

Revolutionary Changes in FAR Part 15

Clarifications and Negotiations



Overview

The model deviation for FAR part 15 provides some significant changes to practice and the art of negotiated procurements. FAR part 15 removes the term “communications” and emphasizes clarifications as exchanges that can occur anytime throughout the source selection process. It also removes the term “discussions” with a strengthened focus on “negotiations.”

This job aid distinguishes between clarifications and negotiations under FAR Part 15, helping contracting officers understand when and how to use each tool to achieve the best contractual outcomes.

Clarifications – FAR 15.202(a)(2)

- **What Are Clarifications?**
 - Clarifications are exchanges between the Government and offerors where offerors are given the opportunity to resolve minor or clerical errors or clarify certain aspects of their proposal - FAR 15.202(a)(2)(i).
- **Key Characteristics:**
 - Do NOT permit offerors to revise material aspects of their proposals.
 - Cannot cure proposal deficiencies or material omissions.
 - Cannot materially alter technical or cost elements.
 - Can request additional information/documentation IF cost/price or other material elements remain unchanged.
- **When Can Clarifications Occur?**
 - Any time after receipt of proposals through contract award.
 - At the contracting officer's discretion.
 - Not required to conduct with any offeror.
 - If conducted with one offeror, NOT required to conduct with others.
- **What Can Be Clarified?**
 - Minor administrative errors.
 - Unclear proposal language (without allowing revisions).
 - Request supporting documentation that doesn't change material elements.
 - Relevance of or adverse past performance information.
 - Verify understanding of proposal contents.

Negotiations

- **What Are Negotiations?**
 - Negotiations are exchanges between the contracting officer and each offeror in the competitive range that provide the opportunity for each offeror to materially enhance its proposal's potential for award – FAR 15.204-2.

- **Key Process Steps:**

1. Establish a competitive range – FAR 15.204-1(a)
 - A competitive range is the group of evaluated proposals that the contracting officer determines are “best suited for further negotiation.”
 - Contracting officers must establish a competitive range if negotiations will occur after evaluating competitive proposals.
2. Consider efficiency – FAR 15.204-1(b)
 - May limit competitive range for efficiency.
 - Limit to greatest number permitting efficient competition among most highly evaluated proposals.

- **Mandatory Requirements for Negotiations – FAR 15.204-2**

- MUST negotiate with each responsible offeror within the competitive range.
- MUST tailor the negotiation to each offeror's proposal.
- MUST, at a minimum, indicate to or negotiate with each offeror any deficiencies or significant weaknesses in the proposal.

- **Contracting Officer Discretion during Negotiations – FAR 15.204-2**

- Scope and extent of negotiations are a matter of contracting officer judgment.
- May negotiate other aspects of the proposal that could be altered or explained to enhance materially the proposal's potential for award.
- Conduct meaningful negotiations; NOT required to negotiate every area where the proposal could be improved.
- May have further negotiations with particular offerors without obligation to have further negotiations with other offerors.

- **Managing the Competitive Range – FAR 15.204-2(c)**

- May eliminate a proposal from the competitive range at any time upon concluding that the offeror is unlikely to receive an award.
- NOT required to have an additional negotiation with an offeror prior to elimination.

- **Process for Proposal Revisions After Negotiations – FAR 15.204-2(d)**

When negotiations with an offeror are finished (and offeror not eliminated):

1. MUST provide the offeror with an opportunity to submit a proposal revision.
2. MUST provide written notice stating that the Government intends to make award without obtaining further revisions.
3. MUST give each offeror with a proposal still within the competitive range an equal amount of time to submit their proposal revision.

- **Option to Award Without Negotiations**

- The government may evaluate proposals and award without negotiations IF the RFP states this intent (as stated under standard provision 52.215-1(f)(4)).
- The government reserves the right to conduct negotiations if later determined necessary.
- If negotiations become necessary after stating intent to award without them, rationale must be documented in the contract file.
- Stating the government's intent to award without negotiations in the RFP encourages offerors to submit their most competitive proposals upfront and preserves the option to proceed directly to award when initial proposals are of such high quality that negotiations would be unlikely to yield material improvements to either the selection decision or the resulting contract terms.