JAN 4 2005

GSA Office of the Chief Acquisition Officer

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RALPH DESTEFANO, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: FAR Case 2004-007, Federal Technical Data Solution

Attached are comments received on the subject FAR case published at 69 FR 63436; November 1, 2004. The comment closing date was January 3, 2005.

Response Number	Date Received	Comment Date	Commenter
2004-007-1	11/02/04	11/02/04	The Dow Chemical Company
2004-0072	11/09/04	11/09/04	USPFO for Kansas
2004-007-3	11/19/04	11/19/04	Aquilent, Inc.
2004-007-4	12/21/04	12/21/04	SSA/Dan Cronin
2004-007-5	12/23/04	12/23/04	Alfred Brock
2004-007-6	01/03/05	01/03/05	Distributed Solutions, Inc.
2004-007-7	01/03/05	01/03/05	Science Applications International Corporation

Attachments

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

2004-007-1

"Tower, Philip (PW)"
<philtower@dow.com>
11/02/2004 01:10 PM

To: "'farcase.2004-007@gsa.gov'" <farcase.2004-007@gsa.gov>
cc:
Subject: Industry comment

Excellent idea. Plenty of agencies and offices already use FBO to link to their own solicitation files so no additional burden or delay is anticipated.

Philip W. Tower
The Dow Chemical Company
9896361355

2004-007-2

comments@comments.regulations.gov

11/09/2004 04:00 AM

To: farcase.2004-007@gsa.gov
cc: group_erulemaking@notesmail.epa.gov
Subject: Docket Comments - November 08, 2004

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comments@comments.regulations.gov.

Thank You!

NASA-04-24231-110804.z

2004-001-2

Agency : NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Title : Federal Acquisition Regulation; Federal Technical Data Solution
Subject Category : Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Fec Acquisition Regulation (FAR): Definitions clause Definitions clause Definitions cl
Docket ID :
CFR Citation : 48 CFR 2, 5, 7
Published : November 01, 2004
Comments Due : January 03, 2005
Phase : PROPOSED RULES

Your comment has been sent. To verify that this agency has received your comment, please contact the agency directly. If you wish to retain a copy of your comment, print out a copy of this document for you

Please note your REGULATIONS.GOV number.

Regulations.gov #: EREG - 1 Submitted Nov 08, 2004

Author : Mr. Thomas Coleman
Organization : USPFO for Kansas
Mailing Address :
Attached Files :

Comment : I am extremely concerned that the use of FedTeds for posting of designs on militai construction project will substantially reduce the level of competition and is a futa attempt to securing documents, that in my opinion, do not need to be secured. On a typlical large construction projects hundreds to potentially thousands of contractor subcontractors and suppliers must have access to these plans and specifications. T place them behind an electronic wall allowing only those who have an acess code view them will result in reduced interest in the project and compeition. Also, the industry standard is that plans and specification are viewable in plans rooms and o internet. This will still go one because one person (example a plans room or printi house) will continue to distribute the plans and specifications without our knowled So it is absolutely rediculous to place construction plans and specifications on the FedTeds system. We are only kidding ourselves that distribution is not being made other channels than through FedTeds. Also, I believe you will obtain less interest i projects since every vendor or supplier must be registered in the CCR in order to o access.

Recommend agencies be given broad latitiude in making the deicsion of placing construction plans and specififcations on the FedTeds system. Agencies should co: any security risk prior to placing documents on the FedTeds system. Please make t optional and not a madatory requirement. Thanks,

2004-007-3

"Costenbader, Jay" <Jay.Costenbader@aquilent.com>

11/19/2004 03:32 PM

To: farcase.2004-007@gsa.gov
cc:
Subject: Comment on Proposed Rule 2004-007

Aquilent Inc. provides information technology solutions to the Federal government, with particular focus on web-based solutions for acquisition and contracting. While we agree that there is a need to provide for the secure distribution of documents, we take exception to the proposed rule requiring that the mechanism for this secure distribution be limited to FedTeDS. Agencies have a number of current tools at their disposal, and only one of them is FedTeDS. For example, agencies can provide their own secure website, similar to the mechanism for hosting their own FBO documents.

Additionally, FedBizOpps (FBO) is currently under review and will include functionality that provides for secure access and distribution of documents. This would mean that FBO could meet the same requirements as FedTeDS.

To amend the FAR to limit the Government's ability to enhance and leverage new technologies and systems would seem to be an unnecessary and unfortunate requirement.

Respectfully,

Jay Costenbader
Vice President
Aquilent, Inc.
1100 West Street
Laurel, MD 20707
301.939.1518 (office)
301.953.2368 (fax)

2004-007-4

"Cronin, Dan"
<Dan.Cronin@ssa.gov
>

12/21/2004 09:48 AM

To: "'farcase.2004-007@gsa.gov'" <farcase.2004-007@gsa.gov>
cc:
Subject: FAR Case 2004-007; Federal Technical Data Solution

We have attached the Social Security Administration's comments on the subject case.

Thank you for this opportunity.

<<FARcase2004-007response.doc>>

Dan Cronin, Director
Division of Policy and Information Management
Office of Acquisition and Grants
410-965-9540
dan.cronin@ssa.gov

FARcase2004-007response.d

2004-007-4

SOCIAL SECURITY ADMINISTRATION COMMENTS

Federal Technical Data Solution (FedTeDS)

Federal Acquisition Regulation (FAR) Case 2004-007

We feel the concept and implementation of FedTeDS is a good idea and will be effective in controlling and monitoring access to sensitive agency information, or other information that an agency may want to control.

After reviewing the subject proposed rule, we felt that the proposed changes to FAR Section 5.102 should be revised slightly for the following reasons.

- The language in the proposed new paragraph 5.102(a)(5) discussing the exceptions to posting on FedTeDS is redundant as it mimics the exceptions (at the current 5.102(a)(4)) to posting through GPE, except for the exception to posting when the information is provided via alternative electronic means.
- The exception to posting at FedTedDS, "when, information will be provided through alternative electronic means" at the proposed 5.102(a)(5)(ii) should be deleted. The Background information in the proposed rule, as well as the Vendor's User Guide on the FedTeDS website advises the contractor that "once in FedTeDS, a vendor can either download a copy of the information or request it on a compact disc (CD) (if the contracting agency is making the information available in that medium). If the drafters of the rule had some other "electronic means," other than a CD ROM, then perhaps the exception should be clarified.
- However, the current (and proposed) Section 5.102(b)(1), states that if the solicitation isn't available through GPE, or the information available through FedTeDS, the contracting officer should employ other electronic means (e.g., CD-ROM or electronic mail) whenever practicable and cost-effective. It seems that if this is the direction when using the exceptions to posting, then it should not be an exception.
- We added "sensitive, but unclassified information" to the types of information agencies should post on FedTeDS, as this terminology is used by a lot of federal agencies and may be helpful when determining what gets posted on FedTedDS as opposed through GPE.

Based on the above points we propose revising FAR Section 5.102 and 7.105(b)(15) as follows. The bold type indicates new text/our suggestions.

2004-007-4

PART 5 - PUPLICIZING CONTRACT ACTIONS:

Amend section 5.102 by revising paragraphs (a)(1) and (a)(2); **by revising and redesignating paragraph (a)(4) as (a)(5); by adding a new paragraph (a)(4)**; and by revising the introductory text of paragraph (b) to read as follows:

5.102 Availability of solicitations

(a)(1) Except as provided in paragraph **(a)(5)** of this section, the contacting officer must make available through the GPE solicitations synopsized through the GPE. The contracting officer must also make **available through the GPE** specifications, technical data, and other pertinent solicitation information, except as provided in paragraph **(a)(4)** of this section. Transmissions to the GPE must be in accordance with the interface description available via the Internet at http://www.fedbizopps.gov.

(2) The contracting officer is encouraged, when practicable and cost-effective, to make accessible through the GPE, additional information related to a solicitation, except as provided in paragraph **(a)(4)** of this section.

(4) Except as provided in paragraph (a)(5) of this section, when a solicitation contains **sensitive, but unclassified information or other** information that requires additional controls to monitor access and distribution (e.g., technical, specifications, maps, building designs, schedules, etc.) as determined by the agency, the information should be made available through the Federal Technical Data Solution (FedTeDS). When FedTeDS is used it must be used in conjunction with the GPE to meet the synopsis and advertising requirements of this part.

(5) The contracting officer need not make **available through the GPE** a solicitation, **or make available through FedTeDS other information as required in (a)(4), when-**

(i) Disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (e.g., size, format) does not make it cost-effective or practicable for contracting officers to provide access through the GPE; or

(iii) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest.

(b) When the contracting officer does not make a solicitation available through the GPE **or does not make other information, as described in paragraph (a)(4), available through FedTeDS,** pursuant to paragraph (a)(5) of this section, the contracting officer--

2004-007-4

(1) Should employ other electronic means (e.g., CD-ROM or electronic mail) whenever practicable and cost-effective. When solicitations are provided electronically on physical media (e.g., disks) or in paper form, the contracting officer must--

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a "first-come-first-served" basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted; and

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

PART 7 - ACQUISITION PLANS

7.105(b)(15) * * * Indicate **any sensitive, but unclassified information or other** information that requires additional controls to monitor access and distribution (e.g., technical, specifications, maps, building designs, schedules, etc.) as determined by the agency, **that** is to be posted via the Federal Technical Data Solution (FedTeDS) (see 5.102(a)**(4)**).

2004-007-5

comments@comments.regulations.gov

12/23/2004 04:00 AM

To: farcase.2004-007@gsa.gov
cc: group_erulemaking@notesmail.epa.gov
Subject: Docket Comments - December 22, 2004

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Thank You!

DOD-04-24231-122204.z

2004-007-5

Agency : DEFENSE DEPARTMENT
Title : Federal Acquisition Regulation; Federal Technical Data Solution
Subject Category : Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Fec Acquisition Regulation (FAR): Definitions clause Definitions clause Definitions cl
Docket ID :
CFR Citation : 48 CFR 2, 5, 7
Published : November 01, 2004
Comments Due : January 03, 2005
Phase : PROPOSED RULES

Your comment has been sent. To verify that this agency has received your comment, please contact the agency directly. If you wish to retain a copy of your comment, print out a copy of this document for you

Please note your REGULATIONS.GOV number.

Regulations.gov #: EREG - 2 Submitted Dec 22, 2004

Author : Mr. Alfred Brock
Organization :
Mailing Address :
Attached Files :

Comment : The Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council (Councils) should NOT provide for the access and distribution of solicitation requirements or other documents (e.g., technical specifications, maps, building designs, schedules, etc.), when controls are necessai according to agency procedures, through the Federal Technical Data Solution (FedTedS) website in lieu of the Governmentwide Point of Entry (GPE).

The information should be made available through the Governmentwide Point of I (GPE).

NASA has for nearly 2 decades lagged behind the rest of the nation in applying technical solutions to problems - especially problems of their own making.

It is time for NASA to be made aware that if they are going to continue to operate separate unit that they need to cooperate.

In any case - in my opinion, NASA is obsolete and should go along with 'I Dream Jeannie' into the trashbin of yesteryear so that private enterprise can get us into spa before NASA closes off the very sky with a swarm of redundant satellites and syst that don't work - or worse yet, explode.

Alfred Brock
40047 Cambridge 102
Canton MI 48187

2004-007-6

"Tuttle, Peter"
<PeterT@distributedinc.com>

01/03/2005 05:10 PM

To: farcase.2004-007@gsa.gov
cc: "Falcone, Ron" <RonF@distributedinc.com>, "DiBenedetto, Anthony" <TonyD@distributedinc.com>
Subject: FAR Case 2004-007

Dear Ms. Duarte:

First of all, thank you for the opportunity to participate and provide comments.

Distributed Solutions Inc. (DSI) is a small business founded in 1992. We are located in Herndon, Virginia and specialize in the manufacture of a robust contract management software solution suite of products called the Automated Acquisition Management System (AAMS). AAMS is currently deployed in over fifteen federal agencies.

1. It is unclear to us what role the next generation of FedBizOpps will take in incorporating the kind of functionality already provided by FedTeDS? Can this be clarified now that the two GAO bid protests on GSA TQN-04-RA-0001 have apparently been dismissed?

2. Proposed FAR 5.102(a)(5) "...the information should be made available through the Federal Technical Data Solution (FedTeDS)." We encourage the Councils to consider making the use of FedTeDS mandatory instead of discretionary. Mandatory use of FedTeDS, when appropriate, should help to reduce the requirements for agencies to maintain similar websites that are used for posting technical information. We believe that the reduction or elimination of duplicative electronic services is in keeping with the direction and spirit of the President's Management Agenda and several of the resulting e-Gov initiatives.

3. We are unclear how, or if, the proposed policy language addresses the posting of supporting technical information for those vendors that are exempt from registering in CCR (i.e. foreign vendors for work performed outside the United States) will be dealt with. Was the list of exceptions to posting to FedTeDS at FAR 5.102(a)(5)(i)(ii)(iii) meant to address all the exceptions to CCR registration that are encountered at FAR 4.1102 "Policy"?

Please feel free to call me or Ron Falcone at (703) 471-7530 if you require additional assistance or need clarification these comments.

Regards,

Peter Tuttle, CPCM
Senior Procurement/Policy Analyst
Distributed Solutions, Inc.

2004-007-7

"Luttner, Meredith A." <MEREDITH.A.LUTTNER@saic.com>
01/03/2005 04:39 PM

To: "'farcase.2004-007@gsa.gov'" <farcase.2004-007@gsa.gov>
cc:
Subject: FAR Case 2004-007

To: Farcase2004-007@gsa.gov

Subject: farcase2004-007@gsa.gov

The following is a response prepared by Science Applications International Corporation (SAIC) to the proposed rule to amend the FAR to require the posting of sensitive but unclassified (SBU) data to FedTedS (FAR Case 2004-007). While SAIC understands the importance of making such data available to the appropriate limited audience, we take serious issue with some implications of the current FedTedS process; concerns that are heightened in the case that this proposed rule is implemented. The following describes SAIC's history of challenges with FedTedS and highlights the basis of our concerns.

Current SAIC FedTedS Process

SAIC is a large business with over 45,000 employees worldwide, including some employees who are not U.S. citizens and employees who are U.S. citizens that are working outside of the United States. SAIC has a centralized Business Opportunity Clearinghouse (BizOps) which obtains acquisition-related information such as RFPs and makes it accessible on the SAIC Intranet to all regular full-time employees, both U.S. citizens and resident aliens. We understand that SBU data needs to be more carefully protected and thus we do not make it generally accessible over the company Intranet. However, SAIC has encountered situations where contracting officers require that individuals interested in pursuing an opportunity (whether the related data is SBU or not) be registered at FedTedS. This creates a problem as the individuals must use the MPIN to register at FedTedS. SAIC also does not wish to share MPINs with *individual* employees because the MPIN is the key to view competitively sensitive past performance data via the Past Performance Information Retrieval System (PPIRS), and the MPIN can be used by other government systems as a corporate password. We find it impossible to follow the Central Contractor Registration's (CCR) guidance to guard this personal code when contracting officers ask that the MPIN be released to any SAIC employee who wishes to register at FedTedS. In order to enable individuals in SAIC to access FedTedS without distributing our MPIN, SAIC currently centrally assigns FedTedS accounts to individual SAIC employees after validating that they are authorized to have access.

Once we have assigned an individual SAIC employee a FedTedS account, however, we lose direct control over their usage and document dissemination. It has been our experience that employees given these accounts will receive via FedTedS e-mail links to SBU documentation. Those individual users may then distribute or otherwise handle the documentation without complying with SAIC procedures, including potentially export controlled material, and there then becomes no way for a central organization at SAIC to keep an audit trail. We are concerned about the company's liability in such instances.

2004-0017

Summary of SAIC's Concerns

To summarize, the following are crucial issues concerning FedTedS that SAIC believes will only become larger issues with the mandatory (and thereby more frequent) use of FedTedS:

1. **Use of the MPIN number for access to FedTedS**: The MPIN number controls access to other sources of confidential information, including past performance. If SAIC distributes the MPIN number to employees in order to allow access to FedTedS, we not only violate the Central Contractor Registration rules, but also put ourselves at risk of compromising competitively-sensitive past performance data. We request that the MPIN not be used for access to FedTedS.

2. **Contracting Officer training and definitive SBU definition:** SAIC has encountered instances in the past where certain contracting officers mandate individual registration in FedTedS as a requirement to participate in a bid (e.g. we were required to have our orals proposal presenters registered individually in FedTedS in order to be assigned an orals appointment time). We have also discovered RFPs posted on FedTedS unnecessarily, as they were later deemed to be in no way, sensitive. SAIC requests a clear, documented definition of what "sensitive, but unclassified" documents are. We also wish to see clear instruction for contracting officers across the government on the use of FedTedS in order to ensure process consistency.

3. **SAIC Compliance with the International Traffic in Arms Regulations (ITAR):** SAIC has a company-wide policy for protecting government information that was established to meet the requirements of 22 CFR 120-130, International Traffic in Arms Regulations (ITAR), and DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM) concerning Technology Control Plans (TCP). Our policy establishes the requirements, processes, and responsibilities for the protection of controlled technology to preclude access of said information to unauthorized Foreign Person employees, suppliers, visitors, and customers when their assignment requires them to access areas and information systems containing such information or material. As such, it is our concern that granting employees direct access to FedTedS, using the MPIN registration number, puts SAIC at risk of employees inadvertently violating ITAR regulations by weakening central control over distribution.

4. **SAIC's liability for distribution of SBU documentation:** Once registered at FedTedS, individual SAIC employees are alerted to new RFPs that are only published at FedTedS. Our concern is that SAIC employees who are registered in FedTedS receive direct emails that lead them to download documentation that they may then distribute to others that have not registered with FedTedS or the SAIC office that controls distribution of SBU information, or may otherwise unknowingly mishandle the SBU documentation.

We appreciate your consideration of the challenges we are facing while attempting to protect Federal Government Sensitive But Unclassified information, including export controlled

2004-007-7

information. SAIC has centralized the process to prevent the dissemination of the guarded MPIN number, as well as to assure that we are not violating ITAR regulations by approving the employees who receive the data. I look forward to discussing alternative ideas that will further ensure the security of SBU data, as well as help SAIC to create clear policy that can remain consistent regardless of the experience and training of the procurement or contracting specialist who may pay post data or links to data on FedTedS. We believe the government should rethink the access control process for SBU and export controlled information before a final rule is promulgated.

Sincerely,

Meredith Luttner

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Corporate Development
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