



EXECUTIVE summary

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Winning Orals

by Shlomo D. Katz

I will begin this article with nearly the same sentences as the ones with which I began my last article: “*Thinking Like an Evaluator*” (Spring/Summer 2017 - Vol. 24, Issue 2). As a bid protest litigator, I often get to see exactly why orals were won or lost. Unfortunately, I can’t tell you detailed war stories. In a protest, the procuring agency shares “*Source Selection Information*” with the protester’s attorney only after that lawyer promises in writing to use the information solely to make arguments in the protest and not to disclose it to anyone, client included. After the protest, we destroy the Source Selection Information we were given.

Nevertheless, we can glean generalities from published bid protest decisions about why orals are successful in some cases and why, in other cases, they actually harm an offeror’s chances.

Let’s start at the beginning. The Federal Acquisition Regulation (FAR) says that oral presentations by offerors, as requested by the Government, may substitute for, or augment, written proposals. According to the FAR, using oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. The FAR says that oral presentations may occur at any time in the acquisition process.

Often, agencies use oral presentations as an opportunity to meet the offeror’s



proposed management team and see how its members work together. To this end, the Government’s evaluators may give the offeror’s presenters a sample problem and have them caucus and present a solution. The evaluators may be looking for many things: understanding of the agency’s need, responsiveness, and creativity in formulating a solution; teamwork; and whether the team inspires confidence. They also may be looking for some degree of humility. No one wants to work with a know-it-all, especially one who claims to know the customer’s needs better than the customer does.

Reading Government Accountability Office (GAO) bid protest decisions can offer insight into what agencies may be looking for and how they grade orals because claims that orals were graded unfairly can be raised in bid protests along with other challenges to the evaluation. (If you are considering such a protest, keep in mind that GAO will review orals using the same tried-and-true standard

by which it reviews other aspects of the evaluation. Specifically, GAO will review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement laws and regulations. A protester’s disagreement with the agency’s judgment, by itself, is not sufficient to establish that an agency acted unreasonably.)

In a representative decision (*Sapient Government Services, Inc.*, B 412163.2, 2016 CPD ¶11), GAO wrote as follows:

With regard to the procedure for the oral presentation, the solicitation stated that agency evaluators would invite the offeror’s representatives into a conference room and share with them “a standard set of management/ technical questions and a problem statement ... involving issues the offering contractor should reasonably expect on an Agile contract.” After receiving this information, the offeror’s representatives were to caucus among themselves,

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then share their “answers and problem resolution” with the evaluators. After that, the agency evaluators would caucus and then pose “any clarifications [they] may require to understand the presentation.” This entire process was limited to three hours. As to the evaluation criteria for the oral presentation, the solicitation stated as follows: “The Government will assess its level of confidence that the offering contractor will successfully perform the task order requirements based on its oral presentation.”

Sapient’s protest challenges the following four findings that the TEC documented for the firm’s oral presentation:

- *This contractor won’t lead us, push forward.*
- *Presentation did not provide a complete understanding or feeling of confidence.*
- *A number of key concepts were not defined, or defined incorrectly.*
- *Focus on [DELETED] is an important continuous improvement method, but not a substitute for portfolio management.*

In its protest, the offeror (Sapient) asserted that these findings were unreasonable, arguing that they allegedly reflect “too much impression and too little substance.” Similarly, Sapient argued that the findings were “so vague and subjective” that they were “per se inadequate to permit the [the Source Selection Authority] to make an intelligent and independent best value determination.”

GAO disagreed, however, concluding that each finding referenced a discrete, identifiable concern that the TEC had

about Sapient’s oral presentation. Second, these concerns reasonably related to the solicitation’s evaluation criteria for the oral presentation—namely, the effect an offeror’s oral presentation had on the TEC’s confidence in the offeror’s ability to successfully perform the task order. Finally, the record reflected that before making the source selection decision, the SSA considered the evaluation results under each nonprice factor “on paper and also in discussions with the [TEC],” and that for Sapient’s oral presentation, the SSA specifically considered “the TEC’s explanation for [Sapient’s] rating.” Therefore, GAO saw no merit in Sapient’s challenge to the TEC’s evaluation of the firm’s oral presentation or the SSA’s consideration of the TEC’s evaluation findings.

Of course, the above is just an example. Offerors should carefully read the RFP instructions and evaluation criteria applicable to their specific procurement to determine what the agency is looking for. If something is important to the agency, please address it with more than one vague bullet point in your orals PowerPoint. I can’t tell you how many times an agency downgraded an offeror for not understanding the scope of a problem, and all the offeror could point to to claim that it understood the problem and had addressed it was one vague line in its orals slides.

Another important thing to remember is that oral presentations are not the same thing as discussions. Orals are for explaining and elaborating on aspects of your proposal. If an offeror

is given an opportunity to change or revise its proposal, then discussions have taken place. And, if one offeror is given discussions, then all offerors in the competitive range need to be given the same opportunity. Therefore, be careful not to overreach during orals; it could result in your competitor getting a chance to improve its proposal. That doesn’t mean that there cannot be a give-and-take during orals. For example, as discussed in the Sapient decision cited above, evaluators may ask questions seeking clarification of the sample problem solution presented by the offeror during orals. Those are not discussions if nothing said during the exchange revises some aspect of the firm’s previously submitted proposal and if, at the conclusion of the session, the offeror is not permitted to submit anything further to the agency.

Lastly, read the RFP carefully before assuming that there will be orals. In some procurements, agencies allow themselves the discretion to hold orals, but that doesn’t mean they are required to, or will, do so. If the RFP you are responding to has language making orals optional, make sure you don’t leave anything important to be said at the orals that may never happen.

Good luck winning orals!

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