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INFORMATION PAPER

26 February 2002

SUBJECT: Urgency Solicitations

PURPOSE: To provide information regarding the need to fully articulate rationale supporting solicitations based on urgency:

FACTS:

- The Competition in Contracting Act of 1984 (CICA) requires “full and open competition” in government procurements except where otherwise specifically allowed by the statute.
- One exception to this competition requirement is where the agency’s needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits bids or proposals.
- If noncompetitive procurement procedures are used, the agency is required to execute a written J&A with sufficient facts and rationale to support the use of the urgency exception. To qualify, the requirement must truly be an urgent one, the urgency must not have been created by the agency due to a lack of advanced planning, and the quantity being acquired must only be the minimum amount necessary to satisfy the immediate urgent requirement.
- The GAO will normally give great deference to a military agency’s reasonable determination that a particular requirement is “urgent,” i.e., that the requirement impacts mission readiness and/or safety of personnel.
- The GAO has been less deferential in protests questioning the agency’s minimum quantity necessary to satisfy the urgent requirement. In a decision issued on September 21, 2001, the GAO sustained a protest against an urgent Army procurement holding that while the Army had established that the requirement was in fact urgent, it had failed to justify why the particular quantity being procured was the minimum necessary to meet the urgent requirement. The GAO also found that the Army failed to engage in reasonable advanced procurement planning, where despite having been aware of safety problems with the current system it took the Army two years to draft performance specifications for a competitive procurement of a new system. Signals & Systems, Inc., B-288107, September 21, 2001.

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- The lesson of this recent GAO decision is that even after September 11, procurement officials should be careful to use the unusual and compelling urgency exception to full and open competition only where there is a legitimate urgent requirement, the quantity being procured is the minimum necessary to meet that requirement, and the urgency is not due to the lack of advanced procurement planning.

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