

GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAR Case 2008-G506:
Rewrite of GSAR Part 515, Contracting by Negotiation.

1. **Purpose.** This order transmits a revision to the General Services Administration Acquisition Manual (GSAM) at GSAR part 515, Contracting by Negotiation and corresponding provisions and clauses in GSAR part 552, Solicitation Provisions and Contract Clauses, to clarify and update the contracting by negotiation GSAR section.
2. **Background.** In 2006, GSA initiated a rewrite of the GSAM, which comprises the General Services Acquisition Regulation (GSAR), as well as internal agency acquisition guidance. The purpose of the GSAM rewrite was to consolidate, update, and revise policy to fulfill statutory and executive order requirements, meet the needs of evolving acquisition programs within GSA's Federal Acquisition Service (FAS), Public Building Service (PBS), and other staff procurement offices, and ensure consistency with the FAR. The plan was to rewrite each GSAM Part separately.

GSA published a proposed rule in the Federal Register at 73 FR 57580 on October 3, 2008 (<https://federalregister.gov/a/E8-22745>), revising GSAR Part 515 as part of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative. The rule updates GSAR part 515 by eliminating out of date references and reorganizes the text to align with the Federal Acquisition Regulation (FAR). Additionally, the final rule incorporates many of the changes of the proposed rule and makes additional modifications to the text.

3. **Effective date.** July 6, 2016.
4. **Explanation of changes.** The GSAM revisions include the following:

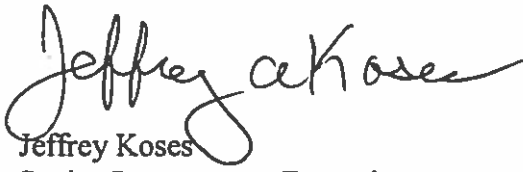
A. Regulatory changes:

- GSAR 501.106 – Aligned Office of Management and Budget (OMB) Control Number 3090-0163 with 552.215-73, *Notice*. The clause states that any information collection required under the solicitation is approved by OMB under Control Number 3090-0163.
- GSAM 503.104-4 (a) (4) – Requires contracting officers to use the *Conflict of Interest Acknowledgement and Nondisclosure Agreement* referenced in GSAM 515.305-71 to maintain the identity of individuals authorized access to contractor bid or proposal information and source selection information.

- GSAM 515.201 – Requires contracting officers to communicate and collaborate with industry prior to receipt of proposal to the maximum extent practicable. Also, encourages the contracting officer to partner with the Office of Small Business Utilization (OSBU) to structure opportunities for communicating and collaborating with industry.
- GSAR 515.204 – Moved the text from subsection 515.204-1 to section 515.204 to parallel FAR section 15.204, identifying in paragraph (a) that the uniform contract format is not required for leasing. Added paragraph (b) identifying the Senior Procurement Executive (SPE) as the designee per FAR 15.204(e).
- GSAR 515.204-1 – Deleted. Paragraphs (a) and (b) were moved to other sections of GSAR 515.
- GSAR 515.205 – Deleted. When a contracting officer uses the government-wide point of entry, such as FedBizOpps, the contracting officer need not specifically send a solicitation to anyone, including the incumbent.
- GSAM 515-208-70 – Provides contracting officers with instructions on how to handle proposals received that contain more restrictive conditions than those in the provision at FAR 52.215-1(e).
- GSAR 515.209-70 – Added paragraphs (a) through (c) to align all GSAM part 515, *Solicitation provisions and contract clauses*, with FAR 15.209:
 - Paragraph (a) is the prescription for clause 552.215-70, *Examination of Records by GSA*, which was moved from 515.209-70. Edits made to the text include deleting subtitle “Clause for other than multiple award schedules.” Replaced “\$100,000” with “simplified acquisition threshold” and the word “you” with “contracting officer.” Eliminated the dashes in the titles, “Assistant Inspector General-Auditing” and “Regional Inspector General-Auditing, replacing each dash with “for”.
 - Paragraph (b) is the prescription for clause 552.215-73, *Notice*, moved from GSAM 515.204-1(b)(1) and (2), notifying the public of the assignment of OMB Control Number 3090-0163 to the information collection requirements contained in the solicitation and contract, and of GSA’s hours of operation for requests of pre- or post-award debriefings.
- GSAR 515.305 – Moved from the regulatory to the non-regulatory as it is only applicable internally to GSA.
- GSAR 515.305-70 – Deleted as paragraph (a) was made non-regulatory, the solicitation notice in paragraph (c) was moved to 515.209-70(b) and the “Notice” itself was converted into clause 552.215-73.
- GSAM 515-305-71 – Provides contracting officers with instructions on actions to take before releasing proposals to an evaluator.

- GSAR 515.70 – The subpart, “Use of Bid Samples”, is deleted in its entirety as it is duplicative of FAR 14.202-4.
- GSAR 552.215-70 – Replaced “100,000” with “simplified acquisition threshold”.
- GSAR 552.215-73 – Added a new clause, notifying the public of OMB Control Number assigned to information collection requirements contained in the solicitation and contract, and GSA’s hours of operations.

See attached Line-In/Line-Out document for more detailed information.



Jeffrey Koses
Senior Procurement Executive

501.106 OMB Approval under the Paperwork Reduction Act.

GSAR Reference	OMB Control No.	GSAR Reference	OMB Control No.
[552.215-73	3090-0163]		

Part 503 – Improper Business Practices and Personal Conflicts of Interest

503.104 Procurement integrity.

503.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) *Persons authorized access to information.* ***

(4) The contracting officer[~~must~~] may use [the] Conflict of Interest Acknowledgement and Nondisclosure Agreement referenced in ~~515.305(b)(4)~~ [515.305-71] to maintain the identity of individuals authorized access to contractor bid or proposal information and source selection information.

* * * * *

Part 515—Contracting by Negotiation

Subpart 515.2—Solicitation and Receipt of Proposals and Information

[515.201 Exchanges with industry before receipt of proposals.

(a) The contracting officer must communicate and collaborate with industry prior to receipt of proposal to the maximum extent practicable. Vendor engagement is key in providing sound solutions in support of the GSA mission and the missions of the customers served by GSA while promoting opportunities for small business. Communication and collaboration tools can be found in the Vendor Communication Plan

(<http://www.gsa.gov/portal/content/105199>).

(b)The contracting officer should partner with representatives of the Office of Small Business Utilization (OSBU) to structure opportunities for communicating and collaborating with industry.]

515.204 Contract format.

(a) The uniform contract format is not required for leases of real property (See GSAM 570.116).
(b) The Senior Procurement Executive is the agency head's designee for the purposes of granting exemptions to the use of the Uniform Contract Format (see FAR 15.204(e).1)

515.204-1 Uniform contract format.

(a) The uniform contract format is not required for leases of real property.
(b) Each solicitation and contract must include the two notices in paragraphs (a)(1) and (b)(2) of this subsection, except that acquisitions of leasehold interests in real property, must include only the notice in (b)(1):
— (1) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3000-0163.
— (2) GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day.

515.205 Issuing solicitations.

Potential sources, as used in FAR 15.205, include both of the following:
(a) The incumbent contractor, except when its written response to the notice of contract action under FAR Subpart 5.2 states a negative interest.
(b) Offerors that responded to recent solicitations for the same or similar items.

515.207 Handling proposals and information.

(a) Unclassified Proposals. In most cases, the best practice is to require offerors to submit proposals and modifications to the issuing contracting office. You may choose to use the local Business Service Center (BSC) for receipt and safeguarding of proposals. If so, make appropriate arrangements with the BSC.

(b) Classified Proposals. Handle classified proposals and quotations according to 504.4, 41 CFR Part 105-60, and GSA Freedom of Information Act procedures at [<http://insite.gsa.gov/portal/content/502412>] <http://www.gsa.gov/staff/c/foia/foiaPros/mainpage.html>.

(c) Recording of offers. Abstracts help to summarize key aspects of proposals when you receive multiple responses to a solicitation (see FAR 4.803(a)(10)).

(1) You may use GSA or Standard Forms prescribed for abstracting bids in sealed bidding to abstract proposals or quotations in competitively negotiated procurements. You may modify the forms to include the information necessary for evaluation.

(2) Abstracts contain contractor bid or proposal information and source selection information. See FAR 15.201, 15.207, 15.306, 15.5, and 24.2 about disclosing information.

[515.208 Submission, modification, revision, and withdrawal of proposals.

515.208-70 Restrictions on disclosure or use of data.

If the contracting officer receives a proposal with more restrictive conditions than those in the provision at FAR 52.215-1(e), then the contracting officer should ask whether the offeror is willing to accept the conditions of the paragraph at FAR 52.215-1(e). If the offeror refuses, then the contracting officer must consult with legal counsel before deciding whether to accept the proposal as marked or return it. See also FAR 3.104-4(d) and FAR 27.404-5.]

515.209 Solicitation provisions and contract clauses.

515.209-70 Examination of records by GSA clause.

Clause for other than multiple award schedules (JUL 2016)

(a) **[Examination of records by GSA clause for other than multiple award schedule (MAS) contracts.**
[[Insert the clause at 552.215-70, Examination of Records by GSA, in [all] solicitations and contracts over [above the simplified acquisition threshold] \$100,000, including acquisitions of leasehold interests in real property, that meet any of the conditions listed below:

- (1) Involve the use or 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 under the control of the contractor.
- (5) Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.
- (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.
- (8) Contain the provision at FAR 52.223-4, Recovered Material Certification.

(b) **[(9) The contracting officer]** You may modify the clause at 552.215-70 to define the specific area of audit (e.g., the use or disposition of Government-furnished property, ~~compliance with the price reduction clause~~). [Office of General Counsel [or the Office of Regional Counsel] and the Assistant Inspector General- [for] Auditing or Regional Inspector General- [for] Auditing, as appropriate, must concur in any modifications to the clause.

[(b) Insert the clause at 552.215-73, Notice, in all solicitations for negotiated procurements above the simplified acquisition threshold in accordance with FAR part 15.

515.210 Forms.

515.210-70 GSA Form 1602.

[(a) The contracting officer] You may use GSA Form 1602, Notice Concerning Solicitation, to do any of the following:

- (a) **[(1)]** Describe the type of contract, the duration of the contract, and the type of supplies or services being procured.
- (b) **[(2)]** Direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer.
- (c) **[(3)]** Highlight significant changes from previous solicitations covering the same supplies or services.
- (d) **[(4)]** Include other special notices as appropriate.

[(b) If GSA Form 1602 is not used, the contracting officer shall place notices and mandated paragraphs in Section L of the solicitation.]

Subpart 515.3—Source Selection

515.300—Scope of subpart

In addition to the policies and procedures of FAR 15.3, ~~Appendix 515A~~, Source Selection Procedures, provides guidance and advice on various source selection techniques.

[515.303 Responsibilities.

The Head of the Contracting Activity (HCA) is the agency head designee that appoints someone other than the contracting officer as the source selection authority (see FAR 15.303(a)).]

515.305—Proposal evaluation.

(a) ~~Restrictions placed on a proposal by the submitter.~~ If you receive a proposal with more restrictive conditions than those in the provision at FAR 52.215-1(e), ask whether the submitter is willing to accept the conditions of the paragraph at FAR 52.215-1(e). If the submitter refuses, consult with legal counsel on whether to accept the proposal as marked or return it.

(b) ~~Actions before releasing proposals.~~ Before releasing any proposal to an evaluator you must take all the following actions:

(1) Obtain the signed original "Conflict of Interest Acknowledgment and Nondisclosure Agreement" from each Government and nongovernment individual serving as an evaluator. Use the Acknowledgment/Agreement in ~~Figure 515.3-1~~.

(i) For employees of other Executive agencies, replace the reference in paragraph (c) of the Acknowledgment/Agreement to GSA's supplemental standards with a reference to the applicable agency.

(ii) For nongovernment evaluators, substitute paragraph (c) of the Acknowledgment/Agreement with the language below and delete paragraph (h):

"(c) I have read and understand the requirements of subsection 27(a) and 27(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 423)."

(2) Attach to each proposal a cover page bearing the following notice:

Government Notice for Handling Proposals

To anyone receiving this proposal or proposal abstract:

This proposal must be used and disclosed for evaluation purposes only.

You must apply a copy of this Government notice to any reproduction or abstract of this proposal.

You must comply strictly with any authorized restrictive notices which the submitter places on this proposal.

You must not disclose this proposal outside the Government for evaluation purposes except to the extent authorized by, and in accordance with, the procedures in 48 CFR 515.305-71.

Figure 515.3-1. Conflict of Interest Acknowledgment and Nondisclosure Agreement

Conflict of Interest Acknowledgment and Nondisclosure Agreement

For proposals submitted in response to GSA solicitation no. _____, I agree to the following:

To the best of my knowledge and belief, no conflict of interest exists that may either:

Diminish my capacity to impartially review the proposals submitted.

Or result in a biased opinion or unfair advantage.

In making the above statement, I have considered all the following factors that might place me in a position of conflict, real or apparent, with the evaluation proceedings:

All my stocks, bonds, other outstanding financial interests or commitments.

All my employment arrangements (past, present, and under consideration).

As far as I know, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household.

I have read and understand the requirements of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR, part 2635) and Supplemental Standards of Ethical Conduct for Employees of the General Services Administration (5 CFR, part 6701).

<p>I have a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the Contracting Officer. I will perform no more duties related to evaluating proposals until I receive instructions on the matter.</p> <p>I will use proposal information for evaluation purposes only. I understand that any authorized restriction on disclosure placed on the proposal by the prospective contractor, prospective subcontractor, or the Government applies to any reproduction or abstracted information of the proposal.</p> <p>I will use my best efforts to safeguard proposal information physically. I will not disclose the contents of, nor release any information about, the proposal to anyone other than:</p> <p>The Source Selection Evaluation Board or other panel assembled to evaluate proposals submitted in response to the solicitation identified above.</p> <p>Other individuals designated by the Contracting Officer.</p> <p>After completing evaluation, I will return to the Government all copies of the proposals and any abstracts.</p> <p>GSA Appropriations Act restriction: These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12058; 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 (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, 703, 704, 708, 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.</p>	
<p>(Enter name of evaluator and organization)</p>	<p>Date</p>

[515.305 Proposal Evaluation.]

([a]e) *Cost or price evaluation MAS* When evaluating prices under MAS, compare an offeror's price to GSA with its price to other customers. In this comparison, consider discounts for early payment to the extent provided in 552.232-8, Discounts for Prompt Payment. *[Price Analysis]*. See subpart 538.2 Establishing and Administering Federal Supply Schedules, for additional procedures when establishing Federal Supply Schedules.]

([b]d) *Past performance evaluation. information:* [See subpart 542.15 Contractor Performance Information.]

(1) You must use information from the Past Performance Information Retrieval System (PPIRS) at www.ppirs.gov when evaluating an offeror's past performance. In addition, [the contracting officer] you may also obtain information through:

- (i) Questionnaires tailored to the circumstances of the acquisition, [i];
- (ii) Interviews with program managers and contracting officers, [i] or
- (iii) Other sources.

(2) You may obtain information to evaluate an offeror's past performance on subcontracting plan goals and small disadvantaged business participation, monetary targets, and notifications under FAR 19.1202-4(b) from the following sources:

- (i) The Small Business Administration;
- (ii) Information on prior contracts from contracting officers and administrative contracting officers;
- (iii) Offeror's references;
- (iv) Past performance information collected under FAR 42.15 and available through PPIRS.

515.305-70 Use of outside evaluators.

(a) *Conditions.* To use outside evaluators, you must meet the restrictions in FAR 37.203 and 537.2.

[515.305-70 Use of nongovernment evaluators.

(a) *Conditions.* To use nongovernment evaluators, contracting officers must meet the restrictions in FAR 7.503, FAR 37.203 and GSAR 537.2. See also FAR subpart 3.11 and Office of Federal Procurement Policy Letter 11-1, *Performance of Inherently Governmental and Critical Functions* (http://www.whitehouse.gov/omb/procurement_index_policy/).

(b) *Limitations on disclosing proposal information.* [The contracting officer] You may disclose proposal information outside the Government before the Government's decision as to contract award only to the extent authorized in this section. Disclosure and handling must comply with FAR 3.1 and GSA[M]R 503.1[04-4].

(e) **Solicitation notice.** Include in the solicitation a notice substantially as follows:

Notice About Releasing Proposals

~~The Government intends to disclose proposals received in response to this solicitation to nongovernment evaluators. Each evaluator will sign and provide to GSA a "Conflict of Interest Acknowledgment and Nondisclosure Agreement."~~

[(c)d) *Relationship to the Freedom of Information Act.* Release of a proposal outside the Government for evaluation does not constitute the release of information under the Freedom of Information Act (5 U.S.C. 552).

[515.305-71 Actions before releasing proposals.

Before releasing any proposal to an evaluator, the contracting officer must take all of the following actions:

(a) Obtain the signed, original "Conflict of Interest Acknowledgment and Nondisclosure Agreement" from each Government and nongovernment individual serving as an evaluator. Use the Acknowledgment/Agreement in Figure 515.3-1. Conflict of Interest Acknowledgment and Nondisclosure Agreement.

(1) For employees of other Executive agencies, replace the reference in paragraph (c) of the Acknowledgment/Agreement to GSA's supplemental standards with a reference to the applicable agency.

(2) For nongovernment evaluators, substitute paragraph (c) of the Acknowledgment/Agreement with the language below and delete paragraph (h):

"(c) I have read and understand the requirements of 41 U.S.C. 2102."

(b) Attach to each proposal a cover page bearing the following notice:

Government Notice for Handling Proposals

To anyone receiving this proposal or proposal abstract—

(1) This proposal must be used and disclosed for evaluation purposes only.

(2) A copy of this Government notice must be applied to any reproduction or abstract of this proposal.

(3) This proposal must not be disclosed to any person outside the Government, unless it is only for evaluation purposes to the extent authorized by, and in accordance with, the procedures in 48 CFR 515.305-70.

Figure 515.3-1 Conflict of Interest Acknowledgment and Nondisclosure Agreement

For proposals submitted in response to GSA solicitation no. _____, I agree to the following:

(a) To the best of my knowledge and belief, no conflict of interest exists that may either—

(1) Diminish my capacity to impartially review the proposals submitted; or

(2) Result in a biased opinion or unfair advantage.

(b) In making the above statement, I have considered all the following factors that might place me in a position of conflict, real or apparent, with the evaluation proceedings:

(1) All my stocks, bonds, other outstanding financial interests or commitments.

(2) All my employment arrangements (past, present, and under consideration) .

(3) As far as I know, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household.

(c) I have read and understand the requirements of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635) and Supplemental Standards of Ethical Conduct for Employees of the General Services Administration (5 CFR part 6701).

(d) I have a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the contracting officer. I will cease performing duties related to evaluating proposals until I receive instructions on the matter.

(e) I will use proposal information for evaluation purposes only. I understand that any authorized restriction on disclosure placed on the proposal by the prospective contractor, prospective subcontractor, or the Government applies to any reproduction or abstracted information of the proposal.

(f) I will use my best efforts to safeguard proposal information physically. I will not disclose the contents of, nor release any information about, the proposals to anyone other than—

(1) The Source Selection Evaluation Board or other panel assembled to evaluate proposals submitted in response to the solicitation identified above; and

(2) Other individuals designated by the contracting officer.

(g) After completing evaluation, I will return to the Government all copies of the proposals and any abstracts.

(h) GSA Appropriations Act restriction. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee 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 Codes, as amended by the Whistleblower Protection Act (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.

(Enter name of evaluator and organization)

Date]

515.306 Exchanges with offerors after receipt of proposals.

Limit access to Government cost estimates to Government personnel whose official duties require knowledge of the estimate. During negotiations, [the contracting officer]you may disclose part or all of the Government estimate under FAR 15.306(e) when necessary to arrive at a fair and reasonable price. After award, [the contracting officer]you may reveal the total amount of the independent Government estimate.

Subpart 515.4—Contract Pricing

515.403 Obtaining [certified]cost or pricing data.

515.403-4 Requiring [certified]cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

To determine if a contract action meets the threshold at FAR 15.403-4 for requesting [certified]cost and pricing data, [the contracting officer shall] consider the value of the action plus any priced options. Exercise of a priced option is not a price adjustment and does not require submission of [certified]cost and pricing data.

515.404-2 Information to support proposal analysis.

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

(b) Follow the procedures in GSA Order, Audit resolution and follow-up system, Ch. 3 (ADM P 2030.2[C]B) for handling contract audit reports.

515.404-4 Profit.

[515.404-70 Profit Analysis.]

(a) *Structured approach for determining profit or fee objectives.*) [The contracting officer shall]base the analysis of profit factors on information available to the Government before negotiations.) [The contracting officer may]Obtain such information from proposals, audit data, performance reports, preaward surveys and the like. The structured approach helps establish a profit objective. It also provides a basis for documenting the objective, including an explanation of any significant departure from this objective in reaching a final agreement.) [The contracting officer shall]-Prepare documentation commensurate with the dollar value and complexity of the proposed procurement.

(b) *Exemptions from requirement to use the structured approach.*

(1) 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 [below the simplified acquisition threshold] of \$100,000 or less in value.

(vi) Architect-engineer and construction contracts.

(2) [The contracting officer] You may request exemptions for other contracts having unusual pricing situations where [the contracting officer] you determine[s that] the structured approach is unsuitable.) [The contracting officer shall] Document [the] your justification in writing. The HCA must approve all such exemptions.

(c) *Other methods for exempted procurements.* Under exempted procurements, [the contracting officer] you may use other methods for establishing profit objectives. In general, [The contracting officer shall] use methods supported in a manner similar to the structured approach (profit factor breakdown and documentation of profit objective). Exclude factors within the structured approach that do not apply to the procurement.

(d) *Profit-analysis factors.*) [The contracting officer shall] Consider the following factors when you negotiate[ing] profit. Use the weight ranges listed after each factor when you us[ing]e the structured approach.

	Profit Factors	Weight Ranges in Percent
Contractor Effort	Material acquisition	1 to 4
	Conversion direct labor	4 to 12
	Conversion related indirect cost:	1 to 3
	per costs neral management	2 to 5
Other Factors	Contract cost risk	0 to 7
	Capital investments	-2 to +2
	Federal socioeconomic programs	-.5 to +.5
	Cost-control and other past accomplishments	-2 to +2
	Independent development and additional factors	-2 to +2

(e) *GSA Form 1766.* [The contracting officer] You may use GSA Form 1766, Structured Approach Profit/Fee Objective, to help compute the profit objective. Measure the Contractor Effort by assigning a profit percentage within the designated weight ranges to each element of cost recognized.

(f) *Facilities capital cost of money.* If [the contracting officer] you allow[s] facilities capital cost of money as an item of cost, either as a part of [the] your 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, reduce the profit/fee objective as follows. After you develop a dollar profit/fee amount for the requirement[is developed], subtract from that aggregate dollar profit/fee amount any dollar amount allowed for facilities capital cost of money. The remainder is the profit/fee objective.

(g) *Calculating profit dollars.* After computing a total dollar profit for Contractor Effort, calculate the specific profit dollars for the categories under Other Factors. Do this by multiplying the total Government cost objective, excluding any cost of money for facilities capital, by the specific weights assigned to the elements in Other Factors.

(h) *Common factors.* In determining the value of each factor, consider the definition, description, and purpose of the factors prescribed in FAR 15.404-4(d) and this subsection.

(1) *General management.* Management problems surface in various degrees. Consider the management expertise exercised to solve them as an element of profit. For example, a new program for an item that involves advanced state of the art techniques may involve more problems and require more managerial time and abilities of a higher order than a follow-on contract. If an initial contract creates more problems and merits a higher profit weight, then a follow-on should merit a downward adjustment, as many of the problems should have been solved. Evaluate 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). When you analyze these costs[are analyzed], consider: [--]

(i) Their significance-[:]

(ii) Their nature- [: and]

(iii) How much they contribute to contract performance.

(3) *Contract cost risk.* When [the contracting officer] you select[s] the proper contract type, the reward for risk by contract type will usually fall into the ranges below.

(i) *Cost-reimbursement type contracts.* 0-3 percent. A cost-plus-a-fixed-fee contract does not normally justify a reward for risk in excess of 0 percent. Only a contract that contains cost risk features such as ceilings on overhead might merit a higher weight. Such cases may justify up to 1 percent. Cost-plus-incentive-fee contracts fill the remaining portion of the 0 to 3 percent range. For these, assign weightings based on such factors as confidence in target cost, share ratio of fee(s), etc.

(ii) *Fixed-price type contracts.* 3–7 percent. This weight range is wide enough to accommodate the many types of fixed-price arrangements. Assign weightings based on the cost risk assumed. Only firm fixed-price contracts should reach the top end of the range.

(iii) *Subcontracting program.* 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. Consider this in selecting a weight for cost risk. The prime contractor may effectively transfer cost risk to a subcontractor. This merits a risk evaluation below the range that would otherwise apply for the contract type proposed. However, you- [the contracting officer] should not evaluate risk lower when a substantial portion of the contract cost represents subcontracts, but without any substantial transfer of contractor's risk.

(iv) *Definitizing letter contracts, unpriced change orders, and unpriced orders under basic ordering agreements.* Consider the effect on risk as a result of partial performance before definitization. Some circumstances may effectively reduce the contractor's total risk, while others may have no effect. Determine an equitable profit weight for all recognized costs, both those incurred and future costs. Consider all attendant circumstances, not just the portion of costs incurred or percentage of work completed before definitization.

(v) *Service contracts.* Apply a weight range of 0 to 4 percent for cost risk. A firm fixed-price contract, not priced on a labor-hour method, may warrant high consideration for contractor cost risk. It may merit a weight up to 4 percent. Conversely, a cost-plus-fixed-fee service contract normally warrants a zero cost risk factor.

(4) *Capital investments.* In evaluating this factor for profit weights, consider the following:

(i) *Facilities.*

(A) To evaluate how this factor contributes to the profit objective, [the contracting officer]you need[s] to know the level of facilities use needed for contract performance, the source of financing for the facilities, and the overall cost effectiveness of the facilities offered.

(B) Contractors who furnish their own facilities that significantly contribute to lower total contract costs, warrant additional profit. Contractors who rely on the Government to provide or finance facilities warrant less profit. Evaluate situations between the above examples on their merits and make either a positive or negative profit weight adjustment, as appropriate.

(C) ~~The contracting officer is not required~~You do not need to adjust the profit when a contractor who owns a large quantity of facilities will perform a contract that does not benefit from these facilities, or when a contractor's use of its facilities has a minimum cost impact on the contract.

(ii) *Payments.* Consider the frequency of payments by the Government to the contractor. Assess the impact the contract will have on the contractor's cash flow. Generally, payments more frequent than monthly merit negative consideration, with maximum reduction as the contractor's working capital approaches zero. Payments less frequent than monthly merit positive consideration, with additional consideration for payments less frequent than the contractor's or the industry's normal practice.

515.404-70 Nonprofit organizations.

([I]a) Nonprofit organizations.

[(1)] The structured approach for determining profit or fee objectives was designed for other than nonprofit organizations. However, if modified as below, [the contracting officer]you may use it to establish fee objectives for nonprofit organizations (See FAR 31.701). Do not apply the modifications as a deduction to historical fee levels. Instead apply them as a reduction in the fee objective calculated under the structured approach.

[]([2]b) For contracts with nonprofit organizations, subtract an adjustment of up to 3 percent from the total profit-fee objective. In developing this adjustment, consider each of the following factors:

[]([I]4) Tax position benefits.

[]([II]2) Granting of financing through letters of credit.

[]([III]3) Facility requirements of the nonprofit organization.

[]([IV]4) Other factors that may work to the advantage or disadvantage of the contractor as a nonprofit organization.

515.405 Price negotiation.

~~If a contractor insists on a price or demands a profit or fee that you consider unreasonable as outlined in FAR 15.405(d), refer the matter to one level above the contracting officer for resolution.~~

Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

~~515.670 Release of information concerning unsuccessful offerors.~~

~~Consult FAR 24.2, 41 CFR part 105-60, and GSA Freedom of Information Act procedures at <http://www.gsa.gov/staff/c/ca/FOIA/FoiaProc/mainpage.html>, to determine what information you may disclose.~~

Subpart 515.6—Unsolicited Proposals

515.606 Agency procedures.

Coordinating offices serve as agency points of contact and establish procedures for controlling the receipt, evaluation, and timely disposition of proposals consistent with FAR [subpart]15.6.

515.606-2 Evaluation.

Complete the evaluation as soon as practicable, normally within 45 calendar days. Communicate the results of the evaluation to the [offeror]submitter.

515.609 Limited use of data.

When you releas[ing]e an unsolicited proposal for evaluation, use the "Conflict of Interest Acknowledgment and Nondisclosure Agreement" in [Figure 515.3-1](#).

Subpart 515.70—Use of Bid Samples

~~515.7000—General.~~

~~Except as provided in 515.7002 and 515.7003, the 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." The terms "bidder" and "invitation" or "invitation for bids" are used synonymously with "offeror" and "solicitation" or "RFP."~~

~~515.7001—Policy.~~

~~(a) The terms "responsiveness" and "nonresponsive" do not apply to negotiated acquisitions. FAR 14.202-4(b)(2) and (4) do not apply to the use of bid samples under this subpart.~~

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

~~(1) Use bid samples in the technical evaluation of proposals to both:~~

~~(i) Determine the acceptability of the samples to meet GSA's requirement.~~

~~(ii) Ensure compliance with all subjective and objective characteristics listed in the solicitation.~~

(2) If you conduct written or oral discussions, you may exclude a proposal from further consideration for award only if you meet all the following conditions:

(i) You discussed with the offeror any deficiencies found in the samples.

(ii) You gave the offeror an opportunity to correct those deficiencies.

(iii) The sample still fails to conform to each of the characteristics listed in the solicitation. (See FAR 15.609 and 15.610).

515.7002 Procedures.

~~(a) Unsolicited samples. The reference to FAR 14.404-2(d) in FAR 14.202-4(g) does not apply. Use the following when contracting by negotiation:~~

~~"However, qualifications in the proposal that are at variance with the Government's requirements, constitute deficiencies. Resolve these as provided in FAR 15.306."~~

~~(b) Solicitation requirements:~~

~~(1) Use the clause at FAR 52.214-20. The second sentence in paragraph (c) of the clause does not apply. Substitute a sentence substantially as follows:~~

~~"Failure of the bid samples to conform to all the required characteristics listed in the solicitation constitutes a deficiency in the proposal (see FAR 15.306)."~~

~~(2) In addition to listing subjective characteristics that you cannot adequately describe in the specification, you may list and evaluate objective characteristics. To include objective characteristics, you must determine that examination of such characteristics is essential to the acquisition of an acceptable product. Base your determination on past experience or other valid considerations.~~

~~(c) FAR 52.215-1(c)(3) applies to samples received after the time set for receipt of offers.~~

Appendix 515A—Source Selection Procedures

[This Appendix will replace GSA Order, Source Selection Procedures (APD-P-2800.2). The source selection procedures are being updated based on the FAR Part 15 rewrite.]

552.215-70 Examination of Records by GSA.

As prescribed in 514.201-7(b) and 515.209-70(a) insert the following clause:

EXAMINATION OF RECORDS BY GSA (FEB 1996) [DATE]

The Contractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding [the simplified acquisition threshold] \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

552.215-73 Notice

As prescribed in 515.209-70(b), insert the following clause:

NOTICE (DATE)

(a) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

(b) GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests for pre-award debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for post-award debriefings delivered after 4:30 p.m. will be considered received and filed the following business day.

(End of clause)