



## Legal Corner: Can I Make That Call?

### Marketing and the Procurement Integrity Act

Shlomo D. Katz, Counsel, Brown Rudnick LLP

As seasoned capture professionals know, an important part of the “win” strategy is selling your product or service to key Government decision-makers before the procurement has begun. As those same professionals also know, there is a point when agencies will no longer allow such “sales calls.” What is not always clear is where those restrictions come from, and when, to whom, and to what they apply.

The Federal Acquisition Regulation (“FAR”) encourages “[e]xchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals.”<sup>1</sup> The FAR explains that the purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government’s requirements, and enhancing the Government’s ability to obtain quality supplies and services at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award<sup>2</sup>.

In contrast, exchanges with industry after receipt of proposals are limited by FAR § 15.306(e). Moreover, the FAR cautions, even exchanges before receipt of proposals must be in accordance with FAR § 3.104, the FAR section that implements the federal Procurement Integrity Act (“PIA” or “the Act”).

The PIA protects the integrity of the procurement system by (1) regulating access to procurement information, and (2) regulating employment discussions between agency officials and actual or potential contractors. The article will not address the latter aspect of the Act. With respect to the former, the PIA prohibits present or former Government officials, as well as certain consultants to the Government, who by virtue of their positions have or had access to contractor bid or proposal information or source selection information, from knowingly disclosing such information before the award of a Federal agency procurement contract to which the information relates.<sup>3</sup> Also, the Act prohibits any person (including bidders) from knowingly obtaining contractor bid or proposal information or



source selection information before the award of a Federal agency procurement contract to which the information relates.<sup>4</sup>

Note that the PIA and the implementing FAR regulations do not actually prohibit bidders from meeting with agency officials before the due date for receipt of proposals. To the contrary, FAR § 3.104-4(e)(3) states: “This section does not restrict or prohibit . . . [i]ndividual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur[.]” Nevertheless, agencies tend to establish, either by regulation or less formal means, a cut-off point after which all contacts between bidders and officials involved in the procurement are prohibited. Sometimes this information is contained in the Source Selection Plan, which is not a public document.

The prohibition on obtaining source selection information does not extend to information that is already public.

Thus, the Government Accountability Office (“GAO”) denied a protest against an award where the eventual winner called a “friend” in the agency and obtained historical information about predecessor procurements.<sup>5</sup>

In a protest involving a procurement for a helicopter avionics system, the protestor (Lockheed) complained that a member of the source selection team had talked to a competitor (IBM) at a trade show and had made suggestions about how IBM could improve its design. The official admitted that he had sat in the mockup of IBM’s cockpit and offered some comments. Nevertheless, GAO denied the protest because the design elements that the official had discussed with IBM played no role in the selection decision.<sup>6</sup>

One final observation: If you believe your competitor has benefitted from a violation of the Procurement Integrity

Act, *do not sit on your rights*. A protest against a PIA violation is foreclosed forever unless, within 14 days of when you learn of the potential violation, you inform the agency of your belief that a violation occurred.

1. FAR § 15.201(a).
2. FAR § 15.201(b).
3. FAR § 3.104-3(a).
4. *Id.*, paragraph (b)
5. *Gold Appraisal Co., B-259201, 95-1 CPD ¶ 144.*
6. *Lockheed Aircraft Service Co., B-255305, 94-1 CPD ¶ 205.*

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. If you have any questions about these or other proposal issues, please contact him at 202.536-1753 or skatz@brownrudnick.com.

## Social Media Event Points to the Power of the Web

Facebook. LinkedIn. Twitter. As busy proposal professionals, we face a dizzying array of choices for social and business networking. The November 18 APMP NCA Roundtable focused on one of those choices—**Using Social Media for Business and Professional Development**. The presentation explained how best to leverage Web 2.0 to market yourself and your company, gather free business intelligence, and make the most of the new paradigm of information sharing. Three panelists—Betsy Blakeney, Senior Proposal Development Manager at CACI, Inc.; Kelly Olson, Vice President of ConnellyWorks, Inc.; and Catherine Read, Owner of Creative Read, Inc.—discussed tips and tricks to take networking to new levels using effective time management.

Several interesting facts were revealed. For example, if Facebook was a country, it would be the world’s fourth largest; 80 percent of all companies use LinkedIn for recruiting; and you can send your Twitter “tweets” to both LinkedIn

and Facebook to maximize your message. Panel Moderator Briana Coleman, Senior Consultant at Lohfeld Consulting Group, moderated a lively discussion that focused on moving from passive participation to active contribution.

**Using Social Media  
to Boost Your Proposal Center**

...your proposal colleagues are using  
...0 applications like Facebook, ...  
...Twitter, and LinkedIn to connect with others and  
...improve their job performance and professional careers.

...the social media to get more clients, increase your chances in the job  
...answers to the issues and challenges you face everyday at:

**APMP's November Roundtable**

**November 18, 2009; 5:30 - 9:00 PM**  
Park Marriott, Falls Church, Virginia

*Making the  
most out of a  
new paradigm.*

...er now... Space is Limited!  
...ca.org/announcements/111809\_roundtable