



## DEPARTMENT OF THE INTERIOR

### DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION (DIAR)

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## **SUBPART 1415.1 -- GENERAL REQUIREMENTS FOR NEGOTIATION**

### **1415.106 Contract clauses**

#### **1415.106-70 Examination of Records by the Department of the Interior clause**

The CO shall insert the clause at [1452.215-70](#), Examination of Records by the Department of the Interior, in all contracts requiring the clause at [FAR 52.215-1](#), Examination of Records by the Comptroller General, as prescribed in FAR 15.106-1(b).

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## **SUBPART 1415.4 -- SOLICITATION AND RECEIPT OF PROPOSALS AND QUOTATIONS**

### **1415.404 Presolicitation notices and conferences**

(c) The presolicitation conference shall be approved at one level above the CO.

### **1415.405 Solicitations for information or planning purposes**

#### **1415.405-1 General**

A CO may issue a solicitation for information or planning purposes without a written justification and without obtaining a higher level of approval.

#### **1415.408 Issuing solicitations**

(b) Solicitations involving classified information shall be handled as prescribed in [Subpart 1404.4](#).

#### **1415.411 Receipt of proposals and quotations**

(b) Classified proposals and quotations shall be handled as prescribed in [Subpart 1404.4](#).

### **1415.413 Disclosure and use of information before award**

#### **1415.413-70 Department of the Interior procedures**

(a) General. This section establishes alternate requirements and procedures, which shall be used instead of those prescribed in FAR 15.413, for the use and disclosure of trade secret information and confidential commercial and financial information contained in solicited proposals.

(b) Marking of solicited proposals. A solicited proposal may contain trade secrets or confidential commercial or financial information which the offeror, or its subcontractors, prefers not to be disclosed to the public or used by the Government for any purpose other than evaluation of the proposal. To notify the Government of trade secrets and confidential commercial or financial information contained in a proposal, offerors shall mark the cover page of the proposal and each affected page of the proposal with the legends specified in the solicitation provision at [1452.215-71](#), Use and Disclosure of Proposal Information -- Department of the Interior. COs and other government personnel evaluating a proposal shall not refuse to consider the proposal because it contains information identified as trade secret information or confidential commercial or financial information.

(c) Failure to mark. The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraph (b) of this section. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraph (b) of this section, the offeror concerned shall be notified promptly of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial and financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(d) Solicitation provision. The provision at [1452.215-71](#), Use and Disclosure of Proposal Information -- Department of the Interior shall be inserted in all requests for proposals and requests for quotations.

#### **1415.413-71 Confidentiality of proposal evaluation**

(a) The safeguarding of evaluation data and information, including proposals, is essential in order to preserve the integrity of the proposal evaluation process. During the selection process, no member or advisor of any committee appointed to evaluate proposals shall discuss or disclose any information on the number, identity, or content of proposals received to any other party (including supervisors) without the written approval of the CO. [18 U.S.C. 1905](#) prohibits the unauthorized disclosure of business, confidential, or trade secret information unless authorized by law.

(b) At the initial meeting of the committee, the CO shall brief all members and advisors on the sensitivity of the evaluation process and the prohibition against unauthorized

disclosure of information. At this meeting each member and advisor shall sign a Confidentiality Certificate (1453.215-73). During the proposal evaluation process, all proposals, evaluation notes, scoring sheets and other materials shall be locked in file cabinets or drawers when not in use by committee members and advisors.

(c) The CO shall be the single point of contact regarding communications received from outside parties relating to the acquisition and the evaluation and selection process. Any committee member or advisor who receives a communication from any outside party shall, without discussion, immediately refer the party to the CO. The CO will then determine what further action shall be taken, if any, in responding to the communication. Requests for information made pursuant to the Freedom of Information Act shall be referred to the CO for reply. Proposal evaluation committee members and advisors shall not contact any offeror whose proposal is under evaluation. All communications with offerors shall be handled by the CO.

(d) Bureaus and offices may only release proposals outside the Government for evaluation or advice in accordance with the following requirements:

(1) Decisions to release proposals outside the Government for evaluation or advice shall be approved in writing by the HCA;

(2) Outside evaluators and advisors shall sign the Conflict of Interest Certificate shown in 1453.215-72, and the Confidentiality Certificate shown in 1453.215-73;

(3) Any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information made by the outside evaluator or advisor;

(4) Upon completing the evaluation, all copies of the proposal, as well as any abstracts thereof, shall be returned to the Government office which initially furnished them for evaluation; and,

(5) All determinations to release the proposal outside the Government shall take into consideration requirements for avoiding individual conflicts of interest (see [1415.608-70](#)) and organizational conflicts of interest (see [FAR Subpart 9.5](#)), and the competitive relationship, if any, between the prospective contractor or subcontractor and the prospective outside evaluator.

(e) If outside individuals will be voting members of the evaluation committee or otherwise participate in other than an advisory capacity, then the committee must be constituted as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (PL 92-463) and [308 DM 2](#). Since such committees must be appointed by the Secretary and approved by the GSA, there should be very few occasions when use of outside individuals as voting members is justified.

(f) Outside evaluators will usually serve as advisors to the proposal evaluation committee and as such are consultants. Consultants may be appointed as special employees in accordance with [5 U.S.C 3109](#) or contracted for in accordance with 1437.2.

(g) Additional restrictions on disclosure of acquisition evaluation information are listed in [FAR Subpart 5.4](#) and FAR sections 15.411(b) and 15.610.

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## **SUBPART 1415.5 -- UNSOLICITED PROPOSALS**

### **1415.506 Agency procedures**

(b) The contact point for the receipt and coordination of unsolicited proposals is the contracting office which will acknowledge and review the proposal contents and determine the proper activity within the bureau/office to evaluate and process the proposal. The policy or contracting office shall acknowledge unsolicited proposals and forward each one to the processing activity in an expeditious manner. Each bureau/office shall establish procedures for receipt, reproduction and disposition of unsolicited proposals consistent with the provision of [FAR Subpart 15.5](#).

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## **SUBPART 1415.6 -- SOURCE SELECTION**

### **1415.607 Disclosure of mistakes before award**

(c)(3) The CCO shall make the determination permitting correction of a proposal.

### **1415.608 Proposal evaluation**

(b) The CCO is authorized to make the determination to reject all proposals.

### **1415.608-70 Conflict of interest**

(a) Technical evaluators and advisors, including members of proposal evaluation committees, must render impartial, technically sound, and objective assistance and advice to protect the integrity of the evaluation and selection process. [18 U.S.C. 208](#) prohibits an employee from participating in his or her Government capacity in any matter when the employee, his or her spouse, minor child, outside business associate, or a person or organization with whom the employee is negotiating or has an arrangement for prospective employment, has a financial interest.

(b) Employee Responsibility and Conduct Regulations of the Department of the Interior are contained in 43 CFR part 20. Section 20.735-21 prohibits employees from having a direct or indirect financial interest that conflicts substantially or appears to conflict

substantially with his or her Government duties and responsibilities. Section 20.735-21 also prohibits employees from engaging in directly or indirectly, a financial transaction, resulting from, or primarily relying on, information obtained through his or her Government employment. In addition, other regulations concerning conflicts of interest involving employees of specific bureaus and offices are contained in Section 20.735-22(c).

(c) With the exception of contracting personnel, proposal evaluators and advisors are not required to file a Confidential Financial Disclosure Report (SF450) unless they occupy positions identified in 43 CFR 20.735-30(b). Therefore, each evaluator and advisor shall sign and return to the CO form DI-1960, Conflict of Interest Certificate (or a bureau substitute approved by the head of the contracting activity), as prescribed in 1453.215-72, upon receipt of a memorandum appointing the individual as an evaluator or advisor. If a potential conflict of interest exists, the appointee shall not be allowed to evaluate or advise on a potential contractor's proposal until the conflict has been resolved with the servicing Ethics Counselor.

(d) During the evaluation process, each evaluator and advisor is responsible for assuring that there are no financial or employment interests which conflict or give the appearance of conflicting with his or her duty to evaluate proposals impartially and objectively. Examples of situations which may be prohibited or represent a potential conflict of interest include:

(1) Financial interest, including stocks and bonds, in a firm which submits, or is expected to submit, an offer in response to the solicitation;

(2) Outstanding financial commitments to any offeror or potential offeror;

(3) Employment in any capacity, even if otherwise permissible, by any offeror or potential offeror;

(4) Employment within the last 12 months by any offeror or potential offeror;

(5) Any non-vested pension or reemployment rights, or interest in profit sharing or stock bonus plan, arising out of the previous employment by any offeror or potential offeror;

(6) Employment of any member of the immediate family by any offeror or potential offeror; and

(7) Negotiation for outside employment with any offeror or potential offeror

(e) Each proposal evaluator and advisor shall notify the CO as soon as it becomes known that a potential or actual conflict of interest exists. The CO shall obtain the assistance of the servicing ethics counselor in order to reach an opinion or resolution. A record of the disposition of all conflict of interest situations shall be included in the contract file.

### **1415.610 Written or oral discussion**

(a)(3) No award shall be made on the basis of acceptance of the most favorable initial proposal without discussion unless the CO documents the file and receives written concurrence from technical or requirements personnel, that there are no deficiencies, uncertainties, or mistakes which require discussion in order to ensure that the Government's requirements are satisfied.

### **1415.612 Formal source selection**

(b) The HCA shall determine when a formal source selection process will be used and shall establish implementing procedures.

(e)(1) The formal source selection procedures shall include designating the CO as the individual responsible for the proper control and appropriate release of proprietary and source selection information after source selection.

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## **SUBPART 15.8--PRICE NEGOTIATION**

### **1415.804 Cost or pricing data and information other than cost or pricing data**

#### **1415.804-1 Prohibition on obtaining cost or pricing data**

(b)(i)(B) Authority to approve the contracting officer's finding supporting the unreasonableness of the lowest price is delegated to one level above the CO.

### **1415.805 Proposal analysis**

#### **1415.805-5 Field pricing support**

(c)(1) The contracting officer shall initiate an audit by sending a completed form DI-1902, Request for Audit, to the Assistant Inspector General for Auditing, OIG (see 1453.215-70). The CO shall allow at least 30 working days in assigning a realistic deadline for receipt of the audit report. In exceptional circumstances 20 working days may be allowed, but the circumstances shall be documented in the contract file.

(e) Upon receipt of a DI-1902, the OIG will conduct the audit or arrange for its conduct by the cognizant audit agency in accordance with 360 DM 3.7.

(g) Upon receipt of the audit report, the CO, and the price analyst (if assigned), shall discuss any questions regarding the report's contents with the cognizant auditor. If a question cannot be resolved, or agreement cannot be reached on a recommendation in the report, the CO shall prepare a written statement for the contract file documenting the

decision on the matter. A copy of the statement shall be promptly forwarded to the Assistant Inspector General for Auditing for information.

## **1415.808 Price negotiation memorandum**

### **1415.808-70 Department of the Interior price negotiation memorandum**

(a) Policy. In addition to the information required in FAR 15.808, the PNM prepared by the CO shall include the information in (c) below to the extent such information is applicable to the negotiation.

(b) Applicability. (1) The CO shall prepare a price negotiation memorandum documenting the negotiation of the initial contract award and any subsequent modifications affecting price, cost, or fee, including revisions to the prices of contracts awarded through sealed bidding procedures. A PNM is not required for unilateral modifications such as exercise of fixed price options or issuance of change orders. The memorandum is required for concluding changes and settlements of claims and for issuance of orders under Blanket Ordering Agreements, task orders and delivery orders that involve the negotiation of prices, estimated quantities or amounts.

(2) For simplified acquisitions conducted pursuant to FAR Part 13, the documentation requirements of 1413.106 and [FAR 13.106](#) shall be followed.

(c) Procedures. When the CO prepares the memorandum prescribed in FAR 15.808(a), the following additional information shall be included to the extent it applies to the contract action, information already contained in the contract file or in a previous PNM shall be referenced by location:

(1) A discussion of the reason(s) why sealed bidding is not appropriate as required by [FAR 6.401](#) (or cross-reference the file location of the existing explanation);

(2) Identification of the type of contract used and why it was selected as required by [FAR 16.103\(d\)](#). The file location of any required determination and findings authorizing use of this type of contract (see Part 1416).

(3) A history of the contract action including whether the action was synopsisized, or the basis for exemption under [FAR 5.202](#), and file location of the synopsis; consideration given to the use of set-asides and file location of DI-1886 (see Subpart 1419.2); solicitation issuance date, closing date for receipt of proposals and extensions; sources solicited (reference file location); late proposal or proposal modification information required by FAR 15.412(g); and, if applicable, file location of "Justification for Other Than Full and Open Competition."

(4) Evaluation of proposal(s) including evaluation factors used and weights ([FAR 15.605](#)); results of initial proposal evaluation ([FAR 15.608](#)); determination of competitive range ([FAR 15.609](#)); results of written or oral discussions conducted (FAR

15.610); discussion of best and final offers received (FAR 15.611) and results of final proposal evaluation; and basis for source selection. For formal source selection procedures (see 1415.612), information on the source selection plan and the source selection decision including supporting documentation required by FAR 15.612(d)(2).

(5) If cost or pricing data were not required, the price analysis performed in accordance with FAR 15.805-2.

(6) If cost or pricing data were required, the cost analysis (FAR 15.805-3) and technical analysis (FAR 15.805-4) performed.

(7) If an audit report was required (FAR 15.805-5), the determination that available data are considered adequate for a reasonableness determination (see FAR 15.805-5(a)(1)), or a description of action taken with regard to the report's findings and recommendations as required by FAR 15.808(a)(8). COs shall specifically describe actions taken in response to significant audit findings, including the monetary value and decisions made with regard to any of the audit's questioned costs; i.e., COs shall identify the value of the questioned costs, indicate whether they will allow or disallow them and provide an explanation for their decisions. For purposes of this section, "significant audit finding" and "questioned cost" are defined as those findings and/or costs cited or questioned in an external audit because of their relationship to unallowable costs claimed, a failure to comply with regulations or the terms of the contract, mathematical errors, and/or the duplication of costs. Questions and/or disagreements between the CO, price analyst (if assigned) and cognizant auditor as to an audit report's interpretation or recommendations regarding "significant audit finding" and/or "questioned costs" shall be clarified or resolved and appropriately documented. If a disagreement cannot be resolved, or agreement cannot be reached, the CO shall prepare a written statement in the PNM which discusses the issue(s) in question and supports a final decision on the matter.

(8) The basis for determining profit or fee as prescribed in FAR Subpart 15.805(a)(1) and form DI-1920 (or file location).

(d) Approval. The PNM shall be signed and dated by the contract specialist or contract negotiator who conducted the negotiation and approved by the CO.

(e) Distribution. As noted in FAR 15.808(b), whenever field pricing support has been obtained, copies of related PNM shall be forwarded to the Assistant Inspector General for Auditing, OIG, not later than 15 days after the execution of the resulting contract, modification, or close-out action.

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## **SUBPART 1415.9 -- PROFIT**

### **1415.902 Policy**

(a) The Department's policy is to use a structured approach for determining the profit or fee prenegotiation objective in acquisition actions that require cost analysis based on the profit analysis factors in FAR 15.905, as implemented and supplemented in [1415.905](#).

#### **1415.905 Profit-analysis factors**

(a) In addition to the factors listed in FAR 15.905-1, subsection [1415.905-2](#) contains a description of an additional factor, "Other Costs," on evaluating and determining a weighted profit or fee. For further guidance also refer to the Armed Services Pricing Manual (ASPM No.1).

(b) Form DI-1920, Structured Approach for Profit/Fee Objective-- Department of the Interior (1453.215-71), shall be used for the calculation of the profit or fee objective.

#### **1415.905-2 Additional factors**

*Other Costs* This subfactor, which is not included under FAR 15.905-1, shall include the contribution of all other direct costs including travel, direct support, and hiring of consultants to contract performance.

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### **SUBPART 1415.10 -- PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES**

#### **1415.1005 Discovery of mistakes**

Preaward mistakes in offeror's proposals shall be treated as prescribed in [FAR 15.607](#) and [1415.607](#). Mistakes in a contractor's proposal disclosed after award shall be processed in accordance with FAR 14.406-4 and [1414.406-4](#).

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