

RECENT GOVERNMENT CONTRACT CASES OF INTEREST

Comp. Gen. Dec. B-299145.5; B-299145.6; Lockheed Martin Systems Integration-Owego; Sikorsky Aircraft Co., August 30, 2007

Lockheed Martin Systems Integration-Owego (LMSI) and Sikorsky Aircraft Co. protested the corrective action taken by the Department of the Air Force in response to GAO's earlier decision in which it sustained a protest by the same parties who challenged the Air Force's evaluation of operations and support costs for a procurement for the development, demonstration and production of the SCAR-X aircraft. In particular, in response to GAO's initial decision, the Air Force issued an amendment to the solicitation that revised the method by which operations and support costs would be evaluated as well as the calculation of the potential maintenance requirements associated with each proposed aircraft. The amendment directed offerors to submit only the information requested in connection with calculating maintenance manpower baseline costs. The protesters, however, challenged this by arguing that the revisions to the solicitation required them to submit unlimited proposal revisions.

GAO determined that where an agency revises the criteria against which offers are to be evaluated or materially changes the solicitation's overall approach to preparing a proposal and the evaluation scheme, as the Air Force did, offerors must be given a reasonable opportunity to submit unlimited proposal revisions, including those that were not the subject of an amendment to the solicitation. Doing otherwise would result in making meaningless the statutory requirement to notify offerors of the criteria on which their offers will be evaluated.

Comp. Gen. Dec. B-299738, Camnetics Mfg. Corp., June 21, 2007

Defense Logistics Agency (DLA) issued a request for quotations for external fuel tank disconnect receptacles for aircraft, advising vendors that the only approved sources for the receptacles were those

produced by Northrop Grumman Systems and Simmonds Precision Products. The solicitation also identified the commercial and government entity (CAGE) codes as well as each of the manufacturers' part numbers for the receptacles. The RFQ also provided that the agency would consider quotations of former government-owned surplus property provided the vendor supplied detailed information relating to the manufacturer of the receptacles and how the vendor obtained the parts.

DLA's decision to issue a purchase order to Pave Technology Co., was upheld by GAO where the agency rejected the quotation from the protester, Camnetics, even though it submitted lower unit and total prices because the parts offered were determined to be defective former government owned surplus originally supplied under another Department of Defense (DoD) contract. According to the decision, each procurement stands on its own merits and the fact that another DoD agency previously had accepted the same receptacles offered by Camnetics was not relevant.

Comp. Gen. Dec. B-299781, Healthcare Technology Solutions International, July 19, 2007

The Department of Veterans Affairs (DVA) sought quotations for medical coding services and selected the quotation that was determined more highly rated though slightly more expensive for the base year and the option period. The protester argued that the agency's evaluation of its proposal was improper and that the information provided at the debriefing was inadequate and inconsistent with the evaluation record. GAO decided the agency properly evaluated the protester's quotation and the agency was justified in selecting the offeror's higher rated quotation under a competitive procurement where the price it offered was slightly higher, though not significantly higher, than that of the protester. GAO also decided that whether or not an agency provides a debriefing and the adequacy of a debriefing are issues that GAO will not consider, because the scheduling and conduct of a debriefing is a procedural matter that does not involve the validity of the award, citing *The Ideal Solution, LLC*, B- 298300, July 10, 2006.

**Comp. Gen. Dec. B-298870.3; B-298870.4,
*Axiom Resource Management, Inc. July 12, 2007***

DoD issued a Request for Quotation (RFQ) for program management support services for the TRICARE Acquisitions Directorate that manages the health care program for active duty and retired members of the uniformed services, their families and survivors. The RFQ provided extensive guidelines regarding mitigating potential Organizational Conflicts of Interest (OCI). The agency awarded the task order to Lockheed, as it received the highest technical rating and was the lowest price quotation. The incumbent contractor, Axiom protested and argued that the evaluation was improper and that the agency failed to properly mitigate an OCI associated with the Lockheed award. As a result, the agency decided to conduct further analysis of the potential OCI issues.

Subsequently, after this review, the agency again determined that it would issue the task order to Lockheed. GAO decided that the agency's decision to award the task order to Lockheed was reasonable when it concluded, after reviewing both existing and future contract requirements, that no OCI existed and that any potential future OCI's could be mitigated. As GAO stated, the responsibility for determining whether an actual or apparent conflict will arise and whether an offeror should be excluded from the competition resides with the contracting agency and as long as the contracting officer's determination is reasonable, as here, it will be upheld.

**Comp. Gen. Dec. B-299595.3,
*J&J Colombia Services MV LTDA, June 26, 2007***

The protester, J&J Colombia, argued that the award of an interim sole-source contract for logistics support of the U.S. strategy to defeat narcotics trafficking and narco-terrorism in Colombia was improper due solely to the Army's lack of advance planning. Notwithstanding the protest, the agency justified the award on the basis that there could be no disruption in its critical mission that might result due to the filing of this protest. GAO upheld this decision to award the sole-source short term contract as the award of a long-term contract was delayed by litigation, i.e., the filing of this protest, and the agency reasonably determined that only the incumbent contract was in a position to perform the urgently required continuing services.

**Comp. Gen. Dec. B-297800.13,
*INDUS Technology, Inc., June 25, 2007***

The General Services Administration (GSA) issued a request for proposals for information technology services and excluded the offer of the protester, INDUS, for failing to provide the minimum acceptance period established by the solicitation. GAO decided that the agency reasonably excluded the offeror's proposal from the competition where the cover letter accompanying the proposal provided for an acceptance period of 180 days while the solicitation required a minimum acceptance period of 350 days and specifically stated that proposals providing less than the minimum acceptance period would be rejected.

**Comp. Gen. Dec. B-299737,
*HealthStar VA, PLLC, June 22, 2007***

DVA issued a solicitation for a community based outpatient clinic in Hot Springs, AK, to provide primary care for veteran patients. During a debriefing with offerors, DVA advised HealthStar, the incumbent contractor and protester, that its proposal was deficient in failing to adequately address the services to be provided and in not providing proof of licensing of nursing staff and competency of support staff. GAO determined that DVA was justified in awarding the contract to an offeror other than the incumbent, HealthStar, where the incumbent contractor failed to provide all information that was requested or necessary to demonstrate its capabilities in response to the solicitation. The offeror's technical evaluation by the agency is dependent on the information it furnishes and notwithstanding that DVA knew of its capabilities due to its incumbent status, there was no basis on which to favor a firm solely on the basis of its incumbency.

Comp. Gen. Dec. B-295126.4, *Engineered Electric Co. D/b/a DRS Fermont, June 14, 2007*

The U.S. Army Materiel Command issued a solicitation to design, build and furnish tactical quiet generator sets and military standard generator sets ranging from 5 to 60 kilowatts. During the evaluation process, the agency relaxed the fuel efficiency requirements. GAO upheld the agency's decision to relax the specification for fuel efficiency which was based on its determination that no offerors were able to meet the original specification and that the relaxed specification still met the agency's needs.

**Comp. Gen. Dec. B-299518; B-299518.3,
*Matthews Manufacturing, Inc., June 11, 2007***

The U.S. Coast Guard issued a solicitation for the supply of steel ocean buoys with an award to be made on the basis of "best value" to the government. The agency determined that it would award the contract to Universal, although its price was higher than, though technically superior to, the protester's bid. GAO decided that the agency's decision to award the contract to the offeror who submitted a higher priced though technically superior proposal was justified, as it was consistent with the RFP's evaluation scheme and it provided significant benefits to the government due to the offeror's considerable experience and manufacturing capabilities in successfully producing the contract items.

**Comp. Gen. Dec. B-299322.3,
*Optimum Management Systems, LLC, May 23, 2007***

In a decision with an opposite result to Matthews, B-299518.3, GAO upheld the award of a contract to SofTec Solutions by the Department of the Interior for financial systems support even though the awardee submitted a lower-rated, lower-priced proposal. GAO denied the protest filed by Optimum where the agency reasonably determined that the additional cost to the agency of Optimum's proposal, in excess of \$2 million, was not justified.

**Comp. Gen. Dec. B-298935.2,
*M.Braun, Inc., May 21, 2007***

The Environmental Protection Agency issued an RFQ for a glovebox container that allows for the rapid identification of the exact chemical structure of hazardous substances in an isolated engineering controlled environment. The RFQ included FAR clause 52.212-1 that required the submission of quotations by 2 p.m. on September 11, 2006. The protester, Braun, contended that the quotation by Premier was submitted late and that the agency's award to Premier was improper. GAO sustained the protest in deciding that while late quotations generally may be considered by the agency up until the time it issues the contract purchase order, in this case the express terms of the RFQ required the agency to reject a late submission. Accordingly, GAO determined that the awardee's proposal was improperly accepted by the agency.

**Comp. Gen Dec. B-299469,
*Knight's Armament Co., April 7, 2007***

The Department of the Army issued a solicitation for rifle suppressors for the M4 Carbine and M16A2/4. The solicitation was cancelled as the Army determined that no technically acceptable proposals were received. The protester contended that the cancellation decision lacked a reasonable basis.

GAO held that the agency's decision to cancel the solicitation after receipt and evaluation of proposals was reasonable where the agency concluded that none of the offered products met the solicitation's requirements and that the requirements identified in the solicitation did not reflect the agency's needs. As GAO stated, in a negotiated procurement a contracting agency need only establish a reasonable basis to support its decision to cancel an RFP. As in this case, a reasonable basis exists and cancellation is appropriate when the agency determines that the solicitation does not accurately reflect its requirements.

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