

Successful Bidding and Performance on Government Fireworks Display Contracts

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Over the years the authors have had experience with government contracting from both sides: in selecting and monitoring contractors for the government and as holders of government contracts. In this article we would like to share some general information about contracting with the federal government and about contracting for fireworks displays in particular. However, readers are cautioned that there are some differences in the manner in which various government departments let contracts and then monitor those contracts. Thus there is no guarantee that the process, as described in this article, is completely accurate for any particular situation.

In preparation for contracting for a fireworks display a "Request for Proposal" (RFP) is prepared by the government agency. This presents all of the government's contracting requirements and the specifications for the display. The RFP is sent to a collection of display companies that have proposed in the past or have requested to receive the solicitation package. In recent years some contracts have been a small business set aside; as a result, a few of the largest display companies are excluded from consideration. After receiving and studying the RFP, potential bidders draft and submit their proposals.

In most cases, the process of selecting a contractor is in essence a two step process in which **TOTALLY** different rules apply. In the first step the **ONLY** consideration is whether the proposal is "Responsive" or "Non-Responsive" (more on this later). Only those proposals declared to be responsive make it to the second step, where the **ONLY** consideration is the price for the display. As a slight complication, the responsive bidders may be asked for their "Best and Final" price, at which time they are free (encouraged) to trim their proposed price in hopes of being the low bidder, the one that will be awarded the contract.

It might seem that this is an inappropriate way to contract for a display, and many in the government might agree. Nonetheless they are required

to follow "Federal Acquisition Regulations" (FAR's). As a result, fireworks displays are purchased very much like nuts and bolts, with the artistry of the display occasionally suffering as a result. For example, suppose there are only two proposals that are responsive (i.e., meet all the government's minimum requirements for the display). Suppose one just meets the minimum shell count and the other promises a substantially greater shell count. All else being equal, the larger display should be the better one. However, if the bidder proposing the larger display has a higher price, even by just one dollar, the government must choose the lower priced proposal. This seems foolish, as obviously the larger display, for only a dollar more, is the better value. The reason it is not foolish, at least as far as government procurement regulations are concerned, can be seen in a second example. Suppose instead, this is a contract for nuts and bolts, and detailed specifications have been established for them that completely satisfy the government's needs in every way. Again there are two bidders to supply the nuts and bolts; the first bidder proposes just to meet the specifications, while the second bidder proposes not only to meet the specification but also hand polish each nut and bolt to a perfect mirror finish. If the first bidder has the lower price, that is the one who will be awarded the contract. This is as it should be; why should the government spend any of our taxes, even just one dollar, for something that is not needed (like polishing nuts and bolts to a mirror finish). While this makes perfect sense when purchasing nuts and bolts, for the most part, it does not make good sense for a fireworks display. (A fireworks display should be purchased more like the commission for a piece of art, where the price is set and then the best proposal for that amount wins.)

From the above discussion it should be clear that price is ultimately very important. However, the proposed price will not even be considered unless the proposal is first found to be responsive. For a proposal to be responsive, it must address

each and every item identified in the RFP. Further it is necessary that each of these responses meet or exceed the minimum requirement established for that item. Note, as in the example above, that no extra points are given for substantially exceeding any or all requirements. Accordingly there are two excellent reasons not to propose to significantly exceed any RFP requirement. In the first place, exceeding the requirements will cost more. While this may result in a superbly responsive proposal, it may also be one which must later be rejected on the basis of cost. Secondly, any promises made in the proposal must be kept after award of the contract. Since, generally, the government will be holding a 100% performance bond paid in advance by you, and since they have the authority to assess "liquidated damages" (deductions to the contract price) for any promises not kept, they have two mighty big sticks to encourage a contractor to meet their commitments.

A point by point discussion of each requirement listed in past government RFP's for fireworks displays might be useful for potential bidders; however, that would turn this short article into a book, which would be of little interest to most readers. Accordingly the subject will not be pursued further in this article.

Some government displays can be referred to as "prestige" shows, ones that a company may want to perform for the prestige derived from having done it. For this reason many companies bid these shows at the absolute lowest possible prices. Often this is little more than about half the fair market value for the display or about the wholesale value of the fireworks alone. Accordingly, unless one is an importer, buying considerably below wholesale, and willing to forego almost any hope of profit, it will not be possible to propose a

low enough price for those prestige shows. In fact, to be able to meet the shell counts required in the RFP and still get the price low enough, one probably has to be able to manufacture or purchase specially made low value "filler shells". These are shells that have impressive names and hopefully look good when shot in barrages, but which are relatively inexpensive. Moral and ethical considerations aside, unless a significant number of this type of shell are used, it will be difficult to win some government display contracts and still break even on the display.

Since some government contracting officers feel that past contractors have occasionally tried to cheat by not fulfilling their obligations, they have tightened many of their practices and exercise more control over their contractors. For example, contracting people may be on site at all times and may insist on verifying all aspects of compliance with the proposal. Most notably, there generally will be a 100% inventory of the shells promised, right down to manufacturer and type. During loading, monitors will usually be present to prevent unauthorized substitutions of cheaper shells or pulling shells without any substitution. Following the display, there will be a mortar by mortar inspection to determine exactly which shells have not been fired. Accordingly, attempts to lower costs with this type of cheating will not be possible.

Rarely is it easy to do business with the government. However, many potential problems can be eliminated by using care not to propose more than you are willing to deliver and with good advance planning with lots of attention to details and contingencies. Nonetheless, in order to win government display contracts, a company has to be willing to forego almost any hope of profit.