

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 2, 14, 15, 36, 52, and
53**

[FAR Case 95-029]

RIN 9000-AH21

**Federal Acquisition Regulation; Part 15
Rewrite—Phase I**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule and notice of public meeting.

SUMMARY: This proposed rule contains the Phase I rewrite of Federal Acquisition Regulation Part 15, Contracting by Negotiation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below starting at 10 a.m. to 5:00 p.m., local time, on October 17, 1996.

Evening Session: Requests for an evening meeting should be made on or before September 27, 1996.

Statements: Statements from interested parties for presentation at the public meeting should be submitted to the GSA address below on or before October 8, 1996.

Comments: Comments should be submitted on or before November 12, 1996 to be considered in the formulation of a final rule.

ADDRESSES: *Comments:* Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 95-029 in all correspondence related to this case.

Public Meeting: The location of the public meeting is the National Aeronautics and Space Administration Auditorium, 300 E Street, SW, First Floor, Washington, DC 20546. Use the entrance at 4th & E Streets.

Evening Session: Send requests for an evening meeting to: Ms. Melissa Rider, DAR Council, Attn: IMD 3D139, PDUSD(A&T)DP/DAR, 3062 Defense Pentagon, Washington, DC 20301-3062; fax (703) 602-0350.

Internet Access: This proposed rule will also be posted on the Acquisition Reform Network (ARNET) at www.Arnet.gov. Comments may be submitted electronically at that address and will be considered official public comments.

FOR FURTHER INFORMATION CONTACT: Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topic scheduled for discussion, should contact the Part 15 Rewrite Committee Chair, Ms. Melissa Rider (703) 602-0131; fax (703) 602-0350. For general information, contact Ms. Victoria Moss at (202) 501-4764, or the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 95-029.

SUPPLEMENTARY INFORMATION:**A. Background**

On January 29, 1996, the FAR Council tasked an ad hoc interagency committee to rewrite FAR Part 15, Contracting by Negotiation. The rewrite will be accomplished in two phases. Phase I consists of rewriting FAR Subparts 15.0, 15.1, 15.2, 15.3, 15.4, 15.6, and 15.10 covering acquisition techniques and source selection.

The FAR Council and the Part 15 Rewrite Committee are providing a forum for the exchange of ideas and information with Government and industry personnel by holding a public meeting and soliciting comments. The goal is to ensure an open dialogue between the Government and the general public on this important initiative. Interested parties are invited to present statements or comments on the Phase I proposed rewrite at the public meeting.

An evening session is also being considered to allow small businesses and other interested parties a greater opportunity to attend and present comments. Those who would find an evening session easier to attend should contact Ms. Melissa Rider at the address listed above. If there is sufficient interest, an evening session will be scheduled and announced in a separate Federal Register notice.

B. Case Summary

The proposed rule revises fundamental concepts and processes in the current FAR Part 15 and introduces new policies. In addition, a more appropriate sequencing of information has been adopted to facilitate use. The proposed rule does not alter the full and open competition provisions of FAR Part 6. The proposed rule is Phase I of a two-phase rewrite of FAR Part 15.

Phase II will cover pricing-related issues in FAR Subparts 15.7, 15.8, and 15.9 and unsolicited proposals in FAR Subpart 15.5.

The committee believes that the spirit of the National Performance Review, the Federal Acquisition Streamlining Act of 1994, and the Federal Acquisition Reform Act of 1995 support an aggressive approach to the rewrite. The committee reviewed the history of the current regulation, including archive copies of the Armed Services Procurement Regulation (ASPR), Defense Acquisition Regulation (DAR), Defense Acquisition Regulations Council files documenting previous changes to the regulations, GAO and Boards of Contract Appeals decisions, statutes and supporting legislative histories, the archives of the Acquisition Law Advisory Panel to the United States Congress ("Section 800 Panel"), SWAT team recommendations, results of a 1990 GSA survey on improving the FAR, and recommendations of the Second Hoover Commission and the Packard Commission. Comments considered in drafting this rule were received—

1. During a public meeting held on January 25, 1996, and public comments received in response to three Federal Register notices (60 FR 63023, December 8, 1995; 60 FR 65360, December 19, 1995; and 60 FR 67113, December 28, 1995);

2. Over the Acquisition Reform Network (an Internet forum);

3. From other Government agencies, the DAR Council, the CAAC, and the Office of Federal Procurement Policy;

4. In response to other notices of the rewrite in various print media and conferences; and

5. From Government fora such as the Front-line Professional's Forum and the Federal Procurement Executive Association.

C. Summary of Changes

Major policy shifts in this proposed rule include—

- A narrower definition of "discussions" limited to communications after establishment of the competitive range;

- A shift in competitive range policy to encourage retaining only the offerors with the greatest likelihood of award and allowing the contracting officer to further limit the competitive range in the interest of efficiency;

- Encouragement of communication with industry throughout the solicitation process to ensure competitive range determinations are informed decisions. The rule allows disclosure of perceived deficiencies

before establishment of the competitive range to resolve ambiguities and other concerns. These communications are not "discussions."

- Elimination of "minor clarifications" except for use in award without discussions; and
- Revision of the rules governing late proposals for negotiated acquisitions to make the offeror responsible for timely delivery of its offer, and to allow late offers to be considered if doing so is in the best interests of the Government.

The proposed rule also specifically authorizes practices currently in use at some agencies including—

- Comparison of one offer to another; and
- Release of the Government estimate to all offerors;

Changes made to support streamlined source selections include—

- Additional discussion of the concept of fairness in the guiding principles at FAR 1.102-2(c);
- A new definition of "best value" at FAR Part 2;
- A description of the two most common source selection processes—award to the low price technically acceptable offeror, and tradeoffs among cost and other factors;
- Authorization to use techniques such as multiphase proposals or oral presentations. These processes and techniques are addressed at 15.2 and comply with Section 18 of the Office of Federal Procurement Policy (OFPP) Act and Sections 8(e), (f), and (g) of the Small Business Act;
- Guidance on communications between the Government and industry prior to release of the solicitation. Agencies are encouraged to share available information freely with industry, within the constraints of the prohibition on giving information necessary to prepare a proposal to one interested party without sharing the information with all other interested parties; and
- A new Model Contract Format (MCF), based on a joint Army/Air Force proposal, that is proposed to replace the uniform contract format. The MCF format has only six sections. The new format will require a change to existing automated systems.

The greatest challenge to the committee was addressing the concerns that traditionally have been raised under the concept of fairness, while maintaining an acquisition process that promotes best value to the taxpayers. This challenge was perhaps most evident in deliberations regarding the treatment of "discussions." The committee believes that the requirement in the Competition in Contracting Act

(CICA) that discussions be held with all offerors in the competitive range does not require that such discussions be held an equal number of times with all offerors. In the past, discussions were conducted as "rounds of discussions," with submissions of revised proposals signaling the end of each round. Under that approach, the Government was compelled to reopen discussions with all offerors in the competitive range, even when discussions were only needed with some of those offerors. That process is burdensome, expensive, and time consuming for both the Government and industry. The committee abandoned the concept of rounds of discussion and eliminated that portion of the current definition which provided for best and final offers, so that both industry and Government could rely more on agreements reached during discussions without requiring offerors to develop revised proposals. However, the contracting officer may request proposal revisions as often as needed, during discussions.

Refining the definition of "discussions" resulted in a disconnect with the concept of communications prior to establishment of the competitive range. In this area, the committee believed increased communications with industry could be particularly beneficial. However, it is necessary to provide guidelines for those communications in order to preserve fairness in the contracting process. The committee decided that those communications should be used to obtain information to understand fully the offeror's intent and to facilitate the Government's decision either to award without discussions or to determine the competitive range. In order to make the communications effective, the committee determined that the information obtained could be used in proposal evaluation. However, changes to the offeror's proposal, other than correction of mistakes, would not be permitted.

Additionally, the committee reaffirmed the flexibility available to the contracting officer for determining what past performance information should be included as part of the proposal. The committee believes the contracting officer is in the best position to determine whether and when to obtain information regarding corrective actions taken to remedy poor past performance. To that end, the existing regulation provides the contracting officer with the greatest amount of flexibility in exercising discretion. While, as a general matter, it is usually a more accurate indicator to look at trends in an offeror's actual performance rather than

on promises or otherwise untested changes (the effectiveness of which is yet unknown), the rule allows the contracting officer to ask the offerors to submit corrective action information as part of their proposals or to request the information at any time following receipt of proposals.

D. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule revises fundamental concepts and processes in the current FAR Part 15 and introduces new policies. The goals of this rewrite are to infuse into the source selection process innovative techniques designed to simplify the process and produce better value, and to eliminate regulations that impose unnecessary burdens on industry and Government contracting officers.

The proposed rule will apply to all large and small entities (including educational and nonprofit entities), that offer supplies or services to the Government in competitive negotiated acquisitions. Aspects of the proposed rule which may impact small entities are: Making a shift in competitive range policy to encourage retaining only those offerors with the greatest likelihood of award rather than all those with a reasonable chance of award; allowing the contracting officer to limit the competitive range in the interest of efficiency; prohibiting cost analysis when contracting on a fixed-price basis without cost incentives, unless the contracting officer has reason to believe that the proposed prices are not reasonable; requiring that evaluation factors established for solicitations provide for meaningful evaluations of competing proposals; rewriting past performance requirements using plain English; allowing for increased communication between the Government and industry earlier in the acquisition process to ensure industry's understanding of Government requirements and the Government's understanding of firms' proposals; eliminating the need for firms to prepare revised proposals reflecting agreements reached during discussions; allowing discussions to remain open until a contract is awarded to simplify making minor adjustment to successful offerors' proposals; allowing the Government to reveal the cost or price that its analysis, market research, and other reviews have identified for an acquisition; and simplifying the process used to amend solicitations after proposals have been

received. The rule proposes to streamline source selection procedures, thereby creating a more efficient process that benefits both private and public sectors.

OFPP believes the proposed rule reduces Government regulations that establish requirements for the way Government deals with those seeking to do business with it. Such deregulation reflects the spirit and intent of the Regulatory Flexibility Act. OFPP further believes that the changes are good for small businesses; that there are many small businesses that do not do business with the Government because of the complexity of offering, evaluation and award, that will benefit from these changes.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 95-029), in correspondence.

E. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule revises existing information collection requirements. Accordingly, a request for amendments of information collection requirements under Office of Management and Budget (OMB) control numbers 9000-0037, 9000-0044, and 9000-0048 will be submitted to OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 2, 14, 15, 36, 52, and 53

Government procurement.

Dated: September 9, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 1, 2, 14, 15, 36, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 2, 14, 15, 36, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

2. Section 1.102-2 is amended by adding paragraph (c)(3) to read as follows:

1.102 Performance standards.

* * * * *

(c) * * *

(3) All offerors and contractors are entitled to fair treatment. Fair treatment requires that the members of the acquisition team abide by the solicitation and acquisition plan (if any) and not act in an arbitrary or capricious manner when dealing with offerors and contractors. Fairness does not mean that offerors and contractors of differing capabilities, past performance, or other relevant factors, must be treated the same.

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Section 2.101 is amended by inserting, in alphabetical order, the definition "Best value" to read as follows:

2.101 Definitions

* * * * *

Best value means an offer or quote which is most advantageous to the Government, cost or price and other factors considered.

* * * * *

PART 14—SEALED BIDDING

4. Section 14.404-1 is amended by adding paragraph (f) to read as follows:

14.404-1 Cancellation of invitations after opening.

* * * * *

(f) When the agency head has determined, in accordance with 14.404-1(e)(1), that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate and make award without issuing a new solicitation, provided, each responsible bidder in the sealed-bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations.

PART 15—CONTRACTING BY NEGOTIATION

5. The Table of Contents for Part 15 is revised to read as follows:
Sec.

Subpart 15.0—General

- 15.000 Scope of part.
- 15.001 Definitions.
- 15.002 Negotiated acquisition.

Subpart 15.1—Source Selection Processes and Techniques

- 15.100 Scope of subpart.
- 15.101 Lowest price technically acceptable process.
- 15.102 Tradeoff process.
- 15.103 Multiphase acquisition technique.
- 15.104 Oral presentations.

Subpart 15.2—Solicitation and Receipt of Proposals and Quotations

- 15.200 Scope of subpart.
- 15.201 Presolicitation exchanges with industry.
- 15.202 Requests for proposals.
- 15.203 Model contract format.
- 15.203-1 Section I, Cover sheet/supplemental information.
- 15.203-2 Section II, Acquisition description.
- 15.203-3 Section III, Financial and administrative information.
- 15.203-4 Section IV, Contract clauses.
- 15.203-5 Section V, Performance requirements.
- 15.203-6 Section VI, Proposal evaluation and submission information.
- 15.204 Issuing solicitations.
- 15.205 Amending the solicitation.
- 15.206 Receipt of proposals and requests for information.
- 15.207 Submission, modification, revision, and withdrawal of proposals.
- 15.208 Solicitation provisions and contract clause.
- 15.209 Forms.

Subpart 15.3—Unsolicited Proposals

- 15.300 Scope of subpart.
- 15.301 Definitions.
- 15.302 Policy.
- 15.303 General.
- 15.304 Advance guidance.
- 15.305 Content of unsolicited proposals.
- 15.306 Agency procedures.
- 15.306-1 Receipt and initial review.
- 15.306-2 Evaluation.
- 15.307 Contracting methods.
- 15.308 Prohibitions.
- 15.309 Limited use of data.

Subpart 15.4—Source Selection

- 15.400 Scope of subpart.
- 15.401 Definitions.
- 15.402 Source selection objective.
- 15.403 Responsibilities.
- 15.404 Evaluation factors and subfactors.
- 15.405 Proposal evaluation.
- 15.406 Competitive range.
- 15.407 Communications with offerors.
- 15.408 Award without discussions.
- 15.409 Proposal revisions.
- 15.410 Source selection.

Subpart 15.5—Make-or-Buy Programs

- 15.500 Scope of subpart.
- 15.501 Definitions.
- 15.502 General.
- 15.503 Acquisitions requiring make-or-buy programs.
- 15.504 Items and work included.
- 15.505 Solicitation requirements.
- 15.506 Evaluation, negotiation, and agreement.
- 15.507 Incorporating make-or-buy programs in contracts.
- 15.508 Contract clause.

Subpart 15.6—Price Negotiation

- 15.600 Scope of subpart.
- 15.601 Definitions.
- 15.602 Policy.
- 15.603 General.
- 15.604 Cost or pricing data and information other than cost or pricing data.
- 15.604-1 Prohibition on obtaining cost or pricing data.

- 15.604-2 Requiring cost or pricing data.
- 15.604-3 [Reserved]
- 15.604-4 Certificate of Current Cost or Pricing Data.
- 15.604-5 Requiring information other than cost or pricing data.
- 15.604-6 Instructions for submission of cost or pricing data or information other than cost or pricing data.
- 15.604-7 Defective cost or pricing data.
- 15.604-8 Contract clauses and solicitation provisions.
- 15.605 Proposal analysis.
- 15.605-1 General.
- 15.605-2 Price analysis.
- 15.605-2 Cost analysis.
- 15.605-4 Technical analysis.
- 15.605-5 Field pricing support.
- 15.606 Subcontract pricing considerations.
- 15.606-1 General.
- 15.606-2 Prospective subcontractor cost or pricing data.
- 15.606-3 Field pricing reports.
- 15.607 Prenegotiation objectives.
- 15.608 Price negotiation memorandum.
- 15.609 Forward pricing rates agreements.
- 15.610 Should-cost review.
- 15.610-1 General.
- 15.610-2 Program should-cost review.
- 15.610-3 Overhead should-cost review.
- 15.611 Estimating systems.
- 15.612 Unit prices.
- 15.612-1 General.
- 15.612-2 Contract clause.
- 15.613 [Reserved]
- 15.614 Unbalanced offers.

Subpart 15.7—Profit

- 15.700 Scope of subpart.
- 15.701 General.
- 15.702 Policy.
- 15.703 Contracting officer responsibilities.
- 15.704 Solicitation provision and contract clause.
- 15.705 Profit-analysis factors.
- 15.705-1 Common factors.
- 15.705-2 Additional factors.

Subpart 15.8—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

- 15.801 Definition.
- 15.802 Applicability.
- 15.803 Notifications to unsuccessful offerors.
- 15.804 Award to successful offeror.
- 15.805 Preaward debriefing of offerors.
- 15.806 Postaward debriefing of offerors.
- 15.807 Protests against award.
- 15.808 Discovery of mistakes.
- 15.809 Forms.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

6. Subpart 15.0, is added, consisting of 15.000, which is revised, and 15.001 and 15.002 which are added to read as set forth below. Subpart 15.1 is revised and Subpart 15.2 is added to read as follows:

Subpart 15.0—General

15.000 Scope of part.

This part prescribes policies and procedures governing acquisitions that do not use sealed bid or simplified

acquisition procedures, including both competitive and sole source acquisitions.

15.001 Definitions.

As used in this part—

Proposal modification is a change made to a proposal before the solicitation is closing date and time; made in response to an amendment; or made to correct a mistake at any time before award.

Revision is a change to a proposal requested by a contracting officer as the result of discussions.

15.002 Negotiated acquisition.

This part covers negotiated acquisition processes for competitive and sole source acquisitions (see Part 6.303-1).

(a) *Sole source acquisitions.* When contracting in a sole source environment, contracting officers are encouraged to follow the procedures in this part to the maximum practicable extent, consistent with an efficient process. Sole source acquisitions should rely on detailed communications with offerors rather than formal procedures. The RFP should be tailored to remove unnecessary information and requirements (e.g. evaluation criteria, voluminous proposal preparation instructions); however, the Model Contract Format should be used, whenever practicable.

(b) *Competitive acquisitions.* When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, evaluation, the source selection decision to the greatest practicable extent, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to selection of the offer representing the best value to the Government.

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.

This subpart describes some acquisition processes and techniques which may be used, singly or in combination with others, to design acquisition strategies suitable for the complexity of the Government's requirement and the amount of Government resources available to conduct the source selection. These alternatives should be considered during acquisition planning. The source selection authority (SSA) should select the process most appropriate to the particular acquisition that is expected to result in the best value.

15.101 Lowest price technically acceptable process.

(a) This process permits communications with offerors and requires fewer resources than a tradeoff process (see 15.102).

(b) If the Source Selection Authority elects to use a lowest price technically acceptable process, the following evaluation considerations apply:

(1) The threshold(s) of technical acceptability shall be set forth in the solicitation. The solicitation must specify that award will be made on the basis of lowest evaluated price of proposals meeting or exceeding the threshold(s).

(2) This process does not permit tradeoffs between price and non-cost factors/subfactors. The non-cost evaluation is done on a pass/fail basis.

(3) If discussions are necessary, the Government's concerns shall be discussed with offerors and a revised proposal may be requested as described in 15.409(c).

15.102 Tradeoff process.

(a) A tradeoff acquisition process is more flexible, but also more resource intensive, than a low price technically acceptable acquisition process. This process is appropriate when the SSA believes that the best value may not be the lowest price offer.

(b) If the SSA elects to use a tradeoff process, the following evaluation considerations apply:

(1) All factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation.

(2) The solicitation shall state whether all evaluation factors other than cost or price when combined are significantly more important, approximately equal or significantly less important than cost or price.

(3) This process requires tradeoffs between cost or price and non-cost factors/subfactors and permits the Government to accept other than the lowest priced technically acceptable offer. Specific tradeoffs need not be described in terms of cost or price impacts nor do the tradeoffs need to be quantified in any other manner.

15.103 Multiphase acquisition technique.

(a) *General.* Multiphase source selection may be appropriate when the submission of full proposals at the beginning of a source selection would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, agencies may seek limited information initially, make one or more down-selects, and request full proposals from a limited number of offerors.

(b) *First phase notice.* In the first phase, the Government shall publish a notice (see 5.205) that provides a general description of the scope or purpose of the acquisition, identifies the criteria that will be used to make the initial down-select decision, and solicits responses. Alternatively, the Government may issue a solicitation that provides a more specific description of the supplies or services to be procured. The notice or solicitation may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice or solicitation shall contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice or solicitation shall advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases.

(c) *First phase responses.* Offerors shall submit the information requested in the notice or solicitation described in paragraph (b) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(d) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the criteria in the notice or solicitation and make either a mandatory or advisory down-select decision.

(1) The Government may make a "mandatory" down-select if it identified the criteria or process that will be used to evaluate offers in all phases and requested sufficient information (including cost information) for there to be binding offers. A mandatory down-select allows the Government to prohibit offerors from participating in subsequent phases based on the evaluation criteria set forth in the notice or solicitation.

(2) If the Government did not request sufficient information for there to be binding offers that the Government could accept without further submissions, the Government must make an "advisory" down-select. In conducting an advisory down-select, the Government shall—

(i) Request selected offerors provide a proposal for the next phase of the acquisition;

(ii) Inform offerors not selected that, based on the offeror's initial submission, they are unlikely to receive an award and provide them supporting rationale. Such offerors may, at their option,

submit a proposal for the second phase which the Government must evaluate; and

(iii) Debrief offerors as required by 15.805 and 15.806 only when they have been formally excluded from the competition. Advisory down-selects do not constitute such exclusion.

(e) *Subsequent phases.* Additional information shall be sought in the second phase so that a mandatory down-select or competitive range determination can be performed or an award made without discussions. If the criteria to be used in making decisions in the second phase were not stated in the original notice or the solicitation, they shall be identified to all remaining offerors at the start of this phase. If desired, the Government may conduct additional phases.

15.104 Oral presentations.

(a) Except for certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions), the SSA may require offerors to submit all, or part of, their proposals through oral presentations. Oral presentations may occur either before or after a competitive range (if any) is established. Generally, oral presentations are most beneficial when they substitute for, rather than augment, written information.

(b)(1) In deciding which information to obtain through an oral presentation, consider the following:

(i) Whether the information can be reasonably and adequately presented to permit evaluation by the Government.

(ii) Whether there is a need to incorporate any of the information into the resultant contract, and if so, the ease of incorporation; and

(iii) The impact oral presentations will have on the efficiency of the competition.

(2) Information pertaining to such areas as an offeror's capability, work plans or approaches, staffing resources, transition plans, sample tasks or other tests may be suitable for oral presentations.

(c) Where oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe—

(1) The scope of the presentations, including the types of information to be presented orally and the associated evaluation criteria that will be used;

(2) The personnel that will be required to provide the oral presentation(s);

(3) The requirements for, any limitations and/or prohibitions on, the

use of written material or other media to supplement the oral presentations;

(4) The impact oral presentations will have on the small businesses;

(5) The location at which the oral presentations will be made;

(6) The restrictions governing the time permitted for each oral presentation; and

(7) The extent of communication that may occur between the Government's participants and the offeror's representatives as part of the oral presentations (e.g. will communications encompass discussions).

Subpart 15.2—Solicitation and Receipt of Proposals and Information

15.200 Scope of subpart.

This subpart prescribes policies and procedures for—

(a) Preparing and issuing requests for proposals (RFP's) and requests for information (RFI's); and

(b) Receiving proposals and information.

15.201 Presolicitation exchanges with industry.

(a) Exchange of information by all interested parties involved in an acquisition from the earliest identification of a requirement through release of the solicitation is encouraged. Interested parties include potential offerors, end users, Government acquisition and supporting personnel and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of Government requirements, thereby enhancing the Government's ability to obtain quality products and services at reasonable prices, and increase the efficiency in proposal preparation, proposal evaluation, negotiation and contract award.

(c) Agencies are encouraged to promote early exchange of information about future acquisitions. An early exchange of information can efficiently and effectively identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work and data requirements; the suitability of the proposal instructions and evaluation criteria; the availability of reference documents and information exchange approaches; and any other industry concerns or questions. Techniques to promote early exchange of information include—

- (1) Industry or small business conferences;
- (2) Public hearings;
- (3) Market research, as described in FAR Part 10;
- (4) One on one meetings with potential offerors (see paragraph (f));
- (5) Presolicitation notices;
- (6) Draft RFPs;
- (7) Requests for information (RFIs);
- (8) Presolicitation or preproposal conferences; and
- (9) Site visits.

(d) The special notices of procurement matters at 5.205(c) or electronic notices may be used to publicize the Government's requirement or solicit information from industry.

(e) *Requests for Information (RFIs)*. This method may be used when the Government does not intend to award a contract on the basis of the solicitation but needs to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract.

(f) Government personnel may disclose general information about agency mission needs and future requirements. If Government personnel disclose specific information about a proposed acquisition which is necessary for the preparation of proposals, that information shall be made available to the public as soon as possible, but no later than the next release of information in order to avoid creating an unfair competitive advantage. When a presolicitation or preproposal conference is conducted, distributed materials should be made available to potential offerors, upon their requests.

15.202 Requests for Proposals.

(a) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs shall only be used when there is a definite intention to award a contract, and therefore, shall not be used as a solicitation for information or planning purposes. RFPs shall, at a minimum, describe the—

- (1) Government's requirement;
- (2) Anticipated terms and conditions that will apply to the contract;
- (i) Contracting officers may allow offerors to propose alternative terms and conditions, including a contract line item number (CLIN) structure that is different from the model in the solicitation.

(ii) Since CLIN structure is often dictated by considerations such as place of performance, or payment and funding requirements, the potential impact of a

changed CLIN structure shall be determined before accepting any proposed alternative.

(3) Information requirements of the offeror's proposal;

(4) Factors and significant subfactors that will be used to evaluate the proposal.

(b) An RFP may be issued for OMB Circular A-76 studies. See Subpart 7.3 for additional information regarding cost comparisons between Government and contractor performance.

(c) In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for RFPs and receipt of proposals. If electronic proposals are authorized, the RFP shall specify the electronic commerce method(s) that offerors may use.

(d) Contracting officers may issue RFPs or receive proposals by facsimile.

(1) In determining whether or not to use these methods, the contracting officer shall consider such factors as—

- (i) Anticipated proposal size and volume;
- (ii) Urgency of the requirement;
- (iii) Availability and suitability of electronic commerce methods; and
- (iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.

(2) If facsimile proposals are authorized, contracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

(e) Letter RFPs may be used, when appropriate (e.g., a sole source follow-on procurement). Use of a letter RFP does not relieve the contracting officer from complying with other requirements of this regulation. Letter RFPs should be as clear and concise as possible and, as a minimum, contain the following:

- (1) RFP number and date;
- (2) Name, address, and telephone number of contracting office;
- (3) Type of contract contemplated;
- (4) Quantity, description, and required delivery dates for the item;
- (5) Applicable certifications and representations;
- (6) Contract terms and conditions (reference to prior contract or updates should be provided, as applicable);
- (7) Instructions to offerors and evaluation criteria (for other than sole-source actions);
- (8) Offer due date; and
- (9) Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support, and different data requirements.

(f) Oral RFPs are authorized when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government (e.g., perishable items and support of contingency operations or other emergency situations).

(1) Use of an oral solicitation does not relieve the contracting officer from complying with other requirements of this regulation.

(2) The contract files supporting oral solicitations shall include—

- (i) A justification for use of an oral solicitation;
- (ii) Sources solicited, including the date, time, name of individuals contacted, and prices offered; and
- (iii) The solicitation number provided to the prospective contractors.

(3) The information furnished to potential offerors under oral solicitations should include that set forth in paragraph (e), to the maximum extent practicable.

15.203 Model contract format.

(a) Contracting Officers should prepare solicitations and contracts using the model contract format (MCF) outlined in Table 15-1 to the maximum extent practicable. The use of the MCF facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by offerors, contractors, and contract administrators. The MCF need not apply to the following acquisitions:

(1) Construction and Architect-engineer contracts (see FAR Part 36).

(2) Subsistence items.

(3) Supplies or services requiring special contract formats prescribed elsewhere in this regulation that are inconsistent with the MCF.

(4) Letter Request for Proposals (see 15.203(e)).

(5) Contracts exempted by the agency head or designee.

TABLE 15-1A—MODEL CONTRACT FORMAT

Section	Title
I	Cover sheet/supplemental information.
II	Acquisition description.
III	Financial and administrative information.
IV	Contract clauses.
V	Performance requirements.
VI	Proposal evaluation and submission information.

§ 15.203-1 Section I, Cover sheet/supplemental information.

The solicitation cover sheet summarizes essential details about the solicitation. The cover sheet is the first

page of the solicitation. The cover sheet shall include, as a minimum, the following information:

(a) Brief description of the acquisition.

(b) Whether or not the acquisition is restricted to small business.

(c) Name, address and location of issuing activity, including room and building where proposals must be submitted.

(d) Solicitation number.

(e) Date of issuance.

(f) Closing date and time.

(g) Number of pages.

(h) A Government point of contact and telephone number.

(i) Government designated period for acceptance of offers (in days).

§ 15.203-2 Section II, Acquisition Description.

This section includes a summary description of the supplies and/or services, and anticipated contract type, e.g., quantities, prices, item number, national stock number/part number, title or name identifying the supplies or services, and options.

§ 815.203-3 Section III, Financial and Administrative Information.

This section includes any required accounting and appropriation data and information affecting payment and contract administration, e.g., the small business subcontracting plan, tailored instructions and/or special tailored requirements for property management, packaging, packing, preservation, marking, inspection, acceptance, or quality assurance.

15.203-4 Section IV, Contract Clauses.

This section includes all contract clauses not tailored specifically for the acquisition that are incorporated by reference (i.e., all standard clauses incorporated by reference, including those with minimal fill-ins) or are not tailored but are required to be inserted in full text. The text of clauses incorporated by reference shall be available through the Internet or from the contracting officer. If the contracting officer elects to include a clause in full text, the clause shall be treated as if it were tailored (e.g., placed in the financial and administrative information section). The restrictions in 52.104 on use of standard clauses still apply.

15.203-5 Section V, Performance Requirements.

This section includes more detailed information as to what and when the contractor is to deliver, e.g., the statement of work or its equivalent, process requirements, data requirements

or special requirements for time and place of delivery.

15.203-6 Section VI, Proposal Evaluation and Submission Information.

(a) This section includes information on how the Government will evaluate the proposal and what the proposal must include, e.g., representations and certifications, instructions to offerors, and evaluation criteria.

(b) Upon award, the contracting officer shall not include section VI in any resultant contract but shall retain it in the contract file.

15.204 Issuing solicitations.

(a) The contracting officer shall furnish copies of unclassified solicitations to any party upon request.

(b) A master solicitation (see 14.203-3) may be used for negotiated acquisitions.

15.205 Amending the solicitation.

(a) When, either before or after receipt of proposals, the Government changes, relaxes, increases, or otherwise modifies its requirements, the contracting officer shall issue an amendment to the solicitation.

(b) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation, and should be issued in the same manner as the solicitation.

(c) Amendments issued after the established time and date for receipt of proposal should be issued—

(1) To all offerors still eligible for award; and

(2) In the same manner as the solicitation.

(d) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment.

(e) If a change is so substantial that it warrants a complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(f) If the proposal considered to be most advantageous to the Government (determined according to the established evaluation criteria) involves a departure from the stated requirements, the contracting officer shall provide all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements; *provided*, that this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection (see 15.206(b) and 15.409(d)).

(g) At a minimum, the following information should be included at the beginning of each amendment:

(1) Name and address of issuing activity.

(2) Solicitation number and date.

(3) Amendment number and date.

(4) Number of pages.

(5) Short description of the change being made.

(6) Government point of contact and phone number.

(7) Revision to solicitation closing date, if applicable.

15.206 Receipt of proposals and requests for information.

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to an RFI shall be marked with the date and time of receipt and be transmitted to the appropriate source selection officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. See 3.104 for statutory requirements and regulations related to the disclosure of proposal information and source selection information (41 U.S.C. 423(d)). Information received in response to an RFI shall also be safeguarded from unauthorized disclosure.

(c) If a proposal received by the contracting officer in electronic format is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and request retransmission of the proposal or, at the contracting officer's discretion, resubmittal of the proposal in another format. If the retransmitted proposal is still unreadable, it may be rejected.

15.207 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for timely submission of proposals, and any requested revisions or modifications to them, to the Government office designated in the solicitation. Unless the solicitation states another specific time, the time for receipt is 4:30 p.m., local time, at the designated Government office on the date that proposals, requested revisions or modifications are due.

(b) Proposals, modifications, and revisions received in the designated Government office after the exact time specified are "late" but may be considered if doing so is in the best interests of the Government. Government mishandling or fault need not be established in order to accept a

late offer. The contracting officer shall promptly notify any offeror if its proposal, modification, or revision was received late and whether or not it will be considered, unless contract award is imminent and the notice prescribed in 15.803(b) would suffice.

(c) Offerors may not revise proposals unless requested by the contracting officer.

(d) Proposals may be withdrawn at any time before award. Written proposals are withdrawn upon receipt by the contracting officer of a written notice of withdrawal. Oral offers in response to oral solicitations are withdrawn by the offeror's statement of withdrawal made to the contracting officer, who then shall document the contract file. Withdrawn proposals will be destroyed or returned to the offeror at the offeror's request and expense.

15.208 Solicitation provisions and contract clause.

When contracting by negotiation—

(a) The contracting officer shall insert the provision at 52.215-1, Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the Government intends to award a contract without discussions:

(1) If the Government intends to make award after discussions with offerors within the competitive range, use the basic provision with its Alternate I; and

(2) If the Government wishes to reserve the right for purposes of efficiency to limit the competitive range to no more than a specific number, use the basic provision with its Alternate II, or the basic provision with both Alternates I and II.

(b) The contracting officer shall insert the clause at 52.215-2, Audit and Records—Negotiation, in solicitations and contracts except—

(1) Acquisitions not exceeding the simplified acquisition threshold in Part 13;

(2) Acquisitions for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge (10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A-133); or

(3) Facilities acquisitions, where the contracting officer shall use the clause with its Alternate I;

(4) Cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II; or

(5) When the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at 52.215-3, Solicitation for Information or Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) The contracting officer shall insert the provision at 52.215-4, Type of Business Organization, in all solicitations.

(e) The contracting officer shall insert the provision at 52.215-5, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

(f) The contracting officer shall insert the provision at 52.215-6, Place of Performance, in solicitations except those in which the place of performance is specified by the Government.

(g) The contracting officer shall insert the provision at 52.215-7, Annual Representations and Certifications—Negotiation, in solicitations if annual representations and certifications are utilized (see 14.213).

(h) The contracting officer shall insert the clause at 52.215-8, Order of Precedence, in all solicitations and contracts.

15.209 Forms.

Forms are not needed to prepare solicitations described in this subpart. The following forms may be used at the discretion of the contracting officer:

(a) Optional Form XX, Solicitation and Offer—Negotiated Acquisition, may be used to issue RFPs and RFQs.

(b) Optional Form XY, Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) Standard Forms 30 and 33 may be used, if appropriately modified (e.g., substitute the MCF for the Uniform Contract Format Table of Contents). If so modified, the contracting officer shall remove the form designation (i.e., standard form number).

(d) To promote identification and proper handling of proposals, Optional Form 17, Offer Label, may be furnished with each request for proposals. The form may be obtained from the General Services Administration (see 53.107).

Subpart 15.3—[Redesignated as Subpart 15.3]

7. Subpart 15.5 is redesignated as Subpart 15.3

8. Subpart 15.4 is revised to read as follows:

Subpart 15.4—Source Selection

15.400 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or

sources in competitive negotiated acquisitions.

15.401 Definitions.

Deficiency, as used in this subpart is a single material failure to meet a Government requirement or a single flaw that appreciably increases the risk of unsuccessful contract performance.

Discussion, as used in this subpart, means communication after establishment of the competitive range between the contracting officer and an offeror in the competitive range.

15.402 Source selection objective.

The objective of source selection is to select the offer which represents the best value. Typically, the best value would be achieved through—

(a) A tradeoff process used to select the most advantageous offer by evaluating and comparing factors in addition to cost or price. A best value decision in these acquisitions reflects the Government's willingness to accept other than the lowest priced acceptable offer if the perceived benefits of the higher priced offer merit the additional cost; or

(b) A lowest price technically acceptable process is used where it has been determined that the Government's interests are best served by selection of the lowest price offer that is evaluated (on a pass/fail basis) as technically acceptable used to select the most advantageous offer where proposals are evaluated on a pass/fail basis, and award is made to the lowest cost (price) technically acceptable offeror. Proposals need not be ranked under this process nor are communications precluded.

§ 15.403 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 procurement or class of procurements.

(b) The source selection authority shall—

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

(2) Approve the source selection plan before solicitation release, if agency procedures require a plan;

(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. 2305(b)(1) and 41 U.S.C. 253b(d)(2));

(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. 2305(b)(4)(B) and 41 U.S.C. 253b(d)(2));

(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 and conduct communications with offerors in accordance with 15.409; and

(3) Award the contract(s).

15.404 Evaluation factors and subfactors.

(a) The criteria upon which the award decision is based consist of evaluation factors and subfactors. The selected factors and subfactors shall be tailored to the acquisition.

(b) Use factors and subfactors that—

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

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

(c) If a multiphase solicitation technique will be used, the factors and subfactors (if any) that apply to the initial phase shall be set forth in the notice or solicitation.

(d) 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) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 253a(c)(1)(B)).

(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. 2305(a)(3)(A)(i) and 41 U.S.C. 253a(c)(1)(B)).

(3)(i) Except as set forth in paragraph (ii) of this paragraph, past performance shall be evaluated in all source selections for competitive acquisitions issued on or after—

(A) July 1, 1995, for acquisition expected to exceed \$1,000,000;

(B) July 1, 1997, for acquisitions expected to exceed \$500,000; or

(C) January 1, 1999, for acquisitions expected to exceed \$100,000.

(ii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition (OFPP Policy Letter 92-5).

(e) All factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.205-5(c)). The rating method need not be disclosed in the solicitation.

(f) 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. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

15.405 Proposal evaluation.

(a) Proposal evaluation is an assessment of both the proposal and the offeror's ability to accomplish the prospective contract successfully. An agency shall evaluate competitive proposals solely on the factors (including any subfactors) specified in the solicitation. In evaluation of competitive proposals against the evaluation factors specified in the solicitation, an agency should compare their relative qualities. Agencies may use any method or combination of methods to evaluate proposals, including color/adjectival ratings, numerical weights, and ordinal rankings. If preaward testing or product demonstration is required, it need not be accomplished in accordance with a formal test plan, provided all offerors are evaluated against the same criteria. The evaluation method used by the agency need not be disclosed in the solicitation.

(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; do not perform a cost analysis unless the price of the otherwise successful offeror is determined to be unreasonable (see 15.604-1(b)(1)(i)(B)). When contracting on other than a firm fixed price or fixed price with economic price adjustment basis, the evaluations should

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 ability to perform the contract. 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 age and relevance of the information, source of the information, subjectivity of the data and general trends in contractor's performance should be considered. This assessment of past performance information is separate from the responsibility determination required under Subpart 9.1.

(ii) The solicitation shall provide offerors an opportunity to identify past contracts (including Federal, State, and local Governments and private) for efforts similar to the Government requirement. At the discretion of the contracting officer, the solicitation may also request offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government may use this information as well as information obtained from any other sources to evaluate the offeror's past performance.

(iii) Firms lacking relevant past performance history shall receive a neutral evaluation for past performance. A neutral evaluation means any assessment that neither rewards nor penalizes firms without relevant performance history.

(3) *Technical evaluation.* If a technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, 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 of each technical proposal against the evaluation criteria.

(4) Cost information may be provided to members of the technical evaluation team if the source selection authority concurs.

(b) All proposals received in response to a solicitation may be rejected if the source selection authority determines that doing so is in the best interests of the Government.

15.406 Competitive range.

(a) The contracting officer shall establish a competitive range for the purpose of conducting written or oral discussion (see 15.409(c)). The

competitive range shall include proposals having the greatest likelihood of award based on the factors and subfactors in the solicitation.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the competitive range is expected to exceed the number at which an efficient competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar supplies and services, and the resources available to conduct the source selection. Alternate II of 52.215-1, Information to Offerors—Competitive Acquisition, may be used to indicate the Government's estimate of the greatest number or proposals that will be included in the competitive range for purposes of conducting an efficient competition among the most highly rated proposals.

(c) After evaluating offers, the contracting officer may determine that the number of proposals that would 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, the contracting officer may limit the number or proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. The solicitation provision at 52.215-1, Instruction to Offerors—Competitive Acquisition, reserves the contracting officer's right to limit the competitive range for purposes of efficiency.

(d) If the contracting officer determines that an offeror's proposal is no longer in the competitive range the proposal shall no longer be considered for award. Written notice of this decision shall be provided to unsuccessful offerors at the earliest practicable time (see 15.803(a)(1)).

(e) Offerors excluded from the competitive range may request a debriefing. When a debriefing is requested, see 15.805.

15.407 Communications with offerors.

(a) Competition on other than price alone and the source selection process necessarily involve communications between the Government and competing offerors. Open communications support the goal of efficiency in Government procurement (10 U.S.C. 2304(j) and 41 U.S.C. 253(h)) by providing the Government with relevant information

(in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of communications between the Government and offerors is a matter of contracting officer judgment.

(b) *Communication with offerors prior to establishment of the competitive range.* Communication with offerors after receipt of proposals, but prior to establishment of the competitive range (or award, if award is to be made without discussions), is encouraged to obtain information to facilitate the Government's decision either to award without discussions or determine the competitive range. Information received during this phase of communications may provide context to the proposal in that it allows the Government to understand the offeror's intent. Consequently, it may be used in proposal evaluation. Communications conducted pursuant to this paragraph—

(1) Are not "discussions" (see 15.409(c));

(2) Do not permit changes in an offeror's proposal other than correction of mistakes;

(3) Are conducted to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in the offeror's proposal. However, a willingness by the offeror to correct any perceived errors, perceived omissions, perceived deficiencies, or other concerns does not require that the offeror be placed in the competitive range;

(4) Shall only be initiated if authorized by the contracting officer; and

(5) Need not be conducted with all offerors. For example, when trying to determine the competitive range, the Government could limit communications to those offerors, whose proposals, on initial evaluation, would be neither clearly "in" nor clearly "out" of the competitive range. Similarly, when trying to decide whether or not to award without discussions, the Government could limit communications to the offeror(s), based on initial evaluation, deemed to have the greatest likelihood of award.

(c) *Communication with offerors after establishment of the competitive range.* Communication with offerors determined to be in the competitive range is accomplished through written and/or oral discussions (see 15.401). If a competitive range is established, the Contracting Officer shall conduct discussions at least once with all offerors in the competitive range (but

see 15.410). All evaluated deficiencies in an offeror's proposal, except those relating to past performance on which the offeror has already had an opportunity to comment, and any other issues which, in the judgment of the contracting officer, should be brought to the offeror's attention shall be disclosed during the conduct of discussions. While the Government may rely upon agreements made during discussions for the purposes of proposal evaluations, such agreements shall be confirmed by proposal revision(s) before contract award (see 15.411).

(d) *Improper discussions and communications.* The contracting officer and other Government personnel involved in the procurement shall not engage in—

(1) Favoring one offeror over another by coaching, prompting, suggesting, or recommending ways in which an offeror must change its proposal to bring it up to the level of other proposals;

(2) Revealing an offeror's technical solution to another offeror;

(3) Advising an offeror of another offeror's price without that other offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high or unrealistic, and the results of the analysis supporting that conclusion. It is also permissible 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. 423(h)(1)(2));

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

(5) Knowingly furnishing source selection information or information about other offerors' proposals without permission of the source (see 3.104-4(j) and (k) and 41 U.S.C. 423(h)(1)(2)).

15.408 Award without discussions.

Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions, unless the contracting officer determines that discussions are considered necessary. However, if the solicitation contains such a notice and the Government later conducts discussions, the rationale for doing so shall be documented in the contract file (see 52.215-16 Alt III) (10 U.S.C. 2305(b)(4)(A)(ii) and 41 U.S.C. 253b(d)(1)(B)). The Contracting Officer may permit minor clarifications to allow proposal modifications that resolve ambiguities, or correct apparent mistakes.

15.409 Proposal revisions.

(a) The contracting officer may request proposal revisions as often as needed during discussions. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cut off date for receipt of proposal revisions.

(b) If an offeror in the competitive range is no longer considered to be among those most likely to receive award after discussions have begun, the offeror may be eliminated from the competitive range without being afforded an opportunity to submit a proposal revision.

(c) Requesting and/or receiving proposal revisions does not necessarily conclude discussions. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

15.410 Source selection.

An integrated comparative assessment of proposals shall be performed before source selection is made. The source selection authority shall independently determine which proposal(s) represents the best value, consistent with the factors and subfactors in the solicitation. The source selection authority may determine that all proposals should be rejected if it is in the best interests of the Government (see 15.407(b)).

(a) The source selection team, or advisory boards or panels, may conduct the comparative analysis(es) and make award recommendations, if the source selection authority requests such assistance.

(b) The basis for the source selection decision shall be documented and shall reflect the rationale for any tradeoffs among factors, subfactors, and business judgments. The perceived benefits to be received for any total additional cost should be specified. Specific tradeoffs need not be described in terms of cost/price impacts nor do the tradeoffs need to be quantified in any other manner.

Subpart 15.7—[Subpart 15.7 Redesignated as Subpart 15.5]

9. Subpart 15.7 is redesignated as new Subpart 15-5.

Subpart 15.6—[Removed]**Subpart 15.8—[Redesignated as Subpart 15.6]**

10. Subpart 15.6 is removed and Subpart 15.8 is redesignated as new Subpart 15.6.

Subpart 15.9—[Redesignated as Subpart 15.7]

11. Subpart 15.9 is redesignated as new Subpart 15.7.

12. Subpart 15.10 is redesignated as Subpart 15.8 and revised to read as follows:

Subpart 15.8—Preaward, Award, and Postaward Notifications, Protests, and Mistakes**15.801 Definition.**

Day, as used in this subpart, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

15.802 Applicability.

This subpart applies to the use of competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). To the extent practicable, however, the procedures and intent of this subpart, with reasonable modification, should be followed for sole source acquisitions and acquisitions described in 6.102(d): broad agency announcements, small business innovation research contracts, and architect-engineer contracts. However, they do not apply to multiple award schedules, as described in 6.102(d)(3).

15.803 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range*. The contracting officer shall notify offerors promptly when their proposals are excluded from the competitive range or otherwise excluded from competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business set-asides*. In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the offeror's proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

(b) *Postaward notices*. (1) Within three days after the date of contract

award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for (10 U.S.C. 2305(b)(5) and 41 U.S.C. 253b(c)). The notice shall include—

- (i) The number of offerors solicited;
- (ii) The number of proposals received;
- (iii) The name and address of each offeror receiving an award;
- (iv) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and
- (v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraphs (b)(1) (i) through (v) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in FAR Part 13.

(3) Upon request, the contracting officer shall provide the information in paragraphs (b)(1) (i) through (v) of this section to unsuccessful offerors who received a preaward notice of exclusion from the competitive range.

15.804 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(a) If award is made without discussions, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer.

(b) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer shall sign the contract award.

(c) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

(d) If the Optional Form YY (OF YY), Contract Award, is not used to award the contract, the first page of the award document shall contain the

Government's acceptance statement from block 15A of that form and the contracting officer's signature. In addition, if the award document includes information that is different than the latest signed offer, the first page shall include the contractor's agreement statement from block 14A of OF YY and the signature of the contractor's authorized representative.

15.805 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 253b (f)–(h)).

(a) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within three days after the receipt of notice of exclusion from the competition. If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer should provide a debriefing to the offeror as soon as practicable. If providing a preaward debriefing is not in the best interest of the Government at the time it is requested, the contracting officer may delay the debriefing, but shall provide the debriefing no later than the time postaward debriefings are provided under 15.806. In that event, the contracting officer shall include the information at 15.806(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offeror's proposals;

(4) The ranking of other offerors;
(5) The evaluation of other offerors; or
(6) Any of the information prohibited in 15.806(e)

(g) The contracting officer shall include an official summary of the debriefing in the contract file.

15.806 Postaward debriefing of offerors.

(a) An offeror, upon its written request received by the agency within three days after the date on which that offeror has received notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An offeror who was notified of exclusion from the competition (15.805(a)), but failed to submit a timely request, is not entitled to a debriefing. When practicable, debriefing requests received more than three days after the offeror receives notice of contract award may be accommodated. However, accommodating untimely debriefing requests does not extend the time within which suspension of performance can be required, because this accommodation is not a "required debriefing" as described in FAR Part 33. To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror (including unit prices);

(3) The overall ranking of all offerors when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the

debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) The contracting officer shall include an official summary of the debriefing in the contract file.

15.807 Protests against award.

(a) Protests against award in negotiated acquisitions shall be treated substantially the same as in sealed bidding (see Subpart 33.1). Use of agency protest procedures which incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If, within one year of contract award, a protest causes the agency to issue either a new solicitation or a new request for revised offers on the protested contract award, the agency shall make available to prospective offerors or original offerors still within the competitive range, respectively—

(1) Information provided in any debriefings conducted on the original award about the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.808 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award shall be processed in accordance with 14.407–4.

15.809 Forms.

(a) Optional Form YY, Contract Award, may be used to award negotiated contracts. If the form is not used, the award document shall incorporate the agreement and award language from the form.

(b) Standard Form 26, Award/Contract, may be used, if appropriately modified (e.g., substitute the MCF for the Uniform Contract Format Table of Contents). If so modified, the contracting officer shall remove the form designation (i.e., standard form number).

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

13. Section 36.524 is revised to read as follows:

36.524 Contracting by Negotiation.

The contracting officer shall insert in solicitations for construction the provision at 52.236-XX, Preparation of Offers—Construction, when contracting by negotiation.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 52.215-1 is revised to read as follows:

52.215-1 Instructions to Offerors—Negotiated Acquisition.

As prescribed in 15.208(a), insert the following provision:

Instructions to Offerors—Negotiated Acquisition (Date)**(a) Definitions.**

(1) *Time*, if stated as a number of days, will include Saturdays, Sundays, and Federal holidays.

(2) *In writing or written* means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

(3) *Revision* means a revision of an offer requested by the contracting officer during discussions.

(4) *Discussion* means communication after establishment of the competitive range between the contracting officer and an offeror in the competitive range.

(5) *Communication* means interchanges with offerors which are not discussions. They may be conducted to obtain information which explains or resolves ambiguities or for minor clarifications.

(b) *Amendments to solicitations*. If this solicitation is amended, all terms and conditions which are not modified remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, revision and withdrawal of offers*. (1) Unless other methods (e.g. electronic commerce, facsimile, etc.) are permitted in the solicitation, offers and modifications to offers shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(2) The first page of the offer must show—

(i) The solicitation number;
(ii) The name, address, and telephone number of the offeror;

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone numbers of persons authorized to negotiate on its behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Offerors are responsible for submitting offers, and any requested revisions to them, to the Government office designated in the solicitation on time. Unless the solicitation states a specific time, the time for receipt is 4:30 p.m., local time, at the designated Government office on the date that offers or requested revisions are due. Offers, and requested revisions to them, that are received in the designated Government office after the time for receipt are "late" and shall be considered at the Source Selection Authority's discretion.

(4) Unless otherwise specified in the solicitation, the offeror may propose any item or combination of items.

(5) Offers submitted in response to this solicitation shall be in the English language and shall be in terms of U.S. dollars, unless otherwise permitted in the solicitation.

(6) Offerors may not revise offers unless requested by the Contracting Officer.

(7) Offers may be withdrawn at any time prior to award. Withdrawals are effective upon receipt by the Contracting Officer.

(d) *Period for acceptance of offers*. Offers in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data*. Offerors who include in their proposals data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and

shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose offer(s) conforming to the solicitation represent the best value.

(2) The Government may reject any or all offers if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in offers received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications). Therefore, each individual offer should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, 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.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.

(6) Communications with offerors after receipt of an offer do not necessarily constitute a rejection or counteroffer by the Government.

(7) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than

cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Government, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

(8) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(9) Award of a contract is effective upon transmittal of the contract signed by the Government.

(10) The Government may disclose the following information in postaward debriefings to other offerors: (i) the overall evaluated cost or price and technical rating of the successful offeror; (ii) the overall ranking of all offerors, when any ranking was developed by the agency during source selection; (iii) a summary of the rationale for award; and (iv) for acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror. (End of provision)

Alternate I (Date). As prescribed in 15.208(a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(4) The Government intends to evaluate proposals and award a contract after conducting discussions with responsible offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, 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. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint.

Alternate II (Date). As prescribed in 15.208(a)(2), add the following to paragraph (f)(4):

(4) If the Contracting Officer exercises the Government's right to limit the number of proposals in the competitive range, the competitive range will be limited to no more than _____ (insert number).

15. Section 52.215-2 is amended by revising the introductory text to read as follows:

52.215-2 Audit and Records—Negotiation.

As prescribed in 15.208(b), insert the following clause:

* * * * *

16. Sections 52.215-3 through 52.215-8 are revised to read as follows:

52.215-3 Solicitation for Information or Planning Purposes.

As prescribed in 15.208(c), insert the following provision:

Solicitation for Information or Planning Purposes (Date)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as provided in subsection 31.205-18, Bid and proposal costs of the Federal Acquisition Regulation.

(b) Although "offer" and "offeror" are used in this Request for Information, your response will be treated as information only. It shall not be used as an offer.

(c) This solicitation is issued for the purpose of: [state purpose].

(End of provision)

52.215-4 Type of Business Organization.

As prescribed in 15.208(d), insert the following provision:

Type of Business Organization (Date)

The offeror or quoter, by checking the applicable box, represents that—

(a) It operates as a corporation incorporated under the laws of the State of _____, ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture.

(b) If the offeror or quoter is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in _____

(country)

(End of provision)

52.215-5 Facsimile Proposals.

As prescribed in 15.208(e), insert the following provision:

Facsimile Proposals (Date)

(a) *Definition-Facsimile proposal*, as used in this solicitation, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile offers are subject to the same rules as paper proposals.

(c) Telephone number of receiving facsimile equipment: [insert telephone number]

(d) If the offeror chooses to transmit a facsimile proposal, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile proposal including, but not limited to, the following:

(1) Receipt of garbled or incomplete proposal.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of proposal.

(5) Failure of the offeror to properly identify the proposal.

(6) Illegibility of proposal.

(7) Security of proposal data.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror agrees to promptly submit the complete original signed proposal.

(End of provision)

52.215-6 Place of Performance.

As prescribed in 15.208(f), insert the following provision:

Place of Performance (Date)

(a) The offeror or quoter, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [check applicable block] to use one or more plants or facilities located at a different address from the address of the offeror or quoter as indicated in this proposal or quotation.

(b) If the offeror or quoter checks "intends" in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

Place of Performance

(Street Address, City, County, State, Zip Code)

Name and Address of Owner and Operator of the Plant or Facility if Other than Offeror Quoter

(End of provision)

52.215-7 Annual Representations and Certifications—Negotiation.

As prescribed in 15.208(g), insert the following provision:

Annual Representations and Certifications—Negotiation (Date)

The offeror certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated _____ [insert date of signature on submission] that are incorporated herein by reference, have been submitted to the Contracting Office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this offer, except as follows [insert changes that affect only this solicitation; if "none," so state]:

☐ (b) Are enclosed.
(End of provision)

52.215–8 Order of Precedence.

As prescribed in 15.208(h), insert the following clause:

Order of Precedence (Date)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) The Acquisition Description (excluding the specifications); (b) tailored clauses; (c) Performance Requirements (including the specifications); (d) other contract clauses; and (e) other parts of the contract, including attachments.
(End of clause)

17. Section 52.236–XX is added to read as follows:

52.236–XX Preparation of Offers—Construction.

As prescribed in 36.524, insert the following provision:

Preparation of Offers—Construction (Date)

(a) Offers must be (1) Submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.

(b) The offer form may require offerors to submit offer prices for one or more items on various bases, including—

- (1) Lump sum offer;
- (2) Alternate prices;
- (3) Units of construction; or
- (4) Any combination of subparagraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires an offer on all items, failure to do so will disqualify the offer. If an offer on all items is not required, offerors should insert the words "no offer" in the space

provided for any item on which no price is submitted.

(d) Alternate offers will not be considered unless this solicitation authorizes their submission.

(End of provision)

PART 53—FORMS

18. Section 53.213 is amended by revising paragraph (a) to read as follows:

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

(a) *SF 18 (Rev. 6/95), Request for Quotations.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107(a).

* * * * *

19. Section 53.214 is amended by revising the first sentences of paragraphs (a) and (d) to read as follows:

53.214 Sealed bidding.

(a) *SF 26, Award/Contract.* SF 26 is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer, and Award, as specified in 14.408–1(d)(1). * * *

* * * * *

(d) *SF 1447(5/88), Solicitation/Contract.* SF 1447 is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids. * * *

* * * * *

20. Section 53.215–1 is revised to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) *OF 307 (XX/96), Solicitation and Offer-Negotiated Acquisition.* OF XX may be used to support solicitation of negotiated contracts as specified in 15.210(a). Award of such contracts may be made by OF YY, as specified in 15.809(a).

(b) *OF 308 (XX/96), Amendment of Solicitation.* OF XY may be used to

amend solicitations of negotiated contracts, as specified in 15.210(b).

(c) *OF 309 (XX/96), Contract Award.* OF YY may be used to award negotiated contracts as specified in 15.809(a).

(d) *SF 26 (REV. 4/85), Award/Contract.* SF 26 as prescribed in 53.214(a) may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.809(b).

(e) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for amending requests for proposals, and for amending requests for information, as specified in 15.210(c).

(f) *SF 33, Solicitation, Offer, and Award.* SF 33, prescribed in 53.214(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be by either OF YY, SF 33, or SF 26, as specified in 15.809(a) and (b), and 53.214(c).

(g) *OF 17 (REV. 12/93), Offer Label.* OF 17 may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in 15.210(d).

21. Section 53.243 is amended by revising the introductory paragraph to read as follows:

53.243 Contract modifications.

SF 30 (REV 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in amending solicitations, as specified in 14.208, and 43.301, modifying purchase and delivery orders, as specified in 13.503(b), and modifying contracts, as specified in 42.1203(f), 43.301, 49.602–5, and elsewhere in this regulation. The form may also be used to amend solicitations for negotiated contracts, as specified in 15.209(c). Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date) is revised in paragraphs (3) and (5) as follows:

* * * * *

22. Sections 53.302–307, 53.302–308, and 53.302–309 are added to read as follows:

BILLING CODE 6820–EP–P

53.302-307 Optional Form 307 Contract Award.

CONTRACT AWARD		PAGE	OF	PAGES
1. CONTRACT NUMBER		2. EFFECTIVE DATE		3. SOLICITATION NUMBER
4. REQUISITION/PROJECT NUMBER		5. ISSUED BY		6. ADMINISTERED BY (If other than Item 5)
7. NAME AND ADDRESS OF CONTRACTOR		8. PAYMENT WILL BE MADE		9. DUNS NUMBER
10. SUBMIT IN COPIES (4 copies unless otherwise specified) TO		11. TABLE OF CONTENTS		
<input type="checkbox"/> ITEM 5 <input type="checkbox"/> ITEM 6 <input type="checkbox"/> ITEM 8 <input type="checkbox"/> OTHER (Specify)		(Insert the page number where each of the listed items is found in this package)		
ITEM		PAGE		ITEM
I SOLICITATION AND OFFER		IV CONTRACT CLAUSES		PAGE
II ACQUISITION DESCRIPTION		V PERFORMANCE REQUIREMENTS		
III FINANCIAL AND ADMINISTRATIVE INFORMATION				
12. BRIEF DESCRIPTION				
13. TOTAL AMOUNT OF CONTRACT				
14. CONTRACTOR'S AGREEMENT. Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.				
15. AWARD. The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.				
<input type="checkbox"/> a. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN FOUR COPIES TO THE ISSUING OFFICE. (Check if applicable)				
b. SIGNATURE OF PERSON AUTHORIZED TO SIGN				
c. NAME OF SIGNER				
d. TITLE OF SIGNER				
e. DATE				
a. UNITED STATES OF AMERICA (Signature of Contracting Officer)				
b. NAME OF CONTRACTING OFFICER				
c. DATE				

53.302-308 Optional Form 308 Solicitation and Offer—Negotiated Acquisition.

SOLICITATION AND OFFER - NEGOTIATED ACQUISITION				PAGE	OF	PAGES
I. SOLICITATION						
1. SOLICITATION NUMBER	2. DATE ISSUED	3. OFFERS DUE BY	4. OFFERS VALID FOR 60 DAYS UNLESS A DIFFERENT PERIOD IS ENTERED HERE			
5. ISSUED BY		6. ADDRESS OFFER TO <i>(No other than Item 5)</i>				
7. FOR INFORMATION CALL <i>(No collect)</i>						
a. NAME	b. TELEPHONE		c. E-MAIL ADDRESS			
	AREA CODE	PHONE NUMBER				
8. BRIEF DESCRIPTION						
9. TABLE OF CONTENTS <i>(Insert the page number where each of the listed items is found in this package)</i>						
ITEM	PAGE	ITEM	PAGE			
I SOLICITATION AND OFFER		IV CONTRACT CLAUSES				
II ACQUISITION DESCRIPTION		V PERFORMANCE REQUIREMENTS				
III FINANCIAL AND ADMINISTRATIVE INFORMATION		VI PROPOSAL EVALUATION AND SUBMISSION INFORMATION				
II. OFFER						
The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.						
10a. PERSONS AUTHORIZED TO NEGOTIATE		10b. TITLE	10c. TELEPHONE			
			AREA CODE	NUMBER		
11. NAME AND ADDRESS OF OFFEROR			12a. SIGNATURE OF PERSON AUTHORIZED TO SIGN			
12b. NAME OF SIGNER						
12c. TITLE OF SIGNER						
12d. DATE			12e. TELEPHONE			
			AREA CODE	NUMBER		

OPTIONAL FORM 308 (1)

53.302-309 Optional Form 309—Amendment of Solicitation

AMENDMENT OF SOLICITATION (Negotiated Procurements)			PAGE	OF	PAGES
NOTICE: Offerors must acknowledge receipt of this amendment in writing, by the date and time specified for proposal submissions or the date and time specified in Block 6, whichever is later. IF YOUR ACKNOWLEDGMENT IS NOT RECEIVED AT THE DESIGNATED LOCATION BY THE SPECIFIED DATE AND TIME, YOUR OFFER MAY BE REJECTED. If, by virtue of this amendment, you wish to change your offer, such change must make reference to the solicitation and this amendment and be received prior to the date and time specified in Block 6.					
I. AMENDMENT					
1. SOLICITATION NUMBER	2. SOLICITATION DATE	3. AMENDMENT NUMBER	4. AMENDMENT DATE		
5. ISSUED BY		6. DUE DATE			
		THIS AMENDMENT DOES NOT CHANGE THE DATE BY WHICH OFFERS ARE DUE UNLESS A DATE AND TIME IS INSERTED BELOW.			
		a. DATE	b. TIME		
7. FOR INFORMATION CALL (No contract calls)					
a. NAME		TELEPHONE		c. E-MAIL ADDRESS	
		AREA CODE	PHONE NUMBER		
8. DESCRIPTION OF AMENDMENT					
Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.					
ACKNOWLEDGMENT OF AMENDMENT					
In lieu of other written methods of acknowledgment, the offeror may complete Blocks 9 and 10 and return this amendment to the address in Block 5.					
9. NAME AND ADDRESS OF OFFEROR		10a. OFFEROR (Signature of person authorized to sign)			
		10b. NAME OF SIGNER			
		10c. TITLE OF SIGNER			
		10d. DATE			

OPTIONAL FORM 309 0