

**§ 101-45.313-9**

(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 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.

**41 CFR Ch. 101 (7-1-00 Edition)**

**§ 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

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## § 101-45.601

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 contracts entered into by executive agencies for the sale of personal property, except the following:

(a) Contracts with a foreign government or agency of that government when the agency head determines that application of the Act to the contract would not be in the public interest,

(b) Contracts with an international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest, and

(c) Contracts of the Tennessee Valley Authority unless such contracts contain a disputes clause requiring dispute resolution via an administrative process.

#### § 101-45.401 The disputes clause.

The disputes clause contained at 48 CFR 52.233-1 must be included in all solicitations and contracts for the sale of personal property unless the exceptions in § 101-45.400 apply.

#### § 101-45.402 Alternative disputes resolution.

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Agencies are encouraged to use alternative dispute resolution (ADR) procedures to the maximum extent practicable in accordance with the authority and the requirements of the Administrative Disputes Resolution Act (Pub. L. 101-522) and agency policies.

### Subpart 101-45.5 [Reserved]

### Subpart 101-45.6—Debarred, Suspended, and Ineligible Contractors

#### § 101-45.600 Scope of subpart.

This subpart prescribes policies and procedures governing the debarment or suspension of contractors for contracts involving the sale by the Government of personal property.

[50 FR 41145, Oct. 9, 1985]

#### § 101-45.601 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts only with responsible contractors, as defined by Federal Acquisition Regulation (FAR) 9.104-1.

(b) The policies, procedures, and requirements of FAR subpart 9.4 are incorporated by reference and made applicable to contracts for, and to contractors who engage in the purchase of Federal personal property.

(c) The debarment or suspension of a contractor from the purchase of Federal personal property has Governmentwide effect and precludes any agency from entering into a contract for purchase of personal property with that contractor unless the agency's head or a designee responsible for the disposal action determines that there is a compelling reason for such action. (See FAR 9.405(a).)

(d) When the debarring/suspending official has authority to debar/suspend contractors from both contracts for the purchase of Federal personal property