

to determine if the Government has a common law remedy such as avoidance, rescission, or cancellation.

(2) If the contractor has a final conviction for a violation under 18 U.S.C. 201-224, you may refer the matter to the voiding and rescinding official under FAR 3.705.

(i) In the referral, identify the final conviction and include the information required by FAR 3.705(d)(2) through (5).

(ii) Coordinate the referral with the Office of Inspector General to determine whether to recommend debarment.

(3) You may postpone a decision to exercise the Government's common law right to void, rescind, or cancel a contract until completion of legal proceedings against the contractor.

(b) *Voiding and rescinding official's actions:*

(1) The voiding and rescinding official reviews the referral and coordinates with assigned counsel and the contracting activity.

(2) If the official decides to declare void and rescind a contract and to recover the amounts expended and the property transferred, the official takes both the following actions:

(i) Issues the notice required by FAR 3.705.

(ii) Conducts the hearing contemplated by FAR 3.705(c)(3).

(3) In case of a dispute of material fact about the agency decision, the official refers the matter to the fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. The voiding and rescinding official makes this referral if the dispute of fact relates to any of the following:

(i) Contracts affected by the final conviction.

(ii) Amounts expended and property transferred by the Government under the affected contracts.

(iii) Identity and value of any tangible benefits received by the Government under the affected contracts.

(4) The voiding and rescinding official issues GSA's final decision under FAR 3.705(e) after receiving the fact-finding official's report, if a referral was made. The voiding and rescinding official may reject the fact-finding official's findings only if they are clearly erroneous or arbitrary and capricious.

(5) The official coordinates the final decision was the contracting activity and provides the activity a copy of the decision.

(c) *Fact-finding official's actions:* The fact-finding official takes all the following actions:

(1) Gives the contractor an opportunity to dispute material facts.

(2) Conducts the proceedings under rules consistent with FAR 3.705(c)(3).

(3) Schedules a hearing within 20 calendar days after receiving the referral. The official may grant extensions for good cause at the request of the contractor or GSA.

(4) Delivers written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

PART 504—ADMINISTRATIVE MATTERS

Subpart 504.4—Safeguarding Classified Information Within Industry

Sec.

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504.602-71 Federal Procurement Data System—Public access to data.

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Subpart 504.4—Safeguarding Classified Information Within Industry

504.402 General.

(a) This subpart:

(1) Prescribes procedures for safeguarding classified information required to be disclosed to contractors in

connection with the solicitation of offers, and the award, performance, and termination of contracts.

(2) Implements the requirements of the Department of Defense's Industrial Security Regulation (ISR) and Industrial Security Manual for Safeguarding Classified Information (ISM). By agreement, the Department of Defense (DOD) will act for, and on behalf of, GSA in rendering security services required for safeguarding classified information released by GSA to U.S. industry.

(b) As used in this subpart, the term:

(1) "Contractor(s)" means prospective contractors, subcontractors, vendors, and suppliers.

(2) "U.S. industry" means those industries (including educational and research institutions) located within the United States, its possessions, and the Commonwealth of Puerto Rico.

504.475 Return of classified information.

(a) You must recover classified information unless it has been destroyed as provided in paragraph 19 of the ISM. The Government agency that provided classified information to a GSA contractor is responsible for the return of the information.

(b) You must ensure that classified information furnished to prospective offerors, offerors, or contractors is returned immediately after any of the following:

(1) After bid opening or closing date for receipt of proposals by non-responding offerors.

(2) After contract award by unsuccessful offerors.

(3) Upon termination or completion of the contract.

(4) Upon notification that authorization to release classified information has been withdrawn.

(5) After notification that a facility:

(i) Does not have adequate means to safeguard classified information.

(ii) Has had its security clearance revoked or inactivated.

(6) Whenever otherwise instructed by the authority responsible for the security classification.

Subpart 504.5—Electronic Commerce in Contracting

504.500 Scope of subpart.

This subpart provides policy and procedure for use of GSA's Electronic Posting System (EPS).

504.502 Policy.

(a) The EPS is GSA's primary vehicle for disseminating synopses and written solicitations. GSA intends that the EPS will substitute for, not supplement, paper copies of solicitations. (Note that FAR 2.101 defines "in writing" or "written" to include "electronically transmitted and stored information.")

(b) This policy does not apply to orders placed against existing contracts, including Federal Supply Service schedule contracts.

(c) Nothing in this policy limits your authority to obtain oral quotations or proposals as authorized by regulation (e.g., FAR 13.106-1 or FAR 15.203(f)).

504.570 Procedures for using the EPS.

(a) You must use the EPS to issue any synopsis required by FAR part 5 or GSAR part 505.

(b) You must issue each written solicitation on the EPS, except as provided in paragraphs (c)(2) and (d) of this section.

(c) Although GSA intends that the EPS will substitute for paper copies of solicitations, web-based transactions are not practical in some industries or in some geographic areas at this time.

(1) If you expect that electronic access to a solicitation will result in adequate competition, distribute the solicitation only through the EPS. Include the following notice in the related synopsis:

GSA is issuing this solicitation only electronically. Interested parties may access the solicitation at <http://www.eps.gov>. This site provides instructions for downloading the solicitation file.

(2) If you believe that distribution of paper copies is necessary to ensure adequate competition, document the file to justify distribution of paper copies. Include the notice in paragraph (c)(1) of this section in the related synopsis, leaving out the first sentence.