

Government Contracts Blog

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MAS March Madness: Increased Competition In Multiple Award Schedule Orders

By Alexander Major

On March 16, 2011, the FAR Councils, heeding Congress' mandate in Section 863 of the 2009 Defense Authorization Act, published an interim rule intending to ramp up competition for orders placed under GSA Federal Supply Schedule ("FSS") contracts and FSS Blanket Purchase Agreements ("BPA"). The new rules, which apply to all federal agencies as of May 16, 2011, instill varying degrees of competition to orders above the FAR's \$3,000 Micropurchase Threshold depending on the type of order being placed (*i.e.*, with or without a statement of work ("SOW") or placed under a multiple award BPA). The attached matrix, prepared by Jonathan Aronie, co-author with John Chierichella of the *GSA Schedule Handbook* (West 2010), provides a useful summary of the [new rules](#).

While the Interim Rule incorporates a number of changes from GSA's historic ordering procedures, the most notable relates to the increased reliance on e-Buy to ensure agencies maximize competition among Schedule holders (and BPA holders). By urging agencies to post their RFQs on the e-Buy website, along with a description of the services and goods being sought or, if applicable, the statement of work and RFQ selection criteria, the Interim Rule intends to allow "all contractors" an "opportunity to respond" to each solicitation. Use of e-Buy is not mandatory, however, and agencies may choose instead to provide the RFQ to "as many schedule contractors as practicable, consistent to market research appropriate to the circumstances" so long as the Agency can be assured to receive at least three quotes. But, if e-Buy is not used and the Agency receives fewer than three quotes, the contracting officer will be required to prepare a "written determination to explain that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so" before selecting the best value from the quotes received. No such determination is required when e-Buy is used.

As the attached summary matrix illustrates, the Interim Rule goes well beyond the use of e-Buy. In general, the rule prods agencies to be more proactive in their search for competition, and amps up the MAS ordering process by essentially bringing more players into the game. Schedule contractors, therefore, need to be ready to get off the bench and show some hustle if they want their product or services to be chosen. This is

especially true when one considers that it now looks like Congress will act to extend GAO jurisdiction over task and delivery order bid protests for all agencies. So, with the new rules in place, the teams vying for their spot in the already-crowded arena, and the GAO looking to take hold of the striped shirts and whistles, it looks as if the new era of MAS ordering is about to begin. Game on!

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