

Minor nonconformance means a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

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3. Section 46.103 is amended at the end of paragraph (c) by removing "and"; in paragraph (d) by removing the period and inserting "; and"; and by adding paragraph (e) to read as follows:

46.103 Contracting office responsibilities.

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(e) Ensuring that nonconformances are identified, and establishing the significance of a nonconformance when considering the acceptability of supplies or services which do not meet contract requirements.

4. Section 46.407 is amended by revising the first sentence of paragraph (c)(1) introductory text, and in the third sentence by removing the comma after the word "determination"; revising paragraph (d); and revising the first sentence of paragraph (f) to read as follows:

46.407 Nonconforming supplies or services.

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(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer shall ordinarily reject supplies or services when the nonconformance is critical or major.

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(d) If the nonconformance is minor, the cognizant contract administration office may make the determination to accept or reject, except where this authority is withheld by the contracting office of the contracting activity. To assist in making this determination, the contract administration office may establish a joint contractor-contract administrative office review group. Acceptance of supplies and services with critical or major nonconformances is outside the scope of the review group.

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(f) Each contract under which supplies or services with critical or major nonconformances are accepted as authorized in paragraph (c) of this section shall be modified to provide for an equitable price reduction or other consideration.

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48 CFR Part 52

[FAC 90-39; FAR Case 95-603; Item XXIX]

RIN 9000-AG98

Federal Acquisition Regulation; Solicitation Provisions—Contract Clauses

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend a Federal Acquisition Regulation (FAR) provision to delete the statement advising offerors to obtain copies of specifications from General Services Administration Business Service Centers. The substance of the provision is not changed. Specifications are no longer available at the Business Service Centers. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 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 FAC 90-39, FAR case 95-603.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the provision at FAR 52.211-1 to delete the statement that copies of specifications may be obtained from the General Services Administration Business Service Centers in Boston, New York, Philadelphia, Atlanta, Kansas City, and Fort Worth. Copies of specifications are no longer available at the Business Service Centers.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-

39, FAR case 95-603), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 Part 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 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).

52.211-1 [Amended]

2. Section 52.211-1 is amended in the introductory paragraph by revising "11.203(a)" to read "11.204(a)"; revising the date of the provision to read "(AUG 1996)"; and in the first sentence of paragraph (a) of the provision by removing ", or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Kansas City, MO; and Fort Worth, TX." and replacing it with a period.

52.211-2 and 52.211-3 [Amended]

3. Section 52.211-2 is amended in the introductory paragraph by revising "11.203(b)" to read "11.204(b)".

4. Section 52.211-3 is amended in the introductory paragraph by revising "11.203(c)" to read "11.204(c)".

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48 CFR Part 52

[FAC 90-39; FAR Case 91-031; Item XXX]

RIN 9000-AE41

Federal Acquisition Regulation; Contract Award—Sealed Bidding—Construction

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to inform offerors under construction solicitations that the Government may reject bids as nonresponsive if the prices are materially unbalanced. The proposed rule was published in the Federal Register at 56 FR 29539, June 27, 1991. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 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 FAC 90-39, FAR case 91-31.

SUPPLEMENTARY INFORMATION:**A. Background**

The FAR was previously amended to include unbalanced bidding provisions at 52.214-10, Contract Award—Sealed Bidding, and 52.215-16, Contract Award, for supplies and services procured under sealed bidding and negotiation procedures. At that time, the unbalanced bidding provisions were not made applicable to construction solicitations. However, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have decided that, for consistency, construction solicitations should include a similar provision to notify offerors that their bids may be rejected as nonresponsive if the prices are materially unbalanced.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 unbalanced bidding provisions have already been incorporated in solicitations, for other than construction, with no known impact on the small business community. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: June 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 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).

2. Section 52.214-19 is amended by revising the date of the provision to read "(AUG 1996)"; and by adding paragraph (d) to the provision to read as follows:

52.214-19 Contract Award—Sealed Bidding—Construction.

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CONTRACT AWARD—SEALED BIDDING—CONSTRUCTION (AUG 1996)

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(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

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48 CFR Part 52

[FAC 90-39; FAR Case 93-305; Item XXXI]

RIN 9000-AF54

Federal Acquisition Regulation; Small Business Innovation Research Rights in Data

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

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed to convert the interim rule published at 59 FR 11386, March 10, 1994, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 15(f) of the revised SBIR Program Policy Directive published by the Small Business Administration in the Federal Register on January 26, 1993 (58 FR 6144). The revision to the clause, Rights in Data—SBIR Program, increases the small business concern's data rights retention period from 2 to 4 years. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 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 FAC 90-39, FAR case 93-305.

SUPPLEMENTARY INFORMATION:**A. Background**

This rule implements Section 15(f) of the revised SBIR Program Policy Directive published by the SBA in the Federal Register on January 26, 1993 (58 FR 6144). Section 15(f) implements Section 103(f)(4) of Public Law 102-564, "Small Business Research and Development Enhancement Act of 1992," which increases the small business concern's data rights retention period from 2 to 4 years.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 merely amends the FAR to conform to the requirements of the Small Business Innovation Research Program Policy Directive published by the Small Business Administration. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors,