

08/06/12

# **POLICY ALERT**

## **No. 12-50**

### **Only One Offer**

- REFERENCE:**
1. Federal Register Volume 77, Issue 126, Friday, June 29, 2012, Defense Federal Acquisition Regulation Supplement Publication Notice 20120629, Defense Federal Acquisition Regulation Supplement [Case 2011-D013 - Only One Offer](#)
  2. Policy Alert 10-42 Revision 001 Improving Competition in Defense Procurements (hereby rescinded)
  3. [DPAP Memorandum dated April 27, 2011, Improving Competition in Defense Procurements - Amplifying Guidance](#)
  4. [DPAP Memorandum dated November 24, 2010, Improving Competition in Defense Procurement](#)
  5. Undersecretary of Defense/Acquisition, Technology and Logistics (USD/AT&L) Memorandum, [Implementation Directive for Better Buying Power - Obtaining Greater Efficiency and Productivity in Defense Spending, November 3, 2010](#) and TMA Policy Alert No. 10-37 Implementation Directive for Better Buying Power - Obtaining Greater Efficiency and Productivity in Defense Spending

**TYPE OF ACTION:** Final Rule

**EFFECTIVE DATE:** June 29, 2012

**SUMMARY:** The Department of Defense (DoD) issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the initiative on promoting real competition that was presented by the Under Secretary of Defense for Acquisition, Technology & Logistics in a memorandum dated November 3, 2010. The objective of the rule is to promote competition and ensure fair and reasonable prices by implementing DoD policy with regard to acquisitions when only one offer is received.

Some of the DFARS changes that address promoting competition and ensuring fair and reasonable prices include:

- Applicability to all competitive procurements of supplies and services above the Simplified Acquisition Threshold (SAT), including commercial items. Further, it covers procurements accomplished under the procedures in Federal Acquisition Regulation (FAR) and DFARS parts/subparts 8.4, 12, 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.

- The requirement at DFARS 215.371-2 Promote competition, does not apply to small business set-asides, the Service-Disable Veteran Owned Small Business Program and the Woman-owned Small Business Program. However, the requirements at DFARS 215.371-3 Fair and reasonable price does apply to set-asides.
- When using competitive procedures, if a solicitation was open for less than 30 days and only one offer was received, the Contracting Officer shall consult with the requiring activity as to whether the requirements documents should be revised and re-solicit allowing an addition period of at least 30 days, except as provided in DFARS 215.371-4 and DFARS 215.371-5.
- If a procurement is accomplished using Federal Supply Schedules and if only offer is received in response to an order exceeding \$150,000 that is placed on a competitive basis, the procedures at DFARS 215.371, Only one offer, apply. Additional ordering procedures are established at DFARS 208.405-70.
- DFARS 215.371-3, Fair and Reasonable Price, is added and reads as follows:
  - (a) If there was “reasonable expectation ...that two or more offerors, competing independently, would submit priced offers” but only one offer is received, this circumstance does not constitute adequate price competition unless an official at one level above the contracting officer approves the determination that the price is reasonable (see FAR 15.403-1(c)(1)(ii)).
  - (b) Except as provided in section 215.371-4(a), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for receipt of proposals (unless the 30-day requirement is not applicable in accordance with 215.371-4(b) or has been waived in accordance with section 215.371-5), the contracting officer shall—
    - (b)(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at one level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see FAR 15.403-1(c) and 15.403-4). In these circumstances, no further cost or pricing data is required; or
    - (b)(2)(i) Obtain from the offeror cost or pricing data necessary to determine a fair and reasonable price and comply with the requirement for certified cost or pricing data at FAR 15.403-4, in accordance with FAR provision 52.215-20. For acquisitions that

exceed the cost or pricing data threshold, if no exception at FAR 15.403-1(c) applies, the cost or pricing data shall be certified; and

(b)(2)(ii) Enter into negotiations with the offeror as necessary to establish a fair and reasonable price. The negotiated price should not exceed the offered price.

- Use the provisions at DFARS 252.215-7007, Notice of Intent to Resolicit, and DFARS 252.215-7008, Only One Offer, as prescribed at 215.408(3) and (4), respectively. In solicitations that include DFARS 252.215-7008, Only One Offer, also include FAR 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost Pricing Data.

**ACTION REQUIRED:** Effective June 29, 2012, Contracting Officers and Contract Specialists shall follow comply with these DFARS changes.

This Policy Alert is effective on the dates indicated above, and remains in effect until incorporated into a TMA Acquisition Policy document(s) or until otherwise rescinded.

You may direct comments/questions on this Policy Alert to the Acquisition Policy and Pricing Division at 303-676-3985.

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