



NDAA Section 876

Presentation to GSA's Advanced Notice of proposal Rulemaking

Lorraine Campos
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National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115- 232)

Section 876 amended 41 U.S.C. 3306(c) by providing ***an exception to the requirement to consider price*** as an evaluation factor for the award of certain indefinite-delivery, indefinite-quantity contracts and Federal Supply Schedule contracts.

Section 876 gives GSA ***the discretion*** to not include price as an evaluation factor in certain FSS contracts and other IDIQs provided that:

- the agency intends to make a contract award to each qualifying offeror,
- task or delivery orders will be based on hourly rates, and
- competition takes place at the order level.

What does this mean?

Next Step in FSS Schedule evolution?

- Transformation of the FSS program?
- Competition on task order level?
- Increased competition?
- Reduced barriers for small businesses?
- Demise of Price Reduction Clause?
- Strategic movement to TDR?

Anticipated Savings for Contractors . . .

In Schedule Formation . . . To obtain a GSA FSS Contract

- Increase participation
 - Less costly to enter the program
 - Less cumbersome to track
- “Not having to demonstrate price reasonableness for hourly rates at the Schedule contract level should reduce costs for offerors to enter into the FSS program. Not having to track sales under the price reduction clause should reduce the administrative cost of contract compliance. Not having to justify price changes under the economic price adjustments clause should reduce costs of administrative compliance.”

But . . . Additional administrative burdens

On the task order level

- Detailed price proposals
 - task order level
 - Transactional Data Reporting
 - Solicitation details in response
- “[O]fferors may see greater burdens in some areas such as more detailed proposals at the task or delivery order level, and the need to submit data under the transactional data reporting. The time and effort expended to develop and prepare cost or price information for purposes of responding to a solicitation or other requests varies according to numerous factors, such as the source selection approach, the contract type, the offeror’s proposal.”

GSA Seeking Comments

Includes . . . but not limited to:

- **Turning on the Authority**
 - Timing
 - Strip hourly rates
- **Contract Type**
 - Full and open
 - Hourly rates
- **Mixed-Use Contracts**
 - Hourly
 - Priced and not price

GSA Seeking Comments

Includes . . . but not limited to:

- **FAR Changes Necessary**
 - FAR 8.4
 - FAR 12.207
- **GSAR Changes Necessary**
 - PRC
 - TDR
 - Evaluation
 - Price List
 - Award

GSA Seeking Comments

Includes . . . But not limited to

- **Updated GSA Guidance**
 - Solicitation updates
 - Pricing as evaluation factor
- **Regulatory Cost Impacts**
 - Is this a savings for contractors
 - Will there be a shift only in negotiation of contract but not administration
 - Other considerations

Cooperative Purchasing

A few words . . .

- Challenge for Cooperative Purchasing of the state, local and tribal governments
- May not have the contracting expertise on the state level
- Emergency purchasing
- Negotiated pricing was seen as a benefit of GSA FSS Contract

Questions/Discussion



Lorraine Campos
lcampos@crowell.com
(202) 624-2786