

Contract Strategy Team Issue: LPTA Source Selection

Issue: Inappropriate use of LPTA as a Source Selection method increases performance and cost risk, decreases competition by inducing unrealistically low contract prices, which reduces industry investment in R&D and drives talented personnel out of the system

Problem Statement: LPTA source selection is detrimental to the government where it is used inappropriately for requirements or contract types that do not result in the best value or mission success or that require added management oversight to compensate for lower quality solutions or personnel

Root Cause Analysis: Belief fostered by USG acquisition leaders driven by budget pressure that (a) lowest price solutions are required, (b) LPTA is more resistant to bid protests than best value trade-offs, and (c) LPTA Contracts are procedurally easier to execute

Solution Proposal: Change the regulations to require higher level approval for LPTA source selection method

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Prior Studies and Current Regulations/Guidance:

TASC White Paper dated November 2012;

Impact of LPTA on Government Procurements, Centurian Research, October 2013

USD AT&&L Better Buying Power 1.0 and 2.0

48 CFR 15.101-2 and FAR Part 15.101-2

DoD Source Selection Guidance, March 4, 2011

Legislative/Regulatory Action: Congress should enact legislation to revise FAR 15.101-2 to: (targeted change language in backup white paper)

(1) Require a CO D&F with higher level approval to document how LPTA will result in the best value to the government, including market research and a risk assessment of the technical acceptability evaluation process that assures low risk of non-performance

(2) Require a second level approval of any CO D&F where LPTA processes are proposed for certain contract types (Cost, T&M) or certain types of requirements (R&D, MDAPs)

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Contract Strategy Team Issue: IDIQ Task Order A/E Source Selection

Issue: A/E task order source selection process

Problem Statement: The FAR does not clearly define the procedures for A/E IDIQ Task Order execution or comply with the Brooks Act for proper AE selection

Root Cause Analysis: The Brooks Act establishes a qualifications-based selection process in which contracts for A/Es are negotiated by first selecting the most qualified A/E firm, then negotiating price with the selected firm. Ordering Procedures in FAR 16.505 do not align the task order procedures for IDIQs with the A/E qualification based selection process in FAR 36 because there is a lack of regulatory guidance bridging the 2 processes

Solution Proposal: Align FAR 16 task order process with FAR 36 quality-based process

Prior Studies and Current Regulations/Guidance:

- FAR Parts 16 and 36
- Brooks Act, 40 USC 541, et. seq.

Legislative/Regulatory Action:

(1) Modify and expressly expand the A/E selection process in FAR Part 16 to more precisely mirror FAR Part 36 processes, and (2) expand the use of, and align, the streamlined Short Selection Process in FAR Part 36.602 to A/E acquisitions above the SAP threshold to expand compliance with the Brooks Act.

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Contract Strategy Team Issue: IDIQ Multiple Award (MAC) Contracting

Issue: MAC IDIQ contracting has grown to gain a large % of the federal services and solutions market with little government-wide adaptation in procurement policy to reflect the shift from stand-alone contracts to task order centric environment, whose expanded use also adds transactional costs and creates employee insecurity

Problem Statement: The NCMA/Bloomberg 2013 review of government contracting cites that the number of agency MACs was 2,086 in 2013, up from 1378 in 2006. Because the problems with MACs vary from agency to agency, common policy issues have been identified as priorities by industry as follows:

- (1) the number of MACs being created with little policing by the USG
- (2) the lack of consistent MAC ordering or selection process across the USG
- (3) the lack of visibility into MAC work requirements each year
- (4) the cost to obtain a basic MAC plus the cost to obtain a TO plus a nominal minimum quantity ordering requirement and a complex and arbitrary fair opportunity transaction process outweighs any industry ROI
- (5) potential to offset industry indirect costs charges by use of common MAC T&Cs negated by complex selection and transactional processes and agency unique procurement policies
- (6) CO forum shopping for other agency MACs to access

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Contract Strategy Team Issue: IDIQ Multiple Award (MAC) Contracting

Root Cause Analysis: The IDIQ MAC was designed under the seminal acquisition streamlining statutes to provide the government with a flexible contract vehicle to allow rapid placement of its needs at reduced transactional cost with a previously competed set of qualified contractors without engaging in the full complement of transaction processes including, for the most part, exemption from bid protest jurisdiction. Over time, the ordering process has been burdened with added procedures that reduce the advantages to using MACs and mostly now resemble full and open competitions also mostly subject to bid protest jurisdiction. MAC policy has evolved in a way that requires companies to spend B&P funds to acquire the underlying MAC and then spend B&P funds each time a new task order effort is publicized, which contribute to a difficult to execute business model, lowered profit expectations and growing reluctance to enter the MAC market.

Prior Studies and Current Regulations/Guidance:

Multiple GAO reports on IDIQ MAC policy and implementation

48 CFR and FAR Part 16.

OMB/OFPP Memo dated 9-29-2011 directing business case analysis for new MACs

Legislative/Regulatory Action: See specific solutions below (see also other targeted recommendations in backup white paper – this strategy assumes broad future USG-industry collaboration to resolve problems)

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Contract Strategy Team Issue: IDIQ Multiple Award (MAC) Contracting

Solution Proposal: A number of targeted regulatory solutions to the priorities above are offered that are designed to reduce the cost and time burden on contractors and government to engage in the MAC marketplace, make agency requirements more transparent, and simplify the transactional process as follows:

1. Establish a simplified, page-limited USG-wide proposal process to qualify companies to become MAC holders in any given requirements area without having to generate complex proposals to acquire the basic IDIQ MAC;
2. Expand and enforce, through agency executive review, the 2011 OFPP guidance on business case analysis to support creating a new MAC, or invoking an option;
3. Provide added flexibility in FAR 16.504 to the CO to issue single award IDIQ contracts and loosen the restrictions on the mandatory preference for MACs;
4. Implement policy guidance in FAR 16 to instruct CO's on how to conduct task order transactions in a way that favors simplified selection processes and limits technical and price proposal submissions;
5. Implement policy guidance in FAR 16 to make requirements, business opportunity information more readily accessible on a periodic and ongoing basis
6. Tailor task order proposal requirements to the minimum ordering amount of the basic IDIQ MAC contract

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