

## COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS

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January 5, 2001  
CODSIA Case No. 17-00

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

REF: Reverse Auction Notice

Dear Ms. Duarte:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) appreciate the opportunity to respond to your request for comments on whether there is a need for guidance on the use of reverse auctioning techniques. This request for comments appeared in the October 31, 2000, *Federal Register* (65 Fed. Reg. 65232).

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.

CODSIA members strongly support the maximum range of contracting vehicles, including reverse auctioning, believing that a full menu of options should be available for government managers in order to best respond to a variety of needs. Industry recognizes, however, that the wide array of vehicles itself poses the risk that certain contracting techniques will be used inappropriately if adequate training is not provided early and often.

Nearly a decade of acquisition reform has afforded the government tremendous streamlining opportunities, cost savings, and flexibility. At the same time, it has highlighted the need for intensive and continuous learning environments. The introduction of the relatively new reverse auctioning technique demands additional training and guidance, including substantive best practices guides. This training should focus on requiring government managers to exhibit extraordinary discipline in determining when to employ the practice.

The lure of new technology, reduced manpower requirements, speed of source selection, and an erroneous belief that what constitutes "value" in one instance is also "value" in another,

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may provide enough incentive to use reverse auctioning techniques in wholly inappropriate circumstances. More specifically, we are concerned that the above-mentioned benefits of reverse auctioning may occasionally result in an inappropriate cost shoot-out for higher risk, developmental, or technically demanding requirements. Because of this, CODSIA members believe the FAR should be amended to provide clear criteria for when to use reverse auctioning techniques.

The October 31, 2000 Notice repeats an opinion that "explicit coverage in the FAR is not needed because FAR 1.102(d) permits any technique that is not expressly prohibited." However, CODSIA members would recommend that in order to avoid the potential problem of using reverse auctioning inappropriately, the spirit of the "best value continuum" included in FAR 15 be used as a fundamental tenet when developing guidance, best practices guides, and training programs for when reverse auctioning is appropriate. In addition, we believe the Office of Federal Procurement Policy Act strongly suggests that matters like this be promulgated as a government-wide regulation in the FAR with implementation guides/training as needed at the agency level.

FAR 15.101 states that "...the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection."

At the upper-end of this best value continuum, auction practices are dangerous in that they obscure more relevant considerations and expose the government, and contractors, to significant risk of failure. The government will limit its ability to access cutting-edge technology and practices and may not attain an acceptable result by contracting through reverse auctions because the practice itself uses cost as the driving factor in source selection.

At the upper-end of the continuum, past performance and technical factors should be more heavily relied upon than cost/price factors. Conversely, at the low-end of the best value continuum, reverse auction techniques may present the best opportunity to achieve agency goals. It is the opinion of the undersigned CODSIA members that opportunities for reverse auctioning to succeed exist predominantly in the commodity sphere (i.e. fuel, electricity, lumber, etc), which clearly resides at the lower end of the continuum.

As best practices guides and training regimens are being developed to address reverse auctioning techniques, we strongly urge those developing the materials to recognize that the tradeoff process described in FAR 15.101-1 requires subjective decisions on the part of highly knowledgeable contracting officers. These same requirements must be part of the decision on whether or not to use reverse auctioning techniques.

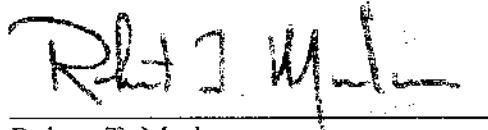
Beyond the need to identify the appropriate circumstances for when to use reverse auctioning techniques, CODSIA members believe there are other areas that require specific

guidance. For example: 1) Can reverse auction participants claim mistakes in their bids/offers and what documentation must be provided to support the mistake? The recognition of mistakes will undoubtedly occur after awards and it is unlikely that working papers will be developed for each round of the auction; 2) Are auction participants required to submit bids/offers in each round or are they permitted to sit out in order to see what develops? 3) Should the FAR require that discussions be concluded before the auction starts, and, if not, how can an offeror submit a price/offer that addresses an agency's known, but unarticulated, concerns? 4) Since an auction simply lowers prices but does not identify the basis for lowering those prices, can there ever be a true "best value" trade-off or is the end result actually lowest cost technically acceptable proposals or two-step closed bids? 5) Should price preference adjustments be made in real-time so the auction participants know "true" prices, or can that occur after the auction concludes, creating the specter of a false auction? and 6) Must the certificate of independent price determination clause be modified to accommodate auctions? Buyers in the commercial sector recognize that in multiple (follow-on) reverse auctions for same/similar services/items that there must be at least one new bidder or the "repeat" bidders will, without direct collaboration between themselves, tend to alternate who wins each auction. We would expect FAR implementation would also cover this latter issue.

We appreciate the opportunity to provide these comments and we look forward to seeing a proposed FAR rule. If you have any questions, please contact CODSIA Project Officer Charles Cantus at (703) 875-8059.

Sincerely,

(SEE ATTACHED CODSIA SIGNATORIES)



Robert T. Marlow  
Vice President, Government Division  
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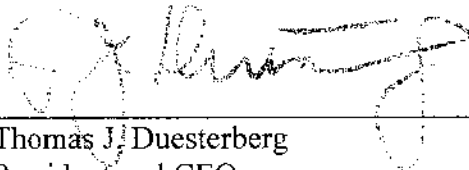
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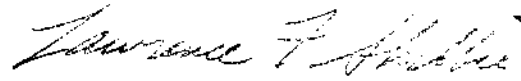
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