



OST GLOBAL SOLUTIONS

# Strategies for Winning Proposals After RFP Release and Proposal Submission

[www.ostglobalsolutions.com](http://www.ostglobalsolutions.com)

[www.milesstockbridge.com](http://www.milesstockbridge.com)

## Olessia Smotrova, CF.APMP Fellow



- More than 20 years of experience in BD, communications, and marketing
- Author of the book *How to Get Government Contracts: Have a Slice of \$1 Trillion Pie*
- Has served for 2 years as the President of the National Contracts Management Association (NCMA) Bethesda/Medical Chapter, and for 2 years as the President of the Association of Proposal Management Professionals (APMP) National Capital Area Chapter
- Prior to OST, worked at Raytheon and Lockheed Martin, and wrote for the *Financial Times of London*
- **About OST:** OST won more than \$22 Billion for its clients since 2005
- Has three lines of business:
  - GovCon Incubator
  - Bid & Proposal Academy
  - Business Development Consulting

## Jeremy S. Scholtes, JD



- Assists clients with such matters as analyses of Federal Acquisition Regulation (FAR) clauses negotiating and drafting subcontracts; claims preparation and defense; bid-protests; employment, contract, and regulatory compliance matters
- Active security clearance (TS/SCI) to assist with classified matters
- Before joining Miles & Stockbridge, had 13 years in active duty in the U.S. Army as an infantry officer and then Judge Advocate General officer (JAG)
- Currently serves as a U.S. Army Reserve (USAR) JAG
- **About Miles & Stockbridge:** A leading law firm with offices throughout the mid-Atlantic region, including Baltimore, Easton, Frederick, Rockville and Towson in Maryland, as well as Tysons Corner, Virginia and Washington, D.C.
- More than 240 lawyers focused on corporate, government contracts, intellectual property, products liability, and real estate

# Shape RFP Through Questions



- Know what the deadline is
- Start proposal work early to digest the RFP – the best questions arise after the brainstorming and writing have started
- Plan to hold an internal questions review session
- Approach to collecting and wording questions:
  - Ask a question agency can clearly answer: confusion in, confusion out
  - Don't educate the competition
  - Don't ask the questions you don't want a negative answer to
  - Formulate your questions to lead the government to the right answer

RFP Reference/Page	Your Question	What would you like the answer to be?	Who is asking?

# Ask Questions to Trigger an Extension

- Expressly ask for an extension justifying an obstruction such as holidays
- Ask a tricky question to throw the government for a loop, making sure they take a long time to find an answer, and are forced to extend
- If all else fails, a pre-award protest can secure vital extension of time to submit proposal
  - Works especially well when you are the incumbent
  - Normally an incumbent will benefit from a shorter proposal period (except when the government is dragging its feet on your bridge contract)
  - A delay can trigger the bridge contract



# Clarifications After Q&A

- After the government has answered questions, you may need clarifications
- Government is not required to clarify, but they often do
- If the Questions deadline has already passed, clarification questions must be related to the initial set of answers
  - Not the new questions you failed to ask prior to the deadline
- Be specific if the government is snide in responding or tells you to read the RFP in their response
  - Explain what specific word is causing the confusion; elaborate further on the exact point of your question
  - Walk a thin line – are you upsetting the government, reducing your chances of winning by clarifying (these are people on the receiving end)?
  - Do you need that answer or can you make an assumption?
  - Be professional, clear, and neutral in your tone – you are looking to get clarity so that your submission meets solicitation requirements since some terms may be unclear or ill-defined



MILES &  
STOCKBRIDGE



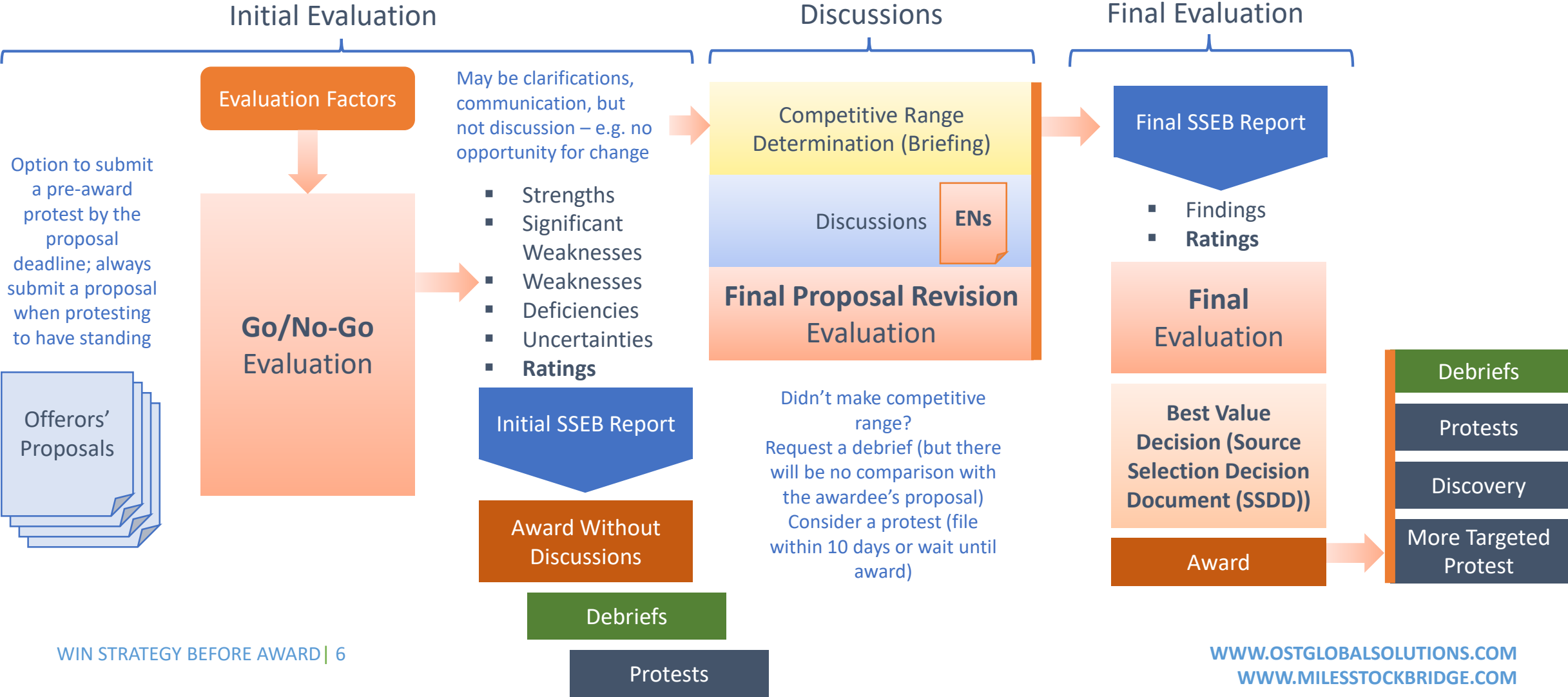
OST GLOBAL SOLUTIONS



**Question:** It is unclear in the RFP PWS Section 3.1.2 whether you are looking for a recommendation or the actual work – could you, please, clarify?

**Answer:** Read the RFP.

# Evaluation Process



# Nail the Discussions



OST GLOBAL SOLUTIONS

- Discussions vs. Clarifications vs. Communications (FAR Part 15)
  - **Communications** – Exchange with the Government where the Government is concerned with past performance, inclusion in the Competitive Range is unclear; Enhance Government’s understanding of the proposal, facilitate reasonable interpretation of the proposal before establishing the Competitive Range
  - **Clarifications** – Exchange with the Government where the Government asks Offerors about certain aspects of the proposal or resolves minor or clerical errors – there are no Discussions
  - **Discussions** – Exchange with the Government where it allows Offerors to **resolve** deficiencies and **revise** a part of Offeror’s proposal (e.g. you could bring your price down or sweeten your offer) – Negotiation after establishing the Competitive Range
- Discussions are initiated via Evaluation Notice (“EN”) to applicable Offeror
- Award **with** Discussions
  - RFP must contain mandatory solicitation provision
    - Part 15: FAR 52.215-1 *with* Alternate 1
- Award **without** Discussions
  - RFP must contain mandatory solicitation provision
    - Part 12: FAR 52.212-1
    - Part 15: FAR 52.215-1 *without* Alternate 1

# So You Made the Competitive Range

- Source Selection Authority (SSA) and Procuring Contracting Officer (PCO) establish the competitive range based on the ratings of each proposal against all evaluation criteria, unless the range is further reduced for purposes of efficiency
- There must be a competitive range decision document, which must be re-approved by the SSA if an Offeror is eliminated from the competitive range prior to making the source selection decision
- Discussions are tailored to each Offeror's proposal and must be conducted by the PCO with every Offeror within the competitive range

## **Discussions must be meaningful, equal, not misleading**

### PCO **must** discuss with the Offeror:

- Any adverse past performance information to which the Offeror has not yet had an opportunity to respond; and
- Any deficiencies or significant weaknesses that have been identified during the evaluation.

### PCO **may** discuss with the Offeror:

- Other aspects of the proposal that could be altered or explained to enhance materially the proposal's potential for award, including weaknesses, excesses, and price.





# Discussions – “The Process”

- Conversation: usually by phone; bring all key players who know the solution and can think on their feet; prepare for the meeting and discuss the overall strategy
  - Make sure you don't miss important details
- Ask the Government for permission to submit things **that would serve you well**, couched “in the best interests of the government”
- If not requested, recommend that the Offerors submit written proposal changes resulting from Discussions before submitting Final Proposal Revisions (FPR)
- If, during Discussions, the Offeror is eliminated from the competitive range, Government must send a written notice of this decision
- Once all Discussions are complete, the PCO will require FPRs by a set date/time and indicate the Government intends to make award without obtaining any further revisions.
- Once the FPR submission deadline passes, the Source Selection Evaluation Board (SSEB) will use the RFP evaluation criteria (as amended) to evaluate and document, and the SSEB or the Source Selection Advisory Council (SSAC) will complete and document a comparative analysis



## What if the Agency is Signaling that Pricing is Too High?

- What standards apply to the competitive range
  - Evaluation criteria
    - Cost or price evaluation
    - Past performance evaluation
    - Technical evaluation
    - Cost information
    - Small business subcontracting evaluation
  - Includes mostly highly rated proposals
- Independent Government Cost Estimates (IGCE) matter – the Government uses the IGCE as a yardstick for costs
- After Discussion – Strong incentive to restructure the offer; remove excesses and lower offer cost/price
- Includes mix of securing this award and other strategic reasons
- Leave it the same only if you cannot adjust – but accept potentially losing

# Written Responses to ENs

- Answer the mail – respond to the Government’s Discussion points and be compliant
- Put your best foot forward:
  - Add clarity
  - Emphasize your win themes
  - Ghost competition
  - Add proof through documentation that you couldn’t include before as attachments or obtained after submission deadline
- Beef up your solution if it doesn’t substantially change (lower the price, add features, or describe something you are offering in greater depth)

Treat responses to ENs as seriously as you would treat your proposal effort



# Submit an FPR

- Set up time to brainstorm on your response strategy
- Correct the proposal consistent with the discussions; if necessary, find creative ways to tie your changes to the questions asked
- Usually must reprint some or all of your proposal to resubmit
- Follow the instructions on how changes must be tracked; ensure changes appear on the printed version the right way
- Create a log of changes for all volumes
- Organize at least one proposal review prior to submission; follow the usual proposal submission best practices
- Sharpen your pencils and sweeten the deal

# When You Are Advised You are Not in Competitive Range

1

You are not out of the game yet

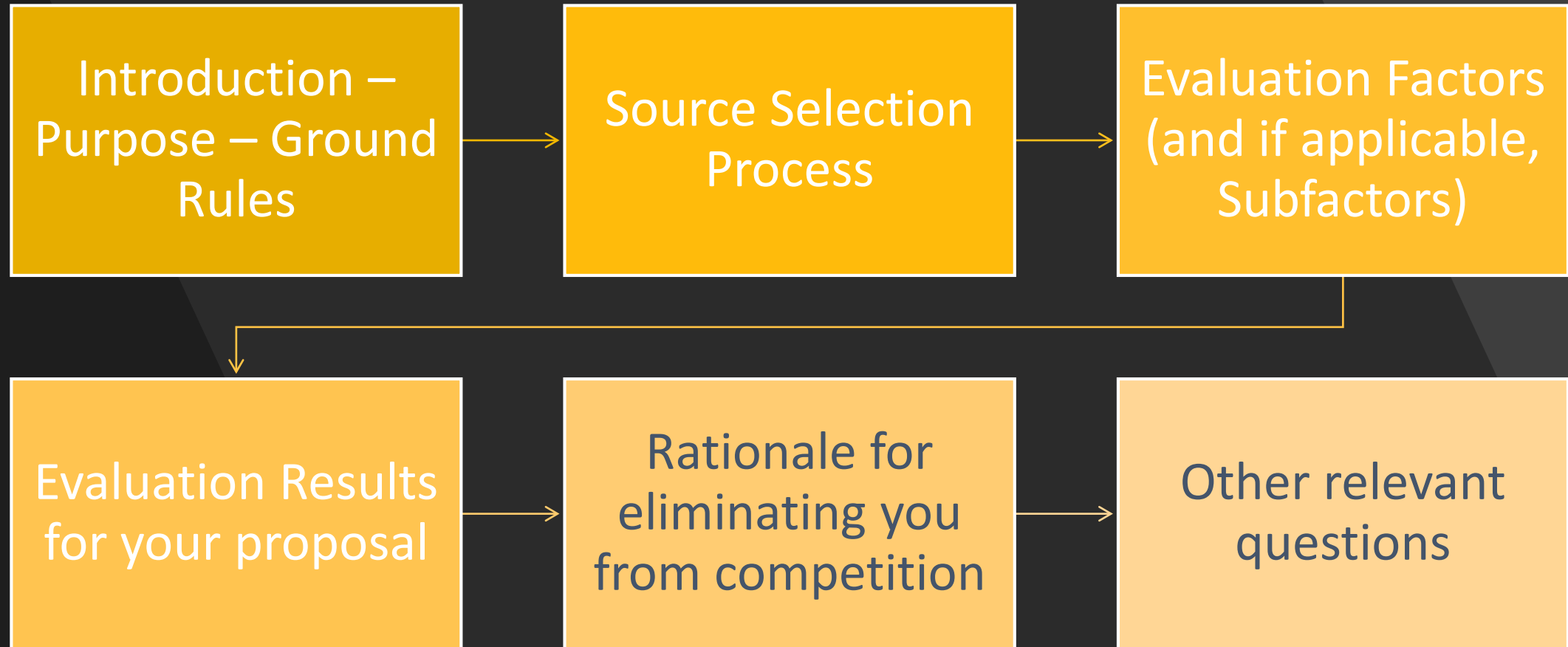
2

Request a debriefing

3

Explore your protest options

# Debriefing Process



# Pre-Award Debriefing Preparation (1 of 2)

Were there any solicitation requirements that we failed to address? If so, which ones?

How is the evaluation consistent with Sections L and M of the solicitation?

Explain the basis for the strengths, weaknesses, or deficiencies in our proposal for each evaluation factor and subfactor

Did the Government discuss all significant weaknesses and deficiencies (and perhaps weaknesses) during Discussions? (These should have been addressed in Discussions)

Were any deficiencies identified by the Government during discussion not adequately addressed in our response to the ENs? If so, how did the evaluation of the deficiencies change during the evaluation of our FPR?

# Pre-Award Debriefing Preparation (2 of 2)

What, if anything, did the Government require in Sections L and M of the solicitation that was missing from our proposal?

Were there any specific considerations that precluded us from being selected as the awardee? If so, what were those considerations? (These should have been addressed in Discussions)

How was past performance evaluated? What was our rating? How was that rating applied to the source selection process?

Was experience evaluated? If so, what was our rating and how was that information used in the source selection process?

What was the procedure for the evaluation of risk? What risks were identified in our proposal? How did they impact the rating of our proposal?



# Protest Evaluation Terms or Other RFP Issues

- Where do you file a protest: Agency or GAO
  - Agency protest more informal; goes to level above Procuring Contracting Officer (PCO) – new objective review; allows the agency to correct its own errors
  - Does not prohibit a GAO protest
  - GAO protest is more formal, resembles a post-award protest; if you are going to the agency – think you are getting a good shot for agency to take corrective action
  - Go to GAO because you lack faith in agency taking a corrective action
  - Jump above and go to the boss more so with GAO than agency protest
- Pre-proposal submission protest vs. post-award protest grounds
- Typical pre-proposal reasons to protest:
- RFP deficient – must submit a proposal to have “standing”

## What are the politics of a protest?

- Balancing game: Hard to predict outcomes
- Don't want to tick off the customer; natural hesitation to protest
  - Agency could blacklist you for protesting
- But: is it really that political? Large companies protest regularly and it's a business as usual around the Beltway
- Agency may encourage awardee(s) to intervene
- Will you file additional protest?

# Pre-Award

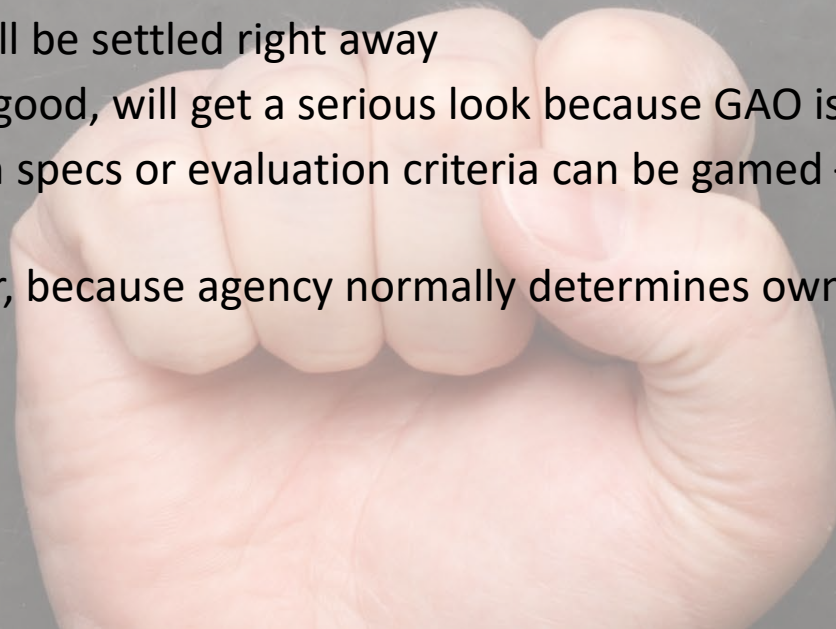
PROTESTS

- **Grounds for pre-award protests:**

- Error in RFP, or ambiguity – the best, will be settled right away
- Unduly restrictive specifications – very good, will get a serious look because GAO is hospitable to these claims
- Can't award to best value, because tech specs or evaluation criteria can be gamed – Government should be grateful, isn't always
- Tech specs exceed true needs – tougher, because agency normally determines own needs

- **Protest grounds should be:**

- Important to framing proposal; and
- Not resolved by Q&A





# “Rule of Two” Protests

- If CO does not set procurement aside, there may be grounds for pre-award protest
- Can be a solid business development tool:
  - Rule of Two: Government must set aside acquisition for small businesses if reasonable expectation of at least two offers from responsible small businesses at reasonable prices; FAR § 19.502-2
  - Same rule generally requires set-aside for SDVOSBs, WOSBs, HUBZones, etc.; See FAR Part 19
  - Rule of Two only applies to single-award procurements; set-aside is discretionary for multiple-award procurements. FAR § 19.502-4
- Don't have to submit a proposal – your standing is that you are a small business and there is at least one other small business
- Your competitor is your ally! Proactively demonstrate to CO that two small businesses are ready to meet the requirement at reasonable prices

# Pre-Award Protest Example #1 (Sustained)

- Government can't determine best value, because pricing evaluation could be gamed:

*For procurement of groceries for military commissaries, "evaluating . . . proposals based on the offerors' unit pricing for the week of July 14 could lead to misleading results because a proposal offering [less of an overall] discount percentage could be evaluated more favorably than a proposal offering a [greater overall] discount percentage.*

*Raymond Express International, B-409872.2 (Nov. 6, 2014)*

# Pre-Award Protest Example #2 (Denied)

- Protest by incumbent that RFQ understates numbers of platforms and technologies to be supported, that more key personnel should be required, and other errors and omissions prevent competing on an equal basis:
  - Protest denied, "determination of an agency's mission needs and the best method of accommodating them is primarily within the agency's discretion . . . ."; Agency clarifies that legacy application is not within scope of procurement.

Salient Federal Solutions, Inc., B-410174 (Nov. 6, 2014).

# Pre-Award Protest is a Vastly Underappreciated Win Strategy Tool

Good opportunity to shape specifications

Good opportunity for incumbent to resolve requirements of next procurement

Can secure vital extension of time to submit proposal

Can potentially secure set-aside opportunities

# Continue with the Capture

Track

Continue tracking your competitors' moves

Leverage

Leverage Discussions as an opportunity to parry and neutralize the competitors' moves

Improve

Make last-minute programmatic improvements if you are an incumbent to gain further customer favor

# Contact Information

Olessia Smotrova – President/CEO  
otaylor@ostglobalsolutions.com  
Cell 240-246-5305

David Huff – Vice President  
dhuff@ostglobalsolutions.com  
Cell 513-316-0993

Office 301-384-3350  
service@ostglobalsolutions.com

Jeremy Scholtes

Direct 301-698-2318  
jscholtes@milesstockbridge.com

30 W. Patrick Street, Suite 600  
Frederick, MD 21701



OST GLOBAL SOLUTIONS



[www.ostglobalsolutions.com](http://www.ostglobalsolutions.com)  
[www.milesstockbridge.com](http://www.milesstockbridge.com)