# 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 <u>subpart 19.5</u>);
- (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 ( $\underline{10~U.S.C.~3304}$  and  $\underline{41~U.S.C.~3704}$ ) 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 <u>15.503(b)</u>, 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  $\underline{15.505}$ (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  $\underline{15.505}(a)(2)$ , or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to  $\underline{15.505}(a)(2)$  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 <u>part 33</u>. 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, <u>Standard Form (SF) 26</u>, Award/Contract, or <u>SF 33</u>, 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 <u>SF 26</u> 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.