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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 2012-018; Docket 2012-0018, Sequence 1]

RIN: 9000-AM27

Federal Acquisition Regulation; Price Analysis Techniques

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the use of a price analysis technique in order to establish a fair and reasonable price.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before **[Insert Date 60 days after publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2012-018 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2012-018". Select the link

"Submit a Comment" that corresponds with "FAR Case 2012-018." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2012-018" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2012-018, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at 202-501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2012-018.

SUPPLEMENTARY INFORMATION:

I. Background

FAR 15.404-1(b)(2) addresses various price analysis techniques and procedures the Government may use to ensure a fair and reasonable price. FAR 15.404-1(b)(2)(i) discusses

the comparison of proposed prices received in response to a solicitation as an example of such techniques and procedures. In this discussion, FAR 15.404-1(b)(2)(i) references 15.403-1(c)(1), which sets forth the requirements of adequate price competition. However, only 15.403-1(c)(1)(i) actually addresses the situation when two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement. Therefore, the reference in 15.404-1(b)(2)(i) is more appropriately identified as 15.403-1(c)(1)(i).

II. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 (E.O.s) direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a 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 this rule merely clarifies the reference at FAR 15.404-1(b)(2)(i) for the use of the price analysis technique at 15.403-1(c)(1)(i) in order to establish a fair and reasonable price. However, an initial regulatory flexibility analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

This rule amends the FAR at 15.404-1(b)(2)(i) to clarify the use of the price analysis technique at 15.403-1(c)(1)(i) in order to establish a fair and reasonable price. FAR 15.404-1(b)(2) addresses various price analysis techniques and procedures the Government may use to ensure a fair and reasonable price. FAR 15.404-1(b)(2)(i) discusses the comparison of proposed prices received in response to a solicitation as an example of such techniques and procedures. In this discussion, FAR 15.404-1(b)(2)(i) references 15.403-1(c)(1), which sets forth the requirements of adequate price competition. However, only FAR 15.403-1(c)(1)(i) actually addresses the situation when two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement. Therefore, the reference in 15.404-1(b)(2)(i) is more appropriately identified as 15.403-1(c)(1)(i). The proposed rule imposes no reporting, recordkeeping, or other information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternatives to the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR case 2012-018), in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: July 3, 2012

Laura Auletta,
Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

15.404-1 [Amended]

2. Amend section 15.404-1 by removing from paragraph (b)(2)(i) "15.403-1(c)(1)" and adding "15.403-1(c)(1)(i)" in its place.

[BILLING CODE 6820-EP]

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