



## **What the government won't tell you about your proposal**

When you talk, be prepared and know what is left unsaid

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Congratulations, your proposal has made competitive range, and the government has contacted you to discuss your offer. What the government will and won't tell you in these discussions can be a surprise to the unprepared bidder, but sophisticated players know the rules and what to expect.

First, it is important to know if your dialogue with the government is a discussion or a clarification. There is a difference, and it is important to which type of communication is being requested.

Discussions are a formal part of the federal procurement process that allows the government to engage in a substantive dialogue with offerors. They occur after the competitive range determination.

If you engage in discussions, a meaningful two-way exchange of information, then you are entitled to revise any part of your proposal you desire — unless, of course, the government tells you otherwise.

If you engage in clarifications, responding to requests from the government to clarify what you wrote, then you are not entitled to change your proposal. Always confirm which type of communication is being requested if you're not unclear.

### **Discussions need not be equal**

When agencies enter into discussion with offerors, they do not have to treat offerors equally. For example, an agency can have discussions with one offeror about its price proposal and not discuss any other sections of that offeror's proposal. For a second offeror in the competitive range for the same procurement, the agency has no obligation to discuss that offeror's price proposal even though they did with the first. However, when conducting exchanges with offerors, agency personnel may not "engage in conduct that... favors one offeror over another," (Federal Acquisition Regulation (FAR) 15.306(e)(1)); in particular, agencies may not engage in what amounts to disparate treatment of competing offerors.

### **Discussions need not be comprehensive**

The government has no obligation to discuss weaknesses in your proposal, even though you might presume that is the purpose of discussions. FAR 15.306(d)(3) is skillfully written so that when conducting discussions with offerors in the competitive range, those discussions include “at a minimum...deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.”

Agencies are not required to afford offerors all-encompassing discussions or to discuss every aspect of a proposal that receives less than the maximum score. Agencies are not required to advise an offeror of a minor weakness that is not considered significant, even when the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals.

If the agency determines that your proposal is full of weaknesses that are not deemed significant, it does not need to discuss them.

Discussions are not intended to provide the whole truth about how the agency scored your proposal.

### **Discussions must be meaningful**

When an agency engages in discussions with an offeror, the discussions must be meaningful — sufficiently detailed to lead an offeror into proposal areas requiring amplifications or revisions that materially enhance its potential for receiving the award. The government may help you rid your proposal of significant weaknesses and deficiencies — assuming you made competitive range — but don’t expect it to lead you to eliminate weaknesses in your offer.

If you understand the discussion rules, you’ll know that discussions focus on remedying significant weaknesses in your proposal, not on leveling the playing field. Be prepared to correct these significant weaknesses — and any other hidden weaknesses when you submit your revised final proposal.