

ARMED SERVICES PROCUREMENT REGULATION, 1-111.2

1-111.2 *Non competitive Practices.*

(a) Unless bids or proposals are genuinely competitive, contract prices tend to be higher than they should be. If the Secretary concerned or his representative considers that any bid received after formal advertising evidences a violation of the antitrust laws, he is required by 10 U.S.C. 2305(d) to refer such bids to the Attorney General for appropriate action. Similarly, evidence of such violations in negotiated procurements should be referred to the Attorney General. Practices which are designed to eliminate competition or restrain trade and which may evidence possible violations of such laws include collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of the business, identical bids, etc.

(b) Reports of identical or equal bids or proposals should not be submitted automatically, but only where there is some reason to believe that those bids or proposals may not have been arrived at independently. Such reports should be accompanied by conformed copies of the bid or proposal, other contract documents, and supporting data. The report should set forth:

ARMED SERVICES PROCUREMENT REGULATION, 1-115

INTRODUCTION

Certificate of Independent Price Determination (June 1964):

(a) By submission of this bid or proposal, each bidder or offeror certifies and in the case of a joint bid or proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) the prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or offeror or with any competitor;

(2) unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder or offeror and will not knowingly be disclosed by the bidder or offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and

(3) no attempt has been made or will be made by the bidder or offeror to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

(b) Each person signing this bid or proposal certifies that:

(1) he is the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein and that he has not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above; or

(2) (a) he is not the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above, and as their agent does hereby so certify; and (b) he has not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above.

(c) This certification is not applicable to a foreign bidder or offeror submitting a bid or proposal for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A bid or proposal will not be considered for award where (a) (1), (a) (3), or (b) above has been deleted or modified. Where (a) (2) above has been deleted or modified, the bid or proposal will not be considered for award unless the bidder or offeror furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances of the disclosure and the Secretary, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

(b) The fact that a firm (1) has published price lists, rates, or tariffs covering items being procured by the Government, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such