



PROCUREMENT
INNOVATION
RESOURCE CENTER

Commercial Solutions Opening (CSO) Guide
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A Background.

The Procurement Innovation Resource Center (PIRC) was created to assist the federal government with acquiring innovative technologies and implement a pilot program to competitively procure, with the Commercial Solutions Opening (CSO) procedure, innovative commercial items, including products, technologies, and services currently in the production/commercialization phase as well as adaptations of existing commercial items. This CSO pilot program will assist GSA and other federal agencies, through assisted acquisitions, with procuring emerging technologies to improve services for citizens and make them more cost effective for taxpayers. See the U.S. Emerging Citizen Technology Atlas for details about some of the emerging technologies being explored within the federal government.

The goal of the CSO pilot program is to expand beyond the current Federal Acquisition Regulation (FAR) procurement methods with this commercial solutions opening procedure to provide a streamlined approach for acquiring innovative commercial items. Success will be measured by the following metrics:

- Comparing the average procurement action lead time (PALT) for contracts using this authority with the PALT for FAR based contracts with the same NAICS;
- Evaluating the effectiveness of each procurement (e.g. whether procurement needs met, satisfaction of contractor and GSA acquisition team) through the PIRC Pilot Survey at the end of the procurement;
- A higher percentage of procurements that include intellectual property rights that do not match any of the FAR intellectual property clauses; and
- Identifying the percentage of contractors receiving an award that have not previously worked with GSA or the Federal Government.

The CSO pilot program is authorized by section 880 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). This Guide supplements the guidance provided in GSAM Part 571. The pilot will sunset in accordance with GSAM 571.206.

GSA has developed this pilot program to be implemented outside the normal Federal Acquisition Regulations requirements and offers a range of advantages to start-up companies and others who may not have significant work experience with the U.S. Government. Implementing regulations are contained in GSAM Part 571 and supplemented by this PIRC Guide.

The CSO pilot program promotes competition with a streamlined approach to address

specific needs for innovative commercial items. This pilot program offers a range of advantages to open up the field of competition so that the Government and taxpayers benefit from a large pool of solutions at a better cost and performance, including:

- Streamlined solicitation requiring only minimal corporate and technical information;
- Fast track vendor selection timelines;
- Simplified contract administration procedures and requirements;
- Negotiable contract termination terms;
- Flexibility in evaluating offeror solutions based on individual merits, without considering tradeoffs or best value; and
- Preference for the vendor retaining core intellectual property, as appropriate.

B Acquisition Planning and Market Research.

B.1 Acquisition Planning Overview

Acquisition planning is an essential component of a successful PIRC project. PIRC projects should include a team approach and promote early and continued communication among all stakeholders.

B.2 Market Research

Market research is an integral part of the development of the acquisition strategy and should be conducted early in the acquisition planning process. A key reason to use the CSO procedure is to attract nontraditional Government contractors to participate. In order to attract these companies, the acquisition planning team should research the appropriate commercial marketplace and publicize the project in a venue (e.g. GitHub) typically used by that commercial marketplace.

B.3 Information Technology Coordination

Requirements for GSA information technology must be coordinated with the GSA Office of the Chief Information Officer (CIO). Guidance for identifying the applicable GSA CIO point of contact is located on the Acquisition Portal at <https://insite.gsa.gov/itprocurement>. For interagency acquisitions, the requesting agency is responsible for the required information technology coordination and approval if the procurement involves information technology for the use of the requesting agency. This requirement for CIO coordination by the requesting agency must be confirmed by GSA, as the servicing agency, by ensuring this CIO coordination requirement is documented in the interagency agreement or a separate document.

B.4 Written Acquisition Plan

After conducting market research, a written acquisition plan using the PIRC CSO Streamlined Acquisition Plan template must be developed that discusses the overall strategy and how the CSO procedure will be utilized. The plan must state how the items being procured are innovative in accordance with the definition in GSAM Part 571.103.

C Approval Process.

In order to utilize the CSO procedure within GSAM Part 571, the GSA contracting officer must:

- Receive confirmation that funds are available.
- Receive written approval from the GSA Acquisition Innovation Advocate to use the CSO procedures. The contact information for the GSA Innovation Advocates is located on the Acquisition Portal at: <https://insite.gsa.gov/pirc>.
- Develop an acquisition plan that is approved one level above the Contracting Officer.
- If the acquisition involves information technology, ensure acquisition plans are also approved by the appropriate individual in the Office of the Chief Acquisition Officer.

After confirming that funds are available through an approved purchase request and receiving approval for the acquisition plan from their supervisor, the contracting officer or other member of the acquisition team must email the approved acquisition plan to the GSA Acquisition Innovation Advocates using GSA Acquisition Innovation Advocates group email address and request approval to use the CSO procedure. The email must include the following information:

- The subject line of the email must state “PIRC CSO Request.”
- The body of the email shall state:

“In accordance with the GSAM 571 and the PIRC CSO Guide, I would like to request use of the CSO procedure for the following procurement:

 - Brief Description of Procurement: XX
 - Anticipated Award Total Cost: XX
 - GSA Contracting Office: XX
 - GSA Contracting Officer Name: XX”
- The approved acquisition plan must be included as an attachment.

The GSA Innovation Advocates group email address is located on the Acquisition Portal at: <https://insite.gsa.gov/pirc>. A GSA Acquisition Innovation Advocate will be assigned to

approve requests for each contracting office. The GSA Acquisition Innovation Advocate may use peer reviews to determine if the procurement is innovative. The GSA Acquisition Innovation Advocate may require the acquisition team to submit additional information later in the procurement cycle.

D Solicitation Development.

D.1 General.

The contracting officer must ensure the solicitation complies with the requirements in GSAM Part 571. When developing the solicitation and negotiating terms, it is essential to ensure the cost to the Government is reasonable, the schedule and other requirements are enforceable, and the payment arrangements promote on-time performance, as well as to mitigate other major risks. The PIRC CSO Solicitation Template shall be used in creating the solicitation and shall be tailored for each procurement in accordance with GSAM Part 571 and this PIRC CSO Guide.

The following best practices should be incorporated when creating the solicitation:

- Provide guidance for the offeror to avoid unnecessarily elaborate solution briefs and encourage the offeror to depict the essence of the proposed solution as simply as possible; and
- Specify all solution briefs shall be unclassified and not contain personally identifiable information.

D.2 General Characteristics.

The general characteristics of a solicitation shall include the following:

- Describe the agency's interest, either for an individual program characteristic or for broadly defined areas of interest;
- Describe additional criteria for selecting the solution briefs;
- Specify applicable intellectual property (IP) terms, carefully assess the intellectual property needs of the Government, and protect the offeror's rights in the IP it currently owns;
- Specify the period of time during which solution briefs submitted in response to the solicitation will be accepted;
- Contain instructions for submission of solution briefs;
- Identify the basis and procedures for payment; and
- Include other necessary terms as required for the protection of the Government and offeror.

D.3 Intellectual Property.

The contracting officer can negotiate terms and conditions different from those typically used in procurement contracts. Intellectual property collectively refers to rights governed by a variety of different laws, such as patent, copyright, trademark, and trade secret laws. There is a preference for vendors to retain core intellectual property when appropriate.

Due to the complexity of intellectual property law and the critical role of intellectual property, contracting officers shall obtain the assistance of Legal Counsel early in the acquisition process. A legal review is required if the contracting officer negotiates intellectual property terms and conditions that deviate from standard clauses typically used in federal procurement contracts.

The contracting officer shall assess the impact of intellectual property rights on the Government's total life cycle cost (e.g. installation, operating, and maintenance costs) of the product or service. For example, where the Government overestimates the intellectual property rights it will need, the Government might pay for unused rights and dissuade new businesses from entering into a contract. If the intellectual property rights are underestimated, the Government may not acquire sufficient rights for use during the item's life cycle (e.g. operations, maintenance, follow-on procurements). As a result, the contracting officer must carefully assess the intellectual property needs of the Government. When appropriate, consider providing the contractor the IP rights for new adaptations of existing commercial products.

D.4 Funding.

No contracting officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. In addition, funds must be available prior to issuing any solicitation.

D.5 Evaluation Criteria.

Evaluation criteria must include an evaluation of technical factors, and the technical factors must be stated in the solicitation. The evaluation shall include a written solution brief and may include an oral presentation, product demonstration, and/or other appropriate method of evaluation. Solutions may be evaluated based on individual merits, without considering tradeoffs or best value. The PIRC CSO Solicitation Template contains sample technical evaluation criteria that may be tailored for use within solicitations.

D.6 Methods of Changes.

The solicitation shall address how changes to the contract will be handled. See the standard language in Section 6.15 within PIRC CSO Solicitation Template.

D.7 Termination.

The solicitation shall address how the contract can be terminated. The termination expectations can be negotiated with the offeror. See the standard language in Sections 7.16 and 7.17 within the PIRC CSO Solicitation Template. Changes to the standard language should be coordinated with assigned legal counsel.

D.8 Disputes.

The solicitation shall address how disputes will be handled. See the standard language in Section 7.19 within PIRC CSO Solicitation Template. Changes to the standard language should be coordinated with assigned legal counsel.

D.9 Additional Terms and Conditions.

The PIRC CSO Solicitation Template contains additional terms and conditions that are important to address in the contract and should be tailored for each procurement.

E Synopsis.

The solicitation for a CSO shall be publicized through the Governmentwide point of entry (FedBizOpps) and, as appropriate, published on relevant websites to reach targeted audiences (e.g. GitHub, DIUx.mil, 18f.gsa.gov, express.gsa.gov, order.gsa.gov).

F Evaluation.

F.1 Peer Review Advisory Group. [Reserved]

F.2 Process of Evaluation.

Solution briefs received shall be evaluated in accordance with evaluation criteria specified within the solicitation through a peer review process that consists of two phases.

Phase I will require the submission of a solution brief. The solution briefs may or may not be evaluated against each other. More than one solution brief may be accepted. A written evaluation report shall be prepared by the GSA acquisition team

for each solution brief evaluated. This report shall contain the rationale for accepting or rejecting the solution brief. The GSA acquisition team shall notify the offeror whether their solution brief is being considered for award and a proposal can be submitted in Phase II, an oral presentation or other supplemental information is requested to supplement the written solution brief, or their solution brief was not selected for award.

After an evaluation of the offeror's solution brief, offeror(s) may be invited to develop and submit a proposal under Phase II. The offeror shall be notified whether their proposal has been accepted for award, further negotiation is requested, or the proposal is not accepted for award.

Solution briefs and proposals shall be safeguarded from unauthorized disclosure throughout the source selection process in accordance with FAR 3.104-4. The procurement integrity requirements of FAR Sections 3.101 through 3.108 shall be followed.

G Award.

G.1 Contract Award.

Ensure solicitation with all contract terms and conditions is incorporated into the contract award documents.

G.2 Responsibility Determination.

The offeror must be considered a responsible party by the contracting officer. To be determined responsible, the contractor must:

- Have adequate financial resources to perform the contract or the ability to obtain them;
- Be able to comply with required or proposed delivery schedule; and
- Have necessary experience, facilities and operational controls or the ability to obtain them;

In addition, the offeror must not be suspended, debarred, or ineligible for a contract as identified in the System for Award Management.

In the absence of information indicating that the prospective contractor is responsible, the contracting officer must make a determination of nonresponsibility.

G.3 Legal Reviews.

Legal reviews are required as mandated in GSA Order ADM 5000.4B, Office of General Counsel Legal Review. Legal reviews shall be requested for specific issues as needed (e.g. intellectual property, indemnity).

G.4 Procurement Instrument Identifier.

The contract must be assigned a uniform procurement instrument identifier in accordance with FAR 4.1603 and GSAM 504.605.

G.5 Finance Notification.

The contract award must be shared with GSA Finance for recording and obligation.

G.6 Award Analysis.

Prior to award of the contract, the contracting officer must complete an award analysis that addresses the following:

- Responsibility of the offeror;
- Confirmation that the presumptive award meets the definition of an innovative commercial item;
- Reasonableness of the negotiated price; and
- Significant terms and conditions.

A price shall be considered reasonable if it reflects fair market value or is a price that a prudent buyer would pay considering market conditions, requirements alternatives, and non-price factors.

H Contract File.

The contract file shall contain applicable documents and correspondence using the following organizational structure:

- Acquisition Plan
 - Market Research
 - Acquisition Plan
- Solicitation
- Funding
- Award Documents
 - Evaluation Report
 - Award Analysis
- Notification to Offerors

- PIRC CSO Contract Award Form
- Contract Administration Documents (e.g. modifications, invoices, performance information)
- PIRC CSO Close-Out Survey

I Notification To Offerors.

Offerors not selected for an award may request, within 5 calendar days of notification of non-selection, feedback regarding the technical review findings of their submitted solution brief.

J Protests To GSA.

An offeror may file a protest to the agency in accordance with the procedures in GSAM 533.103.

K Reporting Usage of Pilot Authority.

The contracting officer must complete and submit the PIRC CSO Contract Award Form to the GSA Senior Procurement Executive within 10 days of the contract award using the online submission process. The link to this form is located on the Acquisition Portal at: <https://insite.gsa.gov/pirc>. Contract awards under this PIRC CSO program must not be reported within FPDS. The following information shall be provided in the PIRC CSO Contract Award Form:

- PIID #
- GSA Contracting Office
- Contract Award Date
- Contract Award Amount
- Number of Offers Received
- Awardee Unique Entity Identifier
- NAICS Code
- Awardee Size Status: select small business, women owned, service disabled veteran owned, HUBZone, socially and economically disadvantaged, Indian tribe, Native Hawaiian Organization, Alaska Native Corporation, or other than small business
- Procurement Acquisition Lead Time: Specify number of calendar days beginning with posting of solicitation and ending with award of the procurement action
- Intellectual Property: Specify whether the contract includes any intellectual property rights that do not exactly match any of the FAR intellectual property clauses

L PIRC CSO Close-Out Survey.

Members of the acquisition team, including any representatives from the requirements office, will complete the PIRC CSO Close-Out Survey using the online submission process no later than 20 calendar days after the contract period of performance ends. This survey will capture the effectiveness of using this CSO procedure for this acquisition. The Contracting Officer is responsible for incorporating applicable feedback from the GSA acquisition team and contractor in the survey submission. The results will be used to measure the overall success of the pilot. The link to this survey is located on the Acquisition Portal at: <https://insite.gsa.gov/pirc>.

