

UNREASONABLE RESTRICTIONS ON QUOTATION OR PROPOSAL REVISIONS

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Federal Acquisition Regulation (“FAR”) 15.307 states that “[a]t the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision....” This same requirement for fairness applies to negotiated procurements that seek proposals as well as quotations from offerors. Recently, the Government Accountability Office (“GAO”) reminded agencies that when they seek a final offer, they cannot restrict a contractor’s ability to make amendments in areas where there have been amendments that materially impact those areas.

In *Castro & Co.*, B-415508.4, Feb. 13, 2018, the Department of Homeland Security (“DHS”) issued an amendment to a solicitation for financial statement audit and internal control support services. After DHS selected the awardee, it received post-award protests, and decided to take corrective action to clarify that it required quotes to offer three full-time individuals to perform the scope of Optional Task 3. However, the corrective action amendment issued by DHS prohibited offerors from changing anything but Task 3, stating that “[a]ny revisions outside of Task 3 will not be evaluated.” Castro protested that this prohibition prejudiced the procurement against any offeror whose strategy took advantage of perceived efficiencies in Tasks 1 and 2 to address the potential needs of Task 3.

In considering the protest, the GAO noted that it generally does not object to specific amendatory corrective action, as long as it is appropriate to remedy the concern that caused the corrective action. However, even where an agency might be justified in restricting revisions in connective action, an agency may not prohibit offerors from revising related areas of their quotation which are “materially impacted” by the amendment. Therefore, GAO considers the extent to which an amendment, and the permitted changes in response to it, materially impact or are inextricably linked with other aspects of a vendor’s quotation.

GAO noted that Castro included the use of personnel and labor hours outside of the number of personnel specifically proposed for Optional Task 3, and that at least two personnel were proposed by Castro to perform across all three tasks. The DHS corrective action amendment materially impacted aspects of Castro’s quotation outside of the areas that the agency permitted for revision of the quotations, and the limitation on quotation revisions was therefore unreasonable.

The takeaway: Agencies sometimes limit changes to one section of a proposal or a quotation in an amendment or corrective action. In other situations, agencies may permit technical or language changes, but prohibit pricing changes in contractor’s proposals or quotes. A contractor should carefully evaluate any amendment that limits proposal or quotation revisions. If the revisions materially impact areas where revisions are prohibited, the contractor should consider submitting a protest against the limitation.

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