GSA Office of the Chief Acquisition Officer

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GSA Acquisition Letter V 04-05

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM: DAVID A. DRABKIN 02/11/05
DEPUTY CHIEF ACQUISITION
OFFICE OF THE CHIEF ACQUISITION OFFICER

SUBJECT: Purchases on Behalf of Other Agencies

1. Purpose. This Acquisition Letter directs GSA Contracting Officers who award contracts and place orders on behalf of other agencies (Requiring Agencies) to obtain information from the Requiring Agency concerning unique or agency specific restrictions applicable to the funds made available for the acquisition and associated with the requirement itself.

2. Background. Efficient and effective operation of the federal acquisition process is critical to the performance of each agency's mission. It is GSA's goal to provide client agencies with best value solutions in a timely manner that meets their needs and complies with both law and regulation. Proper use of contract vehicles to satisfy these agency needs is equally critical.

GSA assists other agencies by awarding and placing orders on their behalf. GSA accomplishes this service by utilizing existing GSA contracts as well as undertaking new contracting actions, where necessary. While GSA Contracting Activities are knowledgeable of laws and regulations applicable to GSA procurement actions, including the Federal Acquisition Regulation (FAR), they may not be familiar with the unique requirements of the Requiring Agencies or restrictions applicable to the funding being provided by them. In order to procure the requested goods and services in a manner that complies with applicable law and regulation, including unique requirements of the Requiring Agencies, GSA Contracting Officers must inquire of the Requiring Agency as to any unique funding and procurement laws or regulations of that agency that may apply to the instant acquisition.

3. Cancellation. This Acquisition Letter supersedes Acquisition Letter 04-04.

4. Effective Date. Upon issuance.

5. Termination Date. One year or until incorporated in the General Services Administration Acquisition Manual (GSAM).

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6. Applicability. This Acquisition Letter applies to all GSA contracting activities that award contracts or place orders on behalf of other agencies. It applies to all requirements received after October 1, 2004, and to any requirement over $2,500 that was received prior to October 1, 2004, but not yet awarded. It does not apply to any contract or order already awarded but it does apply to the exercise of any options. Each service should take appropriate steps to inform their client agencies of the policy set forth in paragraph 7.

7. Policy.

a. When accepting work from a Requiring Agency, all GSA Contracting Officers shall receive from the Requiring Agency verification that, at a minimum:

i. The funds being made available by the Requiring Agency are legally available for the purpose of the acquisition activities to be performed by GSA;

ii. All unique funding and procurement requirements of the Requiring Agency, including statutory or regulatory requirements applicable to the funding being provided by the Requiring Agency, have been disclosed to GSA; and

iii. All internal reviews/approvals required by the Requiring Agency prior to placing the order with GSA have been completed.

b. The Administrator has asked customer agencies to provide the following statement with all of their requisitions:

> By signing the funding document you have verified that the funds are legally available for the purpose of the acquisition activities to be performed by GSA; all unique funding and procurement requirements, including statutory or regulatory requirements applicable to the funding being provided, have been disclosed to GSA; and all internal reviews and approvals required prior to placing the order with GSA have been completed.

c. A copy of the Requiring Agency's incoming requirements, together with the verification discussed above, shall be placed in the GSA contract/order file.

d. In those cases where the Requiring Agency is unable or unwilling to provide the verification required by GSA, the GSA Contracting Activity shall not award a contract or place an order on behalf of the Requiring Agency.

e. Exceptions or deviations to the requirements in 7a, above, may be granted by the GSA Senior Procurement Executive. Any request for such an exception or deviation may only be made where the applicable GSA Contracting Activity confirms, as part of the request, that it has reasonably assured itself as to the matters specified in 7a above by means other than a verification by the Requiring Agency.

FREQUENTLY ASKED QUESTIONS

QUESTION 1. Do we have to go back to clients to get verification for requisitions we received prior to the issuance of the Acquisition Letter?

ANSWER 1: Yes. You must get verification for all requisitions that have not been awarded, including those that were in-house prior to October 1, 2004.

QUESTION 2. Does the Acquisition Letter apply to all requirements, including supplies, services, construction and leases?

ANSWER 2: Yes. It applies to everything GSA buys on behalf of Requiring Agencies, including classified projects.

QUESTION 3. How should the policy be applied when both GSA and another agency contribute funds? In other words, whose policy applies?

ANSWER 3: Both. Any restrictions applicable to use of GSA funds would continue to apply to the use of those funds, and the same would apply to any restrictions applicable to the use of Requiring Agency funds. You are encouraged to seek advice from the CFO and OGC where implementation of differing authorities/restrictions becomes problematic or where there appears to be a conflict between such authorities/restrictions.

QUESTION 4. Does the policy apply only to acquisitions under the Economy Act (FAR 17.5)?

ANSWER 4: No. The policy applies to all work performed by GSA on behalf of a Requiring Agency, whether undertaken pursuant to a Reimbursable Work Authorization (RWA), a Military Interdepartmental Purchase Request (MIPR), the Economy Act, or otherwise.

QUESTION 5. What type of information should our contracting officers have from the agencies? For example, if DOD said to follow the DFAR and the FY05 appropriation bill, would that be acceptable?

ANSWER 5: The Requiring Agency must be specific in its responses since they understand their authorities, rules and restrictions better than GSA does. Care should be taken to distinguish between requirements/restrictions applicable to procurement authorities versus those applicable to funding being provided by the Requiring Agency to GSA. Since the majority of acquisition activities undertaken on behalf of Requiring Agencies will be accomplished using GSA authority, customary GSA processes and procedures will normally be utilized. However, where the Requiring Agency identifies a specific restriction on use of its funding, GSA must incorporate that restriction into its acquisition planning for the product or service to be provided.

QUESTION 6. What level of due diligence is needed to validate data received? For example, is a non-1102 asking a fund certifying official about an RWA good enough?

ANSWER 6: The Contracting Officer is entitled to rely on the accuracy and validity of the information being provided by a Requiring Agency in response to the requirements of paragraph 7a. However, the CO also retains discretion to inquire of the Requiring Agency regarding matters beyond those specifically set forth in paragraph 7a of the policy. For example, the CO may seek confirmation that the needs of the Requiring Agency represent *bona* fide needs of that agency in that fiscal year, additional information regarding the authorization of the signatory official of the Requiring Agency providing the necessary verification, any time limitations on the availability of the Requiring Agency's funding for obligation, etc. COs are encouraged to consult with the CFO and OGC where they have doubts concerning the adequacy of the information provided by the Requiring Agency.

QUESTION 7. What kind of documentation should be present in the contract file? For example, is a contact report with no agency acknowledgement sufficient?

ANSWER 7: For any requirement received after October 1, 2004, written verification from the Requiring Agency as to the matters set forth in paragraph 7a of the policy is required. If the Requiring Agency is unable or unwilling to provide such a written verification, the Contracting Activity may satisfy itself as to the adequacy of the matters referenced in the policy and seek an exception or deviation to the policy as provided in paragraph 7d. However, the Contracting Activity may not undertake performance on behalf of the Requiring Agency without having received the written verification from the agency or received an exception or deviation to the policy.

For any requirement received prior to October 1, 2004, or if the requirement is urgent and compelling or an emergency, the Contracting Officer may contact the person who submitted the requirement, read the following statement, and document the file with the affirmative response provided:

For the requirement [you had previously submitted], we need to verify with you that you know the funds provided are available for the purpose of the acquisition activities to be performed by GSA; all unique funding and procurement requirements, including statutory or regulatory requirements applicable to the funding being provided, have been disclosed to GSA; and all internal reviews and approvals required prior to placing the order with GSA have been completed.

If the contact person cannot answer affirmatively, the procurement cannot proceed.

QUESTION 8. What do we do if the customer's statutory or unique requirements are less or more stringent than GSA's? Which apply?

ANSWER 8: As noted above, it is important to distinguish between requirements/restrictions related to authority being utilized to undertake a procurement action on behalf of a Requiring Agency, and requirements/restrictions that may apply to funding being made available by a Requiring Agency to GSA. Where GSA authority is being utilized to acquire a product or service on behalf of a Requiring Agency (which will normally be the case), GSA's procurement rules and regulations apply. However, to the extent the Requiring Agency informs GSA that certain restrictions exist regarding how/when its funds can be obligated, those restrictions must be incorporated into the procurement activities undertaken by GSA on behalf of the Requiring Agency. COs should consult with OGC if they are uncertain regarding how a Requiring Agency's special requirements must be incorporated into a GSA procurement action.

QUESTION 9. What steps has Central Office taken to notify client agencies, particularly non-DOD, about the requirements of the Acquisition Letter?

ANSWER 9: GSA provided a copy of the Acquisition Letter to the Senior Procurement Executive of every agency. The policy letter is posted on GSA's "Get it Right" homepage and is available through the Acquisition Policy section of the GSA homepage. A briefing of this policy will be presented at the next Chief Acquisition Officer's Council. In addition, the Administrator will be sending a letter to the heads of all agencies to inform them of this policy.