

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 5, 6, 10, 12, and 25**

[FAC 2005–24; FAR Case 2006–016; Item II; Docket 2008–0001; Sequence 2]

RIN 9000–AK70

**Federal Acquisition Regulation; FAR
Case 2006–016, Numbered Notes for
Synopsis**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to update and clarify policy for synopses of proposed contract actions and to delete all references to Numbered Notes (hereafter referred to as “Notes”).

DATES: *Effective Date:* March 31, 2008

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–24, FAR case 2006–016.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 10964, March 12, 2007, requesting comments on amending the Federal Acquisition Regulation (FAR) to update and clarify policy for synopses of proposed contract actions and to delete all references to Notes in the FAR and Federal Business Opportunities (FedBizOpps) electronic publication. The comment period closed May 11, 2007. Four sources submitted comments on the proposed rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided below:

Comment A: One commenter noted that the Notes were helpful when the buyer fails to provide the required information in the body of the synopsis and stated there should be more drop-down boxes to replace the Notes in

order to get more standardized synopses.

Response: Drop-down menus are provided only for those information elements that are mandatory, regardless of the synopsis action and procurement requirement (e.g., classification code, country code, and set-aside code) and that are conducive to incorporation in such menus. Incorporating all potential information that might be relevant to a synopsis into the form of drop-down menus would make the FedBizOpps design lengthy, cumbersome and costly to implement and maintain. The Councils believe that information formerly contained in the Numbered Notes that is valuable to potential offerors should be included in full text in the body of the synopsis where it can be fully explained as it pertains to the proposed acquisition.

Comment B: Another commenter recommended additional language in FAR 5.207 or additional drop-down boxes in FedBizOpps for six specific former Notes:

(1) Note 8: Recommended a drop-down box and language in FAR 5.207 addressing access to data designated as Militarily Critical Technical Data.

Response: Information similar to that contained in this Note is valuable to potential bidders and offerors and should be placed in the body of the synopsis. Buying offices that knew previously to include this Note will know now to include instructions regarding this certification. There is no reference to militarily critical technical data in the FAR as this requirement is unique to DoD procurement; therefore, language in FAR 5.207 or a drop down menu in FedBizOpps is not deemed appropriate.

(2) Note 12: The commenter noted the proposed rule language to be added to FAR 52.207(c)(13) addressing Trade Agreement requirements, but also recommended including the suggested notices as choices in drop-down boxes in FedBizOpps.

Response: The proposed FAR 52.207(c)(13) revision provides exact language appropriate for inclusion in the body of the synopsis. Use of a drop-down menu is not deemed appropriate.

(3) Note 13: The commenter agreed with deletion of the Note, but recommended adding language to FAR 5.207 to require the synopsis to address any restrictions on competition.

Response: This Note referred to restrictions on competition in accordance with FAR 6.302–3; however, FAR 5.202(a)(10) provides for an exception to publishing a synopsis in that case. Further, restrictions on

competition for other reasons are already covered at 5.207(c)(14).

(4) Note 22: The commenter recommended including the language from the current Note as a drop-down box selection in FedBizOpps.

Response: This Note refers to single/sole source intentions pursuant to FAR 6.302. Rather than relying on a drop down menu with a generic statement and no further explanation, the Councils believe that detailed rationale for the lack of competition should be placed in the body of the synopsis, as currently required by 5.207(c)(14).

(5) Note 23: The commenter recommended including the language from the current Note (updated as necessary) as a drop-down box selection in FedBizOpps.

Response: Information contained in this Note pertains to qualification requirements and should be placed in the body of the synopsis, where tailored language can explain the type of qualification requirement. Use of a drop-down menu is not deemed appropriate.

(6) Note 24: The commenter recommended including the language from the current Note as a drop-down box selection in FedBizOpps.

Response: This Note is an extensive discussion of Brooks Act requirements regarding architect-engineer offerors. FAR 36.603(b) provides guidance to contracting officers on qualification data submission requirements, and based upon value to potential offerors, appropriate tailored information should be placed in the body of the synopsis. Use of a drop-down menu is not deemed appropriate.

In summary, the purpose of the synopsis is to provide sufficient information for prospective respondents to determine their interest and capability regarding the pending solicitation. Therefore, information contained in the Notes has value to the synopsis. However, since there is no longer a need to restrict the content of a synopsis, the updated substance of these Notes should, at the discretion of the organization and as applicable to the solicitation, be placed in full text in the synopsis. No change to the proposed rule is required to satisfy this comment.

Comment C: One commenter questioned why we had retained the prohibition at 5.207(g) regarding posting cancellations of synopses or solicitations on FedBizOpps. The commenter suggested that the original reasons for this prohibition had possibly gone away with the transition from the hard copy Commerce Business Daily (CBD) to the electronic FedBizOpps and indicated that many contracting officers

were already violating this prohibition and posting cancellations there.

Response: The Councils agree. Research into the original rationale for this prohibition indicates it was part of the overall attempt by the Department of Commerce to limit the number and length of announcements on the CBD, due to space limitations and the cost of each announcement. The CBD format and cost are no longer obstacles, and the Department of Commerce indicates it would not be opposed to a change in this area. To make it easier for potential bidders and offerors to know that a solicitation has been canceled and, thereby, to save the cost and time that would go into useless offers without such knowledge, the Councils have agreed to new language at FAR 5.207(f) making it permissive for contracting officers to post cancellations on FedBizOpps.

Comment D: A final commenter indicated that there is confusion as to what is being sought from industry in Note 22, where the Note states "Interested parties may identify their interest and capability to respond to the requirement or submit proposals" in response to a sole source synopsis. He noted that, at the point in time when the synopsis is published, there is no solicitation available, and therefore, using the standard FAR definition, a proposal cannot be submitted. He suggested clarifying in the final rule that a submission identifying interest and capability to submit a proposal would be adequate.

Response: The Councils agree. In researching pertinent FAR sections, we noted that 5.207(c)(15) suggested inserting a statement in the synopsis that all responsible sources may submit " * * * a bid, proposal, or quotation which shall be considered by the agency." Further, 6.302-1(d)(2) currently states only that " * * * the notices required by 5.201 shall have been published and any bids and proposals must have been considered." These references have been revised to be consistent and to allow "capability statements" to be added to the list of responses from industry.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final

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., because it makes no significant change to the policy for the synopses of proposed contract actions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 5, 6, 10, 12, and 25

Government procurement.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 6, 10, 12, and 25 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 6, 10, 12, and 25 continue to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Amend section 5.203 by revising the last sentence of the introductory text of paragraph (a) to read as follows:

5.203 Publicizing and response time.

* * * * *

(a) * * * The notice must be published at least 15 days before issuance of a solicitation, or a proposed contract action the Government intends to solicit and negotiate with only one source under the authority of 6.302, except that, for acquisitions of commercial items, the contracting officer may—

* * * * *

■ 3. Amend section 5.205 by revising the fifth sentence following the paragraph heading of paragraph (a) to read as follows:

5.205 Special situations.

(a) * * * Advanced notices must be entitled "Research and Development Sources Sought" and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained.

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■ 4. Amend section 5.207 by—

■ a. Removing paragraph (a)(4) and redesignating paragraphs (a)(5) through

(a)(19) as (a)(4) through (a)(18) respectively;

■ b. Revising the newly redesignated paragraph (a)(9);

■ c. Revising paragraphs (c)(13), (c)(14), (c)(15), and (d);

■ d. Removing paragraph (e), and redesignating paragraphs (f) and (g) as (e) and (f), respectively; and

■ e. Revising the newly redesignated paragraph (f).

The revised text reads as follows:

5.207 Preparation and transmittal of synopses.

(a) * * *

(9) Closing Response Date.

* * * * *

(c) * * *

(13)(i) If the solicitation will include the FAR clause at 52.225-3, Buy American Act-Free Trade Agreements-Israeli Trade Act, or an equivalent agency clause, insert the following notice in the synopsis: "One or more of the items under this acquisition is subject to Free Trade Agreements."

(ii) If the solicitation will include the FAR clause at 52.225-5, Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: "One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements."

(iii) If the solicitation will include the FAR clause at 52.225-11, Buy American Act-Construction Materials under Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: "One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements."

(14) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source and insert a statement of the reason justifying the lack of competition.

(15)(i) Except when using the sole source authority at 6.302-1, insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(ii) When using the sole source authority at 6.302-1, insert a statement that all responsible sources may submit a capability statement, proposal, or quotation, which shall be considered by the agency.

* * * * *

(d) *Set-asides.* When the proposed acquisition provides for a total or partial small business program set-aside, or when the proposed acquisition provides

for a local area set-aside (see Subpart 26.2), the contracting officer shall identify the type of set-aside in the synopsis and in the solicitation.

* * * * *

(f) *Notice of solicitation cancellation.* Contracting officers may publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE.

PART 6—COMPETITION REQUIREMENTS

■ 5. Amend section 6.302–1 by revising paragraph (d)(2) to read as follows:

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

* * * * *

(d) * * *

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids, proposals, quotations, or capability statements must have been considered.

PART 10—MARKET RESEARCH

10.002 [Amended]

■ 6. Amend section 10.002 in paragraph (d)(2) by removing “(see 5.207(e))”.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.603 [Amended]

■ 7. Amend section 12.603 by removing paragraph (c)(2) (xv), and redesignating paragraphs (c)(2)(xvi) and (c)(2) (xvii) as paragraphs (c)(2)(xv) and (c)(2)(xvi), respectively.

PART 25—FOREIGN ACQUISITION

■ 8. Amend section 25.408 by revising paragraph (a)(2) to read as follows:

25.408 Procedures.

(a) * * *

(2) Comply with the requirements of 5.207, Preparation and transmittal of synopses;

* * * * *

[FR Doc. E8–3379 Filed 2–27–08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–24; FAR Case 2007–016; Item III]

[Docket 2008–0001; Sequence 3]

RIN 9000–AK89

Federal Acquisition Regulation; FAR Case 2007–016, Trade Agreements—New Thresholds

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed to issue an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative (USTR).

DATES: *Effective Date:* February 28, 2008.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before April 28, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–24, FAR case 2007–016, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2007–016” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2007–016. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2007–016” on your attached document.

- *Fax:* 202–501–4067.

- *Mail:* General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–24, FAR case 2007–016, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>. Please include your name and company name (if any) inside the document.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 2005–24, FAR Case 2007–016.

SUPPLEMENTARY INFORMATION:

A. Background

Every two years, the trade agreements thresholds are escalated according to a pre-determined formula set forth in the agreements. The USTR, in the **Federal Register**, at 72 FR 71166, December 14, 2007 and 72 FR 73904, December 28, 2007, specified the following new thresholds:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA FTAs	\$194,000	\$194,000	\$7,443,000
Australia FTA	67,826	67,826	7,443,000
Bahrain FTA	194,000	194,000	8,817,449
CAFTA–DR (El Salvador, Dominican Republic, Guatemala, Honduras, and Nicaragua)	67,826	67,826	7,443,000
Chile FTA	67,826	67,826	7,443,000
Morocco FTA	194,000	194,000	7,443,000
NAFTA:			
—Canada	25,000	67,826	8,817,449
—Mexico	67,826	67,826	8,817,449
Singapore FTA	67,826	67,826	7,443,000
Israeli Trade Act	50,000		