52.212–12 through 52.212–15 [Redesignated]

68. Sections 52.212–12 through 52.212–15 are redesignated as 52.242–14 through 52.242–17.

69. 52.212–1 through 52.212–5 Added.

52.212—1 through 52.242—15 [Added]

70. Part 52 is amended by adding new sections 52.212–1 through 52.212–5, to read as follows:

Sec

52.212–1 Instructions to Offerors—Commercial Items.

52.212–2 Evaluation—Commercial Items. 52.212–3 Offeror Representations and

Certifications—Commercial Items. 52.212–4 Contract Terms and Conditions— Commercial Items.

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

52.212–1 Instructions to Offerors—Commercial Items.

As prescribed in 12.302(b)(1), insert the following provision:

Instructions to Offerors—Commercial Items (Date)

Standard Industrial Classification (SIC) Code and Small Business Size Standard. The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF XXXX). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

Submission of Offers. Submit offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF XXXX, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (a) The solicitation number;
- (b) The time specified for receipt;
- (c) The name and address of the offeror;
- (d) A technical description of the items being offered in sufficient detail to determine compliance with the requirements in the solicitation. This may include product literature, warranty provisions, or other documents, if necessary;
 - (e) Price;
- (f) "Remit to" address, if different than mailing address;
- (g) A completed copy of the representations and certifications at FAR 52.212-3;
- (h) Acknowledgment of Solicitation Amendments;
- (i) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references. At a minimum, this should include contract numbers, points of contact with telephone numbers and other relevant information; and
- (j) If the offer is not submitted on the SF XXXX, include a statement specifying the extent of agreement with all terms,

conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or take exception to the terms and conditions of the solicitation may be excluded from consideration.

Offered Prices. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

Product Samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

Multiple Offers. Offerors are encouraged to submit multiple offers presenting alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

Late Offers. Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

Contract Award. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

Multiple Awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(End of provision)

52.212-2 Evaluation—Commercial Items.

As prescribed in 12.602(c), the Contracting Officer may insert a provision substantially as follows:

Evaluation—Commercial Items (Date)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors [Contracting Officer insert relative order of importance (see 15.605)] shall be used to evaluate offers:

[Contracting Officer insert the significant evaluation factors and subfactors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see 15.605)].

Technical and past performance, when combined, are [Contracting Officer insert relative importance of evaluation factors (see 15.605)].

- (b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options shall not obligate the Government to exercise the option(s).
- (c) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items.
- (d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

52.212–3 Offeror Representations and Certifications—Commercial Items.

As prescribed in 12.302(b)(2), insert the following provision:

Offeror Representations and Certifications— Commercial Items (Date)

(a) Definitions. As used in this provision: Emerging small business means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in this solicitation.

Small disadvantaged business concern means a small business concern that—

- (1) Is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged or a publicly owned business, having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals; and
- (2) Has its management and daily business controlled by one or more such individuals.

This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization and which meets the requirements of 13 CFR part 124.

Women-owned small business concern means a small business concern at least 51 percent owned by a woman or women or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one