OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

APR 27 2011

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION AND LOGISTICS MANAGEMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Improving Competition in Defense Procurements – Amplifying Guidance

My attached November 24, 2010, memorandum "Improving Competition in Defense Procurements" provided implementing guidance for the direction provided in the USD(AT&L) memorandum "Better Buying Power: Guidance for Obtaining Greater Efficiency and Productivity in Defense Spending" dated September 14, 2010. The focus of my memorandum was on maximizing competition in situations where only one offer is received in a procurement utilizing competitive procedures. The purpose of this memorandum is to amplify that guidance in response to questions that have been raised.

The policy guidance set out in the November 24, 2010, memorandum is applicable to all competitive procurements of supplies and services above the Simplified Acquisition Threshold (SAT), including commercial items and construction. Further, it covers procurements accomplished under the procedures in Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) parts/subparts 8.4, 12, 13.5, 14, 15, and 16.5. Exceptions to this policy are procurements in support of emergency acquisitions for contingency operations, humanitarian assistance, disaster relief, peacekeeping operations, or recovery from nuclear, biological, chemical, or radiological attacks against the United States. However, the use of these exceptions does not mitigate the need for competition nor the requirement for a determination that the price is fair and reasonable.

Unless an exception applies or a waiver is granted, the following procedures apply:

- If the solicitation was advertised for fewer than 30 days and only one offer is received, then the contracting officer shall cancel and resolicit for an additional period of at least 30 days; or

- If a solicitation allowed at least 30 days for receipt of offers and only one offer was received, then the contracting officer shall not depend on the standard at FAR 15.403-1(c)(ii) in determining the price to be fair and reasonable. Rather, the contracting officer shall use price or cost analysis in accordance with FAR 15.404-1 to make that determination. If the contracting officer believes that it is necessary to enter into negotiations with an offeror, the basis for these negotiations shall be either certified cost or pricing data or data other than certified cost or pricing data, as appropriate, in accordance with FAR 15.403-1(c), DFARS 215-403-1(c) and FAR 15.403-3(b). The negotiated price should not exceed the offered price.

Waivers to the policy requirement to resolicit or the requirement to conduct negotiations are permitted. The waiver authority is the Head of the Contracting Activity (HCA). However, the HCA may delegate this authority to not lower than one level above the contracting officer.

I recognize that implementation of this policy may have the unintended consequence of increasing the contracting community's workload, but given today's scarcity of resources we need to ensure effective competition to the maximum extent possible. Every dollar saved through effective competition benefits the warfighter and the taxpayers. Should you have additional questions on this policy, please contact Mr. Larry McLaury at 703-697-6710 or e-mail address larry.mclaury@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

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DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
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SUBJECT: Improving Competition in Defense Procurements

This memorandum provides additional guidance for competitive situations in which only one offer is received in response to a solicitation and is based on the direction provided in the USD(AT&L) memorandum "Better Buying Power: Guidance for Obtaining Greater Efficiency and Productivity in Defense Spending" dated September 14, 2010. To maximize the savings that are obtained through competition, contracting officers will no longer use the standard at FAR 15.403-1(c)(1)(ii) or (iii) to determine that the offered price is based on adequate competition when only one offer is received.

Effective immediately, you will ensure that if a solicitation was open for less than 30 days and only one offer was received, the contracting officer shall re-advertise the solicitation for a minimum of an additional 30 days, unless a waiver is obtained from the head of the contracting activity. Further, if the solicitation was open for at least 30 days, or has been re-advertised and still only one offer is received, the contracting officer shall conduct negotiations with the offeror, unless this requirement is specifically waived by the head of the contracting activity. The basis for these negotiations shall be either certified cost or pricing data or other than certified cost or pricing data, as appropriate. In no event, should the negotiated price exceed the price originally offered.

Contracting officers shall document the results of the negotiations in the Business Clearance/Pricing Negotiation Memorandum in accordance with FAR 15.406-3 and DFARS PGI 215.406-3 in the same manner as any negotiated procurement. Contract Review Boards or other similar review mechanisms should be used to ensure the Business Clearance/Pricing Negotiation Memorandum documents the process and supports the negotiated price as being fair and reasonable. The Peer Reviews conducted post award will be the mechanism for assessing the application of this process.

The intent of this guidance is to ensure more effective competition that will result in more effective use of the Department's resources and savings for the taxpayer. Should you have any questions, please contact Mrs. Susan Hildner at 703-697-0895, or at Susan.Hildner@osd.mil.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy