

5 Key Strategies To Win A Defense Contract

By Erica Teichert

Law360, Washington (September 20, 2013, 5:24 PM ET) -- As federal budgets tighten and government procurements shrink, defense and aerospace firms are looking for any tricks to make their bid a top contender for the contract award. Here, attorneys share with Law360 their go-to tactics to make contractors' bids outshine the competition.

Start Working on Your Bid Early

There is marked difference between a well-planned bid proposal and a hastily created last-minute dash to a request-for-proposal deadline. But government agencies also may detect when contractors have been working on their bids long before the RFP was announced, attorneys said.

Firms that start preparing early may even have an opportunity to adjust or create procurement standards for the contract they're interested in, which gives them a leg up on the competition, according to Richard P. Rector, chairman of DLA Piper's government contracts practice.

"You can tell the proposals where the company has been meeting with the agency really understood their requirements in advance and maybe helped develop the RFP," Rector told Law360. "Those proposals are always easy to spot and they're much more successful than a company that comes late to the party and reads the RFP cold."

In addition, the extra time can give contractors a chance to limit human errors and carefully hone their proposal. Without solid writing, their plan may never take off, lawyers said.

"I think a lot of contractors lose sight of the fact that it often is a proposal-writing exercise that they're doing," Akin Gump Strauss Hauer & Feld LLP partner Thomas P. McLish said. "They're going to be graded on the quality of their proposal writing rather than the quality of the work they're doing for the government."

Know What Your Client Wants

Thanks to sequestration and smaller budgets, government contracts attorneys have noticed the U.S. Department of Defense and other agencies employing more lowest price technically acceptable, or LPTA, analyses, to determine contract awards. While the practice ensures the government will pay the fewest dollars, it can cause major changes in how companies assemble their bids.

No matter the contract, all offerors need to be aware what analysis method a federal agency will use to compare proposals. What works for a trade-off analysis may fail under LPTA, attorneys noted.

"I think there are a fair number of companies bidding on contracts who are so used to the best-value contracts that sometimes offerors don't fully realize the complications of [LPTA]," said Jason A. Carey, a McKenna Long & Aldridge LLP partner. "The goal is to just be acceptable."

In an LPTA analysis, there's no benefit in giving agency clients more services than they requested in their RFP, and going above and beyond will likely result in a lost award.

All solicitations tell offerors what analysis methods an agency will use on that particular procurement, Covington & Burling LLP's government contracts practice group co-chair Robert Nichols said. Companies must take that into account if they hope to score a win and avoid an "apples to oranges" comparison with their competition.

"Oftentimes the agency will buy the lowest-price offer and it's not actually the best chance they're going to get what they need," Nichols said.

Don't Make Assumptions

While it's easy to presume an agency already knows any necessary background information or can infer the reasons for any proposal variations, contract bids can swiftly be cast aside due to lost connections.

Rather than leaving out vital information, government contractors must justify everything in their bid proposals, even if they're the incumbent up for contract renewal, according to Akin Gump partner Scott M. Heimberg.

"The reason the government selected somebody else is they thought another contractor did a better job describing their capabilities," he said. "That's a problem we see come up over and over."

According to Rector, contractors can score points with their agency clients by providing detailed explanations that bolster their reasoning, compelling the agency to take a closer look at that particular proposal.

"When companies do that in a proposal, the government evaluators appreciate it and they're more willing to consider the contractors' perspective instead of the contractor saying, 'We're not going to do Y, we're going to do X instead,'" Rector said.

Bring in Outside Counsel Early

Rather than waiting for something to go awry in the procurement process, some attorneys encourage contractors to bring in outside counsel well before a contract award, as they may be able to nip problems in the bud.

"We like to start working with companies well before a contract award," Nichols said. "There's no protective order in place yet, there's no protest in place yet. We don't know if the company is going to win or lose. It's a good time for them to teach us what the contract is for."

Outside legal counsel can provide contracting firms with a new perspective on their bid proposal and help them see where there may be ambiguities or room for interpretation in the initial RFP. The extra time also gives the attorneys an opportunity to learn the technology and nuances of the contract at issue well before a debriefing or other agency communication, which can be especially important in large DOD contracts, Nichols said.

"The earlier you can get involved in understanding the proposal and the procurement, especially for high-value procurements, we always think it's worthwhile to bring lawyers in weeks in advance," he said. "Once the protest is filed, everything is under a protective order and you can't talk to the client nearly as much. You lose the opportunity to learn their perspective of the procurement and ask them questions about the technology."

Cultivate Agency Relationships

In the end, government agencies are looking to build respectful business relationships with their contractors. Companies can foster those connections by keeping open, honest lines of communication with their agency contacts and being willing to answer any questions about their bid.

According to Rector, agency questions may be hints that there are potential weaknesses or deficiencies in a contractor's proposal. Rather than dismissing inquiries, Rector urges his clients to welcome agency input with open arms, as he believes this stage of the procurement process may be more important than the initial bid itself.

"I like to tell clients to overreact to those kinds of discussion questions," he said. "What I've learned and from protests and looking at procurement records, you need to assign the A team to discussion questions. You need to treat them as even more important than the original proposal and you need to adopt a tone that is cooperative and not combative in your responses to those questions."

Those answers can set the stage for a comfortable working relationship between the agency and the contractor, for that contract as well as other opportunities in the future.

--Editing by Katherine Rautenberg and Richard McVay.