

**April 2013**

## **Source Selection**



### **Overview**

This chapter provides guidance to the acquisition team on conducting source selection in accordance with Part 15 of the Federal Acquisition Regulation (FAR).

### **Background**

The mid 1990's was a time of significant change in many areas of procurement, particularly in the introduction of new tools and processes that help the procurement professional better meet the needs of demanding customers. The passage of the Federal Acquisition Streamlining Act in 1994 and the Federal Acquisition Reform Act in 1995, coupled with Government-wide and Department of Energy (DOE) contract reform efforts not only changed traditional procurement processes but also changed the role of the procurement professional. No longer are procurement professionals merely the keepers of what some view as an arcane process called Federal contracting.

One area that received considerable attention in most of the reform initiatives was source selection, as set forth in Part 15 of the FAR.

In 1998, significant, and sometimes subtle, changes were made to long-standing policies, practices, and procedures relating to competitive negotiation. These included the introduction of oral presentations, changes in the standards for determining competitive range, and new rules governing communications and the submission of final proposal revisions. These changes place an even greater responsibility on today's procurement professional to ensure that the integrity and fairness of procurement is maintained and that the contract ultimately awarded delivers high-quality goods and services on time to the customer.

## **General**

In today's world, the procurement professional needs to be not only an expert in procurement laws, regulations and policies, but also an expert in business and marketing areas. The procurement professional is now an integral part of a team that manages all phases of the acquisition process, from requirements definition to contract close-out. This is reinforced in guiding principles for the Federal Acquisition System (see FAR 1.102).

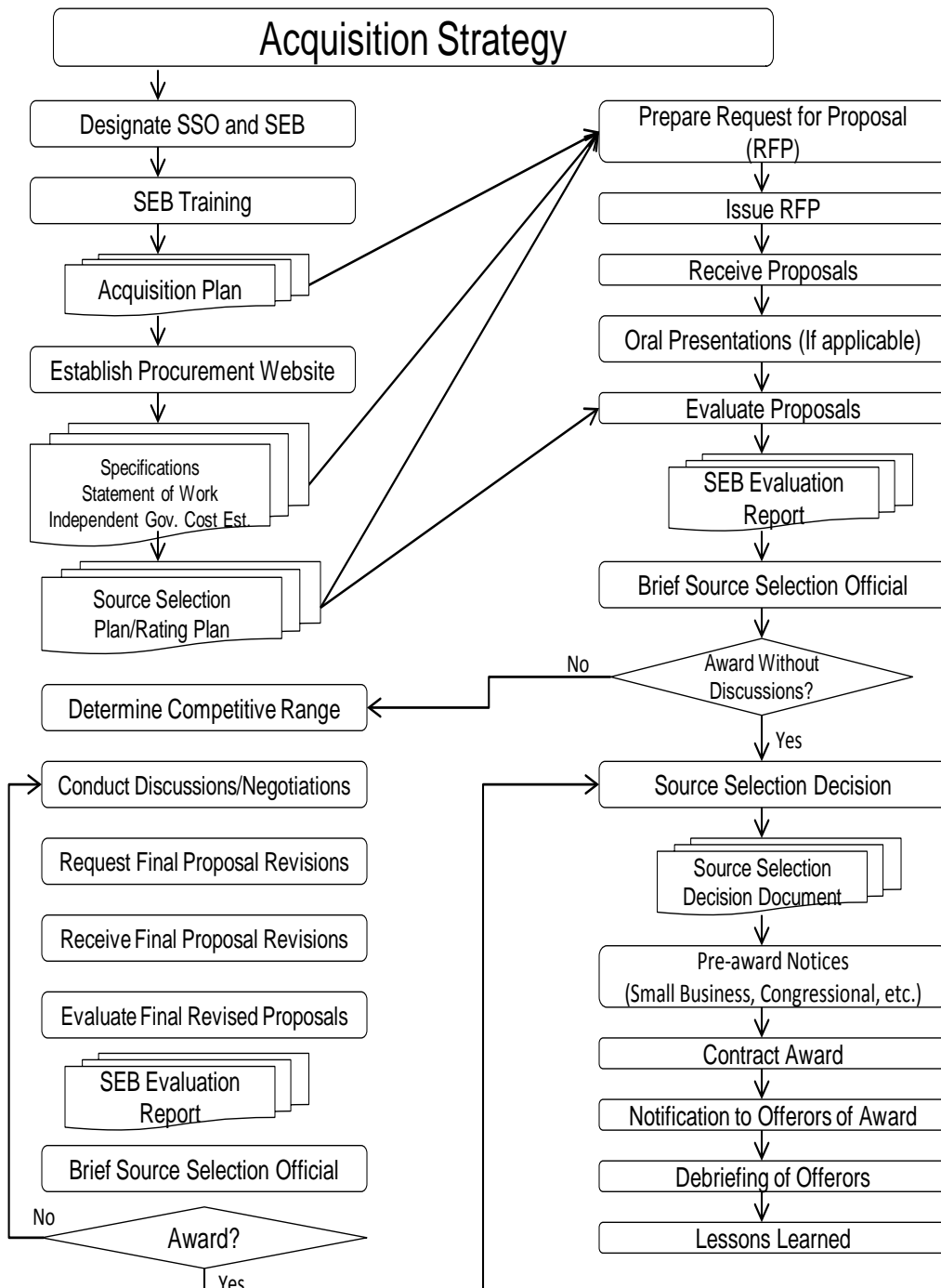
This Chapter provides a series of topics on key areas of the source selection process. The intent is to present DOE procurement professionals with useful "hands-on" information on key principles and practices that will enhance the effectiveness of the source selection process. For FAR Part 15 procurements, DOE usually utilizes the Source Evaluation Board (SEB) process which is addressed in the Chapter. However, in some situations, in particular those involving lower dollar values and minimal complexity, a less formalized approach referred to as Technical Evaluation Committee (TEC) may be appropriate. In this approach, the technical evaluation of proposals is performed exclusively by program personnel without the involvement of the Contracting Officer. Most of the information in this Chapter is applicable to TEC's. Questions may be referred to the SEB Secretariat and Knowledge Manager.

## Table of Contents

TOPIC I	FLOW OF THE SOURCE SELECTION PROCESS .....	4
TOPIC II	SOURCE SELECTION OFFICIAL DESIGNATION .....	5
TOPIC III	SOURCE EVALUATION BOARD COMPOSITION AND DESIGNATION.....	5
TOPIC IV	CONFIDENTIALITY AND CONFLICT OF INTEREST CERTIFICATIONS...	6
TOPIC V	SEB LOGISTICS.....	7
TOPIC VI	ACQUISITION WEBSITE .....	7
TOPIC VII	SOURCE SELECTION TRAINING.....	8
TOPIC VIII	ROLES AND RESPONSIBILITIES .....	8
TOPIC IX	SOURCE EVALUATION BOARD (SEB) REPORTING .....	14
TOPIC X	DRAFT REQUEST FOR PROPOSAL (DRFP).....	14
TOPIC XI	EXCHANGES WITH INDUSTRY BEFORE RECEIPT OF PROPOSALS .....	17
TOPIC XII	SCORING METHODOLOGIES AND SOURCE SELECTION PLANS (RATING PLANS) .....	20
TOPIC XIII	GUIDANCE TO THE SEB .....	24
TOPIC XIV	PAST PERFORMANCE AS AN EVALUATION FACTOR .....	30
TOPIC XV	ORAL PRESENTATIONS.....	37
TOPIC XVI	EXCHANGES WITH OFFERORS AFTER RECEIPT OF PROPOSALS .....	43
TOPIC XVII	PRICING, ANALYSIS AND COST REALISM .....	49
TOPIC XVIII	COST / TECH TRADEOFFS UNDER "BEST VALUE" PROCUREMENTS ..	53
TOPIC XIX	AWARD WITHOUT DISCUSSIONS .....	56
TOPIC XX	CONTENTS OF AN EVALUATION REPORT .....	58
TOPIC XXI	SOURCE SELECTION OFFICIAL (SSO) DECISION DOCUMENTATION ..	63
TOPIC XXII	FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI) .....	66
TOPIC XXIII	DEBRIEFINGS.....	69
TOPIC XXIV	SEB LESSONS LEARNED .....	76
TOPIC XXV	LIBRARY DOCUMENTS .....	77

## TOPIC I      FLOW OF THE SOURCE SELECTION PROCESS

The FAR Part 15 competitive source selection process has a typical flow to it. The process starts with the acquisition strategy and culminates with lessons learned. The diagram below depicts the typical flow of the source selection process.



Within each step of this process, a number of different activities occur. For example, part of developing the acquisition strategy includes defining the requirements, part of developing an acquisition plan usually includes the issuance of a sources sought synopsis, while preparation of the RFP may include the preparation and issuance of a draft RFP, as well as conducting industry day, pre-solicitation, and/or one-on-one meetings. Each procurement is unique, and the Source Evaluation Board (SEB) will determine which activities associated with the steps in the process are necessary for their particular procurement.

## **TOPIC II      SOURCE SELECTION OFFICIAL DESIGNATION**

The Secretary of Energy designated the Director, Office of Acquisition and Project Management (OAPM) as the Senior Procurement Executive (SPE) for DOE. This designation includes delegations of authority for contracting and financial assistance. The SPE re-delegates specific contracting authority to a senior management official for each contracting activity, referred to under government-wide acquisition regulations as the Head of the Contracting Activity (HCA). HCAs in DOE have cognizance over one or more procurement offices. Each HCA is delegated specific dollar authority in a memo signed by the SPE. HCA's for Non-Power Marketing Administration (PMA) procurement offices have been delegated \$50 million of authority.

The SPE has Source Selection Authority for all acquisitions exceeding \$50 million and the Non-PMA HCA has Source Selection Authority for all actions valued at \$50 million or less. This authority is re-delegable.

To obtain an SSO designation for actions exceeding \$50 million, the HCA should submit a memo requesting the designation of an individual as the SSO to the SPE, with a copy to the Director, Field Assistance and Oversight Division, MA-621. For actions valued at \$50 million or less, the Field Office Manager should submit the request to the HCA. The request should include a resume or curriculum vitae with the following information:

Name:

Title:

Background and Experience: Discuss your background and experience, specifically identifying any SEB, contracting, COR, and technical/program experience. Include a discussion of involvement in contract related matters.

Training: Identify any procurement related training.

For actions exceeding \$50 million, the SEB Secretariat (see Acquisition Guide Chapter 1.4) will prepare the SSO designation memo, obtain the SPE's signature and distribute the signed memo.

## **TOPIC III      SOURCE EVALUATION BOARD COMPOSITION AND DESIGNATION**

The composition of a SEB should be tailored to the particular acquisition, assuring the ability to comprehensively evaluate proposals. SEB membership consists of a SEB Chairperson, Voting

Members, Contracting Officer, Advisors, Executive Secretary, and Ex-Officio Member(s). The number of voting members usually ranges from three to five people including the SEB chairperson and the Contracting Officer. It is recommended that the Contracting Officer be a voting member. The number of non-voting members, which includes advisors and ex-officio members, varies greatly based upon the complexity, dollar value and number of voting members assigned to the SEB. At a minimum, each SEB shall include a cost advisor and a legal advisor. Other areas where an advisor may be appropriate include: security, health and safety, human resources, finance, accounting, information technology, intellectual property, etc... Each SEB should have an Executive Secretary as a non-voting member of the SEB. The Executive Secretary should be either a contract specialist or a Contracting Officer. This position is an excellent way to prepare an individual for an increased role as a participant in a future SEB.

The SSO is responsible for designating the SEB. The designation of the SEB should be accomplished through a formal written memorandum. For acquisitions with a value greater than \$50 million, the composition of the SEB must be coordinated with the SEB Secretariat prior to finalization.

#### **TOPIC IV      CONFIDENTIALITY AND CONFLICT OF INTEREST CERTIFICATIONS**

Although there is no regulation requiring each Source Evaluation Board (SEB) member to sign a confidentiality certification or a conflict of interest certification, as a safeguard to preserve the integrity of the SEB process, it is DOE's long standing practice for SEB members to do so. Confidentiality Certification and Conflict of Interest Certification templates are available in the STRIPES Library.

##### **Confidentiality**

All personnel involved in a Source Selection (e.g., SEB or Technical Evaluation Committee (TEC)) must safeguard source selection information and must not disclose proposal information or source selection information to anyone outside the membership of the SEB.

Specifically, proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. (See 3.104 regarding the disclosure of source selection information (41 U.S.C. 2101-2107 formerly 41 U.S.C. 423)). Information received in response to a Request for Information (RFI) shall be safeguarded adequately from unauthorized disclosure. [FAR 15.207(b)]

Furthermore, except as specifically provided for in FAR 3.104-4, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information. [FAR 3.104-4(a)]

Any Confidentiality Certification must contain the following language:

“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”

### **Conflict of Interest**

Government procurement matters must be conducted in a manner beyond reproach, with complete impartiality and preferential treatment to none. Impeccable standards of conduct are a must. As such, all personnel involved in an SEB are required to avoid strictly any conflict of interest or even the appearance of a conflict of interest. [FAR 3.101-1]

### **TOPIC V SEB LOGISTICS**

The procurement and program organizations should coordinate the arrangement of adequate space and resources to conduct the SEB. It is recommended that the SEB members all be co-located together and be dedicated full-time to the extent practicable. The space should be large enough to accommodate the entire SEB. It is recommended that the space include at least one conference room or common work area where the SEB can meet and work as a group. It is also recommended that the space be removed from the normal work space to avoid distractions and disruptions. The space and equipment need to be in conformance with the physical security requirements as well as the information technology security requirements. If the SEB membership includes an individual or individuals whose duty location is different from the location the SEB plans to convene, adequate travel funds will be required to ensure the SEB can meet as necessary.

### **TOPIC VI ACQUISITION WEBSITE**

For most competitive acquisitions, a procurement specific Internet website should be created during the acquisition strategy and acquisition planning phases of procurement. The Internet address of the website should be provided to prospective offeror via a pre-solicitation synopsis. This website can be used for posting such things as: procurement schedule, procurement related documents and information, current contract, details about conferences, meetings and tours, various links to important websites, announcements, questions and answers, as well as the solicitation and any amendments. This website is a supplement to and does not replace the Federal Business Opportunities (FedBizOpps.gov) web page where synopses and solicitations are formally issued.

## **TOPIC VII SOURCE SELECTION TRAINING**

The Office of Acquisition and Project Management and the Office of General Counsel (GC) developed a course entitled Source Selection for the Source Evaluation Board (SEB). This course is approximately 12 hours in length and is conducted by OPAM and GC at the various DOE offices. The training can be scheduled by contacting the SEB Secretariat, GC-61, or the Director, Field Assistance and Oversight Division, MA-621. This training covers the complete flow of the source selection process as described in Topic I of this Guide Chapter. The table of contents for the course is shown below:

- Introduction to Source Selection
- Source Evaluation Board
- SSO and SEB Members Roles and Responsibilities
- Procurement Integrity and Unfair Competitive Advantages
- Acquisition Planning
- Small Business
- Schedule for the Acquisition
- RFP Development
- Statement of Work
- Evaluation Factors for Selection
- Evaluation of Experience and Past Performance
- RFP Instructions
- Cost Proposal Instructions
- SEB Preparations Prior to Receipt of Proposals
- The Consensus
- Source Selection Plans
- Key Personnel and Oral Presentations
- Price/Cost Evaluations
- Award With or Without Discussions?
- Guidance to Individual Evaluators
- SEB Report
- SEB Briefing to SSO
- Source Selection Document
- Debriefings
- Lessons Learned
- HQ Business Clearance

## **TOPIC VIII ROLES AND RESPONSIBILITIES**

The composition of an SEB should be tailored to the particular requirement. SEB membership consists of a Source Selection Official, SEB Chairperson, Voting Members, Contracting Officer, Advisors, Executive Secretary, and Ex-Officio Member(s). Listed below are the roles and

responsibilities of the SSO and SEB members.

#### Source Selection Official (SSO)

The SSO is delegated source selection authority from the Senior Procurement Executive for actions exceeding \$50 million and the Head of Contracting Activity (HCA) for actions valued at \$50 million or less. The HCA may re-delegate source selection authority. When choosing the individual to serve as SSO, consideration should be given to both the complexity and dollar value of the procurement. The SSO is normally a senior program official at either the field office or headquarters. The SSO will:

1. Appoint SEB Chairperson, SEB members, advisors and ex-officio members;
2. Ensure that the entire source selection process is conducted properly and efficiently;
3. Review and approve the Acquisition Plan, Request for Proposal (RFP) and the Source Selection Plan (SSP);
4. Provide the SEB with appropriate resources, guidance and special instructions as may be necessary for the conduct of the evaluation and selection process;
5. Be briefed on the need to enter into discussions and establish a competitive range, if applicable;
6. Decide policy issues and answer major questions identified by the SEB Chairperson;
7. Request briefings and consultations with the SEB chair as may be required (including updates on all significant issues and the SEB's progress throughout the process);
8. Participate in any aspect of the source selection process, such as reviewing proposals, reviewing draft reports, attending oral presentations, (if you attend one, you must attend all) etc., in order to assist in his/her final independent judgment/decision;
9. Select the apparent successful offeror(s) after an in-depth and independent review and analysis of the SEB's evaluation, and performing a comparative assessment of the offeror; and
10. Document the basis of the selection decision in the Source Selection Decision Document.

#### Source Evaluation Board Chairperson

The SEB Chairperson has the overall responsibility for the SEB's activities during the source selection process. The SEB Chairperson usually has a technical background. However, a Contracting Officer can serve as SEB Chairperson. The SEB Chairperson will:

1. Ensure all Board members receive SEB training, as well as any other needed training;

2. Lead and formulate the agenda for all SEB meetings;
3. Manage the acquisition against the schedule;
4. Work with the Field Office Management to ensure that sufficient and adequate personnel and other resources are available in a timely manner to meet the needs of the acquisition;
5. Ensure that proper evaluation tools and procedures are available to the evaluators and advisors and that they are sufficiently trained in the proper use of those tools and procedures;
6. Lead the SEB members in the development of the RFP;
7. Lead the SEB members in the proposal evaluation, based on input from the advisors, to support the Contracting Officer's competitive range determination (if applicable);
8. Coach and develop the team and team members, setting goals and offering advice and guidance when needed, and acknowledging high performance and excellence when it occurs;
9. Ensure that all aspects of the evaluations have been conducted properly and in adequate depth;
10. Lead the SEB members in identifying proposed strengths and weaknesses in proposals based upon RFP evaluation criteria, and reaching a consensus on the strengths, weaknesses, and the significance of the strengths and weaknesses, and assigning ratings with supporting rationale;
11. Lead in developing appropriate cost-performance, trade-off studies, as may be requested by the SSO;
12. Attempt to resolve any reservations, concerns, or disagreements of individual SEB members. If resolution cannot be obtained, ensure that any significant reservations, concerns, or disagreements are documented in the SEB report and presentation to the SSO;
13. Provide briefings and consultations as the SSO and ex-officio members may require;
14. Identify policy issues and major questions requiring decision by the SSO;
15. Report any events that affect the procurement schedule as soon as possible to obtain approval for revised milestone schedules as necessary;
16. Lead the SEB members in reviewing and approving all discussion issues, prior to submission to the Contracting Officer for action;
17. Lead in developing the initial and final SEB written reports, as applicable, and schedule and conduct presentations to the SSO;
18. Coordinate the review of procurement documents for HCA review and business clearance review; and
19. Ensure that SEB lessons learned are captured.

Source Evaluation Board Voting Members

The SEB voting members are the primary evaluators and participants in the source selection process. The SEB members will:

1. Assist in the development of the Acquisition Plan unless completed by the Integrated Procurement Team (IPT);
2. Assist in the development of the RFP;
3. Participate in pre-solicitation meetings/conferences, site tours and pre-proposal conferences as applicable;
4. Assist in the development of answers to questions received from interested parties;
5. Independently evaluate each proposal in accordance with the RFP evaluation criteria and the Source Selection Plan, including consideration of input from advisors;
6. Participate in oral presentations if applicable;
7. Deliberate and develop a consensus among the SEB members of the strengths, weaknesses, deficiencies, and rating of each proposal;
8. Assist in the development of questions for Offeror determined to be in the Competitive Range (CR), if a CR is determined, and participate in discussions if they are held face-to-face;
9. Prepare an SEB report for submission to the SSO;
10. Participate , as necessary, in briefing the SSO;
11. Assist in the documentation of lessons learned; and
12. Participate in debriefings.

#### Source Evaluation Board Advisors

The SEB advisors have subject matter expertise and provide input to the SEB. Advisors are non-voting members. The SEB advisors will:

1. Review designated aspects of proposals and provide advice and assessments in their respective areas of expertise, as requested;
2. Recommend areas of the offeror' proposals that should be further analyzed, evaluated, or studied;
3. Review questions and findings and assist the SEB/Contracting Officer in preparation for discussions and/or responding to questions received on the RFP; and
4. Assist the SEB in the preparation of written reports or other information related to the evaluation.

#### Contracting Officer

The Contracting Officer serves as the primary procurement authority, advising the SEB and the SSO on procurement matters. The Contracting Officer will:

1. Advise and support the SSO and SEB as needed;
2. Protect integrity of the process;
3. Conduct and control all communication with offerors (FAR 15.303(c));
4. Issue the RFP, as well as any amendments to the RFP;
5. Serve as focal point for inquiries (FAR 15.303(c));
6. Determine the competitive range (FAR 15.306(c)(1)), when award is not based on initial submission, with input from the SEB and concurrence from the SSO, and notify the offerors accordingly;
7. Conduct and lead discussions with offerors in the competitive range ensuring the discussions are meaningful (FAR 15.306(d)(3));
8. Oversee the evaluation of cost.
  - Responsible for obtaining information adequate to establish price reasonableness and/or determine cost realism (FAR 15.403-3).
  - Purchase goods and services only at fair and reasonable price (FAR 15.402(a))
9. Request proposal revisions as appropriate;
10. Perform all the required checks (EEO and FOCI, etc), make the responsibility determination, verify size status and compliance with the limitation of subcontracting when required, make all the necessary notifications (successful, unsuccessful and congressional) and coordinate the press release;
11. Award the contract(s) after receiving all the appropriate reviews and approvals;
12. Lead the debriefings, document the file as required and provide all requested information to legal counsel if a protest is received;
13. Assist in the documentation of lessons learned; and
14. Ensure that all documentation and Source Selection Information is filed appropriately.

#### SEB Executive Secretary

The Executive Secretary is the principal assistant to the SEB Chairperson. The Executive Secretary will attend all SEB meetings as necessary, and subject to the direction of the SEB Chairperson, will accomplish such tasks as the following:

1. Obtain secure work areas for conduct of SEB activity;
2. Develop and implement procedures to control access to SEB work areas, and the safeguarding of SEB proceedings and data;

3. Obtain material, supplies and equipment needed by the SEB;
4. Obtain a signed confidentiality certificate and conflict of interest certificate and Procurement Integrity Certification for Procurement Officials from all SEB members, advisors and ex-officio members;
5. Prepare and submit to the SEB Secretariat each month the Source Evaluation Board Status Report;
6. Arrange for the preparation, reproduction, control and distribution of all material relating to the activity of the SEB;
7. Obtain and distribute applicable procedures, policies, instruction, etc., to SEB members, advisors and ex-officio members, as directed;
8. Follow-up on action items assigned to SEB members to ensure the procurement schedule is maintained;
9. Prepare minutes of SEB meetings as appropriate, obtain the chairperson's approval and distribute copies to all SEB members and others as directed by the SEB Chairperson;
10. Assist with logistical and administrative matters involving tours, conferences and oral presentations;
11. Assist in preparing and assembling the SEB report and presentation charts and arrange for reproduction and distribution;
12. Schedule debriefings, and dispose of all excess material with concurrence of SEB Chairperson, Contracting Officer and legal advisor;
13. Assist with the filing of all documentation and Source Selection Information. If necessary, forward the complete file to the cognizant procurement office for permanent retention and contract administration; and
14. Survey the area where SEB activity occurred and arrange for the return of equipment and materials as appropriate.

#### Ex-Officio Member(s)

An ex-officio member is a non-voting participant who is usually in a management position. By virtue of their position, they have a need to know relative to the procurement and can offer advice and guidance to the SEB. Ex-Officio members normally have a very limited role in procurement.

## **TOPIC IX SOURCE EVALUATION BOARD (SEB) REPORTING**

### **Background**

At the December 2009 DOE Procurement Directors meeting, a newly created position called the SEB Secretariat and Knowledge Manager (SKM) was rolled out. The SKM position resides in the Field Assistance and Oversight Division, MA-621. Acquisition Guide Chapter 1.4 provides more details about the establishment of this position, as well as the duties and responsibilities of the position. One of the duties and responsibilities is “establishing SEB reporting requirements and tracking the status of SEB activities against established milestones.” The goals of such a SEB reporting requirement are: (1) timely identification and resolution of issues adversely impacting schedule, (2) identification of trends, (3) dissemination of issue and trend information to DOE procurement personnel, and (4) development or revision of policies and/or guidance as appropriate.

### **Reporting Requirement**

On March 26, 2010, a memo was issued by the Director, Office of Contract Management, formally establishing a SEB reporting requirement. For all SEB’s whose estimated value exceeds \$25 Million, the acquisition schedule shall be submitted to the SKM via e-mail within five days of approval of the Acquisition Plan. After submission of the initial acquisition schedule, SEB’s shall submit monthly status updates by the 5<sup>th</sup> calendar day of the month.

## **TOPIC X DRAFT REQUEST FOR PROPOSAL (DRFP)**

### **Background**

The DRFP is an initial, informal document(s) that communicates the Government's intentions/needs to industry. The DRFP solicits questions, comments, suggestions, and corrections that improve the final product. It is a communication tool used early in competitive acquisitions to promote a clearer understanding of the Government's requirements to industry and to obtain industry feedback on the planned acquisition. DRFP's provide an effective means to resolve potential contract issues and obtain feedback from prospective offerors in advance of issuing the final RFP. In certain cases, such information can lead to (1) significant cost savings and productivity enhancements; (2) reduced proposal preparation and evaluation time; (3) reduced need for solicitation amendments which preclude other delays that disrupt timely completion of the acquisition; or (4) better proposals, end products and services.

The DRFP need not include all of the sections of the Request For Proposal (RFP), but should contain as much as possible of the "business" sections necessary for industry to provide meaningful comments. As a minimum, the DRFP should include Section L (Instructions to Offerors) and Section M (Evaluation Criteria), and the Specification/Statement of Work.

No hard and fast rule exists as to when it is desirable to issue a DRFP; however, in the early stages of acquisition planning/procurement strategy development, the program officer(s), advisory (legal) staff and contracting officer/contract specialist are strongly encouraged to address the desirability of issuing a DRFP in advance of the final RFP. Likewise, no formal process for comment resolution presently exists. However, a methodology should be established to ensure incorporation of beneficial comments in the final RFP. The SEB should document all questions and comments received on the draft RFP, as well as the disposition of the questions and comments. It is not necessary to post all questions and answers on the draft RFP.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 3.104-2 (General [Procurement Integrity])

FAR 15.201(Exchanges with Industry Before Receipt of Proposals)

FAR 5.101(b) (Methods of Disseminating Information)

### **Issues**

#### **When is it appropriate to issue a DRFP?**

It is appropriate to use DRFP's whenever, in the Contracting Officer's (CO's) judgment, the acquisition will benefit significantly from early involvement from interested parties especially when award without discussions is contemplated.

Considerations in determining the feasibility of issuing a DRFP in advance of an RFP for an acquisition include: complexity and dollar value, introduction of new business and/or technical requirements, timing and/or uncertainties as to the clarity of the proposed Statement of Work/Statement of Objective. Use of a DRFP is strongly encouraged for requirements that have not previously been procured. In such cases, the Government would be particularly interested in industry comment on proposed contract type. If there are potential human resource issues (pay, pension & benefits, workforce size, etc.), it is both desirable and beneficial to get stakeholder input before finalizing the RFP. DRFP's are not used for noncompetitive procurements.

#### **What should a DRFP include?**

To the extent practicable, the DRFP should include all relevant parts of the solicitation, including the model contract, Statement of Work (SOW), technical requirements, special contract requirements (Section H), instructions to offerors (Section L), and the evaluation criteria (Section M). The DRFP should identify the point of contact to which comments should be directed (preferably the Contracting Officer or Contract Specialist), the preferred methods by which contact may be established, i.e., via e-mail, and the date by which all comments are due, etc. The DRFP should be published with a cover letter containing a description of DOE's technical and contracting strategy, identifying those areas where DOE specifically desires comments. The letter should also include a statement to the effect "information presented in the DRFP is subject to change and that incurring expenses or beginning to formulate an approach in preparation for

the acquisition based on information presented in the DRFP is solely at the potential offerors risk".

### **What is the process for publicizing a DRFP?**

The Contracting Officer/Contract Specialist should publicize the DRFP in much the same manner as the final RFP would be publicized. A variety of methods may be used, such as posting announcements to the government Point of Entry, Federal Business Opportunities (FBO) at <http://www.fbo.gov> and those methods addressed at FAR 15.201(c) and FAR 5.101(b). The FBO announcement is prepared within STRIPES and must be transmitted to Fed Connect, <https://www.fedconnect.net/FedConnect/>, and FBO. Publication and response times for proposed contract actions at FAR 5.203 are not mandatory for DRFPs. The Contracting Officer should establish reasonable times for receipt of responses to DRFPs that reflect the nature of the product or service, the supply base, and the specifics of the individual procurement. The proposed contract action should be synopsisized in accordance with FAR 5.203 prior to issuance of the draft solicitation. In addition, the notice of availability of a DRFP and a future timeframe when the solicitation may be issued may be included in the same synopsis.

### **How should questions/comments received in response to the DRFP be handled?**

The Contracting Officer/Contract Specialist, in conjunction with support from appropriate technical or other functional advisory staff as merited (.e.g., cost price analysts, legal counsel, contractor human resources specialist, small and disadvantaged business specialist) should carefully review each question/comment/suggestion to: (1) determine whether it has merit and should be pursued; (2) develop a recommended course of action considering the impact to other processes and elements of the RFP or program; and (3) revise the RFP, as applicable. A record of all questions/comments received and the action taken should be kept in the file. Care must also be taken to ensure that changing the RFP as a result of a question/comment/suggestion does not give an unfair competitive advantage to an individual offeror.

If the nature of a question/comment/suggestion is particularly difficult or complex, it may be beneficial for the government to establish an additional comment period (i.e., float the Government's proposed change past the interested parties/potential offerors). This would be accomplished through use of an acquisition website discussed in Topic It may also be beneficial for the government to convene a pre-solicitation conference. Notice of the conference should be publicly announced in a manner to ensure that all interested parties/potential offerors have an opportunity to respond/attend. Minutes of the conference should be maintained and distributed in the same manner as the DRFP, e.g., through posting on the website. (See Topic XI, Exchanges With Industry Before Receipt of Proposals for additional discussion on the use of pre-solicitation conferences.) One-on-one meetings can also be utilized to obtain very frank feedback on the DRFP.

If the procurement has been selected for Business Clearance Review, following approval of the RFP, the Contracting Officer may post a summary level document to the acquisition website and/or prepare an RFP cover letter that will accompany the final RFP, that discusses the nature

of questions/comments/suggestions received and changes made to the DRFP. The document or cover letter should not attribute comments to any particular firm. DOE is not obligated to post each question or to provide an answer to each question.

It is critical throughout the process that all potential offerors be treated fairly and given identical information so as not to provide a basis for a perception of unfair competitive advantage by any one offeror or group of offerors.

If one-on-one meetings are utilized, the Contracting Officer/Contract Specialist must take special care to ensure that either: (1) no additional information is provided during the conference which would give the offeror an unfair competitive advantage; or (2) ensure that any new information provided during the one-on-one meeting is provided to all potential offerors. (See Topic XI, Exchanges With Industry Before Receipt of Proposals for additional discussion on the use of one-on-one meetings.)

## **TOPIC XI EXCHANGES WITH INDUSTRY BEFORE RECEIPT OF PROPOSALS**

Exchanges with industry before receipt of proposals is a technique to promote early exchange of information with industry either: (1) prior to the release of the solicitation or (2) after release of the solicitation but prior to receipt of proposals.

There are a number of techniques to promote exchanges with industry that are identified in FAR 15.201(c). Four of these techniques frequently used are pre-solicitation conferences, one-on-one meetings, pre-proposal conferences, and site tours.

Additionally, in conducting pre-solicitation conferences, one-on-one meetings, pre-proposal conferences, or site tours, remember the following: (1) release information on a fair and equitable basis consistent with regulatory and legal restrictions; (2) establish clear ground rules for the conduct, timing, and documentation of conferences and meetings; (3) protect any proprietary information you may be given during this process; and (4) request legal counsel advice if any questions arise about any exchanges.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 3.104-2 (General [Procurement Integrity])

FAR 15.201 (Exchanges with Industry Before Receipt of Proposals)

### **Issues**

#### **When is it appropriate to conduct pre-solicitation conferences, one-on-one meetings, pre-proposal conferences, and site tours?**

It is appropriate to conduct pre-solicitation conferences, pre-proposal conferences, one-on-one meetings, and site tours when issues exist which make exchanges between government and

industry beneficial. The following factors often drive a need to conduct such exchanges: (1) the complexity of the project; (2) the desirability of having prospective contractors visually examine Government owned facilities (Site tours are normally conducted in conjunction with such exchanges); (3) the need to disseminate additional background data; (4) exceptional demands on a contractor's capability; (5) unavoidable ambiguities in the SOW/PWS/SOO; or (6) complications involving access to classified material or facilities.

Pre-solicitation conferences are held prior to issuance of the final RFP. If a draft RFP is to be issued, the pre-solicitation conference should be held after the draft RFP is issued. One-on-one meetings with prospective offerors and other stakeholders, as appropriate, may be conducted during the Government's acquisition planning phase, after issuance of a draft RFP, or in conjunction with the pre-solicitation conference. One-on-one meetings should not be held with prospective offerors and other interested parties once the final RFP is issued. Pre-proposal conferences are held after issuance of the RFP. Site tours can be held in conjunction with either a pre-solicitation conference or a pre-proposal conference. If a pre-solicitation conference is held, it may not be necessary to also conduct a pre-proposal conference. The need for this additional conference should consider the following: (1) the significance of the changes between the draft RFP (if issued) and the final RFP, and (2) the potential to generate additional competition.

**What should pre-solicitation conferences, one-one-one meetings, pre-proposal conferences, and site tours accomplish?**

The pre-solicitation conference should accomplish the following: (1) advise industry of the Government's anticipated requirements, (2) assist the Government in understanding the capabilities of industry and the potential for meeting the Government's requirements, and (3) obtain industry's input on the most effective means of meeting the Government's requirements.

One-on-one meetings have similar objectives to pre-solicitation conferences. However, one-on-one meetings allow for a more open forum for individual companies to provide input that they might not otherwise provide. Some key areas of interest to the Government in one-on-one meetings would be (1) identification of any restrictive specifications, and (2) identification of any barriers to competition. Care must be taken during these one-on-one meetings to not provide information that might give a potential offeror an unfair competitive advantage.

The pre-proposal conference should accomplish the following: (1) outline principal features of the project, (2) fully describe all details of the work statement and specifications, (3) explain and clarify instructions for completing the proposal, (4) provide an opportunity for offerors to ask questions and receive answers, thus providing them with a better understanding of the government's requirements, and (5) stress the importance of significant elements of the solicitation.

Site Tours should familiarize potential offerors with: (1) size of the site and facilities, (2) work conditions at the site, (3) general condition of the facilities, (4) status of ongoing work, (5) complexity of the scope, and (6) general issues related to performance of the work.

## **How should pre-solicitation conferences, one-on-one meetings, pre-proposal conferences, and site tours be conducted?**

The Contracting Officer should publicize the arrangements for pre-solicitation conferences and one-on-one meetings in much the same manner that the RFP would be publicized (See also Topic X, Draft Request for Proposal related to publicizing information). The pre-proposal conference should be publicized in the solicitation and other means as required.

### Pre-solicitation Conferences

If a draft RFP is issued, pre-solicitation conferences may be conducted in a similar format to a pre-proposal conference, e.g., dissemination of information, questions and answers, etc. Prospective offerors should be advised that, notwithstanding information provided at the pre-solicitation conference, offerors are to rely solely on the information contained in the final RFP.

### One-on-one Meetings

Although it is recommended that one-on-one meetings be held after the release of a draft RFP, if such meetings are held prior to the release of a draft RFP, the Government should provide appropriate and sufficient information to prospective offerors and other interested parties to allow for an effective exchange of information. This information may include, as appropriate, the following: (1) a summary description of the work or a draft statement of work, (2) a description of the anticipated contracting strategy (type contract, fee arrangement, etc.), and (3) questions or specific areas on which the Government desires input. If a draft RFP has been issued, the Government should request feedback on the draft RFP with questions on specific areas of the RFP on which the Government desires input.

### Pre-proposal Conferences

Attendees should be advised that remarks and explanations made by government personnel do not qualify, change, or otherwise amend the terms of the solicitation, and that only a formal, written amendment to the solicitation is binding. A written record of the conference proceedings shall be kept. This record of proceedings, including any new material provided at the conference and questions and answers addressed shall be provided to all potential offerors, regardless of whether they attend the conference.

Where possible, written questions should be requested in advance, and answers should be prepared in advance and delivered during the conference. Questions answered during the conference should be included in the record of conference proceedings.

As soon as possible after the pre-proposal conference, the Contracting Officer should ensure that all potential offerors receive the written record of the conference proceedings, including any new material provided and any questions and answers addressed. If any of the terms and conditions

or requirements of the solicitation were changed, a formal solicitation amendment should be issued.

### Site Tours

A site visit/tour is normally conducted as a part of a pre-solicitation conference. Additionally, a site visit/tour should be part of any pre-proposal conference, particularly if a site tour has not been conducted previously, e.g., in conjunction with a pre-solicitation conference. If sufficient site visits/tours have been provided previously, a tour may not be necessary in conjunction with a pre-proposal conference. Site tours may range, depending on the nature of the statement of work and the anticipated proposal submission requirements, from a detailed tour with access to facilities to a “windshield” tour to familiarize prospective offerors with the site.

It is recommended that communications during site tours be closely monitored. To the extent possible, all communications should be conducted by the Contracting Officer. Development of scripted material is also recommended to ensure that all necessary information is effectively and consistently communicated. Scripts are a necessity when the number of attendees dictates that the site visit is conducted by breaking the attendees into groups. All Government personnel participating in the site visit should be cautioned against having side conversations during the site visit. Questions should be collected and answers should be made available to all interested parties by either posting them on a designated web site or issuing them via an amendment to the solicitation.

## **TOPIC XII SCORING METHODOLOGIES AND SOURCE SELECTION PLANS (RATING PLANS)**

### **Background**

The objective of an acquisition conducted under source selection procedures is to select the source or sources which represent the best value to the Government. The best value process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. FAR Part 15 discusses source selection processes and techniques, including tradeoff processes. FAR 15.305 (a) Proposal Evaluation, states:

“Proposal evaluation is an assessment of the proposal and the offerors ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and sub-factors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.”

A Source Selection Plan helps evaluators assess a proposal's merit with respect to the evaluation factors and significant sub-factors. It uses a scale of words, colors, numbers, or other indicators to denote the degree to which proposals meet the standards for the non-cost evaluation factors. Some commonly used rating systems are adjectival, color coding, and numerical. What is key in using a rating system in proposal evaluations is not the method or combination of methods used, but rather the consistency with which the selected method is applied to all competing proposals and the adequacy of the narrative used to support the rating.

A traditional Source Selection Plan is comprised of four basic elements: (1) evaluation factors and sub-factors that are set out in the solicitation; (2) a rating system (e.g., adjectival, color coding, or numerical,); (3) evaluation standards or descriptions which explain the basis for assignment of the various rating system grades/scores, and (4) administrative procedures that guide the evaluation process. The Source Selection Plan should be developed in parallel with the development of the RFP. Parallel development is especially important due to the linkage between the Source Selection Plan and RFP sections L and M. This parallel development helps assure that: (1) there are practical and effective methods for the SEB's evaluation against the evaluation criteria and (2) the RFP instructions in section L will provide the necessary information to the SEB for its evaluation, i.e., what to evaluate and how to evaluate is planned in advance. The Source Selection Plan should be completed prior to completion of the RFP and approved prior to release of the RFP. A model Source Selection Plan which incorporates these four elements is available in the STRIPES Library.

The Source Selection Official (SSO) is required to follow the evaluation criteria and relative weighting factors set forth in the solicitation. How the SSO achieves this objective is not prescribed by Federal Regulations. In fact, the FAR specifically states that the rating method need not be disclosed in the solicitation. While the GAO has repeatedly held that Source Selection Plans are internal documents, and that offerors are not entitled to enforce the provisions of a Source Selection Plan that were not included in the solicitation, the Court of Federal Claims (COFC) has indicated in two recent decisions that failure of evaluators to follow specific procedures and techniques mandated by the Source Selection Plan could be evidence of an erroneous or biased evaluation. The Source Selection Plan should rarely, if ever be changed once the RFP has been issued. Integrity of the procurement process demands that any departures from the Source Selection Plan be documented, coordinated with local counsel, and made known to the SSO.

#### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.305 (Proposal Evaluation)

FAR 15.505 (Pre-award Debriefing of Offerors)

FAR 15.506 (Post-award Debriefing of Offerors)

#### **Issues**

## **What should be considered when developing evaluation standards?**

Evaluators must be able to determine the relative merit of each proposal with respect to the evaluation factors. Evaluation standards/descriptions provide guides to help evaluators measure how well a proposal addresses each evaluation factor and sub-factor identified in the solicitation. (Standards must not introduce unstated evaluation criterion.) Standards permit the evaluation of proposals against a uniform objective baseline rather than against each other. The use of evaluation standards minimizes bias that can result from an initial direct comparison of proposals. Standards also promote consistency in the evaluation by ensuring that the evaluators evaluate each proposal against the same baseline. In developing standards for each evaluation factor and sub-factor, you should consider the following:

As you develop your evaluation factors, concurrently draft a standard for each factor and sub-factor.

Define the standard by a narrative description that specifies a target performance level that the proposal must achieve in order to meet the standard for the factor or sub-factor consistent with the requirements of the solicitation.

Describe guidelines for higher or lower ratings compared to the standard "target."

Overly general standards should be avoided because they make consensus among evaluators more difficult to obtain and may obscure the differences between proposals. A standard should be worded so that mere inclusion of a topic in an offeror's proposal will not result in a determination that the proposal meets the standard.

While it is sometimes easier to develop quantitative standards because of their definitive nature, qualitative standards are commonly used in source selections.

## **What are the most common types of rating systems?**

### **Adjectival Ratings**

Adjectival ratings are a frequently used method of scoring or rating an offeror's proposal. Adjectives are used to indicate the degree to which the offeror's proposal has met the standard for each factor evaluated. Frequently used adjectives are: Outstanding, Good, Satisfactory, Marginal, and Unsatisfactory. Subsequent to, and consistent with, the narrative evaluation, an appropriate adjective rating may be given to each factor and sometimes to each significant sub-factor. Adjectival systems may be employed independently or in connection with other rating systems.

### **Color Coding**

This system uses colors to indicate the degree to which the offeror's proposal has met the standard for each factor evaluated. For instance, the colors green, blue, yellow, orange, and red

may indicate outstanding, good, satisfactory, marginal, or unsatisfactory degrees of merit, respectively.

**Note:** In using either adjectival or color coding rating systems, the evaluators must assess the collective impact of evaluation sub-factors on each higher tier factor, and then assess the totality of the evaluation factors as they relate to each other under the weighting methodology set forth in the solicitation. This complexity forces the evaluators to thoroughly understand the strengths and weaknesses of each individual proposal in relation to the evaluation criteria and standards in order to reach consensus. While it is critical that this understanding is reflected in the narrative of the evaluation, this depth of understanding aids in the writing of the competitive range and source evaluation reports.

## **Numerical**

This system assigns point scores (such as 0-10 or 0-100) to rate proposals. This rating system may appear to give more precise distinctions of merit; however, numerical systems can have drawbacks as their apparent precision may obscure the strengths and weaknesses that support the numbers. As opposed to the adjective and color coding systems, numeric systems can provide a false sense of mathematical precision which can be distorted depending upon the evaluation factors and standards used. For example, if a standard indicated there could be no weaknesses, a very minor weakness in a proposal would force assignment of the next lower level rating. This would potentially cause a significant mathematical difference in the proposals.

In any evaluation process, the source evaluation board should first identify the strengths and weaknesses involved with a proposal, and then assign the adjective, color or numeric ratings to the criteria. However, this is particularly important when using numeric system because it is too easy to fall into the trap of relying on the numeric rating as opposed to the actual merits or weaknesses of the proposal. Due to the potential pitfalls with the use of numeric ratings, some organizations do not permit the use of numerical rating systems.

It is strongly suggested that if a numerical system is used, the point system used should be a staggered numeric rating system (e.g., 0, 2, 5, 8 and 10) representing the various ratings and not use a full sequential scale (i.e., 0, 1, 2, 3 . . . 10) to represent the various ratings. If the sequential system is used, it forces the evaluation team to differentiate the rating of each evaluation factor within a range of points (e.g., a satisfactory element of a proposal must receive either 4, 5 or 6 rating points) as opposed to the assignment of a standard 5 point rating for a satisfactory rating. The sequential system also can result in generating overall proposal ratings which are numerically close in the total rating which may disguise the proposal differences. Moreover, using a 1-100 scale often results in using "public school" types of grading levels, even if the rating plan provides differently - that is, an A proposal gets a 90-100, a B proposal gets 80-89, a C proposal gets 70-79, and so on. This results in over half of the rating scale [59 and below] effectively not being used. In our experience, using a 1-100 rating scale usually results in ratings being clustered in the 85 to 90 range and blurs the real distinctions between proposals. It also makes the cost-technical tradeoff more difficult, where the technical difference amounts to just a few percentage points.

## **What does a sample rating scale look like?**

A sample of a rating scale that could be used to evaluate technical and management factors and significant sub-factors is included in the model Source Selection Plan available in the STRIPES Library. A proposal need not have all of the characteristics of a rating category in order to receive that rating. The evaluators must use judgment to rate the proposal according to the chosen scale.

## **TOPIC XIII GUIDANCE TO THE SEB**

### **Background**

The Contracting Officer and Counsel provide business, procurement and legal advice and guidance to the Source Selection Official and Source Evaluation Board Chair. Although SEB training covers the complete flow of the source selection process, prior to the initiation of a procurement in a Federal Acquisition Regulations (FAR) Part 15 competitive procurement, the Contracting Officer and Counsel should brief the Source Evaluation Board or the Technical Evaluation Committee (SEB/TEC) on the workings of the source selection process. The briefing should include an explanation of the evaluation process and pertinent documents, conflicts of interest, proposal security, and procurement integrity. The briefing should be designed to inform the evaluators of their responsibilities and provide guidance to the evaluators on how to review the proposals. If there are non-voting members on the SEB/TEC, the Contracting Officer should explain the limits of their involvement in the selection process. The Contracting Officer should also advise the SEB/TEC members of the planned schedule for the evaluations, including the time allotted for individual evaluations, consensus discussions, completion of a draft evaluation report, and the anticipated date for completion of the final report. If the solicitation included a requirement for oral presentations by the offerors, the Contracting Officer must explain the evaluation process for the oral presentations.

### **Applicable statutes, procurement regulations, or small business regulations:**

FAR 3.104 (Procurement Integrity)  
FAR 15 (Contracting by Negotiation)  
DEAR 915 (Contracting by Negotiation)  
FAR Part 9.5 (Organizational and Consultant Conflicts of Interest)  
DEAR 909.5 (Organizational and Consultant Conflicts of Interest)  
DEAR 952.209-72 (Organizational Conflicts of Interest)  
DEAR 970.0905 (Organizational Conflicts of Interest)  
DEAR 903.104-10 (Violations or Possible Violations)

## **Issues**

### **What aspects should the Contracting Officer Brief the SEB/TEC prior to evaluation of proposals?**

#### Certification requirements for evaluators

The briefing is a good opportunity to make sure that all evaluators have signed the required certifications. Prior to commencing evaluations, if they have not already done so, evaluators are required to complete confidentiality certificates, conflict of interest certificates, or other required certifications.

#### Security of proposals

In order to prevent unauthorized disclosure of source selection information per FAR 15.207, proposals and any other proprietary or source selection information must be properly safeguarded. Paper copies need to be kept in locked cabinets or locked rooms. Electronic copies should be closed when individuals are not physically at their computer. Proposals should not be downloaded to thumb drives or other portable media. The SEB/TEC chairman should arrange for appropriate facilities for safeguarding the proposals and other source selection information prior to the receipt of the proposals. The Contracting Officer should inform the evaluators that proposals shall not be taken home. The evaluation and contents of proposals shall not be discussed outside the SEB/TEC with the exception of ex-officio members, procurement advisors, legal advisors, and the source selection official.

#### Potential individual conflicts of interest

Individual conflicts of interest need to be resolved prior to commencing evaluation. The evaluators need to be reminded to review all contractors, subcontractors, consultants, and teaming arrangements proposed under the procurement and report any potential conflicts of interest to the contracting officer, legal advisor, and the SEB/TEC Chairman. Evaluators need to report any relatives employed by the proposing entities, friendships, financial interests, pension benefits, and prior employment. The existence of these relationships does not necessarily mean that a conflict of interest exists, but Counsel will review the specifics of the situation to determine if a potential conflict exists. The evaluator will then be informed if any actions need to be taken to avoid the conflict of interest. Actions that may be taken include divestment of stock, or removing the evaluator from the source evaluation process.

The evaluators need to be advised against the appearance of a conflict of interest. For example, evaluators should not have lunch or go golfing with offerors or prospective offerors, or engage in any other activity that could give the appearance of a conflict of interest. Evaluators should be encouraged to discuss any questions regarding the appearance of a conflict of interest with the Contracting Officer and legal advisor.

## Procurement Integrity Act

The Procurement Integrity Act provisions address a variety of issues, but the two of most concern to evaluators are the prohibitions against employment discussions and the release of information regarding procurement. The provisions of the Procurement Integrity Act are implemented in FAR Part 3.104. The Contracting Officer should inform the evaluators that civil and criminal penalties, and administrative remedies, may apply to conduct that violates the Procurement Integrity Act and related statutes and regulations. Either the Contracting Officer or the legal advisor to the SEB/TEC can provide the procurement integrity briefing.

### Employment prohibitions

Evaluators should be instructed to consult with the legal advisor and the legal staff of the agency ethics office regarding any contact with an offeror regarding non-Federal employment as well as questions related to post employment restrictions. In general, evaluators need to be informed that they can't be involved in the source selection process and discuss potential employment with any offerors, including subcontractors and consultants, proposing under the solicitation. This includes submitting resumes to firms. Evaluators need to be told that if they are approached by a firm, they can't leave the door open for employment discussions and tell the firm that conversations about employment will resume after the evaluation is completed.

The FAR requires that if an agency official is contacted by a person who is an offeror under the solicitation, that official must report that contact, in writing, to the official's supervisor and the agency ethics official. The FAR further states that the agency official must either reject the offer of employment or disqualify himself/herself from further participation in that procurement.

Evaluators should be advised that participation in a Federal agency procurement will result in some post-employment restrictions. Post-employment restrictions are covered by 18 U.S.C.207 and 5 CFR Parts 2637 and 2641 and Subsection 27(d) of the OFPP Act and FAR 3.104-3(d). Former Government employees are prohibited from engaging in certain activities, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific activities in which the former employee participated personally or substantially while employed by the Government. Evaluators who have concerns about the post-employment restrictions should be instructed to discuss their situation with the legal staff within the agency responsible for interpreting post-employment restrictions prior to commencing evaluation of the proposals or becoming further involved with the procurement.

### Disclosure of proprietary or source selection information

An area of concern to evaluators is the disclosure of any proprietary or source selection information during the conduct of procurement. The Procurement Integrity Act prohibits the disclosure of contractor bid or proposal information or source selection information prior to the award of a Federal contract. Evaluators should be informed that source selection information includes: (1) proposed costs or prices; (2) source selection plans; (3) technical evaluation plans; (4) technical evaluation of proposals; (5) cost or price evaluation of proposals; (6) competitive

range determinations; (7) ranking of bids, proposals, or competitors; (8) reports and evaluations of source selection panels, boards, or advisory counsel; and (9) any other information marked “Source Selection Information”.

Evaluators should be reminded that they can only discuss contractor bid or proposal information or source selection information with individuals who are authorized, in accordance with applicable agency regulations or procedures, to receive such information. It is useful for evaluators to keep in mind what is public information and what is not. For example, information in the solicitation is public, but the rating plan is not. The weights assigned to the evaluation criteria are not public unless they are identified in the solicitation. Once a competitive range is established, even though the Government has written letters to offerors letting them know whether or not they are in the competitive range, that information is not public information. Evaluators should be cautioned against holding any conversations with or answering any questions from offerors. All questions should be referred to the Contracting Officer.

If a potential violation of the Procurement Integrity Act is reported, the Contracting Officer is required to determine if there is any impact on the pending award or selection of the contractor. FAR Part 3.104-7 identifies the procedures the Contracting Officer and agency are required to follow. Evaluators should be advised that the earlier a potential procurement integrity violation is reported, the greater is the Contracting Officer's ability to mitigate its effect on the procurement. For example, the Contracting Officer may be able to mitigate an unauthorized disclosure of information by making that information available to all offerors or by taking other appropriate action. Additionally, evaluators should be advised that if they are asked to prepare information related to solicitation or the evaluation that they cannot re-delegate the action to a contractor, even if the action appears to be clerical.

It is helpful to provide examples of procurement integrity violations in the briefing so that the evaluators can relate the procurement/legal jargon to real situations they may encounter. For example, in one case a SEB/TEC evaluator allegedly communicated to an offeror in the competitive range, in general terms, how it needed to revise its technical and price proposals in order to receive an award. The potential violation was reported by the offeror and the case was referred to the appropriate criminal investigative organization for further investigation. As another example, a senior level program official asked a support service contractor to assist in developing the SOW and required labor mix for the re-compete of its own contract. After the violation was reported, the program official attempted to argue that the documents prepared by the support service contractor were only an outline and the information was significantly modified prior to release of the solicitation. This argument was not found to be convincing by the investigative organization.

### Evaluation process

The Contracting Officer should provide an overview of the evaluation process and the steps to be followed. The evaluation membership and structure of the evaluation team should be tailored to each acquisition. Ideally the membership should be reasonably diverse, representing different disciplines. The evaluators should be instructed to review the pertinent documents prior to

evaluating the proposals. Evaluators should review and become familiar with the source selection plan/rating plan, SOW, evaluation scoring sheets, the evaluation criteria in sections L and M of the solicitation, and the established weights for each criterion and sub-criterion.

The proposals need to be individually evaluated by each SEB/TEC member. Evaluations shall be based on the evaluation criteria in the solicitation, and evaluators need to be cautioned against deviating from the evaluation criteria or substituting evaluation criteria.

The Contracting Officer should discuss the unique aspects of the past performance criteria, and how evaluation of past performance differs from the other criteria. Evaluation under this criterion relies on information provided by the offeror's previous and current customers as supplemented by other information available to the agency.

For each proposal, evaluators shall be instructed to document strengths, weaknesses, and deficiencies for each criterion that are sufficiently detailed to support the assigned score or adjectival rating. This does not mean that evaluators will assign individual scores or ratings. This depends on the evaluation process established in the source selection plan/rating plan.

Commonly, individual evaluators will identify individual strengths, weaknesses and deficiencies, and then the SEB/TEC meets to discuss and develop consensus strengths and weaknesses prior to assigning scores. This is the preferred method at the Department of Energy.

Evaluators must be cautioned not to compare proposals against each other. Proposals shall be evaluated against the criteria and standards established in the solicitation. FAR Part 15 specifically states that competitive proposals shall be evaluated solely on the factors and sub-factors identified in the solicitation. Evaluators should be instructed that if the information sought does not exist where it is expected, that they should check if it exists elsewhere, such as in the introduction, on a diagram, or in the appendices.

The briefing should advise evaluators to be consistent during the evaluations, scoring, and developing of questions. The Contracting Officer should instruct the evaluators to discuss questionable issues as a group. Evaluators should be instructed to only credit or fault an offeror once for the same fact or idea unless the solicitation has a redundancy in the criteria. Similarly, evaluators need to evaluate the same fact or idea consistently. If something is noted as a weakness under one proposal, it must be designated as a weakness in other proposals with the same fact or idea.

#### SEB/TEC report and documentation of evaluation

FAR Part 15 states that the source selection records must include "a summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors." The consensus strengths and weaknesses by criterion are included in the SEB/TEC report. The Contracting Officer should advise the SEB/TEC that the report needs to be complete, accurate, and contain sufficient detail on strengths, weaknesses, deficiencies, and risks to demonstrate to an outside reviewer that the Government's evaluation

was fair, reasonable, and unbiased. The evaluators should be informed that the reports prepared by the SEB/TEC must be clear, convincing and supportable, and may be reviewed by the Government Accountability Office or a judge during a protest. Some Contracting Officers encourage evaluators to reference the pertinent part of the applicable evaluation criteria and the applicable page of the offeror's proposal for each strength or weakness. Evaluators should be told to avoid generalizations of a proposal's merits or problems, and instead state the facts that support the conclusions.

The Contracting Officer must instruct the evaluators to refrain from making personal notes in the proposals and on other documents that are retained. These documents may become part of the source selection record, and personal notes may be used during a protest to show inconsistencies. Evaluators must be advised to stamp all documents and worksheets with "Source Selection Information - See FAR 2.101 and 3.104.

**Is there any training available specifically related to the source selection process available?**

The Office of Contract Management (MA-621) in conjunction with the Office of the General Counsel (GC-61) conduct training related to the source selection process (see Topic VII). The audience for the training is the SEB and the SSO.

**Headquarters Business Clearance Review and Approval**

Each DOE office has been delegated specific procurement authority. If the estimated dollar value of an acquisition exceeds an office's dollar threshold, it is subject to Headquarters review and approval. DOE Acquisition Guide Chapter 71.1 discusses in detail how the Headquarters Business Clearance Review and Approval process works.

## **TOPIC XIV PAST PERFORMANCE AS AN EVALUATION FACTOR**

### **Background**

Past performance is a required evaluation factor. Past performance is most commonly and most effectively evaluated through a specific stand-alone evaluation criterion as part of the evaluation process. Information regarding a contractor's past actions and performance under previously awarded contracts is examined during this process. It is a review of deeds not words. The currency and relevance of information, source of the information, context of the data, and general trends in contractor's performance shall be considered.

Key to the successful use of past performance - and any factor- in the source selection process is the establishment of a clear relationship between the SOW, RFP Sections L (instructions to offerors) and M (evaluation criteria). The use and evaluation of past performance information for a specific acquisition should be tailored to fit the needs of that acquisition and clearly articulated in section L of the solicitation. The factors chosen for evaluation must represent the key areas of importance and emphasis to be considered in the source selection decision and support meaningful comparison and discrimination between and among competing proposals. They should be reasonable, logical, and coherent.

Evaluating past performance requires going beyond just obtaining performance information from the Past Performance Information Retrieval System (PPIRS). It also requires gathering and evaluating information not found in proposals. The evaluation requires making inquiries of third parties about contractor performance on various contracts and evaluating the responses.

FAR 15.304(c)(3)(i), requires that past performance be evaluated in all source selections for negotiated competitive acquisitions, unless the Contracting Officer documents that past performance is not an appropriate evaluation factor. It is up to the Contracting Officer to document the reason(s) that the use of past performance as an evaluation factor is inappropriate.

Using past performance as an evaluation factor depends on the significance of past performance as a discriminator. The purpose of an evaluation factor is to enhance the evaluator's ability to distinguish one proposal from another in terms of its relative worth or value to the government. An evaluation factor that does not help discriminate between proposals should not be used as an evaluation factor.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 8.404 (b) (Using Schedules)

FAR 15.101-2 (b) (Lowest Price Technically Acceptable Source Selection Process)

FAR 15.102 (c) (Oral Presentations)

FAR 15.202 (a) (Advisory Multi-Step Process)

FAR 15.304 (Evaluation factors and significant sub-factors)

FAR 15.305 (Proposal evaluation)  
FAR 15.306 (Exchanges with offeror after receipt of proposals)  
FAR 16.505 (b) (Order under multiple award contract)  
FAR 42.15 (Contractor Performance Information)

## **Issues**

### **When should past performance be evaluated?**

As required by FAR 15.304(c)(3)(i), the use of past performance as an evaluation factor is mandatory in all competitive negotiated acquisitions, unless the Contracting Officer documents in the contract file that it is not considered an appropriate evaluation factor for the acquisition.

### **What past performance information should be requested?**

The solicitation must clearly describe the approach that will be used to evaluate past performance. Information requested from offerors as described in section L of the solicitation should be focused on contracts for similar efforts that have been awarded to the offeror, proposed team members, and proposed major subcontractors, that have been in place for at least three years. Similar efforts should be defined in the solicitation by the size, scope, complexity, contract type, etc. The Contracting Officer should consider using solicitation language that evokes the phrase “for the same or similar items,” which may ensure that the Government does not overly restrict its ability to consider an array of information.

The evaluation team should review and consider the most recent relevant data available. Select similar efforts that are either still in progress or just completed and that have at least one year of performance history. While the actual cut-off time should be determined by the Contracting Officer on a case-by-case basis, the currency of the information requested should be determined by the commodity or service and the specific circumstances of the acquisition.

Information concerning past performance by proposed subcontractors should not be requested unless they are a major or critical subcontractor. Only Past Performance Information (PPI) that relates to that team member’s or subcontractor’s proposed SOW effort should be requested.

In order to help ensure as much information as possible regarding a firm’s past performance on a given contract or subcontract is disclosed, it is recommended that at least two references on each identified contract or subcontract be identified. This also helps to ensure that the anonymity of the references can be maintained. FAR 15.306(e) (4) prohibits release of the names of individuals providing reference information about an offeror's past performance.

### **How should the solicitation aspects regarding past performance be structured?**

As required by FAR 15.304(d), the solicitation must describe the general approach that will be used to evaluate past performance. This includes what past performance information will be

evaluated (including the anticipated method of PPI collection), how it will be evaluated, its weight or relative importance to the other evaluation factors and subfactors, the past performance information that is anticipated to be relevant, and how offerors with no past performance will be evaluated. The amount of information requested from offerors should be tailored to the circumstances of the acquisition and should be reasonable so as not to impose excessive burdens on offerors or evaluators.

At a minimum, the solicitation should clearly state that:

The Government will conduct a performance risk evaluation based upon the past performance of the offerors and their proposed major subcontractors as it relates to the probability of successfully performing the solicitation requirements.

In conducting the performance risk evaluation, the Government may use data provided by the offeror and data obtained from other sources including PPIRS (<https://www.ppirs.gov>).

The Government may elect to consider data obtained from other sources that it considers current and accurate, but it should ensure the solicitation contains a request for the most recent information available.

The proposal submission instructions must instruct offerors to submit recent and relevant information concerning contracts and subcontracts (including Federal, State, and local government; and private) that demonstrates their ability to perform the proposed effort.

Offerors should be given the opportunity to explain why they consider the contracts they have referenced to be relevant to the proposed acquisition. The instructions should also permit offerors to provide information on problems encountered on such contracts and the actions taken to correct the problems. Also, it is important that the offerors specifically describe the work that proposed major subcontractors will perform so that the evaluation group can conduct a meaningful performance risk evaluation on each proposed major subcontractor.

A major aspect of the evaluation of an offeror's PPI, is to what degree the PPI is relevant. Relevancy is not a separate element of past performance, and therefore should not be described as a subfactor. Relevancy is information that has a logical connection or stark similarities with the solicitation size, scope, and complexity. PPI with limited relevance may be used for evaluation but should receive a lower rating. In cases where an offeror's PPI is not similar or relevant, the PPI should receive a relatively lower rating. If there is no record of past performance or it is not available, the solicitation should explain that the proposal will be evaluated neither favorably nor unfavorably.

PPI based upon previously established companies from which newly formed companies and mergers are formed may be used to mitigate the absence of PPI for a newly-formed company or merger. If this is the case, the RFP Section M must explain that this information will be considered in place of PPI for the offeror. In addition to Federal contract information, past

performance information should be considered from other sources such as state and local government contracts and private sector contracts and subcontracts.

Occasionally, however, an evaluation team may not find any PPI. In this case, an offeror's lack of past performance must be treated as an unknown performance risk, having no positive or negative evaluation significance. This allows the Government to evaluate past performance in a fair manner. The method and criteria for evaluating offerors with no PPI should be constructed for each specific acquisition to ensure that such offerors are not evaluated favorably or unfavorably on past performance. The solicitation must clearly describe the approach that will be used for evaluating offerors with no performance history.

When structuring the solicitation, it is important to distinguish between a contractor's experience and its past performance. Experience reflects **whether** contractors have performed similar work before. Past performance, on the other hand, describes **how well** contractors performed the work – in other words, how well they executed what was promised in the proposal. If experience is to be evaluated, it should be a separate evaluation factor, not combined with evaluation of past performance. The terms "experience" and "past performance" must be clearly defined in the solicitation. This helps to avoid the potential for double counting by asking for the same information under both factors.

Make certain Section L explains the definition of offerors, i.e., does offeror include each firm in the business relationship (e.g., joint venture, teaming partners, and major subcontractors) and who will be evaluated on its past performance. Section L should also include a statement that past performance information will be used for both the responsibility determination and the best value decision.

The source selection official should use the most relevant, recent past performance information available in making the source selection decision. Since past performance evaluation is essentially an informed judgmental decision of the government and in order for the government's decision to withstand scrutiny, the contract file should contain detailed documentation identifying that the past performance information has been appropriately analyzed and verified by the government. The goal of the evaluation report should be to provide clear, reasonable, and rational analysis of the past performance of the offerors. The evaluation team must provide the source selection authority with sufficient information to make informed judgments based on a well-reasoned, well-supported, well-documented rationale of its past performance evaluation. Conclusive statements must be supported by the underlying factual basis. Therefore, state the conclusion and provide specific strengths and weaknesses that support it.

Attempts at gathering and verifying information from the references on how the contractor performed is the responsibility of the government. Questionnaires followed up by telephone interviews have the most success in getting useful and timely responses from references.

Questionnaires should be provided in the RFP (as an attachment Section L) and offerors requested to provide the questionnaire to its references. The questionnaires are returned from the references directly to DOE without going through the offeror. This allows offerors to know what is important to the government under this criterion and assists the government in getting the PPI.

Questionnaires are normally no more than a page to a page and a half of questions. However, the questions must be relevant to the specific acquisition with the objective of providing sufficiently detailed information to the government to allow for a thorough and effective evaluation of past performance.

Information that supports an entity's past performance, such as awards of excellence presented to the companies that will be performing the work, should be requested.

The evaluation team should consider collecting the list of references and past performance information in advance of the proposal receipt, in order for the Government to commence working with the information. The solicitation can request the offerors to provide a summary past performance early (e.g., in advance of the proposal due date). This allows the Government to begin downloading PPIRS data. To obtain timely completed questionnaires, the contracting officer may have offerors send the Government's questionnaires to all references in advance of submitting their proposals which would allow the completed questionnaires to arrive at the same time as the proposals.

Avoid formula driven past performance ratings, as evaluation of past performance is very much a subjective assessment.

**A model of the Section L instructions and the Section M evaluation criteria for both past performance and experience is available in STRIPES. While this Topic is focused on past performance, the experience model is also shown in order to clearly distinguish between experience (what work has been performed) and past performance (how well it was performed).**

#### **How much past performance information should be requested?**

Source Evaluation Boards (SEBs) may want to limit the information requested to a summary of the offeror's performance for each contract or subcontract. The summary should include contract numbers, contract type, description and relevancy of the work, dollar value, and contract award and completion dates; and names, phone numbers, and e-mail addresses for references in contracting and technical areas. Be prudent about the amount of past performance information that is requested. It should be a reasonable amount that does not cause excessive burdens for the contractor and the government. But, it must be sufficient to allow the government to conduct a thorough and effective evaluation of past performance.

Additionally, FAR 42.1503(e) states that agencies shall use past performance information in the PPIRS that is within three years (six years for construction and architect engineering contracts) of the completion of performance of the evaluated contract or subcontract.

#### **How much weight should be placed on past performance information?**

Past performance should be given sufficient evaluation weight to ensure that it is meaningfully considered throughout the source selection process and will be a valid discriminator among the

proposals received. There is not necessarily an ideal weight for past performance as compared to the weight of the other evaluation criteria.

**What information can be discussed with offerors regarding past performance and when can it be discussed?**

In the case of adverse PPI on which offerors had not had a previous opportunity to comment, the Contracting Officer must provide offerors with the opportunity to comment. This practice ensures fairness for the competing offerors. The validation process is particularly important when the adverse information is provided by only one reference or when there is any doubt concerning the accuracy of the information. Usually, adverse information reflects performance that was less than satisfactory, although this is a judgment call that will depend upon the circumstances of the acquisition. Note that while the Government must disclose past performance problems to offerors, including the identity of the contract on which the information is based, it shall not disclose the name of individuals who provided information about an offeror's past performance. The Government can avoid disclosing names of individuals by identifying an office from which the PPI was received.

If the government receives adverse past performance information relating to entities that have formed business arrangements with a proposed prime contractor, such as subcontractors, joint venture members, and teaming partners, the government can only advise the proposed prime contractor that there is a problem with one of the entities it has proposed to perform the requirement. Specifics of the adverse information cannot be provided to the offeror unless the affected entity agrees.

Any questions asked of the offerors' past performance points of contact should be the same. Inconsistency in questions to offerors can lead to the potential issue of unequal evaluation of offerors. However, if there is a concern raised based on the responses to questions, then it may be necessary to secure additional information from the point of contact. A model PPI questionnaire is available in the STRIPES Library

Below is a summary of when communications/exchanges with offerors related to PPI are either required or may be conducted:

If award is to be made without conducting discussions, offerors may be given the opportunity to clarify the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond.

[FAR 15.306(a) (2)]

If a competitive range is to be established, offerors shall be given the opportunity to address past performance information to which an offeror has not had an opportunity to respond, if the PPI is the determining factor preventing the offeror from being placed within the competitive range.

[FAR 15.306(b) (1) (i) and FAR 15.306(b) (4).]

If discussions are held, after establishment of a competitive range, discussion must include adverse past performance information to which the offeror has not yet had an opportunity to respond. [FAR 15.306(d) (3)] While this requirement may appear redundant to the requirements related to establishing the competitive range above, adverse PPI may become known to the Contracting Officer or may occur subsequent to the time of establishment of the competitive range.

**What is the Government's past performance information database and how does one go about using it?**

The Past Performance Information Retrieval System (PPIRS) is a web-enabled, government-wide application that provides timely and pertinent contractor past performance information to the Federal acquisition community for use in making source selection decisions. PPIRS assists Federal acquisition officials in making source selections by serving as a single source for contractor past performance data. Confidence in a prospective contractor's ability to satisfactorily perform contract requirements is an important factor in making best value decisions in the acquisition of goods and services.

PPIRS provides a query capability for authorized users to retrieve report card information detailing a contractor's past performance. Federal regulations require that report cards be completed annually by customers during the life of the contract. PPIRS functions as the central warehouse for performance assessment reports received from federal performance information collection systems.

Government access to PPIRS is restricted to those individuals who are involved in source selections. Contractors may view only their own data. Contractor access to PPIRS is gained through the Central Contractor Registration (CCR). Access the following internet address to log into PPIRS: <https://www.ppirs.gov/>.

**To what extent are evaluators required to evaluate all relevant past performance, even if such information is not submitted by offerors?**

According to the GAO, a common procedural mistake agencies make in evaluating past-performance is failing to consider "super-relevant" information. Generally, agencies are not required to consider all possible past-performance information when conducting an evaluation. Moreover, agencies are not required to contact all of an offeror's references listed in its proposal, and need not contact the same number of references for each offeror. Nevertheless, the GAO often deems some information to be "too close at hand" to be ignored during an evaluation of past-performance. In order to avoid this pitfall, evaluators must be sensitive to the existence of relevant past-performance information, and should err on the side of evaluating past-performance information rather than ignoring it. This applies not only to favorable information, but also to adverse information. If the information is relevant, it will likely be of value in acquiring a more accurate picture of the offeror's past-performance history, thus resulting in better past-performance evaluations. In light of GAO's concern about information that is "close at hand,"

evaluators should assure that adverse PPI for DOE contracts/subcontracts across the DOE complex is considered, regardless of whether the information was submitted by offerors.

## **TOPIC XV ORAL PRESENTATIONS**

This topic is a digest of the 1996 Office of Federal Procurement Policy Guidelines For The Use Of Oral Presentations. This digest provides the most salient aspects of these Guidelines.

The use of oral presentations is a technique which provides offerors with an opportunity to present information through verbal means as a substitute for information traditionally provided in written form under the cover of the offeror's proposal. Oral presentations can be used as a substitute for written proposals or can be used to augment written proposals. Oral presentations are subject to the same restrictions as written information, regarding timing [FAR 15.208] and content [FAR 15.306]. Its major use has typically been to permit evaluators to receive information on the key members of the offeror's team, the organizational structure, and how the contract will be managed, etc. In a number of cases, the evaluators have conducted the oral presentation in the form of an interview, probing for additional information, posing sample tasks or using other techniques to test the ability of the offeror's team.

Certain types of written proposal information, particularly in the technical and management areas, are costly to prepare and time consuming to evaluate. In addition, oral presentations avoid the use of lengthy written marketing pitches and essays. The use of oral presentations allows for greater communication between the government personnel and the offerors' key personnel and often can be used as essentially a "job interview" of the proposed key personnel. Using oral presentations can have the effect of greatly reducing procurement acquisition lead time and costs associated with the source selection process. These advantages are realized by both government and industry.

A list of the advantages is as follows:

- Can save significant procurement lead time;
- Can improve communication and the exchange of information between government and offerors;
- Can reduce government costs;
- Can reduce offerors' costs and increase competition;
- Can make customers feel more involved in contract selection and award; and
- Can improve ability to select the most advantageous offer.

There is not one best approach for using oral presentations. There are variations in the approach for oral presentations to be considered by the acquisition team when developing the oral presentation methodology. The acquisition team should consider the following when developing the oral presentation methodology:

- Media used to record the presentation;
- Restrictions on the extent and nature of material and media used in the presentation;
- The Government participants;
- The offeror's presentation team; and
- The amount of time permitted for the presentation.

Additional concerns to be considered are as follows:

- The influence of presentation mannerisms, as distinguished from technical content, on the evaluators' decisions;
- Exchanges between evaluators and presenters should be limited to assure these exchanges do not constitute discussions; and
- In some cases, the redundant effort involved in preparing the same material for both oral and written formats.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.102 (Oral Presentations)

FAR 15.208 (Submission, Modification, Revision and Withdrawal of Proposals)

FAR 15.306 (Exchanges With Offerors After Receipt of Proposals)

FAR 15.307 (Proposal Revisions); and

The Office of Federal Procurement Policy Guide For The Use Of Oral Presentations.

### **Issues**

#### **What instructions should be provided regarding oral presentations?**

#### **Proposal Preparation Instructions**

The instructions governing the oral presentation should encourage the offeror to not develop overly elaborate presentations or presentation material. The instructions for oral presentation should include the following:

- Description of the topics that the offeror must address and the technical and management factors that must be covered;
- Statement as to who the offeror is allowed to bring to the presentation;
- Statement concerning the total amount of time that will be available to make the presentation;
- Description of limitations on Government-offeror interaction during, and, if possible after, the presentation;

- Statement whether the presentation will constitute discussions as defined in FAR 15.306(d);
- Description and characteristics of the presentation site;
- Rules governing the use of presentation media;
- The anticipated number and types of positions of the Government attendees;
- Description of the format and content of presentation documentation, and their delivery; and
- Statement that the presentation will be recorded (e.g., videotaped which is required by GC).

The solicitation should require that, as part of the presentation, the offeror will provide a listing of names and position titles of all presenters and copies of all slides and other briefing materials that will actually be used in the presentation. It is preferable that such materials be provided to the evaluation team prior to the presentation to permit the evaluators to familiarize themselves with the information. The evaluation team may want to consider requiring offerors to provide such briefing slides as part of their proposal submission. Materials referenced in a presentation, but not an actual part of the presentation, must not be accepted, or used in, evaluations.

### **Attendance at Oral Presentations**

The attendees for oral presentations will vary from procurement to procurement based upon the size, scope and complexity. At a minimum, the SEB Chairperson, Voting Members, Contracting Officer, and Executive Secretary must attend. Although not required to attend, the Legal Advisor usually attends. The SEB Chairperson should determine which, if any, of the various advisors should attend. The Source Selection Official may elect to attend. However, attendees cannot pick and choose which oral presentations to attend. Attendance at one oral presentation, necessitates attendance at all oral presentations.

### **How should oral presentations be prepared for?**

#### **Initial Preparation**

The order of presenters must be determined. A lottery is most often used to determine the sequence of presentations by offerors. The time between the first and the last presentation should be as short as practicable to minimize any advantage to the later presenters.

The facility in which the presentation is to occur must be determined. In most cases the facility is one selected and controlled by the buying activity. However, nothing would preclude an oral presentation being given at an offeror's facility, although this is the least preferred option. It could be conducted at a Government facility or a neutral and convenient conference center.

The following considerations should be foremost when selecting a facility for the conduct of oral presentations:

- Make it comfortable for both the presenters and the Government evaluators. The room should be large enough to accommodate all of the participants, the recording equipment, lighting, audio-visual aids, and furniture.
- Make it accessible.
- Make it available, if possible, for inspection by the offerors prior to the time set for the actual presentation.

The solicitation should, to the extent practicable, describe the physical characteristics of the facility and resources available to the offeror. In addition, the solicitation should be clear as to what types of equipment will be available to the offeror for use in the presentation, what equipment, if any, should be provided by the offeror, and any prohibitions regarding equipment types and uses.

Prior to the presentation, the Contracting Officer should review the ground rules of the presentation session with the offeror such as:

- The total amount of time that will be available to make the presentation;
- Any limitations on Government-offeror interaction during the presentation;
- Information disclosure rules; and
- Housekeeping items.

Also, prior to the commencement of the presentation, the Contracting Officer should remind the Government participants of their responsibilities during and following the presentation. They should be advised that an oral presentation is procurement sensitive and that they may not discuss, within or outside the agency, (except among themselves) anything that occurred or was said at a presentation.

As a general rule, all of the Government evaluators should be present at every presentation. The Contracting Officer must attend and should chair every presentation. In a GAO case, the offeror protested that the agency erred in not having the SSO attend the presentation. The GAO stated it was unaware of any requirement that an SSO attend presentation sessions. However, if the SSO attends one oral presentation, the SSO should attend all oral presentations. The SSO should not, however, participate in any clarifications.

Presentations by the offeror should be made in person since, through the use of video conferencing, a measure of government control of the meeting may be diminished. Accordingly, the submission of video tapes or other forms of media should not be authorized and should be rejected.

In addition, it is strongly recommended that the presenters should be the actual key personnel who will perform or personally direct the work being described, such as project managers, task leaders, and other in-house staff.

There are two tools available to manage the time each offeror is allotted for the oral presentation. First, and most obvious, is the imposition of a firm time limit. Firm time limits for the presentation must be established in the RFP, and each offeror must be allotted the same amount of time. Second, time may be controlled by restricting the amount of presentation material that an offeror may use during the presentation. A combination of both a firm time limit and restrictions on information to control the time may be preferable. There is no single or ideal amount of time to be allotted. Using the complexity of the procurement requirement to determine the time needed for the oral presentation may not be a reliable indicator. Another factor to consider when determining the proper amount of time is the effect on both the presenters and the evaluation team. The longer the presentation goes on, the harder it is on both parties to stay focused on the presentation. Furthermore, by limiting the amount of time available for the presentation, sales pitches and theatrics can be minimized. The length of time spent on each part of the presentation should be left to the offeror's discretion. It is not generally advisable to limit the time of individual topics or sections within the presentation; that can be the responsibility of the presenter.

### **How should the oral presentation be handled?**

#### **The Presentation**

Open communication and dialog between the offeror and the Government are one of the primary benefits to using oral presentations. However, the nature and extent of information exchanges between the offeror and the Government evaluation team during such presentations is an issue that must be met head on. The rules established in regulation regarding exchanges with offerors during the course of the solicitation process must be watched carefully [FAR 15.306]. This can be especially important if you decide to have your presentations before you establish the competitive range or you are contemplating making an award without discussions. You do not want to inadvertently trigger the rules regarding discussions [FAR 15.306(d)].

The term "oral presentations" is not synonymous with "oral discussions" as defined in FAR 15.306. Oral discussions, as envisioned by the FAR, generally consist of verbal communications between the Government and an offeror following establishment of the competitive range, that provides an opportunity for an offeror to explain, supplement, or enhance written material previously provided to address evaluated deficiencies and significant weaknesses in the proposal, with the end objective being the submission of a revised proposal by the offeror. The FAR prescribes strict controls (see FAR 15.306, 15.306(d), and 15.307) over when, where, and to what extent, the Government can communicate with an offeror regarding its proposal. This is done in order to ensure fairness in the evaluation process. The result is a very rigid and somewhat unnatural communication process. As such, oral presentations, by their very nature can become problematic because of the concern about inadvertently triggering the rules regarding discussions. As stated earlier, restrictions on communications between the Government and the offeror should be addressed by the Contracting Officer to all parties prior to the commencement of the oral presentation. Such restrictions should be consistent with those prescribed at FAR 15.306.

For the above reasons, establishing the ground rules in the solicitation for exchanges during the presentation and reviewing them before the presentation is a must. However, limiting dialog to questions that merely repeat statements that may not have been heard by the evaluators makes little sense and adds little value in improving the understanding of the offeror's presentation. Evaluators may ask questions relating to understanding the oral presentation, but evaluators need to be very cautious about revealing whether the Government finds the presentation favorable or unfavorable or entering into discussions. A practical technique is for the evaluators to recess after the oral presentation and discuss the questions to be asked in consultation with the Contracting Officer and counsel. On the other hand, if you've already established the competitive range, the oral presentation may be the optimal setting for conducting discussions [FAR 15.306(d) & (e)].

Another significant area of concern is the record of the oral presentation. FAR 15.102(e) states that the Contracting Officer shall maintain a record concerning what the government relied upon to make a source selection decision. The method and level of detail is up to the agency and must be communicated to the offerors prior to commencement of the oral presentation. Some examples of records include video recording, audio recording, a written record, Government notes, and copies of briefing slides or presentation notes. GC-61 is strongly urging COs to video record all oral presentations.

In a GAO case, a protestor claimed that the presentation/discussion sessions had not been recorded. In this case, the contemporaneous record consisted of handwritten notes taken by the agency. The offeror did not provide the agency with any presentation materials during its presentation. The GAO ruled that given that "government notes" are specifically mentioned in FAR 15.102(e) as a permissible method of maintaining a record of oral presentations, and given the lack of any prejudicial disagreement between the parties as to what was said during the presentation, the protestor's complaint provides no basis to challenge the award. In DOE, the use of note-taking as a means of creating a record of the oral presentation is not recommended.

## **How should the oral presentation be evaluated?**

### **Evaluation**

There is no firm rule regarding the most appropriate time to evaluate the presentation. Some agencies have elected to perform the evaluation immediately upon conclusion of each presentation. Other agencies have performed the evaluations of presentations after all of the presentations have been made. In DOE, it is recommended that the oral presentations be evaluated immediately after each presentation is made. This is especially important if there are more than two or three offerors or if the oral presentations will last longer than an hour or two. If the latter approach is chosen, it is recommended that the evaluators caucus following each presentation to exchange reactions, summarize potential strengths and weaknesses, and verify perceptions and understandings.

## TOPIC XVI EXCHANGES WITH OFFERORS AFTER RECEIPT OF PROPOSALS

This topic discusses four types of exchanges with offerors: clarifications, communications, discussions, and negotiations. It is important that contracting officers understand the differences in these exchanges.

*Clarifications* are limited exchanges, between the Government and offerors that may occur when award without discussions is contemplated. If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

*Communications* are exchanges, between the Government and offerors, after receipt of proposals and before establishment of the competitive range. If a competitive range is to be established, these communications:

- (1) Shall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond; and
- (2) May only be held with those offerors whose exclusion from, or inclusion in, the competitive range is uncertain. These communications are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications may be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.

*Negotiations* are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions (In competitive acquisitions the terms “negotiations” and “discussions” are often used synonymously).

Contracting officers and source evaluation boards have to be careful that clarifications and communications do not rise to level of discussions or negotiations particularly during oral presentations. If clarifications or communications inadvertently become discussions or negotiations, the Contracting Officer should establish the competitive range and conduct discussions with all offerors in order to insure fair treatment of all offerors.

## **Weaknesses and Deficiencies:**

At times there has been some confusion over the difference between a proposal weakness, a significant weakness and a deficiency and whether or not the Contracting Officer was required to discuss all three of them with offerors in the competitive range.

A *deficiency* means a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that significantly increases the risks of unsuccessful contract performance to an unacceptable level (FAR 15.001).

A *weakness* means a flaw in the proposal that increases the risk of unsuccessful contract performance (FAR 15.001).

A *significant* weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance (FAR 15.001). A number of weaknesses within a criterion, when considered together based on the nature of the weaknesses, may constitute a significant weakness.

FAR 15.306(d)(3) requires the Contracting Officer to indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. The Contracting Officer also is encouraged to discuss other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. However, the Contracting Officer is not required to discuss every area where the proposal could be improved. In DOE procurements, it is recommended that all weaknesses identified in the competitive range report be discussed with offerors in addition to the FAR requirement to discuss deficiencies, significant weaknesses, and adverse past performance information.

## **Competitive Discussions/Negotiations**

Some contracting officers have restricted discussions with competitive range offerors to deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. However the discussions should also be used to make sure that the Government team fully understands what the offeror is proposing to provide and that the offeror fully understands what the Government requirements are. In addition the latest rewrite of FAR 15.306(d)(4) allows negotiations that more closely resemble what private industry can do in acquiring goods and services. The Government may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased. In addition, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums. Negotiations with offerors in the competitive range may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price,

schedule, technical requirements, type of contract, or other terms of a proposed contract. These negotiations provide offerors more of an opportunity to explain what they can provide and allow the Government to more freely explain what proposal features would better fit its needs. If, as a result of negotiations with one offeror, the Government realizes that a change in the solicitation and contract requirements would lead to more advantageous proposals, the solicitation should be amended to reflect the new or changed requirement(s). It should be noted that there are still certain restrictions on discussions and negotiations as discussed in the next topic, but contracting officers, while complying with these limitations on exchanges, should utilize this expanded authority to negotiate proposals and contracts which are in the best interests of the Government.

A recommended approach to the conduct of discussions is a combination of written and oral discussions as follows:

The Government provides to the offerors in writing (i) the weaknesses, significant weaknesses, and deficiencies of the proposal and (ii) any other questions that might clarify any ambiguities or help the Government in its understanding of the proposal;

The offerors submit a revised, written proposal based on the written weaknesses, significant weaknesses, deficiencies, and questions provided by the Government;

The Government and the offerors conduct oral discussions, as necessary, after the Government reviews the revised proposal; and

The offerors submit a final proposal revisions in accordance with FAR 15.307.

### **Limits on Exchanges**

FAR 15.306(e) states that Government personnel involved in the acquisition shall not engage in conduct that:

- (1) Favors one offeror over another;
- (2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;
- (3) Reveals an offeror's price without that offeror's permission;
- (4) Reveals the names of individuals providing reference information about an offeror's past performance; or
- (5) Knowingly furnishes source selection information in violation of 3.104 and 41 U.S.C. 423(h)(1)(2).

## **Competitive Cost/Price Discussions/Negotiations**

The Contracting Officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable (FAR 15.306(e)(3) and 41 U.S.C. 423(h)(1)(2)). However, the release of internal Government documents such as audit reports or independent Government cost estimates is not recommended as good negotiation strategy.

When negotiations are conducted, the Contracting Officer needs to discuss the specific cost or price proposed with the offeror to the extent necessary to determine the reasonableness of the cost or price. FAR 15.404-1(d)(2) requires that cost realism analyses shall be performed on cost reimbursement contracts to determine the probable cost of performance for each offeror. Cost realism analyses may also be used on competitive fixed-priced incentive contracts or, in exceptional cases, on other competitive fixed-price type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors proposed costs have resulted in quality or service shortfalls [see FAR 15.404-1(d)(3)]. If there is a significant cost/price spread in competitive offers, it may be an indication that the offerors may not fully understand the Government's requirements. In these circumstances the Contracting Officer may need to obtain additional information other than cost and pricing data from each offeror, analyze the data, and conduct fact finding with the offerors in order to develop a most probable cost and/or to assure that all offerors understand the requirement and that the proposed cost/price is fair and reasonable. Even in a competitive fixed price environment on a complex or one of kind procurement, if there is a significant price spread in the offerors and all the offerors are proposing the same technology, the Contracting Officer should attempt through discussions to understand what the major cost drivers for the price spread differences are and ascertain whether or not an offeror may be trying to "buy-in" and planning to recover after award.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.306 (Exchanges with Offerors after Receipt of Proposals); and  
FAR 52.215-1 (Instructions to Offerors--Competitive Acquisition)

### **Issues**

#### **What purpose should clarifications serve?**

1. To learn the relevance of past performance information
2. To allow an offeror to respond to adverse past performance information if the offeror has not previously had that opportunity

3. To resolve minor or clerical errors such as:
  - Obvious misplacement of decimal point in proposed price or cost information
  - Obviously incorrect prompt payment discount
  - Obvious reversal of price f.o.b. destination and f.o.b. origin or
  - Obvious error in designation of the product unit
4. To resolve issues of offeror responsibility or acceptability of the proposal as submitted.

The key word in applying clarifications is "limited" communication. Clarifications are permitted to give the offeror an opportunity to make clear and obvious key points about the proposal as originally submitted. The offeror may not revise, expand (by adding new information that enhances the proposal), or amplify its proposal. The intent of clarifications is to remove obvious ambiguity, not to permit the offeror to improve its position by drawing inferences from the Government's questions/information gathering exchanges and using those inferences to shade the meaning of the original proposal so that it becomes more attractive and more beneficial to the Government.

Of course, any opportunity for revision or enhancement must be made available to all offerors with proposals deemed acceptable for inclusion in a competitive range. This must only occur upon the Contracting Officer's determination of the competitive range.

### **What are communications?**

Communications are exchanges between the Government and offerors after receipt of proposals with the purpose of establishing a competitive range. Communications are authorized only when the offeror is not clearly in or clearly out of the competitive range. In other words, communications are used to determine whether an offer should be included in the competitive range.

Specifically, communications:

Must be held with offerors whose past performance information is the determining factor that would prevent them from being in the competitive range. Adverse past performance must be addressed if the offeror has not had a prior opportunity to respond may be held with other offerors whose exclusion from or inclusion in the competitive range is uncertain.

### **What should communications be used to accomplish?**

Enhance the Government's understanding of the proposal (again, in order to determine whether to include the proposal in the competitive range):

- May address ambiguities of concern in the proposal (perceived deficiencies, weaknesses, errors, obvious omissions or mistakes),
- May address information relating to relevant past performance,
- Allow reasonable interpretation of the proposal (but not to enhance or revise it), and

- Facilitate the Government's evaluation process

As stated previously, neither clarifications nor communications are permitted to be discussions in the pre-competitive range phase. Once a competitive range has been established, communications will be expanded to include discussions and may also include additional clarifications.

### **What are the limitations on pre-competitive range communications?**

Pre-competitive range communications and/or clarifications may not allow the offeror to:

- Cure proposal defects or material omissions.
- Materially alter the technical or cost elements of the proposal.
- Otherwise revise the proposal.

Communications and/or clarifications should not alter the Government evaluators' evaluation of the proposal such that the offeror's proposal has effectively been revised as a result of such communications and/or clarifications.

Should any of the above circumstances occur, discussions have ensued. The Contracting Officer must then establish the competitive range with all offerors and hold meaningful discussions with all offerors. This could lead to holding discussions with offerors that submitted proposals that might have otherwise been excluded from the competitive range. Accordingly, it is important not to let pre-competitive range communications stray into discussions.

### **How are clarifications and communications appropriately used?**

Clarifications and communications are effective tools when used appropriately and well documented. They allow some limited exchanges with offerors to facilitate the Government's decisions concerning award without discussions or inclusion in the competitive range. Invoking either clarifications or communications with one offeror does not require exchanges with all offerors - if they are handled correctly and documented carefully. Care needs to be taken by the Contracting Officer to ensure that the exchanges are within the limits defined in FAR 15.306 (a) and (b) and that no offeror is allowed to revise its proposal as the result of these types of exchanges.

As with all elements of the source selection/negotiation process, clarifications and communications must be carefully documented by the Contracting Officer to insure that there is no appearance that one offeror is favored over another. The nature and extent of the exchanges needs to be set out clearly for the record.

### **When are negotiations/discussions appropriate to be conducted?**

In preparing solicitations, a determination must be made as to whether the solicitation will indicate that negotiations/discussions will be held or that award without negotiations/discussions

are intended. In making this determination there are several factors that should be considered. The degree to which the factors below are present may indicate the need for determining in advance of issuing the solicitation that negotiations/discussions should be conducted.

- Complexity of the requirement necessitates assurance that the offeror understands the requirement and the Government understands the proposal,
- Alternative technical approaches/solutions are likely,
- Offerors will propose a Performance Work Statement (PWS),
- Term of the contract,
- Complex cost information is to be provided in the proposal,
- Advance agreement is necessary on certain costs,
- Proprietary processes will likely be proposed that will require agreement on ownership and use,
- Technical information from the offeror's proposal will likely need to be incorporated into the contract, and
- Unique contract provisions are included that will need to be negotiated with individual offerors.

Under certain circumstances negotiations/discussions are appropriate to be conducted even though the solicitation indicated that it was the Government intent to award without discussions. These circumstances are addressed in Part XI, Award Without Discussions.

## **TOPIC XVII PRICING, ANALYSIS AND COST REALISM**

Price means cost plus any fee or profit applicable to contract type. The price or cost to the Government must be evaluated in every source selection [FAR 15.304(c)(1)]. The Contracting Officer must purchase supplies and services at fair and reasonable prices. In all procurements, the Contracting Officer is responsible for evaluating the reasonableness of offered prices [FAR 15.404-1(a)(1)].

To determine the reasonableness of a price, the Contracting Officer may perform either price analysis or cost analysis. If the price is based on adequate price competition, generally no additional data from the offeror is necessary to determine the reasonableness of price, but the Contracting Officer should request data to determine the cost realism of competing offers or to evaluate competing approaches. In cost-reimbursement contract source selections, the Contracting Officer must perform a cost realism analysis to determine the probable cost of performance of each offeror and use it for purposes of evaluation to determine best value. The Contracting Officer must document the evaluation of cost or price [FAR 15.305(a)(1)].

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.401 (Definitions)

FAR 15.403 (Obtaining Cost or Pricing Data)

FAR 15.404-1 (Proposal Analysis Techniques); and

## Issues

### Price Analysis

Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. The Contracting Officer is required to perform a price analysis on every procurement to ensure that the overall price to be included in the contract is fair and reasonable. In the competitive negotiation process, price analysis is the preferred technique for determining price reasonableness because it permits the Contracting Officer to make the determination without a detailed analysis of the cost and profit elements of each proposal using cost analysis techniques. DOD's Contract Pricing Reference Guides available at the following web site are excellent resources for conducting cost and price analysis:

<http://www.acq.osd.mil/dpap/contractpricing/index.htm>

Price analysis is generally based on data obtained from sources other than the prospective contractor. This data is gathered by the Government negotiating team from as many sources as possible. Generally, to assure that the price being included in the contract is reasonable, a sound price analysis will be based on several different types of data.

The Contracting Officer may use various price analysis techniques to a proposed price is fair and reasonable. One or more of the following techniques, or other techniques may be used to perform price analysis:

- (1) Comparison of proposed prices received in response to the solicitation. Caution should be used when applying this technique, however, as all prices proposed may be unreasonable.
- (2) Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity and the reasonableness of the previous prices can be established. A determination must be made that ensures that the price that is being compared to the proposed price has been determined to be fair and reasonable, either through presence of adequate price competition or some other manner such as cost or price analysis.
- (3) Use of parametric estimating. This analysis tool is used to identify inconsistencies in pricing that require further review. It is a technique used to estimate a particular cost or price by using an established relationship with an independent variable. Steps to follow when using this technique are:
  - Define the dependent variable (e.g. cost dollars, hours, and so forth.)
  - Select the independent variable to be tested for developing estimates of the dependent variable.

- Collect data concerning the relationship between the dependent and independent variables.
- Explore the relationship between the dependent and independent variables.
- Select the relationship that best predicts the dependent variable.
- Document your findings.

(4) Comparison between competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(5) Comparison of proposed prices with independent Government cost estimates.

Analysis of pricing information provided by the offeror is predicated on having sufficient information to determine the reasonableness of the proposed price. When there is insufficient information available from other sources, information must be requested from the contractor that is sufficient to determine a fair and reasonable price. Care must be taken to ensure that you request only the required information needed. Certified cost and pricing data should not be requested unless required by regulation or determined necessary by the contracting officer.

## **Cost Analysis**

Cost analysis is: (1) the review and evaluation of the separate cost elements and profit/fee in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data); and (2) application of judgement. Cost analysis is used to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

A cost analysis must be performed anytime that cost or pricing data is required [FAR 15.403-(4)(a)(1) and FAR 15.404-1(a)(3)]. Cost or pricing data is not obtained when there is adequate price competition. Cost analysis may also be used to evaluate other than cost or pricing data. [FAR 15.404-1(a)(4)]. When cost analysis is required, the proposal must be analyzed to determine what costs to use in developing your negotiation objective and what price you determine to be fair and reasonable. When using cost analysis a price analysis should also be performed to verify that the overall price is fair and reasonable.

The Contracting Officer may only consider allowable estimated costs in performing cost analysis. There are several requirements for cost allowability: reasonableness; allocability; compliance with Cost Accounting Standards (CAS), if applicable; compliance with the terms of the contract (FAR 31.201-2.), and the limitations of FAR Subpart 31.2. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable if it (a) Is incurred specifically for the contract; (b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or (c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

Below are the various categories of cost generally analyzed in a cost analysis:

**Direct Costs:** Those costs that are incurred specifically for the contract are identified as direct costs. These costs take the form of material, labor, tooling, subcontract costs and other direct costs. There are two aspects of these costs that must be analyzed, volume or quantity and unit price. As an example, the amount of labor hours, rates and skill mix proposed must be analyzed to determine if they are reasonable to perform the contract.

**Indirect Costs:** Indirect costs are costs that cannot practically be assigned directly to the production or sale of a particular product. In accounting terms such costs are not directly identifiable with a specific cost objective. .

The term indirect cost covers a wide variety of cost categories and the costs involved are not all incurred for the same reasons. A firm may have as few as one or many cost accounts. In general, indirect cost accounts fall into two major categories:

**Overhead:** These are indirect costs incurred primarily to support specific operations. Examples include: material overhead; manufacturing overhead; engineering overhead; field service overhead; and site overhead.

**General and Administrative Costs (G&A):** These are management, financial, and other expenses related to the general management and administration of the business unit as a whole. These costs may be either incurred by or allocated to the general business unit. Allocation occurs when home office expenses are allocated to a division as a business unit. Examples of G&A costs include; salary and other costs of the executive staff of the corporate or home office; salary and other costs of such staff services as legal, accounting, public relations, and financial offices; selling and marketing expense.

## **Cost Realism**

Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements (a) are realistic for the work to be performed, (b) reflect a clear understanding of the requirements, and (c) are consistent with the unique methods of performance and materials described in the offeror's technical proposal. The cost realism analysis incorporates the results from the cost analysis and the technical evaluation of cost to determine the probable cost. Cost realism analysis must be performed on all cost-reimbursement contracts to determine the probable cost of performance for each offeror. The probable cost may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from an offeror's proposal. Probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis. The probable cost is used for the purpose of evaluation to determine the best value. [FAR 15.404-1(d)] Cost realism analysis may be used on competitive fixed-price type contracts, but offered prices may not be adjusted.

## **Independent Government Cost Estimate (IGCE)**

An independent government cost estimate (IGCE) is the Government's estimate of the resources and the projected cost of the resources a contractor will incur in the performance of a contract. These costs include direct costs; such as labor, material, supplies, equipment, or transportation and indirect cost; such as overhead, general and administrative (G&A) expenses, fringe benefits, as well as profit or fee.

An IGCE is required for every procurement action in excess of the simplified acquisition threshold. The IGCE is usually developed by the Program during acquisition planning.. As discussed above, the IGCE can be used by the Contracting Officer when performing price analysis to determine a price fair and reasonable.

## **Technical Analysis or Evaluation of Cost**

A technical analysis or evaluation of the cost proposal must be performed in order to complete a cost realism analysis and determine the probable cost. Personnel having specialized knowledge, skills and experience in engineering, science, or other technical disciplines perform a technical analysis of certain aspects of the cost proposal including: compliance with the delivery schedule, proposed types and quantities of materials, labor, processes, special tooling, facilities, the reasonableness of travel, training, scrap and spoilage, etc. [FAR 15.404-1(e)] DOE Acquisition Guide Chapter 15.4-4 contains a more detailed discussion of technical evaluation of cost.

## **Fair And Reasonable Price**

Fair and reasonable is defined as a conclusion that. a price is fair to both parties to the contract, considering the promised quality and timeliness of contract performance. More specifically, a fair and reasonable price is one that represents the value of the product or service to you, the buyer. To reach that conclusion, you must ask yourself, is it worth this price? If your answer is yes, you have a fair and reasonable price.

## **TOPIC XVIII COST / TECH TRADEOFFS UNDER "BEST VALUE" PROCUREMENTS**

Under a "Best Value" continuum there is a recognition that the Government always seeks to obtain the best value in negotiated acquisitions using any one, or a combination, of source selection approaches, and that the acquisition should be tailored to the requirement. At one end of this continuum is the low priced technically acceptable strategy, and at the other end is a process by which cost or price can be traded off against other factors such as past performance and technical considerations to identify the proposal that provides the Government with the overall best value. Tradeoffs are used when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

A best value analysis lends itself to determining the lowest cost alternative. Best value procurements involve tradeoffs between cost and other factors such as technical and past performance--For example, if the government's requirement needs are to increase efficiency and thereby reduce the agency's operating cost, the purchase of a high end computer at a high price may a better value than a low end computer at a low price in achieving these requirements.

Establishing the evaluation scheme allowing for a cost/technical tradeoff decision allows for a great deal of discretion and the exercising of judgment by the SSO.

### **Applicable statutes, procurement regulations, or small business regulations**

Federal Acquisition Regulation (FAR) 15.101 (Best value continuum)  
FAR 15.101-1 (Tradeoff Process) and  
FAR 15.308 (Source Selection Decision)

### **Issues**

#### **What are the steps in performing a cost/tech tradeoff?**

The RFP should contain language which establishes the procedures that allow award to other than the lowest price offeror or other than the highest technically rated offeror. After establishing all factors to be evaluated and their relative importance, the RFP must, "state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price". See FAR 15.101-1(b)(2).

An evaluation of all the technical and management criteria should be performed in accordance with the evaluation scheme provided for in the RFP. It is important for the source evaluation team to develop written narratives which describe the strengths and weaknesses of each offer as they are important tools in making and documenting a tradeoff decision.

The price the Government will use in making a tradeoff decision should be defined in the RFP. For a fixed price offer, this will usually be the offered price. For a cost reimbursable contract, this must be calculated as a "most probable cost" under cost realism procedures.

If the Government receives an offer which, when evaluated, offers both the lowest evaluated price and the highest rated technical/management offer, no tradeoff analysis is required. If however, that is not the case, the SSO should determine whether the value of technical and management differences between higher rated proposals justifies paying the cost differential between the lower most probable cost/lower technically rated proposals. The ability to differentiate meaningfully among the proposals is very important in making this decision.

## What documentation is needed for a tradeoff decision?

### Documentation of Tradeoff Decision

In accordance with FAR 15.308, Source Selection Decision, "The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSO, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision".

The agency files should contain documentation which demonstrates that its evaluation of the offerors responses to an RFP was reasonable and in accordance with the criteria outlined in the RFP. In a protest, given the discretion granted to agencies in conducting best value procurements, disappointed offerors generally will have only two legal bases for challenging an agency's cost/technical tradeoff analysis-first, that the agency's underlying cost and technical evaluations that formed the basis for the cost/technical tradeoff are inconsistent with the terms of the solicitation or unreasonable, and second that the cost/technical tradeoff decision was unreasonable. There is no legal requirement that the agency quantify any cost/technical tradeoffs in dollars. An agency should use whatever evaluation approach (e.g., narrative, quantification) that best meets its needs. For example, agencies can use narrative explanations of its cost/technical tradeoff so long as it is reasonable and consistent with the criteria identified in the RFP. Some examples of rationale for the business judgments and tradeoffs made by the SSO include, but are not limited to, the amount of cost differential, project or service criticality, the value to DOE of the higher level of performance, and potential consequences to the DOE in the event of poor performance. The determining factors should be described in a clear and convincing manner, providing justification as to how they relate to anticipated contract success.

Cost/technical tradeoff is not based on the % difference in technical scores and probable cost. Rather, it must be based on subjective analysis of the strengths and weaknesses versus the probable cost difference. In the example below when A is selected (as the highest rated proposal), a cost/technical tradeoff must be made between A and B and A and D (B and D being lower cost proposals). If B is selected (as the second highest rated proposal), then a cost/technical tradeoff is made between B and D. If D is selected (as the lowest cost proposal) a cost/technical tradeoff is not necessary since D is the lowest cost proposal. However, in all instances in which the evaluation criteria states that technical is more important than cost and the selected offeror is not the highest rated, the selection decision must document the reasons that the higher technically rated proposal is not worth the cost differential. This is necessary to demonstrate that the selection properly considered the weighting of technical in relation to cost.

	<u>*Offeror Technical Score</u>	<u>Probable Cost</u>
A	875	\$76M
B	795	68M
C	635	83M
D	620	58M

\* In this example, the technical proposal is significantly more important than cost.

## **TOPIC XIX AWARD WITHOUT DISCUSSIONS**

Part 15 of the FAR allows contract award without discussions with offerors if the solicitation states that the Government intends to evaluate proposals and make award without discussions [FAR 15.306(a)(3)]. Clarifications are limited exchanges between the Government and offerors that may occur without jeopardizing the ability to award without discussions. Additional information on the nature of clarifications versus discussions is presented in Topic XVI, Exchanges with Offeror After Receipt of Proposals.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.306(a)(3) (Clarifications and Award Without Discussions)

FAR 52.215-1 (Instructions to Offerors - Competitive Acquisition)

10 U.S.C 2305(b)(4)(A)(ii) and 41 U.S.C.253b(d)(1)(B)

### **Issues**

#### **What is DOE's position regarding award without discussions?**

Contracting Officers should, to the maximum extent practicable, award contracts without discussions. However, consideration should be given to such factors as the nature and complexity of the requirement, the evaluation criteria, and the extent of cost or pricing information to be evaluated (See Topic XVI, Exchanges With Offerors After Receipt of Proposals for considerations for discussions).

#### **Why make an award without discussions?**

Unnecessary discussions may add weeks to procurement lead time. In addition, conducting unnecessary discussions adds unnecessary time and cost burdens to offerors.

#### **What are the guidelines regarding award without discussions?**

Application of the following guidelines will increase the likelihood of evaluating proposals and making awards without discussions.

Evaluation factors must be specific to the needs of the program and the statement of work in the solicitation as opposed to using generic factors that can be applied to many different types of procurements.

Information that offerors are required to submit for evaluation must be closely tied to the evaluation factors. Solicitation instructions for submission of information must be specific and in sufficient detail so that proposals submitted by responsive offerors will contain all of the information necessary for evaluators to clearly assess, in accordance

with the evaluation factors, the offeror's strengths, weaknesses and risks in performance of the prospective contract.

The solicitation should state that any proposed deviation from the terms and conditions in the solicitation may make the offer unacceptable for award without discussions, and that the Government may make an award without discussions to another offeror that did not take exception to the terms and conditions of the solicitation.

The solicitation must state that the Government intends to evaluate proposals and make award without discussions. This language is contained in FAR clause 52.215-1 without alternates. Only in good faith should the Government state its intention to award without discussions. If a solicitation contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so must be documented in the contract file.

### **What are the guidelines for conducting discussions?**

See Topic XVI Exchanges With Offerors After Receipt of Proposals. Solicitations should not contain provisions that notify offerors that award will be made without discussions when the Government's believes discussions are necessary. However, when solicitations include the provision stating that it is the Government's intent to award without discussions, there are some instances that subsequently cause discussions to be appropriate. After evaluation of proposals, the degree to which the following conditions are present should be considered in determining whether discussions are necessary:

Could the lower-priced proposal become the higher technically rated proposal and provide the best value to the Government (degree to which weaknesses or deficiencies are correctible); if discussions are held, might the result produce a different basis (Government's understanding and evaluation of proposals) upon which the SSO would make a decision; the highest rated technical proposal has deficiencies (either in the offer or the technical proposal) or major weaknesses; significant probable cost adjustments are made which may be evidence that the offeror doesn't understand the requirements, the PWS is not well defined, or the Government's understanding of the work requirements differ from the offeror; the cost proposal contains costs, either allowable or unallowable, that require mutual agreement prior to award, and significant differences exist between the Government's estimate to perform the work and some or all of the offerors' proposals.

## **TOPIC XX CONTENTS OF AN EVALUATION REPORT**

The FAR requires that the evaluation of the relative strengths, deficiencies, and significant weaknesses, and risks of proposals be documented in the contract file, [FAR 15.305(a)]. The content of this evaluation should be in the form of a report that definitively and comprehensively reflects the Government's evaluation consistent with the evaluation criteria stated in the solicitation. Furthermore, the report should accurately reflect the deliberations of the Source Evaluation Board or the Technical Evaluation Committee (SEB/TEC), and be consistent with the source selection plan

The evaluation report template in the STRIPES Library is the required format for evaluation reports. The selection and use of these areas outlined in the SEB Report template must be consistent with the nature of the specific proposals being evaluated and the particular situation of the individual acquisition. Some of these areas will only be applicable depending on the circumstances of the acquisition, e.g., establishing the competitive range, award without discussions, acquisition strategy, and earned value management system. The subject areas should be used, as appropriate, for both the initial evaluation report (competitive range report) and the final evaluation report. The individual areas should be included in the main body of the report, but some information or reports may be more appropriate for inclusion as an attachment to the report.

### **Applicable Regulations**

FAR 15.305 (Proposal Evaluation) and  
FAR 15.308 (Source Selection Decision)

### **Issues**

#### **What are the guiding principles for developing an evaluation report?**

Develop concise and comprehensive documentation that reflects the Government's overall evaluation of proposals.

The evaluation report becomes the official record documenting the logic and rationale used to arrive at the evaluation and ratings. The evaluation report must as a minimum contain the relative strengths, weaknesses, deficiencies, and other considerations of each proposal evaluated against the stated evaluation criteria contained in the solicitation. (Depending on the requirements of the Source Selection Plan, the evaluation report should include the significant strengths, strengths, weaknesses, significant weaknesses, and deficiencies.) Include scores, adjectival ratings, and relative rankings of offerors in the evaluation report. The level of detail of the evaluation documentation is dependent on the nature, scope, and complexity of the acquisition. Evaluated strengths, weaknesses, and deficiencies must be addressed in sufficient detail to support the rating or ranking given. When composing the text for strengths, weaknesses, and deficiencies, include the following aspects: (1) what is proposed; (2) what is the

Government's assessment, i.e., good or bad/strong or weak; (3) why is it good or bad, i.e., what is the effect of what is proposed; and (4) how does it relate to the evaluation criteria.

The report should reflect the process used to evaluate proposals (consistent with the source selection plan).

The evaluation report should incorporate, attach, or reference all relevant evaluation information upon which the panel or board used to arrive at its consensus evaluation, e.g., audit reports, technical evaluation reports, etc.

If discussions were held, the report should address how proposals changed from initial to final revised proposals and how the evaluations changed – this includes strengths, weaknesses, deficiencies, cost/fee, and most probable cost determination.

The report should provide sufficient information so that the SSO can clearly understand the area being evaluated and how it relates to the stated evaluation criteria. Provide information that helps the SSO appreciate distinctions among proposals and the relative significance of those distinctions.

Develop documentation which the Government can use as a basis for debriefing unsuccessful offerors.

Consider that the evaluation report may be reviewed by a third party, e.g., GAO or a court, and the report needs to be very definitive as to its conclusions reached and the basis for such conclusions.

**For the complete SEB Report template see the STRIPES Library.**

## **SEB Report Outline**

### **I. EXECUTIVE SUMMARY**

- a. Description of Acquisition
- b. Proposals Received
- c. Summary of Evaluation Results
- d. Competitive Range Determination or Award Without Discussions
- e. Special Considerations

### **II. SOURCE SELECTION OFFICIAL AND SOURCE EVALUATION BOARD**

- a. Source Selection Official
- b. SEB Voting Members
- c. Advisors
- d. Ex-officio Members

### **III. BACKGROUND**

- a. Acquisition Strategy
  - i. Procurement history
  - ii. Development of acquisition strategy
  - iii. Information exchanges with industry
  - iv. Approval of acquisition strategy
- b. Funding Profile
- c. Acquisition Plan
- d. Draft Request for Proposal (RFP)
- e. Pre-solicitation Conference and Site Tours
- f. One-On-One Meetings
- g. Source Selection Plan (SSP)
- h. Request for Proposal
- i. Pre-proposal Conference and Site Tours
- j. Chronology of Major Events

### **IV. EVALUATION METHODOLOGY**

- a. Qualification Criteria
- b. Evaluation Criteria
- c. Overall Relative Importance of Evaluation Criteria
- d. Basis For Contract Award
- e. Methodology Used to Evaluate Proposals
- f. Rating Considerations

## **V. DISCUSSIONS WITH OFFERORS (if applicable)**

- a. Discussions and Final Revised Proposals
  - i. Offeror A
    - 1. Conduct of Discussions
    - 2. Major Issues Discussed
    - 3. Final Revised Proposal
    - 4. Resolution of Initial Proposal Weaknesses and Deficiencies
  - ii. Offeror B
    - [Same format as for offeror A above]*

## **VI. EVALUATION RESULTS – VOLUME I, OFFER AND OTHER DOCUMENTS**

- a. Completeness of Offer
- b. Performance Guarantee
- c. Small Business Plan
- d. Earned Value Management System (if applicable)
- e. Corporate Board of Directors
  - i. Offeror A
  - ii. Offeror B

## **VII. EVALUATION RESULTS – VOLUME II, TECHNICAL, MANAGEMENT, AND BUSINESS PROPOSAL**

- a. TABLE – Summary of Technical, Management, and Business Proposal Evaluation Results
- b. Evaluation Criterion 1 – XXXXXX
  - i. Criterion
  - ii. RFP Proposal Submission Instructions (section L) for Criterion 1
  - iii. TABLE – Ratings -
  - iv. Offeror A Rating Discussion
    - 1. Offeror A – Strengths/Weaknesses/Deficiencies
    - 2. Significant Strengths
    - 3. Strengths
    - 4. Weaknesses
    - 5. Significant Weaknesses
    - 6. Deficiencies
  - v. Offeror B Rating Discussion
    - 1. Offeror B – Strengths/Weaknesses/Deficiencies
    - 2. Significant strengths
    - 3. Strengths
    - 4. Weaknesses
    - 5. Significant weaknesses
    - 6. Deficiencies
- c. Evaluation Criterion 2– XXXXX

*[Repeat same structure of information as Criterion 1 above for all non-cost criteria, e.g., organizational structure and key personnel, ES&H, experience, past performance, etc.]*

## **VIII. EVALUATION RESULTS – VOLUME III, COST AND FEE PROPOSAL**

- a. TABLE I – Overall Summary of Cost and Fee Proposal Evaluation Results
- b. TABLE II – Cost Element Summary of Cost Evaluation Results
- c. TABLE III – WBS Summary of Cost Evaluation Results (if applicable)
- d. Evaluation Information
  - i. Evaluation Criteria
  - ii. RFP Instructions for Cost Proposal
  - iii. Independent Government Cost Estimate (IGCE)
  - iv. Technical Evaluation of Cost
  - v. Audit Assistance
  - vi. Cost Element Evaluation and Probable Cost Report
- e. Evaluation of Cost and Fee – Offeror A
  - i. Adequacy of Proposal for Evaluation
  - ii. Evaluation of Cost
    - 1. TABLE - Summary of Cost and Fee Proposal Evaluation by Cost Element
    - 2. Evaluation of Cost Elements
      - a. Direct Labor
        - Amount proposed [hrs/\$] and basis of estimate
        - SEB evaluation [hrs/\$]
      - b. Fringe Benefits
        - Amount proposed and basis of estimate
        - SEB evaluation
      - c. Indirect Rates
        - Amount proposed and basis of estimate
        - SEB evaluation
      - d. Subcontracts
        - Amount proposed and basis of estimate
        - SEB evaluation
        - Percentage Subcontracting
      - e. Other Direct Costs
        - Amount proposed and basis of estimate
        - SEB evaluation
      - f. Transition Cost
        - Amount proposed and basis of estimate
        - SEB evaluation
      - g. Escalation
        - Amount proposed and basis of estimate
        - SEB evaluation
  - iii. Evaluation of Fee

1. TABLE – Fee Proposed and Percentage of Cost
2. Narrative discussion
- iv. Funding
  1. TABLE – Comparison of Proposed Cost and Fee and Probable Cost and Fee to Funding Profile
  2. Narrative discussion
- f. Evaluation of Cost and Fee – Offeror B

## **IX. OTHER CONSIDERATIONS FOR AWARD**

- a. Organizational Conflicts of Interest
- b. Foreign Ownership, Control, and Influence (FOCI)
- c. Financial Capability
  - i. Offeror A
  - ii. Offeror B
- d. Contractor Responsibility
- e. Inverted Domestic Corporation
- f. Equal Employment Opportunity Pre-Award Clearance
- g. Excluded Parties List System

## **X. APPENDICES**

- a. Technical Approach and Other Technical Areas
- b. Organizational Structure
- c. Listing of Individual Key Personnel and Summary of Experience and Qualifications
- d. Small Business Subcontracting Plan Goals
- e. Relevant Experience
- f. Past Performance
  - i. Past performance questionnaire data.
  - ii. ES&H performance indicators in comparison to DOE and industry averages and industry average.
  - iii. Accomplishment of small business goals.
- g. Cost and Fee
- h. Competitive Range Determination (for final SEB Report)

## **TOPIC XXI SOURCE SELECTION OFFICIAL (SSO) DECISION DOCUMENTATION**

Proper documentation of the entire Source Selection Process is a critical aspect of source selection that can seriously affect the success of the procurement.

The SSO decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSO may use reports and analyses prepared by others, the source selection decision shall represent the SSO's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any

business judgments and tradeoffs made or relied on by the SSO, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

The source selection process requires proper documentation. Proper documentation can greatly assist the SSO in understanding the rationale employed by the evaluation team and give confidence to the SSO that the findings of the Source Evaluation Board (SEB) were consistent with the stated evaluation criteria and source selection plan and are reliable. The documentation can also demonstrate to any third-party forum that the evaluation is performed in a fair and honest manner and in a manner consistent with the solicitation. Also, a properly documented record will greatly assist those called on to justify the selection decision. A Source Selection Decision template is available in the STRIPES Library.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.308 (Source Selection Decision)

### **Issues**

#### **What documentation should be used to support the selection decision?**

FAR 15.308 requires that the "documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the [Source Selection Official], including benefits associated with additional costs.

In ITT Federal Services International Corp., Comp. Gen. Dec. B-283307.2, Nov 3, 1999, the Comptroller General has interpreted this requirement as follows:

ITT contends that the selection decision document here is inadequate, on its face, to support the cost/technical tradeoff it purports to make. Where a cost/technical tradeoff is made, the selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, "including benefits associated with additional costs." Federal Acquisition Regulation (FAR) sect. 15.308; Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD para. 61 at 5. The selection decision document here fails to meet the standard set forth in the FAR for explaining the rationale for tradeoffs that lead to incurring of additional costs. As quoted above, the document first concludes that overall the proposals were technically equal, then that CSA's costs were reasonable, and that the quality of CSA's proposal outweighs its higher cost. Not only are these findings inconsistent, but there is no explanation of the benefits associated with the allegedly higher costs of the CSA proposal.

In the above case, the protest was sustained and the decision recommends, in part, that the agency perform a new best value determination.

The SEB must bear in mind that while the SSO has a great deal of discretion in making the source selection decision, he/she must first have a full understanding of the evaluations. For this reason the SSO must be presented with sufficient information on each of the competing offerors and their proposals in order to make a comparative analysis and arrive at a rational, fully supportable selection decision. Narrative statements serve as the most important part of the documentation supporting the decision. The selection decision must show the relative differences among proposals and their strengths, weaknesses and risks in terms of the evaluation factors. Each of these is an essential part of providing adequate support for the ultimate selection decision. Narrative statements serve to communicate specific information concerning relative advantages or disadvantages of proposals to the SSO that the rating scheme alone (whether adjectival or numerical) obviously cannot.

Such documentation need not be lengthy, as long as it effectively conveys the basis for the SEB/TEC's assessment.

Proposals receiving the same or similar rating can still have obvious distinctions. These distinctions could have a direct impact on the source selection decision and should be documented by the SEB/TEC or the SSO.

Preparation of such statements provides an excellent discipline for the evaluators because it forces them to justify their ratings and be consistent with the stated evaluation criteria.

With the high costs for the preparation of a proposal, offerors want to be assured that the evaluation was fair and impartial. Protests often arise when an offeror feels that this was not the case.

The Comptroller General has ruled that an award will not be overturned unless there is no rational basis for the award decision or unless the RFP criteria are not adhered to. See 51 Com. Gen. 272 (1971). Procuring agencies have an obligation to adequately document their source selection decisions so that a reviewing body can determine whether those actions were in fact proper. See KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD

### **What evidence should be provided regarding proposal evaluations?**

#### **Proposal Evaluation**

The SSO is the contract award decision maker. The SSO's decision must be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSO may use reports and analyses prepared by others, the source selection decision must represent the SSO's independent judgment. The source selection decision is documented, and the documentation includes the rationale for any business judgments and tradeoffs made or relied on by the SSO, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision. [FAR Part 15.308].

## **What documentation is necessary regarding electronic communications?**

### **Electronic Record Documentation**

All required pre- and post-award contract and financial assistance documentation shall be maintained in electronic form, shall reside in STRIPES, and shall be considered the official contract file, except for any documents required by regulation to be maintained in paper copy. For actions that were awarded prior to an office's implementation of STRIPES, existing paper files are not required to be transferred into STRIPES. Each office should determine which documents, if any, it requires or suggests to also be maintained in a paper file as a working copy. Such paper files must be marked as "working copy" to avoid confusion regarding which document is the official contract file. E-mail correspondence which is considered source selection information should be saved as an electronic file and added to STRIPES. When transmitting procurement sensitive data electronically, adequate precautions must be taken to ensure data does not end up in the wrong hands. In those cases when sensitive data is transmitted, the use of password protected files or file encryption is required.

## **TOPIC XXII FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI)**

Before awarding a contract which involves access to classified information or a significant quantity of special nuclear material, DOE must insure that the contractor has a Facility Clearance. In deciding whether or not to grant such a Facility Clearance, DOE must determine whether or not the contractor is subject to Foreign Ownership, Control or Influence (FOCI) that could pose an undue risk to the common defense and security.

DOE is prohibited by statute from awarding a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract. Such an award can be made only after obtaining a Secretarial waiver in accordance with the statutory provisions.

Before awarding a contract the performance of which requires access to classified information or a significant quantity of special nuclear material, DOE must determine whether or not the contractor possesses a "Facility Clearance". A "Facility Clearance" is an administrative determination that a contractor is eligible for access to classified information or special nuclear material. In deciding whether or not to grant a Facility Clearance, DOE must determine whether the contractor is subject to FOCI.

Foreign ownership, control, or influence means a situation where the degree of ownership, control, or influence over an offeror by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may possibly result.

In order to make this determination, DOE obtains FOCI information from offerors using the solicitation provision at DEAR 952.204-73, Standard Form 328, Certificate Pertaining to Foreign Interests, (and various other documents relating to the company's finances, owners, officers and directors, etc.). Based on the information disclosed by the offeror, and after consulting with the DOE Office of Safeguards and Security, the Contracting Officer must determine that award of a contract to an offeror will not pose an undue risk to the common defense and security.

In those cases where FOCI is present, and the DOE determines that an undue risk to the common defense and security may exist, the offeror or contractor shall be requested to propose within a prescribed period of time a plan of action to avoid or mitigate the foreign influences by isolation of the foreign interest.

The types of plans that a contractor can propose are: (1) measures which provide for physical or organizational separation of the facility or organizational component containing the classified information or special nuclear material; (2) modification or termination of agreements with foreign interests; diversification or reduction of foreign source income; (3) assignment of specific security duties and responsibilities to board members or special executive level committees; or (4) any other actions to negate or reduce FOCI to acceptable levels. The plan of action may vary with the type of foreign interest involved, degree of ownership, and information involved so that each plan must be negotiated on a case by case basis.

If the offeror and DOE cannot negotiate a plan of action that isolates the offeror from FOCI satisfactory to DOE, then the offeror will not receive a Facility Clearance and shall not be considered for contract award.

### **National Security Program Contracts**

In addition to the general FOCI situations described above, which are governed by regulatory provisions (i.e., DEAR), there is also a special FOCI situation that is governed by statute.

Specifically, 10 U.S.C. § 2536, prohibits the award of a DOE contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract. (Note that the entity must be controlled by a foreign government for this statute to apply.)

"Entity controlled by a foreign government" means any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government or any individual acting on behalf of a foreign government. "Effectively owned or controlled" means that a foreign government or an entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control or influence the election or appointment of the Offeror's officers, directors, partners, regents, trustees, or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law.

"Proscribed categories of information" include: (1) Top Secret information; (2) Communications Security (COMSEC) information (3) Restricted Data, as defined in the Atomic Energy Act of

1954, as amended; (4) Special Access Program (SAP) information; or, (5) Sensitive Compartmented Information (SCI).

The Secretary of Energy may waive this prohibition, pursuant to 10 U.S.C. 2536(b)(1)(A), if the Secretary determines that waiver is essential to the national security interests of the United States.

The Secretary may also waive this prohibition in the case of a contract awarded for environmental restoration, remediation, or waste management at a DOE facility, if the Secretary determines that the waiver will advance the environmental restoration, remediation, or waste management objectives of the Department and will not harm the national security interests of the United States, and the entity to which the contract is awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144c of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)) (10 U.S.C. 2536(b)(1)(B)).

### **Applicable statutes, procurement regulations, or small business regulations**

10 U.S.C. § 2536; Executive Order 12829, Jan 6, 1993, National Industrial Security (NISIP); National Industrial Security Program Manual, DOD 5220.22-M; Department of Energy Acquisition Regulations (DEAR) 904.70 (Foreign Ownership, Control or Influence over Contractors); DEAR 952.204-2, (Security Clause); DEAR 952.204-73 (Facility Clearance); and Standard Form 328, (Certificate Pertaining to Foreign Interests);

### **Issues**

#### **What procedures are followed when a contractor requires access to classified information or a significant quantity of special nuclear material?**

The Contracting Officer should receive a Contract Security Classification Specification (CSCS) (DOE F 5634.2) from the program office.

Upon receipt of these forms, the Contracting Officer must include the appropriate terms and conditions in the solicitation [DEAR 952.204-73, Facility Clearance], which states in offerors must submit a Certificate Pertaining to Foreign Interests, SF 328, and all required supporting documents to form a complete FOCI package. Contractors are required to submit the FOCI information online at: <https://foci.td.anl.gov>. When completed the offeror must print and sign one copy of the SF 328 and submit it to the Contracting Officer

If an offeror possesses either a Department of Defense or Department of Energy Facility Clearance, they should provide their DOE Facility Clearance code or their DOD assigned commercial and government entity (CAGE) code.

Upon completion of DOE's review of the offeror's foreign involvement, the local Safeguards and Security Office should provide the Contracting Officer with written notification of the results of the FOCI review. If the FOCI determination is favorable and the offeror is granted a DOE-approved facility clearance, the local DOE Safeguards and Security office will sign and return the DOE F 5634.2 (CSCS) to the Contracting Officer. (If the FOCI determination is unfavorable, the Safeguards and Security Office will attempt to negotiate a plan to negate or mitigate the FOCI. If a satisfactory plan cannot be negotiated then the offeror will not receive a Facility Clearance and the offeror shall not be considered for contract award.)

Contract award can be made upon: (1) receipt of notification of a favorable FOCI determination from the local Safeguards and Security Office, (2) receipt of the signed DOE F 5634.2 (CSCS) from the local DOE Safeguards and Security Office, and (3) assurance from the Contracting Officer that the appropriate security clauses are included in the contract.

It should be noted that if, after contract award, a contractor's FOCI situation changes so that it becomes subject to FOCI for the first time or the extent and nature of FOCI changes, DOE must assess whether those changes will pose an undue risk to the common defense and security.

In making this determination, the Department considers proposals made by the contractor to avoid or mitigate foreign influences. If these foreign influences cannot be avoided or mitigated, the Contracting Officer may terminate the contract.

The Contracting Officer may terminate the contract for default if the contractor fails to meet obligations imposed by the FOCI clause (e.g., provide the information required by the clause, or make the clause applicable to subcontractors), or if, in the contracting officer's judgment, the contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate the contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem. In any event, without an adequate mitigation plan, the contractor's Facility Clearance will be terminated and they can no longer perform work requiring access to classified information or a significant quantity of nuclear material.

## **TOPIC XXIII DEBRIEFINGS**

In FAR Part 15 procurements, contracting officers are required to provide debriefings to all offerors, if a debriefing is requested. Debriefings may be either preaward debriefings for offerors excluded from the competitive range or postaward debriefings for all offerors. If an offeror receives a preaward debriefing, that offeror is not entitled to a postaward debriefing. Postaward debriefings may be provided to (1) all unsuccessful offerors who didn't receive a preaward debriefing, and (2) the successful offeror.

The debriefing is the method by which the offerors obtain information about the evaluation of its respective proposal, how the proposal could be improved for the benefit of future procurements,

and the basis for the selection decision and contract award. Debriefings need to be informative and professionally presented. They should never degenerate into debates over the propriety of the source selection process or the accuracy of the government's evaluation. The general approach to a debriefing should be to provide all required information, satisfy the debriefed offeror's reasonable questions about the procurement, and provide as much information as possible without prejudicing the procurement in the event it must be reopened for any reason.

Debriefings should be provided as soon as possible and should occur to the maximum extent practicable within 5 days after the offeror requests the debriefing. The timing of a debriefing affects both the timeframe for filing a GAO protest and also the time within which a protest will require the protested contract performance to be suspended. Because most of DOE's Part 15 procurements are for services, this guidance is written with services procurements in mind.

### **Applicable statutes, procurement regulations, or small business regulations**

FAR 15.503 (Notifications to Unsuccessful Offerors); FAR 15.505 (Preaward Debriefing of Offerors); FAR 15.506 (Postaward Debriefing of Offerors); FAR 33.104(c) (Interrelationship of Debriefing and Stay/Suspension of Contract); 4 C.F.R. § 21.2(a)(2); 31 U.S.C. § 3553(d)(4)(B) (Requiring Suspension of Protested Contract Performance if Protest is Filed Within Five Days of Required and Requested Debriefing); and 41 U.S.C. § 253b(e), (f), (g) (Preaward and Postaward Debriefing Requirements).

### **Issues**

#### **What should be the contracting officer's strategy?**

The Contracting Officer should plan for the debriefing well before award is made. Based on the particular circumstances of the procurement, the Contracting Officer should devise a debriefing strategy to provide as much information as the offeror might reasonably request and should prepare for likely offeror questions. A debriefing script and agenda template is available in the STRIPES library. Contracting Officers should request the offerors to provide any questions in writing a day or so before the debriefing. This gives the agency time to review the questions and provide a more cogent answer to the questions. Even if the offeror provides questions in advance, it should not and cannot be prohibited from posing additional questions at the debriefing. The offeror should come away from the debriefing with an understanding of why its proposal was not selected. Oftentimes there are one or two elements of the offeror's strategy that negatively affected the evaluation and that can be summarized for the offeror's benefit. For example, an offeror might have decided that it understood the government's requirements better than the government and pursued a strategy of offering the government what the offeror believed was best notwithstanding the requirements in the solicitation.

In this instance, it can be helpful to be prepared to review the portion of the solicitation that stated these requirements. Where discussions were held, it can be very helpful to point out to an offeror where the issue or issues that led to its lack of success were raised in discussions.

An understanding of the perspective of a disappointed offeror is sometimes useful in conducting a debriefing. Preparation and submission of a proposal may be a time consuming, costly, and a sometimes emotional exercise for the offeror's proposal team. Non-acceptance of a proposal under such circumstances can produce a degree of emotional and professional trauma in team members. In response, disappointed offerors may react with resentment ("How could I not win?!"), suspicion ("This process must be rigged!"), and anger ("The agency has it in for me!"). As a consequence, many debriefings are not viewed by disappointed offerors as an opportunity to learn how to improve the next time, but rather as an opportunity to vent, demonstrate the poor judgment of the selecting official and evaluators, and identify a basis to overturn the decision through a bid protest. Although government personnel might respond to this reaction by offering as little information as possible, this is not a desirable strategy for the debriefing. Indeed it is frequently more productive to use the debriefing to discharge the emotion, demonstrate the procedural credibility of the decision, and convince the disappointed offeror that a basis for protest does not exist. Strategies for doing so should be fully considered in preparing for the debriefing.

### **When should debriefings be held and how should they be scheduled?**

The general principle applicable to debriefings is that an unsuccessful offeror should be offered a debriefing soon after DOE determines that the offeror is unsuccessful. The FAR distinguishes between preaward and postaward debriefings, depending on when the debriefing is held. The FAR establishes a clear preference that an offeror excluded from the competitive range be provided with a preaward debriefing, and we address the implications of this choice in the next section. A postaward debriefing should be held as soon as possible after the award.

The optimum schedule has the Contracting Officer faxing a letter to the unsuccessful offeror on day 0, informing the unsuccessful offeror of its right to request a debriefing within three days and, in the same letter, informing the unsuccessful offerors of the offered date for their debriefings should they choose to request a debriefing. The offered date should optimally be a date between four and eight days after the unsuccessful offeror letter is faxed. An unsuccessful offeror letter template is available in the STRIPES library. An unsuccessful offeror does not have the right to any particular schedule or location for the debriefing. For postaward debriefings, the letter offering the debriefing optimally should be sent to the offeror on the day of award. For preaward debriefings, the letter should be sent as soon as DOE makes a determination that the offeror is no longer under consideration for award.

### **What is the effect of the debriefing schedule on potential protests?**

#### **Effect of the debriefing schedule on potential protests**

In FAR Part 15 procurement, a company cannot pursue a GAO protest on an issue other than a solicitation issue before its debriefing, if that debriefing was "requested and required." GAO will dismiss a protest filed before the debriefing as premature. Therefore, it is generally best to schedule the debriefing very soon after the offeror is no longer under consideration for award.

## **What are the special considerations for preaward debriefings?**

### **Special considerations for preaward debriefings**

If the offeror was excluded from the competitive range, the debriefing generally should be held as a preaward debriefing soon after the offeror is notified of its exclusion from the competitive range. The debriefing may be held as a postaward debriefing based on the CO's decision or the offeror's request, but these choices have different consequences.

### **If the Contracting Officer delays the preaward debriefing**

The Contracting Officer has the discretion to delay the debriefing until after award, based on "compelling reasons" that holding a preaward debriefing is not in the best interests of the government. The Contracting Officer is required to document the rationale for delaying the debriefing. If the government decides to delay the debriefing until after award, the unsuccessful offeror cannot protest until after the debriefing and, if there is a successful protest, the procurement actions after the offeror was excluded may be nullified.

### **If the offeror requests that the preaward debriefing be delayed**

The offeror can request that the government delay a preaward debriefing until after award. In the event that the debriefing is delayed due to the offeror's request, the Contracting Officer should indicate in writing that debriefing is being postponed at the offeror's request. In the event the offeror requests the government to delay the debriefing from preaward to postaward, GAO generally will not find a protest based on the debriefing to be timely.

## **What clocks start when debriefings are conducted?**

### **Clocks**

Once a "required and requested" debriefing is held, two clocks start to run on the offeror's time for filing a protest. The first clock determines whether GAO will consider the protest. Generally, for a protest to be timely filed at GAO, it must be filed within ten calendar days after the debriefing. If the protester waits until more than ten days after it learned of the basis for its protest and that date is more than ten calendar days after the debriefing, GAO will dismiss the protest as untimely. Please note that protesters can also pursue protests at the Court of Federal Claims, which does not have a ten calendar day time limit for filing protests. The second clock determines whether the agency will have to stay the award of the protested contract or suspend performance on the protested contract. If a protest is filed at GAO and GAO notifies DOE of the protest within either five calendar days after debriefing or ten calendar days after contract award, whichever is later, DOE must suspend performance of the protested contract. If GAO notifies DOE of a protest filed before award is made, DOE must stay the award of the protested contract. In both cases, the stay is in place until GAO decides the protest or until DOE overrides the stay.

## **What information is to be provided and when should it be provided?**

FAR 15.506(d) and 15.505(e) set forth detailed lists of information to be provided and the applicable list provides a fairly good agenda for the debriefing.

### **Information in advance**

Much of this information can be provided in advance of the actual debriefing, either in the unsuccessful offeror letter or in a later written communication prior to the debriefing. It is a better practice to provide the debriefed offeror with a copy of its own evaluated strengths and weaknesses before the debriefing. This practice saves time for everyone, and prevents disagreement over what was said, gives the offeror a chance to get past any emotional reaction to the strengths and weaknesses in the privacy of its offices, and usually improves the cogency of the questions asked at the debriefing.

### **Dialogue**

Because the debriefing rules require the government to provide reasonable responses to relevant questions about whether source selection procedures were followed, it is virtually impossible to provide a complete debriefing to an offeror without an opportunity for dialogue, either in person or by telephone.

### **Interpretation of "overall ranking" and "technical rating"**

When FAR 15.506(d)(3) refers to providing the "overall ranking of all offerors," it means the ranking when there was a combined ranking including cost/price and technical factors and does not require the CO to provide just the technical rankings or just the cost/price rankings. DOE generally has not performed such rankings in its source selection process, nor are such rankings required. When FAR 15.506(d)(2) refers to providing the "technical rating" of the awardee and of the debriefed offeror, it does not mean that every factor and sub-factor score must be revealed. If a competitive range was drawn and discussions were held, there is no requirement to provide the offeror with its or the awardees pre-discussions scores. There is no requirement to provide the offeror with the awardee's sub-factor scores. Providing more than the required information concerning the awardee's scores can be regrettable if the procurement must be reopened for corrective action, a change in requirements, or some other reason. Moreover, in some instances, providing specific scoring information could amount to a violation of the prohibition against providing point-by-point comparisons between the awardee's and the debriefed offeror's proposals.

### **Whose ratings should be provided?**

In the unlikely and hopefully rare event that the source selection official disagrees with aspects of the technical evaluation committee's report, either with respect to scores or to the strengths and weaknesses, the information that is required to be provided to the offeror is the evaluation on which the selection was based, that is, the source selection official's evaluation.

## **What information may not be provided?**

FAR 15.505(f) and 15.506(e) provide detailed lists of information that must not be provided in the debriefing. The usual item that comes up is the prohibition on providing "point-by-point comparisons of the debriefed offeror's proposal with those of other offerors." For this reason, it is advisable that the government not have the other offerors' proposals or the evaluation of the other offerors in the debriefing room. Some agencies take the position that revealing detailed score information about the awardee may constitute providing point-by-point comparisons. An exception to these limitations exists in the form of an "open book debriefing" described below.

## **Who should attend debriefings?**

The FAR provides that the Contracting Officer is in charge of the debriefing and anticipates that he or she will get support from technical and legal personnel as needed. Neither the Source Selection Authority (SSA), nor the SEB Chair, or the individual SEB team members are required to attend. Normally it may be sufficient to have the contracting officer, a technical evaluator (to ensure that communication conveying the technical evaluation are accurate), the executive secretary, and Counsel to the procurement attend the debriefing. It is a good practice to have Counsel present, especially if the offeror indicates it is bringing legal counsel to the debriefing, there are indications that a protest may be filed, or the procurement is significant based on dollar size, complexity, or other sensitivity. On those occasions where the Contracting Officer does not have the knowledge or expertise to explain the cost evaluation, it is advisable to bring someone who has that knowledge and expertise. Notwithstanding the foregoing, it should be noted that the presence of other critical officials in the source selection process such as the SSA and the SEB chair may aid in the presentation to the disappointed offeror and add to the credibility of the source selection.

These officials are particularly useful in explaining the basis for the selection decision and the results of the SEB's evaluation of the offeror's proposal. As the number and type of participants in the debriefing grows, however, the Contracting Officer must take particular care in preparing for and controlling the communication. Coordination with Counsel is critical.

## **What are "Open Book" debriefings?**

### **"Open Book" debriefings**

In some very large, complex procurements, generally M&O procurements, DOE has used a technique called open book debriefings, in which DOE and all the offerors enter into a confidentiality agreement that permits DOE to reveal more information in the debriefing than is normally permitted. This technique has been extremely successful, but it is properly reserved for very large, complex procurements that do not involve repetitive requirements. If used improperly, this technique may conflict with the FAR and/or result in potential violations of the Trade Secrets Act (which subject the government personnel to personal criminal penalties as well as significant potential fines). Therefore, this technique should only be used after

consultation with Counsel who can draft the appropriate agreements and ensure that all necessary consents are obtained.

### **What common questions or problems are associated with debriefings?**

#### **Do not debate the evaluation or the selection**

The job of the debriefer is to provide information to the offeror about the procurement and not to reconsider the evaluation or debate it. This means that it is more important to listen to complaints about the evaluation results than to respond to them. It is especially important not to speculate about what would have happened if the offeror had proposed something different or a lower price.

#### **Be sure the debriefing has a definite conclusion**

The debriefing should have a definite conclusion so that the time when the offeror's two protest clocks begin to run is clear. Once DOE has provided the required information and the offeror has finished asking its "relevant questions about whether the source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed," the Contracting Officer should indicate that the debriefing is concluded. This means that it is strongly ill-advised to tell a protester that "we'll get back to you" on a topic. If necessary, take a short break during the debriefing and seek whatever advice or information or document is needed. A well-prepared debriefing team almost never needs an additional day to provide required information or respond to relevant questions.

#### **Recording the debriefing**

The government is not required to record the debriefing nor permit the debriefed offeror to make an audio or video recording. DOE contracting officers have generally denied offerors' requests to record a debriefing. If the Contracting Officer considers agreeing to a request to record the debriefing, he or she should insist that two identical recordings be made and one left with the agency. This will avoid disputes over whether the recording was altered in some way. The Contracting Officer is required to prepare a summary of the debriefing and include it in the contract file.

#### **Even untimely debriefing requests should be accommodated**

If an offeror does not request a debriefing in a timely fashion, but later requests a debriefing, the better practice is to provide the debriefing but to be clear that it is an accommodation and not a "requested and required" debriefing. The Contracting Officer should, however, insist that the request be in writing and should include documentation in the file that the debriefing was not timely requested.

### **The awardee is also entitled to a debriefing**

Although debriefings are commonly provided to unsuccessful offerors, FAR 15.506(a)(1) provides that offerors can request debriefings and does not exclude the awardee.

### **Debriefings go forward even if there is a protest**

Sometimes an offeror will protest or state its intent to protest before the debriefing. This does not affect the offeror's right to a debriefing. In these instances, it is obviously prudent to have Counsel present and involved in the debriefing planning.

### **Take a break**

It is generally advisable to take breaks during the debriefing if the government attendees need to caucus concerning a question. Such discussion should take place in a different room and out of the hearing of the offeror. In addition, a break can be useful to permit the offeror to consolidate its questions and recover its composure.

### **Finally, do not obsess**

While the debriefers should make every effort to be accurate during the debriefing, keep in mind that the statements made in a debriefing will virtually never form the basis of a GAO decision to sustain a protest. There are legions of denied protests where the information provided at the debriefing was inaccurate in some way or where the protester claims it was told one thing at the debriefing while the evaluation record shows the opposite. Moreover, GAO will not address the quality of the debriefing in a protest decision.

## **TOPIC XXIV SEB LESSONS LEARNED**

As mentioned in Topic I of this Acquisition Guide Chapter, a position called SEB Secretariat and Knowledge Manager (SKM) was established in the Field Assistance and Oversight Division, MA-621. One of the duties and responsibilities of the position is collecting and disseminating SEB lessons learned. A template for documenting SEB lessons learned is available in the STRIPES Library.

### **Requirement**

For acquisitions whose dollar value exceeds \$25 million, each SEB shall document lessons learned using the template. The lessons learned should be submitted to the SKM via e-mail within 45 calendar days of the completion of debriefings. For acquisitions whose dollar value is less than \$25 million, it is recommended that SEB's document lessons learned using the template, and make them part of the contract file.

### **Lessons Learned Database**

The SKM will maintain a database of all DOE SEB Lessons Learned for acquisitions whose dollar value exceeds \$25 million. The database is monitored for trends which develop.

### **Lessons Learned Dissemination**

The SKM will disseminate the lessons learned to each SEB within thirty days of the SEB being formally established. Any trend analysis which exists will accompany the lessons learned.

## **TOPIC XXV LIBRARY DOCUMENTS**

Another duty and responsibility of the SKM position is creating and maintaining a library of acquisition documents.

### **Requirement**

For acquisitions whose dollar value exceeds \$25 million, each SEB shall furnish a copy of the following documents to the SKM for inclusion in the MA Library:

- Extend/Compete Package
- Acquisition Plan
- RFP (conformed copy with all changes if available)
- Source Selection Plan
- Competitive Range Determination
- SEB Report (initial and final)
- Source Selection Decision Document

### **Library**

The SKM will maintain the library and add acquisition documents as they become available.