



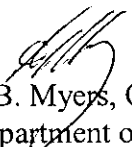
**U.S. Department of Justice**  
Justice Management Division  
*Management and Planning Staff*

*Washington, D.C. 20530*

OCT 10 2007

**MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS and  
BUREAU COMPETITION ADVOCATES**

**FROM:**

  
H.B. Myers, Competition Advocate  
Department of Justice

**SUBJECT:**

DOJ Procurement Guidance Document (PGD) 07-13  
Enhancing Competition in Federal Acquisition

Competition is the cornerstone of our acquisition system and its benefits are well established. It saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. There is, however, increasing concern that we in the procurement community are not doing enough to foster and maximize the use of competitive procedures.

Although a number of tools exist to facilitate the efficient and effective use of competition, the Administrator, Office of Federal Procurement Policy is concerned that we are not taking full advantage of these tools, especially in the placement of task and delivery orders under indefinite-delivery vehicles. OFPP has found that the government frequently misses opportunities to take full advantage of competition when placing orders. Inadequate planning, insufficient market research, and poor coordination among program and acquisition offices lead to ill-defined requirements, lack of head-to-head competition for task-specific solutions and pricing, and the absence of meaningful performance standards to measure results. The lack of meaningful competition for orders has taken on increased significance in recent years with the growth of obligations through task and delivery orders.

OFPP has directed that we address this issue by reinvigorating the role of the Competition Advocate in the procurement process. Competition Advocates have the broad responsibility to promote competition and challenge barriers to competition in agency acquisitions. The competition advocate's responsibilities are described in FAR Subpart 6.5 and JAR Subpart 2806.5 and include preparing an annual report.

The purpose of this memorandum is to request your help and leadership in reinforcing the use of competition and related practices for achieving a competitive environment. To ensure that we are getting the best value for the taxpayer, I ask that Bureau Procurement Chiefs and Competition Advocates work closely together to evaluate the overall strength of your competition practices. In

particular, the Advocate should review the level of competition at your bureau and develop plans and goals for maximizing competition. Competition Advocates must provide a written report with appropriate analysis, including a trend analysis, and recommendations. To assist in this process several questions are provided as an attachment to help the Advocate identify if your agency's practices are conducive to competition. Also attached are the relevant sections of the FAR and JAR describing Competition Advocate duties and responsibilities. Additionally, we have attached overall competition statistics for FYs 2005 and 2006 which are based on an analysis of data in FPDS-NG and the SF281 reports of actions under \$25,000.

The report must be submitted to the DOJ Competition Advocate by November 30, 2007, and annually thereafter. Bureau reports will be consolidated into a DOJ-wide report that will be provided to the DOJ Senior Procurement Executive. A copy of the DOJ-wide report will also be provided to the Office of Federal Procurement Policy (OFPP).

Thank you for your cooperation on this very important matter. Your leadership is essential to maintain and increase our levels of competition. If you have any questions, please contact Vernon Carter at 202/616-3681.

**ATTACHMENTS:**

Assessment of Competition Practices Questionnaire  
FY 2005 and 2006 Competition Statistics  
FAR Subpart 6.5 and JAR Subpart 2806.5.

### **Assessment of Competition Practices**

The following illustrative questions are designed to assist competition advocates in assessing the quality of competition practices and policies at their agencies. Reviews should give special attention to work awarded through orders, especially orders above \$1 million.

As part of their reviews, advocates should evaluate the quality of acquisition planning and contract management practices, as these steps are critical to reaping the benefits of competition. Advocates are encouraged to supplement their reviews with additional considerations, as appropriate.

#### **A. Ensuring sufficient attention to the manner in which acquisitions are planned**

1. Are cross-functional teams, including end-users and acquisition officials used to develop project acquisition plans and strategies and requirements documents?
2. Do acquisition plans explain how competition will be sought, promoted, and sustained throughout the course of the acquisition?
3. Do acquisition plans for large requirements consider, as appropriate, the comparative benefits of awarding a new contract versus placing an order under an existing contract?
4. Do program officials expressly concur on requirements documents?
5. Are the market research techniques outlined in FAR 10.002(b)(2) being used, such as:
  - a. publishing formal requests for information in appropriate technical or scientific journals or business publications;
  - b. querying government and commercial databases that provide information relevant to the acquisition; and
  - c. participating in interactive, on-line communication among industry, acquisition, personnel, and customers.
6. Are plans in place to provide maximum practicable opportunities for small businesses both in prime contracting and subcontracting?
7. If acquisition plans anticipate contract bundling, or contract consolidation in the case of the Department of Defense, have written justifications for these actions and appropriate analyses been developed?

**B. Using competition in an effective manner**

1. Do statements of work, including those in task and delivery orders, have:
  - a. sufficient information, stated clearly, so that offerors may make informed business decisions on whether to respond and perform the due diligence necessary to propose the best solutions possible?
  - b. clear performance measures and expectations related to quality, responsiveness, timeliness, and cost?
2. Does the agency consider complexity, commerciality, availability, and urgency in establishing offeror response times? Has sufficient time been built into the acquisition schedule to maximize competition and encourage contractors to provide quality proposals that would allow for a best value award based on initial offers?
3. Is the agency taking recent and relevant past performance into account, including quality, timeliness, and cost control? Is the agency using the Past Performance Information Retrieval System?
4. Does the documentation for source selection decisions include the rationale for any tradeoffs made or relied on by the source selection authority, including the benefits associated with additional costs?
5. Are orders under indefinite-delivery vehicles reported to FPDS as non-competitive when competition is not used?

**C. Emphasizing sound contract management and oversight**

1. Are properly trained contracting officer representatives and contracting officer technical representatives designated for contracts (including indefinite delivery contracts and task orders) before contract performance begins?
2. Does the agency have appropriate processes in place to ensure that proposed modifications are within the scope of the contract or order?
3. Are quality assurance surveillance plans included in the contracts?

The Components listed on the attached spreadsheets have a total competition base of \$2,771,514,555 for FY 2005 and a total competition base of \$2,946,024,574 for FY 2006. The information provided on these spreadsheets are based on the following:

1. Data obtained from FPDS Standard Competition Report by Agency, as of October 4, 2007.
2. The figures include dollars and actions coded as full and open competition. (Contracts and modifications over \$25,000, as well as competed actions under the Simplified Acquisition Threshold)
3. The figures also include dollars and actions that were collected from Standard Form (SF) 281s submitted by the Components. (Note: Alcohol, Tobacco, Firearms and Explosives; Bureau of Prison; and Drug Enforcement Administration submitted data directly into FPDS and do not submit SF 281s.)



## COMPETITION REPORT - FISCAL YEAR 2006

<u>Contracting Agency</u>	<u>Contracting Office</u>	<u>Competition Base (Dollars)</u>	<u>Competition Base (Actions)</u>	<u>Competed (Dollars)</u>	<u>Competed (Actions)</u>	<u>Percentage Competed (Actions)</u>	<u>Percentage Competed (Dollars)</u>
ATF	ACQUISITION & PROPERTY MGT. DIV. ( AT001)	\$63,699,135.38	1,319	\$20,392,275.37	527	40%	32%
BOP	FEDERAL PRISON SYSTEMS	\$1,156,147,436.59	42,611	\$858,532,435.72	27,539	65%	74%
DEA	DEA HQTRS/LABS/DIVISIONS/OFFICES	\$173,612,692.54	7,599	\$107,273,570.26	3,041	40%	62%
FBI	DEPT OF JUST/FBI( PDS01)	\$220,242,924.78	5,719	\$133,394,872.23	4,078	71%	61%
FPI		\$307,288,641.94	14,268	\$260,931,104.05	11,727	82%	85%
OBD		\$481,997,979.59	17,114	\$346,503,419.41	14,166	83%	72%
OFDT		\$7,143,103.90	45	\$5,749,640.46	17	38%	80%
OJP	ACQUISITION MGT. DIV. (AMD & LEAA5)	\$101,552,409.10	578	\$86,979,660.30	492	85%	86%
USMS	USMS HQTRS/DISTRICTS/DIVISIONS	\$434,340,250.35	4,224	\$311,433,475.69	2,223	53%	72%
<b>TOTAL</b>	<b>ALL DOJ COMPONENTS/BUREAUS</b>	<b>\$2,946,024,574.17</b>	<b>93,477</b>	<b>\$2,131,190,453.49</b>	<b>63,810</b>	<b>68%</b>	<b>72%</b>

### Subpart 6.5—Competition Advocates

#### 6.501 Requirement.

As required by Section 20 of the Office of Federal Procurement Policy Act, the head of each executive agency shall designate a competition advocate for the agency and for each procuring activity of the agency. The competition advocates shall—

(a) Be in positions other than that of the agency senior procurement executive;

(b) Not be assigned any duties or responsibilities that are inconsistent with 6.502; and

(c) Be provided with staff or assistance (*e.g.*, specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small business concerns), as may be necessary to carry out the advocate's duties and responsibilities.

#### 6.502 Duties and responsibilities.

(a) Agency and procuring activity competition advocates are responsible for promoting the acquisition of commercial items, promoting full and open competition, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

(b) Agency competition advocates shall—

(1) Review the contracting operations of the agency and identify and report to the agency senior procurement executive—

(i) Opportunities and actions taken to acquire commercial items to meet the needs of the agency;

(ii) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency;

(iii) Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;

(iv) Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency;

(2) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing—

(i) Such advocate's activities under this subpart;

(ii) New initiatives required to increase the acquisition of commercial items;

(iii) New initiatives required to increase competition;

(iv) New initiatives to ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics;

(v) Any barriers to the acquisition of commercial items or competition that remain; and

(vi) Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research;

(3) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and

(4) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.



PART 2806

COMPETITION REQUIREMENTS

SUBPART 2806.3 - OTHER THAN FULL AND OPEN COMPETITION

2806.302 Circumstances permitting other than full and open competition.

2806.302-7 Public interest.

2806.302-70 Determination and findings.

(a) Procedure. The determination and findings (D&F) required by FAR 6.302-7(c)(1) shall be prepared in the format provided in paragraph (b) of this subsection. The original D&F and documentation supporting the use of this exception to the requirement for full and open competition shall be submitted to PPRG, JMD, for concurrence and coordination to the Attorney General for signature.

(b) Format. The following format shall be used for the D&F:

Department of Justice
Washington, DC 20530
Determination and Findings

Authority To Use Other Than Full and Open Competition

Upon the basis of the following findings and determination, which I hereby make pursuant to the authority of 41 U.S.C. 253(c)(7), as implemented by FAR 6.302-7, it is in the public interest to provide for other than full and open competition in the contract action described below.

Findings

- 1. The (1) proposes to enter into a contract for the acquisition of (2).
2. Use of the authority cited above is necessary and in the public interest for the following reasons: (3)

Determination

For the reasons described above, it is necessary and in the public interest to use other than full and open competition in the proposed acquisition.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Notes:

- (1) Name of contracting activity.
(2) Brief description of supplies or services.
(3) Explain the need for use of the authority.

2806.303 Justifications.

2806.303-1 Requirements.

Pursuant to FAR 6.303-1(d), a copy of the justification shall be forwarded through the Department's Competition Advocate to the Department's point of contact with the Office of the United States Trade Representative.

2806.303-2 Content.

In addition to the information required by FAR 6.303-2, justifications requiring the approval of the PE shall contain the following documents:

(a) A written Acquisition Plan as required by FAR 7.102 and part 2807 of this chapter. If a plan was not prepared, explain why planning was not feasible or accomplished.

(b) A copy of the CBD announcement or proposed announcement in accordance with the requirements of FAR 5.203.

(c) As part of the description of the supplies or services required in FAR 6.303-2, the justification shall include the statement of need as submitted by the requiring activity and any subsequent changes or revisions to the specifications.

(d) Any additional documentation that may be unique to the proposed procurement and is relevant to the justification.

2806.304 Approval of the justification.

(a) All justifications for contract actions over the contracting officer's approval dollar threshold shall be submitted to the BPC for concurrence before being forwarded to the contracting activity competition advocate for approval. Justifications requiring approval by the PE shall be further submitted for the concurrence of the contracting activity competition advocate and the HCA, or designee, before being forwarded to the PE for approval.

(b) After approval by the PE, the signed original will be returned to the contracting activity and one copy will be retained by the PPRG, JMD.

(c) Pursuant to FAR 6.304(c), a class justification for other than full and open competition shall be approved in accordance with bureau procedures.

SUBPART 2806.5 - COMPETITION ADVOCATES

2806.501 Requirement.

In accordance with FAR 6.501:

(a) The Assistant Director, Procurement Policy and Review Group, Management and Planning Staff, Justice Management Division, has been designated as the Competition Advocate for the Department of Justice.

(b) The agency head will appoint, in each bureau, an official to be the contracting activity competition advocate.

The contracting activity competition advocates shall be vested with the overall responsibility for competition activities within their contracting activity. No individual in the contracting office at or below the level of chief of the contracting office may serve as the contracting activity competition advocate. An individual at any level above the BPC may serve as contracting activity competition advocate.

**2806.502 Duties and responsibilities.**

In addition to the duties and responsibilities set forth in FAR 6.502(b) and elsewhere in this chapter, contracting activity competition advocates shall:

(a) Actively enforce the Department's Competition Advocacy Program within the contracting activity and ensure that systems are established for the effective internal control of contracting activity functions and activities which implement the Department's Competition Advocacy Program.

(b) Implement specific goals and objectives to enhance competition and the acquisition of commercial items.

(c) Prepare and submit to the DOJ Competition Advocate, by November 30 of each year, an annual report of competition advocacy activities conducted during the prior fiscal year.