

Government Contracting 101

**General Services Administration (GSA)
Office of General Counsel
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Outline

Introduction

The Procurement Law

The Procurement Process

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What is Contract

Davis-Bacon Act



Introduction

Statutes

The Armed Services Procurement Act governs the defense procurement procedures.

The Act applies to:

- The Department of Defense
- The Department of the Army
- The Department of the Navy
- The Department of the Air Force
- The Coast Guard
- The National Aeronautics and Space Administration

Statutes

The Federal Property and Administrative Services Act

- Established GSA and outlines acquisition procedures
- Applies to “executive agencies” except the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration

The Competition in Contracting Act (CICA)

CICA is the governing law for hiring of contractors. It requires U.S. federal government agencies to arrange “full and open competition through the use of competitive procedures” in their procurement activities unless otherwise authorized by law.

Federal Acquisition Regulation (FAR)

FAR is the primary acquisition regulation for the federal government. And, each government agency may issue an agency acquisition supplement to the FAR. So we also have Defense Federal Acquisition Regulation Supplement (DFARS), the General Services Acquisition Regulation Supplement (GSARS) just to name a couple.

The Procurement Process

- Acquisition planning
- Issuance of the solicitation
 - Potential offerors may protest terms of the solicitation before the close of the solicitation
- Receiving bids/proposals/quotes
- Evaluation/negotiation
- Award of a contract
 - unsuccessful offerors may protest the award decision within 10 days of when a protester knows or should know of the basis of the protest

The Evaluation Process

- Source Selection Plan
- Source Selection Evaluation Board
- Individual evaluation
- Consensus meeting
- Source Selection Evaluation Board Report
- Source Selection Authority Reviews the report
- Discussions may or may not be conducted prior to making the award decision
- The Source Selection Authority writes an Award Decision Document
- Announcement of the award

The Evaluation Process

The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

Evaluation factors and significant subfactors must –

- (1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and
- (2) Support meaningful comparison and discrimination between and among competing proposals.

Typical Evaluation Factors

- Proposed Technical Approach/Solutions
- Proposed Schedule
- Technical Experience and Expertise
- Key Personnel Qualifications
- Past Performance
- Experience with similar types of work
- Small Business Subcontracting Plan
- Price

The Evaluation Process

There is generally no obligation for an agency to conduct discussions where...the RFP specifically instructs offerors of the agency's intent to award a contract on the basis of initial proposals...The Contracting Officer's discretion in deciding not to hold discussions is quite broad. Our office [the GAO] will review the exercise of that discretion only to ensure that it was reasonable based on the particular circumstances of the procurement. HDL Research Lab, Inc., B-294959, Dec. 21, 2004 citing FAR 15.306 (a)(3), and Colmek Sys. Eng., B-291931.2, July 9, 2003.

A/E Contracts Selection Process

The Brooks Act, now known as the Selection of Architects and Engineers Statute. Established a qualification based selection process for A/E contracting (FAR Part 36.6):

- Public announcement
- Annual company submission of qualification statements
- Selection of winning offeror based on demonstrated technical competence and professional qualifications directly related to the professional services required

A/E Contracts Selection Process

- Discussion with at least three of the most highly qualified firms.
- Prepare a selection report for the agency head
- Negotiation with the highest qualified firm
- Negotiation with the second highest qualified offeror if a satisfactory agreement cannot be reached with the first ranked offeror Negotiation of fair and reasonable prices

A/E Contracts Selection Criteria

- Professional qualification
- Specialized experience and technical competence
- Capacity to accomplish the work timely
- Past performance
- Location and knowledge of the locality of the project

What is a Government Contract

- An agreement between two or more parties
- Enforceable by law
- Oral or written

Must contain the following five elements:

- Offer
- Acceptance
- Consideration
- Legal with possible objective

What is a Government Contract

- Competent parties
- Government Contract Authority
 - Per FAR 1.602—The federal government conducts its business through contracting officers. Only contracting officers have the authority to enter into, administer, terminate contracts and make changes to the contract.

Davis-Bacon Act

- Enacted in 1931
- Amended in 1935 and 1964
- Passed by Congress and signed into law by Herbert Hoover in response to the Great Depression
- Protects communities and workers from non-local contractors underbidding local wage levels
- Applies to contracts in excess of \$2,000 to which the Federal Government or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works
- Includes alteration, repair, painting and decorating

Davis-Bacon Act Wage Determinations

Davis-Bacon WDs specify the prevailing wages, including fringe benefits, which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character in the localities specified therein.



QUESTIONS?

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