Recommendation 75: Revise regulations, instructions, or directives to eliminate non-value-added documentation or approvals.

Problem

Within the DoD acquisition system, solicitation and precontract award processes are cumbersome and non-value-added, leading to substantial acquisition delays.

Subrecommendation 75a: Repeal the requirement at DFARS 215.371-2 to resolicit for an additional 30 days when only one offer is received in response to a solicitation.

Background

The 1984 Competition in Contracting Act (CICA) was intended to achieve competitive prices by increasing competition. The law requires the government to compete acquisitions with few exceptions and includes advanced notification timeframes for imminent solicitations as well as minimum response times for contractors responding to solicitations. Nevertheless, in the 30 years since CICA enactment, there is growing concern that competition processes have not always met the desired goals for effective competition. Beginning in 2010, then Under Secretary of Defense for Acquisition, Technology, and Logistics (USD[AT&L]) Ashton Carter included promotion of competition in his Better Buying Power (BBP) initiatives.[1] Among other things, the BBP series of guidance documents issued from 2010 through 2015 included direction to DoD policy makers to streamline the competition process, but also identified that for services, where a single offer was received in response to a solicitation open for less than 30 days, the agency was to resolicit for an additional 30 days.

This direction led to a broader regulatory proposal to limit the ability of contracting officials to avail themselves of the standard for competition at FAR 15.403-1(c) to justify a fair and reasonable price that prohibits obtaining cost or pricing data where there was an expectation of competition from 2 or more offerors. That broader shift in policy did not require an additional 30-day resolicitation period, but in June 2012, DoD issued a final rule to the DFARS addressing competitive procedures when only one offer is received in response to a solicitation that requires resolicitation and revised requirements as needed. That rule was not limited to the acquisition of services. To date, overall increases in effective competition, which have ranged from 50 to 60 percent since 2010 and been the historic range for many years for DoD competition, have not been documented by DoD since the implementation of that policy, nor is data available to support its continuance.[2] The BBP memos do identify that more engagement with industry and other structural changes to the business relationships between the private sector and DoD, such as issuing better demand signals and enhancing knowledge about the value of Intellectual Property, are more important than minor process changes that delay the procurement cycle, but have negligible effect on the competitive process.

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[1] OSD Memorandum, *Better Buying Power: Guidance for Obtaining Greater Efficiency and Productivity in Defense Spending,* September 14, 2010, accessed November 7, 2018, https://www.acq.osd.mil/fo/docs/USD_ATL_Guidance_Memo_September_14_2010_FINAL.PDF.
[2] "Contract Policy: Competition," Defense Pricing and Contracting, accessed November 29, 2018, https://www.acq.osd.mil/dpap/cpic/cp/competition.html.

Discussion

DFARS 215.371-1 states, "It is DoD policy, if only one offer is received in response to a competitive solicitation … To take the required actions to promote competition." The contracting officer is required to conduct market research and engage in a variety of requirements outreach activities prior to developing the strategy and solicitation and is required to identify a list of potential offerors interested in the acquisition as well as scan the marketplace for new or unfamiliar sources.[3] Contracting officers have a good indication long before a solicitation closes, and throughout the presolicitation procurement cycles, even before developing the strategy or solicitation, if the acquisition circumstances will promote effective competition. This foresight includes knowing whether or not two or more offerors are likely to emerge, allowing for strategies to draw new offerors to the federal market, and acknowledging that contracting officers are required to solicit potential offerors and anyone else that expresses interest in a procurement (such a request itself is an indicator of interest in competition). If contracting officers believe competition is unlikely or a modification to the strategy is necessary to promote competition, the time to strategize about increased competition is when drafting the strategy, not after offers have been received. Thus, all the predicate steps to achieving effective competition are taken from the outset of any procurement and are subject to internal and external process outcome reviews by agency managers and several oversight organizations to assure that contracting officials have taken steps to maximize competition.

Interested parties also have multiple opportunities prior to the solicitation phase to be notified of the government's requirement and intent to solicit. FAR 5.203 requires a proposed contract action be publicized 15 days prior to issuance of the solicitation. DFARS 215.371-2 (a)(2) requires contracting officers to "Resolicit, allowing an additional period of at least 30 days for receipt of proposals" in instances where solicitations were open for less than 30 days and only one offer was received. Resoliciting does not resolve a potentially flawed acquisition strategy that does not fully promote competition. Nor does it obviate the need for offerors to monitor acquisitions and respond to solicitations in a timely manner. The requirement at DFARS 215.371-2 to resolicit for an additional 30 days has proven itself unlikely to result in additional interest in an acquisition or increased competition and only delays acquisitions. That said, when only one offer is received, the contracting officer is required to "consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition" and, further, seek post-award feedback from potential offerors. This feedback is to be documented and used in future acquisitions to promote competition.[4] The requirement to adopt lessons learned in any given procurement and to adapt the procurement strategy for the future, which force contracting officers and requiring activities to analyze their requirements and methods of fulfilling them, are more likely to promote competition than relying on resoliciting, which will likely only delay the acquisition.

Conclusions

Interested parties have multiple opportunities prior to the solicitation closing to be notified of the government's requirement and intent to solicit, e.g. market research, synopsis and to engage in the competitive process. The policy to resolicit adds time to the procurement process, has no direct nexus to any documented increase in competition in DoD and does not align with other internal and external

[3] Procedures, Guidance and Information, DFARS 210.002.
[4] Source Selection: Promote Competition, DFARS 215.371-2 and DFARS PGI 215.371-2.

outreach activities conducted by contracting officials as a predicate to soliciting competitive offerors. The requirement at DFARS 215.371-2 for contracting officers to resolicit for an additional 30 days when only one offer is received in response to a solicitation should be repealed.

Subrecommendation 75b: Eliminate the documentation approval process for DoD programs to use OMB-designated best-in class contract vehicles for direct acquisitions.

Background

OMB designates more than a dozen interagency contracts as best-in-class (BICs). Several of these contracts provide DoD and other agencies with access to IT services and solutions. The General Services Administration (GSA) publishes a regularly updated list of approved BICs via the agency's Acquisition Gateway web tool.[5] When DoD conducts acquisitions using non-DoD BIC contract vehicles, there are lengthy documentation approval processes. These approval processes can take several months and incentivizes contracting personnel to use or create agency-unique contract vehicles. Avoidance of already-established contract vehicles increases the amount of duplicative administrative work in DoD contracting offices and potentially decreases the government's negotiating power.[6]

Discussion

Interagency contracting is an important part of DoD's acquisition system, particularly in IT and other areas that may require specialized technical or market knowledge on the part of contracting professionals. Interagency contracting can also be important when buying commoditized products. If the government, as a whole, purchases large amounts of something, a large, preexisting, nondefense contract may provide a faster and higher-quality solution than if contracting officers were to develop a brand-new contract. Statutory requirements on interagency contracts exist under 10 U.S.C. § 2304 and 31 U.S.C. § 1535 (commonly referred to as the Economy Act). The acquisition community implements these laws via FAR Part 17 and DFARS Part 217.[7]

10 U.S.C. § 2304(f) establishes restrictions on making a contract award using "other than competitive procedures," including the streamlined process of using a non-DoD BIC contract vehicle. The section creates thresholds above which senior officials must approve a written justification for the acquisition in question. For contracts valued at $75 million or more, an agency-level senior procurement executive must provide approval.[8] DFARS 217.7 expands these requirements, adding special procedures for interagency contract acquisitions that exceed the simplified acquisition threshold. The subpart requires

[5] Table lists all BICs identified as providing access to IT solutions in GSA Acquisition Gateway, "Best in Class (BIC) Consolidated List," accessed April 30, 2018, https://hallways.cap.gsa.gov/app/#/gateway/best-class-bic/6243/best-in-class-bic-consolidated-list.
[6] In order to use agency-unique solutions, a contracting office must in many cases spend time and resources putting a new contract vehicle in place (complete with a competition to establish an indefinite delivery, indefinite quantity vehicle as required under FAR Part 15). These same solutions might be obtained by competing a task order on an existing contract vehicle using the more streamlined FAR 16.5 procedures.
[7] Agency Agreements, 31 U.S.C. § 1535(a), states, "The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if (1) amounts are available; (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government; (3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and (4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise."
[8] Under Chief Acquisition Officers and Senior Procurement Executives, 41 U.S.C. § 1702(c), *senior procurement executive* refers to the person "responsible for management direction of the procurement system of the executive agency."

DoD components to conduct best-interest evaluations, scope determinations, funding reviews, and data collection and reporting.[9]

DoD interagency procurements are categorized as either direct or assisted. A direct acquisition is one for which a requiring agency places an order directly against another agency's existing contract vehicle—essentially placing a simple purchase order. An assisted acquisition is one for which the requiring agency sends requirements to the contracting agency, which then engages in acquisition processes on behalf of the requiring agency.[10]

Greater use of interagency OMB-designated BICs in DoD contracting should be encouraged. Using BICs may provide several benefits:

- Allowing for the development of common requirements.
- Reducing duplicate contracts (freeing up more of the contracting workforce for other priorities).
- Applying demand management practices; and
- Improving the government's negotiating power with vendors.[11]

Despite the clear benefits to using OMB-designated BICs for contracting, DoD creates mechanisms that discourage their use. Through an overabundance of unnecessary approval documents and signature-accumulation exercises, DoD incentivizes acquisition personnel to create new, duplicative, and overly expensive contract vehicles rather than rely on preexisting ones.

Conclusion

Statutory requirements on interagency contracts exist under the Economy Act and additional documentation required of DoD when using best in class contract vehicles for direct acquisitions discourages use of these vehicles. The results are inefficient contracting strategies and loss of volume discounts and purchasing power. The documentation approval process for DoD programs to use best-in-class contract vehicles for direct acquisitions should be eliminated. The approval process for assisted acquisitions should remain unchanged to ensure greater visibility of offloading and control of contract terms and conditions.

Subrecommendation 75c: Repeal regulatory requirement for preaward Equal Employment Opportunity (EEO) clearance, FAR 22.805(a).

Background

The 1965 Executive Order (EO) 11246, Equal Employment Opportunity, prohibits the discrimination of government or government contractor employees or applicants for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Section 211 of the EO indicates,

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[9] Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense, DFARS 217.7.
[10] See Procedures, FAR 17.502-1(a). Definitions adapted in part from presentation by Steve Sizemore, *Interagency Acquisition,* GSA Federal Acquisition Service, April 25-26, 2017, 3, accessed May 11, 2018, https://interact.gsa.gov/sites/default/files/Interagency%20Acquisition_2017_CLP.pdf.
[11] Adapted in part from presentation by Geri Haworth, *Best in Class Contracts,* GSA Professional Services & Human Capital Symposium, June 6-8, 2017, accessed April 23, 2018, https://interact.gsa.gov/sites/default/files/PSHC%20Symp%20-%20Best%20in%20Class%20Contracts%20Final.pdf.

> *If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.*

Although the EO does not describe a lengthy precontract award process to demonstrate compliance, the FAR's implementation of the EO does.

Discussion

FAR 22.805(a) requires clearance from the Department of Labor's (DOL's) Office of Federal Contract Compliance Programs (OFCCP) that contracts and subcontracts over $10 million are compliant with one or more of the requirements of EO 11246. This requirement is duplicative with FAR 52.222-26 and leads to unnecessary delays.

This process can take up to 35 consecutive days prior to award of a contract for all contracts and subcontract awards over $10 million. Contracting officers are required to submit a preaward clearance request 30 days before the proposed award date, once the awardee is known. On submitting the request to the OFCCP, contracting officers must wait up to 15 days for a response. The response may come in the form of granted clearance for award or a notification of intent to conduct a compliance evaluation, which can take an additional 20 days. In FY 2017, according to data retrieved from FPDS, there were 3,200 contracts awarded meeting this threshold.[12] These 3,200 contracts do not include subcontract awards or modifications to contracts that would constitute a contract award, both of which may also be subjected to this clearance process. In a worst-case scenario the potential result is a cumulative delay, in just one fiscal year, of up to 113,000 days waiting for this clearance, the equivalent of more than 300 years.[13]

Case Study:
Mission Vulnerability Caused by EEO Pre-Award Clearance

One contracting officer interviewed described an emergent requirement performed by a nontraditional contractor not previously cleared by the OFCCP for EEO compliance. The contracting officer submitted a request for preaward clearance to the OFCCP, waited the requisite 15 days and never received a response from the office. After considering this tacit approval of the contractor's compliance with the requirements of EO 11246, the contracting officer proceeded with award. The lack of response caused a 15 day vulnerability to a critical Army mission. The contracting officer indicated that even in instances of urgency, the regulations do not provide enough latitude for timely execution, as claims of urgency require coordination between the head of the contracting activity and OFCCP, which is an even more burdensome and lengthier process than coordinating with the OFCCP directly and waiting for a response.[14]

[12] Based on Section 809 Panel staff analysis of FPDS query results for FY 2017 base and all options value of DoD modification-zero contract actions above $10 million. Blanket purchase agreement, blanket order agreement, and indefinite delivery contract actions omitted from query. FPDS data extracted July 13, 2018 produced 3,221 results.
[13] Number of days based on calculation of number of contracts (about 3,200) multiplied by 35 days. Number of years based on number of days (about 113,000) divided by 365 days per year.
[14] Data collection interviews, conducted by Section 809 Panel Team 6: IT Acquisition, August 2018.

With few exceptions, all contracts over $10 million must include FAR clause 52.222-26, Equal Opportunity, which requires the contractor to comply with EO 11246 and the rules, regulations, and orders of the Secretary of Labor.[15] The clause at 52.222-26 is required for use in all solicitations and contracts estimated over $10,000 unless it fits one of the aforementioned exceptions for national security or under exceptional circumstances. The clause describes the contractual authority of the OFCCP to cancel, terminate or suspend the contract after issuance if the contractor is found not to be in compliance with the clause or any rule enforced by DOL relative to EO 11246. Among other things, the clause has substantive obligations for a contractor not to discriminate for employment purposes on the basis of a variety of factors, to take affirmative action to prevent discrimination in employment, to publicize and disseminate the remedies and protections for workers for any non-compliance, and to allow OFCCP to have access and enforce prescribed remedies for non-compliance. It is also required as a clause for use in the simplified acquisitions of commercial items. As such, the clause is one that is included in virtually all federal forms used to both solicit offers from industry and to award final contracts, and is typically included in the final form contracts in Section I as part of the general reference provisions, which then become part of the performance requirements of every contract, subject to remedies for breach, False Claims Act liability and specific OFCCP enforcement actions.

Prior to even being solicited, as a predicate to becoming eligible to receive a federal contract, offerors are also required to register their company in the System for Award Management (SAM), incorporated by reference in contracts at clause 52.204-7, which encompasses the data base for online representations and certifications (formerly ORCA). ORCA contains two related EEO compliance clauses at 52.222-22, Previous Contracts and Compliance Reports, and 52.222-25, Affirmative Action Compliance. Both clauses require an affirmative representation by any recognized federal contract offeror to their prior compliance with the Equal Opportunity clause at 52.222-26 and that they have an Affirmative Action program in place whose compliance is monitored by the OFCCP under EO 11246. Insofar as the pre-award process includes multiple ongoing representations as to EO compliance prior to receiving a solicitation, and any contract awarded contains the operative clause at 52.222-26 that provides for various remedies for non-compliance, including breach of contract, it is reasonable to conclude that when an offeror to a federal contract self-certifies their agreement to, and previous compliance with, the requirements of EO 11246 by signing their proposal/offer to the federal government, the government has ample protection from potential contractor noncompliance prior to the time of award. Thus, under contract formation principles and law, the contractor has both certified to their previous and ongoing compliance with EO 11246 and then promised their future compliance, subject to breach, on the specific contract.

The Pre-award Compliance Review Clearance form required under FAR 22.805 thus duplicates a series of electronic and paper oversight mechanisms that are already embedded in the procurement process in the FAR solicitation and contract clauses, SAM and ORCA representations and certification already and is unnecessary at the award stage to ensure that contractors are in compliance with EO 11246 or Equal Opportunity law generally. While we understand that DOL may object to eliminating the pre-award compliance clearance form, it is not true that eliminating it will create additional compliance or

[15] Exceptions include national security contracts and those explicitly excluded by the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor.

performance risk or that oversight of the EO will be any less strictly construed under contract law provided the offeror has completed their mandatory SAM registration and signed their offer, but its elimination will allow for greater speed to award and one less duplicative procurement file document."

Precedent exists in acquisition regulations for contractors to self-certify compliance in streamlined processes that avoid the delay of government validation. EO 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, for instance, simply requires the contractor to certify, prior to award, it has implemented a compliance plan to prevent prohibited activities. The same process should apply to EO 11246. Contractor certification prior to award should be sufficient, with ongoing compliance checks by OFCCP. Authority to take action against noncompliance would come from the EO authority. This reform would greatly reduce the procurement acquisition lead time and allow for speedier contract awards.

Conclusion

Requirements for preaward EEO clearance are inconsistent with comparable labor laws and EOs, which rely on contractor certification and post-award enforcement using the terms of the contract and the EO. The preaward clearance process leads to substantial delays in contract awards and should be repealed.

Subrecommendation 75d: Revise FAR 19.815 to allow for tacit release for non-8(a) competition by the Small Business Administration (SBA) if concurrence or rejection has not been received by the Small Business Administration after 15 working days.

Background

In the Small Business Act of July 30, 1953, Congress created the Small Business Administration (SBA), for which the function was to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns." The charter also stipulated that SBA would ensure small businesses a "fair proportion" of government contracts and sales of surplus property.[16] Section 8 of the act allows the SBA to enter into contract with the government and subsequently "arrange for the performance of such procumbent contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns."[17] This program is commonly referred to as the 8(a) program, deriving its name from the section of the act itself. The 8(a) program allows or, in some cases, requires the limitation of competition for certain contracts to businesses that participate in the 8(a) Business Development Program. The program helps the government achieve its socioeconomic goal to award at least 5 percent of federal contracting dollars to small disadvantaged businesses each year.[18]

Discussion

The FAR implements section 8(a) of the Small Business Act in subpart 19.8. The FAR offers detail on the process of contracting with SBA, including how to select acquisitions and determine eligibility as a

[16] "About the SBA: History," U.S. Small Business Administration, accessed November 8, 2018, https://www.sba.gov/about-sba/what-we-do/history.
[17] Small Business Act § 8(a)(1)(B).
[18] "8(a) Business Development Program," U.S. Small Business Administration, accessed November 8, 2018, https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program.

small business, the agency offering and SBA acceptance, and contract execution and administration processes. Unique to the 8(a) program and its requirements is the presumption of perpetual inclusion.

The FAR indicates that "once a requirement has been accepted by SBA into the 8(a) program, any follow-on requirements shall remain in the 8(a) program unless there is a mandatory source… or SBA agrees to release the requirement from the 8(a) program."[19] The FAR briefly describes the process to release a procurement from the 8(a) program. Unlike the detailed process for determining whether to accept a requirement for the 8(a) program, which allows the SBA 10 working days to accept offers over the simplified acquisition threshold and 2 working days for those under the threshold, there is no prescribed timeframe when a request is made to release a requirement from the 8(a) program. This prevents contracting officers from soliciting performance outside the 8(a) program and causes unnecessary delays while waiting for the SBA's response. One source indicated on several occasions his office requested release of a requirement, or portion of a requirement, and waited between 3 and 90 days while the SBA processed the request for release. He said, "The lack of predictability of the SBA in the release process is very detrimental to acquisition planning and our ability to adhere to schedule constraints for critical programs within the DoD."[20]

Conclusions

SBA should be allowed 15 working days after receipt of the contracting officer's written request, described at FAR 19.815(b), to respond with a determination whether to release a requirement from the 8(a) program. If SBA does not provide the requesting contracting officer with a determination within that period, release from the 8(a) program should be presumed and the contracting officer should be authorized to proceed with award outside the 8(a) program.

Implementation

Legislative Branch

- Revise 10 U.S.C. 2304(f) to clarify and streamline the process of awarding DoD task orders under OMB-designated BIC contract vehicles. For assisted acquisitions, the current process may remain in place with higher-level approvals needed. For direct acquisitions, DoD contracting officers should execute the acquisition without explicit approval.

Executive Branch

- Repeal requirement at DFARS 215.371-2 to resolicit for an additional 30 days when only one offer was received in response to a solicitation.
- Eliminate the documentation approval process required at DFARS 217.770 for DoD programs to use OMB-designated BIC contract vehicles for direct acquisitions.
- Repeal requirement for pre-award EEO clearance, FAR 22.805(a).

[19] Release for Non-8(a) Procurement, FAR 19.815(a).
[20] Email to Section 809 Panel, September 2018.

- Revise FAR 19.815 to allow for tacit release for non-8(a) competition by the SBA if no response has been received by the SBA after 15 working days.

Implications for Other Agencies

- The recommended changes to the statutes and the FAR would apply to DoD and civilian agencies that use the FAR. Both DoD and civilian agencies will benefit from these recommendations.

RECOMMENDED REPORT LANGUAGE

SEC. ___. ADMINISTRATIVE SIMPLIFICATION.

This section would revise procurement planning and compliance by making a number of repeals and amendments to current law. Specifically, this section would repeal Section 829 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2306 note) to eliminate certain approval requirements for cost-type contracts. This section would also repeal Section 2304a(d) of title 10, United States Code and Section 4103(d) of title 41, United States Code, to eliminate determinations by the head of the agency before making a single source award of a task order or delivery order contract. This section would amend Section 326(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2302 note) to repeal the limitation of delegation of authority with respect to contracts requiring use of certain ozone-depleting substances. Further, this section would be amended to repeal expired reporting requirements. Finally, this section would require the Department of Defense to consolidate or eliminate redundant or unnecessary requirements in the Federal Acquisition Regulation, its defense supplement, and defense acquisition directives

This committee notes this section is intended to eliminate processes, reviews, and approvals that are redundant, non-value-added, or unduly restrictive, which ultimately reduce acquisition agility and delay delivery of capability to the warfighter. The committee expects these amendments would advance efforts to streamline acquisition procedures, reducing procurement lead time and associated costs while maintaining rigor in oversight.

SEC. ___. ADMINISTRATIVE SIMPLIFICATION.

(a) REPEAL OF APPROVAL REQUIREMENT FOR COST-TYPE CONTRACTS ABOVE A CERTAIN THRESHOLD.—

(1) REPEAL.—Section 829 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2306 note) is amended by striking subsection (b).

(2) TECHNICAL AMENDMENT.—Such section is further amended by striking "(a) and all that follows through "to establish" and inserting "The Defense Federal Acquisition Regulation Supplement shall establish".

(b) REPEAL OF REQUIREMENT FOR CERTAIN DETERMINATIONS BY HEAD OF AGENCY BEFORE MAKING A SINGLE SOURCE AWARD OF A TASK OR DELIVERY ORDER CONTRACT EXCEEDING $112,000,000.—

(1) DEFENSE CONTRACTS.—Section 2304a(d) of title 10, United States Code, is amended by striking paragraph (3).

(2) CIVILIAN AGENCY CONTRACTS.—Section 4103(d) of title 41, United States Code, is amended by striking paragraph (3).

(c) REPEAL OF LIMITATION ON DELEGATION OF CERTAIN AUTHORITY WITH RESPECT TO CONTRACTS REQUIRING USE OF CERTAIN OZONE-DEPLETING SUBSTANCES.—

(1) LIMITATION ON DELEGATION.—Section 326(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2302 note) is amended by striking the second sentence of paragraph (3).

(2) EXPIRED REPORTING REQUIREMENT.—Such section is further amended by striking paragraphs (4) and (5).

(d) REDUCTION IN REGULATORY REDUNDANCY, ETC.—

(1) The Secretary of Defense shall revise the DFARS and defense acquisition directives as necessary—

(A) to eliminate redundancy in those documents with requirements in the FAR;

(B) to eliminate or reduce, to the extent possible, requirements (including requirements for documentation) in those documents that are redundant or unnecessary;

(C) with respect to the Acquisition Plan and Acquisition Strategy for a program or system, to provide for reduction and elimination of redundant requirements (including requirements for documentation) and, to the extent possible, for consolidation of the Plan and Strategy.

(2) DEFINITIONS.— In this section:

(A) DEFENSE ACQUISITION DIRECTIVES.—The term "defense acquisition directives" means the following:

(i) Department of Defense Instruction 5000.02.

(ii) Department of Defense Instruction 5000.74.

(iii) Department of Defense Instruction 5000.75.

(B) FAR.—The term "FAR" means the Federal Acquisition Regulation.

(C) DFARS.—The term "DFARS" means the defense supplement to the FAR.

(3) LIMITATION.—Paragraph (1) does not authorize the Secretary of Defense to eliminate a regulation that implements a requirement imposed by law or Executive order.

(4) DEADLINE.—The Secretary shall complete the actions required by paragraph (1) not later than one year after the date of the enactment of this Act.

determines that the advisory and assistance services are incidental and not a significant component of the contract.

Recommendation 75a

Revise DFARS by striking language below:

SUBPART 215.3--SOURCE SELECTION

215.371 Only one offer.
215.371-1 Policy.
It is DoD policy, if only one offer is received in response to a competitive solicitation—

(a) To take the required actions to promote competition (see 215.371-2); and

(b) To ensure that the price is fair and reasonable (see 215.371-3) and to comply with the statutory requirement for certified cost or pricing data (see FAR 15.403-4).

215.371-2 Promote competition.
Except as provided in sections 215.371-4 and 215.371-5—

(a) If only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer shall—

(1) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see FAR 6.502(b) and 11.002); and

~~(2) Resolicit, allowing an additional period of at least 30 days for receipt of proposals; and~~

(b) For competitive solicitations in which more than one potential offeror expressed an interest in an acquisition, but only one offer was ultimately received, follow the procedures at PGI 215.371-2.

215.371-3 Fair and reasonable price.

(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 a 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(a)(3) or has been waived in accordance with section 215.371-5), the contracting officer shall—

(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 a 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

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

(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.

215.371-4 Exceptions. ***(DEVIATION 2018-O0018)***

(a) The requirements at sections 215.371-2 do not apply to—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions, as determined by the head of the contracting activity, in support of contingency or humanitarian or peacekeeping operations; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate the provision of international disaster assistance; or to support response to an emergency or major disaster;

Class Deviation- 2018-O0018, Micro-Purchase Threshold, Simplified Acquisition Threshold, and Special Emergency Procurement Authority. This clause deviation is effective on August 31, 2018, and remains in effect until incorporated into the FARS or DFARS, or until otherwise rescinded.

(a) The requirements at sections 215.371-2 do not apply to—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions in support of contingency or humanitarian or peacekeeping operations; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate the provision of international disaster assistance; or to support response to an emergency or major disaster;

(3) Small business set-asides under FAR subpart 19.5, set asides offered and accepted into the 8(a) Program under FAR subpart 19.8, or set-asides under the HUBZone Program (see FAR 19.1305(c)), the Service-Disabled Veteran-Owned Small Business Procurement Program (see FAR 19.1405(c)), or the Women-Owned Small Business Program (see FAR 19.1505(d));

(4) Acquisitions of basic or applied research or development, as specified in FAR 35.016(a), that use a broad agency announcement; or

(5) Acquisitions of architect-engineer services (see FAR 36.601-2).

(b) The applicability of an exception in paragraph (a) of this section does not eliminate the need for the contracting officer to seek maximum practicable competition and to ensure that the price is fair and reasonable.

~~**215.371-5 Waiver.**~~

~~(a) The head of the contracting activity is authorized to waive the requirement at 215.371-2 to resolicit for an additional period of at least 30 days.~~

~~(b) This waiver authority cannot be delegated below one level above the contracting officer.~~

215.371-6 Solicitation provision.

Use the provision at 252.215-7007, Notice of Intent to Resolicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial

items, that will be solicited for fewer than 30 days, unless an exception at 215.371-4 applies or the requirement is waived in accordance with 215.371-5.

252.215-7007 Notice of Intent to Resolicit.
As prescribed at 215.371-6, use the following provision:

NOTICE OF INTENT TO RESOLICIT (JUN 2012)

This solicitation provides offerors fewer than 30 days to submit proposals. In the event that only one offer is received in response to this solicitation, the Contracting Officer may cancel the solicitation and resolicit for an additional period ~~of at least 30 days~~ in accordance with 215.371-2.

Recommendation 75b

Revise FAR by adding proposed language below:

SUBPART 17.5 -- INTERAGENCY ACQUISITIONS

17.500 -- Scope of Subpart.

(a) This subpart prescribes policies and procedures applicable to all interagency acquisitions under any authority, except as provided for in paragraph (c) of this section. In addition to complying with the interagency acquisition policy and procedures in this subpart, nondefense agencies acquiring supplies and services on behalf of the Department of Defense shall also comply with the policy and procedures at subpart 17.7.
(b) This subpart applies to interagency acquisitions, see 2.101 for definition, when—
(1) An agency needing supplies or services obtains them using another agency's contract; or
(2) An agency uses another agency to provide acquisition assistance, such as awarding and administering a contract, a task order, or delivery order.
(c) This subpart does not apply to—
(1) Interagency reimbursable work performed by Federal employees (other than acquisition assistance), or interagency activities where contracting is incidental to the purpose of the transaction; or
(2) Orders of $550,000 or less issued against Federal Supply Schedules.
(3) Direct acquisitions for orders placed under OMB Best In Class (BIC) designated contracts.

Revise DFARS by adding proposed language below:

SUBPART 217.7-- INTERAGENCY ACQUISITIONS: ACQUISITIONS BY NONDEFENSE AGENCIES ON BEHALF OF THE DEPARTMENT OF DEFENSE
(Revised September 21, 2015)

217.700 Scope of subpart.
This subpart—

(a) Implements section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375), section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), and section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84); and

(b) Prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

217.701 Definitions.

As used in this subpart—

"Assisted acquisition" means the type of interagency contracting through which acquisition officials of a non-DoD agency award a contract or a task or delivery order for the acquisition of supplies or services on behalf of DoD.

"Direct acquisition" means the type of interagency contracting through which DoD orders a supply or service from a Governmentwide acquisition contract maintained by a non-DoD agency.

"Governmentwide acquisition contract" means a task or delivery order contract that–

(i) Is entered into by a non-defense agency; and

(ii) May be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government

217.702 Exceptions.

(a) Direct acquisitions for orders placed under OMB Best In Class (BIC) designated contracts are not subject to this subpart.

217.770 Procedures.

Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—

(a) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—

(1) Satisfying customer requirements;

(2) Schedule;

(3) Cost effectiveness (taking into account discounts and fees). In order to ensure awareness of the total cost of fees associated with use of a non-DoD contract, follow the procedures at PGI 217.770(a)(3); and

(4) Contract administration (including oversight);

(b) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;

(c) Reviewing funding to ensure that it is used in accordance with appropriation limitations; and

(d) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements in subpart 204.6.

Recommendation 75c

Revise FAR by striking language below:

Subpart 22.8 -- Equal Employment Opportunity

22.805 -- ~~Procedures.~~Reserved.

~~(a) *Preaward clearances for contracts and subcontracts of $10 million or more (excluding construction).*~~

~~(1) Except as provided in paragraphs (a)(4) and (a)(8) of this section, if the estimated amount of the contract, subcontract is $10 million or more, the contracting officer shall request clearance from the appropriate OFCCP regional office before --~~

~~(i) Award of any contract, including any indefinite delivery contract or letter contract; or~~

~~(ii) Modification of an existing contract for new effort that would constitute a contract award.~~

~~(2) Preaward clearance for each proposed contract and for each proposed first-tier subcontract of $10 million or more shall be requested by the contracting officer directly from the OFCCP regional office(s). Verbal requests shall be confirmed by letter or facsimile transmission.~~

~~(3) When the contract work is to be performed outside the United States with employees recruited within the United States, the contracting officer shall send the request for a preaward clearance to the OFCCP regional office serving the area where the proposed contractor's corporate home or branch office is located in the United States, or the corporate location where personnel recruiting is handled, if different from the contractor's corporate home or branch office. If the proposed contractor has no corporate office or location within the United States, the preaward clearance request action should be based on the location of the recruiting and training agency in the United States.~~

~~(4) The contracting officer does not need to request a preaward clearance if --~~

~~(i) The specific proposed contractor is listed in OFCCP's National Preaward Registry via the Internet at https://ofccp.dol-esa.gov/preaward/pa_reg.html;~~

~~(ii) The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and~~

~~(iii) The contracting officer documents the Registry review in the contract file.~~

~~(5) The contracting officer shall include the following information in the preaward clearance request:~~

~~(i) Name, address, and telephone number of the prospective contractor and of any corporate affiliate at which work is to be performed.~~

~~(ii) Name, address, and telephone number of each proposed first-tier subcontractor with a proposed subcontract estimated at $10 million or more.~~

~~(iii) Anticipated date of award.~~

~~(iv) Information as to whether the contractor and first-tier subcontractors have previously held any Government contracts or subcontracts.~~

~~(v) Place or places of performance of the prime contract and first-tier subcontracts estimated at $10 million or more, if known.~~

~~(vi) The estimated dollar amount of the contract and each first-tier subcontract, if known.~~

~~(6) The contracting officer shall allow as much time as feasible before award for the conduct of necessary compliance evaluation by OFCCP. As soon as the apparently successful offeror can be determined, the contracting officer shall process a preaward clearance request in accordance with agency procedures, assuring, if possible, that the preaward clearance request is submitted to the OFCCP regional office at least 30 days before the proposed award date.~~

~~(7) Within 15 days of the clearance request, OFCCP will inform the awarding agency of its intention to conduct a preaward compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a preaward compliance evaluation, clearance shall be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a preaward compliance evaluation, OFCCP shall be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance shall be presumed and the awarding agency is authorized to proceed with the award.~~

~~(8) If the procedures specified in (a)(6) and (a)(7) of this section would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the offer or extension thereof, the contracting officer shall immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award and request clearance be provided before that date. If the OFCCP regional office advises that a preaward evaluation cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward evaluation from the OFCCP regional office.~~

~~(9) If, under the provisions of (a)(8) of this section, a postaward evaluation determines the contractor to be in noncompliance with E.O. 11246, the Deputy Assistant Secretary may authorize the use of the enforcement procedures at 22.809 against the noncomplying contractor.~~

~~(b) *Furnishing posters*. The contracting officer shall furnish to the contractor appropriate quantities of the poster entitled "Equal Employment Opportunity Is The Law." These shall be obtained in accordance with agency procedures.~~

Recommendation 75d

Revise FAR by adding and striking the proposed language below:

Subpart 19.8 -- Contracting with the Small Business Administration (The 8(a) Program)

19.815 – Release for Non-8(a) Procurement.

(a) Once a requirement has been accepted by SBA into the 8(a) program, any follow-on requirements shall remain in the 8(a) program unless there is a mandatory source (see 8.002 or 8.003) or SBA agrees to release the requirement from the 8(a) program in accordance with 13 CFR 124.504(d).
(b) To obtain release of a requirement for a non-8(a) procurement (other than a mandatory source listed at 8.002 or 8.003), the contracting officer shall make a written request to, and receive concurrence from, the SBA Associate Administrator for Business Development.
(c)

(1) The written request to the SBA Associate Administrator for Business Development shall indicate—

(i) Whether the agency has achieved its small disadvantaged business goal;
(ii) Whether the agency has achieved its HUBZone, SDVOSB, WOSB, or small business goal(s); and
(iii) Whether the requirement is critical to the business development of the 8(a) contractor that is currently performing the requirement.

(2) Generally, a requirement that was previously accepted into the 8(a) program will only be released for procurements outside the 8(a) program when the contracting activity agency agrees to set aside the requirement under the small business, HUBZone, SDVOSB, or WOSB programs.
(3) The requirement that a follow-on procurement must be released from the 8(a) program in order for it to be fulfilled outside the 8(a) program does not apply to task or delivery orders offered to and accepted into the 8(a) program, where the basic contract was not accepted into the 8(a) program.

(d) Within 15 working days of the request, the SBA will inform the awarding agency contracting officer of its decisions to concur or non-concur. If the SBA does not inform the awarding agency within that period, release from the 8(a) program shall be presumed and the awarding agency is authorized to proceed with soliciting and award outside the 8(a) program.