

faith effort to provide a drug-free workplace (see 23.504);

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.111 [Amended]

4. Section 13.111 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as (g) and (h), respectively.

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

5. Section 23.504 is amended by revising the introductory text of paragraph (a), paragraphs (a)(3) and (b); and by removing paragraph (c) and redesignating (d) as (c). The revised text reads as follows:

23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible source (see 9.104-1(g) and 19.602-1(a)(2)(i)) for a contract that exceeds the simplified acquisition threshold, unless it agrees that it will provide a drug-free workplace by—

* * * * *

(3) Providing all employees engaged in performance of the contract with a copy of the statement required by paragraph (a)(1) of this section;

* * * * *

(b) No individual shall be awarded a contract of any dollar value unless that individual agrees not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing the contract.

* * * * *

5b. In addition to the amendments set forth above, section 23.504 is further amended by removing “calendar” from paragraphs (a)(4)(ii), (a)(5), (a)(6), and the newly designated paragraph (c).

6. Section 23.505 is amended by revising the section heading and the introductory text of paragraph (a); in paragraph (a)(2) by removing “; or” and inserting a period; and by removing paragraph (b), redesignating paragraph (c) as (b) and revising the introductory text of newly designated (b). The revised text reads as follows:

23.505 Contract clause.

(a) Contracting officers shall insert the clause at 52.223-6, Drug-Free Workplace, except as provided in paragraph (b) of this section, in solicitations and contracts—

* * * * *

(b) Contracting officers shall not insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts, if—

* * * * *

7. Section 23.506 is amended by revising paragraph (d) to read as follows:

23.506 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The contractor has failed to comply with the requirements of the clause at 52.223-6, Drug-Free Workplace; or

(2) The number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.223-5 [Removed and reserved]

8. Section 52.223-5 is removed and reserved.

9a. Section 52.223-6 is amended—

(a) In the introductory paragraph by removing “23.505(b)” and inserting “23.505”;

(b) By revising the date of the clause heading;

(c) In the introductory text of paragraph (a) by removing the comma following the word “clause” and inserting an emdash “—”;

(d) At the end of paragraph (b)(6)(ii) by removing the period and inserting “; and”;

(e) By revising paragraph (c); and

(f) In paragraph (d) by removing the “s” from the word “paragraphs”.

The revised text reads as follows:

52.223-6 Drug-Free Workplace.

* * * * *

Drug-Free Workplace (Jan. 1997)

* * * * *

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

* * * * *

9b. In addition to the amendments set forth above, section 52.223-6 is further amended by removing “calendar” from the introductory text of paragraph (b) each time it appears, from paragraphs

(b)(4)(ii) and (b)(5), and the introductory paragraph of (b)(6).

[FR Doc. 96-32808 Filed 12-30-96; 8:45 am]

BILLING CODE 6820-EP-M

48 CFR Parts 14, 15, and 52

[FAC 90-44; FAR Case 95-019; Item V]

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: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (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. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: March 3, 1997.

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 FAC 90-44, FAR case 95-019.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the late bid rule to allow an offer to be accepted if the late receipt was due primarily to Government mishandling after receipt at the Government installation. The rule recognizes the use of hand-carried offers (including delivery by a commercial carrier) as a common business practice, and provides flexibility in determining when an offer (bid or proposal) was received at the Government activity, by applying standards used by the General Accounting Office. The rule also expands the definition of acceptable evidence to support acceptance of a late offer and adds a new exception at FAR 52.215-10(a)(5) and 52.215-36(a)(3) which allows consideration of a proposal that was misdirected or misdelivered (not necessarily through mishandling) to an office other than that designated for receipt of offers in the solicitation. These changes do not apply

to commercial item solicitations which contain the provision at FAR 52.212-1(f), Late Offers.

A proposed rule was published in the Federal Register at 51 FR 18480, April 25, 1996. Six comments were received from four respondents. All comments were considered in developing the final rule.

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 applies only in situations where late offers are received. The late offers to which this case applies are only a small portion of all offers received.

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 Parts 14, 15, and 52

Government procurement.

Dated: December 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 14, 15, and 52 are 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).

PARTS 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) if it is determined by the Government that the late receipt was due primarily to government mishandling after receipt at the Government installation;

* * * * *

(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)(2) to read as follows:

15.412 Late proposals, modifications, and withdrawals of proposals.

* * * * *

(c) * * * (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 clause date and paragraph (a)(2), redesignating paragraphs (b), (c), and (d), as (c), (d), and (e), respectively, and adding a new paragraph (b) to read as follows:

52.214-5 Submission of Bids.

* * * * *

Submission of Bids (Feb. 1997)

(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 on the outermost envelope or wrapper as prescribed in subparagraphs (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 clause date and paragraph (a)(2) to read as follows:

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

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (Feb. 1997)

(a) * * *

(2) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

* * * * *

6. Section 52.214-23 is amended by revising the clause date and 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 (Feb. 1997)

(a) * * *

(2) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

* * * * *

(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 clause date and paragraph (a)(1) to read as follows:

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

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (Overseas) (Feb. 1997)

(a) * * *

(1) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation; or

* * * * *

8. Section 52.214-33 is amended by revising the clause date and 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) (Feb. 1997)

(a) * * *

(1) Was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

* * * * *

(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 clause date and paragraph (a)(2); by 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 (Feb. 1997)

(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 on the outermost envelope or wrapper 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 clause date and paragraphs (a) and (b); by removing paragraph (c) and redesignating paragraphs (d) through (i) as (c) through (h) respectively; and revising the newly designated (d). The revised text reads as follows:

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

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (Feb. 1997)

(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) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(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

designated for receipt of offers 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) through (a)(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 clause date and paragraphs (a) and (b); by removing paragraph (c) and redesignating paragraphs (d), (e), (f), and (g) as (c), (d), (e), and (f); 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) (Feb. 1997)

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

(1) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(2) 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;

(3) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers 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

(4) 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), 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.

* * * * *

[FR Doc. 96-32809 Filed 12-30-96; 8:45 am]

BILLING CODE 6820-EP-M

48 CFR Part 31

[FAC 90-44; FAR Case 96-012; Item VI]

RIN 9000-AH43

Federal Acquisition Regulation; Foreign Differential Pay

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

ACTION: Interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to amend the Federal Acquisition Regulation (FAR) by deleting the prohibition on the calculation of foreign differential pay based directly on an employee's specific increase in income taxes resulting from assignment overseas. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* December 31, 1996.

Comments Due: To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before March 3, 1997.

ADDRESSES: Comments should be submitted to: General Services Administration, Ms. Beverly Fayson, FAR Secretariat, 18th & F Streets NW, Room 4037, Washington, DC 20405.

E-mail comments submitted over internet should be addressed to: 96-012@www.ARNET.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 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 90-44, FAR case 96-012.

SUPPLEMENTARY INFORMATION:

A. Background

The current cost principle at FAR 31.205-6 prohibits contractors from calculating any increased compensation for foreign overseas differential pay on the basis of an employee's specific