Program contract and are not considered to be Delivery or Task Orders.
(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the terms and conditions of the City Pair Program contract. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, The Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the terms and conditions of the City Pair Program contract. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

b. FAR 52.216-21, Subparagraph (d)

FAR 52.216-21(d), currently states:

The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

This language is not applicable to the CPP contract as it does not establish any limits on total orders. As such, this portion of the FAR clause requires a deviation to strike out the aforementioned language.

c. FAR 52.216-21, Subparagraph (e)

FAR 52.216-21(e), currently states:

If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

The Government does not have a need for accelerated delivery of services under the CPP contract as the CPP contract’s scope provides for air passenger transportation that is already “scheduled” by industry as commercial service. This deviation will remove this subparagraph of FAR 52.216-21 from the contract, as it is not applicable.

d. FAR 52.216-21, Subparagraph (f)

FAR 52.216-21(f), currently states:

Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after __________________ [insert date].

Flights may be procured through the CPP contract from the commencement of the period of performance as stated in the contract or date of award (whichever is later) through its expiration, including option periods. The contract has two (2) option periods that, if exercised, could extend the contract by up to an additional three (3) months. A flight could be purchased on the last day of the CPP contract and not occur until after the CPP contract expires. A deviation is necessary to require the contract carrier to honor any tickets issued prior to contract expiration for flights occurring after contract expiration.
In place of 52.216-21(f), a deviation is requested to replace the “Ordering clause” language with:

Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the Contractor shall not be required to perform under this contract after the date in which all orders issued prior to contract expiration with dates(s) of order fulfillment after contract expiration have been completed.

e. **Revised Clause with deviations**

The deviated clause, **FAR 52.216-21 Requirements (Oct 1995)**, will read in its entirety as follows:

(a) This is a requirements contract for the supplies or services specified and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government’s requirements do not result in orders in the quantities described as “estimated” or “maximum” in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause terms and conditions of the City Pair Program contract. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause terms and conditions of the City Pair Program contract. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the Contractor shall not be required to make any deliveries perform under this contract after the contract period of performance has expired.
[insert date]—after the date in which all orders issued prior to contract expiration with date(s) of order fulfillment after contract expiration have been completed.

**Effect on contractors (costs/benefits), including:**

- **Number of contractors affected:**
  - 8 contractors affected for FY19.

- **Number of small businesses affected**
  - 1 small business affected for FY19.

- **Impact on small businesses (positive or negative)**
  - No impact on small businesses, as no two small businesses for scheduled air passenger transportation services compete on the same route.

**Potential impact on another Service:**
No impact on another service.

**Opportunities for efficiency under the proposed Deviation:**
Approval of the deviation request will establish the timeline that orders can be placed against the CPP contract and will remove language that is not applicable for scheduled air passenger transportation services.

**Analysis of alternatives, identifying risks, and risk mitigation:**
The alternative is to proceed with the current acquisition strategy by including the unaltered FAR Clause 52.216-21, Requirements (OCT 1995). This alternative is not recommended because not deviating from 52.216-21 could result in confusion or difficulties in implementing certain aspects of the CPP contract as there is language included in the clause that is not applicable to CPP requirements.

**Any effects on automated systems (i.e., financial and procurement):**
This deviation will have no impact on any automated systems utilized by CPP.

**Proposed milestones for initiation, including training:**
Initiation for this class deviation request is immediate for the upcoming procurement cycle for the FY20 City Pair Program requirement. All contractors and customers will be advised of the inclusion of this clause and its deviation at the CPP Pre-Solicitation Conference and again in the Significant Changes attachment to the FY20 Request for Proposals.

**Approach to monitoring success and determining whether or not the Deviation will continue:**
Continual monitoring of commercial airline industry standards regarding these deviations will occur throughout the procurement cycle. Changes to industry standards will be noted and appropriate adjustments will be made, if necessary. However, the deviations in this request are unlikely to change during the upcoming procurement cycle.

**Any Federal Strategic Sourcing Initiative team interaction or recommendation should be provided in order to support the overall strategic sourcing goals being sought:**
N/A

[Signature Page Follows]
CONCURRENCE:  
Timothy J. Burke  
Director  
Office of Travel, Transportation and Logistics (QM)  
Date

CONCURRENCE:  
William Toth  
Head of the Contracting Activity (HCA)  
Acting Assistant Commissioner  
Office of Travel, Transportation & Logistics (TTL)  
Date

APPROVED:  
Jeffrey A. Koses  
Senior Procurement Executive  
Office of Acquisition Policy (MV)  
Date
PREPARED BY:  
Corey Gerst  
Contracting Officer  
Travel Acquisition Support Branch (QMACB)  

12/18/18  
Date

Kwanita A. Brown  
Branch Chief  
Travel Acquisition Support Branch (QMACB)

CONCURRENCE:  
Kwanita A. Brown  
Digitally signed by Kwanita Brown  
Date: 2018.12.19 18:10:52 -05'00'

Gregory J. Pope  
Director  
Center for Travel and Transportation Acquisition (QMAC)

CONCURRENCE:  
Rebecca A. Koses  
Digitally signed by Rebecca Koses  
Date: 2018.12.20 13:03:44 -05'00'

Lauren Concklin  
Director  
Air, Training and Travel Solutions (QMCFA)

CONCURRENCE:  
Lauren Concklin  
Digitally signed by Lauren Concklin  
Date: 2018.12.27 07:49:35 -05'00'

AMANDA GRAMLICH  
Assistant General Counsel  
Personal Property Division (LP)  

LEGALLY SUFFICIENT:  
AMANDA GRAMLICH  
Digitally signed by Amanda Gramlich  
Date: 2018.12.27 10:26:37 -05'00'
CONCURRENCE:

Timothy J. Burke
Director
Office of Travel, Transportation and Logistics (QM)

Date

CONCURRENCE:

William Toth
Head of the Contracting Activity (HCA)
Acting Assistant Commissioner
Office of Travel, Transportation & Logistics (TTL)

Date

APPROVED:

Jeffrey A. Koses
Senior Procurement Executive
Office of Acquisition Policy (MV)

Date
Enclosed for your approval is a request to deviate from four subparagraphs listed in FAR Clause 52.216-21 Requirements (OCT 1995) as it does not fulfill the Government’s needs. This deviation request does not violate the underlying statute nor defeat the FAR and GSAM approval requirements.

Approval of this deviation will permit the City Pair Program (CPP) to incorporate a Requirements Clause that more closely aligns with the Government’s needs. Additionally, approval of this deviation request will remove any inapplicable language for the Clause as it is written.

Your approval will permit the GSA to purchase air passenger transportation services in accordance with standard commercial practices.
# ROUTING SLIP

<table>
<thead>
<tr>
<th>TO</th>
<th>CO</th>
<th>RW</th>
<th>R1</th>
<th>R2</th>
<th>R3</th>
<th>R4</th>
<th>R5</th>
<th>R6</th>
<th>R7</th>
<th>R8</th>
<th>R9</th>
<th>R10</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NAME/TITLE**

<table>
<thead>
<tr>
<th>NAME/TITLE</th>
<th>CORRESP. SYMBOL</th>
<th>RECEIVED</th>
</tr>
</thead>
<tbody>
<tr>
<td>TIMOTHY BURKE</td>
<td>QMC</td>
<td></td>
</tr>
<tr>
<td>William Toth</td>
<td>TTL</td>
<td></td>
</tr>
<tr>
<td>Jeffrey A. Koses</td>
<td>MV</td>
<td></td>
</tr>
</tbody>
</table>

5. Necessary Action

<table>
<thead>
<tr>
<th>Comment</th>
<th>As Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>See Me</td>
<td></td>
</tr>
</tbody>
</table>

5. For Signature

<table>
<thead>
<tr>
<th>Initial and Return</th>
<th>Your Information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. Concurrence

<table>
<thead>
<tr>
<th>Per Conversation</th>
<th>Other (Specify)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**REPLY OR INTERIM REPLY**

<table>
<thead>
<tr>
<th>DUE</th>
<th>FOR SIGNATURE OF</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Jeffrey A. Koses</td>
</tr>
</tbody>
</table>

**REMARKS**

See page 1.

---

**FROM**

<table>
<thead>
<tr>
<th>NAME/TITLE</th>
<th>CORRESP. SYMBOL</th>
<th>BUILDING, ROOM NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corey Gerst</td>
<td>QMACB</td>
<td>1800 F St, NW, 3400</td>
</tr>
<tr>
<td>Contracting Officer</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TELEPHONE NO.</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>202-706-1908</td>
<td></td>
</tr>
</tbody>
</table>

**GENERAL SERVICES ADMINISTRATION**

**GSA FORM 14 (REV. 9-80)**
REMARKS
The FAS Office of Travel, Transportation, and Logistics (TTL) Categories City Pair Program (CPP) team has submitted the attached request to deviate from four (4) sub-paragraphs listed in the Federal Acquisition Regulation (FAR) Clause 52.212-21, Requirements (OCT 1995), as these subparagraphs relate to performance and purchase requirements that are not entirely applicable to City Pair and/or do not adequately address the needs of the requirement. Deviated versions of the subparagraphs that better align with the City Pair procurement are outlined in the request.

The attached deviation request follows part of the same rationale as TTL’s annual class deviation request for CPP: the regulation in question does not adequately address the needs of the City Pair requirement. It follows and meets all applicable regulatory requirements as outlined in GSA Acquisition Letter MV-2011-06, Requirements for Preparation of Class Deviations to the GSAM (dated September 27, 2011). Further, the proposed revisions to the Requirements clause do not violate the intent of the underlying statute.

Approval is recommended.