DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 14, 15, 36, 52, and 53

[FAR Case 95–029]

RIN 9000–AH21

Federal Acquisition Regulation; Part 15 Rewrite—Phase I

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

ACTION: Notice of public meeting and extension of comment period.

SUMMARY: The FAR Council and the FAR Part 15 (Contracting By Negotiation) Rewrite Committee are providing a forum for the exchange of ideas and information with Government and industry personnel by holding public meetings and soliciting public comments. The goal is to ensure an open dialogue between the Government and the general public on this important initiative. In order to provide a greater outreach to small businesses and other interested parties for whom a public meeting located in the Washington DC area is not convenient, a second public meeting on the proposed rule has been scheduled. Interested parties are invited to present statements or comments on the Phase I proposed Part 15 rewrite at the public meeting, scheduled for the date and location set forth below. In order to permit time for public comments to be submitted by those attending the second public meeting, the public comment period for the proposed rule, which was published in the Federal Register on September 12, 1996 (61 FR 48380), is extended through November 26, 1996.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown from 9 a.m.—12 p.m., local time, on November 18, 1996. Representatives of the FAR Part 15 Rewrite Committee will remain available at the meeting site as long as members of the general public wish to dialogue on topics relating to the proposed rewrite, including proposed changes regarding the competitive range.

Statements: Statements from interested parties for presentation at the public meeting should be submitted, to the extent feasible, to the address below on or before November 15, 1996.

Comments: Comments on the proposed rule should be submitted in writing to the GSA (address below) on or before November 26, 1996.

ADDRESSES: *Public Meeting:* The location of the public meeting is Ramada Inn Benjamin Ranch, 6101 East 87th Street (I–435 and 87th Street Exit), Kansas City, MO, Sierra Rooms 1, 2, and 3, telephone (816) 765–4331. Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topic scheduled for discussion, should contact Jill Dickey, telephone (816) 926–7203, facsimile (816) 823–1167.

Comments/Statements: Interested parties should submit written comments/statements to: General Services Administration, FAR Secretariat (VRS), Attention: Beverly Fayson, 18th and F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 95–029 in all correspondence related to this issue.

Electronic Access: This proposed rule is posted on the Acquisition Reform Network (ARNET) at www.arnet.gov. Comments may be submitted electronically at that address.

FOR FURTHER INFORMATION CONTACT: For logistics information regarding the public meeting contact Jill Dickey, telephone (816) 926–7203, facsimile (816) 823–1167. For general information, contact the Part 15 Rewrite Committee Chair, Melissa Rider, telephone (703) 602–0131, facsimile (703) 602–0350. Please cite FAR case 95–029.

SUPPLEMENTARY INFORMATION: The FAR Council is conducting a second public meeting to discuss FAR Case 95–029, FAR Part 15 Rewrite—Phase I which was published on September 12, 1996 (61 FR 48380).

The Phase I proposed rule is a rewrite of FAR Subparts 15.0, 15.1, 15.2, 15.3. 15.4, 15.6, and 15.10. The rule proposes to: Enhance efficiency by reinforcing the contracting officer's ability to minimize the cost of doing business with the Government; eliminate unnecessary effort by both the Government and industry to support prices set by free-market forces; ensure that firms seeking to do business with the Government have an accurate understanding of the importance of evaluation criteria; allow the Government to make informed decisions about which offerors are truly most likely to receive award; allow both industry and Government to rely more on agreements reached during discussions without putting offerors through the expense of developing revised proposals; and reinforce the concept of eliminating an offeror without requiring a proposal revision, if discussions with the offeror indicate that a proposal revision would waste the time and resources of both the offeror and the Government.

Major policy shifts in the Phase I proposed rule include:

- A narrower definition of ''discussions'' limited to communications after establishment of the competitive range. This is a much more narrow definition than the current one (which pre-dates CICA) and very strictly conforms with the statute. This supports a much more open and dynamic interchange between the Government and offerors before establishment of the competitive range, thus allowing the Government to make an informed decision when limiting the competitive range and is the cornerstone of all of the rest of the major policy shifts.
- A shift in competitive range policy to encourage retaining only the offerors with the greatest likelihood of award and allowing the contracting officer to further limit the competitive range in the interest of efficiency. This is an evolutionary step from our authority to award without discussions. We believe this will focus an offeror's attention on providing their best deal in the initial proposal.
- Encouragement of communication with industry throughout the solicitation process to ensure competitive range determinations are informed decisions. The rule allows disclosure of perceived deficiencies before establishment of the competitive range to resolve ambiguities and other concerns. These communications are not ''discussions.''
- Elimination of ''minor clarifications'' except for use in award without discussions, once again in strict compliance with statute.
- Revision of the ''late'' rules for negotiated acquisitions to make the offeror responsible for timely delivery of its offer, and to allow late offers to be considered if doing so is in the best interests of the Government. This was done to clarify the responsibility of the offeror to get the offer to the location specified, yet allow the Government to take advantage of the ''best deal'' in each situation.

The proposed rule also specifically authorizes practices currently in use at some agencies including:

- Comparison of one offer to another, after the proposals have been evaluated against the criteria in the solicitation;
- Release of the Government estimate to all offerors, when it makes sense to do so; and

• Amendment of the solicitation, at any time prior to award, including amendment of the evaluation factors and subfactors.

• Changes have been proposed to support streamlined source selections including:

• A new definition of ''best value'' at Part 2, to remove confusion that may arise from several slightly different definitions. This supports the concept of presenting a single face to industry.

• A description of two common source selection processes-award to the low cost technically acceptable offeror, and trade-offs among cost and other factors. The intent is to emphasize that a variety of processes can be used, that source selection need not be complex, and to promote tailoring of processes to match the complexity of the instant requirement. We hope this will allow field contracting activities to put resources where they will get the biggest pay-off and not make source selections more complicated than necessary.

• Authorization to use techniques such as multi-phase proposals or oral presentations, once again to allow tailoring of the source selection process to match the requirement.

• Guidance on communications between the Government and industry prior to release of the solicitation. Within the limitations of the prohibition on giving information necessary to prepare a proposal to one interested party without sharing the information with all other interested parties, agencies are encouraged to share information freely with industry. The improved communications should make it easier for potential offerors to make more aggressive bid/no bid decisions, thereby allowing them to apply their limited bid and proposal dollars where they will get the best potential pay-off.

• A new Model Contract Format (MCF), based on an Army/Air Force proposal, that will replace the uniform contract format. The MCF format has only six sections, which focus on usefulness to the customer at all levels by highlighting tailored information and locating all financial and contract administration data together. We hope this will improve the payment process and make the document more ''user-friendly.''

• A related proposed rule, FAR case 96–303, Competitive Range Determinations, was published in the Federal Register on July 31, 1996 (61 FR 40116). Since it is important to consider the proposed rule for FAR Case 96–303, Competitive Range Determinations, in the broader context of FAR Part 15 as a whole, the FAR Council has determined that comments about both cases may be entertained during the second public meeting for the Part 15 Rewrite—Phase I. However, note that there are differences between the Competitive Range case and the FAR Part 15 Rewrite—Phase I case that are due primarily to the different baselines used. The Competitive Range case uses the baseline of the current FAR Parts 15 and 52, while the FAR Part 15 Rewrite—Phase I case proposes to reorganize and revise Parts 15 and 52. A final rule for the Competitive Range case will be issued well in advance of the final rule for the Part 15 Rewrite. Therefore, it may be viewed as an evolutionary step in a process that will culminate in the pending broader revision. Notwithstanding the minor differences between the cases, we encourage interested parties to express their positions on this rule as part of the second public meeting.

Dated: November 1, 1996.

Jeremy Olson,

Acting Director, Federal Acquisition Policy Division.

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

[FRL–5647–4]

Acquisition Regulation; Limitation of Future Contracting

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise its acquisition regulation (48 CFR Chapter 15) to clarify that the existing coverage regarding ineligibility of Headquarters policy support contractors to enter into EPA response action contracts, unless otherwise authorized by the Contracting Officer, also renders EPA response action contractors ineligible for award of Headquarters policy support contracts, unless otherwise authorized by the Contracting Officer.

DATE: Comments should be submitted not later than January 6, 1997.

ADDRESSES: Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW., Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: Senzel.Louise@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed on-line at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation 9.504 requires Contracting Officers to analyze planned acquisitions to identify and evaluate potential organizational conflicts of interest, and to avoid, neutralize, or mitigate significant potential conflicts of interest (COI) before award. In addition, FAR 9.507–2(a) indicates that a contractor's eligibility for future prime contract or subcontract awards may be restricted as a condition of a contract award because of COI reasons. Two underlying conflict of interest principles as expressed in FAR 9.505 are to prevent the existence of conflicting roles that might bias a contractor's judgment and to prevent unfair competitive advantage.

EPAAR 1552.209–74, Alternate V, ''Limitation of Future Contracting (Headquarters Support)'', paragraph (b) states that if a Contractor, under the terms of a policy support contract, is required to develop specifications or statements of work that are later incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in the solicitation as a prime contractor or subcontractor under an ensuing EPA contract.

Additionally, the basic version of Alternate V states that Contractors performing Headquarters policy support work, during the life of the contract, will be ineligible to enter into a contract with EPA to perform response action work, unless otherwise authorized by the Contracting Officer. It would be inappropriate for a Contractor to participate in Headquarters policy support work, which may involve providing assistance in the policy development process for response action work, and then to perform the response action work which may be affected by the resulting policy for