

Broad Agency Announcements

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Introduction

- Joseph M. Goldstein, Partner Shutts & Bowen, Board Certified Business Litigation
- Former Attorney with General Counsel, Dep't of Air Force (Procurement)
- Practice in Federal, State, and Local Procurement



Topics of Discussion

- Introduction to BAAs
- BAA Process
- Best Practices
- Case Law
- Other Sources of Information



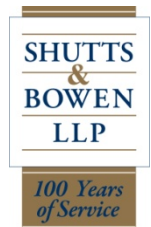
Introduction to BAAs

- Broad Agency Announcement
- FAR 35.016
- Review of Important Definitions
- Comparison with RFP



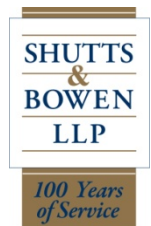
BAA – Defined

- “Broad agency announcement” means a general announcement of an agency’s research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government’s needs (see 6.102(d)(2)). FAR 2.101.



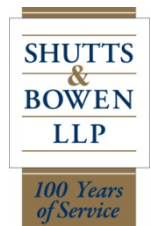
BAA_s – FAR 35.016

- Acquire basic and applied research and that part of development not related to specific system or hardware
- Fulfill requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding



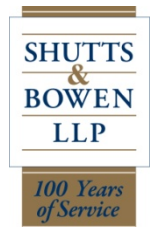
BAAs – FAR 35.016 (con.)

- Only may use when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated



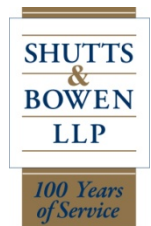
Characteristics of the BAA Process

- Does not limit ideas and/or approaches for solutions
- Offeror prepares a SOW tailored to the proposed solution to the problem
- Offerors can respond to all or part of the areas of interest



Characteristics (con.)

- Permits open discussion with the Government technical focal point



Basis Research – Defined

- Basic research means that research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge. FAR 2.101.



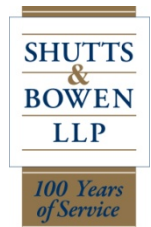
Applied Research – Defined

- Applied research means the effort that (a) normally follows basic research, but may not be severable from the related basic research; (b) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and (c) attempts to advance the state of the art.



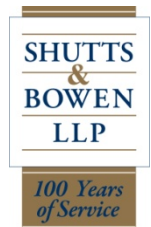
Applied Research – Defined (cont.)

- When being used by contractors in cost principle applications, this term does not include efforts whose principal aim is the design, development, or testing of specific items or services to be considered for sale
- Such efforts are within the definition of “development”



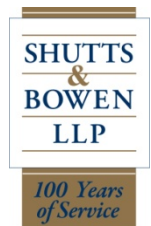
BAA v. RFP: Research and Development

- RFP - Focusing on a specific system or hardware solution
- BAA - Scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding



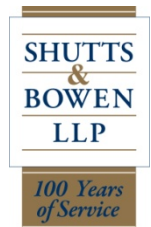
BAA v. RFP: Statement of Work

- RFP - The Government drafts a common SOW to which all offerors propose.
- BAA - The Government drafts a statement of the problem or general research interest. Each offeror proposes its own statement of work and technical approach.



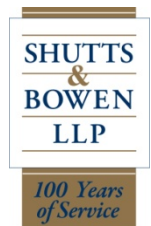
BAA v. RFP: Proposal Comparison

- RFP - All proposals are supposed to do the same thing. Winner is selected by comparing proposals.
- BAA - Proposals contain stand-alone unique solutions. They are not compared to one another.



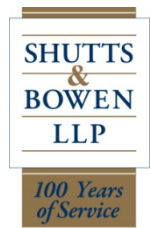
BAA v. RFP - Nature of the Competition

- RFP - Proposals address common SOW and compete, one against another.
- BAA - Each proposal presents a separate approach to solving the problem – marketplace of ideas. Cost or price is rarely the deciding factor on the winning proposal.



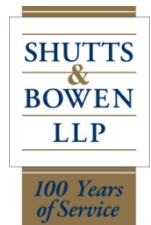
BAA v. RFP: Evaluation Process

- RFP- Follows very closely a predetermined source selection plan.
- BAA- Proposals undergo a scientific review process. A proposal that is otherwise weak could be selected if it shows great technical promise, such as a risky but perhaps revolutionary approach.



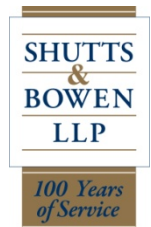
Improper Use of BAA

- Use of BAA to secure from one supplier mobile x-ray device for detection of contraband was utilization of noncompetitive method of procurement in violation of CICA; specific device was called for, by specifications, rather than basic or applied research covered



BAA – Socio-Economic Goals

- Whenever practicable, set-aside discrete or severable areas of research interest to historically black colleges and universities and minority institutions
- DFARS § 235.016



BAA Process

- Notice
- Contents
- Proposals
- Evaluation/Award
- Negotiations



BAA – Notice Requirements

- WWW.FBO.GOV – Federal Business Opportunities
- Research and Development – Classification “A” Section
- Noted scientific, technical, or engineering periodicals (if authorized)



Notice (con.)

- The notice must be published no less frequently than annually for open BAAs
- Notice of Award Not Necessary



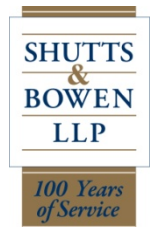
BAA – Be Proactive

- Explore Fed Biz Opps
- Review Prior Research
- Fedconnect.net
- Determine Potential Clients
- Engage before Announcements
- FOIA Requests



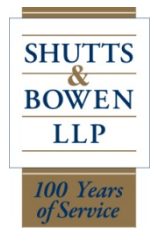
Be Proactive (continue)

- Attend Proposers' Day Briefings
- Attend Other Agency Events
- Pull POCs from Fed Biz Opps and Call for Future Events or Suggested Studies



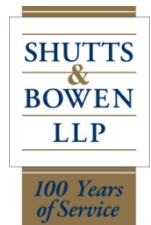
Contents of BAA & Supporting Documents

- Agency's Research Interest
- Selection Criteria and Relative Importance
- Method of Evaluation
- Preparation and Submission Instructions, including Timing



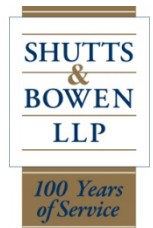
BAA – “Site Visits”

- Informational briefings
- Details as to time, date, place, number of attendees permitted, or clearances needed
- If not included, request!



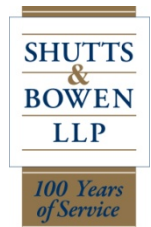
BAAs – Communications with Agency

- Government technical personnel may continue to talk directly with prospective offerors on a BAA announcement to resolve questions and provide general program information until a proposal is submitted



BAA – Improper Discussions

- Other offeror's proposals or White Papers
- Rating information of other offerors
- Questions outside the scope of the technical focal point, such as contract terms and conditions, or projected award schedule, should be referred to the CO



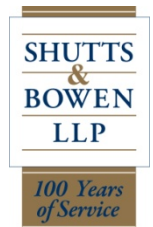
BAA – Challenge Agency

- Review Terms Carefully
- Ask Questions – Verbal and Writing
- File Protest If Necessary, be timely
- Agency properly restricted review of proposal to only one volume of proposal
- Protester did not review closely until rejected



Some Agencies Use Two Steps

- Avoid Additional Work for Offeror and Agency
- Request for White or Concept Paper
- Less than 5 Pages
- Title, Period of Performance, Estimated Cost, Task Objective, Technical Summary and Proposed Deliverables



Evaluation of White Papers

- Use criteria stated in the BAA announcement
- Determine which White Papers to pursue based on their applicability and consistency with the intent of the BAA



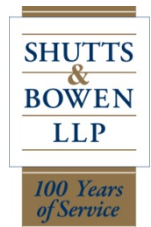
Step Two – Similar to Single Step

- Selected offerors are then requested to submit a definitive technical and cost proposal for RRS to evaluate.
- Offerors whose white papers are not selected for full proposal submission may still submit a full proposal if they wish.



Proposal Submission

- The Obvious
- Simple (as possible)
- Economical, providing straightforward, concise delineation of the technical solution necessary to perform the proposal
- Fully supported cost proposal



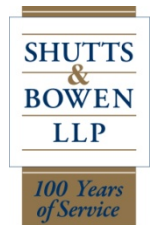
Proposal – Be Complete

- Where protester's proposal failed to include sufficient technical information to establish viability of proposed research, agency reasonably determined that technical success was improbable and properly determined not to fund proposal



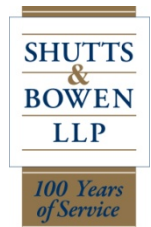
Proprietary Information

- Insert Language from FAR 52.215-1(e)(1) and (2) on Cover Page
- Indicate No Disclosure
- Identify Page Numbers
- “Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.”



BAA – Proposal Evaluation

- Evaluation Criteria in Solicitation
- Peer or Scientific Review Process
- Written Evaluation Reports on Proposals
- Comparative Evaluation Not Necessary as no common work statement



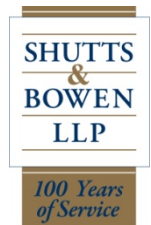
Challenges to Agency's Evaluation

- In reviewing a protest of an agency's proposal evaluation, GAO will not reevaluate proposals.
- Was evaluation reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations.



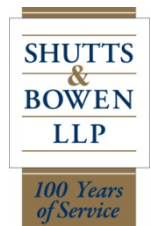
Evaluations

- Rank Proposals – One approach
- 3 Categories
- Recommended for Acceptance
- May be Recommended
- Not Recommended



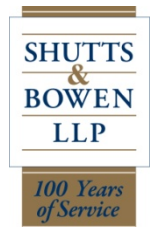
Evaluation Issues

- The use of unstated criteria is not permitted in evaluating proposals, but criteria that are reasonably related to stated criteria may be used.
- To the extent that unstated criteria were present, they were reasonably related to stated criteria and so caused no prejudice to the selection process.



Evaluation Issues (con.)

- Proper to evaluate whether proposal met a “minimum” requirement
- Denied protest as to allegation of evaluation based upon an unstated criterion-access to rights in proprietary data



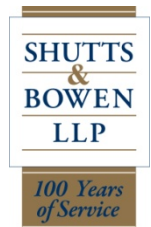
Award Issues

- A request to submit a definitive technical and cost proposal does not guarantee an award.
- Award is dependent on submission of a sound technical and cost proposal and is subject to successful negotiations as well as the availability of funds



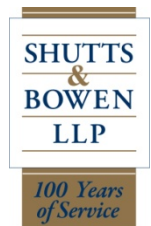
BAA – Selection for Award

- Primary basis - technical, importance to agency programs, and fund availability
- Cost realism and reasonableness shall also be considered to the extent appropriate



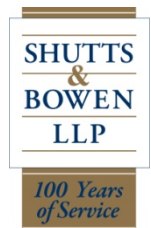
BAA – Fixed v. Cost Price Contract

- Agency had announced intention to award two phase BAA Cost-Plus Contract
- Vendor received phase one fixed price contract due to inadequate accounting system
- Vendor's challenge to rejection of fixed price proposal rejected



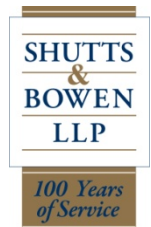
Technical and Cost Negotiations

- Model Contract
- Revised Cost Proposal
- Technical Proposal Changes
- Partial Award



Negotiations – Be Flexible

- Agency reasonably discontinued negotiations that lasted four months where no agreement concerning intellectual property rights.
- FAR meaningful negotiations not applicable at this phase, but still must be reasonable



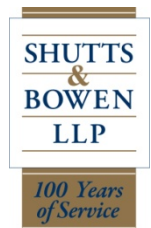
Post Award

- Debriefings
- Always Request – Award or No Award
- Request Copy of Final Technical Report



Protest Issue – GAO/COFC

- U.S. Court of Federal Claims has ruled that it has no protest jurisdiction over Small Business Innovation Research procurements - not procurements. This conflicts with the view of the GAO.
- Unclear as to all BAAs



Rome Research – Industry Guide

- Detailed Directions for Writing Proposal
- Follow Directions in BAA
- If None or Unclear, Clarify
- Use as a Model



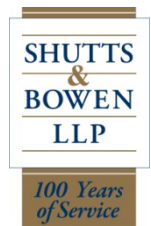
Other Resources

- Combating Terrorism Technical Support Office (CTTSO) Broad Agency Announcement (BAA) Information Delivery System (BIDS)
- www.bids.tswg.gov
- <http://www.hq.nasa.gov/office/procurement/nraguidebook/proposer2010.pdf>



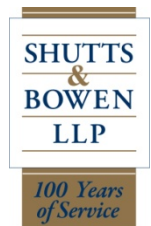
BAA re Oil Spill

- Government Calls for Oil Spill Response Solutions--In connection with the BP Deepwater Horizon oil spill in the Gulf of Mexico, the Coast Guard's Research and Development Center (RDC) June 4 issued a broad agency announcement on FedBizOpps asking vendors to submit white papers on (1) oil-sensing improvements to response and detection, (2) oil wellhead control and submerged oil response, (3) traditional oil spill response technologies, (4) alternative oil spill response technologies, and (5) oil spill damage assessment and restoration.
- The Interagency Alternative Technology Assessment Program workgroup, created by Adm. Thad Allen, the national incident commander for the spill, will work with RDC to evaluate submissions for scientific and technical merit, feasibility, availability of the proposed solution and estimated costs.



Others

- Homeland Security - The Science and Technology Directorate's Processes for Funding Research and Development Programs (OIG-09-88) is available at www.dhs.gov/xoig/assets/mgmttrpts/OIG_09-88_Jul09.pdf.



Private Use - BIA

- Boeing-SAIC Team for the Army's Future Combat Systems used to seek proposals for combat systems, command control, communications, computers, intelligence, surveillance, reconnaissance, and supportability.

