Subpart 15.5 - Preaward, Award, and Postaward Notifications, Protests, and Mistakes

Parent topic: Part 15 - Contracting by Negotiation

15.501 Definition.

Day, as used in this subpart, has the meaning set forth at 33.101.

15.502 Applicability.

This subpart applies to competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). The procedures in 15.504,15.506,15.507,15.508, and 15.509, with reasonable modification, *should* be followed for *sole source acquisitions* and *acquisitions* described in 6.102(d)(1) and (2).

15.503 Notifications to unsuccessful offerors.

(a) Preaward notices-

(1) *Preaward notices of exclusion from competitive range*. The *contracting officer shall* notify *offerors* promptly *in writing* when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice *shall* state the basis for the determination and that a *proposal revision* will not be considered.

(2) Preaward notices for small business programs.

(i) In addition to the notice in paragraph (a)(1) of this section, the *contracting officer shall* notify each *offeror in writing* prior to award and upon completion of negotiations and determinations of responsibility-

(A) When using a small business set-aside (see subpart 19.5);

(B) When using the *HUBZone* procedures in 19.1305 or 19.1307;

(C) When using the service-disabled veteran-owned small business procedures in 19.1405; or

(D) When using the Women-Owned Small Business Program procedures in 19.1505.

(ii) The notice *shall* state-

(A) The name and address of the apparently successful *offeror*;

(B) That the Government will not consider subsequent revisions of the *offeror*'s proposal; and

(C) That no response is required unless a basis exists to challenge the size status or small business status of the apparently successful *offeror* (*e.g.*, small business concern, *small disadvantaged business concern*, *HUBZone* small business concern, service-disabled veteran-owned small business concern, economically disadvantaged *women-owned small business concern*, or *women-owned small business concern* eligible under the Women-Owned Small Business Program).

(iii) The notice is not required when the *contracting officer* determines *in writing* that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see 19.805-2).

(b) Postaward notices.

(1) Within 3 days after the date of contract award, the *contracting officer shall* provide written notification to each *offeror* whose proposal was in the competitive range but was not selected for award (10 U.S.C. 3304 and 41 U.S.C. 3704) or had not been previously notified under paragraph (a) of this section. The notice *shall* include-

(i) The number of *offerors* solicited;

(ii) The number of proposals received;

(iii) The name and address of each *offeror* receiving an award;

(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award *shall* be made publicly available, upon request; and

(v) In general terms, the reason(s) the *offeror*'s proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event *shall* an *offeror*'s cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other *offeror*.

(2) Upon request, the *contracting officer shall* furnish the information described in paragraph (b)(1) of this section to unsuccessful *offerors* in *solicitations* using *simplified acquisition procedures* in part 13.

(3) Upon request, the *contracting officer shall* provide the information in paragraph (b)(1) of this section to unsuccessful *offerors* that received a preaward notice of exclusion from the competitive range.

15.504 Award to successful offeror.

The *contracting officer shall* award a contract to the successful *offeror* by furnishing the executed contract or other notice of the award to that *offeror*.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the *offeror*'s written correspondence, both the *offeror* and the *contracting officer shall*

sign the contract award.

(b) When an award is made to an *offeror* for less than all of the items that *may* be awarded and additional items are being withheld for subsequent award, each notice *shall* state that the Government *may* make subsequent awards on those additional items within the proposal acceptance period.

(c) If the Optional Form (OF) 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, *Solicitation*, *Offer* and Award, is not used to award the contract, the first page of the award document *shall* contain the Government's acceptance statement from Block 15 of that form, exclusive of the Item 3 reference language, and *shall* contain the *contracting officer*'s name, *signature*, and date. In addition, if the award document includes information that is different than the signed proposal, as amended by the *offeror*'s written correspondence, the first page *shall* include the contractor's agreement statement from Block14 of the OF 307 and the *signature* of the contractor's authorized representative.

15.505 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award *may* request a debriefing before award (10 U.S.C. 3305 and 41 U.S.C. 3705).

(a)

(1) The *offeror may* request a preaward debriefing by submitting a written request for debriefing to the *contracting officer* within 3 days after receipt of the notice of exclusion from the competition.

(2) At the *offeror*'s request, this debriefing *may* be delayed until after award. If the debriefing is delayed until after award, it *shall* include all information normally provided in a postaward debriefing (see 15.506(d)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the *offeror* does not submit a timely request, the *offeror* need not be given either a preaward or a postaward debriefing. *Offerors* are entitled to no more than one debriefing for each proposal.

(b) The *contracting officer shall* make every effort to debrief the unsuccessful *offeror* as soon as practicable, but *may* refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing *shall* be documented in the contract file. If the *contracting officer* delays the debriefing, it *shall* be provided no later than the time postaward debriefings are provided under 15.506. In that event, the *contracting officer shall* include the information at 15.506(d) in the debriefing.

(c) Debriefings *may* be done orally, *in writing*, or by any other method acceptable to the *contracting officer*.

(d) The *contracting officer should* normally chair any debriefing session held. Individuals who conducted the evaluations *shall* provide support.

(e) At a minimum, preaward debriefings *shall* include-

(1) The agency's evaluation of significant elements in the *offeror*'s proposal;

(2) A summary of the rationale for eliminating the *offeror* from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the *solicitation*, applicable regulations, and other applicable authorities were followed in the process of eliminating the *offeror* from the competition.

(f) Preaward debriefings *shall* not disclose-

(1) The number of *offerors*;

(2) The identity of other *offerors*;

(3) The content of other *offerors*' proposals;

(4) The ranking of other *offerors*;

(5) The evaluation of other *offerors*; or

(6) Any of the information prohibited in 15.506(e).

(g) An official summary of the debriefing *shall* be included in the contract file.

15.506 Postaward debriefing of offerors.

(a)

(1) An *offeror*, upon its written request received by the agency within 3 days after the date on which that *offeror* has received notification of contract award in accordance with 15.503(b), *shall* be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing *should* occur within 5 days after receipt of the written request. *Offerors* that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also *should* be debriefed within this time period.

(3) An *offeror* that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)

(i) Untimely debriefing requests *may* be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to 15.505(a)(2), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful *offerors may* be done orally, *in writing*, or by any other method acceptable to the *contracting officer*.

(c) The *contracting officer should* normally chair any debriefing session held. Individuals who conducted the evaluations *shall* provide support.

(d) At a minimum, the debriefing information *shall* include-

(1) The Government's evaluation of the significant *weaknesses* or *deficiencies* in the *offeror*'s proposal, if applicable;

(2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful *offeror* and the debriefed *offeror*, and *past performance* information on the debriefed *offeror*;

(3) The overall ranking of all *offerors*, when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For *acquisitions* of *commercial products*, the make and model of the product to be delivered by the successful *offeror*; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the *solicitation*, applicable regulations, and other applicable authorities were followed.

(e) The debriefing *shall* not include point-by-point comparisons of the debriefed *offeror*'s proposal with those of other *offerors*. Moreover, the debriefing *shall* not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including-

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, *indirect cost rates*, and similar information; and

(4) The names of individuals providing reference information about an *offeror*'s *past performance*.

(f) An official summary of the debriefing *shall* be included in the contract file.

15.507 Protests against award.

(a) Protests against award in negotiated *acquisitions shall* be handled in accordance with part 33. Use of agency protest procedures that incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If a protest causes the agency, within 1 year of contract award, to-

(1) Issue a new *solicitation* on the protested contract award, the *contracting officer shall* provide the information in paragraph (c) of this section to all prospective *offerors* for the new *solicitation*; or

(2) Issue a new request for revised proposals on the protested contract award, the *contracting officer shall* provide the information in paragraph (c) of this section to *offerors* that were in the

competitive range and are requested to submit revised proposals.

(c) The following information will be provided to appropriate parties:

(1) Information provided to unsuccessful *offerors* in any debriefings conducted on the original award regarding the successful *offeror*'s proposal; and

(2) Other nonproprietary information that would have been provided to the original *offerors*.

15.508 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award *shall* be processed substantially in accordance with the procedures for mistakes in bids at 14.407-4.

15.509 Forms.

Optional Form (OF) 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, *Solicitation*, *Offer* and Award, *may* be used to award negotiated contracts in which the *signature* of both parties on a single document is appropriate. Note however, if using the SF 26 for a negotiated *procurement*, block 18 is not to be used. If these forms are not used, the award document *shall* incorporate the agreement and award language from the OF 307.