

contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of, or damage to, Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives.

(v) Costs of insurance on the lives of officers, partners, proprietors, or employees are allowable only to the extent that the insurance represents additional compensation (*see* 31.205-6).

(3) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials and workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(4) Premiums for retroactive or backdated insurance written to cover losses that have occurred and are known are unallowable.

(5) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (d)(3) of this subsection.

(6) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to section 4007 (29 U.S.C. 1307) or section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.215-15 by revising the date of the clause and paragraph (b) to read as follows:

### 52.215-15 Pension Adjustments and Asset Reversions.

\* \* \* \* \*

Pension Adjustments and Asset Reversions (Jan 2004)

\* \* \* \* \*

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

\* \* \* \* \*

(End of clause)

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 52

[FAC 2001-18; FAR Case 2002-014; Item VII]

RIN 9000-AJ59

#### Federal Acquisition Regulation; Debriefing—Competitive Acquisition

**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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 on requirements for debriefing unsuccessful offerors under competitive proposals.

**DATES:** *Effective Date:* January 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208-1168. Please cite FAC 2001-18, FAR case 2002-014.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 which

amended 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) require each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. Some of the requirements were already incorporated into the clause at FAR 52.215-1, Instructions to Offerors—Competitive Acquisitions, but the notification for debriefings was overlooked during the drafting of the clause at 52.212-1, Instruction to Offerors—Commercial Items. This rule amends FAR 52.212-1 and 52.215-1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 68 FR 5778, February 4, 2003. Two respondents submitted public comments. The Councils considered the comments before agreeing to publish the proposed rule as final without change. A summary of the comments and their disposition follows:

*Comment:* The revised FAR clauses should include a debriefing requirement to reveal the number of “points” an offeror received under the evaluation of its past performance.

*Response:* The Councils do not concur. The clauses, as revised by this final rule, establish a clear requirement for agencies to provide the results of its evaluation of an offeror's past performance. However, agencies successfully use different methods (*e.g.*, adjectival, color coding, and point scoring) to evaluate proposals. Specifying a particular method would limit agency discretion with no apparent associated benefit.

*Comment:* The revised FAR clauses should include a debriefing requirement to reveal the sources, other than the offeror, of any past performance information received.

*Response:* The Councils do not concur. FAR 15.506(e) prohibits the identification of individuals providing reference information about an offeror's past performance.

*Comment:* The rule should be revised to address the requirement to release unit price information clearly and consistently within the FAR.

*Response:* The Councils appreciate that, as a result of recent court cases, especially *MCI WorldCom v. GSA*, 163 F. Supp. 2d 28, the treatment of unit prices under exemption no. 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) is in a state of flux which may