

**§ 35.937-5**

**40 CFR Ch. I (7-1-10 Edition)**

evaluated. Evaluation criteria shall include, as a minimum, all criteria stated in §35.937-3(c) of this subpart. The grantee shall also evaluate the candidate's proposed method to accomplish the work required, including, where appropriate, demonstrated capability to explore and develop innovative or advanced techniques and designs. The grantee's evaluation shall comply with §35.936-7.

(d) Proposals shall be evaluated through an objective process (e.g., the appointment of a board or committee which, to the extent practicable, should include persons with technical skills. Oral (including telephone) or written interviews should be conducted with top rated proposers, and information derived therefrom shall be treated on a confidential basis, except as required to be disclosed under State or local law or to EPA under §35.937-6.

(e) At no point during the procurement process shall information be conveyed to any candidate which would provide an unfair competitive advantage.

**§ 35.937-5 Negotiation.**

(a) Grantees are responsible for negotiation of their contracts for architectural or engineering services. Contract procurement including negotiation may be performed by the grantee directly or by another non-Federal governmental body, person or firm retained for the purpose. Contract negotiations may include the services of technical, legal, audit, or other specialists to the extent appropriate.

(b) Negotiations may be conducted in accordance with State or local requirements, as long as they meet the minimum requirements as set forth in this section. In the absence of State or local statutory or code requirements, negotiations may be conducted by the grantee under procedures it adopts based upon Public Law 92-582, 40 U.S.C. 541-544 (commonly known as the "Brooks Bill") or upon the negotiation procedures of 40 CFR 33.510-2.

(c) The object of negotiations with any candidate shall be to reach agreement on the provisions of the proposed contract. The grantee and the candidate shall discuss, as a minimum:

(1) The scope and extent of work and other essential requirements;

(2) Identification of the personnel and facilities necessary to accomplish the work within the required time, including where needed, employment of additional personnel, subcontracting, joint ventures, etc.;

(3) Provision of the required technical services in accordance with regulations and criteria established for the project; and

(4) A fair and reasonable price for the required work, to be determined in accordance with the cost and profit considerations set forth in §§35.937-6 and 35.937-7, and payment provisions.

**§ 35.937-6 Cost and price considerations.**

(a) *General.* EPA policy is that the cost or price of all subagreements and amendments to them must be considered. For each subagreement in excess of \$10,000 but not greater than \$100,000, grantees shall use the procedures described in paragraph (c) of this section, or an equivalent process.

(b) *Subagreements over \$100,000.* For each subagreement expected to exceed \$100,000, or for two subagreements which aggregate more than \$100,000 awarded to an engineer for work on one step, or where renegotiation or amendment of a subagreement will result in a contract price in excess of \$100,000, or where the amendment itself is in excess of \$100,000, the provisions of this paragraph (b) shall apply.

(1) The candidate(s) selected for negotiation shall submit to the grantee for review sufficient cost and pricing data as described in paragraph (c) of this section to enable the grantee to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

(2) The grantee shall submit to the EPA Project Officer for review (i) documentation of the public notice of need for architectural or engineering services, and selection procedures used, in those cases where §§35.937-2, 35.937-3 and 35.937-4 are applicable; (ii) the cost and pricing data the selected engineer submitted; (iii) a certification of review and acceptance of the selected engineer's cost or price; and (iv) a copy of