

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 513 [RESERVED]

PART 514—SEALED BIDDING

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37211, July 9, 1999, unless otherwise noted.

Subpart 514.2—Solicitation of Bids

514.201 Preparation of invitations for bids.

514.201-1 Uniform contract format.

Include the following notice in each solicitation:

The information collection requirements contained in this solicitation/contract, are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0162.

514.201-2 Part I—The Schedule.

(a) When using Standard Form 33, Solicitation, Offer and Award, include the following cautionary notice:

“Notice to Bidders—Use Item 13 of the Standard Form 33, Solicitation, Offer and Award, to offer prompt payment discounts. The Prompt Payment clause of this solicitation sets forth payment terms. Do not insert any statement in Item 13 that requires payment sooner than the time stipulated in the Prompt Payment clause (See FAR 52.232-25, 52.232-26, or 52.232-27, as applicable). EXAMPLE: If you insert “NET 20” in Item 13, GSA will reject your bid as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.”

(b) When using other authorized forms (e.g., Standard Form 1447, Solicitation/Contract; Standard Form 1449, Solicitation/Contract/Order for Commercial Items), include the notice in paragraph (a) of this section. Change the reference to the form number, form title, and item number accordingly.

[74 FR 47738, Sept. 17, 2009]

514.201-6 Solicitation provisions.

When considering all or none bids, insert the provision at 552.214-70, “All or None” Bids, in the solicitation.

[74 FR 47739, Sept. 17, 2009]

514.201-7 Contract clauses.

Stock replenishment contracts. For some stock replenishment contracts, individual contractors may be unable to furnish the Government’s monthly requirements. The contracting officer may determine that progressive awards will be more expedient. In such cases, insert a clause substantially the same as the clause at 552.214-71, Progressive Awards and Monthly Quantity Allocations, in the solicitation and contract.

[74 FR 47739, Sept. 17, 2009]

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514.202 General rules for solicitation of bids.

514.202-4 Bid samples.

(a) *Requirements for samples in invitations for bids.* (1) When bid samples are required, the contracting officer shall require bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.

(2) The FAR limits use of bid samples to cases where the contracting officer cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics. The contracting officer may determine that there is a need to examine objective characteristics of bid samples to determine the responsiveness of a bid. The contracting officer should base the determination on past experience or other valid considerations. In the solicitation, separately list "Subjective Characteristics" and "Objective Characteristics".

(3) A provision appears at 552.214-72, Bid Sample Requirements. This provision may be modified to fit the circumstances of a procurement.

(b) *Handling bid samples.* (1) Samples from accepted bids must be retained for the period of contract performance. If there are no outstanding claims regarding the contract, the contracting officer may authorize disposal of the samples at the end of the contract term following the bidder's instructions.

(2) If the contracting officer anticipates a claim regarding the contract, the contracting officer shall require that the bid samples be retained until the claim is resolved.

(3) The contracting officer shall require that samples from unsuccessful bids be retained until award. After award, these samples may be disposed of following the bidder's instructions.

[74 FR 47739, Sept. 17, 2009]

514.202-5 Descriptive literature.

Requirements for Invitations for bids. When using brand name or equal purchase descriptions, the provision at

FAR 52.211-6 satisfies the requirement for descriptive literature.

[74 FR 47739, Sept. 17, 2009]

514.203-1 Transmittal to prospective bidders.

Prospective bidders, as used in FAR 14.203-1, include both the following:

(a) The incumbent contractor, except when its written response to the notice of contract action under FAR subpart 5.2 states a negative interest.

(b) Bidders that responded to recent solicitations for the same or similar items.

514.270 Aggregate awards.

514.270-1 Definition.

Aggregate award means an arrangement whereby two or more separately-priced line items are combined for award to that bidder whose bid will result in the lowest overall cost to the Government for the line items as a group. The individual price for each item does not have to be the lowest bid received. (See also the definition of a "line item" in FAR 3.302.)

514.270-2 Guidelines for use.

(a) GSA usually solicits prices and reserves the right to make award for individual line items. In some cases it serves GSA's best interest to combine two or more line items for an aggregate award. Such cases include when:

(1) Users desire uniformity of design, style, and finish (e.g., suites of household furniture).

(2) The articles will be assembled and used as a unit, and different manufacturers' components may not be interchangeable.

(3) Users have high demand for certain articles, but demand for related articles is insufficient to attract competitive bids (e.g., various sized of socket wrenches). Awarding the low-demand articles in conjunction with the high-demand articles may encourage competition.

(4) Awarding the low-demand articles in conjunction with the high-demand articles may encourage competition.

(5) One location (delivery point) has a large requirement, and another location has a requirement too small to individually attract competitive bids.

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(6) Awarding and administering numerous small contracts for similar articles or services is impractical.

(b) Before deciding to combine items for aggregate award, the contracting officer should consider the following factors:

(1) The capability of bidders to furnish the types and quantities of supplies or services in the aggregate.

(2) How grouping delivery points will affect bidders.

(3) Which combinations will accurately project the lowest overall cost to the Government.

(c) The contracting officer should not use an aggregate award if it will significantly restrict the number of eligible bidders.

[64 FR 37211, July 9, 1999, as amended at 74 FR 47739, Sept. 17, 2009]

514.270-3 Evaluation factors for award.

The solicitation should clearly state the basis for evaluating bids for aggregate award, require bidders to submit a price on each item within the group or a percentage to be added or subtracted from a list price, and advise bidders that failure to submit prices as required within a group makes a bid ineligible for award for that group.

[74 FR 47739, Sept. 17, 2009]

514.270-4 Grouping line items for aggregate award.

(a) *Supplies and services.* This subsection applies to acquisitions of supplies and services.

(b) *Effect on competition.* Provide for full and open competition when grouping items for award. Grouping items for award may preclude a significant of firms from bidding. This occurs if firms are unable to provide all the types or quantities of supplies or services, or make deliveries to the various delivery points included in the prospective aggregate group.

(c) *Grouping different articles.* Include only related articles in an aggregate group. Related articles are those normally manufactured or produced by a majority of prospective bidders. Grouping unrelated articles often restricts competition unnecessarily.

(d) *Grouping geographic locations or delivery points.* Consider the following

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guidelines before deciding to group different geographic locations or delivery points:

(1) A delivery point may have sufficient requirements so that individual shipments involve economic production runs and carload or truckload quantities. In this case, list it as a separate line item.

(2) The types of bidders (*i.e.*, small or large firms, manufacturers or distributors, etc.) who responded to previous solicitations can provide important information. For example, if previous bidders are distributors with franchises in certain territories, grouping different territories could tend to restrict competition.

(3) Transportation costs can affect competition and pricing. They may constitute a significant portion of the total delivered cost. Obtain the advice and assistance of transportation specialists before grouping geographic locations or delivery points. Depending upon the supplies being acquired:

(i) Grouping widespread geographic locations or delivery points may reduce competition or result in higher prices. It can cause the loss of "area pricing" advantages provided by a supplier with a single production point.

(ii) Conversely, for many small commercial items (hand tools, locks, etc.), manufacturers may quote the same price for delivery anywhere in the U.S.

(iii) Tariff boundaries can also affect how manufacturers price deliveries to different areas.

[64 FR 37211, July 9, 1999, as amended at 74 FR 47739, Sept. 17, 2009]

514.270-5 Evaluation methodologies for aggregate awards.

(a) *Definite quantity contracts without options.* For definite quantity contracts without options, the evaluated bid price is the total bid price, as adjusted for any price-related factors identified in the solicitation. This reflects the actual cost to the Government and will identify the most advantageous bid.

(b) *Indefinite quantity contracts, requirements contracts, and options.* Indefinite quantity and requirements contracts use estimated quantities. Options involve the probability of whether and when the options will be exercised. These situations may result in

unbalanced bids (see FAR 15.404-1(g)), leading to inaccurate evaluation of the projected cost and award to other than the most advantageous bid. To avoid unbalanced bids, GSA has two preferred methods for evaluating bids for aggregate awards: weight factors and price list.

(1) *Weight factors method.* Assign a weight to each item in a group. The weight is based on the portion of quantities that item represents. To evaluate bids, multiply each unit price by its weight factor, then total the results.

(2) *Price list method.* Establish prices for bidders to use as a base for preparing their bids. Prepare a list that identifies a base price for each item in a group. Bidders bid a percentage factor to add to or subtract from the base price.

514.270-6 Guidelines for using the weight factors method.

(a) Use the weight factors method when there are reliable estimates for the quantities needed in an acquisition. Reliable estimates of quantities form the foundation for:

(1) Accurate evaluation of the projected cost of each bid.

(2) An appropriate determination of which bid is most advantageous to the Government for the aggregate group.

(b) Assign a weight factor to each item in a group. Develop the weight factor by calculating the portion of the total quantity in a defined group that each item represents.

(c) To evaluate bid prices, first multiply the price bid for each item (unit price X quantity) by its weight factor. Then, add the subtotals together to project the cost for the aggregate group.

(d) Estimated quantities may be reduced to smaller numbers by a common denominator. This may help facilitate the computations involved in evaluating bids.

(e) Consider all price-related factors identified in the solicitation. Award to the responsive and responsible bidder with the lowest evaluated overall cost to the Government for the aggregate group. This represents the most advantageous bid.

[64 FR 37211, July 9, 1999, as amended at 74 FR 47739, Sept. 17, 2009]

514.270-7 Guidelines for using the price list method.

(a) *General.* The price list method helps avoid unbalanced bidding when making aggregate awards, but lack accurate estimates of anticipated quantities. This method establishes base prices for bidders to use in preparing their bids.

(b) *Solicitation requirements.* When using the price list method, in the solicitation:

(1) Include the price list.

(2) Include an estimate of requirements.

(3) Require the bidder to express its price as "net" or as a percentage added to or subtracted from the list prices for each group. Require the bidder to quote only one percentage factor for each group. This means that the bidder provides one percentage factor that applies to every item in a group; not a separate percentage for each item. "Net" indicates the bidder chooses to submit the list prices as its bid.

(4) Identify the percentage factor in paragraph (b)(3) of this section as a price related evaluation factor.

(c) *Developing list prices.* Price lists may be developed using one or more of the following sources:

(1) Industry published prices.

(2) Industry surveys.

(3) Government cost estimates based on knowledge of the supplies or services and previous contract prices.

(d) *First time use for an item or service.* The first time the contracting officer uses list prices for an item or service, give prospective bidders an opportunity to review the proposed list. Also provide information on how GSA will use the list prices. This information may be provided in a draft solicitation.

(e) *Balanced prices.* Ensure that the list prices for the grouped items bear a reasonable and balanced relationship to one another. Prices may be used from previous awards made using the weight factors method to develop price lists. Review those prices first to ensure they did not result from unbalanced bidding.

(f) *Evaluation and award.* Consider all price-related factors identified in the solicitation. Award to the responsive and responsible bidder whose percentage factor produces the most favorable

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price to the Government. This represents the most advantageous bid.

(g) *Example.* The following illustrates a bidding schedule arrangement for a

group of items for aggregate award under the price list method:

DRILLS, TWIST, HIGH SPEED, UNDER FEDERAL SPECIFICATION (NO. AND DATE), AND AMENDMENT (NO. AND DATE), AMENDMENT (NO. AND DATE) WIRE GAUGE SIZES, STRAIGHT SHANK, SHORT LENGTH, TYPE C

Item No.	National Stock No.	Drill size	Est. quantity	Unit	List price
Group 1 (Items 1 through 5)					
1	5133-00-189-9246	1	2,800	Pkg	\$11.16
2	5133-00-189-9247	2	2,400	Pkg	11.16
3	5133-00-189-9248	3	2,800	Pkg	10.44
4	5133-00-189-9249	4	1,600	Pkg	10.80
5	5133-00-189-9250	5	2,000	Pkg	10.80

The bid on each item above is the list price shown minus/plus ___ percent. (Bidder, insert "net" or a single percentage amount in the blank space and cross out minus or plus, as appropriate.)

(h) *Special considerations for contracts for store stock items.* Show estimated quantities only if estimates of demand for each item within a group can be derived from Government records or verified contractor sales reports. Use only current estimates. If the Government's needs cannot be estimated, the solicitation may include past orders. (See CG Decision, B-209037, 82-2 CPD para 323 (1982).)

(i) *Special considerations for repair and alteration contracts.* In the solicitation:

(1) List the estimated quantities for work to be performed during both normal working hours and outside of normal working hours.

(2) State the percent of work anticipated to be performed during normal working hours.

(3) List the unit prices for work to be performed during both normal working hours and outside of normal working hours.

(4) Define "normal" in terms of hours and days of the week.

(5) Advise bidders of the previous year's total expenditures or portions of that total attributable to the listed items.

(6) If providing quantity estimates, state that the estimates are for information only and do not constitute guarantees or commitments to order items under the contract.

(7) Solicit two percentage factors for the line item unit prices listed: one for the unit prices for work performed during normal working hours and the second for the unit prices for work performed outside of normal working hours.

(8) When the solicitation further groups unit prices by trade or business category, multiple percentages may be required.

(9) For the evaluated bid price, add together the following percentages:

(i) The percentage of work performed during normal work hours multiplied by the total estimate adjusted by the bidder's percentage factor for that portion of the work, plus

(ii) The percentage of work performed during other than normal working hours multiplied by the total estimate adjusted by the bidder's percentage factor for that portion of the work.

(10) Consider other price-related factors identified in the solicitation. Make award to the responsible and responsive bidder submitting the lowest overall evaluated bid price for the aggregate group. This represents the most advantageous bid.

[64 FR 37211, July 9, 1999, as amended at 74 FR 47739, Sept. 17, 2009]

General Services Administration

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Subpart 514.4—Opening of Bids and Award of Contract

514.407 Mistakes in bids.

514.407-3 Other mistakes disclosed before award.

Delegation of authority by head of the agency. Under FAR 14.407-3(e), contracting directors (see 502.101) are authorized, without power of redelegation, to make:

(a) The determinations regarding corrections and withdrawals under FAR 14.407-3(a), (b), and (c); and

(b) The corollary determinations not to permit withdrawal or correction under FAR 14.407-3(d).

[74 FR 47740, Sept. 17, 2009]

514.407-4 Mistakes after award.

The contracting director and assigned counsel are required to review and approve the contracting officer's determinations under FAR 14.407-4(b) and (c).

[74 FR 47740, Sept. 17, 2009]

PART 515—CONTRACTING BY NEGOTIATION

Subpart 515.2—Solicitation and Receipt of Proposals and Information

Sec.

515.204 Contract format.

515.204-1 Uniform contract format.

515.205 Issuing solicitations.

515.209 Solicitation provisions and contract clauses.

515.209-70 Examination of records by GSA clause.

Subpart 515.3—Source Selection

515.305 Proposal evaluation.

515.305-70 Use of outside evaluators.

Subpart 515.4—Contract Pricing

515.408 Solicitation provisions and contract clauses.

Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

515.506 Postaward debriefing of offerors.

Subpart 515.7—Use of Samples

515.7002 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37214, July 9, 1999, unless otherwise noted.

Subpart 515.2—Solicitation and Receipt of Proposals and Information

515.204 Contract format.

515.204-1 Uniform contract format.

(a) The uniform contract format is not required for leases of real property.

(b) Each solicitation and contract must include the two notices in paragraphs (b)(1) and (b)(2) of this section, except that acquisitions of interests in real property, must include only the notice in (b)(1):

(1) "The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163."

(2) "GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day."

515.205 Issuing solicitations.

Potential sources, as used in FAR 15.205, include both of the following:

(a) The incumbent contractor, except when its written response to the notice of contract action under FAR subpart 5.2 states a negative interest.

(b) Offerors that responded to recent solicitations for the same or similar items.

515.209 Solicitation provisions and contract clauses.

515.209-70 Examination of records by GSA clause.

Clause for Other Than Multiple Award Schedules

(a) For other than multiple award schedule (MAS) contracts, insert the clause at 552.215-70, Examination of Records by GSA, in solicitations and