

# **Subpart 212.70 - DEFENSE COMMERCIAL SOLUTIONS OPENING**

**Parent topic:** Part 212 - ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

## **212.7000 Scope of subpart.**

This subpart implements 10 U.S.C. 3458 for the acquisition of innovative commercial products or commercial services through the use of a general solicitation known as a commercial solutions opening (CSO).

### **212.7001 Definition.**

As used in this subpart—

*Innovative* means—

- (1) Any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or
- (2) Any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

### **212.7002 Policy.**

(a) Contracting officers may only use a CSO—

- (1) To obtain innovative solutions or potential capabilities that fulfill requirements;
- (2) To close capability gaps, or provide potential innovative technological advancements; and
- (3) When meaningful proposals with varying technical or scientific approaches can be reasonably anticipated.

(b) Notwithstanding FAR 12.207, contracting officers shall use fixed-price type contracts, including fixed-price incentive contracts, for awards resulting from a CSO. When using a fixed-price incentive contract, see FAR 12.214 and subpart 16.4 for additional requirements.

(c) Contracting officers shall treat products and services acquired using a CSO as commercial products or commercial services.

(d) When using a CSO to acquire research and development, contracting officers shall use the procedures of this subpart in conjunction with FAR part 35 and part 235. A CSO is not subject to the limitations at 235.016 and may be used to fulfill requirements for research and development,

ranging from advanced component development through operational systems development.

### **212.7003 Limitations.**

Contracting officers shall follow the procedures at PGI 212.7003 to obtain senior procurement executive approval to award a contract in excess of \$100 million resulting from a CSO.

### **212.7004 Procedures.**

This section prescribes procedures for the use of a CSO.

(a) The CSO shall—

(1) Describe the agency's interest for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements;

(2) Specify the technical data required that may be necessary to meet DoD's minimum requirements (see 227.7102 and 227.7202);

(3) Describe the evaluation factors for selecting proposals to include—

(i) Technical and importance to agency programs as the primary evaluation factors;

(ii) Price to the extent appropriate, but at a minimum to determine that the price is fair and reasonable; and

(iii) Relative importance of the factors, and the method of evaluation;

(4) Specify the period of time during which proposals submitted in response to the CSO will be accepted; and

(5) Contain instructions for the preparation and submission of proposals.

(b) The contracting officer shall publicize the CSO through the Governmentwide point of entry and, if authorized pursuant to FAR subpart 5.5, may also publish a notice regarding the CSO in noted scientific, technical, or engineering periodicals. The contracting officer shall publish the notice at least annually.

(c) Proposals received in response to the CSO shall be evaluated in accordance with evaluation factors specified therein through a scientific, technological, or other subject-matter expert peer review process. Written evaluation reports on individual proposals are required, but proposals need not be evaluated against each other since they are not submitted in response to a common performance work statement or statement of work.

(d) Synopsis of proposed contract actions under FAR subpart 5.2 of individual contract actions based upon proposals received in response to the CSO is not required. The notice published pursuant to paragraph (b) of this section fulfills the synopsis requirement.

(e) When a small business concern would otherwise be selected for award but is considered not responsible, follow the Small Business Administration Certificate of Competency procedure (see FAR

subpart 19.6).

(f) The contracting officer shall document the decision that the requirements of this subpart have been met and include the documentation in the contract file.

### **212.7005 Congressional notification.**

See PGI 212.7005 for congressional notification requirements for contracts valued at more than \$100 million that are awarded pursuant to a CSO.