

FED GOV CON

Webinar Wednesdays 2020 Series

JSchaus & Associates

Washington DC

+1-202-365-0598





About Our Webinars:

- Every Wednesday;
 - Complimentary;
 - Recorded;
- YouTube & our Website;
 - No Questions

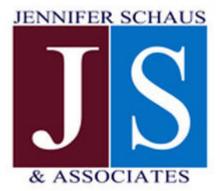




About Us:

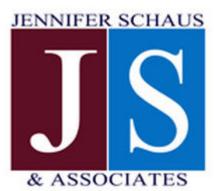
Professional Services for Federal Contractors

```
- GSA Sched;
- SBA 8(a);
- Proposal Writing;
- Pricing;
- Contract Administration;
- Business Development
```





Upcoming Events:

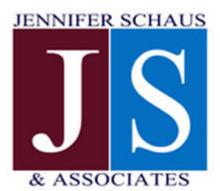




Advertise In Our Newsletter:

Reach 15,700+ Subscribers! Includes Government & Government Contractors

Hello@JenniferSchaus.com





About Our Speaker:

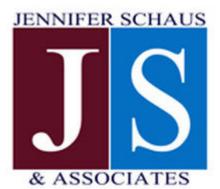
Devon E. Hewitt

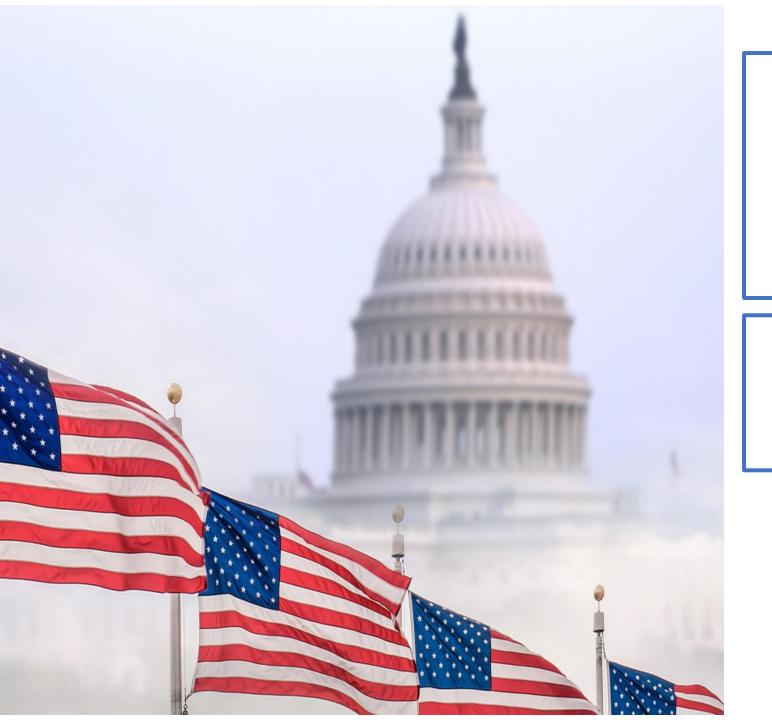
Education:

Smith College, B.A., University of Virginia School of Law, J.D.

Company Name: Protorae Law PLLC

of Years Federal Gov Con Experience: 25+ years

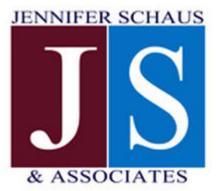




Proposal Writing – View From A Lawyer

Wednesday,

July 8, 2020



View from a Lawyer

- Protest lawyer, participated in over 200 protests
- Reviewed over 200 proposals
- Familiar with GAO caselaw regarding an agency's evaluation of proposals
- Caselaw is instructive as to how contractors should prepare proposals





The Solicitation

- The solicitation means what it says
 - Focus on Sections L (Instructions to Offerors) and M (Evaluation Factors)
- If what solicitation says is unclear, ask a question
 - failure to do so prevents an offeror from challenging an agency's interpretation of a solicitation provision after submission of proposals
 - Issue of "patent" vs. "latent" ambiguity
 - An agency's response to a question is not binding unless it is incorporated into the solicitation per an amendment
- Consider filing a protest
 - Protest of the terms of a solicitation must be submitted *before* the due date announced for submission of proposals





Proposal Preparation

- Follow the instructions contained in Section L
 - GAO will strictly enforce restrictions on page limits; font size; date/time of submission; place and manner of delivery
- Think carefully about including exceptions or caveats in proposal
 - Some solicitations require offeror to state explicitly in proposal that it is *not* taking exception to any of the solicitation provisions or requirements
- Ensure proposal has restrictive legend prohibiting the agency's use of material contained in the proposal for reasons other than evaluation of the proposal





Proposal Submission

- Late is late
- Offeror has the burden of demonstrating proposal was delivered and received by the agency point of contact
 - If hand delivered, must be received by point of contact identified in the solicitation
 - If transmitted electronically, must be received by email address identified in solicitation
 - If uploaded, must be uploaded to the portal identified in the solicitation
- Offer may be accepted if late or received at a contact point other than that specified if agency "mishandled" proposal
- Offerors have limited ability to correct "mistakes" in bids





Proposal Evaluation Generally

- Agency must evaluate proposal in accordance with the evaluation factors included in the solicitation
 - Proposal formatting should mirror evaluation factors
- Agency may award based on the initial proposals received provided that solicitation advises offerors of that possibility
 - Offerors should not hold back in first proposal submission
 - Offerors should not expect that agency will enter into discussions
 - However, DoD provision (DFARS 215.306) requires agency conduct discussions in procurements valued in excess of \$100 million
- Agency not required to search all proposal sections in determining whether offeror has addressed a solicitation requirement





Proposal Evaluation Generally (cont'd)

- Agency not required to hold discussions or more than one round of discussions
 - If an offeror introduces new information in a proposal revision that causes an agency concern, agency not required to raise these concerns with the offeror
 - Unless the agency engages in another round of discussions with other offerors
- Agencies typically evaluate offers to determine if the proposal fails to meet the solicitation's requirements; satisfies the minimum requirements; or exceeds the agency's requirements
 - Agency can assign superior scores to a proposal that includes an approach than exceeds an agency's requirements, but only to the extent *the agency*, vs. the offeror, considers the approach *advantageous to the Government*





Proposal Evaluation: Technical

- Do not "parrot" the solicitation requirements
 - Do not tell agency only what you are going to do; also tell the agency how you will do it
- Failure to comply with a "mandatory, minimum requirement" allows an agency to exclude proposal from the competition
 - Unless solicitation states otherwise
 - Identify the "shall" provisions
 - GAO will strictly enforce education, experience, license, permit or other like requirements
 - Consider including cross reference table if page limits allow





Proposal Evaluation: Past Performance

- References should demonstrate "relevancy"
 - Can be shown in terms of statement of work tasks (most preferable); number of personnel; number of hours; same agency or related agency; incumbent work
- Failure of contacts to return questionnaires will affect evaluation
 - Follow up with references included in proposal
- Agency can consider facts outside the proposal in evaluating past performance
- Agency cannot fail to consider past performance information "too close at hand" to ignore
- Discussion of subcontract past performance should match the areas for which the subcontractor will be responsible during contract performance
- Be careful about referencing past performance of "sister" companies
- But agency should consider past performance of joint venture members





Proposal Evaluation: Pricing, Estimated Costs

- Determination that a price is "reasonable" means the price isn't too high
 - Rarely have to justify pricing in proposal where agency only will conduct a "reasonableness" evaluation
 - "Adequate competition" establishes price reasonableness
- Determination that a price is "realistic" means the price isn't too low
 - Proposal should include facts demonstrating the realism of price proposed
 - Include verbiage linking pricing to technical approach
 - Rely on external studies or sources
 - ERI (direct labor rates)
 - GSA Schedule rates
 - Rely on pricing for other contracts performed
 - If solicitation includes FAR 52.222-44, Statement of Equivalent Rates for Federal Hires, agency must conduct a price realism evaluation





Recommendations

- Have someone review the proposal's compliance with the Section L instructions including page limit, font size etc.
- Use proposal preparation professionals
- Appearances matter
- Technical approach narrative should not only explain the "what" but also the "how"
- Past performance cited in proposal should match SoW requirements and subcontractor past performance should match subcontractor tasks
- Avoid justifying pricing by referring to "internal assessments" etc.; use outside industry sources
- Include a lawyer in red team reviews (have my number?)
 - But if lawyer participates in "competitive decision-making," lawyer cannot represent you in the protest







THANK YOU!

JSchaus & Associates

Washington DC hello@JenniferSchaus.com www.JenniferSchaus.com

+1-202-365-0598

Devon E. Hewitt

dhewitt@protoraelaw.com

703.942.6746

