

UESC CONTRACTING OFFICER ISSUES ROUND-UP

FOR THE SPECIAL SESSION: ENERGY LAWYERS AND CONTRACTING OFFICERS
WORKSHOP, FEDERAL UTILITY PARTNERSHIP WORKING GROUP MEETING

MAY 23, 2013

Presented by: Alice Oberhausen
Former DoD Contracting Officer



UESC PROCESSES – CONTRACTING OFFICER LINGERING QUESTIONS

- With so much legislation surrounding the requirement for the reduction of energy in Federal facilities, and the authorization for entering into contracts with servicing Utility companies, why is there still confusion about the details in the acquisition processes?

A Sampling of Questions

**THE FOLLOWING SLIDES ILLUSTRATE SOME OF THE QUESTIONS THAT
CONTINUE TO ARISE FROM THE ACQUISITION COMMUNITY AS
NEWCOMERS EXPLORE MEETING ENERGY GOALS
THROUGH UESC METHODS**

- Should the Service Contract Act apply to the post-award requirement to provide Performance Assurance analysis and reports?
- Why is a Justification for Other Than Full and Open Competition required when legislation authorizes the direct award to a serving Utility?

- At what point does a Design need to be paid for to avoid violation of the Anti-Deficiency Act?
- If the cost of the Design provided in FY12 is planned to be rolled into the cost of the project, but the project is cancelled in FY 13, what year's appropriation should be used for payment? Has there been a violation of the Anti-Deficiency Act?

THE BUY AMERICAN ACT

The Buy American Act is a riddle,
wrapped in a mystery inside an enigma.

(With apologies to Sir Winston Churchill)

BUY AMERICAN ACT

- There is no indication in FAR Part 41 for the acquisition of Utility services that the Buy American Act applies.
- Yet, it is commonly recognized that the installation of equipment to produce the energy savings required is accomplished by companies and tradesmen who perform construction activities as described in FAR Part 36.

- The conclusion has been to include the Buy American Act and corresponding clauses in the Task Order.
- Should the Contracting Officer require the Utility to identify non-compliant equipment with its submission of the Investment Grade Audit?

- If foreign equipment is identified at this stage, the Contracting Officer can begin the process to obtain a waiver due to non-availability or unreasonable cost before award of the Task Order.
- This will mitigate delays to the schedule and anticipated start of payment to the Lender.

Challenges to Utility Companies

- Many Utility Companies use ESCOs who are Large Business concerns.
- What steps are being taken to bring in Small Business concerns from the Local Area who are qualified to perform these services?
- Small Businesses typically have lower overhead rates, are committed to the local community, and have a stake in providing exceptional service.

GOOD NEWS

- FEMP now has Advanced UESC Workshops and a new Contracting Officer Guidebook that provides more in-depth information and practical exercises developed from actual situations encountered during the UESC solicitation and award processes.