

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 2002–014]

RIN 9000–AJ59

Federal Acquisition Regulation;
Debriefing—Competitive Acquisition

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 implement Sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 on requirements for debriefing unsuccessful offerors under competitive proposals.

DATES: Interested parties should submit comments in writing on or before April 7, 2003 to be considered in the formulation of a final rule.

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

Submit electronic comments via the Internet to—farcase.2002-014@gsa.gov. Please submit comments only and cite FAR case 2002–014 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 Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2002–014.

SUPPLEMENTARY INFORMATION:

A. Background

Sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 amended 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively, to include requirements for debriefing unsuccessful offerors under competitive proposals. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) require each solicitation for competitive proposals to include a statement that prescribes minimal information that

shall be disclosed in postaward debriefings. In addition to the aforementioned minimal statutory disclosure information requirement, FAR 15.506(d) added the following required disclosure information:

1. Unit price information, if applicable, of the successful and debriefed offerors as an element of the statutory requirement to disclose the overall evaluated cost or price; and
2. Past performance information on the debriefed offeror.

Some of the requirements were incorporated into the clause at FAR 52.215–1, Instructions to Offerors—Competitive Acquisitions, but the notification for debriefings was overlooked during the drafting of the clause at 52.212–1, Instruction to Offerors—Commercial Items. The rule amends FAR 52.212–1 and 52.215–1 to implement the statutory requirement and the additional FAR past performance requirement by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

The unit price information, if applicable, on the debriefed and successful offerors was intentionally not included. As a result of recent court cases, especially *MCI WorldCom v. GSA*, 163 F. Supp. 2d 28, the treatment of unit prices under exemption no. 4 of the Freedom of Information Act (5 U.S.C. 552(b)(3)) is in a state of flux which may cause a revision to FAR 15.503(b)(1)(iv) to clarify the release of unit prices. The requirements are addressed in FAR 15.506(d) and FAR 12.203.

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 primarily clarifies language pertaining to disclosure of information in postaward debriefings currently authorized by statute and 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 2002–014), 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: January 30, 2003.

Ralph De Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DOD, GSA, and NASA propose amending 48 CFR part 52 as set forth below:

PART 52—SOLICITATION 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 by revising the date of the provision; and adding paragraph (k) to read as follows:

52.212–1 Instructions to Offerors—
Commercial Items.

* * * * *

Instructions To Offerors—Commercial Items
(Date)

* * * * *

(k) *Debriefing.* If a postaward debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

- (1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer;
 - (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror;
 - (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;
 - (4) A summary of the rationale for award;
 - (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and
 - (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.
- (End of provision)

3. Amend section 52.215–1 by revising the date of the provision and paragraph (f)(11) to read as follows:

52.215–1 Instructions to Offerors—
Competitive Acquisition.

* * * * *

Instructions To Offerors—Competitive Acquisition (Date)

* * * * *

(f) * * *

(11) If a postaward debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer;

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror;

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iv) A summary of the rationale for award;

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

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[FR Doc. 03-2580 Filed 2-3-03; 8:45 am]

BILLING CODE 6820-EP-U