



May 8, 2017

Ms. Claire M. Grady
Director, Defense Procurement and Acquisition Policy
Department of Defense
OUSD (AT&L) DPAP/DARS, Room 3B941
3060 Defense Pentagon
Washington, DC 20301

Subject: DOD Guidebook for Acquiring Commercial Items
Part B: Pricing Commercial Items

The Coalition for Government Procurement (“the Coalition”) appreciates the opportunity to comment on the above referenced Guidebook for Acquiring Commercial Items (Guidebook).

The Coalition is a non-profit association of firms selling commercial services and products to the Federal Government. Our members collectively account for a significant percentage of the sales generated through General Services Administration (“GSA”) contracts including the Multiple Award Schedules program. Coalition members are also responsible for many of the commercial item solutions purchased annually by the Federal Government. Coalition members include small, medium, and large business concerns. The Coalition is proud to have worked with Government officials for more than 35 years towards the mutual goal of common sense acquisition.

DOD’s Commercial Item Guidebook

The Coalition supports DOD’s efforts to ensure that contracting officers (CO’s) have adequate resources to effectively execute commercial item contracts. In the last fiscal year, DOD spent almost \$50 billion on goods and services using commercial item acquisition procedures, and crafting effective guidance is essential to success of these acquisitions. For the vast majority of commercial item acquisitions, DOD is purchasing the items at the price set by the competitive commercial marketplace, ensuring price reasonableness is a simple exercise when there is sufficient competition.

The Coalition recommends that DOD continue to emphasize the use of competition to ensure price reasonableness when purchasing commercial items. Where there is not adequate competition to ensure price reasonableness, we suggest that the scope of the Guidebook be targeted to focus on those specific situations. For example, an August 2015 report from the Government Accountability Office (GAO), “DOD’s Requests for Information from Contractors to Assess Prices,” determined that DOD COs face challenges in determining price reasonableness for commercial items. In the sample of contracts GAO reviewed, all the contracts where COs requested additional information were for aircraft-related products. Focusing on such challenges will ensure that the Guidebook is a valuable resource for COs.

Along with changing the scope of the Guidebook, we have included some technical suggestions with regards to DOD's use of the Schedules.

Use of the GSA Schedules

The Guidebook provides information to help DOD contracting officials determine whether commercial item prices are fair and reasonable. The GSA Schedule is a significant source of commercial items, which have prices that have already been negotiated by GSA. There are more than 20,000 schedule contracts, containing millions of items with a total revenue of approximately \$46 billion dollars annually (including Schedules managed by the Department of Veterans Affairs). The Guide contains the following instructions with respect to the Schedules:

NOTE: With regard to orders under GSA schedules, the Department has issued a Class Deviation 2014-DO0011 to FAR 8.404-1. GSA has determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, to be fair and reasonable for the purpose of establishing the schedule contract. However, GSA's determination does not relieve the contracting officer from the responsibility of making a determination of fair and reasonable pricing for individual orders, Blanket Purchasing Agreements (BPAs), and orders under BPAs, using the proposal analysis techniques at FAR 15.404-1. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

We recommend that the Guidebook be supplemented to include additional information about the level of price analysis that is necessary when determining if a GSA schedule price is fair and reasonable. The Competition in Contracting Act (CICA) defines "competitive procedures" to include GSA's Schedule program procedures so long as (1) participation in the program is open to all responsible sources, and (2) orders and contracts under the MAS procedures result in the lowest overall cost alternative to meet the government's needs.

MAS procedures require competition among schedule contract holders. FAR 8.405 requires that orders exceeding the simplified acquisition threshold be placed on a competitive basis. COs are directed to solicit quotes from 3 contractors (in the case of orders requiring a statement of work (SOW)) or survey the prices of 3 contractors (in the case of orders that do not require an SOW). When prices are *actually* received from at least 3 schedule contractors, the level of price analysis should be simple and streamlined. In this circumstance, contract prices have been leveraged downward by the government twice: the initial GSA schedule negotiation, and the subsequent task order competition. As recognized by the Guidebook itself, competition drives fair and reasonable prices.

"Commercial items are not subject to the Truth in Negotiations Act because the commercial marketplace is presumed to be a competitive environment and should drive a fair and reasonable price." P.2

Thus, the government's two competition exercises reasonably would be expected to drive a fair and reasonable price. Similarly, the Coalition suggest that orders below the simplified acquisition threshold should be subjected to an affirmative, but less complex, price analysis. For orders that exceed the SAT, where less than 3 quotes are obtained, a more complex price analysis could be performed.

Finally, the Coalition recommends that the Guidebook contain examples of price analyses appropriate for ordering an item against the GSA schedule. Adding additional guidance regarding the level of price analysis required when ordering from the Schedule could help ensure that DOD receives the streamlining benefit of utilizing an existing contract source, while protecting DOD's interest in getting good prices considering its requirements and volume of purchases.

Thank you for the opportunity to comment on this Guidebook. The Coalition stands ready to assist your organization as it continues to move forward on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Waldron', with a long horizontal flourish extending to the right.

Roger Waldron
President