



OFFICE OF INSPECTOR GENERAL



DEPARTMENT OF THE INTERIOR

RECOVERY OVERSIGHT ADVISORY

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RECOVERY OVERSIGHT OFFICE

Washington, DC 20240

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To: Chris Henderson
Senior Advisor to the Secretary for Economic Recovery and Stimulus

From: Robert A. Knox 
Assistant Inspector General for Recovery Oversight

Subject: Recovery Oversight Advisory – Indefinite Delivery-Indefinite Quantity Contract Awards (ROO-ROA-MOA-1017-2010)

To safeguard taxpayer dollars, Congress provided us with funding to oversee and ensure accountability of the \$3 billion appropriated to the Department of the Interior (DOI) in the American Recovery and Reinvestment Act of 2009 (Recovery Act). We are focused on: preventing fraud, waste, and mismanagement; reducing misuse of dollars through early detection; and ensuring transparency in our oversight efforts. In our effort to collaborate with the Department, we issue this memorandum to highlight our concerns regarding the award of Indefinite-Delivery/Indefinite Quantity¹ (IDIQ) contracts for the Bureau of Indian Affairs (BIA) and U.S. Fish and Wildlife Service (FWS). Our review found instances where the bureaus had ill-defined requirements, incomplete acquisition planning, and overly broad statements of work that unnecessarily limit competition.

Faced with the responsibility of spending hundreds of millions of dollars promptly and prudently, the Office of Acquisition and Property Management (PAM) issued guidance to establish internal controls to manage and mitigate risks associated with Recovery Act projects.² We applaud PAM's efforts to establish a framework for DOI to expend Recovery Act funds. Recent PAM guidance,³ however, encourages the use of IDIQ contract vehicles as an effective means to accelerate the expenditure of Recovery Act funds. We raise these concerns to improve future awards and encourage the judicious use of IDIQ contracts.

Please provide a written response within 30 days of receipt of this advisory detailing the corrective actions that the Department plans to take to implement the recommendations, including targeted completion dates.

¹ Under an IDIQ contract, the Government places delivery orders (for supplies) or task orders (for services) against a basic contract for individual requirements. Minimum and maximum quantity limits are specified in the basic contract as either number of units (for supplies) or as dollar values (for services). Federal Acquisition Regulation (FAR) § 16.501-1. The FAR can be found in Title 48 of the Code of Federal Regulations. The Government uses an IDIQ contract when it cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period. FAR § 16.504(a) and (b). An IDIQ contract to multiple awardees allows for a certain amount of contract process streamlining, as only IDIQ awardees may bid on task orders, and task order awards are generally exempt from protest.

² Department of the Interior Guidance Release ARRA-2009-01, dated April 23, 2009, Development of an American Recovery and Reinvestment Act of 2009 (ARRA) Acquisition and Financial Assistance Project Review Plan."

³ Department of the Interior Guidance Release ARRA-2010-01, dated December 22, 2009, "Use of Existing Department of the Interior Contract Vehicles for Streamlined Award of American Recovery and Reinvestment Act of 2009 (ARRA) Procurement Actions."

We will post this advisory on our Web site (www.doioig.gov/recovery) and Recovery.gov. Information contained in this advisory may also be included in our semiannual reports to Congress. If you have any questions, please do not hesitate to contact me.

Requirements Definitized

Defining the Department's requirements regarding IDIQ contracts is the cornerstone for an effective acquisition.⁴ Using this knowledge, the contracting officer can determine the appropriate contract vehicle and provide prospective offerors with notice of the goods and services to be procured. Congress's Federal Acquisition Streamlining Act encourages the use of IDIQ contracts. The Senate report on this Act, however, states that "indiscriminate use of task order contracts for broad categories of ill-defined services unnecessarily diminishes competition and results in the waste of taxpayer dollars."⁵ The failure to definitize requirements early in the acquisition process could make the Government vulnerable to contract modifications, cost overruns, and potential litigation.

Incomplete Acquisition Planning

Agencies are required under the Federal Acquisition Regulation (FAR) to perform acquisition planning and conduct market research for all acquisitions as well as to promote and provide for full and open competition. When full and open competition is not required, agencies should promote competition to the maximum extent practicable with due regard to the nature of the supplies or services to be acquired.⁶ Proper acquisition planning is essential to capitalize on spending Recovery Act dollars and protecting the investment of taxpayers. Furthermore, Section 1554 of the Recovery Act requires that "[t]o the maximum extent possible contracts funded under [the] Act shall be awarded as fixed price contracts through the use of competitive procedures."⁷ Contracting activities should conduct acquisition planning and market research prior to the selection of a contract vehicle, especially when IDIQ or other contract vehicles are under consideration.

Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, procurement activities are required to conduct market research to determine whether consolidation of the requirements is necessary and justified.⁸ Packaging huge quantities of diverse services and supplies under one statement of work for an IDIQ makes contract administration and oversight especially unwieldy. Certain services, such as the removal of different types of hazardous waste, must be addressed by uniquely qualified contractors. When IDIQ solicitations are used to acquire a plethora of services and supplies that cannot be delivered by one contractor, there is potential for multiple layers of overhead and

⁴ See *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress*, January 2007, p. 7 ("*Requirements Definition is Key to Achieving Benefits of Competition.*"); FAR Part 11.

⁵ The Senate Report for the Federal Acquisitions Streamlining Act of 1984, P.L. 103-355, discussing the use of task and delivery orders for advisory and assistance services. S. Rep. 103-258, 1994 U.S.C.C.A.N 2561. This concern was later confirmed when the Section 800 Panel found abuses that included agencies drafting overly broad statements of work and issuing delivery and task orders that exceeded the original contract's specifications. https://www.acquisition.gov/comp/aap/24102_GSA.pdf

⁶ FAR § 7.102(a).

⁷ Pub. L. No. 111-5.

⁸ 15 U.S.C. § 644(e)(2)(A).

further expense to the agency. In addition, unqualified contractors may attempt to provide these services to be responsive to the IDIQ umbrella contract solicitation.

After preliminary review of a BIA IDIQ contract, we perceived a lack of engagement by the bureau regarding small business requirements in the planning phase as required by the FAR.⁹ “For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans.”¹⁰

Competition Concerns

The Competition in Contracting Act (CICA) requires that procurements be conducted “in a manner designed to achieve full and open competition for the procurement.”¹¹ Agencies must reasonably specify their needs¹² and develop specifications in a manner designed to achieve that full and open competition.¹³ The U.S. Comptroller General noted in a letter¹⁴ to the Acting Secretary of the Army that,

[I]nclusion of broad categories of work in one statement of work constitutes a form of bundling, since different kinds of work (or tasks in different geographical or technical areas) are combined into one procurement, and an overly broad statement of work can unjustifiably diminish competition just as bundling does, by deterring businesses, particularly small businesses, from competing for a contract, notwithstanding their ability to perform some of the work at issue.

With respect to this same acquisition, the U.S. Comptroller General raised a concern that the “IDIQ contract did not comply with the CICA requirement for full and open competition because the work statement in that contract is so broad that it does not reasonably describe the scope of services needed, and therefore does not provide potential offerors notice of the work that will be within the scope of the resulting contract.”¹⁵

The U.S. Comptroller General’s concerns point to issues that we discovered in reviewing the DOI bureaus’ IDIQ contracts. BIA’s IDIQ contract encompassed repairs, renovations, and new construction in its statement of work.¹⁶ Yet the needs and requirements inherent in the

⁹ FAR §§ 19.201 and 7.104(d)(1). “To the maximum extent practicable, procurement strategies used by the various agencies having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers.” 15 U.S.C. § 644(e)(1).

¹⁰ FAR § 15.304(c)(3)(ii). *See also*, FAR 2.101(b), definition of “bundling” and of “separate smaller contract,” as it is referred to in the definition of “bundling.”

¹¹ 41 U.S.C. § 253a(a)(1)(A).

¹² FAR § 16.504(a)(4)(iii).

¹³ 41 U.S.C. § 253a(a)(1); 10 U.S.C. § 2305(a)(1).

¹⁴ Letters to the Air Force and Army concerning Valenzuela Engineering, Inc., B-277979, January 26, 1998. (Although the associated protest was dismissed as untimely, the Comptroller General’s review indicated that violations of the Small Business Act and the Competition in Contracting Act had occurred. Letters were issued to the Air Force and the Army to bring these matters to their attention.)

¹⁵ *Id.*

¹⁶ At the time of the contract solicitation, the BIA was aware of the locations, and the numbers and types of buildings to be constructed. This information, however, was not fully divulged to prospective offerors. The initial statement of work was subsequently amended to provide the locations and zip codes of prospective construction sites. Relevant information such as the type and size of the building was not provided.

construction of new buildings are neither indefinite nor nebulous and must address, among other requirements, unique environmental concerns and tenant requirements. Nonetheless, an IDIQ contract for new construction nationwide was issued rather than discrete, fixed-price contracts for each specific building as generally required by FAR.¹⁷ Recently, FWS issued an IDIQ that was competed for services not only throughout the country, but also in U.S. territories including the U.S. Virgin Islands, Puerto Rico, and the Insular Areas. In a previous opinion, the U.S. Comptroller General found the statement of work for operations and maintenance at any Government facility in the world impermissibly broad. Including such services for Government facilities worldwide was insufficient to aid offerors in making an intelligent decision whether to submit a proposal or what was necessary to satisfy the actual needs of the Army.¹⁸ We question whether the bureaus' IDIQ solicitations encompassed too vast an area to encourage competitive bidding locally or among small businesses.

Advanced planning and clear specifications are crucial to give contractors sufficient information to bid and price correctly, to perform and be held accountable, and to prevent costly modifications and overruns. FAR states that "Generally, firm-fixed-price contracts shall be used to acquire construction."¹⁹ We are concerned that the use of IDIQ contracts for services and supplies for new construction could leave the Department vulnerable to creating task orders for piecemeal supplies and services that may unnecessarily increase project costs. It may lead to additional layers of overhead and additional profit to the contractor(s). In the worst case scenario, it may appear analogous to a time and materials contract. Competition is reduced when potential offerors have inadequate information to ascertain whether they can be responsive to the Government's broad needs, including construction outside of the continental U.S.²⁰

Such concerns were borne out in a BIA IDIQ contract that was competed. A statement of work, reflecting that construction is to be performed throughout the country rather than the construction of a specific building at a designated site, may have dissuaded local and regional contractors from competing. Ultimately, only two contractors were awarded contracts to perform large, new construction nationwide with a minimum guarantee of \$3 million and a maximum value of \$10 million. As task orders for large-scale construction were limited to only two awardees, subsequent competition for task orders was significantly reduced.²¹ The proposals submitted by the two contractors for one task order for construction of a new building significantly exceeded the Government estimate. Thus, the task order was cancelled and required a new solicitation solely for the construction of the one building. We commend BIA for not awarding the task order; however, we believe that valuable time and resources may have been lost by not planning and competing for the specific construction project from the onset.

¹⁷ FAR § 36.207(a).

¹⁸ Letters to the Air Force and Army concerning Valenzuela Engineering, Inc., B-277979, January 26, 1998.

¹⁹ 48 C.F.R. § 36.207(a).

²⁰ "One of the major problems with the multiple award ID/IQ system is the prevalent practice of drafting overly-broad statements of work that cover the sun, the moon and the stars. This causes problems of competition, when orders can be placed for just about any service or product without going through normal contract award channels, and can lead to potential fiscal law problems, since the purpose of the money may not match the type of funds available, even though the order fits within the original broad statement of work." *Current Problems with Multiple Award Indefinite Delivery/Indefinite Quantity Contracts: A Primer* by Major Michael C. Wong, The Army Lawyer, DA PAM 27-50-400, September 2006, quoting from an interview with Major Gregory Bockin, Trial Attorney, Contract Appeals Division, U.S. Army Litigation Division, in Charlottesville, Va. (Dec. 9, 2004).

²¹ Although pricing is ordinarily established at the time of award for an IDIQ contract thus limiting cost escalation, we are informed that definitization of requirements and pricing is to be performed at the task order level.

Best Value Determination

In order to make a “best value” determination, the Government must clearly articulate the requirements so that potential offerors may respond and provide pricing and other information. Best value means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.²² If the requirements are not definitized at the IDIQ level, a determination cannot be made that awardees have offered the best value for similar, specific requirements. We recognize that task order proposals may further reduce pricing provided at the IDIQ level. One method to assess a potential offeror’s technical approach is to use sample tasks in the IDIQ solicitation. This would allow the Department to evaluate the offeror’s pricing, qualifications, experience, and understanding of DOI’s requirements. In addition, the Government can consistently evaluate offerors’ proposals.

Recording Obligations

An IDIQ contract must require that the Government order and the contractor furnish at least a stated minimum quantity of supplies or services.²³ To ensure that an IDIQ contract is binding, the minimum quantity must be more than a nominal quantity but should not exceed the amount that the Government is fairly certain to order.²⁴ Consistent with 31 U.S.C. § 1501(a)(1), an obligation should be recorded against Recovery Act funds for an amount reflecting the liability incurred as a result of the binding contract at the time that the contract is awarded.²⁵ During our review of recipient reporting, we noted instances in the Federal Procurement Data System – Next Generation (FPDS-NG) where an IDIQ contract was reported, but zero dollars were recorded rather than the obligation of the contractual minimum²⁶. In another instance, when asked why one contract was not recorded in FPDS-NG, the contracting officer explained that the contract was a basic IDIQ contract with no dollars obligated, and the bureau’s system does not allow entering zero dollar awards.

Conclusion

The prudent use of IDIQ contracts may provide a helpful and administratively less cumbersome means of meeting the Department’s reoccurring needs. Nonetheless, proper acquisition planning and clearly definitized requirements are crucial for effective procurements and should not be circumvented. Broad and imprecise requirements adversely affect competition and thwart efforts to make best value determinations.

²² FAR § 2.101.

²³ FAR § 16.504(a)(1).

²⁴ FAR § 16.504(a)(2).

²⁵ See Matter of: Bureau of Customs and Boarder Protection—Automated commercial Environment Contract, B-302358, December 27, 2004.

²⁶ FPDS-NG is a General Services Administration (GSA) system. An official from the GSA Office of Acquisition Management & Policy Division confirmed that the minimum guarantee for an IDIQ contract, necessary to form a binding agreement with the contractor, is obligated in the financial system and reported to FPDS-NG at the time the IDIQ is awarded. See also, Procurement Information Bulletin No. PBS PIB OGMIDIQC 072004-1, issued by the GSA Public Buildings Service, Office of Business Operations – Procurement Division, entitled “Obligation of Guaranteed Minimum on Indefinite-Quantity Contracts,” effective July 15, 2004.

We recommend that:

1. PAM and heads of the contracting activities for bureaus and offices emphasize in their guidance and through training that requirements for IDIQ contracts be sufficiently defined to enhance competition;
2. PAM and heads of contracting activities for bureaus and offices provide training and additional guidance for acquisition planning, market research, and small business participation, when anticipating the use of IDIQ contracts;
3. Department guidance be issued stating that new construction, where the designs are not repetitive or standardized and the Government's specific needs are clear, be separately solicited to enhance competition and ensure best value; and
4. Department guidance be issued to ensure that IDIQ contracts have adequate consideration to bind the Government and that the Government's liability is properly recorded.

cc: Deputy Secretary, Department of the Interior
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Director, Office of Acquisition and Property Management
Acting Director, Office of Financial Management
Departmental GAO/ OIG Audit Liaison
Audit Liaison, Office of the Secretary

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