



JAN 03 2013

MEMORANDUM FOR: JOSEPH A. NEURAUTER
SENIOR PROCUREMENT EXECUTIVE
DIRECTOR, OFFICE OF ACQUISITION POLICY (MV)

FROM: HOUSTON W. TAYLOR 
ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT: CLASS DEVIATION REQUEST TO FAR 25.501 FOR BLANKET
PURCHASE AGREEMENT (BPA) FSSI WIRELESS AGAINST
SCHEDULE 70 CONTRACTS

FAR SUBPART TO BE REVISED: 25.5, Evaluating Foreign Offers – Supply Contracts

PROBLEM:

The Office of Acquisition Operations (QTA) within the Federal Acquisition Service's (FAS's) Office of Integrated Technology Services (ITS) intends to allow vendors under Schedule 70, SIN 132-53 (Wireless Service) to offer no-cost service-enabling devices in conjunction with wireless service. As telephone service in general and wireless service in particular are exempt from the Trade Agreements Act (TAA) (see FAR 25.401(b)(2)), FAS proposes using the group offer analysis described at FAR 25.503 (c)(1) and (2) to allow consideration of domestic wireless service in a group with service-enabling devices. QTA believes that most no-cost service-enabling devices will not be a U.S. end product or the end product of a TAA designated country. The deviation being sought would make clear that the group offer analysis at FAR 25.503 (c) applies to mixed groups of services and supplies.

JUSTIFICATION:

To our knowledge, no other agency has proposed to use the group offer analysis for a mixed group of services and supplies. The existing language does not preclude a mixed group, but in the event that this innovation is challenged (at GAO or elsewhere), it would be prudent to have this deviation in place as a preventative measure against any legal challenges to the proposal's inclusion in FSSI Wireless.

Proposed advantages of the deviation, limited to the FSSI program

The deviation will allow GSA to provide service-enabling devices under the terms of the BPA rather than buying them on the open market in small quantities, or in other, non-

contractual arrangements. Without the deviation, the wireless solution available under Schedule 70 SIN 132-53 is incomplete.

Current cost/benefit analysis (e.g., on market conditions/industry trends)

The proposed clause will benefit the government by making the service under SIN 132-53 more closely conform to commercial practice, bundling service-enabling devices with wireless service.

A high percentage of federal mobile devices are purchased on the open market or through other agreements, rather than through a government-wide vehicle. These purchases are often done at decentralized levels, resulting in thousands of smaller agreements. The federal government's ability to adopt enterprise approaches to mobility (Mobile Device Management, Government App Stores, Government-wide Procurement, Security Policy, and Sustainability) is minimal given the current fragmented and decentralized approach of purchasing separate devices and service plans. This creates a challenge to manage inventory and compliance across the agency's enterprise and to ensure the agency is getting the lowest prices possible.

Many large agencies (including DHS, USDA, DOI, DOJ, DOE, and GSA) believe that more than 75% of their devices could be purchased as no-cost devices bundled with service plans, as commonly offered on the open market. Consequently, they would not have to purchase devices separately, at increased cost, and dedicate additional resources to justify, execute, and manage those purchases.

Name, Organization, and Role of Team Members Preparing the Deviation Request:

<u>Name</u>	<u>Organization, Role</u>
Patti A. Stang	ITS Acquisition Operations (QT), Contracting Officer
Michael McFarland	ITS Acquisition Operations (QT), Director
James T. Connors	ITS Acquisition Operations (QT), Director, Network Services
John Cornell	Legal, Senior Assistant General Counsel
David Peters	ITS Network Services (QT), Program Director
Debbie Hren	ITS Network Service (QT), Wireless Project Manager
Nicholas West	FAS Office of Acquisition Management (QV), Procurement Analyst
Mark Lee	FAS Office of Acquisition Management (QV), MAS Policy Chief

Number of contracts affected in previous fiscal year

None (this clause is only going forward).

Effect on the agency, or Contracting Officers and the acquisition team

Overall benefit is that ordering activity contracting officers will finally have a total wireless solution, rather than buying service-enabling devices on the open market or through non-contractual arrangements. The current practices may not support TAA compliance but rather avoid it or reduce visibility to TAA considerations, thereby

increasing risk to the agencies and the federal government. Managing this risk requires additional resources within each agency to justify and manage device purchases. It will eliminate the need for the Schedule 70 contracting officers to attempt to continually add and replace compliant devices on the Schedule 70 contracts.

Effect on contractors (costs/benefits)

- ***Number of contractors affected***

Based on the technical requirements and market response to date, two to four BPAs are expected to be established under this program. The primary effect on contractors would be that they would need to modify their schedule contracts to support the contract language necessary for a group offer of wireless service plus no-cost service-enabling device. It will eliminate the need for them to attempt to continually add and replace compliant devices on the Schedule 70 contracts.

- ***Number of small businesses affected***

No small businesses will be adversely affected by this deviation; there are no small businesses identified which are capable of meeting the requirements to provide ubiquitous wireless service as required under this RFQ. Contractors will continue to use small businesses for their operational, maintenance, and logistics support as well as providing subcontracting opportunities.

- ***Impact on small businesses (positive or negative)***

N/A

Potential impact on another Service

No impact foreseen on other services.

Opportunities for efficiency under the proposed change

This deviation provides tremendous opportunity for increased efficiencies.

The initial solicitation for the BPA was protested, largely on the finding that it did not conform to customary commercial practices. This deviation provides a device solution that closely matches the commercial market. It should reduce the risk of a protest and further delays on the award of the BPA(s). The federal government can then more quickly begin consolidating wireless services under the BPA(s).

Under the current terms of the Schedule 70 contracts, a device would have to be added as a separate line item. One contractor previously attempted to submit a modification to add devices to the Schedule 70 contract, only for GSA to determine those devices did not comply with the TAA requirement. As a result, to date no devices have successfully been added to any contractor's Schedule 70 contract for wireless. Further, the technology and market for wireless devices changes rapidly. Evaluating and managing contract modifications to add devices and subsequently replace those devices as they

become obsolete would require additional resources not previously programmed for the Schedule 70 staff.

Agencies that have purchased devices through open market or other agreements will gain efficiencies by managing their devices and service plans together under the group offer arrangement on the FSSI Wireless BPA(s).

Analysis of alternatives, identifying risks and risk mitigation

FAS has identified three potential alternatives to requesting a class deviation.

Option One – Do not bundle devices with services and require only service-enabling devices from the US or designated countries. Agencies may continue to obtain other service-enabling devices through the open market or through non-contractual arrangements.

REQUIRE ONLY SERVICE-ENABLING DEVICES FROM DESIGNATED COUNTRIES			
Strength	Weakness	Opportunity	Threat
<ul style="list-style-type: none"> • No conflicting underlying terms and conditions • Not likely to be protested • Agencies are accustomed to this approach 	<ul style="list-style-type: none"> • Does not satisfy OMB program desires or FSSI objectives • Does not meet customer requirements • Requires increased resources and delays to determine TAA compliance for each device and modify contracts for devices • No contractor has been successful to date in adding compliant devices • Approach is undocumented • May perpetuate fragmented and complicated approach to managing wireless services 	<ul style="list-style-type: none"> • Complies with TAA and Schedule 70 contracts as currently written 	<ul style="list-style-type: none"> • Contractors may not offer any compliant devices and they have expressed concerns over their ability to ensure TAA compliance • Compliant devices will be more costly • Compromises objectives of FSSI and, therefore, support from OMB • Reduces anticipated business volume from customer agencies • Delays implementation of BPAs • Agencies may purchase desired devices elsewhere, requiring

	across government		independent determinations of TAA compliance for those purchases
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Option Two – Do not offer service-enabling devices through the BPA(s) and obtain service-enabling devices only through the open market or through non-contractual arrangements.

DO NOT OFFER SERVICE-ENABLING DEVICES THROUGH BPAS			
Strength	Weakness	Opportunity	Threat
<ul style="list-style-type: none"> • No conflicting underlying terms and conditions • Not likely to be protested 	<ul style="list-style-type: none"> • Does not satisfy OMB program desires or FSSI objectives • Does not meet customer requirements • Requires increased resources and delays while Agencies justify and complete purchases from open market or other agreements • Perpetuates fragmented and complicated approach to managing wireless services across government 	<ul style="list-style-type: none"> • Complies with TAA and Schedule 70 contracts as currently written 	<ul style="list-style-type: none"> • Compromises objectives of FSSI and, therefore, support from OMB • Reduces anticipated business volume from customer agencies • Delays implementation of BPA(s) • Forces agencies to purchase devices elsewhere and make independent determinations of TAA compliance for those purchases

Option Three – Implement the deviation and allow wireless service under SIN 132-53 to be bundled with no-cost devices in a group offer. Agencies will still have the option to obtain other service-enabling devices through the open market or through non-contractual arrangements.

IMPLEMENT DEVIATION AND ALLOW NO-COST DEVICES IN GROUP OFFER			
Strength	Weakness	Opportunity	Threat

<ul style="list-style-type: none"> • Legal concurrence that the term is not conflicting • No objection from US Trade Representative • Most closely follows commercial practices 	<ul style="list-style-type: none"> • Requires additional resources to incorporate deviation into Schedule 70 contracts 	<ul style="list-style-type: none"> • Agencies have wider choice of devices and services on a single acquisition vehicle • Meets FSSI objectives 	<ul style="list-style-type: none"> • Interpretation of group offer may be challenged • Could be protested
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Any effects on automated systems (i.e., financial and procurement)

No effects on automated systems are anticipated.

Proposed milestones for initiation, including training

Award of the BPA(s) is well behind the schedule set by the Digital Government Strategy working group and under increasing scrutiny from OMB to make progress. The target schedule below is critical to the credibility and success of the project.

Release RFQ	January 10, 2013
Announce Award of BPAs	March 25, 2013
Publish Users' Guide and Begin Customer Training	April 8, 2013
Agencies Initiate Ordering	April 8, 2013

Prior to award of the Schedule Contract holders' BPA(s), their GSA IT Schedule 70 contracts will be modified to include updated terms and conditions that exclude the TAA clause from wireless services.

Approach to monitoring success and determining whether or not the deviation will continue

The proposed approach allows significant improvements in the ability of the federal government to manage its inventory of mobile assets. This increased capability will serve as the baseline function to determine if deviation continuation is required. Inventories requested previously by OMB and the FSSI have failed to capture more than 40% of assets due to fragmented purchasing.

Any FSSI team interaction or recommendation should be included to support the overall strategic sourcing goals being sought

The FSSI Wireless Program is a highly visible and highly sensitive program that has received approval from the SSWG and OFPP regarding its acquisition strategy and its desire to release the RFQ. Both organizations have been briefed on the changes to allow no-cost service-enabling devices with wireless service and recognize the proposal as an enabler for future adoption and program success.

LEGAL SUFFICIENCY STATEMENT:

The QT legal counsel concurs that there is no legal barrier to proceeding with the proposed deviation.

Counsel Signature:  Digitally signed by JOHN CORNELL
Date: 2013.01.03 09:21:15 -05'00' Date: _____
John E. Cornell

RECOMMENDED LANGUAGE:

Accordingly, FAS is requesting to make the deviation as set out in Appendix A.

BUSINESS CASE ANALYSIS PREPARED BY:

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SENIOR PROCUREMENT EXECUTIVE REVIEW:

Approved: , As to Option Three
Date: Jan 4, 2013 See Attached Considerations.

Appendix A
New Text is represented by [bold brackets]

Part 25 Foreign Acquisition

Subpart 25.5 Evaluating Foreign Offers – Supply Contracts

25.501 General.

The contracting officer—

- (a) Must apply the evaluation procedures of this subpart to each line item of an offer unless either the offer or the solicitation specifies evaluation on a group basis (see 25.503);
- (b) May rely on the offeror's certification of end product origin when evaluating a foreign offer;
- (c) Must identify and reject offers of end products that are prohibited in accordance with Subpart 25.7; and
- (d) Must not use the Buy American Act evaluation factors prescribed in this subpart to provide a preference for one foreign offer over another foreign offer—**]; and**
- (e) May use the evaluation procedures in this subpart for evaluating group offers of supplies and services.]**

Considerations

- GSA should ensure appropriate transparency into the offered no cost mobile devices and include appropriate safeguards to ensure against the procurement of any device from a prohibited source as well as to allow agencies to assess and mitigate any security risks of their telecommunications choices. Security of telecommunications is an area that GSA has been working on with the Office of Emergency Response and Recovery, the National Security Staff, and GSA's FAS.
- GSA should perform appropriate market research and price analysis to ensure that the prices offered are consistent or better than the prices offered in the commercial market place in order to guard against the cost of the devices being hidden in the services.
- GSA should limit the FAR class deviation to SIN 132-53, Wireless Service.