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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEPUTY DIRECTOR
FOR MANAGEMENT

May 21, 1999

MEMORANDUM FOR THE PRESIDENT'S MANAGEMENT COUNCIL

FROM: Deidre A. Lee
Acting Deputy Director for Management

SUBJECT: Competition Under Multiple Award Task and Delivery Order Contracts

I am writing to seek your assistance in addressing the use of multiple award contracts (MACs) within your agency. MACs, which give agencies the ability to compete work efficiently among a small number of capable contractors, are an increasingly popular procurement vehicle for satisfying customer needs. They have become the vehicles of choice for intra- and inter-agency acquisitions of information technology (IT) because they allow agencies to take advantage of advances in technology and changes in agency priorities in an opportune manner. A recent report issued by the Department of Defense Inspector General, however, serves as an important reminder that MACs are only effective when they are structured, managed and administered to consistently benefit from the streamlined, commercial-style competition that occurs when we provide each of the contract holders a fair opportunity to be considered for contract work.

Last year, with your help, we moved to strengthen use of MACs and the fair opportunity process by discontinuing the practice of designating a contract holder as a preferred source for specific work. I ask for your help in building on that progress to make sure that your agency continues to use these vehicles in the most effective manner possible.

The attached memorandum reminds Agency Senior Procurement Executives to ensure that contracting officials use MACs effectively and to avoid incautious or inattentive practices (see Attachment A). It is important for customers within your agency (e.g., senior program managers, Chief Information Officer, Chief Financial Officer) to be sensitive to these matters as they work with contracting officials to plan and execute acquisitions for which MACs may be suitable. For that reason, I would appreciate the broadest distribution of the attached memorandum among those customers. In addition, if your agency manages a program for interagency acquisition, please distribute this information to those program managers as well.

If your agency wishes to request a designation from OMB to be an executive agent for a government-wide acquisition contract for IT (GWAC) pursuant to Section 5112(e) of the Clinger-Cohen Act (40 U.S.C. 1412(e)), we will consider the agency's commitment and demonstrated adherence to sound contracting principles (including those in the attached

memorandum) and procurement reforms designed to deliver good value. The policy framework we are developing to further shape the use of GWACs also will take into account other factors, such as opportunities to aggregate and leverage demand, which will help us determine whether an appropriate business case exists for the designation of an executive agent to create and administer a GWAC (see Attachment B). We hope that these ongoing efforts will further contribute to agencies' ability to make more strategic use of the government's buying power in their interagency acquisition of IT using MACs.

I appreciate your continued support toward effective administration and use of MACs within your agency.

Attachments

cc: Agency Senior Procurement Executives
CIO Council
CFO Council
Program Managers Council

Attachment A

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

May 4, 1999

MEMORANDUM FOR AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM: Deidre A. Lee
Administrator

SUBJECT: Competition and Multiple Award Task and Delivery Order Contracts

I know that you appreciate the innovation and value that competition induces, and the opportunities which multiple award task and delivery order contracts (MACs) provide for agencies to efficiently realize these benefits. A new report issued by the Department of Defense Inspector General (report no. 99-116, dated April 2, 1999) serves as an important reminder for all agencies that MACs, particularly when used for service contracting, are effective only when they are structured, managed and administered to consistently take full advantage of the fair opportunity process. For this reason, I ask that agencies keep the following points in mind when using the MAC authority in FAR Part 16.5:

- Multiple task and delivery order contracts will not enable agencies to make effective use of competition unless there are two or more contractors that are generally capable of performing all work under the proposed contract.

- While all awardees need not be equally capable in all areas, competition will be undermined if some (or all) awardees specialize in only a few areas within the broader statement of work such that, as a matter of course, two or more awardees are not likely to compete for the work.

- In order to obtain best value, task order award decisions need to take price into consideration.

- All ordering decisions, including use of one of the exceptions to the fair opportunity process described at FAR 16.505(b)(2) or the selection of a higher priced proposal because of its greater technical merit, must be properly and adequately documented. This means that rationales must contain sufficient facts to be sound.

Please disseminate this memorandum to all agency contracting personnel and take any additional steps necessary to ensure proper intra- and inter-agency use of these important procurement vehicles. Due to the increasing amount of interagency acquisition involving the placement of orders under MACs, OMB will ask the President's Management Council to share this reminder with customers of multi-agency contracts and government-wide acquisition contracts for information technology.

I will also ask the Federal Acquisition Regulatory Council to open a case to review the sufficiency of current FAR coverage to ensure competition is used effectively and ordering decisions are appropriately documented.

I appreciate your cooperation and prompt attention to this matter.

cc: Program Managers Council

Attachment B

Principles for
Government-wide Acquisitions of Information Technology

Principle 1. The multiple award contract (MAC) underlying the Government-wide Acquisition Contract (GWAC) will be a "model" for effective use of competition, financial incentive, and other good contracting principles.

a. Creation of the underlying MAC.

i. The initial contract must include a SOW, specs, or other description, that reasonably describes the general scope, nature, and purpose of the work to be performed thereunder to enable a prospective offeror to decide whether to submit an offer.

ii. Public offerors must be permitted to compete along with private offerors to become contract holders, pursuant to the provisions of OMB Circular A-76, so that competition achieves the best deal for the taxpayer.

iii. The initial contract should include provisions that reflect the government's buying power (e.g., caps on prices for defined tasks, capped hourly rates).

b. Structuring of orders. Performance-based work statements should be used to define tasks in sufficient detail to permit orders to be awarded on a fixed-priced basis to the maximum extent practicable.

c. Ordering processes. Ordering process should:

i. incorporate a best value approach and use past performance in determining contractors for individual tasks;

ii. to the maximum extent practicable, and unless a statutory exemption applies, ensure competition for individual, specifically-defined projects that are as narrow in scope and brief in duration as practicable, solve a specific part of an overall mission problem, and deliver a measurable net benefit independent of future tasks or orders;

iii. ensure that longer term orders, if used, are structured with effective "off ramps" to minimize dependence on one contractor;

iv. when practicable, incentivize offerors to invest resources in performing due diligence by quickly narrowing the scope of the fair opportunity process to leading contenders;

v. pose no obstacle to requesting agencies' compliance with OMB Circular A-76, as applicable, with special regard to the conversion of work from in-house to GWAC contract performance; and

vi. be easy to understand and emphasize streamlined, cost effective procedures and electronic process that minimize customer and contractor costs.

d. Small business participation. The executive agent should, to the maximum extent practicable, structure the MAC so that small businesses (including small disadvantaged and women-owned businesses) can participate at the prime or subcontract levels.

Principle 2. The executive agent must maintain an ongoing, flexible capacity for successfully managing the acquisition of products and/or services within the scope of its designation.

a. Past performance. The executive agent must record and maintain information regarding contractor performance on individual orders and make it available to source selection officials to facilitate maximum practical consideration of past performance in awarding subsequent task orders for the same or similar supplies and/or services.

b. Contract management. The executive agent must establish a contract management structure and employ adequately trained and sized staff to administer and monitor activity under contract to ensure (i) compliance with the terms of the GWAC and the designation and (ii) effective implementation of good contracting practices.

c. Financial management. In accordance with Statement of Federal Financial Accounting Standards (SFFAS) IV: *Managerial Cost Accounting Standards and Concepts for the Federal Government* with support provided by the Managerial Cost Accounting Standards Guide, the executive agent shall have an accountability structure and financial systems that assure the identification, accounting, and recovery of the fully allocated actual costs.

i. Projected total revenue and costs. Projected total revenue generated by the use of the contract shall not exceed projected actual costs. Revenues generated in excess of the agency's actual costs shall be transferred to the Treasury's Miscellaneous Receipts.

ii. Fee adjustments. Fees should be adjusted so that total revenues do not exceed actual costs.