Off the Shelf

The Coalition for Government Procurement

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The Coalition for Government Procurement

Over 25 Years of Excellence

OFPP RELEASES MUCH-ANTICIPATED INTERAGENCY ACQUISITION GUIDANCE

This month the White House Office of Management and Budget's Office of Federal Procurement Policy released the anticipated guidance on interagency contracting. A checklist of roles and responsibilities for agencies throughout the life of an interagency contract is included in the 70-page document. The intent of the guidance is to assist customer agencies in making sensible business decision to justify the use of interagency acquisitions and strengthen the management of those contracts. Particular emphasis is placed on helping requesting agencies and servicing agencies manager their shared responsibilities in assisted acquisitions.

MACs, or multiagency contracts, are similar to governmentwide acquisition contracts, or GWACs; however, GWACs have the blessing of OFPP prior to award. Agencies can award MACs for any product or service unlike GWACs which are specific to IT products and services and these MACs can be issued independent of OMB approval. This benefit has caused agency Senior Procurement Executives to develop and award their own MACs with unique requirements at an alarming rate. The MAC proliferation has taken a toll on a government contracting industry that is attempting to stay abreast of the myriad procurement opportunities available and going after each for business. OMB estimated a while ago that there are as many as 40 MACs available, each with different regulations and standards.

In the guidance, OFPP Administrator Paul Denett stated that he intends to work with members of the Chief Acquisition Officers Council to design a business case review process similar to that currently used for the designation of executive agents for GWACs and to define the structure required to support such a process.

A copy of the guidance can be found here: http://www.whitehouse.gov/omb/procurement/interagency_acq/iac_revised.pdf

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MAS ADVISORY PANEL CONTINUES TO HEAR DIVERGENT VOICES

The role of the MAS Program in government acquisition, the roles and responsibilities of different stakeholders, and ensuring fair and reasonable pricing continue to be the focus areas of the Multiple Award Schedule Advisory Panel. This panel, comprised of 15 representatives of government and industry, including Coalition President Larry Allen, was commissioned by then-GSA Administrator Lurita Doan to examine schedule pricing and related matters.

According to Allen, the Panel recently completed its fourth meeting. So far, an extensive array of industry representatives has made presentations to the panel on a wide variety of MAS topics. Included in these have been multiple calls to abolish or revamp the Price Reductions Clause. Many stakeholders believe that the Clause is no longer a useful price assurance tool, but rather serves to trip up even the most diligent compliance organizations.

Many speakers have also advocated the abolition of the Most Favored Customer negotiation objective. Industry presenters believe that some GSA contract officials take the MFC to be more than an objective, but rather an outright requirement. Government customers have stated that the MFC term shouldn't be used if the prices negotiated on schedules are something else.

Another topic of discussion is whether separate pricing policies should be instituted for products and services. Speakers have pointed out that the current MAS pricing mechanism was established when most schedule sales were for products. Now, approximately 2/3's of all schedule sales are for services and solutions. Several discussions have been held on how contract level prices for ser-

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vices are arrived at and whether those prices truly reflect fair and reasonable rates.

At the last meeting of the Panel, June 18th, one panel member suggested that perhaps prices at the contract level could be done away with, at least for some schedules. This thought is consistent with a recommendation made in 2006 by the SARA Panel. Under such a scenario, companies would be pre-approved from a technical competency perspective, but prices would only be offered at the task order level when specific opportunities were presented.

It is important to note that the Panel has yet to reach consensus on any topic or idea. In fact, no votes have taken place. The Panel is still very much in information gathering mode.

To that end, the Panel has directed GSA to invite a host of customer agency and other federal government stakeholders to the next meeting, July 21st. Specifically, the panel has asked to hear from civilian and DOD customers, the Government Accountability Office, Congressional staff, DOD acquisition policy, GSA and VA Inspector General representatives, and others. Such a full slate of potential speakers indicates that additional meetings may need to be called, but the Panel very much wants to hear from all stakeholders before beginning to craft recommendations.

The MAS Panel is still scheduled to make those recommendations to the GSA Administrator by the end of this year. That means that there could be a lot of work ahead in a very short time if that timeframe is adhered to.

In the meantime, however, the Panel would like to make sure that anyone with ideas or concerns has an opportunity to comment in person or in writing. The Coalition is planning to make a presentation at a future meeting. For more information on that, contact Barbara Merola at bmerola@thecgp.org.

The Coalition for Government Procurement Presents:

2008 Breakfast Series

Green Procurement:
Sustainable Policies & Industry Compliance

July 30, 2008
Hilton Mclean Tysons Corner
Mclean, VA

Members: $75
Premier Members: $64
Non-members: $100

For more information or to register, please contact Kathy Lamb at klamb@thecgp.org

COALITION HOSTS ANOTHER SUCCESSFUL SPRING CONFERENCE

Over 200 members, guests, and government officials packed the McLean Hilton Tyson's Corner last month for the Coalition's Spring Conference, Forecast 2008: How Procurement Changes Could Call for Cloudy Conditions. Larry Allen, Coalition President, introduced the Keynote Speaker, then-Acting Administrator of GSA, David Bibb. Mr. Bibb discussed GSA's focus on improving relations with the Inspector General as well as reaching out to Congressional staff.

John Horan of McKenna Long and Kingston Smith, Minority Counsel, House Committee on Veterans Affairs gave a presentation forecasting the future of IG oversight and prospects for their involvement in government contracting. Mr. Horan speculated that IGs could possibly expand their oversight roles due to their recent successes in uncovering wrongdoing. John Howell of McKenna Long & Aldridge and Jonathan Aronie of Sheppard Mullin along with Jason Carey also of McKenna Long gave a legal presentation on the imminent regulations effecting government business.

Mathew Blum from OMB's Office of Federal Procurement Policy along with Cynthia Vallina of OMB, Doug Montgomery of NIST, and Neil Horokoshi of IBM discussed the onerous regulations on commercial-item acquisition specifically Energy Star, IPv6, and TAA and their effect on industry compliance. Ray Bjorklund, FedSources, gave a budget forecast discussing how the shrinking federal marketplace will effect government contracting business decisions. All attendees received a thumb drive with Mr. Bjorklund's exclusive analysis.

A highlight of the day was the legislative panel: Peter Levine, Senate Armed Services Committee, and Mark Stephenson, House Committee on Oversight and Government Reform, who discussed the procurement provisions from Chairman Waxman's legislation that were added to the National Defense Authorization Act.

The conference concluded with an interagency contracting discussion on the prospects for DOD to utilize GSA Schedules. On hand to talk was Richard Ginman, Deputy Director, Defense Procurement and Acquisition Policy, and Steve Kempf, Assistant Administrator, Acquisition Management, FAS GSA.

Speaker presentations are available in the events section of the Coalition's website: www.thecgp.org.

LEGAL CORNER

THE EXPANDING FAR ETHICS RULE

As has been widely reported, on November 14, 2007, the Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council (the Councils), at the request of the Department of Justice, proposed an amendment to the Federal Acquisition Regulation (FAR) to add strict new rules for contractor compliance and ethics (the Proposed Rule). 72 Fed. Reg. 64019 (Nov. 14, 2007). Much to the relief of many General Services Administration and Veteran's Administration schedule contractors, the Councils exempted contracts for a "commercial item awarded under FAR Part 12" from application of the new requirements, as well as contracts performed outside the United States..

On Friday, May 16, 2008, the Councils proposed revisions to expand the coverage of the proposed rule to include contracts for commercial items and contracts performed outside of the United States. 73 Fed. Reg. 28,407 (May 16, 2008). The Councils also proposed a new mandatory reporting requirement for all covered contracts. These revisions come on the heels of legislation to "Close the Loopholes" recently passed by the House (H.R. 5712) and introduced in the Senate (S. 2916).

Compliance and Ethics Program Requirements

The Proposed Rule, as revised, requires contractors to have a Code of Ethics and Business Conduct (Code), conduct business ethics and compliance program training and establish and maintain strict internal controls to prevent and detect improper conduct in connection with government contracts. The contractor's system must include the following:

*assignment of responsibility at a sufficiently high level of the organization and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system;
*reasonable efforts to avoid hiring principals persons who have engaged in conduct that is illegal or otherwise in conflict with the Contractor's Code;
*periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Con tractor's Code and the special requirements of government contracting covering specified areas;
*an internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, available for employees to report suspected instances of improper conduct, and instructions that encourage employees to make such reports; and
*disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

Small businesses remain exempt from the business ethics awareness and internal control requirements of the rule.

Self-Reporting Requirement

In the May 16, 2008 revisions, the Councils proposed a further expansion of the most striking requirement of the Proposed Rule -- that a contractor or subcontractor notify the agency Inspector General and the Contracting Officer in writing whenever the contractor has reasonable grounds to believe that a principal employee, agent, or subcontractor of the contractor has committed a violation of the Federal Criminal Law in connection with the award or performance of any government contract or subcontract over $5 million with performance periods of 120 days or more. The May 16, 2006 revisions require contractors to notify, in writing, the agency OIG and the Contracting Officer whenever the Contractor has reasonable grounds to believe that the Contractor or any of its subcontractors has violated the civil False Claims Act (FCA).

The Proposed Rule provides that contractors may be suspended and debarred for a knowing failure timely to disclose a possible crime, civil FCA violation, or an overpayment on a government contract. Further, contractors must have internal control systems that mandate these disclosures and require "full cooperation" with any government investigation.

Remaining Issues

The Proposed Rule, as revised, leaves many open questions, including the following: (1) what constitutes "reasonable grounds to believe" a possible crime, FCA violation, or an overpayment has occurred; (2) does "crimes" include non-procurement violations; (3) what rights do individual employees have when a contractor conducts an investigation into potential violations; (4) how does the mandatory report affect any applicable attorney-client privilege; and (5) will government consider the mandatory report a "voluntary disclosure."

Opportunity to Comment

The Councils will accept comments on the proposed revisions submitted to the FAR Secretariat on or before July 15, 2008. The Councils will consider comments in the formulation of the final rule.

Jack Horan is a partner with the Washington, DC office of McKenna Long and Aldridge. If you have further questions please contact Jack at jhoran@mckennalong.com.

2008 EIP AWARDS

It's that time of year again! Please join us for the 2008 Excellence in Partnership Awards and Dinner. This spectacular sell-out event, which will be held at the Renaissance Mayflower Hotel in Washington, DC on Thursday, October 23, 2008, is a long time favorite for both the industry and government. Over 400 attendees will be there to celebrate and honor the innovators in procurement as we celebrate the FAS organization and its programs. Awards will be given to FAS, its customers and its vendors.

The Coalition for Government Procurement is now accepting nominations for the EIP Awards. This is a great opportunity to recognize the innovators in the procurement world. Here is your chance to thank folks in FAS, its customers and its contractors. Or two or three. Do you know of a contractor who has made environmentally-friendly products available on the schedules program? Or do you know of a government agency that has demonstrated the best use of FAS programs to meet the critical needs of the agency mission? Or do you know of a contracting officer who deserves recognition? All are invited to nominate a deserving individual and/or organization for one of these prestigious awards. Submitting a nomination will cost you nothing, takes only seconds, and can be done anonymously. With your nomination, please provide several sentences as to why one should win. You can nominate your organization, yourself, or any deserving individual/organization. Just go to http://www.eipawards.org/awardcategories2.asp and nominate by **September 1, 2008**.

You can also show your support for FAS by sponsoring a table at the dinner or purchasing an ad in the EIP program. To purchase a table or an ad, please contact Kathy Lamb at klamb@thecgp.org or 202-315-1052. For more information, go to http://www.eipawards.org.

The Coalition for Government Procurement Presents:

MAS Boot Camp

July 22-23, 2008
LMI
Mclean, VA

Join us to learn/review how to obtain your schedule or MOD, the evolution of the MAS program, business ethics, marketing success and more!

The deadline to register is July 16, 2008

Members: $750
Premier Members: $640
Non-members: $995

For more information or to register, please contact Kathy Lamb at klamb@thecgp.org

THE COALITION FOR GOVERNMENT PROCUREMENT PRESENTS:

2008 Golf Tournament

Thursday, October 9, 2008
This year, the golf tournament will be held at an all-new location in MD at Whiskey Creek in Ijamsville (just 35 miles north of D.C). The course will be completely dedicated to our tournament for the afternoon.

For more information or to register, please contact Kathy Lamb, at klamb@thecgp.org.

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