

# 52.215-1 Instructions to Offerors-Competitive Acquisition.

As prescribed in 15.209(a), insert the following provision:

Instructions to *Offerors-Competitive Acquisition* (Nov 2021)

(a) *Definitions*. As used in this provision-

*Discussions* are negotiations that occur after establishment of the competitive range that *may*, at the *Contracting Officer's* discretion, result in the *offeror* being allowed to revise its proposal.

*In writing*, "writing," or "written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

*Proposal modification* is a change made to a proposal before the *solicitation's* closing date and *time*, or made in response to an amendment, or made to correct a mistake at any *time* before award.

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

*Time*, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last *day* falls on a Saturday, Sunday, or legal holiday, then the period *shall* include the next working *day*.

(b) *Amendments to solicitations*. If this *solicitation* is amended, all terms and conditions that are not amended remain unchanged. *Offerors shall* acknowledge receipt of any amendment to this *solicitation* by the date and *time* specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals.

(1) Unless other methods (*e.g.*, *electronic commerce* or facsimile) are permitted in the *solicitation*, proposals and modifications to proposals *shall* be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the *solicitation*, and (ii) showing the *time* and date specified for receipt, the *solicitation* number, and the name and address of the *offeror*. *Offerors* using commercial carriers *should* ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal *must* show-

(i) The *solicitation* number;

(ii) The name, address, and telephone and facsimile numbers of the *offeror* (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the *solicitation* and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the *offeror's* behalf with the Government in connection with this *solicitation*; and

(v) Name, title, and *signature* of person authorized to sign the proposal. Proposals signed by an agent *shall* be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, revision, and withdrawal of proposals.

(i) *Offerors* are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the *solicitation* by the *time* specified in the *solicitation*. If no *time* is specified in the *solicitation*, the *time* for receipt is 4:30 p.m., local *time*, for the designated Government office on the date that proposal or revision is due.

(ii)

(A) Any proposal, modification, or revision received at the Government office designated in the *solicitation* after the exact *time* specified for receipt of *offers* is "late" and will not be considered unless it is received before award is made, the *Contracting Officer* determines that accepting the late *offer* would not unduly delay the *acquisition*; and-

(1) If it was transmitted through an *electronic commerce* method authorized by the *solicitation*, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working *day* prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of *offers* and was under the Government's control prior to the *time* set for receipt of *offers*; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any *time* it is received and *may* be accepted.

(iii) Acceptable evidence to establish the *time* of receipt at the Government installation includes the *time/date* stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an *emergency* or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact *time* specified in the *solicitation*, and urgent Government requirements preclude amendment of the *solicitation*, the *time* specified for receipt of proposals will be deemed to be extended to the same *time of day* specified in the *solicitation* on the first work *day* on which normal Government processes resume.

(v) Proposals *may* be withdrawn by written notice received at any *time* before award. Oral proposals in response to oral *solicitations* *may* be withdrawn orally. If the *solicitation* authorizes facsimile proposals, proposals *may* be withdrawn via facsimile received at any *time* before award, subject to the conditions specified in the provision at [52.215-5](#), Facsimile Proposals. Proposals *may* be withdrawn in person by an *offeror* or an authorized representative, if the identity of the person

requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the *solicitation*, the *offeror* may propose to provide any item or combination of items.

(5) *Offerors shall* submit proposals in response to this *solicitation* in English, unless otherwise permitted by the *solicitation*, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the *solicitation*.

(6) *Offerors may* submit modifications to their proposals at any *time* before the *solicitation* closing date and *time*, and *may* submit modifications in response to an amendment, or to correct a mistake at any *time* before award.

(7) *Offerors may* submit revised proposals only if requested or allowed by the *Contracting Officer*.

(8) Proposals *may* be withdrawn at any *time* before award. Withdrawals are effective upon receipt of notice by the *Contracting Officer*.

(d) *Offer expiration date*. Proposals in response to this *solicitation* will be valid for the number of days specified on the *solicitation* cover sheet (unless a different period is proposed by the *offeror*).

(e) *Restriction on disclosure and use of data*. *Offerors* that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, *shall*-

(1) Mark the title page with the following legend:

This proposal includes data that *shall* not be disclosed outside the Government and *shall* not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this *offeror* as a result of-or in connection with-the submission of this data, the Government *shall* have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award.

(1) The Government intends to award a contract or contracts resulting from this *solicitation* to the responsible *offeror*(s) whose proposal(s) represents the *best value* after evaluation in accordance with the factors and subfactors in the *solicitation*.

(2) The Government *may* reject any or all proposals if such action is in the Government's interest.

(3) The Government *may* waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without *discussions* with *offerors* (except clarifications as described in FAR 15.306(a)). Therefore, the *offeror's* initial

proposal *should* contain the *offeror's* best terms from a cost or price and technical standpoint. The Government reserves the right to conduct *discussions* if the *Contracting Officer* later determines them to be necessary. If the *Contracting Officer* determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the *Contracting Officer may* limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the *offeror* specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with *offerors* after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government *may* determine that a proposal is unacceptable if the prices proposed are materially unbalanced between *line items* or *subline items*. Unbalanced *pricing* exists when, despite an acceptable total evaluated price, the price of one or more *line items* is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal *may* be rejected if the *Contracting Officer* determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a *cost realism* analysis is performed, *cost realism may* be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful *offeror* within the *time* specified in the proposal *shall* result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting *offerors*, the Government *shall* disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed *offeror's* offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed *offeror* and *past performance* information on the debriefed *offeror*.

(iii) The overall ranking of all *offerors*, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For *acquisitions of commercial products*, the make and model of the product to be delivered by the successful *offeror*.

(vi) Reasonable responses to relevant questions posed by the debriefed *offeror* as to whether sourceselection procedures set forth in the *solicitation*, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

*Alternate I (Oct1997)*. As prescribed in [15.209](#) (a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(f)(4) The Government intends to evaluate proposals and award a contract after conducting *discussions* with *offerors* whose proposals have been determined to be within the competitive range. If the *Contracting Officer* determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the *Contracting Officer* may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the *offeror's* initial proposal *should* contain the *offeror's* best terms from a price and technical standpoint.

*Alternate II (Oct1997)*. As prescribed in [15.209](#) (a)(2), add a paragraph (c)(9) substantially the same as the following to the basic clause:

(c)(9) *Offerors* may submit proposals that depart from stated requirements. Such proposals *shall* clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the *solicitation*, as well as the comparative advantage to the Government, *shall* be clearly identified and explicitly defined. The Government reserves the right to amend the *solicitation* to allow all *offerors* an opportunity to submit revised proposals based on the revised requirements.

**Parent topic:** [52.215 \[Reserved\]](#)