Subchapter 3015.3  Source Selection

3015.303 Responsibilities.

(a) The authority given to the agency head is hereby delegated to the Head of the Contracting Activity (HCA).

3015.304 Evaluation factors and significant subfactors.

(c)(3)(i) When past performance is an evaluation factor, DHS Source Selection officials shall use the Contractor Performance Assessment Reporting System (CPARS) at www.cpars.gov, in addition to other sources, for obtaining contractor past performance information in source selections.

(c)(70) The use of recovered materials, environmentally preferable purchasing criteria developed by the Environmental Protection Agency (see http://www.epa.gov/epp/), and the environmental objectives set forth in FAR 23.703(b), must be considered when developing source selection factors. (See HSAM Subchapter 3023.4 and Appendix Q, DHS Affirmative Procurement Plan).

3015.305 Proposal evaluation.

(a)(2)(ii) For purposes of conducting a past performance evaluation during a source selection, contracting officers shall use CPARS to review contractor past performance information. The contractor’s past performance evaluation is distinct from any responsibility determination under the procurement. (See HSAM Subchapter 3009.1.)

(a)(4) Cost information. Cost information may be provided to members of the technical evaluation team as the Source Selection Authority deems necessary.

3015.305-70 Making better use of performance information.

(a) Scope.

This section implements the steps described in the Office of Federal Procurement Policy (OFPP) memorandum titled, “Making Better Use of Contractor Performance Information,” dated July 10, 2014. The purpose of the memorandum is to expand the number of contractor performance information sources to make it possible for contracting officers to make better informed award decisions. The OFPP memorandum is accessible at https://www.whitehouse.gov/sites/default/files/omb/procurement/memo/making-better-use-of-contractor-performance-information.pdf.

(b) Policy.
(1) The FAR allows the Government to consider information from sources of information beyond CPARS. This includes information gathered when conducting additional research and outreach.

(2) At a minimum, contracting officers shall follow the steps provided in Attachment 1 of the OFPP memorandum for contracts or orders when acquiring complex information technology (IT) development, systems or services over $500,000. Also follow Attachment 1 for contracts or orders when the acquisition presents a significant risk as follows:

   (i) Cost reimbursement type contracts: cost-plus award fee, cost-plus incentive fee; cost-plus fixed fee. Also, time-and-materials or labor-hour contracts and orders;

   (ii) Complex awards, such as large construction, architect-engineer, research and development, software development and implementation acquisitions, etc.;

   (iii) High dollar value awards or major acquisition systems, consistent with OMB Circular No. A-109, regardless of contract type;

   (iv) Overseas and contingency operations actions, regardless of contract type; and

   (v) Other contracts or orders determined to be high risk by DHS.

(3) The contracting officer shall document the use of Attachment 1 procedures in the source selection plan. The contracting officer shall also describe the past performance information evaluation method in the solicitation (see FAR 15.305(a)(2)). The contracting officer shall provide offerors an opportunity to respond to adverse past performance information. The contracting officer shall document how the performance information was used during source selection in the contract file.

3015.305-71 Evaluation practices.

(a) When evaluating non-price factors in a competitive acquisition, and when the Government evaluation team includes more than one person, the team may collaboratively arrive at ratings or findings. It is not necessary for an evaluation team to first develop individual member evaluation ratings or findings before starting a consensus evaluation.

(b) [Reserved]

(c) Down-Select Process. When a large number of responses is anticipated in a competitive acquisition, the acquisition team may consider a phased evaluation. In a down-select, many offers are evaluated in the first phase under some of the evaluation factors and fewer offers are considered in one or more subsequent phases on the remaining evaluation factors. The process described in HSAM 3016.505(b)(70)(iii) may be adapted for use with acquisitions under this subpart. However, the contracting officer must be mindful that FAR 15.503(a)(1) requires a
prompt pre-award notice to unsuccessful offerors when their proposals are excluded from the competitive range or otherwise eliminated from the competition. While a down-select decision is not a competitive range decision, it does eliminate proposals from the competition, so a pre-award notice to unsuccessful offerors is required for a down-select process under this subpart.

3015.370 One offer received under competitive procedures.

(a) *Scope of policy.*

(1) The policy applies to any solicitation using competitive procedures expected to result in a contract, order, or call, including options, exceeding the thresholds cited in paragraph (b) and (c) below:

(2) This policy does not apply when emergency acquisition flexibilities of FAR Part 18 apply or to acquisitions of basic and applied research in FAR 35.016.

(b) *Actions when only one offer received.* If only one offer is received in response to a solicitation using competitive procedures, and is expected to exceed the dollar threshold for submission of certified cost or pricing data under FAR 15.403-4(a)(1), the contracting officer must:

(1) Advise the Component Competition Advocate if the solicitation was open for less than 16 days in order to provide an opportunity for advisory consultation; and

(2) If additional time is expected to promote competition, issue a solicitation amendment to reopen the solicitation and extend the due date for offers; or

(iii) Consult with the requiring activity to determine if the requirements document should be revised in order to promote more competition and issue an amendment to reopen the solicitation, revising the requirements or terms and conditions and extending the due date for receipt of offers.

(2) The HCA may approve an exception to the requirements in paragraph (1) above. The HCA authority cannot be delegated.

(c) *Price analysis requirements for one offer.* If only one offer to the solicitation is received, and is expected to exceed the SAT, the contracting officer must:

(1) For a non-commercial item exceeding the threshold for submission of certified cost or pricing data under FAR 15.403-4(a)(1):

(i) Obtain certified cost or pricing data for use in negotiations, unless the contracting officer determines that the price is set by law or regulation, the requirement to obtain certified cost or pricing data is waived per FAR 15.403-1(c)(4) or HCA approval in paragraph (iii) is obtained; and
(ii) Negotiate a fair and reasonable price. The price should not exceed the original offer except as necessary for differing or additional terms; or

(iii) The HCA is the approval authority for a determination of fair and reasonable price based on offeror’s expectation of adequate price competition (FAR 15.403-1(c)(1)(ii)). The HCA authority cannot be delegated. The U.S. Coast Guard cannot use FAR 15.403-1(c)(1)(ii) as a basis of price reasonableness based on 10 U.S.C. 2306a paragraph (b)(1)(A)(i).

(iv) The determination must include circumstances that indicate the offeror believed that at least one other offeror was capable of submitting a meaningful offer and the offeror had no reason to believe that other potential offerors did not intend to submit an offer. The determination should include any other basis that supports the conclusion that the offer was submitted with the expectation of competition.

(2) For all commercial items exceeding the SAT or non-commercial items exceeding the SAT up to the threshold for submission of certified cost or pricing data (FAR 15.403-4(a)(1):

(i) Obtain supporting data other than certified cost or pricing data, see FAR 15.403-3, Requiring data other than certified cost or pricing data; and

(ii) Negotiate a fair and reasonable price. The price should not exceed the original offer except as necessary for differing or additional terms; or

(iii) For actions up to the threshold for submission of certified cost or pricing data under FAR 15.403-4(a)(1), the determination of fair and reasonable price based on offeror’s expectation of adequate price competition (FAR 15.403-1(c)(1)(ii)) must be approved one level above the contracting officer. The U.S. Coast Guard cannot use FAR 15.403-1(c)(1)(ii) as a basis of price reasonableness based on 10 U.S.C. 2306a paragraph (b)(1)(A)(i).

(iv) Actions exceeding the threshold for submission of certified cost or pricing data under FAR 15.403-4(a)(1) must be approved by the HCA. The HCA authority cannot be delegated. The determination must include circumstances that indicate the offeror believed that at least one other offeror was capable of submitting a meaningful offer and the offeror had no reason to believe that other potential offerors did not intend to submit an offer. The determination should include any other basis that supports the conclusion that the offer was submitted with the expectation of competition.