
From: The LAB @ DOC
Subject: MMCB - Vol. 8 - A Novel Evaluation Model! Jan. 2020



Welcome to MMCB Volume 8! This Monday covers a different evaluation model that ranks by price, but still allows a subjective best-value tradeoff of a pool with only the lower priced submissions.

Matter of: GSI Construction Corporation
File: B-418084
Link: <https://www.gao.gov/products/b-418084#mt=e-report>
Date: Jan. 6, 2020

On its face, nothing about this digest was intriguing: *“GSI Construction Corporation (GSI), a service-disabled veteran-owned small business (SDVOSB) of Pace, Florida, protests the award of a contract to Chiefs Construction Company, LLC (Chiefs), an SDVOSB of D’Iberville, Mississippi, under request for proposals (RFP) No. FA3010-19-R-A007, issued by the Department of the Air Force, for renovation and repair work at Arnold Hall, Keesler Air Force Base (AFB), Mississippi. The protester contends that the agency’s evaluation of its past performance was unreasonable. We deny the protest.”*

But, sometimes you have to scan many decisions to find one nugget...that was the case here, but I am glad I did so and read this decision! Below I cover the decision, the funky novelty, the application with a possible example at the bottom, and an overall conclusion.

THE DECISION

Background: US Air Force, FAR 15.3, small business set-aside, two factors (past performance significantly more important than price), and a best-value tradeoff.

- FIRST, proposals were to be evaluated for technical acceptability which we often see. However, this technical acceptability is only to check whether the proposals meet minimum requirements outlined in the solicitation. So this was not a real acceptability measurement of the proposed technical submission, just compliancy.

- SECOND, those who passed acceptability (moreover, all those who were compliant to the solicitation terms), would be ranked according to price and the price would be evaluated at that time for reasonableness (all passed, what a shocker!).
- THIRD, the USAF would evaluate past performance (recency/relevancy) on the typical five-tier confidence level scheme (substantial, satisfactory, etc.).

THIS IS WHERE WE GET FUNKY

*“The solicitation stated that if the lowest-priced offeror was assessed a performance confidence assessment rating of **substantial confidence**, award would be made to that offeror. If the lowest-priced offeror was **not assigned a substantial confidence rating**, the agency would evaluate the next lowest-priced offeror. The agency’s evaluation would **continue** until a proposal was assessed a **substantial confidence rating**, at which point, the agency would make an **“integrated assessment best value award decision.”**”*

The USAF didn’t find substantial confidence in #1 or #2 (ranked by lowest price), then got to #3 (protestor). The protestor only received a *satisfactory confidence*, which was not the **required substantial confidence** to stop evaluating additional offers. They moved on to #4, who was rated a substantial confidence for past performance – DING DING DING – now we have a winner? **NO**. Now we can have our **best-value tradeoff analysis**.

*“Acknowledging that past performance was significantly more important than price, the source selection authority decided that paying the price premium associated with Chiefs’ proposal was warranted, given Chiefs’ lower performance risk.[4] Id. **As such, the agency concluded that Chiefs’ proposal represented the best value to the agency.**”* This means that the best-value tradeoff analysis was inclusive of all offers that had their past performance evaluated.

ARGUMENT: You can probably guess it, the protestor didn’t agree with their past performance rating or that of the awardees – both arguments **denied**. There isn’t much more to it than that.

APPLICATION

I want you to really contemplate this approach, really think about it for a minute. This felt like a traditional LPTA approach where you only evaluate the technical submissions of the lowest-priced proposals, but they only really did a compliancy check for technical acceptability. Different from LPTA, the team maintained a subjective evaluation on the other technical submission – past performance. This really could be any technical submission, it doesn’t have to be past performance. The approach then allowed a best-value tradeoff between the highest-technically rated submission (that was evaluated, in this case vendor #4), and all preceding companies how had lower prices and lower technically-rated submission. In this case two companies had a lower price (#2 was given an award but was no longer a small business so it was rescinded), so the tradeoff was between three companies with one being the highest-technically rated with the highest-price (substantial confidence in past performance) and the others being lower-technically rated with lower prices. The nuance is that although #4 is going to have a higher price than #1 and #3, *they are still the fourth lowest overall out of all submissions*. If there were 20 companies (the decision is silent on how many there were), then they were still the 4th lowest price, not the 20th lowest (or the highest price). **This is a completely different best-value tradeoff approach than we are used to.** In a culture where our contracting officers are deathly afraid to justify

a higher-technically rated and higher-priced submission, this can be a way to help empower their tradeoff decision. I can definitely think of teams in the past who could have benefited from this approach.

EXAMPLE: You need security services for a small facility and you are expecting healthy competition, don't have an unlimited budget, but also want a quality company. The solicitation asks for three factors utilizing our standard confidence level rating: 1) Prior Experience (6 pgs.), 2) Base Security Approach (6 pgs.), and 3) Price. You want to stop evaluating offers until 1 has HIGH confidence in both technical factors OR at least a HIGH confidence in one of the factors (depends on what you expect and you don't want to evaluate all 20 as nobody may have a HIGH confidence rating for both). The technical factors can be descending or equal and when combined are significantly more important than price, but in either case technical > price.

You receive 20 proposals. You may do a compliancy test on the proposals to make sure all look okay – and all pass. You look at the prices to make sure all are reasonable – they are all reasonable. You are looking for a **HIGH** confidence for both factors. You evaluate the two factors for the lowest-priced offer, but they are **SOME** and **SOME**. You evaluate #2, **LOW** and **SOME**. You evaluate #3, **SOME** and **HIGH**. You evaluate #4, **HIGH** and **LOW**. You evaluate #5, **HIGH** and **HIGH** – now you stop evaluating. You now have 5 offers who are the five lowest priced, and the price/technical tradeoff is only between those 5 offers. The 15 higher priced proposals never have their technical submissions evaluated. Your tradeoff decision might lead to an award to #5 OR to someone who didn't have a **HIGH** and **HIGH** (#1 - #4), given the subjectivity we are empowered with. If you build this approach and cover it in your solicitation, then it is baked in and any challenge to it would be untimely. If it was challenged at the solicitation level, then there should be no issue with this approach given the similar nature here and concepts some of our prior teams have used.

CONCLUSION

This is another tool in the toolbox. I think this approach is novel, I like it, and I think we can use it. Yes, this puts an onus on industry to submit everything (including price) without a down-select, but that is okay sometimes. Also, you may feel we are better off doing a down-select per the usual, and only have 3 prices submitted in Phase 2, and award to the best of those three in Phase 2 – however, you may be paying for higher prices in this instance. If you want to ensure price isn't too high and want to keep to a schedule, then this approach is certainly appealing! If we have a team that wants to try this, then let's encourage them to work with their IPT and build it together.

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

*Disclaimer: The information contained in this MMCB is merely an opinion of the author and does not constitute formal legal or policy guidance of any kind.

