

## Health and Human Services

315.371

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

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21510, Apr. 26, 2010]

### 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;

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(3) Include in the contract file the pertinent documents referenced in *FAR 4.803*; and

(4) Obtain the appropriate approval of the proposed contract award(s) in accordance with subpart *304.71* and contracting activity procedures.

(b) After receiving the required approvals, the Contracting Officer shall—

(1) Transmit the contract to the prospective contractor for signature; and

(2) Inform the prospective contractor that the contract is not effective until the Contracting Officer transmits the fully executed contract to the contractor.

(c) The Contracting Officer shall not sign or issue the contract until the finance office certifies that the funds are available for obligation.

#### **315.372 Preparation of negotiation memorandum.**

The Contracting Officer shall prepare a negotiation memorandum, or summary of negotiations, to document all actions leading to award of a contract and support the source selection decision discussed in *FAR 15.308*. The memorandum also satisfies the requirement for preparation of a “cost/price negotiation memorandum” required by *FAR 15.406-3*. The memorandum shall be in sufficient detail to explain and support the rationale, judgments, and authorities upon which all actions were predicated. The memorandum shall document the negotiation process and reflect the negotiator’s actions and judgments in concluding a satisfactory agreement for the Government. The memorandum shall address each item listed below. If an item is not applicable, the memorandum shall so state. The Contracting Officer may reference information already contained in the contract file rather than reiterate it.

(a) *Description of articles and services and period of performance.* Provide a description of the articles or services, quantity, unit price, total contract amount, and period of contract performance.

(b) *Acquisition planning.* Summarize or reference any acquisition planning activities that have taken place.

(c) *Synopsis of acquisition.* Provide a statement as to whether the acquisition

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has or has not been publicized in accordance with *FAR Subpart 5.2*. Include a brief statement referencing the specific basis for exemption under the FAR, if applicable.

(d) *Contract type.* Provide sufficient detail to support the type of contractual instrument recommended for the acquisition. If the contract is a cost-sharing type, explain the essential cost-sharing features.

(e) *Extent of competition.* Discuss the extent to which full and open competition was solicited and obtained. Include the date of solicitation, sources solicited, and solicitation results. If a late proposal was received, discuss whether or not the late proposal was evaluated and the rationale for the decision.

(f) *Technical evaluation.* Summarize or reference the results presented in the technical evaluation report.

(g) *Business evaluation.* Summarize or reference results presented in the business report.

(h) *Past performance.* Summarize or reference results of both the past performance evaluation and reference checks.

(i) *Competitive range (if applicable).* Describe how the competitive range was determined, and indicate the offerors that were included in and excluded from the competitive range.

(j) *Cost breakdown and analysis.* Include a complete cost breakdown together with the Contracting Officer’s analysis of the estimated cost by individual cost elements. The analysis shall discuss the items specified in *FAR 15.406-3* and other cost factors, such as—

(1) A comparison of cost factors proposed for the current requirement with actual factors used in earlier contracts, using the same cost centers of the same supplier or cost centers of other sources having recent contracts for the same or similar item;

(2) Any pertinent Government-conducted audit of the proposed contractor’s record or any pertinent cost advisory report;

(3) Any pertinent technical evaluation inputs as to necessity, allocability and reasonableness of labor, material and other direct expenses;