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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 42, and 52

[FAR Case 2017-014; Docket No. 2017-0014; Sequence No. 1]

RIN 9000-AN43

Federal Acquisition Regulations: Use of Acquisition 360 to Encourage Vendor Feedback

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: DoD, GSA, and NASA are considering an amendment to the Federal Acquisition Regulation (FAR) to establish a standard survey for obtaining voluntary feedback from actual and potential offerors on Government contracts and solicitations. DoD, GSA, and NASA are seeking public input, particularly from Government contractors on the potential benefits and burdens of voluntary feedback surveys.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** to be considered in the formulation of a proposed rule.

ADDRESSES: Submit comments identified by FAR Case 2017-014 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "FAR Case 2017-014" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Comment Now" that corresponds with "FAR Case 2017-014". Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2017-014" on your attached document.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW, Second floor, ATTN: Lois Mandell, Washington, DC 20405.

Instructions: Please submit comments only and cite "FAR case 2017-014" in all correspondence related to this case. All comments received will be posted, without change, to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov>, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202-501-1448 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite "FAR case 2017-014".

SUPPLEMENTARY INFORMATION:

I. Background

In 2015, the Office of Federal Procurement Policy (OFPP) issued guidance to test use of a standard survey that allowed offerors, whether or not they received award, to rate the agency's pre-award and debriefing processes for specific solicitations. See "Acquisition 360--Improving the Acquisition Process through Timely Feedback from External and Internal Stakeholders" (March 2015) (available at:

[https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/procurement/memo/acquisition-360-improving-acquisition-process-timely-feedback-external-internal-](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/procurement/memo/acquisition-360-improving-acquisition-process-timely-feedback-external-internal-stakeholders.pdf)

[stakeholders.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/procurement/memo/acquisition-360-improving-acquisition-process-timely-feedback-external-internal-stakeholders.pdf)). Under the guidance, interested offerors were invited, at their discretion, to rate and provide comments regarding the issuance of solicitations covering a wide range of requirements, including information technology, medical equipment, and management support services. Survey questions asked for input regarding

satisfaction with the pre-solicitation activities, solicitation documents, evaluation criteria, and the debriefing process. To view the online survey tool with the survey questions, go to <https://www.acquisition.gov/360>.

Even though the data was limited in scope some trends did emerge. For example, contractors rated the robustness of agency debriefings with the lowest satisfaction scores in both iterations. This informed OFPP's education and outreach efforts and a memorandum, "'Myth-busting 3' Further Improving Industry Communication with Effective Debriefings", was ultimately issued in 2017.

OFPP, DoD, GSA, and NASA believe that establishing a standard process in the FAR for obtaining voluntary feedback following a contract award will provide more meaningful insight on ways to strengthen the contracting process than can be derived by relying on ad hoc or periodic agency satisfaction surveys. Accordingly, language is being considered to encourage contracting officers, in accordance with agency policy, to invite interested sources - actual and potential offerors - to provide feedback on various aspects of the pre-award acquisition process and debriefings, with a particular emphasis on how information is communicated. Submissions

are intended to be anonymous and for internal Government improvements only. Voluntary participation would not bestow respondents any direct benefits or protections in the acquisition process or any subsequent protests. In addition, OFPP, DOD, GSA, and NASA are considering language that would encourage Government acquisition officials to elicit feedback from their contractors on the agency's performance of its contract administration responsibilities.

II. Request for Public Comments

The FAR Council welcomes input on any matters related to vendor feedback, including specific examples of industry standards, alternative regulatory approaches, and legal definitions that work well in other areas. The Council also invites comment on the overall cost of complying with the Council's existing regulations and any specific regulatory requirements that are particularly burdensome. The specific survey questions to be used in conjunction with a rulemaking are posted on <https://www.acquisition.gov/360>.

Respondents are encouraged to offer their feedback on the above language - as well as the underlying survey questions - in addition to the following additional questions:

1) What are the benefits to industry in providing actual and potential offerors with increased opportunity to submit feedback on how well the Government is performing its pre- and post-award activities? What are the benefits to the Government?

2) Is the approach discussed in this advance notice of proposed rulemaking the most effective way to elicit feedback about the Government's pre-award activities? If not, how might effectiveness be improved? What is the best way the Government can obtain honest and open feedback on the contract administration process?

3) Approximately, how long would you estimate it will take to complete the survey at <https://www.acquisition.gov/360>? What is a reasonable estimate of an organization's costs to complete the survey and what are the elements of this cost (e.g., personnel involved and time to complete)?

4) How would you quantify or otherwise describe the benefits or burdens of this type of feedback mechanism to actual and potential offerors?

5) Should any of the information provided by industry be available for industry review? How should the FAR Council work proactively with industry to consider changes based on any data submitted?

6) Is there different information which should be collected on the survey based on the type of company or the type of acquisition?

7) Would you view the voluntary opportunity to provide input as burden? If so, are there modifications which would decrease the burden associated with the Government collecting this information?

8) Would you be more likely to complete the survey if it were available as a hyperlinked button within each solicitation page of <https://www.fedbizopps.gov>?

9) What measures would help assure you that answers would remain anonymous? For example: Should the solicitation number itself and/or the specific Product Service Code (PSC) be stripped from the data agencies review? Should there be a time delay in agencies receiving survey responses? Should the Government discard survey submissions when two or fewer responses are received for a solicitation or would you prefer that the Government reviews data from all responses?

10) What recommendations would you advise to ensure data quality? Similar to the example above, should the Government discard survey submissions when a minimal number are received for a particular solicitation or contracting

office or would you view this effort more as a forum to provide comments?

This advance notice of proposed rulemaking was determined to be significant for the purposes of E.O. 12866.

List of Subjects in 48 CFR Parts 5, 42, and 52.

Government procurement.

Dated: July 13, 2018.

Cecelia Davis,
Acting Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 5, 42, and 52 to read as follows:

1. The authority citation for 48 CFR parts 5, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Add section 5.407 to read as follows:

5.407—Feedback on the Pre-Award Process and Debriefings

(a) Agencies are encouraged to seek regular voluntary feedback from interested sources that participate in an agency's acquisitions to understand strengths and weaknesses in how information is communicated, how acquisition techniques and methodologies were executed, and consider this feedback, as appropriate, to improve the effectiveness and efficiency of the acquisition process.

(b) The contracting officer should insert the provision 52.XXX-XX, Acquisition 360: Voluntary Survey, in accordance with agency procedures.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

3. Add section 42.1401 to read as follows:

42.1401 Policy.

(a) Agencies are encouraged to seek regular and voluntary feedback from their contractors on the agency's

performance of its contract administration responsibilities.

(b) Feedback might be sought on matters such as the contractor's evaluation of the agency in terms of—

(1) Adherence to contract terms, including the administrative aspects of performance;

(2) Reasonable and cooperative behavior in responding to contractor communications and addressing contractor requests; and

(3) Business-like concern for the interest of the contractor.

(c) Agencies should consider this feedback, as appropriate, to better understand strengths and weaknesses and improve the effectiveness and efficiency of their contract administration activities.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 52.XXX-XX to read as follows:

52.XXX-XX Acquisition 360: Voluntary Survey

As prescribed in 5.407(b), insert the following provision:

Acquisition 360: Voluntary Survey (DATE)

(a) All actual or prospective offerors are encouraged to provide feedback on the pre-award process, including

debriefings. Feedback may be made anonymously by going to <https://www.acquisition.gov/360>.

(b) None of the information provided will be reviewed until after contract award and will not be considered in nor impact source selection in any way.

(End of provision)

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