

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS

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October 29, 2001
CODSIA Case No. 10-01

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

Re: FAR Case 1999-303; Task Order and Delivery Order 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 which was published in the *Federal Register* August 23, 2001, regarding task order and delivery order contracts (66 Fed. Reg. 44518). Formed in 1964 by industry associations with common interests in the defense and space fields, CODSIA is currently composed of seven 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.

The undersigned CODSIA members agree with the proposed FAR language in FAR Case 1999-303 in virtually all aspects. For example, the agency requirement to designate a "task-and-delivery order" ombudsman is a useful procedural safeguard to ensure that awardees of indefinite quantity contracts remain in the competition for future orders. Moreover, the language in proposed FAR 16.505(b)(2) is excellent guidance to contracting officers when compared to the present FAR language. The value of this guidance to the contracting community is its presumption of fair opportunity for contractors (*i.e.*, 16.605(b)(2)) and its requirement that contracting officers fully document their decisions to place orders (*i.e.*, 16.505(b)(4)).

Nevertheless, we are concerned that the proposed changes to FAR Parts 2, 7, 16, and 17 do not completely reflect the intent of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65, § 804). In general terms, the proposed regulations appear to overlook the purpose of the Federal Acquisition Streamlining Act of 1994 (FASA) – which encouraged greater use of commercial items and services and more emphasis on open competition for task

and delivery order contracts. According to House Report 106-301 (page 776), FASA is the legal foundation for § 804's guidance on task and delivery orders.

Accordingly, these comments on the implementation of § 804, although limited, reflect the intent and spirit of FASA as well as the language of § 804. Among other things, we believe the proposed guidance should establish a priority of task and delivery order contract types. The proposed guidance focuses only on Federal Supply Schedule contracts, GWACs and MACs, but excludes a reference to contracts resulting from FAR 16.5, Indefinite Delivery Contracts. The undersigned CODSIA members recommend that the contract type (*e.g.*, IDIQ contracts) and the FAR preference for multiple-award contracts (*see* FAR 16.504(c)) should receive a significantly greater emphasis over GWAC and MAC contracts than can be inferred from the proposed regulations.

The purpose of our recommendation is to promote § 804's requirement that the proposed FAR guidance ensures "that all contractors are afforded a fair opportunity to be considered for the award of task and delivery orders." § 804(b)(2)(B), Pub. L. 106-65. In other words, we do not interpret § 804 to mean that the FAR should (by implication or otherwise) promote the use of schedule contracts, government-wide contracts or multi-agency contracts over the use of multi-award IDIQ contracts designated for the private sector.

Our overriding recommendation can be implemented through the following additions to the FAR Council's proposed language:

1. 7.101: *Order* means an order placed under a task order contract or delivery order contract awarded by an agency under 16.504(c), or awarded by another agency (*i.e.*, a Federal Supply Schedule contract, Governmentwide acquisition contract, or multi-agency contract).¹
2. 7.103 (e): Writing plans either on a systems basis, or an individual contract basis (including multiple award contracts issued under 16.504(c)) or an individual order basis (~~including multiple award contracts issued under 16.504(c)~~), depending upon the acquisition.
3. 7.105(b)(4)(ii): For each order contemplated, ~~including orders from multiple award contracts under 16.504(c)~~, discuss –

* * * * *

¹ The hyphens have been removed from "task order" and "delivery order" in order for the proposed terminology to be consistent with the present definitions in FAR 16.501-1.

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4. 16.505(a)(7): Orders placed under a task order contract or a delivery order contract awarded under 16.504(b) or (c), awarded by another agency (*i.e.*, a Governmentwide acquisition contract or a multi-agency contract).
5. 16.501-1: [insert before the definition of "Delivery order contract"] Order means an order placed under a task order contract or a delivery order contract.

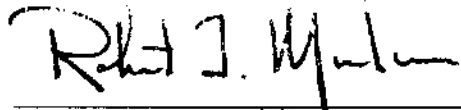
The undersigned CODSIA members believe that the above additions to the proposed language on task and delivery order contracts will also address the observations of the DOD Inspector General Reports on the Defense Department's use of multiple award task order contracts. See "DoD use of Multiple Award Task Order Contracts," Report No. 99-116 (April 2, 1999) and "Multiple Award Contracts for Services," Report No. D-2001-189 (September 30, 2001). These two reports provide details of how contracting agencies have failed to award task orders or delivery orders under multiple-award contracts in accordance with the FASA competition requirements.

If you have any questions on the above comments, please contact David Dempsey, the Project Officer for this CODSIA case. He can be reached at (703) 720-8657 and ddempsey@hkllaw.com.

Sincerely,

(SEE ATTACHED CODSIA SIGNATORIES)

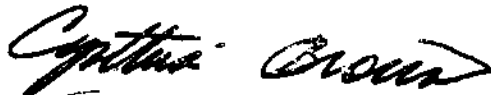
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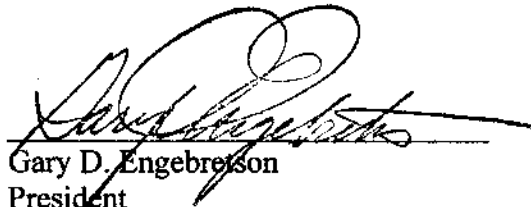
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