United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 2 2 2009

TAKE PRIDE IN AMERICA

Department of the Interior Acquisition Policy Release (DIAPR) 2010-05

Subject: **Class Deviation from the Federal Acquisition Regulation (FAR) 13.5, Test Program for Certain Commercial Items**

References: Memorandum for Civilian Agencies Other than NASA, Class Deviation from the Federal Acquisition Regulation (FAR) 13.5, Test Program for Certain Commercial Items, dated December 1, 2009

1. **Purpose:**

The purpose of this DIAPR is to issue a class deviation from FAR 13.5, changing the date of expiration for the test program in FAR 13.500(d) to January 1, 2012.

2. **Effective Date:**

Upon signature.

3. **Expiration Date:**

This DIAPR will remain in effect until the change is made in the FAR.

4. **Background and Explanation:**

The Test Program for Certain Commercial Items, which authorizes use of simplified procedures for the acquisition of commercial item supplies and services in amounts greater than the simplified acquisition threshold but not exceeding $5.5 million ($11 million for contingency operations or defense or recovery actions), is currently set to expire on January 1, 2010. However, Section 816 of the National Defense Authorization Act of Fiscal Year 2010 changes the date of expiration and extends the program through January 1, 2012. An expedited FAR case is pending that will make this change in the FAR, but it is not likely that the rule will be finalized until after the current date of expiration has passed. Until the FAR is changed to reflect the extension of the program through January 1, 2012, a class deviation is being issued to change the date in paragraph (d) of 13.500.

5. **Action Required:**

In accordance with FAR 1.404, I hereby authorize a class deviation from FAR 13.5, Test Program for Certain Commercial Items. This subpart is attached for your reference. Bureaus must ensure contracting activities are notified about the extension of the test program through January 1, 2012, so that contracting officers can employ simplified procedures authorized by the test program to the maximum extent practicable.

Please disseminate this guidance within your bureau. It will also be available on the web at http://www.doi.gov/pam/diapr.html. You may contact Tiffany Schermerhorn of this office on (202) 513-0747 or Tiffany_Schermerhorn@ios.doi.gov if you have any questions regarding this policy issuance.

Debra E. Sonderman, Director
Office of Acquisition and Property Management

Attachment

Subpart 13.5—Test Program for Certain Commercial Items

13.500 General.

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding $5.5 million ($11 million for acquisitions as described in 13.500(e)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

(b) For the period of this test, contracting activities must employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of Part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in Subpart 12.3.

(d) The authority to issue solicitations under this subpart expires on **January 1, 2012**. Contracting officers may award contracts after the expiration of this authority for solicitations issued before the expiration of the authority.

(e) Under 41 U.S.C. 428a, the simplified acquisition procedures authorized by this test program may be used for acquisitions that do not exceed $11 million when—

(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack; or

(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).

13.501 Special documentation requirements.

(a) Sole source (including brand name) acquisitions.

(1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in Part 6. However, contracting officers must—

(i) Conduct sole source acquisitions, as defined in 2.101, (including brand name) under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(2) of this section; and

(ii) Prepare sole source (including brand name) justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a).

(2) Justifications and approvals are required under this subpart only for sole source (including brand name) acquisitions.

(i) For a proposed contract exceeding $100,000, but not exceeding $550,000, the contracting officer's certification that the justification is accurate and complete to the best of the

contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(ii) For a proposed contract exceeding $550,000, but not exceeding $11.5 million, the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iii) For a proposed contract exceeding $11.5 million but not exceeding $57 million or, for DoD, NASA, and the Coast Guard, not exceeding $78.5 million, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iv) For a proposed contract exceeding $57 million or, for DoD, NASA, and the Coast Guard, $78.5 million, the official described in 6.304(a)(4) must approve the justification and approval. This authority is not delegable except as provided in 6.304(a)(4).

(b) *Contract file documentation.* The contract file must include—

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR Subpart 13.5 were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.