

115 PER CENT PRICE PREMIUM NOT WORTH IT

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When you read about best value (tradeoff) decisions in Government Accountability Office (“GAO”) bid protests, you may wonder why so many higher technically rated proposals with higher prices end up being selected for award. In general, those awards to higher rated technical proposals are generally made at a price that is 5-20% higher than the lower rated technical proposal. But every now and then, when there is a very large difference in price, and a well-rated (less expensive) technical proposal, agencies will select a lower-priced, lower technically rated proposal for award. Exactly that happened in *Lumen Tech. Gov’t Sols, Inc.*, B-402178 et al, July 25, 2022. This was a procurement of network, data and voice services conducted by the Federal Bureau of Investigation (“FBI”), with four evaluation factors set forth below.

In evaluating the two relevant proposals, the FBI rated the relevant factors in the proposals and their prices as follows:

	Lumen	AT&T
Technical Approach	Exceptional	Good
Transition & Management	Good	Good
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Price	\$120.6 million	\$56.0 million (115% price premium)

Because the FBI made award to AT&T, Lumen protested, asserting that the FBI had (1) held misleading discussions by identifying only a limited number of line item prices that the agency had viewed as too high; (2) unreasonably failed to consider negative information about AT&T’s performance of similar contract requirements and (3) made an unreasonable decision because it did not explain why Lumen’s higher technically rated proposal was not worth a 115 percent price premium. The GAO found that the discussions were not misleading, and the agency was not required to consider the negative past performance for different agencies.

On the question of the award decision, the FBI said this:

When reviewing the evaluation in totality, considering the evaluation criteria, Lumen offered a far superior approach in the most important factor, Technical Approach. [] Lumen provided a slightly stronger Transition and Management plan, the second most important non-price factor. [N]either Offeror created separation in Past Performance. Lumen’s offerings for the non-price factors, when considered in totality, are significantly stronger than AT&T at a price that is 115% higher. [A]lthough Lumen provides a superior technical approach, those merits do not warrant paying the 115% premium over AT&T’s beneficial solution. Specifically, AT&T’s proposal has several benefits to the Government without any weaknesses or risks. Although Lumen’s proposal offers more benefits than AT&T’s, the additional benefits are do not merit paying a 115% price premium. Accordingly, AT&T’s beneficial proposal that offers significant cost savings

to the Government in comparison to Lumen's proposal is the best value to the Government.

GAO noted that the agency had found several benefits to the Government, and had expressly found that although the protester's proposal was more highly rated, the benefits "were not worth the price premium. Lumen's disagreement with the agency's subjective judgment here does not provide a basis to sustain the protest. [GAO found] no basis to conclude that the award decision was unreasonable."

Takeaway. The message here is simple. In a price/technical tradeoff, even where price is less important than technical, a very high price (\$64 million or more than two times another price) that does not offer something of significant value (such as being twice as good as another proposal), will be found to be "not worth the price premium." And GAO will be reluctant to disagree with agency judgment when the price differential is so high.

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