



FED GOV CON
Webinar
Wednesdays
2020 Series

JSchaus & Associates

Washington DC

+ 1 - 202 - 365 - 0598

JENNIFER SCHAUS



& ASSOCIATES



About Our Webinars:

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

JENNIFER SCHAU



& ASSOCIATES



About Us:

Professional Services for Federal Contractors

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

JENNIFER SCHAU



& ASSOCIATES



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:

Protora Law PLLC

of Years Federal Gov Con Experience:

25+ years

JENNIFER SCHAUS



& ASSOCIATES



Proposal Writing – View From A Lawyer

Wednesday,

July 8, 2020

JENNIFER SCHAUS



& ASSOCIATES

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

2020 – Fed Gov Con Webinar Series - Washington DC

JSchaus & Associates

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

2020 – Fed Gov Con Webinar Series - Washington DC

JSchaus & Associates

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

2020 – Fed Gov Con Webinar Series - Washington DC

JSchaus & Associates

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

2020 – Fed Gov Con Webinar Series - Washington DC

JSchaus & Associates

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 that 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

2020 – Fed Gov Con Webinar Series - Washington DC

JSchaus & Associates

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

2020 – Fed Gov Con Webinar Series - Washington DC

JSchaus & Associates

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 - 2 0 2 - 3 6 5 - 0 5 9 8

Devon E. Hewitt
dhewitt@protoraelaw.com

703.942.6746

