

5.203

source to perform the particular research services proposed (see 6.302-1(a)(2)(i));

(9) The proposed contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The proposed contract action is made under conditions described in 6.302-3, or 6.302-5 with regard to brand name commercial items for authorized resale, or 6.302-7, and advance notice is not appropriate or reasonable;

(11) The proposed contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of 5.207 with respect to the current proposed contract action;

(12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited. This exception does not apply to proposed contract actions subject to the Trade Agreements Act (see subpart 25.4). This exception also does not apply to North American Free Trade Agreement proposed contract actions, which will be synopsisized in accordance with agency regulations;

(13) The proposed contract action—

(i) Is for an amount not expected to exceed the simplified acquisition threshold;

(ii) Will be made through a means that provides access to the notice of proposed contract action through the GPE; and

(iii) Permits the public to respond to the solicitation electronically; or

(14) The proposed contract action is made under conditions described in 6.302-3 with respect to the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.

(b) The head of the agency determines in writing after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Adminis-

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tration, that advance notice is not appropriate or reasonable.

[50 FR 1728, Jan. 11, 1985, as amended at 50 FR 52430, Dec. 23, 1985; 51 FR 27117, July 29, 1986; 53 FR 27463, July 20, 1988; 54 FR 46004, Oct. 31, 1989; 56 FR 15148, Apr. 15, 1991; 56 FR 41744, Aug. 22, 1991; 59 FR 545, Jan. 5, 1994; 60 FR 34746, July 3, 1995; 60 FR 42653, Aug. 16, 1995; 60 FR 49725, Sept. 26, 1995; 61 FR 39192, July 26, 1996; 63 FR 58592, 58593, Oct. 30, 1998; 66 FR 2127, Jan. 10, 2001; 66 FR 27410, May 16, 2001]

5.203 Publicizing and response time.

Whenever agencies are required to publicize notice of proposed contract actions under 5.201, they must proceed as follows:

(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. For notices published before January 1, 2002, the publication date is the date the notice is published in the CBD. For notices published on or after January 1, 2002, 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—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined synopsis and solicitation procedure (see 12.603).

(b) The contracting officer must establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions via FACNET or for which the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than \$25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than \$25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

(c) Except for the acquisition of commercial items (see 5.203(b)), agencies shall allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the proposed contract action is expected to exceed the simplified acquisition threshold.

(d) Agencies shall allow at least a 30 day response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement if the proposed contract action is expected to exceed the simplified acquisition threshold.

(e) Agencies must allow at least a 45-day response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for proposed contract actions categorized as research and development if the proposed contract action is expected to exceed the simplified acquisition threshold.

(f) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(g) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted through the GPE or other means) following transmittal of the synopsis to the CBD. This presumption is based on the CBD's confirmation that publication does occur within these timeframes. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the proposed contract action under the authority of 5.202(a)(2).

(h) In addition to other requirements set forth in this section, for acquisitions subject to NAFTA or the Trade Agreements Act (see subpart 25.4), the period of time between publication of the synopsis notice and receipt of offers must be no less than 40 days. How-

ever, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published, the contracting officer may reduce this time period to as few as 10 days.

[50 FR 52430, Dec. 23, 1985, as amended at 51 FR 31425, Sept. 3, 1986; 60 FR 34747, July 3, 1995; 60 FR 48236, Sept. 18, 1995; 61 FR 39192, July 26, 1996; 62 FR 263, Jan. 2, 1997; 62 FR 10710, Mar. 10, 1997; 63 FR 58592, 58593, Oct. 30, 1998; 66 FR 27410, May 16, 2001]

5.204 Presolicitation notices.

Contracting officers must provide access to presolicitation notices through the GPE (see 15.201 and 36.213-2). The contracting officer must synopsise a proposed contract action before issuing any resulting solicitation (see 5.201 and 5.203).

[66 FR 27411, May 16, 2001]

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers may transmit to the GPE advance notices of their interest in potential R&D programs whenever market research does not produce a sufficient number of concerns to obtain adequate competition. Advance notices must not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Potential sources which respond to advance notices must be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices must be entitled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers must synopsise (see 5.201) all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.