



Bridge Contracts

Increasing Consistency Across Defense Agencies

Dennis P. Longo

FOR SEVERAL YEARS, THE DEPARTMENT OF DEFENSE (DOD) HAS BENEFITTED FROM THE USE OF TEMPORARY contract extensions without receiving competitive bids. Known as bridge actions, these temporary contract extensions are not necessarily planned and often are used to prolong delivery of items or services under a contract until a replacement contract is awarded. Recently, use of bridge actions has endured considerable scrutiny as the DoD looks to reform its business practices.

A March 2012 Government Accountability Office (GAO) report (2012 GAO 12-384) found 18 of the 111 justifications and approvals (J&As) reviewed were bridge contracts. The contracts had a total value of more than \$9 billion, with 5 of 18 awarded as a result of protests. Of the remaining J&As, the most frequent reasons for the bridge actions included changing office managers multiple times, difficulties writing requirements that met the contracting officer's standards, conflicting end-of-year responsibilities for contracting staff, and extended time to approve acquisition strategies.

A 2014 report (GAO 14-304) found that 12 of 34 contracts awarded on the basis of urgency were bridge contracts with a total value of more than \$466 million and an average period of performance of 11 months. The impact? Higher costs to the DoD due to inefficiencies and cost of administering bridge contracts, the strain on the contracting workforce due

Longo is advocate for competition, task and delivery order ombudsman, and senior procurement analyst at the Army Contracting Command at Aberdeen Proving Ground in Maryland. A member of the Army Acquisition Corps, he holds a bachelor's degree from University of Baltimore, and is Level III certified in contracting and acquisition. His assignments include acquisition specialist at the Program Manager for Chemical Demilitarization within the U.S. Army Chemical Materials Activity and procurement analyst at the U.S. Army Legal Services Agency. He served in the Army from 1971 to 1973 at the Southern European Task Force, Italy, and was deployed to Iraq as a civilian in 2003. He authored the Defense Acquisition University Continuous Learning DoD Purchase Card Tutorial in 2003, and has been an instructor on competition in contracting since 2004. In 2019, he authored the Army's Competition in Army Contracting course.

to the fact that bridge contracts had to be justified and awarded while a follow-on contract was sought, and the loss of benefits associated with full and open competition.

Another GAO report (October 2015 GAO 16-15) examined the insight of agencies on use, characteristics, and reasons for using bridge contracts. GAO concluded that agencies have little or no insight into their use of bridge contracts, and the period of performance of many bridge contracts spanned multiple years and increased prices.

In this article, I present an analysis of DoD's definition of a bridge action and provide a few explanatory notes. I discuss follow-on contracts, and review how options may or may not be related to bridge actions. I then propose standard elements that must be included in every sole-source justification for a bridge action, and provide narratives on recent challenges to bridge actions. I conclude with competition strategies that should be considered to reduce the impact of proposed bridge actions.

A definition for "bridge action," also referred to as "bridge contract," does not exist in the Federal Acquisition Regulation (FAR) or Defense FAR Supplement (DFARS).

Ellen Lord, Under Secretary of Defense for Acquisition, Technology, and Logistics (now Acquisition and Sustainment), on Jan. 31, 2018, released a memorandum signed by her and Deputy Chief Management Officer John H. Gibson reporting that there had been more than 1,100 bridge actions with obligations exceeding \$13.7 billion in Fiscal Year 2015. This, according to the memorandum, represented a lost opportunity for savings that could have been realized by awarding new competitive contracts. The memorandum, titled, "Bridge Action Reduction Measures and Reporting Requirement" states:

A bridge action describes a non-competitive action requiring a justification to include, but not limited to, a formal justification and approval (FAR Part 6 or 13.5), limited sources justification (FAR Subpart 8.4), and exception to fair opportunity (FAR Subpart 16.5), to retain the current or similar product or service as a result of delay in the negotiation and award of a follow-on contract.

Analysis of DoD Bridge Action Definition—A Two-Part Test

Part 1. A noncompetitive action requiring a justification to retain the current or similar product or service. When an action is pursued noncompetitively, it requires a justification. There must be a need to retain performance of the current or incumbent contract until award of a follow-on contract. A bridge action, then, must be a sole-source action to continue delivery or performance of a current contract's same or similar requirement.

The bridge action may involve exercising an option or making a change to the contract that is not executable under the contract "Changes" clause, which allows making changes to a contract under certain circumstances.

Part 2. As a result of a delay in the negotiation and award of a follow-on contract. There must be a delay. This second part of the two-part test applies where negotiation and award of a follow-on contract have been delayed.

"Follow-on contract": FAR 6.302-1(a)(2)(ii) characterizes a follow-on contract as a "contract for the continued development or production of a major system or highly specialized equipment."

As stated previously, reasons for awarding bridge contracts may result from delays caused by bid protests, lengthy revisions to government procurement requirements, delays in awarding a contract or possibly caused by an inexperienced and overwhelmed acquisition workforce. However, the key is that, lacking any delay in the negotiation and award of a follow-on, there cannot be a bridge action.

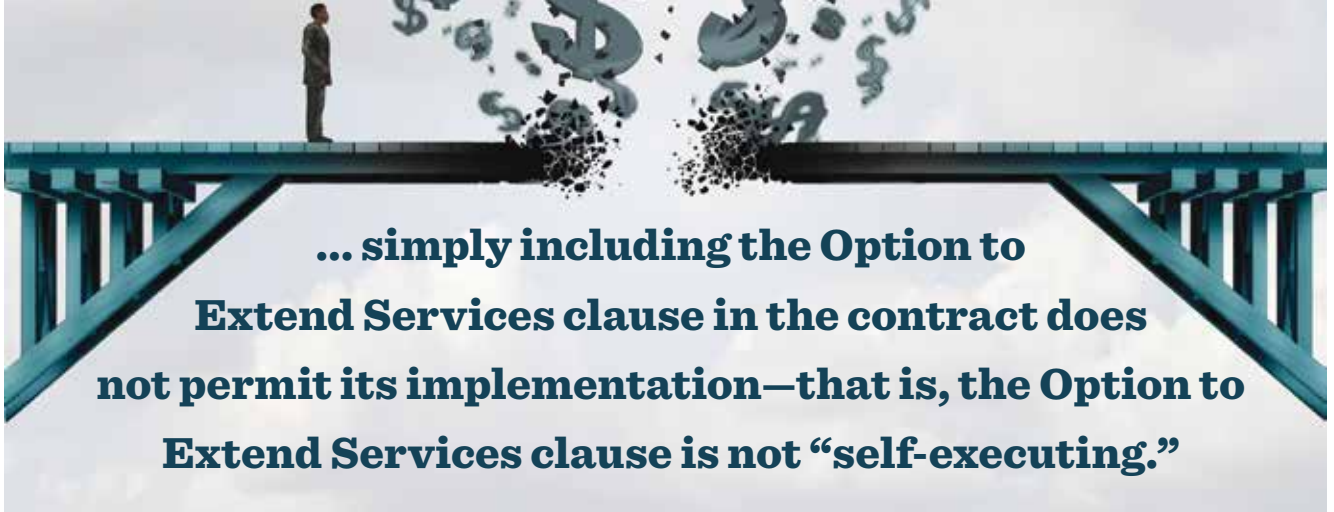
The Lord memorandum noted that extensions of services executed by operation of the Option to Extend Services clause at FAR 52.217-8 should not be considered a bridge action unless or until the total 6-month extension allowed by the clause is exceeded.

Under the "Option to Extend Services" clause, the government may require continued performance of any services within the limits and rates specified in the contract. The total extension of performance exercisable under the clause must not exceed 6 months. The contracting officer may invoke the clause without full and open competition if the option was evaluated and priced at the time of award.

However, simply including the Option to Extend Services clause in the contract does not permit its implementation—that is, the Option to Extend Services clause is not "self-executing." According to FAR 17.207(f), contracting officers must evaluate options at the time of contract award; otherwise, contracting officers cannot exercise options unless they prepare a justification to limit competition.

If the option was evaluated and priced when the contract or order was awarded, the option may be executed to "bridge" between the end of the contract and the follow-on award. In such a case, according to the DoD definition, executing the clause is not considered a bridge action.

The specific language at FAR 17.207(f) requires an option to be evaluated as part of the initial competition. Executing the clause is considered a bridge action when



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the clause was not evaluated and priced at the time the contract or order was awarded, thus requiring a justification to limit competition

Two points apply to documenting limited competition under a bridge action. First, the justification must comply with the format and content requirements in the applicable FAR Part that applies to the acquisition. For example, if you are limiting competition within the Federal Supply Schedule (FSS), you must follow the format and content requirements at FAR Subpart 8.4. If you seek other than full and open competition, you must follow the format and content requirements at FAR 6.303-2.

Second, the rationale for the bridge action must focus on (a) why and how the delay in the follow-on procurement occurred, (b) why you need the bridge action now, and (c) where you need to be to resolve the delay.

To explain the cause of a delay in the follow-on procurement, the rationale for the bridge action should focus on the specific contributing circumstances, when the bridge action initially was required, what was done at the time to overcome the problems, and why the delays could not have been mitigated to avoid the bridge action.

An explanation should focus on the reason for delay in requesting a bridge action; how the cost estimate was calculated and what cost factors were used; and specific dates of relevant events, memos, discussions, and other communications. (Bridge actions often are criticized for being the result of poor or a lack of advance procurement planning, an illustration of which is provided later.) The rationale also should describe any risk or injury to the government if the bridge action is not executed and how the period of performance for the bridge action was calculated.

The bridge action justification should explain how the extended performance period will resolve the gap in supplies or services until the follow-on contract is awarded. The justification should include a milestone chart illustrating where you intended to be when you initially determined the

schedule for awarding the follow-on contract and explain how you arrived at the revised dates for that award.

The milestone chart may, for example, provide the original procurement events in the “Events” column, the dates those events were estimated to be accomplished in the “Initial” column, a record of “Revised” dates that surpassed the “Initial” dates, with reasons in the “Notes” column explaining why the scheduled events and initial dates were surpassed.

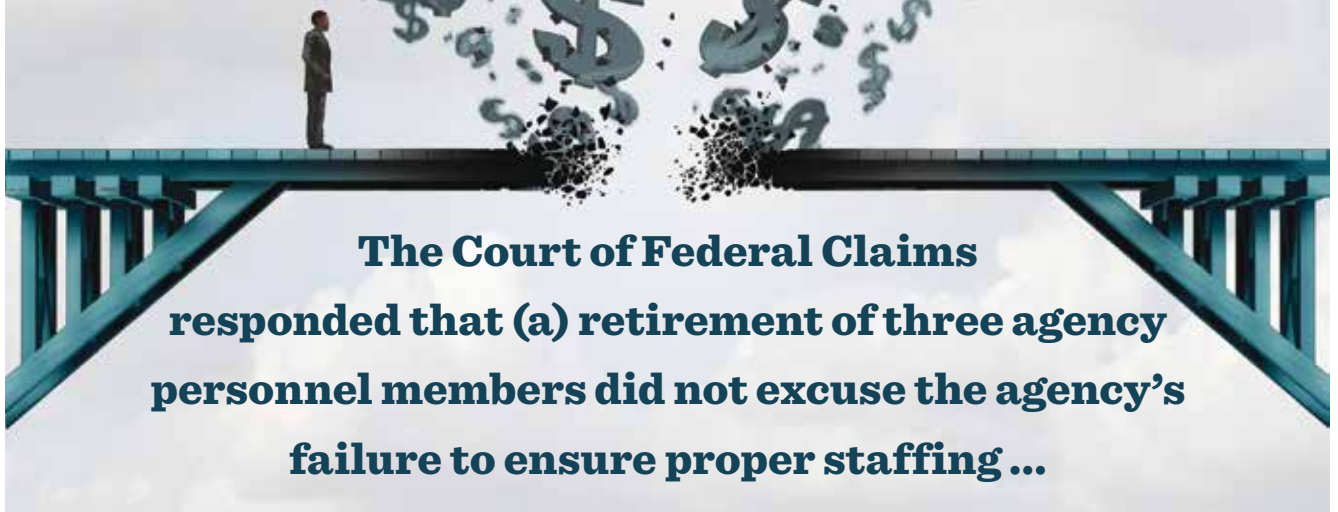
Judicial challenges to bridge actions have disclosed several key principles when justifying limited competition as a result of a delay in the negotiation and award of a follow-on contract:

■ **Don’t let assumptions justify your actions.** Key point: Don’t assume the necessity for a bridge action outweighs the requirement to conduct proper market research.

FAR Part 6 requires notices of proposed contract actions shall have been published, and any responses must have been considered prior to award of a sole-source contract using the Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements exception to full and open competition.

A DoD agency published a notice of its intent to award a sole-source bridge contract to a company named MTC for a 6-month period including an option to extend services for an additional 6 months and invited all responsible parties to submit capability statements. Career Systems Development Corporation (CSD) submitted its capability statement to the agency as directed by the pre-solicitation notice. A day after the notice was published, the agency’s chief procurement officer signed the sole-source J&A and awarded the sole-source contract to MTC. The J&A stated that no other firms expressed an interest in the procurement.

CSD protested the sole-source action to the GAO (B-411346). CSD argued that the sole-source justification was



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deficient because the agency failed to consider its capability statement and the justification was the result of a lack of advance procurement planning.

The agency responded to the protest maintaining that the invitation for firms to submit capability statements was a "mere formality" and that the consideration of CSD's capability statement was "actually irrelevant" to determining whether the agency's sole-source decision was reasonable.

The GAO ruled that the conclusions in the sole-source justification were unreasonable based on the agency's failure to meaningfully assess any offeror's ability to perform the requirement with minimal disruption. Consequently, the sole-source contract was improperly justified.

■ **Don't proceed in the company of predetermined conclusions.** Key Point: Poor time management does not justify use of a bridge action.

In *Global Dynamics, LLC v. U.S.*, No. 17-1875C, the Court of Federal Claims found that award of a bridge contract lacked a rational basis. Due to a number of protest actions, an agency posted its intention to award a fifth sole-source bridge contract to the incumbent contractor. This fifth bridge action increased the originally estimated 120 days to more than 250 days to award a follow-on contract.

Global Dynamics, LLC, challenged the fifth bridge contract, arguing that the agency's decision to award the bridge was improper and prejudicial. The agency that executed the fifth bridge contract explained that the bridge action was necessitated by three factors: (a) three retirements resulted in a personnel shortage; (b) available personnel were working on other matters; and (c) the contract's expected value significantly increased, requiring additional work.

The Court of Federal Claims responded that (a) retirement of three agency personnel members did not excuse the agency's failure to ensure proper staffing; (b) the agency did not explain why other matters needed to be prioritized over resolving issues related to the follow-on contract; and

(c) the significant increase requiring additional work was due to the agency's own failure to meet its deadlines.

For these reasons, the court found that the bridge contract was improper.

■ **Don't ignore the fact that you knew the contract expiration date when the contract was initially awarded.** Key Point: Lack of advance planning does not justify limiting competition. See FAR 6.301(c)(1).

In *Innovation Development Enterprises of America, Inc. v. U.S.* – Court of Federal Claims No 11-217C, Jan. 29, 2013, an agency had 5½ years to plan for its follow-on procurement and failed to do so before awarding a sole-source bridge contract to the incumbent.

The justification offered for the bridge action claimed that market research was not done due to the short timeline and that there were no other contractors with both the technical and professional skills necessary to support the requirement.

The court sustained the protest, explaining that the agency could not have been unaware of the expiring 5-year contract with the incumbent "well in advance" of the bridge action. The decision to award a sole-source contract involved a lack of advance planning, irrational reasoning, and numerous violations of procurement law and regulations. See also *X-Tec, Inc.*, B-410778.3, Oct. 1, 2015.

Bridge actions are sometimes unavoidable, particularly when a protest delays a contract award. However, strategies to mitigate the impact of a bridge action should be routinely explored. For example:

■ **Focus on the mission essential elements of the requirement.** Maintain only these mission essential elements in the bridge action until the follow-on action is awarded.

It may not be necessary to extend the full suite of performance requirements identified in a Performance Work Statement (PWS) in order to continue the immediate

mission requirement. Seek to identify only the mission-essential elements of the work statement that must be maintained without a gap in performance until the follow-on action is awarded.

Once those mission essential elements are identified, calculate the cost/price and performance term of those essential elements for use in justifying the bridge action.

■ Seek to reduce the work that must be performed under the bridge action. Here again, reduce or eliminate non-mission-essential elements that can be postponed until the follow-on contract is awarded.

■ Then consider breaking out the requirement into smaller requirements for separate competitive actions. De-scoping the immediate requirement, not the incumbent contract's statement of work, may allow the requirement to be divided into individual procurements under full and open competitive procedures until the follow-on action is awarded. Competitive procedures include:

- Small business set-asides under FAR Subpart 19.5
- 8(a) Program set-asides under FAR Subpart 19.8
- Set-asides under the Service-Disabled Veteran-Owned Small Business Procurement Program or Women-Owned Small Business Program
- Orders placed under multiple award task or delivery order contracts pursuant to FAR Subpart 16.5
- Orders placed under indefinite-quantity contracts

■ Finally, take advantage of the flexibility permissible by the contract's "Changes" clause. Identify elements of the requirement that may be executable by operation of the "Changes" clause to reduce the total impact of the bridge action. The "Changes" clause ensures the flexibility that the government requires during performance of a contract and affords the contracting officer the discretion to order additional work within the scope of the contract without providing for full and open competition.

Conclusions

Bridge actions endure high-level and persistent scrutiny. The rationale in the justification must focus on why we need the bridge action in the first place. Do not avoid the fact that we knew the contract would expire when we initially awarded the contract. Justify the proposed period of performance and the estimated cost for the bridge contract. Tell the story, be precise, and include dates. Don't let haste result in impulsive or potentially irresponsible actions; don't proceed in the company of assumptions or predetermined conclusions; and tell the truth, the whole truth, and nothing but the truth.

For more information on bridge actions and its impact on competition in contracting, go to <https://spcs3.kc.army.mil/asaalt/procurement/SitePages/NewTraining.aspx>. A common access card is needed to access the site.

The author can be contacted at dennis.p.longo.civ@mail.mil.

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