



## INCREASING COMPETITION IN CONTRACTING AND REDUCING HIGH-RISK CONTRACTING

January 29, 2010

### I. PURPOSE

This document establishes procedures designed to increase competition in contracting, mitigate high-risk contracting, and achieve cost efficiencies at the National Assessment Governing Board (Governing Board), as mandated by the Offices of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB), and the White House.

In the October 27, 2009, memorandum, [Increasing Competition and Structuring Contracts for the Best Results](#) (Attachment 1), OFPP established initial guidelines to help procurement officials to evaluate the effectiveness of agency competition practices and processes for selecting contract types. The guidelines focus on three key questions:

- (1) How is the agency maximizing the effective use of competition and choosing the best contract type for the acquisition?
- (2) How is the agency mitigating risk when noncompetitive, cost-reimbursement, or Time and Materials/Labor Hour contracts are used?
- (3) How is the agency creating opportunities to transition to more competitive and lower risk contracts?

The OFPP guidance followed two related memoranda issued by OMB and the White House [Improving Government Acquisition](#), Office of Management and Budget, July 29, 2009, (Attachment 2) and [Government Contracting](#), The White House, March 4, 2009 (Attachment 3).

Federal agencies have been directed to reduce the use of high-risk contracting authorities including noncompetitive, cost-reimbursement, time-and-materials and labor-hour contracts, as well as competitions that yield only one offer. Agencies are required to reduce by at least 10 percent the combined share of dollars obligated through new contracts in FY 2010 that are:

- (1) Awarded non-competitively and/or receive only one bid in response to a solicitation or a request for quote,
- (2) Cost-reimbursement contracts or,
- (3) Time and Materials/Labor Hour contracts.

The guidelines are intended to help federal agencies identify specific areas in need of greater management attention, training, and workforce development.

In response to these mandates, the Governing Board is issuing this guidance to increase the effectiveness of the Board's competition practices, to apply prudent judgment in the selection of contract type, and to mitigate contracting risks. This guidance is internal to the Governing Board, and provides contracting professionals involved in the acquisition process an opportunity to come to agreement on a proposed course of action early in the planning process, before working with the program expert and Contracting Officer's Representative (COR) to finalize each solicitation.

## **II. APPLICABILITY**

This chapter applies to the Governing Board, which operates under contracting authority provided to the Board by the Senior Procurement Executive of the U.S. Department of Education's Contracts and Acquisition Management Office, pursuant to the Governing Board's delegated contracting authority under a Memorandum of Understanding.

## **III. DEFINITIONS**

A “noncompetitive award” is one that is otherwise subject to competition under FAR Part 6 but is planned to be:

1. Not competed because there is only one responsible source (FAR 6.302-1)
2. Not competed due to unusual and compelling urgency (FAR 6.302-2)
3. Competed among limited sources under a Federal Supply Schedule, including brand name items (FAR 8.405-6)
4. Placed under a multiple award contract without giving fair opportunity to all incumbent contract holders (16.505(b)(2)).

A “noncompetitive award” does not include:

1. Acquisitions required or authorized by statute to be made through another agency or a specified source, including those identified in FAR 6.302-5(b), such as awards made to:
  - a. A sole source under the 8(a) program, HUBZone Act, or Veterans Benefits Act
  - b. Federal Prison Industries or the Government Printing Office
  - c. Qualified nonprofit agencies for the Blind or other Severely Disabled
2. Awards not subject to competition under FAR Part 6, including:
  - a. Contracts awarded using simplified acquisition procedures
  - b. Modifications
  - c. Exercising of priced options that were evaluated in the initial competition
  - d. Orders placed under requirements contracts or definite quantity contracts

- e. Orders placed under indefinite-quantity contracts (except those placed without giving a fair opportunity to all contract holders, see FAR 16.505(b)(2))
- f. Orders placed under a competitively-awarded BPA, when only one BPA was awarded (see FAR 8.405-3(b)(1))
- 3. Sole-source awards pursuant to FAR 6.302-3, -4, -6, or -7.

#### **IV. REQUIREMENTS**

- A. **Acquisition planning considerations** - As early as possible in acquisition planning, the Governing Board contracting professionals should analyze their acquisitions based on these key questions:
  - 1. *Does the scope of work required in the solicitation lend itself to maximum competition? If so, how can we maximize competition and choose the best contract type for the acquisition?* (See pages 2-5 of the attachment 1 for the specific considerations to use in evaluating this question.)
  - 2. *What is the best contract type for the solicitation to maximize competition?*
  - 3. *If we are planning a noncompetitive, cost-reimbursement, or T&M/LH contract, how are we planning to mitigate risk?* (See pages 6-8 of attachment 1 for the specific considerations to use in evaluating this question.)
  - 4. *How can we transition to more competitive or lower-risk contracts?* (See pages 9-11 of Attachment 1 for the specific considerations to use in evaluating this question.)
- B. **Acquisition planning review** – Contracting Officers must participate in an acquisition planning review with the Governing Board’s Executive Director and Deputy Executive Director when considering any of the following:
  - 1. A noncompetitive award, as defined in Section III Definitions above.
  - 2. Soliciting or awarding any new contract using a cost-reimbursement, time-and-materials, or labor-hour contract type (including hybrid contracts).
  - 3. Competing a requirement for which previous competitions have yielded only one proposal or quote.

The acquisition planning review is an opportunity for the contracting professionals involved in the acquisition to discuss with senior management ideas for increasing competition, and reducing the use of high-risk contract types.

The Contracting Officer and Contract Specialist must prepare a written analysis of the planned acquisition based on the acquisition planning considerations above and the detailed considerations documented in the OMB October 27, 2009 memorandum (pages 2-11). The Contracting Officer should submit this analysis, along with a request for an acquisition planning meeting, to the Contract Review Committee comprising of the following members:

1. The Executive Director (Chair of the Contract Review Committee)
2. The Deputy Executive Director
3. Contracting Officer
4. Contract Specialist
5. Contracting Officer’s Representative

Additional staff may participate in the planning-stage review at the request of the Competition Advocate or Head of the Contracting Activity (HCA).

The Contracting Officer shall document the contract file with the results of the acquisition planning review, including the analysis performed and agreements reached at the meeting. This documentation will include at minimum the following determinations as provided in the OMB Guidelines for Increasing Competition and Structuring Contracts for Best results (pages 1-12 of Attachment 1 to this document, as applicable):

1. How competition was maximized;
2. Considerations taken into account in making decisions on contract type;
3. Measures taken to mitigate risks if non-competitive contracts are issued;
4. Measures taken to mitigate risks of cost-reimbursement and T&M/LH contracts;
5. Efforts made to transition to more competitive contracting; and
6. Efforts made to transition to lower risk contract types.

If the outcome of the meeting is a recommendation to use a High-Risk contracting method, the National Assessment Governing Board Executive Director must approve use of the High-Risk contracting method by signing the documentation. This review does not replace other required reviews and documentation such as justifications for other than full and open competition, or determinations and findings supporting contract type selection. At the request of the Competition Advocate or HCA, the Governing Board shall submit a report on outcomes, on a quarterly basis or an annual summary as requested.

**C. Survey sources in one-offer procurements** – After award in an acquisition where only one offer was received, the Contracting Officer shall survey potential sources to understand the basis for decisions made not to participate, and to gather alternative suggestions to encourage future competition. The Contracting Officer shall document contract files and notify the Contract Review Committee of the results of this research. (See Question 3 A.1. on Page 9 of the attached memo for discussion of this topic. See the checklist in Attachment 4 to this memo for a sample format to record the results of this research.)

**D. Annual summary of actions taken in response to the requirements**

After the conclusion of each fiscal year, the Contracting Officer shall prepare a summary report of actions taken in the fiscal year to increase competition and mitigate high risk contracting. Recommended actions for the next fiscal year cycle and an action plan to implement the recommendations will be summarized as well.

## V. Attachments

Attachment 1: [Increasing Competition and Structuring Contracts for the Best Results](#), Office of Management and Budget, October 27, 2009



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Attachment 2: [Improving Government Acquisition](#), Office of Management and Budget, July 29, 2009

Attachment 3: [Government Contracting](#), The White House, March 4, 2009

Attachment 4: Sample checklist for recording results of research on sources

**Attachment 4: Post award checklist for no bid decision made by potential offerors**

Solicitation Number and Name:

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Source Name and Address:

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Contacted by:

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Check box as appropriate	Reason for not submitting offer	COMMENTS
	<b>Not qualified in area of work</b>	
	<b>Unduly restrictive requirements</b>	
	<b>Insufficient time for response</b>	
	<b>Insufficient corporate resources for bid</b>	
	<b>Could not overcome incumbent advantage</b>	
	<b>Cannot meet requirements</b>	
	<b>Other reason (specify)</b>	
<b>SUGGESTIONS FOR INCREASING FUTURE COMPETITION</b>		

Signature (name, title, and date):

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