

Task Force on Services Contracting

Removing Federal Services Acquisition Barriers And Balancing Public and Private Interest

Prepared for
Acquisition Advisory Panel
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Services Working Group Charter

CSA in counsel with agency officials created the opportunity for this Task Force recognizing that *The procurement of Services now exceed Products within the federal government*

The Charter

Review legislation and regulations relative to services and from a “clean sheet” approach identify barriers and proposed changes to assure the government has full and balanced access to all service categories

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*What regulations are obsolete,
What currently works
What barriers exist*

Categories of Services Working Group - one of four groups formed others addressed : Acquisition Management and Planning (PBSA), Multi agency vehicles and Small Business issues

Task Force Components

- The objective was to take a fresh look at services acquisition issues. Some of the work of the Task Force was built on the on-going efforts of various industry coalitions and Task Forces.
- In addition to the leadership of the Contract Services Association, the Task Force consisted of representatives from the Professional Services Council, the National Defense Industrial Association, and the Information Technology Association of America; dozens of volunteers from individual companies and law firms. The Task Force also included representatives from the U.S. Army Forcecom and the Defense Acquisition University,



Categories of Services Review

Initial efforts were to review various categories of services and analyze any unique characteristics that might impact their acquisition in the federal marketplace

Engineering Services
Communication Services / Internet / Van services
Security and Guard Services
Advisory and Assistance Services
Consulting Service
Mechanical, Electrical, HVAC, Plumbing Services
Telecommunication Services / wire and wireless
Research and development services
Travel Services
Commercial Aviation and transportation
Aviation maintenance and flight services
Accounting and legal services
Medical / Dental services
Training Services
Automotive and mechanical services
Architectural Services

Financial / Insurance Services
Profit / non-profit Services
Construction Services/ Masonry, Carpentry,
Paving, Roofing etc.
Food/ Catering Services
Child Care Services
Fire Support Services
Janitorial / Lawn Maintenance Landscaping
/Painting Services
Laboratory Services
Moving Services
Rental / Leasing Services
Printing Services
Mortuary Services
Information technology Services

Categories of Services Working Group

From a review of major services categories the working group felt these services can be classified as either

Commercial Services – Sold to the general public

Developmental Services – Sold under federal government standards and specifications

The working Group assessed that the regulatory guidance addressing developmental items and services was balanced and protected the public and private sectors interest and proposed no further changes

Categories of Services Working Group Recommendations

The working group considered barriers in commercial items acquisition
In developing recommendation it was clear some would required legislative as well as regulatory change

Legislative

- Amend Commercial Item Definitions – FASA
- Revise SARA language increasing the use Time and Material contracting.
- Amend Advisory and Assistant Services restriction to align with Task Order contracting rules

Commercial Item Definition Legislative Revisions

- The definition of commercial services does not need to be conceptually different from commercial items.
- If the service is of a type offered and sold to the commercial marketplace sufficiently to establish a credible basis for demonstrating market acceptance, then the service should qualify as a commercial item.

The definition does not need to state that:

- Can be performed by a different source or time as an item
- Has to be sold at a catalog or market price
- Cannot be acquired under T&M contracts.

Commercial Item Definition Legislative Revisions

- FASA identified commercial items as:

- *Sold to non-government customers*

propose non-Federal Government purposes

(1) ***Any item, other than real property, that is of a type customarily used by the general public or by other than Federal Government entities for purposes other than Federal Government purposes,***

- Requirements for separate definitional groupings should be eliminated: Ancillary Services and separate treatment for specific tasks to be performed

No commercial distinction Ancillary and Non-ancillary

(5) ***Any Service of a type offered and sold in the commercial marketplace for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions.***

Time and Materials Contracting Recommendations

The Task Force recognizes that the use of Time and Material (T&M) and Labor-Hour (LH) contracts for the acquisition of services is a common commercial practice. The Regulations should address this fact.

Time and Materials Contracting Recommendations

SARA provided statutory authority for the limited use of T&M contracts based on competition

The Task Force recommends that SARA be amended so that the requirement for competition or justified sole source be permitted in the award of commercial services T&M contracts.

It is also important that any such change in legislation or regulation also recognize that the use of T&M contracts can be placed at the prime and subcontract levels

Advisory and Assistance Services Recommendations

It was the Working Groups position that the realities of what is and what is not A&AS, as defined in the FAR can be confusing and often blurred in contract requirements. The similarities between task order contracting and A&AS would question the necessary of any distinction

Advisory and Assistance Services Recommendations

Section 813 of the National Defense Authorization Act for Fiscal Year 2005 extends the performance period for “multiyear task and delivery order contracts” awarded by DOD to a base five-year term with an extension for up to an additional five years. This revision did not change the five-year maximum period of performance for a subset of task orders, Advisory and Assistance Services.

Both types of contracts should be treated the same,

The Task Force recommends that Congress amend title 10 to provide similar periods of performance for *all* types of task and delivery order contracts.

Regulatory Revisions - FAR 2.1

“Commercial Item” definition changes

No need to separately define “Items” from “Services”

Change “governmental” restriction to “non-federal”

Remove two tier definition, Ancillary & Specific Outcomes

Moved the cost reasonableness elements within the definition and to FAR parts 12, 13 and 15.

The Task Force clearly recognized price reasonableness is a critical issue for federal buyers of commercial items and deserves promenade treatment

“Services” As Defined by the working group

A Commercial Service Is:

Any "thing", "class of procurement", that is not manufactured or does not require manufacturing, i.e. a service is not a tangible product, even though the service it self may produce some tangible outcome or output."

However, the Task Force decided there was no a need to bring this definition into the FAR



Categories of Services Proposed Reasonableness Changes

FAR 12.209 Determination of Price Reasonableness

FAR Subpart 13.106-3 (1) and (ii) (iii) (3) Award and Documentation

FAR 15 402 (i) Pricing Policy

Adding references to commercial services after references to commercial items

Recognize that reasonableness can be assessed in a variety of ways including competition, market surveys that include a review of past or active vendor contracts,

Clarify that review of any catalogue or other published prices if available.

It is important that vendors dealing with the federal government recognize the overarching need for data that support the reasonableness of all prices offered

Multi-Agency Contracting Vehicles

Contracting through the Federal Supply Schedules (FSS) managed by the General Services Administration (GSA) remains an extremely desirable and productive approach for fulfilling Federal agency requirements.

The Working group fully supported the principals of the “Get it Right” Campaign

From this perspective, the working group developed a number of recommendations intended to improve the utility of Schedule contracts by providing increased transparency

Multi-Agency Contracting Vehicles

Enhancements to E-Buy - Transmit opportunities across all schedules and SINs to enhance competition.

Categorization of Services - Recommend GSA examine the service categorization under each schedule and reduce cross schedule redundancy – Can reduce scope confusion

Recognize the risk difference between “Assisted” (third Party) Procurement from “Unassisted” (Requiring agency) Procurement in policy guidance.

Clarifying the Message - Notwithstanding the clear guidance issued on October 2004 by DOD encouraging the use of third party vehicles, the reaction of the services in local implementation guidance seem to be discourage the use of these proven acquisition tools

Categories of Services Proposed Changes

The Realities that Services Acquisitions now Dominate Federal Discretionary Spending would Suggest that the Legislation and the FAR be revised to assure the guidance is balanced protecting both public and private interest and that the Federal Government has full and free access to all Commercial Items and Services