



SBIR Procedures

Unique Procedural Flexibilities & Other Streamlining
Opportunities

2017 DoD Small Business Training Week | April 3-7, 2017 |  #SBTW17

Presented By

Earl Anderson, Contracting Officer
Washington Headquarters Services

Earl.E.Anderson51.civ@mail.mil

(703) 545.1953

Christopher Harris, Bytecubed Sr. Program Analyst

Chris.Harris@Bytecubed.com

(571) 364.3912



Overview

- ❖ Statutory Framework of Competition
- ❖ FAR Part 15 vs SBIR Procedures
 - Purpose of Procedures
 - General Similarities
 - General & Specific Differences
 - General Differences
 - Specific Differences
 1. Proposal Evaluation
 2. Exchanges After Receipt of Proposals
 3. Trade-offs
 4. Debriefs
- ❖ Additional Streamlining & Opportunities for Flexibility

Statutory Framework

The Competition in Contracting Act (CICA) is principally implemented in two places in statute:

- ❖ 41 U.S.C. § 253
- ❖ 10 U.S.C. § 2304



Statutory Competition Requirements

10 U.S.C. 2304: (a)(1)(A) & (B)

When obtaining products and services the head of the agency:

- ❖ Shall obtain full and open competition through the use of competitive procedures in accordance with this chapter and the FAR.
- ❖ Shall use the competitive procedure or combination thereof that is best suited to the circumstances of the procurement.

Statutory Competition Requirements

10 U.S.C. 2304: (a)(2)(A) & (B)

When determining the competitive procedures appropriate under the circumstances:

- ❖ Shall solicit sealed bids if appropriate.
- ❖ Shall request competitive proposals if sealed bids are not appropriate.



Other Competitive Procedures

10 U.S.C. 2302 (2: A-E)

- A. Architectural & Engineering
- B. Peer or Scientific Review of Basic Research
- C. Multiple Award Schedule
- D. Small Business Act Conducted Procurements
- E. SBIR



FAR 6.102—Competitive Procedures

- A. Sealed Bidding
- B. Competitive Proposals (FAR 15 Negotiated Procurements)
- C. Combination of competitive procedures
- D. Other competitive procedures
 - (1) Architect & Engineering
 - (2) Basic & Applied Research-
 - (i) BAA
 - (ii) Peer or scientific review
 - (3) Multiple Award Schedules

❖ SBIR procedures are not listed above because they are set forth in the SBA SBIR Policy Directive.

FAR Part 15 vs SBIR Procurements



Statutes & Implementing Regulations

❖ FAR 15:

- **Statute:** 10 U.S.C. § 2304 Contracts: Competition Requirements
- **Regulation:** Federal Acquisition Regulation

❖ SBIR:

- **Statute:** 15 U.S.C. § 638 Research and Development
- **Regulation:** SBA SBIR Policy Directive



Purpose of Procedures



FAR 15 Purpose

- ❖ Provide some of the acquisition processes and techniques that may be used to design competitive acquisition strategies **to purchase a specific product or service.**
- ❖ The acquisition procedure is used to obtain the best value in in terms of cost, quality, and timeliness. The actual procedure chosen may vary in order to choose the most suitable procedures for the specific circumstances of the acquisition.
- ❖ Hard & fast rules governing the processes that must be followed to achieve full and open competition.

SBIR Procedures Purpose

- ❖ In accordance with the SBIR Policy Directive the purpose of the SBIR program is to strengthen the role of innovative Small Business Concerns in Federal Research/Research & Development.
- ❖ To fulfill requirements of scientific study and experimentation directed toward advancing the state of the art or increasing knowledge and understanding rather than focusing on a specific system or hardware solution.



Different Purpose –Different Procedures

- ❖ DOD Source Selection Procedures that became effective on April 2016, exempts SBIR acquisitions
- ❖ According to GAO Case *Deborah Bass Associates* (B-257958) November 1994, the SBA stated that the typical procedures utilized in negotiated procurements are inconsistent with the goals of the SBIR program.
- ❖ In keeping with SBIR's purpose:
 - Fulfill the statutory requirement to simplify and standardize the acquisition process (PD 1(b)).
 - Purposely departing from normal Government solicitation format and requirements (PD 5 (e)(1)).
 - Instructing agencies to review their rules and harmonize them with the instructions in the SBA SBIR Policy Directive (PD section 1(d)).

General Similarities

| Procedures | Similarities |
|-------------------------------------|--|
| Synopsis | Must be synopsised in compliance with the Small Business Act |
| Receipt of Proposals/Evaluation | Same Time Period |
| Organizational Conflict of Interest | Must neutralize, avoid, or mitigate |
| Certificate of Competency | Must comply with FAR 19.6 |
| Award Selection | Best Value |

General & Specific Differences



General Differences

| Pre-Solicitation & Solicitation Activities | FAR 15 | SBIR |
|--|--|--|
| Market Research | Match market capabilities with government requirements | (1) Technical Sponsors determine capability gaps (2) identify topics (3) exchange information on topics with vendors during the pre-release period (4) update topics as needed |
| Acquisition Strategy | Set Aside Decision | Set Asides are automatic |
| Solicitation Length | Unlimited | Limited |
| Data Rights | Negotiable Before Award | Not negotiable before award. Data rights are fixed. |
| Small Business Definitions | Many definitions based on industry and identified by average receipts or number of employees | A for profit small business majority owned by a us citizen or resident alien, with 500 or fewer employees or a qualifying firm that is majority owned by venture capital institutions. |
| Contract Pricing | More emphasis | Less emphasis |

Proposal Evaluation

| Topic | FAR 15 | SBIR |
|---|--|---|
| Sorting Proposal Into Categories (e.g. awardable and unawardable) | Competitive Range | Not considered a competitive range (Microcosm B-277326) |
| Ranking Proposals | Establishes order of award for contract action | Order of award for program, but other agencies may make an award based on different priority. PD Section 4(b)(7) |
| Resolving Evaluator Differences | Must be resolved by TEB or the SSA before award. | Need not be resolved as the difference of opinion will manifest itself in the overall score (Kolaka Noeau B-291818) |

Types of Exchanges

❖ FAR 15 lists three common types

- Clarifications – limited exchanges that occur when discussions are not contemplated. Clarifications with one firm does not trigger requirement to clarify with other firms.
- Communications -exchanges after receipt of proposals that leads to the establishment of the competitive range.
- Discussions – exchanges to inform offerors of significant weaknesses, deficiencies, or adverse past performance to which the offeror has not had the opportunity to respond. In addition, the Government may address other aspects of the proposal that will make the offer more attractive.

Exchanges

The GAO uses FAR 15 as “guidance” when evaluating the propriety of exchanges in the context of negotiated procurements:

- ❖ *FSS - (B-411888, Nov 2015)*
- ❖ *IDIQ - (B-411851, Nov 2015)*
- ❖ *BAA - (B-400650, Jan 2009)*
- ❖ *SAP - (B-292320, July 2003)*

The guidance is based on the principles of a fair and equitable competition.

Exchanges (Cont'd)

| Topic | FAR 15 | SBIR |
|----------------------------|---|---|
| Communications | Exchanges that lead to the establishment of the competitive range | N/A |
| Discussions | Form competitive range, conduct meaningful discussions, end discussions on a common date, request Final proposal revisions. | Conduct meaningful discussions, no common cut-off date, obtain revisions as appropriate. |
| Post-Selection Discussions | N/A | Must not be arbitrary, negotiated in good faith, and remain consistent with the solicitation. |

Trade-Offs

| Topic | FAR 15 | SBIR |
|--------------------------|---|--|
| Cost Technical Trade-Off | (1) Evaluates the merits of each proposal relative to the evaluation factors set forth in the solicitation (2) selects best value proposal by comparing the benefits and pricing of proposals to one another to and selecting the best mix of benefits and price. | (1) No common work statement consequently there is no comparison to be made. (2) Like Broad Agency Announcements case law has established that SBIR procedures do not require cost technical trade-offs to select the best value proposals. <i>Tetra Core, B-412535 (Jan 2016)</i> |

Debriefs

| Topic | FAR 15 | SBIR |
|---|---|--|
| Information Provided to Unsuccessful Offerors | <p>Pre/Post Award Debrief Possible</p> <p><u>Post Award</u></p> <ul style="list-style-type: none">❖ Required by law❖ Information on the successful offeror- including price and rating❖ Overall ranking | <ul style="list-style-type: none">❖ Not Required❖ <i>Policy Directive authorizes release of technical evaluation of proposal to applicant.</i>❖ Other proposals are not for consideration (Microcosm B-277326) |

Additional Streamlining & Flexibility Opportunities



Opportunities

- ❖ Payment Strategies
 - Partial vs Progress Payments
- ❖ Contract Types
 - Fixed vs Cost
- ❖ Coordination of Topics with Other Agencies
- ❖ Responsibility Issues
 - Pre-award certifications
 - Page limits



Additional Information

- ❖ Small Business Innovation Research (SBIR) Contracting, “A Guide to Efficient and Effective Execution” National Contract Management Association Magazine, January 2017



