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Proposal Evaluation

GAO: DOJ Improperly Excluded Firm From Asset Forfeiture Competition

BY DANIEL SEIDEN

The Justice Department (DOJ) improperly excluded a small business's \$616 million offer from a competition to provide investigative support services for the agency's asset forfeiture program, the Government Accountability Office (GAO) said (*Arctic Slope Mission Servs. Inc.*, GAO, B-410992, 1/8/16, *decision released 2/26/16*).

The GAO said the agency improperly evaluated a subfactor concerning corporate experience, treated offerors unequally and failed to consider the relevance of past performance references.

Barron Avery of Baker & Hostetler LLP told Bloomberg BNA that the procurement errors were noteworthy because they "gave the protester something really concrete to latch on to that resulted in the protest being sustained."

The decision provides "a good roadmap for contractors that believe that their proposals have been held to a different standard than their competitors, and the decision demonstrates that the GAO will focus in on that disparate treatment when it occurs," he said.

Scott Arnold of Blank Rome LLP said the decision was interesting because the GAO doesn't often sustain competitive range protests, as it did here, due to the broad discretion afforded agencies.

"What makes this case different from many others," he said, "is that every contractor included in the competitive range received a contract, giving an excluded offeror an inherently stronger case to demonstrate prejudice to the extent evaluations to establish the competitive range — and in this case ultimately the contract awardees — were not conducted in an even-handed manner."

Investigative, Legal Support. The request for proposals sought several small businesses to provide investigative, legal, analytical and technical support services under indefinite-delivery/indefinite-quantity contracts valued at \$615 million to \$780 million.

Fifteen firms submitted proposals; six of them received awards. Arctic Slope Mission Services Inc., whose proposal was lower-priced than all but one, protested the awards on several grounds.

The GAO concluded that DOJ gave undue weight to corporate experience, one of six technical subfactors, which competitively disadvantaged Arctic Slope.

Instead of limiting the evaluation to corporate experience, the GAO said, DOJ penalized Arctic Slope for a lack of experience when evaluating it under other technical evaluation subfactors.

Unequal Treatment. DOJ also improperly treated offerors unequally by resolving doubts in proposals in favor of some offerors but not Arctic Slope, the GAO said. The agency tended to read Arctic Slope's proposal narrowly with a more exacting standard, the GAO said.

For example, the GAO said, DOJ assumed that a project manager in awardee Renzulli & Associates Inc.'s proposal had experience that the awardee didn't include in a resume, but penalized Arctic Slope for lack of specificity in its project manager's resume.

Also, the GAO said DOJ failed to consider the relevance of offerors' past performance references as required by the solicitation.

As a result, DOJ unreasonably viewed an offeror's \$72,000 legal services contract to be equally significant as another offeror's nearly \$8 million contract for asset forfeiture work. DOJ didn't consider either contract in relation to the relatively higher priced work at issue here, the GAO said.

Amy Laderberg O'Sullivan and others from of Crowell & Moring LLP, Washington, D.C., represented the protester. John Graham represented intervenor Sullivan Cove Consultants Inc. John R. Caterini and Barry C. Hansen of the Justice Department 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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The GAO's decision is available at: <http://src.bna.com/cVc>.