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M E M O R A N D U M

December 30, 2013

To: United States Transportation Command (USTRANSCOM)
Acquisition Directorate (TCAQ)

From: American Clean Skies Foundation

Re: Response to Draft Performance Work Statement for DOD Worldwide Express (WWX-6) Delivery Service Contract Solicitation Number HTC7711-14-R-C001-WWX6

The American Clean Skies Foundation (ACSF) submits this memorandum in response to the Draft Performance Work Statement (PWS), posted December 13, 2013, for DOD Worldwide Express (WWX-6) delivery service contract, Solicitation Number HTC711-14-R-C001-WWX6. This memorandum supplements our October 1, 2013 Response to Market Research Questionnaire for the same solicitation.

The PWS must be amended to make clear that USTRANSCOM will consider and apply preferences for reduced emissions and fuel efficiency when evaluating potential WWX-6 vendors.

Best Value

Like most federal procurement contracts, WWX-6 is guided by the Federal Acquisition Regulation (FAR), which aims "to deliver on a timely basis the *best value* product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives." 48 C.F.R. § 1.102(a) (emphasis added). Best value "must be viewed from a broad perspective and is achieved by balancing the many competing interests in the System." 48 C.F.R. § 1.102-1(b).

DOD's draft PWS defines best value as follows:

> *Selection of contractors/carriers to support Defense Transportation System requirements will utilize a best value approach based on determining factors such as quality of service, past performance, cost/price, claims experience, ability to perform service within stated requirements, and carrier commitment of transportation assets to readiness support. Under the best value approach, cost is not the only factor in carrier selection. Past performance factors include, but are not limited to, on-time pickup and delivery percentage, lost or damaged cargo percentage, number of claims, and provider availability. Service factors include, but are not limited to, carrier ability to respond,*

routing, and ability to provide in transit visibility and commitment of transportation assets to readiness support.

Draft PWS §§ 1.1.13.2 & 1.2.13.

DOD's definition correctly recognizes that cost is not the only factor in carrier selection under the best value approach. While the Draft PWS properly identifies some additional factors for consideration, it should also list the environmental metrics required by Executive Order 13514 and DOD's own Strategic Sustainability Plan and Green Procurement Program. This clarification would help achieve important DOD and national security goals.

As detailed in our October 1 response to the Transcom Market Research Questionnaire,[1] Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance,[2] requires federal agencies, including DOD, to develop and implement a Strategic Sustainability Performance Plan (SSP), set greenhouse gas (GHG) emissions reduction targets, increase energy efficiency, and leverage federal purchasing power to promote environmentally-responsible products and technologies. The Order also requires all federal agencies to report and reduce their own GHG emissions, as well as those of their delivery services and other contractors (Scope 3 emissions).[3] EO 13514 further mandates that 95 percent of new contract actions, including task and delivery orders, for products and services (with the exception of acquisition of weapon systems) meet the requirement for use of sustainable environmental practices.

Pursuant to EO 13514, in May 2011, the Federal Acquisition Regulation (FAR) was amended to reflect a "sustainable acquisition policy."[4] The FAR defines "sustainable acquisition" as "acquiring goods and services in order to create and maintain conditions (1)

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[1] *See* *http://www.cleanskies.org/wp-content/uploads/2012/08/Memo-to-USTRANSCOM-WWX6-10-1-2013.pdf*

[2] Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (2009), available at *http://www.whitehouse.gov/assets/documents/2009fedleader_eo_rel.pdf*.

[3] Executive Order 13514 defines Scope 3 emissions as "greenhouse gas emissions from sources not owned or directly controlled by a Federal agency but related to agency activities such as vendor supply chains, delivery services…."

[4] The FAR defines "sustainable acquisition" as "acquiring goods and services in order to create and maintain conditions (1) [u]nder which humans and nature can exist in productive harmony, and (2) [t]hat permit fulfilling the social, economic, and other requirements of present and future generations." 48 C.F.R. Sec. 2.101. *See also* Kate M. Manuel and L. Elaine Halchin, (Congressional Research Service), "Environmental Considerations in Federal Procurement: An Overview of the Legal Authorities and Their Implementation," (January 7, 2013).

The FAR is a regulation, codified in Parts 1 through 53 of Title 48 of the Code of Federal Regulations, which generally governs acquisitions of goods and services by executive branch agencies – including DOD. It addresses various aspects of the acquisition process, from acquisition planning to contract formation, to contract management. While the FAR contains the principal rules of the federal acquisition system, DOD has supplemented the FAR with the Defense Federal Acquisition Regulation Supplement (DFARS) to further describe its own procedures.

[u]nder which humans and nature can exist in productive harmony, and (2) [t]hat permit fulfilling the social, economic, and other requirements of present and future generations." 48 C.F.R. Sec. 2.101.

The interests of energy efficiency and environmental protection in "best value" acquisitions are also highlighted in the FAR at 48 C.F.R. § 23.103(a)(1)-(6). This regulation generally requires that agencies "shall advance sustainable acquisition by ensuring that 95 percent of new contract actions for the supply of products and for the acquisition of services (including construction) require that the products are – (1) Energy-efficient (ENERGYSTAR® or Federal Energy Management Program (FEMP)-designated); [or] … (4) Environmentally preferable (e.g., EPEAT-registered, or non-toxic or less toxic alternatives) …."

The Executive Order refers to environmentally preferable products and then lists a few non-exclusive examples. The Executive Order recognizes that there are products and services falling outside the scope of EPEAT certification which are assessed as environmentally preferable, and calls the agencies' attention to reducing emissions from suppliers' delivery and transportation services. *See* EO 13514 Section 2(b)(i) ("the agency head shall consider reductions associated with: (i) pursuing opportunities with vendors and contractors to address and incorporate incentives to reduce greenhouse gas emissions (such as changes to manufacturing, utility or *delivery services, modes of transportation used,* or other changes in supply chain activities") (emphasis added).

DOD's formal Green Procurement Program (GPP) was established "to enhance and sustain mission readiness through cost effective acquisition that achieves compliance and reduces resource consumption….."[5] Among the defined objectives is to reduce consumption of energy and natural resources, and increase purchases and expand markets for green products and services.[6]

In response to EO 13514, DOD is making significant progress toward reducing its greenhouse gas emissions and its fleet petroleum use. Using a 2008 baseline, DOD set a 34% goal for reductions in Scopes 1 and 2 emissions by 2020, and a 13.5% reduction goal for Scope 3 emissions reductions.[7] DOD is on target to meet or exceed these reduction goals.[8] DOD has also achieved a 14 percent reduction in petroleum use in its entire vehicle fleet compared to 2005, and is on track for a 20 percent reduction by 2015.[9] By expanding these efforts to its

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[5] Department of Defense, Green Procurement Program Strategy, updated Nov. 2008, at 2, available at *http://www.denix.osd.mil/gpp/upload/FINAL-GPP-Strategy-Update_USA001967-08_Complete-Distro-2.pdf*.

[6] *Ibid.*

[7] Department of Defense, Strategic Sustainability Performance Plan FY 2012 at I-8, available at *http://www.acq.osd.mil/ie/download/green_energy/dod_sustainability/2012/DoD%20SSPP%20FY12-FINAL.PDF*

[8] Department of Defense, January 2013 Office of Management and Budget Scorecard on Sustainability/Energy.

[9] *Ibid.*

procurements of third-party transportation services, DOD can have a profound impact on the public health and energy security of nation.

WWX-6 plainly falls within the category of procurements where sustainable environmental practices should be preferred – part of the 95 percent of contract actions required by the Executive Order to apply environmental preferences (*i.e.*, there are no extraordinary circumstances warranting an exception). Accordingly, the "best value" determination in the PWS and any final contract award must adhere to the mandate of EO 13514 and the DOD's GPP.

As described below, GSA and large corporations have demonstrated the feasibility and benefits of taking into account the emissions and energy usage of freight and package delivery vendors in making a "best value" determination.[10] With over 3,000 entities participating in the EPA SmartWay Transport Program, measures of emissions and energy usage are readily available for a broad pool of competitive suppliers of the WWX-6 services. EPA SmartWay is a widely-accepted certification for environmentally preferable freight shipments. *See* EPA, "SmartWay Transport Overview" (SmartWay Transport is the US Environmental Protection Agency's flagship program for improving fuel efficiency and reducing greenhouse gases and air pollution from the transportation supply chain industry.")

Feasibility of Environmental Preferences for Package Delivery Services Demonstrated by GSA

The incorporation of environmental factors into the WWX-6 procurement would enable DOD to continue its leadership role in sustainable energy use and procurement, and also match the recent initiatives of GSA regarding transport services.

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[10] *See, e.g.*, BUSINESS WIRE, New $1.5 Billion Federal Delivery Contract to Encourage Cleaner Trucking, Oct. 25, 2013 (highlighting GSA's decision to assess potential delivery vendors on environmental metrics as well as delivery prices), online at *http://www.businesswire.com/news/home/20131025005707/en/1.5-Billion-Federal-Delivery-Contract-Encourage-Cleaner#.UrmkINKJFIE;* Letter from Sharon K. Eckroth, Lead Traffic Management Specialist, Freight Management Branch, General Services Administration, to Transportation Service Providers, Aug. 6, 2013 (preferring EPA SmartWay Transport Partners), online at *http://www.gsa.gov/graphics/fas/20122014WDC-EDC_CoverLetteR.pdf;* U.S. Environmental Protection Agency, 2013 SmartWay Excellence Awards, Oct. 22, 2013 (recognizing shipper, logistics management and carrier companies for top environmental performance), online at *http://www.epa.gov/smartway/partner-resources/awards.htm;* Mike Ramsey, Truckers Tap Into Gas Boom, WALL STREET JOURNAL, Oct. 30, 2013 (identifying large U.S. truck fleets that are shifting to natural gas fueled trucks), online at *http://online.wsj.com/news/articles/SB10001424052702304200804579165780477330844;* Steve Banker, Procter & Gamble, General Mills and Frito-Lay Transition to Natural Gas Fleets, FORBES, Nov. 7, 2013 (*ibid.*), online at *http://www.forbes.com/sites/stevebanker/2013/11/07/procter-gamble-general-mills-and-frito-lay-transition-to-natural-gas-fleets/;* Diane Cardwell and Clifford Krauss, Trucking Industry is Set to Expand its Use of Natural Gas, NEW YORK TIMES, April 22, 2013 (identifying large U.S. truck fleets that are shifting to natural gas fueled trucks), online at *http://www.nytimes.com/2013/04/23/business/energy-environment/natural-gas-use-in-long-haul-trucks-expected-to-rise.html?_r=0*.

Notably, GSA has committed to improve its environmental performance annually by reducing the emissions and petroleum consumption associated with its fleet and, more importantly in terms of scale of operations, its transport services suppliers. To achieve these goals, GSA has been willing to expressly prefer cleaner, more efficient vendors to meet the transport needs of federal agencies.

In 2011, for example, GSA applied a preference for EPA SmartWay Transport Partners in its Request for Offers to transport certain shipments originating at the Western Distribution Center and the Eastern Distribution Center.[11] GSA repeated application of that preference in 2012.[12] As noted earlier, SmartWay is a voluntary government/industry collaboration designed to achieve improved fuel efficiency and reduced environmental impacts from freight transport.

More recently, GSA released a Draft Statement of Objectives for Domestic Delivery Services Generation 3 (DDS3) – a $1.5 billion government-wide contract for package delivery services – wherein vendors competing for the contract would be assessed on emissions and energy usage as well as their ability to meet annual targets for fuel efficiency, greenhouse gas intensity and alternative fuel use. The GSA contract would also require contractors to be EPA SmartWay Partners. As GSA stated:

> *In support of Executive Order 13514 and other applicable statutes, regulations and Executive Orders, and in recognition that harm to the environment, including from greenhouse gas pollution, has quantifiable costs and negative impacts on the economy and federal agency operations, it is the Government's intent to reduce as far as practicable the environmental impacts of services provided under this contract. GSA shall require contractors to belong to the Environmental Protection Agency (EPA) SmartWay Transport Partnership, a voluntary partnership between the Federal Government and the trucking industry, to improve the environmental performance of freight and small package transport by adopting fuel- and emission-reducing strategies….*
>
> *The Government strongly encourages transportation Contractors to reduce as far as possible the use of non-renewable fuels and emissions of pollutants, including greenhouse gases, in provision of services.*

In addition to DDS3, GSA is working to implement environmental metrics into its transportation management tool for less-than-truckload freight shipping, known as the TransPort

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[11] Letter from Sharon K. Eckroth, Lead Traffic Management Specialist, Freight Management Branch, General Services Administration, to Transportation Service Providers, Sep. 8, 2011, online at *http://www.gsa.gov/graphics/fas/WDCEDCAmendedCoverLetter.pdf*

[12] Letter from Sharon K. Eckroth, Lead Traffic Management Specialist, Freight Management Branch, General Services Administration, to Transportation Service Providers, Aug. 6, 2012, online at *http://www.gsa.gov/graphics/fas/20122014WDC-EDC_CoverLetteR.pdf*

Integrator. According to a recent GSA presentation, SmartWay participation will likely be considered and given substantial weight in best value evaluations.[13]

Conclusion

Pursuant to EO 13514, the FAR, DOD's Green Purchasing Plan, and DOD's Strategic Sustainability Performance Plan, DOD must assess environmental factors in evaluating potential WWX-6 vendors. Accordingly, the PWS must be amended to make clear that the best value evaluation will consider and apply preferences for reduced emissions and fuel efficiency.

This procurement is too large and too high-profile to ignore the important Presidential and DOD national energy security and environmental goals implicated by the WWX-6 services.

[13] Presentation by Scott Kidd, Chief of Freight Management at GSA, "TransPort Integrator, The Solution Moving Forward: GSA TPI Value Index Framework," Freight Transportation Service Providers Meeting, Washington, DC, Nov. 19, 2013.