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(2) When the provision at 352.215-70 is included in the solicitation and a proposal is received after the exact time specified for receipt, the Contracting Officer, with the assistance of cost and technical personnel, shall make a written determination as to whether the proposal meets the requirements of the provision at 352.215-70 and, therefore, can be considered.

315.209 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert paragraph (e) in 352.215-1 in place of paragraph (e) in the provision in FAR 52.215-1, Instructions to Offerors—Competitive Acquisition, in solicitations for competitive, negotiated acquisitions valued at more than the simplified acquisition threshold. This is an authorized FAR deviation.

Subpart 315.3—Source Selection

315.303-70 Policy.

(a) If an OPDIV is required by statute to use peer review for technical review of specified contracts, the requirements of those statutes, any implementing regulatory requirements, the Federal Advisory Committee Act, and as applicable, any approved HHSAR deviation(s) from this subpart take precedence over the otherwise applicable requirements of this subpart.

(1) The statutes that require such review and implementing regulations are as follows: NIH—42 U.S.C. 289a and 42 CFR Part 52h; SAMHSA—42 U.S.C. 290aa-3, and AHRQ—42 U.S.C. 299c-1.

315.304 Evaluation factors and significant subfactors.

(a) A solicitation for EIT products and services, including EIT deliverables such as electronic documents and reports, shall include a separate technical evaluation factor (which may be in the form of a technical evaluation criterion or a mandatory qualification criterion, as appropriate) developed by the Contracting Officer, Project Officer, and the OPDIV Section 508 Coordinator to determine vendor compliance with applicable Section 508 accessibility standards. The technical evaluation panel's assessment of Section 508 accessibility standards con-

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formance shall be based on the Section 508 Product Assessment Template—see Section 508 policy on Office of Disability Web site for the template, and on any other pertinent information that offerors provide in response to a solicitation. The HHS Office on Disability is responsible for providing technical assistance in Section 508 evaluation factor development.

(b) Before conducting negotiations or making an award, the Contracting Officer shall provide a summary of the technical evaluation panel's assessment of vendor responses to the solicitation's Section 508 evaluation factor for review by the Section 508 Official or designee. The Section 508 Official or designee shall indicate approval/disapproval of the evaluation panel's assessment. The Contracting Officer shall coordinate the resolution of any issues raised by the Section 508 Official or designee with the chair of the technical evaluation panel or Project Officer, as appropriate. The acquisition process shall not proceed unless and until the Section 508 Official or designee has approved the technical evaluation panel's assessment. The Contracting Officer shall include the assessment in the official contract file. See 339.203 regarding processing exception determination requests.

315.305 Proposal evaluation.

(a)(1) *Cost or price evaluation.*

(i) The Contracting Officer shall evaluate proposals in accordance with the FAR 15.404. The extent of cost or price analysis in each case depends on the availability of competition, contract type, the proposed amount, and technical complexity.

(A) For competitive firm-fixed-price and fixed price with economic price adjustment contracts, price analysis should be sufficient to determine price fairness and reasonableness.

(B) When competition is not adequate for the above contract types, and for cost-reimbursement and time and materials contracts, cost analysis may be required. In such cases, the Contracting Officer shall request the Project Officer's assistance in analyzing the following cost elements, if

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applicable, to determine if the proposed amounts are necessary and reasonable for efficient contract performance:

(1) The number and mix of proposed labor hours relative to the technical requirements.

(2) Types, numbers and hours/days of proposed consultants.

(3) The kinds and quantities of material, equipment, supplies, and services.

(4) Kinds and quantities of IT.

(5) Logic of proposed subcontracting.

(6) Travel proposed, including number of trips, locations, purpose, and travelers.

(7) Other direct costs not specified above.

(ii) The Project Officer shall provide written comments, including the rationale for any exceptions to the cost elements. The Contracting Officer shall consider the Project Officer's comments for negotiations or to support award without discussions. The Contracting Officer shall also request assistance of a cost/price analyst, when necessary.

(2) *Past performance evaluation.* When evaluating past performance, the Contracting Officer shall check references to obtain information concerning the performance history of offerors in compliance with *FAR 42.1502*. The Contracting Officer may require the assistance of the Project Officer as well as other Government technical personnel in performing this function.

(3) *Technical evaluation.*

(i) *Technical evaluation plan.*

(A) The Contracting Officer shall require a technical evaluation plan if the proposed acquisition either requires preparation of an AP—see *307.71* or is otherwise sufficiently complex.

(B) The technical evaluation plan shall include, at a minimum, the following elements:

(1) A list of recommended technical evaluation panel members, their organizations, a list of their major consulting clients (if applicable), their qualifications, and curricula vitae (if applicable).

(2) A statement that the technical evaluation panel will include non-Federal technical proposal evaluators, if applicable, and a determination that sufficient Federal technical proposal

evaluators are unavailable—see *FAR 37.204*. A determination to use non-Federal proposal evaluators shall be signed at a level no lower than the HCA. A determination is not required, however, if non-Federal evaluators will be used in accordance with *315.303–70(a)*.

(3) A statement that there is no apparent or actual conflict of interest regarding any recommended panel member.

(4) A copy of each rating sheet, approved by the Contracting Officer, to ensure consistency with the evaluation criteria.

(5) A brief description of the general evaluation approach.

(6) A description of the methodology for evaluating key elements in the technical evaluation plan, including any solicitation evaluation factor involving the acquisition of EIT products and services subject to Section 508.

(C) Except as provided in OPDIV procedures, a program office official at least one level above the Project Officer shall approve the technical evaluation plan.

(D) The Project Officer shall provide the technical evaluation plan to the Contracting Officer for review and approval before the solicitation is issued. The Contracting Officer shall ensure that the evaluation criteria reflect the significant factors and subfactors relating to the evaluation when conducting the review of the plan.

(ii) *Technical evaluation panel.*

(A) *General.*

(1) A technical evaluation panel is required for all acquisitions subject to this subpart that require preparation of an AP. The Contracting Officer may require a technical evaluation panel for acquisitions that do not require preparation of an AP, based on the complexity of the acquisition and the role that the technical evaluation will have in the award decision.

(2) The technical evaluation process requires careful consideration regarding the size, composition, expertise, and function of the technical evaluation panel. The panel's efforts will influence the success or failure of the acquisition.

(3) At least 50 percent of the HHS personnel on a technical evaluation

panel shall have successfully completed HHS University's "Basic Contracting Officer's Technical Representative" course or an equivalent course within 4 years before assuming their designated role. This training requirement applies to evaluators performing the initial technical evaluation and any subsequent technical evaluations, but does not apply to peer review panel members. The Contracting Officer may waive this training requirement in exigent circumstances if documented in writing and approved by the Head of Contracting Activity. This training requirement applies to evaluators performing the initial technical evaluation and any subsequent technical evaluations. However, this training requirement does not apply to peer review panel members.

(B) *Role of the Project Officer.*

(1) The Project Officer provides guidance, information, and assistance to the Contracting Officer on all technical aspects of a proposed acquisition—see 302.101. The Project Officer may be a voting member of the technical evaluation panel and may serve as the chairperson of the panel unless prohibited by law or contracting activity procedures.

(2) The Project Officer shall recommend panel members who have sufficient expertise in the technical aspects of the acquisition to be able to evaluate strengths and weaknesses in proposals.

(3) The Project Officer shall ensure that persons possessing expertise and experience in addressing issues relative to sex, race, national origin, and disability are included as panel members for acquisitions to which such issues apply.

(4) The Project Officer shall submit a list of recommended panel members to a program office official at least one level higher than him/herself. This official shall review the list and select the chairperson.

(5) The Project Officer shall arrange for adequate and secure working space for the panel.

(C) *Role of the Contracting Officer.*

(1) The term "Contracting Officer," as used in this subpart, may be the Contracting Officer or a Contract Spe-

cialist possessing an appropriate FAC-C certification.

(2) The Contracting Officer shall not serve as a member of the technical evaluation panel, but shall—

(i) Address the initial meeting of the technical evaluation panel;

(ii) Provide assistance to the evaluators as required; and

(iii) Ensure that the scores adequately reflect the written technical report comments.

(D) *Conflict of interest.*

(1) If a panel member has an actual or apparent conflict of interest related to a proposal under evaluation, the individual cannot serve on the panel. If a suitable replacement is not available, the panel shall perform the review without a replacement.

(2) For the purposes of this subpart, conflicts of interest are defined in the *Standards of Ethical Conduct for Employees of the Executive Branch* (5 CFR part 2635), *Supplemental Standards of Ethical Conduct for Employees of the Department of Health and Human Services* (5 CFR part 5501), and the *Procurement Integrity Act*. For outside evaluators serving on the technical evaluation panel, see paragraph (a)(3)(ii)(F) of this section.

(E) *Continuity of evaluation process.*

(1) The technical evaluation panel shall evaluate all original proposals; make recommendations to the chairperson regarding strengths and weaknesses of proposals; if required by the Contracting Officer, assist the Contracting Officer during communications and discussions; and review supplemental, revised or final proposal revisions. To the extent possible, the same evaluators shall be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals. The following are examples of circumstances when it would not be necessary for the technical evaluation panel to evaluate revised proposals submitted during the acquisition:

(i) The answers to questions do not have a substantial impact on the proposal.

(ii) Final proposal revisions are not materially different from the original proposals.

(iii) Revisions to the proposals are relatively minor and do not affect the rankings of the offerors.

(2) The Contracting Officer, with the written concurrence of the technical evaluation panel chairperson, may decide not to have the panel evaluate the revised proposals. The Contracting Officer shall fully document such a decision in the contract file.

(3) When the Contracting Officer considers technical evaluation panel meetings necessary, the attendance of evaluators is mandatory. When the chairperson determines that an evaluator's failure to attend the meetings is prejudicial to the evaluation, the chairperson shall remove or replace the individual after discussing the situation with the Contracting Officer and obtaining the Contracting Officer's concurrence and the approval of the official responsible for appointing the panel members.

(4) When continuity of the evaluation process is not possible, and new evaluators are selected or the size of the evaluation panel is reduced, each panel member shall review all proposals at the current stage of the acquisition—*i.e.*, initial proposal, final proposal revisions, *etc.* Also, the Contracting Officer shall provide guidance concerning what steps to take if an unusually large number of proposals is received, including how to determine what constitutes an unusually large number of proposals.

(F) *Use of outside evaluators.*

(1) Except when peer review is required by statute as provided in 315.303-70(a), decisions to disclose proposals to evaluators outside of the Government shall be made by the official responsible for appointing panel members in accordance with OPDIV procedures. The avoidance of organization conflict of interest and competitive relationships must be taken into consideration when making the decision to use outside evaluators.

(2) When a solicited proposal will be disclosed outside the Government for evaluation purposes, the following or similar conditions shall be part of the written agreement with the evaluator(s) prior to disclosure:

CONDITIONS FOR EVALUATING PROPOSALS

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal for evaluation purposes only. The foregoing requirement does not apply to data obtained from another source without restriction. Any notice or legend placed on the proposal by either HHS or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return to the Government the furnished copy of the proposal or abstract, and all copies thereof, to the HHS office which initially furnished the proposal for evaluation. Unless authorized by the HHS initiating office, the evaluator shall not contact the submitter of the proposal concerning any aspects of its contents. The evaluator's employees and subcontractors shall abide by these conditions.

(iii) *Receipt of proposals.*

(A) After the closing date for the receipt of proposals set in the solicitation, the Contracting Officer shall forward the technical proposals, by memorandum, to the Project Officer or chairperson for evaluation. The Contracting Officer shall retain the business proposals for evaluation.

(B) The transmittal memorandum shall include at least the following elements:

(1) A list of the names of the organizations submitting proposals.

(2) A reference to the need to preserve the integrity of the source selection process.

(3) A statement that only the Contracting Officer is authorized to conduct discussions.

(4) A requirement for a technical evaluation report in accordance with paragraph (a)(3)(vi) of this section.

(5) The establishment of a date for receipt of the technical evaluation report.

(iv) *Convening the technical evaluation panel.*

(A) Normally, the technical evaluation panel convenes to evaluate proposals. However, there may be situations when the panel chairperson determines that it is not feasible for the panel to convene. Whenever the panel does not convene, the panel chairperson shall closely monitor the technical review to produce acceptable results.

(B) When a panel convenes, the chairperson shall control the technical proposals provided by the Contracting Officer for use during the evaluation process. The chairperson normally distributes the technical proposals prior to the initial panel meeting and establishes procedures for securing the proposals whenever they are not being evaluated to ensure their confidentiality. After an evaluation is completed, the chairperson shall return all proposals to the Contracting Officer.

(C) The Contracting Officer shall address the initial meeting of the panel and state the basic rules for conducting the evaluation. The Contracting Officer shall provide written guidance to the panel, if the Contracting Officer cannot attend the initial panel meeting. The guidance shall include the following elements:

(1) An explanation of the evaluation process and the role of evaluators throughout the process.

(2) The need for evaluators to read and understand the solicitation, especially the SOW/PWS and evaluation criteria, prior to reading the proposals.

(3) The need for evaluators to restrict the review to only the SOW/PWS, the evaluation criteria, and the contents of the technical proposals.

(4) The need for each evaluator to review all of the proposals.

(5) The need for evaluators to identify ambiguities, inconsistencies, errors, and deficiencies.

(6) The need for the evaluators to provide complete written documentation of the individual strengths and weaknesses for each proposal.

(7) An instruction specifying that, until an award is made, they may not disclose information concerning the acquisition to any person not directly involved in the evaluation process.

(8) An explanation of conflicts of interest.

(v) *Rating and ranking of proposals.* The evaluators shall individually read each proposal, describe tentative strengths and weaknesses, and independently assign preliminary scores in relation to each evaluation factor set forth in the solicitation. The evaluators may then discuss in detail the individual strengths and weaknesses described by each evaluator and, if pos-

sible, arrive at a common understanding of the major strengths and weaknesses and the potential for correcting each offeror's weakness(es). Each evaluator shall assign a final score to each proposal, and the technical evaluation panel shall collectively rank the proposals. Normally, ranking is the result of adding the numerical scores assigned to the evaluation factors and determining the average for each offeror. The evaluators shall then identify whether each proposal is acceptable or unacceptable. The technical evaluation panel shall not employ predetermined cutoff scores.

(vi) *Technical evaluation report.* The chairperson shall prepare a technical evaluation report and provide it to the Contracting Officer, who shall maintain it as a permanent record in the contract file. The report shall reflect the ranking of the proposals and identify each proposal as acceptable or unacceptable. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations, qualifications, or areas to be addressed that might bear upon the selection of sources for negotiation and award. The report shall include concrete technical reasons supporting any determination of unacceptability of a proposal and, for acceptable proposals, include specific points and questions for discussions or negotiations. The technical evaluation report shall also include a copy of each signed rating sheet, unless the Contracting Officer determines, in accordance with FAR 15.305(a)(3)(ii), and 315.305(a)(3)(vi), that the technical evaluation report includes appropriate and sufficiently detailed supporting narrative (with specific references to particular portions of offerors' proposals) to (1) fully and reasonably explain the basis for the technical evaluation panel's assessments of each proposal, including an evaluation rating of "acceptable" or "unacceptable; and (2) support any recommendation to include or not include a proposal in the competitive range. However, when peer review of proposals is required as provided in 315.303-70(a), OPDIVs shall follow applicable peer review guidelines

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and practices regarding the submission, maintenance, and disposal of reviewer rating sheets.

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315.306 Exchanges with offerors after receipt of proposals.

(d) *Exchanges with offerors after establishment of the competitive range.* The Project Officer or technical evaluation panel shall develop technical questions as part of the technical evaluation report. The questions shall disclose the ambiguities, weaknesses, and deficiencies of offeror(s)' proposals. The Contracting Officer, with the assistance of the Project Officer or panel as required, shall prepare the management, past performance, and cost or price questions. The method of requesting offerors in the competitive range to submit additional information may vary depending on the complexity of the questions, the extent of additional information necessary, the time needed to analyze the responses, and the time frame for making the award. However, to the extent practicable, all questions and answers shall be in writing. The Contracting Officer shall give each offeror in the competitive range an equitable period of time for preparation of responses to questions to the extent practicable.

315.307 Proposal revisions.

(b) Final proposal revisions are subject to—

(1) A final evaluation of price or cost and other salient factors by the Contracting Officer and Project Officer, with assistance from a cost/price analyst, as appropriate; and

(2) An evaluation of technical factors by the technical evaluation panel, as necessary.

The technical evaluation panel may rescore and re-rank technical proposals in the competitive range and prepare a technical evaluation report. To the extent practicable, the same evaluators who reviewed the original proposals shall perform the evaluation. The Contracting Officer and Project Officer shall conduct a final evaluation of past performance. The technical evaluation panel may be involved in the final evaluation of past performance, if the panel

is comprised solely of Government personnel.

315.370 Finalization of details with the selected source.

(a) After selection of the successful proposal, the Contracting Officer may finalize details with the selected offeror, if necessary. However, the Contracting Officer shall not introduce any factor that could have an effect on the selection process after the common cutoff date for receipt of final proposal revisions, nor shall the finalization process in any way prejudice the competitive interest or rights of the unsuccessful offerors. The Contracting Officer shall restrict finalization of details with the selected offeror to definitizing the final agreement on terms and conditions, assuming none of these factors were involved in the selection process.

(b) Whenever a change occurs in the requirements, the Contracting Officer shall reopen the competition, and provide all offerors submitting final proposal revisions an opportunity to resubmit proposals based on the revised requirements. If there is a question as to whether a change is material and would require the initiation of a new competition, the Contracting Officer shall obtain the advice of technical personnel and OGC-GLD before proceeding. Significant changes in the offeror's cost proposal may also necessitate a reopening of a competition, if the changes alter the factors involved in the original selection process.

(c) Upon finalization of details, the Contracting Officer shall obtain a confirmation letter from the successful offeror which includes any revisions to its technical proposal, the agreed upon price or cost, and, as applicable, a certificate of current cost or pricing data.

315.371 Contract preparation and award.

(a) After completing any activities that may be necessary to finalize details with the selected offeror, the Contracting Officer shall—

(1) Prepare the negotiation memorandum in accordance with 315.372;

(2) Prepare the contract containing all agreed to terms and conditions and clauses required by law or regulation;