

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Chapter 1**

[FAR Case 94-701]

**Federal Acquisition Regulation;  
Contract Award Implementation**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to expand the reasons for establishing or maintaining alternative sources of supplies or services, clarify approval authority for use of other than full and open competition, allow acquisition of expert services to support litigation by other than full and open competition and provide an exception to synopsis requirements, make procedures for award without discussion the same for Department of Defense and civilian agencies and clarify procedures for use of source selection evaluation factors in solicitations, require a determination that an option is likely to be exercised before providing for evaluation of options, clarify notice of award and debriefing procedures, allow nonprofit agencies for the blind or severely disabled to use Government supply sources in performing Javits-Wagner-O'Day contracts, clarify procedures for award to a source identified in a statute, and identify new Federal Procurement Data System reporting requirements.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** Comments should be submitted on or before March 10, 1995 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: -General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 94-701 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rider, Contract Award Team Leader, at (703) 614-1634 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 94-701.

**SUPPLEMENTARY INFORMATION:****A. Background**

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and Introduction of the Federal Acquisition Computer Network.

This notice announces proposed FAR revisions developed under FAR Case 94-701, Contract Award Implementation, which implements the following sections of the Act:

- Sections 1002 and 1052 amended 10 U.S.C. 2304(b) and 41 U.S.C. 253(b) to—(1) ensure the continuous availability of a reliable source of supply; (2) satisfy projected needs based on a history of high demand; and (3) satisfy a critical need for medical, safety, or emergency supplies, as reasons for establishing or maintaining alternative sources. (Implementation at FAR 6.202.)
- Sections 1003 and 1053 amended 10 U.S.C. 2304(f)(1)(B)(i) and 41 U.S.C. 253(f)(1)(B)(i) to clarify the approval authority for use of other than full and open competition. (Implementation at FAR 6.304.)
- Sections 1005 and 1055 amended 10 U.S.C. 2304(c)(3) and 41 U.S.C. 253(c) to add the acquisition of expert services for use in any litigation or dispute involving the Federal Government as an exception to use of full and open competition. (Implementation at FAR 6.302-5.) Section 1055 also amended 41 U.S.C. 416(c) and 15 U.S.C. 637(c) to provide an exception to the publication of notices in the Commerce Business Daily for acquisition of expert services. (Implementation at FAR 5.202, 5.301, and 6.302-3.)
- Sections 1011 and 1061 amend 10 U.S.C. 2305(a) and 41 253a to (1) make procedures for award of contracts without discussion comparable in Department of Defense and civilian agencies, (2) require solicitations for competitive proposals to include all significant factors and subfactors and whether they are more important, of equal importance or less important than cost or price and (3) permit agencies to disclose numerical weights assigned to evaluation factors at their discretion. (Implementation at

FAR 15.407, 15.605, 15.610, and 52.215-16.)

- Sections 1012 and 1062 amend 10 U.S.C. 2305(a) and 41 U.S.C. 253(a) to require a determination that it is likely that an option will be exercised before providing for evaluation of prices of options in solicitations for contracts awarded using sealed bid procedures. (Implementation at FAR 17.202 and 17.208.)
- Sections 1013 and 1063 amend 10 U.S.C. 2305(b) and 41 U.S.C. 253b to require, within three days of contract award, notification to unsuccessful offerors that a contract has been awarded and to allow electronic transmission of the notice. (Implementation at FAR 14.407-1, 14.408-1, 15.1001, 15.1002 and 36.304.)
- Sections 1014 and 1064 amend 10 U.S.C. 2305(b) and 41 U.S.C. 253b to (1) allow offerors to request a debriefing within three days of receipt of notice of award and requires agencies, to the maximum extent practicable, to conduct the debriefings within five days, and (2) specify minimum requirements for content of the debriefings. (Implementation at FAR 15.1003 and 36.607.)
- Section 1555 amends 40 U.S.C. 481 to allow nonprofit agencies for the blind or severely disabled providing supplies or services under a Javits-Wagner-O'Day Act contract to use Government supply sources in performing the contract. (Implementation at FAR 51.101 and 51.102.)
- Section 7203 amends 10 U.S.C. 2304 and 41 U.S.C. 253 to state Congressional policy regarding legislative requirements for award of a new contract to a specific non-Federal Government entity. (Implementation at FAR 6.302-5.)
- Section 1004 requires the Federal Procurement Data System to collect from contracts in excess of the simplified acquisition threshold data on awards to small and disadvantaged businesses using either set asides or full and open competition, awards to businesses owned and controlled by women, the number of offers received in response to a solicitation, task order contracts and contracts for the acquisition of commercial items. (Implementation at FAR 4.601.)

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the Council is conducting a series of public meetings. However, the Council has not scheduled a public

meeting on this rule (FAR case 94-701) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see ADDRESSES caption) on or before February 8, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

### B. Regulatory Flexibility Act

The proposed rule is not expected to have 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 it affects internal operating procedures of the Federal Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 94-701) in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Chapter 1

Government procurement.

Dated: December 29, 1994.

#### Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Chapter 1 be amended as set forth below:

1. The authority citation for 48 CFR Chapter 1 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 4—ADMINISTRATIVE MATTERS

2. Section 4.601 is amended by redesignating existing paragraph (d) as (e) and revising it; and adding a new paragraph (d) to read as follows:

#### 4.601 Record requirements.

\* \* \* \* \*

(d) In addition to the information described in paragraphs (b) and (c) of this section, for procurements exceeding \$25,000, the following information shall be accessible:

(1) Awards to small disadvantaged businesses using either set-asides or full and open competition.

(2) Awards to business concerns owned and controlled by women.

(3) The number of offers received in response to a solicitation.—

(4) Task or delivery order contracts.

(5) Contracts for the acquisition of commercial items.—

(e) This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures.

### PART 5—PUBLICIZING CONTRACT ACTIONS

#### 5.201 [Amended]—

3. Section 5.201 is amended in paragraph (a) by removing “(15 U.S.C. 637(c))” and inserting “(15 U.S.C. 637(e))”.—

4. Section 5.202 is amended at the end of paragraph (a)(11) by removing “;or”; at the end of paragraph (a)(12) by removing the period and inserting “; or”; and by adding paragraph (a)(13) to read as follows:

#### 5.202 Exceptions.

\* \* \* \* \*

(a) \* \* \*—

(13) The contract action is for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.

\* \* \* \* \*

5. Section 5.301 is amended at the end of paragraph (b)(5) by removing “or”; at the end of paragraph (b)(6) by removing the period and inserting “; or”; and by adding paragraph (b)(7) to read as follows:

#### 5.301 General.

\* \* \* \* \*

(b) \* \* \*—

(7) The award is for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.

\* \* \* \* \*

### PART 6—COMPETITION REQUIREMENTS—

6. Section 6.202 is amended by revising paragraph (a)(1); at the end of paragraph (a)(2) by removing “or”; at the end of paragraph (a)(3) by removing the period and inserting a semicolon; adding paragraphs (a)(4) through (a)(6); and removing from paragraphs (b)(1) and (b)(3) the word “above” and

inserting “of this section”. The revised text reads as follows:

#### 6.202 Establishing or maintaining alternative sources.—

(a) \* \* \*—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;

\* \* \* \* \*

(4) Ensure the continuous availability of a reliable source of supplies or services;—

(5) Satisfy projected needs based on a history of high demand; or—

(6) Satisfy a critical need for medical, safety, or emergency supplies.

\* \* \* \* \*

7. Section 6.302-3 is amended by revising the heading and paragraph (a)(2); and by adding paragraph (b)(3) to read as follows:

#### 6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.—

(a) \* \* \*—

(2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (iii) to acquire the services of an expert for any current or anticipated litigation or dispute.—

(b) \* \* \*—

(3) Use of the authority in paragraph (a)(2)(iii) of this subsection may be appropriate when it is necessary to acquire the services of—

(i) An expert to—

(A) Assist the Government in the analysis, presentation, or defense of any claim or request for adjustment to contract terms or conditions, whether asserted by a contractor or the Government, which is in litigation or dispute, or is anticipated to result in dispute or litigation before any court, administrative tribunal, or agency, or—

(B) Participate in any part of an alternative dispute resolution process, including but not limited to evaluators, factfinders, or witnesses, regardless of whether the expert is expected to testify; or—

(ii) A neutral person, e.g., mediators or arbitrators, to facilitate the resolution

of issues in an alternative dispute resolution process.

\* \* \* \* \*

8. Section 6.302-5 is amended by revising paragraph (c)(1) and adding paragraph (c)(3) to read as follows:

**6.302-5 Authorized or required by statute.**

\* \* \* \* \*

(c) *Limitations.* (1) This authority shall not be used to support new awards to specified non-Federal Government entities unless a provision of law specifically refers to 10 U.S.C. 2304(j) for armed services acquisitions or section 303(h) of the Federal Property and Administrative Services Act of 1949 for civilian agency acquisitions and requires an agency to award a new contract to a named non-Federal Government entity and specifically states that award to this entity shall be made in contravention of the merit-based selection procedures in subsection 7203(b) of the Federal Acquisition Streamlining Act of 1994 (10 U.S.C. 2304(j) and section 303(h) of the Federal Property and Administrative Services Act of 1949). However, this limitation does not apply—

(i) When the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract; or—

(ii) To any contract requiring the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on those matters to the Congress or any agency of the Federal Government.

\* \* \* \* \*

(3) The authority in paragraph (a)(2)(ii) of this subsection may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).

9. Section 6.304 is amended by revising paragraph (a)(2) to read as follows:

**6.304 Approval of the justification.**

(a) \* \* \* \_

(2) For a proposed contract over \$100,000 but not exceeding \$1,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501 or an official described in paragraphs (a)(3) and (a)(4) of this section. This authority is not delegable.

\* \* \* \* \*

**PART 14—SEALED BIDDING**

10. Section 14.407-1 is amended by revising paragraphs (a)(1) and (d)(2) to read as follows:

**14.407-1 General.**

(a) \* \* \* (1) by written or electronic notice, \* \* \*

\* \* \* \* \*

(d) \* \* \*

(2) use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams or electronic transmissions, as notices of awards.

11. Section 14.408-1 is revised to read as follows:

**14.408-1 Award of unclassified contracts.**

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in 48 CFR part 9, subpart 9.4)—

(i) Notify each unsuccessful bidder in writing or electronically within three days after contract award, that its bid was not accepted;

(ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and

(iii) When Award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), agencies shall include in notices given unsuccessful offerors from designated or NAFTA countries—

(i) The dollar amount of the successful offer; and

(ii) The name and address of the successful offeror.

(b) Information included in paragraph (a)(2) of this subsection shall be provided to any unsuccessful bidder upon request except when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office. In such circumstances, only information concerning location of the abstract of offers need be given.

(c) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the contracting officer should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.

(d) Requests for records shall be governed by agency regulations implementing 48 CFR part 24, subpart 24.2.

**PART 15—CONTRACTING BY NEGOTIATION**

12. Section 15.407 is amended by revising paragraph (d)(4) to read as follows:

**15.407 Solicitation provisions.**

\* \* \* \* \*

(d) \* \* \*

(4) Insert in RFP's the provision at 52.215-16, Contract Award.

(i) If the RFP is for construction, the contracting officer shall use the provision with its Alternate I or the provision with its Alternate I or the provision with its Alternate I and Alternate II.

(ii) If the contracting officer intends to evaluate offers and make award without discussions, use the basic provision with its Alternate II.

\* \* \* \* \*

13. Section 15.605 is amended by revising the heading, and paragraphs (a), (b), and (e) to read as follows:

**15.605 Evaluation factors and subfactors.**

(a) The factors and subfactors that will be considered in evaluating proposals shall be tailored to each acquisition and include only those factors that will have an impact on the source selection decision.

(b) The evaluation factors and subfactors that apply to an acquisition and their relative importance are within the broad discretion of agency acquisition officials. However, price or cost to the Government shall be included as an evaluation factor in every source selection. Quality also shall be addressed in every source selection. In evaluation factors, quality may be expressed in terms of technical capability, management capability, personnel qualifications, prior experience, past performance, and schedule compliance. Any other relevant factors and subfactors, such as cost realism, may also be included.

\* \* \* \* \*

(e) The solicitation shall clearly state the significant evaluation factors and significant subfactors, including cost or price, cost or price-related factors and subfactors, and non-cost or non-price-related factors and subfactors, that will be considered in making the source selection and their relative importance (see 15.406-5(c)). The solicitation shall state whether all evaluation factors other than cost or price, when combined, are (1) significantly more

important than cost or price; (2) approximately equal to cost or price; or (3) significantly less important than cost or price. The solicitation may elaborate on the relative weights at the discretion of the contracting officer. The solicitation shall inform offerors of minimum requirements that apply to evaluation factors and significant subfactors. Numerical weights may be used at the discretion of the head of the agency. If numerical weights are used in proposal evaluation, they may be disclosed in the solicitation on a case-by-case basis. The solicitation may state that award will be made to the low priced offeror that meets the solicitation's minimum criteria for acceptable proposals.

\* \* \* \* \*

14. Section 15.610 is amended by revising paragraphs (a) and (b) to read as follows:

**15.610 Written or oral discussion.**

(a) The requirement in paragraph (b) of this section for written or oral discussion need not be applied in acquisitions—

- (1) In which prices are fixed by law or regulation;
- (2) Of the set-aside portion of a partial set-aside; or
- (3) In which the solicitation notified all offerors that the Government intends to evaluate proposals and make award without discussion unless the contracting officer determines that discussions (other than communications conducted for the purpose of minor clarification) are considered necessary (see 15.407(d)(4)). Once the Government states its intent to award without discussions, the rationale for reversal of this decision shall be documented in the contract file.

(b) Except as provided in paragraph (a) of this section, the contracting officer shall conduct written or oral discussion with all responsible offerors who submit proposals within the competitive range. The content and extent of the discussions is a matter of the contracting officer's judgment, based on the particular facts of each acquisition (but see paragraphs (c) and (d) of this section).

\* \* \* \* \*

**15.1001 through 15.1005 [Redesignated as 15.1002 through 15.1006]**

15. Sections 15.1001 through 15.1005 are redesignated as 15.1002 through 15.1006, respectively; and a new 15.1001 is added to read as follows:

**15.1001 General.**

This subpart applies to the use of competitive proposals, as described in

6.102(b), and a combination of competitive procedures, as described in 6.102(d). To the extent practicable, however, the procedures and intent of this subpart, with reasonable modification, should be followed for these acquisitions: broad agency announcements, small business innovation research contracts and architect-engineer contracts.

16. Newly designated section 15.1002 is amended by revising paragraph (a), and the introductory text of paragraphs (b)(2) and (c)(1); by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2); and by amending the newly designated paragraph (c)(2) by removing "15.1001(c)(1)(i)" and inserting "15.1002(c)(1)(i). The revised text reads as follows:

**15.1002 Notifications to unsuccessful offerors.**

(a) *General.* Within three days of contract award, the contracting officer shall notify, in writing or electronically, each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award.

(b) \* \* \*

(2) In a small business set-aside (see 48 CFR part 19, subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each unsuccessful offeror in writing or electronically of the name and location of the apparent successful offeror. The notice shall also state that

(c) *Postaward notices.* (1) After award of contracts resulting from solicitations exceeding the small purchase limitation in part 13, the contracting officer shall notify unsuccessful offerors in writing or electronically, unless preaward notice was given under paragraph (b) of this section. The notice shall include—

17. Newly designated section 15.1003 is amended by revising the first sentence to read as follows:

**15.1003 Notification to successful offeror.**

The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written or electronic notice of the award to that offeror (but see 15.608(b)). \* \* \*

18. Newly designated section 15.1004 is revised to read as follows:

**15.1004 Debriefing of offerors.**

(a) When a contract is awarded on the basis of competitive proposals, offerors, upon their written request received by the agency within three days after the

date the unsuccessful offeror receives notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. When practicable, debriefing requests received more than three days after the offeror receives notice of contract award shall be accommodated. To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, by electronic means, or any other method mutually acceptable to both the offeror and the contracting officer.

(c) The contracting officer shall chair the debriefing session with the support of individuals actually responsible for the evaluations.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal;

(2) The overall evaluated cost and technical rating of the successful and debriefed offerors;

(3) The overall ranking of all offerors when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For commercial end items delivered under the contract, the make and model of the item being provided by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, debriefing shall not reveal any information exempt from release under the Freedom of Information Act including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques; and—

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

(f) The contracting officer shall include an official written summary of the debriefing in the contract file.

(g) If, within one year of contract award, a successful protest causes the agency to issue either a new solicitation or a new request for best and final offers on the protested contract award, the

agency shall make available to all offerors—

(1) Information provided in any debriefings conducted on the original award about the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

**PART 17—SPECIAL CONTRACTING METHODS**

19. Section 17.202 is amended by revising paragraph (a), and at the end of paragraph (b)(1)(ii) by removing “; or” and inserting a period. The revised text reads as follows:

**17.202 Use of options.—**

(a) Subject to the limitations of paragraphs (b) and (c) of this section, for both sealed bidding and contracting by negotiation the contracting officer may include options in contracts when it is in the Government's interest. When using sealed bids, the contracting officer shall make a written determination that there is a reasonable likelihood that the options will be exercised before including the clause at 52.217-5, Evaluation of Options, in the solicitation. (See 17.207(f) with regard to the exercise of options.)

20. Section 17.208 is amended by revising paragraphs (b) and (c)(4) to read as follows:

**17.208 Solicitation provisions and contract clauses.**

(b) The contracting officer shall insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause, the contracting officer has determined that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of contract award.

(4) The contracting officer has determined that there is a reasonable likelihood that the option will be exercised. For sealed bids, the determination shall be in writing.

**PART 25—FOREIGN ACQUISITION**

21. Section 25.405 is amended by revising paragraph (e) to read as follows:

**25.405 Procedures.**

(e) Within three days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries notice in accordance with 14.408-1 and 15.1002.

**PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

22. Section 36.304 is amended by revising the introductory text to read as follows:

**36.304 Notice of award.**

When a notice of award is issued, it shall be done in writing or electronically, within three days of contract award, shall contain information required by 14.407 and shall—

23. Section 36.607 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

**36.607 Release of information on firm selection.**

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted in accordance with 15.1003(b) through (g). Note that 15.1003(d)(2) through (d)(5) does not apply to architect-engineer contracts.

**PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS**

24. Section 51.101 is amended at the end of paragraph (a)(1) by removing “or” and at the end of paragraph (a)(2) by removing the period and inserting “; or” and by adding paragraph (a)(3) to read as follows:

**51.101 Policy.—**

(3) A contract under the Javits-Wagner-O'Day Act (41 U.S.C. 46 *et seq.*) if (i) the nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Federal Government, and (ii) the supplies or services received are directly used in making or providing a commodity or service approved by the Committee for Purchase From People Who Are Blind or Severely Disabled to the Federal Government (See 48 CFR part 8, subpart 8.7).

25. Section 51.102 is amended in paragraph (a) by revising the last sentence to read as follows:

**51.102 Authorization to use Government supply sources.**

(a) \* \* \* Except for findings under 51.101(a)(3), the determination shall be based on, but not limited to, considerations of the following factors:

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

26. Section 52.215-16 is amended by revising the date in the clause heading and paragraph (c); adding paragraph (h); by removing from Alternate I “15.407(d)(4)(ii)” and inserting “15.407(d)(4)(i)”; by removing Alternate II; and by redesignating Alternate III as II and revising it. The revisions read as follows:

**52.215-16 Contract Award.**

Contract Award (Date)

(c) The Government intends to evaluate proposals and award a contract after conducting written or oral discussions with all responsible offerors whose proposals have been determined to be within the competitive range. However, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(h) The Government may disclose the following information in post-award debriefings to other offerors: (1) The overall evaluated cost and technical rating of the successful offeror; (2) The overall ranking of all offerors, if one was performed during the source selection; and (3) for acquisitions of commercial items, the make and model of the item being provided by the successful offeror.

Alternate II (Date). As prescribed in 15.407(d)(4)(ii), substitute the following paragraph (c) for paragraph (c) of the basic provision:

(c) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications conducted for the purpose of minor clarification). Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.

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