

# Getting in the game

The requirement for competition in federal contracting

**C**ompeting for government contracts means taking advantage of the mandate that federal agencies acquiring services in construction or related services must seek to seize opportunities from a fully competitive field of qualified offerors. The Competition in Contracting Act (CICA) of 1984(1) set the standard as “full and open competition” and instituted the use of competition as a critical tool for achieving the best return on the government’s investment.



While federal agencies generally are required to award contracts on the basis of full and open competition, they’re permitted to award noncompetitive contracts in certain limited situations. For example, the government can solicit from a limited pool of contractors when promoting disadvantaged business goals, such as contracting opportunities for 8(a) minority owned businesses.

When following CICA, effective competition in government procurement promotes competition, by among other things, requiring procuring agencies to give the public advance notice of impending solicitations and barring agencies from using restrictive specifications. (2)

## Procurement Notices

Agencies generally are required to publish “procurement notices” announcing upcoming solicitations or needs for contracts exceeding \$25,000. (3) Timing also is dictated by CICA, as agencies may not issue solicitations earlier than 15 days after the notice is published or establish a deadline for submission of bids or offers earlier than 30 days after the solicitation is issued. (4)

The government utilizes technology to get the word out, and the website



at FedBizOpps (USE LINK: [www.fbo.gov](http://www.fbo.gov)) allows potential offers to search for available opportunities by soliciting agency, location or place of performance, type of service or product desired using North American Industry Classification System (NAICS) code(s), and date of the notice or solicitation.

Once a vendor identifies an interesting opportunity on FedBizOpps, the vendor can elect to be added to a list of potential bidders or request receipt of electronic updates about the procurement effort as it progresses. This allows potential vendors to know about and track opportunities that fit their capabilities.

## Planning & Solicitation Requirements

Under CICA, agencies must prepare specifications geared toward obtaining full and open competition by using thoughtful procurement planning and current market research. The government is charged with knowing the market it is soliciting. Specifications may be stated in terms of function, performance or design requirements, but may include restrictive provisions or conditions only to the extent necessary to satisfy agency needs. (5) This is intended to avoid a procuring agency from crafting requirements, called specifications or a solicitation, so narrowly that contractors effectively are excluded from the pool of potential offerors. (6)

## Application to a Real & Recent Procurement

The General Services Administration recently issued invitations for interest on FedBizOpps for a solicitation for a federal requirement for construction and lease of a complex office building of more than 350,000 rentable square feet and 1,700 secured parking spaces

to be housed on a 45-acre parcel of land in Fort Worth, Texas. (7)

The past performance minimum standards required for consideration by the government were set high in this solicitation, perhaps too high to meet CICA mandates. A minimum number of three office developments exceeding 300,000 square feet having at least five stories and constructed in the past

In addition, these starkly restrictive parameters seem out-of-sync with the realities of the recent office construction market, which has not supported sufficient construction starts of the size required by the government. If this solicitation's pre-qualifications allow only a very small number of competitors, then the overly restrictive solicitation

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five years initially was required in an offeror's portfolio before being allowed to compete for this award.

The market for large office buildings has been depressed since 2008 and few projects of this size were recently completed within these exacting parameters. The high hurdles set by the government to show capability to perform this requirement do not reflect the goal of inclusion of offerors.

requirements may well be a CICA violation if they effectively prevent vigorous competition.

CICA dictates the government must seek to maximize opportunities for competition. This basic principal can help bidders when reading a solicitation and considering opportunities. What can be done if an offeror encounters solicitation requirements that are unduly restrictive on competition? ■



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**FOOTNOTES:** (1) 41 U.S.C. §253. (2) Kate M. Manuel, Legislative Attorney for Congressional Research Service, Competition in Federal Contracting: An Overview of the Legal Requirements (June 30, 2011). (3) 41 U.S.C. § 416. (4) Id. (5) 10 U.S.C. § 2305(a)(1)(B)(i)-(iii) & 41 U.S.C. § 253a(a)(2)(B) & (3)(A)-(C). (6) William S. Cohen, The Competition in Contracting Act, 14 Pub. Cont. L.J. at 19 (1983/1984) (describing specifications as the "cornerstone of competitive procurement" because they "serve initially as the fundamental expression of the agency's need and, in the contract award, as the baseline for the evaluation of offers."). (7) GSA issued SFO 9TX2395b (2011).