

(iii) *Performance* (cost control and other past accomplishments). The Contracting Officer shall evaluate the contractor's past performance in areas such as: quality of services or products, meeting performance schedules, efficiency in cost control (including need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation (both business and technical), compliance with previous contract requirements, and management of subcontract programs. Where a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, this performance merits a proportionately greater opportunity for profit. Conversely, a poor record in this regard warrants less profit.

(iv) *Federal socioeconomic programs*. This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of a contractor's successful participation in Government sponsored programs involving: Small businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; 8(a) small businesses; women-owned small businesses; small disadvantaged businesses; sheltered workshops for the disabled; mentor-protégé; energy conservation, *etc.* The Contracting Officer shall give positive consideration for the contractor's policies and practices that support Federal socioeconomic programs and contribute to successful results. Conversely, the Contracting Officer shall view failure or unwillingness on the part of the contractor to support Federal socioeconomic programs as evidence of poor performance for the purpose of establishing a profit objective.

(v) *Special situations*.

(A) *Inventive and developmental contributions*. The Contracting Officer shall consider the extent and nature of contractor-initiated and contractor-financed independent development in formulating the profit objective, provided that the Contracting Officer has made a determination that the effort will benefit the contract. Examples of profit weighting factors include contribution of the independent develop-

ment to health and human service-related missions; the initiative demonstrated by the contractor in pursuing the independent development; the extent of the contractor's cost risk; and whether the independent development cost was recovered directly or indirectly from Government sources.

(B) *Unusual pricing agreements*. Occasionally, unusual contract pricing arrangements are made with the contractor wherein it agrees to cost ceilings (e.g., a ceiling on overhead rates for conditions other than those discussed at FAR 42.707). In these circumstances, the Contracting Officer shall give the contractor favorable consideration in developing a profit objective.

(C) *Negative factors*. Special situations need not be limited to those which only increase profit levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off-benefits as a direct result of the contract (e.g., products or services with commercial application).

(4) *Facilities capital cost of money*. When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, the Contracting Officer shall reduce the profit objective in an amount equal to the amount of facilities capital cost of money allowed in accordance with the Facilities Capital Cost-of-Money cost principle. If the contractor does not propose this cost, the Contracting Officer shall insert a provision in the contract that makes facilities capital cost of money an unallowable cost.

### Subpart 315.6—Unsolicited Proposals

#### 315.605 Content of unsolicited proposals.

(d) *Certification by offeror*. To ensure against contacts between HHS personnel and prospective offerors that would exceed the limits of advance guidance set forth in FAR 15.604 and potentially result in an unfair advantage to an offeror, the Contracting Officer shall: Furnish the following certification template to any prospective offeror of an unsolicited proposal; and require that the executed certification be

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included in any resultant unsolicited proposal:

### UNSOLICITED PROPOSAL

#### CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that—

(a) This proposal has not been prepared under Government supervision;

(b) The methods and approaches stated in the proposal were developed by this offeror;

(c) Any contact with Department of Health and Human Services (HHS) personnel has been within the limits of appropriate advance guidance set forth in *FAR 15.604*; and

(d) No prior commitments were received from HHS personnel regarding acceptance of this proposal.

Date: \_\_\_\_\_

Organization \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

(This certification shall be signed by a responsible management official of the proposing organization or by a person authorized to contractually obligate the organization.)

#### **315.606 Agency procedures.**

(a) The HCA is responsible for establishing procedures to comply with *FAR 15.606(a)*.

(b) The HCA or designee shall be the point of contact for coordinating the receipt and processing of unsolicited proposals.

#### **315.606–1 Receipt and initial review.**

(d) OPDIVs shall not refuse consideration of an unsolicited proposal because an organization initially submitted it as a grant application. However, OPDIVs shall not award contracts based on unsolicited proposals that have been rejected for grant awards due to lack of scientific merit.

#### **315.609 Limited use of data.**

An offeror shall use the legend, Use and Disclosure of Data, prescribed in *FAR 15.609(a)*, to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may need to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the Contracting Officer shall provide the following notice to all pro-

spective offerors of unsolicited proposals:

“The Government will attempt to comply with the “Use and Disclosure of Data” legend. However, the Government may not be able to withhold a record (data, document, etc.) or deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government determination to withhold or disclose a record will be based upon the particular circumstances surrounding the record and on whether the record is exempt from disclosure under the Freedom of Information Act. Per *FAR 15.609(e)*, the offeror should identify any records that it considers to be trade secrets, commercial or financial information, and privileged or confidential information.”

## **Subpart 315.70—Acquisition of Electronic Information Technology**

### **315.7000 Section 508 accessibility standards.**

EIT products and services, including EIT deliverables such as electronic documents and reports, acquired using negotiated procedures shall comply with Section 508 of the Rehabilitation Act of 1973, as amended. Consistent with paragraph 4.3.1 of the HHS Section 508 policy—see Section 508 policy on HHS Office on Disability Web site, if products and services, including commercially available items, meet some but not all of the applicable Section 508 accessibility standards, and no commercially available products or services meet all of the applicable Section 508 accessibility standards, an OPDIV/STAFFDIV shall acquire the products and services that best meet the applicable Section 508 accessibility standards. Commercial nonavailability exception determinations for EIT products and services that do not meet some or all of the applicable Section 508 accessibility standards shall be processed in accordance with 339.203.

## **PART 316—TYPES OF CONTRACTS**

### **Subpart 316.3—Cost-reimbursement Contracts**

Sec.  
316.307 Contract clauses.