

# Part 515 - Contracting by Negotiation

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**Parent topic:** General Services Administration Acquisition Manual

## **Subpart 515.1 - Source Selection Processes and Techniques**

### **515.101-2 Lowest price technically acceptable source selection process.**

(a) *General.* Lowest Price Technically Acceptable is a source selection process that may be useful in acquisitions in which the Government, or the market, does not benefit from technical tradeoffs. A contracting officer should not use the lowest price technically acceptable source selection process without doing the following:

(1) *Documentation requirements.* The contracting officer shall include documentation as to why the lowest price technically acceptable source selection is being utilized. The rationale for why this method of source selection is being utilized should be clearly described in the acquisition plan (see FAR 7.105(b)(4)). The rationale should include a description as to why utilizing this methodology will not harm the Government.

(b) *Federal Procurement Data System (FPDS).* Contracting officers shall ensure that FPDS is

properly coded to include if lowest price technically acceptable is the source selection process used.

## **Subpart 515.2 - Solicitation and Receipt of Proposals and Information**

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

(a) The contracting officer must communicate and collaborate with industry prior to receipt of proposal to the maximum extent practicable. Vendor engagement is key in providing sound solutions in support of the GSA mission and the missions of the customers served by GSA while promoting opportunities for small business. Communication and collaboration tools can be found in the Vendor Communication Plan at <https://www.gsa.gov/forbusiness>.

(b) The contracting officer should partner with representatives of the Office of Small and Disadvantaged Business Utilization (OSDBU) to structure opportunities for communicating and collaborating with industry.

### **515.204 Contract format.**

(a) The uniform contract format is not required for leases of real property (See GSAM [570.116](#)).

(b) The Senior Procurement Executive is the agency head's designee for the purposes of granting exemptions to the use of the Uniform Contract Format (see FAR 15.204(e)).

### **515.208 Submission, modification, revision, and withdrawal of proposals.**

#### **515.208-70 Restrictions on disclosure or use of data.**

If the contracting officer receives a proposal with more restrictive conditions than those in the provision at FAR 52.215-1(e), then the contracting officer should ask whether the offeror is willing to accept the conditions of the paragraph at FAR 52.215-1(e). If the offeror refuses, then the contracting officer must consult with legal counsel before deciding whether to accept the proposal as marked or return it. See also FAR 3.104-4(d) and FAR 27.404-5.]

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

#### **515.209-70 Contract clause.**

(a) Insert the clause at [552.215-70](#), Examination of Records by GSA, in solicitations and contracts exceeding the simplified acquisition threshold that meet any of the following conditions:

(1) Involve the use or disposition of Government-furnished property.

- (2) Provide for advance payments, progress payments based on cost, or guaranteed loan.
  - (3) Contain a price warranty or price reduction clause.
  - (4) Involve income to the Government where income is based on operations under the control of the contractor.
  - (5) Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.
  - (6) Are requirements, indefinite-quantity, or letter type contracts as defined in FAR [Part 16](#).
  - (7) Are subject to adjustment based on a negotiated cost escalation base.
  - (8) Contain the provision at FAR [52.223-4](#).
- (b) The clause in paragraph (a) of this subsection may be modified to define the specific area of audit ( *e.g.*, the use or disposition of Government-furnished property). Legal ( *i.e.*, the Office of General Counsel or the Office of Regional Counsel, as appropriate), and Inspector General ( *i.e.*, the Assistant Inspector General for Auditing or the Regional Inspector General for Auditing, as appropriate) must concur with any modification to the clause.
- (c) Insert the clause at [552.215-73](#), Notice, in all solicitations and contracts for negotiated procurements exceeding the simplified acquisition threshold in accordance with FAR [part 15](#).

## **515.210 Forms.**

### **515.210-70 GSA Form 1602.**

- (a) The contracting officer may use GSA Form 1602, Notice Concerning Solicitation, to do any of the following:
- (1) Describe the type of contract, the duration of the contract, and the type of supplies or services being procured.
  - (2) Direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer.
  - (3) Highlight significant changes from previous solicitations covering the same supplies or services.
  - (4) Include other special notices as appropriate.
- (b) If GSA Form 1602 is not used, the contracting officer shall place notices and mandated paragraphs in Section L of the solicitation.

## **Subpart 515.3 - Source Selection**

### **515.303 Responsibilities.**

The Head of the Contracting Activity (HCA) is the agency head designee that appoints someone other than the contracting officer as the source selection authority (see FAR 15.303(a)).

### **515.305 Proposal Evaluation.**

(a) *Restrictions placed on a proposal by the submitter.* If you receive a proposal with more restrictive conditions than those in the provision at FAR 52.215-1(e), ask whether the submitter is willing to accept the conditions of the paragraph at FAR 52.215-1(e). If the submitter refuses, consult with legal counsel on whether to accept the proposal as marked or return it.

(b) *Actions before releasing proposal.* Before releasing any proposal to an evaluator you must take all the following actions:

(1) Obtain the signed original "Conflict of Interest Acknowledgment and Nondisclosure Agreement" from each Government and nongovernment individual serving as an evaluator. Use the Acknowledgment/Agreement in Figure 515.3-1.

(i) For employees of other Executive agencies, replace the reference in paragraph (c) of the Acknowledgment/Agreement to GSA's supplemental standards with a reference to the applicable agency.

(ii) For nongovernment evaluators, substitute paragraph (c) of the Acknowledgment/Agreement with the following language and delete paragraph (h):

(2) Attach to each proposal a cover page bearing the following notice:

Government Notice for Handling Proposals

To anyone receiving this proposal or proposal abstract:

(1) This proposal must be used and disclosed for evaluation purposes only.

(2) You must apply a copy of this Government notice to any reproduction or abstract of this proposal.

(3) You must comply strictly with any authorized restrictive notices which the submitter places on this proposal.

(4) You must not disclose this proposal outside the Government for evaluation purposes except to the extent authorized by, and in accordance with, the procedures in 48 CFR 515.305-71.

### **515.305-70 Use of nongovernment evaluators.**

(a) *Conditions.* To use nongovernment evaluators, contracting officers must meet the restrictions in FAR 7.503, FAR 37.203 and GSAR 537.2. See also FAR subpart 3.11 and Office of Federal Procurement Policy Letter 11-1, Performance of Inherently Governmental and Critical Functions ([http://www.whitehouse.gov/omb/procurement\\_index\\_policy/](http://www.whitehouse.gov/omb/procurement_index_policy/)).

(b) *Limitations on disclosing proposal information.* The contracting officer may disclose proposal information outside the Government before the Government's decision as to contract award only to the extent authorized in this section. Disclosure and handling must comply with FAR 3.1 and GSAM [503.104-4](#).

(c) *Relationship to the Freedom of Information Act.* Release of a proposal outside the Government for evaluation does not constitute the release of information under the Freedom of Information Act ([5 U.S.C. 552](#)).

### **515.305-71 Actions before releasing proposals.**

Before releasing any proposal to an evaluator, the contracting officer must take all of the following actions:

(a) Obtain the signed, original "Conflict of Interest Acknowledgment and Nondisclosure Agreement" from each Government and nongovernment individual serving as an evaluator. Use the Acknowledgment/Agreement in Figure 515.3-1. Conflict of Interest Acknowledgment and Nondisclosure Agreement.

(1) For employees of other Executive agencies, replace the reference in paragraph (c) of the Acknowledgment/Agreement to GSA's supplemental standards with a reference to the applicable agency.

(2) For nongovernment evaluators, substitute paragraph (c) of the Acknowledgment/Agreement with the language below and delete paragraph (h):

"(c) I have read and understand the requirements of [41 U.S.C. 2102](#)."

(b) Attach to each proposal a cover page bearing the following notice:

Government Notice for Handling Proposals

To anyone receiving this proposal or proposal abstract-

(1) his proposal must be used and disclosed for evaluation purposes only.

(2) A copy of this Government notice must be applied to any reproduction or abstract of this proposal.

(3) This proposal must not be disclosed to any person outside the Government, unless it is only for evaluation purposes to the extent authorized by, and in accordance with, the procedures in 48 CFR [515.305-70](#).

### **Figure 515.3-1. Conflict of Interest Acknowledgment and Nondisclosure Agreement**

For proposals submitted in response to GSA solicitation no. \_\_\_\_\_, I agree to the following:

(a) To the best of my knowledge and belief, no conflict of interest exists that may either-

(1) Diminish my capacity to impartially review the proposals submitted; or

(2) Result in a biased opinion or unfair advantage.

(b) In making the above statement, I have considered all the following factors that might place me in a position of conflict, real or apparent, with the evaluation proceedings:

(1) All my stocks, bonds, other outstanding financial interests or commitments.

(2) All my employment arrangements (past, present, and under consideration).

(3) As far as I know, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household.

(c) I have read and understand the requirements of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635) and Supplemental Standards of Ethical Conduct for Employees of the General Services Administration (5 CFR 6701).

(d) I have a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the contracting officer. I will cease performing duties related to evaluating proposals until I receive instructions on the matter.

(e) I will use proposal information for evaluation purposes only. I understand that any authorized restriction on disclosure placed on the proposal by the prospective contractor, prospective subcontractor, or the Government applies to any reproduction or abstracted information of the proposal.

(f) I will use my best efforts to safeguard proposal information physically. I will not disclose the contents of, nor release any information about, the proposals to anyone other than-

(1) The Source Selection Evaluation Board or other panel assembled to evaluate proposals submitted in response to the solicitation identified above; and

(2) Other individuals designated by the contracting officer.

(g) After completing evaluation, I will return to the Government all copies of the proposals and any abstracts.

(h) GSA Appropriations Act restriction. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Codes, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.

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(Enter name of evaluator and organization)

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Date

### **515.306 Exchanges with offerors after receipt of proposals.**

Limit access to Government cost estimates to Government personnel whose official duties require knowledge of the estimate. During negotiations, the contracting officer may disclose part or all of the Government estimate under FAR 15.306(e) when necessary to arrive at a fair and reasonable price. After award, the contracting officer may reveal the total amount of the independent Government estimate.

### **515.370 IN-Depth Feedback through Open Reporting Methods (INFORM) Procedures.**

#### **515.3700 Scope of section.**

The INFORM procedures prescribed in this section provide a standardized approach to GSA's post-award communications with offerors and provide all offerors fair access to data, *i.e.*, successful and unsuccessful offerors with detailed information about their submissions. GSA's INFORM procedures are designed to strengthen the relationship between GSA and industry by providing:

- (a) A clear understanding of the underlying rationale of GSA's evaluation and selection process;
- (b) Useful feedback which can assist industry with future submissions; and
- (c) Sufficient information on why the offeror did or did not receive the award.

#### **515.3701 Definitions.**

As used in this section—

“Unredacted” means the information provided to offerors was not significantly altered, modified, edited or revised by GSA prior to distribution.

#### **515.3702 General.**

##### **515.3702-1 Applicability.**

- (a) The INFORM procedures detailed in this section are required for all GSA acquisitions, including DOD assisted acquisitions, with a total estimated contract value (including option years) at or above \$10 million unless excluded or exempted per [515.3702-2](#).
- (b) GSA contracting activities shall use the procedures and guidelines as prescribed in this section in conjunction with:



- (1) The INFORM Guide at <http://insite.gsa.gov/inform>,
  - (2) The guidance in the applicable corresponding FAR parts 8, 12, 15 or 16, and
  - (3) Any other applicable GSAM part.
- (c) If the INFORM procedures in this section are inconsistent with a requirement in another GSAM part, this section [515.370](#) shall take precedence.
- (d) If there is a conflict between the INFORM Guide and this section, this section shall take precedence.

#### **515.3702-2 Exclusions and exemptions.**

- (a) Exclusions. The following are excluded from the INFORM post-award communication process:
- (1) Acquisitions expected to award ten (10) or more contracts or awards in response to a solicitation. Multiple award contracts include but are not limited to, the Federal Supply Schedules (FSS), various Government-Wide IDIQs and GWACs,. The City Pairs Program (CPP) is also excluded. This exclusion does not extend to orders or BPAs placed against the multiple award contracts;
  - (2) Acquisitions that use the lowest price technically acceptable source selection process (see FAR 15.101-2(c));
  - (3) Non-competitive sole source procurements;
  - (4) Mandatory sources identified in FAR 8.002(a) and 8.003, *e.g.*, Federal Prison Industries, AbilityOne;
  - (5) Emergency acquisitions conducted under the procedures outlined in FAR part 18; and
  - (6) The acquisition of leasehold interests in real property.
- (b) Exemptions. Heads of Contracting Activity (HCAs) may exempt an acquisition from the requirements of this section when it is in the best interest of the Government.

#### **515.3702-3 Authority.**

The requirements for notifying, explaining, or debriefing offerors, *i.e.*, successful and unsuccessful offeror can be found in the following Federal Acquisition Regulation (FAR) parts:

- (1) FAR 8.405 (Ordering Procedures for the Federal Supply Schedules);
- (2) FAR 12.301 (Solicitation Provisions);
- (3) FAR 15.503 (Notifications to Unsuccessful Offerors);
- (4) FAR 15.506 (Post-award Debrief of Offerors); and
- (5) FAR 16.505 (Orders under multiple-award contracts)

An additional authority for providing post-award enhanced debriefing when working with the Department of Defense (DOD) is at DOD Class Deviation 2018-00011.

#### **515.3702-4 Limitations.**

The INFORM procedures will seek to share additional information with offerors in writing and/or through an oral feedback meeting that is not required by statute or regulation. The INFORM procedures are not intended to:

- (1) Substitute for industry's full understanding of the work requirements at the time offers are submitted;
- (2) Alter the final agreement arrived at in any negotiations leading to contract award; or
- (3) Extend the U.S. Government Accountability Office's (GAO) timeliness regulations found at Title 4 of the Code of Federal Regulations (C.F.R.), Part 21; therefore, nothing in the INFORM procedures purports or otherwise seeks to modify the timeliness regulations, in particular 4 C.F.R. § 21.2(a)(2).

#### **515.3703 Policy.**

(a) GSA contracting activities shall incorporate the INFORM procedures throughout the acquisition lifecycle.

(b) GSA contracting activities shall provide all offerors, *i.e.*, successful and unsuccessful, with enhanced debrief or explanation feedback without requiring a written request from the offeror, see detail in [515.3703-4](#) and [515.3703-5](#).

#### **515.3703-1 Acquisition planning.**

Contracting officers shall—

(a) Ensure plans comply with [507.104\(d\)](#); and

(b) Select members of the evaluation team, *e.g.*, members should include functional areas such as contracting, small business, technical, logistics, cost/price, legal, program management and end-user organizations, when appropriate. Evaluation team members should be told of the requirement to be available during the evaluation process, time constraints, and oral feedback meeting.

#### **515.3703-2 Solicitation.**

(a) Contracting officers shall incorporate the INFORM solicitation language into all applicable procurements.

(b) Contracting officers may use the INFORM sample solicitation language for FAR part 8, 12, 15, or 16 located at <http://insite.gsa.gov/inform>.

(c) Contracting officers are encouraged to use the sample language as written, but may change the

language to meet the specific needs of the procurement so long as any such change complies with this subpart and the INFORM Guide.

### **515.3703-3 Evaluation and Selection.**

(a) Preaward Notification to Unsuccessful/Unacceptable Offerors. Contracting officers must use a customized Notification Letter and Evaluation Statement (NLES) to notify offerors whose submissions are eliminated from the competition (*e.g.*, not deemed to be part of competitive range or technically unacceptable)

(1) Sample NLES language is located at <http://insite.gsa.gov/inform>.

(2) Contracting officers must also follow the appropriate FAR Part (e.g. 15.503(a)) to ensure timely notification to unsuccessful offerors.

(3) Contracting officers may delay sending the NLES until the time of award to prevent any delays in awarding the contract or order.

(b) Evaluation. For each procurement using the INFORM post-award communication process, contracting officers are encouraged to—

(1) Design and implement templates for members of the evaluation team to use in evaluating offerors' submissions which can be easily copied and pasted into the NLES (NLES sample language per FAR part is located at <http://insite.gsa.gov/inform>);

(2) Incorporate language during the evaluation team orientation which commits evaluators to being available during the evaluation, answering of written questions and oral feedback meetings; and,

(3) Obtain the Office of General Counsel (OGC) review (see ADM 5000.4), when applicable.

### **515.3703-4 Notification of Award.**

(a) Notification Letter and Evaluation Statement (NLES). The NLES is an unredacted customized evaluation statement of the specific offeror's submission. The contracting officer provides the NLES even if an offeror does not request a debriefing or information on an award. The NLES must include the following:

(1) All the information outlined in FAR 8.405-2 4(d), 12.102(b), 15.503(b), 15.506(a)(4)(d) or 16.505(b)(6);

(2) Ratings for each evaluation factor, as identified in the solicitation;

(3) A narrative of the offeror's submission strengths and weaknesses and/or deficiencies for each evaluation factor including significant strengths and weaknesses;

(4) Technical rating;

(5) Ranking order of their proposal, if applicable;

(6) Cost/price data ranking chart, if applicable;

- (7) An opportunity to attend an oral feedback meeting with the evaluation team; and
- (8) An opportunity to ask written questions of the evaluation team (see 515.3703-5 for timelines).

(b) Procedures. The contracting officer, in accordance with the INFORM Guide at <http://insite.gsa.gov/inform>, shall—

(1) Prepare an NLES for each offer. Contracting activities should use information for the specific offeror from the source selection or evaluation panel reports. Sample NLES documents are available at <http://insite.gsa.gov/inform>.

(2) Obtain legal sufficiency (see ADM 5000.4).

(3) Send the NLES to each offeror at the time of award or in accordance with the appropriate FAR part. Ensure all minimum requirements from the FAR are addressed.

### **515.3703-5 Post Notification.**

Contracting activities shall—

(a) Within three (3) business days after sending the NLES. Monitor emails for receipt of written follow-up questions or requests for oral feedback meetings.

(b) Within five (5) business days after receipt of any NLES response. Respond in writing to written follow-up questions received or schedule an oral feedback meeting, as appropriate. Contracting officers should try to schedule and conduct the oral feedback meeting within the five (5) business days of the request. A sample format for conducting the oral feedback meeting is at <http://insite.gsa.gov/inform>.

(c) Within two (2) business days after any oral feedback meeting.

(1) Monitor emails for receipt of written follow-up questions.

(2) Within five (5) business days after receipt of any follow-up questions. Respond in writing to written questions received.

(d) Upon concluding INFORM procedures. Advise the offeror(s) that:

(1) The INFORM process has concluded;

(2) The FAR requirement for debriefing or explanation, as appropriate, has been met; and

(3) No further questions will be answered.

## **Subpart 515.4 - Contract Pricing**

### **515.403 Obtaining certified cost or pricing data.**

**515.403-4 Requiring certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. 254b).**

To determine if a contract action meets the threshold at FAR 15.403-4 for requesting certified cost and pricing data, the contracting officer shall consider the value of the action plus any priced options. Exercise of a priced option is not a price adjustment and does not require submission of certified cost and pricing data.

**515.404 Proposal Analysis**

**515.404-2 Information to support proposal analysis.**

(a) "Field pricing assistance" is provided by the Assistant Inspector General for Auditing, or the Regional Inspector General for Auditing, as appropriate.

(b) Follow the procedures in GSA Order ADM 2030.2, Internal Audit Follow-up Handbook, for handling contract audit reports.

**515.404-70 Profit Analysis.**

(a) *Structured approach for determining profit or fee objectives.* The contracting officer shall base the analysis of profit factors on information available to the Government before negotiations. The contracting officer may obtain such information from proposals, audit data, performance reports, preaward surveys and the like. The structured approach helps establish a profit objective. It also provides a basis for documenting the objective, including an explanation of any significant departure from this objective in reaching a final agreement. The contracting officer shall prepare documentation commensurate with the dollar value and complexity of the proposed procurement.

(b) *Exemptions from requirement to use the structured approach.*

(1) The following types of procurements are exempt from the structured approach:

(i) Management contracts for operation and/or maintenance of Government facilities.

(ii) Contracts primarily requiring delivery of material supplied by subcontractors.

(iii) Termination settlements.

(iv) Cost-plus-award-fee contracts.

(v) Contracts and contract modifications below the simplified acquisition threshold.

(vi) Architect-engineer and construction contracts.

(2) The contracting officer may request exemptions for other contracts having unusual pricing situations where the contracting officer determines that the structured approach is unsuitable. The contracting officer shall document the justification in writing. The HCA must approve all such exemptions.

(c) *Other methods for exempted procurements.* Under exempted procurements, the contracting officer shall use other methods for establishing profit objectives. In general, the contracting officer shall use methods supported in a manner similar to the structured approach (profit factor breakdown and documentation of profit objective). Exclude factors within the structured approach that do not apply to the procurement.

(d) *Profit-analysis factors.* The contracting officer shall consider the following factors when negotiating profit. Use the weight ranges listed after each factor when using the structured approach.

<b>Profit Factors</b>		<b>Weight Ranges in Percent</b>
Contractor Effort	Material acquisition	1 to 4
	Conversion direct labor	4 to 12
	Conversion related indirect cost:	1 to 3
	Other costs General management	2 to 5
Other Factors	Contract cost risk	0 to 7
	Capital investments	-2 to +2
	Federal socioeconomic programs	-.5 to +.5
	Cost-control and other past accomplishments	-2 to +2
	Independent development and additional factors	-2 to +2

(e) GSA Form 1766. The contracting officer may use GSA Form 1766, Structured Approach Profit/Fee Objective, to help compute the profit objective. Measure the Contractor Effort by assigning a profit percentage within the designated weight ranges to each element of cost recognized.

(f) *Facilities capital cost of money.* If the contracting officer allows facilities capital cost of money as an item of cost, either as a part of the price/cost objective in a firm fixed price type contract or as an allowable cost in a flexibly priced type contract, *e.g.*, cost reimbursement or fixed price incentive type contract, reduce the profit/fee objective as follows. After a dollar profit/fee amount for the requirement is developed, subtract from that aggregate dollar profit/fee amount any dollar amount allowed for facilities capital cost of money. The remainder is the profit/fee objective.

(g) *Calculating profit dollars.* After computing a total dollar profit for Contractor Effort, calculate the specific profit dollars for the categories under Other Factors. Do this by multiplying the total

Government cost objective, excluding any cost of money for facilities capital, by the specific weights assigned to the elements in Other Factors.

(h) *Common factors.* In determining the value of each factor, consider the definition, description, and purpose of the factors prescribed in FAR 15.404-4(d) and this subsection.

(1) *General management.* Management problems surface in various degrees. Consider the management expertise exercised to solve them as an element of profit. For example, a new program for an item that involves advanced state of the art techniques may involve more problems and require more managerial time and abilities of a higher order than a follow-on contract. If an initial contract creates more problems and merits a higher profit weight, then a follow-on should merit a downward adjustment, as many of the problems should have been solved. Evaluate the underlying managerial effort involved on a case-by-case basis.

(2) *Other costs.* Include all other direct costs of contractor performance under this item (e.g., travel and relocation, direct support, and consultants). When these costs are analyzed, consider-

(i) Their significance;

(ii) Their nature; and

(iii) How much they contribute to contract performance.

(3) *Contract cost risk.* When the contracting officer selects the proper contract type, the reward for risk by contract type will usually fall into the ranges below.

(i) *Cost-reimbursement type contracts.* 0-3 percent. A cost-plus-a-fixed-fee contract does not normally justify a reward for risk in excess of 0 percent. Only a contract that contains cost risk features such as ceilings on overhead might merit a higher weight. Such cases may justify up to 1 percent. Cost-plus-incentive-fee contracts fill the remaining portion of the 0 to 3 percent range. For these, assign weightings based on such factors as confidence in target cost, share ratio of fee(s), etc.

(ii) *Fixed-price type contracts.* 3-7 percent. This weight range is wide enough to accommodate the many types of fixed-price arrangements. Assign weightings based on the cost risk assumed. Only firm fixed-price contracts should reach the top end of the range.

(iii) *Subcontracting program.* The contractor's subcontracting program may significantly impact the contractor's risk under a contract. It could affect risk in terms of both cost and performance. Consider this in selecting a weight for cost risk. The prime contractor may effectively transfer cost risk to a subcontractor. This merits a risk evaluation below the range that would otherwise apply for the contract type proposed. However, the contracting officer should not evaluate risk lower when a substantial portion of the contract cost represents subcontracts, but without any substantial transfer of contractor's risk.

(iv) *Definitizing letter contracts, unpriced change orders, and unpriced orders under basic ordering agreements.* Consider the effect on risk as a result of partial performance before definitization. Some circumstances may effectively reduce the contractor's total risk, while others may have no effect. Determine an equitable profit weight for all recognized costs, both those incurred and future costs. Consider all attendant circumstances, not just the portion of costs incurred or percentage of work completed before definitization.

(v) *Service contracts.* Apply a weight range of 0 to 4 percent for cost risk. A firm fixed-price contract, not priced on a labor-hour method, may warrant high consideration for contractor cost risk. It may

merit a weight up to 4percent. Conversely, a cost-plus-fixed-fee service contract normally warrants a zero cost risk factor.

(4) *Capital investments*. In evaluating this factor for profit weights, consider the following:

(i) *Facilities*.

(A) To evaluate how this factor contributes to the profit objective, the contracting officer needs to know the level of facilities use needed for contract performance, the source of financing for the facilities, and the overall cost effectiveness of the facilities offered.

(B) Contractors who furnish their own facilities that significantly contribute to lower total contract costs, warrant additional profit. Contractors who rely on the Government to provide or finance facilities warrant less profit. Evaluate situations between the above examples on their merits and make either a positive or negative profit weight adjustment, as appropriate.

(C) The contracting officer is not required to adjust the profit when a contractor who owns a large quantity of facilities will perform a contract that does not benefit from these facilities, or when a contractor's use of its facilities has a minimum cost impact on the contract.

(ii) *Payments*. Consider the frequency of payments by the Government to the contractor. Assess the impact the contract will have on the contractor's cash flow. Generally, payments more frequent than monthly merit negative consideration, with maximum reduction as the contractor's working capital approaches zero. Payments less frequent than monthly merit positive consideration, with additional consideration for payments less frequent than the contractor's or the industry's normal practice.

(i) *Nonprofit organizations*.

(1) The structured approach for determining profit or fee objectives was designed for other than nonprofit organizations. However, if modified as below, the contracting officer may use it to establish fee objectives for nonprofit organizations (See FAR 31.701). Do not apply the modifications as a deduction to historical fee levels. Instead apply them as a reduction in the fee objective calculated under the structured approach.

(2) For contracts with nonprofit organizations, subtract an adjustment of up to 3percent from the total profit-fee objective. In developing this adjustment, consider each of the following factors:

(i) Tax position benefits.

(ii) Granting of financing through letters of credit.

(iii) Facility requirements of the nonprofit organization.

(iv) Other factors that may work to the advantage or disadvantage of the contractor as a nonprofit organization.

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

### **MAS Requests for Information Other Than Cost or Pricing Data**



(a) Use Alternate IV of the FAR provision at 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, for MAS solicitations to provide the format for submission of information other than cost or pricing data for MAS solicitations. To provide uniformity in requests under the MAS program, you should insert the following in paragraph (b) of the provision:

(1) Commercial sales practices. When the solicitation contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting, the Offeror must submit information in the format provided in this solicitation in accordance with the instructions at Figure 515.4-2 of the GSA Acquisition Regulation (48 CFR 515.4-2), or submit information in the Offeror's own format.

(2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(3) By submission of an offer in response to this solicitation, the Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before initial award, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Offeror's cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(b) When the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting, insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation and resulting contract (see FAR 12.303).

**COMMERCIAL SALES PRACTICES FORMAT**

**Name of Offeror** \_\_\_\_\_ **SIN(s)** \_\_\_\_\_

**NOTE:** Provide the following information for each SIN (or group of SINs or Sub SIN for which information is the same).

(1) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12-month period or the offerors last fiscal year: \$ \_\_\_\_\_. State beginning and ending of the 12 month period. Beginning \_\_\_\_\_ ending \_\_\_\_\_. In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).

(2) Show your total projected annual sales to the Government under this contract for the contract term, excluding options, for each SIN offered. If you currently hold a Federal Supply Schedule contract for the SIN the total projected annual sales should be based on your most recent 12months of sales under that contract.

SIN _____	\$ _____
SIN _____	\$ _____
SIN _____	\$ _____

(3) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES \_\_\_\_\_ NO \_\_\_\_\_

(4) (a) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at Figure 515.4, which is provided in this solicitation for your convenience. The information should be provided in the chart below or in an equivalent format developed by the offeror. Rows should be added to accommodate as many customers as required.

Column 1 Customer	Column 2 Discount	Column 3 Quantity/Volume	Column 4 FOB Term	Column 5 Concessions
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(b) Do any deviations from your written policies or standard commercial sales practices disclosed in the above chart ever result in better discounts (lower prices) or concessions than indicated? YES \_\_\_ NO \_\_\_. If YES, explain deviations in accordance with the instructions at Figure 515.4, which is provided in this solicitation for your convenience.

(5) If you are a dealer/reseller without significant sales to the general public, you should provide manufacturers' information required by paragraphs(1) through (4) above for each item/SIN offered, if the manufacturer's sales under any resulting contract are expected to exceed \$500,000. You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer's sales records for the purpose of verifying the information submitted by the manufacturer. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of offers, you should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, you must submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

- (a) Manufacturer's Name.
- (b) Manufacturer's Part Number.
- (c) Dealer's/Reseller's Part Number.
- (d) Product Description.
- (e) Manufacturer's List Price.
- (f) Dealer's/Reseller's percentage discount from list price or net prices.

**(End of Format)**

(c) When the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting, include the instructions for completing the commercial sales practices format in Figure 515.4-2 in solicitations issued under the MAS program. Offerors are not required to complete the commercial sales practices disclosure for order-level materials (See subpart 538.72).

Figure 515.4 Instructions for Commercial Sales Practices Format

If you responded “yes” to question (3), on the Commercial Sales Practices Format in paragraph (b) of this section, complete the chart in question (4)(a) for the customer(s) who receive your best discount. If you responded “no”, complete the chart in question (4)(a) showing your written policies or standard sales practices for all customers or customer categories to whom you sell at a price (discounts and concessions in combination) that is equal to or better than the price(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount which equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the proposed multiple award schedule contract period. If your offer is lower than your price to other customers or customers categories, you will be aligned with the customer or category of customer that receives your best price for purposes of the Price Reductions clause at 552.238-81. The Government expects you to provide information required by the format in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete as of 14 calendar days prior to its submission. You must also disclose any changes in your price list(s), discounts and/or discounting policies which occur after the offer is submitted, but before the close of negotiations. If your discount practices vary by model or product line, the discount information should be by model or product line as appropriate. You may limit the number of models or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the special item number (SIN).

#### Column 1—Identify the Applicable Customer or Category of Customer

A “customer” is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local Governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the Offeror's discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

#### Column 2—Identify the Discount

Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

#### Column 3—Identify the Quantity or Volume of Sales

Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn a discount indicate the time period.

Column 4—Indicate the FOB Delivery Term for Each Identified Customer

See FAR 47.3 for an explanation of FOB delivery terms.

Column 5—Indicate Concessions Regardless of Quantity Granted to the Identified Customer or Category of Customer

Concessions are defined in solicitation clause 552.12-70, Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

If you respond “yes” to question 4(b) in the Commercial Sales Practices Format, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer, or the sales of prototype goods for testing purposes.

If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practices Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

(End of Figure)

(d) Use Alternate IV of FAR 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, to provide for submission of information other than cost or pricing data for MAS contracts. To provide for uniformity in requests under the MAS program, insert the following in paragraph (b) of the clause:

- (1) Information required by the clause at 552.238-82, Modifications (Multiple Award Schedule).
- (2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.
- (3) By submitting a request for modification, the Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before agreeing to a modification, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Contractor’s cost or profit information or other data relevant solely to the Contractor’s determination of the prices to be offered in the catalog or marketplace.

## **Subpart 515.6 - Unsolicited Proposals**

## **515.604 Agency points of contact.**

(a) All unsolicited proposals that meet the criteria at FAR 15.605 and FAR 15.606-1(a) shall be submitted following the format posted at <https://www.gsa.gov/unsolicitedproposal>.

(b) The Office of Acquisition Policy will forward the proposal to the appropriate HCA, except as stated in paragraph (c). HCAs are responsible for review and response to forwarded unsolicited proposals.

(c) Unsolicited proposals that may apply to agency-wide programs will remain with the Office of Acquisition Policy for review and response.

## **515.606 Agency procedures.**

### **515.606-1 Receipt and initial review.**

(a) Before initiating a comprehensive evaluation, the agency point of contact, identified in 515.604, shall determine if the proposal meets the requirements of FAR 15.606-1(a).

(b) If the proposal qualifies, the HCA or the Office of Acquisition Policy shall inform the offeror of receipt and process the proposal in accordance with FAR 15.606-1(b) and 515.606-2.

(c) If the proposal does not qualify, the HCA or the Office of Acquisition Policy shall inform the offeror of why the proposal was rejected in accordance with FAR 15.606-1(c).

(d) Sample responses can be found on the Acquisition Portal at <https://insite.gsa.gov/unsolicitedproposal>.

### **515.606-2 Evaluation.**

(a) The HCA or the Office of Acquisition Policy should complete the evaluation as soon as practicable, normally within 14 calendar days for initial review or 90 calendar days for comprehensive evaluation.

(b) The HCA or the Office of Acquisition Policy shall complete a comprehensive evaluation in accordance with the factors listed in FAR 15.606-2 and any other factors deemed appropriate.

(c) Once complete, the HCA or Office of Acquisition Policy should communicate the results of the evaluation to the offeror.