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**CHAPTER 15. COMPETITION IN CONTRACTING REQUIREMENTS**

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**15-1. INTRODUCTION**

a. **POLICY.** It is Federal law, as well as DOD, DA and AMEDD policy that the needs of the government will be acquired through full-and-open-competition to the maximum extent possible. The noncompetitive acquisition of equipment is a matter of concern and intense scrutiny. It is essential that all the following individuals involved in the acquisition of equipment be cognizant of the requirement for competitive acquisition.

- (1) Requesters.
- (2) Logisticians.
- (3) MEDCASE managers.
- (4) Review and approval authorities at the activity.
- (5) Review and approval authorities at the commands.
- (6) The USAMEDCOM level.

b. **MEDCASE REQUIREMENTS.** MEDCASE requirements must be stated in terms of minimum needs using generic descriptions whenever possible. The use of brand-name descriptions to identify MEDCASE requirements shall not constitute endorsement or approval or acquisition under less-than-full-and-open competition.

c. **MEDCASE PROGRAM EXECUTIONS.** The acquisition of equipment through the MEDCASE program shall use competitive procedures to the maximum extent practical regardless of the acquisition source.

(1) For local procurement, activities must comply with the policies and procedures established by the supporting purchasing and contracting office to implement the CICA. It is essential that MEDCASE participants coordinate and work closely with the contracting officer to ensure that acquisition is not unnecessarily delayed due to a failure to comply with CICA requirements.

(2) For acquisition through the wholesale supply system, it is especially important for the activity to provide descriptive information in the most competitive form possible. The time/distance relationship between the customer, USAMMA, and the supply source, as well as the tremendous volume of transactions handled by wholesale supply activities, complicates the resolution of problems arising from noncompetitive item descriptions. This can easily result in the cancellation or delay of the acquisition of a needed item of equipment.

**15-2. COMPETITION IN CONTRACTING ACT (CICA)**

The CICA of 1984 substantially changed the policies and the regulations concerning the acquisition of equipment by government activities. While it is not the purpose of this manual to supplement acquisition regulations, an outline of areas that have a significant impact upon the acquisition of MEDCASE items is provided as follows:

a. **FEDERAL ACQUISITION REGULATION (FAR).** The FAR established acquisition policy for all branches of the Federal government. The DFARS supplements and implements the FAR for DOD. The FAR and DFARS implement the CICA.

b. EXCEPTIONS TO COMPETITIVE PROCEDURES. The CICA specifies the circumstances that may permit the use of "other-than full-and-open competition" procedures for acquisition. These exceptions must be justified and approved in accordance with CICA procedures. The two most common exceptions that may apply to MEDCASE acquisitions are:

(1) When only one responsible source can provide the equipment requirement and no other item can provide the capabilities that meet the minimum essential needs. This exception requires written justification and approval prior to the award of a contract under less-than-full-and-open competition.

(2) When the equipment is required due to unusual and compelling urgency. The written justification for this exception may be provided after the fact, if necessary; however, offers must be requested from as many potential sources as possible under the circumstances.

c. COMPETITION ADVOCATES. The CICA established the requirement for competition advocates to review acquisitions subject to CICA and challenge those, which unnecessarily and/or unjustifiably restrict competition. A competition advocate review will add from 30-90 days to the acquisition process.

### **15-3. METHODS OF DESCRIBING MEDCASE REQUIREMENTS**

a. The acquisition activity must be provided a description of the required item. The law prescribes that requirements will be stated in terms of minimum essential needs. The degree of detail used by the activity in providing a purchase description is usually dependent upon the cost of the item and the importance of the features described; that is, the higher the cost or importance of the features, the greater the detail which must be provided.

b. SPECIFICATIONS. Specifications are the most detailed form of purchase description. Specifications describe in detail the minimum essential features and performance characteristics required for an item of equipment. Technical writers or contract specialists at a procurement activity usually prepare specifications. Procurement specifications are drawn from the information provided by the requesting activity (for example, from the EDL are ECs), and from the specification writer's knowledge of the market.

c. ESSENTIAL CHARACTERISTICS (ECs). ECs are salient features that an item of equipment must have in order to meet the minimum needs of the user. ECs are usually written by the user, and while they do not contain the detail that is in the procurement specifications, they must provide sufficient information for a procurement activity to write specifications, and to solicit competitive offers from vendors able to meet the minimum essential needs.

d. BRAND NAME OR EQUAL. "Brand name or equal" is a shorthand method of describing ECs. When a "brand name" is used to provide a description of the basic function that must be performed, it is generally difficult for the purchasing office to determine what is "equal." Therefore, the activity must also describe the minimum ECs. Brand name references on approved MEDCASE requirements do not constitute endorsement or authority for limited competition.

e. **LIMITED COMPETITION.** Limited competition arises when an activity specifies the need for features or capabilities that restrict competition. Restrictive characteristics require written justification and must be approved by the appropriate authority. The "appropriate authority" is dependent on the cost of the item.

**15-4. JUSTIFICATION FOR OTHER-THAN-FULL-AND-OPEN COMPETITION**

a. **REQUISITIONS.** Requisitions for MEDCASE requirements must be accompanied by written justification for acquisition under other-than-full-and-open competition, if limited competition is requested, or restrictive ECs or specifications are provided. This is often referred to as a CICA Justification or a Justification and Approval (J&A). The J&A must clearly address the following areas:

(1) Identify the features or specifications which limit competition, and efforts made to eliminate restrictions for this and future requirements.

(2) Provide a clinical rationale for the essentialness for each feature or specification that limits competition. A clinical rationale must explain the clinical application of the restrictive ECs.

(3) Identify the impact if those features or ECs are not met.

b. **JUSTIFICATION STATEMENT.** The CICA justification/J&A must include the following statement signed by the clinical/health care professional initiating the requirement:

"I certify that the information contained in this justification supports the government's minimum essential requirements and that the statements contained herein for other-than-full-and-open competition are accurate and complete."