**UNITED STATES DEPARTMENT OF COMMERCE**
**National Oceanic and Atmospheric Administration**
OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER
Real Property Management Division

# REAL PROPERTY MANAGEMENT DIVISION POLICY BULLETIN # 31

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Subject: Source Selection Standards - Best Value Tradeoff Lease Acquisitions

Category: Lease Acquisition

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**Overview**

There are two primary decision-making methods for running a competitive acquisition[1] for a leasehold interest in real property: lowest price technically acceptable; and, best value tradeoff.[2] This Bulletin describes these two competition methods and provides guidelines and best practices for use of the best value tradeoff process.

"The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price."[3] Proposals are evaluated for technical acceptability but not ranked against technical evaluation factors (i.e., non-cost/price factors).[4] Using the lowest price technically acceptable selection process, detailed minimum technical requirements are developed and included in the Solicitation for Offers (SFO)/Request for Lease Proposals (RLP) to ensure mission-based needs can be met by the successful offeror. The offeror meeting these minimum technical requirements that has the lowest price is determined to be the successful offeror. The process is appropriate for the majority of NOAA lease acquisitions.

The best value tradeoff process permits award to other than the lowest priced offeror or the highest technically rated offeror. The best value tradeoff process involves a comparative assessment of offers against specific technical evaluation factors identified in the solicitation. The method allows leases to be awarded to offerors that offer the best combination of price and technical qualifications. NOAA uses a "best value tradeoff" source selection process (pursuant to GSA Acquisition Regulation Section 570.304, and Federal Acquisition Regulations at 15.101) for major acquisitions: acquisitions whose life cycle costs are $20 million or greater, or other high risk or complex acquisitions where there is likely to be measurable and significant differences between offers. Use of methods other than best value tradeoff for major acquisitions requires the approval of the NOAA Deputy Chief Administrative Officer.

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[1] Acquisition is used in accordance with the definition under FAR 2.101. The term lease procurement is also used within RPMD.
[2] The lowest price technically acceptable process and the tradeoff process are part of the best value continuum under FAR 15.101 and both are considered "best value" source selection methods.
[3] FAR 15.101-2
[4] FAR 15.101-2

The best value tradeoff process is generally more time consuming and requires more documentation than the lowest price technically acceptable process. "A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror."[5] The tradeoff process should not be used as a method to circumvent competition or to discourage potential offerors. Use of the best value tradeoff process in lease acquisitions that are not major acquisitions must be approved by the appropriate Real Property Management Division (RPMD) Region Chief, the line/staff official (for the office that will be the primary occupant of the space), and the Director RPMD.

Lease acquisitions below the simplified lease acquisition threshold (SLAT) are not required to follow the procedures outlined in this Bulletin, see General Services Administration Manual (GSAM) Subpart 570.2 Simplified Lease Acquisition Procedures. However, use of the tradeoff process for any SLAT acquisition must be pre-approved by the RPMD Region Chief and the Director RPMD. The Region Chief must also concur on an evaluation report documenting the offeror selected and the evaluation process conducted. The evaluation report may be a separate document or the Price Negotiation Memorandum may serve as the evaluation report provided it clearly identifies how each offer was evaluated under each of the evaluation factors and why the Lessor's offer provided the best value.

**Key Steps for Best Value Trade Off Acquisitions**

Development of the Solicitation for Offers/Request for Lease Proposals and the Source Selection Plan (SSP):

Use of the tradeoff process requires the creation and approval of a source selection plan. The SSP shall be reviewed and concurred by: the Contracting Officer, the relevant staff/line office senior official, the Office of General Counsel, the RPMD Region Chief, and the Director RPMD. The SSP shall be approved by the Source Selection Authority (SSA) (which may be the Contracting Officer) and the Contracting Officer. For major acquisitions, the SSA shall be the Deputy CAO unless delegated to the Director RPMD. The SFO/RLP and SSP shall contain all factors, and subfactors, if any, that offers will be evaluated on.

If an acquisition is expected to exceed 90% of the prospectus threshold[6], the U.S. General Services Administration (GSA) must be consulted and no further procurement action taken by NOAA. GSA will conduct all prospectus acquisitions and will obtain appropriate Congressional approval before proceeding with such acquisitions. As a precaution, the SSP and SFO/RLP shall state that award shall not be made to any offeror whose average annual rent including amortized tenant improvements, but net of operating expenses is at or greater than the GSA prospectus threshold for leasehold rental payments. The SSP and SFO/RLP shall also state that award shall not be made to any offeror if the proposed lease is determined to be a capital lease (unless the RPMD Director and the Line Office have approved and have funding available for the acquisition as a capital lease).

Amendments to the SSP and/or SFO/RLP may be required in order to clarify the SFO/RLP or include a critical factor that was inadvertently omitted from the original SFO/RLP. However, amendments should be minimized as such amendments can create the perception that the

[5] FAR 15.101-1

[6] GSA's annual prospectus thresholds can be found at www.gsa.gov/portal/content/101522

Government is "steering" or favoring an offeror or offerors over other offerors. If there is an amendment to the SFO/RLP that amends the evaluation factors or any significant term of the SFO, the SSP must also be amended, concurred, and approved to reflect the change. Amendments to the SFO will be transmitted by the Contracting Officer to potentially interested parties requiring offerors to include their concurrence with the Amendment with the offer submission.

Attachment A details the elements that shall be contained in an SSP.

Evaluation Factors:
Development of the SSP and SFO/RLP evaluation factors is vital to ensuring that the Technical Evaluation Teams (TETs), if any, Source Selection Evaluation Board (SSEB), and Source Selection Authority (SSA),[7] will be able to select an offeror based on the most important project/lease criteria. "Evaluation factors must:

1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and,
2) Support meaningful comparison and discrimination between and among competing proposals."[8]

Evaluation factors shall include:

1) Price or cost to the Government.
2) The quality of the product or service through consideration of one or more non-cost technical evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. [NOTE: Unless the Contracting Officer documents why past performance is not an appropriate evaluation factor for the acquisition, past performance MUST be evaluated in all source selections for competitive acquisitions expected to exceed the simplified lease acquisition threshold.]

Evaluation factors must NOT:

1) Unduly favor one or more offerors; or,
2) Represent criteria that are not mission-based needs.

The SSP and SFO/RLP must explicitly state the relative importance of the factors and (within the factors) the relative importance of the subfactors (if used). The relative priority of the factors (and subfactors within factors), is designed to reflect the importance each factor/subfactor is considered to play in determining the most technically capable offer. "The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are –
(1) Significantly more important than cost or price;
(2) Approximately equal to cost or price; or
(3) Significantly less important than cost or price (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).."[9]

[7] See Attachment A for descriptions of the roles of the TETs, SSEB, SSA and others involved in the best value tradeoff process.
[8] FAR 15.304(b)
[9] FAR 15.304(e)

In order to avoid overly complicating the rating of offers, every effort should be made to limit the number of factors rated and the number of rated subfactors within each factor. In many cases, it may facilitate the evaluation if requirements/concerns/characteristics that would fall under a factor are listed in a narrative (i.e. horizontally) as items that will be considered under a specific factor versus listing them (vertically) as specifically rated subfactors. For example, ceiling height, column spacing, and age of building systems may be considered under quality of building and affect the rating for that factor, but need not be separately listed and rated as subfactors. (The narrative for quality of building would note that ceiling height, column space, and age of building systems will be considered.) The SSP and SFO/RLP must indicate what will be considered within each factor, and subfactor, if any.

The SSP may, in some instances, contain more detail on the criteria for each factor and how it will be rated than the information contained in the SFO but the SFO must contain clear information on how the factor will be evaluated and the evaluators (SSEB, SSA, CO, etc.) must follow those requirements.

Attachments C, D, and E detail potential evaluation factors that have been used in the past. Evaluation factors (and subfactors) must be adjusted based on the specific procurement.

The Realty Specialist and CO must ensure that the SFO/RLP contains appropriate submittal requirements so that offerors provide the information necessary to allow for a thorough evaluation of their offers. If an offeror does not provide sufficient information the CO should clearly request the information as soon as the lack of sufficient information is discovered (the CO, the TETs, or the SSEB may discover that information is insufficient). The Contracting Officer should document the request in correspondence. The correspondence should note that failure to provide the information may result in the offer being deemed unacceptable or receiving a lower rating.

Evaluating Offers:

Once offers are received, the TETs, if any, the SSEB, and the SSA[10] will evaluate each offer. Accurate and complete documentation of the evaluation of each offer is critical. If a protest is filed or a review conducted, the written record will serve as the basis for whether the Government acted in accordance with law and regulations by GAO or the Court of Federal Claims.

The SSEB (and the TETs as appropriate) shall evaluate competitive offers and then assess their relative qualities solely on the factors and subfactors, if any, specified in the SFO/RLP and SSP. The relative strengths, deficiencies, weaknesses, and risks supporting proposal evaluation shall be documented in the contract file (FAR 15.305 (a))[11]. **Offers shall be compared solely against the factors and subfactors. Comparative analysis between/among offers is prohibited until the tradeoff process. Price evaluation of offers shall be conducted separately from the TET and SSEB evaluation process. TET and SSEB members shall not be provided with price evaluation information until after they have rated all final proposal revision offers unless**

[10] The SSA may use the SSEB's report as the basis for his/her evaluation. However, he/she must make an independent assessment and must document "the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision." FAR 15.308

[11] The evaluation should be documented in a separate SSEB report (and TET report(s)) as applicable.

**the CO identifies a need for assistance from the TETs or SSEB in understanding the price reasonableness of the technical proposal, in which case the chair of the TET or SSEB will be given limited access to the price proposal in question prior to the trade off process. The CO shall conduct the price analysis in accordance with the criteria established in the SFO.**

Awards may be made with or without discussions with offerors. Clarifications, limited exchanges between the Government and offerors, are permitted in cases when the Government intends to award without discussions. If the Government intends to award without discussions, or may decide to award without discussions, it should be stated in the solicitation.

Competitive range – The SSEB shall evaluate all proposals in accordance with SSP and FAR 15.305. If discussions are to be conducted, "based on the ratings of each proposal against all evaluation criteria, the Contracting Officer shall establish a competitive range comprised of all of the most highly rated offers unless the range is further reduced for the purposes of efficiency…."[12] If the Contracting Officer believes all offers are competitive then the competitive range shall include all offers. The SSA must concur with the Contracting Officer's determination of the competitive range.

The rating system detailed below shall be used to rate all offers. Deviations from the rating system shall be approved by the Director RPMD or the SSA if the SSA is at a level above the Director RPMD. Do not use a numerical system as these have been proven to be problematic in protests and can result in evaluators using simple averaging instead of considering offers as a whole. As evidenced by a number of Government Accountability Office (GAO) protest decisions, numerical ratings frequently lead to source selection decisions based only on the "numbers," which are found in those protests to be arbitrary. Do not use colors as these have also proven to be problematic. Only an adjectival system is acceptable. The rating system should be simple and easily understood. Use of supplemental characterizations of the ratings (e.g., Outstanding+ or Outstanding; or low end of outstanding, high end of acceptable) is prohibited.

Consensus should be reached by the SSEB on each adjectival rating for each factor, and subfactor (if any), and on the overall rating for each offer. As long as there is a majority vote for one rating per factor (and subfactor, if any) and the other member's rating does not differ by more than one adjectival rating, i.e. Outstanding v. Better, or Better v. Acceptable, then consensus is determined to be reached. The record should still reflect the difference among members. Minority reports to document where consensus cannot be reached should be included in the record.

Ratings, except for past performance ratings, shall be Outstanding, Better, Acceptable, Marginal, and Poor. Price shall not be adjectivally rated.

An important aspect of any evaluation is the descriptive narrative which accompanies the adjectival ratings. This narrative should clearly identify the strengths, weaknesses and deficiencies of the offer when compared to the stated requirements.[13]

[12] FAR 15.306(c)(1)
[13] FAR 15.305(a)

Rating System:

The following ratings will be assigned to each technical factor, and subfactor, if any. The rating criteria should be applied to the factors being reviewed and to the overall offer.

**OUTSTANDING**: Significantly exceeds solicitation requirements and meets all solicitation requirements. There are significant strengths. There are no significant weaknesses. Any weaknesses are considered to be of such small consequence that their impact on the overall superiority of the offer/factor is insignificant. The offer clearly demonstrates an understanding of all aspects of the requirements. The offer represents a high probability of success with no apparent risk in meeting the Government's requirements.

**BETTER**: Meets all solicitation requirements. There are significant strengths. There are no significant weaknesses. There may be one or more minor weaknesses. Minor weaknesses, either alone or together, will have only minimal impact on the overall offer/factor. The offer demonstrates clear understanding of the requirements. The offer represents a strong probability of success with overall low degree of risk in meeting the Government's requirements.

**ACCEPTABLE**: There are no deficiencies. Significant strengths, if any, are limited and/or offset by weakness. There may be limited weaknesses, however, weaknesses will not (alone or together) jeopardize timely and satisfactory performance. The offer demonstrates an understanding of the requirements. The offer represents a reasonable probability of success with overall moderate degree of risk in meeting the Government's requirements.

**MARGINAL**: There is at least one significant weakness that will likely impact timely or satisfactory performance. One or more technical considerations and capabilities are questionable as to whether or not the offer meets standards necessary for acceptable lease performance. Strengths, if any, are outweighed by weaknesses. The offer may demonstrate a limited understanding of the requirements. The offer represents a low probability of success with overall high degree of risk in meeting the Government's requirements. It is possible, however, that the offer may become acceptable through discussions (if held).

**POOR**: The offer has many significant weaknesses, omissions, and/or one or more deficiencies. Technical considerations and capabilities are questionable as to whether or not they meet standards necessary for acceptable contract performance. The offer may demonstrate a limited understanding of requirements. The offer represents a low probability of success with overall high degree of risk in meeting the Government's requirements. (When applying this adjective to an offer as a whole, the offer would have to portray a weakness or a deficiency in one or more areas that would have to be completely revised in order to attempt to make it other than Poor.)

Definitions:
Strength: An aspect or characteristic contained in an offer that is unique, innovative or especially beneficial to the program or could increase the probability of successful contract performance (including scheduling, completion of deliverables, quality control and cost benefit). A significant strength is one that is a major consideration in the rating of the offer. A significant strength may be an area where an offeror far exceeds the requirements in a way that is beneficial to the Government.

Weakness[14]: A flaw in the proposal (offer) that increases the risk of not meeting the Government's requirements. A "significant weakness" in the proposal (offer) is a flaw that appreciably increases the risk of unsuccessful contract performance or an inability of the real property or offer to efficiently or effectively support the Government's requirements.

Deficiency[15]: A material failure of an offer to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. NOTE: In an award without discussions, a single deficiency will render an offer unsuitable for award.

Ratings for Past Performance shall be:

High Confidence: Based on the offeror's performance record, the government has high confidence the offeror will successfully perform the required effort. "High Confidence" indicates there is essentially no doubt that the offeror will successfully perform the required effort.

Significant Confidence: Based on the offeror's performance record, the government has significant confidence the offeror will successfully perform the required effort. "Significant Confidence" indicates there is little doubt that the offeror will successfully perform the required effort.

Satisfactory Confidence: Based on the offeror's performance record, the government has confidence the offeror will successfully perform the required effort. Normal contractor emphasis should preclude any problems.

Unknown Confidence: No performance record is identifiable. Offerors without a record of relevant past performance or for whom information on past performance is not available will not be evaluated favorably or unfavorably.

Little Confidence: Based on the offeror's performance record, substantial doubt exists that the offeror will successfully perform the required effort.

No Confidence: Based on the offeror's performance record, extreme doubt exists that the offeror will successfully perform the required effort.

<u>Price Evaluation:</u>
The Contracting Officer will be responsible for completing or supervising completion of the price evaluation.[16] The calculation by which price will be computed must be described in the SFO/RLP. Such calculation must take into consideration relocation and replication costs, if applicable. Other quantifiable mission-based elements that will affect the total cost to the government of the lease may be included in the price calculation provided they are clearly defined in the SFO/RLP. For example, if NOAA plans to require a fixed number of hours of overtime utility use, official government parking, and/or roof access rights payments for

[14] Partially taken from FAR 15.001 Definitions – note the FAR uses "proposal" while lease acquisitions usually use the term offer.
[15] Partially taken from FAR 15.001 Definitions – note the FAR uses "proposal" while lease acquisitions usually use the term offer.
[16] Per GSAM 570.306 the Contracting Officer must also determine that the price is fair and reasonable.

antennas, offerors may be requested to provide the cost of these items as line items in their offer and these costs may be included in the price evaluation.

Best Value Trade Off Decision:
If there is no highest technically rated, lowest price offer, then the best value tradeoff process must be utilized to determine the offer that presents the best value to the Government. The tradeoff process, including providing information on the price of offers, will only occur after the final evaluation and technical rating of each offer by the SSEB. The SSEB will then reach a consensus recommendation on which offer provides the best value to the Government in accordance with the Source Selection Plan. The supporting rationale for the tradeoff must be included in the report of the SSEB. The SSA will review the recommendation of the SSEB and document his/her decision on whether to accept the recommendation or identify another offer as best value. The SSA must carefully document his/her consideration of the proposals, the tradeoff analysis, and the source selection decision.[17]

**References**
Federal Acquisition Regulation – Part 15 – Contracting by Negotiation
Federal Acquisition Regulation – Part 37.2 – Advisory and Assistance Services
General Services Administration Acquisition Regulations and Manual (GSAR and GSAM) – Part 537.2 – Advisory and Assistance Services
General Services Administration Acquisition Regulations and Manual (GSAR and GSAM) – Part 570 – Acquiring Leasehold Interests in Real Property
Commerce Acquisition Manual – 15-2 – Formal Source Selection Procedures (May 1989)
(Note: GSA has indicated that its Leasing Desk Guide will include a chapter on Source Selection. As of the date of issuance of this Bulletin, GSA has not published the referenced Source Selection Chapter. Once GSA publishes such a chapter it should be a useful reference.)

Attachments
A - Source Selection Plan Requirements
B - Sample SSP Section Describing the Evaluation Process
C - Sample Evaluation Factor Section – Office
D - Sample Evaluation Factor Section – Pier
E - Sample Evaluation Factor Section –Site

[17] SSA statements that merely concur with the recommendation of the SSEB but do not discuss the SSA's tradeoff thought process have been grounds for protest to the GAO and/or Court of Federal Claims.