

BPA's, CTAs and Helping Agencies Order Services

Brad Powers

Director, Acquisition Solutions Team

Management Services Center

Presentation Topics

- Regulatory and Policy Changes
- Working with Agencies
- What Sells to Gov't Evaluators
- BPAs
- CTAs

Regulatory and Policy Changes

Overview of “Section 863 Changes”

- Call for Action:
 - Executive Office of the President Memoranda
 - GAO reviews
 - FY10 Compliance Survey
 - Duncan Hunter National Defense Authorization Act - FY09 Section 863
 - Enhances competition under multiple-award contracts
 - Increases transparency when limiting sources
- Regulatory Changes:
 - FAR Case 2007-012
 - Affected FAR Parts: 5, 8, 16, 18, 38

Regulatory and Policy Changes (continued)

FAR Subpart 8.4 Restructuring

- Rules for competing task and delivery orders off FSS reflect DFARS 208.405-70
- Removed the maximum order threshold and replaced with the simplified acquisition threshold
- Clarified the ordering procedures for establishing and ordering off FSS BPAs to standalone section, and enhance competition requirements
- Clarify protests in FSS Program

Old Procedures for Establishing FSS BPAs (FAR 8.405-3(a))

- Considerations for Single-Award vs. Multiple-Award BPAs:
 - Scope and complexity of requirement(s)
 - Need to periodically compare multiple technical approaches or prices
 - Administrative costs of BPAs
 - Technical qualifications of schedule contractor(s)
- Procedures for establishing BPA(s) follow 8.405-1 or 8.405-2
- Must address ordering frequency, invoicing, discounts, requirements, delivery locations, and time
- Specify ordering procedures for multiple-award BPAs
- Allows multi-agency BPAs when agencies and their requirements can be defined at the time of establishment

New Procedures for Establishing FSS BPAs (FAR 8.405-3(a))

- Preference for Multiple-Award over Single-Award
- Considerations for BPA establishment:
 - Scope and complexity of requirement(s)
 - Benefits of on-going competition and need to periodically compare multiple technical approaches or prices
 - Administrative costs of BPAs
 - Technical qualifications of schedule contractor(s)
- Must address ordering frequency, invoicing, discounts, requirements, delivery locations, and time
- Ordering procedures for multiple-award BPAs must be in accordance with 8.405-3(c)(2)
- Allows multi-agency BPAs when agencies and their requirements can be defined at the time of establishment

New Procedures for Establishing FSS BPAs (FAR 8.405-3(a))

➤ Restrictions on Single-award BPAs

- If estimated over \$100 million, must follow procedures for limiting sources AND Head of Agency must determine, in writing that one of the following conditions applies (may be combined with limited source justification):
 - The orders expected under the BPA are so integrally related that only a single source can reasonably perform the work
 - The BPA provides only for firm-fixed priced orders for products with unit prices established in the BPA or services with prices established in the BPA for specific tasks to be performed
 - Only one source is qualified and capable of performing the work at a reasonable price to the government
 - It is necessary in the public interest to award the BPA to a single source for exceptional circumstances.
- Limits period of performance to one year base with the possibility of four one-year options
- Annual reviews require approval by the ordering activities competition advocate

New Procedures for Establishing FSS BPAs (FAR 8.405-3(a))

➤ Minimum documentation:

- Schedule contracts considered
- Contractor from which supply/service was purchased
- Description of supply/service purchased
- Price
- Required justification for a limited source BPA, if applicable
- Determination for a single award BPA exceeding \$100 million, if applicable
- Documentation supporting decision to establish multiple/single award BPA
- Evidence of compliance with competitively awarded BPAs, if applicable
- Basis for award decision that includes:
 - Evaluation methodology
 - Rationale for any tradeoffs
 - Price reasonableness determination for services requiring a statement of work.

Old Procedures for Ordering from FSS BPA(s) (FAR 8.405-3(a))

- Single BPA: Place order directly when the need for supply/service arises
- Multiple BPAs: Discussed separately
- BPAs for hourly rate services:
 - Develop SOW
 - Specify a price for the performance of the tasks identified in the SOW

New Procedures for Ordering from FSS BPA(s) (FAR 8.405-3(c))

- **Single BPA: Place order directly when the need for supply/service arises**
- **Multiple BPAs: Discussed separately**
- **BPAs for hourly rate services:**
 - **Develop SOW**
 - **Place firm-fixed-price orders to the maximum extent practicable**
 - **Specify a price for the performance of the tasks identified in the SOW**

*** Effective Date of New Procedures: 60-day grace period from March 2011,**

Old Guidelines on Duration FSS BPA(s) (FAR 8.405-3(c))

- **BPA's generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be awarded BPA's that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.**

New Guidelines on Duration FSS BPA(s) (FAR 8.405-3(d))

- **Multiple-award BPAs generally should not exceed five years in length, but may do so to meet program requirements.**
- **A single-award BPA shall not exceed one year [base]. It may have up to four one-year options. See paragraph (e) for requirements associated with option exercise.**
- **Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.**

Old Guidelines on Review of FSS BPA(s) (FAR 8.405-3(d))

- **Review, and document file, at least once a year to determine whether:**
 - **The schedule contract is still in effect**
 - **The BPA still represents the best value**
 - **Estimated quantities/amounts have been exceeded and additional price reductions can be obtained**
- **If a single-award BPA is established, the annual determination must be approved by the competition advocate prior to the exercise of an option**

New Guidelines on Review of FSS BPA(s) (FAR 8.405-3(d))

- **Review, and document file, at least once a year to determine whether:**
 - **The schedule contract is still in effect**
 - **The BPA still represents the best value**
 - **Estimated quantities/amounts have been exceeded and additional price reductions can be obtained**

Myth Busting –OFPP Style

- On February 2, 2011 the Office of Federal Procurement Policy (OFPP) issued a Memorandum with the following stated objectives:
 - 1) identify common misconceptions about vendor engagement that may be unnecessarily hindering agencies' appropriate use of the existing flexibilities, and provide facts and strategies to help acquisition professionals benefit from industry's knowledge and insight;
 - 2) direct agencies to remove unnecessary barriers to reasonable communication and develop vendor communications plans, consistent with existing law and regulation, that promote responsible and constructive exchanges; and
 - 3) outline steps for continued engagement with agencies and industry to increase awareness and education.

<http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/Myth-Busting.pdf>

Other Trends to Watch

- Organizational Conflicts of Interest
- Transparency, More Reporting and Even More Reporting
- “Green” as a Source Selection Factor for Services
- Strategic Sourcing of Services
- Budget and Funding Craziness from Agencies
- How Agencies Create and Evaluate RFQs

How Agencies Create and Evaluate RFQs

- Requirements Development
- Market Research
- RFQ Terms and Conditions Added
- Source Selection Method Selected
- Quotation Instructions Crafted
- RFQ is put “On the Street”
- Quotes Received and Evaluated

Working with Agencies: Customer Managed Acquisitions

- Agencies deal directly with MAS Schedule Holders
- FAR 8.4 Provides clear guidance on how to proceed
- “Owner’s Manual” is a great tool
 - *MAS Desk Reference (2011)*
 - *www.gsa.gov/schedules*
- Acquisition Centers will work with Agencies on scope issues
- Structure of an individual acquisition is at the discretion of the Agency Contracting Officer

Working with Agencies: Top Frustrations of Agency COs

- Quotation Instructions not followed
- Waiting until the last minute to ask questions
- Lack of updated pricing on GSA Advantage!
- Boilerplate disclaimer language that contradicts RFQ or Schedule contract Ts and Cs
- Quoting services/items not actually on contract or out of scope
- Not segregating Open Market Items

Working with Agencies: Top Frustrations of Agency COs (Cont)

- Adding IFF as a separate “charge”
- “Lot Pricing” where labor categories/rates from contract not used
- Charging more than contract ceiling rates
- Obvious mathematical errors in price quotations
- Poorly written technical submittals

How Do I Win?

- Read the Quotation Instructions Carefully and Follow them Meticulously
- Avoid Generic Language, Boilerplate Terms/Conditions and “Cut and Paste”
- Stress How your Past Projects are Relevant to this BPA
- Stress how you will Manage your Team and any Task Orders you win

How Do I Win (Cont.)?

- What Makes you Different from the Company Sitting Next to you?
- What can you do for the Government that increases your Value to us?
- Robust Teams with Heavy Socioeconomic Membership (if Requested)
- Aggressive Discounting is Good!

Two Flexible Schedule Tools

1. Blanket Purchase Agreements (BPAs)
2. Contractor Teaming Arrangements (CTAs)

Why Establish a Schedule BPA?

- Opportunity to seek additional discounts
- Satisfy recurring requirements
- Reduce administrative burden
- Leveraging buying power through volume
- Support field offices/other contracting offices
- Quicker order turn-around
- Can incorporate non-conflicting terms & conditions
- Can include contractor teaming
- No funding required to establish BPA
- No synopsis (except FY09 ARRA), no competition outside Schedules to establish or use BPA

What's in a BPA?

- Scope
- Estimated value/level of effort (not ceiling)
- Duration
- GSA Schedule(s) & Contract(s)
- Participating offices/agencies
- Invoicing/billing procedures
- Ordering procedures (*if multi-award*)
- Terms & conditions
- Discount terms
- Types of orders to be placed
- BPA Termination

Two BPA Decisions

1. Single-Award BPA
2. Multiple-Award BPA

Single-Award BPA

- Determination – Acquisition Plan
- Issue BPA RFQ (PWS)
- Receive & Evaluate BPA Quotes
- Establish One BPA

Then for each recurring task:

- Issue Task Order RFQ (PWS) to sole BPA-holder
- Evaluate the Quote
- Award Task Order

One Best Value Evaluation: Who Gets the BPA?

** Options, Competition Advocate approval, 5 yr limit*

** \$100 million threshold, Head of Agency approval*

Multiple-Award BPA

- Issue BPA RFQ (PWS)
- Receive & Evaluate BPA Quotes
- Establish Multiple BPAs

Then for each recurring task:

- Develop Task Order Evaluation Criteria
- Issue Task Order RFQ (PWS) to “all” BPA-holders *
- Evaluate the Multiple Quotes: Best-Value Source Selection
- Award Task Order

Two Best Value Evaluations: Who Gets the BPA? Who Gets the Task Order?

***Unless Limited Source Justification (IAW FAR Part 8.405-6(a)(1)(i))**

What is a Schedule Contractor Teaming Arrangement?

- Defined: Arrangement between two or more Schedule contractors working together to meet agency requirements.
- Don't be confused by FAR SubPart 9.6, a non-Schedules definition that includes joint ventures and subcontracting as "teaming"
- GSAR 538 (rewrite) clause will call this "Contractor Partnering Arrangement (CPA)"

Benefits of Contractor Teaming Arrangements

- Reduction in Open Market Items
- Allows Additional Opportunities for Small Businesses
- Increases Probability of Complimentary Capabilities by Contractors
- All-Schedule Solution Possible

Two Ways to Satisfy Multi-Domain (Schedule/SIN) Requirements

- One GSA Contractor holds all needed domains, so teaming not required:
 - As separate single-Schedule contracts, and/or
 - On the Consolidated Schedule

OR

- GSA Schedule holders team across domains

Consolidated Schedule

- Only for contractors with two or more (of the 13 eligible) Schedules (e.g., PES and MOBIS)
- One GSA contract, so just one Task Order for agency to award/administer
- Contractor can offer their entire business line on a single contract
- Includes most service Schedules and some related product Schedules (including IT)

Subcontracting vs “Teaming”

➤ Subcontracting

- Only Prime must have a Schedule contract
- Only Prime has privity of contract (and interface) with Government
- Ordered and invoiced at Prime’s Schedule rate (less discount)
- Limited to SINs and labor categories on a single Schedule contract
- Prime can’t “delegate” responsibility

➤ Teaming

- Each Team Member must have a Schedule contract
- Each Team Member has privity of contract (and can interface) with Government
- Ordered and invoiced at each Team Member’s Schedule rate (less discount)
- Total Schedule solutions possible
- Each member can be responsible for particular duties in a teaming agreement

Contractor Teaming Arrangements

- Team Leaders and Team Members must hold a GSA Schedule and remit IFF
- Contractor Teams are issued one BPA
- Task Orders may include Team Leader, Team Member and/or Subcontractor Effort
- Teams may propose that Task Orders be issued to Team Leader -or- directly to a Team Member

*Team Leaders and Team Members use their GSA Schedule Rates. Subcontractors may be mapped to Prime Contractor's GSA Schedule Rates.

MAS CTAs

- Team Leads & Members must have GSA Schedule and use their Schedule rates
- Contractor Teams are issued one BPA
- Could include subcontractor effort, as long as mapped to their Prime's Schedule labor category
- If Multi-Award BPA, Teams compete for Task Orders
- Task Orders can be issued to Team Lead or directly to each Team Member, per Agreement
- Decision to team or not is entirely up to contractors, not ordering activity

MAS CTAs

- Not a separate legal entity but acts *like* joint venture
- Include Teaming Agreement with quote for agency review
- Government incorporates that agreement into BPAs/orders
- Can reduce the need for open market items!

Best Practice: Make sure the contract number for *each team member* contributing to a task order is cited on the order(s).

Teaming Agreement Highlights

- Identify Parties (Members and Lead)
- Teaming Activities (w/ responsibilities, like communication)
- Type & Duration of Agreement
- CTA Terms (Team Management fee?)
- Ordering Procedures
- Team Lead & Team Member Duties (on PWS)
- Pricing, Invoicing, and Payment
- Performance Responsibility/Evaluation
 - Whose PPIRS reports card? (reqd > \$100k, FAR 8.406-7)
- Reporting Sales to GSA
- Who Signs Modifications to BPA/Order?
- Confidential Information

**Agreement is solely between the Members - -
can't conflict with their individual contracts.**

Helpful Websites on BPAs/CTAs

- **Using GSA Schedules – General Information/FAQs**
 - www.gsa.gov/schedules
- **Blanket Purchase Agreements**
 - www.gsa.gov/bpa
- **Contractor Teaming Arrangements**
 - www.gsa.gov/cta
- **Consolidated Schedule Information**
 - www.gsa.gov/consolidated

1. Contract Support Items

- Commercial Items
- Items included in the MAS contract
 - Contract award or modification
 - Not to be separately ordered without the services
 - Can be included on orders like Schedule labor
- Items for which the Schedule CO has already determined the price fair and reasonable
- Example: items awarded, priced, and listed under a “Support Products” SIN (but a separate *product-only* SIN not required)

Open-Market Items

(“Incidentals” or “Non-Schedule Items”)

- Items not awarded under that Federal Supply Schedule contract
- No assumption of price reasonableness (or scope!)
- Schedule T&Cs don't apply unless cited
- Open-market items purchased IAW all applicable acquisition regulations (FAR 8.402(f))
 - FAR Part 5 – Publicizing contract Actions
 - FAR Part 6 – Competition Requirements
 - FAR Part 12 – Acquisition of Commercial Items
 - FAR Part 13 – Simplified Acquisition Procedures
 - FAR Part 14 – Sealed Bidding
 - FAR Part 15 – Contracting by Negotiations
 - FAR Part 19 – Small Business Programs

Can Be Mixed With Schedule Items ONLY if All Clauses Included and Ordering Officer Determines Prices Fair & Reasonable and Within Scope

3. Travel Reimbursables

- Federal Travel Regulation
 - 41 CFR, Chapters 300 – 304
 - Travel policies for Federal civilian employees and others authorized to travel at Gov't expense
- Joint Federal Travel Regulations
 - USC, Title 37 and 10
 - Availability of contract fares or prices to government contractors
- Local travel in the performance of a task order
 - Reimbursable IAW ordering agency regulations

Brad Powers

(253) 931-7171

bradley.powers@gsa.gov

<http://interact.gsa.gov/groups/services-ordering-solutions>

Management Services Center

(800) 241-RAIN (7246)