

Federal Contracts Report™

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Proposal Evaluation

GAO: Agency Issued Flawed Support Staff Award

BNA Snapshot

Key Holding: GAO sustains protests of support staff award due to several flaws in Defense Human Resources Activity's evaluations.

Rationale: Agency lacked a reasonable basis for assigning technical and past performance ratings, and treated offerors inconsistently.

Key Takeaway: In a best value trade-off, agencies must explain why awarding a higher-priced offeror is worth the premium.



By Daniel Seiden

July 31 — The Defense Human Resources Activity should reevaluate proposals and make a new award in a support staff procurement due to several flaws in the initial evaluation, the Government Accountability Office said (*Metis Solutions LLC* , GAO, B-411173, 7/20/15, decision released 7/30/15).

The GAO said the agency didn't have a reasonable basis for its award, failed to adhere to solicitation terms and treated offerors inconsistently.

Stephen E. Ruscus of Morgan, Lewis & Bockius LLP told Bloomberg BNA there was ample evidence that the procurement wasn't conducted reasonably. The protesters went "score by score and adjective by adjective and found a whole host of flaws across every portion of the evaluation," he said.

As a result, it might have been wise for the agency to take corrective action.

He also he said the case "shows the need for the government to have a specific rationale for its best value trade-off," and that an agency must articulate "why paying the higher priced offeror is worth paying the higher price."

James G. Peyster of Crowell & Moring LLP said the most noteworthy aspect of the decision was that there was a decision at all given the number of errors.

He told Bloomberg BNA in an e-mail that the "evaluation record had a large number of fairly glaring gaps, mistakes, and inconsistencies which DOD could not explain. It is surprising that a case with so many sustainable evaluation errors would get to a final decision from the GAO."

The agency's request for proposals sought small businesses to provide support staff services under a fixed-price contract. The agency said it would award the firm offering the best value to the government after considering price, technical and past performance factors.

The highest-rated but highest-priced offeror, Interactive Government Holdings Inc., received the contract. Six firms filed protests raising numerous allegations.

Unreasonable Technical Evaluation

The GAO said the technical evaluation was flawed because the agency lacked a reasonable basis for assigning weaknesses to proposals.

For example, the agency assigned a protester a weakness because it included a quality assurance surveillance plan in the

proposal appendix and not as part of the technical proposal, even though the solicitation didn't require such a plan in the technical proposal.

The agency also assigned weaknesses inconsistently, the GAO said. In particular, one protester received a weakness for failing to include a list of deliverables in the performance work statement, but the awardee didn't receive a weakness for this same omission.

Inconsistent Past Performance Ratings

The GAO also said Interactive Government shouldn't have received a satisfactory past performance rating because its past performance examples were of a much lower value than the contract in this case.

In addition, there was no explanation of why protesters with stronger past performance examples received lower ratings.

Finally, the GAO said the agency didn't meaningfully consider offerors' price advantages or the comparative strengths and weaknesses of the individual proposals.

Peyster added that "in the past five years all federal agencies, but particularly DOD agencies, have become significantly more proactive about identifying flawed procurement files and taking voluntary corrective action before the GAO gets to the point of issuing a written decision on a bid protest. Cases where there are multiple protesters challenging very similar issues tend to get even more scrutiny from agency counsel early in the protest defense process."

Ronald S. Perlman and Elizabeth N. Jochum of Holland & Knight LLP; Washington, DC; Jerry A. Miles and others from Deale Services LLC, Rockville, Md.; James S. DeSordo and James S. Phillips of Argus Legal, LLC, Manassas, Va.; Antonio R. Franco and others from PilieroMazza PLLC, Washington, DC; Kevin J. Cashman; Georges H. Brandan represented the protesters. David E. Fletcher and others from Cooley LLP, Washington, DC, represented the intervenor-awardee. Hattie Russell DuBois of the Defense Human Resources Activity represented the agency. Susan A. Poling and others from the Office of the General Counsel, GAO, participated in the preparation of the decision.

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For More Information

The GAO's decision is available at: <http://www.gao.gov/assets/680/671800.pdf>.