

Marshall CIV John C

From: Marshall CIV John C
Sent: Wednesday, December 17, 2008 6:56 PM
To: M_HQMC_MCFCS_Directors/Deputies
Cc: M_HQMC_LB; Romano CIV Mark; Oliver CIV R. Kaye; Daise CIV Stanley C; Hobbs CIV Beverly
Subject: APM 09-04: Determination to Award Task or Delivery Order Contracts to a Single Source
Signed By: marshalljc@hqmc.usmc.mil

Attachments: Sec 843 DASN 28 Oct and 27 Jun 08.pdf; Sec 843 Approval Matrix 17Dec08.doc



Sec 843 DASN 28 Oct and 27 Jun...
Sec 843 Approval Matrix 17Dec0...

To All,

POLICY: Determination to Award Task or Delivery Order Contracts to a Single Source

ACTION: Effective on the dates specified in paragraphs A and B below, no task or delivery order contract may be awarded to a single source unless the appropriate approval authority makes the required written determination. Attached DASN (A&LM) memorandums of 27 June and 28 October 2008 provide the overall DON and DoD policies which implement Section 843 of FY08 NDAA; specific MCFCS implementation requirements are contained herein.

A. Effective 27 May 2008, MCFCS offices were notified via email of this approval requirement for actions estimated to exceed \$100 million (including all options).

B. Effective 18 December 2008, similar review and approval requirements are established for actions estimated between \$5.5 million and \$100 million (including all options) in accordance with DON policy.

DISCUSSION:

1. ACTIONS ESTIMATED TO BE BETWEEN \$5.5 MILLION AND \$100 MILLION. Per DASN (A&LM) memorandum of 28 October 2008, the following categories of contracts below \$100 million but greater than \$5.5 million are exempt from this review of single award of task or deliver order contracts:

- a. Competitively awarded contracts which provide only for firm, fixed unit price task or delivery orders for products or services where unit prices are established in the contract;
- b. Only one qualified offer received under a competitive solicitation [the circumstances for award must be addressed in the business clearance];
- c. Contracts for Foreign Military Sales awarded to a directed source;
- d. Requirements contracts supported by approved acquisition plans/strategies;
- e. Contracts supported by a sole source Justification and Approval under FAR Part 6;
- f. Sole source contracts awarded under Section 8(a) of the Small Business Act; and
- g. Contracts with a total estimated value less than \$5.5 million.

For actions estimated between \$5.5M and \$100M, a D&F is required to substantiate the determination to award to a single source, unless one of the exempt categories identified in paragraph 1. a. through g. above applies. These D&Fs shall be submitted to the HQMC, Field Support Branch (LBF) for approval by ADC, I&L (Contracts) or Designee, except as noted in the attached HQMC Sec 843 FY08 NDAA Approval Matrix.

2. All actions requiring approval under paragraphs A and B above shall be in the D&F format found in NMCARS Annex 3, appropriately modified to reflect a Determination to Award a Task or Delivery Order Contract to a Single Source in accordance with Sec 843 FY08 NDAA, and include the content required by the DASN (A&LM) memorandum of 27 June 2008. In addition, the Contracting Officer must include in the D&F supporting rationale for not using a multiple award approach under FAR 16.504(c)(1)(ii)(B), and document the decision whether or not to use multiple awards in the contract file in accordance with FAR 16.504(c)(1)(ii)(C). In most cases, these D&Fs should be submitted concurrently with the associated Acquisition Strategy (AS) for the acquisition.

3. Please be aware that the DASN memorandum of 28 October 2008 indicates that, in the case of "hybrid" contracts, where the overwhelming preponderance of the work is defined but the contract contains ordering provisions for supplies/services incidental to the overall effort, the threshold for review is based on the estimated value for those incidental supplies/services.

4. The attached HQMC Sec 843 FY08 NDAA Approval Matrix summarizes these requirements, identifies the determination Approval Authority for MCFCS acquisitions at various dollar thresholds, and makes clear that the task and delivery order contracts affected by this policy include requirements contracts and indefinite-quantity contracts (see FAR 16.501-2).

Please let us know if you have any questions. Please direct any "instant procurement" questions with regard to the execution of the policy/guidance provided herein to the HQMC, Field Support Branch (LBF).

V/R John
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HQMC Contracts Division (LBP)
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HQMC SEC 843 FY08 NDAA APPROVAL MATRIX

DETERMINATION TO AWARD TASK OR DELIVERY ORDER CONTRACTS TO A SINGLE SOURCE *

\$ Amount (including all options)	Approval Authority
≥ \$5.5M - \$100M citing criteria (i), (ii), (iii) or (iv) (criteria listed below) (exempt categories shown below apply only for actions < \$100M)	CCOs at MCLC, Albany and MCI-NCR, Quantico may approve D&Fs for Products and Performance-Based Services up to \$10M. ADC, I&L (Contracts) or Designee will approve all other D&Fs. Submit to HQMC (LBF) for processing.
> \$100M citing criteria (i), (ii), (iii) or (iv)	ASN (RD&A). Submit to HQMC (LBF) for processing to DASN (A&LM).

Criteria referenced in matrix above (as specified in DASN (A&LM) memo of 27 Jun 08)

- (i) the task or delivery orders under the contract are so integrally related that only a single source can reasonably perform the work;
- (ii) the contract provides only for firm, fixed unit price task or delivery orders for products or services where unit prices are established in the contract;
- (iii) only one source is qualified and capable of performing the work at a reasonable price to the government; or
- (iv) because of exceptional circumstances, it is necessary in the public interest to award to a single source.

Exempt categories (as specified in DASN (A&LM) memo of 28 Oct 08)

- a. Competitively awarded contracts which provide only for firm, fixed unit price task or delivery orders for products or services where unit prices are established in the contract;
- b. Only one qualified offer received under a competitive solicitation [the circumstances for award must be addressed in the business clearance];
- c. Contracts for Foreign Military Sales awarded to a directed source;
- d. Requirements contracts supported by approved acquisition plans/strategies;
- e. Contracts supported by a sole source Justification and Approval under FAR Part 6;
- f. Sole source contracts awarded under Section 8(a) of the Small Business Act; and
- g. Contracts with a total estimated value less than \$5.5 million.

* "Award task or delivery order contracts to a single source," as used in this context, means any task or delivery order contract (defined in FAR 16.501-1) other than a multiple award contract, as described in 10 USC 2304a(d)(1)(B) and FAR 16.504(c), under which task or delivery orders are competed between contract holders. Task and delivery order contracts include requirements contracts and indefinite-quantity contracts (see FAR 16.501-2).

References:

- Sec 843 FY08 NDAA
- DASN (A&LM) memorandum of 27 Jun 08 Subj: Determination to Award Task or Delivery Order Contracts to a Single Source
- DASN (A&LM) memorandum of 28 Oct 08 Subj: Determinations for Award of Task or Delivery Order Contracts to a Single Source



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
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OCT 28 2008

MEMORANDUM FOR HEADS OF CONTRACTING ACTIVITIES

Subj: DETERMINATIONS FOR AWARD OF TASK OR DELIVERY ORDER
CONTRACTS TO A SINGLE SOURCE

Ref: (a) DASN(A&LM) memorandum of June 27, 2008

Reviews by the Government Accountability Office found that a significant number of task and delivery orders contracts are awarded to a single source. The Acquisition Advisory Panel, chartered under the Services Acquisition Reform Act of 2003, also identified award of task and delivery order contracts to a single source as an area needing improvement. Award of task and delivery order contracts to a single source frequently eliminates competitive pressures in pricing of individual orders and are inconsistent with the goals of the statutory preference for multiple awards.

Section 843 of the National Defense Authorization Act for Fiscal Year 2008 stipulates that no task or delivery order contract in excess of \$100,000,000 may be awarded unless the Head of the Agency determines in writing that the award meets one of four criteria. Reference (a) implemented this requirement and established Department of the Navy policy that single awards of task or delivery order contracts below the \$100 million threshold require Head of the Contracting Activity (HCA) approval.

Based on subsequent discussions and considerations, the following categories of contracts below \$100 million are exempt from the reference (a) requirement for review of single award of task or delivery order contracts:

- a. Competitively awarded contracts which provide only for firm, fixed unit price task or delivery orders for products or services where unit prices are established in the contract.
- b. Only one qualified offer received under a competitive solicitation [the circumstances for award must be addressed in the business clearance];
- c. Contracts for Foreign Military Sales awarded to a directed source;
- d. Requirements contracts supported by approved acquisition plans/strategies;
- e. Contracts supported by a sole source Justification and Approval under FAR Part 6;
- f. Sole source contracts awarded under Section 8(a) of the Small Business Act; and
- g. Contracts with a total estimated value less than \$5.5 million.

Subj: DETERMINATIONS FOR AWARD OF TASK OR DELIVERY ORDER
CONTRACTS TO A SINGLE SOURCE

In the case of "hybrid" contracts, where the overwhelming preponderance of the work is defined but the contract contains ordering provisions for supplies/services incidental to the overall effort, the threshold for review is based on the estimated value for those incidental supplies/services.

The restrictions on delegations in reference (a) are removed.

Questions may be addressed to Bob Johnson at Robert.F.Johnson@Navy.Mil or 703-693-2936.


M. F. Inggard
Chief of Staff/Policy
For DASN(A&LM)

Copy to:
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DEPARTMENT OF THE NAVY
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June 27, 2008

MEMORANDUM FOR HEADS OF CONTRACTING ACTIVITIES

Subj: DETERMINATION TO AWARD TASK OR DELIVERY ORDER
CONTRACTS TO A SINGLE SOURCE

Encl: (1) DPAPPSS memorandum of May 23, 2008

Enclosure (1), distributed to Navy/Marine Corps contracting activities via e-mail on May 27, 2008, advised that Section 843 of the National Defense Authorization Act for Fiscal Year 2008 became effective on May 27, 2008. Section 843 stipulates that no task or delivery order contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single source unless the Head of the Agency determines in writing that—

- (i) the task or delivery orders under the contract are so integrally related that only a single source can reasonably perform the work;
- (ii) the contract provides only for firm, fixed unit price task or delivery orders for products or services where unit prices are established in the contract;
- (iii) only one source is qualified and capable of performing the work at a reasonable price to the government; or
- (iv) because of exceptional circumstances, it is necessary in the public interest to award to a single source.

Questions received since issuance of the notice have demonstrated the need for certain clarifications:

1. Approval to award to a single source under Section 843 may be supported by any one of the above four criteria.

2. "Awarded to a single source," as used in this context, means any task or delivery order contract other than a multiple award contract, as described in 10 USC 2304a(d)(1)(B) and FAR 16.504(c), under which task or delivery orders are competed between contract holders.

Determination packages should detail circumstances supporting use of a task or delivery order contract, address alternate acquisition strategies, and potential impact if award is not approved. For criterion (iii) above, the D&F should cite and attach any applicable justification to the package.

Subj: DETERMINATION TO AWARD TASK OR DELIVERY ORDER
CONTRACTS TO A SINGLE SOURCE

Enclosure (1) indicates that the Head of the Agency may delegate authority to make the required determinations, however, to date, no such delegation has been signed. Pending further direction, single award of task or delivery order contracts between 10 million and \$100 million under criteria (i) – (iii) require HCA approval. Determinations for single awards below \$10 million under criteria (i) – (iii) may be delegated to the Chief of the Contracting Office. Determinations based on public interest shall be submitted through DASN(A&LM) for processing..

Questions may be directed to Bob Johnson at Robert.F.Johnson@Navy.Mil or 703-693-2936.


Seán Crean
RDML, SC, US Navy
DASN(A&LM)

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MAY 23 2008

ACQUISITION
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT),
ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Enhanced Competition for Task and Delivery Order Contracts

Section 843 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, "Enhanced Competition Requirements for Task and Delivery Order Contracts" is effective May 27, 2008 (attached). It includes several requirements enhancing competition. Section 843 specifies procedures for the placement of orders in excess of \$5 million under a multiple award task or delivery order contract and provides for post-award debriefings with respect to such orders. Orders in excess of \$10 million issued under a multiple award task or delivery order contract may be protested to the Government Accountability Office exclusively. These provisions apply to orders issued on or after May 27, 2008 under existing contracts as well as under new contracts.

Section 843 also stipulates that no task or delivery order contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single source unless the Head of the Agency determines in writing that -

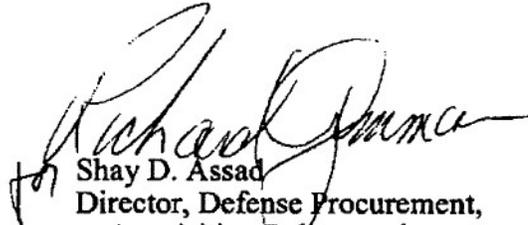
- (i) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;
- (ii) the contract provides only for firm, fixed price task or delivery orders for products for which unit prices are established in the contract or services for which prices are established in the contract for the specific tasks to be performed;
- (iii) only one source is qualified and capable of performing the work at a reasonable price to the government; or
- (iv) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

EM/CL (1)

When a determination is based on public interest, the Head of the Agency must notify Congress within 30 days after making the determination.

The law pertaining to any single award task or delivery order contract is effective for contracts awarded on or after May 27, 2008. A change to the Federal Acquisition Regulation (FAR) is in process (FAR Case 2008-006). However, DoD Components must implement this change on May 27, 2008 regardless of whether the FAR rule has been issued. The Head of the Agency may delegate the authority to make the required determinations. However, the authority to make the determination authorized in (iv) above may be delegated no lower than to the Senior Procurement Executive (as defined in Part 202 of the Defense FAR Supplement). The Defense FAR Supplement will be changed to incorporate this limitation on delegation of authority.

My staff point of contact for this subject is Ms. Teresa Brooks at (703) 697-6710 or teresa.brooks@osd.mil.


Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing

Attachment
As stated

Pub. L. 110-181 (NDAA-08)

SEC. 843. ENHANCED COMPETITION REQUIREMENTS FOR TASK AND DELIVERY ORDER CONTRACTS.

1 (a) **Defense Contracts-**

2 (1) **LIMITATION ON SINGLE AWARD CONTRACTS-** Section 2304a(d) of title 10,
3 United States Code, is amended--

4 (A) by redesignating paragraph (3) as paragraph (4); and

5 (B) by inserting after paragraph (2) the following new paragraph (3):

6 (3)(A) No task or delivery order contract in an amount estimated to exceed
7 \$100,000,000 (including all options) may be awarded to a single source unless the
8 head of the agency determines in writing that--

9 (i) the task or delivery orders expected under the contract are so integrally
10 related that only a single source can reasonably perform the work;

11 (ii) the contract provides only for firm, fixed price task orders or delivery
12 orders for--

13 (I) products for which unit prices are established in the contract; or

14 (II) services for which prices are established in the contract for the
15 specific tasks to be performed;

16 (iii) only one source is qualified and capable of performing the work at a
17 reasonable price to the government; or

18 (iv) because of exceptional circumstances, it is necessary in the public
19 interest to award the contract to a single source.

20 (B) The head of the agency shall notify Congress within 30 days after any
21 determination under subparagraph (A)(iv).

22 (2) **ENHANCED COMPETITION FOR ORDERS IN EXCESS OF \$5,000,000-** Section
23 2304c of such title is amended--

24 (A) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g),
25 respectively;

26 (B) by inserting after subsection (c) the following new subsection (d):

27 (d) **Enhanced Competition for Orders in Excess of \$5,000,000-** In the case of a task
28 or delivery order in excess of \$5,000,000, the requirement to provide all contractors a
29 fair opportunity to be considered under subsection (b) is not met unless all such
30 contractors are provided, at a minimum--

31 (1) a notice of the task or delivery order that includes a clear statement of the
32 agency's requirements;

33 (2) a reasonable period of time to provide a proposal in response to the notice;

1 ` (3) disclosure of the significant factors and subfactors, including cost or price,
2 that the agency expects to consider in evaluating such proposals, and their relative
3 importance;

4 ` (4) in the case of an award that is to be made on a best value basis, a written
5 statement documenting the basis for the award and the relative importance of
6 quality and price or cost factors; and

7 ` (5) an opportunity for a post-award debriefing consistent with the requirements
8 of section 2305(b)(5) of this title.'; and

9 (C) by striking subsection (e), as redesignated by paragraph (1), and inserting the
10 following new subsection (e):

11 ` (e) Protests- (1) A protest is not authorized in connection with the issuance or
12 proposed issuance of a task or delivery order except for--

13 ` (A) a protest on the ground that the order increases the scope, period, or
14 maximum value of the contract under which the order is issued; or

15 ` (B) a protest of an order valued in excess of \$10,000,000.

16 ` (2) Notwithstanding section 3556 of title 31, the Comptroller General of the
17 United States shall have exclusive jurisdiction of a protest authorized under
18 paragraph (1)(B).

19 ` (3) This subsection shall be in effect for three years, beginning on the date that is
20 120 days after the date of the enactment of the National Defense Authorization
21 Act for Fiscal Year 2008.'

22 **(3) EFFECTIVE DATES-**

23 **(A) SINGLE AWARD CONTRACTS-** The amendments made by paragraph (1) shall
24 take effect on the date that is 120 days after the date of the enactment of this Act, and
25 shall apply with respect to any contract awarded on or after such date.

26 **(B) ORDERS IN EXCESS OF \$5,000,000-** The amendments made by paragraph (2) shall
27 take effect on the date that is 120 days after the date of the enactment of this Act, and
28 shall apply with respect to any task or delivery order awarded on or after such date.

29 **(b) Civilian Agency Contracts-**

30 **(1) LIMITATION ON SINGLE AWARD CONTRACTS-** Section 303H(d) of the Federal
31 Property and Administrative Services Act of 1949 (41 U.S.C. 253h(d)) is amended--

32 (A) by redesignating paragraph (3) as paragraph (4); and

33 (B) by inserting after paragraph (2) the following new paragraph (3):

34 ` (3)(A) No task or delivery order contract in an amount estimated to exceed
35 \$100,000,000 (including all options) may be awarded to a single source unless the
36 head of the executive agency determines in writing that--

37 ` (i) the task or delivery orders expected under the contract are so integrally
38 related that only a single source can reasonably perform the work;

1 (ii) the contract provides only for firm, fixed price task orders or delivery
2 orders for--
3 (I) products for which unit prices are established in the contract; or
4 (II) services for which prices are established in the contract for the
5 specific tasks to be performed;
6 (iii) only one source is qualified and capable of performing the work at a
7 reasonable price to the government; or
8 (iv) because of exceptional circumstances, it is necessary in the public
9 interest to award the contract to a single source.
10 (B) The head of the executive agency shall notify Congress within 30 days after
11 any determination under subparagraph (A)(iv).'

12 (2) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF \$5,000,000- Section
13 303J of such Act (41 U.S.C. 253j) is amended--

14 (A) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g),
15 respectively;

16 (B) by inserting after subsection (c) the following new subsection (d):

17 (d) Enhanced Competition for Orders in Excess of \$5,000,000- In the case of a task
18 or delivery order in excess of \$5,000,000, the requirement to provide all contractors a
19 fair opportunity to be considered under subsection (b) is not met unless all such
20 contractors are provided, at a minimum--

21 (1) a notice of the task or delivery order that includes a clear statement of the
22 executive agency's requirements;

23 (2) a reasonable period of time to provide a proposal in response to the notice;

24 (3) disclosure of the significant factors and subfactors, including cost or price,
25 that the executive agency expects to consider in evaluating such proposals, and
26 their relative importance;

27 (4) in the case of an award that is to be made on a best value basis, a written
28 statement documenting the basis for the award and the relative importance of
29 quality and price or cost factors; and

30 (5) an opportunity for a post-award debriefing consistent with the requirements
31 of section 303B(e)'; and

32 (C) by striking subsection (e), as redesignated by paragraph (1), and inserting the
33 following new subsection (e):

34 (e) Protests- (1) A protest is not authorized in connection with the issuance or
35 proposed issuance of a task or delivery order except for--

36 (A) a protest on the ground that the order increases the scope, period, or
37 maximum value of the contract under which the order is issued; or

38 (B) a protest of an order valued in excess of \$10,000,000.

1 (2) Notwithstanding section 3556 of title 31, United States Code, the Comptroller
2 General of the United States shall have exclusive jurisdiction of a protest
3 authorized under paragraph (1)(B).

4 (3) This subsection shall be in effect for three years, beginning on the date that is
5 120 days after the date of the enactment of the National Defense Authorization
6 Act for Fiscal Year 2008.'

7 **(3) EFFECTIVE DATES-**

8 **(A) SINGLE AWARD CONTRACTS-** The amendments made by paragraph (1) shall
9 take effect on the date that is 120 days after the date of the enactment of this Act, and
10 shall apply with respect to any contract awarded on or after such date.

11 **(B) ORDERS IN EXCESS OF \$5,000,000-** The amendments made by paragraph (2) shall
12 take effect on the date that is 120 days after the date of the enactment of this Act, and
13 shall apply with respect to any task or delivery order awarded on or after such date.

Conf. Rpt. 110-477

Enhanced competition requirements for task and delivery order contracts (sec. 843)

The House bill contained a provision (sec. 821) that would address the issue of competition in contracting on a government-wide basis.

The Senate amendment contained a provision (sec. 821) that would encourage the use of multiple-award task and delivery order contracts in lieu of single-award contracts, enhance requirements for the competition of task orders and delivery orders under multiple-award contracts, and authorize bid protests for task or delivery orders in excess of \$5.0 million under such contracts.

The House bill contained no similar provision.

The House recedes with an amendment that would address the competition issues in the Senate provision on a government-wide basis. The provision would raise the threshold for bid protests to \$10.0 million and sunset the authorization for bid protests after 3 years. The conferees expect that the sunset date will provide Congress with an opportunity to review the implementation of the provision and make any necessary adjustments.