

disseminate information on proposed contract actions as follows:

(1) For proposed contract actions expected to exceed \$25,000, by synopsisizing in the GPE (see 5.201).

(2) For proposed contract actions expected to exceed \$10,000, but not expected to exceed \$25,000, by displaying in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c). The notice must include a statement that all responsible sources may submit a response which, if timely received, must be considered by the agency. The information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted instead of a notice, the contracting officer may employ various methods of satisfying the requirements of 5.207(c). For example, the contracting officer may meet the requirements of 5.207(c) by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a)(1), (a)(4) through (a)(9), or (a)(11) apply, when oral or Federal Acquisition Computer Network (FACNET) solicitations are used, or when providing access to a notice of proposed contract action and solicitation through the GPE and the notice permits the public to respond to the solicitation electronically.

(iii) Contracting officers may use electronic posting of requirements in a place accessible by the general public at the Government installation to satisfy the public display requirement. Contracting offices using electronic systems for public posting that are not accessible outside the installation must periodically publicize the methods for accessing the information.

(b) In addition, one or more of the following methods may be used:

(1) Preparing periodic handouts listing proposed contracts, and displaying them as in 5.101(a)(2).

(2) Assisting local trade associations in disseminating information to their members.

(3) Making brief announcements of proposed contracts to newspapers, trade journals, magazines, or other mass communication media for publication without cost to the Government.

(4) Placing paid advertisements in newspapers or other communications media, subject to the following limitations:

(i) Contracting officers shall place paid advertisements of proposed contracts only when it is anticipated that effective competition cannot be obtained otherwise (see 5.205(d)).

(ii) Contracting officers shall not place advertisements of proposed contracts in a newspaper published and printed in the District of Columbia unless the supplies or services will be furnished, or the labor performed, in the District of Columbia or adjoining counties in Maryland or Virginia (44 U.S.C. 3701).

(iii) Advertisements published in newspapers must be under proper written authority in accordance with 44 U.S.C. 3702 (see 5.502(a)).

[48 FR 42119, Sept. 19, 1983, as amended at 50 FR 1728, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 27117, July 29, 1986; 52 FR 21885, June 9, 1987; 56 FR 41731, Aug. 22, 1991; 60 FR 34736, 34746, July 3, 1995; 61 FR 39191, July 26, 1996; 62 FR 12692, Mar. 17, 1997; 63 FR 58592, Oct. 30, 1998; 66 FR 27409, May 16, 2001; 68 FR 56678, Oct. 1, 2003]

5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(5) of this section, the contracting officer must make available through the GPE solicitations synopsisized through the GPE, including specifications, technical data, and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

(2) The contracting officer is encouraged, when practicable and cost-effective, to make accessible through the GPE additional information related to a solicitation.

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(3) The contracting officer must ensure that solicitations transmitted to FACNET are forwarded to the GPE to satisfy the requirements of paragraph (a)(1) of this section.

(4) When an agency determines that a solicitation contains information that requires additional controls to monitor access and distribution (e.g., technical data, specifications, maps, building designs, schedules, etc.), the information shall be made available through the Federal Technical Data Solution (FedTeDS) unless an exception in paragraph (a)(5) of this section applies. When FedTeDS is used, it shall be used in conjunction with the GPE to meet the synopsis and advertising requirements of this part.

(5) The contracting officer need not make a solicitation available through the GPE, or make other information available through FedTeDS as required in paragraph (a)(4) of this section, when—

(i) Disclosure would compromise the national security (e.g., would result in disclosure of classified information, or information subject to export controls) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (e.g., size, format) does not make it cost-effective or practicable for contracting officers to provide access to the solicitation through the GPE;

(iii) Agency procedures specify that the use of FedTeDS does not provide sufficient controls for the information to be made available and an alternative means of distributing the information is more appropriate; or

(iv) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest.

(6) When an acquisition contains brand name specifications, the contracting officer shall include with the solicitation the justification or documentation required by 6.302-1(c), 13.106-1(b), or 13.501, redacted as necessary (see 6.305).

(b) When the contracting officer does not make a solicitation available through the GPE pursuant to para-

graph (a)(5) of this section, the contracting officer—

(1) Should employ other electronic means (e.g., CD-ROM or electronic mail) whenever practicable and cost-effective. When solicitations are provided electronically on physical media (e.g., disks) or in paper form, the contracting officer must—

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a "first-come-first-served" basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted; and

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

(c) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(1) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

(2) The name and telephone number of an employee of the contracting office who will answer questions on the solicitation; and

(3) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(d) When electronic commerce (see subpart 4.5) is used in the solicitation process, availability of the solicitation may be limited to the electronic medium.

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(e) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under part 6.

(f) This section 5.102 applies to classified contracts to the extent consistent with agency security requirements (see 5.202(a)(1)).

[66 FR 27409, May 16, 2001, as amended at 71 FR 20297, Apr. 19, 2006; 71 FR 57359, Sept. 28, 2006]

Subpart 5.2—Synopsis of Proposed Contract Actions

5.201 General.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b)(1) For acquisitions of supplies and services, other than those covered by the exceptions in 5.202 and the special situations in 5.205, the contracting officer must transmit a notice to the GPE, for each proposed—

(i) Contract action meeting the threshold in 5.101(a)(1);

(ii) Modification to an existing contract for additional supplies or services that meets the threshold in 5.101(a)(1); or

(iii) Contract action in any amount when advantageous to the Government.

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

(c) The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

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

[66 FR 27410, May 16, 2001, as amended at 68 FR 56678, Oct. 1, 2003]

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5.202 Exceptions.

The contracting officer need not submit the notice required by 5.201 when—

(a) The contracting officer determines that—

(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (e.g., would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

(2) The proposed contract action is made under the conditions described in 6.302–2 (or, for purchases conducted using simplified acquisition procedures, if unusual and compelling urgency precludes competition to the maximum extent practicable) and the Government would be seriously injured if the agency complies with the time periods specified in 5.203;

(3) The proposed contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government or international organizations, has the effect of requiring that the acquisition shall be from specified sources;

(4) The proposed contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see 5.205(f)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

(5) The proposed contract action is for utility services other than telecommunications services and only one source is available;

(6) The proposed contract action is an order placed under Subpart 16.5;

(7) The proposed contract action results from acceptance of a proposal