

*Advisory Phased Acquisition Supplement to Procurement Executive's Bulletin on Advisory Phased Acquisition Processes*

1. Purpose

This is a supplement to the Procurement Executive's Bulletin (PEB) on *Advisory Phased Acquisition Processes*. The purpose of this document is to offer additional information of phased acquisition processes using voluntary down-selects. This supplement is a "living document" that will be updated as appropriate to highlight best practices and share lessons learned.

2. Background on Voluntary Down-select

In accordance with the PEB, the term "voluntary" is synonymous with "advisory" and "non-mandatory". COs are encouraged to explore these processes, which can both reduce barriers for entry, as well as reduce time and workload of the overall procurement. As stated in the PEB, these processes insert an additional step into the typical procurement; however, they may lead to efficiencies in the evaluation of proposals.

The term "down-select" is not defined in the FAR, but this practice has been used in various forms by many government agencies. In general, "down-select" can be used to describe any process in which the government intends to reduce the number of proposals for evaluation. Down-selects can be mandatory or non-mandatory.

The information and practices highlighted in this document are for voluntary down-select only. This means that the government *is only recommending that an offeror not proceed* with either a full proposal submission, or the next phase of the proposal submission. As further discussed below, when using a voluntary down-select, the offeror may always decide to proceed despite this recommendation.

3. Highlighted Practices for Voluntary Down-select

As stated in the PEB, the agency has highlighted two separate practices: a pre-solicitation process per FAR 15.202 and a post-solicitation approach as written into the RFP.

**A. Pre-Solicitation: Advisory Multi-Step Process per FAR 15.202**

*1) Overview*

The advisory multi-step process is outlined in FAR 15.202, in which the government issues a pre-solicitation notice inviting offerors to submit information used to establish whether an offeror is a "viable competitor". It provides the potential offerors the opportunity to assess whether to invest further resources in developing a proposal. The advisory multi-step process is intended to help both the government and potential offerors reach informed decisions and avoid the preparation and evaluation of proposals that are not competitive.

*2) Determining viability*

COs should consider what initial information should be requested for a preliminary assessment of the potential offeror in the pre-solicitation notice. Some examples of information include requests for information regarding the proposed technical concept, targeted statements of

capabilities, and qualification questions. This list is not exhaustive, and COs have the discretion to request any type of information that will be meaningful to the implementation of the activity.

As stated in the PEB, the FAR prohibits requesting and evaluating the same information in the pre-solicitation and in the subsequent RFP. Therefore, requesting a full technical proposal is not recommended, as that would both entail significant costs to the offerors and reduce the ability of the government to evaluate the technical proposal during the actual RFP. CO's should review this content carefully to make sure that the information to be reviewed is a true indicator of the likelihood of future successful contract performance.

In its request for information, the government must notify offerors how their submission will be assessed. COs should document in the file their assessment of each submission. The government assesses the information received from the offeror and informs the potential offerors whether they are likely to be a viable competitor and recommends whether the potential offeror should submit a proposal in response to the subsequent RFP. As stated above, even if a potential offeror is informed that they are not likely to be a viable competitor, they may decide to submit a proposal in response to the RFP.

### 3) *Feedback by the government*

The potential offeror that received a recommendation to not proceed must be provided government feedback. At a minimum, the notification must include *the general basis for that opinion*. This is not a debriefing and should not be represented as a debriefing. The CO can provide a general opinion for the decision/determination. Notably, one perceived benefit of this process is that it allows a potential offeror to receive feedback before investing additional resources in preparing an uncompetitive proposal. This can help the potential offeror learn more about what it would take to be successful for future opportunities. Therefore, this feedback can be an excellent learning opportunity, particularly to potential new partners.

However, the “feedback” provided to the contractor would and should not provide findings that would allow an offeror to specifically “correct” their approach when the full RFP is offered.

### 4) *Advantages & Disadvantages*

There are pros and cons in using this practice.

#### ● *Advantages*

- Encourages new partners to participate in procurements as they can better assess the viability of their proposal prior to investing resources in preparing a full proposal.
- The initial submission is also more straight-forward and less burdensome in terms of procurement action lead time (PALT).
- New entrants can avoid incidence of non-compliance in response to a full RFP.
- Can reduce the number of non-competitive full proposals received in response to the subsequent RFP, and therefore, reduce workload and PALT for the government.
- Process can lead to better information and refinement of the final RFP, which can potentially result in stronger proposals from offerors.

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- Increasing the partner base can lead to more innovative and varied solutions.
- Allows the government to assess industry's capabilities when considering new methods, solutions, or technologies.

- *Disadvantages*

- Because it adds an additional step for the presolicitation information review, this can increase the amount of time for the overall procurement.
- It also can add to the effort on the part of the government in the review of the initial information.
- There is no guarantee that the process will result in fewer or better proposals in response to the RFP.

5) *When Not to Use*

This process offers fewer advantages when the government knows with confidence that it will receive a limited number of offers.

Additionally, it should not be used when the government cannot identify an important factor that can be used as the basis for a recommendation to proceed or not to proceed with a full proposal, or if the factor would need to be evaluated at both the initial and full proposal stages.

6) *Offerors responding to RFP that did not participate in the pre-solicitation*

The advisory multi-step process is intended to provide a voluntary and non-binding assessment of viability. It is not to be used to restrict or limit competition. It does not restrict non-participants in the pre-solicitation from submitting a proposal in response to the RFP. As underscored in the PEB, any firm, including offerors advised that they were not competitively viable, or entities that did not respond to the initial notice may submit a proposal in response to the RFP.

**B. Post-solicitation: Voluntary Down-select in RFP**

1) *Overview*

The voluntary down-select approach is explicitly written into the RFP. It is a practice used in government agencies, including USAID. Unlike the advisory multi-step process described above, the voluntary down-select approach is not outlined in the FAR and is completed as part of the solicitation, as opposed to pre-solicitation.

Voluntary down-select is a way to screen offers at an initial phase, and then recommend to offerors whether they should proceed/not proceed. The offeror may still decide to proceed with the submission for the next phase despite the recommendation. In contrast to the advisory multi-step process described above, participation in the initial phase is mandatory for all offerors.

2) *Process*

Because the FAR does not prescribe the process, COs have flexibility in how to use this approach. The below is an illustrative example of a process that may be used for this approach. In general, the RFP is divided into phases.

- The RFP establishes a phased approach for the evaluation. The RFP provides the instructions and evaluation criteria separately for Phase I and Phase 2.
- Phase 1 requests Offerors to submit information that is deemed critical to determination of competitiveness.
- Offerors submit proposal content in response to Phase 1 proposal submission instructions, as outlined in the RFP.
- If when using FAR 15, the CO or TEC have any questions about the offeror's submission that requires clarification for Phase 1, the CO can ask for clarifications from the offeror per FAR 15.306. However, these clarifications are not discussions, and this should be clearly communicated to offerors.
- After evaluating the submission against the criteria for Phase 1, the government provides a letter/email to an offeror recommending the offeror to proceed or not proceed to phase 2 of the evaluation.
- The letter/email provides a determination of the proposed offeror's chance of success or competitiveness, such as the proposed offeror has a "high viability to compete"; conversely, the letter/email provides that the proposed offeror has a "low viability to compete". It must be clear that this does not constitute an award decision, that it remains a competitive process, and the offerors in the latter category (i.e., "low viability to compete") may still choose to continue.
- These terms and definitions are to be provided in the initial RFP in the instructions.
- The letter/email *recommends* to the potential offeror whether to submit/not submit a proposal for Phase 2.
- Offerors that elect to not proceed do not receive a debrief.
  - Since the government is not excluding the potential offeror, those potential offerors are not entitled to a debrief.
  - A potential offeror that decides to not proceed may be provided feedback after the award, but this is not a debrief. See the below section on feedback for more details.
- Offerors submit the additional proposal information in response to Phase 2.
- The government evaluates the Phase 2 proposals using the evaluation criteria for Phase 2.
- If determined to be necessary, the government establishes a competitive range and enters into discussions addressing discussion issues from Phase 2 proposals. Note: It is advised that when using this approach that the government only hold discussions on Phase 2 content, and Phase 1 not be part of discussions. See below section on discussions.
- Government makes the award decision.
- Non-selected offerors that submitted a proposal for Phase 2 and that ask for a debrief are required to receive the debrief.

### 3) *Sample of Design*

When designing a voluntary down-select, the CO should think carefully about the criteria for each phase and remember the objectives. The government wants to reduce workload upfront and provide information to the offeror regarding their viability as a competitor prior to the offeror's investing significant resources. The government wants to be able to assess offerors with confidence in the first phase, but the major costs of proposal investment should only be incurred in the second phase. In addition, the intention is for the offeror to be realistic in their chances of a successful award.

To accomplish these objectives, the below sample features some important aspects in the RFP design. The RFP is issued dividing up evaluation criteria into two phases:

1. Phase 1: Light Technical/Technical Outline and Qualification Statement Questions
2. Phase 2: Full Technical Approach, Management, and Cost Proposal

In Section M, the RFP states that *Phase 1* is the *more highly rated* of the overall evaluation.

In Section L, the timeline is as follows:

- Phase 1 proposals due Jan. 1.
- Phase 2 proposals *due 30 days* after receipt of government recommendations for Phase 1.

In the sample, the RFP has been designed with the intention to deter potential offerors that receive a "not recommended" letter from proceeding to Phase 2.

The idea is that a potential offeror that is already aware that they have little chance of success would likely not choose to incur additional costs in proposal preparation. The Phase 1 preparation costs for a Light Technical/Technical Outline and responses to qualification questions would be significantly lower in comparison to the costs to prepare a full technical proposal and cost proposal for Phase 2. And because Phase 1 is more heavily weighted, the offeror would be dissuaded from then proceeding to Phase 2.

In addition, other government agencies have found that providing a clear and reasonable timeline for the submission of the Phase 2 proposals after receipt of the recommendation, has prevented offerors from doing work upfront and further dissuades offerors from submitting a Phase 2 proposal.

### 4) *Feedback for Phase 1*

Potential offerors that elect to not proceed to Phase 2 may ask for feedback and should receive this information. Just like the feedback for the Advisory Multi-Step (see above) the CO can provide feedback of the opinion/determination. However, for the Voluntary Down-select, CO should not provide this feedback information on Phase 1 until after the award is made. This feedback should not be identified as a debrief. The feedback is intended to provide useful information to help potential offerors for future procurements. Again, this information is particularly helpful to potential new partners, and an important value of this process.

5) *Debrief for Phase 2 Offerors*

In using this process, only offerors that proceeded to Phase 2 are entitled to official debriefings outlined in FAR 15.505 and 15.606. Offerors that do not proceed to Phase 2 have elected to remove themselves from the competition and have not been excluded or not selected for award by the government.

6) *Discussions in Phase 2*

As mentioned above, there is not a prescribed approach or process for this method in the FAR, and therefore, CO's have discretion when using this process. The RFP must make clear whether proposal content from Phase 1 and Phase 2 will/may be part of discussions after receipt of Phase 2 proposals.

It is highly recommended that when using this approach that the CO not enter into discussions about any of the content submitted in Phase 1. There are several reasons for this recommendation:

- Time is lost whenever part of a proposal is revised and re-evaluated.
- The CO has already determined that the initial submission was sufficient to be invited to Phase 2 so it would normally be unnecessary to discuss that part of the proposal
- Cost to the offerors should also be considered. Whenever an organization revises its proposal, there are inherent costs involved. Depending on the extent of the revisions, these costs can reduce the advantage of this procurement method.
- Most importantly, negotiating on Phase 1 introduces issues of fairness for those offerors who were advised not to bid on Phase 2 as they were not allowed to revise their initial proposal. Additionally, they are not informed of their weaknesses in order to submit an improved proposal.

7) *Advantages & Disadvantages*

There are pros and cons in using this practice. This process may be another tool to use when it is advantageous to the government.

- *Advantages*

All the advantages of the Advisory Multi-Step process can be realized using this process as well. However, this process does have the potential to provide greater benefits, since it allows offerors to submit, and the government to evaluate, a "light" Phase 1 proposal. The evaluation of the full technical proposal and the cost proposal can be avoided in Phase 1.

*i. For our partners*

Responding to a full RFP is very costly to our partners. All Partners must invest heavily in labor and typically travel in responding to an RFP.

For some organizations, such as local partners and small businesses, these costs are a greater deterrent, and may prevent partners from responding to an RFP, despite having the technical

expertise and capabilities. Without this impediment, non-traditional partners are more likely to respond to a USAID RFP.

In addition to non-traditional partners, reduction in the cost for proposal preparation is also a benefit to existing partners. Finally, these time and cost savings can result in reduction of costs passed onto the government.

*ii. For USAID*

There are many benefits to expanding our partner base, including finding more innovative and varied solutions to our development challenges.

In addition to expanding our partner base, more streamlined evaluation processes and fewer full proposals will save government resources and reduce PALT.

● *Disadvantages*

- It might not reduce the number of proposals submitted. Just like the Advisory Multi-Step process, an offeror given the recommendation to not proceed, may still decide to remain in the competition. After all, it is a business decision by the offeror and that offeror may still want to take this chance despite the added costs.
- The process does take strong management and planning by the government. As a phased approach for evaluation, there are added challenges to scheduling the reviews and evaluation for each phase.
- It can limit negotiation and disadvantage the government. For example, if the RFP provides that issues in Phase 1 cannot be part of discussions, the government may be at a disadvantage later if issues are identified that cannot be resolved.

8) *When Not to Use*

- This approach would not be appropriate for awards of great complexity and risk where cost factors, technical approach, and capability must be assessed together to make a prudent determination of an offeror's viability. This approach would also not be recommended when the government expects a small pool of potential offerors.