

APPENDIX A TO PART 170—GUIDANCE

Guidance documents include:

- (a) “CMMC Model Overview” available at <https://DoDcio.defense.gov/CMMC/>.
- (b) “CMMC Assessment Guide—Level 1” available at <https://DoDcio.defense.gov/CMMC/>.
- (c) “CMMC Assessment Guide—Level 2” available at <https://DoDcio.defense.gov/CMMC/>.
- (d) “CMMC Assessment Guide—Level 3” available at <https://DoDcio.defense.gov/CMMC/>.
- (e) “CMMC Scoping Guide—Level 1” available at <https://DoDcio.defense.gov/CMMC/>.
- (f) “CMMC Scoping Guide—Level 2” available at <https://DoDcio.defense.gov/CMMC/>.
- (g) “CMMC Scoping Guide—Level 3” available at <https://DoDcio.defense.gov/CMMC/>.
- (h) “CMMC Hashing Guide” available at <https://DoDcio.defense.gov/CMMC/>.

PART 173—COMPETITIVE INFORMATION CERTIFICATE AND PROFIT REDUCTION CLAUSE

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APPENDIX TO PART 173—LIST OF CONTRACTORS FOR WHOM CERTIFICATION IS REQUIRED

AUTHORITY: 10 U.S.C. 2202.

SOURCE: 53 FR 42948, Oct. 25, 1988, unless otherwise noted.

§ 173.1 Scope.

(a) The purpose of the Competitive Information Certificate is to provide the Contracting Officer sufficient information and assurance to support award of a contract in those circumstances where certification is required.

(b) Although a Competitive Information Certificate provides reasonable assurance to the Government, the possibility remains that even a diligent internal review by the contractor may fail to identify illegal or improper actions. The purpose of the Profit Reduction Clause is to ensure effective protection of the Government’s interest in making contract awards when a Competitive Information Certification is required. The Profit Reduction Clause is required in all competitively awarded new contracts over \$100,000 when a Competitive Information Certificate is required prior to award.

§ 173.2 Competitive Information Certification.

(a) The Competitive Information Certificate is required prior to award of all competitively awarded new contracts of a value exceeding \$100,000 to contractors subject to the requirement.

(1) Corporate activities required to provide the Certificate are corporations or corporate divisions which have been the subject of search warrants, or as to which other official information indicates such certification should be required, and their subsidiaries and affiliates. A list of contractors from whom certification is required is maintained and published as required under authority of the Department of Defense Procurement Task Force.

(2) The requirement to provide the Certificate may be further limited to certain divisions or subsidiaries, contracts or programs upon the basis of official information, furnished by the contractor or otherwise, sufficient to establish to the satisfaction of the Department of Defense that the investigation is so limited. Such information may include copies of search warrants, subpoenas and affidavits from corporate officials concerning the scope and conduct of the investigation. The sufficiency of such information is solely within the discretion of the Department of Defense.

(3) Contractors from whom certification in certain instances is required will be relieved of the certification requirement when the Department of Defense determines that information developed in the “Ill Wind” investigation has been resolved in such a manner that certification is no longer required to protect the interests of the Government.

(4) A Certificate will not be required prior to the exercise of options or non-competitive award of contracts. This does not limit in any manner the Government’s ability to inquire into, or require information concerning, the circumstances surrounding an underlying competitive award.

(b) With respect to information disclosed under paragraph (1) of the Certificate, the offeror must attach to the Certificate a written statement detailing what information was obtained, and how, when, and from whom it was

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obtained. This information shall be evaluated at the levels prescribed by the contracting component to determine whether award of the contract should be made to the offeror. If during this review it is determined that the offeror may have obtained an unfair competitive advantage from the information and that there is no other reason for denying award to the offeror, the reviewing authority shall consider whether action may be taken to neutralize the potential unfair competitive advantage. Any decision to deny award to an offeror based upon information disclosed in the Certificate shall be reviewed and approved by the Service Acquisition Executive.

(c) This certificate and any accompanying statements required, must be executed by the offeror's corporate president or his designee at no more than one level below the president's level.

(d) If a contractor from whom certification is required is uncertain as to whether competitive information otherwise required to be disclosed was generally available to offerors, the uncertainty should be resolved by disclosure.

(e) Contracting Officers may continue to accept Certificates of Business Ethics and Integrity complying with the Interim rule in lieu of Competitive Information Certificates.

(f) The Competitive Information Certificate shall be in the following form:

Competitive Information Certificate

(1) (Name of the offeror) certifies, to the best of its knowledge and belief, that

(i) With the exception of any information described in an attachment to this certificate, and any information the offeror reasonably believes was made generally available to prospective offerors, the offeror has not knowingly obtained, directly or indirectly from the Government, any written information or oral extract or account thereof relating to this solicitation which was

(A) Submitted to the Government by offerors or potential offerors in response to the Government's solicitation for bid or proposal;

(B) Marked by an offeror or potential offeror to indicate the information was

submitted to the Government subject to an assertion of privilege against disclosure;

(C) Marked or otherwise identified by the Government pursuant to law or regulation as classified, source selection sensitive, or for official use only; or

(D) The disclosure of which to the offeror or potential offeror by a Government employee would, under the circumstances, otherwise violate law or regulation.

(ii) The offeror named above

(A) Determined the prices in its offer independently, without, for the purpose of restricting competition, any consultation, communications, or agreement, directly or indirectly, with any other offeror or competitor relating to (1) those prices, (2) the intention to submit an offer, or (3), the methods or factors used to calculate the prices offered;

(B) Has not knowingly disclosed the prices in its offer, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law;

(C) Has not attempted to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(iii) The offeror has attached an accurate description of the internal review forming the basis for the certifications provided herein.

Corporate President or Designee.

§ 173.3 Profit reduction clause.

The following profit reduction clause is required in all competitively awarded new contracts over \$100,000 when a Competitive Information Certificate is required prior to award.

Profit Reduction for Illegal or Improper Activity

(a) The government, at its election, may reduce the contract price by the amount of any anticipated profit determined as set forth in paragraph (b) of this section; if

(1) A person or business entity is convicted for violating 18 U.S.C. 201-224 (bribery, graft, and conflicts of interest), 18 U.S.C. 371 (conspiracy), 18