

procurements to alert ATP when all competitors are submitting unreasonably high or low-cost proposals.

- (iii) Any known, significant variances (e.g., in excess of 10%) between the amounts established in the ICE and the respective amounts at Contract award should be documented in the Procurement File.

Ashurst [ASH1] June 25, 2024 12:27 AM

~~Brad—please confirm this wording addresses the suggestion to add a requirement to document known differences between the ICE and the actual contract award in the event of a dispute/protest (especially if the ICE varies from the actual award by 10%).~~

(c) **Applicability of Cost and Price Analysis**

- (i) A price analysis (i.e., using catalog, market prices, or comparison of Offerors) is used to determine if a Contract or Contract Modification price is reasonable following a determination that competition was adequate. It involves an evaluation of the prices for the same or similar items or services. A price analysis is a more simplified process and is normally used when two or more Responsive and Responsible Offers have been received.
- (ii) ATP will conduct a cost analysis for every Procurement action when a price analysis will not provide sufficient information to determine reasonableness of the Contract cost or Contract Modification. Generally, a cost analysis shall be performed for: (1) Procurements which require that Offerors submit detailed elements of direct and indirect costs; (2) Procurements where adequate price competition is lacking; (3) noncompetitive Procurements, unless price reasonableness can be established based on market prices; and/or (4) Procurements in excess of the applicable Simplified Acquisition Threshold. Obtaining cost elements for noncompetitive pricing of manufactured items can be difficult or impossible since many vendors may feel this information is proprietary. In these cases, ATP should prepare a price analysis to determine if the price is fair and reasonable.

(d) **Evaluations of Cost or Pricing Data**

- (i) Evaluations of cost or pricing data may include comparisons of costs and prices of an Offeror's based on any independent price and cost estimates by ATP, or if permitted under Applicable Law, the cost estimates of other Offerors. They also shall include consideration of whether such costs are reasonable and allocable.
- (ii) Cost analysis includes the appropriate verification of cost or pricing data and the use of this data to evaluate:

6. PROTESTS, DISPUTES AND ADMINISTRATIVE REMEDIES

6.1 Introduction and Required Clauses

- (a) This Chapter 6 is intended to foster public confidence in the integrity of ATP's handling of current, prior, or post Procurement related matters (which includes but is not limited to administration, Offer submission, Offer acceptance, Offer handling, Offer rejection, evaluations, awards, complaints, grievances, debarments, determinations, disputes, payments, pre-bid or pre-proposal conferences, Protests, Solicitations, the award of any Contract, suspensions, terminations, and any dispute under any resulting Contract) ("**ATP Procurement Related Matter**") by providing a fair and impartial resolution of controversies in an expeditious and cost-efficient manner.
- (b) To the fullest extent permitted by State law, this Chapter 6 provides for mandatory administrative remedies for all ATP Procurement Related Matters.
- (c) All Solicitations entered into by ATP shall contain, or be deemed to contain, the following clause (modified as applicable):

"By submission of a bid, proposal, offer or quotation in response to this Solicitation, the Respondent/Offeror (as applicable) agrees to exhaust all its administrative remedies under Chapter 6 (Protests, Disputes and Administrative Remedies) of ATP's Procurement Policy and Procedures and to submit any protest under this Solicitation (or dispute under any resulting Contract) to the procedures for protests and dispute resolution pursuant to Chapter 6 (Protests, Disputes and Administrative Remedies) of ATP's Procurement Policy and Procedures prior to seeking judicial relief of any kind in connection with any ATP Procurement Related Matter (as defined in ATP's Procurement Policy and Procedures). ~~Further, following exhaustion of such administrative remedies, the Respondent/Offeror (as applicable) agrees to waive any claim it has or may have against ATP (including its directors, officers, and employees) in connection with the administration, evaluation or recommendation of any bid, proposal, offer or quotation.~~"

- (d) All Solicitations entered into by ATP for FTA-funded Procurements shall also contain, or be deemed to contain, the following clause (modified as applicable):

Ashurst [ASH2] July 3, 2024 08:22 AM
 Brad to confirm whether to include, noting the revised version of this sentence has been narrowed. Winstead identified the previous waiver as too broad and unlikely to be enforced under State law. The original version is below.

"FURTHER, THE CONSULTANT AGREES TO WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST ATP (INCLUDING ITS DIRECTORS, OFFICERS, AND EMPLOYEES) ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY BID, WAIVER OF ANY REQUIREMENTS UNDER ANY BID OR CONTRACT DOCUMENTS, OR IN CONNECTION WITH AN ATP PROCUREMENT RELATED MATTER."

- (ii) postpone award of Contract in light of a Protest under Section 6.2(c)(ii) (Timeframes and Grounds for Submitting Protests) received before award of the Contract.

(f) Protest Determination

- (i) The SVP of Procurement and Contract Management shall prepare a written determination in respect of a Protest within a reasonable time after receipt of a properly prepared and timely Protest (and receipt of all additional information in accordance with Section 6.2(d) (Additional Information)).
- (ii) The determination shall contain an explanation of the basis of the determination, and address the substantive issues raised in the Protest.
- (iii) Protest determinations shall be delivered to the Protester (and the FTA to the extent required by Applicable Law) by certified mail.
- (iv) ATP will notify the FTA, and will keep the FTA informed of the status of Protests as to the extent required under the Federal Requirements. ATP will disclose information about a Protest to the FTA upon request. The FTA may require ATP to provide copies of a particular Protest, and any or all related supporting documents, as the FTA may determine necessary.

(g) Protest Appeal

- (i) The Protester may appeal the written determination of the SVP of Procurement and Contract Management in accordance with Section 6.3 (Appeals and Final Decision).

(h) Public Information Requests

- (i) Protesters may submit a request for ATP to make available to the Protester information that is relevant to the basis of the Protest through a public information request process at ATP's Public Records Center. ~~ATP shall make such information available to the Protester except where information is proprietary, confidential, will result in a competitive advantage or otherwise protected or permitted or required to be withheld by Applicable Law. The decision of the SVP of Procurement and Contract Management as to whether and the extent to which the requested~~

~~information is permitted or required to be withheld shall be final on behalf of ATP.~~

Ashurst [AA3] April 3, 2024 05:12 PM
Brandon to confirm.

- (ii) Participants in the Protest process who wish to keep the information they submit confidential must clearly label the portion of the text that they believe is confidential, proprietary, or trade secret protected and indicate on the front page of each document that it contains confidential information. Only to the extent allowed by Applicable Law and this Policy, this written request for confidentiality of information shall be honored.

(i) **Request for Reconsideration**

The SVP of Procurement and Contract Management may consider a request for reconsideration in relation to a Protest which was initially submitted in a timely manner but denied by ATP, if (i) the SVP of Procurement and Contract Management receives such request no later than the date of award of the Contract and (ii) the Protester provides data or information that was not available at the time of the original Protest.

(j) **Frivolous Protests and/or Requests**

Protests or requests (including but not limited to public information requests) that are the same or substantially similar to previous or rejected Protests or requests (as applicable), beyond the reasonable contemplation of a fair-minded individual, or filed unfairly or with intent to harass Procurement officials shall not be considered. Any violation of this restriction may result in the disqualification of the Offeror from further participation in the Procurement, and from award of any Contract or subcontract under the Procurement.

(k) **Protest Remedies**

- (i) If a Protest under Section 6.2(c)(i) (Timeframes and Grounds for Submitting Protests) is sustained, the available remedies, at the sole discretion of ATP, include, but are not limited to:
 - (A) change in the terms, conditions, or form of the Procurement;
 - (B) cancellation of the Procurement; and
 - (C) any other action that addresses deficiencies in the Procurement.