

Impact of Source Control Drawings on Competition

Public Law (P.L.) 98-369, The Competition in Contracting Act (CICA) of 1984, requires procurements for property and services to be obtained on the basis of full and open competition. There are seven exceptions to this requirement identified in Part 6 of the Federal Acquisition Regulation (FAR) which generally requires the preparation of a Justification and Approval (J&A) if the procurement is to be conducted without full and open competition. Occasionally, when J&As are submitted for review, the principal justification cited is that only one company is listed on the source control drawing (SCD) and, therefore, that source is the only source qualified to provide the item. This situation has led to the question: Is listing a single firm on a SCD a proper basis for sole source? The statutory and regulatory guidance associated with qualification provisions for SCDs, particularly as these relate to CICA, must be understood in order to accurately answer this question.

Title XII of P.L. 98-525, The Defense Procurement Reform Act of 1984, established the requirement for the Secretary of Defense to reform Department of Defense procurement practices relating to replenishment parts. Consistent with this requirement, it also established an additional requirement for the head of a defense agency to provide written justification when establishing qualification standards that a potential contractor or product would have to meet, including the costs such contractor might incur to qualify. (FAR 9.201 defines a qualification requirement as a Government requirement for testing or other quality assurance demonstration that must be completed **before** award of a contract.) P.L. 98-525 further ~~further~~ states that an agency head need not delay a procurement in order to permit a company to demonstrate its ability to meet the qualification standards. It does, however, require such agency head to solicit additional sources of supply, and pay the qualifying costs of a potential supplier that is a small business concern if fewer than two manufacturers qualify.

FAR 9.202(a)(1) provides the regulatory implementation consistent with P.L. 98-525, and establishes that the head of an agency, or designee, must prepare a written justification before establishing a qualification requirement. This justification must address: (1) the need for establishing the qualification requirement, and why it must be demonstrated before award; (2) an estimate of likely testing and evaluation costs; and (3) identification of all requirements that a potential offeror must satisfy to become qualified. Only the least restrictive requirements necessary to meet the Government's purposes may be specified. FAR 9.202(b) enables the Head of the Contracting Activity to waive the FAR 9.202(a)(1) requirement, after considering any comments from the Competition Advocate, when the agency activity responsible for establishing the qualification requirement has made a determination that it is unreasonable to specify the standards for qualification which a prospective offeror must satisfy.

Appendix B of MIL-STD 100G, Department of Defense Standard Practice For Engineering Drawings, dated 9 June 1997, addresses qualification provisions for SCDs. It states that qualification provisions for SCDs are required by P.L. 98-525. It defines a SCD as follows:

“A source control drawing provides an engineering description and acceptance criteria for purchased items that require design activity imposed qualification testing and provides performance, installation and interchangeability specific characteristics required for critical applications. It includes a list of approved manufacturers, the manufacturers’ item identifications, and acceptance criteria for items which are interchangeable in specific applications. The SCD establishes item identification for the controlled item(s). The approved items and sources listed on the SCD are the only acceptable items and sources.”

A SCD is only used when it has been determined that no other procurement approach will enable the Government to obtain the required products, two or more manufacturers are able and willing to qualify as sources of supply (single source SCDs require specific approval from the Government design activity), test facilities and resources are available to establish and maintain the qualified sources of supply, and the costs of qualification are justified by the Government’s needs.

The intent of establishing a qualification requirement is to enable the Government to identify products of requisite quality, reliability, or safety through testing prior to, and independent of, award of a contract. Such pre-testing is in recognition of a complexity of performance requirements and sensitivity of design or end item application that render it impractical to rely on first article and/or acceptance testing.

When establishing a new SCD, or developing additional sources for a SCD, publication of the Government’s intent is required in the Commerce Business Daily, and manufacturers known to be interested in submitting products for qualification are also to be contacted. Additionally, known related trade associations are notified in order to effect widespread publicity.

The listing of a manufacturer as a source of supply on a SCD signifies only that, at the time of examination or test, the manufacturer could make a product that met the drawing requirements. Inclusion of a source of supply on a drawing does not relieve a contractor of its contractual obligations to deliver products that comply with the drawing requirements, guarantee acceptability of products delivered under a contract, nor constitute a waiver of any requirement for inspection.

Based on a review of the above-cited statutory and regulatory guidance, it is clear that qualification requirements shall only be used when absolutely necessary, that appropriate written justifications are required, and that affirmative actions must be taken to obtain multiple qualified sources to enable competition. Similarly, SCDs should cite multiple sources, except when appropriately justified.

In conclusion, the mere listing of a single source on a SCD is not in and of itself a basis for a sole source acquisition. The Government needs to take appropriate steps in accordance with FAR 9.202 to justify any qualification requirements, and then provide industry an opportunity to meet these requirements. Consequently, the initial review of a proposed sole source

acquisition justified on the basis of only a single firm listed on a SCD must determine if the appropriate approvals in accordance with FAR 9.202 have been obtained. If the required approvals have not been obtained, then reliance on the fact that there is a single source listed on the SCD would not be an appropriate basis to support a sole source acquisition strategy. If the required approvals have been obtained, the sole source justification should describe the circumstances that require the establishment of a qualification requirement, and the actions taken in an attempt to qualify more than one source.

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