

# The Executive Summary

VOL VI NO. 2 MARCH/APRIL 2000



A BIMONTHLY PUBLICATION OF THE APMP NATIONAL CAPITAL AREA (NCA) CHAPTER

## Winning In A Hostile Environment

By Jacob B. Pompan

When the winds of change topple imbedded contracting concepts and when your inability to quickly adjust could result in being swept out of the mainstream, it pays to have some strong philosophical anchorage. My 50-year-old anchor may be rusty but it helps me understand and relate to the changes. I think it serves me well.

My anchor is my circa 1950 perception of

the acquisition process. Whatever new changes take place, I try to put them in context with my perception of the process. If I believed that the total procurement process was exceedingly user friendly, that it was fair, that the government employees were all well trained, even-handed, rational, and skilled, I could make a reasonable interpretation of how the changes would be implemented. I could adjust my sights, because I could make some reasonable forecast of the impact of change, and I would not be "swept out to sea" or wherever government contractors and lawyers end up. But that is not my perception of procurement. I see the process as quite the opposite. I see it as neither predictable nor user friendly. After fifty years at all levels of the process, I view it as extremely hostile to government contractors and would be contractors. I view that condition as a fact of life that must be considered and factored into every interface with the process.

My view of the process by which a government customer develops a need, is then transformed into a specific requirement, a statement of work, a solicitation, a proposal, a contract, and a satisfied customer, is a minefield in which an understanding of the total process is critical to your efforts to effect any particular result. It is a hostile environment.

If you start with the premise that it is hos-

tile and try to identify why it is hostile you have a better chance of success. This process is an absolute continuum. Every actor in the process has an impact on the process further down the food chain whether or not that person is aware of his impact on the process. The engineer who makes a decision involving the performance requirements of a machine tool has an impact on whether or not the procurement will be sole source, the degree of price competition, whether it may be purchased from a schedule, whether there will be a protest, whether there will be a claim under the contract, and of course, whether the ultimate government customer will be satisfied. He has this impact although he may not know it.

So we have identified two characteristics of the process — one is that it is hostile. The second is that it is a continuum. One reason that it is hostile is that notwithstanding the almost daily regulatory pronouncements from Washington and the centralized control of regulations, such as the FAR, DFARS, AFARS, AFFARS, as well as the SBA regulations, the "trickle down theory" does not work. Every contracting officer has an interpretation of the regulations and policies, and what their obligations are under those directives. In some agencies, there is pervasive and dangerous ignorance and disregard of the regulations. At The Secretary's office in Washington, you may get agreement on the meaning of a policy and regulation.

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## **President's Corner by Carl Dickson**

**T**here are lots of little things going on with NCA that add up to some major changes.

First, I'm proud to report that our small business SIG is going to sponsor a pre-round table event on the topic of SBIR/STTR proposals. The Government spends a huge amount of money through these vehicles, yet many proposal specialists are not familiar with them. If you can make it a little early to the next round table, I encourage you to sit in on the presentation.

Next in the news is the start of our Point of Contacts lists. At the last round table, we passed out sign up sheets on a variety of topics, including: proposal processes, proposal technol-

ogy, small businesses, contracts, graphics/production, business development, and more. We plan to pass them out again at the next round table and then begin publishing the lists so you can get in touch with others who share your proposal interests. We hope to see these lists foster new opportunities for networking for those who attend NCA's events. Finally, the domain name for NCA's Web site is changing, due to changes at the national level. Our new Web site URL is <http://www.apmp-nca.org>. Information about the point of contacts lists, our events, and frequently asked questions about NCA will be posted there. ■

## **January Roundtable**

**T**he January meeting was low in attendance (20 people), but was high quality in terms of the program. Carl

Dickson presented a program called "Frequently asked questions about the NCA". The program was an introspection of the organization, functions and missions of the NCA. It was cleverly presented in a ques-

tion and answer format and included interaction with the audience. It covered everything from what NCA stands for to the relationship of the National APMP organization to the NCA. It provided lots of guidance on how members can contribute to the NCA. Also, Lou Robinson presented the dynamics of the financial side of NCA including the source and use of funds.

Carl passed out a group of sign up sheets covering topics related to proposals such as Small Business Proposals, Marketing, Orals,

etc. Members signed all sheets that covered topics of interest to them. This is part of an effort to reshape NCA in response to the interest of the membership.

Bob Crawford conducted the election of the Mem-

bers of the NCA Board of Directors for the year 2000. He presented a slate of officers that was unanimously accepted. The members of the board of Directors for 2000 are Carl Dickson (President), Bob Crawford (Vice President), Lou Robinson (Secretary/Treasurer), Gene Alfaro (Member at Large) and John Bender (Member at Large) ■



# March NCA Roundtable

**M**r. JAKE POMPAN is the speaker for the March 15, 2000 APMP Roundtable Meeting.

Mr. Pompan will be speaking on "Strategies for Success in a Hostile Environment." He will describe the Hostile Environment and suggest ways to reduce these hostilities.

Mr. Pompan is the senior member of the Alexandria law firm of Pompan, Murray & Werfel. He is a Government Contract Specialist who closely follows Government acquisition processes and changes in the processes. He is a graduate of the U.S. Military Academy and received a Juris Doctor (with honors) from George Washington University Law School. He retired from the Air Force as a Colonel in 1973. Since then he has been active continually in Government Contracts law.

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## Pre-Roundtable Event Announcement

*PROPOSAL MANAGEMENT & SUPPORT SYSTEMS*

*FOR SMALL BUSINESS INNOVATIVE RESEARCH COMPANIES*

**T**his unique presentation will be aimed at providing the audience with a practical understanding and Proposal Management perspective of the US Government's most successful small business technology development program, the SBIR. SBIR is the single "most proposed to" program in all of federal contracting, receiving more than 50,000 proposals each year. With that many proposals, it might seem to be fertile ground for the proposal consultants in our membership — but is it really? Come to the APMP roundtable on 15 March to get the lowdown on this exciting, ever changing, ten agency program presented from the proposal support and management point of view. Find out what the leading firm in the SBIR proposal support business had to do to become the leader.

The speaker, John Davis, is founder of the SBIR Resource Center(TM) and the General Manager of JADE Research Corporation. JADE Research has been the leading national provider of business development resources to the SBIR and STTR communities since 1994. A member of APMP since 1995, Davis has more than 30 years experience in winning funds from, and conducting R&D projects for, federal agencies. Davis can be reached at JADE Research Corporation, 5 Linda Lane, Severna Park, MD 21146, by telephone at (410) 315-8101, E-mail SBIR@win-sbir.com or through the SBIR Resource Center(TM) web page found at <http://www.win-sbir.com/>. ■



## Calendar of Events

The purpose of the calendar is to apprise NCA members of upcoming events of interest to proposal professionals.

				Contact Phone No.
<b>MAR</b>	6	NCA Board Meeting	• Topic: General Business	703-883-9112
	15	NCA Roundtable	• Topic: Strategies For Success In A Hostile Environment	202-293-4987
<hr/>				
<b>APR</b>	3	NCA Board Meeting	• Topic: General Business	703-883-9112
<hr/>				
<b>MAY</b>	8	NCA Board Meeting	• Topic: General Business	703-883-9112
	17	NCA Roundtable	• Speaker: TBD	202-293-4987

# Small Business Interest Group Update



**N**CA is working toward including more members of the Small Business community into the local chapter. The purpose of the Small Business Interest Group (SIG) is to attract small business into the APMP membership in order to advance the arts, sciences and technology of proposal management. Additionally, the SIG will promote the professionalism of small business enterprises in the proposal process associated with business development. The goal of the Small Business SIG would be to offer small business information about proposal management and related topics. The topics would be topics of great interest identified by SIG members.

## **OBJECTIVES OF THE SIG INITIALLY ARE TO:**

- Convene an APMP Small Business Interest Group Session on an as scheduled basis to start with
- Offer relevant small business topics and speakers
- Provide a forum for identifying small business needs in the proposal area

All APMP members and associates of members are welcome to participate in the activities of the SIG.

The SIG is sponsoring a Pre-Roundtable presentation on Small Business Innovative Research (SBIR) at the March 15, Roundtable. The presentation will start at 5 o'clock and last about one half-hour. Additional information on SBIR is in an accompanying article. ■

## March Roundtable...

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Since April of 1997, he has been issuing Contracts Flash Reports every month. In addition, he sometimes issues "Alerts" for sudden or significant changes in the acquisition process. The reports describe Government changes or anticipated changes in acquisition processes and words of wisdom applicable to proposal preparation. They provide examples of contractors in protest actions and note what was done correctly and incorrectly. A sampling of subject titles shows how relevant this information can be:

- Recent Relevant GAO Decisions
  - Uncontrolled Agency Sole Source Awards to 8(a) Contractors
  - Pompan's Early Warning System (PEWS)
- See you on March 15th. ■

## **UNIQUE CAREER OPPORTUNITY**

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# How to break proposal software

**W**hen purchasing software it really helps to know how to break it. You might decide to buy it anyway, but at least you'll know its limitations ...

## CHANGE THE PROCESS

An automated process is like an assembly line, with predictable repeatable steps. A smart automated process may allow for contingencies, and customizable processes. However, developing proposals (at least certain types of proposals), often involves process changes made on the fly, based on circumstances like amendments to the RFP. Proposals written by teams often have different people playing different roles depending on who is in charge of that particular proposal. Try backing up and repeatable a step in a different way, as often happens in the real world of doing proposals. Some software packages designed to automate the proposal process won't let you back up at all! Granted, nobody wants to back up and repeat steps, but the real world of proposals can get ugly. If the software can't keep up with how you want to do a particular step in a proposal at a particular moment, you'll end up working around the needs of the software instead of the software working around your needs.

## CHANGE THE OUTLINE

Any software that establishes a link from the outline to individual responses is vulnerable to changes in the outline. Sometimes the outline changes because someone in the chain of command wants it that way. Some changes to the outline may be required by an RFP amendment. Changes to the outline can involve changing a section, deleting sections, adding sections, and moving sections. Maintaining the links between the outline, the



assignment, and the response through these changes will often break proposal software that links the outline to the response.

## RECEIVE AN AMENDMENT

If you really want to muck-up an automated proposal system, throw an RFP amendment at it. Think of everything that can change as the result of an amendment — requirement contents, response contents, outline, process, schedule, resources, writers, team mates, etc. Can the software you have in mind keep up?

## INCORPORATE UNWRITTEN REQUIREMENTS

Make sure any software that supports written RFPs also provides for unwritten requirements. A good proposal capture plan will generate requirements intelligence long before the RFP is actually issued. Ideally, a proposal automation platform should be able to begin supporting a proposal before the RFP is issued and apply the data collected to the RFP once it hits the street. Another possibility is that the proposal may not have a written RFP. Can you emulate a written RFP by documenting verbal requirements and

customer understanding? Can these unwritten requirements be allocated to the document?

## REVIEW THE DOCUMENT

Most proposals go through informal and formal reviews. Will the software support both types? Does it support any type of review? Will it facilitate the collection of comments and their redistribution as writing assignments. Reviews can also lead to changes in response requirements, outline, assignments, schedule, and even process?

## SWITCH ROLES (SUB VS. PRIME)

When we think of doing proposals we often think of doing them as a prime-contractor. Yet many companies do the majority of their proposals as sub-contractors. As a sub-contractor, the proposal may not live within your system. However, the re-use material and other features of your proposal system may still be of assistance. Will the software provide the support you need when in either role?

## TEAM WITH ANOTHER FIRM

When you are the prime-contractor, you may have sub-contractors working on the proposal with you. If this is the case, how will access be provided and what security will be in place. Even if you don't provide remote access, you don't want a sub-contractor working at your facility to have access to all proposals when using the system.

## WEB BROWSER ISSUES

If the software is web-based, there are technical issues to consider. The various web-browsers are not feature-for-feature compatible.

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# Winning In A Hostile Environment...

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You are very unlikely to get any agreement with the Secretarial level interpretation in some agencies where training is limited, and skilled leadership seems often non-existent. Keep in mind, the individual people are not hostile. The natives are very affable and friendly, not at all personally hostile although they often cling to incorrect interpretations of the law and defy you to correct them. They can be very dangerous to your contract health because they are either ignorant of the rules of the game or affirmatively disregard them.

A critical characteristic of the process which creates the hostile environment is the transition from “award to low bidder with almost no discretion” to an environment with almost unfettered discretion in procurements in which awards are to be made on the basis of subjective evaluation of non-cost factors. In the mythical world of highly skilled contracting people, working in mythical organizations in which the contracting officer is indeed in charge of the show using her consultants evenly and making “Solomon” like decisions, the degree of discretion in the subjective evaluation of non-cost factors might lead to happiness and light.

Even now, the evaluation decisions leading to the award are not necessarily “wrong.” In decisions of best value there is often no “right” or “wrong.” The GAO will generally not object to an evaluation decision as long as it is “reasonable.” The GAO will not stand in the shoes of the evaluator with this immense discretionary power. Today, while there are awards based solely on who is the low bidder, the trend toward



evaluation of non-cost factors predominates.

Whose discretion is it? It is not generally the contracting officer. There was a time in the distant past when a contracting officer was possessed of substantial power, both de jure because of his warrant, and de facto because of his experience and the corporate culture. The ranks of contracting officers, particularly in the Department of Defense were staffed with experienced personnel, who understood their role, were qualified to perform it and had the stature in the organization to participate in award decisions in a meaningful way. Much has changed. Today, we have many contracting officers who never had a strategic understanding of their role in the process and whose role today is in a state of flux because of new procurement methods. Notwithstanding a plethora of acquisition training courses, contracting officers no longer make the key decisions. The decisions are being made by the customer to whom the contracting officers and the process have relinquished authority.

Is that a hostile environment? It depends

on whose ox is being gored. It will be hostile if you fail to appropriately market your ultimate customer and fail to give him what he wants in performance. The trend away from using cost as the discriminator is critical. The GAO cases spell it out very clearly — contracting officers are regularly making awards to other than the low priced offeror since in the customer’s opinion, the higher ratings for non-cost items are worth the premium over the lower priced proposal. The dollar differences are a finite number and easily comparable. However, the non-cost factors such as man-

agement, personnel, quality, past performance, experience, and subcontracting to small business defy finite comparisons. As long as the evaluations fit into the very broad ambit of “reasonableness” and as long as that decision is documented, the award to the higher priced offeror on the basis of best value will prevail.

The use of past performance as a primary evaluation factor is the perfect example of the source of the hostile environment. In 1949, we had names of contractors on a sheet of paper taped to our desk — contractors to whom we simply would not award a contract unless there was no other choice. Almost every contracting officer in my branch had his own personal list. It may have been illegal, but it was very effective. Today, the agencies are still struggling to find a reasonable implementation of this extremely subjective factor. There are many cases in which the only two factors determining the award are cost and performance with performance valued at 50%. We have evaluations with the non-cost subjective past performance factor

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# Winning In A Hostile Environment...

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weighted at 70%. Contracting personnel and their technical advisors incapable of explaining defective pricing, or defining overhead or G&A rates or understanding a balance sheet have implacable personal opinions on the offeror's past performance. No technical skills are necessary to have a "reasonable" opinion about the degree of performance risk associated with any particular offeror — just simple bias.

The position of the GAO on bias is very instructive. If a protester alleges bias, he must have "irrefragable proof" that the agency had targeted that contractor to hurt him in some way. That is an almost impossible burden of proof and I know of no cases in which the GAO has agreed that prejudicial

bias against a contractor existed. There is no question that there is bias. Good marketing and an outstanding proposal will bias an evaluator in favor of a client. Bias was less important when awards, even CPFF awards were being made to the "low offeror." Today, subjective bias is the name of the game. You just need the "right" bias.

The most effective proposal is the one that gives the technical evaluators exactly what they want. Good marketing means developing a trust relationship with the government technical personnel to create a clear understanding that the offeror has the capability to deliver what the government wants. The government must engage in market research. The regulations recognize

that while the government should know its own requirements, the contractor may have a better idea of what is in the marketplace that can satisfy those requirements, or in fact whether the requirements should be changed to take advantage of contractor capabilities. The regulations at FAR 15.201 provide the superb vehicle to market the government and create the "right" positive bias. The obligations of the government to perform market research spelled out at FAR Part 7 in conjunction with its obligation in FAR 15.201 to meet with and listen to contractors are critical predicates to a successful proposal. The most successful proposal should rest on a foundation of friendly, legitimate, continuous, and productive communications between government technical customer and the offeror. Effective pre-proposal communication is the key to a successful proposal. ■

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# How To Break Proposal Software...

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Spacing, colors, and other details may change depending on which browser you are using. There are also differences between browser versions. This is most important for web-based systems using the features of the latest versions of HTML, Javascript, or Java. Each browser version has features that can greatly improve a web-based system — at the expense of users of previous versions who won't be able to take advantage of them. Even if all users within your company use the same browsers, teaming partners, home users, and onsite users may not. Pay attention to browser compatibility.

Also pay attention to any scripting languages required. These include Javascript, VBScript, and Java. Java is a completely different animal from Javascript. Java is a complete programming language that can do many wondrous and powerful things. However, this power comes at a price. Java based systems tend to be slow, and often have significant download requirements before you can use them. Think of how much disk space a pro-

gram like MS-WORD takes. It's not megabytes, its tens of megabytes. Now imagine if you had to download that code before you could run it. Most Java systems severely limit the amount of code (and therefore the functionality) in order to shorten download times. But a download time measured in minutes before you can access your page may not be a useable solution, especially if you have users who dial-in using modems. Also, Java is not as platform compatible in real world usage as promised. There is a trade off here, and the use of Java in a system may be worth it—but test it before you commit.

Another check to make with web-based systems is whether a browser "plug-in" is required. A plug-in extends the functionality of the browser and can help get around problems with web-based systems. On the other hand, downloading a multi-megabyte plug-in prior to being able to use a system may not be practical. It depends on your user population and proposal environment. ■

## ***Interested in your association?***

Have you considered  
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are important to your  
committee!**

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