

PART 5215 CONTRACTING BY NEGOTIATION

SUBPART 5215.2—SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

5215.204 Contract format.

5215.204-5 Part IV--Representations and Instructions.

(c) When a cost realism analysis is to be performed, Section M, Evaluation Factors for Award, should include a notice that the proposed costs may be adjusted, for purposes of proposal evaluation, based upon the results of the cost realism analysis.

SUBPART 5215.3—SOURCE SELECTION

5215.300 Scope of subpart.

Submit request for waivers of DPC mandated source selection requirements in paragraph 1.2 of the DOD Source Selection Procedures Guide (DFARS PGI Subpart 215.3) to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS PGI 215.3 “Source Selection Procedures Waiver.” DPC is the approval authority for acquisitions \$1B or greater. DASN(P) is the approval authority for acquisitions below \$1B.

5215.303 Responsibilities.

(a) When it is appropriate to have someone other than the contracting officer act as Source Selection Authority (SSA) for reasons of high dollar value, mission importance or political visibility, the HCA (or PEO, for PEO-assigned efforts) may designate an alternate individual to be the SSA.

(S-90) The SSA policies below apply only to competitively negotiated acquisitions covering the selection of one or more prime development and or production contractors (including materiel solution analysis or the initiation of preliminary, contract, or detailed design for ship development and acquisition programs) as described in SECNAVINST 5000.2 series; and, to other competitively negotiated acquisitions approved in advance by the assigned PEO, SYSCOM commander, or DRPM; or the head of the contracting activity.

(a) ASN(RDA) for assigned ACAT IA programs, and PEOs, SYSCOM commanders, and DRPMs for their assigned ACAT I, IA, and II programs, shall be the SSA, unless otherwise specified by the USD(AT&L), DON CIO for ACAT IA programs, SECNAV, or ASN(RDA). The ACAT I SSA responsibility may not be further delegated. The ACAT IA SSA responsibility may be delegated. The ACAT II SSA responsibility may be delegated to an individual who:

- If a member of the armed forces, is a flag or general officer; or
- If a civilian, is a member of the SES (or in a comparable or higher position under another schedule).

(b) PEOs, SYSCOM commanders, and DRPMs for their assigned ACAT III, IV, and AAPs, and ASN(RDA) or designee for IT ACAT III, IVT, and AAPs not assigned to PEOs, SYSCOM commanders, and DRPMs, shall designate the SSA at the time approval is granted to use formal source selection procedures.

(c) The SSA for other competitively negotiated acquisitions shall be as prescribed by the FAR, DFARS, or NMCARS, unless otherwise directed by ASN(RDA).

5215.304 Evaluation factors and significant subfactors.

(c) In accordance with SECNAVINST 4101.3A, all acquisition programs with an energy-consuming end item shall ensure that the acquisition team considers energy in making tradeoff decisions and develops an evaluation factor (not sub-factor) for use in source selection.

5215.305 Proposal evaluation.

(a)(1) *Cost or price evaluation.* Methods of evaluation which assign a point score to cost or price and combine it with point scores for other evaluation factors generally should not be used. Point scores can be helpful in summarizing subjective evaluation of technical and other factors but are not needed in evaluating cost or price and tend to obscure the tradeoff between cost/price and other factors, rather than clarifying it. If point scoring of cost/price is utilized, it should be demonstrated that the value of a cost/price point is comparable, in value to the Government, to the value of a non-cost/price point. When a cost realism analysis is performed, the resulting realistic cost estimate should be used in the evaluation of cost, except when using a firm-fixed-price or fixed-price with economic price adjustment type of contract.

(4) *Cost information.* The sharing of cost information with the technical evaluation team, and any limitations on the timing and extent of such sharing, should be addressed during the planning for the source selection. HCAs may establish specific procedural requirements for approving, documenting and/or varying from plans related to such sharing.

(S-90) Approval for use of contractor personnel as evaluators is addressed in FAR Subpart 37.2 and 5237.204. Such contractor personnel shall not rank or recommend one proposal over another, assign any ratings or numerical scores, or otherwise act in a decision-making capacity. Whenever advisory contractor personnel are to be used, a written release shall be obtained from each offeror.

5215.308 Source selection decision.

Advisory bodies, such as Source Selection Advisory Councils, must make a recommendation to the SSA and the recommendation shall be in writing.

SUBPART 5215.4—CONTRACT PRICING

5215.403 Obtaining certified cost or pricing data.

5215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C 2306a and 41 U.S.C. Chapter 35).

(c)(4)(A) Submit the request for DPC approval to use the exceptional circumstances waiver pursuant to DPC Class Deviation 2019-00008, Section 890 Pilot Program to Accelerate Contracts and Pricing Processes, via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5215.403-1(c)(4)(A) – Section 890 Pilot Program to Accelerate Contracting and Pricing Processes.”

(2) *Senior procurement executive coordination.* Submit exceptional case Truth in Negotiations (TINA) waivers that exceed \$100 million via DASN(P) for coordination prior to approval by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 215.403-1(c)(4)(A), -Exceptional TINA Case Waivers.”

(c)(4)(B) An annual report of Truth in Negotiations Act waivers shall be submitted to DASN(P) by October 31st of each year by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 215.403-1(c)(4)(B)- Truth In Negotiations Act Waivers Annual Report.” Reports are to include contract award date, contracting officer’s name, and contracting officer’s telephone number. Where the Pilot Program was used, in accordance with DFARS Class Deviation 2019-00008:

(i) In lieu of the requirement to describe why the item(s) could not be obtained without a waiver as required by DFARS PGI 215.403-1(c)(4)(B)(5), indicate that the exceptional circumstances waiver was applied in accordance with the Section 890 Pilot Program.

(ii) In lieu of the requirement to demonstrate the benefits of granting the waiver as required by DFARS PGI 215.403-1(c)(4)(B)(7), provide the verifiable information submitted by the contractor in accordance with paragraph (b) of the clause 252.215-7998, Pilot Program to Accelerate Contracting and Pricing Processes (DEVIATION 2019-00008).

(S-90) Submit the request for DPC approval of a pilot program demonstrating the efficacy of using risk-based techniques to require the submission of cost or pricing data pursuant to DPC memorandum “Pilot Program Regarding Risk-Based Contracting for Smaller Contract Actions Under the Truth in Negotiations Act” via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5215.403-1(S-90) - Pilot Program Regarding Risk-Based Contracting for Smaller Contract Actions Under TINA.”

5215.403-3 Requiring data other than certified cost or pricing data.

(6) Submit a courtesy copy of the quarterly report to DASN(P) by email RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 215.403-3 HCA Determination to Award to Offeror Failing to Comply with Requests for Data Other Than Certified Cost or Pricing Data.” Negative reports are required.

5215.406 Documentation.

5215.406-1 Prenegotiation objectives.

(b)When the Director, Defense Contract Audit Agency (DCAA) elevates an audit disagreement to DPC pertaining to a Navy contract(s), the CCO shall provide notification to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] PGI 215.406-1 - DCAA Audit Disagreement.” The email should provide relevant details of the disagreement and the contracting officer’s position in the body of the email or attachments.

5215.406-90 Business clearance.

(a) Generally, “pre-negotiation” and “post-negotiation” business clearances are required for each negotiated contract action. Business clearance memoranda (BCM) document the basis for approval of the action, and the basis for determination that the negotiated prices are fair and reasonable.

(b) For competitive acquisitions, the pre-BCM presents a chronology of the acquisition up to the determination of competitive range and provides the basis for the competitive range decision. The

post-BCM continues the chronology to contract award and provides the basis for the award decision. If award is made without discussions, on the basis of original offers, the pre- and post-BCM may be combined.

(c) For contracts and modifications requiring price negotiations, the pre-BCM demonstrates to the approving official that the Government is ready to enter into negotiations. It addresses salient legal and regulatory requirements and sets forth the Government's negotiation objectives. It generally includes a discussion of the bases for the contractor's proposal and the Government objective, DCAA and other Government pricing recommendations and the analysis done and conclusions reached by the negotiating team. The post-BCM describes the results of negotiations, and documents the basis for determining the negotiated price is fair and reasonable. Using the objective in the pre-BCM as a base, it addresses the reasons for any difference between the initial objective and the final negotiated amount. The pre- and post- BCM together constitute the documentation required by FAR 15.406-3 and DFARS 215.406-3 and should provide all the information required therein. In particular, the BCMs should document the use made of field pricing assistance and describe the extent of Government reliance on the contractor's certified cost or pricing data, if obtained, in sufficient detail to provide a basis for Government recovery in the event any of the data proves inaccurate, incomplete or not current.

(d) Annex 2, Business Clearance Memorandum, contains the required content and recommended format to document decisions on contract actions that are subject to business clearance requirements. If an activity plans to use a format other than Annex 2, the activity shall notify DASN(P) by submitting its HCA approved alternate format by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] NMCARS 5201.690 - Alternate Business Clearance Memorandum Format."

SUBPART 5215.6—UNSOLICITED PROPOSALS

5215.606 Agency procedures.

- (a) HCAs are responsible for establishing procedures.
- (b) HCAs are responsible for establishing contact points.