

PART 12
SOURCE SELECTION AND AWARD

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12.1 RECEIPT OF OFFERS.

12.1.1 Handling of Offers.

(a) **POLICY:** Offers shall not be opened in public. All offers shall be marked with the date and time of receipt. Offers shall be handled confidentially. See also BPI 3.1.2 and Appendix 3-A, Section 3.

12.1.1.1 Clause Usage Prescriptions.

PROCEDURE: COs shall include Clause 12-1, Disclosure of Offeror's Proposal, in solicitations over \$50,000 (except commercial supplies/services).

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12.1.2 Late Offers.

(a) **POLICY:** Offers are considered late if they are received after the date and time specified for receipt by the CO, regardless of the reason. CO's are not required to consider late offers, but may do so if there is a good business reason for doing so. For example, where:

- (1) The late offer provides significant technical or cost advantages to BPA, or
- (2) The late offer is important to ensure a competitive negotiation environment.

(b) **PROCEDURE:** Buyers shall briefly document the disposition of late offers.

12.1.3 Offers from Unsolicited Sources.

(a) **INFORMATION:** An offer from an unsolicited source is an offer:

- (1) Which is received from a supplier in response to a known BPA requirement, and
- (2) Which was not solicited by the CO.

(It is distinguished from an unsolicited proposal by the fact that the supplier is responding to a known BPA requirement. See BPI 12.2 for information regarding unsolicited proposals.)

(b) **POLICY:** The CO has the authority and discretion, based on good business judgment, to decide whether to consider an offer from an unsolicited source. The CO is not required to open or review such unsolicited offers prior to making his/her decision. The CO shall document the disposition of the offer.

12.2 UNSOLICITED PROPOSALS.

12.2.1 General.

(a) **INFORMATION:** An unsolicited proposal is a written proposal submitted by an offeror:

- (1) Which was not submitted in response to a known BPA requirement (i.e., where BPA is not already planning to purchase the type of supply or service offered in the unsolicited proposal), and
- (2) Which was not solicited by BPA.

It does not include advertising material or commercial product offerings. (It is distinguished from an "offer from an unsolicited source" by the fact that the contractor is not responding to a known BPA requirement. See BPI 12.1.3 for additional information.)

(b) **POLICY:** BPA encourages submission of unsolicited proposals which offer unique or particularly innovative ideas which support BPA's mission.

(c) **PROCEDURE:** Except where specific procedures are described in this subpart, requests for contracts based on unsolicited proposals shall be processed in accordance with applicable portions of the BPI.

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12.2.2 Advance Guidance.

POLICY: BPA encourages potential offerors of unsolicited proposals to make preliminary contacts with subject matter specialists before expending extensive effort on a detailed unsolicited proposal. Appendix 12-A, "How to Submit an Unsolicited Proposal," provides additional guidance to suppliers. This is the BPA implementation of DOE Order 542.2.

12.2.3 Receipt and Initial Handling.

PROCEDURE: Any office receiving an unsolicited proposal shall immediately send it to Supply Chain Policy and Governance – CK, c/o Agency Small Business Specialist, who serves as a clearinghouse for all unsolicited proposals received by BPA. The Specialist shall log in the proposal, acknowledge receipt of the proposal to the proposer, and send copies to the subject matter specialist (program office) and designated CO in Supply Chain Services. The Specialist shall either attach the following or print on the face page of the proposal:

UNSOLICITED PROPOSAL -- CONTENTS SHALL NOT BE DISCLOSED
OUTSIDE BPA AND SHALL NOT BE USED FOR PURPOSES OTHER THAN
EVALUATION.

12.2.4 Evaluation and Negotiation.

(a) **POLICY:** Unsolicited Proposals may not be accepted unless they meet all of the following criteria:

- (1) The proposal must not be within the scope of a pending solicitation, and
- (2) The proposal must be unique or propose a particularly innovative idea which was originated by the proposer, or the proposer must have unique qualifications, and
- (3) The proposal's basic concept must be acceptable to the subject matter specialist, both technically and from a budget standpoint, and
- (4) Potential organizational conflicts of interest, if any, must be resolved (see BPI 3.4.2).

(b) **PROCEDURE:** The subject matter specialist and CO shall review the unsolicited proposal to determine whether it meets the above criteria. Proposals which do not meet these criteria shall be either rejected without further consideration or competitively negotiated along with other qualified contractors.

(1) If the CO's and subject matter specialist's initial review concludes the proposal should be rejected, they shall notify the proposer verbally and send a brief explanation to the Procurement Analyst which explains the reasons for rejection and date the proposer was verbally notified. The Procurement Analyst shall notify the proposer in writing of such.

(2) If the CO's and subject matter specialist's initial review concludes that the proposal is either acceptable as submitted or has high potential of being acceptable after negotiations, they shall document the basis for making award without considering other suppliers' qualifications. Such documentation shall include:

- (A) An explanation of the unique or particularly innovative aspects of the proposal, or
- (B) An explanation of the offeror's unique qualifications.

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(3) The subject matter specialist shall submit a purchase requisition and other documentation to the CO. The CO and subject matter specialist shall negotiate details and other terms and conditions with the offeror. BPA retains the right to reject any unsolicited proposal at any time prior to award. The Procurement Analyst shall be notified of final disposition of the unsolicited proposal.

12.3 CHANGES IN REQUIREMENTS AFTER RECEIPT OF OFFERS.

(a) **INFORMATION:** See BPI 11.12 for changes in requirements before receipt of offers.

(b) **POLICY:** If there are substantial changes in BPA's requirements after offers are received, the CO may reconsider any offers previously eliminated. The CO shall notify such offerors of the changes only if the changes would materially improve their potential for award. The solicitation need not be canceled.

(c) **POLICY:** CO's may encourage innovative alternate approaches to addressing BPA's requirements by including Alternate I to Clause 11-3, Considerations in Making Awards, in the solicitation. (See BPI 11.11.1). When innovative approaches are received, CO's will generally protect such approaches by not sharing them with other offerors before award. In some cases BPA may modify its statement of work or specifications for one offer without changing the requirements for other offerors, if to do so would likely reveal the particularly innovative aspects of an offeror's approach.

(d) **PROCEDURE:** Notification of changes may be made orally or in writing as appropriate for the circumstances.

(e) **POLICY:** The CO shall ensure that changes that materially affect the agreement between the contractor and BPA are included in the final contract.

12.4 EVALUATION TEAMS.

12.4.1 Establishment of Evaluation Teams.

(a) **POLICY:** The CO will typically evaluate simple, low risk purchases without extensive involvement by program staff. A team will evaluate more complex purchases. The number of team members shall be kept to the minimum necessary to adequately understand and evaluate the proposal.

(b) **POLICY:** When an evaluation team is used, it shall include both the CO (or representative) and technical personnel. It may also include non-BPA evaluators if appropriate.

(c) **PROCEDURE:** The CO shall designate the team in writing for purchases over \$50,000, except purchases in any amount for commercial supplies, commercial services, or commercial construction.

12.4.2 Conduct of Evaluation Teams.

(a) **POLICY:** Although the CO is responsible for final source selection and best buy determination, and technical personnel are responsible for the technical requirements, all parties shall work as a team to ensure BPA obtains the best buy.

(b) **POLICY:** Offerors shall be treated fairly. The actions and decisions of the Evaluation Team shall be based on good business judgment.

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(c) **POLICY:** Unless publicly available or otherwise available under the Freedom of Information Act, information submitted by offerors shall be used for evaluation only and shall not be disclosed outside BPA without the offeror's approval.

(d) **POLICY:** Communications between offerors and BPA shall only be done through the CO or a designee.

(e) **POLICY:** Members of evaluation teams and technical advisors shall comply with the Standards of Conduct Regarding Purchasing and Assistance policies described in BPI 3.1 and Appendix 3-A. This includes, but is not limited to:

- (1) Avoiding conflicts of interest or the appearance of such,
- (2) Prohibitions against soliciting or accepting items of value from contractors,
- (3) Maintaining confidentiality throughout the purchasing process.

(f) **PROCEDURE:** The CO shall inform all evaluation team members and technical advisors of the above policies prior to beginning evaluation of offers.

12.5 EVALUATION PROCESS.

12.5.1 General.

POLICY:

(a) BPA will be responsive to the supplier community by evaluating proposals in a fair and timely manner. The costs to both industry and BPA of conducting the purchasing process shall be minimized.

(b) During evaluation of offers, the attributes listed in Clause 11-3, Considerations in Making Awards, which apply to the particular purchase shall be considered. As stated in Clause 11-3, BPA reserves the right to consider attributes not listed in the solicitation without notification to offerors if review of the proposals or BPA program needs raise relevant new issues.

(c) The team should identify the methodology used to reach consensus. Generally, the team should develop the methodology prior to beginning evaluation. However, they are not required to do so and may, when appropriate, develop the methodology later in the evaluation process.

(d) The entire proposal (technical and cost/price) shall typically be provided to all team members for their consideration. The evaluation of price, estimated cost, and total cost shall be considered concurrent with evaluation of technical/management aspects of the proposal. Although the CO may concentrate on cost/price and other business aspects of the proposal, the CO shall participate as an integral member of the team. Likewise, technical personnel shall consider proposal price information as well as technical information, even though they may concentrate on technical aspects of the offers.

(e) The team may consider all information available, including information outside the written proposal relating to past performance. The team need not review each proposal in the same level of detail. If some proposals are obviously inferior, their review need not be as rigorous.

(f) The team shall make a decision regarding which proposal(s) has the highest potential for being the "best buy." (See BPI 1.1(c) for discussion of "best buy.")

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(g) The team shall document the basis for key decisions made by the team. Documentation shall be prepared at the time major milestones are reached in the purchasing process. This includes the following milestones (see BPI 12.8.2, Document of Award Decision for details):

- (1) The decision to eliminate any firms who submitted offers.
- (2) A decision to negotiate with multiple firms rather than one firm.
- (3) The decision to award to the firm which offers the "best buy," including analysis of price/estimated cost, and total cost.

12.5.2 Analysis of Price, Estimated Cost, and Total Cost.

(a) **INFORMATION:** The objective of price/cost analysis is to determine reasonableness of the offeror's proposed price/estimated costs. Analysis of "total cost" means analysis of the proposed purchase price plus costs incurred by BPA which are not otherwise reflected by the offeror's price or cost proposal. Examples include: probable total operational costs, probable administrative costs for foreign factory inspection trips, frequency and costs of preventative maintenance, probable frequency of repairs or down-time of equipment offered, learning curve costs, added contract administration costs due to probable contract administration problems, etc.

(b) **POLICY:** While price may be the determining factor for award in some instances, comparison of offers shall not be limited to price alone. The CO shall consider total cost and shall document the nature and extent of the comparison process in a manner which clearly explains the reasons for award.

(c) **PROCEDURE:** The analysis of price, estimated cost and total cost shall be documented in the Document of Award Decision (see BPI 12.8.2.) The offeror's price/cost proposal shall be analyzed by using price analysis as well as cost analysis, if appropriate. The CO shall perform cost analysis where price reasonableness cannot be determined through price analysis alone. The total costs to BPA shall also be considered when there is an obvious and significant variation between the total cost of offerors' proposals. For example, the administrative costs for BPA to conduct factory inspections should only be considered if the competing offerors are located in different geographic regions. For purposes of evaluation, such costs which can be reasonably quantified may be added to the offeror's proposed price. Costs which cannot be reasonably quantified shall be considered subjectively with the technical aspects of the offeror's proposal. Analysis of total costs should be kept as simple as possible and should be documented only when there is a significant variation between offeror's proposals.

(d) **PROCEDURE:** Where an internal BPA estimate has been prepared and the proposed price/estimated cost is significantly lower than the BPA estimate, the CO shall verify that both the offeror and the BPA estimator adequately understand the scope of work.

(e) **INFORMATION:** When appropriate, proposed prices may be compared to similar types of work and adjusted for differences in circumstances. Rough yardsticks may also be used, such as cost per square meter for structures, cost per lineal meter for utilities, and cost per cubic meter of excavation or concrete.

12.5.3 Analysis of Profit.

POLICY:

(a) Profit analysis only applies to purchases subject to cost analysis. The objective of profit analysis is to determine reasonable profit, not necessarily to eliminate profit. Profit should be

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based on factors including current market conditions, the level of risk inherent in performance, the type of contract, the amount of capital invested by the contractor, etc.

(b) Profit is not allowed for contracts with non-profit organizations, educational institutions, tribes, and local governments. However, a "development" fee is allowed if this is the offeror's established practice and if the purpose of the fee is to develop future business (i.e., it is not distributed to officers or employees as remuneration, or used to reimburse the organization for costs not otherwise allowable under applicable cost principles.

12.5.4 Cost and Pricing Information.

(a) **INFORMATION:** The CO may require offerors to submit detailed cost or pricing information in order to better understand their proposal or to determine reasonableness of price or cost estimates. Form BPA F 4220.42, Price/Cost Proposal, may be used if appropriate.

(b) **POLICY:** Although offerors are not required to certify their cost/pricing information, BPA retains the right to reduce the contract price if the data originally submitted is later determined to not be accurate, complete, and current at the time of final price agreement.

12.5.4.1 Clause Usage Prescriptions.

PROCEDURE: The CO may include Clause 12-2, Price Reduction For Inaccurate Cost or Pricing Information, in solicitations and contracts for which they want the right to readjust the contract price if contract cost/price information, including information submitted for modifications or by subcontractors, is inaccurate.

12.5.5 Accounting System Reviews.

(a) **POLICY:** BPA's Internal Audit staff may advise the evaluation team regarding the adequacy of accounting systems for cost-type contracts and estimated costs of the offers being considered. CO's shall consider including BPA's Internal Audit staff as advisors to the evaluation team.

(b) **PROCEDURE:** The following factors shall be considered in deciding whether to conduct an accounting system review:

- (1) The proposed contract is a cost-type contract and the proposed contractor has not previously performed a cost type contract for BPA.
- (2) The offeror has had prior cost-type contracts which surfaced significant accounting system problems or questioned significant costs.
- (3) Cost reimbursement contracts where the offeror is an individual or a closely held corporation.
- (4) The market under which the offeror operates is not typically subject to accounting for their costs (e.g., advertising industry)
- (5) Time and Materials contracts where a substantial amount of equipment, travel or subcontract costs is expected.

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12.5.6 Advance Agreements.

(a) **POLICY:** Advance agreements on particular costs may be incorporated into contracts where it is difficult to determine actual costs after award or where limits on specific elements of cost are desirable.

(b) **INFORMATION:** Although advance agreements are most common for cost-reimbursement type contracts, they may be used for fixed price and time and materials contracts which include elements of cost type contracts. The purpose of such agreements is to minimize contract administration costs and the risk of dispute with contractors. Advance agreements avoid the possible disallowance of costs based on a subjective judgment of unreasonableness or non-allocability of costs. Examples include:

- (1) Salaries (personnel costs) for contracts with individuals or closely held corporations.
- (2) General and Administrative expenses.

12.6 SOURCE SELECTION.

(a) **POLICY:** The CO will generally select only the top-ranked firm for final negotiations. This does not preclude the CO from communicating with more than one firm in order to obtain enough information to narrow the field of competition. In the case of closely ranked offers, BPA may negotiate with more than one firm concurrently. However, this practice is generally discouraged in order to minimize administrative costs for offerors and BPA.

(b) **PROCEDURE:** Based on the quality of offers received and BPA's objectives, the Evaluation Team may develop different source selection strategies prior to the selection of the final source(s) for negotiation. For example,

- (1) Two firms without past BPA experience may be awarded small orders for identical training services to give BPA an opportunity to evaluate their performance. Based on that performance, a large contract might be made to one of the firms without soliciting new offers.
- (2) BPA might award 90% of its power circuit breaker orders to the top-ranked firm and 10% to the second-ranked firm, in order to avoid over dependence on a single source and/or to develop the capabilities of a second source.
- (3) One firm is selected for final negotiations and award. This should be the most common source selection strategy because it reduces administrative costs and takes advantage of economies of scale.

(c) **POLICY:** If negotiations with the selected firm are unsuccessful, the CO may close negotiations and initiate negotiations with one or more other offerors.

12.7 NEGOTIATION.

(a) **INFORMATION:** "Negotiation" is the process of discussing with offerors their proposals, terms, conditions, price, BPA specifications, and other requirements. The objective of negotiations is to establish a clear understanding of both parties' positions and reach contractual agreement.

(b) **POLICY:** Emphasis shall be placed on person-to-person negotiations which lead to close understanding between BPA and the offeror. This does not preclude written agendas for discussions or written questions and answers to items of negotiation. Following negotiations, the CO shall ensure that the written contract accurately reflects the agreement between the parties.

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(c) **POLICY:** Although detailed negotiations will typically be concentrated after source selection, the CO may negotiate, resolve mistakes, or obtain clarifying information at any time. For example, selected offerors may be asked to provide an oral presentation at any time the CO feels it would be helpful. BPA has no obligation to negotiate with all firms.

(d) **POLICY:** The transfer of unique ideas or approaches from one firm's proposal to another is prohibited.

(e) **POLICY:** Auctioning techniques (i.e. creating an auction-like atmosphere which encourages a price "bidding war" between competing contracts) are allowed only when a Strategy Panel or the Tier II Purchasing Manager (or designee), and the HCA have determined that business conditions exist such that a reverse auction is the optimum means for acquiring pricing information from the identified technically acceptable offerors. A reverse auction shall not be used to acquire technical, performance, or other business information. See BPI 11.10.

12.8 ADMINISTRATIVE REQUIREMENTS.

12.8.1 Contract Award Forms.

(a) **POLICY:** CO's shall award contracts using any of the electronically generated forms in the Bonneville Enterprise System, or the forms listed below.

- (1) Form BPA F 4230.03, Order for Supplies or Services
- (2) Form BPA F 4230.04, Order for Supplies or Services - Continuation Sheet
- (3) Form BPA F 4220.39, Contract
- (4) Form BPA F 4220.36, Request for Offers and Award
- (5) Form BPA F 4220.41, Intergovernmental Contract

(b) **POLICY:** CO's shall award written orders under master contracts using the electronically generated releases in the Bonneville Enterprise System, or the forms listed below.

- (1) Form BPA F 4220.32, Task Order (services only)
- (2) Form BPA F 4230.03, Order for Supplies or Services (supplies only)

(c) **INFORMATION:** Purchase orders may be an appropriate method to document a contractual agreement, regardless of dollar value. A purchase order does not require the signature of the contractor, i.e., it is an offer from BPA which becomes a binding contract upon commencement of performance by the contractor. A contract with signatures of both parties should be used for situations where it is important that both parties demonstrate their firm agreement to the contract terms before work begins.

(d) **POLICY:** Although purchase orders typically include a standard set of terms and conditions, the CO may vary those terms as allowed by particular clause prescriptions.

12.8.2 Document of Award Decision.

- (a) **PROCEDURE:** Purchases under \$10,000:

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Documentation is not required except for awards which, without documentation, would appear unreasonable to a reasonable journeyman buyer with sufficient market knowledge of the items/services being purchased.

(b) **PROCEDURE:** Purchases of \$10,000 or more, or modifications outside the scope of the contract:

(1) Documentation shall be completed at the time major milestones are reached in purchasing process and prior to award.

(2) It is not necessary to document decisions which are either obvious or which are already explained in other file documentation. Cross-references to supporting documentation shall be used where appropriate.

(3) Documentation may be brief and hand-written for simple actions where BPA's risk is low. Complex purchases in which substantive questions may arise regarding either the basis for source selection or the substance of negotiations shall be documented in greater detail. See BPI 4.2, Contract Files, for additional information.

(4) There is no required format for documentation. Form BPA F 4250.12, Analysis of Offers, may be used to simplify the documentation process for instances in which multiple offerors are solicited and the major factor in determining "best buy" is the offered price (typical example: off-the-shelf supplies from suppliers who have good histories of performance.) Documentation shall include:

(A) Source Determination: an explanation of decisions made at key milestones in the purchasing process regarding the sources solicited and the source awarded the contract, including:

(i) If purchase is exempt from competitive consideration: citations or explanations required by BPI 11.7.1.2 or 11.7.1.3.

(ii) If unique source: the reason why no more than one firm was considered (see BPI 11.7.2.).

(iii) If multiple firms were considered: a brief discussion of who was considered, who was solicited, and why (see BPI 11.8).

(iv) If multiple firms were also solicited: the relative strengths and weaknesses of the offers, the reasons for elimination of firms, and the basis for selection of the best firm(s) for final negotiation and award (see BPI 12.5.1).

(v) If multiple firms were also included in negotiations: the reasons for negotiating with more than one firm (see BPI 12.5.1).

(B) Best Buy Analysis: the basis for determining that the offer selected for negotiations (if negotiations are necessary) and award is reasonable and is the "best buy," including analysis of price/estimated cost, and total cost. (see BPI 12.5.1 and 12.5.2).

(C) Cross-references to other supporting documentation, if applicable. (see below)

(D) Date and name of person preparing documentation.

(E) A summary of the CO's briefing(s) to purchasing management at major decision points to provide key information regarding offer evaluation and source selection on high-risk and mission critical awards.

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(c) **INFORMATION:** Following is a partial list of citations to other portions of the BPI which require documentation prior to award. Such documentation shall be either included in the Document of Award Decision or located elsewhere in the file.

APPLICABLE BPI PART	CHECKLIST OF REQUIRED DOCUMENTATION
3.4.4	Documentation of potential organizational conflicts of interest
4.3	Review by General Counsel of certain actions
4.5	Congressional Affairs notification of certain awards
6.15.3 (d)	Disposition of strategy panel's recommendations for certain actions
8.1	Preference program review decisions on form BPA F 4250.13 (Only required when the HCA institutes increased outreach efforts or more narrowly tailored affirmative action purchasing programs as per 8.1.1.)
8.3.1	Where subcontracting opportunities do not exist for a purchase which would otherwise require a subcontracting plan
11.11.3	Record of preproposal conference, if applicable
12.1.2	Disposition of late offers
12.1.3	Disposition of offers from unsolicited sources
12.2.4	Unique aspects of an unsolicited proposal
12.4.1	Designation of evaluation team for certain actions
15.2	Safety requirements for work and safety hazards

12.8.3 Notification to Unsuccessful Offerors.

POLICY:

(a) Unsuccessful offerors shall be notified as soon as reasonably possible that their offer is no longer being considered. The notification may be made orally and shall include a general explanation of the reasons for elimination.

(b) For contracts over \$50,000, unsuccessful offerors shall also be notified at the time of award of the name of the successful offeror, total contract price, date of award.

(c) This policy does not apply to transactions where notification to unsuccessful offerors is not a common business practice. However, COs shall consider the benefits of full and open communication with all of BPA's suppliers when making the decision regarding notification.

12.8.4 Debriefings and Release of Related Information.

(a) **INFORMATION:** Debriefings are an important method of helping offerors to understand the basis for BPA's decisions. Developing good long-term relationships with contractors includes treating offerors who are not selected for award with respect, and with the knowledge that they may become an important supplier at some future date. In this sense, debriefings should be considered to be more a buyer's "obligation" than an offeror's "right." Debriefings shall be considered to be negotiations which will, in part, determine BPA's future supplier base. For this reason they shall receive commensurate preparation.

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(b) **POLICY:** The CO shall debrief unsuccessful offerors upon request, or when deemed appropriate to preserve or enhance the business relationship. The relative merits of competitors' proposals shall not be revealed. If requested, information that is clearly available under the Freedom of Information Act shall be released.

12.8.5 Protests.

INFORMATION: See BPI subpart 21.2.

12.8.6 Discovery of Mistakes After Award.

POLICY: If the Contractor alleges a mistake in their offer after award and requests that the contract be modified in a way that could have affected the award decision, the CO shall consult with the HCA before modifying the contract.

12.8.7 Disposal of Proposals.

POLICY: All copies of unsuccessful proposals shall be returned to the CO following evaluation. The CO shall retain the proposals for 90 days after award or 90 days after any protests are resolved, whichever is later. Unsuccessful proposals shall be destroyed unless the offeror requests their return.

12.8.8 Examination of Records.

POLICY: BPA reserves the right to review an offeror's pertinent records for contracts whose payment provisions are cost-based, including cost-based modifications to fixed price contracts.

12.8.8.1 Clause Usage Prescriptions.

PROCEDURE: The CO shall include Clause 12-3, Examination of Records, in all cost reimbursement or time & materials contracts over \$100,000 or in modifications over \$100,000 for any type of contract where cost analysis is required to determine the reasonableness of the amount of the modification.

12.8.9 Reserved.

12.8.10 Special Contract Clauses.

INFORMATION: The BPI prescribes the use of certain clauses for purchases under \$50,000 and for purchases over \$50,000 for commercial supplies, commercial services, or commercial construction. The intent is to simplify the terms and conditions for purchases of low dollar value or of commercial supplies/services.

12.8.10.1 Clause Usage Prescriptions.

(a) **PROCEDURE:** The CO shall include Clause 12-4, Basis of Agreement, in solicitations and contracts under \$50,000 and in solicitations and contracts of any dollar amount for commercial supplies, commercial services, or commercial construction.

(b) **PROCEDURE:** The CO shall include Clause 12-5, Delivery Or Performance, in solicitations and contracts under \$50,000 and in solicitations and contracts of any dollar amount for commercial supplies, commercial services, or commercial construction.

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12.50 TEXT OF CLAUSES.

The following clauses are referred to in BPI Part 12:

- 12-1 Disclosure Of Offeror's Proposal
- 12-2 Price Reduction For Inaccurate Cost Or Pricing Information
- 12-3 Examination Of Records
- 12-4 Basis of Agreement
- 12-5 Delivery or Performance

Clause 12-1 DISCLOSURE OF OFFEROR'S PROPOSAL (Sep 98)(BPI 12.1.1.1)

BPA agrees not to publicly disclose the information submitted in response to this solicitation, with the following exceptions:

- (a) Information which is incorporated into the final contract, unless specifically excepted.
- (b) Information available under the Freedom of Information Act.
- (c) Information required by a court of law or other Federal agencies.
- (d) Information publicly available from other sources.

(End of clause)

Clause 12-2 PRICE REDUCTION FOR INACCURATE COST OR PRICING INFORMATION (Sep 98)(12.5.4.1)

BPA retains the right to reduce the contract price, including profit or fee, if the cost or pricing information submitted by the contractor was not complete, accurate, and current at the time of final price agreement. This right applies to the contract as awarded, to any subsequent modifications, and to any data submitted by subcontractors.

(End of Clause)

Clause 12-3 EXAMINATION OF RECORDS (Sep 98)(BPI 12.8.8.1)

(a) The contractor shall keep accurate and complete accounting records in support of all cost-based billings to BPA in accordance with generally accepted accounting principles and practices. The Comptroller General of the United States, the Contracting Officer, or their representatives, shall have the right to examine, audit, and reproduce any of the Contractor's pertinent records involving transactions related to this contract or any subcontract hereunder. Records includes, but is not limited to, books, documents, and other information regardless of form (e.g., machine readable data) or type (e.g. data bases, applications software, data base management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, subcontracting, modifying or performing the contract. The purpose of such examination shall be to determine the accuracy, completeness, and currency of costs charged under the contract and/or to verify cost or pricing information submitted to BPA.

(b) Such documents shall be available for three (3) years after final payment or, in the case of termination, three (3) years from the date of any final termination settlement. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims have been disposed of.

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(c) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (c), in other than fixed price subcontracts over \$100,000, altering the clause as necessary to identify the contracting parties and the Contracting Officer under the prime contract.

(End of Clause)

Clause 12-4 BASIS OF AGREEMENT (Sep 04)(12.8.10.1)

This page is designed to provide basic terms and conditions for contracts involving supplies, services and construction. It may be supplemented, as needed. The terms and conditions on this page, the signature page of the contract, and any supplements constitute the entire agreement of the parties.

(End of clause)

Clause 12-5 DELIVERY OR PERFORMANCE (Sep 98)(12.8.10.1)

The place of delivery or performance shall be as specified and time is of the essence. BPA reserves the right to reject shipments that are not properly labeled with BPA purchase order number, or are not accompanied by a complete packing slip.

(End of clause)