

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 14, 15, and 52**

[FAR Case 95-019]

RIN 9000-AG89

**Federal Acquisition Regulation;
Consideration of Late Offers**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulations (FAR) to broaden the conditions under which late offers for procurements other than commercial items can be considered. 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 June 24, 1996 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 95-019 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 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 95-019.

SUPPLEMENTARY INFORMATION:**A. Background**

The proposed coverage amends the late bid rule to allow an offer to be accepted if Government mishandling after receipt at the Government installation is determined (by the Government) to be the primary cause of delay. The proposed rule recognizes use of hand-carried offers as a common business practice, (consistent with GAO case law); proposes a change to provide more flexibility in determining when an offer (bid or proposal) was received at the Government installation (again by

applying standards used by the GAO); expands the definition of acceptable evidence to prove mishandling beyond a date/time stamp or other documentary evidence of receipt, to include oral testimony and statements of Government personnel; and adds a new exception at 52.215-10(a)(5) which would allow consideration of a proposal which was misdirected or misdelivered (not necessarily through mishandling) to an office other than that designated in the solicitation. This exception would require that there be a reasonable basis to conclude that the offer was delivered into Government control prior to the time proposals were due, that it was thus out of the offeror's control, and, in the determination of the contracting officer, accepting the offer would not unduly delay the procurement.

These changes will not apply to commercial items solicitations which contain 52.212-1(f), Late Offers.

B. Regulatory Flexibility Act

This proposed rule is not expected 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 the rule only applies in situations where late offers are received. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 95-019), 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 Parts 14, 15, and 52

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 14, 15, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 14, 15, and 52 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 14—SEALED BIDDING

2. Section 14.304-1 is amended by revising paragraphs (a)(2) and (c) to read as follows:

14.304-1 General.

* * * * *

(a) * * *

(2) It was sent by mail (or telegram or facsimile if authorized) or hand-carried (including delivery by a commercial carrier) and if it is determined by the Government that Government mishandling after receipt at the Government installation was the primary cause of delay;

* * * * *

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of such installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

* * * * *

**PART 15—CONTRACTING BY
NEGOTIATION**

3. Section 15.412 is amended by revising paragraph (c) to read as follows:

15.412 Late proposals, modifications, and withdrawals of proposals

* * * * *

(c) Proposals, and modifications to them, that are received in the designated Government office after the exact time specified are "late" and shall be considered only if (1) they are received before award is made, and (2) the circumstances meet the specific requirements of the provision at 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals.

* * * * *

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

4. Section 52.214-5 is amended by revising the date of the provision; revising paragraph (a)(2); redesignating paragraphs (b) through (d) as (c) through (e), respectively; and adding a new paragraph (b) to read as follows:

52.214-5 Submission of Bids.

* * * * *

Submission of Bids (Date)

(a) * * * (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed

and marked as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

* * * * *

5. Section 52.214-7 is amended by revising the date of the provision; and revising paragraphs (a)(2) and (d) to read as follows:

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

Late Submissions, Modifications, and Withdrawals of Bids (Date)

* * * * *

(a) * * *

(2) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) and if it is determined by the Government that Government mishandling after receipt at the Government installation was the primary cause of delay;

* * * * *

(d) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

* * * * *

6. Section 52.214-23 is amended by revising the date of the provision; and by revising paragraphs (a)(2) and (e) to read as follows:

52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

* * * * *

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Date)

(a) * * *

(2) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) and if it is determined by the Government that Government mishandling after receipt at the Government installation was the primary cause of delay;

* * * * *

(e) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

* * * * *

7. Section 52.214-32 is amended by revising the date of the provision; and by revising paragraphs (a)(1) and (c) to read as follows:

52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (Overseas) (Date)

(a) * * *

(1) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) and if it is determined by the Government that Government mishandling after receipt at the Government installation was the primary cause of delay; or

* * * * *

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

* * * * *

8. Section 52.214-33 is amended by revising the date of the provision; and by revising paragraphs (a)(1) and (d) to read as follows:

52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas) (Date)

(a) * * *

(1) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) and if it is determined by the Government that Government mishandling after receipt at the Government installation was the primary cause of delay;

* * * * *

(d) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

9. Section 52.215-9 is amended by revising the date of the provision; by revising paragraph (a)(2); redesignating paragraphs (b) through (e) as (c) through (f), respectively, and adding a new paragraph (b) to read as follows:

52.215-9 Submission of Offers.

* * * * *

Submission of Offers (Date)

(a) * * * (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Offerors using commercial carrier services shall ensure that the proposal is addressed and marked as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

* * * * *

10. Section 52.215-10 is amended by revising the date of the provision; by revising paragraphs (a) and (b); by

removing paragraph (c) and redesignating paragraphs (d) through (h) as (c) through (g), respectively, and revising the newly designated (d) to read as follows:

52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (Date)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers will not be considered unless it is received before award is made and—

(1) It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) and if it is determined by the Government that Government mishandling after receipt at the Government installation was the primary cause of delay;

(3) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays;

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals;

(5) There is acceptable evidence to establish that it was received at the activity issuing the solicitation and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or

(6) It is the only proposal received.

(b) Any modification of a proposal or quotation, including a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a) (1), (2), (3), (4) and (5) of this provision.

* * * * *

(d) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

* * * * *

11. Section 52.215-36 is amended by revising the date of the provision; by revising paragraphs (a)(1) through (3) and (b); by removing paragraph (c) and redesignating paragraphs (d) through (f) as (c) through (e), respectively; and

revising the newly designated paragraph (c) to read as follows:

52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (Overseas) (Date)

(a) * * *

(1) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) and if it is determined by the Government that Government mishandling after receipt at

the Government installation was the primary cause of delay;

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals;

(3) There is acceptable evidence to establish that it was received at the activity issuing the solicitation and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or

(b) Any modification of a proposal or quotation, including a modification resulting

from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of the installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

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