

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 3, 7, 13, 15, 17, and 52**

[FAC 2024–06; FAR Case 2015–038, Item I; Docket No. FAR–2015–0038; Sequence No. 1]

RIN 9000–AN31

**Federal Acquisition Regulation:
Reverse Auction Guidance**

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to provide guidance on the use of reverse auctions.

DATES: Effective August 29, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or by email at michael.o.jackson@gsa.gov. For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2024–06, FAR Case 2015–038.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 85 FR 78815 on December 7, 2020, in response to Government Accountability Office (GAO) report GAO–14–108, *Reverse Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings*, dated December 2013, and GAO report 18–446, *Reverse Auctions: Additional Guidance Could Help Increase Benefits and Reduce Fees*, dated July 2018. GAO recommended that the Director of the Office of Management and Budget amend the FAR to address agencies' use of reverse auctions and issue Governmentwide guidance to maximize competition and savings when using reverse auctions. In response, the Office of Federal Procurement Policy issued a memorandum on June 1, 2015, entitled *Effective Use of Reverse Auctions*. The preamble to the proposed rule contained a detailed description of Reverse Auctions and the use of a reverse

auction to obtain competitive prices for an acquisition.

This final rule addresses concerns reported in both GAO reports and implements the resulting OFPP policy memorandum.

Twenty-three respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

Several changes were made to the final rule as a result of public comments.

New definitions are added at FAR 17.801 for Government data and Government-related data to identify the information subject to the access, use, and disclosure limitations on reverse auction providers added to the final rule. Conforming changes are made in the contract clause, FAR 52.217–12, Reverse Auction Services.

The final rule provides new guidance at FAR 17.802(c)(4) for contracting officers to ensure offerors and reverse auction service providers are aware of the Government's access, use, and disclosure requirements. Conforming changes are made in the contract clause, FAR 52.217–12, Reverse Auction Services.

Guidance at FAR 17.802(d)(5)(iii) is revised to remove text that required all documentation received from offerors in response to a reverse auction be removed from the reverse auction service provider's business and computer systems upon completion of the reverse auction. Instead, contracting officers shall provide disposition instructions in a solicitation and resulting contract for reverse auction services, see FAR 17.802(c)(4).

A prohibition on the use of reverse auctions for procurements of architect-engineer (A/E) services that are subject to the Brooks Act (40 U.S.C. chapter 11) is added to FAR 17.803, Applicability, because reverse auctions do not comply with the qualifications-based selection processes required by statute and implemented at FAR subpart 36.6.

The point of contact requirements at FAR 17.804(c)(1) are revised to clarify that a contracting officer's name and email address are required for every reverse auction.

The contract clause, FAR 52.217–12, Reverse Auction Services, is revised to incorporate the new definitions at FAR 17.801, and the Government's access, use, disclosure and disposition requirements.

B. Analysis of Public Comments**1. Support for the Rule**

Comment: Several respondents voiced support for the proposed rule.

Response: The Councils acknowledge support for the rule.

2. Removal of Reverse Auction Data

Comment: Several respondents were concerned that the proposed FAR changes requiring the removal of all documentation received from offerors in response to the reverse auction from its business and computer systems will impact the Government's ability to carry out audits and other activities. The respondents believed that the data received and housed by the service providers is essential to conventional investigations and in the use of data analytics.

Response: The final rule is revised to address concerns regarding contractor use and access to Government data and Government-related data. The text that required the removal of the reverse auction information is deleted. New text is added to provide guidance to contracting officers on the use, access, disclosure, and disposition of Government data and Government-related data at FAR 17.802(c)(4) and (d)(4). FAR clause 52.217–12 is revised to clarify direction to contractors.

Comment: A respondent asserted that reverse auction service providers should be able to do basic spend analysis.

Response: The final rule protects against the unauthorized use of Government data and Government-related data. A reverse auction service provider may be able to conduct basic spend analysis for an agency if the contracting officer specifically authorizes such analysis in the terms of the contract, task order, or delivery order (see FAR 52.217–12(b)(3)(i) and (b)(4)). This authority is specific to the issuing agency data and may not be used for comparison to other Government agencies.

3. Applicability of Reverse Auctions

Comment: Several respondents requested that the rule not apply to construction and construction-related services in accordance with the prohibitions in HR 133, Consolidated Appropriations Act, 2021, Title IV, Construction Consensus Procurement Improvement Act of 2020.

Response: Subsequent to the proposed rule, section 402 of the Construction Consensus Procurement Improvement Act of 2020 (Pub. L. 116–260, December 27, 2020) was enacted. However, the Construction Consensus Procurement Act of 2021 (Pub. L. 117–28, July 26, 2021) superseded the 2020 statute. The new statute requires rulemaking to establish a definition for complex, specialized, or substantial design and construction services to include many of the original prohibitions from the 2020 statute and limits the prohibition to procurements valued above the simplified acquisition threshold. The Councils have opened a new FAR case 2023–003, Prohibition on the Use of Reverse Auctions for Complex, Specialized, or Substantial Design and Construction Services, to implement the 2021 statute.

Comment: Some respondents requested the rule prohibit the use of reverse auctions for A/E services including for surveying and mapping, as these are subject to the qualifications-based selection process codified in the Brooks Act (40 U.S.C. chapter 11) and implemented at FAR subpart 36.6. A respondent recommended a revision at FAR 17.803, Applicability.

Response: The final rule is revised to exclude A/E professional services subject to 40 U.S.C. chapter 11 from FAR 17.803, Applicability.

4. Expansion of Reverse Auctions

Comment: Some respondents requested that the rule be expanded to allow the reverse auctioning of construction projects and materials, in addition to personal protective equipment (PPE), asserting that these products/services have been successfully reverse auctioned. A respondent suggested the rule could contain an exception that allows reverse auctions at the discretion of the contracting officer. Another respondent, however, supported the prohibition on PPE because of concerns associated with the medical supply chain.

Response: The final rule is revised to prohibit the use of reverse auctions for certain construction and A/E services to comply with existing statute. New FAR case 2023–003 has been opened to implement new statutory prohibitions and guidance regarding the use of reverse auctions for construction services. Sections 813 and 814 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328), as amended by section 882 of the NDAA for FY 2018 (Pub. L. 115–91), and section 880 of the John S. McCain National Defense Authorization Act for FY 2019 (Pub. L. 115–232, 41

U.S.C. 3701 note) prohibit the use of reverse auctions for PPE.

5. Market Research

Comment: Some respondents were concerned that the requirement at FAR 17.804(a) to conduct market research and execute a determination and finding when considering the use of a reverse auction service provider will cause confusion and significant delays in awarding actions when using reverse auctions. While the respondents agree with the requirements when awarding the initial agency-wide contract or for individual actions with non-contracted providers, the respondents do not believe it is necessary for each action, when an agency has an existing agency-wide contract with a reverse auction provider.

Response: Contracting officers conduct market research for new requirements in accordance with FAR part 10. The decision regarding the use of a reverse auction provider would be addressed during that process. A decision to use a reverse auction must be documented in the contract file; however, it is not a requirement to issue a determination and finding as defined at FAR subpart 1.7. As a result, the text has been revised to clarify the intent.

6. Display of Proposed Price

Comment: Some respondents expressed concern that the proposed rule requires the auction service provider to display the offeror's proposed prices. The respondents stated that requiring that pricing be shared with other offerors may increase the risk of protest in cases where an agency selects an offer other than the lowest price.

Response: A reverse auction requires prices to be displayed in order to provide offerors the opportunity to submit a lower price. Use of reverse auctions should be used in circumstances where a lowest price, technically acceptable source selection method is contemplated.

Comment: A respondent raised the issue that some providers do not actually reveal the other bidder's price(s), but instead just state whether the bidder has the lowest price.

Response: At a minimum, reverse auction service providers must provide all offerors with the lowest price offered, without disclosure of the competing offerors' identity, in order to have the opportunity to submit lower priced offers until the close of the auction.

7. Disclosure of Fees

Comment: Some respondents had concerns that the proposed rule required the breakout of the purchase price from the reverse auction service provider fee. One respondent questioned the purpose of the disclosure if the agency had already negotiated the fee and determined that it was a best value to the Government when the contract with the reverse auction service provider was first established. One respondent also expressed concerns that a contracting officer will have to evaluate the fee during the evaluation of price reasonableness, resulting in delayed contract awards.

Response: The rule requires contracting officers to evaluate a reverse auction provider fee when considering whether to use a reverse auction, regardless of whether the agency has an existing contract with the reverse auction provider. The contracting officer is not expected to evaluate the fee when determining price reasonableness of the offer but is required at FAR 17.804(c)(2) to verify that the fee is in accordance with the reverse auction provider's fee structure.

Comment: A respondent expressed concerns that disclosure of the provider's fee is not a standard commercial practice for e-Commerce marketplace providers and would create an unequal playing field if only applied to reverse auctions. For example, GSA's commercial e-Commerce pilot does not require its e-marketplace providers to list the fees associated with each purchase separately.

Response: The disclosure of fees is required to address the recommendations from the GAO on increasing transparency with regard to the fee. Contracting officers, at the end of the auction, are required to verify that the fee is in accordance with the reverse auction provider's fee structure.

Comment: A respondent stated that fees paid by an offeror can be provided before bidding, as an effective way to ensure no surprises to the offeror and also to make the bidding inclusive of all costs, including the reverse auction provider fee.

Response: Reverse auction service providers may structure their fee arrangements as they see fit as long as the provider complies with the terms of the contract.

8. Use of Reverse Auctions

Comment: One respondent recommended that agencies not use reverse auctions for small procurements or those for which there are limited sources of supplies because it deters

competition. The respondent recommends only using reverse auctions for actions greater than \$1 million and/or with longer periods of performance because that will increase competition and agency savings.

Response: Contracting officers conduct market research commensurate with the scope and breadth of each requirement to determine the best method of procurement. The rule provides guidance on when a reverse auction may be appropriate.

Comment: One respondent recommends that the FAR expressly state that reverse auctions should not be limited to the SAT.

Response: The final rule does not limit reverse auctions to procurements below the SAT.

9. Exclusion of Offerors

Comment: A respondent expressed concerns that only the contracting officer may exclude an offeror from a reverse auction and recommends that reverse auction providers be granted the authority to exclude an offeror if the offeror is in breach of contract with the auction provider.

Response: Only an agency official may exclude an offeror from participating in an auction. (See Office of Federal Procurement Policy Memorandum, "Effective Use of Reverse Auctions", dated June 1, 2015).

10. Indefinite Delivery Indefinite Quantity (IDIQ) Contract and Blanket Purchase Agreement (BPA) Applicability

Comment: A respondent expressed concern that the new clause FAR 52.217-11 will create a barrier to using reverse auctions for Governmentwide acquisition contracts if it has not been included in the basic contract.

Response: The IDIQ or BPA contracting officer has the discretion to determine whether a reverse auction is an appropriate method of procurement for task orders, delivery orders, or orders under a BPA.

11. Contracting Officer Contact Information

Comment: A respondent recommends that contracting officer contact information be posted in accordance with FAR 5.102(c)(2) to allow original equipment manufacturers to advise the Government if grey market items are being proposed.

Response: The final rule clarifies the required contact information at FAR 17.804(c)(1) to include the name and email address of the contracting officer.

12. Additional Costs of Reverse Auctions

Comment: A respondent recommends that OFPP encourage agencies to cover the increased costs of monitoring reverse auctions for small businesses.

Response: The Councils do not believe that there would be any additional costs associated with a reverse auction over the costs of a non-reverse auction acquisition. The rule does not add any additional requirements for participants on a reverse auction that would increase costs.

13. Rule of Two Requirement

Comment: A respondent requests clarification of how reverse auctions will meet the rule of two requirements for service-disabled veteran-owned small businesses.

Response: As with any procurement, the contracting officer will consider the rule of two as a part of market research and acquisition planning. If the rule of two is satisfied, the contracting officer can then set aside the reverse auction.

14. Out of Scope

Five respondents submitted comments outside the scope of the case.

C. Other Changes

Minor edits were made to the final rule to update text for current FAR drafting conventions. The final rule revises the term "winning" offeror to "successful" offeror to comply with current FAR drafting conventions. Replacement of the term occurs in several instances at FAR 17.802, 17.804, and the contract clause FAR 52.217-12, Reverse Auction Services.

The final rule revises the terms "call" to "order" and "orders under a blanket purchase agreement" in lieu of "against" to comply with current FAR drafting conventions. Replacement of the terms occurs in several instances at FAR 17.802, 17.805 and the contract clauses at FAR 52.217-11, Reverse Auction-Orders and 52.217-12, Reverse Auction Services.

The final rule clarifies text at FAR 17.804(b)(1) to reflect that while an offeror's offered price(s) may be revealed to enable the execution of a reverse auction, an offeror's identity will only be revealed if the offeror is the successful offeror.

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

The reverse auction provision and clauses are available for use at or below the simplified acquisition threshold, for commercial products, including commercially available off-the-shelf items, and for commercial services.

IV. Expected Impact of the Rule

This final rule amends the FAR to provide guidance on the use of reverse auctions. The final rule provides additional guidance to contracting officers on the information necessary for a reverse auction service provider to comply with the Government's access, use, disclosure, and disposition requirements. This will ensure that Government data and Government-related data is protected from unauthorized access and disclosure.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) 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 impacts, 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.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601-612. The FRFA is summarized as follows:

DoD, GSA, and NASA are revising the Federal Acquisition Regulation (FAR) in response to Government Accountability Office (GAO) reports GAO-14-108, Reverse

Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings, dated December 2013, and 18–446, Reverse Actions: Additional Guidance Could Help Increase Benefits and Reduce Fees, dated July 2018. The rule also implements guidance from the Office of Federal Procurement Policy memorandum, Effective Use of Reverse Auctions, dated June 1, 2015, which resulted from GAO reports.

The objective of the rule is to address concerns raised by GAO regarding transparency and understanding of reverse auction service provider fees.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

The Government does not currently collect data on the number of awards that utilized a reverse auction to obtain pricing. However, GAO report 18–446 indicates that, while the total value of contracts awarded annually that utilize reverse auctions represents less than one percent of all annual Government contract spending, most of the annual contracts awarded that utilize reverse auctions are awarded to small entities.

The final rule does not impose any new reporting or recordkeeping requirements on any small entities.

There are no known alternative approaches to the rule that would accomplish the objectives of the rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 2, 3, 7, 13, 15, 17, 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 are amending 48 CFR parts 2, 3, 7, 13, 15, 17, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 7, 13, 15, 17, and 52 continues to read as follows:

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.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by adding in alphabetical order a definition for “Reverse auction” to read as follows:

2.101 Definitions.

* * * * *
Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, in which offerors see competing offerors’ price(s), without disclosure of the competing offerors’ identity, and have the opportunity to submit lower priced offers until the close of the auction.
* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 3. Amend section 3.103–2 by adding paragraph (a)(1)(iv) to read as follows:

3.103–2 Evaluating the certification.

(a) * * *

(1) * * *

(iv) Participating in a reverse auction (see subpart 17.8).

* * * * *

■ 4. Amend section 3.104–4 by revising paragraph (e)(1) to read as follows:

3.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

* * * * *

(e) * * *

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information. During reverse auctions, agencies may reveal to all offerors the offered price(s), but shall not reveal any offeror’s identity except for the awardee’s identity subsequent to an award resulting from the auction (see subpart 17.8);

* * * * *

PART 7—ACQUISITION PLANNING

7.105 [Amended]

■ 5. Amend section 7.105 by removing from paragraph (b)(4) introductory text the words “including” and “pre-award” and adding “including the basis for using a reverse auction (when applicable),” and “preaward” in their places, respectively.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 6. Amend section 13.104 by adding paragraph (c) to read as follows:

13.104 Promoting competition.

* * * * *

(c) When conducting a reverse auction, see subpart 17.8.

PART 15—CONTRACTING BY NEGOTIATION

■ 7. Amend section 15.306 by revising paragraph (e)(3) to read as follows:

15.306 Exchanges with offerors after receipt of proposals.

* * * * *

(e) * * *

(3) Reveals an offeror’s price without that offeror’s permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government’s discretion, to indicate to all offerors the cost or price that the Government’s price analysis, market research, and other reviews have identified as reasonable (41 U.S.C. 2102 and 2107). When using reverse auction procedures (see subpart 17.8), it is also permissible to reveal to all offerors the offered price(s), without revealing any offeror’s identity;

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

■ 8. Revise section 17.000 by—

■ a. Removing from paragraph (b) the word “and”;

■ b. Removing from paragraph (c) the text “contracting,” and adding “contracting; and” in its place; and

■ c. Adding paragraph (d).

The addition reads as follows:

17.000 Scope of part.

* * * * *

(d) The use of reverse auctions to obtain competitive pricing.

■ 9. Add subpart 17.8 to read as follows:

Subpart 17.8—Reverse Auctions

Sec.

17.800 Scope of subpart.

17.801 Definitions.

17.802 Policy.

17.803 Applicability.

17.804 Procedures.

17.805 Solicitation provision and contract clauses.

Subpart 17.8—Reverse Auctions

17.800 Scope of subpart.

This subpart prescribes policies and procedures for conducting reverse auctions and utilizing reverse auction service providers.

17.801 Definitions.

As used in this subpart—

Government data means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government, in the course of official Government business.

Government-related data means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (*e.g.*, financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

17.802 Policy.

(a) The use of reverse auctions may be appropriate when market research indicates that—

(1) A competitive marketplace exists for the supplies and/or services being acquired;

(2) Multiple offerors can satisfy the agency's requirement; and

(3) The nature of the supplies and/or services being acquired (*e.g.*, clearly defined specifications, less complex requirements) encourages an iterative bidding process (*i.e.*, multiple offerors participate and at least one offeror submits more than one offer during the reverse auction).

(b) The reverse auction process is used to obtain pricing for an acquisition. When using the reverse auction process, contracting officers are still required to follow the acquisition policies and procedures (*e.g.*, those prescribed in subpart 8.4 or 16.5, or part 13 or 15), as appropriate for the particular acquisition.

(c)(1) A service platform for conducting reverse auctions may be provided by a commercial or Government entity.

(2) While some reverse auction service providers are paid directly by the Government for reverse auction services, other providers may incorporate a fee structure that uses an indirect payment method. When using an indirect payment method, the reverse auction service provider adds a fee(s) to the price of the successful offer that is provided to the Government at the close

of an auction. The Government then pays the successful offeror the total price of the offer, which includes the fee(s) added by the reverse auction service provider. The reverse auction service provider then collects its fee(s) from the successful offeror.

(3) When acquiring reverse auction services from a commercial reverse auction service provider, agencies shall—

(i) Use competitive procedures, unless an exception applies;

(ii) Detail the provider's fee structure in the resultant contract or agreement for reverse auction services; and

(iii) Make the details of the contract or agreement for reverse auction services, including the provider's fee structure, available to contracting officers for consideration when determining whether to use a reverse auction service provider, in accordance with 17.804(a).

(4) When acquiring reverse auction services, the contracting officer shall ensure the following information is provided in the solicitation and contract:

(i) Descriptions of Government data and Government-related data.

(ii) Data ownership, licensing, delivery, and disposition instructions specific to the relevant types of Government data and Government-related data (*e.g.*, DD Form 1423, Contract Data Requirements List; work statement task; line item). Disposition instructions shall provide for the transition of data in commercially available, or open and non-proprietary format and for permanent records, in accordance with disposition guidance issued by the National Archives and Records Administration.

(d) Contracting officers shall only use the services of a reverse auction service provider that—

(1) Does not assert or imply that it can or will obtain a Government contract for participants of a reverse auction;

(2) Allows entities to register, at no cost, as potential offerors for reverse auctions conducted on behalf of the Government on the provider's reverse auction platform;

(3) Allows each entity, as part of the registration process, the opportunity to execute a proprietary data protection agreement with the provider; provided that the terms in the agreement do not affect the terms and conditions of a Government solicitation or contract;

(4) Protects from unauthorized use or disclosure and does not release outside of the Government—

(i) All contractor bid or proposal information (see 3.104–1) and source selection information associated with

providing reverse auction services to the Government;

(ii) All information similarly generated to support the issuance of a task order or delivery order or order under a blanket purchase agreement; and

(iii) Information identified by an offeror as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the reverse auction participant's price or proposal;

(5) Allows offerors to see the successive lowest price(s) offered in the auction without revealing an offeror's identity;

(6) At the close of each auction—

(i) Provides the Government with the successful offer, along with information that separately identifies the offeror's price and the price for each provider fee or charge included in the total price; and

(ii) Provides the Government with all information and documentation received from offerors in response to the reverse auction.

(7) Does not participate as an offeror in any reverse auction which the provider is hosting on behalf of the Government. This prohibition includes participation in a reverse auction by any entity with which the provider has a relationship that raises an actual or potential conflict of interest; and

(8) Asserts no rights or license in the data gathered or generated during a reverse auction.

(e) Only a contracting officer shall—

(1) Exclude an offeror from participating in an auction;

(2) Determine the awardee(s) of any reverse auction; or

(3) Determine that the offeror is a responsible prospective contractor (see 9.103, 9.104–1, and 9.405(d)).

17.803 Applicability.

Reverse auction processes shall not be used for—

(a) Design-build construction contracts (see 36.104);

(b) Procurements for architect-engineer services subject to 40 U.S.C. chapter 11 (see 36.601);

(c) Procurements using sealed bidding procedures (see part 14); or

(d) Acquisition of personal protective equipment, in accordance with—

(1) Sections 813 and 814 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328);

(2) Section 882 of the NDAA for FY 2018 (Pub. L. 115–91); and

(3) Section 880 of the John S. McCain NDAA for FY 2019 (Pub. L. 115–232, 41 U.S.C. 3701 note).

17.804 Procedures.

(a) When considering the use of a reverse auction service provider, the contracting officer shall—

(1) Conduct market research for available sources of reverse auction services (e.g., existing agency contracts or agreements, commercial service providers, or Government service providers);

(2) Evaluate the fee structure for each reverse auction service provider; and

(3) Document the contract file that the use of a reverse auction service provider is cost effective.

(b) When conducting a reverse auction, the contracting officer shall—

(1) Not disclose the identity of the offeror(s) except for the awardee's identity subsequent to an award resulting from the auction (see 3.104–4(a) and (e)(1));

(2) Allow offerors the opportunity to continually revise their prices downward during the reverse auction until the close of the auction; and

(3) Allow an offeror to withdraw an offer from further consideration prior to the close of an auction.

(c) When using the services of a reverse auction service provider, contracting officers shall—

(1) Include contact information, including contracting officer name and email address, in the synopsis and solicitation that will allow offerors to contact the contracting officer directly with any questions;

(2) Upon receipt of a successful offer, verify that any provider fees or charges included in the price are in accordance with the provider's fee structure, as evaluated in accordance with paragraph (a)(2) of this section; and

(3) Include in the contract file any information and/or documentation received by the reverse auction service provider from offerors responding to the reverse auction.

(d) If only one offeror participates in an auction, the contracting officer may—

(1) Cancel the auction and document the contract file with evidence of the participation of only one offeror; or

(2) Accept the offer, only if the price is determined to be fair and reasonable (see 13.106–3(a)(2) and 15.404–1).

17.805 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 52.217–10, Reverse Auction, in solicitations when using a reverse auction to award a contract or blanket purchase agreement.

(b) The contracting officer shall insert the clause at 52.217–11, Reverse Auction—Orders, in solicitations and

contracts for a multiple-award contract or blanket purchase agreement, when a reverse auction may be used to place orders under the basic contract or blanket purchase agreement.

(c) The contracting officer shall insert the clause at 52.217–12, Reverse Auction Services, in all solicitations and contracts for the purchase of reverse auction services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Add sections 52.217–10, 52.217–11, and 52.217–12 to read as follows:

52.217–10 Reverse Auction.

As prescribed in 17.805(a), insert the following provision:

Reverse Auction (Aug 2024)

(a) *Definitions.* As used in this provision—
Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, in which offerors see competing offerors' price(s), without disclosure of the competing offerors' identity, and have the opportunity to submit lower priced offers until the close of the auction.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

(b) *Reverse auction.* The Government intends to conduct a reverse auction under this solicitation to award a contract or blanket purchase agreement.

(c) *Offeror agreement.* By submission of a quote or proposal in response to the solicitation, the Offeror agrees to participate in the reverse auction and agrees that the Government may reveal to all Offerors the offered price(s) in the auction, without revealing any Offeror's identity, except for the awardee's identity subsequent to an award resulting from the auction. The Offeror may withdraw its agreement to further participate in the process by withdrawing its offer before the close of the auction by notifying the Contracting Officer via the contact method identified in the solicitation.

(d) *Only one offer.* If the reverse auction produces only one offer, the Government reserves the right to cancel the auction.

(e) *Release of information.* The Government may use a reverse auction service provider to conduct the reverse auction. Any price or proposal information or source selection information received by the reverse auction service provider in relation to the reverse auction shall not be released, outside of the Government, unless otherwise required by law. However, this does not prevent the Government from revealing to all Offerors the offered price(s) in the auction, without revealing any Offeror's identity. Price or proposal information includes, but is not limited to—

(1) Contractor bid or proposal information, as defined at Federal Acquisition Regulation 3.104–1; and

(2) Information identified by the Offeror as restricted from duplication, use, or

disclosure—in whole or in part—for any purpose other than to evaluate the Offeror's price or proposal.

(End of provision)

52.217–11 Reverse Auction—Orders.

As prescribed in 17.805(b), insert the following clause:

Reverse Auction—Orders (Aug 2024)

(a) *Definitions.* As used in this clause—
Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, in which offerors see competing offerors' price(s), without disclosure of the competing offerors' identity, and have the opportunity to submit lower priced offers until the close of the auction.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

(b) *Reverse auction.* The Contracting Officer may conduct a reverse auction to award an order under this contract or blanket purchase agreement.

(c) *Contractor agreement.* When a reverse auction is conducted under this contract or blanket purchase agreement, the following applies:

(1) The Contractor's or blanket purchase agreement holder's submission of a quote or proposal in response to the solicitation for an order constitutes agreement to participate in the auction.

(2) The Contractor agrees that the Government may reveal to all Offerors the offered price(s) in the auction, without revealing any Offerors' identity, except for the awardee's identity subsequent to an award resulting from the auction.

(3) The Contractor or blanket purchase agreement holder may withdraw its agreement to further participate in the reverse auction by withdrawing its offer. To withdraw an offer made in response to a reverse auction solicitation issued under this contract or blanket purchase agreement, the Contractor or blanket purchase agreement holder shall notify the Contracting Officer of the request before the close of the auction via the contact method identified in the solicitation.

(4) If the reverse auction produces only one offer, the Government reserves the right to cancel the auction.

(d) *Release of information.* The Government may use a reverse auction service provider to conduct the reverse auction. Any price or proposal information or source selection information received by the reverse auction service provider in relation to the reverse auction shall not be released, outside of the Government, unless otherwise required by law. However, this does not prevent the Government from revealing to all Contractors or blanket purchase agreement holders the offered price(s) in the auction, without revealing any Contractor or blanket purchase agreement holder's identity. Price or proposal information includes, but is not limited to—

(1) Contractor bid or proposal information, as defined at Federal Acquisition Regulation 3.104–1;

(2) Price or proposal information similarly generated for a task order or delivery order or an order under a blanket purchase agreement; and

(3) Information identified by the Contractor or blanket purchase agreement holder as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the Contractor or blanket purchase agreement holder's price or proposal.

(End of clause)

52.217–12 Reverse Auction Services.

As prescribed in 17.805(c), insert the following clause:

Reverse Auction Services (Aug 2024)

(a) Definitions.

Government data means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government, in the course of official Government business.

Government-related data means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (e.g., financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, in which offerors see competing offerors' price(s), without disclosure of the competing offeror's identity, and have the opportunity to submit lower priced offers until the close of the auction.

(b) *Duties of the reverse auction service provider.* When providing reverse auction services to the Government, the Contractor shall—

(1) Not assert or imply that it can or will obtain a Government contract for the participants of a reverse auction;

(2) Allow entities to register, at no cost, as potential offerors for any reverse auction conducted on behalf of the Government on the provider's reverse auction platform. As part of the registration process, the Contractor shall allow each entity the opportunity to execute a proprietary data protection agreement with the Contractor; however, the Contractor shall not negotiate terms in the agreement that affect the terms and conditions of a Government solicitation or contract;

(3) Limit access to, use of, and disclosure of Government data and Government-related data.

(i) The Contractor shall not access, use, or disclose Government data unless specifically authorized by the terms of this contract or a task order or delivery order issued hereunder.

(ii) If authorized by the terms of this contract or a task order or delivery order issued hereunder, any access to, or use or disclosure of, Government data shall only be

for purposes specified in this contract or task order or delivery order.

(iii) The Contractor shall ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.

(iv) These access, use, and disclosure prohibitions and obligations shall survive the expiration or termination of this contract.

(v) The Contractor shall notify the Contracting Officer promptly of any requests from a third party for access to Government data or Government-related data, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or local agency. The Contractor shall cooperate with the Contracting Officer to take all measures to protect Government data and Government-related data from any unauthorized disclosure.

(4) Assert no right or license in the data gathered or generated during a reverse auction. Use Government-related data only to manage the operational environment that supports the Government data and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.

(5) Protect from unauthorized use or disclosure and not release outside of the Government any price or proposal information or any source selection information (see Federal Acquisition Regulation (FAR) 2.101) received by the Contractor in relation to a reverse auction. Price or proposal information shall include, but is not limited to—

(i) Contractor bid or proposal information, as defined at FAR 3.104–1;

(ii) Price or proposal information similarly generated for a task order or delivery order or an order under a blanket purchase agreement; and

(iii) Information identified by the reverse auction participant as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the reverse auction participant's price or proposal;

(6) Allow offerors to see the successive lowest price(s) offered in the auction without revealing an offeror's identity;

(7) Not participate as an offeror in any reverse auction, which the Contractor is hosting on behalf of the Government. This prohibition includes participation in a reverse auction by any entity with which the Contractor has a relationship that raises an actual or potential conflict of interest;

(8) At the close of each auction—

(i) Provide the Contracting Officer with the successful offer, along with information that separately identifies the offeror's price and the price for each provider fee or charge included in the total price; and

(ii) Provide the Contracting Officer with all information and documentation received from reverse auction participants in response to the reverse auction.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2024–06; FAR Case 2021–009, Item II; Docket No. FAR–2021–0010; Sequence No. 1]

RIN 9000–AO26

Federal Acquisition Regulation: Protests of Orders Set Aside for Small Business

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration to update and clarify requirements associated with size and socioeconomic status protests in connection with multiple-award contract set-asides and reserves, and orders placed under multiple-award contracts.

DATES: Effective August 29, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Dana Bowman, Procurement Analyst, at 202–803–3188 or by email at dana.bowman@gsa.gov. For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2024–06, FAR Case 2021–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 88 FR 68067 on October 3, 2023, to implement regulatory changes made by the Small Business Administration (SBA) in its final rules published in the **Federal Register** on October 2, 2013 (78 FR 61113), October 16, 2020 (85 FR 66146), and on November 29, 2022 (87 FR 73400). For further details, please see the proposed rule. One respondent submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the