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Guest Appearance

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**STREAMLINING SOURCE SELECTION BY IMPROVING
THE QUALITY OF EVALUATION FACTORS**

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Almost everyone involved with Government contracting can tell a horror story about a “best value” source selection that involved the development of a lengthy and costly proposal, about a source selection that took two years to complete, and about a protest that delayed an important project and increased its costs. Legislators, policymakers, and acquisition managers are currently looking for ways to “streamline” the source-selection process. I would suggest that the single most effective thing acquisition managers can do to streamline the best value source-selection process is to improve their choices of evaluation factors for award.

Typical RFPs--An Essay-Writing Contest

Consider the typical Request for Proposals (RFP). It includes a statement of work or specification that describes the Government's requirements as well as the Government's preferred contract terms and conditions. It also includes evaluation factors for award like “understanding of the problem,” “soundness of approach,” or “quality of the management plan.” Such RFPs usually instruct offerors to read the statement of work or specification and then to propose a plan or “approach” to doing the work, but caution offerors that approaches that depart from the terms of the RFP may result in rejection of the proposal.

For example, a current RFP for task order “advisory and assistance services” includes a statement of work that describes about 14 generic tasks and subtasks, such as “[a]dvice and assist the [agency's] Executive Committee on the updating and/or development and implementation of a new [total quality management (TQM)] plan,” and “[d]esign and facilitate a wide variety of structured activities. . .for the purpose of organizational improvement.” The RFP states that technical factors will comprise 80% of the total evaluation weight and lists four equally important technical factors: (1) company background and experience, (2) technical and management approach, (3) personnel qualifications, and (4) plans for use of outside resources. The RFP goes on to state that technical proposals must contain “detailed explanations of proposed approaches to performing and accomplishing the work. . .and a specific outline of the actual tasks proposed to be performed in order to complete the work.” The RFP warns: “Repeating the work statement without elaborating on the specific tasks to be performed is unacceptable.”

In response, offerors will probably submit lengthy technical proposals because of the weight assigned to technical factors, the vagueness of the tasks in the statement of work, and the warning that offerors must submit an elaborate response or risk rejection. (The RFP did not include a proposal page limitation.) The proposals will be expensive to produce, to read, and to evaluate. How much of this is necessary?

RFPs typically include two broad categories of “technical” or “management” evaluation factors. The first category relates to factual matters about offeror capability and includes such factors as experience, past performance, key personnel qualifications, capability of facilities, and product specifications. The second category relates to offerors' descriptions, promises, or predictions about what they will do, achieve, or deliver in the future. It includes descriptions of their plans, procedures, “design concepts,” and promises or predictions about their performance or the performance of their products. This category includes such factors as “understanding the problem,” “soundness of approach,” and “merits of the proposed design.”

It is in response to the second category of factors that offerors must write lengthy proposals, especially when a RFP combines those factors with instructions to provide detailed explanations and warnings not to repeat the work statement without elaboration. These factors relate to assertions about future events, which are not verifiable. To respond to the first category of factors, an offeror should report facts. But to respond to the second category of factors, the offeror must invent something to say.

When an RFP includes a complete description of the Government's requirements and terms and conditions, the evaluation factors constitute little more than a test of the offerors' knowledge and rhetorical skill. The offerors' technical and management proposals will play little or no role in contract formation. They will simply provide information for the Government to use in evaluating and comparing the offerors. The Government assumes that the technical and management proposals will indicate the offerors' relative capabilities and prospects for success. Thus, RFPs that include such factors effectively compel offerors to compete in essay-writing contests. Source-selection decisions based on these criteria too often reflect the ability of an offeror to write a good essay rather than its ability to do the work. (For a classic example, see *SMS Data Products Group, Inc.*, GSBICA 8589-P, 87-1 BCA ¶ 19496, 1986 BPD ¶ 206.) The reaction of competent contractors to such requirements is entirely predictable. See an article in the proceedings of the fifth annual conference of the Association of Proposal Management Professionals, which was held in Washington, D.C. this past May, suggesting that companies develop reusable “plans” and “TQM blurbs” as a means of winning these essay-writing contests.

An offeror's assertions--predictions, plans, and promises--about the future in a proposal are not reliable bases upon which to judge its capability and prospects for success for several reasons. *First*, the proposal may reflect the knowledge and writing skill of consultants and proposal writers rather than the performance capability of the offeror. *Second*, even if the offeror did write the proposal, the ability to promise, plan, or predict does not demonstrate the ability to execute. *Third*, a plan is merely a statement of intentions, made without perfect knowledge about the future. The future is rarely as we hope or expect it to be, and most projects do not proceed as planned. The ability to write a good plan does not demonstrate the ability to respond effectively to unanticipated contingencies. *Fourth*, the Government may lack the expertise to evaluate proposed plans and designs. Indeed, as users rather than designers, Government personnel may not be able reliably to predict project success based on a performance plan or predict product or system mission performance based on a conceptual design. Requirements to write proposals in response to factors in the second category increase the cost and time of source selection. But the claim that such proposals are essential to sound source-selection decisionmaking is dubious. Government agencies can streamline the source-selection process by omitting this second category of factors.

Illusory Benefits Of BAFOs

Agencies further increase the cost and time of source selection when they conduct discussions to tell offerors what they do not like (deficiencies) about their assertions, plans, conceptual designs, or predictions and then ask them to revise and resubmit them as best and final offers (BAFOs). (Agencies are telling offerors: “You flunked the first essay exam, but we'll give you a chance to take it again.”) The BAFO procedure may add little of value because assertions, plans, predictions, and conceptual designs may not mean much. Moreover, the procedure may encourage offerors to reduce prices or costs and fees excessively in a desperate attempt to win the contract. The procedure's benefits may thus be doubly illusory. The BAFO may not only add nothing of value, it may plant the seeds of conflict and poor performance.

RFPs For Research And Development

What about large research and development contracts (or design-build construction contracts)? Many would argue that solicitations for such programs should request proposals that include detailed--albeit preliminary or "conceptual"--design information (e.g., problem definition, feasibility, functional flow, requirements allocation, tradeoff, and other analyses), systems engineering plans, configuration management plans, and so forth. Such proposals often contain thousands of pages, cost millions of dollars to produce, and require months to study and evaluate. Certainly, tradition weighs in heavily on the side of those who argue the need for such proposals.

But one must wonder how many of the large systems that have been fielded by the National Aeronautics and Space Administration, the Department of Defense, and other agencies are significantly different from the design concept in the winning proposal. The relationship between the winning concept and the final product is often distant because the initial statement of Government requirements tends to be vague or ambiguous, incomplete, and tentative and because the factors that drive and constrain those requirements are often highly dynamic. The plans and proposed designs solicited by RFPs are, in fact, sales presentations. They are designed to persuade the Government that the offeror has the capability to succeed. They are the answers to essay questions.

Here are three propositions, offered in response to those who argue for the need for detailed technical proposals for research and development programs:

(1) In selecting a system development contractor, the Government is entering into a partnership that is established on the basis of a developmental capability and an expectation of success.

(2) Proposed project plans and preliminary designs will count for little in the long run because initial statements of requirements are usually vague or ambiguous, incomplete, and tentative, and because the factors that drive and constrain requirements will change during the course of development. Therefore, they are not the most reliable bases for predicting success in research and development procurements.

(3) Contractor experience, past performance, and key personnel qualifications are far more reliable indicators of developmental capability and predictors of success than factors such as "soundness of approach" or "merits of proposed design."

The larger and more complex the system and the longer the period of development, the greater the force of these propositions.

Rethinking Evaluation Factors

The most reliable indicators of an offeror's capability and prospects for success are its record of experience, its reputation for past performance, and the qualifications of its key personnel. Add price or estimated cost and fee, and you have all the best value evaluation factors most agencies will ever need to select a contractor. For supply contracts, the Government may need to include a factor relating to verification of product specifications. Facility capability and capacity also may be important. Omitting essay contest factors and their associated proposal preparation instructions will eliminate the cost and time associated with the preparation, evaluation, discussion, and revision of lengthy technical and management proposals. (For an excellent example of an effective, streamlined procurement, see *CORVAC, Inc.*, Comp. Gen. Dec. B-244766, 91-2 CPD ¶ 454, a protest involving a procurement for hazardous waste processing in which the only evaluation factors were price and past performance.)

By rethinking their ideas about evaluation factors for award, acquisition managers can reduce the time and cost associated with best value source selection. Better evaluation factors will improve the quality of competition in Government contracting and benefit both Government and industry. Beneficial change can come without new legislation, new policy, or rewriting the Federal Acquisition Regulation. *Vernon J. Edwards*

• **ADDENDUM** • The length and complexity of the competitive negotiation source-selection process is one of the critical issues in Government procurement. If you accept our definition of streamlining--a limited number of evaluation factors, short proposals, small evaluation teams, and fast evaluation and award--it seems apparent that the number and quality of the evaluation factors is the driving element in the process. See our discussions in *Acquisition Streamlining: Revamping the Competitive Negotiation Process*, 4 N&CR ¶ 38, and *Competitive Negotiation: A Better System?*, 6 N&CR ¶ 1. As John said last month in *Oral Presentations in Competitive Negotiation: Delayed Second Opinion*, 8 N&CR ¶ 49: "Ask stupid or irrelevant questions and you get stupid or irrelevant answers." The problem is that these questions greatly increase the cost and complexity of the source-selection process and the answers become the basis for the ultimate selection decision.

Vern raises the key question regarding evaluation factors--*how important is it to obtain a description of how each offeror will perform the work?* He answers that a description is rarely important and frequently misleading, and I'm not sure he isn't correct. But let me approach the problem from a slightly different perspective by attempting to provide a generic framework without regard to whether the agency is acquiring services, research and development, or design-build construction. It seems to me there are two subsidiary questions that must be answered to find the correct solution to the problem.

First, *has the agency decided how it wants the work to be performed?* I see many procurements where the answer is yes--not because the technique is reflected in the RFP but because of the scoring of the proposals. Many proposals are given low scores because they do not propose the technique the agency was looking for. What has happened is that the agency has not stated the technique it is looking for in the RFP but has left it to the offerors to figure out. Worst of all, once the procurement is structured in this way, the agency may conclude that it may not, in the written or oral discussions, tell the offerors that didn't figure it out what it is looking for because that would be "technical leveling." So the agency says that the answer is a deficiency and lets the offeror try again. This process makes source selection a game that has little connection to how the contract will be performed. But the root of this problem is not that the technique for performing the work was used as an evaluation factor but that the agency was not candid in the RFP. My suggestion is that the rule should be that *when an agency has a preferred technique, it must be stated in the RFP*. See our fuller discussion in *Postscript: Best Value Procurements*, 7 N&CR ¶ 10.

Following this rule will eliminate the technique evaluation factor from the RFP when the agency will consider no alternative techniques to perform the contract. But what if the agency is open to alternative techniques or has no preference? That is where my second question comes into play--*does the agency intend to incorporate the technique proposed by the winning contractor into the contract as a binding legal requirement?* We have previously concluded that this is a murky area of Government procurement law in *The Status of Technical, Management, and Cost Proposals: Are They Part of a Negotiated Contract?*, 7 N&CR ¶ 37. Suffice it to say, here, that the agency must answer the question to complete the analysis I am proposing. If the answer is yes--that the agency intends to make the performance technique of the winning contractor a binding legal requirement--the technique should be a significant evaluation factor and written proposals should be solicited. If the answer is no--as Vern suggests it should generally be--then we arrive at the heart of the question of whether there is any utility in using the technique as an evaluation factor and seeking essays on the subject.

Let me be perfectly clear on the limits of the question. We have screened out those situations where the agency knows the technique to be used and those situations where the agency wants to bind the ultimate contractor to the technique proposed. That would appear to leave us with those situations where the agency isn't sure that the proposed technique will do the job but believes the winning contractor's essay demonstrates the best understanding of the problem. This is precisely the method that we use in law school to test the *analytical ability* of our students, and I can testify that it works very well. My only caveat is that a student with excellent writing skills can enhance the professor's view of his or her analytical ability compared to the student with poor writing skills. So the essay exam is actually a test of two things-- analytical ability and writing skill. But does *analytical ability and writing skill equate to successful contract performance?* Vern answers no, and I am inclined to agree with him.

This leads me to the following set of rules:

(a) When an agency has determined the preferred technique for performing the contract work, it should state the technique in the RFP.

(b) When an agency has decided to incorporate the technique proposed by the winning offeror in the contract, the technique should be a significant evaluation factor and written proposals on the technique should be solicited.

(c) When an agency has decided not to incorporate the technique in the contract, it should only include the technique as an evaluation factor when it has decided, after thoughtful analysis, that evaluation of the proposed technique will permit the agency to make a reliable prediction of successful contract performance.

Each evaluation factor asking for a description of how the contractor is going to perform the contract should be subject to this rigorous analysis. If the agency decides to make the proposed technique an evaluation factor, the agency will then have to decide whether the contractor's description of the technique will be submitted in the form of a written proposal or an oral presentation. See *Oral Presentations in Competitive Negotiation: Could They Be Used in Lieu of Written Proposals?*, 8 N&CR ¶ 48.

We believe that if these rules are followed, agencies will greatly reduce--if not eliminate--the number of instances where they incorporate essay-writing evaluation factors in their RFPs.