

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, Suspend-
ed, 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

pursuant to FPMR 101-45.6 and acquisition contracts pursuant to FAR 9.4, that official shall consider simultaneously debarring/suspending the contractor from the purchase of Federal personal property and the award of acquisition contracts. When debarring/suspending a contractor from the purchase of Federal personal property and the award for acquisition contracts, the debarment/suspension notice shall so indicate and the appropriate FPMR and FAR citations shall be included.

[50 FR 41145, Oct. 9, 1985]

§ 101-45.602 Listing debarred or suspended contractors.

(a) Contractors which have been debarred or suspended by agency debarring/suspending officials will be included on the Consolidated List of Debarred, Suspended, and Ineligible Contractors (FAR 9.404) in accordance with the procedures established at FAR 9.404.

(b) Agencies shall establish procedures for the use of the consolidated list to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as provided in FAR 9.405(a).

[50 FR 41146, Oct. 9, 1985]

Subpart 101-45.7—Submission of Bids

SOURCE: 37 FR 24666, Nov. 18, 1972, unless otherwise noted.

§ 101-45.700 Scope of subpart.

This subpart prescribes policies and methods relating to bids submitted in advertised sales of Government personal property and includes the treatment of late bids received in connection with such sales.

§ 101-45.701 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the

integrity of the formal advertising system may be maintained.

(b) Telegraphic or telephonic bids shall not be considered unless otherwise provided in the invitation for bids. (See § 101-45.4901-114C, item No. 3 entitled "Consideration of Bids.") The term "telegraphic bids" includes bids submitted by telegram or by mailgram. The following statement should be included in all invitations for bids: "The terms 'telegraphic bid' and 'telegraphic notice' include bids and notices by telegram or by mailgram."

(c) Bids shall be filled out, executed, and submitted in accordance with the instructions contained in the invitation for bids. If a bidder uses his own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation for bids and (2) award on the bid would result in a binding contract, the terms and conditions of the invitation.

[37 FR 24666, Nov. 18, 1972, as amended at 43 FR 11820, Mar. 22, 1978]

§ 101-45.702 Time of bid submission.

Bids shall be submitted so as to be received by the contracting officer not later than the exact time set for opening of bids. When telegraphic bids are authorized and such a bid is received by telephone from the receiving telegraph office not later than the time set for opening of bids, it shall be considered only if the bid is confirmed by receipt of a copy of the telegram or mailgram which formed the basis for the telephone call.

[43 FR 11821, Mar. 22, 1978]

§ 101-45.703 Late bids.

§ 101-45.703-1 General.

Bids received by the contracting officer after the exact time set for bid opening are late bids. (See §§ 101-45.4904-1-114C-1, 101-45.4901-114C-2, and 101-45.4901-114C-3 for item entitled "Consideration of late Bids, Modifications, or Withdrawals.") Late bids shall not be considered for award except as authorized in this § 101-45.703.

[42 FR 40854, Aug. 12, 1977]