

***PEOPLE BUY FROM PEOPLE******Navigating the US Federal Highway***

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**Requested Response to the  
Northern Virginia Systems Integration Forum**

**The Federal Acquisition Highway**

*[Clark Sebastian was requested by the Northern Virginia Systems Integration Forum to present his views on the flexibility of the Federal Acquisition Regulation. Sebastian titled his report The Federal Acquisition Highway.]*

# FAR

The Federal Acquisition Regulation (FAR) is the driver of federal acquisitions, encouraging early contact of buyers and sellers through formal propositions to contracting. The acquisition cycle follows a prescriptive process though flexibility is allowed.

As the largest buyer in the world, the US federal government is wise to encourage sellers to better understand the government's requirements, just as it is wise for the government to understand what sellers have to offer. Given the volume of dollars exchanging hands and in the interest of fairness to all parties, there are rules and regulations governing the exchange of information and the formal submission of bids, as well as post-award activities. These rules are written in considerable detail in the Federal Acquisition Regulation handbook, approximately 1,891 pages, originally published April 1984, amended as required. All federal departments and agencies are covered except for the FAA and the US Mint, both exempt although they routinely follow the FAR.

## **Request For Proposals (RFP)**

The first time I sat through a review of a federal government RFP I thought "What in the world?" I was wet behind the ears so I didn't say anything, faking my understanding of the prescriptive nature of government RFPs. But damn it was odd. Folks were bouncing all over the place talking about B, C, L and M and other sections

just like they had their own alphabet. Odd, they never got past M. I did the count, not even having to use my fingers, and there were exactly 13 letters after M not used. There were also exactly 13 letters from A to M. Is this relevant or just the way it worked out? Is this one of those numbering structures that leaves you befuddled? For those that know the Bible, there exists a very unique structure. Psalm 117 is the shortest chapter in the Bible and Psalm 119 is the longest chapter and Psalm 118 is exactly in the center with 594 chapters before Psalm 118 and 594 chapters after Psalm 118, with the total of 594 and 594 equaling 1,188 or Psalm 118.8 which is the exact center of the Bible. Darn if I know if a unique scheme like this was intended for the FAR, but if it was, I'm sure going to pay more attention looking for other oddities. Perhaps if I read it backwards I would glean some useful insight?

Upon reviewing the RFP I thought to myself, "Who decided this?" No way was I going to ask. By continuing to listen, asking an innocuous question here and there, aided by some research ([acquisition.gov/far/](http://acquisition.gov/far/)), I discovered a government handbook called the FAR (Federal Acquisition Regulation) that describes in detail how an RFP is to be structured. The exact chapter and verse is FAR 15.204-1 Uniform contract format. FAR 15.204-1 is also the descriptor of the resultant contract to the awardee.

FAR 15.204-1 presents four major parts of the government's acquisition document: Part I Schedule; Part II Contract Clauses; Part III List of Documents, Exhibits and Other Attachments; and, Part IV Representations and Instructions. All four parts are required to be included in a solicitation, though only Parts I, II and III are included in the contract with Part IV saved in a contract file and incorporated by reference in the contract.

Part I – The Schedule	Section H – Special Contract Requirements
Section A – Solicitation/Contract Form	Part II – Contract Clauses
Section B – Supplies or Services and Price/Costs	Section I – Contract Clauses
Section C – Description/Specifications/Statement of Work	Part III – List of Documents, Exhibits and Other Attachments
Section D – Packages and Marketing	Section J – List of Attachments
Section E – Inspection and Acceptance	Part IV – Representations and Instructions
Section F – Deliveries or Performance	Section L – Instructions, Conditions, and Notices To Offerors or Respondents
Section G – Contract Administration Data	Sections M – Evaluation Factors For Award

Each RFP section stands alone yet interfaces with other sections in an intricate manner, leaving the uninformed, or perhaps non-federally educated individual perplexed. How these and other sections are versed, and interpreted, can make a material difference in which company gets an award.

In recent years I observed a change in standard RFP language that I find confusing and believe to be contradictory to the FAR. The language is found in Section M, the evaluation criteria used by the government to score offerors. It pertains to the term "best value," by definition in FAR 15.101 meaning the government has the discretion to select the offeror it believes provides the greatest overall benefit in response to the requirement. While I believe best value procurements are appropriate I

have found additive Section M language in many RFPs that states, “Cost is the least important factor but when technical scores become closer, cost becomes significantly more important.” I searched the FAR and could not find this language. A friend suggested it may have originated from a GAO protest decision where the government argued cost became paramount as technical scores equaled, with such language to be included in Section M to facilitate this interpretation of scoring. I am challenged by this language for several reasons. First, the language is not in the FAR and offerors do not know what they are being evaluated on until after proposals are submitted and scored. Per 15.101-1, “All evaluation factors ... that will affect contract award and their relative importance shall be clearly stated in the solicitation.” I don’t see the required clear statement of relevancy; rather there is significant ambiguity around such language with the implication of “depending on.” Second, while the FAR allows trade-offs, 15.101-1(c) expressly “...allows the Government to accept other than the lowest priced proposal.” Nowhere in 15.101-1 [Best Value] Tradeoff Process is there language pertaining to lowest cost as the tradeoff. The language I have found in the FAR favoring a low cost only decision pertains to commodity-type acquisitions and Lowest Price Technically Acceptable source selection (15.101-2). For the latter, when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price, the FAR (15.101-2(b)(1)) clearly states “the evaluation factors ... that establish the requirements of acceptability shall be set forth in the solicitation.”

Another reason I have an issue with the supplemental language is that often technical proposal scoring techniques force scoring where there is often minor variation in scores thus invoking the tradeoff language. Take Color Code and Consensus scoring. These techniques all but force technical scores to be close. I guess the next step would be to amend the FAR to define “close.” [Just kidding.] But if cost is to be a major factor in a solicitation, the government should just say so versus using language where you don’t know the relative importance of an evaluation until scoring has been completed. This is contradictory to best value determinations (FAR 15.101-1).

### **The Truth About Government-Private Sector Collaboration**

My experience dealing with federal government information technology acquisitions is founded on three plus decades working with the government as a contractor. I have observed varying degrees of conformity to the latitudes provided by the FAR with overall pendulum motion presently swinging towards risk avoidance, often accompanied by the overzealous guarding of information exchange, perhaps in violation of the FAR itself. Consider FAR 15.201 -- Exchanges with industry before receipt of proposals. Per the FAR, “(a) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. (b) The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government’s requirements, and enhancing the Government’s ability to obtain quality supplies and services ... and increase efficiency in proposal preparation, proposal evaluation,



negotiation, and contract award. (c) Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, contracting officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information.”

Note the title of FAR 15.201 – Exchanges with industry before receipt of proposals. The intent cannot be called out any clearer – exchanges prior to receipt of proposals. In actuality 15.201 (a) states “...through receipt of proposals.” FAR 15.201 does not state after an RFI or after a DRFP or even up to the distribution of an RFP. It explicitly states exchanges with industry at an implied detailed level are encouraged “through receipt of proposals.”

FAR 15.201 goes on to state there are many opportunities for an exchange from industry conferences, public hearings, market research, and pre-solicitation notices to pre-proposal conferences and one-on-one meetings with potential offerors. No doubt the government headlines a varying portion of these forums though some are hardly exchanges and one-on-one meetings are rare once an acquisition begins in earnest. Take for example Industry Days. These events are primarily one-way communications, not exchanges sought by the FAR, as attendees ask no more than basic questions so as to not reveal their strategies through information inferred in a question. Take another example – draft RFPs. Is there a belief that an exchange, as suggested by the FAR, occurs? Look at the exact language in 15.201 (b): “exchanging information is to improve the understanding of Government requirements...” What happens with a draft RFP is the government most often shuts the doors to verbal communications and issues a document (DRFP) and requests written feedback. Communications stop there. The government does its internal dance without any feedback, unilaterally decides what to do, then configures the RFP as necessary and releases it. Are concerns between the parties resolved through this type of communication? No. What about draft RFPs where major sections of an acquisition are often omitted, such as Section M, Evaluation Criteria? This is contrary to 15.201 (c) which states “Agencies are encouraged to promote early exchanges of information about ... evaluation criteria.” Often evaluation criteria are not known until formal release of the RFP, and even then the value of the criteria is often not known as cost becomes a complicated evaluation factor depending on technical scoring where often the value of the evaluation criteria is not known until an award is made. I repeat – often the value of the evaluation criteria is not known until an award is made. This is not what the FAR states or intends.

I believe, just as those in government believe, the FAR is the reference document presenting what you can and cannot do relative to an acquisition. These are the rules and guidelines to follow. I suggest let’s do just that. Let’s maintain open communications as stated in FAR 15.201 (a) “through receipt of proposals.” I’m smiling as I can hear the feedback now. “Sebastian, how do you propose we meet with every vendor interested in a particular program? There aren’t enough hours in the

day.” My response is to follow the FAR once again, taking advantage of the provisions to downsize the competitor pool thus enabling govees to meet one-on-one with a limited set of pre-screened contractors, perhaps right up to the time proposals are completed and submitted to the government as stated in the FAR.

### Ask Early If You Qualify

## FAR 15.202

The FAR clause that facilitates downsizing the competitor pool is FAR 15.202, Advisory Multi-Step Process. Per the clause, “(a) The agency may publish a pre-solicitation notice 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. (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.”

For contractors and government alike, this is the best thing since “sliced bread.” I am amazed it is seldom used. Consider for a moment the advantage to a contractor that spends tens if not hundreds of thousands of dollars or more pursuing an acquisition? For a fraction of that cost, responding to a request for a limited proposal presenting past performance, the contractor can be told if it is a viable competitor. If not, they can withdraw from the competition saving considerable monies, perhaps look at subcontracting or continue the pursuit understanding where they stand in the evaluator’s opinion. Nonetheless, the bidding pool of contractors is likely substantially reduced enabling the government the time to meet one-on-one with qualified vendors, facilitating an appropriate information exchange and receiving higher quality proposals at likely lower cost. This is good government. This is what the FAR encourages. This is a win-win for all.

Let’s look at the three likely outcomes for the government when performing this proposition. First, there is less work for the government. Likely the total number of bidders submitting proposals is reduced suggesting less evaluation time required by the government. Sure, there are the additive evaluations of the FAR 15.202 proposals but they are a fraction the size of a full-up proposal. The second outcome is higher quality proposals. After meaningful exchanges with the government, contractors are better informed about the government’s requirements and their operating environment, allowing them to propose solutions more closely aligned with the government’s statement of work. The third outcome is lower cost. Many proposals submitted to the government recognize a bevy of unknowns given a lack of needed information. While the contractor has a fair idea of the work to be performed based on the statement of work, often parts of SOWs are nebulous or don’t go into the level of detail needed to adequately estimate the level of effort. Further, the contractor often does not fully understand the operating environment in which the work is to be performed, as such is often not provided in a meaningful level of detail. No doubt it is

difficult to present that environment in a set of paragraphs in the RFP and site visits are seldom available. It is these and a dozen other circumstances that cause contractors to take extra care in their estimates to perform the work. Accounting for these unknowns often drives up an offeror's bid to the government. Should more open and timely communications be provided, an offeror's bid can be estimated more accurately, often driving down the bid price.

*The bottom line is that the FAR can be friend or foe, depending on how it is interpreted. It should always be used in a manner that drives "good government." To do otherwise is to go against the intent of the FAR itself. And let us not forget, good government must be defined from the perspective of the government.*