UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

FEB 08 2013

PROCUREMENT MEMORANDUM 2013-01

ACTION

MEMORANDUM FOR: **Bureau Procurement Officials**
Heads of Contracting Offices

FROM: Barry E. Berkowitz
Senior Procurement Executive
and Director for Acquisition Management

SUBJECT: FAR Class Deviation: Ordering Procedures for Federal Supply Schedules, Limiting sources, Publication of Items peculiar to one manufacturer *[e.g., a particular brand name, product or a feature of a product]* under FAR 8.405-6(b) when using FedBid Reverse Auction Tool.

Background

Federal Acquisition Regulation (FAR) Part 8.4 sets forth general requirements for Government buyers ordering supplies or services from GSA Schedule holders.

FAR 8.405, Ordering procedures for Federal Supply Schedules, at 8.405-6, Limiting Sources, addresses publication requirements for orders with items peculiar to one manufacturer—e.g., a particular brand name, product, or a feature of a product. For such "brand name only" requirements at 8.405-6(b), FAR 8.405-1(e) generally requires buyers to post a solicitation along with the justification and related information to e-Buy. However, the posting requirements of FAR 8.405-6(b)(3)(i) do not apply if:

- The nature of the file (e.g., size, format) does not make it cost-effective or practicable for contracting officers to provide access through GSA's e-Buy tool; or
- The agency's senior procurement executive makes a written determination that access through e-Buy is not in the Government's interest (FAR 8.405-6(b)(3)(ii)(B) and (C)).

The Department's current provider for reverse auction services, FedBid, has developed an automated data feed directly to the Government-wide point of entry (GPE) at www.FedBizOpps.gov (FBO) that streamlines the posting of synopsis/solicitation information for acquisition personnel but e-Buy disallows that data feed from FedBizOpps. The use of FedBid has been successful and the Department desires to extend its use, where appropriate, to limited source requirements under FAR 8.405-6(b).

Purpose

The purpose of this memorandum is to issue the attached class deviation which authorizes deviation from FAR 8.405-6 for requirements under FAR 8-405-6(b), using the FedBid reverse auction tool. This deviation authorizes ordering activities to post the information relevant to the GSA Multiple Award Schedule (MAS) as detailed at FAR 8.405-6(b)(3)(1), including brand name

documentation or justification and the solicitation, to the Government-wide point of entry (GPE) at www.FedBizOpps.gov (FBO) instead of and as an alternative to using GSA's electronic Request for Quote (RFQ) /Request for Proposal (RFP) system, e-Buy, at www.ebuy.gsa.gov.

Action Required
When using the FedBid reverse auction tool for requirements under 8.405-6(b), Contracting Officers shall post the solicitation and required documentation or justification to the FBO using FedBid's automatic feed and comply with FAR Part 8.405 requirements. Further information on the Department's use of FedBid is available in Procurement Memorandum 2012-05.

Effective Date
This class deviation is effective upon issuance and remains in effect until rescinded or issuance of a FAR change or until e-Buy and FedBizOpps compatibility issues can be resolved.

Additional Information
Questions may be directed to Tammy Journet at 202-482-4511 or tjournet@doc.gov

Attachment

DEPARTMENT OF COMMERCE

CLASS DEVIATION FROM THE FEDERAL ACQUISITION REGULATION

Reference FAR Part 8.405 – Ordering Procedures for Federal Supply Schedules

Determination and Findings

For requirements under 8.405-6(b), Ordering Procedures for Federal Supply Schedules, Limiting sources, items peculiar to one manufacturer *[such as a particular brand name, product, or a feature of a product]*, the Department of Commerce is authorizing a class deviation to permit a change in posting location from GSA's electronic Request for Quote (RFQ) /Request for Proposal (RFP) system, e-Buy, at www.ebuy.gsa.gov (per FAR 8.405-6(b(3)(i)) to the Government-wide point of entry (GPE) at www.FedBizOpps.gov (FBO), when using the FedBid reverse auction tool.

Findings

1. FAR Part 8.4 sets forth the general requirements for government buyers ordering supplies or services from GSA Schedule holders. FAR 8.405 was updated to address publication requirements for orders containing brand specific requirements. The updated language implements policy set forth in the memoranda issued by the Office of Management and Budget dated April 11, 2005, and April 17, 2006, and the determinations of FAR Case 2005-037, regarding Brand Name Specifications.

2. For procurements containing brand specifications, FAR 8.405-1(e) generally requires buyers to post the solicitation along with the brand name justification or documentation, to e-Buy, as required by FAR 8.405-6, Limiting Sources. However, the posting requirements of FAR 8.405-6(b)(3)(i) do not apply if:
   - The nature of the file (e.g., size, format) does not make it cost-effective or practicable for contracting officers to provide access through e-Buy (FAR 8.405-6(b)(3)(ii)(B) ; or
   - The agency's senior procurement executive makes a written determination that access through e-Buy is not in the Government's interest (FAR 8.405-6(b)(3)(ii) (C)).

3. At this time, unlike the Government wide point of entry (GPE) at www.FedBizOpps.gov (FBO), e-Buy is unable to upload electronically formatted solicitation data from other online procurement systems or marketplaces, such as FedBid. This means that for Schedule-based orders with brand name specifications competed through these alternative means, buyers must manually re-enter solicitation data in order for it to be posted to e-Buy to comply with FAR 8.402(d)(ii) and 8.405-6). The Department has determined that this data incompatibility issue warrants application of one of the two exceptions described above, eliminating the requirement to post to e-Buy when using alternative commercially available tools like FedBid and, instead, permitting automated postings of the solicitation, justification or documentation, as required by 8.405-6, to FBO. This approach accomplishes 2 things: i) it maximizes the use of efficient, automated posting processes by eliminating manual and double entry of solicitation data and ii) it maximizes public notice of the requirement by utilizing the publicly available GPE.

4. The Agency's current provider for reverse auction services, FedBid, has developed an automated data feed directly to www.FedBizOpps.gov that streamlines the posting of synopsis/solicitation information for acquisition personnel but at this time e-Buy disallows that data feed from www.FedBizOpps.gov to itself.

5. An analysis of DOC's FY 2012 requirements acquired using FedBid demonstrates its use has resulted in increased competition and cost savings, and a higher percentage of dollars being awarded to small business. The Department therefore seeks to maximize the potential benefits available from FedBid by extending its use, where appropriate, to limited source requirements under FAR 8.405-6(b).

6. Through the automated posting feature to FBO, use of FedBid for 8.405-6(b) limited source requirements provides for maximum public notice and access to the solicitation, justification and documentation information. Manual double entry of this information into e-Buy would be highly inefficient and time consuming.

7. Accordingly, per FAR 8.405-6(b)(3)(ii)(B) and (C), the Senior Procurement Executive finds that for FAR 8-405-6(b) requirements using FedBid, posting through e-Buy is not cost-effective nor in the Government's interest and that such requirements should instead be posted to the government-wide point of entry at FBO via FedBid's automatic posting feature.

Determination

In accordance with FAR 1.404 and pursuant to FAR 8.405-6(b)(3)(ii)(B) and (C), I hereby authorize this class deviation from FAR 8.405-6 for requirements under FAR 8-405-6(b), using the FedBid reverse auction tool. This deviation authorizes ordering activities to post the information relevant to the GSA Multiple Award Schedule (MAS), as detailed at FAR 8.405-6(b)(3)(i), such as brand name documentation or justification and the solicitation, to FBO instead as an alternative to using e-Buy.

This determination is based on analysis of the findings described herein. This class deviation will remain in effect until rescinded or issuance of a FAR change or until e-Buy and FBO compatibility issues can be resolved.

Barry Berkowitz

Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

2/8/13
Date