

(to include, when applicable, preliminary layouts, sketches, diagrams, other graphic representations, calculations, curves, and other data necessary for presentation, substantiation, justification, or understanding of the approach);

(iv) Special technical factors, such as experience or pertinent novel ideas in the specific branch of science or technology involved;

(v) Feasibility and/or practicality of successfully accomplishing the requirements (to include a statement and discussion of anticipated major difficulties and problem areas and recommended approaches for their resolution);

(vi) Availability of required special research, test, and other equipment or facilities;

(vii) Managerial capability (ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources, and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidenced by the management plan and demonstrated by previous experience);

(viii) Availability, qualifications, experience, education, and competence of professional, technical, and other personnel, to include proposed subcontractors and consultants (as evidenced by resumes, endorsements, and explanations of previous efforts);

(ix) Soundness of the proposed staff time or labor hours, propriety of personnel classifications (professional, technical, others), necessity for type and quantity of material and facilities proposed, validity of proposed subcontracting, and necessity of proposed travel;

(x) Quality of offeror's past performance on recent projects of similar size and scope; and

(xi) Extent of proposed participation of small disadvantaged business concerns in performance of the contract.

**315.208 Submission, modification, revision, and withdrawal of proposals.**

(b) When the head of the contracting activity (HCA) for a health agency determines that certain classes of biomedical or behavioral research and de-

velopment acquisitions should be subject to conditions other than those specified in FAR 52.215-1(c)(3), the HCA may authorize the use of the provision at 352.215-70 in addition to the provision at FAR 52.215-1. This is an authorized deviation.

(2) When the provision at 352.215-70 is included in the solicitation and a proposal is received after the exact time specified for receipt, the contracting officer, with the assistance of cost and technical personnel, shall make a written determination as to whether the proposal meets the requirements of the provision at 352.215-70 and, therefore, can be considered.

**315.209 Solicitation provisions and contract clauses.**

(a) Paragraph (e) of the provision at 352.215-1 shall be used in place of that specified at FAR 52.215-1(e). This is an authorized deviation.

(g) If the head of the contracting activity (HCA)(not delegable) has determined that the contracting activity will allow the use of the annual submission of representations and certifications by offerors, the provisions of FAR 14.213 shall be followed.

**Subpart 315.3—Source Selection**

**315.305 Proposal evaluation.**

(a)(1) *Cost or price evaluation.* The contracting officer shall evaluate business proposals adhering to the requirements for cost or price analysis included in FAR 15.404. The contracting officer must determine the extent of analysis in each case depending on the amount of the proposal, the technical complexity, and related cost or price. The contracting officer should request the project officer to analyze items such as the number of labor hours proposed for various labor categories; the mix of labor hours and categories of labor in relation to the technical requirements of the project; the kinds and quantities of material, equipment, and supplies; types, numbers and hours/days of proposed consultants; logic of proposed subcontracting; analysis of the travel proposed including number of trips, locations, purpose, and travelers; and kinds and quantities of information technology. The project officer

shall provide his/her opinion as to whether these elements are necessary and reasonable for efficient contract performance. Exceptions to proposed elements shall be supported by adequate rationale to allow for effective negotiations or award if discussions are not conducted. The contracting officer should also request the assistance of a cost/price analyst when considered necessary. In all cases, the negotiation memorandum must include the rationale used in determining that the price or cost is fair and reasonable.

(2) *Past performance evaluation.* When evaluating past performance, the contracting officer is responsible for conducting reference checks to obtain information concerning the performance history of offerors. The contracting officer may require the assistance of the project officer as well as other Government technical personnel in performing this function.

(3) *Technical evaluation.* (i) Technical evaluation plan. (A) A technical evaluation plan may be required by the contracting officer, at his/her discretion, when an acquisition is sufficiently complex as to warrant a formal plan.

(B) The technical evaluation plan should include at least the following:

(1) A list of recommended technical evaluation panel members, their organizations, a list of their major consulting clients (if applicable), their qualifications, and curricula vitae (if applicable);

(2) A justification for using non-Government technical evaluation panel members. (Justification is not required if non-Government evaluators will be used in accordance with standard contracting activity procedures or policies);

(3) A statement that there is no apparent or actual conflict of interest regarding any recommended panel member;

(4) A copy of each rating sheet, approved by the contracting officer, to be used to assure consistency with the evaluation criteria; and

(5) A brief description of the general evaluation approach.

(C) The technical evaluation plan must be signed by an official within the program office in a position at

least one level above the project officer, or in accordance with contracting activity procedures.

(D) The technical evaluation plan should be submitted to the contracting officer for review and approval before the solicitation is issued. The contracting officer shall make sure that the significant factors and subfactors relating to the evaluation are reflected in the evaluation criteria when conducting the review of the plan.

(ii) Technical evaluation panel.

(A) *General.* (1) A technical evaluation panel is required for all acquisitions subject to this subpart which are expected to exceed \$500,000 and in which technical evaluation is considered a key element in the award decision. The contracting officer has the discretion to require a technical evaluation panel for acquisitions not exceeding \$500,000 based on the complexity of the acquisition.

(2) The technical evaluation process requires careful consideration regarding the size, composition, expertise, and function of the technical evaluation panel. The efforts of the panel can result in the success or failure of the acquisition.

(B) *Role of the project officer.* (1) The project officer is the contracting officer's technical representative for the acquisition action. The project officer may be a voting member of the technical evaluation panel, and may also serve as the chairperson of the panel, unless he/she is prohibited by law or contracting activity procedures to do so.

(2) The project officer is responsible for recommending panel members who are knowledgeable in the technical aspects of the acquisition and who are competent to identify strengths and weaknesses of the various proposals. The program training requirements specified in 307.170 must be adhered to when selecting prospective panel members (government employees).

(3) The project officer shall ensure that persons possessing expertise and experience in addressing issues relative to sex, race, national origin, and handicapped discrimination are included as panel members in acquisitions which address those issues. The intent is to balance the composition of the panel so

that qualified and concerned individuals may provide insight to other panel members regarding ideas for, and approaches to be taken in, the evaluation of proposals.

(4) The project officer is to submit the recommended list of panel members to an official within the program office in a position at least one level above the project officer, or in accordance with contracting activity procedures. This official will review the recommendations and select the chairperson.

(5) The project officer shall arrange for adequate and secure working space for the panel.

(C) *Role of the contracting officer.* (1) The term "contracting officer," as used in this subpart, may be the contracting officer or his/her designated representative within the contracting office.

(2) The contracting officer shall not serve as a member of the technical evaluation panel but should be available to:

(i) Address the initial meeting of the technical evaluation panel;

(ii) Provide assistance to the evaluators as required; and

(iii) Ensure that the scores adequately reflect the written technical report comments.

(D) *Conflict of interest.* (1) If a panel member has an actual or apparent conflict of interest related to a proposal under evaluation, he/she shall be removed from the panel and replaced with another evaluator. If a suitable replacement is not available, the panel shall perform the review without a replacement.

(2) For the purposes of this subpart, conflicts of interest are defined in the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), Supplemental Standards of Ethical Conduct for Employees of the Department of Health and Human Services (5 CFR part 5501), and the Procurement Integrity Act. For outside evaluators serving on the technical evaluation panel, see paragraph (a)(3)(ii)(F) of this section.

(E) *Continuity of evaluation process.* (1) The technical evaluation panel is responsible for evaluating the original proposals, making recommendations to the chairperson regarding weaknesses

and deficiencies of proposals, and, if required by the contracting officer, assisting the contracting officer during communications and discussions, and reviewing supplemental, revised and/or final proposal revisions. To the extent possible, the same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals. The following are examples of circumstances when it would not be necessary for the technical evaluation panel to evaluate revised proposals submitted during the acquisition:

(i) The answers to questions do not have a substantial impact on the proposal;

(ii) Final proposal revisions are not materially different from the original proposals; or

(iii) The rankings of the offerors are not affected because the revisions to the proposals are relatively minor.

(2) The chairperson, with the concurrence of the contracting officer, may decide not to have the panel evaluate the revised proposals. Whenever this decision is made, it must be fully documented by the chairperson and approved by the contracting officer.

(3) When technical evaluation panel meetings are considered necessary by the contracting officer, the attendance of evaluators is mandatory. When the chairperson determines that an evaluator's failure to attend the meetings is prejudicial to the evaluation, the chairperson shall remove and/or replace the individual after discussing the situation with the contracting officer and obtaining his/her concurrence and the approval of the official responsible for appointing the panel members.

(4) Whenever continuity of the evaluation process is not possible, and either new evaluators are selected or a reduced panel is decided upon, each proposal which is being reviewed at any stage of the acquisition shall be reviewed at that stage by all members of the revised panel unless it is impractical to do so because of the receipt of an unusually large number of proposals.

(F) *Use of outside evaluators.* (1) The National Institutes of Health (NIH) and

the Substance Abuse and Mental Health Services Administration (SAMHSA) are required to have a peer review of research and development contracts in accordance with Public Law 93-352 as amended by Public Law 94-63; 42 U.S.C. 289 a and 42 U.S.C. 290aa-3 respectively. This legislation requires peer review of projects and proposals, and not more than one-fourth of the members of a peer review group may be officers or employees of the United States. NIH and SAMHSA are therefore exempt from the provisions of 315.305(a)(3)(ii) to the extent that 42 U.S.C. 289a and 290aa-3 apply. Conflicts of interest are addressed at 42 CFR part 52h. Other agencies subject to statutory scientific peer review requirements are also exempt from the requirements of paragraph (a)(3)(ii) of this section to the extent that these requirements are inconsistent with their legislative requirements.

(2) In general, decisions to disclose proposals outside the Government for evaluation purposes shall be made by the official responsible for appointing panel members for the acquisition, after consultation with the contracting officer and in accordance with operating division procedures. The decision to disclose either a solicited or unsolicited proposal outside the Government for the purpose of obtaining an evaluation shall take into consideration the avoidance of organizational conflicts of interest and any competitive relationship between the submitter of the proposal and the prospective evaluator(s).

(3) When it is determined to disclose a solicited proposal outside the Government for evaluation purposes, the following or similar conditions shall be included in the written agreement with evaluator(s) prior to disclosure:

#### CONDITIONS FOR EVALUATING PROPOSALS

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal only for evaluation purposes.

The foregoing requirement does not apply to data obtained from another source without restriction.

Any notice or legend placed on the proposal by either the Department or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator

shall return the Government furnished copy of the proposal or abstract, and all copies thereof, to the Departmental office which initially furnished the proposal for evaluation.

Unless authorized by the Department's initiating office, the evaluator shall not contact the submitter of the proposal concerning any aspects of its contents.

The evaluator is obligated to obtain commitments from its employees and subcontractors, as necessary, to effect the purposes of these conditions.

#### (iii) Receipt of proposals.

(A) After the closing date set by the solicitation for the receipt of proposals, the contracting officer will use a transmittal memorandum to forward the technical proposals to the project officer or chairperson for evaluation. The business proposals will be retained by the contracting officer for evaluation.

(B) The transmittal memorandum shall include at least the following:

(1) A list of the names of the organizations submitting proposals;

(2) A reference to the need to preserve the integrity of the source selection process;

(3) A statement that only the contracting officer is to conduct discussions.

(4) A requirement for a technical evaluation report in accordance with paragraph (a)(3)(vi) of this section; and

(5) The establishment of a date for receipt of the technical evaluation report.

(iv) Convening the technical evaluation panel.

(A) Normally, the technical evaluation panel will convene to evaluate the proposals. However, there may be situations when the contracting officer determines that it is not feasible for the panel to convene. Whenever this decision is made, care must be taken to assure that the technical review is closely monitored to produce acceptable results.

(B) When a panel is convened, the chairperson is responsible for the control of the technical proposals provided to him/her by the contracting officer for use during the evaluation process. The chairperson will generally distribute the technical proposals prior to

the initial panel meeting and will establish procedures for securing the proposals whenever they are not being evaluated to insure their confidentiality. After the evaluation is complete, all proposals must be returned to the contracting officer by the chairperson.

(C) The contracting officer shall address the initial meeting of the panel and state the basic rules for conducting the evaluation. The contracting officer shall provide written guidance to the panel if he/she is unable to attend the initial panel meeting. The guidance should include:

(1) Explanation of conflicts of interest;

(2) The necessity to read and understand the solicitation, especially the statement of work and evaluation criteria, prior to reading the proposals;

(3) The need for evaluators to restrict the review to only the solicitation and the contents of the technical proposals;

(4) The need for each evaluator to review all the proposals;

(5) The need to watch for ambiguities, inconsistencies, errors, and deficiencies which should be surfaced during the evaluation process;

(6) An explanation of the evaluation process and what will be expected of the evaluators throughout the process;

(7) The need for the evaluators to be aware of the requirement to have complete written documentation of the individual strengths and weaknesses which affect the scoring of the proposals; and

(8) An instruction directing the evaluators that, until the award is made, information concerning the acquisition must not be disclosed to any person not directly involved in the evaluation process.

(v) Rating and ranking of proposals. The evaluators will individually read each proposal, describe tentative strengths and weaknesses, and independently develop preliminary scores in relation to each evaluation factor set forth in the solicitation. After this has been accomplished, the evaluators shall discuss in detail the individual strengths and weakness described by each evaluator and, if possible, arrive at a common understanding of the major strengths and weaknesses and

the potential for correcting each offeror's weakness(es). Each evaluator will score each proposal, and then the technical evaluation panel will collectively rank the proposals. Generally, ranking will be determined by adding the numerical scores assigned to the evaluation factors and finding the average for each offeror. The evaluators should then identify whether each proposal is acceptable or unacceptable. Predetermined cutoff scores shall not be employed.

(vi) Technical evaluation report. A technical evaluation report shall be prepared and furnished to the contracting officer by the chairperson and maintained as a permanent record in the contract file. The report must reflect the ranking of the proposals and identify each proposal as acceptable or unacceptable. The report must also include a narrative evaluation specifying the strengths and weaknesses of each proposal, a copy of each signed rating sheet, and any reservations, qualifications, or areas to be addressed that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal must be included. The report should also include specific points and questions which are to be raised in discussions or negotiations.

#### **315.306 Exchanges with offerors after receipt of proposals.**

(d) *Exchanges with offerors after establishment of the competitive range.* The contracting officer and project officer should discuss the uncertainties and/or deficiencies that are included in the technical evaluation report for each proposal in the competitive range. Technical questions should be developed by the project officer and/or the technical evaluation panel and should be included in the technical evaluation report. The management, past performance and cost or price questions should be prepared by the contracting officer with assistance from the project officer and/or panel as required. The method of requesting offerors in the competitive range to submit the additional information will vary depending on the complexity of the questions, the extent