

15.306 Exchanges with offerors after receipt of proposals.

(a) Clarifications and award without discussions.

(1) Clarifications are limited exchanges, between the Government and *offerors*, that *may* occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, *offerors may* be given the opportunity to clarify certain aspects of proposals (*e.g.*, the relevance of an *offeror's past performance* information and adverse *past performance* information to which the *offeror* has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award *may* be made without discussions if the *solicitation* states that the Government intends to evaluate proposals and make award without discussions. If the *solicitation* contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so *shall* be documented in the contract file (see the provision at 52.215-1 (10 U.S.C. 3303(a)(2)) and 41 U.S.C. 3703(a)(2)).

(b) *Communications with offerors before establishment of the competitive range.* Communications are exchanges, between the Government and *offerors*, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications-

(1) *Shall* be limited to the *offerors* described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section and-

(i) *Shall* be held with *offerors* whose *past performance* information is the determining factor preventing them from being placed within the competitive range. Such communications *shall* address adverse *past performance* information to which an *offeror* has not had a prior opportunity to respond; and

(ii) *May* only be held with those *offerors* (other than *offerors* under paragraph (b)(1)(i) of this section) whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) *May* be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications *shall* not be used to cure proposal *deficiencies* or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications *may* be considered in rating proposals for the purpose of establishing the competitive range;

(3) Are for the purpose of addressing issues that *must* be explored to determine whether a proposal *should* be placed in the competitive range. Such communications *shall* not provide an opportunity for the *offeror* to revise its proposal, but *may* address-

(i) Ambiguities in the proposal or other concerns (*e.g.*, perceived *deficiencies*, *weaknesses*, errors, omissions, or mistakes (see 14.407)); and

(ii) Information relating to relevant *past performance*; and

(4) *Shall* address adverse *past performance* information to which the *offeror* has not previously had an opportunity to comment.

(c) Competitive range.

(1) Agencies *shall* evaluate all proposals in accordance with 15.305(a), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the *contracting officer shall* establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

(2) After evaluating all proposals in accordance with 15.305(a) and paragraph (c)(1) of this section, the *contracting officer may* determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the *solicitation* notifies *offerors* that the competitive range can be limited for purposes of efficiency (see 52.215-1(f)(4)), the *contracting officer may* limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals (10 U.S.C. 3303 and 41 U.S.C.3703).

(3) If the *contracting officer*, after complying with paragraph (d)(3) of this section, decides that an *offeror's* proposal *should* no longer be included in the competitive range, the proposal *shall* be eliminated from consideration for award. Written notice of this decision *shall* be provided to unsuccessful *offerors* in accordance with 15.503.

(4) *Offerors* excluded or otherwise eliminated from the competitive range *may* request a debriefing (see 15.505 and 15.506).

(d) *Exchanges with offerors after establishment of the competitive range*. Negotiations are exchanges, in either a competitive or sole source environment, between the Government and *offerors*, that are undertaken with the intent of allowing the *offeror* to revise its proposal. These negotiations *may* include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and *may* apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive *acquisition*, they take place after establishment of the competitive range and are called discussions.

(1) Discussions are tailored to each *offeror's* proposal, and *must* be conducted by the *contracting officer* with each *offeror* within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain *best value*, based on the requirement and the evaluation factors set forth in the *solicitation*.

(3) At a minimum, the *contracting officer must*, subject to paragraphs (d)(5) and (e) of this section and 15.307(a), indicate to, or discuss with, each *offeror* still being considered for award, *deficiencies*, significant *weaknesses*, and adverse *past performance* information to which the *offeror* has not yet had an opportunity to respond. The *contracting officer* also is encouraged to discuss other aspects of the *offeror's* proposal that could, in the opinion of the *contracting officer*, be altered or explained to enhance materially the proposal's potential for award. However, the *contracting officer* is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of *contracting officer* judgment.

(4) In discussing other aspects of the proposal, the Government *may*, in situations where the *solicitation* stated that evaluation credit would be given for technical solutions exceeding any

mandatory minimums, negotiate with *offerors* for increased performance beyond any mandatory minimums, and the Government *may* suggest to *offerors* that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(5) If, after discussions have begun, an *offeror* originally in the competitive range is no longer considered to be among the most highly rated *offerors* being considered for award, that *offeror may* be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the *offeror* has been afforded an opportunity to submit a *proposal revision* (see [15.307\(a\)](#) and [15.503\(a\)\(1\)](#)).

(e) *Limits on exchanges*. Government personnel involved in the *acquisition shall* not engage in conduct that-

(1) Favors one *offeror* over another;

(2) Reveals an *offeror's* technical solution, including—

(i) Unique technology;

(ii) Innovative and unique uses of *commercial products* or *commercial services*; or

(iii) Any information that would compromise an *offeror's* intellectual property to another *offeror*;

(3) Reveals an *offeror's* price without that *offeror's* permission. However, the *contracting officer may* inform an *offeror* that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all *offerors* the cost or price that the Government's price analysis, *market research*, and other reviews have identified as reasonable ([41 U.S.C.2102](#) and [2107](#));

(4) Reveals the names of individuals providing reference information about an *offeror's past performance*; or

(5) Knowingly furnishes *source selection information* in violation of [3.104](#) and [41 U.S.C.2102](#) and [2107](#)).

Parent topic: [Subpart 15.3 - Source Selection](#)