

§ 101-45.313-8

41 CFR Ch. 101 (7-1-02 Edition)

(c) Contracts to be made in foreign countries.

(d) Any other contracts, individually or by class, of the Department of Defense, designated by the Secretary, Under Secretary, or Assistant Secretary of a military department. (Reports of any such exceptions shall be filed promptly with the Administrator of General Services.)

[30 FR 2930, Mar. 6, 1965, as amended at 35 FR 12121, July 29, 1970]

§ 101-45.313-8 Enforcement.

(a) *Failure or refusal to furnish representation and agreement.* Each selling agency shall take the necessary steps to assure that the indicated successful bidder or proposed contractor has furnished a representation (negative or affirmative) and agreement as prescribed in § 101-45.313-3.

(1) If the indicated successful bidder makes such representation in the negative such representation may be accepted and award made or offer accepted in accordance with established procedure.

(2) If the indicated successful bidder or proposed contractor makes such representation in the affirmative, a completed Standard Form 119 shall be requested from the bidder or proposed contractor. In the case of formal advertising, the making of an award in accordance with established procedure need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119 prior to acceptance of the offer or execution of the contract unless the head of the executive agency (including for this purpose, any military department) concerned, or his authorized representative, considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.

(3) If the indicated successful bidder or proposed contractor fails to furnish the representation and agreement, such failure shall be considered a minor informality and, prior to award, such bidder or proposed contractor shall be afforded a further opportunity

to furnish such representation and agreement. A refusal or failure to furnish such representation and agreement, after such opportunity has been afforded, shall require rejection of the bid or offer.

(b) *Failure or refusal to furnish Standard Form 119.* If the successful bidder or contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof as provided in § 101-45.313-6, the selling agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(1) If an award has not been made or offer accepted, determine whether the bid or offer should be rejected.

(2) If the contract has been awarded or the offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor in accordance with established procedure.

(c) *Misrepresentations or violations of the covenant against contingent fees.* In case of misrepresentation, or violation or breach of the covenant against contingent fees, or some other relevant impropriety, the selling agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(1) If an award has not been made, or offer has not been accepted, determine whether the bid or offer should be rejected.

(2) If an award has been made or offer has been accepted, take action to enforce the covenant in accordance with its terms, that is, as the best interests of the Government may appear, annul the contract without liability or recover the amount of the fee involved.

(3) Consider the future eligibility as a contractor of the bidder or contractor in accordance with established procedure.

(4) Determine whether the case should be referred to the Department of Justice in accordance with established procedure with respect to determining matters of fraud or criminal conduct.

§ 101-45.313-9 Preservation of records.

Selling agencies shall preserve, for enforcement or report purposes, at

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least one executed copy of any representation and completed Standard Form 119, together with a record of any other pertinent data, including data as to action taken.

§ 101-45.314 Federal excise taxes.

Federal manufacturers' and retailers' excise taxes are not applicable to the sale or other disposal by the Government of personal property or the disposal of contractor inventory. Federal manufacturers' excise taxes do not apply to subsequent sales, including uses, by purchasers of Government property and contractor inventory. Federal retailers' excise taxes apply to subsequent sales, but not to subsequent uses by the purchasers unless the subsequent sale is made for resale and a certificate of resale is obtained. The foregoing does not apply to gasoline, and holding agencies shall make appropriate arrangements with the Internal Revenue Service with respect to the disposal thereof. Questions relating to the applicability of Federal excise taxes arising from the disposal of property or contractor inventory should be referred to the Internal Revenue Service.

§ 101-45.315 Equal Opportunity clause in contracts.

The Equal Opportunity clause prescribed by Executive Order 11246 of September 24, 1965 (30 FR 12319, 12935) (as amended by Executive Order 11375 of October 13, 1967 (32 FR 14303)), as set forth in § 101-45.4807, shall be included in all contracts for the sale of personal property when the contract exceeds \$10,000, and an appreciable amount of work by the purchaser required by or for the Government is involved. When a sale is planned and the probability exists that the foregoing conditions will be present, the Equal Opportunity clause shall be included in the contract provisions of the invitation as a special condition of sale.

[42 FR 40854, Aug. 12, 1977]

§ 101-45.316 [Reserved]

§ 101-45.317 Noncollusive bids and proposals.

(a) Condition No. 20 of the General Sale Terms and Conditions, Standard

Form 114C, contains the certification of independent price determination. This condition is applicable to all invitations for bids and requests for proposals or quotations providing for the sale of personal property, except fixed price sale under section 203(e)(5) of the Act.

(b) The authority to make determinations described in paragraph (d) of Condition No. 20 of the General Sale Terms and Conditions, Standard Form 114C, shall not be delegated to an official below the level of the head of a selling activity of the agency.

(c) Where a certification is suspected of being false or there is an indication of collusion, the matter shall be referred to the Department of Justice as provided in § 101-45.107-1.

[31 FR 9542, July 14, 1966, as amended at 35 FR 12121, July 29, 1970]

§ 101-45.318 Identical bids.

In addition to complying with the requirements of §§ 101-45.316 and 101-45.317, when an invitation for bids for the sale of personal property results in the submission of identical bids, consideration shall be given to whether adequate prime competition was obtained. Whether there is adequate price competition for a given sale is a matter of judgment to be based on the circumstances of the sale. If the circumstances do not permit a reasonable determination that the price competition was adequate, the sale should be resolicited.

[36 FR 12297, June 30, 1971]

Subpart 101-45.4—Contract Disputes

SOURCE: 59 FR 60561, Nov. 25, 1994, unless otherwise noted.

§ 101-45.400 Scope of subpart.

This subpart provides guidance regarding contract claims and appeals relating to contracts for the sale of personal property under the Contract Disputes Act of 1978, as amended, (41 U.S.C. 601-613). Contracting agencies should seek guidance from the Contract Disputes Act (the Act) and Federal Acquisition Regulation (FAR) 48 CFR Part 33. The Act applies to all