

Federal Acquisition Regulation

10.001

pool, the contracting officer shall verify its approved status with the SBA District Office Director or other approving agency and document the contract file that the verification was made.

(d) Pools approved by the SBA under the Small Business Act are entitled to the preferences and privileges accorded to small business concerns. Approval under the Defense Production Act does not confer these preferences and privileges.

(e) Before awarding a contract to an unincorporated pool, the contracting officer shall require each pool member participating in the contract to furnish a certified copy of a power of attorney identifying the agent authorized to sign the offer or contract on that member's behalf. The contracting officer shall attach a copy of each power of attorney to each signed copy of the contract retained by the Government.

[48 FR 42142, Sept. 19, 1983, as amended at 61 FR 67410, Dec. 20, 1996]

9.703 Contracting with individual pool members.

(a) Pool members may submit individual offers, independent of the pool. However, the contracting officer shall not consider an independent offer by a pool member if that pool member participates in a competing offer submitted by the pool.

(b) If a pool member submits an individual offer, independent of the pool, the contracting officer shall consider the pool agreement, along with other factors, in determining whether that pool member is a responsible prospective contractor under subpart 9.1.

PART 10—MARKET RESEARCH

Sec.

10.000 Scope of part.

10.001 Policy.

10.002 Procedures.

10.003 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

SOURCE: 60 FR 48237, Sept. 18, 1995, unless otherwise noted.

10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements the requirements of 41 U.S.C. 3306(a)(1), 41 U.S.C. 3307, 10 U.S.C. 3453, and 6 U.S.C. 796.

[60 FR 48237, Sept. 18, 1995, as amended at 74 FR 52849, Oct. 14, 2009; 79 FR 24199, Apr. 29, 2014; 87 FR 73896, Dec. 1, 2022]

10.001 Policy.

(a) Agencies shall—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting offers for acquisitions that could lead to consolidation or bundling (15 U.S.C. 644(e)(2)(A) and 15 U.S.C. 657q);

(v) Before awarding a task or delivery order under an indefinite-delivery-indefinite-quantity (ID/IQ) contract (*e.g.*, GWACs, MACs) for other than a commercial product or commercial service in excess of the simplified acquisition threshold 10 U.S.C. 3453(c); and

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; and

10.002

48 CFR Ch. 1 (10–1–23 Edition)

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities (see 26.205); and

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial products or commercial services, or, to the extent commercial products suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial products or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial products or commercial services, such as type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;

(v) Ensure maximum practicable use of recovered materials (see subpart 23.4) and promote energy conservation and efficiency;

(vi) Determine whether consolidation is necessary and justified (see 7.107–2) (15 U.S.C. 657q);

(vii) Determine whether bundling is necessary and justified (see 7.107–3) (15 U.S.C. 644(e)(2)(A));

(viii) Determine whether the acquisition should utilize any of the small business programs in accordance with part 19; and

(ix) Assess the availability of supplies or services that meet all or part of the applicable information and communication technology accessibility standards at 36 CFR 1194.1 (see subpart 39.2).

(b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.

(c) If an agency contemplates consolidation or bundling, the agency—

(1) When performing market research, should consult with the agency small business specialist and the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see 19.402(a); and

(2) Shall notify any affected incumbent small business concerns of the Government's intention to bundle the requirement and how small business concerns may contact the appropriate Small Business Administration procurement center representative (see 7.107–5(a)).

(d) See 10.003 for the requirement for a prime contractor to perform market research in contracts in excess of \$6 million, other than contracts for the acquisition of commercial products or commercial services (section 826 of Pub. L. 110–181).

[60 FR 48237, Sept. 18, 1995, as amended at 64 FR 72443, Dec. 27, 1999; 65 FR 46054, July 26, 2000; 66 FR 20896, Apr. 25, 2001; 68 FR 4049, Jan. 27, 2003; 68 FR 60005, Oct. 20, 2003; 69 FR 8313, Feb. 23, 2003; 71 FR 36925, June 28, 2006; 71 FR 74676, Dec. 12, 2006; 74 FR 52849, Oct. 14, 2009; 75 FR 34278, June 16, 2010; 76 FR 14565, Mar. 16, 2011; 80 FR 38297, July 2, 2015; 81 FR 67772, Sept. 30, 2016; 84 FR 19837, May 6, 2019; 85 FR 11756, Feb. 27, 2020; 85 FR 62488, Oct. 2, 2020; 86 FR 44231, Aug. 11, 2021; 86 FR 61021, Nov. 4, 2021; 87 FR 73896, Dec. 1, 2022]

10.002 Procedures.

(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial products, commercial services, or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The contracting officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant. Market research involves obtaining information specific to the product or service being acquired and should include—

(i) Whether the Government's needs can be met by—

(A) Products or services of a type customarily available in the commercial marketplace;

(B) Products or services of a type customarily available in the commercial marketplace with modifications; or

(C) Products or services used exclusively for governmental purposes;

(ii) Customary practices regarding customizing, modifying or tailoring of products of services to meet customer needs and associated costs;

(iii) Customary practices, including warranty, buyer financing, discounts, contract type considering the nature and risk associated with the requirement, etc., under which commercial sales of the products or services are made;

(iv) The requirements of any laws and regulations unique to the item being acquired;

(v) The availability of items that contain recovered materials and items that are energy efficient;

(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and

(vii) Whether the Government's needs can be met by small business concerns that will likely submit a competitive offer at fair market prices (see part 19).

(2) Techniques for conducting market research may include any or all of the following:

(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.

(ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.

(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.

(iv) Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at <https://www.contractdirectory.gov/> and other Government and commercial databases that provide information relevant to agency acquisitions.

(v) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.

(vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.

(vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.

(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

(ix) Reviewing systems such as the System for Award Management, the Federal Procurement Data System, and the Small Business Administration's Dynamic Small Business Search.

(c) If market research indicates commercial products, commercial services, or nondevelopmental items might not be available to satisfy agency needs, agencies shall reevaluate the need in accordance with 10.001(a)(3)(ii) and determine whether the need can be restated to permit commercial products, commercial services, or nondevelopmental items to satisfy the agency's needs.

(d)(1) If market research establishes that the Government's need may be met by a type of product or service customarily available in the commercial marketplace that would meet the definition of a commercial product or commercial service at subpart 2.1, the contracting officer shall solicit and award any resultant contract using the policies and procedures in part 12.

(2) If market research establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, part 12 shall not be used. When publication of the notice at 5.201 is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use part 12 for the acquisition.

(e) The head of the agency shall document the results of market research in

10.003

a manner appropriate to the size and complexity of the acquisition.

[60 FR 48237, Sept. 18, 1995, as amended at 68 FR 43863, July 24, 2003; 68 FR 56679, 56682, Oct. 1, 2003; 71 FR 74676, Dec. 12, 2006; 73 FR 10962, Feb. 28, 2008; 75 FR 34278, June 16, 2010; 75 FR 77745, Dec. 13, 2010; 78 FR 13769, Feb. 28, 2013; 85 FR 11756, Feb. 27, 2020; 85 FR 67623, Oct. 23, 2020; 86 FR 61021, Nov. 4, 2021]

10.003 Contract clause.

The contracting officer shall insert the clause at 52.210-1, Market Research, in solicitations and contracts over \$6 million, other than solicitations and contracts for the acquisition of commercial products or commercial services.

[86 FR 61021, Nov. 4, 2021]

PART 11—DESCRIBING AGENCY NEEDS

Sec.

- 11.000 Scope of part.
- 11.001 Definitions.
- 11.002 Policy.

Subpart 11.1—Selecting and Developing Requirements Documents

- 11.101 Order of precedence for requirements documents.
- 11.102 Standardization program.
- 11.103 Market acceptance.
- 11.104 Use of brand name or equal purchase descriptions.
- 11.105 Items peculiar to one manufacturer.
- 11.106 Purchase descriptions for service contracts.
- 11.107 Solicitation provision.

Subpart 11.2—Using and Maintaining Requirements Documents

- 11.201 Identification and availability of specifications.
- 11.202 Maintenance of standardization documents.
- 11.203 Customer satisfaction.
- 11.204 Solicitation provisions.

Subpart 11.3—Acceptable Material

- 11.301 Definitions.
- 11.302 Policy.
- 11.303 Special requirements for paper.
- 11.304 Contract clause.

Subpart 11.4—Delivery or Performance Schedules

- 11.401 General.

48 CFR Ch. 1 (10-1-23 Edition)

- 11.402 Factors to consider in establishing schedules.
- 11.403 Supplies or services.
- 11.404 Contract clauses.

Subpart 11.5—Liquidated Damages

- 11.500 Scope.
- 11.501 Policy.
- 11.502 Procedures.
- 11.503 Contract clauses.

Subpart 11.6—Priorities and Allocations

- 11.600 Scope of subpart.
- 11.601 Definitions.
- 11.602 General.
- 11.603 Procedures.
- 11.604 Solicitation provision and contract clause.

Subpart 11.7—Variation in Quantity

- 11.701 Supply contracts.
- 11.702 Construction contracts.
- 11.703 Contract clauses.

Subpart 11.8—Testing

- 11.801 Preaward in-use evaluation.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

SOURCE: 60 FR 48238, Sept. 18, 1995, unless otherwise noted.

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.

As used in this part—

Reconditioned means restored to the original normal operating condition by readjustments and material replacement.

Remanufactured means factory rebuilt to original specifications.

[62 FR 44810, Aug. 22, 1997, as amended at 63 FR 9051, Feb. 23, 1998; 65 FR 36017, June 6, 2000]

11.002 Policy.

(a) In fulfilling requirements of 10 U.S.C. 3206(a), 10 U.S.C. 3453, 41 U.S.C. 3306(a), and 41 U.S.C. 3307, agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see part 6), or maximum practicable competition when using simplified acquisition procedures, with due