


I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 192-37 (COR)

Introduced by:

William A. Parkinson 

**AN ACT TO *ADD* NEW ARTICLE 15 TO CHAPTER 5,
DIVISION 1, TITLE 5, GUAM CODE ANNOTATED,
RELATIVE TO INDEFINITE DELIVERY, INDEFINITE
QUANTITY (IDIQ) CONTRACTS FOR ALL
GOVERNMENT OF GUAM AGENCIES.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 15 is *added* to Chapter 5, Title 5, Guam Code
Annotated to read as follows

“Article 15

Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts.

§ 5910. Description. An indefinite-quantity contract provides for an
indefinite quantity, within stated limits, of supplies or services during a fixed period.
The Government of Guam Agency places orders for individual requirements.
Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government of Guam Agency to
order and the contractor to furnish at least a stated minimum quantity of
supplies or services. In addition, if ordered, the contractor must furnish any
additional quantities, not to exceed the stated maximum. The contracting
officer should establish a reasonable maximum quantity based on market
research, trends on recent contracts for similar supplies or services, survey of
potential users, or any other rational basis.

1 (2) To ensure that the contract is binding, the minimum quantity
2 must be more than a nominal quantity, but it should not exceed the amount
3 that the Government is fairly certain to order.

4 (3) The contract may also specify maximum or minimum quantities
5 that the Government may order under each task or delivery order and the
6 maximum that it may order during a specific period of time.

7 (4) A solicitation and contract for an indefinite quantity must

8 (i) Specify the period of the contract, including the number of
9 options and the period for which the Government may extend the
10 contract under each option;

11 (ii) Specify the total minimum and maximum quantity of
12 supplies or services the Government will acquire under the contract;

13 (iii) Include a statement of work, specifications, or other
14 description, that reasonably describes the general scope, nature,
15 complexity, and purpose of the supplies or services the Government
16 will acquire under the contract in a manner that will enable a
17 prospective offeror to decide whether to submit an offer;

18 (iv) State the procedures that the Government will use in
19 issuing orders, including the ordering media, and, if multiple awards
20 may be made, state the procedures and selection criteria that the
21 Government will use to provide awardees a fair opportunity to be
22 considered for each order;

23 (v) Include a description of the activities authorized to issue
24 orders; and

25 (vi) Include authorization for placing oral orders, if
26 appropriate, provided that the Government has established procedures
27 for obligating funds and that oral orders are confirmed in writing.

1 § 5911. Application. Contracting officers may use an indefinite-quantity
2 contract when the Government cannot predetermine, above a specified minimum,
3 the precise quantities of supplies or services that the Government will require during
4 the contract period, and it is inadvisable for the Government to commit itself for
5 more than a minimum quantity. The contracting officer should use an indefinite-
6 quantity contract only when a recurring need is anticipated.

7 § 5912. Multiple Award Preference

8 (1) Planning the Acquisition.

9 (i) Except for indefinite-quantity contracts for advisory and
10 assistance services as provided in § 5913. of this Act, the contracting officer
11 must, to the maximum extent practicable, give preference to making multiple
12 awards of indefinite-quantity contracts under a single solicitation for the same
13 or similar supplies or services to two or more sources.

14 (A) The contracting officer must determine whether multiple
15 awards are appropriate as part of acquisition planning. The contracting
16 officer must avoid situations in which awardees specialize exclusively
17 in one or a few areas within the statement of work, thus creating the
18 likelihood that orders in those areas will be awarded on a sole-source
19 basis; however, each awardee need not be capable of performing every
20 requirement as well as any other awardee under the contracts. The
21 contracting officer should consider the following when determining the
22 number of contracts to be awarded:

23 (1) The scope and complexity of the contract
24 requirement;

25 (2) The expected duration and frequency of task or
26 delivery orders;

1 (3) The mix of resources a contractor must have to
2 perform expected task or delivery order requirements; and

3 (4) The ability to maintain competition among the
4 awardees throughout the contracts' period of performance.

5 (B) The contracting officer must not use the multiple award
6 approach if:

7 (1) Only one contractor is capable of providing
8 performance at the level of quality required because the supplies
9 or services are unique or highly specialized;

10 (2) Based on the contracting officer's knowledge of the
11 market, more favorable terms and conditions, including pricing,
12 will be provided if a single award is made;

13 (3) The expected cost of administration of multiple
14 contracts outweighs the expected benefits of making multiple
15 awards;

16 (4) The projected orders are so integrally related that
17 only a single contractor can reasonably perform the work;

18 (5) The total estimated value of the contract is at or
19 below the simplified acquisition threshold; or

20 (6) Multiple awards would not be in the best interests
21 of the Government.

22 (C) The contracting officer must document the decision
23 whether or not to use multiple awards in the acquisition plan or contract
24 file. The contracting officer may determine that a class of acquisitions
25 is not appropriate for multiple awards.

26 (D) Threshold Amount for any (IDIQ) Contract

1 (1) No task or delivery order contract in an amount
2 estimated to exceed Five Million (\$5,000,000) (including all
3 options) may be awarded to a single source unless the head of the
4 agency determines in writing that:

5 (i) The task or delivery orders expected under
6 the contract are so integrally related that only a single
7 source can reasonably perform the work;

8 (ii) The contract provides only for firm-fixed
9 price of task or delivery orders for:

10 (A) Products for which unit prices are
11 established in the contract; or

12 (B) Services for which prices are
13 established in the contract for the specific tasks to
14 be performed;

15 (iii) Only one source is qualified and capable of
16 performing the work at a reasonable price to the
17 Government; or

18 (iv) It is necessary in the public interest to award
19 the contract to a single source due to exceptional
20 circumstances.

21 (2) The head of the agency must notify *Liheslaturan Guåhan*
22 within 30 days after any determination under § 5912. (A) and (D)(1)(iv)
23 of this Act.

24 (3) The requirement for a determination for a single-award
25 contract greater than Five Million (\$5,000,000).

26 (i) Is in addition to any applicable requirements of
27 Guam Procurement Law and Regulations; and

1 (ii) Is not applicable for architect-engineer services
2 awarded.

3 **§ 5913. Contracts for advisory and assistance services.**

4 (i) Except as provided in § 5913(ii) of this Act, if an indefinite-
5 quantity contract for advisory and assistance services exceeds 3 years and Five
6 Million (\$5,000,000), including all options, the contracting officer must make
7 multiple awards unless.

8 (A) The contracting officer or other official designated by the
9 head of the agency determines in writing, as part of acquisition
10 planning, that multiple awards are not practicable. The contracting
11 officer or other official must determine that only one contractor can
12 reasonably perform the work because either the scope of work is unique
13 or highly specialized or the tasks so integrally related;

14 (B) The contracting officer or other official designated by the
15 head of the agency determines in writing, after the evaluation of offers,
16 that only one offeror is capable of providing the services required at the
17 level of quality required; or

18 (C) Only one offer is received.

19 (ii) The requirements of § 5913(i) of this Act do not apply if the
20 contracting officer or other official designated by the head of the agency
21 determines that the advisory and assistance services are incidental and not a
22 significant component of the contract.”

23 **Section 2. Severability.** If any provision of this Act or its application to
24 any person or circumstance is found to be invalid or contrary to law, such invalidity
25 *shall* not affect other provisions or applications of this Act that can be given effect
26 without the invalid provision or application, and to this end the provisions of this
27 Act are severable.