



DEFENSE SECURITY COOPERATION AGENCY

2800 DEFENSE PENTAGON

WASHINGTON, D.C. 20301-2800

09 AUG 2012

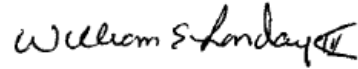
MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE AIR FORCE FOR
INTERNATIONAL AFFAIRS
DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR
DEFENSE EXPORTS AND COOPERATION
DEPUTY ASSISTANT SECRETARY OF THE NAVY FOR
INTERNATIONAL PROGRAMS
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
DIRECTOR FOR SECURITY ASSISTANCE, DEFENSE FINANCE
AND ACCOUNTING SERVICE – INDIANAPOLIS OPERATIONS
DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, DEFENSE LOGISTICS INFORMATION SERVICE
DIRECTOR, DEFENSE LOGISTICS AGENCY DISPOSITION
SERVICES
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY
DIRECTOR, NATIONAL GEOSPATIAL – INTELLIGENCE
AGENCY
DEPUTY DIRECTOR FOR INFORMATION ASSURANCE,
NATIONAL SECURITY AGENCY

SUBJECT: Revised Guidance for Requests for Other than Full and Open Competition, DSCA
Policy 12-15 [SAMM E-Change 200]

The attached change to the Security Assistance Management Manual (SAMM) revises provisions regarding Foreign Military Sales (FMS) customer requests for other than full and open competition procurement (commonly referred to as “sole source”) under the authority of an exception in the Competition in Contracting Act (CICA) (10 U.S.C. §2304(c)(4)), referred to as the “International Agreement” exception in Federal Acquisition Regulation (FAR) 6.302-4 and the Department of Defense FAR Supplement (DFARS) Subpart 206.302-4. Neither the Act nor acquisition regulations require a foreign purchaser to provide rationale for such a request. However, as a matter of policy, such requests should not be approved where there is an indication that the request if granted would be improper or unethical. This change also revises the Sole Source Procurement Note in Appendix 6 accordingly.

This change will take effect 30 days from signature. Chapter 6 and Appendix 6 of the SAMM will be updated as reflected in the attachment, and this change will be included in the online version of the SAMM found on the DSCA Web Page, www.dsca.mil/samm/, as SAMM E-Change 200.

If you have questions regarding this policy or the SAMM, please contact Mr. Mike Slack, DSCA/STR/POL, at (703) 601-3842 or e-mail: michael.slack@dca.mil. Implementing Agencies should disseminate this policy to supporting activities.



William E. Landay III
Vice Admiral, USN
Director

Attachments:
As stated

cc:
STATE/PM-RSAT
AFRICOM
CENTCOM
EUCOM
JFCOM
NORTHCOM
PACOM
SOCOM
SOUTHCOM
TRANSCOM
USASAC
SATFA TRADOC
NAVICP
NETSAFA
AFSAC
AFSAT
DISAM

SECURITY ASSISTANCE MANAGEMENT MANUAL (SAMM), E-CHANGE 200

Revised Guidance Regarding Requests for Other than Full and Open Competition

1. Replace Chapter 6, Section C6.3.4., with the following revised text, and delete Table C6.T2.:

C6.3.4. Requests for Other than Full and Open Competition. The competitive procurement process is used to the maximum extent possible when procuring articles or services. The Competition in Contracting Act (CICA) ([10 U.S.C. section 2304](#)), however, provides certain limited circumstances in which the contracting activity can consider FMS purchaser requests for procurement using other than full and open competition (commonly referred to as “sole source”) when the contract to be awarded is expected to exceed the simplified acquisition threshold (Federal Acquisition Regulation ([FAR](#)) [2.101](#) and [FAR Part 6](#)). Contracts expected not to exceed that threshold are contracted for under [FAR Part 13](#). One of CICA’s exceptions to full and open competition at 10 U.S.C. section 2304(c)(4) is implemented as the “International Agreement” exception in [FAR 6.302-4](#) and the DoD FAR Supplement (DFARS) [Subpart 206.302-4](#). An authorized official of the purchasing government may submit a written request, generally through the Security Cooperation Organization (SCO), that the Implementing Agency with procurement responsibility for the required item and/or service procure a defense article(s) and/or service(s) from a specific organization or entity, or that competition be limited to specific organizations or entities. The Defense Attaché or comparable purchaser’s representative in the United States may also submit these requests to the Implementing Agency. FMS customers need not provide a rationale for the request.

C6.3.4.1. Legal Requirements. The exception is available where either the terms of an international agreement or a treaty between the United States and a foreign government, or international organization or the written directions of a foreign government reimbursing the Implementing Agency for the cost of the acquisition of the supplies or services (such as a signed Letter of Offer and Acceptance (LOA)), require the use of other than competitive procedures ([FAR 6.302-4](#)). The use of other than competitive procedures for the acquisition must be documented in accordance with [10 U.S.C. section 2304\(f\)\(2\)\(E\)](#); [DFARS 206.302-4\(c\)](#). The nature of this document may be described in Implementing Agency regulations.

C6.3.4.1.1. The exception may be applied to LOAs funded with nonrepayable FMF or MAP funds when requested in writing by the foreign country. Purchaser requests for procurements from foreign sources of supply using other than full and open competition may be considered only with the concurrence of DSCA (Strategy Directorate and Office of the General Counsel). See C4.4.1. An Offshore Procurement Determination is required for any proposed procurement from foreign sources of supply if the procurement will be funded with FMF. See C9.7.2.7.3.

C6.3.4.1.2. This exception is not available for use with Building Partner Capacity (BPC) programs, which are funded with U.S. appropriations. See C15.T4, line 11, for guidance to the BPC Requesting Authority on sole source procurement.

C6.3.4.2. Timing of Requests. Official written direction to use other than full and open competition should be submitted in the LOR, or it can be submitted separately with a reference to the LOR. The designation of a procurement to be conducted using other than full and open competition for an LOA that has already been accepted by the purchaser would be an exception to policy subject to acceptance by the Implementing Agency. If this situation occurs, the LOA may be amended to include the designation for other than full and open competition. A Modification may be used instead of an Amendment if the request for other than full and open competition is made by the official who requested the LOA, his or her replacement, or an official known to have equivalent or greater authority than the official who signed the LOA.

C6.3.4.3. Policy Requirements. Requests for other than full and open competition using the authority of [10 U.S.C. section 2304\(c\)\(4\)](#) should be to meet the objective requirements of the purchaser and not for improper or unethical considerations. USG representatives must remain objective in providing options or recommendations to the partner and may not solicit requests for other than full and open competition. In general, the USG does not investigate the circumstances behind a foreign purchaser's request to use other than full and open competition, and DoD contracting agencies are encouraged to defer to a foreign purchaser's requests under the International Agreement exception to the extent that they are not aware of any indication that such requests violate U.S. law or ethical business practices. The Implementing Agency must consult with its counsel on cases where facts indicate that granting a request to use other than full and open competition may violate U.S. law or ethical business practices. If the Implementing Agency determines that a request to use other than full and open competition should not be approved, the memorandum informing the purchaser must be coordinated with DSCA (Operations and Strategy Directorates).

C6.3.4.4. Subcontracts. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer should honor subcontract placement requests from the FMS customer regarding a subcontract only if the LOA or other written direction sufficiently fulfills the requirements of [FAR Subpart 6.3](#) (see [DFARS 225.7304\(a\)](#)). Risks associated with the designation of subcontractors should be conveyed to the FMS purchaser. If problems occur in the performance or integration of the component, the FMS purchaser must bear the increased costs of correcting the problem. The purchaser should be advised of this potential expense when the sole source designation is requested.

C6.3.4.5. LOA Note for Other than Full and Open Competition. The applicable LOA document must identify the designated source. See Appendix 6 for the LOA note wording.

C6.3.4.6. Coordination with Contracting Offices. The Implementing Agency sends the request for other than full and open competition to the contracting office for information and advice. The Implementing Agency also sends a copy of the implemented LOA document (containing the source designation) to the contracting officer. This is especially important when the contracting activity is separate from the activity responsible for the LOA (e.g., LOAs prepared by a MILDEP that contain items procured by the Defense Logistics Agency (DLA)).

2. Delete the Sole Source Procurement Note in Appendix 6 and replace it with the following note:

Procurement Using Other Than Full and Open Competition

Note Usage
<p>Mandatory for FMS LOAs that include approved specific source procurement designations.</p> <p>Mandatory for Amendments and Modifications only when they add or change designations for specific source procurement. Previous versions of this note should remain on the LOA if there have been no changes to the specific source designation.</p> <p>When multiple prime/subcontractors are used, affecting multiple lines on the case, the information should be in a 2-column format to make clear which subcontractor(s) are working for each prime contractor.</p>
References
<p>See Section C6.3.4.</p>
Note Input Responsibility
<p>IA</p>
Note Text
<p>"The purchaser has requested in a letter dated [insert date] that [insert name of specific firm or other private source] be designated as [insert "prime contractor" or "subcontractor"] for line/items(s) [insert line item numbers] of this Letter of Offer and Acceptance.</p> <p>This note is confirmation that a specific source designation has been requested in writing by the purchaser and that the Department of Defense has accepted the request."</p>