

“Hey Big Spender . . .”: GAO Reiterates That Agencies Must Meaningfully Consider Price In Best Value Tradeoffs

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In three related bid protest decisions made public last week, the Government Accountability Office (“GAO”) reaffirmed the principle that agencies must **meaningfully consider** price when making best value tradeoff decisions. GAO sustained the protests, stressing that merely paying lip service to price while selecting a more expensive, higher-rated offeror is not sufficient — agencies must provide a rational explanation for why they have decided to pay a premium for the awardee’s technical superiority.

In [Solers, Inc., B-414672.3 et al.](#); [Technatomy Corporation, B-414672.5](#); and [OGSystems, LLC, B-414672.6 et al.](#), three disappointed offerors challenged the Defense Information Systems Agency’s (“DISA”) award of Multiple Award Task Order contracts to 14 contractors as part of the Systems Engineering, Technology, and Innovation program.

The solicitation provided that DISA would make award on a best-value tradeoff basis considering price and four technical factors that, when combined, were significantly more important than price. The agency made award to the 14 highest rated proposals in the non-price factors, opining — without elaboration — that “the technical merit of those proposals justifies paying a price premium over lower-rated, lower-priced proposals.” Indeed, throughout the evaluation process, the agency repeatedly noted — again without elaboration — that the awardees’ proposals were worth a premium.

The three protestors raised a host of different claims, but each one challenged the best value determination, arguing that DISA failed to meaningfully consider price. GAO agreed, holding that the agency had performed a mechanical tradeoff that relied exclusively on adjectival ratings and excluded technically acceptable proposals without any meaningful consideration of their price. GAO was unimpressed by the agency’s “one-sentence conclusion” — repeated “nearly verbatim” throughout the evaluation record — that, “due to strengths on the non-price factors, the 14 awardees merited selection over lower-rated, lower-priced proposals[.]” It found “such consideration of price to be nominal” and opined that “anything less would be to ignore price completely.”

GAO also noted that the source selection authority (“SSA”) missed the point when it concluded that there was a “clear break” between the offerors who received award and the disappointed offerors

who purportedly “d[id] not have sufficient technical merit to justify making additional awards.” In GAO’s view, the SSA failed to consider the relevant question, which was “whether the higher-rated proposals were worth the associated price premium.” GAO explained that “there is no indication that price played a role in determining the ‘clear break’ in the proposals.”

These decisions serve as an important reminder that disappointed offerors who lose best value tradeoff procurements to a higher-priced, higher-rated offeror should try to assess during the debriefing process whether the agency can articulate a rational justification for paying a premium to the awardee. If the agency is unable to do so, the disappointed offeror should consider filing a bid protest.

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