

OFFERORS WHO FAIL TO FOLLOW PROPOSAL INSTRUCTIONS

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This blog has frequently noted the crucial importance for offerors to comply with instructions in a solicitation. This is particularly important in negotiated procurement, but also includes sealed bidding. Two new protest decisions from the Government Accountability Office (“GAO”) demonstrate once again that the penalties are often severe. The two protests are *Valbin Corp.*, B-416680, Nov. 9, 2018 and *McCann-Erickson USA, Inc.*, B-414787.2, Nov. 14, 1980.

Valbin involved a procurement by the Defense Intelligence Agency for linguist operations at the National Media Exploitation Center. The Request for Proposals (“RFP”) advised that proposals were required to include “sufficient detail for evaluation and validity of stated claims,” and limited the technical approach in the proposal to 25 pages. *Valbin*’s technical approach was 25 pages long, but also included five appendices totaling an additional 25 pages. The Contracting Officer refused to permit a technical evaluation of the excess 25 pages in the appendices. *Valbin* protested the technical evaluation, disputing the six weaknesses assessed against its offer.

The GAO denied the protest, concluding that the agency evaluation was reasonable, consistent with the evaluated criteria and adequately documented. Some of the weaknesses identified by the agency and endorsed by the GAO were:

- No detail regarding the company’s experience or expertise in identifying or recruiting hard-to-fill linguists.
- No details regarding how it would provide 24/7 operational support, including any details of roles, responsibilities or coordination.
- Few details on the offeror’s approach to support operational requirements and workflow management.
- Incomplete because it did not sufficiently address retention, deployment processing, oversight or the redeployment of linguists.

McCann-Erickson involved a full service contract for advertising and marketing services for the U.S. Army. The Army initially removed *McCann* from consideration because it did not comply with the RFP instructions. *McCann* submitted a protest, noting that the RFP did not contemplate such a “compliance review” to eliminate proposals before evaluating them. (*McCann Erickson USA, Inc.*, B-414787, Sept. 17, 2017, 2017 CPD ¶ 300). The GAO sustained this protest and *McCann*’s proposal was evaluated after discussions were held.

In its Final Proposal Revision, *McCann Erickson* failed to include a cost/price workbook required by the solicitation and also did not include any of the required backup cost/price data that would have been necessary for the agency to evaluate its proposed cost/price. The Army again rejected the proposal because it “could not be evaluated.” The GAO denied *McCann*’s second protest.

GAO noted that prior to the discussions, the Army specifically amended the RFP to state that “[f]ailure to submit the required documentation specified in Section L of this solicitation may

render the Offeror's proposals unevaluatable (sic) and the proposal will be eliminated from the competition without further consideration." In addition, although McCann suggested that the Army could have used the material that it had submitted during discussions, the GAO noted that this material was also deficient, and that the agency had specifically cautioned McCann twice about relying on material presented to the agency during discussions. The Army had advised McCann that "any content not included in the Final Proposal Revisions will not be considered in the final evaluation," and further that the Government would not track back through the data received during discussions in an attempt to evaluate the revised cost/price volume.

The GAO denied the protest, concluding that McCann had twice submitted an inadequately prepared proposal, first during submission of its initial proposal, and again during submission of Final Proposal Revisions. The Army had a right, consistent with the revised wording of the solicitation, to perform a "compliance review" of the proposal.

The Takeaway. It is not clear from either of these two protests if either offeror completely read and fully understood the RFP for the particular procurement. It is clear, however, that neither offeror provided the agency with what it had asked for in the RFP. This demonstrates the crucial importance of a "second look" by a team that does not write the proposal before it is submitted. This "second look" by an impartial reviewer can ensure that the proposal meets the requirements of the solicitation.

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