



MAY 10 2002

Defense Acquisition Regulations Council,
ATTN: Ms. Susan L. Schneider,
OUSD(AT&L)DP(DAR)
IMD 3C132
3062 Defense Pentagon
Washington, DC 20301-3062

Re: Public Comments DFARS Case 2001-D017

Dear Ms. Schneider,

The General Services Administration (GSA) appreciates the opportunity to submit public comments on DFARS Case 2001-D017 for your consideration. Before the April 29, 2002, public meeting and our review of the public comments, GSA agreed with the Department of Defense's (DoD) public comment dated April 11, 2002. However, based on the April 29, 2002, public meeting and the public comments received to date, GSA now believes the proposed rule needs to be rewritten to provide sufficient guidance to the acquisition community about how to place orders against multiple award vehicle for similar services.

GSA does not believe that the proposed rule as drafted provides sufficient guidance to the acquisition community about how to place orders against multiple award vehicles for similar services. The proposed rule essentially implements the statutory language as it is written, and, therefore, is silent as to the guidance necessary to ensure proper implementation as well as retaining the flexibility of Section 803. GSA believes the rule as written may serve as a deterrent to proper use of multiple award contracts for similar services within DoD. For example, the rule should clarify that services requiring a statement of work are the services addressed in Section 803.

GSA also believes that the rule should be rewritten stressing the importance of acquisition planning and market research. Acquisition planning including market research addressing the services required by DoD customers will ensure, among other things, the use of the appropriate contracting vehicle and provide the underpinning for any documentation required in accordance with Section 803.

GSA believes a revised final rule can be developed in a short time frame. A revision to your proposed rule is attached for your consideration in developing the final rule. GSA is available to join your team and develop a final rule that will meet our mutual requirements to provide our customers with the best value services that meets there requirements and provides the taxpayer with a sound return on the investment of their tax dollars.

Sincerely,

A handwritten signature in cursive script, appearing to read "Al Matera", with a long horizontal flourish extending to the right.

Al Matera
Director
Acquisition Policy Division

Competition Requirements for Purchase of Services
Under Multiple Award Contracts
DFARS Case 2001-D017
Draft Final Rule

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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SUBPART 208.4—ORDERING FROM FEDERAL SUPPLY SCHEDULES

[208.404 Using schedules.

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[(b) *Ordering procedures for optional use schedules—*

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold. The procedures at FAR 8.404(b)(2), regarding review of catalogs or pricelists of at least three schedule contactors, do not apply to orders for services using a statement of work exceeding \$100,000. Instead, use the procedures at 208.404-70.*

(3) *Orders exceeding the maximum order threshold.*

(i) For orders for services using a statement of work exceeding \$100,000, use the procedures at 208.404-70 in addition to the procedures at FAR 8.404(b)(3)(i).

(7) *Documentation. For orders for services using a statement of work exceeding \$100,000, use the procedures at 208.404-70 in addition to the procedures at FAR 8.404(b)(7).]*

* * * * *

[208.404-70 Additional ordering procedures for services using a statement of work].

(a) This subsection implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107).

(b) Each order for services [using a statement of work] exceeding \$100,000 must be made on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that-

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iii) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services [using a statement of work] exceeding \$100,000 is made on a competitive basis only if the contracting officer provides a fair notice of the intent to make the purchase, including a description of the work the contractor must perform and the basis upon which the contracting officer will make the selection, to-

(1) As many contractors as practicable[,]consistent with market research appropriate to the circumstances[, to reasonably ensure that, in the government's judgment, at least three offers will be receive from qualified contractor (When conducting market research in developing a source list, consider including, if available, one or more small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Orders placed against the schedules may be credited toward the ordering agency's small business goals.)]
and-

(i) Receives offers from at least three qualified contractors; or

(ii) Determines in writing that no additional qualified contractors could be identified despite reasonable efforts to do so consistent with the market research conducted (Document, including a description of efforts made to obtain offers from at least three qualified contractors, the rationale for the determination commensurate with the dollar value and complexity of the requirement. Generally, conducting proper market research will permit award at this point without resoliciting.);
or

(2) All contractors offering such services under the multiple award schedule[,] and ~~affords all contractors~~

~~responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.]~~

[(3) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.]

~~(1) The contracting officer-~~

~~(i) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor must perform and the basis upon which the contracting officer will make the selection, to all contractors offering such services under the multiple award schedule; and~~

~~(ii) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered; or~~

~~(2) The contracting officer provides the notice described in paragraph (c) (1) (i) of this subsection to as many contractors as practicable and-~~

~~(i) Receives offers from at least three qualified contractors; or~~

~~(ii) Determines in writing that no additional qualified contractors could be identified despite reasonable efforts to do so.~~

(d) Single and multiple blanket purchase agreements (BPAs) [for services using a statement of work exceeding \$100,000] may be established against Federal Supply Schedules if the contracting officer-

(1) Follows the procedures in paragraphs (b) and (c) of this subsection; and

(2) (i) For a single BPA, defines the tasks and establishes a ~~firm-fixed~~ price for individual tasks or services identified in the statement of work; or

(ii) For multiple BPAs, forwards the statement of work and the selection criteria to all BPA awardees before placing orders against the BPAs. (See FAR 8.404(a) ~~and (b)(4)~~, and paragraph (b) of GSA's ordering procedures for services at

http://www.gsa.gov/Portal/content/offerings_content.jsp?contentO
ID=116992&contentType=1004.)]

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PART 216—TYPES OF CONTRACTS

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SUBPART 216.5—INDEFINITE-DELIVERY CONTRACTS

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[216.501-1 Definition.

“Multiple award contract,” as used in this subpart, means—

(1) A multiple award task order contract entered into in accordance with FAR 16.504(c); or

(2) Any other indefinite delivery, indefinite quantity contract that an agency enters into with two or more sources under the same solicitation.]

* * * * *

[216.505-70 Orders for services using a statement of work exceeding \$100,000 under multiple award contracts.

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107); and

(2) Applies to orders for services using a statement of work exceeding \$100,000 placed under multiple award contracts, instead of the procedures at FAR 16.505(b)(1) (see Subpart 208.4 for procedures applicable to orders placed against Federal Supply Schedules).

(b) Each order for services using a statement of work exceeding \$100,000 must be made on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services [using a statement of work] exceeding \$100,000 is made on a competitive basis only if the contracting officer—

(1) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor must perform and the basis upon which the contracting officer will make the selection, to all contractors offering such services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) When using the procedures in this subsection—

(1) The contracting officer should keep submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations; and

(3) The competition requirements in FAR Part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer must—

(i) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(ii) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(iii) Tailor the procedures to each acquisition;

(iv) Include the procedures in the solicitation and the contract; and

(v) Consider price or cost under each order as one of the factors in the selection decision.

(e) The contracting officer should consider the following when developing the procedures required by paragraph (d)(3) of this subsection:

(1) Past performance on earlier orders under the contract, including quality, timeliness, and cost control.

(2) Potential impact on other orders placed with the contractor.

(3) Minimum order requirements.]

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Note. In the Federal Register Notice, the Background statement should make it clear that Section 803 applies to orders placed by civil agencies for DOD. Also, a discussion regarding the importance of acquisition planning and market research should be included.