207.106 Additional requirements for major systems.

(b)(1)(A) The contracting officer is prohibited by 10 U.S.C. 3208(d)(1) from requiring offers for development or production of major systems that would enable the Government to use technical data to competitively reprocure identical items or components of the system if the item or component were developed exclusively at private expense, unless the contracting officer determines that—

(1) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements;

(2) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or

(3) The Government is otherwise entitled to unlimited rights in technical data.

(B) If the contracting officer makes a determination, under paragraphs (b)(1)(A)*(1)* and *(2)* of this section, for a competitive solicitation, 10 U.S.C. 3208(d)(2) requires that the evaluation of items developed at private expense be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

(S-70)(1) In accordance with 10 U.S.C. 3774(a) and DoD policy requirements, acquisition plans for major weapon systems and subsystems of major weapon systems shall—

(i) Assess the long-term technical data and computer software needs of those systems and subsystems; and

(ii) Establish acquisition strategies that provide for the technical data and computer software deliverables and associated license rights needed to sustain those systems and subsystems over their life cycle. The strategy may include—

(A) The development of maintenance capabilities within DoD; or

(B) Competition for contracts for sustainment of the systems or subsystems.

(2) Assessments and corresponding acquisition strategies developed under this section shall—

(i) Be developed before issuance of a solicitation for the weapon system or subsystem;

(ii) In accordance with 10 U.S.C. 4328, to emphasize reliability and maintainability in weapon system design, ensure that reliability and maintainability are included in the performance attributes of the key performance parameters on sustainment during the development of capabilities requirements. For additional guidance see PGI 207.105 (b)(14)(ii)*(2)*;

(iii) Address the merits of including a priced contract option for the future delivery of technical data and computer software, and associated license rights, that were not acquired upon initial contract award;

(iv) Address the potential for changes in the sustainment plan over the life cycle of the weapon

system or subsystem; and

(v) Apply to weapon systems and subsystems that are to be supported by performance-based logistics arrangements as well as to weapon systems and subsystems that are to be supported by other sustainment approaches.

(S-71) See 209.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

(S-72)(1) In accordance with section 202 of the Weapon Systems Acquisition Reform Act of 2009 (Pub. L. 111-23), acquisition plans for major defense acquisition programs as defined in 10 U.S.C. 4201, shall include measures that—

(i) Ensure competition, or the option of competition, at both the prime contract level and subcontract level (at such tier or tiers as are appropriate) throughout the program life cycle as a means to improve contractor performance; and

(ii) Document the rationale for the selection of the appropriate subcontract tier or tiers under paragraph (S-72)(1)(i) of this section, and the measures which will be employed to ensure competition, or the option of competition.

(2) Measures to ensure competition, or the option of competition, may include, but are not limited to, cost-effective measures intended to achieve the following:

(i) Competitive prototyping.

(ii) Dual-sourcing.

(iii) Unbundling of contracts.

(iv) Funding of next-generation prototype systems or subsystems.

(v) Use of modular, open architectures to enable competition for upgrades.

(vi) Use of build-to-print approaches to enable production through multiple sources.

(vii) Acquisition of complete technical data packages.

(viii) Periodic competitions for subsystem upgrades.

(ix) Licensing of additional suppliers.

(x) Periodic system or program reviews to address long-term competitive effects of program decisions.

(3) In order to ensure fair and objective “make-or-buy” decisions by prime contractors, acquisition strategies and resultant solicitations and contracts shall—

(i) Require prime contractors to give full and fair consideration to qualified sources other than the prime contractor for the development or construction of major subsystems and components of major weapon systems;

(ii) Provide for Government surveillance of the process by which prime contractors consider such sources and determine whether to conduct such development or construction in-house or through a

subcontract; and

(iii) Provide for the assessment of the extent to which the prime contractor has given full and fair consideration to qualified sources in sourcing decisions as a part of past performance evaluations.

(4) Whenever a source-of-repair decision results in a plan to award a contract for the performance of maintenance and sustainment services on a major weapon system, to the maximum extent practicable and consistent with statutory requirements, the acquisition plan shall prescribe that award will be made on a competitive basis after giving full consideration to all sources (including sources that partner or subcontract with public or private sector repair activities).

(5) In accordance with 10 U.S.C. 4328, acquisition plans for engineering manufacturing and development and production of major systems as defined in 10 U.S.C. 3041(a) and 4202 and for major defense acquisition programs as defined in 202.101 , shall include performance measures that are developed using best practices for responding to the positive or negative performance of a contractor for the engineering and manufacturing development or production of a weapon system, including embedded software. At a minimum the contracting officer shall—

(i) Encourage the use of incentive fees and penalties as appropriate; and

(ii) Allow the program manager or comparable requiring activity official exercising program management responsibilities, to base determinations of a contractor's performance on reliability and maintainability data collected during the program. Such data collection and associated evaluation metrics shall be described in detail in the contract; and to the maximum extent practicable, the data shall be shared with appropriate contractor and Government organizations.

(S-73) In accordance with section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) and DoD policy requirements, acquisition plans for major weapons systems shall include a plan for the preservation and storage of special tooling associated with the production of hardware for major defense acquisition programs through the end of the service life of the related weapons system. The plan shall include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling. The Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) may waive this requirement if USD(A&S) determines that it is in the best interest of DoD.

(S–74) When selecting contract type for a major defense acquisition program, see 234.004 Acquisition strategy. https://www.govinfo.gov/link/plaw/112/public/239.

Parent topic: Subpart 207.1 - ACQUISITION PLANS