



Understanding Solicitation and Contract Formats

Presented by

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July 8, 2009

Introduction

- This presentation explains various solicitation and contract formats that an organization may encounter when conducting business with the Federal Government.
- The audience may benefit from this presentation by learning what some of the various solicitation and contract formats are , when they are used, and gain a better understanding of the content of those documents.
- Presenter has a B. S. degree in Business Administration and several courses completed towards an MBA; completed the Dept. of the Navy's 3-Year Acquisition Intern Program in 1994; has a Master's Certificate in Government Contracting from George Washington University; has 18 years of experience in the Federal acquisition arena; has worked for three Federal agencies in a broad array of acquisition disciplines; is a supervisory Contracting Officer; and is Level III Certified under the Federal Acquisition Certification in Contracting (FAC-C) Program.

Training Outline

- Topic 1: Commercial Items (Products and Services) – Open Market
- Topic 2: Non-Commercial Items (Products and Services) – Open Market
- Topic 3: GSA Federal Supply Schedules (“GSA Schedules”) and Governmentwide Acquisition Contracts (“GWAC’s”)

Topic I: Commercial Items (Open Market)

- “Commercial item” is defined in Federal Acquisition Regulation (FAR) Subpart 2.101, Definitions
- FAR Part 12 procedures must be utilized for commercial item acquisitions valued in excess of \$3,000
 - Contracting Officers (CO’s/KO’s) use FAR Part 12 in conjunction with policies and procedures in FAR Parts 13, 14 or 15, as appropriate
 - Oral solicitation method may be used in limited circumstances
 - Very few required provisions and clauses (52.212-1 through 52.212-5; 52.212-2 is optional); market research may indicate other commercial practices that are appropriate, and may result in additional terms and conditions
 - Provisions 52.212-1, 52.212-2 and 52.212-3 apply only to solicitation; clauses 52.212-4 and 52.212-5 apply to solicitation *and* resultant order/contract
- CO/KO prohibited from requesting certified cost or pricing data from Offerors, regardless of amount of acquisition

Topic I: Commercial Items (Open Market)

- Limited contract types authorized for use (firm-fixed-price, fixed-price with economic price adjustment, labor-hour, time-and-materials)
- CO may “tailor” clause 52.212-4 if such tailoring is consistent with customary commercial practice (excluding Assignments, Disputes, Payment, Invoice, other compliances and Compliance with laws unique to Government contracts). Tailoring shall be by *addenda to the solicitation and order/contract*, not by modifying clause 52.212-4.
- CO may not tailor clause 52.212-5; other clauses within 52.212-5 will apply as indicated
- Streamlined solicitation for commercial items – FAR Subpart 12.603
 - Reduces time to solicit and award contracts/orders for commercial items
 - Combines the synopsis required by FAR Subpart 5.203 and the issuance of the solicitation into a single document

Topic I: Commercial Items (Open Market)

- Streamlined list of solicitation requirements (paragraph (b) of provision 52.212-1)
- Streamlined evaluation of offers
 - May utilize FAR Part 13 Simplified Acquisition Procedures up to \$5.5 million
 - FAR Part 19 Small Business Programs, requirements do apply
 - Clause 52.219-6, Notice of Total Small Business Set-Aside, included if Small Business Set Aside
 - Nonmanufacturer Rule
 - SBA Waiver to Nonmanufacturer Rule
 - FAR Part 25, Foreign Acquisition, requirements do apply
 - Buy American Act, Trade Agreements Act, etc.
 - Price evaluation adjustments to quotations in certain scenarios - based on Offeror's completion of FAR provision 52.212-3 representations and certifications

Topic I: Wrap-up

- FAR Part 12 is primary FAR section governing commercial item acquisition
- Limited contract types permitted
- Tailoring of certain clause 52.212-4 requirements if consistent with commercial practice
- FAR Part 19 requirements regarding small business set asides do apply, as do requirements for FAR Part 25, Foreign Acquisition
- Streamlined solicitation, quotation submission, and evaluation

Topic 2: Non-Commercial Items (Open Market)

- “Non-commercial items” are products or services that do not meet definition of “commercial item” in FAR Subpart 2.101
 - FAR Part 13, Simplified Acquisition Procedures, apply for acquisitions valued up to \$100,000
 - Very few provisions and clauses; clause 52.213-4 is primary clause; clause may be modified, as appropriate. Other FAR clauses and other agency-level clauses added as appropriate
 - No specific format for solicitation or purchase order required by FAR for solicitation or contract
 - Contract type is generally firm-fixed-price, time-and-materials or labor-hour
 - Oral solicitation may be used in limited circumstances
 - Vendor quotation is *not* an offer; it is only information. Purchase order is the Government’s offer to the vendor that, if accepted, becomes a binding contract
 - Streamlined evaluation of offers
 - FAR Part 19 Small Business Programs, requirements do apply
 - Clause 52.219-6, Notice of Total Small Business Set-Aside, included if Small Business Set Aside
 - Ordering forms/documents may differ by agency

Topic 2: Non-Commercial Items (Open Market)

- FAR Part 15, Contracting by Negotiation, procedures required for acquisitions exceeding \$100,000
 - Solicitation and contract clauses determined by Contracting Officer based on “FAR Matrix”
 - Uniform Contract Format (Sections A through M) required; Sections K, L and M apply only to solicitation
 - Any contract type set forth in FAR Part 16 is permitted, as appropriate
- Proposal in response to solicitation is a binding offer; may be withdrawn or modified only in accordance with instructions in solicitation. Contract awarded based on proposal submitted is binding.
- Complex evaluation of offers
 - Detailed evaluation factors and subfactors; all factors and significant subfactors and their relative importance required to be stated clearly in solicitation; solicitation must also state whether evaluation factors other than cost or price, when combined, are (a) significantly more important than cost or price; (b) approximately equal to cost or price; or (c) significantly less important than cost or price
 - Complex process for conducting discussions (establish competitive range; conduct discussions, request final proposal revisions)
 - Certified cost or pricing data may be required for acquisitions over \$650,000 unless exception applies

Topic 2: Non-Commercial Items (Open Market)

- FAR Part 19 Small Business Programs, requirements do apply
 - Clause 52.219-6, Notice of Total Small Business Set-Aside, included if Small Business Set Aside
- FAR Part 25, Foreign Acquisition, requirements do apply for products
 - Buy American Act, Trade Agreements Act, etc.
 - Price evaluation adjustments to quotations in certain scenarios - based on Offeror's completion of FAR provision 52.212-3 representations and certifications
- Standard Government-wide forms used for award of Part 15 contracts (e.g., SF-26 or SF-33)
- Unsolicited proposals governed by FAR Subpart 15.6
 - Must be innovative and unique; be independently originated and developed by the offeror, be prepared without Government supervision, endorsement, direction, or direct Government involvement; not be an advance proposal for a known agency requirement; not address a previously published agency requirement.
 - Excludes advertising materials, commercial item offers, or contributions as defined in FAR Subpart 15.601

Topic 2: Wrap-up

- FAR Part 13 is primary FAR section for non-commercial products and services up to \$100,000; FAR Part 15 is primary FAR section for over \$100,000
 - Simplified, relatively unstructured acquisition procedures for acquisitions up to \$100,000, with few required FAR and, as applicable, supplemental agency clauses
 - Complex, structured acquisition procedures for acquisitions exceeding \$100,000, with many required FAR and, as applicable, supplemental agency clauses
- Contract types for FAR Part 13 acquisitions are normally firm-fixed-price, labor-hour or time and materials; full range of contract types set forth in FAR Part 16 permitted for FAR Part 15
- FAR Part 19 requirements regarding small business set asides do apply, as do requirements for FAR Part 25, Foreign Acquisition, for product acquisitions
- Unsolicited proposals governed by FAR Subpart 15.6; advertising material, commercial item offers and contributions are *not* unsolicited proposals.

Topic 3: GSA Federal Supply Schedules and Governmentwide Acquisition Contracts

- GSA Federal Supply Schedules (GSA Schedules) and Governmentwide Acquisition Contracts (GWAC's) have grown in popularity enormously in the past decade because of streamlined procedures
- Agencies awarding the GSA Schedule and GWAC Contracts have already conducted acquisition processes to award contracts; many of them have multiple awards
- Separate, specific authorities and procedures apply to GSA Schedules and GWAC's; *they are not the same*
 - GSA Schedules primary statutory authorities are Title III of the Federal Property Administrative Services Act of 1949 and Title 40 U.S.C. 501, Services for Executive Agencies; GSA Schedules are governed by FAR Subpart 8.404, Using Federal Supply Schedules. GSA Schedules cover a multitude of products and services.
 - GWAC's are task order or delivery contracts (sometimes multiple award) for *information technology products or services* established by one agency for Governmentwide use. Each GWAC is operated by an executive agent designated by OMB pursuant to section 5112(e) of the Clinger-Cohen Act. To use GWAC's, agencies either need to obtain a delegation of authority from the host center and/or follow specific ordering procedures set forth for that GWAC.

Topic 3: GSA Federal Supply Schedules and Governmentwide Acquisition Contracts

- GSA Schedules
 - Separate procedures for products and services (FAR Subpart 8.4)
 - Firm-fixed-price and labor-hour (and sometimes time-and-materials) contracts permitted; cost-reimbursement contracts not permitted
 - GSA e-BUY required to be used to solicit for brand-name specific requirements
 - Ordering activities cannot exceed prices or rates in GSA Schedule contracts; discounts from GSA Schedule Contractors is encouraged
 - Cannot order incidental items unless “appropriate regulations have been applied” – case law
 - Contractor Teaming Arrangements permitted among two or more GSA Schedule vendors; CTA’s are *not* the same as subcontracting
 - GSA Schedule Blanket Purchase Agreements are permitted (single or multiple); leverage existing contract terms and conditions but streamline ordering for repetitive needs for supplies or services

Topic 3: GSA Federal Supply Schedules and Governmentwide Acquisition Contracts

- GWAC's
 - Ordering procedures set forth in the contracts
 - Ordering activities cannot exceed prices or rates in GWAC contracts; discounts from Contractors is encouraged
 - Cannot order incidental items
 - Blanket Purchase Agreements are not permitted
 - “Fair opportunity” process applies to multiple award GWAC's – FAR Subpart 16.505(b)
 - Any contract type authorized by the contract is permitted; typically, contract type for orders is firm-fixed-price or labor-hour
 - Examples of GWAC contracts: NASA SEWP, NIH ECS-III; GSA 8(a) STARS; GSA VETS; COMMITS NexGen

Topic 3: Wrap-up

- GSA Schedules and GWAC's are popular because they provide streamlined methods to procure products and services
- GSA Schedules and GWAC's are not the same – they have separate statutory authorities and separate ordering procedures
- GSA Schedules have separate ordering procedures for supplies and services; GWAC ordering procedures are set forth in the contract
- GSA Schedules allow an ordering activity to establish Blanket Purchase Agreements; GWAC's do not
- GSA Schedules allow Contractor Teaming Arrangements to be established; GWAC's do not
- GSA Schedules cover a broad range of products and services' GWAC's are limited to information technology products and services
- Neither GSA Schedules nor GWAC's require Economy Act Determinations by the ordering activity, but a written delegation of authority may be required to use a GWAC
- Allowable contract types for orders for GSA Schedules and GWAC'S are specified in the contracts



Questions and Answers