

TSA's FAR Exemption Bites the Dust

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Representative Chris Carney (D-PA) and Senators John Kerry (D-MA) and Olympia Snowe (R-Maine) finally got their wish this week. DHS amended its procurement regulations to include TSA, which means that TSA (which up until now operated under the FAA's Acquisition Management System (AMS)) is now subject to the Federal Acquisition Regulations (FAR) that governs most other agencies.

AMS has an interesting history. FAA's previous effort to modernize its Air Traffic Control System resulted in cost, schedule, and performance issues lasting two decades. FAA explained those results by blaming the FAR and personnel regulations. In response, Congress not only exempted FAA from the FAR in 1995, it asked the agency to develop its own acquisition system. Somehow, I don't think FAA's explanation would work in today's acquisition environment.

TSA followed some FAR guidelines, but lawmakers became increasingly concerned with inconsistency in TSA's acquisition environment over the past few years. Amidst cries of wasteful spending, mismanagement, and confusion, Representative Carney and Senators Kerry and Snowe introduced the TSA Procurement Reform Act of 2007. Representative Carney asked during a 2007 House Homeland Security Committee meeting, "If the FAR is good enough for the overwhelming majority of the federal government, why not for TSA?" TSA's Assistant Administrator of Acquisitions discussed the AMS' "efficiencies" and "flexibility", which may be codewords for "don't want to have to read 25,000 pages of the FAR."

The 2008 omnibus appropriations bill requires the transition as well, and as of June 23, 2008, it will be done.

So what does it all mean for contractors serving TSA? How is the AMS different from the FAR? According to various GAO reports from 2004 and 2007:

- AMS is much broader, with only a portion dealing directly with the procurement process. AMS includes planning and management issues that FAR-governed agencies look to OMB Circular A-109, internal guidance, and best practices to address.
- FAA does not have to comply with the Small Business Act. However, AMS language says that "all reasonable opportunities to be awarded contracts shall be provided to small business concerns."
- AMS has less rigorous competition requirements. The preferred procurement method is to compete requirements among two or more sources, but there is no requirement to ensure that contractors that want to participate get the chance to do so.
- AMS is more stringent on the use of performance-based contracting methods, however FAA's actual performance metrics have been called into question within NextGen.

The good news - anecdotal evidence suggests that TSA used a mix of the FAR and the AMS during acquisitions over the years, so any major differences resulting from the change may very well be invisible to contractors.