

Federal Acquisition Regulation

32.205

also give the Government a right to verify the existence and value of the assets.

(3) Provision of Government financing shall be conditioned upon a contractor certification that the assets subject to the lien are free from any prior encumbrances. Prior liens may result from such things as capital equipment loans, installment purchases, working capital loans, various lines of credit, and revolving credit arrangements.

(c) *Other assets as security.* Contracting officers may consider the guidance at 28.203-2, 28.203-3, and 28.204 in determining which types of assets may be acceptable as security. For the purpose of applying the guidance in part 28 to this subsection, the term “surety” and/or “individual surety” should be interpreted to mean “offeror” and/or “contractor.”

(d) *Other forms of security.* Other acceptable forms of security include—

(1) An irrevocable letter of credit from a federally insured financial institution;

(2) A bond from a surety, acceptable in accordance with part 28 (note that the bond must guarantee repayment of the unliquidated contract financing);

(3) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or

(4) Title to identified contractor assets of adequate worth.

(e) *Management of risk and security.* In establishing contract financing terms, the contracting officer must be aware of certain risks. For example, very high amounts of financing early in the contract (front-end loading) may unduly increase the risk to the Government. The security and the amounts and timing of financing payments must be analyzed as a whole to determine whether the arrangement will be in the best interest of the Government.

32.203 Determining contract financing terms.

When the criteria in 32.202-1(b) are met, the contracting officer may either specify the financing terms in the solicitation (see 32.204) or permit each offeror to propose its own customary financing terms (see 32.205). When the

contracting officer has sufficient information on financing terms that are customary in the commercial marketplace for the item, those terms may be specified in the solicitation.

32.204 Procedures for contracting officer-specified commercial contract financing.

The financing terms shall be included in the solicitation. Contract financing shall not be a factor in the evaluation of resulting proposals, and proposals of alternative financing terms shall not be accepted (but see 14.208 and 15.206 concerning amendments of solicitations). However, an offer stating that the contracting officer-specified contract financing terms will not be used by the offeror does not alter the evaluation of the offer, nor does it render the offer nonresponsive or otherwise unacceptable. In the event of award to an offeror who declined the proposed contract financing, the contract financing provisions shall not be included in the resulting contract. Contract financing shall not be a basis for adjusting offerors' proposed prices, because the effect of contract financing is reflected in each offeror's proposed prices.

[60 FR 49711, Sept. 26, 1995, as amended at 62 FR 51271, Sept. 30, 1997]

32.205 Procedures for offeror-proposed commercial contract financing.

(a) Under this procedure, each offeror may propose financing terms. The contracting officer must then determine which offer is in the best interests of the United States.

(b) *Solicitations.* The contracting officer must include in the solicitation the provision at 52.232-31, Invitation to Propose Financing Terms. The contracting officer must also—

(1) Specify the delivery payment (invoice) dates that will be used in the evaluation of financing proposals; and

(2) Specify the interest rate to be used in the evaluation of financing proposals (see paragraph (c)(4) of this section).

(c) *Evaluation of proposals.* (1) When contract financing terms vary among offerors, the contracting officer must