ORDER OF PRECEDENCE CLAUSE
(NFAS 5252.236-9312)
WORKSHOP OBJECTIVES

1. WHY WE HAVE THE ORDER OF PRECEDENCE
   CLAUSE (NFAS 5252.236-9312).

2. TO UNDERSTAND THE ORDER OF PRECEDENCE
   WHEN THERE ARE CONFLICTS BETWEEN OR
   WITHIN THE RFP, PROPOSAL, FINAL DESIGN
   AND THE 6 PARTS OF THE RFP DOCUMENT.

3. WHAT HAPPENS WHEN THE GOVERNMENT ACCEPTS
   THE CONTRACTOR’S PROPOSAL AND/ OR FINAL
   DESIGN AND THEY DON’T MEET THE RFP
   REQUIREMENTS.
6 PARTS OF THE RFP

1. Proposal Forms & Documents (FAR Clauses, etc.)
2. General Requirements (Division 01 UFGS)
3. Project Program (Project Description, Objectives, Requirements, & Site Analysis)
4. Performance Technical Specifications
5. Prescriptive Specifications (Generally Military Unique Specs)
6. Attachments (As-builts, soils data, asbestos & lead surveys, concept design, etc.)

Order Of Precedence

Statement of work

www.wbdg.org/ndbm
RFP PART 1 - DIVISION 00 FORMS & DOCUMENTS

- Title Page
- Table of Contents
- Instructions to Proposers
- Evaluation Factors For Award
- Contract Clauses (full text + referenced)
- Order Of Precedence
- Solicitation FORM 1442 + Price Schedule
- Representations & Certifications
- Davis-Bacon Wage Rates
WHY WE HAVE THE ORDER OF PRECEDENCE CLAUSE?

1. REQUIRED TO CLARIFY WHEN THERE ARE CONFLICTS BETWEEN AND/OR WITHIN THE SOLICITATION (RFP), PROPOSAL AND THE FINAL DESIGN.

2. CONTRACTORS WERE MAKING CHANGES AND PROVIDING LOWER QUALITY MATERIALS AND PRODUCTS AFTER THEY ENCOUNTERED BUDGET PROBLEMS. THEY WERE CHANGING BETTERMENTS SHOWN IN THEIR PROPOSALS OR FINAL DESIGN TO THE MINIMUM REQUIRED BY THE RFP.
In the event of conflict or inconsistency between any of the below described portions of the conformed contract, precedence shall be given in the following order:

a. Any portions of the proposal or final design that exceed the requirements of the solicitation.
   (1) Any portion of the proposal that exceeds the final design.
   (2) Any portion of the final design that exceeds the proposal.
   (3) Where portions within either the proposal or the final design conflict, the portion that most exceeds the requirements of the solicitation has precedence.

b. The requirements of the solicitation, in descending order of precedence:
   (1) Standard Form 1442, Price Schedule, and Davis Bacon Wage Rates.
   (2) Part 1 - Contract Clauses.
   (3) Part 2 - General Requirements.
   (4) Part 3 - Project Program Requirements.
   (5) Part 6 - Attachments (as-builts, asbestos surveys, etc., but not Concept Drawings).
   (6) Part 5 - Prescriptive Specifications exclusive of performance specs.
   (7) Part 4 - Performance Specifications exclusive of prescriptive specs.
   (8) Part 6 - Attachments (Concept Drawings).

Government review or approval of any portion of the proposal or final design shall not relieve the contractor from responsibility for errors or omissions with respect thereto.
CONFLICTS BETWEEN/WITHIN THE CONTRACTOR PREPARED DOCUMENTS

• NFAS “a”: Any portions of the proposal or final design that exceed the requirements of the solicitation.

• NFAS “a(1)”: Any portion of the proposal that exceeds the final design.

• NFAS “a(2)”: Any portion of the final design that exceeds the proposal.

• NFAS “a(3)”: Where portions within either the proposal or the final design conflict, the portion that most exceeds the requirements of the solicitation has precedence.
Conflict between the RFP & Proposal

- **RFP (Part 3):** Metal Roofing System
- **RFP (Part 4):** Slate, Concrete Tile, Clay Tile, Asphalt Shingles, **Galvanized Steel and Aluminum Panels**
- **Proposal:** Copper Roof Panels
- **Final Design:** Aluminum Roof Panels
- **Government gets:** Copper Roof Panels

**NFAS “a”:** Any portions of the proposal or final design that exceed the requirements of the solicitation. **NFAS “a(1)”:** Any portion of the proposal that exceeds the final design.
Conflict between the **RFP & Final Design**

- **RFP (Part 3)**: Metal Roofing System
- **RFP (Part 4)**: Slate, Concrete Tile, Clay Tile, Asphalt Shingles, **Minimum 24 Gauge Galvanized Steel or Aluminum Panels**
- **Proposal**: 24 Gauge Aluminum Roof Panels
- **Final Design**: 22 Gauge Aluminum Roof Panels
- **Government gets**: 22 Gauge Aluminum Roof Panels -
  - **NFAS “a”**: Any portions of the proposal or final design that exceed the requirements of the solicitation.
  - **NFAS “a(2)”**: Any portion of the final design that exceeds the proposal.
Conflict between RFP and Final Design

- **RFP (Part 4):** Water mains: 12” and less shall be ductile iron, PVC or HDPE. Deeper than 10’ or larger than 12” shall be ductile iron.

- **Proposal:** Civil Sht C-1: 12” PVC Main

- **Final Design:** 12” Ductile Iron Main at 8 feet depth

- **Government gets:** 12” Ductile Iron

NFAS “a”: Any portions of the proposal or final design that exceed the requirements of the solicitation. NFAS “a(2)”: Any portion of the final design that exceeds the proposal. NFAS “a(3)”: Where portions within either the proposal or the final design conflict, the portion that most exceeds the requirements of the solicitation has precedence.
Conflict between Proposal Drawings

- RFP: Metal Gutters
- Proposal: (Drawings for same gutter work)
  - Arch Sht A-3: Aluminum Gutters
  - Arch Sht A-5: Copper Gutters (Downspout connection detail)
- Final Design: Aluminum Gutters
- Government gets: Copper Gutters

NFAS “a(3)”: Where portions within either the proposal or the final design conflict, the portion that most exceeds the requirements of the solicitation has precedence.
Conflict between Final Drawings

• RFP: 24 Gauge Minimum Metal Roofing System
• Proposal: 24 Gauge Aluminum Roof Panels
• Final Drawings: Arch Sht A-3: 24 Gauge Aluminum
  Arch Sht A-5: 22 Gauge Aluminum
• Government gets: 22 Gauge Aluminum

NFAS “a”: Any portions of the proposal or final design that exceed the requirements of the solicitation. NFAS “a(3)”: Where portions within either the proposal or the final design conflict, the portion that most exceeds the requirements of the solicitation has precedence.
Conflict between Final Drawing & Spec.

- **RFP:** 24 Gauge Minimum Metal Roofing System
- **Proposal:** 24 Gauge Aluminum Roof Panels
- **Final Drawing:** 22 Gauge Aluminum
- **Final Specification:** 24 Gauge Aluminum
- **Government gets:** 22 Gauge Aluminum Roof Panels

**NFAS “a”:** Any portions of the proposal or final design that exceed the requirements of the solicitation.

**NFAS “a(3)”:** Where portions within either the proposal or the final design conflict, the portion that most exceeds the requirements of the solicitation has precedence.
CONFLICTS BETWEEN/WITHIN THE GOV’T PREPARED RFP DOCUMENTS

NFAS “b”: The requirements of the solicitation, in descending order of precedence:

PART 3 - Project Program Requirements

PART 6 - Attachments (as-builts, asbestos survey, geotechnical report, etc.)

PART 5 - Prescriptive Specifications exclusive of performance specifications (usually only for military unique items)

PART 4 - Performance Specifications exclusive of prescriptive specifications

PART 6 - Attachments (Concept Design).
Conflict between RFP Parts 3, 4, 5, & 6

• Part 3: Aluminum Windows
• Part 4: Aluminum Windows & Steel Windows
• Part 5: Stainless Steel Windows (Special Window)
• Part 6: Steel Windows

Government gets: Aluminum Windows

Part 3 - Project Program Requirements.
Part 6 - Attachments (as-builts, asbestos surveys, etc).
Part 5 - Prescriptive Specifications
Part 4 - Performance Specifications
Part 6 - Attachments (Concept Drawings).
Conflict between RFP Parts 4, 5 & 6

• Part 3:  Metal Windows
• Part 4:  Steel Windows
• Part 5:  Stainless Steel Windows
• Part 6:  Concept Drawings show Steel Windows
• Government gets:  Stainless Steel Windows

Part 3 - Project Program Requirements
Part 6 - Attachments (as-builts, asbestos surveys, etc.)
Part 5 - Prescriptive Specifications
Part 4 - Performance Specifications
Part 6 - Attachments (Concept Drawings)
Conflict between Concept Design & As-Built Drawings

- RFP: As-Built drawing shows 12” thick concrete footing. Concept drawings show removal of existing 10” thick concrete footing.
- Actual site condition: 12” thick footing
- What must the Contractor remove at no cost to the Government?

Contractor shall remove 12” thick footing at no additional cost to the government, unless PART 3 specifically states to remove 10” thick concrete footing.

Part 3 - Project Program Requirements
Part 6 - Attachments (as-builts, asbestos surveys, etc).
Part 5 - Prescriptive Specifications
Part 4 - Performance Specifications
Part 6 - Attachments (Concept Drawings).
Conflict when Government accepts or approves and it doesn’t meet the RFP

- RFP: Stainless Steel Handrails
- Proposal: Galvanized Handrails
- Final Design: Galvanized Handrails
- Government accepts the Proposal & Final Design.
- What does the Government get? Stainless Steel

NFAS: Government review or approval of any portion of the proposal or final design shall not relieve the Contractor from responsibility for errors or omissions with respect thereto.

Contractor must still meet minimum “RFP” requirements even if Government accepts “Proposal” or approves “Final Design” that did not meet the “RFP” requirements.
SCENARIO

• Part 3: Provide windows to match existing
• Part 4: Aluminum Windows
• Part 5: (No specifications)
• Part 6: As-Built Drawings show Wood Windows
• Government conducts a pre-proposal site visit with Contractors and observe that existing windows are aluminum.
• What does the Government get and why? Wood

Part 3 - Project Program Requirements
Part 6 - Attachments (as-builts, asbestos surveys, etc.)
Part 5 - Prescriptive Specifications
Part 4 - Performance Specifications
Part 6 - Attachments (Concept Drawings)
The Contractor submits a Final Electrical Design for a generator that is signed and stamped by the Contractor’s DOR and certified by the Quality Control Managers. The Government accepts and signs the Final Design and incorporates it into the contract with a modification.

The Government later discovers that the generator does not meet the minimum requirements of the RFP.

What is the Government entitled to receive and why?

Answer: Government is entitled to a generator that meets minimum RFP requirements. Government review or approval of any portion of the proposal or final design shall not relieve the Contractor from responsibility for errors or omissions with respect thereto.
The solicitation is a “Best Value” contract process.

The RFP states in Part 3 that the roofing system shall be Aluminum.

The Contractor submits a Proposal providing a Copper Roof.

The TEB meets and identifies that the Proposal exceeds the RFP requirements.

What should the Government get and why:

Aluminum Roofing

If discussion are held, the Contract Specialist needs to let the Contractor know that their Proposal does not meet the RFP. Contractor can exceed minimum RFP requirements, but not contract specific requirements.
TAKEAWAYS

1. NEED TO BE FAMILIAR WITH ORDER OF PRECEDENCE CLAUSE.

2. EVEN IF THE GOVERNMENT ACCEPTS/ APPROVES THE CONTRACTOR’S PROPOSAL AND/ OR FINAL DESIGN PACKAGES AND ERRORS/ OMISSIONS ARE DISCOVERED LATER, THE CONTRACTOR IS STILL LIABLE TO MEET THE RFP REQUIREMENTS.
QUESTIONS?