

PART 5215—CONTRACTING BY NEGOTIATION

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Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

5215.402 General.

(a) Competition is the cornerstone of Navy acquisition policy. As such, the preferred and predominant method of pricing in the Navy is through the use of competition, without the need for cost or pricing data and cost analysis. The Navy has found that not only does competition generate more favorable prices, but significant time and effort can be saved by relying on the forces of competition to establish prices, as opposed to the use of detailed cost analysis. This approach is not only consistent with the Competition in Contracting Act (CICA), but it affords the opportunity for significant efficiencies and reduction of procurement leadtime as a result of minimizing the requirement for cost or pricing data and associated audit reports. As competition is increasingly relied upon and the need for cost or pricing data is reduced, there may be a corresponding requirement for performing a cost realism evaluation for many competitive procurements to guard against unrealistically low prices which can lead to quality deficiencies, late deliveries, performance shortfalls, and cost overruns. In performing cost realism evaluation,

only the minimum selected data to perform the cost realism evaluation is to be obtained, as opposed to full cost or pricing data which would be required when it is necessary to perform cost-based negotiations, such as in the case of sole source negotiations.

5215.407 Solicitation provisions.

(S-90) During acquisition planning, an assessment shall be made as to the likelihood that adequate price competition will exist. If it is anticipated that an award will be based on adequate price competition, the solicitation shall include the provision at 5252.215-9000. If the procurement schedule is critical, this provision with its Alternate I shall be used so that there will be a minimum delay in the event that adequate price competition does not materialize and it is necessary to obtain cost or pricing data. Contracting officers must be judicious in the use of the Alternate I provision, as it may cause offerors to incur certain costs in preparing standby cost or pricing data in anticipation that it may be subsequently requested.

Subpart 5215.6—Source Selection

5215.605 Evaluation factors.

(S-90)(1) When a cost realism evaluation will be performed, the source selection evaluation criteria shall include a notice that the proposed costs may be adjusted, for purposes of evaluation, based upon the results of the cost realism evaluation.

(2) Technical criteria may include quality standards that are based on either a minimally acceptable approach or a cost/benefit approach. When the quality desired is that necessary to meet minimum needs, proposals should be evaluated for acceptability and award made to the lowest priced, technically acceptable offer. When the quality desired is the highest affordable or that representing the best value, proposals should be evaluated on a cost/benefit basis that would permit an award based on paying appropriate premiums for measured increments of quality. When a cost/benefit approach is used, cost must carry a weight of not less than 40% unless thoroughly justified.

(3) Cost realism evaluation. (i) Cost realism evaluation involves a summary level review of the cost portion (excluding profit/fee) of the offerors' proposals to determine if the overall costs proposed are realistic for the work to be performed. Cost realism evaluation differs from the detailed cost analysis usually undertaken in a noncompetitive procurement to determine the reasonableness of the various cost elements and profit/fee to arrive at a fair and reasonable price. Data submitted only for cost realism evaluation generally will not be certified.

(ii) The purpose of cost realism evaluation is to:

(A) Verify the offeror's understanding of the requirements;

(B) Assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/costs; and

(C) Assess the degree to which the cost included in the cost/price proposal accurately represents the work effort included in the technical proposal.

(iii) Some examples of data and information that may be obtained to perform cost realism evaluation are:

(A) Manloading (quantity and mix of labor hours);

(B) Engineering, labor and overhead rates; and

(C) Make or buy plans.

A price analysis approach where there is adequate price history may also be a suitable and efficient means to evaluate cost realism. The amount of data required will be dependent upon the complexity of the procurement and the data already obtained by the contracting officer (e.g. information on recent Forward Pricing Rate Agreements (FPRAs)).

(iv) Cost realism evaluation generally will be performed as a part of the proposal evaluation process (see 5215.605) for all competitive solicitations where a cost reimbursement contract is contemplated. For competitive solicitations contemplating a fixed price, labor hour, or time and material type contract, a cost realism evaluation would be the exception and not the rule, although its use may be ap-

propriate where the proposal evaluation process will encompass both a cost/price evaluation and a technical evaluation. Also, where the contracting officer suspects a "buy-in" (see FAR 3.501) or a misunderstanding of the requirements as a result of reviewing the initial offers, data and information should be obtained and a cost realism evaluation performed.

(v) When cost realism data are required, the contracting officer shall not request a formal field pricing report but rather, shall request a review of only those specific areas of information necessary to allow the contracting officer to perform a cost realism evaluation. For example, the contracting officer may only need to know the current or FPRA labor and/or overhead rates. In these instances, the request for information from DCAA may be oral or written.

5215.608 Proposal evaluation.

(a) When a cost realism evaluation will be performed in accordance with 5215.605(S-90), the resulting realistic cost estimate shall be used in the evaluation of cost.

Subpart 5215.8—Price Negotiation

5215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) *General.* As explained in 5215.402, cost or pricing data would not normally be obtained because the predominant portion of Navy procurements are awarded on the basis of adequate price competition.

(b)(1)(iii) Adequate price competition may also exist where price is a secondary factor in the evaluation of proposals, as long as price is a substantial factor. Price, as used herein, means cost plus any fee or profit applicable to the contract price. Thus, in competitive acquisitions where adequate price competition is contemplated, the contracting officer shall not require the submission of cost or pricing data whether certified or not, as defined in FAR 15.801, regardless of the type of contract.

(b)(3) Examples of contract awards for which prices may be based on adequate price competition and/or to have