

OFFICE OF MANAGEMENT AND BUDGET

Competition in Contracting; Contract Bundling

AGENCY: Office of Management and Budget, Executive Office of the President

ACTION: Notice of public meeting and request for comments

SUMMARY: The Office of Management and Budget (OMB) is reviewing federal agencies' use of competition in their contracting activities. Although "full and open" competition remains the general rule when agencies acquire goods and services, a variety of legislative, regulatory, and policy initiatives, implemented primarily over the past decade, authorize competition on a significantly more restricted and informal basis. The purpose of this review, which has been called for by the White House, is to identify steps for ensuring that agency competition practices facilitate access to the full range of marketplace capabilities – especially those of small businesses – to consistently achieve good quality at lower cost to the taxpayer. This review will occur in conjunction with an initiative to address contract bundling (i.e., the consolidation of two or more requirements previously provided or performed under separate smaller contracts into a single contract that is likely to be unsuitable for award to a small business).

OMB invites interested parties from both the public and private sector, and especially from small businesses, to provide comments on: the positive and negative effects of agency competition practices from the 1990s to the present, and the impact of contract bundling. Interested parties may offer oral and/or written comments at a public meeting to be held on June 14, 2002. Parties may also provide written comments directly to OMB's Office of Federal Procurement Policy (OFPP) by the date indicated below.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below on June 14, 2002, from 1:00 p.m. to 3:00 p.m. Eastern standard time. The time period may be extended based on the level of interest expressed. Parties wishing to make formal oral presentations at the public meeting must contact Ms. Barbara Diering of OFPP by June 3, 2002. Due to time limitations, OFPP will notify individuals of their speaking status (time) prior to the meeting. Time allocations for oral presentations will depend on the number of individuals who desire to make presentations. Parties wishing to share written statements at the public meeting must submit such statements to OFPP by June 7, 2002.

Statements: In lieu of, or in addition to, participating in the public meeting, interested parties may submit comments to OFPP at the address shown below on or before July 1, 2002.

ADDRESSES: *Public Meeting:* The public meeting will be held at the General Services Administration (GSA) auditorium, 18th and F Streets NW, Washington, DC 20405.

Statements: Interested parties may send comments by electronic mail (e-mail) to bdiering@omb.eop.gov. While e-mail is preferred, parties may alternatively submit comments by facsimile (202) 395-5105. In either case, please cite "Competition in contracting review" as the subject. Since hard copy mail is not being accepted on a regular basis (due to security reasons), comments should not be submitted in this mode. Parties that cannot submit comments using either e-mail or facsimile should contact Ms. Diering.

FOR FURTHER INFORMATION CONTACT:

For clarification of subject matter related to the review of competition practices:
Mr. Mathew Blum, OFPP, (202) 395-4953.

For clarification of subject matter related to contract bundling and small business issues:
Mr. Michael Gerich, OFPP, (202) 395-6811.

For public meeting information and submission of comments to OFPP: Ms. Barbara Diering, OFPP, (202) 395-3256.

The TTY number for further information is: 1-800-877-8339.

SUPPLEMENTARY INFORMATION: In 1984, the Competition in Contracting Act (CICA), Public Law 98-369, sec. 2701, established "full and open" as the competition standard in federal contracting. CICA's enactment marked a culmination of concerns that competition had become the exception, rather than the rule, in acquiring goods and services. Despite these concerns, CICA's approach to competition has been criticized as unduly burdensome and complex. These concerns led to a series of legislative, regulatory, and policy reforms -- the most significant of which occurred in the mid-1990s -- to streamline and simplify competition and contracting processes. Many of these changes authorize competition on a relatively restrictive and informal basis. These changes include, among others:

- authority to conduct limited competitions under multiple award task and delivery order contracts (MACs) or GSA's Multiple Award Schedules (MAS) program, where the source selection process for becoming a contract holder is open to all interested sources but competitions for orders are limited to pre-qualified contract holders; and
- authority to seek competition "to the maximum extent practicable" using simplified source selection procedures for all actions under the simplified acquisition threshold (SAT), which is currently at \$100,000, and, on a test basis, up to \$5 million for commercial items.

An increasing number of recent reports addressing streamlined acquisition processes and competition practices, including studies by the General Accounting Office and agency inspectors general, call into question whether agencies are taking advantage of the full range of marketplace capabilities in their use of competition. In addition, concerns have been voiced that other acquisition practices are also limiting opportunities for contractors, especially small businesses. In particular, there is ongoing concern that agencies are unnecessarily bundling contracts and, in doing so, have created an environment that makes it difficult for small businesses to flourish.

The President is committed to ensuring that agencies take full advantage of competition in contracting, especially the services of small business contractors. This commitment, like those in the President's Management Agenda generally, reflect the Administration's focus on strengthening the performance of government through results-oriented initiatives – i.e., in this case, improving the return on taxpayer investments in contracting. To this end, OMB has been instructed both to review competition practices at agencies with significant procurement activities and to develop a strategy to address contract bundling.

OMB has established two inter-agency working groups to carry out these efforts: one working group will address agency competition practices; the other will develop a strategy for unbundling contracts whenever practicable. OMB seeks public comment from all interested parties, and especially from small businesses, to inform these working groups. Comments are especially welcome on the following topics:

1. Use of other than full and open competition. What are the positive and negative effects of authorities that allow competition on other than a full and open basis?
 - Authorities to consider might include:
 - (1) micro-purchase authority (see Federal Acquisition Regulation (FAR) Subpart 13.2);
 - (2) authority to transact using the government-wide purchase card (see FAR 13.301);
 - (3) authority to seek competition to the “maximum extent practicable” and use of simplified source selection procedures for acquisitions under the SAT (see FAR part 13 generally) and up to \$5 million for the acquisition of commercial items (see FAR subpart 13.5);
 - (4) authority to conduct limited competitions through MACs (see FAR 16.504 and 16.505) and the MAS program (see FAR subpart 8.4); and
 - (5) inter-agency contracting through government-wide acquisition contracts (i.e., task or delivery order contracts for information technology established for government-wide use and operated by executive agents designated by OMB), multi-agency contracts (i.e., task or delivery order contracts established for use by

government agencies consistent with the Economy Act), or other contracts for multiple agency use.

- Effects to consider might include:
 - (a) opportunities to learn about and participate in planned acquisitions;
 - (b) ability of contractors to offer, or agencies to secure: (i) fair and reasonable pricing, (ii) favorable terms and conditions, and (iii) timely delivery of good and services; and
 - (c) ability of contractors to make meaningful offers and agencies to make rationally-based decisions.
2. Use of full and open competition. What are the effects, positive and negative, of changes made in the way full and open competition is pursued, such as under Part 15 of the FAR? (For effects to consider, see question no. 1.)
3. Areas of impact. Have the authorities identified in question nos. 1 and 2 had an especially noticeable effect on any particular: (a) dollar range, (b) contract type, or (c) product or service category?
4. Barriers to small business participation. What barriers presently make it difficult for small businesses to participate in federal procurement, and what steps can be taken to remove barriers to participation, particularly in full and open competitions?
5. Contract bundling. If you believe that agency contract bundling has direct effects on participation by small businesses in federal contracting, what steps can be taken to mitigate those effects?
6. Application of electronic commerce techniques. How has electronic commerce affected contractor participation in government contracting in general, and small business participation in particular, and in what, if any, ways can its applications be improved to increase participation in government contracting?
7. Studies and articles on competition and bundling. What, if any, recent studies or articles addressing competition or contract bundling in federal contracting should be considered by OMB's competition and bundling working groups?

Special Accommodations

The public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Diering (202-395-3254) at least 5 days prior to the meeting date.

/s/
Angela B. Styles
Administrator