

ALWAYS CURE ANY MATERIAL OMISSION IN YOUR FINAL REVISED PROPOSAL

Copyright 2018, Richard D. Lieberman, Consultant and Retired Attorney

Offerors must take advantage of every opportunity they are given to maximize their chance for award in negotiated procurements. Unfortunately, not ever offeror seems to understand the way the system works. Geotech Environmental Services lost an opportunity to win an Air Force contract to construct water wells at Malmstrom Air Force Base, Montana because it failed to correct a material omission in its proposal when it submitted a final proposal revision. *Geotech Envir. Svs.*, B-415035, Nov. 8, 2017.

The Federal Acquisition Regulation (“FAR”) makes it clear that in negotiated procurements, if negotiations (discussions) are held with an offeror in the competitive range, the intent of such discussions is to “allow[] the offeror to revise its proposal.” FAR 15.306(d). At a minimum, the contracting officer must indicate to or discuss with the offeror “deficiencies, significant weaknesses and adverse past performance to which the offeror has not yet had an opportunity to respond.” FAR 15.306(d)(3). At the conclusion of discussions, each offeror in the competitive range must be given an opportunity to submit a final proposal revision. FAR 15.307(b). The primary objection of this process of discussions followed by final proposal revisions is to “maximize the Government’s ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.” FAR 15.306(d)(2).

In *Geotech*, the solicitation required offerors to provide evidence of prior performance of at least two domestic water well projects where a licensed geologist logged the well stratigraphy (rock layers) during the well drilling operation. Although Geotech’s price was lowest of the six offers received, the Air Force found its proposal technically unacceptable under the “well stratigraphy” factor. The agency conducted discussions because of the wide price disparity among the proposals.

The agency sent three evaluation notices to Geotech, one of which informed the offeror that its proposal had been found technically unacceptable under the well stratigraphy subfactor, because the proposal did not note whether a licensed geologist performed the logs for one of Geotech’s projects. The notice requested that Geotech clearly state whether or not a licensed geologist logged the stratigraphy for that project.

In its final proposal revision, Geotech did not expressly confirm that a licensed geologist had logged the stratigraphy for the questioned project. In the protest, Geotech argued that “it was presumed that a licensed geologist logged the well stratigraphy...” That wasn’t good enough, since GAO has repeatedly stated that it is an offeror’s responsibility to submit a well written proposal that affirmatively demonstrates compliance with solicitation requirements—and Geotech had failed to do that. Agencies are not required to infer information from an inadequately detailed proposal or to supply information that the offeror failed to provide. Finally, the GAO noted that the Air Force was under no obligation to seek *further* clarifications or give Geotech a second opportunity to cure the defect in its proposal in response to the evaluation notice. The GAO denied Geotech’s protest and confirmed the Air Force’s award to

another contractor whose price was 25 percent higher in price, but whose proposal was fully technically acceptable.

The Takeaway: Whenever an agency requests clarifications in your proposal, always provide a clear and unquestionable clarification. When an agency holds discussions and identifies a deficiency, significant weakness, a weakness or a technically unacceptable issue in your proposal, take the recommendation to heart. Carefully consider such criticism and take action to correct your proposal when you submit a final proposal revision. Remember that FAR 15.001 defines important terms as follows:

- *Deficiency* is a material failure of a proposal to meet a government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.
- *Weakness* mans a flaw in the proposal that increases the risk of unsuccessful contract performance.
- A *significant weakness* in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

Any of the above flaws in your proposal will make it technically acceptable or will significantly downgrade your technical score, and any such issues must be addressed in your final revised proposal if you are serious about receiving award of the contract.

For other helpful suggestions on government contracting, visit:
Richard D. Lieberman's FAR Consulting at <https://www.richarddlieberman.com/>, and Mistakes in Government Contracting at <https://richarddlieberman.wixsite.com/mistakes>
