

# **COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS**

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February 22, 2000

CODSIA Case No. 1-00

General Services Administration  
FAR Secretariat (MVRS)  
1800 F Street, N.W.  
Room 4035  
ATTN: Ms. Laurie Duarte  
Washington, D.C. 20405

REF: FAR case 1999-014, Competition Under Multiple-Award Contracts

Dear Ms. Duarte:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) appreciate the opportunity to comment on the proposed rule regarding competition under multiple-award contracts.

Formed in 1964 by industry associations with common interests in the defense and space fields, CODSIA is currently composed of eight associations representing over 4,000 member companies across the nation. Participation in CODSIA projects is strictly voluntary; a decision by any member association to abstain from participating in a particular activity is not necessarily an indication of dissent.

We would like to take this opportunity to clearly state our position on the broad issue of competition under multiple-award contracts as well as provide a couple of comments on the specifics of the proposed rule at hand.

CODSIA members strongly support the Government-Wide Acquisition Contracts (GWACs) and agency specific Multiple-Award Contracts (MACs) as excellent examples of successful acquisition reform. In particular, these contracting vehicles have produced extraordinary savings in the time and cost of procurement cycles, afforded a high degree of flexibility for program sponsors, and provided the government with broad, state-of-the-art access to technical solutions.

## **Background to Evaluating GWACs/MACs Contracting**

It is important to acknowledge why GWAC/MAC contracting was established and what procurement reform initiatives were implemented to create an effective IT contracting environment.

**Contracting for Information Technology (IT)** – It was recognized early on by acquisition reformers that as we continue to migrate to a technologically based society it would be increasingly difficult to purchase IT and related solutions employing a traditional long lead competitive procurement or Request for Proposal environment. The lead-time required to execute this type of procurement for IT often resulted in obtaining technology that was completely outdated by the time of contract award. Worse yet, because of the encumbrances of an antiquated procurement process, program managers were encouraged to modify fatally flawed agreements rather than begin the process anew. This behavior had predictable negative consequences on both technology delivery and pricing. In response to this situation, agencies were provided the authority to establish Government Wide Acquisition Contracts (GWACs) for the purpose of establishing a prequalified list of highly qualified vendors available to support the agencies' requirements for IT. In establishing the GWAC, the agency must execute a competition with potential vendors and select vendors that are qualified to do business with the government. Once a vendor has successfully competed to be on a GWAC, contracting opportunities are awarded – again competitively – based on vendor responses to requests for bids. GWAC contracting allows the agency to contract rapidly and competitively acquire the very latest IT products and services at their best possible prices.

**Modular Contracting** – IT systems and solutions are expensive investments of time and resources. Acquisition reformers understood that the pace of technological advancement meant that the pervasive use of a large single award procurement would sometimes sub-optimize the acquisition process. There are, nonetheless, circumstances where the traditional, large scale, IT systems integration program is the best alternative – e.g., high-development risk, extreme technical complexity and interface dependencies. Modular contracting is designed to assist the agency in managing its acquisition process by breaking large systems into their logical components and allow flexibility and competition at critical design and delivery stages in the acquisition life cycle. By purchasing IT in modular sections an agency can ensure that the designed solution is working and is thoroughly meeting the needs of the end users before making further investments in a large scale solution that may not be in the best interest of the government. Modular contracting enables the insertion of new technology, as it becomes available. Clearly, GWAC and MAC vehicles dovetail well with the notion of modular contracting by offering users the flexibility required to design the most effective and efficient IT solutions to adapt to evolving program needs and available technology solution sets.

**Past Performance** – In today's contracting environment procurement rules require consideration of a contractor's past performance in the evaluation process. This is being done to ensure that the government is contracting with quality vendors who understand and effectively respond to the needs of the agency. The use of GWAC and MAC vehicles typically utilize a set

of prequalified contractors for bidding on task requirements. While past performance is now a normal part of agency procurement practices, a casual observer would note that there are more immediate consequences for stellar or poor past performance under a GWAC or MAC contract. Contractors know that the next available task for bidding will be graded using their most current assignments which are most likely directly related to the immediate opportunity as it is within the same statement of work for the umbrella GWAC or MAC vehicle.

**Best Value Procurement** – The contracting community has worked diligently to promote the use of best value procurement. Best value procurement allows factors other than price to be considered more important to the end user. A vendor's past performance with an agency, or technical competency with a particular technology solution or maintenance policy, may justify award to other than a low bidder especially when IT is purchased. The new contracting rules encourage the contracting officer to utilize evaluation factors other than lowest price when selecting a vendor. The GWAC and MAC vehicles are good candidates for execution of a best value approach as they are typically represented by high technology assignments and acquire solutions through use of multiple task orders allowing users to modify precise evaluation criteria at specific modular control points in the procurement process.

### **Fair Opportunity**

We realize that with all of the advantages and improvements offered in the GWAC and MAC procurement, process refinements may be in order. One question which remains unresolved is: "Does the procurement process need to be modified to improve the fair opportunity for consideration feature?" To answer this question, one must first understand the context of logical follow-on and awards based upon a single offer in the competitive framework. Logical follow-on work results from work that was first competed. The examination of orders by CODSIA members has found that the initial competition for work typically has duration of one year or less, which many times is driven by annual funding considerations. The employment of the logical follow-on provision in the procurement regulations should not be considered a sole source procurement but rather a natural continuation of a competitive award. The standards for competition and the deliberate placement of up-front competition were designed to respond effectively to the many challenges faced by the federal government when contracting for IT. Recognizing that the methodology for acquiring IT encourages the use of modular contracting with an emphasis on past performance and overall best value to the government, it should be expected that there may be more logical follow-on work initiated through GWACs. In a very real sense, the use of logical follow-on confirms that a highly qualified pool of multiple award vendors has been selected in the first instance.

Secondly, regulations specifically state that award following receipt of a single offer following solicitation of multiple sources is considered a competitive procurement so long as the vendor had reason to believe that more than a single offer was proffered. Again, these actions are legitimate competitive acquisitions following the commercial best practice model. We feel

strongly that under GWAC and MACs, industry is provided a fair opportunity for consideration when two or more vendors are requested to respond to the solicitation.

### **GWACs Analysis**

CODSIA members performed an independent analysis of task orders issued under the FEDSIM 9600, DEIS II, ITOP, and CIO-SP contracts which revealed that fair opportunity exists for the majority of tasks. While single offers are received following requests made of two or more vendors it was found that there were often multiple factors driving a bid-no-bid decision. In a typical GWAC environment, where there are innumerable tasks, frequent opportunities to bid, and a relatively small number of informed prospective bidders, a situation which elicits only one offer is not necessarily an indication of inadequate competition. There are many reasons why contractors might pass up an opportunity including:

1. Nonavailability of manpower at that time;
2. Nonavailability of specialized expertise;
3. Saving manpower for an upcoming, more attractive task;
4. A sense that they are not competitive with an incumbent or other offerors; and
5. In rare instances, strategic reasons based on corporate direction, market positioning, core competencies, and similar factors.

During the short life of the GWAC and MAC vehicles, a steady improvement in the procurement process, especially during the last year, has been observed. For example, most of the contracts now provide reasonable lead-time regarding a pending opportunity to bid on a task – typically two weeks or more depending on the size and complexity of the requirement. In addition, the proposal response time has stabilized, and typically is running in the three to seven week range again depending on the size/complexity.

### **Recommendations**

CODSIA members believe that improvements to new systems can be made. However, we believe this can best be achieved through other than a statutory or regulatory means i.e., education, training, software-based tools, best practice/guidance instruments and policy and administrative directives. CODSIA members believe that the overall quality and performance of the GWAC's can be improved through specific judicious modifications and without degrading the substantial benefits provided by these vehicles. We recommend consideration of the following:

1. **Best Value/Performance-Based Work Statements** – Much greater emphasis needs to be applied to this area, backed up by strong training, tools, and quality control oversight. We believe that central leadership is required on the part of OFPP, OMB. In particular, contracting officers need to receive guidance concerning the broad discretion available to them in identifying specific evaluation factors for task order awards. In addition to the customary evaluation factors need refinement and specificity, we believe that small business plans and small business participation should be considered as a specific evaluation factor. Such an evaluation factor would recognize the recent bundling requirements. We believe that such specific factors will promote the best interests of the end-user.

2. **Bid-no-Bid Notification** – A government-wide practice should be adopted to assist the sponsors of task competitions in assuring that they fully understand the market response to a given performance requirement. This could be readily accomplished by requiring all prospective offerors to indicate their intention to bid or not with the reason for the no bid, within, say, 3-5 days of the receipt of the solicitation.

3. **GWAC's Tracking System** – In order to acquire a reasonable and cumulative understanding of the pattern of competition/fair opportunity across the total universe of GWAC's vehicles, each agency sponsor should be required to maintain a simple tracking system which categorizes the various outcomes of GWAC's task level competition. This process will serve to highlight any unusual patterns (e.g. an exceptionally large number of single bid awards).

With regard to the proposed rule (FAR Case 1999-014), we would like to make just a couple of specific comments. First, under the 16.505 Ordering Language at (b) (1) (ii) (E), we would recommend that the sentence read: (E) Consider price or cost *along with factors such as past performance, management capabilities, small business participation and obligations, technical capabilities, etc.* under each order as factors in the selection decision.

Secondly, since the proposed rule is a document to assist in providing guidance to the CO, we recommend that some mention be made regarding providing information to the vendors not selected for the Task Order upon request of the vendor. We recommend something less than a debriefing since this is a simplified contracting tool.

Possible language addressing this concern could be the following:

*The C.O. is required to provide the following specific information to each unsuccessful task competitor upon written request received within 5 calendar days following notice of non-selection:*

- \* *Perceived significant strengths/weaknesses of the offeror consistent with the evaluation criteria in Section M of the task solicitation document.*

- \* *Past performance rating of the unsuccessful offeror and a copy of any information detailing poor past performance.*
- \* *Evaluated price of the offeror compared to the successful offeror.*
- \* *Overall ranking of all offerors.*
- \* *Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.*

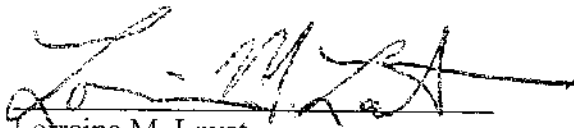
*In the interests of streamlining the acquisition process, the above information could be provided in writing to the offeror instead of a face-to-face debriefing.*

### **Conclusion**

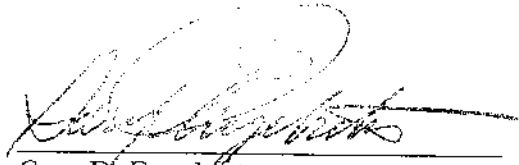
CODSIA members believe that the GWAC's vehicles are making a substantial contribution to the ultimate mission performance improvement across the federal government. While we understand that improvements can be made, we strongly urge oversight groups and regulatory policy organizations to focus primarily on education, training, problem solving tools and syndication of best practices, and avoid statutory or regulatory interventions.

We appreciate the opportunity to provide these comments. If you have any questions, please contact CODSIA Project Officer Charles Cantus at (703) 875-8059.

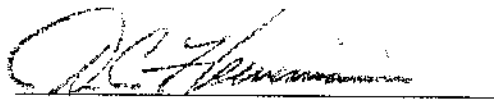
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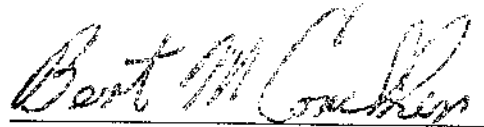
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