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**COMMERCE ACQUISITION MANUAL
1315.3**

DEPARTMENT OF COMMERCE
Formal Source Selection

COMMERCE ACQUISITION MANUAL 1315.3

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FORMAL SOURCE SELECTION

SECTION 1 – OVERVIEW

1.1 Background

Source selection refers to the decision process used to achieve best value, that is, the expected outcome of an acquisition that in the Government's estimation provides the greatest overall benefit in response to a requirement. In negotiated acquisitions, best value can be obtained using any one or a combination of source selection approaches as prescribed in Federal Acquisition Regulation (FAR) Part 15, ranging from lowest price technically acceptable to tradeoff.

The principle objective of the source selection process is to conduct an impartial, equitable, and comprehensive evaluation of each Offeror's proposal and select the Offeror(s) who best meet the Government's needs as defined in the solicitation.

1.2 Purpose

The purpose of this Commerce Acquisition Manual (CAM) chapter is to provide policy and guidance for formal selection of source(s) in competitive negotiated acquisitions.

1.3 Applicability

The requirements of this chapter are applicable to all competitive negotiated acquisitions within the Department of Commerce (DOC, Department) and its Operating Units with estimated life-cycle costs of \$10 million or more. This guidance does not apply to the following acquisitions:

- Competitions where price is the only evaluation factor;
- Acquisitions using FAR Subpart 8.4;
- FAR Subpart 12.6 Streamlined Acquisitions;
- Orders under multiple award contracts – Fair Opportunity (FAR Subpart 16.505(b) (1));
- Broad Agency Announcements in accordance with FAR Subpart 35.016; and
- Architect and Engineer (A&E) acquisitions pursuant to FAR Part 36.

1.4 Policy

It is the policy of the Department that formal source selection procedures shall be used for all negotiated acquisitions with estimated life-cycle costs of \$10 million or more.

1.5 Exemptions

Competitive negotiated acquisitions with estimated life-cycle costs of \$10 million or more may be exempted from the requirements of this chapter with advance written approval of the Senior Procurement Executive (SPE). The request to exempt an acquisition from formal source selection procedures must be submitted in writing to the SPE by the Senior Bureau Procurement Official and contain sufficient rationale to justify the request for the exemption. Approval of the exemption must be granted prior to the release of the solicitation.

1.6 Protecting Source Selection Information

Source selection information shall be safeguarded from unauthorized disclosure throughout the entire source selection process. Individuals who participate directly or indirectly in any stage of the acquisition process shall not publicize, discuss or release any source selection information or other details regarding the proposed acquisition outside DOC or to prospective contractors, except as provided in the FAR.

The following notice shall be prominently displayed on the front page of all Source Selection Plans (SSP):

“This document contains proprietary or source selection information related to the conduct of a Federal agency procurement. The disclosure and receipt of this information is restricted by Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of this information may subject both the discloser and the recipient to contractual, civil, and/or criminal penalties as provided by law.”

In addition, each page of the SSP and any other documents containing source selection information shall state:

“Source Selection Information — See FAR Subparts 2.101 and 3.104-4”

END OF SECTION 1

SECTION 2 – Roles and Responsibilities

2.1 Senior Procurement Executive (SPE)

The Senior Procurement Executive has overall responsibility for the following:

- a. Planning, developing and implementing policies and procedures for acquisitions throughout the Department of Commerce;
- b. Overseeing the source selection process through normal oversight reviews of procurement offices; and
- c. Approving requests submitted by Senior Bureau Procurement Officials to exempt a competitive acquisition with estimated life-cycle costs of \$10 million or more from the requirements of this guidance.

2.2 Head of Contracting Activity (HCA)

The Head of Contracting Activity is responsible for:

- a. Serving as the designated Source Selection Authority on acquisitions with estimated life-cycle cost of \$10 million or more; or
- b. Re-delegating the responsibility of Source Selection Authority to a senior-level Official a level above the Contracting Officer.

2.3 Senior Bureau Procurement Official (BPO)

The Senior Bureau Procurement Official is responsible for the following:

- a. Ensuring the formal source selection process is effectively implemented and used; and
- b. Providing a written request to the SPE to have a competitive acquisition with estimated life-cycle costs of \$10 million or more exempt from the requirements of this guidance.

2.4 Source Selection Authority (SSA)

The Source Selection Authority is responsible for the following:

- a. Ensuring the source selection process is properly and efficiently conducted;
- b. Establishing a Source Selection Evaluation Board (SSEB) to evaluate proposals;
- c. Appointing a Chairperson to facilitate the procedural and administrative aspects of the SSEB;
- d. Ensuring any conflicts of interest, and the appearance thereof, are avoided in the source selection process;
- e. Ensuring premature or unauthorized disclosure of source selection information is avoided;
- f. Approving the source selection strategy prior to solicitation release;

- g. Ensuring that cost, technical, past performance, and other factors are appropriately considered in accordance with the evaluation criteria and relative order of importance for award;
- h. Selecting the source(s) that offers best value to the Government, considering all data available including evaluation findings from the SSEB; and
- i. Ensuring the final source selection decision and supporting rationale are well documented prior to contract award.

2.5 Source Selection Evaluation Board Chair

The Chairperson of the Source Selection Evaluation Board is responsible for the following:

- a. Ensuring the proper and efficient operation of the SSEB in its advisory role;
- b. Providing leadership to the evaluation team(s) and administrative services for all activities necessary to conduct and document the source selection evaluation;
- c. Ensuring adherence to all security requirements outlined in the SSP and applicable policies and regulations;
- d. Planning and coordinating the schedule for SSEB meetings;
- e. Developing teams within the SSEB possessing the appropriate functional and technical skills necessary to effectively evaluate areas such as: past performance, technical and management approach, and cost and price; and
- f. Documenting SSEB findings into an evaluation report for the SSA's consideration.

2.6 Source Selection Evaluation Board (SSEB)

The Source Selection Evaluation Board is responsible for the following:

- a. Evaluating proposals in accordance with the established evaluation criteria and SSP;
- b. Providing briefings concerning the evaluation as required by the SSA; and
- c. Preparing and submitting evaluation findings to the SSEB Chairperson for the SSEB report.

2.7 Contracting Officer (CO)

The Contracting Officer is responsible for the following:

- a. Providing the SSEB with appropriate guidance and instructions necessary to effectively conduct the source selection process;
- b. Providing applicable input for adequate acquisition planning and preparation of the source selection plan (e.g., advising on source selection criteria; conducting pre-proposal conferences, etc.);
- c. Reviewing and providing concurrences on SSPs;

- d. Preparing solicitations, Requests for Proposals (RFPs) and other procurement documents;
- e. Serving as the focal point for inquiries from prospective Offerors before and after release of solicitation, and controlling exchanges with Offerors after receipt of proposals;
- f. Receiving proposals and as appropriate, requesting clarifications from Offerors;
- g. Considering input from the SSEB;
- h. Determining the competitive range and notifying Offerors eliminated from competition;
- i. Determining contractor responsibility;
- j. Preparing pre- and post-negotiation memoranda;
- k. Conducting debriefings with unsuccessful Offerors; and
- l. Maintaining the SSP and any revisions, the acquisition plan, solicitation and any amendments thereto as part of the contract file.

2.8 Office of General Counsel (OGC)

The Office of General Counsel is responsible for the following:

- a. Providing legal advice and counsel;
- b. Reviewing source selection plans and providing concurrence;
- c. Providing support to SEEB members to resolve any conflicts of interests or breaches of source selection regulations; and
- d. Ensuring that all legal concerns have been appropriately resolved.

2.9 Program Official

The Program Official is responsible for the following:

- a. Preparing the acquisition package, in coordination with the acquisition team, to include at a minimum: acquisition plan, source selection plan, Performance Work Statement or Statement of Work/Objectives, and Independent Government Cost Estimate (IGCE).

END OF SECTION 2

SECTION 3 – SOURCE SELECTION EVALUATION BOARD

3.1 Background

Competitively negotiated acquisitions with estimated life-cycle costs of \$10 million or more must undergo a formal source selection process in which a comprehensive evaluation of each proposal is conducted by an evaluation team (referred to as the Source Selection Evaluation Board). The SSEB functions as an advisory council to the Source Selection Authority providing evaluation findings to aid in determining the proposal most advantageous to the Government considering technical capability, past performance, cost/price and other factors as defined in the solicitation. The SSEB shall be comprised of personnel possessing the appropriate functional and technical skills necessary to provide a complete and balanced evaluation of proposals.

3.2 Source Selection Authority Designation

The Head of Contracting Activity shall serve as the designated SSA charged with selecting the source(s) whose proposal is the best value to the Government. This authority may be delegated by the HCA to a senior-level official at a level above the Contracting Officer. The designated SSA must be identified in both the source selection plan and acquisition plan. If the SSA is changed at any time after approval of the acquisition and source selection plans, the name of the new SSA must be provided in writing to the Head of Contracting Activity.

The SSA's role is to ensure the source selection process is conducted properly and efficiently in accordance with the SSP, applicable regulations, and guidance provided herein. The SSA is responsible for establishing the SSEB to serve as the evaluation team and will issue each member an appointment memorandum. A sample *Board Appointment Memorandum* is provided as Appendix B, which shall at a minimum identify:

- a. General duties and expectations of the SSEB member;
- b. Confidentiality, Conflict of Interests and any other certification requirements; and
- c. Limitations and restrictions involving participation in a source selection, (e.g. information disclosure, post-employment restrictions).

3.3 Source Selection Evaluation Board

The Source Selection Evaluation Board is responsible for evaluating proposals and presenting its findings to the SSA. The SSEB's findings must present sufficient information to allow the SSA the opportunity to make an informed and objective award selection. The SSEB may consist of both voting and non-voting members and include Federal and non-Federal participants, all of which shall possess the appropriate expertise to provide a thorough analysis of the proposals in their selected discipline (i.e. technical, cost and price, etc.).

Membership of the SSEB shall be tailored to the particular acquisition to ensure a comprehensive evaluation of offers and should include, as appropriate, qualified technical and program representatives, cost/price analysts, legal advisor, and any other representatives from appropriate functional areas, all with sufficient experience in proposal evaluations.

The Contracting Officer shall brief the SSEB on the source selection process to include an explanation of the evaluation process, limitations of non-voting members in the evaluation process, pertinent certification documents, conflicts of interest, safeguarding source selection

information, employment prohibitions and procurement integrity. The briefing shall also inform the SSEB of their responsibilities and provide guidance on how to review proposals.

The size and composition of the SSEB should be contingent upon the nature and complexity of the requirement but shall be as many as necessary to facilitate appropriate communication and a comprehensive evaluation as the SSEB will be involved in numerous tasks to include: reviewing and evaluating proposals against the approved evaluation criteria; providing briefings and consultations regarding the evaluation as required by the SSA; and preparing an evaluation report of their findings.

All personnel participating in the evaluation process or individuals who have a substantive role in the process have a responsibility to maintain security of information and avoid conflicts of interest. To this end, participants in the source selection process, including the SSA and all SSEB members are required to sign the following:

- a. Confidentiality Certificate (see Appendix C);
- b. Conflict of Interest Certificate (see Appendix D); and
- c. Non-Disclosure Agreement (see Appendix E).

In the event any member of the SSEB has or may have a financial or conflict of interest with any of the competing companies, the member shall immediately consult with the Contracting Officer and OGC. Any conflict of interest documentation indicating a potential conflict and the resolution of such conflict must be maintained by the Contracting Officer in the contract file.

Evaluators shall also be advised that participation in a Federal agency procurement will result in some post-employment restrictions. Evaluators should be instructed to consult with the OGC, Ethics Law and Programs Division regarding any contact with an Offeror regarding non-Federal employment as well as questions related to post employment restrictions.

3.4 Disclosure of Information

The procurement integrity provisions of the Office of Federal Procurement Policy Act, (commonly known as the Procurement Integrity Act) addresses prohibitions against the release or disclosure of contractor bid/proposal information or source selection information prior to award, which may result in civil and/or criminal penalties. Source selection information includes, but is not limited to:

- a. Proposed technical solutions, costs or prices;
- b. Source selection plans;
- c. Competitive range determinations;
- d. Reports and evaluations of the SSEB;
- e. Past Performance information; and
- f. Any other information marked as source selection.

All proposals and any other proprietary or source selection information must be kept in locked cabinets and copies of proposals and source selection information should be numbered and tracked by the SSEB Chairperson. No documentation in any form should be removed from the secured work area for any purpose without specific permission of the SSEB Chairperson. At the conclusion of the evaluation process, members of the teams may not retain work papers or any part of the proposals received without first obtaining authorization from the SSEB Chair. Rough drafts or working papers which are not retained in the file shall be destroyed.

Any source selection information shall be discussed only with individuals participating in the source selection or otherwise authorized as “need to know” through written authorization by the SSA. In those exceptional instances where necessity and reasonableness dictate that procedural advice from non-Board sources is obtained, discussions should be limited in such a way as not to reveal specific cost/price data, evaluation information, or the number and identity of offers received and should be coordinated with the Contracting Officer and SSEB Chair. Additionally, any requests for information under the Freedom of Information Act shall be reported to the Contracting Officer and the Office of General Counsel.

If there is a violation or possible violation of the Procurement Integrity Act and the Contracting Officer concludes that the reported violation or possible violation may have an impact on the pending award selection, the Contracting Officer must promptly forward the information to the SSA or BPO to take appropriate action.

END OF SECTION 3

SECTION 4 – SOURCE SELECTION PLAN

4.1 Background

The intended source selection process shall be planned and documented in a Source Selection Plan. The SSP shall describe how the proposals will be solicited, evaluated and scored; who will evaluate; the composition of the SSEB; and the timetable for contract award consistent with the Milestone or Formal Acquisition Plan, as applicable.

The SSP will serve as a written guide for the selection process and must point out what is important in the selection process and the relative importance of the evaluation factors. The SSP shall also include all essential instructions for evaluating proposals and define the specific source selection approach.

4.2 Developing the Source Selection Plan

Use prudent business judgment to tailor the size and detail of the SSP based upon the complexity of the acquisition. However, the source selection plan shall contain, at a minimum, the following elements:

- a. Brief description of the requirement;
- b. A summary of the acquisition strategy consistent with the approach contained in the acquisition plan;
- c. Confidentiality requirements and considerations;
- d. Listing by name of the Contracting Officer, SSA, SSEB Chairperson and members (both voting and non-voting), their roles and responsibilities, and the composition of evaluation teams, as applicable;
- e. Any planned pre-solicitation activities (e.g., issuance of a draft solicitation, industry day, request for information, etc.) ;
- f. Listing of evaluation factors and weighting to be used;
- g. Discussion of the technical, costs and/or schedule risks associated with performance and the proposed actions to mitigate those risks;
- h. Discussion of the methods and techniques to be used in the evaluation process;
- i. A detailed description of the rating scheme to be used by the SSEB;
- j. A milestone schedule indicating significant events of the source selection process; and
- k. A signature page providing for the review and clearance of the Contracting Officer, OGC, SSEB Chairperson and approval of the SSA.

4.3 Source Selection Plan Review and Clearances

Formal source selection plans shall be prepared sufficiently in advance of the solicitation's release date to allow ample time for review and clearances. All SSPs, at a minimum, shall be reviewed and signed by the Contracting Officer, an Office of General Counsel representative assigned by the Contract Law Division, the SSEB Chairperson and the Source Selection Authority.

By signing the source selection plan, the Contracting Officer certifies that the acquisition methodology is sound and the plan reflects an efficient source selection strategy for the acquisition. The Office of General Counsel's signature certifies that all legal issues have been resolved. The SSEB Chairperson's signature signifies concurrence with the content of the plan and adherence to the plan's instructions and security requirements. The Source Selection Authority's signature certifies approval of the source selection plan.

END OF SECTION 4

SECTION 5 – SOURCE SELECTION PROCESS

5.1 Background

The source selection process as prescribed in FAR Part 15 provides for the series of events leading to award of the offer representing best value to the Government. The source selection process is intended to minimize the complexity of the solicitation, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive evaluation of proposals. As such, the process shall be objective, orderly, efficient, and comply with acquisition laws, regulations, policies, and procedures.

5.2 Developing the Solicitation

5.2.1 Market Research

Prior to drafting a solicitation, the Contracting Officer and acquisition team may find it necessary to expand market research efforts in order to gain a more thorough understanding of the Government's requirement. This can be accomplished through a myriad of pre-solicitation outreach activities with industry, *keeping in mind that all specific information regarding the preparation of proposals must be made available to all potential Offerors.*

Some useful communication forums to promote effective early government/industry exchanges include:

- a. Pre-solicitation notices;
- b. Pre-proposal conferences;
- c. One-on-One meetings;
- d. Draft Request for Proposals;
- e. Requests for Information; or
- f. Any other communication mechanism to improve industry's understanding of Government requirements and Government's understanding of industry's capabilities.

5.2.2 Evaluation Factors

Contracting Officers shall ensure the RFP clearly communicates the Government's need as well as the evaluation factors, significant subfactors, and relative importance of evaluation factors to one another. Further, all evaluation factors and subfactors must align with the solicitation's statement of work/objectives, perceived risks and be consistent with FAR Subpart 15.304 to include mandatory factors and bundling considerations.

The purpose of evaluation factors is to enhance the evaluator's ability to distinguish one proposal from another as to its relative worth or value to the Government. As such, the number of factors and subfactors should be consistent with the need, preferably fewer broad evaluation elements than overly narrow and detailed criteria, to effectively enable a meaningful comparison and discrimination between and among proposals.

The relative importance of evaluation factors may be expressed through the use of a scoring method or combination of methods, including color or adjectival ratings, numerical weights, and

ordinal rankings, with the exception of cost/price which shall not be scored or rated as part of the evaluation. Regardless of the method(s) used, the scoring must be consistently applied to all competing proposals and supported by a detailed narrative that indicates strengths, risks, weaknesses, deficiencies and degree to which the Offeror's proposal meets the standard for each element evaluated. The narratives shall provide specific examples to ensure there is sufficient information to make a sound basis for award and meaningful debriefings to unsuccessful Offerors, as well as in the event the resulting contract action is protested.

5.2.3 Evaluation Standards

To assist evaluators in determining the relative merit of each proposal with respect to the evaluation factors, evaluation standards/descriptions may be developed to allow for the evaluation of proposals against a uniform baseline rather than against each other. The use of evaluation standards promote consistency and potentially minimize bias that can result from direct comparison of proposals.

Although optional, the use of evaluation standards is strongly encouraged as they further detail the relationship between the statement of work and evaluation factors. Depending on the nature of the acquisition, the evaluation standard may either be *quantitative*, where an element can be defined in a readily measurable form (i.e. speed, accuracy rate, etc.) or *qualitative*, where attributes or questions are used to assist in assessing whether the proposal meets the requirements of the solicitation. When used, evaluation standards shall be developed by the SSEB and reviewed by the Contracting Officer.

5.2.4 Past Performance

The use of past performance information as a significant evaluation factor can be highly effective in identifying an Offeror's possible performance risk and shall be included as a distinct evaluation factor or subfactor in acquisitions expected to exceed the Simplified Acquisition Threshold (SAT), unless the Contracting Officer provides rationale in the contract file as to why the evaluation of past performance is not appropriate.

Contracting Officers shall utilize the Past Performance Information Retrieval System (PPIRS), the Government-wide database for contractor performance information. Contracting Officers are required to use past performance information in PPIRS for contract actions completed within the last three years, with the exception of construction and architect-engineering services in which information in PPIRS may be used for contract actions completed within the last six years.

The solicitation shall address how proposals will be rated for newly-formed companies as well as firms without relevant past performance information. The solicitation shall also specifically state that past performance will be obtained from a number of sources, as appropriate and relevant to the requirement, to include:

- a. Information captured in PPIRS;
- b. Responses to questionnaires from references provided by the Offeror or otherwise;
- c. Data collected within DOC and other government assessments or report cards;
- d. Published commercial evaluations; and
- e. Awards or other recognition provided by customers to the Offeror.

5.2.5 Cost/Price Analysis

In accordance with FAR Subpart 15.304, price or cost to the Government shall be a mandatory evaluation factor in every acquisition. As with all other factors and significant subfactors, the importance of cost or price relative to the other evaluation factors/subfactors and the overall evaluation must be disclosed. The circumstances of the acquisition will indicate how important cost or price is to the source selection. As a general rule the higher the technical or performance risk, the greater the emphasis on non-cost factors.

In firm-fixed-price contract types where a price analysis is required, adequate price competition is sufficient to determine prices as fair and reasonable. Therefore evaluating separate cost elements and proposed profit/fee is not required.

In cost-type contracts, the Offeror's proposed costs must be analyzed for both reasonableness and cost realism, that is, what the Government should realistically expect to pay for the proposed effort. If cost realism is performed, cost evaluators must also assess cost/price risks and analyze profit or fee. Further, in accordance with FAR Subpart 15.404-1, a cost realism analysis may be used for competitive fixed-priced incentive contracts or, in exceptional cases, other competitive fixed-price contracts when new requirements may not be fully understood by competing Offerors; there are quality concerns; or past performance indicates the proposed items have resulted in quality or service deficiencies.

While communication among SSEB members is important, it may be necessary to protect cost/pricing data from members performing technical evaluation to avoid intentional or unintentional bias on the part of evaluators. Accordingly, to preserve impartiality, cost/pricing information shall not normally be disclosed to non-cost evaluators. To the extent required, the SSEB Chairperson shall manage the sharing of cost/price information, to include information required to conduct cost realism analysis.

5.3 Evaluation Process

The procedures governing the conduct of evaluations may differ according to the nature and scope of the acquisition. However, in all instances, the Contracting Officer shall provide evaluators an overview of the evaluation process and ensure evaluators review and become familiar with the source selection plan, statement of work/objectives, special instructions to Offerors and evaluation criteria and where applicable, evaluation scoring sheets, evaluation standards and the established weights for each factor and subfactor.

5.3.1 Proposal Review

Soon after receipt of proposals, the SSEB Chairperson shall provide the evaluation teams the appropriate proposal sections to be evaluated. Evaluators shall conduct an initial screening of all proposals received and may reach a consensus to eliminate a proposal from further consideration if the proposal is determined to be so grossly deficient as to require an extensive rewrite or supplementation in order to be considered for evaluation, or the proposal otherwise clearly demonstrates that the Offeror does not understand the requirements of the RFP. The recommendation to eliminate a proposal without further consideration shall be approved by the SSA and cleared through OGC.

While the specific evaluation processes and tasks may vary among source selections, the basic objective is to provide the SSA sufficient information to make an informed and reasoned award selection. Toward this end, evaluators must identify strengths, weaknesses, risks (including relative magnitude of each), and deficiencies and develop a concisely written narrative

description of these elements with respect to each factor. Evaluators shall avoid generalizations of a proposal's merits or problems, and instead state the facts that support the conclusions. Evaluation worksheets that outline the foregoing shall be developed for consistency and provided to evaluators. Where weaknesses, risks or deficiencies exist in an Offeror's proposal, the evaluators shall also prepare discussion questions as part of the narrative.

The SSEB evaluators shall evaluate all proposals and report their findings to the Chairperson in accordance with the ranking scheme and evaluation criteria identified in the approved source selection plan. Throughout the evaluation process, the SSEB shall meet as often as necessary to discuss, review, collaborate and consolidate results of the evaluations. The SSEB Chair shall be responsible for preparing a written report embodying the SSEB's conclusions and preparing a briefing thereon to the SSA.

In the event there is significant disagreement among the SSEB members regarding the evaluation results to be presented to the SSA, a minority opinion(s) shall also be documented providing the SSA with sufficient information to sully consider the minority view.

5.3.2 Contractor Responsibility

In accordance with FAR Subpart 9.104-6, acquisitions expected to exceed the SAT, require Contracting Officers to review Offerors' criminal or related activity and suspension or debarment through the Federal Awardee Performance and Integrity Information System (FAPIIS) and the Excluded Parties List System, respectively. Contracting Officers are to consider information in FAPIIS as well as any past performance information available in making a responsibility determination and document the contract file to indicate how this information was considered in reaching the responsibility determination.

5.3.3 Receipt of One Offer

If only one proposal is received, Contracting Officers shall seek the reason why other offers were not submitted by engaging the marketplace to determine if barriers exist that inhibit competition or if the solicitation was unduly restrictive or otherwise flawed. Accordingly, the Contracting Officer shall make a determination as to whether to continue with the evaluation or cancel the solicitation.

If the decision is made to continue with the acquisition, the SSEB shall conduct a limited evaluation to decide if the proposal received is an acceptable offer and satisfies the requirements of the solicitation. The SSEB initial findings and Contracting Officer determination shall be presented to the SSA who will review the data submitted and inform the SSEB Chairperson and Contracting Officer to:

- a. Proceed with the evaluation using the established criteria as prescribed in the SSP;
- b. Disband the SSEB and proceed with award without further SSEB involvement; or
- c. Reject the proposal received and cancel the solicitation.

5.3.4 Oral Presentations

Depending on the requirement, oral presentations may be effective in streamlining the source selection process. In accordance with FAR Subpart 15.102, oral presentations can be used as a substitute for, or to augment written proposals and may occur anytime during the acquisition process. Oral presentations are useful when the requirements are clear and are stated in terms of performance or function.

When conducting oral presentations, in order to preserve a sustainable record of the proposal, Contracting Officers shall use recording media such as video, audio, written transcripts, or obtain a copy of the Offeror's briefing slides or presentation notes. The recorded oral presentation, which is considered source selection information, shall become part of the official file. Contracting Officers shall provide a copy to the Offeror and seal and securely store the master copy of the recording in the event of a protest or litigation.

Oral statements cannot be incorporated into the contract by reference and therefore, any information to be made part of the contract must be submitted in writing. At a minimum, the Offeror must submit representations, certifications and a signed offer sheet (including any exceptions to the Government's terms and conditions) in writing. Additionally, the Offeror must submit pricing or costing data as part of the written proposal. Oral presentations may be conducted before or after a competitive range is established.

When oral proposals will be used, the solicitation shall provide explicit instructions governing how presentations shall be prepared and evaluated and should include, at a minimum:

- a. Topics the Offeror must address and how they relate to the evaluation criteria;
- b. The required format and content of the presentation and their delivery;
- c. The required submission date for presentation charts and/or materials;
- d. Total amount of time that will be allotted for the presentation;
- e. Requirement that the Offeror provide a list of names and position titles of the presenters;
- f. Limitations on Government/Offeror interaction during, and possibly after presentations;
- g. Statement as to whether oral presentations will constitute discussions;
- h. Whether any cost/price information should be included in the presentation; and
- i. Statement whether the oral presentation will be recorded.

5.3.5 Establishing Competitive Range

Contracting Officers will determine, with approval of the SSA, which proposals are within the competitive range based on the evaluated price and other evaluation factors and subfactors included in the RFP. The competitive range shall be limited to the greatest number that will permit an efficient competition among the most highly rated proposals. Contracting Officers must ensure solicitations clearly state that the Government reserves the right to limit the competitive range for purposes of efficiency. However, predetermined cutoff scores or rankings of Offerors cannot be used to exclude a proposal from the competitive range.

Contracting Officers shall collaborate with the SSEB Chair to decide how much review and documentation is required of the various teams to support the competitive range determination prior to entering discussions. Decisions to exclude Offerors from the competitive range shall be fully supported with sufficient facts to conclude that meaningful discussions could not reasonably improve the proposal to be considered for award. Any proposal that, during or after discussions, is no longer considered to be among the most highly rated Offerors being considered for award shall be removed from the competitive range.

In the instance where there is only one proposal falling within the competitive range, Contracting Officers shall ensure the evaluation factors and subfactors are not unduly restrictive and that the procurement is truly competitive. To continue through the evaluation process, the single proposal must meet the requirements of the RFP.

5.3.6 Exchanges with Offerors after Receipt of Proposals

The primary purpose of exchanges with Offerors is to maximize the Government's ability to obtain best value. Contracting Officers shall remain the focal point for all exchanges with prospective contractors from release of the solicitation through contract award. The nature and extent of exchanges will vary depending upon when it occurs after receipt of proposals, yet all exchanges must be conducted in a fair and impartial manner.

For instance, during pre-competitive range exchanges, Contracting Officers may conduct communications if uncertain whether or not to include a proposal in the competitive range or with any Offeror whose adverse past performance information is the determining factor that excludes them from the competitive range. Adverse past performance must be addressed if the Offeror has not had a prior opportunity to respond. However, if an Offeror's inclusion in the competitive range is certain, Contracting Officers shall wait until discussions are opened to address concerns.

Pursuant to FAR Subpart 15.306, discussions differ from clarifications and communications in that, discussions between the Contracting Officer and an Offeror obligates the Contracting Officer to conduct discussions with *all* other Offerors in the competitive range, whereas clarifications and communications do not. In contrast with discussions, exchanges of information held during clarifications or communications do not provide an opportunity for Offerors to revise, expand or amplify proposals as with the conclusion of discussions.

During discussions, Contracting Officers shall discuss any deficiencies and/or significant weaknesses with the Offeror. Contracting Officers are also encouraged to address any risks, non-significant weaknesses or other areas which are not weaknesses but where an Offeror's proposal can be improved. The discussion process affords each Offeror in the competitive range an opportunity to submit a final proposal revision addressing discussion issues and otherwise revising its proposal as necessary.

During exchanges with Offerors following receipt of proposals, Contracting Officers must avoid:

- a. Favoring one Offeror over another;
- b. Revealing an Offeror's solution, technology, or intellectual property to another Offeror;
- c. Revealing cost/price information without permission from the Offeror;
- d. Revealing the name of individuals providing past performance information; or
- e. Knowingly disclosing source selection data in violation of the Procurement Integrity Act.

Upon receipt of final proposal revisions, only minor irregularities may be clarified without any additional request for revisions from all Offerors. However, if further negotiations are needed, a second final proposal revision opportunity must be extended to all Offerors.

5.3.7 Award Without Discussions

An award without discussions is most likely to result in best value when requirements are clear, commodities are known or stable, and the marketplace is extremely competitive. In deciding to award without discussions, the Contracting Officer should consider whether conducting discussions can result in meaningful improvement in technical merit or reduction in cost/price.

The solicitation must clearly communicate the Government's intention to make award without discussions. In cases where the solicitation states this intention and the Contracting Officer later determines it necessary to conduct discussions, rationale for doing so shall be documented in the contract file. Additionally, when awarding without discussions, the solicitation shall state that any proposed deviation from the terms and conditions in the solicitation may result in an offer being unacceptable for award.

5.3.8 SSEB Evaluation Report

Upon completion of the SSEB evaluation assessment, the SSEB Chair shall compile the SSEB's overall findings into a written SSEB evaluation report to be submitted to the SSA. The content of the report shall reflect comprehensive documentation of the overall results and significant points of the evaluation consistent with the source selection criteria provided in the solicitation and SSP. The SSEB evaluation report must be signed by all SSEB evaluators and may be amended following discussions and final proposal revisions.

The SSEB evaluation report shall, at a minimum:

- a. Include a narrative assessment for each evaluation factor and significant subfactor that highlights the strengths, weaknesses, risks, and deficiencies of each proposal and convincingly substantiates the recommended rating, where applicable;
- b. Identify areas in which a proposal failed to conform to the RFP requirements;
- c. Address whether additional information is required to resolve uncertainties or ambiguities in a proposal;
- d. Assess whether any deficiencies can be corrected following discussions or require major revisions in order to meet program requirements as stated in the RFP; and
- e. Identify any irreconcilable differences among the SSEB's ratings.

END OF SECTION 5

SECTION 6 – SOURCE SELECTION DECISION

6.1 Background

In accordance with FAR Subpart 15.308, the source selection decision shall be based on a comparative analysis of the competing proposals against the source selection criteria in the solicitation. The Source Selection Authority shall consider evaluation documentation provided by the SSEB and other advisors; however, the source selection decision shall represent the SSA's impartial and independent judgment.

6.2 Tradeoff Analysis

Under a best value continuum, the Government seeks to obtain the best value in negotiated acquisitions using any one, or a combination of source selection approaches. At one end of the continuum is the lowest priced technically acceptable strategy, and at the other end is a process by which cost or price, past performance, and technical considerations can be traded off against each other to identify the proposal that provides the overall best value to the Government. Tradeoffs are used when it may be in the best interest of the Government to consider awarding to other than the lowest priced Offeror or other than the highest technically rated Offeror.

To determine which proposal provides the best value, the SSA shall analyze the differences between competing proposals. While the SSA may use the evaluation findings and analysis prepared by the SSEB, the SSA is not bound by the SSEB evaluation findings as long as the SSA has a rational basis for the differing opinion. Upon review of the SSEB report and independent analysis, the SSA may find it necessary to request additional analysis of the SSEB or others as applicable; request additional information; re-open discussions; amend the RFP and obtain revised proposals; cancel the RFP or select a source for award.

Where award may be made to other than the lowest price technically acceptable Offeror, the SSA is responsible for independently determining whether non-price advantages are worth the cost/price that might be associated with a higher rated proposal and document the rationale for the price premium. Conversely, if the highest technically rated proposal is not selected, it is also imperative that the rationale for its non-selection be documented.

6.3 Source Selection Statement

The SSA shall prepare a source selection statement that succinctly and accurately provides rationale for the source selection decision and any business judgment and technical/cost tradeoff such as the benefits associated with additional costs. The source selection statement shall include the following:

- a. Decision statement, (i.e. *As Source Selection Authority for this acquisition, I have determined that the product/service proposed by Offeror C provides the best overall value to satisfy the Department of Commerce needs*);
- b. Brief description of the requirement;
- c. Basis for award as set forth in the RFP, including the factors and subfactors against which proposals were measured and their relative order of importance;
- d. Offerors in the competitive range;

- e. Rationale for business judgments and tradeoffs, to include:
 - i. Comparison of each proposal, focusing on key proposal differences (strengths, weaknesses, and risks) and their impact on the acquisition.
 - ii. Explanation of specific tradeoffs that led to the selection decision.
 - iii. Explanation of specific benefits of the technically superior offeror(s) and why they are or are not significant enough to warrant any additional cost.
- f. Any significant differences between the SSA's decision and the SSEB's evaluation, if applicable.

6.4 Debriefing Unsuccessful Offeror

6.4.1 Pre-award Debriefing

Contracting Officers shall promptly notify an Offeror whose proposal is excluded from the competitive range or otherwise eliminated from competition before contract award. The pre-award notice shall provide a summary of the basis for the exclusion from the competitive range and a statement that the Government will not consider any further proposal revisions from the excluded Offeror. For small business programs, the apparent unsuccessful Offerors shall be provided the pre-award notice required by FAR Subpart 15.503.

A request from an unsuccessful Offeror for a pre-award debriefing must be in writing and received by the Government within three calendar days of the Offeror receiving exclusion notification. Contracting Officers shall conduct debriefings as soon as practicable after receipt of a timely, written request. However, Contracting Officers may decline a request for a pre-award debriefing if conducting the debriefing would not be in the Government's best interest. Offerors may request the debriefing be delayed until after award. When delayed, the debriefing shall include all the information to be provided in a post-award debriefing.

During a pre-award debriefing, Contracting Officers may discuss evaluation results of significant elements in the Offeror's proposal, provide a summary of the rationale for eliminating the Offeror from competition and offer reasonable responses to relevant questions regarding source selection procedures followed in evaluating their proposal. However, in accordance with FAR Subpart 15.505(f), the following information may not be disclosed in a pre-award debriefing:

- a. Number of Offerors;
- b. Identity of other Offerors;
- c. Content of other Offerors' proposals;
- d. Ranking of other Offerors;
- e. Evaluation of other Offerors;
- f. Point-by-point comparisons of a debriefed Offeror's proposal with other proposals; or
- g. Information prohibited from disclosure by FAR Subpart 24.202 or exempt from release under the Freedom of Information Act (FOIA).

6.4.2 Post-award Debriefing

Contracting Officers shall provide post-award notices within three days after the date of contract award to each Offeror whose proposal was in the competitive range, but was not selected for award or who had not received a pre-award notice. The post-award notice shall state:

- a. Number of proposals received;
- b. Name(s) and address(es) of awardee(s);
- c. Contract price;
- d. Rationale as to why the Offeror's proposal was not selected; and
- e. Notice of right to request a debriefing.

The request for a debriefing after award must be in writing and received by the Government within three days of the Offeror receiving notification of contract award. Contracting Officers shall to the maximum extent practicable, hold post-award debriefings within 5 days after receipt of a timely written request. Untimely debriefing requests may be accommodated, if feasible. A debriefing may also be provided to the successful Offeror upon request.

The Contracting Officer shall chair the debriefing and select appropriate Government personnel to attend so that a meaningful debriefing is achieved. The Contracting Officer may rely on SSEB members to address specialized areas of the Offerors' proposals. A representative from the OGC shall also attend debriefings when the Offeror's legal counsel is in attendance or in the event the Offeror has filed a protest before the debriefing or there are indicators that a protest is likely to ensue. Post-award debriefing information shall be in accordance with FAR Subpart 15.506(d).

Contracting Officers shall include a summary of each debriefing in the contract file. The post-debriefing memorandum must include, at a minimum:

- a. A list of all debriefing attendees;
- b. A summary of the information disclosed during the debriefing; and
- c. The substance of all questions and answers discussed at, or provided subsequent to, the debriefing.

**END OF SECTION 6
END OF CAM 1315.3**

APPENDIX A – DEFINITIONS

Acquisition Plan - A comprehensive plan outlining the recommended method of procurement, including documentation of the decisions made related to such matters as recommended period of performance, socio-economic program set-asides, market research findings, and whether the requirement constitutes bundling.

Acquisition Strategy – Identifying the proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria and related program documents.

Best Value - The expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

Clarifications – Limited exchanges between the Government and Offerors that may occur when award without discussions is contemplated.

Communications – Exchanges between the Government and Offerors, after receipt of proposals, leading to establishment of the competitive range.

Deficiency – A material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Discussions – Negotiations conducted in a competitive acquisition that takes place after establishment of the competitive range permitting an Offeror to revise its proposal.

Final Proposal Revision – Upon completion of discussions, Offerors may revise their initial proposal with a final revision which documents all cost and technical agreements reached during negotiations.

Life-cycle Cost - the total cost, including life options, to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired under a contract vehicle.

Market Research – Collecting and analyzing information about capabilities within the market to determine the breadth and scope of concerns available to satisfy Federal agency needs.

Milestone Acquisition Plan – Written acquisition plan reflecting the major activities (milestones) to be accomplished in processing of the acquisition.

Program Office – The entity responsible for defining acquisition requirements and providing funding allocations for the acquisitions.

Proposal Modification – A change made to a proposal before the solicitation closing date, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal Revision – A change to a proposal made after the solicitation closing date, at the request of or as allowed by the Contracting Officer, as the result of negotiations.

Risk – The potential for unsuccessful contract performance. The consideration of risk assesses the degree to which an Offeror’s proposed approach for achieving the technical factor or subfactor may involve risk of disruption of schedule, increased cost or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance.

Source Selection Evaluation Board – Any board, team, council, or other group that evaluates proposals.

Strength – An aspect of an Offeror’s proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.

Weakness – A flaw in the proposal that increases the risk of unsuccessful contract performance.

APPENDIX B

Source Selection Evaluation Board Appointment Memo (Sample)

MEMORANDUM FOR: Source Selection Evaluation Board Member

FROM: Source Selection Authority

SUBJECT: Appointment of Source Selection Evaluation Board for (*Acquisition Title*)

As Source Selection Authority (SSA) on (*acquisition title*), you are hereby appointed to serve as member of the Source Selection Evaluation Board (SSEB) to evaluate proposals for this acquisition. The evaluation will be conducted in accordance with the source selection plan which shall be submitted for my approval. The SSEB consist of the following members:

Chairperson:

Member:

Member:

Other advisors, consultants, etc.:

The SSEB will operate in accordance with the Department of Commerce source selection procedures as set forth in the Commerce Acquisition Manual 1315.3, as well as regulations governed by Federal Acquisition Regulation, Commerce Acquisition Regulation, and any other applicable Departmental regulations. It will be the joint responsibility of the SSEB Chairperson and the Contracting Officer to ensure that the SSEB members and other participants are fully conversant with, and adhere to, the applicable acquisition and source selection regulations and procedures.

As a member of the SSEB, you will be responsible for evaluating proposals in accordance with the evaluation criteria and source selection plan and preparing evaluation findings for submission to the SSA. To accomplish this, your active participation on this SSEB is required.

All participants in the source selection process have a responsibility to maintain security of information and avoid conflicts of interest. To this end, all SSEB members shall sign a Confidentiality Certificate; Conflict of Interest Certificate; and Source Selection Non-Disclosure Agreement and Statement of Financial Interest. As a SSEB member you may also be requested to complete an OGE-450, *Confidential Financial Disclosure Report* or SF-278, *Public Financial Disclosure Report*, which are maintained by the Department of Commerce Office of General Counsel, Ethics Law and Programs Division.

No documentation in any form shall be removed from the secured work area for any purpose without specific permission of the SSEB Chairperson. Additionally, any source selection information shall be discussed only with individuals participating in the source selection or otherwise authorized as "need to know" through written authorization by the SSA.

APPENDIX C

Confidentiality Certificate (Sample)

Confidentiality Certificate

To Source Selection Evaluation Board Chairperson:

In anticipation of my participation on the Source Selection Evaluation Board formed to evaluate proposals for the (*acquisition title*), I have read and understand the requirements for safeguarding and disclosing information. I certify that I will not disclose any information concerning the evaluation, the number of offers received, the identity of the offerors, the contents of the proposals, or any other identifiable source selection information to any party who is not authorized access to the source selection information by law, regulation, or pursuant to the order of a court of competent jurisdiction, and then only to the extent that such information is required in connection with such person's official responsibilities.

Furthermore, I will report to you any communication concerning the acquisition or the Source Selection Evaluation Board's composition and activities, from any party outside of the Source Selection Evaluation Board. I will keep all copies of proposals, evaluation reports, scoring sheets, notes, and all other materials pertaining to the Source Selection Evaluation Board's operations in a locked cabinet or file drawer when not being used. I will also return all of the documents when instructed.

(Signature)

(Printed Name)

(Date)

APPENDIX D

Conflict of Interest Certificate (Sample)

Conflict of Interest Certificate

To Source Selection Evaluation Board Chairperson:

I certify that I am not aware of any matter which might limit my ability to participate in the (*acquisition title*) proceedings and activities in an objective and unbiased manner or which might place me in a position of a conflict, real or apparent, between my responsibilities as a member of the Source Selection Evaluation Board and other interests.

In making this certification, I have considered all my stocks, bonds, other financial interests, and employment arrangements (past, present, or under consideration) and, to the extent known by me, all the financial interests and employment arrangements of my spouse, my minor children, and other members of my immediate household.

If, after the date of this certification, any person, firm, or other organization with which, to my knowledge, I (including my spouse, minor children, and other members of my immediate household) have a financial interest, or with which I have (or had) an employment arrangement, submits a proposal or otherwise becomes involved in the acquisition, I will notify the Board Chairperson and the Contracting Officer of this apparent conflict of interest. Until advised to the contrary, I will not participate further in any way (by rendering advice, making recommendations, voting or otherwise) in the work of this Source Selection Evaluation Board.

(Signature)

(Printed Name)

(Date)

APPENDIX E

SOURCE SELECTION NON-DISCLOSURE AGREEMENT AND STATEMENT OF FINANCIAL INTEREST FOR (*ACQUISITION TITLE*)

I understand that I have been assigned to the source selection for (*acquisition title*) and that I am subject to Subsection 27(a) of the Office of Federal Procurement Policy Procurement Integrity Act and the implementing regulations included in Federal Acquisition Regulation (FAR 3.104). I acknowledge and agree to the following:

I agree that I will only use the information I obtain as a result of having been assigned to the source selection for (*acquisition title*) for authorized purposes.

I acknowledge that disclosure of source selection information as defined in FAR 2.101, contractor bid or proposal information as defined in FAR 3.104-1, or other proprietary information without prior written authorization from the Contract Officer could damage the integrity of this procurement and subject me to adverse personnel actions and criminal and civil penalties under the Procurement Integrity Act or other applicable laws.

I agree that if I obtain source selection information, contractor bid or proposal information, or other proprietary information without prior written authorization by the Contracting Officer, I will (i) promptly notify the Contracting Officer; (ii) return all source selection information in the form it was received to the Contracting Officer; (iii) neither copy or retain any copies; and (iv) not disclose the information, except as permitted herein.

I agree to safeguard all materials pertaining to the source selection for (*acquisition title*), including following all directions from the Contracting Officer, and promptly return them to the Contracting Officer upon his or her request or completion of the source selection.

I agree that if I become aware that any source selection information, contractor bid or proposal information, or other proprietary information has been improperly disclosed, I will promptly advise the Contracting Officer. I will provide as much detail as I have about the improper disclosure.

I acknowledge that I may not participate in the source selection for (*acquisition title*) if I am aware that it will have a direct and predictable effect on my financial interest or those persons whose interest are imputed to me under laws, regulations, or contractual obligations.

I agree not use the source selection information, contractor bid or proposal information, or other proprietary information for my private gain or the private gain of others, either by my direct or indirect action or by giving counsel, recommendations, or suggestions to others.

I agree that I am not aware of any matter which might reduce my ability to participate in the source selection for (*acquisition title*) in an objective an unbiased manner or which might place me in a position of conflict, real, apparent, possible, or potential, between my responsibilities as a participant and other interests.

I agree that if, at any time during my participation in the source selection, I become aware that my participation may result in a real, apparent, possible, or potential conflict of interest, I will immediately report the circumstances to the Contracting Officer in writing and thereafter, until advised by the Contracting Officer to the contrary, cease my participation in the source selection.

I agree that if by virtue of my position I am otherwise required to file either an OGE Form 450 confidential financial disclosure report or OGE Form 278 public financial disclosure a current form is on file or will be submitted prior to my participation in the source selection for (*acquisition title*).

I acknowledge that I am aware of and will comply with all applicable laws, regulations, and standards of conduct related to source selections, acceptance of bribes and gratuities, conflicts of interest, procurement integrity, and post-employment restrictions.

I acknowledge that in accordance with Section 715 of the Consolidated Appropriations Act of 2012 Section 715, these restrictions are consistent with and do not supersede, conflict with, or otherwise alter the my obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.

I acknowledge that pursuant to the Whistleblower Protection Enhancement Act of 2012, 5 USC 2302(b) that these provisions are consistent with and do not supersede, conflict with, or otherwise alter my 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, gross waste of funds, 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.

Signature and Date

Bureau and Office

Printed Name

Phone Number