

245.7309

would tend to create or maintain a situation inconsistent with the antitrust laws.

(c) If the Attorney General advises that the proposed disposition is inconsistent with the antitrust laws, do not continue with the proposed disposition.

(d) Under non-competitive sales, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General.

(e) Under competitive or non-competitive sales, the purchaser is required to provide the information required in paragraph (a) of this subsection.

[56 FR 36448, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992; 57 FR 53601, Nov. 12, 1992]

245.7309 Mandatory terms and conditions—formal invitations.

Sale by formal invitation shall include, as a minimum, the terms and conditions in this section.

245.7309-1 Inspection.

The Bidder is invited to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. Failure to inspect property does not constitute grounds for the withdrawal of a bid after opening.

245.7309-2 Condition and location of property.

(a) Unless otherwise specifically provided in the Invitation, all property is offered for sale "as is" and "where is." If the Invitation provides that the Contractor will load, then "where is" means f.o.b. conveyance at the point specified in the Invitation.

(b) The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of the property or its fitness for any use or purpose.

(c) Except as provided in Conditions 245.7306-8, Variations in Quantity or Weight, and 245.7306-10, Risk of Loss, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

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245.7309-3 Consideration of bids.

(a) Bidder agrees that this bid is firm and irrevocable within the acceptance period specified in the Invitation (or, if not specified, not less than ten or more than 60 days).

(b) The right is reserved to reject any or all bids, to waive any technical defects in bids, and, unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the invitation provides otherwise, bids—

- (1) May be on any or all items;
- (2) Must be submitted on the unit basis specified for that item;
- (3) Must cover the total number of units designated for that item; and
- (4) Unit prices govern.

245.7309-4 Payment.

(a) Purchaser agrees to pay the full purchase price for awarded property at the prices quoted in the bid. Unless an adjustment is required pursuant to Condition 245.7306-8, Variations in Quantity or Weight, payment must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made, payment must be made immediately after such adjustment.

(b) The full purchase price, or balance if a bid deposit was required, shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor is not required to extend credit to any purchaser.

(c) The Contractor reserves the right to apply any bid deposits made under this Invitation by a bidder against any amounts due under a contract awarded by the Contractor under this Invitation. If the total sum due to the contractor is less than the amount deposited with the bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

245.7309-5 Title.

(a) Unless otherwise specified in the Invitation, title to property sold under this Invitation shall vest in the Purchaser when full payment is made. If the Invitation provides for loading by

the Contractor, title shall not vest until payment and loading are completed.

(b) A Standard Form 97, Certificate of Release of a Motor Vehicle, (or a State certificate of title) shall be furnished for motor vehicles and motor-propelled or motor-drawn equipment requiring licensing.

245.7309-6 Delivery and removal of property.

(a) Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title in the Purchaser. Delivery shall be made at the designated location, and removal will be at the Purchaser's expense within the time frame specified in the Invitation or any additional time allowed by the Contractor.

(b) The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by Purchaser's removal operations. If additional time is required to remove the property, the Contractor, without limiting any other rights, may require the Purchaser to pay reasonable storage charges.

245.7309-7 Default.

If the successful Bidder fails to make full payment, remove property by the specified date, or comply with any other terms and conditions of sale, the Contractor reserves the right to sell or otherwise dispose of any or all such property and to charge losses and incidental expenses to the defaulting Bidder. Bid deposits received (if required in the Invitation) shall be applied against such losses and expenses.

245.7309-8 Variations in quantity or weight.

When property is sold on a "unit price" basis, the Contractor reserves the right to vary by up to 15 percent the quantity or weight listed in the Invitation and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted in accordance with the unit price and on the basis of the quantity or weight delivered.

245.7309-9 Weighing.

(a) When weighing is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all weighing expenses. When removal is by truck, weighing shall be subject to supervision and accomplished on—

(1) Contractor scales;

(2) Certified scales; or

(3) Other scales acceptable to both parties.

(b) When removal is by rail, weighing shall be on railroad scales or by other means acceptable to the railroad for freight purposes. The Purchaser shall pay switching charges.

245.7309-10 Risk of loss.

The Contractor is responsible for reasonable care and protection of the property until the date specified for removal. All risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser after passage of title.

245.7309-11 Liability.

Contractor and Government liability, when liability has been established, shall not exceed the refund of any portion of the purchase price already received by the Contractor.

245.7309-12 Oral statements.

Any oral statement by the Contractor changing or supplementing the contract or any condition thereof is unauthorized.

245.7309-13 Eligibility of bidders.

The Bidder shall certify that the Bidder is not—

(a) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(b) A member of the United States Armed Forces, including the Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(c) An agent, employee or immediate member of the household of personnel in paragraphs (a) and (b).