
From: The LAB @ DOC
Subject: MMCB Vol. 13 - HTRRP Under FAR 8.405, Nov. 2020



Welcome to MMCB Volume 13 – the second release today! Highest Technically-Rated with a Fair and Reasonable Price (HTRRP) under FAR subpart 15.3 is well employed, but is it possible under FAR subpart 8.405? **YES. IT. IS.**

Matter of: RIVA Solutions, Inc.
File: [B-417858.2; B-417858.10](#)
Link: <https://www.gao.gov/assets/b-417858.2.pdf>
Date: October 29, 2020

You may or not recall, but some counsel countered us with some good pushback on whether price **MUST** be evaluated in FAR 8.405, both in down-selects and under the HTRRP methodology (reference to the [Noble Supply & Logistics GAO decision in Jan. 2020](#)). This was all the hoopla over the “lowest overall cost alternative” language in FAR 8.405, but that Noble decision considered the HTRRP methodology for four single-award BPAs. We all concurred that approach was highly problematic. It is well settled under FAR 15.3 when creating multiple-award IDIQs, that HTRRP is perfectly acceptable as it doesn’t violate any statutes. First there was [Sevatec](#), followed by others, and another similar procurement/decision from [Commerce NOAA](#) last November.

Thankfully, NOAA liked this approach so much used it for a \$2B multiple-award IT BPA and did so without a self-scoring mechanism. The solicitation provided that the non-price factors, when combined, were significantly more important than price, and that the three non-price factors would “**play a dominant role in the basis for award**.” Now, HTRRP does not contemplate a cost/non-cost tradeoff, as cost is simply reasonable or not reasonable, but I do like this language!

Each factor was looked with the traditional Outstanding, etc., rating scheme, assigning strengths/weaknesses for each factor. This was a subjective assessment for each factor, there was not a technical acceptability set nor self-scoring. There were 105 quotes, 87 passed compliancy/eligibility, and 57 received a marginal or unacceptable, prompting NOAA to make 28 awards. They planned for 10-25 and settled on 28, which I feel is WAYYYYYYYYYYYYYYYYY too many awardees for a multiple-award BPA; having to compete each task order with all those unsuccessful quoters is a lot of work. Here are some excerpts from the source selection official (SSO) on how he documented the best value reasoning, which again is not a tradeoff analysis. There were no tradeoffs.

- The SSO further explained that, “[a]lthough these quotes’ prices are found to be fair and reasonable,” these quotations “all contain multiple significant weaknesses and/or deficiencies that fail to demonstrate the [vendors]’ understanding, capability and expertise to meet the Government’s requirements.”
- The SSO found that “these quotes reveal a poor understanding of the overall requirements listed under the BPA, which significantly increase[s] the risk of poor performance.” Id. The SSO concluded that “[d]ue to failure to demonstrate understanding, capability and expertise, and due to high performance risk,” these “57 quotes are not evaluated as Highest Technically Rated.”
- The SSO concluded that the remaining 28 quotations, which all received “Acceptable to Outstanding ratings under [the] three non-price factors,” provided the “Highest Technically Rated quotes with [a] fair and reasonable price.”
- He noted that all 28 quotations “present a combination of strengths that are highly beneficial to the Government and outweigh any weaknesses found,” that “[t]he risk of unsuccessful performance is low,” and that the government has “very high confidence in these Quoters to successfully perform under this BPA.” Id. Accordingly, the SSO concluded that these 28 quotations represented the best value to the government and decided to establish BPAs with those vendors.

Summary

We all reached the logical conclusion that for a single-award BPA this could be problematic and we didn’t support GSA’s approach outlined in Noble. This decision and process seems to eradicate all the badness associated from the Noble decision. The Noble decision left the impression that HTRRP was okay in FAR 15.3 procurements, but it was not permitted in FAR 8.405 procurements, to which I call...



that picture refers to HORSE-HOCKEY!!! We discussed that if only GSA had done this or that, etc., the GAO would have seen it differently. To sum it up, if only they had imported some of the NOAA ideas into their approach, it *could* have gone differently. Remember, each GAO decision offers an opinion tied to the unique nature of that procurement. However, many decisions reference routine language and principles that have become commonplace. If you have a team that wants to conduct a multiple-award BPA or IDIQ, then please refer them to this approach that doesn’t consider points, keeps it subjective, and keeps it as close to a traditional tradeoff as it can be without invoking that process. The best value continuum has no bounds, this approach just falls within the continuum. The tiny caveat is that the price element wasn’t directly challenged but I don’t find that to be too concerning 😊.

This volume was originally authored in November 2020 and refreshed in March 2025.

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