DFARS Case 2019-D037

Peer Reviews of Contracts for Supplies and Services

PGI Text

PGI 201.170 Peer ~~R~~[r]eviews.

[DoD components may request a Defense Pricing and Contracting (DPC) led peer review for procurements that would not otherwise require a DPC-led peer review.]

~~The tenets of the DoD-wide architecture for the acquisition of services along with the associated review criteria are available~~ [~~here~~](http://www.acq.osd.mil/dpap/dars/pgi/docs/Criteria_for_Acquisition_of_Services_(Pre_and_Postaward).doc)~~. These matrices are to be used when conducting preaward and postaward peer reviews on acquisitions for services. See~~ [~~PGI 237.102-76~~](http://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI237_1.htm#237.102-76)~~, Review criteria for the acquisition of services.~~

PGI 201.170-1 Objective[s] of ~~P~~[p]eer ~~R~~[r]eviews.

The objectives of ~~P~~[p]eer ~~R~~[r]eviews are to—

(a) Ensure that DoD contracting officers are implementing policy and regulations in a consistent and appropriate manner;

(b) Continue to improve the quality of contracting processes throughout DoD; and

(c) Facilitate cross-sharing of best practices and lessons learned throughout DoD[.] ~~Defense Procurement and Acquisition Policy~~[DPC] maintains a ~~database~~[compilation] of ~~P~~[p]eer ~~R~~[r]eview ~~recommendations,~~ lessons learned~~,~~ and best practices that is available at~~:~~  *http[s]://www.acq.osd.mil/dpap/cpic/cp/peer\_reviews.html* [for competitive peer reviews and at [*https://www.acq.osd.mil/dpap/DP/docs/Peer\_Reviews\_Best\_Practices\_14\_June\_21.pdf*](https://www.acq.osd.mil/dpap/DP/docs/Peer_Reviews_Best_Practices_14_June_21.pdf) for noncompetitive peer reviews].

**PGI 201.170-2 Pre~~-~~award ~~P~~[p]eer ~~R~~[r]eviews.**

(a) Pre~~-~~award ~~P~~**[p]**eer ~~R~~**[r]**eviews for competitive acquisitions shall be conducted prior to each of the following three phases of the acquisition:

(1) Issuance of the solicitation.

(2) Request for final proposal revisions (if applicable).

(3) Contract award.

(b) Pre~~-~~award ~~P~~**[p]**eer ~~R~~**[r]**eviews for non~~-~~competitive acquisitions shall be conducted prior to each of the following two phases of the acquisition:

(1) Negotiation.

(2) Contract award.

**~~PGI 201.170-3 Post-award Peer Reviews of service contracts.~~**

~~(a) If the base period of performance is greater than one year, the first post-award Peer Review should take place at the mid-point of the base period of performance. If the base period of performance is one year or less, the post-award Peer Review should occur prior to exercise of the first option year. Post-award Peer Reviews should occur prior to every option period thereafter.~~

~~(b) Post-award Peer Reviews shall be focused on—~~

~~(1) The adequacy of competition;~~

~~(2) An assessment of actual contract performance; and~~

~~(3) The adequacy of Government surveillance of contract performance.~~

**PGI 201.170-~~4~~[3] Administration of ~~P~~[p]eer ~~R~~[r]eviews.**

(a) The results and recommendations that are products of ~~P~~**[p]**eer ~~R~~**[r]**eviews are intended to be advisory in nature; however, in the event the ~~P[~~**p]**eer ~~R~~**[r]**eview report includes a recommendation that is identified as “significant” and the contracting officer does not intend to follow that recommendation, the senior procurement official of the contracting activity for the reviewed organization must be made aware of this fact before action is taken (or inaction, as applicable) that is contrary to the recommendation. Reviews will be conducted in a manner that preserves the authority, judgment, and discretion of the contracting officer and the senior officials of the ~~acquiring~~**[requiring]** activity.

(b) Peer ~~R~~**[r]**eview teams ~~will~~**[should]** be comprised of senior contracting officials and attorneys**[ as appropriate.]** ~~from throughout DoD. A senior official designated by the OSD Office of Small Business Programs will participate as a team member on Peer Reviews of services acquisitions.~~ Teams ~~will~~**[may]** include civilian employees or military personnel external to the department, agency, or component that is the subject of the ~~P~~**[p]**eer ~~R~~**[r]**eview.

(c) **[Reviews are g]**~~G~~enerally~~, each review will be~~ conducted **[remotely. However, a peer review may be conducted]** at the location of the executing contracting organization **[when appropriate]**.

(d) A list of the documents that must be made available to the **[competitive peer]** review team, along with the specific elements the team will examine, is provided at ~~the end~~ **[paragraph (g)]** of this PGI section. **[A list of the documents that must be made available to the noncompetitive peer review team, along with a link to the noncompetitive peer review preparation checklist, is provided at paragraph (h) of this PGI section.]**

(e) The review team observations and recommendations will be communicated to the contracting officer and the senior procurement official immediately upon completion of a review.

(f) The contracting officer shall document the disposition of all ~~P~~**[p]**eer ~~R~~**[r]**eview recommendations (i.e., state whether the recommendation will be followed and, if not, why not) as a signed memorandum for the record in the applicable contract file**. [For competitive acquisitions, the contracting officer shall submit t]**~~T~~his memorandum ~~must be executed~~ **[to** [***osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil***](mailto:osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil)**]** prior to the next phase ~~P~~**[p]**eer ~~R~~**[r]**eview or prior to contract award for ~~P~~**[p]**hase 3 reviews. **[For noncompetitive acquisitions, the contracting officer shall submit this memorandum to** [***osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil***](mailto:osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil) **prior to the phase 2 review or prior to contract award for phase 2 reviews.]**  ~~For post-award Peer Reviews of services acquisitions, the memorandum must be executed prior to the next option exercise. The contracting officer shall provide a copy of the memorandum to: Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), 3060 Defense Pentagon, Washington, DC 20301-3060.~~

[(g) *Competitive acquisition preaward peer review required documents and elements*. Submit any required peer review documents to [*osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil*](mailto:osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil).

(1) *Required documents*. At a minimum, peer review teams shall have access to the following documents, as applicable, at least 5 business days prior to the scheduled date of a peer review:]

~~Pre-award Peer Reviews~~

~~Required Documents and Elements~~

~~Required Documents: At a minimum, Peer Review teams shall have access to the~~

~~following documents (as applicable):~~

~~1.~~[(i)] The ~~requirements document, to include the~~ [most recent] ~~A~~[a]cquisition ~~D~~[d]ecision ~~M~~[m]emorandum [for the program.]~~;~~

~~2.~~[(ii)] The acquisition strategy, or acquisition plan[.]~~;~~

~~3.~~[(iii)] The source selection plan[.]~~;~~

~~4.~~[(iv)] The ~~initial~~ [draft for phase 1 or final] ~~R~~[r]equest for ~~P~~[p]roposals (RFP) and all amendments[, with a synopsis of] ~~to include~~ what, if any, RFP requirements (technical and contractual) were changed and why[.]~~;~~

~~5.~~[(v)] The ~~S~~[s]ource ~~S~~[s]election ~~E~~[e]valuation ~~B~~[b]oard (SSEB) analysis and findings to ensure the evaluation of offers was consistent with the ~~S~~[s]ource ~~S~~[s]election ~~P~~[p]lan and RFP criteria[.]~~;~~

~~6.~~[(vi)] Any meeting minutes memorializing discussions between the Government and offerors[.]~~;~~

~~7.~~[(vii)] All evaluation notices generated as a result of deficiencies in the offerors’ proposals as well as the offerors’ responses to those evaluation notices[.]~~;~~

~~8.~~[(viii)] All minutes memorializing the conduct of ~~S~~[s]ource ~~S~~[s]election ~~A~~[a]dvisory ~~C~~[c]ouncil (SSAC) deliberations held to date[.]~~;~~

~~9.~~[(ix)] The offerors’ responses to the request for ~~F~~[f]inal ~~P~~[p]roposal ~~R~~[r]evision[.]~~;~~

~~10.~~[(x)] The final SSAC ~~deliberations~~[deliberation.]~~;~~

~~11.~~[(xi)] The final [source selection authority (]SSA[)] determination and source selection decision[.]~~;~~

~~12.~~[(xii)] Award/incentive fee arrangements, documentation of any required ~~HCA~~[head of the contracting activity] ~~D&Fs~~[determinations and findings] regarding non~~-~~availability of objective criteria[.]~~;~~

~~13. Justification and Approval for use of non-competitive procedures; and~~

~~14. Documentation of pre-negotiation objectives, cost/price negotiation and the assessment of contractor risk in determining profit or fee.~~

[(2) Peer review teams may make recommendations on any aspect of the procurement, including the following:] ~~Elements to be addressed:~~

~~1.~~[(i)] The process was well understood by both Government and Industry[.]~~;~~

~~2.~~[(ii)] Source ~~S~~[s]election was carried out in accordance with the ~~S~~[s]ource ~~S~~[s]election ~~P~~[p]lan and RFP[.]~~;~~

~~3.~~[(iii)] The SSEB evaluation was clearly documented[.]~~;~~

~~4.~~[(iv)] The SSAC advisory panel recommendation was clearly documented[.]~~;~~

~~5.~~[(v)] The SSA decision was clearly derived from the conduct of the source selection process[.]~~;~~

~~6.~~[(vi)] All source selection documentation is consistent with the Section M evaluation criteria[.]~~; and~~

~~7.~~[(vii)] The business arrangement.

[(h) *Noncompetitive acquisition preaward peer review required documents and noncompetitive peer review preparation checklist*. Submit any required peer review documents to [*osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil*](mailto:osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil).

(1) *Required documents*. At a minimum, peer review teams shall have access to the following documents, as applicable, at least 5 business days prior to the scheduled date of a peer review:

(i) Preliminary price negotiation memorandum/business clearance for phase 1 or price negotiation memorandum/business clearance for phase 2, including all listed attachments.

(ii) Summary documents to support a discussion of salient aspects of the acquisition, e.g., business/contract clearance charts. Special charts do not need to be developed for the peer review.

(iii) The anticipated or negotiated language of clauses affecting the price or the business arrangement, e.g., economic price adjustment, performance-based payments, incentive or award-fee/award-term provisions, terms establishing price adjustment when using demand bands, reopener clauses, exchange rate clauses, or other clauses.

(iv) Award-fee plan and documentation of any required head of the contracting activity determination and findings regarding nonavailability of objective criteria (see FAR 16.401(e)(1));

(v) Defense Contract Audit Agency audits and Defense Contract Management Agency technical and/or price analyses, upon request.

(vi) The proposed performance-based payments schedule and Government analysis, if use of performance-based payments is contemplated.

(vii) Any other documents deemed necessary by the review team.

(2) *Noncompetitive peer review checklist*. The noncompetitive peer review preparation checklist is available at *https://www.acq.osd.mil/dpap/DP/docs/Sole\_Source\_Peer\_Review\_Preparation\_and\_Checklist\_8\_Apr\_21.pdf*. The checklist identifies frequently addressed areas of emphasis. It is recommended that acquisition teams review these listed areas of interest in advance of releasing a request for proposal.]

~~Post-award Peer Reviews~~

~~Required Documents and Elements~~

~~Required Documents: At a minimum, Peer Review teams shall have access to the~~

~~following documents (as applicable):~~

1. ~~The requirements document;~~
2. ~~The business arrangement, including business case analysis;~~
3. ~~Market research documentation;~~
4. ~~The business clearance, including documentation of cost/price negotiation and the assessment of contractor risk in determining profit or fee.~~
5. ~~Contractor surveillance documentation to include metrics, quality assurance surveillance plans; and~~
6. ~~The contract and modifications thereof.~~

~~Elements to be addressed, at a minimum, in every post-award review:~~

1. ~~Contract performance in terms of cost, schedule, and requirements;~~
2. ~~Use of contracting mechanisms, including the use of competition, the contract structure and type, the definition of contract requirements, cost or pricing methods, the award and negotiation of task orders, and management and oversight mechanisms;~~
3. ~~Contractor’s use, management, and oversight of subcontractors;~~
4. ~~Staffing of contract management and oversight functions; and~~
5. ~~Extent of any pass-throughs, and excessive pass-through charges by the contractor (as defined in section 852 of the National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364).~~
6. ~~Steps taken to mitigate the risk that, as implemented and administered, non-personal services contracts may become de facto personal services contracts.~~

~~Elements to be addressed in post-award reviews of contracts under which one~~

~~contractor provides oversight for services performed by other contractors:~~

1. ~~Extent of the DoD component’s reliance on the contractor to perform acquisition functions closely associated with inherently governmental functions as defined in 10 U.S.C. 2383(b)(3); and~~
2. ~~The financial interest of any prime contractor performing acquisition functions described in paragraph (1) in any contract or subcontract with regard to which the contractor provided advice or recommendations to the agency.~~

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PGI 237—SERVICE CONTRACTING

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PGI 237.1—SERVICE CONTRACTS—GENERAL

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PGI 237.102-76 [Reserved.] ~~Review criteria for the acquisition of services.~~

~~The tenets of the DoD-wide architecture for the acquisition of services along with the associated review criteria are available here. These matrices are to be used when conducting reviews in the preaward phase (Review/Approval of Acquisition Strategies or Preaward Peer Reviews) and in the postaward phase (Postaward Peer Reviews). See DFARS 201.170, Peer reviews, and PGI 201.170, Peer reviews.~~