

## A FOOTNOTE ABOUT DISCUSSIONS AND FINAL PROPOSAL REVISIONS

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In a recent blog, I explained that an agency does not need to give offerors a chance to submit a second final proposal revision. See “Don’t Hurt Your Chances to Win in Your Final Proposal Revisions.” So if you introduce problems or deficiencies in your final offer, you are likely to lose a contract award. *TASC, Inc.*, B-412674, August 25, 2016. Another Government Accountability Office (“GAO”) protest adds a further thought about discussions and deficiencies in final proposal revisions. *URS Fed. Servs, Inc.*, B-41304 et al. July 25, 2016.

In *URS*, a best value source selection, the solicitation required resumes for eight key personnel in order to demonstrate the offeror’s ability to meet the requirements. The unavailability of a key person was identified as a material requirement of the solicitation. *URS*’s proposal was evaluated as “unacceptable” because of a deficiency. The proposal identified as a senior software engineer (key person) an individual who resigned from *URS* after the proposals were submitted.. *URS* argued in its protest to GAO, that the unacceptable rating was not reasonable, because the departure of its proposed key person was not the fault of *URS*.

GAO denied the protest, stating there was no basis to question the agency’s evaluation. The GAO stated that it has consistently held that upon notice of the withdrawal of key personnel prior to a contract award, the agency has two options:

- (1) evaluate the proposal as submitted, where the proposal would be rejected as technically unacceptable for failing to meet a material requirement; or
- (2) re-open discussions to permit the offeror to correct this deficiency.

Further, the GAO noted that the agency’s discretion to hold discussions is broad, and is not generally reviewed by GAO. *URS*’s protest was denied because discussions were never reopened and because its final proposal, as submitted, contained a material failure to meet a material requirement of the solicitation.

Offerors should keep in mind that a protest concerning a change in circumstances after final proposals are submitted (such as the departure from the company of a key person required by the solicitation) will not be sustained at the GAO. If such an event occurs, the offeror should, prior to award, immediately notify the Contracting Officer and seek a re-opening of discussions so that it can substitute an available person. Alternatively, the offeror can look for another procurement opportunity, since it is not likely to win at the GAO.