

12.204

12.204 Solicitation/contract form.

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203 (a) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.

[62 FR 264, Jan. 2, 1997]

12.205 Offers.

(a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Consistent with the requirements at 5.203(b), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items, unless the acquisition is covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see 5.203(h)).

[60 FR 48241, Sept. 18, 1995, as amended at 62 FR 264, Jan. 2, 1997; 64 FR 72418, Dec. 27, 1999; 69 FR 1053, Jan. 7, 2004; 69 FR 77872, Dec. 28, 2004]

12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and

48 CFR Ch. 1 (10–1–11 Edition)

outside the Federal Government in accordance with the policies and procedures contained in subpart 9.1, section 13.106, or subpart 15.3, as applicable.

[60 FR 48241, Sept. 18, 1995, as amended at 61 FR 39192, July 26, 1996; 62 FR 51270, Sept. 30, 1997; 62 FR 64917, Dec. 9, 1997]

12.207 Contract type.

(a) Except as provided in paragraph (b) of this section, agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items.

(b)(1) A time-and-materials contract or labor-hour contract (see Subpart 16.6) may be used for the acquisition of commercial services when—

(i) The service is acquired under a contract awarded using—

(A) Competitive procedures (*e.g.*, the procedures in 6.102, the set-aside procedures in Subpart 19.5, or competition conducted in accordance with Part 13);

(B) The procedures for other than full and open competition in 6.3 provided the agency receives offers that satisfy the Government's expressed requirement from two or more responsible offerors; or

(C) The fair opportunity procedures in 16.505, if placing an order under a multiple award delivery-order contract; and

(ii) The contracting officer—

(A) Executes a determination and findings (D&F) for the contract, in accordance with paragraph (b)(2) of this section (but see paragraph (c) of this section for indefinite-delivery contracts), that no other contract type authorized by this subpart is suitable;

(B) Includes a ceiling price in the contract or order that the contractor exceeds at its own risk; and

(C) Authorizes any subsequent change in the ceiling price only upon a determination, documented in the contract file, that it is in the best interest of the procuring agency to change the ceiling price.

(2) Each D&F required by paragraph (b)(1)(ii)(A) of this section shall contain sufficient facts and rationale to justify that no other contract type authorized by this subpart is suitable. At a minimum, the D&F shall—