

DON'T HURT YOUR CHANCES TO WIN IN YOUR FINAL PROPOSAL REVISIONS

Copyright Richard D. Lieberman, Consultant and Retired Attorney

In negotiated procurements, at the conclusion of discussions (negotiations), every offeror in the competitive range must be given an opportunity to submit a final proposal revision. FAR 15.307. It's very important that offerors use care in preparing final proposal revisions, addressing only the deficiencies or weaknesses that the Government has identified, and *not changing anything else*. Other changes may introduce new weaknesses or deficiencies. A recent Government Accountability Office ("GAO") case demonstrates that the agency does not need to give you a chance to submit a second final proposal revision. *TASC, Inc.*, B-412674, August 25, 2016. So if you introduce problems in your final offer, you are likely to lose the contract award.

First, a refresher on discussions and final proposal revisions. (From PCI Blog, *Six Recurring Agency Mistakes in Discussions*, May 9, 2016 by Richard D. Lieberman, Consultant.)

Discussions are exchanges between the Government and offerors in the competitive range that are undertaken with the intent of allowing the offeror to revise its proposal. Discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. FAR 15.306(d). Further,

- (1) Discussions must be tailored to each offeror's proposal;
- (2) The primary objective of discussions is to maximize the Government's ability to obtain best value; and
- (3) At a minimum, the contracting officer must indicate to, or discuss with, each offeror, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. FAR 15.306(d).
- (4) A "**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. FAR 15.001.
- (5) A "**weakness**" is 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. FAR 15.001.

Final Proposal revisions: At the conclusion of discussions, every offeror in the competitive range must be given an opportunity to submit a final proposal revision. FAR 15.307.

In *TASC*, a procurement for intelligence advisory and assistance support services, the solicitation explicitly required offerors to submit resumes for 15 "non-key" personnel. The solicitation stated that any proposal that failed to meet a material requirement or were otherwise assigned a deficiency would be ineligible for award.

The agency had very specific requirements (degrees, experience, etc.) for these non-key personnel. TASC submitted an initial proposal with resumes for its 15 non-key personnel. After the final round of discussions, TASC included for the first time in its final proposal revision the resume of an individual (identified as “Ms. D”) as a replacement for one of the 15 required non-key personnel resumes. The Government’s evaluation of Mrs. D’s resume was that it failed to meet the experience and years of service requirements in the solicitation. TASC’s final proposal was assigned a deficiency, and was deemed ineligible for award due to that deficiency.

GAO denied the protest stating that “agencies are not required to reopen discussions to afford an offeror an additional opportunity to revise its proposal where a weakness or deficiency is first introduced in the firm’s revised proposal.”

The takeaway is important. In final proposal revisions, don’t change your proposal unless the government identifies a weakness or deficiency that needs to be changed. You may inadvertently introduce a *new* weakness or deficiency that could cause a downgrading in your score, or worse, a disqualification for award, as happened to TASC. There is only one reason to make a change in a final proposal revision that was not called out as a deficiency or weakness—where you must change something in your offer, such as the resume of a person who has died or is no longer available, or an unavailable subcontractor, where you must identify your suppliers. (It is not clear in *TASC* why Ms. D’s resume was submitted as a replacement. If the person she replaced was no longer available, then TASC would have been forced to replace him/her with Ms. D).