

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Walhalla, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-10135 Filed 4-15-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 97-136; RM-9083 and RM-9136]

Radio Broadcasting Services; Ironton, Malden and Salem, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 225C2 for Channel 225C3 at Malden, Missouri, and modifies the license for Station KMAL(FM) to specify operation on Channel 225C2 in response to a petition filed by B.B.C., Inc. See 62 FR 29090, May 29, 1997. The coordinates for Channel 225C2 at Malden are 36-39-48 and 89-47-39. To accommodate the allotment at Malden, we shall substitute Channel 224A for Channel 225A at Ironton, Missouri, and modify the license for Station KYLS accordingly. The coordinates for Channel 224A at Ironton are 37-34-23 and 90-41-35. A joint counterproposal filed by B.B.C., Inc. and Dockins Communications, Inc., licensee of Station KYLS, Ironton, is not being considered. The counterproposal supported the allotment at Malden but requested the substitution of Channel 240C3 for Channel 225A at Ironton and the substitution of Channel 225A for Channel 240A at Salem, Missouri. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97-136, adopted March 25, 1998, and released April 3, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 225C3 and adding Channel 225C2 at Malden, and by removing Channel 225A and adding Channel 224A at Ironton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-10134 Filed 4-15-98; 8:45 am]

BILLING CODE 6712-01-F

GENERAL SERVICES ADMINISTRATION**48 CFR Parts 503, 515, 552 and 570**

[APD 2800.12A, CHGE 79]

RIN 3090-AG70

Acquisition Regulation; Negotiation Procedures for Acquisition of Leasehold Interests in Real Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to update negotiation procedures for acquisitions of leasehold interests in real property. The changes make GSAR Part 570 consistent, where applicable, with Federal Acquisition Regulation (FAR)

Part 15, as revised by Federal Acquisition Circular (FAC) 97-02. The changes also update FAR provisions and clauses applicable to acquisitions of leasehold interests in real property.

DATES: Effective date April 16, 1998. Comments should be submitted in writing to the address shown below on or before June 15, 1998.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4012, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208-6726.

SUPPLEMENTARY INFORMATION:**A. Background**

GSA issues regulations for acquiring leasehold interests in real property under the authority of 40 U.S.C. 486(c), including source selection procedures. Many of the source selection procedures for acquiring leasehold interests in real property are based on FAR Part 15. FAC 97-02 made significant revisions to FAR Part 15, infusing innovative techniques into the source selection process, simplifying the acquisition process, incorporating changes in pricing proposal policy, and facilitating the acquisition of best value. In order to take advantage of the innovations and simpler procedures incorporated into FAR part 15 by FAC 97-02 and to minimize potential confusion, GSA is updating 48 CFR part 570 to ensure consistency with FAR part 15 where applicable. The changes provide more flexibility in exchanges with industry, change the standard for admission into the competitive range (to all proposal most highly rated), simplify documentation requirements, ensure that procedures for addressing adverse past performance are consistent with FAR Part 15, and ensure that procedures for obtaining and analyzing cost or pricing data or information other than cost or pricing data remain consistent with FAR Part 15. The changes also delete the requirement for a Certificate of Procurement Integrity and a Contingent Fee Representation and Agreement, consistent with earlier changes made to FAR Part 3.

B. Executive Order 12866

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804. The impact on small businesses derives from the changes made to the FAR rule, and

the impacts were discussed in that rule's Final Regulatory Flexibility Analysis.

C. Regulatory Flexibility Act

This interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule ensures that procedures for acquiring leasehold interests in real property remain consistent, where applicable, with the changes made to FAR Part 15. Consistency will help minimize confusion that would result from separate and different procedures. It also provides that the innovative source selection techniques, simpler processes, and changes in pricing policy introduced in FAR Part 15 will facilitate the acquisition of best value leasehold interests in real property. Elimination of burdens and creation of a simplified, efficient, and impartial acquisition process benefits all participants in Government contracting, especially small businesses.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

E. Determination to Issue an Interim Rule

Urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. The changes to FAR Part 15 have been in effect since January 1, 1998. The changes are sufficiently important that GSA must update the GSAR immediately. GSA believes this rule will provide significant benefits to both the Federal Government and contractors. It will allow GSA and agencies delegated leasing authority to reduce the resources necessary for source selection and reduce time to contract award. It will ensure that the Government receives the best value when acquiring leasehold interests in real property while ensuring fair treatment of offerors. The rule will also eliminate the potential for confusion by reducing the difference in procedures for acquiring supplies and services and procedures for acquiring leasehold interests in real property.

List of Subjects in 48 CFR Parts 503, 515, 552, and 570

Government procurement.

Accordingly, 48 CFR 570 is amended as follows:

1. The authority citation for 48 CFR Parts 503, 515, 552, and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 503.104–10 is revised to read as follows:

503.104–10 Solicitation provisions and contract clauses.

The contracting officer shall insert a clause substantially the same as the clause at 552.203–73, Price Adjustments for Illegal or Improper Activity, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed \$100,000 and all modifications to leases exceeding \$100,000 which do not already contain the clause.

3. Section 503.404 is amended by deleting paragraph (a) and removing the designation “(b)” from the remaining paragraph.

PART 515—CONTRACTING BY NEGOTIATION

4. Section 515.106–70 is amended by revising paragraph (a) to read as follows:

515.106–70 Examination of records by GSA clause.

(a) The contracting officer shall insert the clause at 552.215–70, Examination of Records by GSA, in solicitations and contracts (other than multiple award schedule contracts), including acquisitions of leasehold interests in real property that:

(1) Involve the use and disposition of Government-furnished property,

(2) Provide for advance payments, progress payments based on cost, or guaranteed loan,

(3) Contain a price warranty or price reduction clause,

(4) Involve income to the Government where income is based on operations that are under the control of the contractor,

(5) Include an economic price adjustment clause,

(6) Are requirements, indefinite-quantity, or letter type contracts as defined in FAR part 16,

(7) Are subject to adjustment based on a negotiated cost escalation base, or

(8) Contain the provision at FAR 52.223–4, Recovered Material Certification. The contracting officer may modify the clause to define the specific area of audit (e.g., the use or disposition of Government-furnished

property, compliance with the price reduction clause). Counsel and the Assistant Inspector General-Auditing or Regional Inspector General-Auditing, as appropriate, must concur in any modifications to the clause.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.203–71 [Removed]

5. Section 552.203–71 is removed and reserved.

552.203–72 [Removed]

6. Section 552.203–72 is removed and reserved.

552.203–73 [Revised]

7. Section 552.203–73 is amended by revising the introductory text to read as follows:

552.203–73 Price Adjustments for Illegal or Improper Activity.

As prescribed in 503.104–10, insert the following clause:

* * * * *

8. Section 552.270–1 is revised to read as follows:

552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.

As prescribed in 570.702(a), insert the following provision:

Instructions to Offerors—Acquisition of Leasehold Interests in Real Property (Mar 1998)

(a) Definitions. As used in this provision—
“Discussions” are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

“In writing” or “written” means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Proposal modification” is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

“Time,” if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain

unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals.

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages. Offers must be:

(i) Submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and

(ii) Signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(2) Late proposals and revisions.

(i) The Government will not consider any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers unless it is received before the Government makes award and it meets at least one of the following conditions:

(A) It was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th).

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation.

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

(D) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals.

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement.

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in subparagraphs (c)(2)(i)(A) through (c)(2)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the

U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c)(2)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(2)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) An offeror may withdraw its proposal by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, an offeror may withdraw its proposal via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(3) Any information given to a prospective offeror concerning this solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offeror.

(4) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(5) Offerors may submit amended proposals only if requested or allowed by the Contracting Officer.

(6) The Government will construe an offer to be in full and complete compliance with this solicitation unless the offer describes any deviation in the offer.

(7) Offerors may submit proposals that depart from stated requirements. Such a proposal shall clearly identify why the acceptance of the proposal would be advantageous to the Government. The proposal must clearly identify and explicitly define any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

(d) Restriction on disclosure and use of data. An offeror that includes in its proposal data that it does not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, must meet both of the following conditions:

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a lease is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets].

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(e) Lease award.

(1) The Government intends to award a lease resulting from this solicitation to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a lease after conducting

discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

(5) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(6) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(7) The unconditional written acceptance of an offer establishes a valid contract.

(8) The Government may disclose the following information in postaward debriefings to other offerors:

- (i) The overall evaluated cost or price and technical rating of the successful offeror;
 - (ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection; and
 - (iii) A summary of the rationale for award.
- (End of provision)

Alternate I (MAR 1998). As prescribed in 570.702(a)(1), substitute the following paragraph for paragraph (c)(2)(i) of the basic provision:

(i) Any offer received at the office designated in the solicitation after the exact time specified for receipt of final proposal revisions will not be considered unless it is received before award is made and it meets one of the following conditions—

Alternate II (DATE). As prescribed in 570.702(a)(2), substitute the following paragraph for paragraph (e)(4) of the basic provision:

(4) The Government intends to evaluate proposals and award a lease without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

9. Sections 552.270-2 and 552.270-3 are removed and reserved.

10. Section 552.270-4 is amended by revising the introductory text to read as follows:

552.270-4 Historic Preference.

As prescribed in 570.702(b), insert the following provision:

* * * * *

552.270-5 [Removed]

11. Section 552.270-5 is removed and reserved.

12. Section 552.270-6 is amended by revising the introductory text to read as follows:

552.270-6 Parties to Execute Lease.

As prescribed in 570.702(c), insert the following provision:

* * * * *

13. Section 552.270-20 is amended by revising the clause date and paragraph (c) to read as follows:

552.270-20 Proposals for Adjustment.

* * * * *

PROPOSALS FOR ADJUSTMENT (APR 1998)

* * * * *

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$500,000—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403-4); and

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds \$500,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406-2).

* * * * *

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

14. Section 570.107 is added as follows:

570.107 Oral presentations.

Oral presentations may be used for acquisitions of leasehold interests in real property. Follow the procedures in FAR 15.102.

15. Section 570.204-4 is revised to read as follows:

570.204-4 Negotiation, evaluation, and award.

(a) Negotiations, if applicable, should be conducted in accordance with 570.305.

(b) Offers must be evaluated in accordance with the solicitation. The contracting officer shall evaluate the price and document the lease file to demonstrate that the proposed contract prices represent fair and reasonable prices. In cases where the total cost

exceeds \$500,000, cost and pricing data must be obtained unless the requirement is waived or one of the exceptions at FAR 15.403-1 applies. For purposes of FAR 15.403-1(c)(1)(iii), "same or similar items" means similar space leased to the general public. A market survey and/or an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the price reasonableness.

(c) An acceptable small business subcontracting plan must be provided if the total contract value of the lease will exceed \$500,000, unless the lease will be awarded to a small business concern.

(d) The contracting officer should review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, to ensure the proposed awardee is eligible to receive the award and is otherwise responsible before awarding the lease.

(e) An award will be made to the responsible offeror whose proposal represents the best value after evaluation considering price and other factors included in the solicitation.

16. Section 570.303 is amended by revising paragraphs (a)(7)(i) and (a)(8) as follows:

570.303 Solicitation for offers (SFO).

(a) * * *

(7) * * *

(i) Unless the design-build selection procedures are being used as authorized by 570.106(c), the solicitation must comply with FAR 15.304 and either:

(A) FAR 15.101-1 if the Government will use the tradeoff process, or
(B) FAR 15.101-2 if the Government will use the lowest price technically acceptable source selection process.

* * * * *

(8) Include a statement outlining the information that may be disclosed in preaward and postaward debriefings.

* * * * *

17. Section 570.305 is revised to read as follows:

570.305 Negotiations.

(a) Follow the procedures in FAR 15.306 and 15.307 for exchanges (including clarifications, communications, negotiations, and discussions) and revisions.

(b) Place a written record of all exchanges in the lease file.

(c) Provide prompt written notice to any offeror excluded from the competitive range or otherwise eliminated from the competition in accordance with FAR 15.503(a)(1).

570.306 [Removed]

18. Section 570.306 is removed and reserved.

19. Section 570.307 is revised to read as follows:

570.307 Late offers, modifications of offers, and withdrawals of offers.

Offers determined to be received late will be handled in accordance with FAR 15.208.

570.308-1 [Amended]

20. Section 570.308-1 is amended by deleting paragraph (b) and redesignating paragraph (c) as paragraph (b).

21. Section 570.308-2 is revised to read as follows:

570.308-2 Cost or pricing data.

(a) Cost or pricing data are required under the circumstances described in FAR 15.403-4.

(b) The exceptions to and waivers of submission of cost or pricing data outlined in FAR 15.403-1 apply to leasing actions. For purposes of FAR 15.403-1(c)(1)(iii), "same or similar items" means similar space leased to the general public. A market survey and/or an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the price reasonableness.

(c) In exceptional cases, the requirement for submission of cost or pricing data may be waived under FAR 15.403-1(c)(4).

(d) When cost or pricing data is required, the contracting officer shall follow the procedural requirements in FAR 15.403-5.

22. Section 570.308-3 is revised to read as follows:

570.308-3 Proposal evaluation.

(a) Offers must be evaluated in accordance with the solicitation.

(b) The contracting officer shall evaluate the price and document the lease file to demonstrate that the proposed contract prices represent fair and reasonable prices.

(c) The contracting officer shall evaluate past performance in accordance with FAR 15.305(a)(2).

(d) The lease file must document the evaluation of other award factors listed in the solicitation. The file must include the basis for evaluation, an analysis of each offer, and a summary of findings. An abstract of final proposal revisions may be prepared to aid in the analysis of offers received.

23. Section 570.309 is revised to read as follows:

570.309 Award.

(a) As used in this section, "day" has the meaning set forth at FAR 33.101.

(b) The contracting officer is designated as the source selection authority unless the Head of the

Contracting Activity appoints another individual for a particular leasing action or group of leasing actions.

(c) An award will be made to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(d) Award will be made in writing within the timeframe specified in the SFO. If an award cannot be made within that time, the contracting officer shall request in writing from each offeror an extension of the acceptance period through a specific date.

(e) Unsuccessful offerors will be notified in writing or electronically in accordance with FAR 15.503(b).

(f) The source selection authority may reject all proposals received in response to an SFO, if doing so is in the best interest of the Government.

24. Section 570.310 is revised to read as follows:

570.310 Debriefings.

The procedures in FAR 15.505 and 15.506 apply to leasing actions.

25. Section 570.401 is revised to read as follows:

570.401 Disclosure of mistakes after award.

When a mistake in a lessor's offer is not discovered until after award, the mistake should be handled as provided in FAR 14.407-4 and subpart 514.4.

26. Section 570.602-2 is amended by revising paragraphs (c)(3), (d), (e)(3), and (f)(3) to read as follows:

570.602-2 Procedures.

* * * * *

(c) * * *

(3) The requirements for the submission of cost or pricing data outlined in FAR 15.403-4, 15.403-5, and 15.406-2 apply to alteration projects over \$500,000. The procedural requirements at FAR 15.403-5 must be followed when requesting cost and pricing data. Exceptions or waivers to submission of cost or pricing data must be processed in accordance with the requirements of FAR 15.403-1. If the lease does not include the clauses at FAR 52.215-10 and 52.215-12 or the clauses at FAR 52.215-11 and 52.215-13, the modification to the lease for the alterations must add the clauses at FAR 52.215-11 and 52.215-13 if cost and pricing data is submitted.

(d) *Audits.* Unless the cost or pricing data requirement is exempt or waived in accordance with FAR 15.403-1, an audit must be requested for negotiated alteration projects which are not competed as a part of the lease and exceed \$500,000.

(e) * * *

(3) Analyze profit in accordance with FAR 15.404-4 if the project exceeds \$100,000; and

* * * * *

(f) * * *

(3) Negotiations must be documented in accordance with FAR 15.406-3.

* * * * *

27. Section 570.701 is amended by revising paragraphs (c), (d), (f), (g), (h), (j), and (k) to read as follows:

570.701 FAR provisions and clauses.

* * * * *

(c) All solicitations and contracts which exceed \$2,500 must include the following provisions/clauses:

| FAR part 52 cite | Title |
|------------------|---------------------------------------------|
| 52.219-1 | Small Business Program Representations. |
| 52.222-36 .. | Affirmative Action for Handicapped Workers. |

(d) All solicitations and contracts which exceed \$10,000 must include the following provisions/clauses:

| FAR part 52 cite | Title |
|------------------|---------------------------------------------------------------------------|
| 52.222-21 .. | Certification of Nonsegregated Facilities. |
| 52.222-22 .. | Previous Contracts and Compliance Reports. |
| 52.222-25 .. | Affirmative Action Compliance. |
| 52.222-26 .. | Equal Opportunity. |
| 52.222-35 .. | Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era. |
| 52.222-37 .. | Employment Reports on Disabled Veterans and Veterans of the Vietnam Era. |

* * * * *

(f) All solicitations and contracts which exceed \$100,000 must include the following FAR provisions/clauses:

| FAR part 52 cite | Title |
|------------------|------------------------------------------------------------------------------------------|
| 52.203-11 .. | Certificate and Disclosure Regarding Payments to Influence Certain Federal Transactions. |

(g) All solicitations and contracts for actions which exceed the simplified lease acquisition threshold must include the following FAR provisions/clauses:

| FAR part 52 cite | Title |
|------------------|-------------------------------------------------|
| 52.203-2 | Certificate of Independent Price Determination. |
| 52.203-7 | Anti-Kickback Procedures. |

| FAR part 52 cite | Title |
|------------------|------------------------------------------------------------------------------------------------------|
| 52.209-5 | Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. |
| 52.215-2 | Audits and Records—Negotiation. |
| 52.219-8 | Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns. |
| 52.223-6 | Drug-Free Workplace. |
| 52.233-2 | Service of Protest (Solicitations only). |

(h) All solicitations and contracts which exceed \$500,000 must include the FAR clauses at 52.219-9, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan, and 52.219-16, Liquidated Damages—Subcontracting Plan.

* * * * *

(j) When cost or pricing data is required for work or service exceeding \$500,000 the FAR clauses at 52.215-10, Price Reduction for Defective Cost or Pricing Data, and 52.215-12, Subcontractor Cost or Pricing Data, must be included in solicitations and contracts.

(k) When the contracting officer determines that it is desirable to authorize the submission of facsimile proposals, the solicitation must include the FAR provision at 52.215-5, Facsimile Proposals.

28. Section 570.702 is revised to read as follows:

570.702 Solicitation provisions.

When a solicitation for offers is issued, the contracting officer should include provisions substantially the same as the following unless the contracting officer makes a determination that use of one or more of the provisions is not appropriate:

(a) 552.270-1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.

(1) Use Alternate I if the contracting officer decides that it is advantageous to the Government to allow offers to be submitted up to the exact time specified for receipt of final proposal revisions.

(2) Use Alternate II if the Government intends to award without discussions.

(b) 552.270-4 Historic Preference.

(c) 552.270-6 Parties to Execute Lease.

29. Section 570.703 is amended by deleting paragraph (a)(25) and redesignating paragraph (a)(26) as (a)(25).

30. Section 570.704 is revised to read as follows:

570.704 Use of provisions and clauses.

The omission of any provision or clause when its prescription requires its use constitutes a deviation which must be approved under subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g., GSAR 552.203-5, Covenant Against Contingent Fees, FAR 52.215-2, Audit and Records—Negotiation, etc.) in order to modify the language of the provision or clause, when permitted by the statute. However, the statutory provisions and clauses may not be omitted from the SFO unless the statute provides for waiving the requirements of the provision or clause. Also, certain clauses required by non-GSA regulations require approval of the issuing agency before the contracting officer can delete or modify them (e.g., 52.222-26, Equal Opportunity; 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era; and 52.222-36 Affirmative Action for Handicapped Workers, require the approval of the Department of Labor's Office of Federal Contract Compliance Programs before they can be deleted from or modified in the SFO or lease).

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297-8054-02; I.D. 041098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Apportionment of reserve.

SUMMARY: NMFS is apportioning the initial reserve of Pacific cod in the Gulf of Alaska (GOA). This action is necessary to allow incidental catch of Pacific cod to be retained in other directed fisheries and to account for previous harvest of the total allowable catch (TAC) in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 16, 1998, through 2400 hrs, A.l.t., December 31, 1998.

Comments must be received by May 1, 1998.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The initial TAC of Pacific cod in the Western, Central, and Eastern Regulatory Areas of the GOA was established by the Final 1998 Harvest Specifications for Groundfish of the GOA (63 FR 12027, March 12, 1998) as 18,536 mt, 33,374 mt, and 936 mt in the Western, Central, and Eastern Regulatory Areas, respectively. Directed fishing for Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA was closed on March 3, 1998 (63 FR 11160, March 6, 1998), and in the Central Regulatory Area on March 10, 1998 (63 FR 12416, March 13, 1998), under § 679.20(d)(1)(iii) to prevent exceeding the allocation for processing by the inshore component in these areas.

The reserve of Pacific cod in the GOA was withheld under the Final 1998 Harvest Specifications for Groundfish of the GOA (63 FR 12027, March 12, 1998) as a management buffer to prevent exceeding the TACs and to provide greater assurance that Pacific cod could be retained as bycatch throughout the fishing year.

The Administrator, Alaska Region, NMFS, has determined that the initial TACs for Pacific cod in the GOA need to be supplemented from the Pacific cod reserve to allow the retention of incidental catch of Pacific cod in other fisheries and to account for prior harvest. Therefore, in accordance with § 679.20(b)(3)(i)(A), NMFS is apportioning 13,214 mt of Pacific cod from the reserve to the TAC in the GOA: 4,634 mt in the Western, 8,346 mt in the Central, and 234 mt in the Eastern Regulatory Areas.

Pursuant to § 679.20(a)(6)(iii), 90 percent and 10 percent of the