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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 52

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

RIN 9000-AN43

Federal Acquisition Regulations: FAR Case 2017-014, Use of Acquisition 360 to Encourage Vendor Feedback

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to encourage use of voluntary feedback mechanisms, where appropriate, to support continual improvement of the acquisition process.

DATES: Interested parties should submit written comments at the address 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 final rule.

ADDRESSES: Submit comments in response to FAR Case 2017-014 to <http://www.regulations.gov>. Submit comments via the

Federal eRulemaking portal by searching for "FAR Case 2017-014". Select the link "Comment Now" that corresponds with "FAR Case 2017-014". Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2017-014" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR case 2017-014" in all correspondence related to this case. Comments received generally 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 www.regulations.gov, approximately two to three days after submission to verify posting.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA and NASA are proposing to revise the FAR to encourage use of voluntary feedback mechanisms, where appropriate, to support continual improvement of the acquisition process. These mechanisms were largely developed through pilot efforts conducted in accordance with the Office of Federal Procurement Policy (OFPP) memorandum "Acquisition 360--Improving the Acquisition Process through Timely Feedback from External and Internal Stakeholders." The memorandum established the Acquisition 360 Survey tool, a voluntary online survey to elicit industry feedback on the pre-award and debriefing processes in a consistent and standardized manner.

An advanced notice of proposed rulemaking (ANPR) was published at 83 FR 34820 on July 23, 2018, to obtain public input regarding matters related to contractor feedback, the overall cost of compliance and any specific regulatory requirements that are particularly burdensome. The proposed Acquisition 360 survey questions were also posted as part of the rulemaking.

II. Discussion and Analysis

This proposed rule seeks to amend FAR part 1, adding a new section at FAR 1.102-3, Evaluating agency acquisition processes, which encourages agencies to develop internal

procedures to seek voluntary feedback from interested parties in the acquisition process. Contracting officers are encouraged to use a new provision at 52.201-XX, Acquisition 360: Voluntary Survey, to solicit feedback from actual and potential offerors, in accordance with agency procedures.

The proposed revisions are intended to implement a standard process for obtaining voluntary feedback on various aspects of the acquisition process. While use of feedback is encouraged, DoD, GSA, and NASA appreciate that tailored solicitation of feedback may be more manageable and useful than blanket application and, for this reason, have crafted the proposed rule to provide agencies the flexibility to target specific types of requirements or aspects of the acquisition lifecycle where feedback may be most helpful to the agency and its efforts to drive continual process improvements. The feedback will be anonymous, unless the participant self-identifies in the survey.

The proposed text is moved to FAR part 1 from parts 5 and 42 because the survey tool may be applied to procurements in general, as determined by agency procedure.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule seeks to add a provision for a voluntary survey. The provision is not prescribed for any particular kind of procurement; agencies may include it in solicitations below the SAT and in solicitations for commercial items, including COTS. However, because it is voluntary, impact on offerors or contractors is expected to be minimal.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impact, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This proposed rule is not expected to be subject to E.O. 13771, Reducing Regulation and controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to 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. Nevertheless, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The reason for this proposed rule is to encourage use of voluntary feedback mechanisms, where appropriate, to support continual improvement of the acquisition process. The use of the voluntary Acquisition 360 survey is one mechanism to elicit feedback on the pre-award and debriefing processes in a consistent and standardized manner.

The objective of the rule is to encourage agency use of the Acquisition 360 survey tool in accordance with agency procedures, to obtain feedback from offerors which may be used to improve their acquisition processes. The Office of Management and Budget is providing and hosting the centralized survey portal which will facilitate data access and analysis across the Government. The legal basis for the proposed rule is 40 U.S.C. 121(c), 10 U.S.C. chapter 137, and 51 U.S.C. 20113.

Data generated from the Federal Procurement Data System (FPDS) and the System for Award Management (SAM) have been used as the basis for estimating the number of small entities affected by this rule. Currently, there are approximately 327,000 small entities registered in SAM that were small in at least one North American Industry Classification Systems (NAICS) code. The rule, therefore, will potentially impact all 327,000 small entities.

In order to estimate the likely number of small entities impacted by the rule, we used the average of FPDS data for fiscal years (FY) 2017, 2018, and 2019. Examination of the data reveals that the number of unique small entities that received contract awards was 60,912. DoD, GSA, and NASA estimate that each unique small entity would respond to approximately 3 solicitations, equating to 182,736 potential offers. It is anticipated that 33 percent of these potential offerors will submit a response to the survey based upon the outcome of a previous OFPP-conducted pilot. Based upon this data, it is anticipated that 60,302 small entities will likely be affected by the rule.

The proposed rule encourages potential offerors to provide feedback at <https://www.acquisition.gov/360> on agency acquisition processes.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There were other alternatives considered, to include the status quo, for Government acquisition officials to elicit feedback from their contractors, such as vendor outreach with industry days on the agency's performance of its contract administration responsibilities; however, these would not accomplish the stated objective of the rule nor would they minimize the economic impact of the rule on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule consistent with 5 U.S.C. 610. Interested parties must submit such comments

separately and should cite 5 U.S.C. 610 (FAR Case 2017-014) in correspondence.

VII. Paperwork Reduction Act:

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies as this proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat Division has submitted a request for approval of a new information collection requirement concerning the Voluntary Pre-award Survey.

A. The public reporting burden for this collection of information is estimated at 10 minutes per response to the voluntary online survey. This estimate includes entering the online portal and providing input to as few as one or as many as 18 questions, as determined by the respondent.

This new information collection uses the common form method to calculate the public burden hours. GSA data is provided to estimate the initial burden information for the collection. In the future, each executive branch agency will provide information on the agency use and contractor participation in the voluntary survey. This information will be included in the renewal of the collection at that time.

The annual reporting burden is estimated as follows:

*Respondents: 4,573

*Responses per respondent: 1

*Total annual responses: 4,573

*Preparation hours per response: .1667

*Total response burden hours: 762

B. Request for Comments Regarding Paperwork Burden.

As part of this proposed rulemaking, the FAR Council is soliciting comments from the public in order to:

Evaluate whether this collection of information is necessary for the proper performance of functions of the FAR, including whether the information will have practical utility;

Evaluate the accuracy of the FAR Council's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate collection techniques or other forms of information technology.

Organizations and individuals desiring to submit comments on the information collection requirements associated with this rulemaking should submit comments, including suggestions for reducing this burden, not later

than **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW., 2nd Floor, Washington, DC 20405-0001.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW., 2nd Floor, Washington, DC 20405-0001. Please cite OMB Control Number 9000-XXXX.

List of Subjects in 48 CFR Parts 1 and 52.

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1 and 52 as set forth below:

1. The authority citation for 48 CFR parts 1 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.102-3 and 1.102-4 [Redesignated]

2. Redesignate sections 1.102-3 and 1.102-4 as sections 1.102-4 and 1.102-5.

3. Add new section 1.102-3 to read as follows:

1.102-3 Evaluating agency acquisition processes.

(a) Agencies are encouraged to develop internal procedures seeking voluntary feedback from interested parties in an acquisition to assess process strengths and weaknesses and improve effectiveness and efficiency of the acquisition process. Agencies may—

(1) Utilize a variety of feedback mechanisms available to the public (e.g., surveys, in-person, and/or group exchanges);

(2) Utilize the core pre-award and debriefing survey questions at <https://www.acquisition.gov/360>; and

(3) Seek additional feedback on targeted aspects of an acquisition throughout its lifecycle (e.g., performance

standards at 1.102(b) or post-award contract administration responsibilities at 42.302).

(b) Contracting officers are encouraged to insert the provision 52.201-XX, Acquisition 360: Voluntary Survey, in accordance with agency procedures.

(c) Contracting officers shall not review information until after contract award and shall not consider it in the award decision.

4. In section 1.106, amend the table by adding an entry for "52.201-XX" in numerical order to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	* * *
52.201-XX	9000-XXXX
* * * * *	* * *

1.108 [Amended]

5. Amend section 1.108 by removing from paragraph (b) "1.102-4(b)" and adding "1.102-5(b)" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Add section 52.201-XX to read as follows:

52.201-XX Acquisition 360: Voluntary Survey.

As prescribed in 1.102-3(b), insert the following provision:

ACQUISITION 360: VOLUNTARY SURVEY (DATE)

(a) All actual and potential offerors are encouraged to provide feedback on the preaward and debriefing process. Feedback may be provided to agencies up to 45 days after award. The feedback is anonymous, unless the participant self-identifies in the survey. Actual and potential offerors can participate in the survey by selecting the following link: <https://www.acquisition.gov/360>.

(b) The Contracting Officer will not review the information provided until after contract award and will not consider it in the award decision. The survey is voluntary and does not convey any protections, rights, or grounds for protest. It creates a way for actual and potential offerors to provide the Government constructive feedback about the pre-award and debriefing process on a specific acquisition.

(End of provision)