

IN BEST VALUE DETERMINATION AGENCY IS NOT REQUIRED TO QUANTIFY BENEFITS OF HIGHER PRICED, HIGHER TECHNICALLY RATED PROPOSAL

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Offerors are sometimes distressed when an agency selects a significantly higher priced, higher technically rated proposal in a best value determination. The rejected offeror may believe that the government has not properly conducted the best value determination, and request a quantification of the benefits in the higher rated proposal. The Government Accountability Office (“GAO”) does not agree that quantification is required. *Jacobs Technology, Inc.*, B-422040, Jan. 4, 2024 is a good example of the GAO position.

Jacobs protested the award of a contract for support services for the Electronic Proving Group (“EPG”) at Ft. Huachuca, AZ. This blog only discusses the challenge to the best value tradeoff, which was required by the Solicitation, and which contemplated a cost plus award fee contract. The two most highly rated proposals were Jacobs and InDyne, and their scores and cost are shown on the chart below:

Factor	Jacobs	InDyne
MISSION SUPPORT	Acceptable	Acceptable
Sample WBS PWS	Acceptable	Acceptable
Phase-In	Good	Good
Property Management	Pass	Pass
STAFFING APPROACH	Acceptable	Outstanding
Staffing Approach and Structure	Acceptable	Outstanding
Retention and Recruitment	Good	Outstanding
FINANCIAL SYSTEM	Acceptable	Outstanding
Financial System Capability	Acceptable	Outstanding
PAST PERFORMANCE		
Relevancy	Very	Very
Confidence	Substantial	Substantial
SMALL BUSINESS PARTICIPATION	Acceptable	Acceptable
COST	\$115,836,653.	\$152,888,900.

The agency selected InDyne’s proposal as offering best value to the government. Jacobs protested that the agency had failed to reasonably justify the award at a \$37 million (32 percent) price premium. Jacobs alleged that the agency did not quantify the benefits in InDyne’s proposal, or the performance risk in the two weaknesses that were apparently identified in InDyne’s proposal.

The GAO denied the protest, holding that the function of a price/technical tradeoff is to determine if one proposal’s technical superiority is worth the higher price, and “the extent to

which one is sacrificed for the other is governed only by the rest of rationality and consistency with the stated evaluation criteria.” The GAO noted that the rationale for the agency’s source selection must be documented “but that documentation need not quantify the tradeoffs that led to the decision,” They simply must be reasonable, and it is the reasonableness that the GAO will consider. This follows a line of GAO cases such as:

- [T]here is no requirement that the agency’s selection decision quantify the best value tradeoff. See FAR 15.308. *TeKONTROL, Inc.* B-290270, June 10, 2002
- [N]o requirement than an agency quantify the value of technical superiority in relation to low cost to determine best value. *Bulova Techs, LLC*, B-281384, Feb. 3, 1999.

There is no indication just how much of a price premium might be acceptable to the GAO in this type of best value procurement.

Takeaway: A disappointed protester may ask for a quantification justifying selection of a higher priced, higher technically rated proposal, however, the GAO is does not normally insist upon that—only a reasonable justification and consistency with the evaluation factors.

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