

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 2000-011]

RIN: 9000-AJ11

**Federal Acquisition Regulation;
Revisions to Provisions/Clauses to
Accommodate Sealed Bidding and
Simplified Procedures in Commercial
Item Acquisitions**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to update FAR provisions relating to Instructions to Offerors—Commercial Items and Offeror Representations and Certifications—Commercial Items, to accommodate sealed bidding and simplified acquisitions.

DATES: Interested parties should submit comments in writing on or before October 22, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000-011@gsa.gov

Please submit comments only and cite FAR case 2000-011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAR case 2000-011.

SUPPLEMENTARY INFORMATION:**A. Background**

Federal Acquisition Regulation, Part 12, Acquisition of Commercial Items, was developed to implement Title VIII of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355). The regulations became effective on October 1, 1995. Several areas have been

identified that need updating and clarification. This rule revises the provisions at 52.212-1 and 52.212-3 to accommodate the use of sealed bidding or requests for quotations for commercial items.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely revises the provision to add language that currently must be added by the contracting officer. It does not change existing policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000-011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: August 17, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR part 52 be amended as set forth below:

**PART 52—SOLICITATIONS
PROVISIONS AND CONTRACT
CLAUSES**

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.212-1 as follows:

- (a) Revise the date of the provision;
- (b) Redesignate paragraphs (a) through (j) as (b) through (k), respectfully;
- (c) Add a new paragraph (a);

(d) Revise the newly designated paragraph (c);

(e) In the newly designated paragraph (d), revise the heading; and

(f) Revise the newly designated paragraph (h). The revised and added text reads as follows:

**52.212-1 Instructions to Offerors—
Commercial Items.**

* * * * *

Instructions to Offerors—Commercial Items (Date)

(a) *Definition.* As used in this provision, the terms “offer” and “offeror” include “quote” and “quoter” respectively, except as used in paragraph (h) of this provision.

* * * * *

(c) *Submission of offers and modifications to offers.* (1) Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers shall include—

- (i) The solicitation number;
- (ii) The time specified in the solicitation for receipt of offers;
- (iii) The name, address, and telephone number of the offeror;
- (iv) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (v) Terms of any express warranty;
- (vi) Price and any discount terms;
- (vii) “Remit to” address, if different from mailing address;
- (viii) A completed copy of the representations and certifications at Federal Acquisition Regulation (FAR) 52.212-3;

(ix) Acknowledgement of solicitation amendments;

(x) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(xi) If the offer is not submitted on the SF 1449, a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Proposals or quotes that fail to furnish required representations or information, or reject the terms and conditions of the solicitation, may be excluded from consideration. Bids that do not conform to the essential requirements of the invitation for bids will be rejected.

(2) Address offers and modifications to offers, regardless of the media under which submitted, to the office specified in the solicitation. Offerors shall ensure that the outermost wrapper (or the transmittal documentation for electronic submissions) of the offer or modification is marked to show the time and date specified for receipt, the solicitation number, and the name and address of the offeror.

(d) *Offer expiration date.* * * *

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(h) *Contract award.* Depending on the method of solicitation selected in Block 14 of the SF 1449, only one of the following three paragraphs applies:

(1) *Request for quotations.* The Government will evaluate quotations on the basis specified in the solicitation. For the purposes of this paragraph, a quotation is not an offer and cannot be accepted by the Government to form a binding contract. Instead, the Government may include the quotation in an order to the supplier to buy certain supplies or services upon specified terms and conditions. The order is an

offer by the Government. A contract is formed when the supplier accepts the offer. The Contracting Officer may require the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at FAR 2.101. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(2) *Invitation for bids.* The Government will evaluate bids in response to this solicitation and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(3) *Request for proposals.* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and

technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

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3. In section 52.212-3, revise the date of the provision and the introductory text of paragraph (a) to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items

* * * * *

Offeror Representations and Certifications—Commercial Items (Date)

(a) *Definitions.* As used in this provision, the term “offeror” includes “quoter”.

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