PART 5815 - CONTRACTING BY NEGOTIATION

Revised: April 2024

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SUBPART 5815.2 – SOLICITATION AND RECEIPT OF

PROPOSALS AND INFORMATION

5815.201 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.

5815.204 Contract Format

(e) The HCA is the designee.

SUBPART 5815.3 – SOURCE SELECTION

5815.300 Scope of Subpart

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

Source selection guidance can be found in the DoD Source Selection Procedures and DISA Source Selection Procedures

5815.304 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/USA000740-22-DPC.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.

5815.307 Proposal Revisions

(S-90) Final proposal revision letters shall be reviewed by legal counsel for competitive actions in accordance with the thresholds at DARS 5801.9000.

5815.371-5 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 https://disa.deps.mil/org/PL2/Pages/DITCORefs.aspx DARS PGI 5815.371-5(b). The HCA delegates the waiver authority to the appropriate DITCO Chief of the Contracting Office (CoCO).

SUBPART 5815.4 – CONTRACT PRICING

5815.403-3 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 (PS842) 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 PS21, 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).

5815.404-1 Proposal Analysis Techniques

(S-90) *Policy.*

(1) Independent Government Cost Estimates (IGCE) are part of the required documentation for a complete requirements package for procurement actions expected to meet or exceed the Simplified Acquisition Threshold (SAT). An IGCE is also required for Economy Act Determination and Findings requests above $2,500. The DISA IGCE Deskbook located at https://www.ditco.disa.mil/hq/Deskbooks contains procedures/guidance for developing IGCEs.

(2) IGCEs must contain a written narrative 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 PS842.

(3) The use of “fully burdened” labor (hour) rates is recommended. Rates must be recent and relevant to the labor categories contemplated. PS842 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.

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 (PS842) and/or Tariff Specialists (DITCO-Scott, PS82, 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 Request Form” located at DARS PGI 5815.404-1(S-91).

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) PS82 Tariff Specialist assistance related to tariff interpretation, tariff rate establishment/update and other tariff issues shall be requested as required.

(3) PS842 or PS82 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.

(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 PS842 or PS82 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.

(viii) 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 Request Form" located at DARS PGI 5815.404-1(S-91) to the Cost and Pricing Branch Chief via DITCO-Scott Cost and Pricing Branch Mailbox , containing details related to the type of support requested. 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.

5815.406-1 Prenegotiation Objectives

(b) Prenegotiation objectives are established and documented within the Cost/Price Report and/or Evaluation Notices (EN). ENs shall be developed prior to entering negotiations with the offeror, and issued to the offeror during negotiations, to assist the Contracting Officer in making a fair and reasonable price determination and to resolve any weaknesses or deficiencies in the proposal. Cost and pricing analysis assistance for actions less than $10M is encouraged in order to ensure the pertinent issues to be negotiated, cost objectives, and a profit or fee objective is clearly documented in the Cost/Pricing Report.

5815.406-3 Documenting the Negotiation

The Standard Operating Procedure for Obtaining Access to the Contract Business Analysis Repository (CBAR) is located in DARS PGI 5815.406-3(S-90).

(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 any actions at or below the micro-purchase threshold, nor is a PNM required for orders under single award indefinite delivery contracts, when established priced line items are being ordered and the established pricing was deemed fair and reasonable in the base contract. 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 https://disa.deps.mil/org/PL2/Pages/DITCORefs.aspx?RootFolder=%2Forg%2FPL2%2FOther%2FPR

OCEDURES%20GUIDES%20AND%20INSTRUCTIONS%20%28PGI%29&FolderCTID=0x012000175D246D4A108E42B091C3F17BE4BDFE&View=%7B998EB6D7%2DDD02%2D4224%2D9626%2D13F9934F7F4C%7D DARS PGI 5815.406-3(S-90). See DARS 5813.106-3 (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) PNMs for actions 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 price determination.

(2) ENs for actions valued over $10M, shall be prepared in collaboration with a 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 objectives issued as ENs; the Contract Price/Cost Analyst shall also support negotiations and review of the PNM, prior to approval, as requested by the contracting officer.

(3) In all instances where the Cost and Pricing Branch has provided assistance in development of the PNM—including but not limited to, the evaluation of cost/price proposals and calculation of the Government negotiation position, a copy of the signed/approved PNM shall be provided to the Cost and Pricing Branch Chief via 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 an explanation in the PNM. The explanation shall contain detailed information on recommendations 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 all PNMs and negotiation objectives is the contracting officer.

Table 15-2 Competitive Acquisitions PNM Format

ACQUISITION TYPE	FORMAT
FAR Part 13 Competitive ≤ SAT	SAT PNM
Open Market (when the Contracting Officer is the SSA)	Competitive PNM
GSA Schedule orders	IDIQ 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) and Competitive PNM
FAR Part 8/13/16 Competitive LPTA Supply or Service up to $10M	Abstract PNM
FAR Part 15 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	Sole Source PNM
Unilateral orders for priced CLINS at established contract price (no proposed labor categories or hours)	PNM not required

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)	Modifications PNM or Sole Source PNM

SUBPART 5815.5 – PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES

5815.502 Applicability

The DoD Source Selection Procedures and the Outline for Debriefings are located at the DISA Procurement – Contracting Procedures, Guides and Templates website.

SUBPART 5815.6 – UNSOLICITED PROPOSALS

5815.606 Agency Procedures

(a) Unless the contractor specifies within the proposal; no reproduction of material is allowed beyond the copies needed for PS22, Contract Operations Branch, contracting officer, technical and legal reviews. All copies shall be properly disposed (shredding hard copies, permanently deleting electronic copies). PS22 shall maintain an electronic copy of the proposal with the PSD decision authority's letter.

(b) PS22, Contract Operations Branch is the agency point of contact to coordinate the receipt and handling of unsolicited proposals.

5815.606-1 Receipt and Initial Review

(S-90) PS22 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) PS22 will perform the initial review within 10 business days of receipt of the unsolicited proposal. Before initiating a comprehensive evaluation, PS22 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 PS22 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 PS22 shall inform the offeror the reasons for rejection.

5815.606-2 Evaluation

(a) PS22 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, PS22 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) PS22 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.

5815.607 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) PS22 will draft a proposed letter to accept or reject the unsolicited proposal, citing regulatory reasons if the unsolicited proposal is rejected, and may using statements from the evaluation.