

YOU CAN MODIFY ANYTHING IN YOUR PROPOSAL DURING REVISIONS, UNLESS THE INSTRUCTIONS PROHIBIT

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An agency may amend the solicitation or issue new information during discussions, and will frequently request one or more rounds of proposal revisions. It is important to remember that although you must address any new issues raised by the agency, you are at liberty to modify your proposal (technical and price) in any way you desire, unless the agency has specifically prohibited modifications outside of a particular area. This principle was re-emphasized in *Quest Diagnostics, Inc. v. United States*, No. 19-907C (Fed. Cl. May 1, 2013).

The Army sought clinical reference laboratory services for various treatment facilities. The Army twice attempted to award the contract but in each case, there was a protest to the Government Accountability Office (“GAO”). The first time the Army took corrective action by amending the RFP to estimate usage and explain a new methodology for evaluating price. The Army instructed offerors that “if any changes identified by this amendment cause a revision to other than the pricing of your proposal, please submit same in number of copies and format as your original submission.” The Army then held a new round of discussions, and permitted proposal revisions. In its revisions, one offeror (LabCorp) updated technical matters (including testing and implementation of one of its subsystems).

There were two more GAO protests, but at the Court the major issue was Quest’s protest that LabCorp was allowed improperly to amend its proposal by submitting new technical information. The protester alleged that the technical revisions were outside the scope of the corrective action, which related to price, not technical matters.

The Court held, consistent with GAO decisions, that, unless an agency restricts the scope of the revisions that offerors may make to their proposals in responding to solicitation amendments, the offerors may revise any aspect of their proposals, including those that were not the subject of the amendments. The Federal Acquisition Regulation (“FAR”) supports this, because it states that offerors “may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award” FAR 52.215-1(c)(6) and 52.212-1(f)(1).

Tips: (1) Whenever an agency asks for revisions to your proposal, if you have any doubt that the scope of the revisions is limited in any way, ask the Contracting Officer in writing. If the scope is limited, change only what is permitted. If there is no specific limitation, you may change anything.

(2) You may change price, technical, add to past performance, etc., at any time you submit a proposal revision (or final proposal revision).

(3) Keep in mind, however, that if your proposal was satisfactory or acceptable as previously submitted, and you change your technical response, you run a risk that the agency may find the revision to be “not acceptable”. So be careful.