

the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 4, 5, 6, 7, 9, 10, 12, 13, 14, 19, 22, 25, 34, 35, and 36

[FAC 2001-16; FAR Case 1997-304; Item  
II]

RIN 9000-A110

#### Federal Acquisition Regulation; Electronic Commerce in Federal Procurement

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

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to further implement section 850 of the National Defense Authorization Act for Fiscal Year 1998; and implement section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

Section 850 calls for the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. This includes the designation in the FAR of a single point of universal electronic public access to Governmentwide procurement opportunities (the "Governmentwide Point of Entry" or "GPE"). Section 810 allows agencies to provide access to notices through the GPE, as designated in the FAR, instead of publishing them via the Commerce Business Daily (CBD).

This rule finalizes the interim rule that designated Federal Business Opportunities (FedBizOpps) as the GPE. In addition, this final rule makes the GPE the exclusive official source for public access to notices of procurement actions over \$25,000.

**DATES:** Effective Date: October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-16, FAR case 1997-304.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

##### 1. Implementation of Section 850 of the Defense Authorization Act for Fiscal Year 1998

Section 850, which is codified at section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426), requires agencies to "establish, maintain, and use, to the maximum extent that is practicable and cost-effective, procedures and processes that employ electronic commerce in the conduct and administration of their procurement systems." Among other things, section 850 called for "any notice of agency requirements or agency solicitation for contract opportunities" to be provided in a form that allows "convenient and universal user access through a single, government-wide point of entry" (GPE). In addition, section 850 amended titles 10, 15, 40, and 41 of the United States Code to eliminate the statutory preference for the Federal Acquisition Computer Network (FACNET) computer architecture in conducting transactions electronically.

On October 30, 1998, the Councils published an interim rule (63 FR 58590), which amended FAR subpart 4.5 and made associated changes to FAR parts 2, 5, 13, 14, and 32 to implement section 850. In particular, the interim rule amended the FAR to—

- Promote the cost-effective application of electronic commerce in Federal procurement; and
- Require Federal procurement systems that employ electronic commerce to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

Around the time that the interim rule was developed, the General Services Administration (GSA), the National Aeronautics and Space Administration (NASA), and other agencies piloted, and later began using, "FedBizOpps" (formerly known as the Electronic Posting System) to take greater advantage of electronic tools. Among other things, these efforts were designed to provide sellers with "one-stop"

access to business opportunities (*i.e.*, where sellers, after identifying pre-solicitation notices of interest for actions above \$25,000, could quickly access related solicitation information through a direct link). These efforts were also intended to streamline agency buyers' preparation and issuance of notices and solicitation information without disrupting, eliminating, or otherwise requiring the replacement of current agency electronic commerce software.

In the spring of 2000, the Office of Federal Procurement Policy (OFPP) recommended that FedBizOpps (<http://www.fedbizopps.gov>) be designated as the GPE. The Councils published a proposed rule in the **Federal Register** to reflect this recommendation (65 FR 50872, August 21, 2000). The preamble to the proposed rule described the Government's objectives in designating a GPE (*i.e.*, to create a central point for electronic access to business opportunities, to follow the commercial lead, and to modernize processes used by sellers and buyers) and how FedBizOpps met these objectives.

After considering public comments on the proposed rule, the Councils published an interim rule in the **Federal Register** to make the proposed designation of FedBizOpps as the GPE effective (66 FR 27406, May 16, 2001). That rule required agencies to make notices of contracting opportunities that meet the criteria in FAR 5.101 and 5.201 accessible via FedBizOpps by October 1, 2001. In addition, the rule—

- Added place of contract performance and set-aside status as two new data fields to the required notice content;
- Required agencies to make accessible through FedBizOpps other notices that were being published in the CBD, such as presolicitation notices and award notices supporting subcontracting opportunities;
- Required agencies to make accessible via FedBizOpps most solicitations and amendments associated with business opportunities listed on the FedBizOpps web site;
- Permitted contractors to publicize subcontracting opportunities with the intent of supporting achievement of subcontracting goals; and
- Permitted agencies to make accessible via FedBizOpps information that allows potential offerors to better understand how they can meet the Government's needs.

This final rule finalizes the GPE designation that was proposed at 65 FR 50872, August 21, 2000, and made effective by the interim rule published

in the **Federal Register** at 66 FR 27406, May 16, 2001

## *2. Implementation of Section 810 of the Defense Authorization Act for Fiscal Year 2001*

Section 810 amends section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)). As amended, these provisions allow agencies to provide access to their notices of solicitation either by transmitting them to the GPE designated in the FAR or by publishing them in the CBD, rather than mandating notices only through the CBD as had previously been required.

To implement section 810, the interim rule that was published on May 16, 2001 (66 FR 27406), established FedBizOpps (*i.e.*, the designated GPE) as the principal venue for procurement notices. Pursuant to that rule, agencies have been required to transmit notices to FedBizOpps since October 1, 2001. The rule required duplicate notices in the CBD through January 1, 2002, using the current format prescribed for the electronic version of the CBD, Commerce Business Daily Network (CBDNet). The duplication of notices transmitted to FedBizOpps in the CBD through the end of the calendar year 2001 was designed to provide additional time for vendors to become acclimated to FedBizOpps as the GPE.

The interim rule provided that agencies need not provide duplicate notice in the CBD as of January 1, 2002, and instead may rely exclusively on the mandatory notice in FedBizOpps to satisfy the required access. Thus, the interim rule effectively laid the foundation for the phase-out of the CBD and CBDNet by making their use non-mandatory. Agencies have been relying exclusively on FedBizOpps since the beginning of January 2002.

This final rule clarifies that the GPE is the exclusive source for public access to notices of procurement actions over \$25,000. Sole reliance on FedBizOpps is enabling the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes.

## *3. Public Comments*

Public comments regarding the proposed designation of FedBizOpps as the GPE were solicited and received in response to the proposed rule published in the **Federal Register** at 65 FR 50872, August 21, 2000. For this reason, the subsequent interim rule that was published in the **Federal Register** at 66 FR 27406, May 16, 2001, sought

comments on the issues unique to that rule—namely, those relating to the implementation of section 810—for consideration in the formulation of this final rule.

The majority of the comments received in response to the interim rule focused on technical considerations related to the use of FedBizOpps, as opposed to the policies set forth in the rule. Those comments were referred to the FedBizOpps “users group” for consideration. The users group is comprised of agency representatives who help to manage their agency’s use of FedBizOpps. The remaining comments are briefly summarized as follows:

- Two commenters suggested continuing the publication of printed synopses. This suggestion was not accepted. The Councils believe the cost of issuing printed notices would be excessive for the small number of firms that would be interested in printed copies. Continued operation of a paper-based process would force the Government to shoulder unnecessary cost and burden. By contrast, sole reliance on FedBizOpps enables the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes.

- One commenter indicated that the rule should have addressed the underlying requirements for publication of notices and the content of notices. No changes were made to the rule based on this comment. The general requirement to synopsize and the contents of synopses are already addressed in FAR subpart 5.2. This rule does not change the underlying requirement to synopsize, which is rooted in section 18 of the Office of Federal Procurement Policy Act, 41 U.S.C. 416. Agencies’ internal review procedures provide the necessary oversight of contracting personnel to ensure compliance with these requirements.

- One commenter indicated that the interim FAR coverage failed to modify the timeframes for presumption of publication even though FedBizOpps will provide a near-instantaneous display of notices. FAR 5.203(g) has been amended to shorten to one day the time for presumption of publication.

- Finally, one commenter offered several editorial changes to improve the readability of the rule. These comments were accepted where possible.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The final rule further implements section 850 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, and section 810 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398. Section 850 amends titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) computer architecture. Section 810 amends 41 U.S.C. 416 and 15 U.S.C. 637 to allow solicitation notices to be published via a single Government point of entry (FedBizOpps) or via the CBD.

The objectives of the rule are (1) designate a single Governmentwide point of entry on the Internet, <http://www.fedbizopps.gov>, where agencies are required to provide convenient and universal public access to information on their procurement opportunities, and (2) to permit electronic access to notices of solicitation through the single Governmentwide point of entry as a substitute for the previously required paper publication in the CBD.

One comment was received in response to the Initial Regulatory Flexibility Analysis. The commentator recommended that the rule continue dual publishing of contracting opportunities in FedBizOpps and the CBD so that small businesses would have two sources from which to identify notices and solicitations. The IRFA should then be republished discussing Section 810 based on an interpretation that it does not preclude dual publishing of notices in the CBD and FedBizOpps. In addition, the comment suggested that the time for agencies to become fully compliant with the regulation be extended and that the rule mention the linkage between FedBizOpps and the Procurement Marketing and Access Network (PRO-Net).

No changes were made to the rule based on the comment. While Section 810 does not preclude the continuation of dual publicizing vehicles, the Federal Government is currently taking steps to eliminate duplicative systems in order to reduce operating costs for the Government and to provide one face to industry. Equally, if not more importantly, sole reliance on FedBizOpps enables the Government and its business partners to take advantage of the improved access to information and efficiencies made possible through electronic processes. With regard to extending the time provided for agencies to become compliant, this extension was not considered necessary since agencies have already completed their transition to FedBizOpps, in compliance with the interim rule, which made agency use of FedBizOpps mandatory as of October 1, 2001. With regard to linkage between FedBizOpps and PRO-Net, such linkage has been made on the cover page of FedBizOpps. The Councils do not

believe this linkage needs to be the subject of a regulatory promulgation.

The final rule will apply to all large and small entities that do business or are planning to do business with the Government. FedBizOpps is designed to be sufficiently versatile to allow sellers and service providers to access and download information through different commercial electronic means, including web-based technology, bulk data feeds, and electronic mail. This versatility will enable the more than 49,101 small and 19,382 large businesses to have easy access to Government business opportunities over \$25,000.

The rule imposes no reporting, recordkeeping, or other compliance requirements. There are no practical alternatives that will accomplish the objectives of this rule.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 2, 4, 5, 6, 7, 9, 10, 12, 13, 14, 19, 22, 25, 34, 35, and 36

Government procurement.

Dated: September 24, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

### Interim Rule Adopted as Final With Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rules amending 48 CFR parts 2, 4, 5, 6, 7, 9, 12, 13, 14, 19, 22, 34, 35, and 36 that were published in the **Federal Register** at 63 FR 48590, October 30, 1998, and 66 FR 27406, May 16, 2001, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 2, 5, 9, 10, 12, 13, 14, 22, 25, and 35 is revised to read as follows:

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

### PART 2—DEFINITIONS OF WORDS AND TERMS

#### 2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b) by removing the definition “Commerce Business Daily (CBD)”.

### PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Revise section 5.003 to read as follows:

#### 5.003 Governmentwide point of entry.

For any requirement in the FAR to publish a notice, the contracting officer must transmit the notices to the GPE.

#### 5.101 [Amended]

■ 4. Amend section 5.101 in paragraph (a)(1) by removing “, unless covered by 5.003”; and by removing “5.207(d) and (g)” from the introductory text of paragraph (a)(2) and paragraph (a)(2)(i) (twice) and adding “5.207(c)” in its place.

■ 5. Amend section 5.201 by removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2); and revising newly designated paragraph (b)(2) and paragraph (d) to read as follows:

#### 5.201 General.

\* \* \* \* \*

(b)(1) \* \* \*

(2) When transmitting notices to FACNET, contracting officers must ensure the notice is forwarded to the GPE.

\* \* \* \* \*

(d) The GPE may be accessed via the Internet at <http://www.fedbizopps.gov>.

■ 6. Amend section 5.203 by revising the introductory text of paragraph (a); and removing the first and second sentences from paragraph (g) and adding a sentence in its place to read as follows:

#### 5.203 Publicizing and response time.

\* \* \* \* \*

(a) An agency must transmit a notice of proposed contract action to the GPE (see 5.201). All publicizing and response times are calculated based on the date of publication. The publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

\* \* \* \* \*

(g) Contracting officers may, unless they have evidence to the contrary, presume the notice was published one day after transmission to the GPE. \* \* \*

\* \* \* \* \*

#### 5.205 [Amended]

■ 7. Amend section 5.205 by removing the last sentence of paragraph (b), the second and third sentences of paragraph (d)(1), the last sentence of paragraph (e), and the second sentence of paragraph (f).

#### 5.206 [Amended]

■ 8. Amend section 5.206 by removing from the introductory text of paragraph (a) “, the CBD, or both”; and by removing from paragraph (b)(1) “, following the standard CBD format for items 7, 10, 11, and 17 in 5.207(b)(4)”.

■ 9. Revise section 5.207 to read as follows:

#### 5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE must address the following data elements, as applicable:

- (1) Action Code.
- (2) Date.
- (3) Year.
- (4) Government Printing Office (GPO) Billing Account Code.
- (5) Contracting Office Zip Code.
- (6) Classification Code.
- (7) Contracting Office Address.
- (8) Subject.
- (9) Proposed Solicitation Number.
- (10) Opening and Closing Response Date.

(11) Contact Point or Contracting Officer.

(12) Contract Award and Solicitation Number.

(13) Contract Award Dollar Amount.

(14) Contract Line Item Number.

(15) Contract Award Date.

(16) Contractor.

(17) Description.

(18) Place of Contract Performance.

(19) Set-aside Status.

(b) *Transmittal.* Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

(c) *General format for “Description.”* Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested including the following, as appropriate:

(1) National Stock Number (NSN) if assigned.

(2) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see subpart 9.2).

(3) Manufacturer, including part number, drawing number, etc.

(4) Size, dimensions, or other form, fit or functional description.

(5) Predominant material of manufacture.

(6) Quantity, including any options for additional quantities.

(7) Unit of issue.

(8) Destination information.

(9) Delivery schedule.

(10) Duration of the contract period.

(11) For a proposed contract action in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, enter—

(i) A description of the procedures to be used in awarding the contract (*e.g.*, request for oral or written quotation or solicitation); and

(ii) The anticipated award date.

(12) For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

(13) Numbered notes (*see* paragraph (e) of this section), including instructions for set-asides for small businesses.

(14) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source (*see* paragraph (e) of this section) and insert a statement of the reason justifying the lack of competition.

(15) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(16) If solicitations synopsisized through the GPE will not be made available through the GPE, provide information on how to obtain the solicitation.

(17) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.

(18) In the case of a very small business set-aside, identify the Designated Region (*see* Subpart 19.9).

(19) If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, if any, from which the technical data may be obtained.

(d) *Set-asides*. When the proposed acquisition provides for a total, partial, or very small business set-aside or a HUBZone small business set-aside, the appropriate Numbered Note will be cited.

(e) *Numbered notes*. Numbered Notes are footnotes to be used by contracting officers to eliminate the unnecessary duplication of information that appears in various announcements. An explanation of the numbered notes appears at <http://www.fedbizopps.gov>.

(f) *Codes to be used in Synopses to identify services or supplies*. Contracting officers must use one of the classification codes identified at <http://www.fedbizopps.gov/> to identify services or supplies in synopses.

(g) *Cancellation of synopsis*. Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE. Cancellations of solicitations must be made in accordance with 14.209 and 14.404–1.

■ 10. Amend section 5.301 by revising paragraph (c) and removing paragraph (d) to read as follows:

#### 5.301 General.

\* \* \* \* \*

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers must submit synopses in sufficient time to permit their publication in the GPE not later than 60 days after award.

### PART 9—CONTRACTOR QUALIFICATIONS

#### 9.204 [Amended]

■ 11. Amend section 9.204 in paragraph (a)(1) by removing the last sentence.

#### 9.205 [Amended]

■ 12. Amend section 9.205 in the introductory text of paragraph (a) by removing the third sentence.

### PART 10—MARKET RESEARCH

#### 10.002 [Amended]

■ 13. Amend section 10.002 by removing “(*see* 5.207(e)(4))” from the end of paragraph (d)(2) and adding “(*see* 5.207(e))” in its place.

### PART 12—ACQUISITION OF COMMERCIAL ITEMS

#### 12.603 [Amended]

■ 14. Amend section 12.603 in paragraph (a) by removing the last sentence; in paragraph (c)(1) by removing “for items 1–16”; and in paragraph (c)(2) by removing “item 17,” and adding “the” in its place.

### PART 13—SIMPLIFIED ACQUISITION PROCEDURES

#### 13.104 [Amended]

■ 15. Amend section 13.104 in the first sentence of paragraph (b) by removing “neither using FACNET nor” and adding “not using either FACNET or” in its place.

### PART 14—SEALED BIDDING

#### 14.503–2 [Amended]

■ 16. Amend section 14.503–2 in paragraph (b) by removing “(*see* 5.207(b)(1))” and adding “(*see* 5.207)” in its place.

### PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

#### 22.1009–4 [Amended]

■ 17. Amend section 22.1009–4 in the introductory text of paragraph (b) by removing “(*see* 5.207(g)(4))”.

### PART 25—FOREIGN ACQUISITION

#### 25.408 [Amended]

■ 18. Amend section 25.408 in paragraph (a)(2) by removing “(5.207(e)(2))” and adding “(5.207(e))” in its place.

### PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

#### 35.016 [Amended]

■ 19. Amend section 35.016 in paragraph (c) by removing the last sentence.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 4

[FAC 2001–16; FAR Case 2002–025; Item III]

RIN 9000–AJ70

### Federal Acquisition Regulation; Unique Contract and Order Identifier Numbers

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to issue an interim rule amending the Federal Acquisition Regulation (FAR) to require that Federal agencies assign a unique identifier for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System (FPDS). Agencies must be