INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

REPORT
NO. 90-033

February 9, 1990

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION
ASSISTANT SECRETARY OF DEFENSE (PRODUCTION AND LOGISTICS)
ASSISTANT SECRETARY OF THE ARMY (FINANCIAL MANAGEMENT)
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Report on the Survey of Competition in Negotiated Procurements (Project No. 9CA-0030)

Introduction

This is our final report on the Survey of Competition in Negotiated Procurements in DoD. The survey was made from March to May 1989. The survey objective was to determine whether definitive contract awards under competitive negotiated procurement procedures resulted in reasonable prices through use of adequate competition. We also reviewed the Services' internal control procedures implemented for obtaining the required approval from supervisory contracting officers, commanders, and boards to ensure that sufficient competition had taken place.

Scope of Survey

The total DoD contract awards (greater than $500,000) coded in the DD350 data base as competitive negotiated in FY 1988 were valued at $19 billion. Based on a statistical sample of these awards, we selected 360 contract awards totaling $7.2 billion for review. We randomly selected for the survey a subsample of 69 contract awards with the intent of using stop and go procedures to determine whether to proceed with the audit. We reviewed the 69 contract awards, valued at $1.6 billion, at 10 procurement activities to determine compliance with Federal Acquisition Regulation (FAR) procedures.

The survey was made in accordance with the auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD, and accordingly, included such tests of the records as were considered necessary. We reviewed the contracts and documents supporting the negotiation and award process for the 69 contractual awards and the Services' internal control procedures for the supervisory approvals to ensure sufficient competition. The activities visited are listed in Enclosure 1.

Background

The Competition in Contracting Act of 1984 (CICA), effective April 1, 1985, states, in part, that "an executive agency in conducting a procurement for property or services - (A) shall obtain full and open competition through the use of competitive procedures in accordance with requirements of this title and the modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984; and (B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement." The contracting officer has the responsibility to ensure that "full and open competition" has been accomplished. FAR Subpart 6.0 states that full and open competition, when used with respect to a contract action, means that all responsible sources are permitted to compete. If full and open competition is not possible, justifications must be prepared and approval must be secured from appropriate levels of authority at the procurement office.

Negotiation, as defined in FAR Subpart 15.101, means contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract. Competitive negotiated contracts are those which have some competition, but are negotiated. According to FAR Section 15.804-3 (b)(1), adequate price competition exists when two or more responsible offerors submit proposals in response to a solicitation, the offers are responsive, and the offerors compete independently for a price-based award. The FAR, in Section 15.804-3(b)(2), states that the contracting officer can presume adequate price competition exists, unless "(i) The solicitation is made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete; (ii) The low offeror has such a decided advantage that it is practically immune from competition; or (iii) There is a finding, supported by a statement of the facts and approved at a level above the contracting officer, that the lowest price is unreasonable."

In addition to the foregoing, a determination must always be made by the contracting officer as to when price analysis is sufficient, or when a combination of cost and price analysis is required. Price analysis is sufficient to determine that the

overall price is fair and reasonable, unless cost or pricing data are required in accordance with FAR Section 15.804-2. However, when cost or pricing data are required, the contracting officer shall make a cost analysis to evaluate the reasonableness of individual cost elements.

Prior Audit Coverage

We identified no audit coverage which corresponds directly to the objectives in this review. However, there have been recent reviews performed by the DoD Inspector General dealing with aspects of competitive procurements. In Report No. 88-163, "Dual-Source Procurement Techniques," dated June 7, 1988, the DoD Inspector General found that dual-source procurement techniques usually did not result in adequate price competition. The audit scope dealt with 38 dual-source contracts awarded through calendar year 1986. In Report No. 89-062, "Validity of Competition Statistics Being Reported By DoD," dated March 28, 1989, the DoD Inspector General found that the percentage of contract dollars awarded on a competitive basis by DoD was overstated in annual reports to Congress. The scope of the review was FY 1986 and FY 1987 data.

Discussion

Our statistical sample of competitive negotiated procurements showed that DoD is generally in compliance with CICA and FAR. Contracts were either awarded under full and open competitive procedures, or adequate safeguards, such as contract audits and/or certificates of current cost or pricing data were obtained. We also determined that evaluations of price reasonableness, as required, were made for procurement awards in accordance with the FAR.

We reviewed 69 competitive negotiated contracts issued in fiscal year 1988, valued at $1.6 billion. The survey showed that 67 of these contracts awarded under competitive negotiated procurement procedures resulted in reasonable prices as determined by adequate price competition or other procedures. Conversely, only two contracts were awarded without adequate price competition as defined by the FAR, or without adequate assurance by either contract audit review and/or certificates of current cost or pricing data being obtained. The survey also showed that the internal controls for the approval of procurements by supervisory contracting officers, commanders, and boards were adequate to ensure sufficient competition and reasonable prices. Based on the survey results, we decided to terminate this project.

We provided a draft of this report to the addressees on August 10, 1989. In our draft report, we stated that 71 contracts were reviewed and only one contract was awarded without adequate price competition. We have revised the number of contracts reviewed to 69 and the number with inadequate

competition to two. The conclusions drawn in our draft report remain valid in this final report. Because there were no recommendations, no comments were required of management, and none were received. Therefore, we are publishing this report in final form.

We appreciate the cooperation and courtesies extended to the staff during the survey. The names and titles of the audit team members are shown in Enclosure 2. The distribution of this report is shown in Enclosure 3. If you have any questions concerning this report, please contact Mr. Richard Jolliffe, Program Director, at (202) 694-6260 (AUTOVON 224-6260) or Mr. Joel Pasowicz, Project Manager, at (202) 694-6262 (AUTOVON 224-6262).

Stephen A. Trodden
Assistant Inspector General
for Auditing

Enclosures

cc:
Secretary of the Army
Secretary of the Navy
Secretary of the Air Force

ACTIVITIES VISITED

Department of the Army

Office of the Assistant Secretary of the Army (Research, Development and Acquisition), Washington, DC
U.S. Army Laboratory Command, Adelphi, MD
U.S. Army Missile Command, Huntsville, AL
U.S. Army Armament Command, Rock Island, IL

Department of the Navy

Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Washington, DC
Naval Avionics Center, Indianapolis, IN
Naval Regional Contract Center, Philadelphia, PA
Aviation Supply Office, Philadelphia, PA

Department of the Air Force

Office of the Assistant Secretary of the Air Force (Acquisition), Washington, DC
Wright-Patterson Air Force Base, Dayton, OH
Newark Air Force Base, Newark, OH

Defense Logistics Agency

Defense Electronics Supply Center, Dayton, OH
Defense Personnel Support Center, Philadelphia, PA

AUDIT TEAM MEMBERS

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Auditor General, U.S. Army Audit Agency

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House Committee on Armed Services
House Committee on Government Operations
House Committee on Legislation and National Security,
  Committee on Government Operations