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CONTRACTING OFFICER'S TECHNICAL INSTRUCTION (COTI) 99-11

To: Regional Associate Directors, Service Centers, Administrative Program Centers, Public Utility Management and Washington Office
Attention: Contracting and Acquisition Management Offices

From: Acting Manager, Contracting and Procurement Program, WASO

Subject: **Servicewide Policy on Use of and Competition under National Park Service Multiple Award Indefinite Delivery - Indefinite Quantity Contracts**

I. BACKGROUND

In 1994, multiple award contracts were explicitly authorized by the Federal Acquisition Streamlining Act of 1994 (FASA). This authority encourages agencies to award multiple contracts covering the same scope of work and then, as needs are identified for specific tasks and products, use streamlined commercial-style procedures to compete the orders among the contract holders.

In 1998, the Administration raised grave concern about misuse of this new authority. Under the prescribed procedures in FAR Subpart 16.505, orders are to be placed under multiple award contracts by subsequently competing orders for specific supplies and/or services among the contract holders.

The General Accounting Office and the Department of Defense Inspector General have testified before Congress that agencies are not taking full advantage of the competitive aspects of order placement. Some agencies have instituted a practice of designating certain multiple award contract holders as "preferred sources" for receipt of particular orders or types of orders. This practice clearly contradicts sole source authorization procedures in FAR 16.505(b)(2) and FAR Part 6. The FAR Council has been requested to revise the FAR to directly prohibit this practice. Until that is completed, all agencies have been directed to refrain from this practice.

II. PURPOSE

The purpose of this Contracting Officer's Technical Instruction (COTI) is to provide National Park Service policy, and uniform guidance and procedures to Contracting Officers and Program Managers on the use of and competition requirements under National Park Service Multiple Award Indefinite Delivery - Indefinite Quantity (IDIQ) Contracts. It also provides a central database of these Servicewide IDIQ contracts for shared information and use. The database will be updated semi-annually in October and March of each year.

III. POLICY

The National Park Service encourages the use of multiple award contracts as a means to streamline acquisition processing and to take advantage of the benefits of competition after contract award. Sharing of these multiple award IDIQ contracts is also strongly encouraged. Competition is required between all contract holders (defined as Contractors or awardees who have been awarded contracts in response to a specific solicitation) rather than with all Contractors in the database.

After initial contract award, the National Park Service mandates that all like contract holders have a fair opportunity to be considered for each Task/Delivery Order in excess of \$ 2,500. Although the regulations governing Architect-Engineer Contracts and Supply and Service Contracts are different, competition is required in some form for Task/Delivery Orders under both types of contracts.

The Brooks Act, Public Law 92-582 and FAR Subpart 36.6 provides the framework under which Architect-Engineer Services are procured. After initial contract award, subsequent Task/Delivery Orders are negotiated and awarded in accordance with these identical laws and regulations. Selection of sources for Architect-Engineer Contracts in accordance with Public Law 92-582 and Subpart 36.6 is a competitive procedure.

In order to be fully in compliance with the intent of the Brooks Act, "competition" as it relates to selection of firms for Task Order awards under multiple-award Architect-Engineer contracts must be limited to technical qualification factors only. In no instance should Architect-Engineer firms be encouraged or allowed to compete for work on the basis of price or cost. Factors that may be used include, past performance on earlier tasks under the multiple award contract, quality of deliverables, cost control, or other factors (other than cost or price) that the Contracting Officer believes are relevant.

The italicized paragraph is an addition made on March 7, 2000

FAR Subparts 12, 14 and 15, provides the framework under which supplies and services are procured. After initial contract award, subsequent Task/Delivery Orders are negotiated and awarded in accordance with the provisions of FAR Subpart 16.505. Competition among like multiple awarded IDIQ contracts is required under these provisions unless an exception is justified and approved by the Contracting Officer.

A sole source exception granted over \$100,000 under any circumstances shall be approved at a level above the Contracting Officer.

IV. RESPONSIBILITIES

- A. The Manager, Contracting and Procurement Program, WASO, is responsible for the dissemination of information and policy.
- B. The Program Manager is responsible for developing the Task/Delivery Order and recommending to the Contracting Officer the appropriate source or sources to compete. If only one source of the multiple award contract holders is identified, documentation must be provided which addresses one of the four exceptions set forth in FAR Subpart 16.505 (b) (2) or selection in accordance with FAR Subpart 36.602. The Program Manager is also responsible for providing a recommendation to the Contracting Officer regarding the designation of a specific Contracting Officer's Technical Representative (COTR) for Task/Delivery Order administration based on their qualification in the particular discipline.
- C. The Contracting Officer is responsible for ensuring that individual Task/Delivery Orders clearly describe all services to be performed or supplies to be delivered, that they are **within the scope of the contract**, and that the competition requirements as required by FAR 16.505 or FAR Subpart 36.602 and Public Law 92-582 are satisfied. Documentation addressing the above factors must be included in a Memorandum to the File or Summary of Negotiation. The Contracting Officer is also responsible for ensuring that a certified and qualified COTR is designated to represent the Government in the administration of the Task/Delivery Order. The Contracting Officer is further responsible for the coordination of the Task/Delivery Order with the Issuing Office of the contract throughout the duration of the Order.
- D. *The Contracting Office that issues the Task/Delivery Order is also responsible for reporting the award in the Department's reporting system, i.e., IPDS.*

The italicized paragraph is an addition made on March 7, 2000

V. AUTHORIZED USERS

- A. Only National Park Service Contracting Officers with a Level IIIA or higher warrant may request permission to negotiate Architect-Engineer Task/Delivery Orders under the terms and conditions of National Park Service IDIQ Contracts.
- B. National Park Service Contracting Officers with a Level IIB or higher warrant may request permission to negotiate Task/Delivery Orders under the terms and conditions of National Park Service IDIQ Contracts for other than Architect-Engineer Task/Delivery Orders.
- C. National Park Service COTR's must be certified in accordance with the requirements contained in COTI 94-8 dated January 21, 1994. This policy sets forth minimum training requirements for all individuals who are delegated written authority from a Contracting Officer to serve as their representative during contract performance.

VI. PRE-AWARD

- A. Prior to setting up contracts in various disciplines, the Contracting Officer is strongly encouraged to use existing National Park Service, Department of the Interior, and other Agency IDIQ Contracts.
- B. If it is determined that a new solicitation is necessary, thought should be given to making only the reasonable number of awards necessary to satisfy the work requirements and effect meaningful competition.
- C. The contract solicitation and award shall include, as appropriate, the following:
 - (1) General statement of work, or other description that reasonably describes the scope, nature or complexity, and the purpose of the supplies or services;
 - (2) The period of contract, including all options;
 - (3) Minimum and maximum quantities or dollar values of supplies or services to be acquired;
 - (4) The general procedures for ordering, selection and issuance of Task/Delivery Orders;

- (5) The identification of authorized users; and
- (6) The inclusion of a requirement to have the Contractor prepare quarterly reports for National Park Service IDIQ Contracts to assist in the proper administration and tracking of minimum and maximum quantities.

VII. POST-AWARD

- A. All Task/Delivery Orders under multiple award IDIQ contracts over \$2,500, require competition in accordance with FAR Subpart 16.505 or FAR Subpart 36.6.

Exceptions to competition under FAR Subpart 16.505 (b) (2) are:

- (1) The agency need for such supplies or services is of such urgency that providing such opportunity would result in unacceptable delays;
- (2) Only one such Contractor is capable of providing such supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;
- (3) The order should be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or
- (4) It is necessary to place an order to satisfy a minimum guarantee.

Documentation for the use of one of these exceptions is required to be in each contract file. While the FASA authority provides for reasonable exceptions to the competitive award of orders, going beyond these exceptions to designate a preferred source is prohibited.

- B. In carrying out the competition requirement, streamlined competition and ordering procedures are strongly encouraged. Oral solicitations or quotations are also encouraged when the requirements are not complex, either as to specifications or number of items required.

VIII. APPLICABILITY

This COTI is effective immediately and will remain in effect until canceled or rescinded.

IX. ATTACHMENTS

- A. Servicewide Procedures for Use of Another Office's Indefinite Delivery - Indefinite Quantity Contracts.
- B. Sample of Suggested General Procedures for Ordering, Selection, and Issuance of Orders.
- C. National Park Service Indefinite Delivery - Indefinite Quantity Database.

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