

GovCon101- IDIQ CONTRACTS: A GROWING, BUT SOMETIMES FRUSTRATING, BUSINESS METHOD

PCI

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WHY DO FEDERAL AGENCIES USE MA IDIQ CONTRACTS TODAY?

Speed

- Weeks vs. Months
- More Manageable Competitions

Pre-Selected Contractors

- Vetted for Experience and Financial Stability

Ability To Meet Small Business & Other Specialized Goals

Ability to Obtain Real-time Pricing

Non-Schedule IDIQ's Are Protest-Resistant

- Only Task Orders Above \$25M Can be Protested

Can Buy Directly or Through Assisted Acquisition Services

IDIQ CONTRACTS & THE 4TH QUARTER

- Bloomberg Government Estimates That Up to 66% of FY'23 Q4 Buys Will Be Made Through IDIQ Contracts

Particularly Important for IT and Professional Service Companies, & Any Company Selling Commercial Items

A Little Late to Get One Now, So If Your Company Doesn't Have One, Partner With Those Who Do

CURRENT IDIQ CHALLENGES

- Trend Toward Larger Number of Contractors Per Vehicle
 - On and Off-Ramps, Small Business Teams, Some IDIQ's With Low Entry Requirements
- Potential For Small-Business Set-Aside Dominance
- Agency Mandates to Use BIC Vehicles
- COFC Contract Level Pricing Case, *SH Synergy, LLC v. U.S.*
- Protests At Every Phase
- Government Moving At Speed of Need, Yet It Takes 4-5 Years to Put A Big, Multi-Agency IDIQ (GWAC) In Place
 - Innovation Labs, OTA's, SBIR/STTR, Etc.

SO, WHAT ARE WE TALKING ABOUT HERE, DOLLAR-WISE?

- GSA & VA Federal Supply Schedule Sales = \$57B – 5.5% Increase From FY'21 and 17.5% Since FY'20
- NASA SEWP – Sales More Than Doubled from Fy'18-'22 - \$10.5B in FY'22
- Seaport Enhanced & Next Gen = \$6.B – Decrease of 6% From FY'21, but 3.4% Above 5 Year Average
 - Business Now Transitioning to Next Gen
- GSA OASIS (small and large) = \$12.1B – 20% Increase In EACH of the Past 2 Years

MORE TOP GWAC/IDIQ PROGRAMS

- *CIOSP 3 (small and large) = \$4.0B – **11% Increase**
 - CIOSP 3 Extended Till April 2024
 - CIOSP 4 Awards Coming Next Year??

GSA Alliant2 = \$6.513B - **35% Increase!**

- Second Alliant 3 Draft Expected Soon

Army ITES IV (Hardware, Software, Services) – **Total Value Expected to be \$475M – This is Actually a Decrease from the Current Program**

- GAO recently told the Army to “try again” over protests

TYPES OF ACQUISITION METHODS

- Cost Plus

- Make Sure You Have a Compliant Cost Accounting System

Firm, Fixed Price

Time & Material Labor Hour

Not all Contracts Have the Same Buying Options

- Look Before You Choose

While FFP is Preferred, Other Methods Are Widely Used

WHEN CAN I GET ON THESE VEHICLES?

- Must Respond to RFP At Origination Or During an On-Ramp
 - Reality: Most Companies Track These Opportunities Several Years in Advance to be Prepared

Only the GSA Schedule Program Is Continually Open to New Offers

- GSA Is Working With the SBA To Increase 8(a) Participation

Some IT Companies Will Allow You to Sell Through Their Vehicle

Another Alternative is To Partner With a Company That Has One or More

SOME KEY COMPLIANCE CONSIDERATIONS

- Make Sure You Understand What It Takes to Comply
 - There Are Requirements Even as A Subcontractor

Invest In Education and Infrastructure to Ensure You Can Implement the Necessary Practices & Processes

Remember That Compliance IS Pennies on the Dollar

Never Assume Your Customer Has All of the (Right) Answers

IDIQ ORDERING RULES

PRODUCT & NON-SOW SERVICE ORDERING METHODS

- These Procedures Apply Up To the Simplified Acquisition Threshold - \$250,000

Examine At Least 3 Price Lists Or Conduct Market Research

Make A Best Value Purchase Decision

Purchase

PURCHASING SOW SERVICES UP TO THE SAT

- Develop Statement of Work
- Solicit As Many Contractors As Reasonable to Obtain At Least 3 Bids in Return
- Evaluate Offers Received
- Make A Best Value Determination
- Purchase

ALL PURCHASES OVER THE SAT

- Develop Statement of Work & RFQ For Services – Non Services, Develop RFQ
 - Send Statement of Work To As Many Companies As Reasonable to Obtain 3 Offers OR Post on E-Buy System (For GSA Contracts)
- If Less Than 3 Received, Document File On Steps Taken To Ensure Competition, Wait Till The “Magic Third” Offer is Received, OR Offer Fair Opportunity to Bid to Call Contractors on the Selected IDIQ, Or It’s Relevant Part
- Evaluate Offers
- Make Best Value Determination
- Purchase

BEST IN CLASS CONTRACTS

- Best-in-class (BIC) is a government-wide designation for acquisition solutions that can be used by multiple agencies and that satisfy key criteria defined by the White House Office of Management and Budget.

Who Decides?

- OMB, Through Agencies Supplying Business Cases Seeking This Designation
- Not All BIC's See Business: GSA Alliant 2 SB Exploded on Launch Pad

Industry Concern: BIC Effectively = Low Price

DO AGENCIES USE BIC'S?

- It Depends
- IT BIC's = 33% of Federal IT Spending
- Non-IT: BIC's Account for 7% of Federal Spend, Unchanged Over Several Years
- Some Prospects May Use Your Lack of a BIC As An Excuse Not To Do Business

Take-Away: It's Useful to Have a BIC IT IDIQ, But Contractors Can Still Successfully Promote Other Options to Buyers

Statistics from Bloomberg Government

FEWER CONTRACTS, WIDER REACH

- Fewer Formal Government Wide Acquisition Contracts Today, But Wider Array of IDIQ Contracts Overall
 - GWAC's require formal business case approval and designation from OMB
 - Other IDIQ's may require a business case, but the bar is lower when a government-wide classification is not sought.

GSA Maintains An Acquisition Gateway of Many IDIQ's

- https://hallways.cap.gsa.gov/app/?utm_source=gsaag&utm_medium=link&utm_campaign=gsacapstie%20#/
- Limited Information for Industry, But Generally Can See Listed Contracts
- Get Information on BIC & Mandatory Use
- See Opportunities/How to Bid In Most Cases

SMALL BUSINESS IMPLICATIONS

- Agencies Learned Lesson The Hard Way When Trying To Unify Large and Small Contract Vehicles
 - CIOSP IV
 - OASIS+ Planning
 - GSA Separated OASIS+ Into Multiple Contracts

Wider Use of Small Business Teams

- More Small Business Contractors
- More Contractors Overall on a Given IDIQ
- Challenge: How Do Agencies Score Experience of Each Team Member? Does Each Member Have To Bring Experience to the Table? If so, What Kind?

Understand Small Business Subcontracting Requirements

- Contract Specific vs. Company-wide
- Can You Achieve the Goals?

POTENTIAL FOR SET-ASIDE ISSUES

- Delex
 - GAO Protest
 - Two or More Small Businesses on an IDIQ = Set-Aside
 - Agencies Issued Written Exceptions to their Contracts
- Tolliver
 - Court of Federal Claims
 - Rule of Two Must Be Considered Before Any Acquisition, Schedule Buys Excluded
- Kingdomware
 - Supreme Court
 - SDVOSB's and VOSB's Must Get First Opportunity at The VA
- Central Key Question: When Are Funds Obligated? When Is an Acquisition a “Contract”?

THE USE OF SELF-SCORING SHEETS

- Widely Used: GSA, NIH, Probably Ever Other Major IDIQ Agency

Intended to Weed Out Companies That Can't Meet The Requirements and Lessen Successful Contract Award-Stage Protests

Companies Describe Capabilities Based on Real Engagements

- Proving That They Actually Do What They Say They Can

Minimum Number of Points Must Be Achieved

- Intended to Vet Companies
- Small Business Teams Can Use Experience of Each Team Member
 - Continued Disputes over Prime vs. Sub Experience

MORE ON SELF-SCORING

- This Is Now a Highly Problematic Area in IDIQ Contracting
 - Multiple Protests, Including Several Hundred Total on NIH's CIOSP-IV, Over This One Issue
 - Immediate Protest On A GSA OASIS+ SB RFP

Issue: How Can The Government Justify The Point Cut-off Line? So Far, They Haven't Been Very Successful At This

Have We Seen The End of This Mechanism?

IS IT AN IDIQ OR A BPA?

- Some IDIQ Contracts Are Really Based on Other Contracts Spun Into a Program
 - Air Force, DHS, and Army All Have Programs That Look Like IDIQ's, but are Schedules-based Blanket Purchase Agreements (BPA's)
 - Companies Must Have the Underlying Contract In Order to Bid for the Subsequent BPA-based Contracting Program
 - Makes Having A GSA Contract Important for More Than Just "Regular" Business

A QUICK WORD ON CTA'S

- Contractor Teaming Agreements (CTA's) Are Often Used By Small Businesses To Come Together and Bid on an IDIQ

FAR 9.6 Governs These Types of Teaming Agreements

Some Courts Believe That These Agreements Are Dubious In Nature

- Make Your Language Specific!

NB: GSA Schedule Teaming Agreements **ARE NOT!** Regulated By FAR 9.6.

- See FAR 8.4

PROTESTS AND IDIQ CONTRACTS

- Will Protests Kill IDIQ Contracting Overall?
- The Street Is Becoming Increasingly Littered With the Corpses of SB IDIQ Contracts As A Result of Protests
 - GSA Alliant II SB - RIP
 - NIH CIO SP IV – Stabbed, Shot, and Bleeding.
 - GSA Polaris – Tasered, Poisoned, Left to Drown.

The Government Is Wary About Creating Additional IDIQ's Over This Specific Issue

- Protests tie-up Resources and Slow Down Progress

Can Delay Contract Start

Ironically, Task Orders, Except for Those on a GSA Schedule, Are Protest Resistant.

CURRENT MAJOR GSA IDIQ CONTRACTS

- Schedules
- Alliant 2
- OASIS
- StARS (8(a))
- Vets
- ASTRO

COMING SOON (?)

- NIH CIOSP IV
 - NITAAC Recently Extended CIOSP III Contracts to April 2024 To Provide Time to Rework This Acquisition
- POLARIS – Small Business, Specific Pools for Women-Owned and HUBZone Business
 - GSA Has Stated That They Do Plan to Proceed
- OASIS+
 - RFP Issued, Offers Due September 13th at 4:00 ET
- Alliant III
 - GSA Issuing Second Draft RFP, Final RFP Now Expected In First Half of FY'24
- SEWP VI – Will Add A Wider Array of Services for the First Time!

TEN TIPS FOR DEVELOPING A SUCCESSFUL IDIQ BASIS

- Develop and Execute a Focused Business Plan
- Don't Try to Be Everywhere in the Federal Space At Once
- Make Sure You Know How Your Customer Can Use the IDIQ To Buy
- Have "Both Feet" In the Federal Market
- Recognize the Four Different Decision-makers: Customer, Customer's Supervisor, Contracting, and Finance
- Definitely Consider Partnering With Specialized & Experienced Companies
- Take Advantage of Free Info. Resources: Federal News Network, Defense News, Government Exec, etc.
- Use Associations for Networking, Information & Relationship Development
- Dedicate the Time and Resources Necessary
- Make Sure You Comply With IDIQ Rules

KEY FACTORS TO CONSIDER WHEN SELLING VIA AN IDIQ

- Never Make Your Customer Play “52 Contract Pick Up”
 - Have 1-3 Preferred Vehicles and Be Ready To Explain Why They Work For Your Customer

Has Your Customer Used This Vehicle Before?

Who Has Sold To Them Before?

Know What Is In Scope and Out of Scope on Each Vehicle

Know the Contract Access Fee

- AND Whether the Managing Agency Has Negotiated a Lower Fee for A Specific Customer
- Follow E-Buy, Especially at FY End

THE ROLE OF ASSISTED ACQUISITIONS IN IDIQ CONTRACTING

- About 60% of GWAC/ MA IDIQ Buys Are Direct Between Customer and Contractor; 40% Are Done Via Assisted Acquisition Services

Agencies Must Be Authorized By the GWAC/IDIQ Managing Agency to Buy Direct

Contractors Definitely Need to Have Established Relationships With Assisted Service Organizations & Understand How They Work

SO, HOW DO THEY WORK?

- All Are Fee-For-Service Organizations

They Manage The Buy For Your Customer, Yet Contractors Will Bring Business to Them (No Assurance That You Get the Contract, Though)

Major AAS Agencies Include: GSA, Interior Business Center, and NIH NITAAC. Many Have Specialties. All Have Time-Sensitive Deadlines at Year-End.

SOME MAJOR AAS ORGANIZATIONS

- GSA FEDSIM – Only Handles \$100M & Up

GSA Regional AAS – Some May Be A Fit For You, Others Not So Much

- GSA Nearly Finished With Re-Org That Will Reportedly Do Away With Regional Exclusivity

Interior Business Center – Buys For Many Agencies. Up and Down Relationship with DOD

NIH NITAAC – Only Uses NITAAC Vehicles and Buys for NIH/HHS – Also DOD

TO SUM IT UP

- IDIQ's Are A Popular Method of Acquisition, But Have Some Challenges
- Ease of Use and Protest Resistance Are Plusses
- Don't Assume Your Customer Knows How to Use The IDIQ
- Be Committed to A Federal Market Approach
- Stay Compliant With IDIQ Requirements
- Engage With IDIQ Management Agencies During Contract Creation
- Team With Experienced Partners
- Understand the Role of Assisted Acquisition Services
- Stay Focused, But...
- Maintain a Sense of Humor

Knowledge check 1:

- The Department of Defense is at work on a contract that will be known as the Defense Information Systems Management, Acquisition, and Logistics contract.

A) True

B) False

Knowledge Check 2:

- 2. Former Congressman John Conyers once compared GSA Schedule prices to:
 - A. The sticker price of a car
 - B. The pricing available at the local 7-11
 - C. Better pricing than he could get at WalMart
 - D. Both A and B are correct

Knowledge Check 3:

- 3. What is the airspeed velocity of an unladen swallow?
 - A. 10 miles per hour
 - B. 7.86 miles per hour
 - C. The answer cannot be determined without knowing whether the swallow is African or European.

QUESTIONS/DISCUSSION/THANK YOU!

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