

## **§ 636.408**

inclusion in, the competitive range is uncertain.

### **§ 636.408 Can communications be used to cure proposal deficiencies?**

(a) No, communications must not be used to:

- (1) Cure proposal deficiencies or material omissions;
- (2) Materially alter the technical or cost elements of the proposal; and/or
- (3) Otherwise revise the proposal.

(b) Communications may be considered in rating proposals for the purpose of establishing the competitive range.

### **§ 636.409 Can offerors revise their proposals during communications?**

(a) No, communications shall not provide an opportunity for an offeror to revise its proposal, but may address the following:

- (1) Ambiguities in the proposal or other concerns (e.g., perceived deficiencies, weaknesses, errors, omissions, or mistakes); and
- (2) Information relating to relevant past performance.

(b) Communications must address adverse past performance information to which the offeror has not previously had an opportunity to comment.

## **Subpart E—Discussions, Proposal Revisions and Source Selection**

### **§ 636.501 What issues may be addressed in discussions?**

In a competitive acquisition, discussions may include bargaining. The term bargaining may include: persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

### **§ 636.502 Why should I use discussions?**

You should use discussions to maximize your ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation.

## **23 CFR Ch. I (4–1–11 Edition)**

### **§ 636.503 Must I notify offerors of my intent to use/not use discussions?**

Yes, in competitive acquisitions, the solicitation must notify offerors of your intent. You should either:

(a) Notify offerors that discussions may or may not be held depending on the quality of the proposals received (except clarifications may be used as described in § 636.401). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint; or

(b) Notify offerors of your intent to establish a competitive range and hold discussions.

### **§ 636.504 If the solicitation indicated my intent was to award contract without discussions, but circumstances change, may I still hold discussions?**

Yes, you may still elect to hold discussions when circumstances dictate, as long as the rationale for doing so is documented in the contract file. Such circumstances might include situations where all proposals received have deficiencies, when fair and reasonable prices are not offered, or when the cost or price offered is not affordable.

### **§ 636.505 Must a contracting agency establish a competitive range if it intends to have discussions with offerors?**

Yes, if discussions are held, they must be conducted with all offerors in the competitive range. If you wish to hold discussions and do not formally establish a competitive range, then you must hold discussions with all responsive offerors.

### **§ 636.506 What issues must be covered in discussions?**

(a) Discussions should be tailored to each offeror's proposal. Discussions must cover significant weaknesses, deficiencies, and other aspects of a proposal (such as cost or price, technical approach, past performance, and terms and conditions) that could be altered or explained to enhance materially the proposal's potential for award. You may use your judgment in setting limits for the scope and extent of discussions.