



How to Prevent Key Personnel Departures from Derailing Long-Running Procurements

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The Increasing Importance Of Key Personnel

A hot topic in 2017:

- *General Revenue Corp. et al.*, B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 (protest sustained)
- *Next Tier Concepts, Inc.; Maximus Fed. Servs., Inc.*, B-414337, B-414337.2, May 15, 2017, 2017 CPD ¶ 161 (protest sustained on other grounds)
- *A-T Solutions, Inc.*, B-413652.2 *et al.*, July 5, 2017, 2017 CPD ¶ 214 (offeror eliminated)
- *YWCA of Greater Los Angeles*, B-414596 *et al.*, July 24, 2017, 2017 CPD ¶ 245 (protest sustained)

Contractor Duty To Disclose

Greenleaf Constr. Co., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19

- After submitting its FPR but before award, the awardee learned that two of its proposed key personnel would not be available.
- The awardee did not notify the agency.
- When the award was protested, GAO held:
 - **“Under these circumstances, [the awardee] was required to advise the agency of the material change in its proposed resources and technical approach, in order to ensure that the evaluation was based on consideration of the staffing . . . that [the awardee] actually intended to use in performing the contract.”**

Key Personnel Are Material

Paradigm Techs., Inc., B-409221.2, B-409221.3, Aug. 1, 2014, 2014 CPD ¶ 257

- Solicitation required offerors to identify and submit resumes for their proposed program managers.
- Between initial and corrective action awards, awardee notified agency that its program manager had left the company and would not be available.
- Agency assigned a weakness to awardee's proposal, but still awarded contract.
- GAO held agency should have either rejected awardee's proposal as technically unacceptable for failing to meet a material requirement or reopened discussions to permit the firm to correct this deficiency.

An Agency's "Two Options"

Pioneering Evolution, LLC, B-412016, Dec. 8, 2015, 2015 CPD ¶ 385

- After second round of discussions, Pioneering notified agency that one of its three lead mechanical engineers had joined another company and would be unavailable.
- Pioneering proposed a replacement engineer and offered to restructure its proposal to eliminate the need for the engineer.
- The agency refused to consider those alternatives, and instead assigned Pioneering's proposal a deficiency and eliminated Pioneering as unacceptable.
- GAO upheld the agency's evaluation, stating:
 - **[U]pon notice of the withdrawal, the Navy had two options: [1] either evaluate Pioneering's proposal as submitted, where the proposal would be rejected as technically unacceptable for failing to meet a material requirement, or [2] reopen discussions to permit Pioneering to correct this deficiency.**

Contractor-Identified Key Positions

General Revenue Corp. et al., B-414220.2 et al., Mar. 27, 2017, 2017 CPD ¶ 106

- In multiple-award procurement, solicitation identified two key personnel positions and allowed offerors to propose additional key personnel.
- During nine months between proposal submission and award decisions, numerous offerors experienced key personnel departures.
- GAO held that all offerors had a duty to disclose such departures, regardless of whether the offerors voluntarily identified the additional positions:
 - **“[I]t is immaterial whether the proposed key personnel were explicitly required by the RFP or were identified as key personnel by an offeror.”**

RFP Substitution Clause Not A Safe Harbor

YWCA of Greater Los Angeles, B-414596 et al., July 24, 2017, 2017 CPD ¶ 245

- After submission of FPRs but before award, awardee notified agency that a proposed key personnel would not be available.
- Awardee provided replacement personnel, which the agency evaluated.
- Agency argued that RFP allowed substitution because it required written notice of personnel changes “at any point in the procurement process.”
- GAO held that the RFP required notification of departures, but did not permit post-FPR substitutions, which are tantamount to discussions.
- GAO also held that the late substitution violated the RFP’s prohibition of late proposal submissions.

Government Takeaways

- Understand the “two options”:
 1. evaluate proposal as submitted; or
 2. (re)open discussions.
- Plan ahead with the solicitation:
 - Focus on recruitment/retention, not specific individuals.
 - Require offerors to confirm availability of truly key personnel.
 - Structure solicitations to expressly allow for key personnel substitutions before award?

Contractor Takeaways

- Encourage agencies to relax unnecessary requirements.
- Consider the risk in identifying additional key personnel.
- Obtain commitments from key personnel, and incentivize them to stick around.
- Keep track of key personnel, and disclose departures when necessary.
- Monitor competitors for potential protest grounds.



Questions?

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