

## ID/IQ Contract Challenges

Written by Nick Sanders

Tuesday, 06 November 2018 00:00

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Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts are hard.

ID/IQ contracts are a subset of indefinite-delivery contract types. Indefinite-delivery contracts are used “to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award.” FAR 16.501-2 states, “There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts.” FAR Part 16.5 also makes the following points:

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A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

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A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period (from one contractor), with deliveries or performance to be scheduled by placing orders with the contractor.

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An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

Thus, an ID/IQ contract is one where a variable quantity of goods or services may be ordered at any time during a fixed period. We will adopt Vern Edward’s terminology and call that “fixed period” the “ordering period.” Contractors don’t know when and they don’t know how much, until they receive a task or delivery order that tells them.

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FAR 16.504(c) tells contracting officers that they “must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.” The upshot of this direction is that contractors may have to compete for the award of individual task/delivery orders, at unpredictable times during the ordering period. For unpredictable quantities.

In other words, ID/IQ contracts are risky. Even when you have one in hand, you may not get much work. In fact, the government is not required to order any more than the specified minimum quantity.

Competition typically is fierce. While there are specified exceptions, “The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,500 issued under multiple delivery-order contracts or multiple task-order contracts...” The contract’s competition procedures must be specified in the contract; but often a contractor may believe there was a bias because it did not receive an opportunity to bid or perhaps consistently lost on the bids it submitted.

Unfortunately for most contractors who believe they have been treated unfairly, the FAR prohibits protests of task or delivery order awards, except in limited (and specified) circumstances. Consequently, contractors that may believe they have not received sufficient orders under their multiple-award ID/IQ contracts have very little opportunity to do anything about it.

On the other hand, the ASBCA has provided contractors with limited success, where they have alleged that the contracting officer breached the contract by failing to give the contractor a fair opportunity to compete for a task/delivery order, as the contract promised. (Note the Court of Federal Claims has rejected the assertion that a prohibited bid protest can be “re-characterized” as a Contract Disputes Act (CDA) claim.)

But the government would prefer that contractors not bother the courts with their concerns. Instead, the government would prefer that aggrieved contractors first discuss their concerns with the cognizant contracting officer. In fact, we would suggest that this is good advice for contractors in many circumstances, not just those associated with ID/IQ contracts. Your first call should be to your CO, in order to get an understanding of their side of the story.

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If that doesn't work, there is an alternative. The contractor can call the contract's Ombudsman. Each multiple-award ID/IQ contract is required to identify the cognizant Ombudsman. See FAR 16.505-(b)(8)—

The head of the agency shall designate a task-order and delivery-order ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's advocate for competition.

If you have a multiple-award ID/IQ contract, then it must "include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman." The government wants you to call the Ombudsman, who is supposed to impartially hear your concerns. (Also: the government wants you to ignore its inconsistent capitalization of the term in its regulations.)

In fact, a recent [proposed rule](#) on the topic was issued "to implement a new clause that provides the agency task- and delivery-order ombudsman's responsibilities and contact information for use in multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts." According to the promulgating comments, lack of a standard FAR clause has led several agencies to create their own individual clauses; and thus it would be nice if there were a standard FAR clause that would supersede those agency-unique clauses.

Importantly, the proposed contract clause includes Alternate 1 language that would be used if multiple agencies are ordering from the same ID/IQ contract. It would state "This is a contract that is used by multiple agencies. Complaints from Contractors concerning orders placed under contracts used by multiple agencies are primarily reviewed by the task-order and delivery-order Ombudsman for the ordering agency."

So: ID/IQ contracts are risky and one way to manage the risk is to understand the communication hierarchy the government wants you to be using. Litigation should be a last resort, as is true in so many areas of government contracting.