

MUNICIPAL SERVICES PARTNERSHIP

6 Nov 2002

ISSUE:

To formulate a response to the question, "Why would a Municipal Services Partnership be more efficient than an award to a private entity?"

CONCLUSIONS:

This Municipal Services Partnership would be more efficient than an award to a private entity for a number of reasons that center around cost to the Government and procurement process time. It is assumed that a direct award could be made, if justified by a business case; otherwise the award would result from limited or full competition. Regulations governing the participation of entities require mention although not for reasons of efficiency. The most cogent reasons are summarized below.

1. There is less cost to the Government (cost efficiency)
 - a. The Government provides no profit in its payments to a municipality.
 - b. Municipalities have lower overhead than private entities.
 - c. The municipality charges to the Government will contain no contingencies.
 - d. The municipality can bundle the installation's work with its own work, producing local economies of scale.
 - e. The municipality's close proximity to the installation provides for lower mobilization and demobilization costs that for a private entity.
2. There is less time to award (time efficiency).
 - a. Government due diligence and contract negotiation take less time than the solicitation, evaluation and award process.
 - b. There will be no lengthy protest or lawsuit.
3. This is the only way the municipality can bring its benefits to the Government (regulatory preclusion).
 - a. The Federal Acquisition Regulations (FAR) preclude municipalities from participation.
 - b. Municipalities may have difficulty justifying expenditure of local tax dollars to compete with private enterprise.

DISCUSSION:

1. **There is less cost to the government (cost efficiency.)**
 - a. **The government provides no profit in its payments to a municipality.** Municipalities are generally forbidden profits by their charter documents. They are required to cover their costs, and their cost structure is open to Government inspection during due diligence activities and afterwards. Generally, municipalities manage costs reasonably effectively, as failure in administering local taxpayers' money leads to swift and serious consequences for local government managers. As a result, activity-based costing and asset management are common in local governments. Further, while competing

profit-motivation bidders against one another may be useful for “squeezing” profits, the result is still a contract with a non-zero profit, unlike with the municipality.

b. Municipalities have a lower overhead than private entities.

Municipalities typically have an average overhead rate of about 27 percent, mostly for benefits. In the case of the Presidio of Monterey project, the City’s burden on direct salaries varied from 21 to 26 percent. For a Government contractor, this burden is typically 32-39 percent, depending upon how bonus accrual is handled at a for-profit firm.

c. The municipality charges to the Government will contain no contingencies.

The municipality is merely required to recover its costs. This can be effectively accomplished by utilization of a performance-based contract vehicle (such as cost plus fixed fee, with a fee of zero), where contingency is eliminated. Unless a for-profit bidder is permitted a time and materials bid, the firm typically includes a 10 to 20 percent contingency to provide for unknowns and to protect his profit margin. Of course, the Government does not see this, but they pay it, nonetheless. Also it should be noted that if a private entity provides a traditional firm fixed price bid, the Government knows exactly what it will spend – until the first contract amendment for something that was not in the original contract scope.

d. The municipality can bundle the installation’s work, with its own work, producing local economies of scale.

Absent the profit motive, the municipality can drive down costs by making larger work packages, which makes for cheaper procured items and more attractive subcontracts. It should be noted that a municipality may not be able to do everything “in house” for an installation, and therefore will seek a cost efficient bidding process for subcontracting, administering these subcontracts with the low municipal overhead. A municipality can decide if it is cheaper to grow capacity or to subcontract and the Government can monitor the costs.

e. The municipality’s close proximity to the installation provides for lower mobilization and demobilization costs than for a private entity.

The municipality will be closer to the installation, if not contiguous, than a typical for-profit bidder. The close proximity reduces the cost of transportation equipment and it reduces travel and living costs for personnel, providing a lower cost of service to the Government for mobilization and demobilization.

2. There is less time to award (time efficiency).

a. If a direct award is made to a municipality, government due diligence and contract negotiation take less time than the solicitation, evaluation, and award process.

If a competitive award is made the Government has a usually lengthy procurement process to go through (and pay for). This involves preparation of an RFP, provision of time for offer preparation (including meeting with

prospective bidders and answering questions), convening and utilizing a Source Evaluation Board, obtaining approval for an award, and negotiating a contract. This process usually takes many months, and as in the case of utilities privatization, can run into years. In the case of a municipality, the principals usually know each other at least from common participation in community events, and a level of trust has already been established, which is conducive to the process the Government needs to go through for a services contract. The Government first must select promising installation/municipality pairs, then meet with a municipality to conduct due diligence activities. As a minimum, these consist of assessments of the municipal cost structure, of the municipality's capacity to do the work, (including their subcontracting capability), and of their ability to meet the performance standard of the installation. These items, *inter. alia.*, could then be used to prepare a business case justifying a direct award. The parties must then negotiate a cost plus fee (where fee is zero) or a cost reimbursable contract. This process should take no more than 3 or 4 months; six at the outside, if someone puts a "stick in the spokes".

b. There will be no lengthy protest or lawsuit.

In many A-76 cases, there has been a lengthy protest process by the party not getting the award, whether it is the Government's Most Efficient Organization or the bidding private contractor. The A-76 process, available since the early '80's, came into more prominent use by DoD elements beginning in 1996. Unfortunately, with increased use has come an accelerated incidence of protest, coincident with expenditure of time and money necessitated by protest activities, along with some painful reversals (e.g., Lackland AFB). In the case of utilities privatization, Army experience has included not only protests, but also time and resource-consuming lawsuits (e.g., Ft. Carson and the Military District of Washington). If a directed award were negotiated with a municipality, none of these lengthy and expensive impediments would be expected.

3. This is the only way the municipality can bring its cost benefits to the Government (regulatory preclusion).

a. The FAR precludes municipalities from participation.

In general, the FAR provides for regulation of the activities undertaken by private entities seeking to contract with the US Government. Participation in the federal acquisition process by municipality is specifically prohibited by the FAR, largely because of the small business set-aside requirement. A directly negotiated contract with a municipality should be regarded as a US Government Inter-Service Agreement (ISA), but at a different level. It is nothing more than moving the activity to those who can do it best in a given set of circumstances.

b. Municipalities may have difficulty justifying expenditure of local tax dollars to compete with private enterprise.

Even if the FAR preclusion were waived, and other Federal acquisition roadblocks were removed, it may be difficult for municipal leadership to justify tax dollar expenditure in any activity other than service to constituents, which

includes proposal preparation to compete with private enterprise. Even if their municipal charter permitted this (many will not), constituents could justifiably complain (particularly if one or more were a bidder) that this was not the intended use of their tax dollars. Of course, a directed award would avoid this difficulty.