

which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 3 and 52 which was published at 61 FR 39199 on July 26, 1996, is adopted as a final rule without change.

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

[FR Doc. 97-6310 Filed 3-14-97; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 5, 14, 15, and 52

[FAC 90-46; FAR Case 91-104; Item II]

RIN 9000-AF50

#### Federal Acquisition Regulation; Electronic Contracting

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to address the use of electronic commerce/electronic data interchange in Government contracting. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**DATES:** Effective May 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-46, FAR case 91-104.

## SUPPLEMENTARY INFORMATION:

### A. Background

A proposed rule was published in the Federal Register at 58 FR 69588, December 30, 1993. The rule proposed amendments to the FAR to remove any barriers to the use of electronic data interchange in Government contracting. Thirty-six comments from ten respondents were received during the public comment period. After evaluating the public comments, the Councils agreed to publish another proposed rule as a result of significant changes to the previous proposed rule being deemed necessary. The revised proposed rule was published in the Federal Register at 60 FR 12384, March 6, 1995, and an interim rule was published at 60 FR 34735, July 3, 1995. Additional changes to the final rule include—

- Revisions at FAR 5.101(a)(2)(iv) to clarify requirements for electronic posting of solicitations;
- Revisions at FAR 14.209(b) to clarify procedures for informing bidders of cancellation of electronic invitations before opening; and
- Clarification of when electronic bids and proposals will be considered to have been received by the Government for the purposes of the late bid and late proposal rules in various clauses within FAR Part 52.

This rule complements the FACNET rule (FAR Case 94-770; 61 FR 39189, July 26, 1996), which implemented provisions of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355) and the Clinger-Cohen Act of 1996 (Pub. L. 104-106).

### B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

This final rule authorizes the use of electronic commerce/electronic data interchange in Government contracting. The legal authority to use electronic commerce for Government contracting actions was confirmed in General Accounting Office (GAO) Advisory Opinion B-238449. The rule will apply to all actual or potential bidders or offerors, large and small, when the solicitation authorizes the use of electronic commerce/electronic data interchange. It is estimated that the rule will apply to at least 8,615,190 small entities. There are no significant alternatives which would accomplish the objectives of the rule.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 5, 14, 15, and 52

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 14, 15, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 14, 15, and 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).

## PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.101 is amended by revising the first sentence of paragraph (a)(2)(iv) to read as follows:

### 5.101 Methods of disseminating information.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(iv) Electronic posting of requirements in a place accessible by the general public at the Government installation may be used to satisfy the public display requirement. \* \* \*

\* \* \* \* \*

## PART 14—SEALED BIDDING

3. Section 14.209 is amended by revising paragraph (b) to read as follows:

### 14.209 Cancellation of invitations before opening.

\* \* \* \* \*

(b) When an invitation issued other than electronically is cancelled, bids that have been received shall be returned unopened to the bidders and notice of cancellation shall be sent to all prospective bidders to whom invitations were issued. When an invitation issued electronically is cancelled, a general notice of cancellation shall be posted electronically, the bids received shall not be viewed, and the bids shall be purged from primary and backup data storage systems.

\* \* \* \* \*

4. Section 14.304-1 is amended by revising paragraph (a)(4) to read as follows:

**14.304-1 General.**

\* \* \* \* \*

(a) \* \* \*

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids.

\* \* \* \* \*

**PART 15—CONTRACTING BY NEGOTIATION**

5. Section 15.410 is amended by revising the second and third sentences of paragraph (b) to read as follows:

**15.410 Amendment of solicitations before closing date.**

\* \* \* \* \*

(b) \* \* \* If the time available before closing is insufficient, prospective offerors or quoters shall be notified by electronic data interchange, facsimile transmission, telegram, or telephone of an extension of the closing date. Telephonic, facsimile, and telegraphic notices shall be confirmed in the written amendment to the solicitation. \* \* \*

\* \* \* \* \*

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

6. Section 52.214-7 is amended by revising the provision date, and paragraph (a)(4) to read as follows:

**52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.**

\* \* \* \* \*

Late Submissions, Modifications, and Withdrawals of Bids (May 1997)

(a) \* \* \*

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids.

\* \* \* \* \*

7. Section 52.214-23 is amended by revising the provision date, and paragraph (a)(4) to read as follows:

**52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.**

\* \* \* \* \*

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (MAY 1997)

(a) \* \* \*

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one

working day prior to the date specified for receipt of technical proposals; or

\* \* \* \* \*

8. Section 52.214-32 is amended by revising the date of the provision, and paragraph (a)(2) to read as follows:

**52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).**

\* \* \* \* \*

Late Submissions, Modifications, and Withdrawals of Bids (Overseas) (May 1997)

(a) \* \* \*

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term "working day" excludes weekends and U.S. Federal holidays.

\* \* \* \* \*

9. Section 52.214-33 is amended by revising the clause date, and paragraph (a)(2) to read as follows:

**52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).**

\* \* \* \* \*

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (May 1997)

(a) \* \* \*

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals. The term "working day" excludes weekends and U.S. Federal holidays; or

\* \* \* \* \*

10. Section 52.215-10 is amended by revising the provision date and paragraph (a)(4) to read as follows:

**52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.**

\* \* \* \* \*

Late Submissions, Modifications, and Withdrawals of Proposals (May 1997)

(a) \* \* \*

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals;

\* \* \* \* \*

11. Section 52.215-15 is revised to read as follows:

**52.215-15 Failure to Submit Offer.**

As prescribed in 15.407(d)(3), insert the following provision:

Failure to Submit Offer (May 1997)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, for paper transactions, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. Electronic solicitations do not require notification of desire to receive future solicitations, since these solicitations will be openly available to any interested party. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

12. Section 52.215-36 is amended by revising the provision date and paragraph (a)(2) to read as follows:

**52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).**

\* \* \* \* \*

Late Submissions, Modifications, and Withdrawals of Proposals (OVERSEAS) (MAY 1997)

(a) \* \* \*

(2) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals. The term "working day" excludes weekends and U.S. Federal holidays;

\* \* \* \* \*

[FR Doc. 97-6311 Filed 3-14-97; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 9, 35, and 37**

[FAC 90-46; FAR Case 94-008; Item III]

RIN 9000-AG86

**Federal Acquisition Regulation; Office of Federal Procurement Policy Letter 93-1, Management Oversight of Service Contracting**

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

**ACTION:** Final rule.