

CHAPTER 5. CONTRACTING BY NEGOTIATION

5-1 GENERAL. This chapter prescribes policies and procedures for negotiated procurements conducted in accordance with FAR Part 15 and HUDAR Part 2415. As defined at FAR 15.000, “negotiation” means awarding a contract through any method other than sealed bidding. Contracting by negotiation may be through the use of competitive or other-than-competitive, including sole source, proposals. The competitive negotiation process includes the solicitation and receipt of proposals from offerors, permits discussions (“negotiations”) with offerors, and may afford offerors an opportunity to revise their proposals before award of a contract.

5-2 PRESOLICITATION ACTIVITIES.

- A. Source Selection Method. The Contracting Officer shall determine the appropriate method of source selection for each contract (see FAR Subpart 15.1). The Contracting Officer should consult with the program office in making this determination (see also paragraph 5-7.B.)
- B. Selection of Contract Type. The Contracting Officer shall determine and negotiate the appropriate type of contract taking into consideration the nature of the requirement, the risk to be borne by the each of the parties, the Government’s interests, and other relevant factors. Contracting Officers may use any of the contract types permitted in FAR Part 16 subject to obtaining any required approvals (see also Chapter 6.)
- C. Coordination.
1. Contracting and program personnel shall coordinate closely with each other throughout the procurement process. Contracting staff should consult with program staff early in the procurement process to ensure that each party fully understands the other’s needs, responsibilities, and expectations.
 2. Integrated Program Team (IPT).
 - a. Definition. An IPT is a group of management, program, technical, and contracting experts assembled to accomplish critical, complex procurement action(s).
 - b. Purpose. The IPT’s goal is to ensure that:
 - (1) All necessary expertise is made available and devoted to the successful to the accomplishment of the procurement;

- (2) A single Departmental official has overall responsibility for the accomplishment of the procurement action(s); and,
 - (3) All of the principal players in the contracting process have a common understanding of what is to be accomplished, and how, when, and by whom it will be. This shared knowledge fosters a commitment on the part of the IPT members, and helps the IPT work together as an entity to achieve the required outcome.
- c. Applicability. IPTs should be used for all contracts and task orders for significant (i.e., generally in excess of \$500,000), new, or substantially revised requirements. IPTs may be used for such contract actions having a lower dollar value if in the opinion of the Contracting Officer and/or the program office it is appropriate (e.g., for new or substantially revised procurement requirements).
- d. Activities. The IPT:
- (1) Plans the acquisition strategy;
 - (2) Establishes the contracting milestones;
 - (3) Develops, or reviews and approves, the solicitation(s) and the plan(s) for evaluating offers;
 - (4) Manages the contracting process through award; and,
 - (5) Monitors contractor performance to ensure that all contract cost, schedule, and performance requirements are met.
- e. Timing of Formation. The IPT should be formed as soon as possible in the planning process (e.g., as soon as the initial requirements are known).
- f. Members. IPTs should contain the minimum number of representatives needed to accomplish the procurement program. With the exception of the GTM and perhaps, some technical specialists, the IPT members are involved from planning through completion of contracts and task orders. The program office is responsible for providing the Contracting Officer with the names of the program office members and any technical specialties for which representation will be needed. The Contracting Officer is responsible for providing the program office with the name of the Contract Specialist.

- (1) IPT Leader. A representative of the program office usually leads the IPT. Another member may assume the leadership role if necessary to ensure the successful execution of the procurement action. The IPT Leader has overall responsibility for the procurement action(s). The IPT Leader must have sufficient knowledge of the programmatic and procurement goals and the contracting methods needed to lead the IPT. The IPT is responsible for selecting the member who best meets those criteria.
- (2) Government Technical Representative (GTR; see section 11-2).
- (3) Government Technical Monitor (GTM; see section 11-2).
- (4) Contracting Officer (CO; see section 1-3 and FAR Subpart 2.1).
- (5) Contract Specialist (see section 1-3).
- (6) Legal advisor from OGC including program counsel, if needed.
- (7) Other technical staff as appropriate for the procurement (e.g., IT, audit, etc.).

D. Establishing the Technical Evaluation Panel (TEP). TEPs are used for all negotiated, competitive, contract source selections (see section 5-7). The size and composition of a TEP will depend upon the complexity and size of the proposed contract (see also HUDAR 2415.303(b)).

1. Appointment. The program office is responsible for identifying and selecting the TEP's voting members, chairperson, and any non-voting technical advisors or committees (see also paragraph 5-7D). Voting members will read and rank proposals, and advise the SSA in selecting the contractor. Advisors and committees may perform a variety of activities related to the evaluation of proposals including, but not limited to: evaluating and advising the TEP on portions or aspects of proposals; and, providing specific technical assistance to the TEP (e.g., explaining specific technical aspects of a requirement).
2. Team-Building. Once the TEP has been appointed, the Contracting Officer and TEP chairperson should take every opportunity to foster a team environment within a TEP, especially when TEP members do not work in the same office (e.g., different program offices, different geographic locations). Examples of these opportunities include:

- a. Briefing the TEP members as a group (e.g., on the same conference call) rather than individually;
- b. Joint development or review of the SOW and evaluation plan by the TEP when appropriate (e.g., new contract effort) and feasible; and,
- c. Providing or arranging for any needed training for TEP members (e.g., reviewing proposals), as close as possible to the actual occurrence of the activities that require the skills or knowledge to be provided in the training.

5-3 SOLICITATION.

- A. Format. Contracting Officers shall solicit offers using a Request for Proposal (RFP) prepared in the Uniform Contract Format (UCF) prescribed by FAR 15.204. (Note: The UCF shall be used for both competitive and sole source procurements. The extent of information solicited under a sole source RFP may be limited when the Contracting Officer decides that the circumstances warrant submission of a less detailed proposal.)
- B. Preparation and Review of RFP.
 1. The Contracting Officer shall be responsible for the preparation of the final RFP. The Contracting Officer should seek the assistance of program and technical personnel as needed to ensure that all programmatic and technical requirements are adequately addressed. When an IPT is used, the Contracting Officer shall provide the RFP to all members for their review and concurrence. When an IPT is not used, the Contracting Officer shall provide the RFP to the TEP chairperson and/or any other designated program personnel (e.g., GTR), as requested by the program office, for review. This review must be done before obtaining the reviews in B.2 below (see also paragraph 5-7.C).
 2. The Contracting Officer shall obtain the following reviews:
 - a. For RFPs expected to result in contracts exceeding \$1 million, but be less than \$5 million, review by the OCPO or FCO Branch Chief.
 - b. For RFPs expected to result in contracts expected to exceed \$5 million, review by the OCPO Division Director or FCO Director.
 - c. For RFPs for contracts for services subject to FAR Part 15 and expected to exceed \$500,000, review by legal counsel.

- C. Solicitation Period. The Contracting Officer may determine that longer periods than the minimums required at FAR Subpart 5.2 are necessary or advisable to better obtain competition.
- D. Statement of Work (SOW). The work or services to be performed under a proposed negotiated contract are described in an SOW or a Performance Work Statement (PWS). (Note: Unless specifically stated otherwise, the term SOW shall refer generically to both SOW and PWS.) The program office shall be responsible for preparing the SOW. The contracting office shall provide technical assistance to the program office in drafting or revising statements of work as requested. Such assistance will normally be in matters related to contracting requirements and practices. This assistance should be provided once the requirement is known (i.e., it need not wait for the submission of the RCS; see section 4-2). There is no mandatory format for SOWs. The following contents should be used as a model:
1. Background. This section should provide any information needed to help potential offerors better understand the requirement (e.g., information relative to prior work in the technical area, the significance of the proposed contract effort to the Departmental program's mission, or other programmatic requirements the contract will support). When it is necessary to focus attention on the end product or further clarify the requirement, the objective(s) of the contract may be furnished as guidance to potential offerors.
 2. Outcome. This section describes the expected overall result of the contract.
 3. Description of Work and Related Requirements. The SOW shall describe, in as much detail as necessary, the work to be performed and related outcomes. Any detailed design and/or performance specifications may be included in the SOW or may be made part of it by attachment. The description of work should include:
 - a. Clearly defined sequential tasks. The tasks should be arranged in the order of work accomplishment when logical divisions can be made in the effort to be performed. Complex requirements may need to be broken down into phases or stages of performance. In the case of performance-based contracts, the SOW should not include detailed procedures for performing the required services. Contractors will develop and use their own procedures and methods for accomplishing the work;
 - b. Clearly defined outcomes and all required deliverables and products;

- c. Specific delivery or performance periods (e.g., due dates, milestones);
 - d. Reporting or other compliance requirements:
 - (1) Proposed contracts, including indefinite-delivery contracts using task orders, for professional or technical services of a developmental or advisory nature (i.e., other than routine or commercially available services) anticipated to exceed \$500,000 shall include a requirement for the use of systematic baseline project planning and progress reporting for measuring the contractor's performance (see HUDAR Subpart 2442.11).
 - (2) Performance-based contracts shall include clear measurement criteria that HUD will use to evaluate the quality of the contractor's performance. Contracting staff shall assist the GTR and program office in developing these criteria.
 - (3) In accordance with the Paperwork Reduction Act of 1980, it is Departmental policy to not burden the public with unnecessary reporting requirements via the procurement process. The program office should only ask for those reports that are reasonable and necessary for contract monitoring. The Contracting Officer is responsible for determining the validity of the number and types of reports requested; and,
 - e. Any attachments containing other information needed to perform the work (e.g., prior reports or products developed under other contracts or generated by the Department). Attachments may be physically part of the SOW or they may be included by reference. The RFP must clearly indicate where information included by reference may be obtained.
- E. Proposal Instructions (see also HUDAR Subpart 2415.42). Proposal instructions shall specifically address the proposed requirement and provide potential offerors with all the information needed to prepare a proposal that addresses the Government's needs. The instructions must include details as to the scope, format, and type of information required in the proposal. The instruction will vary, according to the type, complexity, and specific requirements of the individual procurement. Contracting staff shall assist program offices in developing appropriate instructions.

1. Technical Proposal Instructions.
 - a. General. Technical proposal instructions should request all the information needed to evaluate an offeror's ability to perform the proposed contract. Such information normally includes documentation supporting the offeror's qualifications, prior experience (including those of key personnel), and past performance. Technical proposals may also include any narrative needed to provide evidence of the offeror's understanding of the RFP's requirements and/or presentation of a proposed method of performing the contract.
 - b. Past performance information.
 - (1) Requests for information concerning past performance shall be tailored to the specific requirements of the RFP. This helps to ensure that the references or other information provided by the offeror address the offeror's ability to perform the proposed contract. Offerors should be requested to provide references for which they have performed work substantially similar to the major tasks of the RFP. While other references may provide some evidence of the offeror's overall quality of performance, the quality of performance does not necessarily have a direct correlation to the offeror's potential ability to perform the immediate contract. For example, an RFP requires an evaluation of HUD's Public Housing Development grant program. A competing offeror has performed numerous small-scale studies of individual grant-funded projects, but has never conducted an evaluation of an entire program. No matter how good his/her past performance has been, there is still a risk to the successful completion of the contract.
 - (2) The instructions should also ensure that offerors provide a sample of clients that is sufficiently large to obtain an accurate picture of the offerors' performance. Often, the best method of preventing offerors from "stacking the deck" in their favor is to require a list of all firms and governmental entities for which the offerors have provided related services within a specific, recent time period. Recency will vary depending upon how fast the state of the art is changing in the industry associated with the procurement. For example, 18 months might be an appropriate maximum period of time for information technology development services, whereas for a Public

Housing study, three years may be more appropriate.

- (3) The RFP should request offerors to submit past performance references for the firm as a corporate entity, or if the firm has no corporate experience, references for the principals and any proposed key personnel and major or critical subcontractors. References for other than the firm as an entity should only be requested if they will be evaluated.

2. Business Proposals. The business portion of proposals includes cost or pricing information, the offeror's certifications and representations and other non-technical information (e.g., special licenses) needed to evaluate the offeror's capability to perform the contract. These instructions should include any format or content requirements for cost or pricing data or other information needed to determine cost or price reasonableness (when cost or pricing data per se are not required; see also FAR Subpart 15.4). A sample pricing proposal format for other than cost or pricing information is available on the OCPO intranet site at:

<http://hudweb.hud.gov/po/arc/connect/template.htm>

3. Limiting Proposal Size. The Contracting Officer, in consultation with the program office, may limit the size (i.e., number of pages) of proposals whenever it is practicable to do so. Such limitation should be tailored to the specific RFP and not be arbitrarily chosen. The limit and the consequences for exceeding it shall be stated in the proposal instructions in the RFP.
4. Proposal Formatting Requirements. These instructions must clearly state all formatting requirements, including: type of medium allowed (e.g., hard copy, electronic submission); software application to be used (e.g., Excel spreadsheet, Word text file, etc.); paper size if hard copy; total number of pages or electronic file size; margins; and, font size.

F. Evaluation Factors for Award (see FAR 15.304, HUDAR 2415.304).

1. General. All RFPs for competitive procurements shall include the factors that will be used to select the contractor(s). Evaluation factors serve as the standards against which each proposal is evaluated. The factors shall be explicit and address the specific requirements of the particular RFP, i.e., not be generic in nature. Factors may address technical, management, and cost aspects of proposals. Factors may be broken down into significant component subfactors. Factors that evaluate only desirable (vs. required) elements of proposals may be included, but should be given less emphasis than those of the required elements. Contracting staff will assist program

offices as requested in developing and weighting factors. All selection factors shall be contained in section M of the RFP. Exhibit 5-1 contains model standard evaluation factors.

2. Quality Factor. The quality of proposed services, work or products must be evaluated in every source selection. The Contracting Officer and the program office (e.g., GTR, TEP chairperson, SSA) shall determine the appropriate specific factors to be used to evaluate the quality of the proposals.
3. Past Performance. Past performance is different from prior experience. It is the evidence of how well the contractor has performed work relevant to that required by the proposed contract. The RFP must clearly describe the method to be used in evaluating past performance.
 - a. The quality of an offeror's past performance is normally verified by contacting the firms or governmental entities for which the offeror has performed work, or provided products, substantially similar to those required by the contract within an appropriately recent time period. (Note: It is important to specify the time period in the instructions to offerors in Section L of the solicitation.) The OCPO has issued detailed instructions on checking past performance references submitted by offerors, which are available online on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/connect/ais/acqinstr.htm>
 - b. The past performance evaluation shall consider the record of the offeror as a corporate entity. When the offeror has no history as a corporate entity, the past performance of its principals and any proposed key personnel and major subcontractors should be considered.
4. Minimum Requirements. In some cases, it may be necessary or advisable to include minimum requirements that offerors must meet to be considered further for contract award (e.g., required State or local real estate license, possession or access to specialized equipment, etc.; i.e., not matters of qualitative judgment). The RFP must clearly identify those minimum requirements and inform offerors of any time period for meeting them (e.g., "with initial proposal," "by the date for the submission of final proposal revisions," "within 15 days after award of contract," "within 30 days of notification to the offeror that he/she has been selected for award," etc.).
5. Factor Weights and Rating. Factor weights are included in the RFP to show the relative degree of importance of the factors to one another, to the

contract requirements, and to the elements of the proposals that they measure (e.g., the offerors' ability to perform the required work). Adjectival descriptions (e.g., outstanding, excellent, good, fair, poor, etc.) shall be used to rate how well proposals meet each factor or subfactor. OCPO has issued separate instructions on the use of adjectival ratings, which are available online on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/connect/ais/acqinstr.htm>

6. Cost and Price. Although not mandatory for HUD procurements, proposed costs or price may be evaluated using weighting. If weighting is used, the evaluation method shall be explained in Section M of the RFP. The use of weighting notwithstanding, the proposed costs or price shall be evaluated in every case.
 7. Cost or Price vs. Technical. The relative importance of cost or price to technical factors shall be established in advance and be clearly stated in the RFP (see FAR Subpart 15.3).
 8. Selection Method. The RFP must clearly indicate the method of source selection to be used (i.e., tradeoff or lowest price technically acceptable (LPTA) process), and explain how the method will be used; see paragraph 5-7.B and FAR 15.101).
 9. Award on Initial Offer. The RFP must include the appropriate FAR solicitation provision to indicate whether award will be made based upon initial submissions without discussions or after discussions (see FAR 15.209 and 15.306).
 10. Changes to Factors. Any changes to selection factors or their rating method after the issuance of the RFP shall be made through an amendment to the RFP.
- G. Contractor Performance Assessment Plan. Contracts for services require the development and use of a contractor performance assessment plan, also called a quality assurance plan (QAP), or when using PBC, a quality assurance surveillance plan (QASP; see also 6-2). The plan describes the actions the Government will take to assess the quality of the contractor's performance. It includes such information as the frequency of the assessment actions and the personnel responsible for taking the actions. The program office is responsible for the development of the plan. The contracting office should provide technical assistance in the development and use of the plan. Sample plans and additional guidance on their use are available on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/connect/guidance/qap/index.htm>

- H. Solicitation Provisions and Contract Clauses. The Contracting Officer shall ensure that all required and appropriate provisions and clauses are included in each solicitation. Unless the prescription for a clause permits changes to it (e.g., “a clause substantially the same as”), FAR and HUDAR clauses may not be changed without a deviation executed in accordance with FAR Subpart 1.4.
- I. Legal Review. The OGC legal advisor (see also paragraph 4-4.D) must review any solicitation for services expected to exceed \$500,000.

5-4 COMMUNICATIONS WITH PROSPECTIVE OFFERORS AND CONTRACTORS.

- A. Pre-award Contacts. Except as permitted by FAR 15.201, from the time that an RFP is issued until the resulting contract is awarded, only the Contracting Officer or his/her designee shall have contact with prospective offerors and offerors concerning matters related to the procurement. Offerors who have legitimate reasons for communicating with Departmental staff on other substantive matters shall not be restricted from doing so (e.g., a competing offeror is also the incumbent contractor and, therefore, must communicate with the GTR). Nevertheless, no information concerning pending procurements may be released unless expressly authorized by the Contracting Officer. The Contracting Officer is responsible for ensuring that the program office is made aware of this prohibition.
- B. Pre-proposal Conferences.
1. Purpose. Pre-proposal conferences are held when it is necessary to: inform prospective offerors of specific requirements of solicitations (particularly when those requirements are new or have been changed); transmit other relevant information; respond to questions from prospective offerors; and, solicit input from industry to clarify or improve a proposed requirement or solicitation. Pre-proposal conferences may be held before the solicitation is drafted, in response to a draft solicitation, or after issuance of the solicitation.
 2. Responsibilities. Contracting and program office personnel (e.g., GTR) should determine jointly the need for pre-proposal conferences as part of the acquisition strategy and plan. Because of the time and resources needed to stage such conferences, they should not be used indiscriminately. The contracting office shall control all aspects of the conference. The program office should provide assistance as requested by the contracting office. The Contracting Officer, or designee, shall chair the conference. The Contracting Officer shall ensure that a record of the conference is made and that it is made available to prospective offerors. This may be done through the issuance of an amendment or attachment to the solicitation (depending upon whether or not the RFP was issued prior to the conference), which contains the substantive issues and questions

raised, and their disposition (as opposed to questions that were answered by referring questioner to existing direction in the RFP).

3. Timing. Pre-proposal conferences may be held before or after the issuance of the RFP. The timing depends largely upon whether the Government needs the input of potential sources in refining its requirements, or only needs to provide them with information. The decision to hold a pre-proposal conference should be made prior to the issuance of the RFP so that a notice of the date and location may be included in the RFP. In some cases, the need for a conference may not become apparent until after the RFP has been issued, and questions received from prospective offerors reveal significant variations in interpretation or deficiencies in the RFP.

- C. Correspondence. Contracting personnel shall control all correspondence with offerors and potential offerors concerning proposed procurements. The Contracting Officer must sign all correspondence to offerors. All correspondence from offerors must be received by, or referred to, the Contracting Officer for response. If one firm receives information that would aid it in preparing its offer, and the lack of which would be prejudicial to other potential offerors, that information must be provided to all other potential offerors. The Contracting Officer shall make this information available to prospective offerors.

5-5 SAFEGUARDING INFORMATION (see also FAR Subpart 3.1).

A. General.

1. The Contracting Officer shall comply with the requirements for disclosure, protection, and marking of proprietary and source selection information set forth in FAR Subpart 3.1.
2. All proposals, source selection information, and proprietary information must be kept physically secure in HUD offices both during and after duty hours. Documents containing such material sent through interoffice mail must be opaquely wrapped and sealed. Source selection information and proprietary information that is transmitted electronically (e.g., via electronic mail to remote TEP members) shall also be kept secure by the recipient.

- B. Right to Information. The right to substantive information concerning a procurement prior to award of the contract does not extend to the chain of supervision of personnel involved in the evaluation process or to upper level management not directly involved in the procurement (i.e., TEP members, source selection authority, Contracting Officer). Personnel are not prohibited, however from providing their supervisors or higher management with information of an administrative nature (e.g., the time and place of panel meetings, the amount of

the individual's time to be required, and status reports on evaluation progress), provided no information relating to the status of any proposal is disclosed.

5-6 CONFLICT OF INTEREST REQUIREMENTS FOR TEPs.

- A. Standards of Conduct. The Contracting Officer shall ensure that each TEP member is informed of the requirements in section 1-5 and his/her responsibility to inform the chairperson in writing whenever his/her participation in the TEP activities could be reasonably interpreted as a possible or apparent conflict of interest.
- B. Certifications and Disclosures (see also paragraph 1-5).
1. As a condition to serving on a TEP, each member¹ (including advisors and outside personnel serving on the panel) who has not previously done so must complete the following documents:
 - a. The appropriate financial disclosure form (SF-278, or OGE-450 and HUD-450A; see paragraph 1-5). TEP members and advisors required to make annual financial disclosure shall not be required to submit a new financial disclosure form if a current report (see paragraph 1-5 for definition) is on file with the appropriate Agency Ethics Official. If a current report is on file, members and advisors shall only submit the certification in B.1.b below. However, financial assets or liabilities acquired since the submission of the current report must be reported on the certification form. TEP members or advisors required to file an SF-278 shall not be required to complete an OGE-450.
 - b. The "Financial Conflict of Interest Certification for Technical Evaluation Panel (TEP) Members" (see Exhibit 5-2). The certification shall be completed after proposals are received, but before the proposals are provided to the TEP members. The TEP chairperson or Contracting Officer shall provide the TEP members with a list of the names of the offerors, including any proposed subcontractors, before the members complete the certification.
 - c. A "Certification of Nondisclosure" (see Exhibit 5-3) completed by all individuals to whom proposal and source selection information is made available.
 2. Filing Procedures. TEP members may deliver the required certifications

¹ Requirement for submission of financial disclosure and Certification of Nondisclosure does not apply to contracting or legal personnel acting in an advisory, non-voting capacity, who have a current report on file.

and disclosures described in paragraph B.1 above directly to the appropriate Agency Ethics Official (AEO): the Ethics Law Division (ELD) in Headquarters OGC for TEP members in Headquarters; or, the cognizant field AEO for field-based TEP members. Alternatively, TEP members may submit these documents to the Contracting Officer for delivery to the AEO. In either case, TEP members shall place the documents in a sealed opaque envelope and shall identify the RFP number and title on the outside of the envelope.

3. Supporting documentation. For each RFP, the Contracting Officer shall provide the ELD/AEO with a copy of the abstract of proposals that lists the names and addresses of all organizations that have submitted a proposal.
4. ELD/AEO Review.
 - a. For each TEP member, the ELD/AEO will determine if an appropriate financial disclosure form is on file and if any apparent conflict of interest exists. If the ELD/AEO determines that a member does not have a current report on file, that office will inform the Contracting Officer, who will ensure that the appropriate report is submitted.
 - b. The ELD/AEO will review the certifications and financial disclosure forms and promptly notify the Contracting Officer of any apparent or actual financial conflict of interest on the part of any TEP member(s). The ELD/AEO will advise the Contracting Officer of any rulings on the affected member's continued participation in the TEP and/or recommend other necessary action(s). This review should be completed as soon as possible after the Contracting Officer provides ELD/AEO with the information required from the TEP members and the abstract of proposals. The TEP may be convened, and with the exception of outside personnel (see C.2 below), the members may begin their review of proposals before ELD/AEO completes the review.
4. Dismissal of TEP Members. The Contracting Officer shall immediately notify the TEP chairperson when a member must be dismissed from the TEP due to conflict of interest. The chairperson shall, in turn, immediately dismiss the individual and return to the Contracting Officer all proposals and other source selection information that was provided to the individual. The chairperson shall advise the dismissed member of his/her responsibility concerning continuing prohibitions under procurement integrity and the nondisclosure requirements in paragraph 1-5.F.

5. File Documentation. The Contract Specialist shall document the contract file regarding the dismissal of any TEP member, noting the name, date of dismissal and the facts contributing to the dismissal, and include all supporting documentation received from ELD/AEO.
- C. Outside Personnel.
1. When personnel from outside HUD (e.g., from another Government agency or from outside the Government) are to be used as TEP members, advisors, or consultants, they shall be informed of, and subject to, the requirements of this section 5-6 as though they were Departmental employees.
 2. The Contracting Officer shall not release proposals to an outside evaluator until the evaluator has completed and submitted the required disclosures and certifications.
- D. Confidentiality. To help ensure the confidentiality of the disclosure process, the Contracting Officer shall request that all financial disclosure reports be submitted, and ensure that they are transmitted to the ELD/AEO, in sealed, opaque envelopes.
- E. Refusal to Certify. Refusal on the part of any individual to complete and submit the certifications and financial disclosures required in paragraph B above shall disqualify him/her from participation in the TEP.
- F. Later Disclosure of Conflicts of Interest. TEP members (including the chairperson, advisors, consultants, and outside personnel) shall immediately notify the chairperson and/or Contracting Officer whenever they become aware of a potential or actual conflict of interest on their part. The Contracting Officer and chairperson shall promptly inform ELD/AEO. ELD/AEO will promptly advise the Contracting Officer and chairperson as to whether or not there is a conflict and the appropriate action required. When a member is determined to have a conflict of interest, the chairperson shall take appropriate action, which may include the member's dismissal from the TEP. The SSA or TEP chairperson (if authorized) shall appoint a successor to replace a dismissed individual, if one is needed.

5-7 SELECTION PROCESS.

- A. Definitions.
1. Appointment Memorandum. A memorandum from the SSA, or program office director for procurements where the Contracting Officer is the SSA, to the Contracting Officer naming the chairperson and members of the TEP, including any advisors, and consultants known at the time. The

memorandum should provide a brief description of each individual's experience and knowledge relative to the proposed requirement. Alternate members may also be named. The SSA or chairperson, if authorized by the SSA, may subsequently name additional or replacement members, advisors or consultants, as needed.

2. Chairperson. The individual responsible for overseeing the TEP's activities. The GTR assigned to the proposed requirement may be the chairperson of the TEP.
 3. Panel Members. Government (HUD or other Federal agency), and in exceptional cases, non-Government employees, named by the SSA or program office director to serve on the TEP. Members shall be voting members unless otherwise restricted by the SSA or chairperson.
 4. Committee. A body of Departmental, other Government employees, and/or outside consultants appointed by the SSA or TEP chairperson to consider, investigate, take action on, and report to the TEP on a specific aspect of the proposal evaluation process. The use of committees should be restricted to cases where the input of specialized technical expertise in the evaluation process is needed.
 5. Advisor. A person selected by the SSA or chairperson, if delegated such authority by the SSA, to advise the TEP in the evaluation of a specific technical or business aspect of a proposal or proposals. Advisors are non-voting TEP members.
 6. Consultants. Non-Government personnel serving as voting members or non-voting advisors. Contracting Officers shall verify that program offices properly engage the services of such consultants before permitting them to be used in the selection process. Contracting Officers shall ensure that any procurement of outside consultants for the purpose of evaluating proposals complies with the requirements FAR Subpart 37.2.
 7. Contracting Advisor. The contracting office staff member, normally the cognizant Contract Specialist, who advises the TEP on procurement-related matters.
 8. Source Selection Authority (SSA) (see FAR 15.303 and HUDAR 2415.303). The individual who oversees the selection process and makes the final selection of the contractor.
- B. Source Selection Methods. The Department recognizes two principal methods of selecting offers for award: the tradeoff process; and, the lowest price technically acceptable (LPTA) process (see also FAR Subpart 15.101). For both methods, selections shall be based upon the evaluation factors set forth in the RFP (see

paragraph 5-3 F). Both methods provide for discussions and negotiations with offerors when award is not made on the basis of the initial proposals submitted. The Contracting Officer, in concert with the GTR and TEP chairperson, shall determine the appropriate source selection method for the proposed procurement.

1. Tradeoff Process. This method provides for the evaluation of technical and other factors in addition to cost or price to determine the offer that represents the best overall value to the Government. The Government may make award to other than the lowest-priced offer. However, as proposals become technically equivalent, cost or price may become the determining selection factor. This method is best suited to procurements where the Government has determined that the superiority of the offerors' technical ability or quality to be equal to or more important than the proposed contract price (e.g., developmental efforts, evaluations, specialized technical assistance).
2. LPTA Process. This method provides for award to the lowest-priced offer that meets a set of minimum standards of technical acceptability specified in the RFP. This method should be used whenever a minimum acceptable level of technical ability and/or quality can be established - and clearly described - to meet the Government's requirements (e.g., requirements that are closely related to commercially available goods or services).

C. Responsibilities. In addition to the responsibilities prescribed in HUDAR Subpart 2415.3:

1. TEP Chairperson. The chairperson is responsible for all procedural and administrative aspects of TEP activities, including:
 - a. Scheduling and conducting TEP meetings;
 - b. Designating - after consultation with TEP members, the SSA and offices concerned - any committees and advisors needed to assist in the evaluation. (Note: The program office head has the discretion to authorize the chairperson to make such designations or to reserve that authority to him- or herself.);
 - c. Ensuring adequate participation of members. The chairperson has discretion in determining if full TEP attendance (i.e., all voting members, advisors, etc.) is needed to hold meetings, conduct TEP business, etc. Meetings should be scheduled primarily on the basis of the availability of voting members. The chairperson should take reasonable steps to ensure that at least a majority of the voting members are present. If a TEP member's failure to perform his/her TEP duties hinders the evaluation process, the chairperson shall be responsible for taking any necessary action (e.g., request the SSA

or cognizant program office director to require the member's attendance or designate a replacement, recommend to the SSA and cognizant program office management the dismissal of the member, etc.) to ensure that the TEP completes its evaluation by the established completion date (e.g., in the Individual Procurement Plan, see paragraph 4-1.C);

- d. Ensuring adequate discussion and resolution of all matters considered by the TEP (see paragraph 5-7.H);
- e. Assisting in the preparation of the RCS (see section 4-2) and/or RFP (particularly in developing or revising the SOW, proposal instructions, and evaluation factors for award);
- f. Approving the final RFP. The chairperson is responsible for reviewing the technical, programmatic aspects of RFPs to ensure that the program office's requirements are met. The chairperson should seek the advice of the GTR. The chairperson should also seek advice from the TEP (particularly when various technical disciplines represented by the TEP membership are needed for the review), but has the discretion to make this approval without the full involvement and approval of the TEP. (Note: If an IPT is used, the IPT will also approve the final RFP; see paragraph 5-2.C.2.);
- g. Preparing, or having prepared, the evaluation plan (see paragraph 5-7.E);
- h. Designating specific TEP member(s) to conduct offeror reference checks (see paragraph 5-7.F);
- i. Ensuring that TEP findings are thoroughly documented;
- j. Arranging for meeting facilities;
- k. Ensuring that all necessary precautions are taken to protect the confidentiality of the evaluation process and safeguard TEP records, proposals, and other information bearing on the evaluation;
- l. Instructing any committee members, advisors, and consultants as to their role, responsibilities, and procedures;
- m. Participating, and/or obtaining the participation of TEP members, in negotiations and debriefings;

- n. Preparing, or having prepared, information required by the Contracting Officer for conducting negotiations and debriefings, and for responding to protests;
 - o. Ensuring that scheduled deadlines for evaluation and reporting are met;
 - p. Notifying the Contracting Officer and the SSA whenever the TEP will be unable to meet its scheduled deadlines; and,
 - q. Notifying the Contracting Officer of any actual or potential conflicts of interest and actual or suspected violations of standards of conduct and ethics rules (see section 5-6).
2. TEP Members. TEP members are responsible for:
- a. Meeting as directed by the chairperson. (Note: TEP duties should take priority over normal duty assignments.);
 - b. Completing all assignments on time;
 - c. Fully documenting all evaluation findings, including background and reference checks and significant deliberation (e.g., dissenting opinions), and providing detailed written narratives to support ratings;
 - d. As directed by the chairperson, Contracting Officer, or SSA, assisting in the preparation of the RFP (particularly in developing or revising the SOW, proposal instructions, and evaluation factors for award) and the technical evaluation plan;
 - e. As directed by the chairperson, Contracting Officer or SSA, assisting in the preparation of the RFP (particularly in developing or revising the SOW, proposal instructions and evaluation factors for award) and the technical evaluation plan;
 - f. Taking all necessary precautions to protect the confidentiality of the evaluation process and safeguard TEP records, proposals, and other information bearing on the evaluation; and,
 - g. Notifying the chairperson of any actual or potential conflicts of interest and actual or suspected violations of standards of conduct and ethics rules (e.g., Procurement Integrity).
3. Contracting Officer. The Contracting Officer, or his/her representative, shall ensure that:

- a. The TEP is established and operated in accordance with applicable regulations and Departmental policy;
- b. The TEP is fully briefed on its role and responsibilities. For remotely located TEP members (e.g., in different HUD offices), such briefing may be conducted via telephone or video conference call;
- c. The integrity of the competitive process is maintained;
- d. The certifications, disclosures and other documentation required under section 5-6 are completed and submitted to the appropriate AEO for review;
- e. The original documents listed below are placed in the respective contract file:
 - (1) TEP appointment memorandum;
 - (2) Abstract of proposals; and,
 - (3) TEP reports and supporting documentation.

4. Office of General Counsel (OGC).

- a. As requested by the Contracting Officer, an OGC representative will brief the TEP on standards of conduct, including disclosure of potential conflicts of interests of TEP members (see also paragraph 5-6).
- b. As requested by the Contracting Officer, OGC will review the TEP proceedings for compliance with regulatory and statutory requirements and/or provide the TEP with advice on the legal aspects of any matter that may be presented to him/her.
- c. OGC will advise the TEP chairperson and the Contracting Officer regarding any possible or apparent conflicts of interest of TEP members and make any rulings on their continued participation or recommend other necessary action(s).
- d. As requested by the TEP chairperson or Contracting Officer, OGC will advise the TEP and Contracting Officer regarding legal matters related to solicitations and proposals (see also paragraph 5-7.H).

5. SSA. The SSA is responsible for:
 - a. Appointing the TEP and any consultants or advisors;
 - b. Reviewing and approving the technical evaluation plan;
 - c. Reviewing TEP evaluation reports and other relevant information provided by the Contracting Officer; and,
 - d. Providing a written selection decision that clearly states the rationale for the selection decision.

D. Appointment and Composition of the TEP.

1. The SSA, or his/her designee, shall appoint the TEP. The TEP shall be appointed before the Contracting Officer issues the solicitation. Every effort should be made to appoint the TEP as soon as practicable once the procurement has been scheduled (see also 4-1).
2. Generally, a TEP will consist of three to five voting members, with one member serving as the chairperson. For more complex procurements, the TEP may add advisors and/or a committee to focus on specific technical issues or concerns. For inexpensive or routine acquisitions of equipment, supplies or services, the TEP may consist of one technical representative (see also HUDAR 2415.303(b).)
3. The HCA shall approve the appointment of proposed TEP members who are not employed by the Federal government (see also section 5-6). The Contracting Officer shall provide the HCA with all information needed to render a decision on, and make any determination to use outside evaluators. The Contracting Officer shall ensure that no proposal information is made available to outside evaluators before the HCA has executed the required determination. The Contracting Officer shall ensure that the requirements of FAR Subpart 37.2 are satisfied before any such outside individual is engaged on a contractual basis to evaluate proposals. The SPE shall execute the determination required by FAR 37.204.

- E. Evaluation Plan. The TEP chairperson is responsible for developing a written plan for evaluating proposals using the selection factors set forth in the RFP. The plan describes the method the TEP will use to rate and rank proposals. As requested by the chairperson, any of the TEP members may help develop the plan. The TEP chairperson should make every effort to submit the plan to the Contracting Officer and SSA for approval before the RFP is issued, but must submit it before the proposal receipt date. The plan is considered source selection information, and must be treated confidentially. It shall be handled and marked as required in paragraph 5-5A. Additional guidance and examples of evaluation

plans are available on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/cafe/tep/tephome.htm>

F. Initial Technical Evaluation.

1. Prior to reading and evaluating proposals, the TEP chairperson shall ensure that all TEP members have a clear, common understanding of the evaluation factors, the evaluation plan, the contract requirements and the proposal content requirements.
2. The TEP shall evaluate proposals in accordance with HUDAR 2415.305. Each TEP member shall individually read and rate the proposals assigned to him/her without consulting (“comparing notes” with) other TEP members. They shall limit the initial evaluation to the quality of proposals as measured against the selection factors stated in the RFP. When large numbers of proposals are received, it may not be practicable for each TEP member to read all proposals. In such cases, the chairperson shall ensure that each proposal is evaluated by at least two TEP members.
3. The TEP should rate and rank proposals through a consensus process whenever practicable. In such a process, the TEP, as a group, will consider the merits of and determine a single rating for each proposal. This consensus rating is then used to establish the ranking of the proposals and to develop the competitive range recommendation (see paragraph J below). To the extent practicable, the competitive range recommendation should be developed during the same meeting where the consensus rating is done.
4. The Contracting Officer, or his/her designee, should participate in any meeting (in person or through electronic communications) where the ranking process is conducted.

G. Reference Checks and Past Performance Information (see also 5-3.E.1.b and 5-3.F.3). The TEP shall conduct checks of offerors’ references and review relevant past performance information whenever past performance of offerors is a significant technical factor for award. The CPO has issued separate guidance on checking past performance references, which supplements this paragraph.

1. The requirement for providing references shall be clearly stated in the RFP proposal instructions.
2. The TEP chairperson may designate certain TEP members to conduct reference checks (i.e., not all TEP members need to participate). Only the TEP member(s) specifically designated by the chairperson shall conduct reference checks.

3. The number of references contacted shall be at the discretion of the TEP unless otherwise directed by the Contracting Officer, but shall be large enough to obtain a meaningful sample of information on the offerors' past performance.
4. The TEP, in consultation with the Contracting Officer, shall decide what information needs to be obtained. The chairperson shall ensure that similar information is obtained from all references contacted.
5. Reference checks may be required as part of the initial evaluation process or at a subsequent stage in the selection process (e.g., once the competitive range has been determined). However, checks and reviews of past performance information must be completed before the Contracting Officer initiates discussions.
6. In addition to references provided by offerors, the TEP shall review available information about the offerors' past performance under HUD and other Federal contracts. The Contracting Officer may provide or direct the TEP to available relevant performance data (e.g., contractor performance reports; see section 12-15).
7. The Contracting Officer may use any or all of the information obtained in seeking further clarification (if award is made without negotiations) and conducting discussions or negotiations with offerors. The Contracting Officer shall consult with the TEP in deciding which information to use. The Contracting Officer must disclose to an offeror any adverse information concerning the offeror's past performance obtained by the Government or provided to it by a third party, and permit the offeror an opportunity to explain it (see also FAR 15.306).

H. Initial Technical Evaluation Report. The TEP shall submit a written report of its findings to the Contracting Officer as prescribed in HUDAR 2415.305. In preparing the report, emphasis should be placed on substance rather than form. Exhibit 5-4 contains sample initial TEP report formats for the tradeoff and LPTA selection methods. While use of the model formats is not mandatory, the type of information they contain shall be included in all final TEP reports. The formats are also available on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/cafe/tep/tephome.htm>

1. The TEP Chairperson shall ensure that the report is factually supported by the information contained in the proposals or obtained during past performance checks. The Chairperson shall also ensure that the report does not contain inconsistent, superfluous, or unnecessary statements.

2. The report shall clearly identify the strengths, weaknesses and deficiencies (see FAR 15.001 for definitions of “deficiency” and “weakness”) of each proposal that contributed to the TEP’s decision regarding its acceptability (see paragraph H.5 below).
3. The report shall include an assessment of the risk that each proposal presents with regard to contract performance and completion, and how the degree of risk influenced the TEP’s assessment of the proposal’s acceptability. Risk is defined as the degree of doubt that an offeror can perform the proposed contract given the offeror’s performance record, experience, technical ability, and available resources, as each is applicable.
4. The report shall describe the significant qualitative differences between proposals (e.g., relative strengths and weaknesses) and the value of those differences. (For example, “Key personnel proposed by offeror X have nearly twice as much experience in the areas required by the contract than do any other offeror’s proposed personnel. Offeror X, therefore, will be able to begin performing the contract tasks immediately with none of the start-up learning curve and attendant costs that the other offerors’ personnel would face.”)
5. The report shall clearly identify each proposal as being technically “acceptable,” “unacceptable, but capable of being made acceptable” (“capable”), or “unacceptable.” In determining acceptability, the TEP must consider that offerors are expected to submit a complete initial proposal that responds to the RFP. Offerors who submit incomplete proposals with an expectation of being afforded the opportunity to significantly rewrite or supplement them do so at their own risk. The Contracting Officer is under no requirement to, and shall not, afford offerors the opportunity to improve technically unacceptable proposals. These terms are defined as follows:
 - a. Acceptable. The offeror clearly understands HUD’s requirements, has adequately addressed the requirements of the RFP, and has provided adequate evidence of his/her ability to perform the contract. HUD could select the offeror without any additional information and be reasonably assured that the offeror would successfully perform the contract. This does not mean that the proposal is perfect or that the TEP has no significant questions or concerns, but that the offer has no “fatal flaws.”
 - b. Unacceptable but capable of being made acceptable. This is an interim rating that means that the proposal as submitted contains enough deficiencies and/or weaknesses (see paragraph H.4 above) to make it unacceptable (i.e., the TEP doubts or questions the

offeror's ability to successfully perform the contract). The unacceptability may be due to a lack of clarity in the proposal, missing information, etc. Nevertheless, the flaws are not serious enough to make the proposal unacceptable outright, and the TEP has reason to believe that the offeror may be able to clarify parts of the proposal or provide additional information that would improve the offer to the point of being acceptable. (For example, an otherwise acceptable proposal briefly addresses the qualifications of key personnel and refers to their resumes, but fails to include the resumes. The TEP cannot evaluate the qualifications of the proposed personnel. Rather than reject the proposal, the TEP may decide to assign this interim rating and seek the missing information, withholding its final judgment until it can review the missing resumes.)

- c. Unacceptable. The deficiencies and/or weaknesses constitute a high risk of failure of contract performance. The amount of additional information and/or revision that would be needed from the offeror would be tantamount to affording him/her the opportunity to rewrite his/her proposal. Unacceptable offers may be severely lacking in information. On the other hand, they may contain lots of irrelevant information. It is obvious, though, that the offeror does not have the capability to do the work and/or just does not understand what is required (i.e., the offeror just does not "get it").
 - d. Special Considerations for LPTA. Under the LPTA selection process, proposals must ultimately receive an "acceptable" or "pass" rating on all factors and subfactors to be considered technically acceptable and be eligible for further consideration for award of a contract. Receiving an "unacceptable" rating on one or more factors in the initial evaluation may not automatically exclude an offer from further consideration (i.e., clarification and discussions).
 - e. Seeking Additional Information. The decision to seek additional information from an offeror shall be a matter of judgment on the part of the Contracting Officer. The Contracting Officer should seek the advice of the TEP.
6. For solicitations that contain minimum requirements, the TEP report must indicate whether or not the requirements have been met. Where a proposal has not met the requirements, the TEP shall recommend whether or not to seek additional information through clarification and/or discussions (e.g., an otherwise excellent proposal is missing one piece of required documentation, e.g., state license, that might be easily obtained

from the offeror).

7. The report shall address any serious reservations or dissent on the part of individual panelists and explain how these were resolved or to what degree any unresolved reservations or dissent were considered in the overall evaluation and consensus ranking of the offers.
 8. The report shall provide a detailed rationale for any changes in ratings made during the review process.
 9. The report shall include, as attachments, any documentation needed to support the TEP's findings. Such documentation may include: rating sheets used to arrive at the ratings; reference checks results; any reports or assessments by committees or consultants. The report shall also include specific questions, concerns, and recommendations for use in discussions, negotiations and/or selection. Normally, the report should not include notes made by individual panelists to prepare for the consensus rating.
 10. The report is considered source selection information and shall be handled and marked as required in section 5-6. With the exception of the SSA and authorized contracting personnel, it shall not be reviewed by anyone outside the TEP who has not been expressly authorized to do so by either the Contracting Officer or the SPE.
 11. The Contracting Officer may require the submission of a draft report for the Contracting Officer's review. The requirement for draft TEP reports should be limited to cases where the RFP, proposals, and/or evaluation are highly complex or large in scope, or where specific legal issues are raised.
 12. If the chairperson decides that legal review of the findings contained in the report is advisable or needed, the chairperson shall provide a copy of the report to the cognizant OGC legal advisor (see also paragraph 5-7.O). The chairperson should advise the Contracting Officer that he/she has sought legal review.
- I. Cost and Price Analysis. The Contracting Officer shall conduct cost and price analyses as required by FAR Subpart 15.4.
1. Technical Analysis. The Contracting Officer may provide the cost or pricing proposals to the TEP for their technical analysis after they have completed their initial individual evaluations of the proposals and before the TEP consensus evaluation is developed. If the assigned GTR is not a TEP member, the Contracting Officer may provide the cost or pricing information to him/her earlier. This technical analysis consists of an evaluation of the need for and appropriateness of proposed costs as they relate to proposed work (e.g., labor categories and rates, travel, ADP,

etc.). Normally, the Contracting Officer will only provide the TEP with cost or pricing information for those offerors found to be technically acceptable or capable of being made technically acceptable. The Contracting Officer, in consultation with the Chairperson, may elect to provide the TEP with cost or pricing information for only those offerors determined to be within the competitive range. This avoids unnecessary analysis of technically unqualified offers. The Contracting Officer may also obtain assistance in evaluating cost or pricing information from technical, program and audit personnel.

2. Cost Realism Analysis. In cases where cost will be the deciding factor in selection of a cost-reimbursement contractor (see paragraph 5-7.P), the Contracting Officer shall perform a cost realism analysis to determine the probable cost of performance of each offeror (see FAR 15.305 and 15.404-1 for additional information). This analysis determines if proposed costs are reasonable in light of the work required by the contract and the way in which the offeror proposes to conduct that work. The Contracting Officer should rely on the expertise of the program office and TEP in deciding if an offeror's technical approach is reasonable, and if the proposed costs accurately reflect, and are necessary for, that approach. The program office and TEP should compare the proposed costs to both the offeror's technical approach (e.g., is the same quantity and type of labor reflected in both) to the contract's technical requirements and to HUD's independent cost estimate. The TEP's review will focus primarily on the reasonableness of the proposed labor (both amount and mix) and related direct costs (e.g., equipment, travel, supplies, consultants, etc.). The TEP is not normally expected to evaluate costs such as overhead. The OCPO has issued a separate Acquisition Instruction that provides the format for the cost realism analysis. The instruction and format are available on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/connect/ais/acqinstr.htm>

3. Field Pricing Assistance (see FAR 15.404-2). Contracting Officers shall request Defense Contract Audit Agency pre-award audits via OCPO's Policy and Field Operations Division. Requests shall be made using the DCAA audit request format (Request for Audit/Evaluation) available on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/connect/template.htm>

4. Use of Analyses and Field Pricing Information. The probable costs resulting from the cost/price analysis, cost realism analysis, and field pricing reviews will be used in discussions and negotiations with offerors and the selection of the contractor (see paragraphs 5-7.M and P).

J. Determination of Competitive Range.

1. The Contracting Officer shall determine the competitive range (see FAR Subpart 15.3) by considering the technical evaluation results and recommendations of the TEP and the proposed costs or prices of the individual offers. The TEP shall provide the Contracting Officer with its recommendations for competitive range. The Contracting Officer should attend the TEP meeting (e.g., consensus meeting; see 5-7.F above) where the competitive range recommendation is developed. Whenever practicable, the Contracting Officer should determine the competitive range during the consensus meeting.
2. The Contracting Officer should consult with technical personnel to reconcile the technical, socioeconomic, and business factors that affect the determination.
3. The Contracting Officer may redetermine the competitive range whenever an offeror ceases to have a reasonable chance of being selected (e.g., if after clarification and/or discussions, a proposal which was initially found to be capable of being made acceptable is found to be unacceptable). Such redetermination will eliminate the need for any further consideration of an unacceptable offer.
4. The Contracting Officer shall promptly notify offerors who fail to make the competitive range as required by FAR 15.503.

K. Pre-negotiation Meetings. Contracting Officers are encouraged to meet with all members of the negotiating team before starting discussions or negotiations. The Contracting Officer should use such meetings to obtain input for and/or develop the Government's pre-negotiation objectives (see paragraph L below). The Contracting Officer shall also ensure that all personnel participating in negotiations are briefed on their roles and the pre-negotiation objectives. Meetings involving members in different geographical locations (e.g., in different field offices) should be conducted via telephone conference call.

L. Pre-negotiation Objectives. When contract award will not be made on the basis of initial offers received, the Contracting Officer shall ensure that pre-negotiation objectives are developed before negotiations are conducted with offerors. The Contract Specialist assigned to the procurement will develop the objectives in accordance with FAR 15.405 and 15.406 using the format provided in Exhibit 5-6. The Contracting Officer shall approve objectives before discussions and negotiations begin. The approved objectives shall be maintained in the official contract file. The scope of the objectives will depend upon the complexity and dollar value of the proposed contract. For each offeror, the pre-negotiation objectives shall include:

1. A description of all significant areas to be addressed (e.g., labor mix and rates);
2. The Government's cost or pricing objectives, including the rationale and its basis (e.g., cost analysis, pricing history, independent Government estimate, field pricing review, audit, technical review, labor and overhead rate verifications). The objectives shall include an explanation for significant differences from any auditor's position; and,
3. The Government's profit or fee objective, if applicable, and the rationale for the objective, including a completed weighted guidelines profit or fee objective. The Contract Specialist shall develop a profit or fee objective using the weighted guidelines structured approach (see FAR 15.404-4) for each contract action that requires cost analysis and is expected to be \$100,000 or more. The format and instructions for using the structured approach are available on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/connect/template.htm>

M. Discussions and Negotiations (see FAR Subpart 15.3).

1. The Contracting Officer shall conduct written or oral discussions with all offerors within the competitive range. All communications with offerors shall be in accordance with FAR 15.306.
2. Contracting Officers are encouraged to use oral discussions whenever practicable. As requested by offerors, or as deemed necessary, Contracting Officers should provide them with written confirmation of substantive issues covered during oral discussions.
3. Discussions and negotiations may involve proposed costs or prices, technical and management issues, and related matters. The Contracting Officer must disclose deficiencies and significant weaknesses (see paragraph 5-7.H above and FAR 15.306) to the offeror during discussions.
4. The Contracting Officer may request the participation of technical (e.g., program (GTR), legal, audit, etc.) personnel in discussions and negotiations as needed. The Contracting Officer shall control all discussions and negotiations.
5. The Contracting Officer is responsible for arranging discussions and negotiations. Discussions/negotiations may be held at the offeror's site or at a HUD facility. They may be face-to-face or electronic (e.g., telephone or video conferencing). The method used will depend upon such factors as the complexity and magnitude of the proposed contract, travel costs,

time considerations (e.g., urgency), and past experience with and knowledge of, the offerors (e.g., incumbent contractors).

6. The Contracting Officer, with the coordination of the OGC legal advisor, when applicable, shall ensure the integrity of the negotiation process.
7. The Contracting Officer shall make all reasonable attempts to reach a suitable, mutual understanding between the parties. In some cases, more than one round of discussions and negotiations and the submission of more than one revised proposal may be needed before requesting final proposal revisions. Nevertheless, contracting personnel should make all reasonable efforts to obtain all needed information and discuss all substantive issues in one round of discussions. The TEP shall evaluate all revisions to proposals. The Contracting Officer shall document the rationale for multiple rounds of discussions and proposal revisions in the price negotiation memorandum (see paragraph S below).

N. Proposal Revisions (see FAR Subpart 15.3).

1. Whenever practicable, the entire TEP should evaluate all proposal revisions. This helps to ensure continuity in the evaluation process. The need for review by any advisors or committees that participated in the initial evaluation will depend upon the nature and content of the revisions. The Contracting Officer, in consultation with the chairperson, may determine the need for review by the entire TEP. The Contracting Officer should provide both the technical and cost portions of the final proposal revisions to the TEP for evaluation.
2. The TEP may re-rate and re-rank the proposals based upon the final proposal revisions. The new rating sheets shall be included as an attachment to the final report.

O. Final TEP Report. The TEP shall submit a final written report as required by HUDAR 2415.308.

1. The report shall include:
 - a. A final assessment of each offer's quality and technical acceptability and a comparative analysis of all the proposals within the competitive range, including their relative strengths and weaknesses, and the risks presented by each. The report shall address the adequacy of the offerors' responses to the technical concerns and questions raised by the TEP and the impact of the final proposal revisions on the final rating, ranking, and technical acceptability of the offers;

- b. Final determinations with regard to the offerors' meeting any minimum requirements (see paragraphs 5-3.F and 5-7.H); and,
 - c. A recommendation to the SSA of the offeror(s) to be selected for award. This recommendation shall be made for procurements using the tradeoff selection process only. Under the LPTA process, the Contracting Officer, as the SSA, must select the lowest-priced offer from among those that the TEP has determined to be technically acceptable.
2. Exhibit 5-5 contains model formats for the final TEP report for both tradeoff and LPTA selection processes. While use of the model formats is not mandatory, the type of information they contain shall be included in all final TEP reports. The formats are also available on the OCPO intranet site:
- <http://hudweb.hud.gov/po/arc/caf/tep/tephome.htm>
3. The chairperson shall provide the report through the Contract Specialist to the cognizant Contracting Officer and HCA for their review.
4. For proposed contracts expected to exceed \$1 million (including all options), the chairperson shall also provide the final report to:
- a. The legal advisor who will determine whether the findings are adequately supported by the documentation and that all applicable source selection procedures have been complied with. For proposed contracts less than \$1 million the chairperson should consult the Contracting Officer and the legal advisor to determine if a legal review is needed; and,
 - b. The CPO for his/her approval. The CPO may delegate this approval to the Deputy CPO.
5. The Contracting Officer, HCA, and legal advisor shall advise the chairperson, if they find the report to be unacceptable. The chairperson shall resolve all concerns before submitting the report to the SSA.
6. The report is source selection information and must be handled and marked as required in paragraph 5-5.A.

P. Source Selection.

- 1. In selecting the offeror for award, the SSA shall consider:
 - a. The Final TEP Report.

- (1) If the SSA agrees with the findings and recommendations contained in the TEP's final report, the report will serve as the basis for the selection decision.
 - (2) If the SSA disagrees with the report's findings or recommendations, he/she may either return the report to the TEP and seek additional information and/or clarification or make a different selection. The SSA shall justify in writing the selection of another source, clearly indicating how and where he/she disagrees with the findings of the TEP. Such selection must be based strictly on the requirements of the RFP and the evaluation criteria. The SSA shall inform the Contracting Officer (in tradeoff selections) of his/her disagreement with the TEP's findings and/or his/her decision to make a different selection. The Contracting Officer shall ensure that the legal advisor is kept informed of such actions;
- b. Failure to Meet Minimum Requirements. The SSA shall not select any offer that has failed to meet minimum requirements unless the RFP specifically permits correction after selection or award (see subparagraph 5-3.F); and,
- c. Costs or Prices. Costs or prices shall be considered in selecting every contractor.
- (1) LPTA Process. The SSA (i.e., the Contracting Officer) must select the lowest priced offer among those proposals determined to be technically acceptable (i.e., those remaining in the Competitive Range after the evaluation of final proposal revisions).
 - (2) Tradeoff Process. More than one technically acceptable proposal from qualified sources may remain for consideration after the close of discussions and negotiations. In making his/her selection, the SSA shall consult with the Contracting Officer regarding the tradeoffs and relative merits of cost/price and technical aspects of the proposals (e.g., selecting an offer with a lower technical ranking, but more reasonable price).
 - (3) Cost Realism Analysis. In the award of a cost-reimbursement contract, the SSA must consider the cost realism analyses performed by the contracting office (see subparagraph 5-7.I).

2. The SSA shall prepare a source selection decision document and, in the case of tradeoff source selections, submit it to the Contracting Officer. For tradeoff source selections, the Contracting Officer and TEP chairperson shall provide the SSA with technical assistance in completing the selection document. The decision document is considered source selection information and must be handled and marked as required in paragraph 5-5.A. A model format for the decision document is available on the OCPO intranet site:

<http://hudweb.hud.gov/po/arc/connect/template.htm>

5-8 POST-SOURCE SELECTION REQUIREMENTS.

- A. Contract Preparation and Pre-award Approvals and Concurrences. Promptly after the contractor has been selected, the Contracting Officer shall:

1. Prepare a complete contract document for execution. The Contracting Officer is responsible for ensuring that the contract document reflects the agreements reached during negotiations.
 - a. Contracts should not incorporate by reference, or otherwise include, the contents of the successful technical proposal, or any portion of it, in the contract unless there is no other way to include specific requirements (e.g., quality assurance plans). (Note: Technical proposals that are not incorporated into contracts are protected from release under the Freedom of Information Act. Those that are incorporated are not protected from such disclosure; see FAR Subpart 24.2);
 - b. When contract terms and conditions (e.g., special provisions) are changed as a result of discussions and negotiations, the affected parts of the contract must be revised before the final contract is executed. Failure to revise the affected contract terms implies rejection of the change by the Government, creates ambiguity, and gives rise to potential or future contract disputes.
 - c. Contracts shall include all appropriate clauses prescribed by FAR and HUDAR (see paragraph 5-3.H). Unless the prescription for a clause permits tailoring it (e.g., “a clause substantially the same as”), FAR and HUDAR clauses may not be changed without a deviation executed in accordance with FAR Subpart 1.4. The OGC legal advisor must review any proposed contract that contains modifications to required clauses or departs in a significant manner from the terms of the original solicitation (see OCPO Acquisition Instruction 99-1);

2. Prepare all supporting documentation (e.g., determinations, etc.) and obtain any written reviews or approvals (e.g., OGC, Office of Federal Contracts Compliance, etc.) required before contract execution;
3. Obtain the advice and concurrence of the GTR, as needed, on any changes made to the technical requirements of the contract during negotiations;
4. Obtain the Deputy CPO's pre-award approval, if required (see paragraph 1-4.E); and,
5. Obtain Equal Employment Opportunity Pre-award Clearance (see FAR 22.805) from the Department of Labor's Office of Federal Contracts Compliance for each contract and first tier subcontract exceeding \$10 million. (Note: Construction contracts and subcontracts are excluded from this requirement.)

B. Responsibility Determination. The Contracting Officer shall determine the responsibility of the selected source (see paragraph 1-4.D and FAR Subpart 9.1). In making the determination, the Contracting Officer shall consult the following sources of information:

1. "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," available online via the OCPO intranet Contract Connection site (under "Responsibility Determination"):

<http://hudweb.hud.gov/po/arc/arconnect.htm>

2. Contractor performance information (see section 12-15);
3. Relevant audit reports (e.g., issued by HUD's Inspector General);
4. Reference checks;
5. Pre-award survey results (if applicable, see FAR Subpart 15.4);
6. Credit reports. Credit reports should be requested when HUD has no previous experience with a contractor, a pre-award audit is not scheduled, and other financial information is unavailable or inadequate; and,
7. Compliance with small business subcontracting requirements as evidenced by subcontracting reports (SF-294/295; see also paragraph 3-3D).

C. Price Negotiation Memorandum (PNM; see FAR Subpart 15.406-3).

1. The Contract Specialist shall prepare the PNM using the model in Exhibit

5-7. The Contracting Officer shall indicate his/her approval by signing the PNM. The PNM shall be placed in the official contract file. The PNM

2. The PNM shall explain any significant differences between proposed, objective and negotiated costs. It shall also explain any deviations from recommendations made by auditors, the GTR, or the TEP. Discussion of individual cost elements should be limited to those proposed items of cost to which the Contracting Officer, the auditor (if applicable), GTR, or TEP took exception.
3. If the proposed contract price is determined to be reasonable based on price analysis, the PNM shall include the basis for the price analysis (e.g., historical pricing data, adequate price competition, etc.; see FAR Subpart 15.4) and its results.
4. If a combination of price and cost analysis is used to determine the reasonableness of the price, the PNM shall discuss each to the extent needed.

D. Notifications and Debriefings.

The Contracting Officer shall make all notifications to unsuccessful offerors and conduct debriefings as required by FAR Subpart 15.5. The Contracting Officer may require the participation of personnel having direct knowledge of the procurement including the TEP chairperson, TEP members, and the GTR, if he/she participated in the selection process. Such personnel shall be available to participate if requested by the Contracting Officer (see also paragraph 12-3.A).

E. Protests. While many protests are file after contract award, protests may also be made before contract award (e.g., as a result of notification to unsuccessful offerors once the competitive range is determined). Pre-award protests shall handled in accordance with this paragraph E.

1. The Contracting Officer shall handle all protests of award in accordance with FAR Subpart 33.1 and HUDAR Subpart 2433.1. Program or technical personnel shall provide information related to the protest to the Contracting Officer as requested.
2. Contracting Officers shall seek to use alternative dispute resolution (ADR) methods (see Chapter 10), as appropriate, to resolve potential and actual protests. Contracting Officers shall coordinate all ADR efforts with OGC/Regional Counsel.
3. Contracting Officers shall report all agency level protests through the HCA to the CPO promptly upon receipt of a notice of protest. Contracting Officers shall provide updates on the status of the protests as requested by

the HCA, the CPO, and/or OGC/Regional Counsel.

F. Disposition of TEP Records Documentation.

1. The program office shall provide to the Contracting Officer all original documentation relevant to the selection process including back-up data, advisory or committee reports, minutes of meetings, reference checks, etc. The Contracting Officer shall ensure that these documents are placed in the official contract file.
2. The GTR may retain copies of the successful proposal and any modifications made to it during the award process if such will be needed to monitor the contractor's performance (see paragraph Q above and paragraph 12-4).
3. Other documents related to the selection process shall be disposed of as follows:
 - a. Copies of unsuccessful proposals and extra copies of the successful proposal shall be returned to the contracting office and, if requested, returned to the offerors who submitted them, and;
 - b. Unofficial internal documents (e.g., TEP members' individual notes) are not considered to be official records and shall not be placed in the official contract file. The program office may keep such documents for a brief period after contract award for informational purposes.

5-9 UNSOLICITED PROPOSALS. The processing and disposition of unsolicited proposals shall be handled in accordance with FAR Subpart 15.6 and HUDAR Subpart 2415.6.

STANDARD EVALUATION FACTORS FOR AWARD

Technical and Management Factors. Evaluation factors are the standards against which a Technical Evaluation Panel measures the quality of each offer (“proposal”). Each factor is assigned a weight, which reflects its importance relative to the other factors. Factors may be further broken down into subfactors, which have individual weights. Evaluation factors are tailored to fit the particular requirements of each solicitation and the source selection method used.

I. Tradeoff Process:

Documented evidence of [*Note: It is not enough for offerors to claim experience, etc. They must provide evidence in their proposals. Such evidence will vary by solicitation. It might include appraisal reports, copies of architectural designs, reports from past studies, resumes of key staff, etc.*]:

- A. The prior experience of the offeror as an organization (i.e., corporate experience) in performing work, or producing products, that are the same as, or substantially similar to, that required by the contract. [*This factor is used to evaluate what the offeror has done that is relevant to the work required under the RFP.*]
- B. The offeror’s demonstrated record, as confirmed by references, of successful past performance of the same or substantially similar contract efforts including quality of services or supplies, timeliness of performance and delivery, cost control and the offeror’s business relations. [*This factor is used to evaluate how well the offeror has performed work under contracts. Evaluation will normally include contacting professional and business references, including Federal and other government entities, for which the offeror has performed work under contracts to verify the quality of the performance. This evaluation should also consider any predecessor companies, key personnel with relevant experience and subcontractors proposed to perform major or critical portions of the work. Note: When an offeror lacks past performance history as an entity, the TEP should evaluate the past performance of the offeror’s principals, predecessor companies, key personnel and major subcontractors in assessing the risk that the offeror presents in fulfilling the contract requirements. Offerors who lack any relevant past performance information the must be given a neutral rating under this factor.*]
- C. The qualifications - including relevant prior experience, special training and education - of proposed personnel. [*Normally, this is applied to “key” personnel, i.e., those whose contribution to the contract effort will have a significant impact on the quality of the contractor’s performance. The term “personnel” includes the offeror’s own employees, as well as any proposed consultants and subcontractor employees.*]
- D. The offeror’s capability to manage the contract. [*How likely is it that the*

offeror's proposed organization and management will be successful in performing the work? This includes the offeror's ability to manage subcontracts.]

- E. The technical excellence of the offeror. [*This may be expressed as “the offeror’s proposed approach or methodology to performing the work required in the RFP.” The factor measures how well the offeror’s proposal presents an efficient and realistic approach to fulfilling the contract’s requirements. This factor should only be used where the proposed contract involves research or other complex effort (e.g., designing a computer system, evaluating a HUD program’s results) by the contractor, and it is necessary to evaluate the offeror’s understanding of, and technical ability to meet the Government’s needs. It should not be used for routine or commercial services (e.g., appraisals, building inspections), for PBCs, or when use of the lowest price technically acceptable proposal approach is more appropriate.]*

- II. Lowest Price Technically Acceptable (LPTA) Process. The factors used under this process must be specific to the work requirements of each RFP, and they must clearly state what constitutes technical acceptability in measurable terms (e.g., length of experience, type of experience, any required qualifications, training or certification of staff, any required licenses, etc.). The factors in I.A through D above are appropriate for use under this method. **These factors will be judged on a pass-fail basis only. No other rating or qualitative value shall be assigned.** Lack of adequate documentation in a proposal to support a given factor may easily result in a “fail” rating of that factor (i.e., it is not required that the offeror be allowed to submit additional information). On the other hand, the Contracting Officer may seek additional information if the circumstances warrant (i.e., an offer is found to be capable of being made technically acceptable). (Note: When an offer from a small business is determined to be technically unacceptable on the basis of lack of experience, the Contracting Officer must obtain a Certificate of Competency from the Small Business Administration.)

**FINANCIAL CONFLICT OF INTEREST CERTIFICATION
FOR TECHNICAL EVALUATION PANEL (TEP) MEMBERS**

Reference: Request for Proposals Number _____

I _____, understand my responsibility to disclose any potential or actual financial conflict of interest² with any of the organizations that have submitted offers under the referenced solicitation and hereby make the following certifications [*check applicable boxes*]:

I do not have a financial conflict of interest with any of the offerors whose proposals are to be evaluated by this TEP.

I have a potential, actual financial conflict of interest with the following offeror(s):

I have, I do not have a current financial disclosure report (Standard Form 450, “Confidential Financial Disclosure Report,” and supplemental form HUD-450A, or Standard Form 278, “Public Financial Disclosure Report”) on file with the cognizant Agency Ethics Official. [*Note: If you are an annual financial disclosure report filer, or if you have otherwise filed a financial disclosure report within the past year, do not complete new disclosure forms. If you have not filed an annual financial disclosure report with the cognizant Agency Ethics Official, complete and return the appropriate financial disclosure form with this certification to the Contracting Officer or his or her designee. Please place the disclosure in a sealed, opaque envelope. Consult the TEP chairperson or the Contracting Officer if you are unsure as to which disclosure form you must complete.*]

There have been changes to my financial interests and/or liabilities as reported on my current financial disclosure. [*List changes on reverse side of this form.*]

Signature

Date

²For the purpose of this certification, a *financial conflict of interest* means any ownership of, investment in, or financial agreement with any of the organizations that have submitted offers. Financial interests of your spouse, dependent child, general partner, or organization in which you serve as an officer, director, trustee, general partner or employee are also considered to be your financial interests.

Changes in Financial Interests and/or Liabilities

CERTIFICATION OF NONDISCLOSURE

As a condition of serving as an evaluator for _____ [*insert solicitation number or other identification, e.g., task order number*], I hereby certify that I will:

- (1) Use the information provided to me for the intended evaluation purposes only and will not further disclose this information to any individual without the express authorization of the evaluation panel chair or the Contracting Officer. I also understand that the unauthorized release of this information may result in the termination of my participation in this procurement and/or administrative, civil and criminal penalties;
- (2) Honor any authorized restrictive legends placed on the information by prospective contractors or subcontractors or by the Government and apply them to any reproductions or abstracts I may make or order to be made; and
- (3) Return all copies of the information (whether originally provided to me by the Government or made or ordered by me in the course of my evaluation), as well as any abstracts thereof, to the Government office which initially furnished the proposals to me for evaluation.

I understand that this certification will be made part of the source selection record and the official contract file and does not relieve me of the responsibility for any other disclosure or certification requirement required by law, regulation, or other directive.

Typed or Printed Name

Signature

Date

**INITIAL TECHNICAL EVALUATION REPORT FORMAT
- TRADEOFF PROCESS**

MEMORANDUM FOR: [*Name and title of Contracting Officer*]

FROM: [*Name*], Chair, Technical Evaluation Panel (TEP)

SUBJECT: Initial Technical Evaluation of Offers Submitted under RFP [*number and title of RFP*]

Attached for your review are the results of the TEP's initial evaluation of the technical proposals submitted under the subject RFP.

I. Basis for Evaluation

All technical proposals provided to the TEP were evaluated against the evaluation factors for award published in Section M of the RFP [as amended, *insert date(s) of any amendment(s)*]. Each panel member independently read and evaluated each proposal [*or if all members do not read all proposals*, The panel members independently read and evaluated the proposals assigned to them] in accordance with the approved evaluation plan and RFP.

II. Ranking of Proposals

The TEP, as a whole, reviewed the individual members' findings and determined the consensus ratings and technical acceptability of each proposal as shown below:

Name of Offeror Consensus Rating¹ Acceptability² Proposal Risk³

¹ Excellent, Good, Fair, Poor, Unacceptable

² A = technically acceptable; C = technically unacceptable, but capable of being made acceptable through discussions; U = technically unacceptable

³ Low, Moderate, High

III. Analysis of Proposals [*Discuss the evaluation of each offeror's proposal separately. For each proposal, address each of the evaluation factors in turn, discussing the particular strengths, deficiencies, significant weaknesses, and weaknesses of the proposal that led to the TEP's rating. The discussion should include the TEP's rationale for its findings and explain the level of risk to successful performance posed by each evaluated strength, weakness, significant weakness and deficiency in the proposal (e.g., the extensive prior experience of the proposed contract manager in managing similar contractual efforts indicates minimal to no risk to successful performance of this contract).*]

IV. Findings

For the reasons listed in III above, the TEP finds that:

- A. The proposals submitted by [*insert names of offerors*] are acceptable or capable of being made acceptable, and recommends that discussions be held with them.
- B. The proposals submitted by [*insert names of offerors*] are technically unacceptable and recommends that no further information be requested from these offerors.

Concurrence of TEP Members:

_____ Signature	_____ Date
_____ Signature	_____ Date
_____ Signature	_____ Date
_____ Signature	_____ Date
etc.	

Attachments
[*Rating sheets, committee and/or advisor reports, reference checks documentation, specific items for clarification, and concerns and questions to be addressed in discussions and negotiations*]

**INITIAL TECHNICAL EVALUATION REPORT FORMAT
- LOWEST PRICE TECHNICALLY ACCEPTABLE PROCESS**

MEMORANDUM FOR: [*Name and title of Contracting Officer*]

FROM: [*Name*], Chair, Technical Evaluation Panel (TEP)

SUBJECT: Initial Technical Evaluation of Offers Submitted under RFP [*number and title of RFP*]

Attached for your review are the results of the TEP's initial evaluation of the technical proposals submitted under the subject RFP.

I. Basis for Evaluation

All technical proposals provided to the TEP were evaluated against the evaluation factors for award published in Section M of the RFP [as amended, *insert date(s) of any amendment(s)*]. Each panel member independently read and evaluated each proposal [*or if all members do not read all proposals insert*, The panel members independently read and evaluated the proposals assigned to them] in accordance with the approved evaluation plan and RFP. The TEP, as a whole, determined the technical acceptability of each proposal.

II. Technical Acceptability of Proposals

The following is a summary listing of the technical acceptability of each proposal:

Name of Offeror	Acceptability ¹	Proposal Risk ²
-----------------	----------------------------	----------------------------

III. Analysis of Proposals [*Discuss the evaluation of each offeror's proposal separately. For each proposal, address each of the evaluation factors in turn, discussing the particular strengths, deficiencies, significant weaknesses, and weaknesses of the proposal that led to the TEP's rating. The discussion should include the TEP's rationale for its findings and explain the level of risk to successful performance posed by each evaluated strength, weakness, significant weakness and deficiency in the proposal (e.g., the extensive prior experience of the proposed contract manager in managing similar contractual efforts indicates minimal to no*

¹ A = technically acceptable; C = technically unacceptable, but capable of being made acceptable through discussions; U = technically unacceptable

² Low, Moderate, High

risk to successful performance of this contract).]

IV. Findings

For the reasons listed in III above, the TEP finds that:

- A. The proposals submitted by [*insert names of offerors*] are acceptable or capable of being made acceptable, and recommends that discussions be held with them.
- B. The proposals submitted by [*insert names of offerors*] are technically unacceptable and recommends that no further information be requested from these offerors.

Concurrence of TEP Members:

Signature	Date

Signature	Date

Signature	Date

Signature	Date

etc.

Attachments

[Rating sheets, committee and/or advisor reports, reference checks documentation, specific items for clarification, and concerns and questions to be addressed in discussions and negotiations]

**FINAL TECHNICAL EVALUATION REPORT AND
SOURCE SELECTION RECOMMENDATION FORMAT
- TRADEOFF PROCESS**

MEMORANDUM FOR: [*Name and title of Source Selection Authority*]

FROM: [*Name*], Chair, Technical Evaluation Panel (TEP)

SUBJECT: Source Selection Recommendation - RFP [*number and title of RFP*]

Attached for your consideration are the results of the TEP's evaluation of the final proposal revisions submitted under the subject RFP and its recommendation of source selection for award of a contract.

I. Basis for Evaluation

The TEP evaluated each final proposal revision against the results from the initial evaluation of offers (see report dated [*insert date of initial report*]), including the significant technical questions and concerns raised by that review, and against the evaluation factors for award published in Section M of the RFP. The TEP also evaluated the revised costs and pricing information contained in the final proposal revisions to determine the overall value of each final offer.

II. Ranking of Proposals

Based upon its evaluation of the final proposal revisions, the TEP revised the initial consensus ratings and technical acceptability ratings as shown below:

Name of Offeror	Consensus Rating ¹	Acceptability ²
-----------------	-------------------------------	----------------------------

III. Analysis [*For each proposal, on a factor-by-factor basis, discuss how and if the final proposal revision resolved the concerns and questions raised by the TEP's initial evaluation and what impact these facts had on the final rating. Discuss the relative merits of the offers to one another, including both principal strengths and weaknesses.*]

IV. Costs and Prices [*For each proposal, discuss the effect of any change in the offeror's price on the TEP's assessment of the overall value of the offer.*]

¹ E = excellent, G = good, F = fair, P = poor, U = unacceptable

² A = technically acceptable; U = technically unacceptable

- V. Findings [*Discuss the overall relative value of each offer and the principal facts that led the TEP to decide on the recommended source (e.g., better technical staff combined with a lower overall price).*]

- VI. Source Selection Recommendation. Based upon its findings described above, the TEP recommends that [*name of offeror(s)*] be selected for award of a contract [*or, in the case of multiple awards, “contracts”*] under the subject RFP.

- VII. Concurrence of TEP Members:

Signature

Date

Signature

Date

Signature

Date

Signature

Date

**FINAL TECHNICAL EVALUATION REPORT FORMAT
- LOWEST PRICE TECHNICALLY ACCEPTABLE PROCESS**

MEMORANDUM FOR: [*Name and title of Contracting Officer*]

FROM: [*Name*], Chair, Technical Evaluation Panel (TEP)

SUBJECT: Final Technical Evaluation of Offers - RFP [*number and title of RFP*]

Attached for your consideration are the results of the TEP's evaluation of the final proposal revisions submitted under the subject RFP.

I. Basis for Evaluation

The TEP evaluated each final proposal revision provided to it. The final proposal revisions were evaluated against the results from the initial evaluation of offers (see report dated [*insert date of initial report*]), including the significant technical questions and concerns raised by that review, and against the evaluation factors for award published in Section M of the RFP.

II. Final Technical Acceptability of Proposals

Based upon its evaluation of the final proposal revisions, the TEP has determined the following technical acceptability ratings:

<u>Name of Offeror</u>	<u>Acceptability¹</u>
------------------------	----------------------------------

III. Analysis [*For each proposal, on a factor-by-factor basis, discuss how and if the final proposal revision resolved the concerns and questions raised by the TEP's initial evaluation and what impact these facts had on the final determination of technical acceptability. Discuss the relative merits of the offers to one another, including both principal strengths and weaknesses.*]

¹ A = technically *acceptable*; U = technically *unacceptable*

IV. Concurrence of TEP Members:

Signature Date

Signature Date

Signature Date

PRE-NEGOTIATION OBJECTIVES

RFP/CONTRACT¹ NUMBER: _____

OFFEROR/CONTRACTOR: _____

Purpose of Negotiations/Description of Action:

Cost Category	Proposed	Audited	Government Objective	Narrative Reference
Direct Material				
Material Overhead				
Direct Labor				
Fringe Benefits				
Labor Overhead				
Other costs				
Special equipment				
Travel				
Communications				
Information technology				
Reproduction				
Consultants				
Subcontracts ²				
G & A Expense				
Total costs				
Profit/Fee				
Total				

Recommended:

Contract Specialist

Date

Approved:

Contracting Officer

Date

¹ Format may be used for new awards, orders and modifications (see Handbook 2210.3, Chapters 5 and 12).

² Attach separate objective sheets for each major subcontractor.

PRICE NEGOTIATION MEMORANDUM

Contract¹ Number:

Task Order Number *(if applicable)*:

Modification Number *(if applicable)*:

Offeror's/Contractor's Name:

Audit Number *(if applicable)*:

Purpose of Negotiations *(brief description of action)*:

Date of Negotiations:

In Attendance at Negotiations *(list all)*

Name	Position/Title	Organization Represented

(continue as needed)

¹ Format may be used for new awards, orders and modifications (see Handbook 2210.3, Chapters 5 and 12).

Cost Analysis:

Cost Category	Proposed	Government Objective	Negotiated	Narrative Reference (p.)
Direct Material				
Material Overhead				
Direct Labor				
Fringe Benefits				
Labor Overhead				
Other direct costs				
Special equipment				
Travel				
Communications				
Information tech				
Reproduction				
Consultants				
Other:				
Subcontracts ²				
G & A Expense				
Total costs				
Profit/Fee				
Total cost plus profit/fee				

Discussion of Individual Cost Elements/Fee or Profit:

(use additional sheets as needed)

Price Analysis: Price analysis was conducted. Benchmarks used for comparison were:

Complete one of the following:

- Certified cost or pricing data were not required (*provide justification*):
- Certified cost or pricing data were required and were relied upon in negotiating the total cost or price to the following extent (*when cost analysis was used*):

Contract Specialist

Date

Approved: _____
Contracting Officer

Date

²Attach separate objective sheets for each major subcontractor.