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October 22, 2001

**VIA HAND DELIVERY
AND ELECTRONIC MAIL**

General Services Administration
FAR Secretariat (MVP)
1800 F Street, NW, Room 4035
ATTN: Laurie Duarte
Washington, D.C. 20405

**Re: FAR Case 2000-011
Proposed Rule: Sealed Bidding and Simplified
Procedures in Commercial Item Acquisitions
66 Fed. Reg. 44288 (August 22, 2001)**

Dear Ms. Duarte:

On behalf of the Section of Public Contract Law of the American Bar Association ("the Section"), I am submitting comments on the above-referenced matter. The Section consists of attorneys and associated professionals in private practice, industry, and Government service. The Section's governing Council and substantive committees contain members representing these three segments to ensure that all points of view are considered. In this manner, the Section seeks to improve the process of public contracting for needed supplies, services, and public works.

The Section is authorized to submit comments on acquisition regulations under special authority granted by the Association's Board of Governors. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, therefore, should not be construed as representing the policy of the American Bar Association.¹

¹ Mary Ellen Coster Williams, an Officer of the Public Contract Law Section, did not

(footnote continued to next page)

The Section generally supports the proposed rule to amend Federal Acquisition Regulation (“FAR”) clauses 52.212-1 and 52.212-3 to accommodate sealed bidding and simplified acquisitions in commercial item acquisitions. However, it does not appear that the proposed rule fully accomplishes its purpose, as the proposed changes do not make explicit reference to sealed bidding in all appropriate paragraphs.

More specifically, while the revised definition paragraphs of FAR 52.212-1 and 52.212-3 now recognize that the terms “offer” and “offeror” include “quote” and “quoter,” and thus accommodate the use of Requests for Quotations in commercial item procurements, there is no recognition of the terms unique to sealed bidding. Accordingly, the Section recommends the following changes to the definition paragraphs of FAR 52.212-1 and 52.212-3:

Reference	Proposed Rule	Recommended Change (in italics)
FAR 52.212-1(a)	Definition. As used in this provision, the terms “offer” and “offeror” include “quote” and “quoter” respectively	Definition. As used in this provision, the terms “offer” and “offeror” include (i) “quote” and “quoter,” and (ii) “ <i>bid</i> ” and “ <i>bidder</i> ” respectively
FAR 52.212-3(a)	Definitions. As used in this provision, the term “offeror” includes “quoter”.	Definitions. As used in this provision, the term “offeror” includes <i>both</i> “quoter” and “ <i>bidder</i> .”

(footnote continued from previous page)

participate in the Section’s consideration of these comments, and she abstained from voting to approve and send this letter.

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The Section believes that the addition of the terms “bid” and “bidder” to the proposed definitions will make it more clear that these FAR provisions are intended to accommodate both simplified acquisitions and sealed bidding, as intended by the proposed rule.

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The Section appreciates the opportunity to provide these comments and is available to provide additional information or assistance as you may require.

Sincerely,

Norman R. Thorpe
Chair, Section of Public Contract Law

cc: Mary Ellen Coster Williams
Hubert J. Bell, Jr.
Patricia H. Wittie
Patricia A. Meagher
Marshall J. Doke, Jr.
Rand L. Allen
Gregory A. Smith
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