2000-D306 -01

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To: "'dfars@acq.osd.mil'"
Subject: DFARS Case 2000-D306

Please consider the following:

This case appears to contradict the language in FAR 13.5. FAR 13.5 states: (a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding $5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. (emphasis added)
The case language prohibits use of FAR 13.5 when using FAR Part 12 for Performance-Based service contracts. DFARS 212.102 states: (a)(i) In accordance with Section 821 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398), the contracting officer also may use FAR Part 12 for any performance-based contracting for services if the procedures in FAR Subpart 13.5 are not used, and the contract or task order-- (emphasis added)
Scenario: An acquisition is within FAR 13.5 test threshold, is commercial; and is also Performance-Based. It appears the language of the subject case precludes the use of simplified acquisition procedures due to the fact the buy is Performance-Based. What is the purpose of prohibiting simplified procedures for Performance-Based buys when the services are commercial? This seems to inhibit streamlining, such as a combined synopsis/solicitation allowed under FAR 13.105(b).
The buy I am currently working is not affected by this change, but comes close. It may however affect others.

Thank you,

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