

Ethical Requirements Shaping

A practical explainer for sales, capture, and solution teams

Disclaimer: This document is for general awareness only and does not constitute legal advice.

Always coordinate with your contracts, legal, and ethics officers when you are unsure.

1. WHY REQUIREMENTS SHAPING MATTERS

In federal and defense sales, the real competition often starts long before an RFP is released. How the requirement is defined—what problems are prioritized, what outcomes are written into the statement of work, and what evaluation factors are used—can determine which solutions are even eligible.

Done well, early engagement helps the Government:

- Better understand the mission problem.
- Learn what is feasible in the market.
- Avoid unrealistic, incomplete, or internally inconsistent requirements.

Done poorly or unethically, early engagement can:

- Skew the competition toward one vendor.
- Create organizational conflicts of interest (OCI).
- Trigger protests, investigations, or reputational damage.

Your goal is to be a trusted advisor who helps government customers frame good requirements without crossing lines on fairness, procurement integrity, or professional ethics.

2. KEY LEGAL AND ETHICAL GUARDRAILS (PLAIN LANGUAGE)

A. FAR 15.201 – Exchanges with industry

The Federal Acquisition Regulation (FAR) explicitly encourages early exchanges with industry before proposals are received. The goal is to improve mutual understanding of requirements and capabilities and to improve the quality of acquisitions. Those exchanges, however, must be consistent with procurement integrity rules and cannot give any firm an unfair competitive advantage.

Bottom line for your team:

- Early conversations are allowed and even encouraged.
- The way you hold them must respect integrity and fairness.

B. FAR 3.101-1 – Standards of conduct

FAR 3.101-1 states that government business must be conducted in a manner above reproach, with complete impartiality and without preferential treatment. It warns against conflicts of interest and even the appearance of a conflict in Government–contractor relationships.

Bottom line:

- The Government is held to a very high standard of impartiality.
- If your actions would make an outsider question the fairness of a competition, you are in dangerous territory.

C. FAR Subpart 9.5 – Organizational conflicts of interest (OCI)

FAR Subpart 9.5 describes situations where a contractor’s relationships or roles may:

- Bias ground rules (for example, writing specifications that later favor you).
- Provide unequal access to nonpublic information.
- Impair your objectivity (for example, evaluating your own or a competitor’s work).

If you help shape requirements in a way that creates one of these conditions, the agency may have to disqualify you or your company from competing.

D. DFARS and agency supplements

For DoD work, the Defense Federal Acquisition Regulation Supplement (DFARS) and related guidance

add further obligations around ethics, data handling, cybersecurity, and national security.

Agencies may also have additional ethics rules, training, and review processes.

E. Professional standards

In addition to regulations, your own company’s code of business ethics, industry codes of conduct, and your personal professional standards matter. “Everyone does it” is not a defense.

3. WHAT ETHICAL REQUIREMENTS SHAPING LOOKS LIKE

Ethical requirements shaping starts from a simple principle:

Help the customer make a well-informed, defensible decision that serves the mission and protects competition.

Examples of healthy, proactive behavior (before an RFP is released):

1) Mission-focused discovery conversations

- Asking open-ended questions about mission outcomes, constraints, and risks.
- Listening more than you talk; resisting the urge to sell a specific product too early.
- Helping the customer articulate measurable outcomes, not just features.

2) Market research and education

- Responding to RFIs, sources-sought notices, and questionnaires with factual, non-misleading information.
- Sharing public white papers, reference architectures, and best practices that any competitor could also provide.
- Participating in industry days, one-on-ones, and tech demos when invited and when rules allow.

3) Highlighting trade-offs, not just your advantages

- Explaining realistic cost, schedule, and risk implications of different approaches.
- Discussing pros and cons of contract types, phasing options, and technical architectures in neutral language.
- Helping government teams see alternative approaches, even those that are not your sweet spot, when that serves the mission.

4) Clarifying constraints and integration realities

- Helping customers understand interface requirements, dependencies, and legacy system constraints.
- Flagging security, data, or interoperability issues that the requirement must address.

In all of these, the customer remains in charge of the requirement. You are providing information and perspective, not dictating the answer.

4. WHEN REQUIREMENTS SHAPING CROSSES THE LINE

These behaviors are warning signs that your team may be crossing ethical or regulatory lines:

1) Biased ground rules (OCI risk)

- Drafting statements of work, specifications, or evaluation criteria that only your product can meet without a clear, mission-based justification.
- Offering to “just give the government your spec sheet to use as the requirement.”
- Pushing for unique, brand-specific features that are not truly essential to the mission.

Why this is dangerous:

- FAR Subpart 9.5 specifically calls out biased ground rules as an OCI concern.
- If you help set the rules in a way that favors you, you may later be excluded from competing, or the award may be protested.

2) Unequal access to nonpublic information

- Receiving budget targets, competitor information, source-selection plans, or draft evaluation factors that are not available to others.
- Being told “this is just between us” about details that will later affect the competition.
- Using insider knowledge from a current contract to prepare for a future competition without proper safeguards.

Why this is dangerous:

- Unequal access to information is a classic form of OCI.
- It can create an unfair competitive advantage and undermine the integrity of the acquisition.

3) Impaired objectivity

- Being asked to evaluate or score products or services that compete with your own offerings.
- Providing “independent” recommendations on whether your own solution met requirements.
- Writing reports or analyses that will directly feed into a decision about awarding work to you.

Why this is dangerous:

- Your financial interest may conflict with the duty to provide impartial advice.
- Agencies are expected to avoid even the appearance that a contractor is grading its own homework.

4) Procurement integrity and gifts

- Offering gifts, travel, entertainment, or employment discussions that could raise questions about impartiality.
- Pressuring government personnel to share information they should not share.

- Suggesting that your help is contingent on being favored later.

Why this is dangerous:

- FAR Part 3 and procurement integrity rules prohibit bribery, improper gifts, and misuse of nonpublic information.
- Even the appearance of such conduct can result in investigations or debarment.

5. PRACTICAL GUIDANCE BY PHASE

A. BEFORE ANY DRAFT RFP OR RFI

Do:

- Learn the mission, constraints, and pain points.
- Share general market trends and feasibility information.
- Offer to brief standard architectures or implementation patterns that others also use.

Don't:

- Push detailed product-specific requirements before the customer has defined their problem.
- Ask for nonpublic budget or acquisition strategy details.
- Promise to “write the requirement” for the customer.

B. DURING RFIs, SOURCES-SOUGHT, AND DRAFT RFPs

Do:

- Provide complete and accurate information in responses.
- Suggest evaluation factors or contract structures using neutral, performance-based language when asked.
- Flag requirements that are not achievable or that create unnecessary risk.

Don't:

- Sneak in brand-specific or proprietary language that only you can satisfy.
- Design scoring schemes that obviously favor your current solution.
- Use your response to try to exclude credible competitors without a mission-based reason.

C. AFTER THE FINAL RFP IS RELEASED

Do:

- Respect the fact that communication channels are now constrained.
- Use formal Q&A; mechanisms for clarification questions.
- Mirror the Government's instructions and evaluation criteria in your proposal.

Don't:

- Lobby individual government personnel for special treatment.
- Seek off-the-record guidance about how to "game" the evaluation.
- Continue pre-solicitation style shaping; at this point, the requirement is set.

6. SIMPLE RULES-OF-THUMB FOR YOUR TEAM

Use these quick tests in the field:

1) Front-page test

- If the email, meeting summary, or draft language you are proposing were printed on the front page of a newspaper, would it look fair and defensible? If not, stop.

2) "All-offerors" test

- Would it still feel fair if every competitor had the same opportunity, information, or influence you are seeking? If the answer is no, you may be seeking an unfair advantage.

3) Role clarity test

- Ask: "Are we acting as a vendor, an advisor, or both?" If you are providing advice that directly shapes ground rules for a procurement you plan to bid, raise the issue with your ethics and contracts teams.

4) Escalation test

- If you would be uncomfortable explaining your involvement to a contracting officer, agency ethics counselor, or GAO auditor, escalate internally before proceeding.

7. PRACTICAL CHECKLIST FOR SALES AND CAPTURE

Before every significant customer engagement where requirements may be discussed, consider:

1) Stage and context

- Where are we in the acquisition lifecycle (pre-RFI, draft RFP, final RFP, post-award)?
- What communication rules apply at this stage?

2) Our role

- Are we a current incumbent, a new market entrant, or a potential advisor?

- Do we have any existing contracts that could give us nonpublic information?

3) Potential OCIs

- Could our work, relationships, or access create biased ground rules, unequal access to information, or impaired objectivity?
- Do we need an OCI mitigation plan or to recuse ourselves from certain roles?

4) Documentation

- Are we documenting key interactions and providing written summaries when appropriate?
- Could those notes help show that we acted ethically if questions arise later?

5) Internal touchpoints

- Have we looped in our contracts, legal, or ethics team for gray areas?
- Do we know who to call quickly when something feels off?

8. HOW LEADERSHIP CAN ENABLE ETHICAL REQUIREMENTS SHAPING

Executives and managers play a crucial role in setting expectations and providing guardrails.

Leadership should:

- Communicate clearly that long-term trust and eligibility are more important than short-term wins.
- Provide training on FAR/DFARS basics, OCIs, and procurement integrity tailored for sales and capture teams.
- Establish simple escalation paths when employees see potential ethics or OCI issues.
- Reward employees who walk away from questionable situations or who surface concerns early.
- Ensure that marketing and thought-leadership activities are broadly available, not designed as backdoor favoritism.

9. WHAT TO DO WHEN SOMETHING FEELS WRONG

If you find yourself in a situation where a customer asks you to do something that feels risky—like writing key parts of the statement of work, commenting on competitors' proposals, or sharing proprietary information—take these steps:

1) Pause the conversation respectfully.

- You can say, “I want to make sure we handle this in a way that is fair to everyone and compliant with the rules. Let me check with our contracts/ethics team and get back to you.”

2) Document what happened.

- Capture who was present, what was requested, and any relevant context.

3) Escalate internally.

- Contact your contracts, legal, ethics office, or leadership as appropriate.
- Be factual and avoid accusations; focus on the situation and the risk.

4) Follow the guidance you receive.

- You may be advised to decline certain work, ask the agency to use more formal mechanisms, or disclose potential OCI concerns.

5) Learn from the experience.

- Share sanitized lessons learned with your team so everyone grows more confident navigating similar situations.

10. BOTTOM LINE

Ethical requirements shaping is not about giving up influence. It is about using your influence in a way that:

- Helps the Government define clear, achievable, mission-focused requirements.
- Preserves fairness and integrity in the competition.
- Protects your company, your customer, and your personal reputation.

When you understand the guardrails in FAR, DFARS, and professional ethics—and you build simple habits around escalation, documentation, and transparency—you can be proactive and helpful without crossing lines.