

Strategies for a Winning Proposal: Tips and Pitfalls

A Joint Webinar Presented by
Crowell & Moring LLP and
AOC Key Solutions

September 26, 2018

Topics & Presenters

- Introduction
 - Steve McBrady, Crowell & Moring
- The Pre-Proposal Process
 - Rob Sneckenberg, Crowell & Moring
- Proposal Drafting and Submission
 - Ray Thibodeaux, Ellen Perrine, Emily Arnold, AOC Key Solutions
 - Olivia Lynch, Crowell & Moring
- Post Submission Communications
 - Christian Curran, Crowell & Moring
- Questions

The Pre-Proposal Process:

How to Provide Input to the Government about Future Opportunities and Preserve your Rights

The Procurement Cycle

- Continuous cycle:
 - Source selection
 - Bid protest litigation (during and/or after source selection)
 - Contract performance
- Considerations/timelines driven by need for competition

CICA's Competition Mandate

- The Competition in Contracting Act of 1984
 - Passed to foster competition and reduce costs
- Mandates full and open competition
 - I.e., all responsible sources are permitted to submit proposals
- Sets minimum time frames after publication before the procurement can be processed

Full & Open vs. Limited Competition

- Typical full & open competitions:
 - FAR Part 14 Sealed Bids
 - FAR Part 15 Competitive Proposals
- Limited Competitions & Set-Aside Examples:
 - FAR Subpart 8.4 GSA Schedules
 - FAR Subpart 16.5 task and delivery orders
 - Small Business Section 8(a) set-asides
- Sole Source awards with Justification & Approval

Acquisition Planning

- Acquisition strategy—i.e., proposed contract type, terms and conditions, and acquisition planning schedules
- FAR encourages agencies to have exchanges with industry to identify and resolve concerns regarding:
 - acquisition strategy;
 - the feasibility of the requirements, including performance requirements, statements of work, and data requirements;
 - the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; and
 - the availability of reference documents
- Mechanisms: RFIs, industry conferences, draft RFPs, pre-solicitation notices, site visits

Issuance of the Solicitation

- Solicitation must include:
 - Government's requirements
 - Evaluation factors and significant subfactors
 - Information required in offerors' proposals
- The Government must ensure a level playing field and that no offeror receives an unfair competitive advantage
- Important to resolve any ambiguity or confusion in the solicitation prior to proposal submission

Solicitation Review

- Carefully scrutinize:
 - Evaluation criteria
 - Sufficiency of information provided, including clarity of proposal instructions
 - Unduly restrictive requirements/overstating agency's needs
 - Ambiguous requirements/terms & conditions
 - If requirements unnecessarily favor one offeror
- Latent vs. Patent defects

The Q&A Process

- Tool for advocating change to a solicitation or pointing out shortcomings
 - Understand how to ask questions to improve your competitive standing
 - Can be just as and often more effective than a pre-award protest (and significantly cheaper)
- Q&As published to all offerors to maintain a level playing field
- Even if deadline for submission of questions has passed, still consider submitting the question!

Bid Protests: Preserving Your Right to a Fair Competitive Process

- A bid protest:
 - Is a statutorily created right to challenge procurement ground rules (e.g., solicitation terms), proposal evaluations, and award decisions
 - Provides offerors an opportunity to ensure a fair and objective chance to compete for and win government business
- Can be filed with GAO, COFC, or procuring Agency
- Can be Pre- or Post-Award
 - But strict deadlines!

Pre-Award Protests – Common Issues

- Solicitation (or limited competition) is unduly restrictive of competition/overstates agency needs
- Ambiguous requirements or inconsistent terms in the solicitation
- Solicitation requirements unnecessarily favor one offeror
- Solicitation's identification of contract clauses is flawed

Pre-Award Protests: Considerations

- Usually must file prior to time set for receipt of proposals
- Effect of filing: If timely filed, agency may not award the contract pending the outcome of the protest
- May still need to submit timely proposal to preserve standing
- Sensitivity to filing while proposal is still subject to agency evaluation
- Practice Tip: Use the solicitation Q&A process first!

Proposal Drafting and Submission:

How to Structure a Proposal and Present a Technical Approach that Will Make It Easy for Evaluators to Rate You Favorably

What We'll Cover Today



Keys to Ensuring Compliance



The Devil is in the Details and What Can Go Wrong



Using Your Software Smarter: How to Become a MS Office Power User for Proposals



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Keys to Ensuring Compliance

Keys to Ensuring Compliance

- **What Do We Mean by Compliance?**
 - Compliance vs Responsiveness
 - Section L Instructions (What you must talk about)
 - Section M Evaluation Factors (How you should talk about it)
 - Section C Statement of Work or Performance Work Statement (The it)
 - Section J Attachments and others (More of the it)

Keys to Ensuring Compliance

- **Three Key Tools for Ensuring Compliance**
 - Compliance Matrix
 - Section Templates
 - Numbered Headers with bracketed RFP references



Keys to Ensuring Compliance

- **Compliance Matrix**
 - Roadmap for entire proposal from Title Page to Pricing Volume
 - Tracks your outline to Section L and quality of response to M and SOW
 - Can also be used to track section-by-section progress of proposal maturity

Outline #	Title	Page Limits	Section L Instructions	Section M Evaluation	Section C SOW	Other RFP Sections and Guidance
Volume I	Offer Letter/Section K/SF33	N/A	L-4, L-4.1.0			
	Title Page		L-4.1.0			Cover art, mandatory data as per Sec. L
	Table of Contents		L-4.1.0			
1.1	Offer Letter		L-4.1.1			Include validity period, digital signature
1.2	Completed Section K (Reps and Certs)		L-4.1.2			
1.3	SF33		L-4.1.3			Acknowledge amendments
Volume II	Technical Proposal	35	L-4, L-4.2.0	M.1.2.1		
	Title Page		L-4.1.0			
	Table of Contents		L-4.1.0			
	List of Acronyms		L-4.1.0			
1.0	Executive Summary (2 pages)		L-4.2.1	M.1.2.1		
2.0	Technical Intro (1 page)		L-4.2.1	M.1.2.1		
2.1	Workforce		L-4.2.1	M.1.2.1.a	C.3.1- C.3.8; C.6.1.2	
2.1.1	Workforce Qualifications Spreadsheet		L-4.2.1.1	M.2.1; M.1.2	C.3.1- C.3.8; C.6.1.2	J Alt P1
2.1.2	Labor Category Information		L-4.2.1.2; L.5	M.2.1; M.1.2	C.3.1- C.3.8	
2.1.2.1	Key Labor Categories		L-4.2.1.2.1; L.5	M.2.1	C.3.1- C.3.8	
2.1.3	Key Personnel Resumes		L.2.1.3	M.2.1	C.6	
2.1.4	Workforce Hour Matrix		L-4.2.1.4	M.2.1	C.3.1- C.3.8	J Alt P2

Keys to Ensuring Compliance

- **Section Templates**

- Conformed to Section standards for font/size (headers and body text), borders, etc.
- Include styled tables and callout boxes, color palette, and other graphic elements
- Include L, M, SOW, and other RFP elements to be addressed under the header



Keys to Ensuring Compliance

- **The Big Three Narrative Elements for Management and Operations**
 - Understanding of the Requirement
 - Approach/Methodologies
 - Demonstrated Capability

Keys to Ensuring Compliance

- **The Big Three – Understanding of the Requirement**
 - Highlight your customer knowledge
 - What are their pain points and weaknesses?
 - What is their vision for their mission?



Keys to Ensuring Compliance

- **The Big Three – Approach/Methodologies**
 - Who does what to accomplish the work?
 - What processes and tools will you use?
 - Any innovative processes or technologies that benefit the customer?



Keys to Ensuring Compliance

- **The Big Three –Demonstrated Capability**
 - Have you successfully applied this approach on similar past projects?
 - To what good results?
 - ✓ Is the success quantifiable in hard statistics?
 - ✓ Customer satisfaction ratings? Kudos?
 - Hard statistics always strengthen claims. Quantify as much as possible.

Keys to Ensuring Compliance

- **Proposal Color Reviews**

- Pink (bullets/storyboarding of narrative and graphics – maturity level – 60%)
- Red (completed sections– maturity level – 90%)
 - ✓ Compliance Specialist
- Quantify as much as possible.
- Final (If it ain't broken, don't fix it)
- White Glove (Binder check to ensure no glitches/run-overs in final printout)



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***The Devil is in the Details
and What Can Go Wrong***

The Devil is in the Details and What Can Go Wrong

- **A More Detailed Understanding of Compliance**
 - Instructional Compliance – Following the Instructions to Offerors in Section L, FAR 52.212 – 1 Instructions to Offerors – Commercial Items
 - Administrative Compliance – Filling out required forms
 - Technical Compliance – Providing a technical solution that meets all RFP requirements

The Devil is in the Details and What Can Go Wrong

- **Achieving Instructional Compliance**

- Put the information in the volume/section where it is asked for
- Order information as closely as possible to Section L instructions
- Review Section M, FAR 52.212-2, and match evaluation factors to proposal sections where they apply
- Identify Section M information that contains instructions or requirements not previously mentioned and include it in your outline
- Add Section C (SOW/PWS) requirements where they logically should occur
- Review all other RFP sections for information that must be included
- Address redundancies wherever possible

The Devil is in the Details and What Can Go Wrong

- **Achieving Administrative Compliance**

- Identify forms requirements early and obtain original signatures early
- Review the RFP FAR clauses and identify any fill-in requirements and fill them in
- Acknowledge amendments (via signed copies, SF 1449 form, and/or text response)
- Determine requirements for Cover Letter, gather information, and develop a draft
- Review Section K requirements and fill-ins or substitute SAM compliance statement
- Track all Section J Attachments and complete/sign all required forms
- State that you comply with all solicitation requirements and take no exceptions, or provide information on any exceptions

The Devil is in the Details and What Can Go Wrong

- **Achieving Technical Compliance**
 - Review requirements of SOW/PWS
 - Develop technical solution that meets all SOW/PWS elements
 - Develop a requirements traceability matrix to make sure that you have addressed all technical requirements
 - If page count is limited, write abbreviated technical solution and reference all SOW/PWS elements that apply

The Devil is in the Details and What Can Go Wrong

- **Compliance Horror Stories (Instructional Compliance)**
 - RFP required 3 volumes: Technical, Administrative, Price
 - Bidder combined Administrative and Price into one volume
 - This could be considered non-compliant by the Government



The Devil is in the Details and What Can Go Wrong

- **Compliance Horror Stories (Administrative Compliance)**
 - RFP Volume VI (Offer/Signed Solicitation Set volume) required inclusion of miscellaneous solicitation items, including cover letter, SF 33, signed copies of amendments, completed RFP sections A-K, and the DD Form 254
 - What Happened:
 - Bidder's SF 33 did not include an original signature
 - The firm did not submit signed copies of the 7 amendments
 - The cover letter did not sufficiently address the firm's intent to comply with RFP requirements or address whether the firm took exception to solicitation terms
 - Certain RFP fill-in sections were missing
 - The DD 254 was not completed fully

The Devil is in the Details and What Can Go Wrong

- **Compliance Horror Stories (Administrative Compliance)**
 - Bidder protested the Agency's decision to reject its proposal as non-responsive based on the bidder's reasonable interpretation and compliance with the RFP's plain language and belief that the nonconformities were minor issues
 - Solicitation addressed importance of compliance with various proposal requirements as stated; the Government reserved the right to reject any proposal that did not comply with the detailed instructions for the format and content of the proposals
 - Protest was denied by GAO

The Devil is in the Details and What Can Go Wrong

- **Compliance Horror Stories (Technical Compliance)**
 - Bidder's proposal did not meet all the technical requirements of the RFP; the proposal was rejected
 - RFP required bidders to have capabilities and experience performing 22 specific tasks and required a specific company certification; the bidder only addressed 20 and had no certification; the proposal was rejected
 - A proposal was submitted without a staffing matrix, which contained qualifications of personnel and clearances; the proposal was rejected

The Devil is in the Details and What Can Go Wrong

- **The Best Defense is a Good Offense**

- Compliance is everybody's business; bring any and all compliance issues to the attention of the Proposal Manager
- If something in the RFP is unclear, ask the Government a question; use responses to questions to determine next steps
- Understand the requirements; if your technical solution is non-compliant, make it compliant or don't bid
- Make sure you are qualified to bid (business size standard, business type, NAICS codes supported)
- Have recent, relevant past performance that addresses all elements of the SOW/PWS
- Have key personnel with the qualifications and experience to perform the work
- Seek help from legal counsel on solicitation requirements and any associated business risks, and grounds for protest

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Using Your Existing Software Smarter: How to Become a Microsoft Office Power User for Proposals

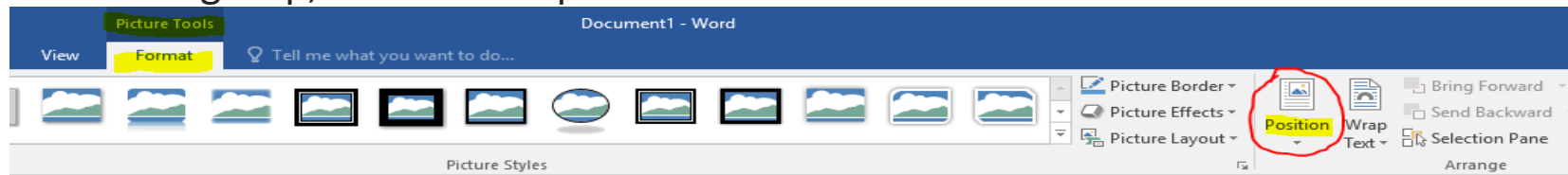
Keeping Graphics Font-Size Compliant

- **1. Make the graphic compliant to begin with.**
 - Tell the graphics artist the requirements for the proposal (font type, size, spacing, margins, etc.)
 - Good graphics people will know how to set their artboard to fit in your document.
 - Example: On 8.5x11 sheet with 1 inch margins, a full width graphic will be 6.5 inches wide.
- **2. Keep the graphic at the right size**
 - When you insert the graphic, make sure it is set to 100%.
 - Right Click Image → Size and Position → Scale → Make sure height and width are 100%
 - Don't shrink graphics on your own—you risk non-compliance on the font size.
- **3. Double check graphics that you're not sure about**
 - If you're unsure, check the font size using a text box with the same text over your graphic and compare the text size.

Keeping Everything Inside the Margins

• 1. Position Graphics within the Margins

- Follow previous instructions for full width graphics
- For placement, either drag the document, right click → size and position, OR use built in tool
 - Click the graphic → click the “Picture Tools: Format” tab → in the “Arrange” group, click the drop down for “Position”.

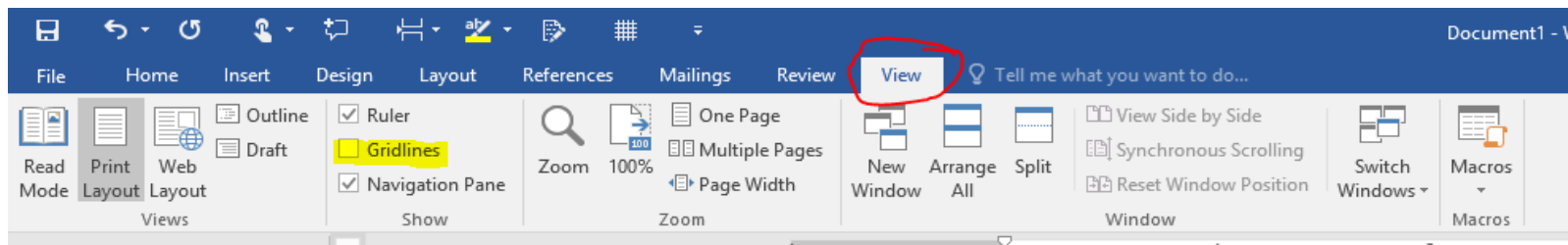


• 2. Set all full width tables to the right size

- 6.5 inches for 8.5x11 paper with 1 inch margins

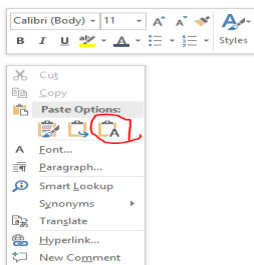
Keeping Everything Inside the Margins

- **3. Double check using Gridlines in word**
 - Click the View Tab
 - In the “Show” group, click the box next to “Gridlines”



Other Tips and Tricks

- Use Paste Special
 - Use paste special to avoid inadvertently bringing in non-compliant fonts to your document
 - Right Click → “Paste Options”, Click the clipboard with the letter “A”
 - You can set your default paste to be special (without formatting)
 - File → Options → Advanced → Cut, copy, and paste → Set all drop downs to “Keep Text Only”



Cut, copy, and paste

Pasting within the same document:

Keep Text Only

Pasting between documents:

Keep Text Only

Pasting between documents when style definitions conflict:

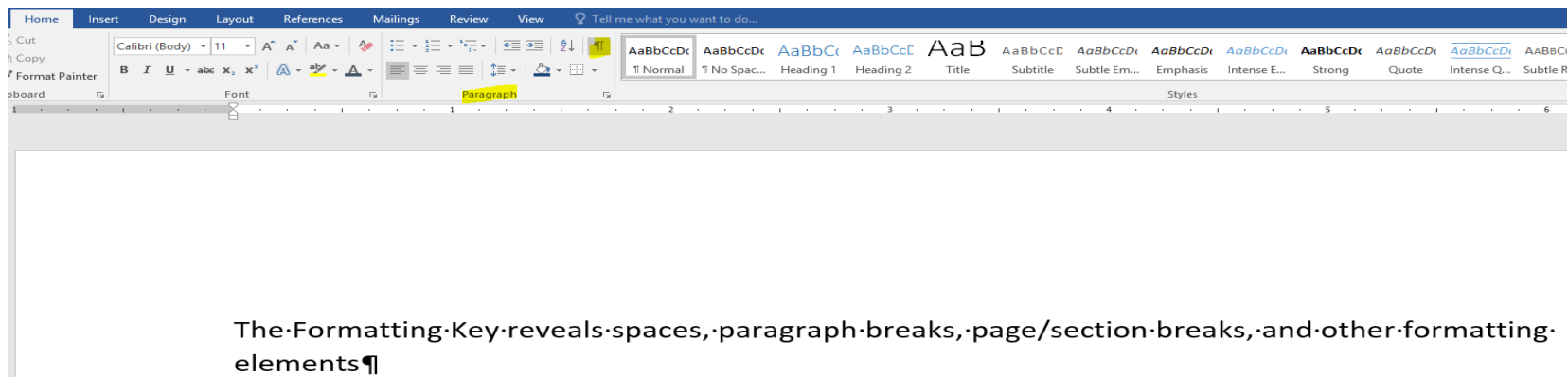
Keep Text Only

Pasting from other programs:

Keep Text Only

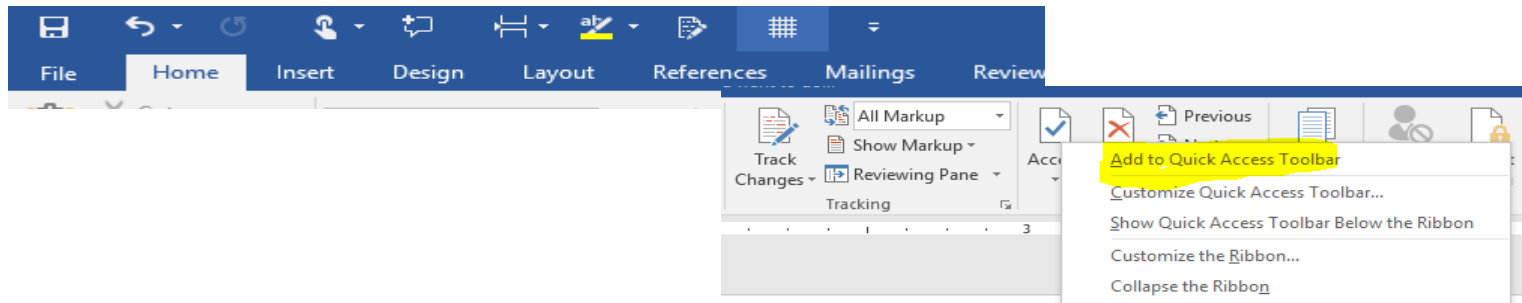
Other Tips and Tricks

- Check for Strange Formatting by Showing Formatting Key
 - Something strange happening in your document/spacing? Turn on the formatting key to reveal underlying formatting.

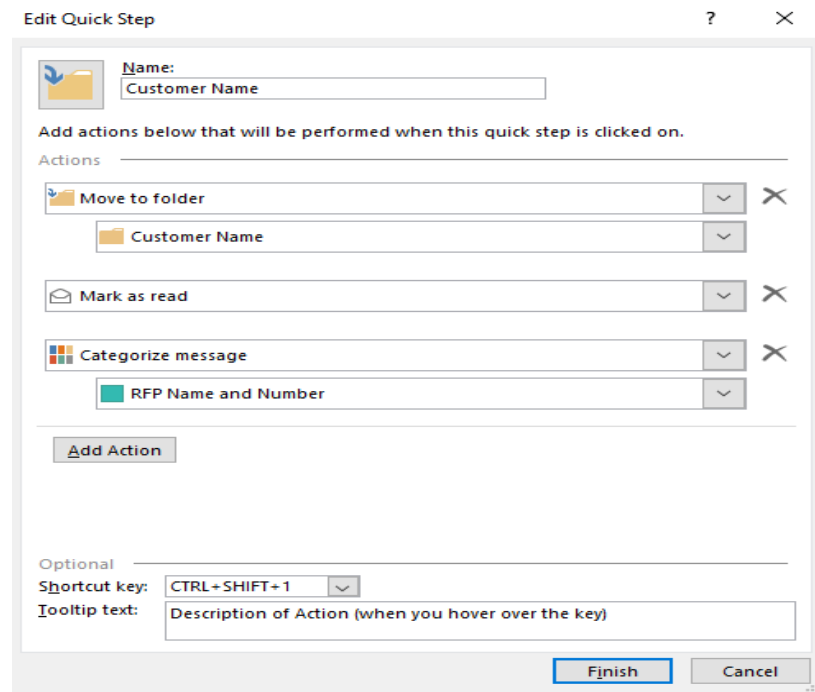
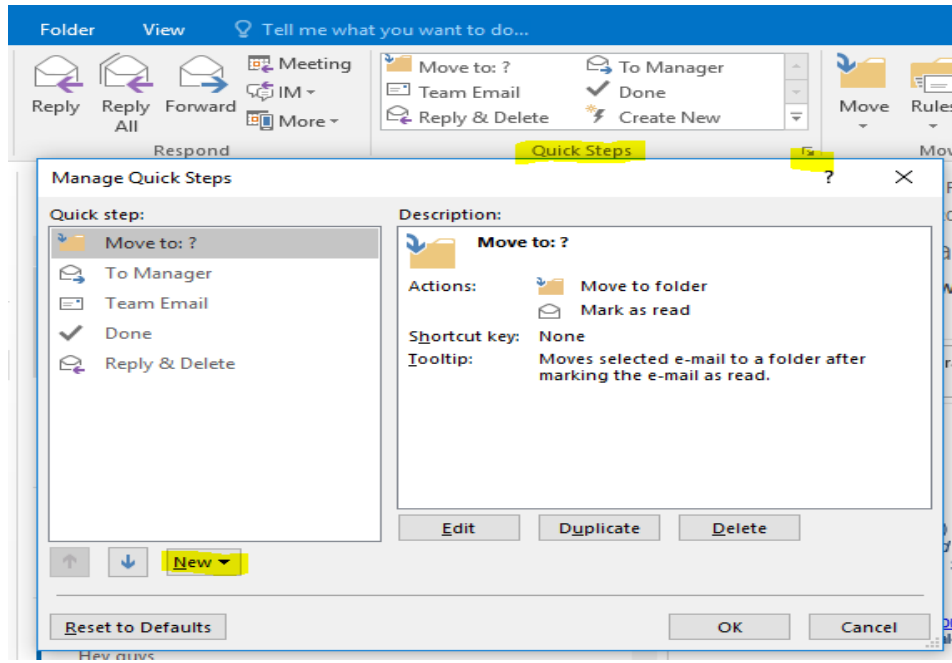


Other Tips and Tricks

- Use Your Ribbon, Quick Access Toolbar, and Quick Steps
 - By right clicking most “buttons” in office software, you can add these to the top bar of your program
 - I find it useful to use comments, track changes, and insert page/section break in word

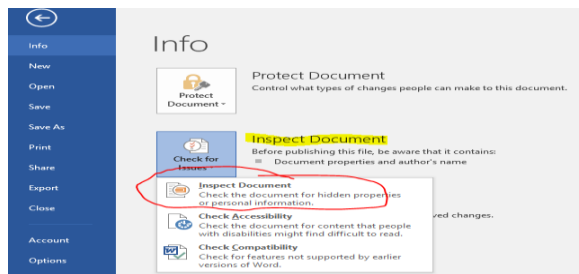


Other Tips and Tricks



Final Checks before Submission

- Does the Customer Require a Word submittal (instead of hard copy and/or PDF)?
 - Double check your document in different versions of word
 - Tracking changes between Word 2010 and Word 2013
- Inspect Your Document before Submitting
 - Use the “Inspect Document” tool to check for remaining track changes, comments, and author information.
 - File → Inspect → Check for Issues (drop down) → Inspect Document



Other Tools to Help Keep Yourself Organized

- Evernote/One Note
 - Make a note per day, or note specifically for an important review/meeting.
 - Integrates with Outlook and Chrome
- Zapier
 - Powerful tool that allows automation.
 - I used Zapier with Evernote to automate the creation/titling of my daily note

Principles to Remember While Proposal Drafting

Principles to Remember While Proposal Drafting

- It is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate
 - Agencies are not required to adapt their evaluations to comply with an offeror's submission, or otherwise go in search of information that an offeror has omitted or adequately failed to present
 - An agency is not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide
 - Where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation

Principles to Remember While Proposal Drafting

- An offeror may not rely on its prior experience with an agency as a substitute for including required information in its proposal
- Past performance:
 - In certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider “outside information” bearing on the offeror's past performance when it is “too close at hand”
 - BUT the “too close at hand” doctrine is not intended to remedy an offeror's failure to include information in its proposal
- Experience:
 - An agency *may* consider close at hand experience information known to the agency but is not always required to do so

Principles to Remember While Proposal Drafting

- Incumbency
 - Don't put all your eggs in the incumbent basket!
 - Just because a contractor is the incumbent on a program does not mean that it is uniquely situated to win strengths, receive the highest ratings, and/or present the government with the best value solution

Post Submission – Communications with the Government:

How to Interpret and Respond to Formal Communications from the Government During the Evaluation Process

Types of Exchanges

- Clarifications – FAR 15.306(a)
 - Limited exchanges between the Government and offerors that may occur when award without discussions is contemplated
 - LIMITED opportunity to clarify certain clerical errors and other minor issues
- Discussions – FAR 15.306 (d)
 - At a minimum, the agency must discuss deficiencies, significant weaknesses, adverse past performance information that offeror has not yet had an opportunity to respond
 - FULL opportunity to revise proposal per agency instructions
- Communications – FAR 15.306(b)
 - “[E]xchanges between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range”
 - NO opportunity for the offeror to revise its proposal

Clarifications vs. Discussions

- Clarifications – existence of the mistake or clerical error must be apparent from the face of the offer
- GAO's acid test:
 - Whether an offeror has been afforded an opportunity to revise or modify its proposal
- In determining whether clarifications or discussions have occurred, look to the parties' actions, not how the exchange is characterized by the agency

Clarifications vs. Discussions

- Significance of distinction
 - While clarifications may be requested from just one offerors, if an agency conducts discussions with one offeror, it must hold discussions with all offerors in the competitive range
 - In the protest context, if a discussions protest ground is sustained it may result in the submission of revised proposals – clarifications do not

Discussions

- Advantages of Discussions
 - Can lead to best value for the agency, *i.e.*, lower/more realistic pricing and/or improved technical proposals
 - Consistent with a policy favoring robust exchange of information
- Advantages of Not having discussions
 - Efficiency – reduce acquisition lead-time and cost
 - Lessens risk of improper/unequal discussions that could create potential protest issues

Agency Discretion to Hold Discussions/Clarifications

- Intent to Engage in Clarifications
 - Agency has practically unfettered discretion
- Intent to Hold Discussions – Must Be in RFP if No Discussions
 - Similarly broad discretion in deciding whether to hold or not hold discussions
 - An agency's decision not to initiate discussions is a matter that GAO will generally not review
 - If the RFP provides for award without discussions, there is no requirement the decision to not hold discussions be documented
 - Importantly, agencies are not required to engage in discussions where a weakness or deficiency is first introduced in the company's revised proposal – this is within agency discretion

Discussions Must Be “Meaningful”

- Agencies must identify deficiencies and significant weaknesses in an offerors proposal
 - Must lead the offeror into the area of the proposal requiring amplification or revision
 - “Spoon-feeding” not required
 - Test on whether an error must be addressed: impact on overall evaluation decision

Discussions Must Be “Meaningful”

- No requirement for agency to:
 - Advise of weakness or deficiency first introduced in response to discussion question
 - Hold “successive” rounds of discussions until all defects are corrected
 - Advise whether responses have resolved the agency’s concern or whether those concerns remain
 - Flag if you are highest price (as long as your price does not warrant a significant weakness)

Discussions Must Be “Equal”

- If One, Then All
 - An agency cannot engage in discussions with only one offeror. If discussions are opened, they must be held with all offerors in the competitive range
- No Favoritism
 - An agency cannot conduct discussions in a way that favors one offeror over another
 - E.g., if the agency goes beyond significant weaknesses and identifies weaknesses or risks for one offeror, it must do so for all

Discussions Cannot Be “Misleading”

- Discussions must address the agency’s actual concern
 - An agency cannot mislead an offeror through the framing of a discussions question by soliciting a response that does not address the agency’s actual concern
- Discussions questions will be reasonably interpreted
 - Standard is whether a reasonably diligent competitor would have sought clarification from the agency
 - When in doubt, if you do not understand a question, ask the agency to further explain

Post-FPR Exchanges

- General rule: NO post-FPR discussions
 - Must be a common cut-off for proposal submissions, post-FPR discussions defeat that purpose
- Exceptions
 - Responsibility issues
 - Information related to offeror corporate identity – concerns about ambiguity of offeror or improper transfer of proposal

Practice Tips – Ask Questions!

- Use the Q&A process! Clarify solicitation ambiguities and inconsistencies up front
- If it's not clear whether an agency is requesting clarifications or has opened discussions, ask
- If a discussions question is unclear or you don't understand it – ask the agency to clarify
- If it's not clear what you can revise, ask

Practice Tips – Be Clear!

- The agency is not required to open or to engage in successive rounds of discussions – put your best foot forward the first time
- The agency is not required to let you know if your response has addressed its concern – ensure a complete response
- The agency is not required to re-open discussions for a weakness or deficiency introduced in FPR – be cautious with your revisions/responses
- Don't rely on a discussion response alone to satisfy the agency – you must include changes referenced in your response in your revised proposal

Questions?



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Crowell & Moring LLP is an international law firm with more than 500 lawyers representing clients in litigation and arbitration, regulatory, and transactional matters. The firm is internationally recognized for its representation of Fortune 500 companies in high-stakes litigation, as well as its ongoing commitment to *pro bono* service and diversity. The firm has offices in Washington, D.C., New York, Los Angeles, San Francisco, Orange County, London, and Brussels.

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