

# PART 15 -- CONTRACTING BY NEGOTIATION

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## **SUBPART 15.2 — SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION**

### **15.201 Exchanges with industry before receipt of proposals.**

(S-90) Except as limited by FAR 6.303-1(a), a Draft RFP may be released prior to final approval of the acquisition strategy and acquisition plan.

### **15.204 Contract format.**

(e) The HCA is the designee.

## **SUBPART 15.3 — SOURCE SELECTION**

### **15.300 Scope of subpart.**

(S-90) Procedures, guidance, and templates for this section are located at the [DISA Procurement - Contracting Procedures, Guides and Templates](#) webpage.

Past performance guidance can be found in the [OSD Guide to Collection and Use of Past Performance Information](#)

Source selection guidance can be found in the [DoD Source Selection Procedures](#) and [DISA Source Selection Procedures](#)

### **15.304 Evaluation factors and significant sub factors.**

(d)(S-90) Small Business Participation Evaluation:

In acquisitions that require the use of FAR Clause 52.219-9, Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process, the extent of participation of small business, including those in socioeconomic categories, shall be addressed through the submission of a Small Business Participation Plan. The contracting officer shall coordinate with the OSBP before issuing a solicitation when the evaluation assesses the extent of small business participation. The DoD Source Selection Procedures provides additional information regarding the evaluation of small business participation and it may be accessed at: <https://www.acq.osd.mil/dpap/policy/policyvault/USA004370-14-DPAP.pdf>

Small Business Participation Plan Post Award Responsibilities:

The Small Business Participation Plan shall be incorporated into the contract (as an attachment).

Twice a year (every six months), the contractor shall report to the Contracting Officer's Representative and the Contracting Officer with a copy to the OSBP information concerning their performance under the Plan. This reporting requirement is separate from the eSRS Subcontracting Plan report submission requirements. The contracting officer will determine reporting period dates that are consistent with the contract award date.

### **15.307 Proposal revisions.**

(S-90) Final proposal revision letters shall be reviewed by legal counsel for competitive actions in accordance with the thresholds at DARS 1.9000.

### **215.371 Only one offer.**

#### **215.371-5 Waiver.**

(b) Prior to awarding to the only offeror received when utilizing the competitive procedures, the contracting officer shall document a recommendation that resoliciting the procurement for an additional period of at least 30 days is not in the best interest of the Government (sample determination and findings/waiver is at [DARS PGI 215.371-5\(b\)](#)). The HCA delegates the waiver authority to the appropriate DITCO Chief of the Contracting Office (CoCO).

## **SUBPART 15.4 -- CONTRACT PRICING**

### **215.403-3 Requiring data other than certified cost or pricing data.**

(S-90) Refusal to Provide Data Other than Certified Cost and Pricing Data. Contracting Officers are required to coordinate with the DITCO-Scott, Cost and Pricing Branch (PL842) if a contractor refuses to provide Data Other than Certified Cost and Pricing Data. Refusals to provide this data is considered a "Denial of Requests for Data Other than Certified Cost and Pricing Data" and is reportable to DPC in accordance with DFARS PGI 215.403-3(6) Reporting requirements. The Cost and Pricing Branch will consolidate any denials that are not resolved through the elevation process at DFARS PGI 215.404-1(a)(i)(A) and report those actions quarterly to the PL21, Contract Policy Branch. As required, the Cost and Pricing Branch will coordinate on any required determination by the HCA IAW FAR 15.403-3(a)(4).

### **15.404-1 Proposal analysis techniques.**

(S-90) *Policy.*

(1) IGCEs are part of the required documentation for a complete requirements package. The DISA IGCE Deskbook located at <https://www.ditco.disa.mil/hq/deskbooks.asp> contains

procedures/guidance for developing IGCEs.

(2) IGCEs must contain details to demonstrate how the estimates were developed. Assistance with developing IGCEs, including incorporation of current cost and pricing information should be requested, as needed, from PL842.

(3) The use of “fully burdened” labor (hour) rates is recommended. Rates must be recent and relevant to the labor categories contemplated. PL842 can provide advice regarding sources of fully loaded labor rates, as well as their applicability and limitations for use in developing the IGCE.

(4) Resource Managers shall coordinate on IGCEs prior to submission of the requirements package.

(5) Contracting officers shall fully document in the PNM variances in the total evaluated cost/price and the IGCE. Significant deviations may be cause for formal discussions or RFP/RFQ amendment or cancellation. Total evaluated cost/price exceeding the IGCE should be discussed with the PMO to determine if additional funds may be secured.

(S-91) *Cost and Price Analysis*. Contracting officers shall initiate action to obtain cost and price analyses in accordance with the following procedures.

(1) The contracting officer, exercising sole responsibility for the final pricing decision shall, in accordance with FAR 15.404-1, coordinate with, request, and evaluate the advice of the Cost/Price (C/P) Analyst (PL842) and/or Tariff Specialists (DITCO-Scott, PL82, Telecommunications Contract Division). Contracting officers shall obtain cost and pricing assistance for contract awards, orders or modifications of \$10 million or more. Contracting officers may request cost and pricing assistance, including a cost/price analysis and review of all solicitation documents (including the PWS, RFP, etc.) before solicitation or issuing a modification with a contract value in excess of the threshold for obtaining certified cost or pricing data (FAR 15.403-4(a)(1)), to determine price reasonableness. A list of services offered by the Cost/Price Branch can be found in the “[Cost and Pricing Branch Request Form](#)” located at [DARS PGI 15.404-1\(S-91\)\(1\)](#).

The following exceptions apply:

(i) Orders priced in accordance with prices/rates established in base contracts/agreements. Modifications priced in accordance with prices/rates established within the base contract/order/agreement.

(ii) Modifications for funding actions

(iii) Modifications to exercise priced options; or

(iv) Any other contract or order award, or modification meeting the thresholds above where the Cost and Pricing Branch Chief and at least one level above the contracting officer waive in advance the requirement to obtain cost or pricing assistance. This agreement must be documented in writing in the official contract file.

(2) PL82 Tariff Specialist assistance related to tariff interpretation, tariff rate establishment/update and other tariff issues shall be requested as required.

(3) PL842 or PL82 Tariff Specialist, with the concurrence of the contracting officer, shall be responsible for:

(i) Obtaining cost or pricing data or information other than cost or pricing data and auditing

contractor's records.

(ii) Performing contract audit follow-up reporting tasks in accordance with and DARS 42.1-90.

(iii) Conducting cost or price analyses and tariff reviews in accordance with FAR 15.404-1, as appropriate. Cost analyses shall incorporate audit findings, technical analysis and tariff review results, and all relevant cost driver information.

(iv) Consolidating cost or pricing data, information other than cost or pricing data, audit results, tariff reviews and other pertinent information; and developing pre-negotiation objectives.

(v) Participating in negotiations with contractors which require the use of information, computations, or data developed during the cost or price analysis.

(vi) Reviewing all solicitations for actions which require PL842 or PL82 Tariff Specialists in accordance with (S-92)(1) prior to issuance for competitive or noncompetitive services and supplies to ensure adequate cost or pricing data and tariff provisions are included and that detailed evaluation criteria are developed and tailored for each acquisition.

(vii) Assisting contracting officers in documenting the contract files by providing detailed cost/price analysis memoranda, supporting schedules, automated spreadsheets, discussion items, pre- and post-negotiation memorandums input, DD Forms 1547, Tariff Change Notices, Tariff Contract File Conflict Notices, and other items, as required.

Participating in conferences, briefings, debriefings, and other meetings where pricing and/or tariff support is required.

(S-92) *Request Cost and Price Analysis Support*. To request cost/price analysis support, the contracting officer shall submit a completed “ [Cost and Pricing Branch Request Form](#) ” to the Cost and Pricing Branch Chief via [DITCO-Scott Cost and Pricing Branch Mailbox](#) , containing details related to the type of support requested. The Cost and Pricing Branch Request Form is located at <https://www.ditco.disa.mil/DITCOContractingTemplates/Default.asp> . RFP reviews must be requested early in the acquisition stage so that a detailed review may be accomplished prior to issuing the RFP. Acquisition plans and timelines must recognize the need for effective pricing/tariff reviews and analysis and must contain reasonable periods for conducting these tasks. C/P analyst pre-solicitation reviews shall be requested concurrent with policy and legal reviews.

## **15.406 Documentation.**

### **15.406-3 Documenting the negotiation.**

(S-90) *Price Negotiation Memorandum*. A Price Negotiation Memorandum (PNM) shall be prepared for contracting actions as described below and included in the official contract file.

A PNM is not required for orders for pre-priced supplies or services placed against established single award indefinite delivery contracts, nor and actions at or below the micro-purchase threshold. The PNM fulfills the documentation requirements in FAR 15.406-3 and provides the determination of fair and reasonable pricing. The PNM templates are located in [DARS PGI 15.406-3\(S-90\)](#). See DARS 13.106-3 (S-90) for PNM requirements for the I/Q/O process or the North Atlantic Treaty

Organization (NATO) Allied Long Lines Agency (ALLA)/National Allied Long Lines Agency (NALLA) circuit demand process under the threshold for certain commercial items identified at FAR 13.500(a).

*(S-91) DITCO Cost/Price Analyst Involvement*

(1) Pre-PNMs, Post-PNMs, and IDIQ Order PNMs valued over \$10M shall be routed electronically to the Cost and Pricing Branch for review/coordination prior to approval (See [Contract Document Approval Signature Routing Procedures](#) ). Routing to the Cost and Pricing Branch or assigned Contract Price/Cost Analyst is not required when pricing is based on prices/rates are established in base contracts/agreements, when prices are set by law or regulation, or a fair and reasonable price determination can be made by the contracting officer by comparing prices or rates against an existing or previous Government contract where prices are recent and based on an adequately supported fair and reasonable determination.

(2) Pre-PNMs valued over \$10M, shall be prepared in conjunction with the DITCO Cost/Price Analyst. The Cost/Price Analyst shall assist the contracting officer in evaluation of the pricing proposal and aid in the development of the pre-negotiation objective and Pre-PNM; The Contract Price/Cost Analyst shall also support negotiations and review the Post-PNM, prior to approval, as requested by the contracting officer.

(3) In all instances where the Cost and Pricing Branch has provided assistance to the contracting officer in the development of the PNM—including but not limited to, the evaluation of cost proposals, calculation of the Government negotiation position and input to the relevant PNM documents—a copy of the signed and approved Post-PNM shall be routed to the Cost and Pricing Branch Chief via the [DITCO Scott - Cost and Pricing Branch Mailbox](#) . In situations where the recommendations provided by the C/P Branch and the negotiation objectives are not achieved during negotiations, the contracting officer shall include justification within the Post- PNM. The justification shall contain a detailed explanation on recommended items not achieved and the alternative rationale utilized in the contractor officer's determination of fair and reasonable pricing.

*(S-92) PNM Approval Authority.* The approval authority for Pre/Post PNMs negotiation objectives and modification PNMs negotiation objectives is the contracting officer.

**Table 15-2 Competitive Acquisitions PNM Format**

ACQUISITION TYPE	FORMAT
Open Market (when the Contracting Officer is the SSA)	Competitive PNM
GSA Schedule orders	Competitive PNM
8(a)	Competitive PNM
IDIQ orders with Pre-established labor rates	IDIQ PNM

Open Market (when the SSA is not the Contracting Officer)	Source Selection Decision Document (SSDD)
Part 8/16 Competitive Supply Acquisitions < or equal to the SAT	Template for Part 8/16 Competitive Supply Acquisitions < or equal to SAT
Competitive, only 1 offer received	Sole Source PNM

**Table 15-3 Sole Source Acquisitions PNM Format**

ACQUISITION TYPE	FORMAT
Open Market or 8(a) at or below SAT	Sole Source PNM
GSA Schedule orders	Sole Source PNM
IDIQ orders	Sole Source PNM
Open Market or 8(a) above SAT	Pre-PNM and Post-PNM

**Table 15-4 Modifications PNM Format**

MODIFICATION TYPE	FORMAT
Pricing Modifications against previously competed actions w/ Pre-established rates (e.g., labor rates)	Modifications PNM
Pricing Modifications w/ Pre-established rates (e.g., labor rates) - sole source	Modifications PNM
Other Pricing Modifications (e.g., cost type)	Pre-PNM and Post-PNM

### **215.406-3 Documenting the negotiation.**

The Contract Business Analysis Repository (CBAR) User's Manual and the CBAR PCO list (includes specific contacts for each section/org) are located in [DARS PGI 215.406-3](#).

## **SUBPART 15.5 -- PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES**

### **15.502 Applicability.**

The DoD Source Selection Procedures and the Outline for Debriefings are located at the [DISA Procurement - Contracting Procedures, Guides and Templates](#) website.

## **SUBPART 15.6 – UNSOLICITED PROPOSALS**

### **15.606 Agency procedures.**

(a) Unless the contractor specifies within the proposal; no reproduction of material is allowed beyond the copies needed for PL22, Contract Operations Branch, contracting officer, technical and legal reviews. All copies shall be properly disposed (shredding hard copies, permanently deleting electronic copies). PL22 shall maintain an electronic copy of the proposal with the PSD decision authority's letter.

(b) PL22, Contract Operations Branch is the agency point of contact to coordinate the receipt and handling of unsolicited proposals.

#### **15.606-1 Receipt and initial review.**

(S-90) PL22 shall maintain an unsolicited proposal log which includes, at a minimum, the company name, proposal title, DITCO Contracting Office, Technical POC, date unsolicited proposal was received, final disposition of the unsolicited proposal.

(S-91) PL22 will perform the initial review within 10 business days of receipt of the unsolicited proposal. Before initiating a comprehensive evaluation, PL22 shall make the determination the unsolicited proposal meets the criteria defined in FAR 15.606-1(a) (1) through (7). If the proposal meets these requirements, the PL22 shall promptly acknowledge receipt and process the proposal for further evaluation. If the proposal does not meet the requirements of FAR 15.606-1(a) and should be rejected, the PL22 shall inform the offeror the reasons for rejection.

#### **15.606-2 Evaluation.**

(a) PL22 will coordinate comprehensive evaluations and will attach or imprint on each unsolicited proposal circulated for evaluation, if not already present, the legend required by FAR 15.609(d) within 15 business days after receipt of the unsolicited proposal.



(b) If the unsolicited proposal meets the criteria in FAR 15.605 and 15.606-1, PL22 will forward the unsolicited proposal to the appropriate technical representative, as designated by the appropriate CoCO, for a comprehensive technical review. The technical review shall include a recommendation for acceptance or rejection of the proposal after considering the factors outlined in FAR 15.603. The technical evaluation recommendation to accept or reject the unsolicited proposal shall be documented with supporting rationale.

(S-90) PL22 will review the entire package including the unsolicited proposals and the technical evaluation and forward the package to legal for review. Legal will provide comments concurring or nonconcurring with the evaluation decision.

### **15.607 Criteria for acceptance and negotiation of an unsolicited proposal.**

(S-90) A final determination to accept or reject an unsolicited proposal will be made by the Vice, Procurement Services Executive (PSE), or by the PSE.

(S-91) PL22 will draft a proposed letter to accept or reject the unsolicited proposal, citing regulatory reasons if the unsolicited proposal is rejected, and may use statements from the evaluation.