

award during the bid acceptance period must be made using SF-30, Amendment of Solicitation/Modification of Contract (except see 519.503-4(b) regarding partial set-asides). The authority cited in paragraph 13D of SF-30 for the subsequent award will be FAR 14.408-1(c)(4).

[54 FR 26514, June 23, 1989. Redesignated and amended at 60 FR 42803, Aug. 17, 1995; 60 FR 44387, Aug. 25, 1995; 60 FR 54957, Oct. 27, 1995]

514.408-6 Equal low bids.

In resolving a tie-bid situation, the status of the bidders (small/large/labor surplus area) on the date the bid was signed is controlling.

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.408-70 Preaward inquiries.

(a) Responses to preaward inquiries should be limited to a statement that the award decision is pending and agency policy prohibits release of additional information.

(b) Actions or discussions that may create false impressions in the eyes of prospective contractors about pending awards must be avoided.

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.408-71 Awards involving related cases referred to higher authority.

When a case is to be or has been referred to higher authority for review, any action which might prejudice the freedom of the higher authority to act on that case must be avoided. This includes partial awards to the same bidder under the same solicitation.

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.408-72 Forms for recommending award(s) (Supplies and services).

GSA Form 1535, Recommendation for Award(s), and GSA Form 1535-A, Recommendation for Award(s), Continuation Sheet, must be used to document all proposed awards (except construction contracts) exceeding the simplified acquisition threshold. The use of the form for awards at or below the simplified acquisition threshold is at the discretion of the contracting activity. One or more awards may be set

forth on each form. All information pertinent to the recommendation must be furnished on the form. The checklist on the back of the form must be completed.

[60 FR 42803, Aug. 17, 1995]

514.409 Information to bidders.

514.409-1 Award of unclassified contracts.

The GSA Form 3577, Notification of Contract Award, may be used to notify all unsuccessful bidders other than (a) any apparent low bidder(s) or (b) unsuccessful bidders from designated countries for acquisitions subject to the Trade Agreements Act.

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.409-70 Restriction on disclosure of inspection or test data.

Before award, no inspection or test data, whether prepared by the Government or an outside inspection or testing agency, shall be disclosed to anyone other than Government officials requiring access to such information in connection with bid evaluation. For requests received after award, see FAR 14.408-1(e).

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.471 Multiple bidding.

(a) All bids received from a person, firm, or its affiliates must be considered for award if responsive and otherwise acceptable.

(b) Any bid offering two or more products for the same item received from the same bidder may be accepted if it is the lowest received and meets all requirements of the solicitation.

PART 515—CONTRACTING BY NEGOTIATION

Subpart 515.1—General Requirements for Negotiation

Sec.

515.106 Contract clauses.

515.106-70 Examination of records by GSA clause.

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48 CFR Ch. 5 (10-1-97 Edition)

Subpart 515.4—Solicitation and Receipt of Proposals and Quotations

SOURCE: 54 FR 26521, June 23, 1989, unless otherwise noted.

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- 515.7001 General.
- 515.7002 Policy.
- 515.7003 Procedural requirements.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 515.1—General Requirements for Negotiation

515.106 Contract clauses.

515.106-70 Examination of records by GSA clause.

(a) The contracting officer shall insert the clause at 552.215-70, Examination of Records by GSA, in solicitations and contracts, other than multiple award schedule contracts, that

(1) Involve the use and disposition of Government-furnished property,

(2) Provide for advance payments, progress payments based on cost, or guaranteed loan,

(3) Contain a price warranty or price reduction clause,

(4) Involve income to the Government where income is based on operations that are under the control of the contractor,

(5) Include an economic price adjustment clause,

(6) Are requirements, indefinite-quantity, or letter type contracts as defined in FAR part 16,

(7) Are subject to adjustment based on a negotiated cost escalation base, or

(8) Contain the provision at FAR 52.223-4, Recovered Material Certification. The contracting officer may modify the clause to define the specific area of audit (e.g., the use or disposition of Government-furnished property, compliance with the price reduction clause). Counsel and the Assistant Inspector General—Auditing or Regional Inspector General—Auditing, as appropriate, must concur in any modifications to the clause.

(b) The contracting officer shall insert the clause at 552.215-71, Examination of Records by GSA (Multiple Award Schedule), in solicitations and multiple award schedule contracts. With the Senior Procurement Executive's approval, the contracting officer may modify the clause to also provide for post-award access to and the right to examine records to verify that the pre-award/modification pricing, sales or other data related to the supplies or services offered under the contract which formed the basis for the award/

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modification was accurate, current, and complete. Such a modification of the clause shall provide for the right of access to expire 2 years after award or modification. Before modifying the clause, the contracting officer shall make a determination that absent such access there is a likelihood of significant harm to the Government and submit it to the Senior Procurement Executive for approval. Such determinations must be made on a schedule-by-schedule basis.

[62 FR 44521, Aug. 21, 1997]

Subpart 515.4—Solicitation and Receipt of Proposals and Quotations

515.402 General.

Contracting officers may authorize facsimile proposals (see FAR 15.407(j)) after considering the factors outlined in FAR 15.402(i), provided that facsimile equipment is available in the office designated to receive proposals, procedures and controls have been established for receiving and safeguarding incoming proposals.

[58 FR 52443, Oct. 8, 1993]

515.405 Solicitations for information or planning purposes.

515.405-1 General.

Solicitations for information or planning purposes must be approved by the Chief of the Contracting Office (See 502.101).

[58 FR 52443, Oct. 8, 1993]

515.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

515.406-1 Uniform contract format.

(a) Leases of real property are exempted from the requirement for use of the uniform contract format.

(b) All contracts, including leases of real property, must include the following notice:

The information collection requirements contained in this solicitation/contract that are not required by regulation have been approved by the Office of Management and Budget pursuant to the Paperwork Reduc-

tion Act and assigned OMB Control No. 3090-0163.

[54 FR 26521, June 23, 1989, as amended at 57 FR 61584, Dec. 28, 1992]

515.408 Issuing solicitations.

Potential sources, as used in FAR 15.403 and 15.408, include the incumbent contractor (except when its written response to the contracting activity's notice of contract action under FAR subpart 5.2 states a negative interest) and should include offerors that responded to recent solicitations for the same or similar items.

[56 FR 47005, Sept. 17, 1991]

515.411 Receipt of proposals and quotations.

(a) Solicitations should provide for proposals and modifications to proposals to be submitted to the appropriate contracting office unless arrangements have been made with the local Business Service Center (BSC) for receipt and safeguarding of proposals by the BSC.

(b) Classified proposals and quotations must be handled under FAR 15.411, GSAR subpart 504.4, and the requirements of GSA Order, Freedom of Information Act procedures (ADM 1035.11B).

[54 FR 26521, June 23, 1989, as amended at 56 FR 47005, Sept. 17, 1991]

515.411-70 Recording of offers.

The GSA and/or Standard Forms prescribed for abstracting bids in sealed bidding may be used to abstract proposals or quotations submitted in connection with competitively negotiated procurements where more than one offer is received in response to the solicitation. (See FAR 4.803(a)(10).) The forms may be appropriately modified to include all of the information necessary for evaluation. Abstracts must not be provided to the Business Service Center or disclosed except as provided in 515.1070. See FAR 15.411, 15.413 and 15.1001 regarding disclosure of information.

515.414 Forms.

If partial award is made to an offeror and additional items are being withheld for possible subsequent award to the same offeror, any subsequent award

must be made using SF-30, Amendment of Solicitation/Modification of Contract (except see FAR 15.1002 regarding notification to the successful offeror and GSAR 519.502-3(b) regarding partial set-asides). The authority cited in paragraph 13D of SF-30 for subsequent awards will be GSAR 515.414.

[55 FR 48847, Nov. 23, 1990]

515.414-70 GSA forms.

The GSA Form 1602, Notice Concerning Solicitation, may be used as prescribed in 48 CFR 514.201-70.

[61 FR 6167, Feb. 16, 1996]

Subpart 515.5—Unsolicited Proposals

515.501 Definitions.

Coordinating office, as used in this subpart, means the (a) Office of GSA Acquisition Policy, (b) Office of Acquisition, FSS, (c) Office of Information Technology Acquisition, ITS, (d) Office of the Acquisition Executive, PBS, or the office designated in writing by the regional administrator in the regions. The Office of GSA Acquisition Policy serves as the coordinating office for Central Office activities outside of FSS, ITS, and PBS.

[60 FR 54956, Oct. 27, 1995]

515.504 Advance guidance.

Potential offerors should be encouraged to make preliminary contacts with coordinating offices before submitting a detailed unsolicited proposal or proprietary data.

515.506 Agency procedures.

Coordinating offices shall serve as contact points and establish procedures for controlling the receipt, evaluation,

and timely disposition of proposals consistent with FAR 15.5.

515.506-2 Evaluation.

The evaluation must be completed as soon as practicable (normally within 45 calendar days). The results of the evaluation should be communicated to the submitter with a copy to the coordinating office.

Subpart 515.6—Source Selection

515.608 Proposal evaluation.

515.608-70 Rejection of all proposals.

HCA may reject all proposals received in response to a solicitation under FAR 15.608(b). This authority may be redelegated. Written documentation citing the reasons for rejecting proposals must be included in the contract file.

515.608-71 Discounts for prompt payment.

The policy of not considering discounts in the evaluation of offers applies where there is direct competition between two or more offerors for a single award. It does not apply to procurements where the evaluation process involves a comparison of the offeror's price to the Government with the offeror's price to its other customers. Accordingly, the policy in FAR 14.407-3 does not apply to multiple award schedule solicitations except in those instances where offers are received on identical products. The clause at 552.232-8, Discounts for Prompt Payment, specifies the extent to which discounts for prompt payment will be considered in the evaluation for multiple award schedules. The formula for computing the annualized rate of return addressed in the clause at 552.232-8 is as follows:

$$\text{Discount (\%)} \times \frac{\text{Number of days in a year}}{\text{Total days to due date for payment}^* - \text{Days to discount due date}} = \text{Rate of return}$$

*To determine the total number of days to the due date for payment, start with the date of the invoice and allow 3 days from the date of the invoice to receipt by the Government

and assume that the invoice will be received after the supplies have been delivered and accepted by the Government. Normally, the contract will provide for payment in 30 days

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and the total number of days to the due date for payment will be 33 days.

515.612 Formal source selection.

After the source selection, the releasing authority under FAR 15.612(e)(1) shall be the Contracting Officer. The contracting officer shall obtain the advice and concurrence of assigned legal counsel before releasing proprietary or source selection information outside the agency.

[55 FR 39974, Oct. 1, 1990]

Subpart 515.8—Price Negotiation

515.803 General.

(a) Access to Government cost estimates is limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent necessary to arrive at a fair and reasonable price. After award, the total amount of the independent Government estimate may be revealed, upon written request, to those firms or individuals who submitted proposals.

(b) Whenever a contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable as outlined in FAR 15.803(d) the contracting officer shall refer the matter to the contracting director for resolution.

[55 FR 48848, Nov. 23, 1990]

515.804 Cost or pricing data and information other than cost or pricing data.

515.804-2 Requiring certified cost or pricing data.

When determining the contract amount for purposes of applying the threshold at FAR 15.804-2 for requesting certified cost and pricing data, the value of the contract plus any priced options must be considered. Exercise of a priced option is not considered a price adjustment and does not require submission of cost and pricing data.

515.804-3 [Reserved]

515.804-6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Contracting officers should use Alternate IV of the FAR provision at 52.215-41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, to provide the format for submission of information other than cost or pricing data for multiple award schedule (MAS) contracts. To provide for uniformity in requests under the MAS program, contracting officers should insert the following in paragraph (b) of the provision.

(1) An offer prepared and submitted in accordance with the clause at 552.212-70, Preparation of Offer (Multiple Award Schedule);

(2) Commercial sales practices. The Offeror shall submit information in the format provided in this solicitation in accordance with the instructions at Table 515-1 of the GSA Acquisition Regulation; or submit information in the Offeror's own format.

(3) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(4) By submission of an offer in response to this solicitation, the Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before initial award, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Offeror's cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(b) Contracting officers shall insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation (see FAR 12.303).

COMMERCIAL SALES PRACTICES FORMAT

Name of Offeror _____ SIN(S) _____

NOTE: Please refer to clause 552.212-70, PREPARATION OF OFFER (MULTIPLE AWARD SCHEDULE), for additional information concerning your offer. Provide the following information for each SIN (or group

of SINs or SubSIN) for which information is the same.

(1) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12 month period or the offerors last fiscal year. \$ _____. State beginning and ending of the 12 month period. Beginning _____. Ending _____. In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).

(2) Show your total projected annual sales to the Government under this contract for the contract term, excluding options, for each SIN offered. If you currently hold a Federal Supply Schedule contract for the SIN the total projected annual sales should be based on your most recent 12 months of sales under that contract. SIN _____ \$ _____; SIN _____ \$ _____; SIN _____ \$ _____

(3) Based on your written discounting policies (standard commercial sales practices in

the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES ___ NO _____. (See definition of "concession" and "discount" in 552.212-70).

(4)(a) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at Table 515-1 which is provided in this solicitation for your convenience. The information should be provided in the chart below or in an equivalent format developed by the offeror. Rows should be added to accommodate as many customers as required. See definition of "concession" and "discount" in 552.212-70.

| Column 1 Customer | Column 2 discount | Column 3 quantity/volume | Column 4 FOB term | Column 5 concessions |
|----------------------|----------------------|--------------------------|-------------------|-------------------------|
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(b) Do any deviations from your written policies or standard commercial sales practices disclosed in the above chart ever result in better discounts (lower prices) or concessions than indicated? ___YES ___NO. _____. If YES, explain deviations in accordance with the instructions at Table 515-1 which is provided in this solicitation for your convenience.

(5) If you are a dealer/reseller without significant sales to the general public, you should provide manufacturers' information required by paragraphs (1) through (4) above for each item/SIN offered, if the manufacturer's sales under any resulting contract are expected to exceed \$500,000. You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer's sales records for the purpose of verifying the information submitted by the manufacturer. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of of-

fers, you should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, you must submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

- (a) Manufacturer's Name
- (b) Manufacturer's Part Number
- (c) Dealer's/Reseller's Part Number
- (d) Product Description
- (e) Manufacturer's List Price
- (f) Dealer's/Reseller's percentage discount from List Price or net prices

(End of Format)

(c) The contracting officer should include the instructions for completing the commercial sales practices format in Table 515-1 in solicitations issued under the multiple award schedule program.

TABLE 515-1—INSTRUCTIONS FOR COMMERCIAL SALES PRACTICES FORMAT

If you responded "YES" to question (3), on the COMMERCIAL SALES PRACTICES FORMAT, complete the chart in question (4)(a) for the customer(s) who receive your best discount. If you responded "NO" complete the chart in question (4)(a) showing your written policies or standard sales practices for all customers or customer categories to whom you sell at a price (discounts and concessions in combination) that is equal to or better than the price(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount which equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the proposed multiple award schedule contract period. If your offer is lower than your price to other customers or customer categories you will be aligned with the customer or category of customer that receives your best price for purposes of the Price Reduction clause at 552.238-76. The Government expects you to provide information required by the format in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete as of 14 calendar days prior to its submission. You must also disclose any changes in your price list(s), discounts and/or discounting policies which occur after the offer is submitted, but before the close of negotiations. If your discount practices vary by model or product line, the discount information should be by model or product line as appropriate. You may limit the number of models or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the special item number (SIN).

Column 1—Identify the applicable customer or category of customer. A "customer" is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of stu-

dents), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the offeror's discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

Column 2—Identify the discount. The term "discount" is as defined in solicitation clause 552.212-70 Preparation of Offer (Multiple Award Schedule). Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis for your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

Column 3—Identify the quantity or volume of sales. Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn the discount. When purchases/orders must be placed within a specified period to earn a discount indicate the time period.

Column 4—Indicate the FOB delivery term for each identified customer. (See FAR 47.3 for an explanation of FOB delivery terms.)

Column 5—Indicate concessions regardless of quantity granted to the identified customer or category of customer. Concessions are defined in solicitation clause 552.212-70 Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

If you respond "YES" to question 4(b) in the Commercial Sales Practices Format, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead

to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer; or the sales of prototype goods for testing purposes.

If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practice Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested, the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

(d) The contracting officer shall insert the clause at 48 CFR 552.215-72, Price Adjustment—Failure to Provide Accurate Information, in solicitations and contracts to be awarded under the multiple award schedule program.

(e) The contracting officer should use Alternate IV of the FAR clause at 52.215-42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, to provide for submission of information other than cost and pricing data for MAS contracts. To provide for uniformity in requests under the MAS program, the contracting officer should insert the following in paragraph (b) of the clause.

(1) Information required by the clause at 552.243-72, Modifications (Multiple Award Schedule);

(2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(3) By submitting a request for modification, the Contractor grants the Contracting

Officer or an authorized representative the right to examine, at any time before agreeing to a modification, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Contractor's cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

[62 FR 44522, Aug. 21, 1997]

515.805 Proposal analysis.

515.805-5 Field pricing support.

(a) "Field pricing support" is provided by the Assistant Inspector General-Auditing, or the Regional Inspector General-Auditing, as appropriate.

(b) When applying the threshold at FAR 15.805-5 for requesting field pricing support, the value of the proposal (including any priced options) must be used.

Subpart 515.9—Profit

515.902 Policy.

(a) *Structured approach for determining profit fee objectives.* The contracting officer's analysis of these profit factors is based on information available to the Government before negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like. The structured approach also provides a basis for documentation of a profit objective, including an explanation of any significant departure from this objective in reaching a final agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed procurement.

(b) *Exemptions from requirement to use the structured approach.* (1) Under exempted procurements, other methods for establishing profit objectives may be used. Generally, such methods will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of profit objective). However, factors within the structured approach considered inapplicable to the procurement may be excluded from the profit objectives. The following types

of procurements are exempt from the structured approach:

- (i) Management contracts for operation and/or maintenance of Government facilities;
- (ii) Contracts primarily requiring delivery of material supplied by subcontractors;
- (iii) Termination settlements;
- (iv) Cost-plus-award-fee contracts;
- (v) Contracts and contract modifications of \$100,000 or less in value; and
- (vi) Architect-engineer and construction contracts.

(2) Other exemptions may be made in the negotiation of contracts having unusual pricing situations where the structured approach is determined to be unsuitable. Such exemptions must be justified in writing and approved by the HCA.

515.905 Profit-analysis factors.

(a) The following factors must be considered whenever profit is to be negotiated. The weight ranges listed after each factor should be used when the structured approach is used.

| Profit factors | Weight ranges in percent |
|---|----------------------------|
| Contractor Effort | |
| Material acquisition | 1 to 4. |
| Conversion direct labor | 4 to 12. |
| Conversion related indirect cost. | 3 to 8. |
| | Other costs 1 to 3. |
| | General management 4 to 8. |
| Other Factors: | |
| Contract cost risk | 0 to 7. |
| Capital investment | -2 to +2. |
| Cost-control and other past accomplishments. | -2 to +2. |
| Federal socio economic programs. | -.5 to +.5. |
| Special situations and independent development. | -2 to +2. |

(b) GSA Form 1766, Structured Approach Profit/Fee Objective, may be used to facilitate the profit objective computation. The contracting officer shall measure the Contractor Effort by the assignment of a profit percentage within the designated weight ranges to each element of cost recognized.

(c) If the facilities capital cost of money is allowed as an item of cost, either as a part of the contracting officer's price/cost objective in a firm fixed price type contract or as an allowable cost in a flexibly priced type contract, e.g., cost reimbursement or fixed price incentive type contract, the contract-

ing officer shall reduce the profit/fee objective as follows. After the contracting officer has developed a dollar profit/fee amount for the requirement (e.g., the sum of the "contract effort" and "other factors" dollar profit/fee amounts on the GSA Form 1766, Structured Approach Profit/Fee Objective), the contracting officer shall subtract from that aggregate dollar profit/fee amount any dollar amount allowed for facilities capital cost of money. The remainder, after subtraction of the facilities capital cost of money amount, is the profit/fee objective.

[54 FR 26521, June 23, 1989, as amended at 55 FR 48848, Nov. 23, 1990]

515.905-1 Common factors.

(a) *Contractor Effort* encompasses broad and basic categories but shall not include facilities capital cost of money. Individual proposals may be in a different format.

(b) After computing a total dollar profit for Contractor Effort, the contracting officer shall calculate the specific profit dollars for the categories under other factors. This is done by multiplying the total Government cost objective, exclusive of any cost of money for facilities capital, by the specific weights assigned to the elements within the Other Factors category.

(c) In determining the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as prescribed in FAR 15.905-1 and the following:

(1) *General management.* Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a new program for an item that involves advanced state of the art techniques may cause more problems and require more managerial time and abilities of a higher order than one that is a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward, as many of the problems should have been solved. An evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(2) *Other-costs.* Include all other direct costs of contractor performance under this item (e.g., travel and relocation, direct support, and consultants). Analysis of these costs in assigning profit weights must include (i) their significance, (ii) their nature, and (iii) how much they contribute to contract performance.

(3) *Contract-cost-risk.* Where the proper contract type has been selected, the reward for risk by contract type would usually fall into the following ranges:

| | |
|--|------|
| Cost-reimbursement type contracts..... | 0-3% |
| Fixed-price type contracts..... | 3-7% |

(i) A cost-plus-a-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads. In such cases, up to 1 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the 0 to 3 percent range with weightings directly related to such factors as confidence in target cost, share ratio of fee(s), etc. The weight range for fixed-price contracts is wide enough to accommodate the many types of fixed-price arrangements. Weighting should indicate the cost risk assumed, with only firm fixed-price contracts reaching the top end of the range.

(ii) The contractor's subcontracting program may significantly impact the contractor's risk under a contract. It could affect risk in terms of both cost and performance. This should be a part of the contracting officer's overall evaluation in selecting a weight for cost risk. The prime contractor may effectively transfer cost risk to a subcontractor and the risk evaluation may, as a result, be below the range that would otherwise apply for the contract type being proposed. The risk evaluation should not be lowered, however, merely because a substantial portion of the contract cost represents subcontracts without any substantial transfer of contractor's risk.

(iii) In evaluating risk in the definitization of letter contracts, unpriced change orders, and unpriced orders under basic ordering agreements, the effect on risk as a result of partial performance before definitization should be considered. Under some cir-

cumstances the total risk may have been effectively reduced. Under other circumstances, the contractor's risk may have remained substantially unchanged. To be equitable, the determination of a profit weight for all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances, not just to the portion of costs incurred or percentage of work completed before definitization.

(iv) Service contracts should have a weight range for cost risk of 0 to 4 percent. A firm fixed-price contract, which is not priced on a labor-hour method, may warrant additional consideration for contractor cost risk. In those circumstances, a weight of up to 4 percent is authorized. Conversely, a cost-plus-a-fixed-fee service contract normally warrants a zero cost risk factor.

(4) *Capital investment.* The evaluation of this factor for profit weights should include the following:

(i) *Facilities.* To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities use needed for contract performance, the source of financing of the facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities that significantly contribute to lower total contract costs, should receive additional profit. Contractors who rely on the Government to provide or finance facilities should receive less profit. Situations between the above examples should be evaluated on their merits with either a positive or negative profit weight adjustment, as appropriate, being made. However, when a contractor who owns a large quantity of facilities is to perform a contract that does not benefit from these facilities, or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(ii) *Payments.* The frequency of payments by the Government to the contractor should be considered. The key to this weighting is the impact the contract will have on the contractor's cash flow. Generally, for payments more frequent than monthly, negative consideration should be given, with

maximum reduction as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for payments less frequent than the contractor's or the industry's normal practice.

(5) *Cost control and other past accomplishments.* See FAR 15.905-1(e).

(6) *Federal socio economic programs.* See FAR 15.905-1(c).

(7) *Special situations and independent development.* See FAR 15.905-1(f).

[54 FR 26521, June 23, 1989, as amended at 55 FR 48848, Nov. 23, 1990]

515.905-70 Nonprofit organizations.

(a) The structured approach was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, the structured approach as modified below, should also be used to establish fee objectives for nonprofit organizations. (See FAR 31.701.) The modifications should not be applied as deductions to historical fee levels, but rather, as a reduction in the fee objective calculated under the structured approach.

(b) For contracts with nonprofit organizations, an adjustment of up to 3 percent will be subtracted from the total profit-fee objective. In developing this adjustment, it will be necessary to consider the following factors:

- (1) tax position benefits;
- (2) granting of financing through letters of credit;
- (3) facility requirements of the nonprofit organization; and
- (4) other factors that may work to the advantage or disadvantage of the contractor as a nonprofit organization.

Subpart 515.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

515.1070 Release of information concerning unsuccessful offerors.

(a) GSA Order, GSA Freedom of Information Act (FOIA) procedures (ADM 1035.11B), should be consulted to determine what information may be disclosed.

(b) When simplified acquisition procedures are used, the names and dollar amounts of unsuccessful offerors may be released upon request without processing through the formal FOI procedures.

(c) When the contracting officer determines, in connection with negotiated procurements (other than purchases made using simplified acquisition procedures), that the administrative time and workload of processing regular FOIA requests (see FAR 14.408-1(c)) is greater than the workload involved in preparing an abstract of offers to be displayed at an appropriate Business Service Center, the following rules apply:

(1) An abstract of offers may be prepared for display after award in the appropriate Business Service Center in addition to the notification required by FAR Subpart 15.10.

(2) The abstract must include only the names, addresses, and "best and final" prices offered for unclassified acquisitions where the award is based on price and price-related factors. The successful offeror(s) must be identified.

(3) Abstracts must not contain information regarding failure to meet minimum standards of responsibility or other notations properly exempt from disclosure under FOI regulations.

(d) The information outlined in paragraph (c) of this section must not be disclosed when the contracting officer determines, on a case-by-case basis, that it is not in the best interest of the Government or when it may be competitively harmful to offerors such as when negotiations are in process for an item that was recently awarded under another solicitation.

[54 FR 26514, June 23, 1989, as amended at 56 FR 47005, Sept. 17, 1991; 60 FR 42804, Aug. 17, 1995]

Subpart 515.70—Use of Bid Samples

515.7000 Scope of subpart.

This subpart supplements the policies and procedures in FAR 14.202-4 and 514.202-4 regarding bid samples required in negotiated acquisitions.

515.7001 General.

Except as provided in 515.7002 and 515.7003, the basic policy and procedures in FAR 14.202–4 and 514.202–4 apply to negotiated acquisitions. When referring to FAR 14.202–4 and 514.202–4, the term “bid” means “offer” or “proposal” and the terms “bidder” and “invitation” or “invitation for bids” are used synonymously with “offeror” and “solicitation” or “RFP” when contracting by negotiation.

515.7002 Policy.

(a) Since the terms “responsiveness” and “nonresponsive” do not apply to negotiated acquisitions, FAR 14.202–4(b) (2) and (4) do not apply when the use of bid samples is determined necessary under this subpart.

(b) Instead of FAR 14.202–4(b) (2) and (4), apply the following:

(1) Bid samples will be used in the technical evaluation of proposals to determine the acceptability of the samples to meet the Government’s specification and to ensure compliance with the subjective and any objective characteristics listed in the solicitation.

(2) A proposal may be excluded from further consideration for award if after discussion with the offeror of any deficiencies found in the samples and after the offeror has been given an opportunity to correct those deficiencies, the sample still fails to conform to each of the characteristics listed in the solicitation. (See FAR 15.609.)

515.7003 Procedural requirements.

(a) *Unsolicited samples.* The reference to FAR 14.404–2(d) in FAR 14.202–4(g) is not applicable and the following is to be applied when contracting by negotiation:

Qualifications in the proposal that are at variance with the Government’s requirements are deficiencies and must be resolved as provided for in FAR 15.610.

(b) *Solicitation requirements.* (1) When the clause at FAR 52.214–20 is used in a negotiated acquisition, the second sentence in paragraph (c) of the clause does not apply. A sentence substantially as follows must be substituted in the clause when contracting by negotiation.

Failure of the bid samples to conform to all of the required characteristics listed in the solicitation shall constitute a deficiency in the proposal and shall be resolved as provided for in FAR 15.610.

(2) In addition to listing subjective characteristics that cannot be adequately described in the specification, objective characteristics may be listed in the solicitation and evaluated when it has been determined, on the basis of past experience or other valid considerations, that examination of such characteristics is essential to the acquisition of an acceptable product.

(c) Samples received after the time set for receipt of offers may be considered only if they meet the requirements of FAR 52.215–10.

PART 516—TYPES OF CONTRACTS**Subpart 516.2—Fixed-Price Contracts**

Sec.

516.203 Fixed-price contracts with economic price adjustment.

516.203–4 Contract clauses.

516.203–70 EPA in FSS multiple award schedules.

Subpart 516.4—Incentive Contracts

516.405 Contract clauses.

Subpart 516.5—Indefinite-Delivery Contracts

516.505 Contract clauses.

Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.

516.603–3 Limitations.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 54 FR 26526, June 23, 1989, unless otherwise noted.

Subpart 516.2—Fixed-Price Contracts**516.203 Fixed-price contracts with economic price adjustment.****516.203–4 Contract clauses.**

(a) *General.* When the contracting officer decides to use a clause providing for adjustments based on cost indexes of labor or material under FAR 16.203–4, a clause must be prepared with the