

# Competition in Government Contracting



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# Overview



## Topics for this Session:

- Government's Requirements for Competition
- Contractors' Standards for Competition
- Government Exemptions from Competition
- Contractors' Standards for Documenting Non-Competitive Transactions

# Competition Requirements - Government



- The Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253) (H.R. 5184) (FAR Subpart 6.1“Full and Open Competition”) is a
  - Public law enacted for the purpose of encouraging competition for the award of all types of Government contracts.
  - The purpose was to increase the number of competitors
  - Increase savings through lower, more competitive pricing.
- CICA became law in 1984 and is one of the building blocks of FAR
- CICA does not apply to prospective contracts awarded using Simplified Acquisition Procedures (SAP).

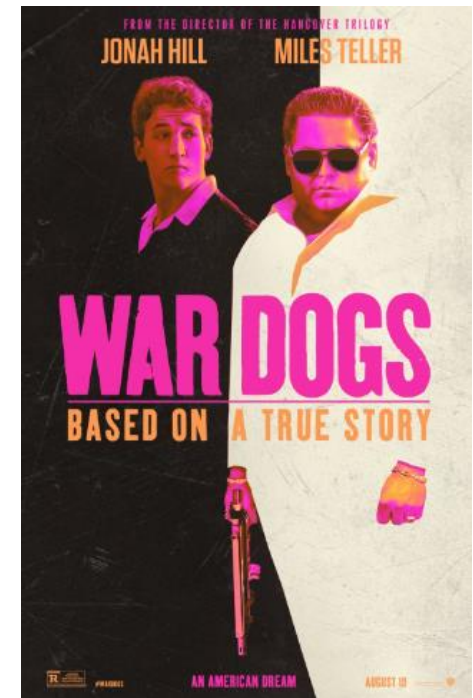


MARKET COMPETITION

# Competition Requirements - Government



- CICA introduced the concept of “Full and Open Competition which was designed to:
  - Promote transparency, accountability, and integrity in Government contracting methods
  - Ensuring fair competition for enterprises interested in securing contracts with the Federal Government
  - Increase the amount of Small Business participation in Government Contracting



# Competition Requirements - Government



- CICA also mandated:
  - Optimal and effective use of taxpayer funds by requiring that Federal agencies optimize competition during the procurement of goods and services
  - Protocols and criteria for competitive bidding
  - The utilization of sealed bidding (FAR Part 14) and competitive bids (FAR Part 15)
  - That contracts be awarded based on merit, price, and other pertinent factors rather than bias or prejudice.
  - The use of a formal evaluation process
  - The use of a formal protest process

# Competition Requirements - Government



- FAR 6.101 Full and Open Competition states:
  - (a) 10 U.S.C. 3201 and 41 U.S.C.3301 require, with certain limited exceptions (see subpart 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.
    - (a) Sealed bids
    - (b) Competitive proposals
    - (c) Combination of competitive procedures (e.g., two-step sealed bidding).
    - (d) Other competitive procedures.



# Competition Requirements - Government



- FAR 6.2 – Full and Open Competition After Exclusion of Sources provides guidance to agencies regarding the use of competitive procedures after sources are excluded. Examples include:
  - 6.202 Establishing or maintaining alternative sources.
  - 6.203 Set-asides for small business concerns.
  - 6.204 Section 8(a) competition.
  - 6.205 Set-asides for HUBZone small business concerns.
  - 6.206 Set-asides for service-disabled veteran-owned small business (SDVOSB) concerns eligible under the SDVOSB Program.
  - 6.207 Set-asides for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.
  - 6.208 Set-asides for local firms during a major disaster or emergency.

# Competition Requirements - Contractor



52.244-5 Competition in Subcontracting (August 2024) states:

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
  
- (b) If the Contractor is an approved mentor under the DoD Mentor-Protégé Program ( 10 U.S.C. 4902), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.





# Other than Full and Open Competition- Government Exceptions



- FAR 6.302 identifies circumstances permitting Other Than Full and Open Competition as follows:
  - Only one responsible source and no other supplies or services will satisfy agency requirements
  - Unusual and Compelling Urgency
  - Industrial mobilization; engineering, developmental, or research capability; or expert services.
  - International Agreement
  - Authorized or required by statute.
  - National Security
  - Public Interest



# Industry Exceptions - Contractor



## ➤ OTHER:

- Only one responsible source
- Unusual and Compelling Urgency
- Industrial mobilization; engineering, developmental, or research capability; or expert services.
- International Agreement
- Authorized or required by statute.
- National Security
- Contracting Officer Directed



# Industry Exceptions - Contractor



## ➤ OTHER:

- Follow-On Effort
- Executive Management Directed
- Proprietary (Source Controlled) Item/Drawings
- Predominant Expert
- Directed
- Logistical Considerations
- Cost and Schedule Impacts



# Justification and Approval for Other Than Full and Open Competition - Government



## 6.303 Justifications.

### 6.303-1 Requirements.

(a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer-

- (1) **Justifies**, if required in 6.302, the use of such actions in writing;
- (2) **Certifies** the accuracy and completeness of the justification; and
- (3) **Obtains the approval** required by 6.304.

Content for the J&A for Other than Full and Open Competition can be found at Far 6.303-2.

# CPSR Guidelines to Contractors



FAR does not provide guidance to contractors regarding Non-Competitive source selection. However, applicable CPSR clauses requires appropriate documentation. The DCMA Guidebook provides guidelines as follows:

- b. Other Than Full and Open Competition
  - i. If a purchase order is not competed, there must be documentation justifying why it was not competed and showing management's approval per DFARS 252.244-7001(c)(9). This justification should contain the following.
  - ii. Content of the Justification - Each procurement must stand on its own merit; each justification shall contain sufficient facts and rationale to justify the use of a sole source.

# CPSR Guidelines to Contractors



- iii. Key points for justification – Validate assumptions regarding the specified sources unique capabilities. Identify all sources that expressed interest in the requirement (market research), and details regarding the evaluation of their capabilities. Thoroughly describe unique capabilities or qualifications that form basis of the justification.
- iv. Approvals – Management level justification and adequate cost or price analysis, as applicable, is required for all non-competitive awards per DFARS 252.244-7001(c)(9) and (10).
- v. Summary – Full and open competition is the rule and noncompetitive awards should have management level approved justification documented in the file per DFARS 252.244-7001(c)(9).



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