

# **OVERVIEW OF FEDERAL COMPETITIVE PROCUREMENTS**

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## **Contractors have increasingly competed for the award of contracts under the competitive requirements of the Federal Acquisition Regulation:**

- Program Safeguard Contracts
- Standard System Contracts
- Qualified Independent Contractor Contracts
- Contracts under Section 911 of the Medicare Prescription Drug Improvement and Modernization Act of 2003

# Topics

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- Basic Authorities
- Acquisition Officials
- Competition Requirements
- Basic Steps of a Competitive Acquisition
- Special Contracting Authorities

# Requirements for Competition

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- 41 U.S.C. 253(a) provides that, unless otherwise authorized by statute, an executive agency in conducting a procurement for property or services: (A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this title and the Federal Acquisition Regulation; and
- (B) shall use the competitive procedures or combination of competitive procedures that is best suited under the circumstances of the procurement.
- Federal Acquisition Regulations (48 C.F.R. Chapter 1)
- DHHS Acquisition Regulation (48 C.F.R. Chapter 3)

# Exceptions to Competition

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- 41 U.S.C. 253(c), as implemented in FAR Part 6, provides that an executive agency may use other than competitive procedures when:
  - Property or services are available from only one responsible source
  - The need for the property or services is of an unusual and compelling urgency
  - Necessary to award to a particular source to (A) maintain a facility or producer in case of national emergency, (B) establish an essential engineering, research or development capability with a nonprofit or federally funded institution

# Exceptions to Competition

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- Treaty or written direction of a foreign government requires other than competitive procedures
- Statute expressly specifies a source
- Disclosure of need would compromise national security
- Necessary to the public interest provided the Secretary notifies Congress at least 30 days before award

# Acquisition Officials

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- Project Officer
  - Responsible for technical aspects of acquisition
  - Defines need
  - Prepares statement of work
  - Develops evaluation factors and scoring plan
  - Other Responsibilities

# Acquisition Officials

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- Contracting Officer
  - Responsible for Legal Requirements
  - Determines Method of Contracting
  - Determines Type of Contract
  - Responsible for Sufficiency and Adequacy of Solicitation
  - Responsible for assuring that an acquisition complies with all laws and regulations

# Basic Steps of a Competitive Acquisition

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- Exchanges with Industry
- Contract Funding
- Acquisition Planning
- Publicizing Contract Actions
- Issue Request for Proposals
- Submission of Proposals
- Initial Evaluation of Proposals

# Basic Steps of a Competitive Acquisition - Continued

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- Establish Competitive Range
- Conduct Discussions
- Obtain Revised Proposals
- Evaluate Revised Proposals
- Source Selection and Contract Award
- Debrief Unsuccessful Offerors
- Protest

# Exchanges with Industry

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- Purpose of industry exchanges are to improve the Government's understanding of its requirements and industry capabilities
- Industry exchanges are encouraged consistent with procurement integrity requirements
- Techniques include:
  - Conferences
  - Public hearings
  - One-on-one meetings
  - Draft solicitations
  - Presolicitation or preproposal conferences

# Contract Funding

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- Basic Principles of Appropriation Law:
  - Purpose of obligation must be authorized
  - Obligation must occur within time limits applicable to the appropriation
  - Obligation or expenditure must be within amounts Congress established

# Acquisition Planning

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- Internal document that is prepared by the contracting officer, project officer and others who are responsible for significant aspects of the acquisition in accordance with FAR Part 7.
- The acquisition plan addresses all technical, business, management and other significant considerations
- The acquisition plan includes significant milestones for an acquisition

# Publicizing Contract Actions

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- FAR Part 5 prescribes policies and procedures for publicizing contract opportunities
- Proposed acquisitions are publicized through Federal Business Opportunities which can be found at [FedBizOpps.gov](http://FedBizOpps.gov)
- As a general rule, notice must be published at least 15 days before issuance of a solicitation

# Issuance of Request for Proposals

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- Requirements for the content of an RFP are prescribed in FAR 15.203
- At a minimum an RFP must describe:
  - Government's requirements
  - Anticipated contract terms and conditions
  - Information required to be in a proposals
  - Factors and significant sub factors that will be used to evaluate proposals and their relative importance

# Submission of Proposals

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- Proposals may be written, oral, or some combination thereof
- RFP will specify a common cut off date and time for the submission of a proposal
- Generally required to allow at least 30 days for the submission of a proposal

# Initial Evaluation of Proposals

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- Requirements for the evaluation of proposals are set forth in FAR 15.305
- Proposals are to be evaluated based solely on the basis of the factors and sub factors specified in a solicitation
- The technical evaluation assesses the relative strengths, deficiencies, weaknesses, and risks associated with a proposal
- The business evaluation assesses the reasonableness and realism of proposed costs

# Establish Competitive Range

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- Requirements for the competitive range are set forth in FAR 15.306(c)
- If discussions are to be conducted, the contracting officer must establish the competitive range
- Based upon the ratings of proposals against the evaluation criteria, the competitive range is to be comprised of all of the most highly rated proposals, unless the contracting officer reduces the range for purposes of efficiency

# Conduct Discussions

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- Requirements for discussions are set forth at FAR 15.306(d)
- The contracting officer is responsible for the extent and content of discussions. If held, must be conducted with all offerors in the competitive range
- Discuss all deficiencies, significant weaknesses, adverse past performance information or other aspects of a proposal that could be altered or improved to enhance an offeror's potential for award

# Obtain Revised Proposals

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- After the completion of discussions, the contracting officer is to allow proposal revisions to clarify and document understandings reached in discussions
- Award is made on the basis of revised proposals

# Evaluate Revised Proposals

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- Technical and business evaluations are again performed on revised proposals
- No further discussions are to be conducted following receipt of revised proposals

# Source Selection and Contract Award

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- The contracting officer generally serves as the source selection authority, although the Administrator may appoint a different official to make the source selection decision
- The source selection decision is to be based upon a comparative assessment of proposals against all source selection criteria in the solicitation
- Generally, award decisions are based upon the best value to the Government, taking into account the relative technical merits and costs of proposals

# Source Selection and Contract Award- Continued

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- The source selection authority may rely on technical and business evaluation reports, however the source selection decision is to be an independent one
- Generally, award decisions are based upon the best value to the Government, taking into account the relative technical merits and costs of proposals

# Debrief Unsuccessful Offerors

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- FAR Subpart 15.5 prescribes procedures for post award notifications and debriefings
- Unsuccessful offerors are to be notified of contract award within three days of the award decision

# Debrief Unsuccessful Offerors - Continued

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- An unsuccessful offeror is to request a debriefing within 3 days of notification of award
- The debriefing is to provide information regarding weaknesses and deficiencies in the offerors proposal, the overall evaluated cost of the successful proposals, and other related information
- A debriefing may not include a detailed point by point comparison of the debriefed offeror's proposal against other proposals

# Protests

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- An unsuccessful offeror may protest its exclusion from the competitive range, the award decision, and other aspects of a competitive acquisition to the General Accounting Office
- Under certain circumstances, and unsuccessful offeror may also seek injunctive relief in a United States District Court, or in the Court of Federal Claims

# Special Contracting Authorities

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- Multiple Award Indefinite Delivery Indefinite Quantity Contracts under FAR Subpart 16.4
- Orders against the Federal Supply Schedules under FAR Subpart 8.4