
From: The LAB @ DOC
Subject: MMCB - Vol. 14 - Adequate Record of Oral Presentations + Affordability, Dec. 2020



Welcome to MMCB Volume 14! Today we share an example of the Affordability technique as well as share yet another example of what satisfies the r-e-c-o-r-d of an oral presentation for a \$4B FAR subpart 15.3 procurement [SPOILER ALERT – it is not a video recording].

Don't miss out, read below!

Matter of: Strategic Resources, Inc.
File: B-419151
Link: <https://www.gao.gov/products/b-419151#mt=e-report>
Date: December 11, 2020

We will start by sharing how this solicitation encompassed including an Affordability statement, as it could not have been done much more robustly (NOT a grounds for protest). Then we will shift to the argument that the agency failed to maintain adequate records of Oral Presentations (DENIED). I tracked down the [GSA Solicitation](#) and have included here for reference, all 203 pages in its mighty glory. If that link is problematic, you can try their SAM page: <https://sam.gov/opp/315908e5d49f4f8b836f974b11286b19/view>. Also to note they only had three technical factors and intentionally didn't use subfactors, instead calling them elements and that the elements would be "evaluated as a whole to arrive at the factor-level rating". I appreciate the approach to not complicate the process with many traditional subfactors and individual ratings for each. This is from GSA FEDSIM, so I am glad they are adapting their traditional processes.

Affordability

The ranges begin on page L-3 and extend to L-4 of the attached. I have included them in a table to make it easier to read and understand.

CLIN	Low Range	High Range
X001a	\$ 89,563,000.00	\$ 99,514,000.00
X001B	\$ 83,098,000.00	\$ 92,331,000.00
X002a	\$ 907,415,000.00	\$ 1,008,239,000.00
X002b	\$ 742,431,000.00	\$ 824,923,000.00
X003a	\$ 74,229,000.00	\$ 82,477,000.00
X003b	\$ 60,733,000.00	\$ 67,481,000.00
X004a	\$ 38,479,000.00	\$ 42,754,000.00
X004b	\$ 31,483,000.00	\$ 34,981,000.00
X005	\$ 683,040,000.00	\$ 758,934,000.00
X006	\$ 824,771,000.00	\$ 916,412,000.00
X007a	\$ 7,392,000.00	\$ 8,213,000.00
X007b	\$ 7,392,000.00	\$ 8,213,000.00
Totals	\$ 3,550,026,000.00	\$ 3,944,472,000.00

After including the estimated range for each CLIN, the solicitation stated the following:

Any proposal that is not within these stated ranges shall include an explanation that specifically draws the Government's attention to any unique technical aspects of the proposal the offeror would like the Government to consider as the justification for the deviation from the range. The stated ranges do not include the costs for the 6 month extension in accordance with FAR part 52.217-8, Option to Extend Services. Please see section M.3 for additional details regarding the costs associated with FAR 52.217-8.

CONCLUSION: We have several DHS teams that have included this type or range or Affordability statement in solicitations, but this is the first time I have seen it referenced in a bid protest. Again, this was not challenged. It is the most granular approach I have seen within a CLIN structure as well. If our programs really understand the low and high end of their costs by CLIN or SLIN, then perhaps they can be firmer in their ranges.

Record of Oral Presentations

BACKGROUND: I don't want to include pages from the solicitation below as it is too much information, so please read L.7.2 – L.7.6 (page L-21 - L-22 of the [linked solicitation](#)) as there is other good text we can consider from it. I will summarize it here. Orals are 75 minutes and allow for slides; similar to how we do things they state that only the slides covering in the presentation will be considered for evaluation, etc. At the end of the oral is a Q&A session, but this Q&A session is for formal clarifications as it will encompass the oral technical proposal and the previously submitted written technical proposal. Again, these are only for clarifications as **"Proposal revisions are not expected and will not be allowed."**

CHALLENGE

SRI asserts that the agency failed to maintain adequate records of its oral presentations. SRI argues that the agency failed to video record the presentation, and therefore reviewing fora are now unable to determine what occurred during SRI's oral presentation. The agency responds that it maintained an adequate record of SRI's oral presentation in accordance with FAR 15.102(e).

GAO RESPONSE

- *Section 15.102(e) requires the contracting officer to maintain a record of oral presentations to document what the agency relied upon in making the source selection decision. The source selection authority selects the method of recording the oral presentations, and FAR 15.102(e) gives the following examples of methods that may be used: videotaping, audio tape recording, written record,*

government notes, copies of offeror briefing slides or presentation notes. Whatever method is chosen, FAR 15.102(e) establishes an obligation to provide a reasonably adequate record of such presentations and the evaluation thereof. Moreover, the principal of government accountability dictates that an agency maintain a record adequate to permit meaningful review.

- Here, the record contains adequate documentation of SRI's oral presentation. The record contains SRI's oral presentation slides, the aforementioned record of the Q&A session, and the technical evaluation notes showing specific observations regarding the firm's oral presentation. Significantly, the slides contain extremely detailed information about SRI's proposed personnel and management approach, including, for example, the firm's proposed key personnel with biographies, and task-by-task descriptions of how the firm will satisfy each of the performance objectives.

It is interesting how much value and emphasis the GAO places on slides, even though they are irrelevant if not covered during the presentation. I have seen many attorneys feel much more comfortable not video recording once they learn they have slides, so this may be a good continued compromise for the future. It seems like we have teams doing more virtual oral presentations now that aren't requiring slides (but even the optional slide submissions end up with 100% of the offerors submitting slides). Food for thought. Now to bring us home...

Furthermore, the agency preserved a record of which slides SRI presented; the evaluator notes show which slides SRI omitted from its presentation, or simply read the slide's title. ("Slides omitted - 12-15, 47, 49*, 66, 67*, 70 73, 80-83, 87, 134, 138-141 *title only"). Thus, the record contains adequate documentation of the oral presentation because the slides provide a record of SRI's proposal, and the Q&A notes and evaluator notes provide a record of what was presented and actually occurred during the presentation, such that one can determine whether the agency's evaluation judgments were reasonably based on the content presented. Accordingly, we deny this allegation.

Summary

It seems that the GAO has provided its footprint for what constitutes an adequate record without a video recording for a procurement of this size. Considering how our teams create their consensus report immediately after conclusion of the oral presentation, capturing what is important to them, I believe it would be very similar to what this team created to rely on their "evaluator notes". Again, this was for \$4B so you can't forget about how the size and complexity plays into the adequacy of the record, etc. Perhaps in the bottom of the consensus report under other observations, we can capture that XX slide was not covered or was only read from, etc. Those facts seemed to matter here. [Footnote 7](#) is also worth a gander 😊.

This volume was authored in December 2020 and refreshed in March 2025.

*Disclaimer: The information contained in this MMCB is merely an opinion of the author and does not constitute formal legal or policy guidance of any kind.

