PART 3415—CONTRACTING BY NEGOTIATION

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Source: 88 FR 60542, Sept. 1, 2023, unless otherwise noted.

Subpart 3415.2—Solicitation and Receipt of Proposals and Information

3415.209 Solicitation provisions and contract clauses.

Subpart 3415.3—Source Selection

3415.302 Source selection objective.

3415.302-70 Two-phase source selection.

Subpart 3415.6—Unsolicited Proposals

3415.605 Content of unsolicited proposals.

3415.606 Agency procedures.

Parent topic: SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Subpart 3415.2—Solicitation and Receipt of Proposals and Information

3415.209 Solicitation provisions and contract clauses.

(a) The Freedom of Information Act (FOIA), 5 U.S.C. 552, may require ED to release data contained in an offeror's proposal even if the offeror has identified the data as restricted in accordance with the provision in FAR 52.215–1(e). The solicitation provision in 3452.215–70 (Release of restricted data) informs offerors that ED is required to consider release of restricted data under FOIA and Executive Order 12600.

(b) The contracting officer must insert the provision in 3452.215–70, in all solicitations that include a reference to FAR 52.215–1 (Instructions to Offerors—Competitive Acquisitions).

Subpart 3415.3—Source Selection

3415.302 Source selection objective.

3415.302-70 Two-phase source selection.

(a) *Use.* FSA may utilize a two-phase process to solicit offers and select a source for award. The contracting officer can choose to use this optional method of solicitation when deemed beneficial to the FSA in meeting its needs as a PBO.

(b) *Phase one—*

(1) *Publicizing.* The contracting officer must publish a notice in accordance with FAR subpart 5.2, except that the notice must include limited information as specified in 3405.207.

(2) *Information submitted by offerors.* Each offeror must submit basic information such as the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the approach, and past performance data, together with any additional information requested by the contracting officer.

(3) *Selection for participating in second phase.* The contracting officer must select the offerors that are eligible to participate in the second phase of the process. The contracting officer must limit the number of the selected offerors to the number of sources that the contracting officer determines is appropriate and in the best interests of the Federal Government.

(c) *Phase two.*

(1) The contracting officer must conduct the second phase of the source selection consistent with FAR subparts 15.2 and 15.3, except as provided by 3405.207.

(2) Only sources selected in the first phase will be eligible to participate in the second phase.

Subpart 3415.6—Unsolicited Proposals

3415.605 Content of unsolicited proposals.

(d) Each unsolicited proposal must contain the following certification:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that—

a. This proposal has not been prepared under Federal government supervision;

b. The methods and approaches stated in the proposal were developed by this offeror;

c. Any contact with employees of the Department of Education has been within the limits of appropriate advance guidance set forth in FAR 15.604; and

d. No prior commitments were received from Departmental employees regarding acceptance of this proposal.

Date:

Organization:

Name:

Title:

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization.)

3415.606 Agency procedures.

(b)

(1) The HCA or designee is the contact point to coordinate the receipt, control, and handling of unsolicited proposals.

(2) Offerors must direct unsolicited proposals to the HCA.