

# EXHIBIT D

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, et al.,  
  
Plaintiffs,  
  
v.  
  
CENTRAL INTELLIGENCE AGENCY, et al.,  
  
Defendants.

Case No. CV 09-0037-CW (EDL)  
  
**DECLARATION OF LTC MARC  
BUSTAMANTE, MEDCOM  
PRINCIPAL ASSISTANT  
RESPONSIBLE FOR  
CONTRACTING**

I, LTC Marc Bustamante, do hereby state and declare as follows:

1. I am the MEDCOM Principal Assistant Responsible for Contracting. As described below, I provide the following statements based on my personal knowledge, as well as information made available to me during the course of this litigation in my official capacity.
2. I am familiar with the Court’s April 2, 2014 Order (Dkt. 562), regarding the Army’s Report describing its plan for compliance with the Court’s injunction issued on November 19, 2013.
3. I have been asked to describe generally how long it will take to procure a contract once a Performance Work Statement is provided to the Medical Command/Health Care Acquisition Activity (“HCAA”). Choosing a contractor to perform services can be a lengthy and involved process based in part on regulatory requirements applicable to government contracting. The first step in the contracting process is for the relevant command to prepare a PWS. This is an important step that requires careful preparation of a clear written PWS that addresses any issues raised internally as to what should be sought in the proposed contract. Once a PWS has been delivered to the Medical Command, the time to prepare the solicitation, publicize the procurement, evaluate proposals and select the contractor (assuming no complications arise), will require a minimum of 4

1 to 6 months. Procurement action lead times will depend on a number of variables, to include but  
2 not limited to, the total dollar amount of the acquisition, the type of acquisition whether it is  
3 competitive or sole source, and whether it is purchased on the open market, negotiated or  
4 purchased from a GSA Schedule. An acquisition which is subsequently protested by an offeror can  
5 significantly lengthen the acquisition time frame as well. Based upon those variables, the time  
6 frame could extend 9 to 12 or even 18 months.

7 4. Before the contracting office can begin processing the action, it needs a requirements  
8 package from the customer. This includes a purchase request from the customer with proper  
9 funds certified and a Service Contract Approval form signed by the MEDCOM Chief of Staff (or  
10 one of the Regional Commanding Generals). The customer will also provide an Independent  
11 Government Estimate (e.g., price estimate). In addition to receiving the requirements package  
12 from the customer, the contracting officer must also document a number of determinations and  
13 prepare a number of more complex documents to include Source Selection Plan, Acquisition  
14 Strategy, Acquisition Plan, and Market Research Report. These requirements are mandated by the  
15 Federal Acquisition Regulation ("FAR"), the Department of Defense FAR Supplement ("DFARS")  
16 and the Army Federal Acquisition Regulation Supplement ("AFARS") and in many cases cannot  
17 be waived.

18 5. The contracting office must process a significant amount of information in procuring  
19 services from a government contractor. It first must gather information about alternatives and  
20 select the best course of action for this procurement. A number of factors must be considered in  
21 the contracting process at this stage, including, among others, whether the procurement will be  
22 competitive, sole source, or limited source solicitation (FAR Part 6).

23 6. If sole source or limited source is chosen, the contracting officer will need to prepare a  
24 written justification and depending on the total contract amount, the justification may require  
25 approval several levels above the contracting officer.

26 7. A Source Selection Plan will be prepared if it is decided to competitively bid or engage in  
27 a limited source solicitation. (FAR 15.303).

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1 8. The contracting officer must settle on a source for the supplies, *e.g.*, Small Business,  
2 Ability One, GSA Schedule, or full and open competition.

3 9. A synopsis of the solicitation must be prepared and thereafter published through the  
4 Government-Wide Point of Entry for 15 days before the solicitation may issue (FAR 5.203(a)).

5 10. The solicitation will incorporate the PWS, but will require the Contracting Officer to write  
6 Contract Line Item Numbers for pricing, select required contract clauses, and develop appropriate  
7 evaluation factors (FAR 15.304). The solicitation must be published for 30 days on the  
8 Government Wide Point of Entry (FAR 5.203(b)). For “commercial items,” the publication must  
9 only be for a “reasonable opportunity to respond” (FAR 5.203(b), but in practice, the publication is  
10 generally for 30 days, sometimes more.

11 11. While the solicitation is advertised there may be exchanges of information between the  
12 government and offerors (*e.g.*, questions and answers), some of which may lengthen the 30 day  
13 publication period and require amendments to the solicitation.

14 12. Once the offers are received, the Contracting Officer may decide to award with or without  
15 discussions. If awarded with discussions, the Contracting Officer will determine a “competitive  
16 range,” eliminating certain offerors who will receive notice and an opportunity to protest (FAR  
17 15.506(c)). Once the competitive range has been identified, oral or written “discussions” will be  
18 held with each offeror in the competitive range. This typically is done in writing, with a letter sent  
19 to each offeror, identifying weaknesses in their proposal, and providing them an opportunity to  
20 revise their proposal and resubmit (FAR 15.306, 15.307).

21 13. Once the Contracting Officer has the best and final offers from offerors, s/he must  
22 evaluate each proposal, document how each offeror measures up to the evaluation criteria, and  
23 then make an award determination. The award determination must be set forth in writing and must  
24 be a stand-alone document in explaining the Contracting Officer’s rationale for the source  
25 selection.

26 14. Before or after award, one or more offerors may choose to dispute the decision by way of  
27 Agency Protest, GAO Protest, or the Court of Federal Claims, or a combination of the three in  
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1 succession. An agency protest could result in reopening the solicitation. A GAO Protest or Court  
2 of Claims bid protest would create a significant delay during which time a stop work order will be  
3 in place and the contract cannot be performed.

4 15. Once the contractor has been given direction to proceed with work, there will be a  
5 transition period to allow the contractor to ramp up services.

6 16. The foregoing information is an estimated timeline for procurement based on assumptions  
7 that may change once the Performance Work Statement is received by the contracting officer.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed at Fort  
9 Sam Houston, Texas on April 16, 2014.

10 **BUSTAMANTE.M** Digitally signed by  
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ou=USA, cn=BUSTAMANTE.MARC.1131301380  
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LTC Marc Bustamante  
13 Principal Assistant Responsible for Contracting  
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