



October 20, 2021

Skip Jentsch
Cloud Products Manager
General Services Administration

Dear Mr. Jentsch:

On behalf of the Computing Technology Industry Association "CompTIA", the largest technology trade association with over 2,200 members, I would like to bring to your attention certain agency public outreach that may undermine federal procurement law while promoting anti-competitive practices that stifle price competition and innovation.

GSA held two webinars last month that focused on how the government procures cloud services (specifically educating GSA Federal Supply Schedule (FSS) contracting officers about how to procure cloud off the GSA FSS). Over the course of the webinars, the GSA made several comments that call into question GSA's procurement practices.

Cloud Service Provider Vendor Lock In

During the September 15th webinar "How to Buy Cloud for Government", the GSA speaker stated that "GSA advises contracting officers that the practice of cloud service provider vendor lock-in may be justified or even desirable because of the major operating advantages of Cloud Service Provider proprietary tools." Not only does this practice stifle innovation by picking winners but directly conflicts with Congressional and Office of Management and Budget guidance that agencies should avoid vendor lock-in.

The 2011 Federal Cloud Computing Strategy guidance warns agencies to "consider the availability of technical standards for cloud interfaces which reduce the risk of vendor lock-in" and "**minimize the risk of vendor lock-in**, for instance, to ensure portability and encourage competition among providers."¹ More recently, the Office of Management and Budget ("OMB") 2019 Federal Cloud Computing Strategy directs agencies to "avoid vendor lock-in":

¹ 2011 Federal Cloud Computing Strategy 14-16, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/egov_docs/federal-cloud-computing-strategy.pdf (last visited 27 Jan. 2021).

To address these challenges, agencies will need to use a variety of approaches that leverage the strength of the Federal Government's bulk purchasing power, the shared knowledge of good acquisition principles, as well as relevant risk management practices. As part of the Cloud Smart multidisciplinary approach, agencies will also need to place security and privacy considerations at the forefront of any procurement effort, and **to avoid vendor lock-in**, they should evaluate the business process dependencies of any new solution. They should also update their business continuity and disaster recovery plans to include contingencies involving the sudden interruption or termination of service. Detailed below are additional considerations for Federal procurement professionals navigating the IT space and IT professionals seeking guidance on common practices to ensure the cost-effective, safeguarded procurement of cloud-based solutions.²

Consideration of Brand Name Buys

During the same webinar, the GSA speaker suggested that contracting officers should consider brand name buys as opposed to sole source contracts. This practice would target the Cloud Service Provider, not the reseller. GSA's guidance to "Consider a Brand Name Justification" contradicts CICA, the FAR, the DFARS, and Congressional direction. CICA and FAR Part 6 require agencies to specify needs and develop specifications in a manner designed to achieve full and open competition. 41 U.S.C. § 3301; FAR 6.101. FAR Part 11 unequivocally states a preference for performance-based specifications instead of brand name requirements, FAR 11.104, and requires that any brand name requirement be accompanied by a finding that the brand name product is "essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's minimum needs." FAR 11.105(a).

GSA's suggestion to use brand name justifications that "Target[] the CSP not the reseller" seems to advise that competition among resellers to provide a brand name CSP service qualifies as full and open competition. But the FAR forecloses such a strategy: "An acquisition or portion of an acquisition that uses a brand-name description ... does not provide for full and open competition, regardless of the number of sources solicited." FAR 6.302-1(c)(1).

Single Award Blanket Purchase Agreements "BPAs"

² OMB OCIO, 2019 Federal Cloud Computing Strategy (2019), <https://cloud.cio.gov/strategy/#procurement> (last visited 27 Jan. 2021).

Finally, the speaker encouraged contracting officers to use single award blanket purchase agreements "BPAs". This guidance is also repeated in a web video, "Think Cloud, Think GSA³" where GSA's presenter says that, "[agencies] have been asking.. . establish a BPA, a single award, with a re-seller that sells more than one CSP, that would put all of your eggs in one basket, that would be a good thing." FAR 8.4 specifically disfavors large single award BPAs, just as Congress has prohibited large single award IDIQ contracts in many circumstances.

Specifically, FAR 8.405-3(a)(3)(i) requires agencies to prioritize multiple-award BPAs "to the maximum extent practicable," and specifies the factors a contracting officer must consider and obtain before competing a single award BPA. FAR 8.405-3(a)(3)(iv). Significantly, the FAR prohibits single award BPAs over \$100 million (including options) absent a head of the contracting activity written determination that an exception applies. FAR 8.405(a)(3)(ii).

OMB has noted the deleterious effects of single award contracts: "A single award ID/IDQ contract often makes it difficult for the government to secure the same price reductions and contractor performance improvements that would occur if the contractor was competing against other qualified contractors throughout the contract."⁴ Few markets are more vibrant and subject to rapid change than the cloud computing market. No assurance exists that today's reseller of cutting-edge cloud services will have access to the leading cloud services of tomorrow. Single award BPAs insulate the reseller from competition, ending the need for competitive pricing in a market where prices trend downward and technology improves rapidly.

CompTIA supports practices that encourage a level full and open competitive playing field while ensuring that innovation remain a top priority. We welcome a recognition that current GSA cloud procurement practices may be out of line with a level playing field approach and encourage GSA to address these practices to ensure that innovation and full and open competition remain prime GSA objectives.

Very Respectfully,



David Logsdon
Staff Lead, CompTIA Federal Procurement Council

³ <https://www.youtube.com/watch?v=qI3Wia4XHZE> at 47:40

⁴ OMB, Best Practices for Multiple Award and Task and Delivery Order Contracting at, <https://www.gsa.gov/cdnstatic/BestPracticesMultipleAward.pdf>.