

Guidance: Using Other Agencies' Contracts & Services

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Objectives for this Training

Understand

- Regulation and policy requirements
- Proper usage
- Potential pitfalls

Areas to be Covered

- Interagency Agreements (IAA)
 - Economy Act
 - Other Funds-Out IAA's
 - ex., Franchise Fund Organizations
- Federal Supply Schedules
- Government-Wide Acquisition Contracts

Economy Act Interagency Agreements (IAA)

- General authority
- Used when more specific authority not available
- Statutory Authority

Economy Act of 1932 (31 U.S.C. 1535)

Other Funds-Out IAA's

- When a more specific authority applies
- Examples of Service Agencies
 - Franchise Fund Organizations
 - GSA's Federal Technology Service

Franchise Fund Organizations

- Provide common administrative support
- Service Providers

Commerce

Interior

HHS

Treasury

Veterans Affairs

EPA

- Specific statutory authority:

Government Management Reform Act of 1994

Section 403 of Public Law 103-356

GSA's Federal Technology Services

- Provides IT hardware & services
- Specific statutory authority:
Information Technology Fund (40 U.S.C. 757)

IAA Implementing Information

- FAR 17.5 for Economy Act
- Consult servicing agency
- DOE Acquisition Letter (AL) 2005-04
“Proper Use of Non-DOE Acquisition Vehicles,”
- DOE Acquisition Guide, Chapter 17

Economy Act

Implementing Information

■ FAR 17.503 requires a D&F that:

- IAA is in best interest of Gov't.
- Supplies/Services cannot be obtained as conveniently or economically from private industry
- If services will be provided by a contractor:
 - The servicing agency's contract is existing
 - The servicing agency has expertise to enter into such a contract & DOE lacks such expertise, or
 - The servicing agency is authorized by law/regulation to purchase such services on behalf of other agencies.

New Requirements

AL 2005-04

- Enhanced CO requirements
 - Administration
 - Determination & Findings (D&F)

AL 2005-04

■ CO Must:

- Sign all IAA's
- Monitor (or designate COR to monitor) IAA performance and any associated contracts
- Ensure the IAA complies with DOE policies & regulations
- Ensure inclusion of appropriate DOE clauses in Servicing Agency's contract
- Submit IAA's to Office of Contract Management (ME-62) or the appropriate office in NNSA for review as required.

AL D&F Requirements

CO shall execute a D&F that:

1. Addresses requirements of FAR 17.503
2. Certifies conformance with all DOE regulations, policies and procedures
3. States that the DOE and service agency CO have determined the services to be within scope of the servicing agency's contract
4. States that CO will review all follow-on tasks to ensure they are within scope of the IAA

D&F Requirements Continued

5. Discusses all DOE requirements to be incorporated in the IAA & resulting contract
6. Describes the supplies/services required and servicing agency's roles and responsibilities
7. States the IAA in the best interest of DOE, and
8. Certifies compliance with FAR 7.3
(Contractor verses Government Performance)

Additional AL Requirements

Working with Franchise Fund Organizations

- Services must be obtained through an IAA
- If obtaining Acquisition Services for placement or administration of contracts and financial assistance:
 - IAA must be approved by the HCA
 - Prior notice to Senior Procurement Executive

IAA Potential Pitfalls

- Services not in-scope
 - Pre-award/Post-award
 - Army's \$37 M construction project using IT Funds
- IAA doesn't define roles/responsibilities
- Service agency contract lacks DOE special requirements
 - Security, appropriation limitations, emphasis on competition, commitment to small business

Solutions

- Stay within the scope of the IAA and service agency's contract SOW
- Comply with Federal or DOE regulations, policies and procedures
- Ensure the IAA defines roles/responsibilities
- Ensure DOE special requirements are incorporated into any resulting contract or order
- Monitor performance and cost

Federal Supply Schedule (FSS)

- GSA Multiple-Award Schedule
41 U.S.C. 251, et seq. and 40 U.S.C
- GSA Advantage & e-Buy
40 U.S.C. 1501
- Federal Acquisition Regulation (FAR) 8.4
- Acquisition Letter (AL) 2005-04
- DOE Strategic Acquisition Transactions Guide
(Chapter 38 of the Acquisition Guide)

AL 2005-04 Requirements

■ CO must::

- Sign all orders
- Follow FSS ordering procedures
- Comply with DOE policies & regulations
- Document:
 - Determination that the proposed work is in-scope
 - The order is in best interest of DOE
 - Any advice provided by GSA Contracting Officer

FSS Potential Pitfalls

- Lack of competition
- Out-of-Scope: pre-award or post-award
- Using FAR Part 15 processes
- Introducing FAR Part 19 elements

Pitfall – Lack of Competition

- DOE Policy & Practice: Compete!
- Problems with competition in DOD
 - Sole sourcing
 - Farce competitions

Solutions

- Do obtain adequate competition
 - Can use GSA e-Buy tool
- Allow offerors sufficient time to respond
- When in doubt –
Error on the side of getting competition!

Obtaining Competition – No SOW

- **Micro-purchase threshold or less:**
 - Any FSS contractor meeting agency needs
- **Above micro-purchase threshold up to max ordering limitation**
 - Consider catalogs or pricelists of 3 schedule contractors
- **Above max ordering limitation**
 - Consider catalogs or pricelists of more than 3 schedule contractors and seek price reductions.

Obtaining Competition – SOW

- Micro-purchase threshold or less:
 - Any FSS contractor meeting agency needs
- Above micro-purchase threshold up to max ordering limitation
 - Provide RFQ to at least 3 schedule contractors
- Above max ordering limitation
 - Provide RFQ to more than 3 contractors

Pitfall: Supplies Out-of-Scope

■ Armed Forces Merchandise Outlet, Inc.

Comp. Gen. B-294281 (Oct 2004)

Pitfall: Services Out-of-Scope

■ Pre-award

OMNIPLEX World Services Corp.

Comp. Gen. B-291105 (Nov 2002)

■ Post-award – Scope Creep

- DOE work via a Navy order placed using FSS
- GSA's **“Get it Right!”**

Solutions

- Review FSS orders, modifications to orders to ensure in-scope
- If not in-scope, use other procedures (FAR 12, 13, 14 or 15).
- Avoid “scope creep,” adding missing labor categories to order that are outside the contractor’s schedule.
 - GSA must do so at the contract level, or
 - Look at other schedules

Solutions Continued

- Subcontractor may provide missing labor categories if within sub's schedule.
- May include out-of-scope items/services in FSS order if all other FAR requirements are met (see FAR 8.402(f))

FSS Pitfall – Using Part 15 Processes

■ Discussions

- ACS Government Solutions Group, Inc.

Comp. Gen. B-282098.3 (Jun 1999)

■ Basis of selection

- May use lowest price, technically acceptable, or
- Best value

Potential Pitfall When Specifying Best Value

- Gov't selected lowest priced, technically acceptable quotation

Computer Products, Inc.

Comp. Gen. B-284702 (May 2000)

- If best value, RFQ must state selection basis

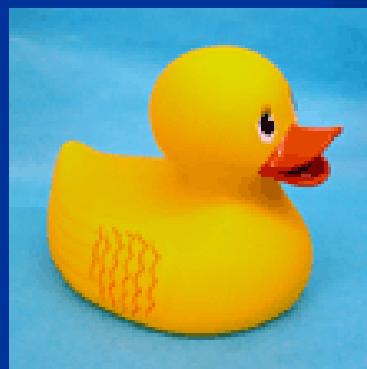
COMARK Federal Systems

Comp. Gen. B-278343.2 (January 1998)

Solutions

When using FAR Part 15 Processes -

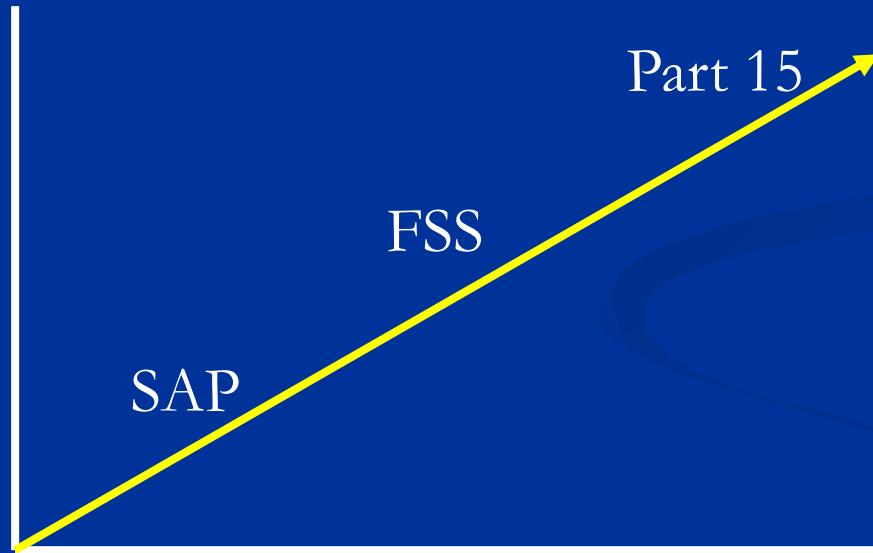
Remember the GAO “Duck Rule!”



Solutions Continued

Pick appropriate acquisition procedures

Complex
Procurement



Complex
Procedures

Solutions Continued

- Follow FSS procedures, FAR 8.405
- If selection basis other than Low Price Technically Successful, expect to be held to FAR Part 15 standards with respect to:
 - Communication with offerors
 - Documentation supporting the evaluation of firms
 - The selection rationale
- Otherwise, don't import Part 15 lingo like "discussions," "competitive range," etc.

Pitfall – Introduction of FAR Part 19 Elements

- Setting the procurement aside
- Mentioning S.B. status is a consideration in RFQ or any other documentation
- Resulting problems with NAICs codes

Solution

- DOE established practice: Support SB's
- Follow FAR 8.405-5:
 - Consider S.B. status when soliciting quotes
 - Don't mention S.B. status is a consideration
 - Rely on schedule contractor's S.B. representations made at the contract level
 - Should at a minimum solicit one S.B.

Government-Wide Acquisition Contracts (GWAC)

- 5 agencies providing IT equipment and services
- Special Statutory Authority:
Section 5112(e) of the Clinger-Cohen Act (1996)
(40 U.S.C. 1412(e))

GWAC Servicing Agencies

- GSA
- NASA
- Commerce
- NIH
- Transportation

GWAC Implementing Info.

- FAR 16.505, “Ordering under Multiple Award Contracts”
- Servicing agency’s ordering requirements
- Acquisition Letter (AL) 2005-04
- DOE Strategic Acquisition Transactions Guide
(Chapter 38 of the Acquisition Guide)

AL 2005-04

■ CO Must:

- Comply with DOE policies & regulations
- Document:
 - Determination that the proposed work is in-scope
 - The order is in best interest of DOE

GWAC Potential Pitfalls

- Out-of-scope pre-award or post-award
- Roles/responsibilities of client and servicing agency personnel not defined if IAA required
- Servicing agency contract doesn't provide for DOE special requirements, (e.g., security).

Solutions

- Stay within the scope of the service agency's contract
- Comply with Federal or DOE regulations, policies and procedures
- Ensure DOE special requirements are incorporated into any resulting contract or order
- Follow FAR 16.505 ordering requirements
- Ensure roles/responsibilities defined if IAA required.

Conclusions

- Use of other Agencies' contracts is increasing
- These contracts provide additional choices
- Continued availability is contingent on:
 - Compliance
 - Proper documentation
 - Exercise of good business judgment
 - Avoidance of inappropriate use

Points of Contact

- | | | |
|-----------------|--------------------|--------------|
| ■ Economy Act: | John Bashista | 202-287-1500 |
| ■ AL 2005-04: | Jackie Kniskern | 202-287-1342 |
| ■ FSS/GWAC: | Jeff Rubenstein | 202-287-1516 |
| ■ IAA: | Robert Webb | 202-287-1338 |
| | Beth Tomasoni | 202-287-1536 |
| ■ Legal Issues: | Your Local Counsel | |
| | Gena Cadieux | 202-586-3426 |
| | Joe Lenhard | 202-586-0321 |

NNSA Points of Contact

- Steve Law 202-586-4321
- Bobbie Wright 505-845-5518
- Keith Landolt (Attorney) 202-586-5918

GWAC Information Sources

- General <http://www.arnet.gov/gwac/govwide.html>
- GSA <http://www.gsa.gov/millennia>
- GSA <http://www.gsa.gov/millennialite>
- NASA <http://www.sewp.nasa.gov>
- Commerce <http://www.COMMITS.doc.gov>
- NIH <http://www.olao.od.nih.gov/Acquisitions>

GSA Web Sites

- FSS <http://www.gsa.gov/schedules>
- GSA Advantage <http://gsaadvantage.gsa.gov>
- e-Buy <http://www.ebuy.gsa.gov>
- GSA training <http://fsstraining.gsa.gov>
- GSA Legal Corner <http://www.gsa.gov/schedules>

Questions Regarding AL 2005-04

- Send to: Jaqueline.Kniskern@hq.doe.gov
- Answers will be posted on the Professionals web page:
<http://professionals.pr.doe.gov/ma5/ma-5web.nsf/>