

## AGENCIES MAY WAIVE PAGE LIMITS IN A SOLICITATION IF THERE IS NO COMPETITIVE PREJUDICE TO SUCH A WAIVER

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This blog has repeatedly explained that the Government Accountability Office (“GAO”) will not sustain a bid protest even if the agency has violated a Federal Acquisition Regulation (“FAR”) requirement, unless there is competitive prejudice. This means that a protester must demonstrate there was a significant error in the procurement process and prove that, without that error, they had a substantial chance of receiving the award. But what does this mean in the case where an agency waives the solicitation page limitations for the awardee? This blog will discuss a recent case, *Kako’o Spectrum Healthcare Solutions, LLC*, B-421127.5 and .6, May 28, 2025.

The U.S. Marine Corps (“USMC”) issued a solicitation for the services of athletic trainers for the USMC sports medicine and injury program. This was a best value procurement. The solicitation required a “management and staffing” approach volume that had a 50 page limit. The USMC held discussions and when award was made to Cognito, Kako’o submitted a protest that the source selection decision was unreasonable. The USMC took corrective action and agreed to make a new source selection decision.

As part of the corrective action, Kako’o and Cognito were both invited to update their price volumes, but only Kako’o submitted an updated price volume. The USMC final re-evaluation was as follows:

	<b>Kako’o</b>	<b>Cognito (the awardee)</b>
<b>Management and Staffing Approach</b>	Good	Outstanding
<b>Past Performance</b>	Satisfactory	Satisfactory
<b>Price</b>	\$63.7 mil	\$61.3 mil

The USMC awarded to Cognito, but Kako’o protested that the evaluation of Cognito’s management and staffing volume had improperly considering portions of the proposal that exceeded page limits.

The agency had effectively waived the 50 page limit, by considering 55 pages in Cognito’s management and staffing portion of its proposal. Although this violated the page limit in the solicitation it was not enough to sustain the protest because Kako’o could not demonstrate that it was competitively prejudiced. GAO explained that an agency may waive compliance with a material solicitation requirement, such as page limitations, in awarding a contract if the award will meet the agency’s needs without prejudice to other offerors. The GAO noted that in cases where a protester argues that an agency improperly waived a certain requirement, “prejudice does not mean that had the agency failed to waive the requirement, the awardee would have been unsuccessful. [ ] Rather, the pertinent question is whether the protester would have submitted a different offer that would have had a reasonable possibility of being selected for award had it known that the requirement would be waived.” In this particular case, Kako’o’s final page count for the management and staffing approach volume was 31 pages, which was 19 pages below the 50 page limit. GAO said “In order for [Kako’o] to be prejudiced by the waiver [ ] it would have

needed to demonstrate how it would have altered its volume to its competitive advantage had it been aware that it could use an additional five pages.” However, because its volume was 19 pages below the limit, Kaso’o did not argue and could not show it would have made use of an additional five pages to its competitive advantage. Kaso’o’s protest was denied.

Takeaway. Waivers of solicitation requirements do not always result in the sustaining of a protest. The protester must demonstrate a competitive prejudice, and show that it had a substantial change to receive the award, which wasn’t shown in this protest.

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