

**COMMERCE ACQUISITION MANUAL
1306.70**

DEPARTMENT OF COMMERCE
COMPETITION REQUIREMENTS

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COMPETITION REQUIREMENTS

SECTION 1 – Overview

1.1 Background

Effective competition lies at the heart of the federal acquisition system. Obtaining competition when acquiring goods and services increases the Government's buying power, as competition can drive down costs, potentially heighten performance, innovation and overall value, and help curb fraud and waste. In contrast, noncompetitive contracts place the Government in the position of negotiating contracts without the benefit of a direct market mechanism to help establish pricing and deprive the Government of the ability to consider alternative solutions in a reasoned and structured manner.

The President's March 4, 2009, Memorandum on Government Contracting directs agencies to strengthen their use of competition and improve how contracts are structured. The Memorandum requires agencies to strive for a process that is "open and competitive" when awarding government contracts, while maintaining flexibility to tailor contracts to achieve mission and policy objectives.

When an award is made noncompetitively or only one offer is received, the Government's risk of overspending or negotiating less desirable terms and conditions significantly increases. Therefore, to the maximum extent practicable, contracting officers shall promote and provide for full and open competition in awarding contracts.

1.2 Purpose

This Commerce Acquisition Manual (CAM) chapter provides policy and guidance to promote and provide for full and open competition in the acquisition process.

1.3 Applicability

The requirements of this chapter are applicable to all acquisitions within the Department of Commerce (DOC).

1.4 Policy

With certain limited exceptions, it is the policy of the Department of Commerce to promote and provide for full and open competition in soliciting offers and awarding contracts through the use of competitive procedures.

1.5 Roles and Responsibilities

1.5.1 Senior Procurement Executive (SPE)

The Senior Procurement Executive has overall responsibility for:

- a. Developing and implementing policies and procedures for acquisitions throughout the Department of Commerce;

- b. Overseeing the Department's competitive acquisition practices through normal oversight reviews of procurement offices;
- c. Approving Justifications for Other than Full and Open Competition for proposed acquisitions in excess of \$62.5 million; and
- d. Approving an exception to the one-year limitation for contracts awarded using unusual and compelling urgency authority.

1.5.2 Head of Contracting Activity (HCA)

The Head of Contracting Activity is responsible for approving Justifications for Other than Full and Open Competition for proposed acquisitions above \$12.5 million but not exceeding \$62.5 million.

1.5.3 Senior Bureau Procurement Official (BPO)

The Senior Bureau Procurement Official is responsible for:

- a. Ensuring policies and guidance for promoting and providing for competitive acquisition practices are effectively implemented;
- b. Conducting spend analysis to evaluate the strength of competition practices and identify opportunities for improvement;
- c. Sponsoring annual vendor outreach events; and
- d. Preparing annual competition report.

1.5.4 Contracting Officers

The contracting officer is responsible for:

- a. Entering into, administering, and closing-out or terminating contracts;
- b. Ensuring the use of competitive acquisition practices;
- c. Promoting the acquisition of commercial items;
- d. Promoting full and open competition;
- e. Challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;
- f. Challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses; and
- g. Making recommendations to increase full and open competition.

1.5.5 Agency Competition Advocate

The Agency Competition Advocate is responsible for:

- a. Promoting the acquisition of commercial items;
- b. Promoting full and open competition;
- c. Challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;
- d. Challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses;
- e. Making recommendations to increase full and open competition;
- f. Approving Justifications for Other than Full and Open Competition for proposed acquisitions in excess of \$650,000 but not exceeding \$12.5 million; and
- g. Preparing the Department's annual competition report.

1.5.6 Operating Unit Competition Advocate

The Operating Unit Competition Advocate is responsible for:

- h. Promoting the acquisition of commercial items;
- i. Promoting full and open competition;
- j. Challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;
- k. Challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses;
- l. Making recommendations to increase full and open competition;
- m. Approving Justifications for Other than Full and Open Competition for proposed acquisitions up to \$650,000; and
- n. Preparing the Department's annual competition report.

END OF SECTION 1

SECTION 2 – Maximizing the Use of Competition

2.1 Full and Open Competition

Obtaining full and open competition when acquiring goods and services increases the Government's buying power, as competition can drive down costs and potentially heighten performance, innovation and overall value. Therefore, to the maximum extent practicable, contracting officers shall promote and provide for full and open competition in awarding contracts.

Contracting without providing for full and open competition or full and open competition after exclusion of sources is prohibited unless:

- a. Only one responsible source is available and no other supply or service will satisfy the requirement;
- b. The need is of such unusual and compelling urgency that the Government would be seriously injured if the supplies or services were not immediately acquired;
- c. Awarding to a specific source is necessary in order to maintain continuity of operations in the case of a national emergency or to achieve industrial mobilization; establish or maintain engineering, research or development capabilities; or acquire expert services;
- d. Precluded by the terms of an international agreement or treaty between the United States and a foreign government or international organization;
- e. Authorized or required by law or statute;
- f. National security would be compromised in disclosing the Government's requirements; or
- g. The agency head determines it is not in the public interest.

2.2 Considerations for Increasing Competition

2.2.1 Requirements Development

Requirements that are vague or unduly restrictive are detrimental to meaningful competition. To promote effective competition, sufficient information should be provided in the statement of work and sufficient time should be provided for response. The contracting officer shall ensure that commercial items are acquired to the maximum extent practicable, statements of work are not unduly restrictive, and specifications are not unnecessarily detailed. In addition, the contracting officer shall take appropriate steps to ensure that the acquisition team works collaboratively and applies their respective skill sets to understand the market for the requirement, including how industry is structured, potential cost drivers, and the competition state.

2.2.2 Performance Based Acquisition

The contracting officer shall ensure the use of performance-based acquisitions for services to the maximum extent practicable. The use of performance-based acquisitions will encourage meaningful competition by allowing vendors to offer more innovative

solutions to meet the Government's performance needs. Performance-based acquisitions will also allow vendors to offer market-tested commercial solutions at competitive pricing with risks that can be reasonably managed under a fixed-price contract.

2.2.3 Outreach and Market Research

Senior Bureau Procurement Officials shall sponsor at least one vendor and/or small business outreach event annually, and cooperate with the Office of Small and Disadvantaged Business Utilization to participate in small business outreach events. In addition, when planning an acquisition, contracting officers shall conduct market research and outreach activities, as appropriate to the circumstances, such as:

- a. Inviting potential offerors, through a request for information or an industry day that provides a general description of the scope or purpose of the acquisition, to submit information or have discussion on marketplace capabilities;
- b. Taking advantage of the full range of market research tools to understand marketplace capabilities and identify all reasonable potential solutions; or
- c. Engaging potential suppliers, whenever practicable, in an advisory process, especially for complex needs, such as major systems, that invites potential offerors, through a pre-solicitation notice, to submit information that the agency would evaluate to advise offerors of their potential to be viable competitors.

2.2.4 Acquisition Planning

Contracting officers shall ensure that as a part of market research and acquisition planning processes, the acquisition team works collaboratively to consider the comparative benefits of awarding a new contract using full and open competition versus placing an order under an existing contract. The acquisition team should evaluate and document, in the acquisition plan, the strength of each competition strategy in terms of its ability to:

- a. Generate meaningful competition;
- b. Meet needs in a timely manner;
- c. Allow for the negotiation of fair and reasonable pricing and terms and conditions to address the requirements;
- d. Meet small business goals;

2.2.5 Strategic Sourcing

Contracting officers shall actively consider the use of strategic sourcing when requirements can be satisfied through a contracting vehicle under an existing Departmental or Federal Strategic Sourcing Initiative. If a contracting vehicle under an existing strategic sourcing initiative is not used, the contracting officer shall document, in the acquisition plan, the reason the vehicle was not used.

2.2.6 Task and Delivery Orders

Contracting officers shall ensure that acquisitions achieve meaningful competition in the placement of task and delivery orders by:

- a. Applying greater competitive rigor through the disclosure of significant factors and subfactors and their relative importance when conducting the “fair opportunity process” for orders over \$5 million; and
- b. Using data generated by Federal Procurement Data System reports to evaluate new competitions on the extent to which task and delivery order competition is being achieved.

2.2.7 Socioeconomic Programs

Contracting officers should take appropriate steps to facilitate a regular collaboration of contracting and program offices with their Small Business Specialist and the Office of Small and Disadvantaged Business Utilization (OSDBU) in planning acquisitions to identify:

- a. Requirements that can be met by small businesses; and
- b. The small business contracting authority that: is best suited for a given requirement, and will help the Department meet or exceed its small business contracting goals.

In addition, contracting officers should utilize the OSDBU, the Small Business Administration, and the DOC Minority Business Development Agency to assist with market research to help identify qualified and capable small and minority business sources for prime contracting and subcontracting opportunities.

2.3 Documentation for Noncompetitive Actions

The following documentation is required for awards to be made on a noncompetitive basis:

- a. Justification for Other Than Full and Open Competition. A justification and approval fully explaining the rationale for making an award on a noncompetitive basis with supporting documentation is required in accordance with FAR Subpart 6.303 (for other than full and open competition), Subpart 8.405-6 (for orders under the Federal Supply Schedules) and Subpart 16.505(b)(5) (for orders placed under a multiple award contract without providing a fair opportunity to be considered). If a brand name specification is used, the justification must fully explain why a suitable substitute does not meet, or cannot be modified to meet, the needs of the requirement.
- b. Surveillance Plan. The contracting officer shall work with the acquisition team to develop a surveillance plan that describes how the Government will monitor, control, and mitigate risk of contract performance. The surveillance plan shall provide reasonable assurance that efficient methods and effective cost controls

are utilized, and outline the roles and responsibilities of the Government personnel involved in surveillance and demonstrate the skills and capacity of the personnel to perform adequate contract award, management and oversight. The surveillance plan shall be developed during the acquisition planning phase and modified, as needed, upon contract award. Appendix C provides a suggested Surveillance Plan template.

END OF SECTION 2

SECTION 3 – Mitigating Risk of Noncompetitive and Single Offer Contracts

3.1 Contract Limits

Noncompetitive contracts carry risk of overspending because they are negotiated without the benefit of a direct market mechanism. Contracting officers shall limit the period of performance of noncompetitive and single source contracts to the minimum period necessary to meet the requirement. The period of performance for actions awarded using unusual and compelling urgency shall not exceed the minimum period necessary for meeting the unusual and compelling urgency requirements, but no longer than one year or such period as specified by law, unless a longer period for performance is approved by the Senior Procurement Executive, in accordance with FAR 6.302-2. Such approval is in addition to that provided as part of the initial decision to make an award using other than full and open competition.

3.2 Price Reasonableness

In the absence of adequate price competition (noncompetitive and single offer), contracting officers shall obtain the information and data needed, consistent with applicable Federal Acquisition Regulation (FAR) requirements, to ensure price reasonableness.

3.3 Contractor Performance

Regular assessments and reporting of the contractor's quality, timeliness, cost control, and concern for the customer will improve the ability to motivate quality contracting performance during the life of the contract. For all noncompetitive and single offer contracts that exceed the simplified acquisition threshold, contracting officers shall comply with the performance evaluation requirements as prescribed in Commerce Acquisition Manual 1342.15.

3.4 Barriers to Competition

For all noncompetitive and single offer contracts that exceed the simplified acquisition threshold, contracting officers shall take the following steps to engage the marketplace to determine how barriers to competition can be removed:

- a. Contact sources that expressed interest in the procurement (e.g., responded to a request for information, participated in an industry day, or contacted the OSDDBU) but ultimately did not submit offers to understand the basis for their decision not to participate;
- b. Ask sources if future plans, such as those described in published justifications and approval documents for sole-source contracts, will be effective in encouraging competition and if other alternatives should be considered; and
- c. Document the results of inquiries in the contract file.

3.5 Spend Analysis

Spend analysis may be useful for identifying and analyzing competitions for which only one offer was received. Senior Bureau Procurement Officials should conduct an annual spend analysis for acquisitions in excess of \$150,000 to evaluate the strength of their competition practices and identify opportunities for improvement. Data in the Federal Procurement Data System can be used to identify the largest spending categories to analyze and compare levels of competition achieved by different organizations to determine if more successful practices may exist for obtaining greater marketplace competition for a given spending category.

3.6 Migration Strategy

The contracting officer shall develop a strategy to migrate to more competitive contracting. When re-competing a requirement, if a decision is made that it is premature to transition to a more competitive contracting strategy, the contracting officer shall document and support their rationale not to transition. The documentation shall include market research results identifying barriers to competition and results of spend analysis that does not support competitive practices.

END OF SECTION 3

SECTION 4 – Reporting Requirements

4.1 Competition Report

Annually, at the end of each fiscal year, each Senior Bureau Procurement Official shall review the competitive practices of their contracting operations and prepare a report that addresses the following:

- a. Opportunities and actions taken to acquire commercial items;
- b. Opportunities and actions taken to achieve full and open competition;
- c. Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;
- d. Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions;
- e. New initiatives required to increase the acquisition of commercial items;
- f. New initiatives required to increase competition;
- g. New initiatives to ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics;
- h. Any barriers to the acquisition of commercial items or competitions that remain;
- i. Other ways in which the acquisition of commercial items and competition have been emphasized in areas such as acquisition training and research;
- j. Initiatives that ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with FAR Sections 8.405 and 16.505;
- k. Recommendations of goals and plans for increasing competition;
- l. Recommendations of a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition;
- m. Meaningful analysis of trends, examples of representative of report findings, and recommendations that address barriers or impediments to competition;
- n. Competitive practices in the placement of orders under task and delivery order contracts; and
- o. Specific activities taken in conjunction with the Office of Small and Disadvantaged Business Utilization to ensure maximum opportunities are provided to small business.

A sample template for completion of the report is provided in Appendix B. The report shall be submitted no later than December 15 each year to the Office of Acquisition Management at the following address:

U. S. Department of Commerce
Office of Acquisition Management
Attn: Director, Acquisition Workforce and Policy Division
1401 Constitution Avenue, NW, Room 1854
Washington, DC 20230

END OF SECTION 4

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APPENDICES

APPENDIX A - DEFINITIONS

Acquisition – The acquiring by contract, interagency and other special agreement, blanket purchase agreement, or task/delivery order with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.

Acquisition Planning – The process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency's need in a timely manner and at a reasonable costs. It includes developing the overall strategy for managing the acquisition.

Acquisition Team – A team of individuals formed to prepare the individual elements of an acquisition plan and execute the acquisition. The team should be comprised of representatives from Acquisition, Budget, Legal, technical offices, small business and any other areas as necessary.

Commercial Item – Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes and has either been offered or actually sold, leased, or licensed to the general public.

Market Research – Collecting and analyzing information about capabilities within the market to determine the breadth and scope of concerns available to satisfy Federal agency needs.

Noncompetitive Contract – A contract for the purchase of supplies or services that is entered into or proposed to be entered into after soliciting and negotiating with only one source.

Performance-Based Acquisition – Structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific and objective terms and measurable outcomes or broad and imprecise statements of work.

APPENDIX B – Competition Report Template

In preparing the report, BPOs shall use the following format without deviation and answer each question. **Please be clear, concise, complete, and provide specific examples throughout.**

PART 1 (Reporting Bureau)

- a. Bureau: _____
- b. Title: _____
- c. Signature: _____
- d. Date: _____

PART 2 (Content of Bureau Competition Report)

- a. In accordance with FAR 6.502(b):

Identify and report based on review of your bureau's contracting operations in the FY:

- (i) Opportunities and actions taken to acquire commercial items to meet the needs of the agency;
- (ii) Opportunities and actions taken to achieve full and open competition in the contracting operation of the agency;
- (iii) Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;
- (iv) Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency;

Also include in the report:

- (v) The bureau's competition advocacy/advocate's activities;
- (vi) New initiatives required to increase the acquisition of commercial items;
- (vii) New initiatives required to increase competition;
- (viii) New initiatives to ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics;
- (ix) Any barriers in the acquisition of commercial items or competition that remain; and
- (x) Other ways in which the bureau has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research;

- (xi) The bureau's recommendation to the Senior Procurement Executive of goals and plans for increasing competition on a fiscal year basis; and
- (xii) The bureau's recommendation to the Senior Procurement Executive of a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

b. In accordance with OFPP's request, also include in your report:

- (i) Meaningful analysis of trends, examples of representative of report findings, and recommendations that address barriers or impediments to competition.
- (ii) Competitive practices in the placement of orders under task and delivery order contracts;
- (iii) Specific activities taken in conjunction with the Office of Small and Disadvantaged Business Utilization (OSDBU) to ensure maximum opportunities are provided to small business.

IMPORTANT TO ADDRESS IN YOUR REPORT:

- If Bureau Competition numbers are down, please explain.
- Include bureau input regarding Competition Initiatives for next fiscal year
- Highlight your best practices

Address specific practices your bureau is using to improve the competitive environment and leverage the benefits of competition.

APPENDIX C – Surveillance Plan Template

The Surveillance Plan shall at a minimum include the following:

Introduction

[Provide background information regarding the purpose of the requirement, general description total estimated cost, etc.]

Contract Type and Requirements

[Provide information on the type of contract and tasks to be performed under the contract.]

Surveillance Plan Objectives

[Provide information of the objectives of the surveillance plan.]

Roles and Responsibilities

[Outline roles and responsibilities of all members of the surveillance team and any limitations of authority.]

Team Members and Qualifications

[Identify team members and provide information regarding their qualifications. The section should demonstrate that personnel involved in the surveillance have demonstrated skills and capacity to perform effective management and oversight.]

Performance Standards

[Provide description of performance standards that will be used to evaluate contractor performance.]

Deliverables and Schedule

[Provide information regarding contract deliverables and delivery schedule.]

Performance Monitoring

[Provide description of how contractor performance will be monitored against the identified performance standards. The monitoring plan should provide reasonable assurance that efficient methods and effective cost controls are utilized.]

Risk Mitigation

[Provide plan for mitigating cost, schedule and performance risk.]