



Public/Private or Public/Public Competition
of
Depot Maintenance

4 December 1992

Atch 94-23K (FAR 17)

Post to AFMCFARS 5317.95 where Depot Maintenance Competition was previously covered. Then file this atch behind sups to FAR 17.

D. TECHNICAL DATA AVAILABILITY

Preparation of technical data packages for a competitive solicitation is the responsibility of the competition managing activity. When one or more using Service(s) have special repair, overhaul, etc., requirements that are not covered in the above technical data package, the Service(s) having differing requirements must provide additional technical data to cover these requirements. To allow for an orderly competition, a technical data package will be developed in the timeframe specified by the competition manager.

E. SYNOPSIS FOR COMMERCE BUSINESS DAILY (Public/Private Competitions only)

Each synopsis contemplating both DOD and private industry source involvement should contain language that informs all interested parties that DOD activities may be competing for the advertised workload.

When a DOD activity determines it intends to submit an offer in response to a requirement that was not synopsized to indicate anticipated DOD involvement, the activity will immediately notify the cognizant contracting officer of its intent. The contracting officer will, if time permits and consistent with mission requirements, amend the synopsis to notify the interested parties that a DOD activity may submit a proposal. The solicitation must be amended if the DOD activity is to be allowed to submit a proposal.

The following recommended language is provided to assist in ensuring proper notification is provided to interested parties when a DOD source will be involved in competing for the workload. This language serves as a guide and should be modified to fit the particular acquisition. It is not the intent to limit any flexibility that exists in the current synopsis procedures. Proposed language: "This acquisition is open to all interested parties, including U.S. Department of Defense sources who may submit a bid/proposal and compete for this requirement".

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JOINT LOGISTICS COMMANDERS

SUBJECT: JPCG-DM Procedures, Public/Private or Public/Public Competition of Depot Maintenance (Interim)

The attached document is hereby approved by the Joint Policy Coordinating Group on Depot Maintenance (JPCG-DM) for use until such time as its procedures are incorporated into appropriate formal regulations/instruction.

The attached document does not constitute a change to OPNAVINST 4790.14, AMC-R 750-10, AFMCR 800-30, MCO P4790.10A, Logistics Depot Maintenance Interservice, 1 June 1988.


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JPCG-DM PROCEDURES
FOR
PUBLIC/PRIVATE OR PUBLIC/PUBLIC COMPETITION
OF DEPOT MAINTENANCE

PURPOSE

Provide guidance for conducting public/private and public/public competitions for depot maintenance workloads to ensure fair and equitable treatment of bidders to the maximum extent possible and provide the best value to the Department of Defense (DOD). This is a living document that may require modification with time, experience, and changing conditions.

INTRODUCTION

Single-Service used weapon systems, equipment or depot level reparable components may be competed by the using Service. If a single Service performs a competition, that Service will resolve issues relative to the scope of that competition.

For multi-Service used weapons systems, equipment or depot level reparable components, each using Service will determine whether their portion of the proposed workload will be competed. A using Service may independently compete their portion of a workload; but, if more than one using Service agrees to compete their portion, a joint competition may be accomplished and the participating Services will determine who will manage the competition.

Appendix A provides definitions of terms used in this document.

Appendix B provides a list of references.

Appendix C identifies the authority for this document and provides a list of Joint Service Competition Working Group members.

I. PRE SOLICITATION

A. COMPETITION SCOPE

The scope of a competed workload will be coordinated with and agreed to by involved system/item managers to minimize multiple sources of repair and reduce overall costs to the government.

Systems, equipment or components such as avionics/electronics systems, engines, aircrew ejection systems, etc., that are used on or have the potential of being used on more than one weapon system platform should be competed separately from the platform. To preclude establishing redundant repair capabilities, concurrent rework will not be authorized for items that generate through the supply system (overhaul and repair at another source) without the specific approval of the inventory control points.

Items competed must have a complete competitive data package that will not preclude any interested candidate from participating. For Public/Public competitions the data package may be tailored as needed. Competitions will be planned taking into consideration availability of equipment and award length so as to maximize competitive involvement. Normally, repair/overhaul contracts run from three to five years (to include a base year with options) while workload assignments through DMISAs are open ended with mandatory annual review. The competition planning process must document the period of performance and justify that period in terms of maximizing competitive involvement. It is understood that the period of performance will be balanced against operational needs.

B. COMPETITION MANAGEMENT

Representatives from each of the Services having workload competed, and potential bidders as required, will support the competition manager in development of the statement of work (SOW)/work specification. Once the SOW has been developed, potential bidders will be held at an arms length for all remaining involvement. Service representatives may be involved during the solicitation process, as appropriate. As a minimum, each using Service will:

- Identify Service unique requirements and ensure these requirements are covered in the SOW.
- Review and approve the SOW prior to solicitation.
- Participate in sensitivity and/or risk assessments, where such assessments are warranted.

The using Service will manage all competitions involving single Service used systems, equipment or depot level repairable components.

In cases where more than one Service uses all or part of a workload to be competed, a lead Service will be designated to manage the competition and associated procurement as applicable. The lead Service will be determined as one of the following:

- The Service having system or item management and configuration control authority.
- The Service having Primary Inventory Control Activity (PICA) responsibility as defined in AMC-R 700-99, NAVSUPINST 4790.7, AFMCR 400-21, MCO P4410.22C, Logistics Wholesale Inventory Management and Logistics Support of Multiservice Used Nonconsumable Items and as registered in the Defense Logistics Information System at the level for which the workload is being competed.
- The Service being the predominate user.
- A minority using Service where the predominant using Service is not participating in a joint competition or does not want to manage the competition.

C. ARMS LENGTH RELATIONSHIP

The Standards of Conduct and Ethics and the Procurement Integrity Act apply to all organizations and personnel involved in or responsible for managing, evaluating and/or awarding depot level maintenance support through public/private competition. The Standards of Conduct and Ethics also apply to public/public competitions. DOD directives and Services' regulations specify types of conduct that are prohibited in a relationship with defense contractors. The same standards of conduct apply to the relationship of these organizations and personnel when dealing with competing public activities.

The arms length relationship is dependent upon the integrity of the individuals involved rather than their physical location. Therefore, there is no prohibition against distinct teams from a single facility conducting a competition and submitting a proposal provided there is no duplication of team membership. Individuals, including advisors and management, who participate in the preparation of a requirement, solicitation, evaluation or award, will not participate in the preparation of a corresponding proposal. All communications relative to a competition will be through the competition manager.

D. TECHNICAL DATA AVAILABILITY

Preparation of technical data packages for a competitive solicitation is the responsibility of the competition managing activity. When one or more using Service(s) have special repair, overhaul, etc., requirements that are not covered in the above technical data package, the Service(s) having differing requirements must provide additional technical data to cover these requirements. To allow for an orderly competition, a technical data package will be developed in the timeframe specified by the competition manager.

E. SYNOPSIS FOR COMMERCE BUSINESS DAILY (Public/Private Competitions only)

Each synopsis contemplating both DOD and private industry source involvement should contain language that informs all interested parties that DOD activities may be competing for the advertised workload.

When a DOD activity determines it intends to submit an offer in response to a requirement that was not synopsized to indicate anticipated DOD involvement, the activity will immediately notify the cognizant contracting officer of its intent. The contracting officer will, if time permits and consistent with mission requirements, amend the synopsis to notify the interested parties that a DOD activity may submit a proposal. The solicitation must be amended if the DOD activity is to be allowed to submit a proposal.

The following recommended language is provided to assist in ensuring proper notification is provided to interested parties when a DOD source will be involved in competing for the workload. This language serves as a guide and should be modified to fit the particular acquisition. It is not the intent to limit any flexibility that exists in the current synopsis procedures. Proposed language: "This acquisition is open to all interested parties, including U.S. Department of Defense sources who may submit a bid/proposal and compete for this requirement".

II. SOLICITATIONS

A. METHODS

For public/private competition: In developing a solicitation, the full range of contract types (i.e., fixed price, fixed price incentive, cost plus incentive fee, cost plus award fee, etc.) are available. The evaluation and selection of a source of repair/manufacture as well as the contract type selected will ensure that the best value to the Government is obtained.

For public/public competition: A modified solicitation will be prepared. Terms and conditions will be developed by the competition management activity.

B. SOLICITATION PROVISIONS (Public/Private Competitions only)

Solicitation provisions for public/private competitions will be substantially the same as in private/private competitions with the exception that the following will be added:

- Notification that public activities will be allowed to propose for this workload.
- Notification that Comparability Factors will be applied, as appropriate, to each bid.
- Special provisions as required.

Provisions/clauses that are not applicable to a DOD activity will be identified in the solicitation document.

C. SOURCE SELECTION PROCESS

The full range of source selection techniques (i.e., price competition, two-step, formal/streamlined, etc.) are available. The technique selected will ensure that the best value to the Government is obtained. The technique selection is a function left to the competition management activity.

Representation from each of the Services with systems or equipment being competed may be involved in the selection process. The competition management activity may require a service to participate if that Service's systems or equipment are included in the competition. Services will be included on selection panels at their request if their equipment or systems are being competed.

For Public/Private competitions, formal source selection will stay within the existing contract authority guidelines.

For Public/Public competitions, the following will be identified:

- The competition manager.
- The source selection authority.

Additionally, a source selection evaluation staff will be established, as appropriate, based on the complexity of the solicitation and the source selection criteria. This staff may include price analysts, technical evaluators, terms and conditions evaluators, and etc.

III. AWARD/COMPETITIVE ASSIGNMENT

A. COST REALISM ANALYSIS

For competitions using formal source selection techniques, public proposals will be analyzed for cost realism and private proposals may be analyzed for cost realism. The objective of the examination is to determine whether the proposed price reflects realistic costs sufficient to accomplish work identified in the solicitation. It is the responsibility of the competition management activity, with assistance from proposing Services as required, to ensure cost realism. The cost realism process and documentation must be fully auditable by an independent activity.

B. COST COMPARABILITY

Cost comparability will be performed in accordance with the Cost Comparability Handbook. Proposals must include cost comparability adjustments. Application of cost comparability adjustments will be determined by the offering Service. Procedures must be developed by each Service to determine who/where adjustment data will be developed and applied from two perspectives-when that Service is a bidder only and when that Service is both a bidder and the competition management activity. Evaluation factors will be applied by the competition management activity.

C. SURVEYS

Surveys may be conducted by the competition management activity at any offeror's location.

Public offeror's will be allowed the same access to public activities performing work to be competed as is provided to private offerors.

D. SIGNATURE AUTHORITY AND AWARD/ASSIGNMENT DOCUMENT

Offerors will identify in their proposals who has signature authority. Signature authority for the award/assignment document will be designated by the competition management activity.

Existing solicitation and award/assignment formats will be used.

Public assignment within a Service will be handled by that Service. Public assignment to another Service will be covered by a Depot Maintenance Interservice Support Agreement (DMISA) containing all the terms and conditions contained in the solicitation.

Existing contracting/assignment systems may be used to track an award/competitive assignment to a DOD source.

E. PROTESTS

Federal Acquisition Regulation procedures will be used for protests from the private sector.

Intraservice protests will be resolved within that Service. Protests by public bidders prior to final award involving more than one Service, if submitted, will be lodged with the competition management activity for resolution and, if necessary elevated through the appropriate Services' chain of command. Each Service will identify the chain of command applicable to each competition and primary points of contact within that chain.

The following applies to public bidders responding to public versus public or public/private competitions. Protests between public activities must be resolved expeditiously to both protect operational requirements and ensure orderly execution of budgeted funds. The competition manager and the Service lodging the protest have a responsibility to work cooperatively to resolve all issues. As a worst case, however, time limitations are established herein to ensure the process of resolution comes to a timely conclusion.

Public activities must document and lodge their protest to their next command level and the competition management activity not later than 10 working days after award notification. The protest must include the basis for the protest and brief supporting rationale. Supporting

documentation will be provided, as required, as the protest proceeds. Public protests must be resolved within 20 working days if settled by the competition management activity, and within 40 additional working days if protest notification is submitted to a higher level for resolution for a maximum total of 60 working days. Award/assignment will be delayed when a public activity lodges a protest until the protest is resolved or the Service responsible for the competition rules that continuation of performance is in the best interest of the Government. The same procedure applies to continued performance when a protest is lodged after award.

IV. POST AWARD

A. ADMINISTRATION

Administration of contracts won by private industry will be in accordance with the Federal Acquisition Regulation (FAR). Assignments made competitively to public activities will be administered by the administration activity assigned by the organization managing the competition.

The administration activity will be responsible for assessing fair compensation for changes and represent certain specified interests of the parties who are funding the work competitively assigned. Compensable changes will be negotiated and authorized based on the authorities granted by the parties funding the workload and contingent on the availability of funds.

B. DISPUTES AND APPEALS

Disputes and appeals involving a private contractor will be resolved based on procedures in the FAR.

Disputes and appeals involving a public activity performing competitively assigned workload will be resolved in accordance with existing Depot Maintenance Interservice (DMI) procedures progressing through the Services' chains of command for resolution.

C. TERMINATION

The competition management activity may terminate an award/competitive assignment for convenience or non-performance. However, existing DMI procedures will be used for terminations of assignments to public activities.

V. OTHER

A. MATERIAL SUPPORT/SUPPLY SYSTEM ACCESS

GOVERNMENT-FURNISHED MATERIAL (GFM):

When GFM cannot be delivered on schedule, existing Service procedures will be used to negotiate or resolve the issue. This applies to both public and private activities.

CONTRACTOR-FURNISHED MATERIAL (CFM):

The Federal Supply System (FSS) is the mandated first source for material to be acquired by public offerors. Since the FSS is the mandated first source, public offerors will price and acquire all CFM through the FSS. Existing Service procedures covering the FSS apply. However, since the FSS is the mandated first source, when CFM can't be delivered to the performing public activity to meet the schedule, that activity will contact the cognizant administrative authority. That authority will resolve the issue using existing procedures governing late delivery of GFM which will apply and take precedence.

Under public/private competition, the private sector may be allowed to use the FSS for stock-listed items specifically required to support this competition. When the private sector will be offered access to the FSS, the solicitation must include disclaimers that absolve the government of liability. The following is an example of language that may be used in a solicitation:

It is understood by all parties that the offeror has elected to utilize the Federal Supply System for its own convenience to meet its contractual obligations to perform the work under this contract. The Federal Supply System is considered to be an alternate source or vendor of CFM; therefore, materials, equipments, or other supplies ordered and/or obtained from the Federal Supply System are specifically not considered to be GFM, but are considered to be CFM. The Government makes no representations as to the availability of materials, or other supplies for the performance of the work required under this contract, nor shall unavailability, late delivery, delivery of non-conforming supplies, higher costs of Federal Supply System (if any), or any other failure of the Federal Supply System to meet the expectations or requirements of the Contractor constitute excusable delay or grounds for equitable or any other adjustment of the Contract or relief from the requirement to perform in accordance with the terms of the contract.

GOVERNMENT-FURNISHED EQUIPMENT (GFE):

When GFE is to be used it must be identified as early as possible in the process.

CONTRACTOR-FURNISHED EQUIPMENT (CFE):

Public activities must have all CFE available or be in a position to obtain CFE to propose on a solicitation.

B. ACQUISITION OF NEW INDUSTRIAL TECHNOLOGIES AND EQUIPMENT

It is the responsibility of each Service to define their requirements for new industrial technologies and equipment. As part of this responsibility each Service should identify new technologies needed to ensure their continued ability to compete for depot workloads. The process for determining requirements, funding and acquiring new technologies and equipment should be in accordance with the procedures and regulatory guidance of each Service. The Joint Technology Exchange Group is the current forum to facilitate the open exchange of information and technology between the Services.

C. FREEDOM OF INFORMATION ACT/BUSINESS SENSITIVITY

All information that may be released to a private competitor must also be releasable to any public offeror.

Certain information used in day-to-day business and in the preparation of proposals under competition would enable competitors to determine the competition strategy which a specific public activity would use to develop a bid. This information should be marked business sensitive and held as proprietary information which is not releasable under the Freedom of Information Act, 5 U.S.C. 552.

Competition management activities must take the same precautions throughout the life of the procurement to protect public offeror bid/proposal information that is afforded information submitted by a private contractor. In this context, public bid/proposal preparation offices will annotate their documents in accordance with marking procedures outlined in FAR 14.2 and appropriate supplements and DOD regulations.

D. STANDARDS/SYSTEMS/PROGRAMS EQUIVALENCY

Public offerors have systems and programs (i.e., production reporting systems, EEO compliance, quality programs, safety, etc.) in place. The competition management activity will determine acceptability of using existing public offerors systems/programs in lieu of solicitation requirements.

APPENDIX A

DEFINITIONS

ARMS LENGTH RELATIONSHIP: The condition of "fairness" that must be maintained in the business relationship during the course of a competition both before and after a successful workload assignment.

AWARD: The results of a competition which designates workload to be performed consistent with mission/Service requirements.

BEST VALUE: The optimum combination of cost, quality and schedule performance consistent with mission/Service requirements.

COMPETITION MANAGEMENT ACTIVITY: The designated Government organizational activity (e.g., buyer side of a depot, command, etc.) responsible for conducting a competition and managing the resultant award/workload assignment.

COMPETITION MANAGER: The competition management activity's representative that acts as the focal point for the competition (e.g., Contracting Officer, Weapon System Manager, System Manager, Item Manager).

COMPETITIVE ASSIGNMENT: The results of a competition which designates workload to be performed by a public activity. The assignment document is an agreement containing specific terms and conditions which must be met. Examples of such documentation include project orders, depot maintenance interservice support agreements (DMISA), memoranda of agreement and work assignment documents.

COMPETITIVE DATA PACKAGE: All technical data referenced in or applicable to a competition. A competitive data package includes such things as a technical data package as well as military standards/military specifications referenced for such things as skill certification, process performance, conformance requirements, quality requirements, etc.

CONCURRENT REWORK: Rework, repair and/or overhaul of systems/components at one source of repair when another source of repair has been assigned. Concurrent work is not authorized by regulation except under certain limited conditions.

CONTRACTOR FURNISHED MATERIAL (CFM): All material not furnished by the government (Government Furnished Material (GFM)) which is required to perform the specified work and which must be provided by the contractor.

DEPOT MAINTENANCE INTERSERVICE SUPPORT AGREEMENT (DMISA): An agreement between a principal (requiring activity) and an agent (performing activity) to perform depot maintenance of assigned workload.

PERFORMING ACTIVITY: The organizational activity within a Service assigned to perform depot repair, rework or overhaul of weapon systems, systems or equipment. The seller.

PUBLIC/PRIVATE COMPETITION: Competition for a DCD depot maintenance workload which is open to public activities and private industry.

PUBLIC PUBLIC COMPETITION: Competition for a DOD depot maintenance workload which is restricted to public activities.

REPARABLE COMPONENT: All nonconsumable items that are not directly identified as weapon systems, systems or items of equipment. The lowest indenture level of items identified through the Logistics Support Analysis (LSA) process and specified through the Source, Maintenance and Recoverability (SM&R) process as requiring repair, recoverability or disposal at depot level. Examples include printed circuit boards, hydraulic actuators, motors, aircraft engine blades and vanes, etc.

REQUIRING ACTIVITY: The organizational activity within a Service assigned responsibility for weapon system management (SM), item management (IM), inventory control point (ICP), etc. In generic terms, the funding customer (buyer). In the case of depot maintenance, the requiring activity for fielded weapon systems, systems, items of equipment or depot reparable components is most often the wholesale supply system.

TECHNICAL DATA PACKAGE: All technical orders, technical manuals, drawings, schematics, illustrated parts breakdowns, etc., required to actually perform depot repair, rework or overhaul. These documents contain specific processes and procedures to be followed in the repair, rework or overhaul.

APPENDIX B

REFERENCES

This document is based in part on direction, policy, procedures and guidance contained in various Federal, DOD or joint Service references. When conflict exists, these references take precedence only if the specific subject matter is covered and as applicable to that subject matter. In case of conflict, the JSCWG should be notified and requested to resolve such conflict. The following references are listed as applicable to the content of this document:

- Title 5, United States Code, Section 552 Freedom of Information Act
- Title 41, United States Code, Section 423 Procurement Integrity Act
- Federal Acquisition Regulation
- DOD D 4151.18 Maintenance of Military Materiel
- DOD D 5000.1 Defense Acquisition
- DOD D 5000.2 Defense Acquisition Management Policies and Procedures
- DOD D 5500.7 Standards of Conduct
- OPNAVINST 4790.14, AMC-R 750-10, AFMCR 800-30, MCO P4790.10A Logistics, Depot Maintenance Interservice
- AMC-R 700-99, NAVSUPINST 4790.7, AFMCR 400-21, MCO P4410.22C Logistics, Wholesale Inventory Support of Multiservice Used Nonconsumable Items
- Cost Comparability Handbook

APPENDIX C

AUTHORITY

1. The authority for this document is vested in the mission of the Joint Service Competition Working Group (JSCWG) which was chartered by the JPCG-DM Executive Group on 26 Mar 91. The JSCWG was established to:

a. Develop and recommend procedures by which public/private and public/public competition should be conducted for depot maintenance workloads.

b. Develop guidance for conducting various forms of public/private and public/public competitions for depot maintenance workloads.

c. Provide ongoing advice and assistance to the Service(s) conducting competitions for depot maintenance workloads.

2. The following personnel comprise the JSCWG:

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