Subpart 315.3—Source Selection

Parent topic: PART 315—CONTRACTING BY NEGOTIATION

315.303-70 Policy.

(a) If an operating division (OPDIV) is required by statute to use peer review for technical review of proposals, the requirements of those statutes, any implementing regulatory requirements, the Federal Advisory Committee Act, and as applicable, any approved Department of Health and Human Services Acquisition Regulation (HHSAR) deviation(s) from this subpart take precedence over the otherwise applicable requirements of this subpart.

(b) The statutes that require such review and implementing regulations are as follows: National Institutes of Health—42 U.S.C. 289a, Peer Review Requirements and 42 CFR part 52h, Scientific Peer Review of Research Grant Applications and Research and Development Contract Projects; Substance Abuse and Mental Health Services Administration—42 U.S.C. 290aa-3, Peer Review and Agency for Healthcare Research and Quality—42 U.S.C. 299c-1, Peer review with respect to grants and contracts.

315.304 Evaluation factors and significant subfactors.

When acquiring electronic and information technology supplies and services (EIT) using negotiated procedures, contracting officers shall comply with Section 508 of the Rehabilitation Act of 1973, as amended.

315.305 Proposal evaluation.

(c) *Use of non-Federal evaluators.*

(1) Except when peer review is required by statute as provided in 315.303-70(a), decisions to disclose proposals to non-Federal evaluators shall be made by the official responsible for appointing Source Selection Evaluation Team members in accordance with OPDIV procedures. The avoidance of organizational and personal conflicts of interest must be taken into consideration when making the decision to use non-Federal evaluators.

(2) When a solicited proposal will be disclosed outside the Government to a contractor or a contractor employee for evaluation purposes, the following or similar conditions shall be part of the written agreement with the contractor prior to disclosure:

CONDITIONS FOR EVALUATING PROPOSALS

The contractor agrees that it and its employees, as well as any subcontractors and their employees (in these conditions, “evaluator”) will use the data (trade secrets, business data, and technical data) contained in the proposal for evaluation purposes only. The foregoing requirement does not apply to data obtained from another source without restriction. Any notice or legend placed on the proposal by either HHS or the offeror shall be applied to any reproduction or abstract provided to the

evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return to the Government the furnished copy of the proposal or abstract, and all copies thereof, to the HHS office which initially furnished the proposal for evaluation. The evaluator shall not contact the offeror concerning any aspects of a proposal's contents.