

## “PERVASIVE ERRORS” IN SOURCE SELECTION

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It is rare when the Government Accountability Office (“GAO”) says that agency actions in its source selection for two different contractors showed “pervasive errors in the conduct of the competition and evaluation of proposals.” But that’s exactly what the GAO said in two opinions about a U.S. Transportation Command procurement for complete global household goods relocation services. *Connected Global Solutions, LLC*, B-418266.4, Oct. 21, 2020 and *HomeSafe Alliance, LLC*, B-418266.5, Oct. 21, 2020.

The procurement was conducted as a negotiated acquisition for commercial items. The solicitation contained four evaluation factors: business proposal, technical capability, past performance and price. The business proposal and past performance factors would be rated acceptable or unacceptable, while there would be a best-value tradeoff analysis, with technical capability and price being evaluated on an approximately equal basis.

There was an earlier protest of the evaluation and award, and the Transportation Command had made a new award decision based on a reevaluation of proposals. Despite two separate evaluations of proposals, the GAO found 5 reasons to sustain each offeror’s protest, each set forth from the GAO digest below:

In *HomeSafe*:

- Protest challenging a contracting officer’s affirmative determination of the awardee’s responsibility is sustained where the record shows that the contracting officer failed to consider that the awardee’s statements offered in the course of a second responsibility determination--that two affiliates implicated in criminal wrongdoing would not contribute to contract performance--contradicted the awardee’s technical capability proposal, and failed to consider that two top officers of the awardee’s parent company are employees of one of the affiliates implicated in criminal wrongdoing.
- Protest that the agency conducted misleading discussions is sustained where, although the protester’s total evaluated price was consistently lower than other offerors’ prices, in each round of discussions the agency advised the protester that its total price seemed high.
- Protest that agency failed to adequately document oral presentations and the related discussions is sustained where the record demonstrates that the agency did not maintain a record of the oral presentations adequate to permit meaningful review.
- Protest that the agency disparately evaluated technical capability proposals is sustained where the differences in the assignment of strengths cannot be attributed to differences in the proposals.
- The weight accorded to the technical capability factor and price in the best-value tradeoff analysis was reasonable; the allegation that the best-value tradeoff analysis was flawed is

sustained, however, because of the errors identified in the agency's underlying evaluation.

*In Connected Global Solutions:*

- Protest challenging the contracting officer's affirmative determination of the awardee's responsibility is sustained where the record shows that the awardee's statements offered in the course of a second responsibility determination--that two affiliates implicated in criminal wrongdoing would not contribute to contract performance--contradicted the awardee's technical capability proposal.
- Protest that agency failed to adequately document oral presentations and the related discussions is sustained where the record demonstrates that the agency did not maintain a record of the oral presentations adequate to permit meaningful review.
- Protest challenging the agency's conduct of discussions regarding oral presentations is sustained when the record does not provide a basis for finding that the discussions were fair.
- Protest that the agency disparately evaluated technical capability proposals is sustained where the differences in the assignment of strengths cannot be attributed to differences in the proposals.
- Although the best-value tradeoff analysis methodology was reasonable and consistent with procurement law and regulation, the allegation that the analysis was flawed is sustained due to errors identified in the evaluation of the technical capability proposals.

The takeaway. It is difficult to understand how an Agency can make so many mistakes in a source selection—especially since it evaluated proposals twice, apparently with a flawed result. The only possible explanation was the that this was the first time that Transportation Command was seeking a contractor to perform household goods relocation services that were presently performed by the government.

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