

National Aeronautics and Space Administration  
Kennedy Space Center  
Kennedy Space Center, FL 32899



March 19, 2015

Reply to Attn of:

OP

**TO:** NASA Headquarters  
Attn: Assistant Administrator for Procurement

**FROM:** OP/Procurement Officer

**SUBJECT:** Justification for an Exception to Fair Opportunity for the Commercial Crew Transportation Capability (CCtCap) contracts, NNK14MA74C, NNK14MA75C

In accordance with the Federal Acquisition Regulation (FAR) 16.505(b)(2), approval is requested to use an exception to the Fair Opportunity Process in awarding the minimum quantity of Post Certification Missions (PCMs) to Space Exploration Technologies Corporation and The Boeing Company as specified in the CCtCap contracts, NNK14MA74C and NNK14MA75C, respectively. The contracts specify that the minimum quantity of PCMs to be issued for each Contractor is two.

FAR 16.505(b)(1)(i) requires the Contracting Officer to provide each awardee under a multiple award contract, a fair opportunity to be considered for each order exceeding \$3,000 unless a statutory exception applies. The specific exception that precludes the fair opportunity process is in accordance with FAR 16.505(b)(2)(i)(D), which states "it is necessary to place an order to satisfy a minimum guarantee."

In accordance with the requirements of FAR subsection 16.505(b)(2)(i)(B), information supporting this waiver request is provided in the enclosure. This request has been coordinated with the Office of General Counsel and reflects concurrences from both the Kennedy Space Center (KSC) Director of Procurement and the KSC Chief Counsel's Office.

Please direct any questions regarding this waiver request to the Contracting Officer, Mr. Rogelio Curiel, at 321-867-7498.

  
Dudley R. Gannon, Jr.

Enclosure

**National Aeronautics and Space Administration (NASA)  
Kennedy Space Center (KSC)**

**Justification for an Exception to Fair Opportunity for the Commercial Crew  
Transportation Capability (CCtCap) contracts, NNK14MA74C, NNK14MA75C**

Pursuant to Federal Acquisition Regulation (FAR)16.505(b)(2), a determination to waive the requirement to provide each CCtCap awardee a fair opportunity to be considered for a task order is requested for the CCtCap contracts as described below.

**(1) Identification of the agency and the contracting activity**

This determination is issued by NASA KSC for the Commercial Crew Program's CCtCap contracts. The CCtCap contracts are issued to the Space Exploration Technologies Corporation (SpaceX) and The Boeing Company (Boeing) under contracts NNK14MA74C and NNK14MA75C, respectively.

**(2) Nature and/or description of the action being approved.**

In accordance with FAR 16.505(b)(2), *Exceptions to the fair opportunity process*, approval is requested to waive the requirement to provide each CCtCap awardee a fair opportunity to be considered for the minimum quantity Post Certification Mission (PCM) task orders. The waiver applies for the four PCMs which NASA plans to issue in order to satisfy its minimum quantity obligation under the Indefinite Delivery/Indefinite Quantity (IDIQ) element of the CCtCap contracts (CLIN 002). Approval of this waiver will allow NASA to directly issue each of these four PCM task orders at its discretion once the Authority to Proceed (ATP) criteria is satisfied per each Contractor's development progress (ultimately placing two minimum quantity PCMs to each of the two CCtCap Contractors). It is NASA's intent to compete the remaining PCMs among the respective eligible CCtCap contractors.

**(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).**

The purpose of the CCtCap contracts is to complete the final development and certification of a U.S. commercial crew space transportation capability to provide safe, reliable, and cost effective access to and from the International Space Station (ISS) as soon as possible with a goal of No Later Than (NLT) 2017.

One of the stated Commercial Crew Program objectives is to develop and implement a strategy that stimulates the U.S. space transportation industry, encourages the availability of human space transportation services to NASA and other customers, and addresses the needs of industry partners to the greatest extent possible. As such, these contracts accommodate different contractor designs, maturity levels, approaches and schedules in order to meet government needs as well as the contractor's vision of future commercial markets.

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The CCtCap contracts were awarded September 16, 2014 and include Firm-Fixed-Price (FFP) Research and Development (R&D) (CLIN 001) with IDIQ service elements (CLIN 002).

CLIN 001 is FFP R&D for Design, Development, Test, and Evaluation (DDT&E)/Certification of the Contractor's Crew Transportation System (CTS). The CTS development will enable the purchase by NASA of commercial services to meet its ISS crew transportation needs, once the capability is certified by the Agency.

CLIN 002 is FFP IDIQ Services for PCMs to the ISS. The CCtCap contract awards enable issuance of PCM task orders once the ATP criteria defined in the contract is satisfied. However, each contract specifies a guaranteed minimum of two and a maximum of six PCMs. The contract also requires the capability of providing PCMs about every six months.

According to the development schedules, the Contractors will achieve certification late summer to early fall of 2017 [REDACTED]

The minimum guaranteed PCM task orders will be issued at the earliest time deemed appropriate by NASA. The CCtCap contracts specify that Contractors will not be authorized to proceed on a PCM until the Contractor meets the ATP criteria defined in each contract. Each Contractor's ATP criteria lists the development activity that must be successfully achieved under the DDT&E CLIN 001 effort and in accordance with each Contractor's development schedule. The ATP criteria is unique to each contractor both in content and estimated time of completion, therefore, compliance toward meeting the ATP criteria is directly within each Contractor's control and unique rate of progress. [REDACTED]

[REDACTED] Both Contractors will be capable of launching their first PCM [REDACTED] provided that the development progress is kept on track and ATP criteria is met according to schedule.

The service required under each CLIN 002 task order is to provide crew transportation to and from the ISS. The performance requirements for these PCM services are defined in the *Crew Transportation System Design Reference Mission requirement documents, Contract Performance Work Statement, and other terms and conditions in the contracts*. The FFP PCM prices range from [REDACTED] which were competitively defined in the contract during the CCtCap acquisition process.

**(4) Identification of the exception to fair opportunity and the supporting rationale, including a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the exception cited.**

**History/Background**

NASA has determined that it is in the best interest of the U.S. to have its own reliable crew transportation and emergency rescue capability as soon as possible and to ensure the safety of its crew and its international partners' crew, for ISS mission assurance.

In support of the nation's crew transportation needs to the ISS, Congress and the President have stated in the NASA Authorization Act of 2010, Public Law 111-267 Section 501(a), that:

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**“crewmembers provide the essential component to ensure the return on investment from and the growth and safe operation of the ISS. The Russian Soyuz vehicle has allowed continued human presence on the ISS for United States crewmembers with its ability to serve as both a routine and backup capability for crew delivery, rescue, and return. With the impending retirement of the Space Shuttle, the United States will find itself with no national crew delivery and return system. Without any other system, the United States and all the ISS partners will have no redundant system for human access to and from the ISS. It is therefore essential that a United States capability be developed as soon as possible....New capabilities for human crew access to the ISS should be developed in a manner that ensures ISS mission assurance and safety...NASA shall make use of United States commercially provided ISS crew transfer and crew rescue services to the maximum extent practicable” (emphasis added).**

Presently, the United States does not have a CTS. NASA and its international partners receive crew transportation services to the ISS only through the end of 2017, using the Soyuz vehicle under contract with the Russian Federal Space Agency (Roscosmos)<sup>1</sup>. The U.S. and its partners have a single point of failure due to their dependency and reliance on only one vehicle to provide continuous flight availability. This creates significant risk to the safety of the crew on board the ISS and to ISS mission assurance. Until the CCtCap CTSs are NASA-certified and launched by a U.S.-based provider, continued crew access to the ISS is at risk under the single point failure scenario of placing sole reliance on the Russian crew launch system. This scenario does not provide for the safest operation of the ISS as the criticality of crew transportation requires at least two dissimilar methods to provide crew transportation and rescue services.

**Agency's Challenges for Commercial Crew Access to ISS**

Although NASA is making progress towards obtaining its own U.S. crew transportation capability available through the CCtCap contracts, NASA recognizes that the Commercial Crew vehicles are still in the development stages.

In addition, crew transportation to the ISS is highly reliant on external and unpredictable conditions, such as severe weather that may damage ground hardware and delay launch opportunities, technical anomalies that require vehicles to be grounded until issues are investigated and understood, and uncertainty in geo-political situations. Even with successful missions, the development, operation and launch of human spaceflight vehicles is inherently complex and risky. Historically, these activities require many years and have taken longer than anticipated.

The CCtCap timetable for having operational vehicles certified and ready to meet NASA needs is so constrained that launches will have to be ordered very early to meet the needed operational timeframe. As critical-path development work continues, procurement of long-lead item and progress toward mission execution must begin to enable PCM launches to occur as soon as possible.

<sup>1</sup> Pending a U.S based crew transportation capability, NASA intends to contract with Roscosmos for crew transportation services to and from the ISS on a sole source basis for six (6) Soyuz seats and associated services for calendar year (CY) 2018 with rescue/return services extending through spring 2019.

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In order to obtain a reliable U.S based transportation system that replaces the nation's dependency on the Russian Soyuz and to mitigate the risks of not obtaining PCM services to the ISS due to the inherently technical and complex nature of a crew transportation system, NASA has determined that each CCtCap contractor will need to be awarded a PCM to enable a launch to the ISS as soon as possible. [REDACTED]

[REDACTED] PCMs will ensure that the Government need is met even if circumstances are present where one of the Contractor's DDT&E effort would encounter technical difficulties that prevent execution of that particular Contractor's PCM. Typically, competing for each PCM at a time under multiple-award contracts would result in obtaining a single PCM task order awardee. This scenario risks placing total Agency dependency in a single contractor that is subject to the uncertainties of developing a highly complex crew transportation system. Under this waiver, NASA will be able to issue the minimum quantity PCMs for both CCtCap Contractors to allow NASA to secure crew transportation services from a U.S. commercial vehicle, enable assured access to the ISS and meet a CCP primary goal to provide U.S. crew transportation capability as soon as possible.

The effort under the CCtCap contracts is a very complex human spaceflight undertaking that is subject to significant risks. Ensuring safe, reliable U.S. crew access to the ISS is critical. Awarding minimum quantity PCMs, once the ATP criteria is met, maximizes meeting the program objectives by reducing overall risk to the program and best ensures successfully accomplishing safe, reliable missions to the ISS by providing more options and flexibility for the Agency throughout contract performance.

**Exception to Fair Opportunity**

In accordance with FAR 16.505(b)(2), *Exceptions to the fair opportunity process*, approval is requested to waive the requirement to provide each CCtCap awardee a fair opportunity to be considered for a PCM task order. This waiver is submitted as an exception in accordance with FAR 16.505 (b)(2)(i)(D) which states that "it is necessary to place an order to satisfy a minimum guarantee."

Specifically, the waiver applies to four PCMs which NASA plans to issue in order to satisfy its minimum quantity obligation under the IDIQ element of the CCtCap contracts (CLIN 002) by awarding two PCMs to each Contractor. Each Contractor, Boeing and SpaceX, has two PCMs specified as the minimum quantity in each of their CCtCap contracts. This waiver enables NASA to forgo the need to compete four PCM orders among the two multiple-award CCtCap contracts which would typically result in a single PCM award for each task order competition. Instead, this waiver allows NASA to pursue a [REDACTED] where both Contractors are not only provided a fair opportunity to be considered for a PCM order, each Contractor would receive a PCM order and therefore enable [REDACTED] toward the required mission to the ISS. NASA's [REDACTED] would enable NASA obtain a PCM as soon as possible through [REDACTED] of one Boeing and one SpaceX PCM mission toward a late-2017 launch date and one Boeing and one SpaceX mission toward a mid-2018 launch date. Use of this exception for four PCM orders is required to achieve NASA's [REDACTED] to minimize the government's risk of not ensuring crew access to the ISS via a U.S. based CTS NLT 2017. The redundancy obtained by enabling two U.S. based providers progressing towards

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launching the minimum quantity PCMs is critical for ensuring continued availability of reliable transportation to the ISS for both planned crew rotations and emergency rescue capability.

Each Contractor has built into its integrated master schedule a forecasted timetable. The forecasts are consistent with performing a mission as soon as possible and meeting the 2017 NASA goal. Given the lead time required for the preparation and availability of these PCM launches, there is a need for PCM task orders to be issued as soon as Contractors are eligible to receive NASA's ATP to ensure access to the ISS. Enabling [REDACTED] by both CCtCap contractors is in the best interest of the U.S. as it maximizes the likelihood to successfully accomplish NASA's mission.

PCM Approach

[REDACTED] in accordance with clause H.20, *Adjustments to Post Certification Mission Schedule*. This clause allows launch delays at the convenience of NASA and the Contractor, and allows them to adjust the standard launch window as required for these missions. In addition, the ISS program will inform this process to ensure that the mission parameters and timing are optimized to provide crew transportation services to the ISS.

**(5) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.**

The CCtCap contracts contain firm fixed prices for PCMs that were obtained through competition and determined fair and reasonable. Therefore, the anticipated cost to the Government for issuance of PCM task orders is considered fair and reasonable.

**(6) Any other facts supporting the justification.**

None

**(7) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the exception to fair opportunity before any subsequent acquisition for the supplies or services is made.**

After the four PCM task orders approved under this exception are issued (two for each contractor), the minimum quantity obligation under the IDIQ element of the CCtCap contracts will be satisfied. NASA intends to provide each Contractor a fair opportunity to be considered for the remaining PCM task orders falling outside the minimum quantity exceptions approved in this justification. NASA will execute task orders under the multiple-award CCtCap contracts for

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**the remaining PCMs in accordance with FAR 16.505, *Ordering*, and as stated in contract clauses B.4, H.2 and H.8 regarding PCM task ordering procedures and other related terms and conditions.**

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I certify that this justification is accurate and complete to the best of my knowledge and belief.

[Redacted Signature]

Rogelio Curiel  
Contracting Officer

19 MARCH 2015  
Date

I certify that any technical supporting data that form the basis for this justification is accurate and complete to the best my knowledge and belief.

[Redacted Signature]

Deborah A. Cole  
Contracting Officer's Representative

3/19/15  
Date

CONCURRENCE:

[Redacted Signature]

Steven G. Hofm  
Assistant Chief Counsel

3/19/15  
Date

CONCURRENCE

[Redacted Signature]

Dudley Cannon, Jr.  
Procurement Officer

19 March 2015  
Date

APPROVAL

[Redacted Signature]

*for* William P. McNally  
Assistant Administrator for Procurement

4/9/2015  
Date