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A Government Contractor's Version Of Everything I Need To Know I Learned In Kindergarten: Follow The Rules

Follow instructions. It's a directive that parents try to teach their children from the day they are born, and that teacher's try to impart on students the moment they step foot into the classroom. Despite the attempts of parents and teachers alike, children often find ways to evade this simple rule. As demonstrated by three recent GAO bid protests, it is not just children that struggle with following instructions; contractors struggle as well to follow solicitation instructions regarding proposal submission such as formatting, page limitations, and submission of resumes—and with consequences far greater than a day without television.

For example, in *Wyle Laboratories, Inc.*, B-412964, B-412964.3, May 27, 2016, the agency issued a solicitation for a task order to provide engineering services to support the F-35 Joint Program Office. The solicitation required offerors to provide a resume for all key personnel containing specified information. Wyle submitted a technical proposal identifying key personnel # 131 as a named male but did not include his resume, while it included the resume of a female for the same position but did not list her for the position. Wyle's proposal also identified an unnamed "contingent" candidate for the key personnel job, without a resume. The agency concluded that Wyle submitted an unacceptable proposal because it could not identify which person would fill the role of Position #131. Wyle protested, asserting that its proposal unambiguously identified the named male as the person to fill the position. GAO disagreed, finding that Wyle's proposal was ambiguous, having listed three different people to fill the same spot. Moreover, GAO explained that even if Wyle clearly identified the male as the person to fill the position, Wyle did not comply with the instruction to include a resume for that person. Instead, Wyle included a resume for only the female. GAO held that Wyle's failure to comply with the instruction to include a resume for all proposed key personnel rendered Wyle ineligible for award, upholding the agency's decision to find Wyle's proposal unacceptable.

In another recent case, *DKW Communications, Inc.*, B-412652.3, B-412652.6, May 2, 2006, GAO found that the agency improperly awarded a contract to an offeror that failed to comply with the formatting instructions contained in the RFQ. Specifically, the RFQ mandated offerors to draft a quotation that did not exceed ten pages, and required offerors to single-space the text. Criterion submitted a quote, but did not utilize single-spacing, instead compressing the line spacing of its technical quote "to be less than 'single-spacing.'" After receiving copies of Criterion's quote, DKW filed a protest explaining that the compressed line spacing did not comply with the RFQ's instructions, and compliance would have caused Criterion's quote to exceed the ten page limit. GAO agreed. It found that the RFQ established mandatory formatting requirements, and Criterion's failure to comply with those requirements gave Criterion a competitive advantage. Moreover, GAO explained that it appeared that Criterion utilized compressed line spacing "in a deliberate and intentional effort to evade the page limitation imposed by the RFQ." Therefore, GAO sustained the protest and recommended the agency reject Criterion's quote if it did not comply with the requirements, costing Criterion a \$260 million order.

In yet another decision, *Tetra Tech AMT*, B-411934.2, B-411934.3, May 17, 2016, GAO found that the agency properly rejected an offeror's proposal for exceeding the page limitation. In this case, after submission of initial quotes, the agency entered into discussions with offerors and, after discussions, requested final revised quotes. In response to a question from another offeror, the agency explained that "the RFQ page limit remains for quote resubmission." Nevertheless, in its revised quote, Tetra Tech submitted a quote that exceeded the page limitation. In its evaluation, the agency excluded pages from Tetra Tech's quotes that went beyond the limit. Tetra Tech protested, asserting that it was permitted to exceed the limit or that the RFQ was ambiguous. GAO disagreed finding that the agency clearly announced that the page limitations applied to the revised RFQ. Therefore, GAO found that the agency's evaluation of Tetra Tech's proposal, after excluding the excess pages, was reasonable—costing Tetra Tech an opportunity for a more than \$50 million award.

It seems so easy—color in the lines; stand in line; comply with the instructions in a solicitation or RFQ. Yet, children—and businesses—cannot seem to follow instructions consistently. Don't be one of those businesses. Before responding to a solicitation or an RFQ, make sure you understand the requirements and the instructions. If you don't, you may cost yourself money before you even start.

If you have any questions about any of the cases discussed in this article, or feel one of your competitors may be skirting the instructions, please feel free to contact Daniel Strouse at 202-342-2550 or dstrouse@cohenmohr.com