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Part VI

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Parts 2, 4, 5, et al.

**Federal Acquisition Regulation; Electronic
Commerce in Federal Procurement;
Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 4, 5, 6, 7, 9, 12, 13, 14,
19, 22, 34, 35, and 36****[FAR Case 1997-304]****RIN 9000-A110****Federal Acquisition Regulation;
Electronic Commerce in Federal
Procurement****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 designate FedBizOpps as the single point of universal electronic public access to Governmentwide procurement opportunities. Agencies will have until October 1, 2001, to complete their transition to, or integration with, FedBizOpps. This rule implements section 850 of the National Defense Authorization Act for Fiscal Year 1998. The proposed rule also changes the public notification requirements to allow greater electronic access to information on Government acquisitions, including notices of upcoming acquisition opportunities, notices of subcontracting opportunities, and notices of contract awards.

DATES: Interested parties should submit comments in writing on or before October 20, 2000, to be considered in the formulation of a final rule.

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

Submit electronic comments via the Internet to: farcase.1997-304@gsa.gov

Please submit comments only and cite FAR case 1997-304 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 1997-304.

SUPPLEMENTARY INFORMATION:**A. Background**

An interim rule was published in the **Federal Register** at 63 FR 58590, October 30, 1998, amending FAR Subpart 4.5 and making associated changes to FAR Parts 2, 5, 13, 14, and 32 to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105-85. Section 850 amends Titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within agencies to be conducted on the FACNET computer architecture. The interim rule—

- Promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems; and
- Requires Federal procurement systems that employ electronic commerce to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

Public comments were received from 28 respondents. All comments were considered in drafting this proposed rule. Subsequent to publication of the interim rule, the Office of Federal Procurement Policy proposed to designate FedBizOpps as the single Governmentwide point of entry for accessing information on procurement actions. This proposed rule changes the FAR to implement that recommendation.

FedBizOpps (in the process of being expanded for Governmentwide usage) is the new name for the Electronic Posting System (EPS) that is accessible via the Internet at <http://www.fedbizopps.gov>. Agencies must make contracting opportunities that meet the criteria in FAR 5.101 accessible via FedBizOpps. Most public notices of procurement actions over \$25,000 are now published in the *Commerce Business Daily*. Under the proposed rule, agencies would no longer furnish separate notices to the CBD. Agencies would direct FedBizOpps to forward the information to the CBD, using the current format prescribed for the electronic version of CBD, *Commerce Business Daily* Network (CBDNet). The proposed rule also—

- Adds place of contract performance and set-aside status to the required notice content;
- Requires agencies to make accessible through FedBizOpps other notices that are currently published in the CBD, such as pre-solicitation notices

and award notices supporting subcontracting opportunities;

- Requires agencies to make accessible via FedBizOpps most solicitations and amendments associated with business opportunities listed on the FedBizOpps website;
- Permits contractors to publicize subcontracting opportunities with the intent of supporting achievement of subcontracting goals; and
- Permits agencies to make accessible via FedBizOpps information that allows potential offerors to better understand how they can meet the Government's needs.

Agencies must be posting all applicable actions on the FedBizOpps website by October 1, 2001. This phase-in period supports smooth transition to a Governmentwide posting system.

In proposing to designate FedBizOpps, the Office of Federal Procurement Policy (OFPP), in consultation with the Procurement Executives Council (PEC), considered the electronic methods that have been used in recent years to significantly increase access to Government procurement opportunities. In addition to FedBizOpps, OFPP considered CBDNet and the Federal Acquisition Computer Network (FACNET). OFPP also examined suitable commercial alternatives.

The following were the OFPP objectives:

- Create a central point for electronic access to business opportunities. Through the central point, allow access to notices that must now be published in the CBD, solicitations, and related acquisition information, including information maintained at central points or on agency websites.
- Follow the commercial lead. Leverage the investment made by the private sector, benefit from the market-driven economies and innovation that commercial tools offer, and accommodate different commercial electronic means for acquiring information.

- Facilitate reengineering for sellers and buyers. For sellers, provide "one stop to business" and a consistent process for locating business opportunities. The Governmentwide point of entry must be reliable and easy to use. For buyers, support streamlined preparation and issuance of notices and solicitation information without disrupting, eliminating or otherwise requiring the replacement of current agency electronic commerce software.

Based on agencies' experiences to date with each of the above-mentioned alternatives, OFPP believes that

FedBizOpps can most effectively meet the Government's objectives by—

- Creating a central point for electronic access. FedBizOpps hosts a wide variety of business documents, including notices, solicitations, and other related acquisition information;
 - Creating an index of all business information at one internet location for searching and downloading;
 - Allowing agencies to continue to select the most appropriate posting option for their mission (*i.e.*, posting at FedBizOpps or posting at the agency website), since either achieves the goal of access through a single point of entry;
 - Providing access through electronic tools that have widespread commercial acceptance and interface with sellers' electronic tools, and can adapt to new tools as they gain commercial acceptance;
 - Allowing potential offerors and service providers to access and download information through a variety of commercial electronic means and business applications, including web-based technology, bulk data feeds, and push technology through electronic mail (e-mail); and
 - Enabling sellers to choose the means (either direct or service-provider enhanced) they find most suitable for gaining access to Federal business opportunities.
- For sellers—
- Providing "one stop" access to business opportunities. After identifying notices of interest, sellers may quickly access related solicitation information through a direct link. When a seller "clicks" to the notice, they are also obtaining, through the solicitation page, direct access to all solicitation and related information electronically available at that time on the acquisition;
 - Easing the process for locating the information needed to decide whether to pursue a business opportunity by presenting information in consistent web page formats (*i.e.*, the same user interface) up to the point of browsing or downloading the solicitation. This enhances sellers' familiarity and comfort in identifying business opportunities for review;
 - Making notices of proposed contract actions available in a standardized format, as required by FAR 5.207. (However, FedBizOpps does not require a standardized format for solicitations, so that agencies may maintain flexibility in formatting solicitations to accommodate their individual processes and needs); and
 - Keeping business processes simple and flexible. Surveys indicate that potential offerors generally find that FedBizOpps provides easy, user

friendly, and consistent access to business opportunities. Users like FedBizOpps' automatic e-mail notification feature because it provides information about contracting opportunities for specific supplies or services or specified agencies and eliminates the need for repeated searches to gain access to up-to-date information.

For the Government—

- Reengineering Government buyer practices. Surveys indicate that FedBizOpps helps to streamline and eliminate transaction steps. FedBizOpps can accommodate existing posting systems and contract writing systems, allowing seamless integration. Notices and solicitations can be posted on the Internet without any rekeying of information. Agencies without their own posting system or a contract writing system that integrates with FedBizOpps are serviced through an easy web-based interface. According to the survey, this increases agency efficiency;
 - Eliminating the need for individual websites. In the past, agencies maintained individual web sites at each operating location. When a buyer or contracting officer wanted to produce a business opportunity, they would enter the notice information into CBDNet through the Internet, and would give their solicitation document to a "webmaster" who would post the document to the Internet. Under FedBizOpps, the buyer posts the notice information. It is forwarded to CBDNet, and FedBizOpps posts the solicitation document via the Internet FedBizOpps. This reduces process steps and eliminates the need for a dedicated webmaster for this function; and
- FedBizOpps is linked to the Procurement Marketing and Access Network (PRO-Net), an Internet database of small businesses managed by the Small Business Administration. This link increases small business awareness of Government contracting opportunities.

This is a significant regulatory action and, therefore, was 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 changes may 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 proposed rule establishes Federal Business Opportunities (FedBizOpps.gov) as the single

Governmentwide point of electronic entry ("GPE") for all large and small business entities accessing notices of proposed contract actions, solicitations, and related procurement information. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The proposed rule establishes the Electronic Posting System (EPS), to be renamed the Federal Business Opportunities (FedBizOpps.gov), as the single Governmentwide point of electronic entry ("GPE") for accessing notices of proposed contract actions, solicitations, and related procurement information. This action implements section 30(c)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 426(c)(4)), that requires the designation of a single point of entry to provide convenient and universal public access to procurement opportunities Governmentwide.

The legal basis for the rule is Section 850 of Public Law 105-85, codified at section 30 of the OFPP Act (41 U.S.C. 426).

The proposed rule will apply to all large and small entities that do business or are planning to do business with the Government. FedBizOpps is designed to be sufficiently versatile to allow sellers and service providers to access and download information through different commercial electronic means, including web-based technology, bulk data feeds, and electronic mail. This versatility will enable the more than 47,340 small and 29,200 large businesses to have easy access to Government business opportunities.

The rule imposes no reporting, recordkeeping, or other compliance requirements. Basic skill in operating a personal computer with access to the internet is required to access the GPE website (<http://www.fedbizopps.gov>). The estimated purchase cost of a personal computer, modem, software, telephone lines, and internet access is \$1,600. To accommodate small and large businesses that may not wish to access the GPE directly, FedBizOpps will make notices available for paper publication in the CBD. In addition, FedBizOpps will make available—in a daily bulk feed—business opportunity information to value added networks and other service providers to publish or otherwise provide information in either electronic or paper form.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

Prior to the development of this proposed rule, the Office of Federal Procurement Policy (OFPP), in consultation with the Procurement Executives Council (PEC), considered the suitability of various alternatives to satisfy the requirement of section 30 of the OFPP Act to designate a GPE. OFPP focused its review on electronic means that the Government has used in recent years to significantly increase access to Government procurement opportunities. Thus, in addition to FedBizOpps, consideration was given to CBDNet and the Federal Acquisition Computer Network

(FACNET). OFPP also sought to determine if suitable commercial alternatives presently exist to provide the single point of entry function.

Alternatives to FedBizOpps demonstrated benefits, some significant, over paper-based processes. However, when considering the Government's objectives in the aggregate (*i.e.*, creating a central point for electronic access to business opportunities, following the commercial lead, and facilitating reengineering for sellers and buyers), the alternatives did not exceed the benefits of FedBizOpps in serving as the GPE.

A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 1997-304), 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 Parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36

Government procurement.

Dated: August 15, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 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 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Commerce Business Daily (CBD)" and "Governmentwide point of entry (GPE)"; and in the definition "Federal Acquisition Computer Network (FACNET) Architecture" by removing the last sentence. The added text reads as follows:

2.101 Definitions.

* * * * *

Commerce Business Daily (CBD) means the publication of the Secretary of Commerce used to fulfill statutory

requirements to publish certain public notices in paper form.

* * * * *

Governmentwide point of entry (GPE) means the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at <http://www.fedbizopps.gov>.

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PART 4—ADMINISTRATIVE MATTERS

4.501 [Amended]

3. Amend section 4.501 by removing the definition "Single, Governmentwide point of entry."

4. Amend section 4.502 by revising paragraph (b)(4) to read as follows:

4.502 Policy.

* * * * *

(b) * * *

(4) Include a single means of providing widespread public notice of acquisition opportunities through the Governmentwide point of entry and a means of responding to notices or solicitations electronically; and

* * * * *

5. Amend section 4.803 by revising paragraph (a)(4) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(4) Synopsis of proposed acquisition as required by part 5 or a reference to the synopsis.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

6. Add section 5.003 to read as follows:

5.003 Governmentwide point of entry (GPE).

For any requirement in the FAR to publish a notice in the CBD through the GPE, the contracting office may transmit the notice directly to the CBD if the contracting office lacks the capability to access the GPE and the notice is issued prior to October 1, 2001.

7. Amend section 5.101 by removing the introductory paragraph; and by revising paragraph (a) to read as follows:

5.101 Methods of disseminating information.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers must

disseminate information on proposed contract actions as follows:

(1) For proposed contract actions expected to exceed \$25,000, by synopsis in the CBD (see 5.201). To satisfy this requirement, contracting officers must use the GPE, except as provided in 5.003.

(2) For proposed contract actions expected to exceed \$10,000, but not expected to exceed \$25,000, by displaying in a public place or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(d) and (g). The notice must include a statement that all responsible sources may submit a quotation which, if timely received, must be considered by the agency. Such information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207(d) and (g) may be employed. For example, the requirements of 5.207(d) and (g) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a)(1), (a)(4) through (a)(9), or (a)(11) apply, when oral or FACNET solicitations are used, or when providing access to a notice of proposed contract action and solicitation through the GPE and the notice permits the public to respond to the solicitation electronically.

(iii) Contracting officers may use electronic posting of requirements in a place accessible by the general public at the Government installation to satisfy the public display requirement. Contracting offices using electronic systems for public posting that are not accessible outside the installation must periodically publicize the methods for accessing such information.

* * * * *

8. Revise section 5.102 to read as follows:

5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(4) of this section, the contracting officer must make available, through the GPE, solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the Interface

Description available via the Internet at <http://www.fedbizopps.gov>.

(2) The contracting officer is encouraged, when practicable and cost effective, to make accessible through the GPE additional information related to a solicitation.

(3) The contracting officer must ensure that solicitations transmitted to FACNET are forwarded to the GPE to satisfy the requirements of paragraph (a)(1) of this section.

(4) The contracting officer need not make a solicitation available through the GPE when—

(i) Disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (*e.g.*, size, format) does not make it cost effective or practicable for contracting officers to provide access through the GPE;

(iii) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest; or

(iv) The contracting office lacks the capability to access the GPE and the synopsis is issued prior to October 1, 2001.

(b) When the contracting officer does not make a solicitation available through the GPE pursuant to paragraph (a)(4) of this section, the contracting officer—

(1) Should employ other electronic means (*e.g.*, CD-ROM, electronic mail) whenever practicable and cost effective. When solicitations are provided electronically on physical media (*e.g.*, disks) or in paper form, the contracting officer must—

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a "first-come-first served" basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted.

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

(c) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(1) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

(2) The name and telephone number of an employee of the contracting office to answer questions on the solicitation; and

(3) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(d) When electronic commerce (see subpart 4.5) is used in the solicitation process, availability of the solicitation may be limited to the electronic medium.

(e) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under part 6.

(f) This section 5.102 applies to classified contracts to the extent consistent with agency security requirements (see 5.202(a)(1)).

9. Revise section 5.201 to read as follows:

5.201 General.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b)(1) For acquisitions of supplies and services, other than those covered by the exceptions in 5.202 and the special situations in 5.205, the contracting officer must transmit a notice to the GPE, for each proposed—

(i) Contract action meeting the threshold in 5.101(a)(1);

(ii) Modification to an existing contract for additional supplies or services that meets the threshold in 5.101(a)(1); or

(iii) Contract action in any amount when advantageous to the Government.

(2) When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to

satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

(3) When transmitting notices to FACNET, contracting officers must ensure the notice is forwarded to the GPE. Contracting officers must ensure that such notices are forwarded by the GPE to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

(c) The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

(d)(1) The GPE may be accessed via the Internet at <http://www.fedbizopps.gov>.

(2) Subscriptions to the CBD must be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (Tel. 202-512-1800).

10. Amend section 5.202 in paragraph (a)(13) by revising paragraph (a)(13)(ii) and by removing (a)(13)(iii) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(13) * * *

(ii) Will be made through FACNET or another means that provides access to the notice of proposed contract action through the GPE; and permits the public to respond to the solicitation electronically; or

* * * * *

11. Amend section 5.203 by revising the introductory paragraph, paragraphs (a), (b), and (e), the first sentence of paragraph (g), and paragraph (h) to read as follows:

5.203 Publicizing and response time.

Whenever agencies are required to publicize notice of proposed contract actions under 5.201, they must proceed as follows:

(a) An agency must transmit a notice of proposed contract action to the GPE. The notice must be forwarded by the GPE, and published in the CBD, at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined synopsis/solicitation procedure (see 12.603).

(b) The contracting officer must establish a solicitation response time

that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions via FACNET or for which the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than \$25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than \$25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

* * * * *

(e) Agencies must allow at least a 45-day response time for receipt of bids or proposals from the date of publication of the notice in the CBD required in 5.201 for proposed contract actions categorized as research and development if the proposed contract action is expected to exceed the simplified acquisition threshold.

* * * * *

(g) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted through the GPE or other means) following transmittal of the synopsis to the CBD. * * *

(h) In addition to other requirements set forth in this section, for acquisitions subject to NAFTA or the Trade Agreements Act (see subpart 25.4), the period of time between publication of the synopsis notice in the CBD and receipt of offers must be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published in the CBD and the GPE, the contracting officer may reduce this time period to as few as 10 days.

12. Revise sections 5.204 and 5.205 to read as follows:

5.204 Presolicitation notices.

Contracting officers must provide access to presolicitation notices through the GPE (see 15.201 and 36.213-2). Synopsizing of a proposed contract action is required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers are encouraged to transmit to the GPE advance notices of their interest in potential R&D programs whenever existing solicitation mailing lists do not

include a sufficient number of concerns to obtain adequate competition.

Advance notices must not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Potential sources which respond to advance notices must be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices must be entitled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers must synopsize (see 5.201) all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see part 35) or before changing its basic purpose and mission, the sponsor must transmit at least three notices over a 90-day period to the GPE and the **Federal Register**, indicating the agency's intention to sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice must indicate the scope and nature of the effort to be performed and request comments. Notice is not required where action is required by law. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

(c) *Special notices.* Contracting officers may transmit to the GPE, special notices of procurement matters such as business fairs, long-range procurement estimates, pre-bid/pre-proposal conferences, meetings, and the availability of draft solicitations or draft specifications for review.

(d) *Architect-engineering services.* Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by 5.202, contracting officers must transmit to the

GPE each proposed contract action for which the total fee (including phases and options) is expected to exceed \$25,000. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce. Reference must be made to the appropriate CBD Numbered Note.

(2) When the total fee is expected to exceed \$10,000 but not exceed \$25,000, the contracting officer must comply with 5.101(a)(2). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b).

(e) *Effort to locate commercial sources under OMB Circular A-76.* When determining the availability of commercial sources under the procedures prescribed in subpart 7.3 and OMB Circular A-76, the contracting officer must not arrive at a conclusion that there are no commercial sources capable of providing the required supplies or services until publicizing the requirement through the GPE at least three times in a 90 calendar-day period, with a minimum of 30 calendar days between each. When necessary to meet an urgent requirement, this may be limited to a total of two notices through the GPE in a 30 calendar-day period, with a minimum of 15 calendar days between each. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Circular.

(f) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under subpart 19.8, the contracting officer must transmit a synopsis of the proposed contract action to the GPE. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce. The synopsis may be transmitted to the GPE concurrent with submission of the agency offering (see 19.804-2) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the North American Industry Classification System (NAICS) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

13. Amend section 5.206 by revising the introductory text of paragraph (a) to read as follows:

5.206 Notices of subcontracting opportunities.

(a) The following entities may transmit a notice to the GPE, the CBD, or both to seek competition for subcontracts, to increase participation by qualified HUBZone small business, small, small disadvantaged, and small women-owned business concerns, and to meet the established subcontracting plan goals:

* * * * *

14. Amend section 5.207 by—

a. Redesignating paragraphs (a) through (h) as (b) through (i), respectively, and by adding a new paragraph (a);

b. Revising newly designated paragraph (b);

c. Revising the introductory text of newly designated paragraph (c), and adding under “Format Item and Explanation/Description of Entry” item numbers 18 and 19; and

d. Revising newly designated paragraph (i) to read as follows:

5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE or CBD must address the following data elements, as applicable:

- (1) Action Code.
- (2) Date.
- (3) Year.
- (4) Government Printing Office (GPO) Billing Account Code.
- (5) Contracting Office Zip Code.
- (6) Classification Code.
- (7) Contracting Office Address.
- (8) Subject.
- (9) Proposed Solicitation Number.
- (10) Opening/Closing Response Date.
- (11) Contact Point/Contracting Officer.
- (12) Contract Award and Solicitation Number.
- (13) Contract Award Dollar Amount.

(14) Contract Line Item Number.

(15) Contract Award Date,

(16) Contractor.

(17) Description.

(18) Place of Contract Performance.

(19) Set-aside Status.

(b) *Transmittal*—(1) *GPE.*

Transmissions must be in accordance with the Interface Description available via the Internet at <http://www.fedbizopps.gov>.

(2) *CBD*—(i) *Electronic transmission.*

All synopses transmitted electronically to the CBD, other than through the GPE (see 5.003), must be in ASCII Code.

Contact your agency's communications center for the appropriate transmission instructions or services.

(ii) *Hard copy transmission.* When electronic transmission is not feasible (see 5.003), synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to: Commerce Business Daily, U.S. Department of Commerce, P.O. Box 77880, Washington, DC 20013-8880.

(c) *Format for the CBD.* The contracting officer must prepare the synopsis in the following style and format to assure timely processing of the synopsis by the Commerce Business Daily.

* * * * *

18. *Place of contract performance.* (Include where applicable; where not applicable, enter N/A.)

19. *Set-asides.* (Identify if the proposed acquisition provides for a total or partial set-aside, a very small business set-aside, or a HUBZone small business set-aside. If not a set-aside, enter N/A.)

* * * * *

(i) *Cancellation of synopsis.*

Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE or CBD. Cancellations of solicitations must be made in accordance with 14.209 and 14.404-1.

15. Amend section 5.301 by revising the introductory text of paragraph (a); by revising paragraphs (b)(7) and (c); and by adding paragraph (d) to read as follows:

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section and as provided in 5.003, contracting officers must synopsise through the GPE awards exceeding \$25,000 that are—

* * * * *

(b) * * *

(7) The contract action—

(i) Is for an amount not greater than the simplified acquisition threshold; and

(ii) Was conducted by using FACNET or access to the notice of proposed contract action was provided through the GPE and permitted the public to respond to the solicitation electronically; or

* * * * *

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers must submit synopses in sufficient time to permit publication in the CBD, through the GPE, not later than 60 days after award.

(d) When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

16. Amend section 5.404-1 by revising paragraph (b)(3)(iii) to read as follows:

5.404-1 Release procedures.

* * * * *

(b) * * *

(3) * * *

(iii) More specific information relating to any individual item or class of items will not be furnished until the proposed acquisition is synopsized through the GPE or the solicitation is issued;

* * * * *

17. Revise section 5.404-2 to read as follows:

5.404-2 Announcements of long-range acquisition estimates.

Further publicizing, consistent with the needs of the individual case, may be accomplished by announcing through the GPE that long-range acquisition estimates have been published and are obtainable, upon request, from the contracting officer.

PART 6—COMPETITION REQUIREMENTS

6.303-2 [Amended]

18. Amend section 6.303-2 in paragraph (a)(6) by removing “CBD”.

PART 7—ACQUISITION PLANNING

19. Amend section 7.303 in paragraph (a) and the introductory text of paragraph (b) by removing “shall” and adding “must” in their place; and by revising paragraph (b)(1) to read as follows:

7.303 Determining availability of private commercial sources.

* * * * *

(b) * * *

(1) Synopsizing the requirement through the Governmentwide point of entry (GPE) in accordance with 5.205(e); and

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

20. Amend section 9.204 in the introductory text of paragraph (a) by removing “shall” and adding “must” in its place; and by revising paragraph (a)(1) to read as follows:

9.204 Responsibilities for establishment of a qualification requirement.

* * * * *

(a) * * *

(1) Periodically furnish through the Governmentwide point of entry (GPE) notice seeking additional sources or products for qualification unless the contracting officer determines that such publication would compromise the national security. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the Commerce Business Daily (CBD) to satisfy the requirements of 10 U.S.C. 2319(d)(1)(A) and 41 U.S.C. 253c(d)(1)(A).

* * * * *

21. Amend section 9.205 by revising the introductory text of paragraph (a) to read as follows:

9.205 Opportunity for qualification before award.

(a) If an agency determines that a qualification requirement is necessary, the agency activity responsible for establishing the requirement must urge manufacturers and other potential sources to demonstrate their ability to meet the standards specified for qualification and, when possible, give sufficient time to arrange for qualification before award. The responsible agency activity must, before establishing any qualification requirement, furnish notice through the GPE. When transmitting notices to the GPE, contracting officers must direct the GPE to forward the notice to the CBD to satisfy the requirements of 10 U.S.C. 2319(d)(1)(A) and 41 U.S.C. 253c(d)(1)(A). The notice must include—

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

22. Amend section 12.603—

a. In the introductory text of paragraph (a) by removing “Commerce Business Daily (CBD)”;

b. By revising paragraph (a)(1);

c. In paragraph (a)(2) by removing “CBD”;

d. In paragraph (c)(2)(xv) by removing “Commerce Business Daily”; and

e. By revising paragraphs (c)(3) and (c)(4) to read as follows:

12.603 Streamlined solicitation for commercial items.

(a) * * *

(1) Whether transmission is made directly to the Commerce Business Daily (CBD) or through the Governmentwide point of entry (GPE), section 5.207 limits descriptions in the CBD to 12,000 textual characters (approximately 3½ single-spaced pages).

* * * * *

(c) * * *

(3) Allow response time for receipt of offers as follows:

(i) Because the synopsis and solicitation are contained in a single document, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined synopsis/solicitation, contracting officers must establish a response time in accordance with 5.203(b) (but see 5.203(h)).

(4) Publicize amendments to solicitations in the same manner as the initial synopsis/solicitation.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

23. Amend the introductory paragraph of section 13.104 and the introductory text of paragraph (a) by removing “shall” and adding “must” in their place; and by revising the first sentence of paragraph (b) to read as follows:

13.104 Promoting competition.

* * * * *

(b) If using simplified acquisition procedures and not using either FACNET or providing access to the notice of proposed contract action and access to the solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area.

* * *

* * * * *

13.105 [Amended]

24. Amend section 13.105 in the introductory text of paragraph (a) by removing “shall” and adding “must” in its place; and in paragraph (a)(1)(ii) by removing “single, Governmentwide point of entry” and adding “GPE” in its place.

PART 14—SEALED BIDDING

25. Revise section 14.203–2 to read as follows:

14.203–2 Dissemination of information concerning invitations for bids.

(a) Procedures concerning display of invitations for bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsizing through the Governmentwide point of entry (GPE) are set forth in 5.101 and 5.2.

(b) For procedures that apply to publicizing notices through the GPE to determine whether commercial sources are available, as prescribed by OMB Circular A–76, see 5.205(e) and 7.303(b).

26. Amend section 14.503–2 by revising paragraphs (a)(4) and (b) to read as follows:

14.503–2 Step two.

(a) * * *

(4) Not be synopsized through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted (see 5.101(a)).

(b) The names of firms that submitted acceptable proposals in step one will be listed through the GPE for the benefit of prospective subcontractors (see 5.207(a)(1)).

PART 19—SMALL BUSINESS PROGRAMS

27. Amend section 19.202–2 in the introductory paragraph by removing “shall” and adding “must” in its place; and by revising paragraph (c) to read as follows:

19.202–2 Locating small business sources.

* * * * *

(c) Publicize solicitations and contract awards through the Governmentwide point of entry (GPE) (see subparts 5.2 and 5.3).

28. Amend section 19.804–2—

a. In the first sentence of the introductory text of paragraph (a) by removing “shall” and adding “must” in its place;

b. In paragraph (a)(9) by removing “Commerce Business Daily” and adding “Governmentwide point of entry (GPE)” in its place; and

c. By revising the third and fourth sentences of paragraph (c) to read as follows:

19.804–2 Agency offering.

* * * * *

(c) * * * All requirements, including construction, must be synopsized through the GPE. For construction, the synopsis must include the geographical

area of the competition set forth in the SBA's acceptance letter.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

29. Amend section 22.1009-4 in paragraph (a) by removing "shall" and adding "must" in its place; and by revising the introductory text of paragraph (b) to read as follows:

22.1009-4 All possible places of performance not identified.

* * * * *

(b) Include the following information in the notice of contract action (see 5.207(g)(4)):

* * * * *

PART 34—MAJOR SYSTEM ACQUISITION

34.005-2 [Amended]

30. Amend section 34.005-2 in paragraph (a)(1) by removing "publication in the Commerce Business Daily" and adding "publicizing through the Governmentwide point of entry" in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

31. Amend section 35.004 in the introductory text of paragraph (a) by removing "shall" and adding "must" in its place; and by revising paragraph (a)(1) to read as follows:

35.004 Publicizing requirements and expanding research and development sources.

(a) * * *

(1) Early identification and publication of agency R&D needs and requirements, including publicizing through the Governmentwide point of entry (GPE) (see part 5);

* * * * *

32. Amend section 35.016 by revising paragraph (c) to read as follows:

35.016 Broad agency announcement.

* * * * *

(c) The availability of the BAA must be publicized through the Governmentwide point of entry (GPE) and, if authorized pursuant to subpart 5.5, may also be published in noted scientific, technical, or engineering periodicals. The notice must be

published no less frequently than annually. When transmitting a notice to the GPE, contracting officers must direct the GPE to forward the notice to the Commerce Business Daily to satisfy the requirement of the Small Business Act and the Office of Federal Procurement Policy Act to furnish notices for publication by the Secretary of Commerce.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

33. Amend section 36.213-2 in the introductory text of paragraph (b) by removing "shall" and adding "must" in its place; and by revising paragraph (b)(9) to read as follows:

36.213-2 Presolicitation notices.

* * * * *

(b) * * *

(9) Be publicized through the Governmentwide point of entry in accordance with 5.204.

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