




CFR § 15.202 ADVISORY MULTI STEP PROCESS

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ontracting Officers and Analysts have one of the toughest jobs in the Federal Government. These days there are more actions per Contracting Officer than ever before, coupled with the increasing complexity of the Federal Acquisition Regulation (FAR) and what often seems to be a sea of federal contractors and their attorneys ready to pounce on any loss with a protest, poking holes in months of work and reviews.

In addition, both industry and the government must find new and innovative ways to keep pace with the rapidly changing technological landscape - a challenge that is integral to successfully modernize the information technology arena.

It is becoming more and more crucial to streamline the acquisitions process to keep up with the dynamic service demands of areas such as cybersecurity. Under these precarious circumstances, opportunities to leverage areas of the FAR that facilitate a more streamlined acquisition process while also managing a high number of high-quality proposals are more important than ever.

It may seem that complying with the FAR's complex requirements drives long procurement lead times that cannot be streamlined in any way. In reality, the FAR is specifically designed to provide flexibility to meet mission needs in a timely and expedited manner, while simultaneously encouraging the development of new processes, products, and projects.

The resources for success are already there.

The issue is whether or not agencies leverage all available resources under the FAR to provide the efficiency and value the government needs. One such underutilized strategy is

CFR § 15.202 the Advisory Multi-Step Process:

(a) The agency may publish a presolicitation notice (see 5.204) that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the Government to advise the offerors about their potential to be viable competitors. The presolicitation notice should identify the information that must be submitted and the criteria that will be used in making the initial evaluation. Information sought may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance, and limited pricing information). At a minimum, the notice shall contain sufficient information to permit a potential offeror to make an informed decision about whether to participate in the acquisition. This process should not be used for multi-step acquisitions where it would result in offerors being required to submit identical information in response to the notice and in response to the initial step of the acquisition.

(b) The agency shall evaluate all responses in accordance with the criteria stated in the notice, and shall advise each respondent in writing either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. The agency shall advise respondents considered not to be viable competitors of the general basis for that opinion. The agency shall inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the resultant acquisition.

WHAT IS FAR 15.202?

FAR Part 15.202 falls under *Subpart 15.2: Solicitation and Receipt of Proposals and Information, under Part 15: Contracting by Negotiation*. FAR 15.202 details the process in which agencies issue a *presolicitation notice* inviting potential offerors to submit sufficient information to allow the government to judge whether the offeror could be a viable competitor for a procurement.

The presolicitation notice, Request for Information (RFIs), a Sources Sought notice, and similar government documents should identify the information that must be submitted and the criteria that will be used in making the evaluation. There should be enough information for the offeror to make an informed decision about whether to participate in the acquisition. Examples of information provided include a statement of qualifications, proposed technical concept, past performance, and limited pricing information.

An agency must evaluate all responses in accordance with the criteria stated in the notice and then advise each respondent whether it will be invited to participate in the resulting acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. Firms can still bid if they want - they are only advised “not to” through being deemed non-viable.

The key aspect is that ALL firms and agencies have the opportunity to utilize FAR 15.202, and they are provided viability. This key element is what makes usage non-protestable.

BENEFITS

FAR 15.202 has historically been underutilized, but is an excellent option due to multiple benefits to both government and contractors.

FOR THE GOVERNMENT

Higher Quality and Fewer Proposals

More communication between government and contractors allows contractors to better understand the government's needs and more closely align solutions with agency-specific requirements. Consequently, this results in fewer proposals as contractors are better able to recognize their capabilities in providing the government with the necessary services.

Less Time Government Must Spend Evaluating Proposals

Due to the reduced number of proposals, agencies are able to avoid expending scarce evaluation resources on weak proposals. This is especially beneficial in situations where agencies are expecting to receive a large number of offers.

Increased Competition Drives Quality

Presolicitation notices inform companies of an agency's desire for improvement and competition, thereby allowing contractors the opportunity to propose stronger technical and cost competition, resulting in a higher quality of possible services provided. This is particularly useful when there has been a long-term incumbent.

FOR CONTRACTORS

Conserves Business Development Resources

Potential offerors are able to discover early in the process that they may not be able to compete effectively. This allows them the opportunity to cease bidding activities and avoid the expenditure of unnecessary business development resources needed to put together a quality proposal response.

Lower Costs for Both Government and Contractors

More communication and understanding of the government's requirements will allow contractors to more accurately bid an optimized price, driving cost savings for both parties.

REDUCE RISK OF PROTEST

FAR 15.202 dramatically reduces the risk of protests in several ways, such as:

Increased Transparency

Clear, frequent, and fair communication between agencies and industry provides the most pertinent information to both parties. This exchange of information significantly increases agencies' ability to understand government requirements and the government's understanding of industry capabilities, contributing to a decreased likelihood of protest.

Always Available

FAR 15.202 is a non-protestable way of communicating with industry through an acquisition process because companies are not explicitly barred from continuing despite being advised they are non-competitive. If a company is advised not to advance, they do not have to resort to a protest to continue in the process, but can instead just proceed to submit a proposal. It is an opportunity readily available for ALL firms and agencies.

The Government Accountability Office (GAO) reported a total of 2,198 cases of protests filed during the 2019 fiscal year.

Each of these protests represents thousands of dollars (or more) in wasted taxpayer dollars as well as the irretrievable loss of valuable time and energy that could have been channeled into providing the government with vital products and services.

CONCLUSION

A growing number of agencies have decreased the time from requirements to service and solution delivery by 50% or more simply by leveraging all resources available under the FAR, such as the multi-step advisory process.

Benefits to both government agencies and contracting firms such as shorter response for initial evaluation and a decrease in the number of total proposals to those that are the strongest aids in delivering greater value to the American taxpayer and lowering overall acquisition risk.

Ultimately, FAR 15.202 is an efficient and effective way to combat today's risk aversion culture and improve procurement efficiency. ■