

Government Accountability Office (GAO) Rules Agency Best Value Decision Fails “Tests Of Rationality And Consistency”

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The GAO recently issued a decision clarifying that a procuring agency’s discretion in best-value procurements, while broad, is not unfettered.

In [*PricewaterhouseCoopers LLP*](#), B-409537 (June 4, 2014), GAO sustained a protest by PricewaterhouseCoopers (“PwC”) challenging NASA’s award of a contract for audit support services to CliftonLarsonAllen, LLP (“CLA”). PwC alleged that NASA improperly relied upon CLA’s successful past performance rating as the basis for award, notwithstanding PwC’s higher-rated proposed technical approach. GAO held that NASA’s decision failed the “tests of rationality and consistency with the solicitation’s stated evaluation criteria.”

Facts: The solicitation instructed that NASA would award the contract to the offeror whose proposal represented the best value to the Government, taking into account three factors, in descending order of importance: (1) technical approach; (2) past performance; and (3) price, with the non-price factors being significantly more important than price. Non-price proposals were evaluated by a “Source Evaluation Team” (“SET”). The SET rated PwC’s technical approach as “Excellent,” the highest available rating, assigning it two significant strengths, two strengths, and no weaknesses. The SET rated CLA’s technical approach as “Good” (two ratings lower than “Excellent”), assigning it one significant strength, one strength, and identifying three weaknesses that the SET believed could impact CLA’s ability to perform. As to the other two factors, both offerors received ratings of “Very High Confidence” for their past performance. CLA’s proposed price was roughly 13% lower than PwC’s.

After receiving the SET’s ratings, the NASA Source Selection Authority (“SSA”) awarded the contract to CLA, concluding that PwC’s higher technical rating did not warrant its proposed price premium. In so doing, the SSA heavily relied upon CLA’s successful past performance rating, which he believed indicated that CLA could successfully perform the work notwithstanding the issues the SET identified in its technical approach. Indeed, the during a hearing on the protest, the SSA explained that CLA’s past performance record served to offset any technical superiority in PwC’s proposed approach.

GAO Decision: GAO sustained the protest, holding that the SSA had “improperly magnified the importance of past performance and used it to conclude that the identified technical differences were

of no consequence.” GAO found this magnification to be even more problematic given that PwC and CLA had received the same past performance rating, “such that the SSA could [not] reasonably make tradeoffs between one vendor’s technical superiority and another vendor’s strong past performance.” Indeed, GAO noted the SSA’s written award decision indicated that past performance was “not a discriminator” between the two offerors. Accordingly, GAO held that notwithstanding the “broad discretion” afforded to source selection agencies in best-value procurements, the award decision was irrational.

Impact for Contractors: GAO’s holding here is significant, as it confirms that while the discretion of source selection officials in best-value procurements is broad, it is not without limits, and an agency award decision cannot ignore a solicitation’s stated evaluation criteria. But while it directed NASA to “make a new source selection decision that is consistent with the solicitation,” GAO recognized that an awarding agency can “trade technical merit for price.” Thus, NASA could re-award the contract to CLA notwithstanding its lower-rated technical proposal, so long as it provides a defensible basis for its decision.

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