

(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.

[62 FR 51259, Sept. 30, 1997; 64 FR 51841, Sept. 24, 1999, as amended at 64 FR 72433, 72451, Dec. 27, 1999; 66 FR 2135, Jan. 10, 2001; 68 FR 69258, Dec. 11, 2003]

52.215-2 Audit and Records—Negotiation.

As prescribed in 15.209(b), insert the following clause:

AUDIT AND RECORDS—NEGOTIATION (JUN 1999)

(a) As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) *Comptroller General.* (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (a), in all subcontracts under this contract that exceed the simplified acquisition threshold and—

- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

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(End of clause)

Alternate I (JAN 1997). As prescribed in 15.209(b)(2), in facilities contracts, add the following sentence at the end of paragraph (b) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

Alternate II (APR 1998). As prescribed in 15.209(b)(3), add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this contract.

Alternate III (JUN 1999). As prescribed in 15.209(b)(4), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly, and substitute the following paragraph (e) for the redesignated paragraph (e) of the basic clause:

(e) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

[60 FR 42651, Aug. 16, 1995, as amended at 61 FR 39198, July 26, 1996; 62 FR 259, Jan. 2, 1997; 62 FR 51271, Sept. 30, 1997; 63 FR 9055, Feb. 23, 1998; 64 FR 32749, June 17, 1999]

52.215-3 Request for Information or Solicitation for Planning Purposes.

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

REQUEST FOR INFORMATION OR SOLICITATION
FOR PLANNING PURPOSES (OCT 1997)

(a) The Government does not intend to award a contract on the basis of this solici-

tation or to otherwise pay for the information solicited except as an allowable cost under other contracts as provided in subsection 31.205-18, Bid and proposal costs, of the Federal Acquisition Regulation.

(b) Although "proposal" and "offeror" are used in this Request for Information, your response will be treated as information only. It shall not be used as a proposal.

(c) This solicitation is issued for the purpose of: [state purpose].

(End of provision)

[62 FR 51261, Sept. 30, 1997]

52.215-4 [Reserved]

52.215-5 Facsimile Proposals.

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

FACSIMILE PROPOSALS (OCT 1997)

(a) *Definition*. *Facsimile proposal*, as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is: [insert telephone number].

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

(1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(End of provision)

[62 FR 51261, Sept. 30, 1997]