



**DEFENSE LOGISTICS AGENCY**  
DEFENSE ENERGY SUPPORT CENTER  
8725 JOHN J. KINGMAN ROAD, SUITE 4950  
FORT BELVOIR, VIRGINIA 22060-6222

IN REPLY  
REFER TO

AUG 02 2002

DESC-CPA

CONTRACTING INSTRUCTION (CI): 02-13  
MEMORANDUM FOR CI Distribution

SUBJECT: Release of Unit Prices under the Freedom of Information Act (FOIA)

This CI is being issued to inform contracting personnel of new DESC policy as well as a new required clause regarding the release of unit prices under FOIA. The release of unit prices is now contingent on following the procedures described herein. In the past there has not been any restriction on giving out unit pricing information, including abstracts. However, as a result of a ruling made in a case between the General Services Administration (GSA), Sprint and MCI, new restrictions apply.

To implement the attached DEPI coverage; all solicitations must include the new clause, K15 RELEASE OF UNIT PRICES. Solicitations that are currently open must be amended to include the clause. However, if solicitations are closed and clause K15 was not included in them, a letter, similar to the attached template must be sent to each offeror that submitted a proposal. The letter may be tailored to specific circumstances. Contracts that are already in place do not have to be modified unless new items are added to them.

This CI is effective immediately and expires upon inclusion in the DEPI. Point of contact is Cheryl Creason, extension 8471.

A handwritten signature in black ink, appearing to read "Kevin M. Ahern".

KEVIN M. AHERN  
Center Senior Procurement Official

Attachments:

DEPI coverage  
Contract clause  
Letter template



DEFENSE ENERGY PROCUREMENT INSTRUCTION

**PART 24**

**PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

SUBPART 24.2 - Freedom of Information Act

24.203 Policy

**PART 24**

**PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

**SUBPART 24.2 - FREEDOM OF INFORMATION ACT**

**24.203 Policy.**

(a) Freedom of Information Act (FOIA) procedures are governed by the DoD regulations listed in DOD 5400.7-R and by DLA Regulation 5400.14, DLA Freedom of Information Act Program.

(b) All FOIA requests and questions about the FOIA program shall be referred to the DESC FOIA Manager, Procurement Oversight Branch, Procurement Planning and Support Division (DESC-CPB). The FOIA Manager will process all FOIA requests for DESC, including coordinating with DESC-G and other interested offices.

(c) FOIA requests must by law be answered within 20 working days. The FOIA Manager will assign a suspense date on FOIA requests referred to other DESC offices for response based on the complexity of the request, related research and the response date required by law.

(d) Letters of denial and letters stating that no records have been found must be signed by the Director. The FOIA Manager will prepare a letter for signature by the Director, DESC-D, requesting that the Director sign such correspondence. The request will be coordinated through the DESC-CPB Chief, DESC-CP, DESC-G and DESC-CSPO. The letter with the requester's correspondence enclosed will be forwarded to the Director.

(e) (1) Acquisition information may be provided as a part of the acquisition process without regard to formal FOIA procedures when release of such information would clearly benefit the Government due to a potential increase in competition. In general, information that the submitter (offeror) has already approved for release and can be briefly conveyed verbally over the telephone or is available on the Internet can be given out by the buying office. Any document that can be mailed or faxed must normally be released through the FOIA office only. Usually, contracts, modifications, price modifications and documents incorporating a submitter's confidential business practices can be released by the FOIA manager only. If the submitter has not approved release, then the request must be denied. Always contact our FOIA office first if you have the least doubt.

(2) Requests for information not routinely supplied during the acquisition process (e.g., unusual requests for acquisition information, requests for acquisition information not readily available, and requests for excessive amounts of acquisition information) will be referred to the FOIA Manager.

## DEFENSE ENERGY PROCUREMENT INSTRUCTION

### (f) FOIA Unit Price Policy

(1) DOD FOIA Policy – Per 32 CFR §286.31(h)(1) and DOJ, if a FOIA request for unit prices has been made, first, the submitter of the requested information, in this case, the offeror of the proposal, must be notified that a request has been made and given an opportunity to object to release (“submitter notice procedure”). Second, agencies should conduct a thorough competitive harm analysis of any objection that is made to the disclosure of unit prices through this submitter-notification process. Per DOJ guidance, competitive harm is determined on a case-by-case basis.

(i) If a proposal has been incorporated into a contract, use the submitter notice procedure above.

(ii) If the proposal is in response to a solicitation for a competitive acquisition, has not been incorporated into a contract, and is within US control, it may not be made available to the public under the FOIA.

(iii) Permissible releases - Per 32 CFR §286.31(h)(2), the definition of proposal does not include the submitter's name, total price or unit prices when set forth in a record other than the proposal itself (such as a bid abstract, prices-to-web, award reports, bid evaluation model reports, notices to unsuccessful offerors, and like documents). Thus these documents are not prohibited from release. When in doubt, consult with DESC-G. However, for DESC FOIA policy, read below.

### (2) DESC FOIA Policy

(i) Presolicitation – insert the Disclosure of Unit prices clause into each new solicitation.

#### (ii) Post –solicitation –

(A) If there is a FOIA request for a proposal that was not incorporated into a contract, do not release. No submitter notice is required.

(B) If there is a FOIA request for a proposal that has been incorporated into a contract,

(1) First check the contract for the Disclosure of Unit prices clause.

(i) If submitter agreed to the release of unit prices, release the information.

(ii) If submitter did not agree to the release of unit prices, conduct a thorough competitive harm analysis prior to recommending the release or withholding of the information.

(2) If no Disclosure of Unit Prices clause is in the contract, use the Submitter Notice Procedure:

## DEFENSE ENERGY PROCUREMENT INSTRUCTION

(i) Send letter to the submitter of the information notifying it of the request for the information and giving a reasonable opportunity (30 days) to respond.

(ii) Once a response is received, conduct a thorough competitive harm analysis prior to recommending the release or withholding of the information.

(iii) Permissible releases - Per 32 CFR §286.31(h)(2), the definition of proposal does not include the submitter's name, total price or unit prices when set forth in a record other than the proposal itself (such as a bid abstract, prices-to-web, award reports, bid evaluation model reports, notices to unsuccessful offerors, and like documents). Thus these documents are not prohibited from release. When in doubt, consult with DESC-G. However, recent DOJ advice recommends notifying the submitter in all cases prior to release. Web release of bid abstracts, prices-to web, award reports, bid evaluation model reports, notices to unsuccessful offerors, and like documents—

(A) First check the contract for the Disclosure of Unit prices clause.

(B) If the submitter agreed to the release of unit prices, incorporate the unit prices into the document for posting on the DESC web site.

(C) If the submitter only agreed to the release of unit prices if awarded the contract, analyze the rationale submitted for competitive harm prior to deciding to release or withhold the unit price information.

(D) If the submitter did not agree to the release of unit prices, analyze the rationale submitted for competitive harm prior to deciding to release or withhold the unit price information.

(iv) In all cases, the decision to release over the submitter's objection must be made by the Initial Denial Authority (DESC-D).

**K15/52.224-9F25 RELEASE OF UNIT PRICES.** Required in all solicitations, except electricity. **Include this clause in the Offeror Submission Package.** MFR dated 30 Jul 02.

**K15 RELEASE OF UNIT PRICES ( DESC JUL 2002)**

(a) The Defense Energy Support Center (DESC) has routinely released the unit prices of successful and unsuccessful offerors to interested parties at the conclusion of the procurement. These unit prices are the bottom-line price per unit of product. Unit price may include the total contract price. They do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror's anticipated profit or any pricing factors. This information has been released pursuant to the Freedom of Information Act in various formats, including abstracts of offers received, bid evaluation model reports, notices to unsuccessful offerors, and other summary formats. Updated contract prices are also publicly posted on the DESC website throughout the delivery period of some contracts. Offerors have not objected to DESC's routine release or disclosure of these unit prices.

(b) DESC does not believe that release of unit prices after award causes any competitive harm. If the offeror disagrees, the offeror must provide a detailed explanation of how it will suffer competitive harm from the release of unit prices after award. The competitive harm explanation is required if the offeror either agrees to release award prices only, or does not agree with releasing any unit prices. This detailed explanation must be provided with the initial offer. DESC will use this information to determine if there is a sufficient basis to withhold the unit price after award. The offeror's indication of disagreement with release of unit prices and/or failure to provide a detailed explanation of competitive harm with the initial offer may result in release of unit prices after award. Failure to agree to the release of unit prices shall not be a factor considered in contract award.

(c) Offerors shall indicate their agreement below to the release of unit prices after award. **NOTE:** The offeror's agreement or disagreement with release of unit prices must apply to all items and may not be split to apply differently to different line items.

- Offeror **AGREES** to the release of unit prices.
- Offeror **AGREES** to the release of unit prices, but only in the event of contract award. Detailed rationale as to why the release of unit prices of unsuccessful offers would cause competitive harm is attached.
- Offeror **DOES NOT AGREE** to the release of unit prices. Detailed rationale as to why the release of unit prices would cause competitive harm is attached.

(DESC 52.224-9F25)

LETTER TEMPLATE

DESC-

Date:

Ms.  
President  
Energy Company  
2102 Main Street  
Anytown, USA

Dear Ms. :

The Defense Energy Support Center requests your agreement to the release of your offered unit price on its recently concluded procurement. In the past, DESC has routinely released the "unit prices" of successful and unsuccessful offerors to interested parties at the conclusion of the procurement. These "unit prices" are the bottom-line price per unit of product. They do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror's anticipated profit or any pricing factors. This information has been released pursuant to the Freedom of Information Act in various formats, including abstracts of offers received, bid evaluation model reports, notices to unsuccessful offerors, and other summary formats. Updated contract prices are also publicly posted on the DESC website throughout the delivery period of some contracts. Offerors have not objected to DESC's routine release or disclosure of these unit prices.

DESC is in the process of posting your offered unit price on its web site. We do not believe that release of unit prices after award causes you any competitive harm. If you disagree, you must provide a detailed explanation of how you will suffer competitive harm from the release of unit prices after award. This detailed explanation must be provided within 30 days from the date of this letter. DESC will use this information to determine if there is a sufficient basis to withhold the unit price after award. Your indication of disagreement with release of unit prices and failure to provide a detailed explanation of competitive harm within 30 days may result in release of your offered unit price. Please complete the enclosed form and return it to the address above.

Sincerely,

John Doe  
Contracting Officer

Enclosure

**AGREEMENT ON DISCLOSURE OF UNIT PRICE (DESC JUNE 2002)**

Offerors shall indicate their agreement below to the release of unit prices after award.

Note: The offeror's agreement or disagreement with release of unit prices must apply to all items and may not be split to apply differently to different line items.

\_\_\_\_ Offeror **AGREES** to the release of unit prices.

\_\_\_\_ Offeror **AGREES** to release of unit prices, but only in the event of contract award. Detailed rationale is attached.

\_\_\_\_ Offeror **DOES NOT AGREE** to the release of unit prices. Detailed rationale is attached.

Signed: \_\_\_\_\_

Position: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_