



EXECUTIVE summary

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This Issue's Theme: **The Art of Persuasive Proposal Writing**

Inside

- 1 Hiring and Retaining Outstanding Proposal Writers
- 4 Should I Reuse Graphics?
- 6 The Art and Science of Writing a Masterpiece
- 9 Who Are We Writing TO Anyway?
- 11 The Proposal Dentist: Extracting a Technical Approach from the Technical Experts
- 13 Making the Team
- 15 What Ernest Hemingway Can Teach Us About Proposal Writing
- 18 Nothing is Great Right Out of a Can...
- 20 The Importance of Persuasive Proposal Writing?
- 22 Educational Fall Networking Event "Pricing for Today's Federal Environment"
- 23 Making Today's Vision Tomorrow's Reality
- 25 Are Consultants the Answer?
- 28 APMP-NCA 2011 Corporate Sponsors





Legal Corner: The Importance of Persuasive Proposal Writing?

by Shlomo Katz



I have argued before in this column that writing a proposal has many similarities to writing a college essay. Without a doubt, among the most important of these similarities is that your written work—be it an essay or a proposal—must be persuasive. Let me try to persuade you that this is true.

We have all seen proposals that are not persuasive; i.e., they do not convince the customer that the submitter of the proposal is the best choice for the job that the solicitation describes. Sometimes this is because the offeror assumes that the would-be customer already knows what the offeror has to offer. Other times it is because the offeror assumes the answer is obvious. As a result, the offeror fails to adequately articulate its technical or management approach, its experi-

ence, or its most relevant, recent past performance. Whatever the reason, failing to demonstrate that you are the best one for the job is a good way to lose a competition, as the Government Accountability Office (“GAO”), one of the tribunals that hear bid protests, has explained:

It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. [1]

Also:

It is an offeror’s responsibility to submit an adequately written proposal that establishes its capability and the merits of its proposed technical

[1] Matter of: T-C Transcription, Inc., B-401470.2, 2010 CPD ¶ 50

approach in accordance with the evaluation terms of the solicitation. [2]

Agencies are not required - indeed, they are highly limited in their ability - to read between the lines of a proposal or to base an award decision on information outside of the proposal.

To illustrate, take a bid protest where GAO said a deficiency had been assigned to the protestor’s proposal “for failing to address how it would mobilize resources to accomplish the transition.” [3] The protestor argued that the RFP did not require the firm to explain how it would perform the transition and, anyway, the transition requirements were undemanding, and thus required only limited resources, and correspondingly little explanation. Finally, the protestor argued, “The entirety of [its] proposal unquestionably demonstrated the firm’s ability to mobilize resources for transition, especially given the fact that the firm listed its existing office in its home region.”

The agency (the Department of Housing and Urban Development) responded that the protestor’s proposal did not address any transition activities, and this omission was reasonably evaluated as a deficiency. HUD argued that an agency cannot make a “leap of faith” that an offeror is prepared to take over responsibility for an inventory of properties from

[2] Matter of: Kuhana-Spectrum, B-401270, 2010 CPD ¶ 61

[3] Matter of: Patry Family Realty, Inc., B-402296.7, 2010 CPD ¶ 263

the incumbent contractor where the firm’s proposal fails to demonstrate that. HUD further argued that, particularly in light of the troubled state of the domestic housing market now, the agency cannot simply assume that an offeror will capably assume its property management duties.

GAO agreed with the agency, noting again that an offeror bears the responsibility to submit an adequately written proposal that demonstrates the merits of its approach, and risks rejection if it fails to do so. GAO continued:

Here, the RFP notified offerors that the technical approach evaluation would consider the offeror’s ability to mobilize resources to accomplish a variety of transition tasks, from establishing an office, to actually taking responsibility for managing an inventory of properties from the incumbent contractors. [The protestor] failed to present an approach to transition, or otherwise demonstrate its ability to accomplish those tasks. We are not persuaded by [the protestor’s] arguments that the evaluators should have discerned its response from the proposal as a whole, and that the transition tasks are so simple that no specific response was needed beyond the indications in its proposal that [the protestor] currently performs property management services in its home office area.

Failing to be persuasive can be very damaging, especially if your better solution happens to be more expensive than the competition’s. Customers—from the U.S. Government to state and local government agencies to commercial buyers—are facing nearly unprecedented pressures to cut costs. While a best value solicitation allows

the Government to choose the proposal with the higher technical score over the lower-cost alternative, an agency will be hard-pressed to justify award to a company whose proposal does not persuasively demonstrate that it is offering the best value. Add to this that both GAO and the Court of Federal Claims are asserting that their protest jurisdiction has been expanded by recent statutory changes, and that contractors in today’s highly competitive environment may be more willing to use the protest option, and it becomes even more clear that you must be persuasive. This does not mean saying in the cover letter, “We offer the Government the best value.” It means writing a proposal that clearly demonstrates the value that the offeror would bring to the work.

As the other articles in this issue of Executive Summary illustrate, persuasive proposal writing is an art. But don’t confuse persuasive writing and art. Graphics can be very helpful and often are necessary, but remember that GAO and the courts have consistently held that, where graphics and text conflict, the text takes precedence.^[4] For example, in a protest involving award of a contract for military transport using “self-sustaining” refrigerated shipping containers, the solicitation in that case sought a contractor to transport food to military personnel at Guantanamo Bay and it required the offeror to propose refrigerated shipping containers that had power sources separate from the ship’s power source. The winning bidder included in its proposal a picture of a compliant

[4] See Shlomo D. Katz, “Is One Picture Really Worth A Thousand Words?” in Executive Summary Volume XIV, Issue 3 (APMP-NCA, Summer 2008) p.12

GAO and the courts have consistently held that, where graphics and text conflict, the text takes precedence.

container, but the text of the proposal clearly implied that the containers did not in fact have independent power sources. In that case, the United States Court of Federal Claims said, it was unreasonable for the contracting officer to ignore the text and rely on the picture in making the award.^[5] At the end of the day, what matters is persuasive writing.

While persuasive proposal writing may be an art, there also is a need for scientific precision. Agencies may allow mistakes to be corrected; then again, they may not. In the latter case, GAO is unlikely to be sympathetic, as is illustrated by a protest in which the protestor argued that the agency unreasonably failed to adjust the protestor’s cost downward to correct an error in its proposal.^[6] The protestor acknowledged that its proposal erroneously applied the G&A rate to a certain element - GAO’s published decision deletes the identity of the particular element - but the narrative portion of its proposal explained that G&A is not applied to that element. GAO stated:

[The protestor] asserts that any reasonable evaluation of its cost proposal should have disclosed the error, and the Navy should have

[5] *Transatlantic Lines LLC v. United States*, 68 Fed. Cl. 48 (2005)

[6] *Matter of: EER Systems, Inc.*, B-290971.3, 2002 CPD ¶ 186

corrected it as it did with errors in other cost proposals.

But, GAO rejected this argument, explaining:

It is the offeror’s burden to submit an adequately written cost proposal for the agency to evaluate, especially where, as here, the offeror is specifically on notice that the agency intends to make award based on initial proposals without discussions. In this case, the RFP advised offerors that proposal volumes must be internally consistent or they would be considered unrealistic and might be considered unacceptable.

. . . [The protestor] now argues that a sentence in the narrative portion of its proposal should override the methodology shown in its spreadsheets. . . That sentence does not state, as [the protestor] asserts, that G&A is not applied to [DELETED]. Instead, the sentence states that “G&A is applied to [DELETED]”. [The protestor] has not persuaded us that the narrative portion of its proposal expressed its intent so clearly as to require the Navy to override the methodology it actually applied to resolve what [the protestor] concedes is an internal inconsistency.

Writing persuasively is one key component of increasing your win rate. I hope you are persuaded.

Shlomo D. Katz is Counsel in the Washington, DC office of the international law firm of Brown Rudnick LLP, a Corporate Sponsor of APMP-NCA, specializing in all aspects of Government contracting. If you have any questions about these or other proposal or contracting issues, please contact Shlomo at 202.536-1753 or skatz@brownrudnick.com.

Educational Networking Event on Nov. 16, 2011

“Pricing for Today’s Federal Environment—Come meet the pricing gurus and gain the competitive edge!”

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Agenda, including a full sit-down dinner:

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- 6:15 Dinner and Chapter business
- 7:15 Panel Discussion and Q&A
- 8:15 Adjournment

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5:30-8:30 PM

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metro lines)