Subpart 15.3 - Source Selection

Parent topic: Part 15 - Contracting by Negotiation

15.300 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated *acquisitions*.

15.301 [Reserved]

15.302 Source selection objective.

The objective of source selection is to select the proposal that represents the *best value*.

15.303 Responsibilities.

(a) *Agency heads* are responsible for source selection. The *contracting officer* is designated as the source selection authority, unless the *agency head* appoints another individual for a particular *acquisition* or group of *acquisitions*.

(b) The source selection authority *shall*-

(1) Establish an evaluation team, tailored for the particular *acquisition*, that includes appropriate *contracting*, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of *offers*;

(2) Approve the source selection strategy or *acquisition* plan, if applicable, before *solicitation* release;

(3) Ensure consistency among the *solicitation* requirements, notices to *offerors*, proposal preparation instructions, evaluation factors and subfactors, *solicitation* provisions or *contract clauses*, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the *solicitation* (10 U.S.C. 3303(c) and 41 U.S.C. 3703(c));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the *best value* to the Government (10 U.S.C. 3303(c) and 41 U.S.C. 3703(c)).

(c) The *contracting officer shall*-

(1) After release of a *solicitation*, serve as the focal point for inquiries from actual or prospective

offerors;

(2) After receipt of proposals, control exchanges with *offerors* in accordance with 15.306; and

(3) Award the contract(s).

15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the *acquisition*.

(b) Evaluation factors and significant subfactors *must*-

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) The evaluation factors and significant subfactors that apply to an *acquisition* and their relative importance, are within the broad discretion of agency *acquisition* officials, subject to the following requirements:

(1)

(i) Price or cost to the Government *shall* be evaluated in every source selection (10 U.S.C. 3206(c)(1)(B) and 41 U.S.C.3306(c)(1)(B)(also see part 36 for architect-engineer contracts), subject to the exception listed in paragraph (c)(1)(ii)(A) of this section for use by DoD, NASA, and the Coast Guard.

(ii) In accordance with 10 U.S.C. 3206(c), for DoD, NASA, and the Coast Guard—

(A) The *contracting officer may* choose not to include price or cost as an evaluation factor for award when a *solicitation*—

(1) Has an estimated value above the *simplified acquisition threshold*;

(2) Will result in *multiple-award contracts* (see subpart 16.5) that are for the same or similar services; and

(3) States that the Government intends to make an award to each and all *qualifying offerors* (see 2.101).

(B) If the *contracting officer* chooses not to include price or cost as an evaluation factor for the contract award, in accordance with paragraph (c)(1)(ii)(A) of this section, the *contracting officer shall* consider price or cost as one of the factors in the selection decision for each order placed under the contract.

(C) The exception in paragraph (c)(1)(ii)(A) of this section *shall* not apply to *solicitations* for *multiple-award contracts* that provide for sole source orders pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(2) The quality of the product or service *shall* be addressed in every source selection through consideration of one or more non-cost evaluation factors such as *past performance*, compliance with *solicitation* requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 3206(c)(1)(A) and 41 U.S.C. 3306(c)(1)(A)); and

(3)

(i) *Past performance*, except as set forth in paragraph (c)(3)(iii) of this section, *shall* be evaluated in all source selections for negotiated competitive *acquisitions* expected to exceed the *simplified acquisition threshold*.

(ii) For *solicitations* that are not set aside for small business concerns, involving consolidation or *bundling*, that *offer* a significant opportunity for subcontracting, the *contracting officer shall* include a factor to evaluate *past performance* indicating the extent to which the *offeror* attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).

(iii) *Past performance* need not be evaluated if the *contracting officer* documents the reason *past performance* is not an appropriate evaluation factor for the *acquisition*.

(4) For *solicitations*, that are not set aside for small business concerns, involving consolidation or *bundling*, that *offer* a significant opportunity for subcontracting, the *contracting officer shall* include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor (15 U.S.C. 637(d)(4)(G)(i)).

(5) If telecommuting is not prohibited, agencies *shall* not unfavorably evaluate an *offer* that includes telecommuting unless the *contracting officer* executes a written determination in accordance with FAR 7.108(b).

(d) All factors and significant subfactors that will affect contract award and their relative importance *shall* be stated clearly in the *solicitation* (10 U.S.C. 3206(b)(1) and 41 U.S.C. 3306(b)(1)) (see 15.204-5(c)). The rating method need not be disclosed in the *solicitation*. The general approach for evaluating *past performance* information *shall* be described.

(e) Unless the exception at paragraph (c)(1)(ii)(A) of this section applies, the *solicitation shall* also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price (10 U.S.C. 3206(c)(1)(C) and 41 U.S.C. 3306(c)(1)(C)).

15.305 Proposal evaluation.

(a) Proposal evaluation is an assessment of the proposal and the *offeror*'s ability to perform the prospective contract successfully. An agency *shall* evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the *solicitation*. Evaluations *may* be conducted using any rating method or combination of methods, including color or adjectival

ratings, numerical weights, and ordinal rankings. The relative strengths, *deficiencies*, significant *weaknesses*, and risks supporting proposal evaluation *shall* be documented in the contract file.

(1) *Cost or price evaluation*. Normally, competition establishes price reasonableness. Therefore, when *contracting* on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis *may* be appropriate to establish reasonableness of the otherwise successful *offeror*'s price (see 15.403-1(c)(1)(i)(C)). When *contracting* on a cost-reimbursement basis, evaluations *shall* include a *cost realism* analysis to determine what the Government *should* realistically expect to pay for the proposed effort, the *offeror*'s understanding of the work, and the *offeror*'s ability to perform the contract. *Cost realism* analyses *may* also be used on fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts (see 15.404-1(d)(3)). (See 37.115 for uncompensated *overtime* evaluation.) The *contracting officer shall* document the cost or price evaluation.

(2) *Past performance* evaluation.

(i) *Past performance* information is one indicator of an *offeror*'s ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance *shall* be considered. This comparative assessment of *past performance* information is separate from the responsibility determination required under subpart 9.1.

(ii) The *solicitation shall* describe the approach for evaluating *past performance*, including evaluating *offerors* with no relevant performance history, and *shall* provide *offerors* an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The *solicitation shall* also authorize *offerors* to provide information on problems encountered on the identified contracts and the *offeror*'s corrective actions. The Government *shall* consider this information, as well as information obtained from any other sources, when evaluating the *offeror*'s *past performance*. The source selection authority *shall* determine the relevance of similar *past performance* information.

(iii) The evaluation *should* take into account *past performance* information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant *acquisition*.

(iv) In the case of an *offeror* without a record of relevant *past performance* or for whom information on *past performance* is not available, the *offeror may* not be evaluated favorably or unfavorably on *past performance*.

(v) The evaluation *should* include the *past performance* of *offerors* in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see subpart 19.7).

(vi) For *offerors* that are joint ventures, the evaluation *shall* take into account *past performance* of the joint venture. If the joint venture does not demonstrate *past performance* for award, the *contracting officer shall* consider the *past performance* of each party to the joint venture.

(3) *Technical evaluation*. When tradeoffs are performed (see 15.101-1), the source selection records *shall* include-

(i) An assessment of each *offeror*'s ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

(4) *Cost information.* Cost information *may* be provided to members of the technical evaluation team in accordance with agency procedures.

(5) S*mall business subcontracting evaluation. Solicitations must* be structured to give *offers* from small business concerns the highest rating for the evaluation factors in 15.304(c)(3)(ii) and (c)(4).

(b) The source selection authority *may* reject all proposals received in response to a *solicitation*, if doing so is in the best interest of the Government.

(c) For restrictions on the use of support contractor personnel in proposal evaluation, see 37.203(d).

15.306 Exchanges with offerors after receipt of proposals.

(a) Clarifications and award without discussions.

(1) Clarifications are limited exchanges, between the Government and *offerors*, that *may* occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, *offerors may* be given the opportunity to clarify certain aspects of proposals (*e.g.,* the relevance of an *offeror*'s *past performance* information and adverse *past performance* information to which the *offeror* has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award *may* be made without discussions if the *solicitation* states that the Government intends to evaluate proposals and make award without discussions. If the *solicitation* contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so *shall* be documented in the contract file (see the provision at 52.215-1) (10 U.S.C. 3303(a)(2) and 41 U.S.C. 3703(a)(2)).

(b) *Communications with offerors before establishment of the competitive range*. Communications are exchanges, between the Government and *offerors*, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications-

(1) *Shall* be limited to the *offerors* described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section and-

(i) *Shall* be held with *offerors* whose *past performance* information is the determining factor preventing them from being placed within the competitive range. Such communications *shall* address adverse *past performance* information to which an *offeror* has not had a prior opportunity to respond; and

(ii) *May* only be held with those *offerors* (other than *offerors* under paragraph (b)(1)(i) of this section) whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) *May* be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications *shall* not be used to cure proposal *deficiencies* or material omissions, materially

alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications *may* be considered in rating proposals for the purpose of establishing the competitive range;

(3) Are for the purpose of addressing issues that *must* be explored to determine whether a proposal *should* be placed in the competitive range. Such communications *shall* not provide an opportunity for the *offeror* to revise its proposal, but *may* address-

(i) Ambiguities in the proposal or other concerns (*e.g.,* perceived *deficiencies*, *weaknesses*, errors, omissions, or mistakes (see 14.407)); and

(ii) Information relating to relevant *past performance*; and

(4) *Shall* address adverse *past performance* information to which the *offeror* has not previously had an opportunity to comment.

(c) Competitive range.

(1) Agencies *shall* evaluate all proposals in accordance with 15.305(a), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the *contracting officer shall* establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

(2) After evaluating all proposals in accordance with 15.305(a) and paragraph (c)(1) of this section, the *contracting officer may* determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the *solicitation* notifies *offerors* that the competitive range can be limited for purposes of efficiency (see 52.215-1(f)(4)), the *contracting officer may* limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals (10 U.S.C. 3303 and 41 U.S.C. 3703).

(3) If the *contracting officer*, after complying with paragraph (d)(3) of this section, decides that an *offeror*'s proposal *should* no longer be included in the competitive range, the proposal *shall* be eliminated from consideration for award. Written notice of this decision *shall* be provided to unsuccessful *offerors* in accordance with 15.503.

(4) *Offerors* excluded or otherwise eliminated from the competitive range *may* request a debriefing (see 15.505 and 15.506).

(d) *Exchanges with offerors after establishment of the competitive range*. Negotiations are exchanges, in either a competitive or sole source environment, between the Government and *offerors*, that are undertaken with the intent of allowing the *offeror* to revise its proposal. These negotiations *may* include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and *may* apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive *acquisition*, they take place after establishment of the competitive range and are called discussions.

(1) Discussions are tailored to each *offeror*'s proposal, and *must* be conducted by the *contracting officer* with each *offeror* within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain *best value*,

based on the requirement and the evaluation factors set forth in the *solicitation*.

(3) At a minimum, the *contracting officer must*, subject to paragraphs (d)(5) and (e) of this section and 15.307(a), indicate to, or discuss with, each *offeror* still being considered for award, *deficiencies*, significant *weaknesses*, and adverse *past performance* information to which the *offeror* has not yet had an opportunity to respond. The *contracting officer* also is encouraged to discuss other aspects of the *offeror*'s proposal that could, in the opinion of the *contracting officer*, be altered or explained to enhance materially the proposal's potential for award. However, the *contracting officer* is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of *contracting officer* judgment.

(4) In discussing other aspects of the proposal, the Government *may*, in situations where the *solicitation* stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with *offerors* for increased performance beyond any mandatory minimums, and the Government *may* suggest to *offerors* that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(5) If, after discussions have begun, an *offeror* originally in the competitive range is no longer considered to be among the most highly rated *offerors* being considered for award, that *offeror may* be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the *offeror* has been afforded an opportunity to submit a *proposal revision* (see 15.307(a) and 15.503(a)(1)).

(e) *Limits on exchanges*. Government personnel involved in the *acquisition shall* not engage in conduct that-

(1) Favors one *offeror* over another;

(2) Reveals an *offeror*'s technical solution, including—

(i)Unique technology;

(ii)Innovative and unique uses of *commercial products* or *commercial services*; or

(iii)Any information that would compromise an *offeror*'s intellectual property to another *offeror*;

(3) Reveals an *offeror*'s price without that *offeror*'s permission. However, the *contracting officer may* inform an *offeror* that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all *offerors* the cost or price that the Government's price analysis, *market research*, and other reviews have identified as reasonable (41 U.S.C. 2102 and 2107). When using *reverse auction* procedures (see subpart 17.8), it is also permissible to reveal to all *offerors* the offered price(s), without revealing any *offeror*'s identity;

(4) Reveals the names of individuals providing reference information about an *offeror*'s *past performance*; or

(5) Knowingly furnishes *source selection information* in violation of 3.104 and 41 U.S.C.2102 and 2107).

15.307 Proposal revisions.

(a) If an *offeror*'s proposal is eliminated or otherwise removed from the competitive range, no further revisions to that *offeror*'s proposal *shall* be accepted or considered.

(b) The *contracting officer may* request or allow *proposal revisions* to clarify and document understandings reached during negotiations. At the conclusion of discussions, each *offeror* still in the competitive range *shall* be given an opportunity to submit a final *proposal revision*. The *contracting officer* is required to establish a common cut-off date only for receipt of final *proposal revisions*. Requests for final *proposal revisions shall* advise *offerors* that the final *proposal revisions shall* be *in writing* and that the Government intends to make award without obtaining further revisions.

15.308 Source selection decision.

The source selection authority's (SSA) decision *shall* be based on a comparative assessment of proposals against all source selection criteria in the *solicitation*. While the SSA *may* use reports and analyses prepared by others, the source selection decision *shall* represent the SSA's independent judgment. The source selection decision *shall* be documented, and the documentation *shall* include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision *must* be documented, that documentation need not quantify the tradeoffs that led to the decision.