

ALERT

DoD Issues "Amplified Guidance" on Improving Competition in Defense Procurements to Maximize Competition Where Only One Offer is Received

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On April 27, 2011, the Department of Defense Office of Under Secretary for Acquisition, Technology and Logistics through Director of Defense Procurement and Acquisition Policy Shay D. Assad, issued a Memorandum to "amplify" guidance given to acquisition professionals on maximizing competition when the Government receives only one offer. Under this guidance, contracting officers (COs) are instructed to engage in more rigorous analysis of price or cost when only one price offer is received in response to a solicitation. The guidance applies to acquisitions over the simplified acquisition threshold, including commercial items and construction, except for emergency acquisitions for contingency operations, humanitarian assistance, disaster relief, peacekeeping operations, or recovery from certain attacks against the U.S.

The amplified guidance instructs that if a solicitation was advertised for fewer than 30 days and only one offer is received, the CO should cancel and resolicit the requirement for an additional 30 days. If the solicitation was advertised for 30 days or more and only one offer is received, the CO is instructed not to "depend on" the standards in FAR 15.403-1(c)(1)(ii) to determine whether the price is fair and reasonable. This provision of the FAR provides that the CO can consider "adequate price competition" to exist such that submission of certified cost or pricing data will not be required, if there was a reasonable expectation that two or more qualified offerors would submit price offers, but only one is received, and the CO can reasonably conclude that the lone price offer was submitted with the

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expectation of competition, the CO reasonably determines that the proposed price is based on adequate price competition, and the price is approved at a level above the CO. Instead, the CO is instructed to use price or cost analysis techniques described in FAR 15.404-1, which sets forth the standards for price analysis in FAR 15.404-1(b) and for cost analysis in FAR 15.404-1(c). In addition, if the CO enters into negotiations, the CO is to use either certified cost and pricing data or data other than certified cost or pricing data for purposes of negotiation, as appropriate.

The guidance "recognize[s] that implementation of this policy may have the unintended consequence of increasing the contracting community's workload." Nevertheless, "[e]very dollar saved through effective competition benefits the warfighter and the taxpayers." Thus, in light of this guidance, contractors can expect increased attention to cost and price negotiation even when they are the only contractor submitting an offer.