



EXECUTIVE summary

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This Issue's Theme: **Oral Presentations**

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Oral Presentations

by Shlomo Katz



Once quite unusual, oral presentations are now common in Federal Government procurements. Naturally, like other aspects of the procurement process, oral presentations raise their share of legal questions. To help you better prepare for, and take advantage of future oral presentations, this article will survey some of the Government Accountability Office (“GAO”) bid protest decisions in which issues arising from orals played a significant part.

The Federal Acquisition Regulation (“FAR”) explains that: “Oral presentations by offerors as requested by the Government may substitute for, or augment, written information.”⁽¹⁾ And, the FAR sets out some basic principles regarding orals. It says:

Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presen-

tations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing and content. Oral presentations provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations for the purposes of this section, although they may be included in offeror submissions, when appropriate.⁽²⁾

Still, as is the case with so many FAR provisions, additional guidance relating to procedures for and best practices regarding orals must be gleaned from GAO’s bid protest decisions.

Recording Oral Presentations

– It is a best practice for the Government to record oral presentations. This protects both the Government and offerors in the event that disputes later

arise about what was actually said. In Resource Dimensions, LLC⁽³⁾, the Government did record the presentation, but it did not record the Q&A session afterward. Instead, the contract specialist took notes. The offeror disputed the accuracy of those notes, and eventually a consensus was reached about what the questions and answers actually were. However, the Technical Evaluation Panel members apparently were not informed of the consensus notes and instead relied on the original version. As a result, the offeror’s protest was granted.

There are several lessons here: First, offerors should designate a member of their team to keep notes of the presentation. Second, you should inquire how the customer intends to memorialize the orals and you should ask for a copy of the recording, notes, etc. Finally, if the Government refuses to provide a copy, then, if a protest becomes necessary, be sure to tell your

attorney about the existence of recordings or notes so that the attorney will know to request them from the agency in the protest proceedings.

“Orals matter. The Government is not holding them just for a chance to shake your hand.”

Oral Presentations As An Evaluation Factor

– In *Brooks Range Contract Services, Inc.*⁽⁴⁾, the protestor asserted that the selection decision was unreasonable because it was based in part on consideration of the oral presentations. The protestor claimed that, because the oral presentations were not listed in the RFQ as an evaluation factor, it was improper for the agency to include the presentations in the evaluation. GAO disagreed, however. While the protestor was correct that the solicitation did not include the oral presentations as a separate evaluation factor, such an express designation was not required. Vendors were specifically advised that the oral presentation would become part of the quotation package, and the solicitation specified that oral presentations were to cover information related to performance of the contract. Therefore, it was implicit that the information presented would be considered in the selection decision.

The most important lesson here is that orals matter. One wonders if the

protestor in that case did a less than stellar job on its oral presentation because it did not think the presentation counted. Don't make that mistake; the Government is not holding orals just for a chance to shake your hand.

Orals As Discussions – Two contrasting cases involving oral presentations highlight the important point that the Government must treat all offerors equally. This includes holding discussions with all offerors in the competitive range if discussions are held with any.

In *Sierra Military Health Services, Inc.*⁽⁵⁾, the protestor complained that the agency had held discussions with only one offeror and allowed that offeror to submit proposal revisions following its oral presentation. GAO ruled that agency's communications with the awardee during oral presentation did not constitute discussions, and the agency was not required to conduct discussions with and request revised proposals from all offerors in the competitive range. Rather, the information furnished by the awardee after oral presentation in response to agency questions was merely a clarification of information previously furnished by the awardee in its presentation slides and the accompanying oral presentation of the slides.

In contrast, in *Global Analytic Information Technology Services, Inc.*⁽⁶⁾, GAO held that the agency improperly engaged in discussions with the awardee while not holding discussions with other offerors. In this case, the awardee was permitted to submit the required price escalation rate after the conclusion of its oral

presentation, notwithstanding the agency's specific instructions that such pricing information had to be furnished at the outset of the oral presentation.

What do these cases mean for you? Offerors often go into orals hoping to gain more insight into what it will take to win the procurement. Sometimes, offerors are disappointed because the Government team says nothing and asks no questions. Other times, a lively give-and-take occurs. Such a conversation can help you submit a better revised proposal, if you are given that chance. But be careful! The last thing you want is for the Government to talk so much that it is forced into requesting revised proposals from all offerors when it had been planning to award to you based on your initial proposal and oral presentation.

1. FAR § 15.102(a).
2. *Id.*
3. B-404536, 2011 CPD ¶ 50.
4. B-401231, 2009 CPD ¶ 129.
5. B-292780, 2004 CPD ¶ 55.
6. B-298840.2, 2007 CPD ¶ 57.

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