PART 15 -- CONTRACTING BY NEGOTIATION

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SUBPART 15.2 — SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

15.201 Exchanges with industry before receipt of proposals.

(S-90) Draft RFP may be released prior to final approval of the acquisition strategy and acquisition plan.

15.204 Contract format.

(e) The designee is the HCA.

SUBPART 15.3 — SOURCE SELECTION

15.300 Scope of subpart.

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

Past performance guidance can be found in the OSD Guide to Collection and Use of Past Performance Information.

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

215.304 Evaluation factors and significant sub factors.

(S-90) Small Business Participation Evaluation

A small business participation commitment document shall be submitted to address the extent of small business participation in performance of a contract, and shall be separate from the submission of a Small Business Subcontracting Plan.

The contracting officer shall coordinate with the Office of Small Business Programs 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/USA004370-14-DPAP.pdf

Postaward Responsibilities of the Contracting Officer - Small Business Participation

The small business participation plan shall be incorporated into the final contract award as an attachment. Twice a year (every six months) the contractor shall report to the contracting officer

representative and the Office of Small Business Programs information concerning their performance under its small business participation commitment document. This reporting requirement is separate from the eSRS reporting submission requirements. The contracting officer will determine reporting period dates that are consistent with the contract award date.

15.307 Proposal revisions.

(S-90) Contracting officers may establish a page limit for final proposal revisions.

(S-91) Final proposal revision letters shall be reviewed by Legal for competitive actions in accordance with the threshold set at DARS 1.9000.

15.308 Source selection decision.

(S-90) *Use of Automated Source Selection Evaluation Tool and Source Selection training*. PSD has contracted for, and has budgeted to pay for, an automated source selection evaluation tool and source selection training for SSEBs. An automated source selection evaluation tool and formal source selection training may be used for competitive source selections.

215.371 Only one offer.

215.371-5 Waiver.

(b) For I/Q/O telecommunication actions, the HCA delegates the waiver authority to the appropriate DITCO Chief of the Contracting Office (CoCO). For all other actions, the HCA delegates the waiver authority to the HCO.

(S-90) Prior to awarding to the only offeror received when utilizing the competitive procedures, the contracting officer shall determine if resoliciting the procurement for an additional 30 days is in the best interest of the Government. A sample determination and findings/waiver request can be found in DARS PGI 215.371-5(S-90).

215.403-3 Requiring data other than certified cost or pricing data.

215.403-3(a)(4) (S-90) Contracting Officers are required to coordinate with the Cost and Pricing Branch 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. 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 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).

SUBPART 15.4 -- CONTRACT PRICING

215.403-3 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 Cost and Pricing Branch 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 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).

15.404-1 Proposal analysis techniques.

(S-90) *Policy.*

(1) IGCEs are part of the required documentation for a complete requirements package. The DISA IGCE Deskbook located at https://www.ditco.disa.mil/hq/deskbooks.asp contains procedures/guidance for developing IGCEs.

(2) IGCEs must contain details 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 PL842.

(3) The use of fully burdened labor (hour) rates is recommended. Rates must be recent, and relevant to the labor categories contemplated. PL842 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 HCA review or submission of the complete requirements package to PSD.

(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*. DITCO contracting officers shall initiate action to obtain cost and price analyses in accordance with the following procedures.

(1) 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 Contract Price/Cost (C/P) Analyst in PL842 and Tariff Specialists in PL82. 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 Performance Work Statement (PWS), Request for Proposal (RFP), etc. before solicitation of actions, order or modification with a contract value in excess of the threshold for obtaining certified cost or pricing data (FAR 15.403-4(a)(1)), if required by the contracting officer in order to determine price reasonableness. A list of services offered by the Contract Price/Cost Analyst can be found in the Cost and Pricing Branch Request Form located in DARS PGI 15.404-1(S-91)(1).

The following exceptions apply:

(i) Orders priced in accordance with prices/rates established in base contracts/agreements.

(ii) Modifications priced in accordance with prices/rates established within the base contract/order/agreement.

(iii) Modifications for funding actions.

(iv) Modifications to exercise priced options; or

(v) Any other contract award, modification, or order 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 and maintained in the official contract file.

(2) PL82 Tariff Specialist assistance related to tariff interpretation, tariff rate establishment/update and other tariff issues shall be requested as required.

(3) PL842 or PL82 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 in accordance with and DARS 42.1-90.

(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 PL842 or PL82 Tariff Specialists in accordance with (S-92)(1) prior to their issuance to industry for competitive and noncompetitive services, supplies, and equipment 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 initiate a request for cost/price analysis support, the contracting officer shall submit a completed Cost and Pricing Branch Request Form to the Cost and Pricing Branch Chief via the DITCO-Scott Cost and Pricing Branch

Mailbox, containing details related to the type of support requested. The Cost and Pricing Branch Request Form is located at https://www.ditco.disa.mil/DITCOContractingTemplates/Default.asp. RFP reviews must be requested early in the acquisition stage so that a detailed review may be accomplished prior to submitting the RFP to industry. 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 PL22 and legal reviews.

15.406 Documentation.

15.406-3 Documenting the negotiation.

(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 orders for pre-priced supplies or services placed against established single award indefinite delivery contracts and actions at or below the micro-purchase threshold. 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 DARS PGI 15.406-3(S-90).See DARS 13.106-3 (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 of

$7M.

(S-91) *DITCO Cost/Price Analyst Involvement*

(1) Pre-PNMs, Post-PNMs, and IDIQ Order PNMs 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 determination.

(2) Pre-PNMs valued over $10M, shall be prepared in conjunction with the 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 objective and Pre-PNM; The Contract Price/Cost Analyst shall also support negotiations and review the Post-PNM, prior to approval, as requested by the contracting officer.

(3) In all instances where the Cost and Pricing Branch has provided assistance to the contracting officer in the development of the PNM—including but not limited to, the evaluation of cost proposals, calculation of the Government negotiation position and input to the relevant PNM

documents—a copy of the signed and approved Post-PNM shall be routed to the Cost and Pricing Branch Chief via the 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 justification within the Post- PNM. The justification shall contain a detailed explanation on recommended items 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 Pre/Post PNMs negotiation objectives and modification PNMs negotiation objectives is the contracting officer.

Table 15-2 Competitive Acquisitions PNM Format

ACQUISITION TYPE	FORMAT
Open Market (when the Contracting Officer is the SSA)	Competitive PNM
GSA Schedule orders	Competitive 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)
Part 8/16 Competitive Supply Acquisitions equal to or under the SAT	Template for Part 8/16 Competitive Supply Acquisitions equal to or under the SAT
Competitive, but 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	Pre-PNM and Post-PNM

Table 15-4 Modifications PNM Format

MODIFICATION TYPE	FORMAT
Pricing Modifications against previously competed actions and have Pre-established rates (e.g., labor rates)	Modifications PNM
Pricing Modifications using Pre-established rates (e.g., labor rates) - sole source	Modifications PNM
Other Pricing Modifications (e.g.,cost type modifications)	Pre-PNM and Post-PNM

215.406-3 Documenting the negotiation.

The Contract Business Analysis Repository (CBAR) User's Manual and the CBAR PCO list (includes specific contacts for each section/org) are located in DARS PGI 215.406-3.

SUBPART 15.5 -- PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES

15.502 Applicability.

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

SUBPART 15.6 — UNSOLICITED PROPOSALS

15.606 Agency procedures.

(a) Unless the contractor specifies within the proposal; no reproduction of material is allowed beyond the initial copy per branch/division required for the appropriate PL22, legal, or technical reviews. Upon notification by PL22 that reviews are complete, all copies shall be properly disposed via shredding and any softcopies received by email shall be permanently deleted.

(b) PL22 is the agency point of contact to coordinate the receipt and handling ofunsolicited proposals.

15.606-1 Receipt and initial review.

(S-90) PL22 will perform the receipt and initial review process in consultation with the HCO or HCO designee and Legal within 15 business days of receipt of the unsolicited proposal. (The HCO s designee must be a contracting officer who can contractually obligate or bind the Government to consult on the initial review.) Before initiating a comprehensive evaluation, PL22 shall make the determination the unsolicited proposals meets the criteria defined in FAR 15.606-1(a) (1) through (7). If the proposal meets these requirements, the PL22 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 is rejected, the PL22 shall inform the offeror the reasons for rejection. PL22 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.

15.606-2 Evaluation.

(a) PL22 will coordinate comprehensive evaluations and will attach or imprint on each

unsolicited proposal, circulated for evaluation, the legend required by FAR 15.609(d) within 30 business days after receipt of the unsolicited proposal.

(b) If the unsolicited proposal meets the criteria in FAR 15.605 and 15.606-1, PL22 will forward the unsolicited proposal to the appropriate technical representative, as designated by the HCO or HCO s designee, 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 evaluator or evaluators recommended acceptance or rejection of the unsolicited proposal shall be documented with supporting rationale.

(c) The evaluators shall notify PL22 of their recommendations when the evaluation is completed.

(S-90) PL22 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.

15.607 Criteria for acceptance and negotiation of an unsolicited proposal.

(S-90) All unsolicited proposals will be reviewed and accepted or rejected by the PSE.

(S-91) The PSE will provide a letter indicating rejection of an unsolicited proposal to the offeror citing the reasons for the rejection using supporting statements from the comprehensive evaluation.

(S-92) The PSE will provide a letter indicating acceptance of an unsolicited proposal only after the criteria in FAR 15.606-2 are met.