



ACQUISITION AND  
TECHNOLOGY

PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE

3015 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3015



May 5, 1999

MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS  
ATTENTION: SERVICE ACQUISITION EXECUTIVES  
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Subcontractor Competition

As a result of the consolidation of the defense industry, large defense conglomerates are faced more often with the choice of selecting one of their own divisions or an unaffiliated company to furnish subsystems or components on Department of Defense (DoD) contracts. Because of the potential for bias in such decisions, additional government insight into the subcontractor selection process may be necessary to ensure fairness and the best value for DoD.

When developing acquisition strategies, program managers and contracting officers shall consider increasing government insight into the subcontractor selection process when another division of a potential offeror might be a competitor for a particular subsystem. In that situation, the solicitation should ask offerors to submit a plan explaining how they will ensure that the subcontractor competition will be conducted fairly and result in the best value for DoD. The plan should address:

- how the offeror will ensure the subcontractor selection process results in the best value (e.g., the subcontractor selection criteria or evaluation process should not provide any benefit to a company merely because it is another division of the same company as the offeror);

- how the offeror will protect intellectual property rights of unaffiliated companies competing for a specified subcontract;

- whether any independent advisors will be used in the subcontractor selection process (on one recent contract, the prime contractor used independent advisors on the subcontractor source selection evaluation board and as the source selection authority);



- whether any measures (commonly referred to as firewalls) will be implemented to isolate the source selection personnel from any other personnel in the company that could influence a subcontractor selection for reasons other than obtaining the best value; and

- an assessment of whether the benefits of having two sources for a specified subsystem outweigh the costs.

The government shall review such plans to determine if the offeror has taken adequate steps to ensure that a fair competition will be conducted for a specified subsystem, not to act as a surrogate source selection official or to approve the selection of a particular source.

Similar review of the subcontract selection process after contract award can be accomplished pursuant to subpart 44.2 of the Federal Acquisition Regulation (FAR), which permits the government to reserve the right to consent to specified subcontracts. FAR section 44.202-2 provides that particularly careful consideration of subcontracts is necessary when close working relationships or ownership affiliations between the prime and subcontractor may preclude robust competition or result in higher prices.

If after reviewing an offeror's plan for ensuring the best value during the source selection of a particular subsystem, government personnel conclude that it is likely that the offeror will show bias in selection of a subcontractor, they should seek appropriate revision of the plan. If bias cannot be mitigated adequately, then they should consider procuring the subsystem and furnishing it as Government Furnished Equipment (GFE). Furnishing a subsystem as GFE, however, should be a last resort because of the adverse impact of GFE on the total system responsibility assumed by a prime contractor.

*Dave Quinn*