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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

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William W. Thybony
Assistant Administrator
for Regulations
Office of Federal Procurement
Policy
Office of Management and
Budget
Executive Office of the
President

Dear Mr. Thybony:

By letter dated August 30, 1978, you transmitted for our comment the Second Federal Acquisition Regulation (FAR) draft segment. This segment consists of Part 14 - Formal Advertising and Part 15 - Contracting By Negotiation.

Part 14 describes the method of contracting known as Formal Advertising.

14.000 Scope of Part - is a summary of material topics covered within the part.

14.1 Use of Formal Advertising - sets out the policy and procedures for use of this method. It states the elements required, the authorities, and policy, both general and specific, that apply.

14.2 Solicitation of bids - addresses the preparation of invitation packages, general rules, and methods applicable to the solicitation process. It covers bidder mailing lists, solicitation amendments, cancellation before award, and pre-bid conferences.

14.3 Submission of bids - describes rules of submission, responsiveness, and timeliness also the handling of late bids, bid modifications, and withdrawals.

14.4 Opening of bids and award of contract - provides procedures for the receipt, handling and disposition of bids, and the subsequent award of contract.

14.5 Two-Step Formal Advertising - contains the procedures for contracting by using an alternative method to classical Formal Advertising when, for example, adequate specifications are not available.

Part 15 prescribes the policies and procedures governing the method of contracting known as Negotiation.

15.1 General Requirements for Negotiation - defines negotiation, then covers use of the method, need for approvals and the role of competition.

15.2 Negotiation Authorities - provides statutory citations and explanations in terms of application and limitation of the exceptions to the general requirement for formal advertising.

15.3 Determination and Findings - defines the two terms, and discusses their use and application for justifying negotiations in lieu of formal advertising. Non-negotiation related use of Determination and Findings is left for discussion with the appropriate subject matter elsewhere in the regulation.

Our comments follow:

FAR 14.304 Modification or withdrawal of bids

Section 14.304(b)(2)(iii) provides that a bid may be withdrawn by a bidder or his representative if, among other things, the withdrawal "is done before bid receipt time." This appears to be an error. It would be appropriate to require that withdrawal be accomplished prior to bid opening.

FAR 14.404-1 Cancellation of invitation after opening

Section 14.404-1(c)(6) provides that an invitation may be canceled prior to award but after opening if it is

determined that "All otherwise acceptable bids received are at unreasonable prices." Section 14.404-1(c)(7) provides for such cancellation in the event it is determined that the bids were not arrived at in open competition, were collusive or submitted in bad faith. We recommend that both FAR 14.404-1(c)(6) and (7) include a reference to FAR 15.214 which concerns the authority to negotiate after advertising. FAR 15.214(a)(2) provides that negotiation may be used where the conditions outlined by FAR 14.404-1(c)(6) and (7) exist. In this regard we note that the current FPR Section (FPR 1-2.404-1(b)(5)) comparable to FAR 14.404-1(c)(6) contains a reference to the authority to negotiate after advertising.

Although the remaining portions of the draft segment contain several variations from the present regulations such as Section 14.202-1 which sets the minimum bidding time for all items at 30 calendar days and Section 14.405 which does not list, as does ASPR 2-405(ii), a bidder's failure to make a representation as to size status as an example of a minor informality or irregularity, these changes do not appear to represent significant departures from present policy. Therefore, we have no further comments.

Sincerely yours,

MILTON COLLIER

For

Paul G. Dembling
General Counsel