

Health and Human Services

315.404-2

(4) Any other pertinent information to fully support the basis for the cost analysis;

(5) If the contract is an incentive type, a discussion of all elements of profit and fee structure; and

(6) A justification of the reasonableness of the contractor's proposed profit or fixed fee considering the requirements of *FAR 15.404-4* and *315.404-4*.

(k) *Cost realism*. Describe the cost realism analysis performed on proposals.

(1) *Government-furnished property and facilities*. With respect to Government-furnished facilities, equipment, tooling, or other property, include the following:

(1) If the Government will not provide property, a statement to that effect.

(2) If the Government will provide property, a full description of it, its estimated dollar value, the basis of price comparison with competitors, and the basis of rental charge, if rental is involved.

(3) If a decision to furnish property has not been made, a detailed explanation.

(m) *Negotiations*. Include a statement as to the date and place of negotiations, and identify members of both the Government and contractor negotiating teams by area of responsibility. Include negotiation details relative to the SOW/PWS, terms and conditions, and special provisions. The results of cost or price negotiations shall include the information required by *FAR 31.109* and *15.406-3*. In addition, if the potential contractor provided cost or pricing data, specify the extent to which the Contracting Officer relied upon the factual cost or pricing data submitted and used it in negotiating the cost or price.

(n) *Other considerations*. Include coverage of areas such as the following:

(1) Financial data with respect to a contractor's capacity and stability.

(2) Determination of contractor responsibility.

(3) Details as to why the method of payment, such as progress payments, advance payments, *etc.*, is necessary and cite any required D & F's.

(4) Information with respect to obtaining a certificate of current cost or pricing data.

(5) Other required special approvals.

(6) If the contract represents an extension of previous work, the status of funds and performance under the prior contract(s). Also, the Project Officer shall provide sufficient information for the Contracting Officer to determine that the Government has obtained enough actual or potential value from the work previously performed to warrant continuation with the same contractor.

(7) A statement that the Contracting Officer has explained the equal opportunity provisions of the proposed contract to the contractor, and the contractor is aware of its responsibilities. Also, state whether or not an Equal Employment Opportunity (EEO) clearance is required.

(8) If the contract is for services, a statement, in accordance with *FAR 37.103*, that the services are nonpersonal in nature.

(o) *Terms and conditions*. Identify the general and special clauses and conditions that are contained in the contract, such as option arrangements, multi-year contracting, anticipatory costs, deviations from standard clauses, *etc.* The Contracting Officer shall state the rationale for inclusion of any special terms and conditions and, where applicable, identify the document which granted approval for their use.

(p) *Recommendation*. Briefly state the basis (or bases) for recommending award.

(q) *Signature*. The Contracting Officer and the individual who prepared the negotiation memorandum must sign the document.

Subpart 315.4—Contract Pricing

315.404 Proposal analysis.

315.404-2 Information to support proposal analysis.

(a)(2) When some or all information sufficient to determine the reasonableness of the proposed cost or price is already available or can be obtained by phone from the cognizant audit agency, the Contracting Officer may request less-than-complete field pricing support (specifying in the request the information needed) or may waive in writing the requirement for audit and

field pricing support by documenting the file to indicate what information will be used instead of the audit report and the field pricing report.

(3) When initiating audit and field pricing support, the Contracting Officer shall do so by sending a request to the cognizant Administrative Contracting Officer, with an information copy to the cognizant audit office. When field pricing support is not available, the Contracting Officer shall initiate an audit by sending, in accordance with agency procedures, two (2) copies of the request to the OIG Office of Audit Services, Regional Inspector General. In both cases, the Contracting Officer shall, in the request—

(i) Prescribe the extent of the support needed;

(ii) State the specific areas for which input is required;

(iii) Include the information necessary to perform the review, such as the offeror's proposal and the applicable portions of the solicitation, particularly those describing requirements and delivery schedules;

(iv) Provide the complete address of the location of the offeror's financial records that support the proposal;

(v) Identify the office having audit responsibility, if other than the HHS Regional Audit Office; and

(vi) Specify a due date for receipt of a verbal report and the written audit report. If the time available is not adequate to permit satisfactory coverage of the proposal, the auditor shall so advise the Contracting Officer and indicate the additional time needed. The Contracting Officer shall submit one copy of the audit request letter provided to the Office of Audit Services, Regional Inspector General and a complete copy of the contract price proposal to OIG Office of Audit Services. Whenever the Office of Audit Services has conducted an audit review, the Contracting Officer shall forward two (2) copies of the memorandum of negotiation to OIG Office of Audit Services.

315.404-4 Profit.

(b) *Policy.* (1) The structured approach for determining profit provides a technique for establishing a profit objective for negotiation. A profit objective is that part of the estimated con-

tract price objective or value which, in the judgment of the Contracting Officer, constitutes an appropriate amount of profit for the acquisition being considered. This technique allows for consideration of the profit factors described in paragraph (d) of this section. The Contracting Officer's analysis of these factors shall be based on available information, such as proposals, audit data, assessment reports, and pre-award surveys. The structured approach provides a basis for documenting the profit objective. The Contracting Officer shall explain any significant departure from this objective. The amount of documentation depends on the dollar value and complexity of the proposed acquisition. The profit objective is a part of the overall negotiation objective and is directly related to the cost objective and any proposed sharing arrangement. The profit objective shall exclude factors considered inapplicable to the acquisition.

(ii) The Contracting Officer shall negotiate the profit objective at the same time as the other cost items and as a whole rather than as individual profit factors. The profit factor breakdown shall be part of the documentation. The Contracting Officer shall use the profit analysis factors in *FAR 15.404-4(d)* in lieu of the structured approach in the following circumstances:

(A) Contracts not expected to exceed \$100,000.

(B) A & E contracts.

(C) Management contracts for operations or maintenance of Government facilities.

(D) Construction contracts.

(E) Contracts primarily requiring delivery of material supplies by subcontractors

(F) Termination settlements.

(G) Cost-plus-award-fee contracts.

However, the Contracting Officer may perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement. The Contracting Officer may make other exceptions in the negotiation of contracts having unusual pricing situations, but shall justify in writing those situations where the structured approach is determined to be unsuitable.

(c) *Contracting Officer responsibilities.* The Contracting Officer shall develop