



ACQUISITION
TECHNOLOGY
AND LOGISTICS

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

JUL 16 2008

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
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT),
ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/ACQ
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Coordinated Contract Policy Execution Review Plan

Section 813 of the National Defense Authorization Act for Fiscal Year 2007 directed the Department of Defense to establish a Panel on Contracting Integrity. The purpose of the Panel is to conduct a Department-wide review of vulnerabilities that might lead to contracting fraud, waste, and abuse and provide Congress with recommendations for improvement.

The Panel identified the following contracting areas of vulnerability.

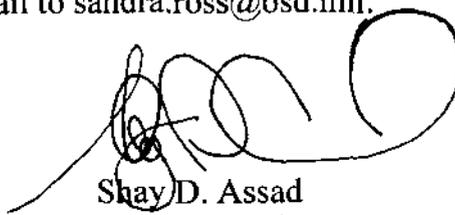
- Lack of documentation supporting the determination of a commercial item.
- Contract actions are not definitized within the required time frames and lack documentation supporting the basis for the profit/fee negotiated.
- Competition requirements for orders placed against multiple award contracts (to include Federal Supply Schedules (FSSs) orders and Blanket Purchase Agreements established under FSSs) are frequently waived without adequate documentation justifying the waiver.
- Failure to use available pricing information or adequately document fair and reasonable price determinations for sole source awards.



Review of these areas should be incorporated into your execution reviews/procurement management reviews. The criteria and the review plan action to address these vulnerabilities are included in the attachment.

Please report actions taken to incorporate review of these areas of vulnerability into your execution reviews/procurement management reviews by September 30, 2008. The results will be included in the Panel's 2008 Report to Congress.

Components are requested to report the status of reviews to DPAP, as well as any recommendations for DoD policy revision/clarification, by October 31, 2009 and annually thereafter. Questions regarding these requirements may be addressed to Ms. Sandra Ross at (703) 695-9774 or via email to sandra.ross@osd.mil.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', with a large circular flourish at the end.

Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing

Attachment:
As Stated

Attachment

Department-wide Areas of Contracting Vulnerability

Identified Vulnerability	Criteria	Review Plan Action
<p>1. Lack of documentation regarding the <i>determination of a commercial item</i>.</p>	<p>The DFARS 212.102 specifies that, when using FAR Part 12 procedures for acquisitions exceeding \$1million in value, the contracting officer must determine in writing that the acquisition meets the commercial item definition in FAR 2.101, and the contracting officer must include the written determination in the contract file.</p>	<p>For commercial item acquisitions of \$1million and above, review contract files to verify that the file contains the required written determination.</p>
<p>2. Contract actions are not definitized within the required time frames and lack documentation supporting the basis for the profit or fee negotiated.</p>	<p>DFARS 217.7400 prescribes policies and procedures for <i>undefinitized contract actions</i> Specifically,</p> <ul style="list-style-type: none"> i) DFARS 217.7403(a) places limitations on use of UCAs; ii) DFARS 217.7404-1 lists approval requirements for the use of UCAs; iii) DFARS 217.7404-2, requires inclusion of a ceiling price; iv) DFARS 217.7404-3 requires timely definitization of UCAs; v) DFARS 217.7404-4 limits obligation of funds before definitization; and vi) DFARS 217.7404-6 sets allowable profit when the final price of a UCA is negotiated after a substantial portion of the required performance has been completed. 	<p>Review undefinitized contract actions to assess if contracting activities adhere to relevant DFARS requirements.</p>

Attachment

Department-wide Areas of Contracting Vulnerability

Identified Vulnerability	Criteria	Review Plan Action
<p>3. Competition (fair opportunity) requirements are frequently waived without adequate support for orders against multiple award indefinite-quantity contracts (to include Federal Supply Schedules (FSSs) and Blanket Purchase Agreements (BPAs) established under FSSs).</p>	<p>DFARS 208.405-70(b) and 216.505-70(b) were revised, effective March 21, 2006, to:</p> <ul style="list-style-type: none"> i) Incorporate circumstances described at FAR 16.505(b)(2)(i) under which competition waivers may be appropriate; ii) Expand the requirement for fair opportunity on orders exceeding \$100,000 for services placed under multiple award contracts, to also apply to orders exceeding \$100,000 for supplies placed under multiple award contracts; iii) Establish approval requirements for exceptions to fair opportunity, consistent with those at FAR 8.405-6. <p>These changes expanded on the requirements set forth in DFARS 208.405-70(b), 216.505-70(b) and PGI 208.405-70 pertaining to orders greater than \$100,000 and BPAs established under FSS.</p>	<p>Review orders placed under multiple award contracts (to include FSS and BPAs established under FSS contracts) awarded after March 21, 2006 to verify that contracting officers adhered to relevant DFARS requirements and PGI.</p>
<p>4. Failure to use available pricing information or adequately support fair and reasonable price determinations for sole source awards.</p>	<p>FAR 15.403/ DFARS 215.403 address when contracting officers must obtain cost or pricing data if the procurement is above the Truth in Negotiation Act (TINA) threshold and none of the exceptions to submission of cost or pricing data apply. Contracting officers must obtain whatever information or data is necessary to determine a fair and reasonable price when TINA does not apply.</p>	<p>Review the procurement files to determine if:</p> <ul style="list-style-type: none"> (1) Cost or pricing data was obtained when required; or (2) Sufficient information, other than cost or pricing data, was obtained to support fair and reasonable price determinations.