

# **PART 415 - CONTRACTING BY NEGOTIATION**

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

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**Parent topic:** SUBCHAPTER C - CONTRACTING METHODS AND CONTRACT TYPES

## **Subpart 415.2 - Solicitation and Receipt of Proposals and Information**

### **415.204 Contract format.**

The Senior Procurement Executive is authorized to exempt contracts from the uniform contract format.

### **415.207 Handling proposals and information.**

(a) Throughout the source selection process, agency personnel and non-Government evaluators with access to proposal information shall disclose neither the number of offerors nor their identity except as authorized by FAR subpart 15.5. (See also FAR 5.403.)

(b) The contracting officer shall obtain the following written agreement from the non-Government evaluator prior to the release of any proposal to that evaluator.

#### Agreement Governing the Use and Disclosure of Proposals

#### RFP

#### Offeror

1. To the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial and objective review of the offeror's proposal, or may otherwise result in a biased opinion or an unfair advantage. If a potential conflict of interest arises or if I identify such a conflict, I agree to notify the Government promptly concerning the potential conflict. In determining whether any potential conflict of interest exists, I agree to review whether my or my employer's relationships with other persons or entities, including, but not limited to, ownership of stocks, bonds, other outstanding financial interests or commitments, employment arrangements (past, present, or under consideration), and, to the extent known by me, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household, may place me in a position of conflict, real or apparent, with the evaluation proceedings.

2. I agree to use proposal information only for evaluation purposes. I understand that any authorized restriction on disclosure placed upon the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information of the proposal. I agree to use my best effort to safeguard such information physically, and not to disclose the contents of, or release any information relating to, the proposal(s) to anyone outside of the Source Evaluation Board or other panel assembled for this acquisition, the Contracting Officer, or other individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

(Name and Organization)

(Date)

(End of provision)

(c) The release of a proposal to a non-Government evaluator for evaluation does not constitute the release of information for purposes of the Freedom of Information Act (5 U.S.C. 552).

(d) The contracting officer shall attach a cover page bearing the following notice: GOVERNMENT NOTICE FOR HANDLING PROPOSALS - This proposal shall be used and disclosed for evaluation purposes only. Attach a copy of this Government notice to every reproduction or abstract of the proposal. Any authorized restrictive notices which the submitter places on this proposal shall be strictly complied with. Disclosure of this proposal outside the Government for evaluation purposes shall be made only to the extent authorized by, and in accordance with, FAR 3.104-4, FAR 15.207, and AGAR 415.207.

## **415.209 Solicitation provisions and contract clauses.**

(a) The provision at 452.215-71, Instructions for the Preparation of Technical and Business Proposals, may be used when offerors will be required to submit technical and business proposals. Contracting officers should tailor the clause to reflect the degree of information required for the specific acquisition.

(b) The contracting officer shall insert the provision at 452.215-72, Amendments to Proposals, in solicitations which require the submittal of lengthy, complex technical proposals.

## **Subpart 415.3 - Source Selection**

### **415.303 Responsibilities.**

The head of the contracting activity (HCA) is authorized to appoint an individual other than the contracting officer as the source selection authority.

### **415.305 Proposal evaluation.**

HCAs are responsible for establishing procedures regarding the release of cost information to the members of the technical evaluation team.

## **Subpart 415.4 - Contract Pricing**

### **415.404-4 Profit.**

(a)

(1) USDA will use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions when price negotiation is based on cost analysis.

(2) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.404-4(d) when analyzing profit for these contracts or actions:

(i) Architect-engineer contracts;

(ii) Construction contracts;

(iii) Contracts primarily requiring delivery of material supplied by subcontractors;

(iv) Termination settlements; and

(v) Cost-plus-award-fee contracts;

(b) Unless otherwise restricted by contracting activity procedures, the Contracting Officer may use another Federal agency's structured approach if that approach has been formalized and is maintained as part of that Agency's acquisition regulations (*i.e.*, included in that Agency's assigned chapter of title 48 of the Code of Federal Regulations).

(c) The HCA is responsible for establishing procedures to ensure compliance with this subpart.

## **Subpart 415.5 - Preaward, Award, and Postaward Notifications, Protests and Mistakes**

### **415.570 Post-award conference.**

If a postaward conference is necessary, the contracting officer shall insert clause 452.215-73, Post-Award Conference.

## **Subpart 415.6 - Unsolicited Proposals**

### **415.604 Agency points of contact.**

HCAs are responsible for establishing procedures to ensure compliance with the requirements of FAR 15.604.

### **415.606 Agency procedures.**

HCAs are responsible for establishing the procedures for control of unsolicited proposals required by FAR 15.606(a) and for identifying the contact points as required by FAR 15.606(b).