
Unsuccessful Offerors

Notifications to Unsuccessful Offerors (FAR Subpart 15.5.03)

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, upon completion of negotiations, determinations of responsibility, and, if necessary, the process in FAR19.304(d)—
 - (A) When using a small business set-aside (see FAR Subpart 19.5)
 - (B) When a small disadvantaged business concern receives a benefit based on its disadvantaged status (see FAR Subpart 19.11 and FAR 19.1202) and is the apparently successful offeror; or
 - (C) When using the HUBZone procedures in FAR19.1305 or FAR19.1307.
 - (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 small business size status, disadvantaged status or HUBZone status of the apparently successful offeror.
 - (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 FAR 19.805-2).

Unsuccessful Offerors, Continued

Notifications to Unsuccessful Offerors (FAR Subpart 15.503), continued

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. 2305(b)(5) and 41 U.S.C. 253b(c)) 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.

Preaward and Postaward Debriefings (FAR Subparts 15.505 and 15.506)

When contracting by negotiation, if you receive notice that you were either excluded from the “competitive range” or were not awarded the contract, you have the right to request a Preaward Debriefing or a Postaward Debriefing. This is your opportunity to find out what you did right and/or wrong.

If you have been excluded from the competitive range, you may request a preaward debriefing OR postaward debriefing, not both, by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

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.

Unsuccessful Offerors, Continued

Preaward and Postaward Debriefings (FAR Subparts 15.505 and 15.506), continued

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 FAR15.506(e).

FAR 15.506(e) states:

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 FAR 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552).

If you receive notification that you were not selected for contract award, you may request a postaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice.

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 items, the make and model of the item 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.

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 FAR 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552).

Debriefings of successful and unsuccessful offerors can be done orally, in writing, or by any other method acceptable to the contracting officer.

Unsuccessful Offerors, Continued

Preaward Surveys (FAR Subpart 9.106)

According to the FAR, purchases shall be made from, and contracts shall be awarded only to responsible prospective contractors. The purchasing activity must evaluate the offerors in order to make a positive finding as to responsibility.

Getting accepted as a "responsible" contractor is not like getting on a qualified products list. You can't arrange for a survey at your convenience and wait until you are approved before submitting an offer. The determination of responsibility is done only in connection with an offer when you are the apparent low or otherwise successful offeror. To be found responsible, you must be able to demonstrate that you:

1. Have, or are able to obtain, adequate financial resources.
2. Are able to comply with the delivery requirements; have a satisfactory record of performance.
3. Have a satisfactory record of integrity and business ethics.
4. Have, or are able to obtain, the necessary organization, experience, accounting and operational controls, and technical skills.
5. Have, or are able to obtain, the necessary production, construction, and technical equipment and facilities.
6. Are otherwise qualified and eligible to receive an award under applicable laws and regulations.

Sometimes a contracting officer proposes to reject the apparent successful offer of a small business firm because of doubt as to whether the firm is sufficiently responsible to perform the contract. In that event, the case must be referred to the Small Business Administration. If the SBA determines that the small business firm is responsible, it issues a Certificate of Competency (CoC) to the contracting officer, who then must award the contract to the small business firm.

-Certificate of Competency Program

The Certificate of Competency (COC) program allows a small business to appeal a contracting officer's determination that it is unable to fulfill the requirements of a specific government contract on which it is the apparent low bidder. When the small business applies for a COC, SBA industrial and financial specialists conduct a detailed review of the firm's capabilities to perform on the contract. If the business demonstrates the ability to perform, the SBA issues a COC to the contracting officer requiring the award of that specific contract to the small business.

The Certificate of Competency (COC) program helps ensure that small businesses, especially those which are newly entering into the federal procurement arena, are given a fair opportunity to compete for and receive government contracts. <http://www.sba.gov/GC/indexprograms-coc.html>