

SUBPART 215.6—SOURCE SELECTION

215.605 Evaluation factors and subfactors.

(b)(2)(A) In acquisitions which require use of the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the extent of participation of small and small disadvantaged businesses in performance of the contract shall be addressed in source selection.

(1) For acquisitions other than those based only on cost or price competition, the contracting officer shall evaluate the extent to which offerors identify and commit to small business and to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(2) Criteria for evaluation may include—

(i) The extent which such firms are specifically identified in proposals;

(ii) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(iii) The complexity and variety of the work small firms are to perform;

(iv) The realism of the proposal;

(v) When not otherwise required by 215.608(a)(2), past performance of the offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(vi) The extent of participation of such firms in terms of the value of the total acquisition.

(3) Proposals addressing the extent of small and small disadvantaged business performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and should be structured to allow for consideration of offers from small businesses.

(4) When an evaluation includes the criterion in paragraph (b)(2)(A)(2)(i) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).

(B) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk is likely to result in significant costs or savings.

Defense Federal Acquisition Regulation Supplement

Part 215—Contracting By Negotiation

(c) In competitive acquisitions of services—

(i) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(ii) The weighting of costs must be commensurate with the nature of the services being acquired.

(A) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(1) The effort being contracted for departs from clearly defined efforts;

or

(2) Highly skilled personnel are required.

(B) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(1) Services being acquired are of a routine or simple nature;

(2) Highly skilled personnel are not required; or

(3) The product to be delivered is clearly defined at the outset of the acquisition.

215.607 Disclosure of mistakes before award.

(c)(3) The designee is the head of the contracting activity, who may redelegate this authority to the chief of the contracting office.

215.608 Proposal evaluation.

(a)(1) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided (see FAR 37.115) will not degrade the level of technical expertise required to fulfill the Government's requirements. When acquiring such services, contracting officers shall conduct a risk assessment, and evaluate for award on that basis, any proposals received that reflect factors such as—

(i) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(ii) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

(2) When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned

Defense Federal Acquisition Regulation Supplement

Part 215—Contracting By Negotiation

Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.

(b) Except for determinations based on violations or possible violations of Section 27 of the Office of Federal Procurement Policy (OFPP) Act, and unless otherwise specified in department/agency regulations, the contracting officer shall make the written determination. Determinations based on violations or possible violations of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

215.611 Best and final offers.

(c)(i) Before requesting an additional (second or subsequent) best and final offer, the contracting officer shall obtain approval from—

(A) The source selection authority and the senior procurement executive (SPE) for competitive negotiated acquisitions under formal source selection (see FAR 15.612). The SPE may delegate this authority to a level no lower than the head of the contracting activity.

(B) The head of the contracting activity (HCA) for all other competitive negotiated acquisitions. The HCA may delegate this authority to the chief of the contracting office.

(ii) Each HCA shall establish a system for reporting and documenting additional requests for best and final offers. Systems shall include as a minimum—

(A) The total number of competitive negotiated acquisitions awarded;

(B) The number of those acquisitions for which an additional request for best and final offers was approved and issued; and

(C) The reasons for approving each additional request for best and final offers.

(iii) To ensure that additional requests for best and final offers are used only when necessary and unavoidable, HCAs shall—

(A) Periodically analyze data collected under paragraph (c)(ii) of this section;

(B) Take appropriate corrective action, e.g., training, revising approval levels; and

(C) Provide periodic summary reports to the SPE as specified in department/agency regulations.

215.613 Alternate source selection procedures.

215.613-70 Four-step source selection procedures.

(a) *General.* The four-step source selection procedure is designed for those situations where the Government wishes to focus on technical excellence. Proposals are

Defense Federal Acquisition Regulation Supplement

Part 215—Contracting By Negotiation

evaluated, a competitive range established, and an apparent successful offeror selected without discussions of proposal deficiencies (a deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements). Negotiations are conducted only in the final step and only with the apparent successful offeror.

(b) *Applicability.* Four-step source selection procedures may be used for—

(1) Competitively negotiated research and development acquisitions with an estimated value of \$2 million or more; or

(2) Other acquisitions as permitted by department/agency regulations, except those in paragraph (c) of this subsection.

(c) *Restrictions.* Four-step source selection procedures shall not be used for acquisitions which—

(1) Will require extensive discussion and negotiations;

(2) Use the authority of FAR 6.302-2;

(3) Are solely for personal or nonpersonal services;

(4) Are for architect-engineer services; or

(5) Have an estimated value of less than \$2 million.

(d) *Presolicitation.* Establish early and open dialogue with prospective offerors to ensure their understanding of the Government's needs, since the evaluation will be conducted with limited discussions and without disclosing deficiencies in offeror proposals. Ways of establishing this dialogue are—

(1) Presolicitation notices;

(2) Presolicitation conferences;

(3) Preproposal conferences;

(4) Solicitations for information or planning purposes; and

(5) Tailoring of specifications.

(e) *Solicitations.* Include the following special provisions in four-step source selection solicitations—

(1) Explanation of the four-step concept and procedures;

(2) Statement regarding the relative importance of technical/system performance criteria;

(3) Notification that the contracting officer may reject proposals with unrealistic technical, schedule, cost, or price commitments since unrealistic

Defense Federal Acquisition Regulation Supplement

Part 215—Contracting By Negotiation

commitments reflect an inherent lack of technical competence or indicate a failure to comprehend the complexity and risks of the requirements;

(4) Schedule of planned source selection events, including specific dates for the sequential submission of separate technical and cost proposal;

(5) Requirement for the technical proposal to include—

(i) Identification, when appropriate, of trade-offs (with illustrative cost estimate impacts) among performance, production costs, operating and support costs, schedule and logistics support factors; and

(ii) Information showing that the goals for design to cost and operating and support costs (when used) will be achieved when the item enters production;

(6) Requirement for the cost proposal to include detailed cost information supporting the technical proposal and the cost factors in the evaluation criteria;

(7) Statement that both technical and cost discussions will be limited as described in paragraphs (f) and (g) of this subsection; and

(8) Notification that the contracting officer will only negotiate with the selected offeror, and that offerors' initial technical and cost proposals should be their best offer.

(f) *Step one—evaluation of technical proposals.*

(1) The sequence of step one—

(i) Evaluate all technical proposals;

(ii) Conduct limited discussions with all offerors; and

(iii) Ask for any necessary clarifications and additional supporting data when necessary (normally, ask that this be submitted with the cost proposal).

(2) In conducting step one—

(i) Limit discussions to only what is necessary to ensure that both parties understand each other;

(ii) Do not tell offerors about deficiencies in their proposals; and

(iii) Provide written clarification to all offerors when it appears the Government's requirements have been misinterpreted.

(g) *Step two—evaluation of cost proposals.*

(1) The sequence of step two—

(i) Request cost proposals;

(ii) Evaluate all cost proposals;

Defense Federal Acquisition Regulation Supplement

Part 215—Contracting By Negotiation

- (iii) Establish the competitive range;
 - (iv) Eliminate those proposals outside the range and advise those offerors;
 - (v) Conduct limited discussions with remaining offerors; and
 - (vi) Eliminate proposals which cannot be made acceptable and advise the offerors.
- (2) In conducting step two—
- (i) Limit discussions to—
 - (A) Clarifying inconsistencies or correcting mathematical errors;
 - (B) Correlating cost elements with technical effort in order to assess cost realism; and
 - (C) Ensuring a complete understanding of the Government's requirements, the offeror's offer, and other contract terms;
 - (ii) Do not tell an offeror that any of its cost elements are either too high or too low; and
 - (iii) Follow the guidelines in paragraph (f) of this subsection if further discussions of technical proposals or clarifications are required.
- (h) *Step three—common cut-off and selection of an offeror for final contract negotiations.*
- (1) The sequence of step three—
- (i) Notify offerors of the common cut-off date for receipt of best and final offers (technical and cost);
 - (ii) Evaluate the offers;
 - (iii) Select the best offeror (see paragraph (h)(2)(iv) of this subsection for multiple sources);
 - (iv) Tell the selected source that the decision is conditional based on negotiation of a definitive contract within the time period prescribed by the source selection authority; and
 - (v) Advise the other offerors of the source selected.
- (2) In conducting step three—
- (i) Remind offerors, when notifying them of the common cut-off date, that any changes incorporated in the final proposal must be fully documented;

Defense Federal Acquisition Regulation Supplement

Part 215—Contracting By Negotiation

(ii) Do not accept lump sum reductions in final cost proposals without supporting data;

(iii) Do not request additional best and final offers without the approval required by 215.611(c); and

(iv) Do not select two or more offerors, rather than a single source, for final contract negotiations, unless the HCA makes a written determination that final selection of a single source should not be made until the prospective contracts have been tentatively negotiated.

(i) *Step four—final negotiations and contract award.*

(1) The sequence of step four (single selectee)—

(i) Negotiate the final contract price, terms, and conditions; and

(ii) Award the contract.

(2) The sequence of step four (multiple selectees)—

(i) Negotiate tentative final contract terms and conditions;

(ii) Select the best source; and

(iii) Award.

(3) In conducting step four—

(i) Complete negotiations and award the contract within the time prescribed by the source selection authority;

(ii) Terminate negotiations and make a new source selection decision if the condition in paragraph (i)(3)(i) cannot be met;

(iii) Do not permit changes in the Government's requirements or the offeror's proposal which would affect the source selection decision; and

(iv) Follow the procedures in FAR 15.606 if changes in the Government's requirements are necessary.