

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Parts 1815 and 1852**

RIN 2700-AE13

NASA FAR Supplement: Proposal Adequacy Checklist**AGENCY:** National Aeronautics and Space Administration.**ACTION:** Final rule.

SUMMARY: NASA has adopted as final, without change, a proposed rule amending the NASA FAR Supplement (NFS) to incorporate a proposal adequacy checklist for proposals in response to solicitations that require the submission of certified cost or pricing data.

DATES: *Effective Date:* March 28, 2014.

FOR FURTHER INFORMATION CONTACT: Bill Roets, NASA, Office of Procurement, Contract Management Division (Suite 5K34); (202) 358-4483; email: william.roets-1@nasa.gov.

SUPPLEMENTARY INFORMATION:**A. Background**

A proposed rule was published on October 29, 2013 (78 FR 64442) that supported the NASA Assistant Administrator for Procurement's "Reducing Transaction Costs in NASA Procurements" initiative by incorporating the requirement for a proposal adequacy checklist into the NFS at 1815.408-70(c), and associated solicitation provision at NFS 1852.215-85, to ensure offerors take responsibility for submitting thorough, accurate, and complete proposals. The provision will be included in solicitations that require the submission of certified cost or pricing data.

B. Discussion and Analysis*I. Summary of Significant Changes*

Based on a review of the public comments discussed below, NASA has concluded that no change to the proposed rule is necessary.

II. Analysis of Public Comment

NASA received comments from one respondent on the proposed rule. Comments are discussed below.

a. Overly Burdensome

Comment: Respondent opined that the proposed rule passed the administrative burden and shifted the associated costs directly onto the contractor which was inappropriate. Respondent suggested, as an alternative, that solicitations require standardized table of contents with a proposal.

Response: This rule does not impose additional requirements over what is already required under the conditions when certified cost or pricing data is required. This provision is a single uniform tool that is applicable across NASA to promote consistency in compliance with FAR Table 15-2.

b. Applicability Clarification

Comment: Respondent was concerned that this rule would be applied to programs that have a phased application process (e.g. Phase A, Phase B). Respondent requested clarification that the rule would only apply to the full (Phase B) application.

Response: The checklist is only utilized when certified cost or pricing data is required per FAR 15.403-4. In the example, if the Phase A acquisition did not require certified cost or pricing data, use of the checklist would not be required by this rule.

C. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, at 5 U.S.C. 601, et. seq., and is summarized as follows:

This final rule amends the NASA FAR Supplement (NFS) to add a checklist for NASA contractors to complete under solicitations that require the submission of certified cost or pricing data. This rule supports the NASA Assistant Administrator for Procurement's "Reducing Transaction Costs in NASA Procurements" initiative.

The objective of the rule is to ensure that offerors submit thorough, accurate, and complete proposals. By filling out the checklist, offerors will be able to self-validate their proposals.

No issues were raised by the public in response to the initial regulatory flexibility analysis.

No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule.

The final rule will apply to solicitations, for which certified cost or pricing data are required. Based on data collected in the Federal Procurement Data System for FY2010-2012, there are on average 1162 actions per year that met the criteria where the proposal adequacy checklist is to be utilized. On average, 462 of those actions are with small business concerns.

No alternatives were determined; the proposal adequacy checklist was created directly from requirements already in the FAR.

E. Paperwork Reduction Act

This final rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35). However, these changes to the NFS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0013, entitled "Cost or Pricing Data Exemption Information."

List of Subjects in 48 CFR 1815 and 1852

Government Procurement.

William P. McNally,*Assistant Administrator for Procurement.*

Accordingly, 48 CFR Parts 1815 and 1852 are amended as follows:

PART 1815—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for Part 1815 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

■ 2. In section 1815.408-70, paragraph (c) is added to read as follows:

1815.408-70 NASA solicitation provisions and contract clauses.

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(c) When the solicitation requires the submission of certified cost or pricing data, the contracting officer shall include 1815.215-85, Proposal Adequacy Checklist, in the solicitation to facilitate submission of a thorough, accurate, and complete proposal.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for Part 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

■ 4. Section 1852.215–85 is added to read as follows:

1852.215–85 Proposal adequacy checklist.

As prescribed in 1815.408–70(c), use the following provision:

PROPOSAL ADEQUACY CHECKLIST (MAR 2014)

The offeror shall complete the following checklist, providing location of requested information, or an explanation of why the requested information is not provided. In

preparation of the offeror's checklist, offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.

PROPOSAL ADEQUACY CHECKLIST

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
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GENERAL INSTRUCTIONS

1. FAR 15.408, Table 15–2, Section I Paragraph A.	Is there a properly completed first page of the proposal per FAR 15.408 Table 15–2 I.A or as specified in the solicitation?		
2. FAR 15.408, Table 15–2, Section I Paragraph A(7).	Does the proposal identify the need for Government-furnished material/tooling/test equipment? Include the accountable contract number and contracting officer contact information if known.		
3. FAR 15.408, Table 15–2, Section I Paragraph A(8).	If your organization is subject to Cost Accounting Standards (CAS), does the proposal identify the current status of your CAS Disclosure Statement? Does the proposal identify and explain notifications of noncompliance with Cost Accounting Standards Board or Cost Accounting Standards (CAS); any proposal inconsistencies with your disclosed practices or applicable CAS; and inconsistencies with your established estimating and accounting principles and procedures?		
4. FAR 15.408, Table 15–2, Section I, Paragraph C(1). FAR 2.101, "Cost or pricing data"	Does the proposal disclose any other known activity that could materially impact the costs? This may include, but is not limited to, such factors as— (1) Vendor quotations; (2) Nonrecurring costs; (3) Information on changes in production methods and in production or purchasing volume; (4) Data supporting projections of business prospects and objectives and related operations costs; (5) Unit-cost trends such as those associated with labor efficiency; (6) Make-or-buy decisions; (7) Estimated resources to attain business goals; and (8) Information on management decisions that could have a significant bearing on costs.		
5. FAR 15.408, Table 15–2, Section I Paragraph B.	Is an Index of all certified cost or pricing data and information accompanying or identified in the proposal provided and appropriately referenced?		
6. FAR 15.403–1(b)	Are there any exceptions to submission of certified cost or pricing data pursuant to FAR 15.403–1(b)? If so, is supporting documentation included in the proposal? (Note questions 18–20.)		
7. FAR 15.408, Table 15–2, Section I Paragraph C(2)(i).	Does the proposal disclose the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data?		
8. FAR 15.408, Table 15–2, Section I Paragraph C(2)(ii).	Does the proposal disclose the nature and amount of any contingencies included in the proposed price?		
9. FAR 15.408 Table 15–2, Section II, Paragraph A or B.	Does the proposal explain the basis of all cost estimating relationships (labor hours or material) proposed on other than a discrete basis?		
10. FAR 15.408, Table 15–2, Section I Paragraphs D and E.	Is there a summary of total cost by element of cost and are the elements of cost cross-referenced to the supporting cost or pricing data? (Breakdowns for each cost element must be consistent with your cost accounting system, including breakdown by year.)		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
11. FAR 15.408, Table 15–2, Section I Paragraphs D and E.	If more than one Contract Line Item Number (CLIN) or sub Contract Line Item Number (sub-CLIN) is proposed as required by the RFP, are there summary total amounts covering all line items for each element of cost and is it cross-referenced to the supporting cost or pricing data?		
12. FAR 15.408, Table 15–2, Section I Paragraph F.	Does the proposal identify any incurred costs for work performed before the submission of the proposal?		
13. FAR 15.408, Table 15–2, Section I Paragraph G.	Is there a Government forward pricing rate agreement (FPRA)? If so, the offeror shall identify the official submittal of such rate and factor data. If not, does the proposal include all rates and factors by year that are utilized in the development of the proposal and the basis for those rates and factors?		

COST ELEMENTS

MATERIALS AND SERVICES

14. FAR 15.408, Table 15–2, Section II Paragraph A.	Does the proposal include a consolidated summary of individual material and services, frequently referred to as a Consolidated Bill of Material (CBOM), to include the basis for pricing? The offeror's consolidated summary shall include raw materials, parts, components, assemblies, subcontracts and services to be produced or performed by others, identifying as a minimum the item, source, quantity, and price.		
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SUBCONTRACTS (Purchased materials or services)

15. FAR 15.404–3(c) FAR 52.244–2	Per the thresholds of FAR 15.404–3(c), Subcontract Pricing Considerations, does the proposal include a copy of the applicable subcontractor's certified cost or pricing data?		
16. FAR 15.408, Table 15–2, Note 1; Section II Paragraph A.	Is there a price/cost analysis establishing the reasonableness of each of the proposed subcontracts included with the proposal? If the offeror's price/cost analyses are not provided with the proposal, does the proposal include a matrix identifying dates for receipt of subcontractor proposal, completion of fact finding for purposes of price/cost analysis, and submission of the price/cost analysis?		

EXCEPTIONS TO CERTIFIED COST OR PRICING DATA

17. FAR 52.215–20 FAR 2.101, "commercial item"	Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215–20? a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1) through (8)), and the basis on which the item meets the definition? b. For modified commercial items (FAR 2.101 commercial item definition paragraph (3)); did the offeror classify the modification(s) as either— i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403–1(c)(3)(iii)(B)? c. For proposed commercial items "of a type", or "evolved" or modified (FAR 2.101 commercial item definition paragraphs (1) through (3)), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?		
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PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
18. FAR 15.408, Table 15–2, Section II Paragraph A(1).	Does the proposal support the degree of competition and the basis for establishing the source and reasonableness of price for each subcontract or purchase order priced on a competitive basis exceeding the threshold for certified cost or pricing data?		
INTERORGANIZATIONAL TRANSFERS			
19. FAR 15.408, Table 15–2, Section II Paragraph A.(2).	For inter-organizational transfers proposed at cost, does the proposal include a complete cost proposal in compliance with Table 15–2?		
20. FAR 15.408, Table 15–2, Section II Paragraph A(1).	For inter-organizational transfers proposed at price in accordance with FAR 31.205–26(e), does the proposal provide an analysis by the prime that supports the exception from certified cost or pricing data in accordance with FAR 15.403–1?		
DIRECT LABOR			
21. FAR 15.408, Table 15–2, Section II Paragraph B.	Does the proposal include a time phased (i.e.; monthly, quarterly) breakdown of labor hours, rates and costs by category or skill level? If labor is the allocation base for indirect costs, the labor cost must be summarized in order that the applicable overhead rate can be applied.		
22. FAR 15.408, Table 15–2, Section II Paragraph B.	For labor Basis of Estimates (BOEs), does the proposal include labor categories, labor hours, and task descriptions, (e.g.; Statement of Work reference, applicable CLIN, Work Breakdown Structure, rationale for estimate, applicable history, and time-phasing)?		
23. FAR subpart 22.10	If covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), are the rates in the proposal in compliance with the minimum rates specified in the statute?		
INDIRECT COSTS			
24. FAR 15.408, Table 15–2, Section II Paragraph C.	Does the proposal indicate the basis of estimate for proposed indirect costs and how they are applied? (Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data.)		
OTHER COSTS			
25. FAR 15.408, Table 15–2, Section II Paragraph D.	Does the proposal include other direct costs and the basis for pricing? If travel is included does the proposal include number of trips, number of people, number of days per trip, locations, and rates (e.g. airfare, per diem, hotel, car rental, etc)?		
26. FAR 15.408, Table 15–2, Section II Paragraph E.	If royalties exceed \$1,500 does the proposal provide the information/data identified by Table 15–2?		
27. FAR 15.408, Table 15–2, Section II Paragraph F.	When facilities capital cost of money is proposed, does the proposal include submission of Form CASB–CMF or reference to an FPRA/FPRP and show the calculation of the proposed amount?		
FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES			
28. FAR 15.408, Table 15–2, Section III.	Are all cost element breakdowns provided using the applicable format prescribed in FAR 15.408, Table 15–2 III? (or alternative format if specified in the request for proposal).		
29. FAR 15.408, Table 15–2, Section III Paragraph B.	If the proposal is for a modification or change order, have cost of work deleted (credits) and cost of work added (debits) been provided in the format described in FAR 15.408, Table 15–2.III.B?		
30. FAR 15.408, Table 15–2, Section III Paragraph C.	For price revisions/redeterminations, does the proposal follow the format in FAR 15.408, Table 15–2.III.C?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided explain (may use continuation pages traceable to this checklist)
OTHER			
31. FAR 16.4	If an incentive contract type, does the proposal include offeror proposed target cost, target profit or fee, share ratio, and, when applicable, minimum/maximum fee, ceiling price?		
32. FAR 16.203–4 and FAR 15.408 Table 15–2, Section II, Paragraphs A, B, C, and D.	If Economic Price Adjustments are being proposed, does the proposal show the rationale and application for the economic price adjustment?		
33. FAR 52.232–28	If the offeror is proposing Performance-Based Payments—did the offeror comply with FAR 52.232–28?		
34. FAR 15.408(n) FAR 52.215–22 FAR 52.215–23	Excessive Pass-through Charges—Identification of Subcontract Effort: If the offeror intends to subcontract more than 70% of the total cost of work to be performed, does the proposal identify: (i) the amount of the offeror's indirect costs and profit applicable to the work to be performed by the proposed subcontractor(s); and (ii) a description of the added value provided by the offeror as related to the work to be performed by the proposed subcontractor(s)?		

(End of provision)
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XD148

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Trawl Catcher Vessels in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2014 Pacific cod total allowable catch apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 23, 2014, through 1200 hours, A.l.t., June 10, 2014.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2014 Pacific cod total allowable catch (TAC) apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA is 6,191 metric tons (mt), as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013) and inseason adjustment (79 FR 601, January 6, 2014).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2014 Pacific cod TAC apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,791 mt and is setting aside the remaining 400 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this

directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 20, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.