



NATIONAL IMAGERY AND MAPPING AGENCY

U-067-02/AC

May 3, 2002

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (ACQUISITION,
TECHNOLOGY AND LOGISTICS)
ATTN: DIRECTOR, DAR COUNCIL

SUBJECT: Submittal of Agency Comments on Proposed DFARS
Rule

REFERENCE: DFARS Case 2001-D017, Competition Requirements
for Purchase of Services Under Multiple Award
Contracts

1. Following are National Imagery and Mapping Agency's (NIMA)
comments relative to the proposed DFARS change:

a. When published, recommend you clarify/reiterate the applicability of the new rule to existing contracts and new task orders issued under the existing contracts, in accordance with Section 803, paragraph (d) of the National Defense Authorization act of 2002.

b. The statutory and proposed regulatory language is unclear as whether it applies to A&E task orders or not. There is no exception explicitly stated for A&E contracts. However, it would seem that the procedures would not necessarily be a good fit with A&E contracts. The language of the proposed regulations closely follows the language of the statute. The best solution for this ambiguity is for the DAR Council to put language into the regulations specifically stating that the regulations do not cover A&E contracts. This language should clarify the ambiguity in the regulations and the statute as stated below:

(1) Currently, the proposed DFARS 216.505-70 (b)(2) reads "**(2) A statute expressly authorizes or requires that the purchase be made from a specified source.**" NIMA recommends that the following parenthetical be put at the end of (b)(2) "**(Sources selected under FAR 36.6 are considered a specified source.)**". While generally, "specified source" refers to a source individually identified (e.g., in legislation and by a foreign countries in FMS agreements), "specified source" can also be interpreted in the A&E context. FAR 36.6 specifies that

4600 SANGAMORE ROAD
BETHESDA, MARYLAND 20816-8003

3205 SECOND STREET
ST. LOUIS, MISSOURI 63118-3399

REPLY TO THE
FOLLOWING:

12310 SUNRISE VALLEY DRIVE
RESTON, VIRGINIA 20191-3449

WASHINGTON NAVY YARD, BUILDING 213
WASHINGTON, DC 20303-0001

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we must award to the most qualified source (without comparative consideration of price/cost).

(2) NIMA also requests that the requirement in the proposed DFARS 216-505-70(d)(3)(v) be clarified. The provision requires that the Government "(v) Consider price or cost under each order as one of the factors in the selection decision." While we do consider price or cost as a factor in A&E actions (i.e., we will not award when faced with an unreasonable cost), that is different than the comparative price/cost evaluation done under most other contracts. To clarify this point, the following language should be added: "Orders under contracts awarded in accordance with FAR 36.6 should consider price or cost consistent with the provisions of FAR 36.6."

c. As written, the proposed DFARS Part 208 rules may have a negative impact on socio-economic programs. It is understood that FAR Part 19 does not apply to orders awarded under Federal Supply Schedules. However, an agency may currently choose to make comparisons among capable small businesses as a way of improving progress toward socio-economic goals. This flexibility would not be possible under the proposed DFARS 208.404-70(c)(1)(i) or (ii), as the agency would be required to enlarge the pool of competitors to all contractors, regardless of business size.

d. Regarding proposed DFARS 216.505-70(c)(1)(2)(3)(i), the terms "fair notice," "fair opportunity," and "fair consideration" are used. NIMA recommends adding definitions for these terms, especially if fair opportunity differs from fair consideration.

2, My point of contact for this memorandum is Mrs. Melissa Wallach, telephone (314)263-4211 extension 118, or email wallachm@nima.mil.


MARVIN E. SMALLING
Director, Procurement
and Contracts