



The U.S. Government Procurement Market



Results of FTA Negotiations

- Secured “Designated Country” status under the Buy American Act eliminating the prior imposition of a 6% price penalty and allowing duty-free entry for most procurements of:
 - Products and services >\$58,550 US
 - Construction >\$6,725,000 US
- Australian companies can be awarded General Services Administration Federal Supply Schedule Contracts
- Framework to promote the mutual recognition of qualifications for services including education, financial and professional
- Defence procurements will continue to be governed by the 1995 Australian – U.S. MOA on Reciprocal Defence Procurement

FTA Government Procurement Implementation Issues

- Mechanisms will need to be created to address the application, or waiver of certain aspects of the FAR to Australian companies including:
 - Cost Accounting Standards
 - Cost Allowability Rules
 - Submission of Cost or Pricing Data
 - Inspection and Acceptance
 - Quality Assurance
- FTA text will need to be reviewed to identify areas requiring further clarification

Federal Acquisition Regulation (FAR)

- The regulation that governs how goods and services are purchased by the US.
Government
- 1,400 pages with supplements for each agency
- Contains hundreds of tender provisions and contract clauses
- Will undergo revisions to implement the FTA

U.S. FTA Approval Process

- Congressional approval and passage of the FTA and an Implementation Act
- Civilian Agency Acquisition Council (CAAC) identifies all affected FAR, prepares proposed revisions, and distributes proposed changes for public comment
- CAAC prepares a Federal Acquisition Circular containing final FAR revisions which is published in the Federal Register with an effective date implementing treaty provisions
- Jan 01, 05 assuming Congressional approval on or before July 04

Types of U.S. Government Procurements

- **Type 1:** Competitive tenders for *individual* acquisitions by an individual ordering agency (one-time, one-off procurements for finite quantities made to a *single* company or a team of companies)
- **Type 2:** Competitive tenders for *repetitive* acquisitions by a single ordering agency (multi-year, *multiple-awardees*, *defined* ordering agency users)
- **Type 3:** Open Season competitive tender for *repetitive* acquisitions by an agency *on behalf of*, and *for extended periods of use by all agencies* (Federal Supply Schedule Contracts)

Features of Type 1 Competitive Tenders

- Generally require technical, cost, and management proposals
- Advertised in the Commerce Business Daily and on the FedBizOps website; companies can form teams
- Contain technical evaluation criteria and technical vs. cost scoring methodology
- Provided evaluation criteria and scoring methods are followed agencies have discretion to award on the basis of best value to the government
- 4-12 Month procurement cycle

Drawbacks of Type 1 competitive tenders for single awards

- May need an on-the-ground presence to identify the agency requirement before it is advertised
- Very expensive to prepare, submit, and negotiate a competitive tender
- Lengthy tender and award cycle
- Under the FTA awards can be protested via legal intervention at the General Accounting Office or Court of Federal Claims

Types of U.S. Government Contracts Resulting From Type 1 Competitive Tenders

- Fixed-price and fixed price incentive and award fee contracts
- Time and material and labour hour contracts
- Cost reimbursement contracts
- Indefinite quantity / indefinite delivery contracts
- Blanket purchase agreements
- Requirements contracts

Type 2 Competitive Tenders for Government-Wide Acquisition Contracts (GWACs)

- Multi-year contracts with multiple awardees
- Generally are indefinite quantity indefinite delivery with no minimum orders
- Can have fixed price, time and materials, cost reimbursement orders
- Discounts, prices, and hourly labour rates are negotiated at time of initial award
- Eligible ordering agencies are defined

Advantages of Type 3 Competitive Tenders for Federal Supply Schedule Contracts

- Limited market intelligence required
- Continuous Open Season
- Ordering agencies are not required to evaluate order pricing
- Credit card orders are accepted
- No advertising required for orders
- No lengthy proposal preparation for orders
- No protests of individual orders

Type 3 Competitive Tenders for General Services Administration

Federal Supply Schedule (FSS) Contracts (commonly referred to as GSA Schedule Contracts)

- Base term of 5 years with a 5 year option, some evergreen
- No dollar limit on orders or guaranteed minimum
- Limited competition for orders and negotiation of discounts
- Available for use by all government agencies, departments, mixed-ownership government corporations, the District of Columbia, qualified domestic and international organizations
- \$25 Billion ordered through these contracts annually
- \$15 Billion ordered through the IT Schedule Contract annually of which \$8.5 billion involve services
- Veterans Administration administers contracts for certain types of products including pharmaceuticals, bio technology products, and medical devices.

GSA Schedule Contract Demographics

- 8,979 Companies hold these contracts
- 10,535 contracts in force
- GSA Advantage (GSA's online ordering website)
 - 75,000 searches per month (4 Million on last day of fiscal yr)
 - 235,000 registered government customers (400 new customers register each day)
 - \$220 million ordered on-line last year
 - e-Buy request for quotation system operational
 - Credit card ordering system operational
- 70% of sales go to 30% of contract holders

Types of GSA Schedule Contracts:

- Buildings and Building Materials/Industrial Services and Supplies
- Products for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response
- Food Service, Hospitality, Cleaning Equipment and Supplies, Chemicals, and Services
- Sports, Promotional, Outdoor, Recreational, Trophies and Signs
- Temporary Administrative and Professional Staffing
- Laboratory Testing and Analysis Services
- Test and Measurement Equipment, Avionics Equipment, Unmanned Aerial Vehicles and Related Services
- Chemistry, Biochemistry, Clinical Instruments, General Purpose Laboratory Instruments and Services
- Geophysical, Environmental Analysis Equipment and Services

Types of GSA Schedule Contracts: (continued)

- Chemistry and Clinical Instruments
- Electronic Test and Measurement Equipment
- Laboratory Equipment and Supplies
- Modular Lab Furniture
- Avionic Test Equipment
- Spectrometer and Chromatographic Systems
- Geophysical and Environmental Analysis Equipment
- Mechanical, Electrical, and Chemical Testing and Analysis
- Oceanographic Analysis and Display Systems

Obtaining a GSA Schedule Contract

- Only commercial products and services can be placed on a GSA Schedule Contract
- Companies respond to a GSA tender package by preparing a proposal including a proposed price list
- Companies must disclose 2 years worth of sales history including discounts
- GSA uses the sales history data to negotiate a discount off the catalog price
- A company's terms and conditions will be included to the extent they do not conflict with GSA's terms and conditions

Cost of Obtaining a GSA Schedule Contract

- Attorney's and/or consultants usually charge \$10,000 to \$15,000
 - depending on the number of products, or labour categories, and the complexity of the discounting and terms and conditions
- Consultants charge \$2,500 - \$5,000 per year to maintain the contract
 - depending on the number of price and product changes required

Administration of a GSA Schedule Contracts

- 0.75% is added to negotiated prices and is remitted quarterly to GSA
- The Price Reduction Clause requires that if the company gives any customer a discount in excess of the GSA discount that it passes that discount along to GSA with civil and criminal penalties for non-compliance
- Orders and blanket purchase agreements with additional discounts and special terms and conditions are negotiated directly with ordering agencies

Positioning for FTA Implementation

- Monitor how the implementation issues noted on Slide 4 are addressed
- Review products for suitability, need, and competitive position within the government procurement market
- Start to identify potential teaming partners
- Monitor and control discounting practices
- Ensure that your management information systems capture discounting information

For additional information please contact:

SOUTHERN CROSS LAWYERS



Robert G. Bugge BA, JD

Partner

Admitted: NSW, Washington DC, Florida

Specializing in:
international trade,
business transactions,
information technology,
government procurement

The Promenade
321 Harbour Drive
Coffs Harbour, NSW 2450
robertb@sclcoff.com.au
Tel: 612 6651 1511
Mobile 0408169613
Fax 612 66513588

Level 15, CML Building
14 Martin Place
Sydney, NSW 2000
Tel: 612 9233 2889
Fax 612 9232 5264