



**Advertising and Integrated Marketing Solutions
No Cost Contracting Guidance under SIN 561920**

Multiple Award Schedule - Professional Services Category

Under the Multiple Award Schedule (MAS) [SIN 561920](#), customer agencies can acquire a variety of services relating to conference, meeting, trade show, or other event planning services. This guidance is provided to customer agencies in utilizing no cost contracting services under MAS SIN 561920.

If a contractor is awarded SIN 561920, the contractor may enter into a task order to provide all services as required by the task order at no cost to the Government. As consideration, the Contractor shall be entitled to all of the registration, exhibition, sponsorship and/or other fees collected as payment for performance under the task order, provided there is no cost to the Government. Under this arrangement, the contractor shall be liable for all costs related to the performance of the task order as defined in the task. The value of the task order is determined by the amount of the registration, exhibition, sponsorship and other fees collected under the task order. The Contractor shall provide an accounting of expenses and revenues, if requested, by the Government Agency issuing the no cost task order.

Under a no cost contracting arrangement, the contractor's profit, if any, shall be derived from the revenue stream created through fees collected, if any. Additionally, should there be any commissions received by the contractor for conference events or trade show planning, etc., the contractor shall be entitled to retain any said commissions.

GAO issued a report, [B-308968](#) dated November 27, 2007, entitled No-Cost Contracts for Event Planning Services which provides a wealth of information about no-cost contracting.

IMPORTANT CONSIDERATIONS: In formulating an RFQ that would be subject to no-cost contracting, the Ordering Contracting Officer (OCO) is recommended to address the following items in its Request for Quote (RFQ):

1. Require the contractor's cancellation policy as part of the bid/proposal and use it as an evaluation criterion. In many cases the cancellation policy is a flow-through from the proposed/required conference venue (i.e., hotel, convention center, etc.).
2. Establish minimum and maximum attendance numbers.
3. Describe minimum needs of the conference rooms (i.e. meals, capacity, audio/visual, etc.).
4. Past performance is a required evaluation criterion.



5. Agencies may play a role in determining fees charged by contractors acting under authority of a No Cost Contract. Agencies should not “lose sight of [their] objectives for a particular event”, and should ensure that in minimizing costs, they do not act to “compromise the effectiveness of [a] conference, or “undermine the achievement of agency goals.”
6. The agency should request a breakdown of the pricing in accordance with the statement of work.
7. No Cost Contracting can be combined with priced tasks.
8. Require quoters to address conflicts of interest in regards to selection of venue, speakers, or agenda development.

FREQUENTLY ASKED QUESTIONS (derived from GAO Report B-308968)

1. Can an agency use a no-cost contract to acquire something for which its appropriation is not otherwise legally available?

There is no GAO case law addressing a situation like this. If an agency enters into a no-cost contract that permits the vendor to provide a service for which the agency’s appropriation is not otherwise legally available, the no-cost contract would not violate the Antideficiency Act’s voluntary services prohibition because the agency incurs no financial liability. However, the agency should take into consideration that it, indeed, does receive a service in return, for example, for permitting the vendor to provide food to the agency’s guests even though the agency’s appropriation is not legally available to pay for the food.

2. If we assume that the event and circumstances meet the criteria for using appropriated funds to provide food at an agency-sponsored conference, may an agency instead enter into a no-cost contract for conference services, including the provision of food?

Yes. The agency may contract for this service using a no-cost contract. For example, the contract could be structured such that providing food or refreshments to conference participants is part of an overall contract for planning and support services.

An agency may use appropriated funds to provide meals and light refreshments to Federal Government (as well as non-Federal) attendees and presenters at a formal conference that furthers the agency’s statutory mission if the conference meets the following criteria: (1) meals and refreshments are incidental to the conference, (2) attendance at the meals and when refreshments are provided is important for the host agency to ensure attendees’ full participation in essential discussions, lectures, or speeches concerning the purpose of the conference, and (3) the meals and refreshments are part of a formal conference that includes not just the



discussions, speeches, or other business that may take place when the meals and refreshments are served, but also includes substantial functions occurring separately from when the food is served. A formal conference typically involves topical matters of interest to, and participation of, multiple agencies and/or nongovernmental participants. In addition, other indicators of a formal conference include registration, a published substantive agenda, and scheduled speakers or discussion panels. See B-300826, March 3, 2005.

In this situation, the agency could use a traditional contract in which it pays the contractor to provide lunch at no cost to the attendees, or it could use a no-cost contract where the attendees (or possibly their employers) would bear the cost. In B-308968 referenced below, Nov. 27, 2007, GAO cautioned that in structuring a no-cost contract there are other considerations beyond compliance with fiscal laws that an agency should take into account so that the effectiveness of the conference is not compromised, including, for example, who may approve and sign such contracts, the ultimate cost to the government as a whole, and possible conflicts of interest.

3. May an agency use a no-cost contract to acquire property as opposed to a service?

The no-cost contracts GAO has addressed have been for various types of services, including real estate brokerage, travel, conference planning, concession, relocation assistance, haircuts for military recruits, ferryboat transportation, and workers compensation insurance coverage. GAO reviewed many of these contracts in the context of our bid protest function. GAO has also issued a number of appropriations law decisions involving no-cost contracts. At issue in the decisions was whether the no-cost contract violated the Antideficiency Act's voluntary services prohibition. The voluntary services prohibition, by its own terms, would not be applicable if property, rather than services, were being provided. GAO has not issued a decision involving a no-cost contract to acquire property.

4. May an agency use a no-cost contract to accomplish an activity or function that is mission-related or specifically required by the agency's appropriations act or authorizing legislation?

GAO has not specifically looked at no-cost contracts from this perspective. However, based on B-308968, November 27, 2007, we would find it difficult to make a distinction between mission-related or required statutory activities and other agency activities.

As discussed in B-308968, when an agency enters into a no-cost contract it does not violate the Antideficiency Act's voluntary services prohibition because the agency incurs no financial liability and there is no expectation of payment on the part of the vendor. If an agency enters into a no-cost contract for the provision of a service, whether the service is mission related or statutorily required, or is another type of agency activity, the agency does not incur a financial liability for the service and thus does not violate the voluntary services provision. Of course, an



agency, as a matter of policy, can decide the situations in which it is willing to entertain a no-cost contract.

5. How do the federal procurement laws apply to an agency's use of a no-cost contract?

Statutory requirements for competition, such as the Competition in Contracting Act (CICA), apply to procurements by federal agencies for property or services. 10 U.S.C. § 2303; 41 U.S.C. § 253. Thus, as a threshold matter, to be subject to these requirements, the agency must be acquiring property or services. Determining whether competition requirements apply to a particular procurement for a no-cost contract for property or services will depend on the agency involved. CICA does not apply to no-cost contracts of military agencies, see 10 U.S.C. § 2303; *Century 21—AAIM Realty, Inc.*, B-246760, Apr. 3, 1992, 92-1 CPD ¶ 345; *Gino Morena Enterprises*, B-224235, Feb. 5, 1987, 87-1 CPD ¶ 121, but it does apply to no-cost contracts of civilian agencies. See 41 U.S.C. § 253; *Gourmet Distributors*, B-259083, Mar. 6, 1995, 95-1 CPD ¶ 130. Federal Acquisition Regulation (FAR) requirements apply only to acquisitions by the government of supplies or services with appropriated funds. *Fidelity and Casualty Co. of New York*, B-281281, Jan. 21, 1999, 99-1 CPD ¶ 16; FAR, 48 C.F.R. §§ 1.104, 2.101. Consequently, the FAR does not apply to no-cost procurements conducted by either a defense or civilian agency.

Regardless of the applicability of CICA or FAR, GAO's jurisdiction to consider protests by interested parties challenging procurements conducted by federal agencies extends to all procurements for property or services. In the context of challenges to no-cost contracts for concession services at the National Parks, we have found that in some cases the procurement action was outside of our jurisdiction. Specifically, we have held that concession contracts that do not require the delivery of goods or services to the government (or that require the delivery of goods or services of only *de minimis* value to the government) are not contracts for the procurement of property or services within the meaning of CICA and do not fall within our Office's bid protest jurisdiction. *White Sands Concessions, Inc.*, B-295932, Mar. 18, 2005, 2005 CPD ¶ 62, *recon. denied*, B-295932.2, Apr. 12, 2005 (concession contract for the operation of a gift shop and snack bar at a National Park Service visitor center); *Crystal Cruises, Inc.*, B-238347, Feb. 1, 1990, 90-1 CPD ¶ 141 at 2, *aff'd*, B-238347.2, June 14, 1990, 90-1 CPD ¶ 560 (concession permits for five cruise ship entries into Glacier Bay National Park and Preserve). Where a contract authorizing the provision of concession services also requires the delivery of goods or services of more than *de minimis* value to the government, however, the contract is one for the procurement of property or services within the meaning of CICA, and, as such, is encompassed within our bid protest jurisdiction. *Great South Bay Marina, Inc.*, B-293335, July 13, 2005, 2005 CPD ¶ 135.



6. May an agency play a role in determining the fee the no-cost contractor charges its customers?

Yes, agencies may play a role in determining fees charged by contractors acting under authority of a no-cost contract. Agencies should not “lose sight of [their] objectives for a particular event,” and should ensure that in minimizing costs, they do not act to “compromise the effectiveness of [a] conference,” or “undermine the achievement of agency goals.” B-308968, Nov. 27, 2007. Although utilizing a no-cost contract may alleviate financial burdens and may not violate the Antideficiency Act, agencies contemplating use of such contracts should consider the cost to the government as a whole, especially when many attendees to a conference will be government employees. *Id.*

In practice, agencies may have several options in playing a role in fee determination. For example, an agency may negotiate with the contractor to ensure that fees charged to third parties are reasonable. Alternatively, an agency employing a competitive selection process when seeking a contractor may include as one of its selection criteria the cost imposed upon third parties.

7. May either the agency or the no-cost contractor bar a person from attending a conference if the person has not paid the contractor?

The collection of a fee charged by the vendor is a matter between the vendor and the individual. However, the conference is, in fact, the agency’s conference, not the vendor’s, and the agency is the host, not the vendor. For the same reasons we suggest that an agency should play a role in determining the fee that the vendor charges, we also recommend that an agency have some influence in acceptable collection tools.