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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

May 9, 2006

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Competitive Sourcing Program Policy–Private Sector Health Insurance Costs in Public-Private Competitions

This memorandum issues DoD Competitive Sourcing Program policy to implement section 8014 of the DoD Appropriations Act, 2006, Public Law No. 109-148. This law prohibits a private sector source from receiving an advantage in public-private competitions either by offering no employee health benefits, or by paying less toward health benefits than the Department of Defense pays for health benefits for its civilian employees.

The attached policy requires the use of a uniform process throughout the DoD for evaluating health insurance costs in proposals from the private sector when public-private competitions are performed in accordance with OMB Circular A-76. DoD Components shall comply with the attached DoD Competitive Sourcing Program policy when performing public-private competitions of commercial activities with more than 10 DoD civilian employee authorizations.

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Attachment:
DoD Competitive Sourcing Program Policy on
Private Sector Health Insurance Costs in Public-Private Competitions

Department of Defense
Competitive Sourcing Program **May 9, 2006**

SUBJECT: Private Sector Health Insurance Costs in Public-Private Competitions

REFERENCES: (a) Section 8014(a)(3) of the Department of Defense Appropriations Act, 2006, Publ. L. No. 109-148
(b) Office of Management and Budget (OMB) Circular Number A-76, Performance of Commercial Activities, May 29, 2003
(c) Department of Defense (DoD) A-76 Costing Manual, March 14, 2001

1. PURPOSE.

1.1. This policy implements section 8014 of the Department of Defense Appropriations Act, 2006 (referred to hereafter as "the law"). It establishes mandatory, uniform procedures to ensure that, in public-private competitions performed in accordance with OMB Circular A-76 (referred to hereafter as "the Circular"), a private sector service provider does not receive an advantage over the agency tender by making lesser contributions towards health insurance than the DoD makes on behalf of its civilian employees.

1.2. Specifically, the law provides that DoD may not convert a function performed by more than ten DoD civilian employee authorizations to contractor performance, unless:

> the contractor does not receive an advantage for a proposal that would reduce costs for the Department of Defense by - (A) not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of that activity or function under the contract; or (B) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Defense for health benefits for civilian employees under chapter 89 of title 5, United States Code.

1.3. In order to eliminate any advantage to a private sector offeror, this DoD policy provides the procedures for determining if the ratio of health insurance costs in a private sector offeror's cost proposal is equal to the standard health benefit cost factor used in the agency cost estimate, and, if necessary, making an upward adjustment to the private sector's evaluated costs.

1.4. The law does not authorize DoD to reject a private sector offer based on the cost or extent of the private sector offeror's health coverage. To require that private sector offerors match DoD's health insurance costs would not only discourage competition, but would force DoD to subsidize any expansion in coverage that a successful offeror proposed.

2. APPLICABILITY. This policy applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities of DoD (hereafter referred to collectively as "the DoD Components").

3. DEFINITIONS. In addition to the terms and definitions in the Circular, the following definitions are used in this policy:

3.1. Civilian Employee Authorization. A civilian employee position that is authorized, funded through appropriated funds, allocated to a commercial activity, and expressed in terms of one year of full-time workload.

3.2. Final Decision. The decision that is implemented (e.g., contract award, most efficient organization letter of obligation) following resolution of any type of dispute (e.g., contest, protest) regarding a performance decision or, if no such disputes are received, the time allowed for submission of disputes. The final decision date is the date when either (a) all certifications are completed on a revised standard or streamlined competition form that results from the resolution of disputes, or (b) if no disputes are received, the time allowed for submission of such disputes.

3.3. Performance Decision. Consistent with the Circular's definition of performance decision, the decision that identifies the end and outcome of the public-private competition process. A performance decision occurs prior to resolution of any type of dispute (e.g., contests, protests) regarding the performance decision or, if no disputes are received, the time allowed for submission of such disputes. The performance decision date is the official end date for a streamlined or standard competition, which occurs when all certifications are completed on the standard or streamlined competition form signifying a performance decision. The performance decision date is also the end date for the time frames specified under Section 8021 of the Department of Defense Appropriations Act for Fiscal Year 2006 (Public Law 109-148).

4. POLICY.

4.1. DoD Components shall comply with the following DoD Competitive Sourcing Program policy when performing public-private competitions of commercial activities with more than ten DoD civilian employee authorizations.

4.1.1. DoD Components shall not give an advantage to a private sector service provider that does not offer employee health benefits or that pays less towards health benefits than the DoD pays for its civilian employees.

4.1.2. DoD Components shall ensure, for evaluation purposes, that private sector proposals are adjusted, if necessary, to include an amount for employee health benefits at least equal to the amount that is included in agency cost estimates for federal employee health benefits.

4.1.3. DoD Components shall determine if the ratio of health insurance costs in a private sector offeror's cost proposal is equal to the standard health benefit cost factor used in the agency cost estimate, and, if necessary, make an upward adjustment to the private sector's evaluated costs.

4.1.4. DoD Components shall use OMB's standard cost factors in effect on the performance decision date.[1]

4.2. DoD Components shall not apply this policy to a public-private competition of commercial activities with ten or fewer DoD civilian employee authorizations or any number of military authorizations.

5. PROCEDURES: DoD Components shall:

5.1. State in solicitations that private sector offerors shall identify the following in the price narrative of their cost proposals:

5.1.1. A clear statement as to whether the offeror and all subcontractors will provide an employer-sponsored health insurance plan to employees who will perform under the proposed contract;

5.1.2. The dollar amount of the direct labor costs included in the offeror's proposal (including prime contractor and all subcontractor employees' total salaries and wages for the proposed contract); and

5.1.3. The dollar amount contributed by the employer(s) (the offeror and all subcontractors) for the premium or subscription share of the employer-sponsored health benefits plan(s) for the employees identified in 5.1.2.

5.2. Ensure that the standard cost factor for civilian position full fringe benefits in effect on the performance decision date is used to calculate costs in the agency cost estimate.[2] This full fringe benefit cost factor (32.85 percent at the time of the publication of this guidance) includes the standard cost factor for health benefits (5.5 percent at the time of the publication of this guidance).[3]

5.3. Compute the ratio of a private sector offeror's health insurance contribution to its direct labor costs to determine if the ratio is equal to, or greater than, the standard health benefit cost factor used in the agency cost estimate.

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[1] See Paragraph A.10. in Attachment C and Paragraph D.4.a.(3) in Attachment B of the Circular.

[2]To estimate the government's costs in agency tenders, the Circular requires the application of specific standard cost factors (Paragraph A.10 and Figure C1 in Attachment C to the Circular). Among these factors is a civilian-position full fringe benefit standard cost factor, which is applied to each civilian position's basic pay in an agency cost estimate that estimates the cost of all fringe benefits that government employees may receive (Paragraph B.2.f in Attachment C to the Circular). This standard cost factor is the sum of multiple standard cost factors (Paragraph B.2.f(1) in Attachment C to the Circular.

[3]The Circular combines the cost of life insurance benefits and health insurance benefits in one standard cost factor (Paragraph B.2.f.(1)(b) in Attachment C to the Circular). At the time of publication of this guidance, the civilian position full fringe benefit standard cost factor is 32.85 percent, which includes a 5.7 percent standard cost factor for insurance and health benefits. Of this 5.7 percent, 5.5 percent is for health insurance and 0.2 percent is for life insurance.

5.4. Make cost adjustments on standard competition form (SCF) or streamlined competition form (SLCF) Line 9 as follows:

5.4.1. If the ratio is equal to, or greater than, the standard health benefit cost factor used in the agency cost estimate, the DoD Component shall not make an adjustment to the private sector offeror's cost proposal.

5.4.2. If the ratio is less than the standard health benefit cost factor used in the agency cost estimate, the DoD Component shall make an upward adjustment for all performance periods to the evaluated cost of the private sector offeror's cost proposal, so that the ratio is equal to the standard health benefit cost factor (5.5 percent at the time of the publication of this guidance) used in the agency cost estimate.

5.5. Document, in writing, the ratio, the calculation used to compute the ratio, and the amount of any cost adjustment made on SCF/SLCF Line 9 for each private sector offeror's proposal.

5.6. Make the performance decision as indicated on SCF/SLCF Line 18 and include a statement from the contracting officer certifying that the private sector offeror did not receive an advantage in violation of the Circular, as implemented in this policy.

5.7. Implement the final decision. For a private sector performance decision, award the contract based on the private sector offeror's proposed cost (rather than the evaluated cost that has been adjusted to comply with this policy).