

COMPETITION ALONE DOES NOT RENDER EVERY PRICE REASONABLE PER SE

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The Government Accountability Office (“GAO”) recently considered and sustained a protest where an agency had concluded that just because a number of proposals were received, this was a sufficient guarantee that the awardee’s price was fair and reasonable. *Cognosante, LLC*, B-417111, Feb. 21, 2019. The protest involved a Department of Veterans Affairs (“VA”) task order competition for information technology operations and services.

The VA received seven proposals and established a competitive range of six proposals. The offerors in the competitive range had evaluated prices between \$741.4 million (lowest), \$793.9 million (protester), and \$999.9 million (awardee-Booz Allen Hamilton, or “BAH”). BAH’s proposal was rated “Outstanding” with past performance of 12 out of 20 points. Cognosante’s proposal was rated “Acceptable” with past performance of 11 out of 20 points.

Cognasante asserted that the VA failed to satisfy the FAR 15.402(a) and 15.404-1(a) requirement that the contract would contain “fair and reasonable” prices. The solicitation specified no method for conducting the price reasonableness evaluation. The VA stated that it elected to use the technique provided in FAR 15.404-1(b)(2), which involves a comparison of proposed prices received in response to the solicitation. The FAR states that “normally, adequate price competition establishes a fair and reasonable price. FAR 15.404-1(b)(2)(i). However, the VA based its comparison on initial prices (not final prices) and concluded that the prices were fair and reasonable.

The GAO noted that competition alone does not render every price reasonable per se. Rather, it is the favorable comparison of an awardee’s price to its competitor’s prices that provides the assurance that a proposed price is fair and reasonable. But the VA never compared an assessment of *final* proposal prices, and simply based its price reasonableness finding on the presence of multiple offers. The VA failed to compare offeror’s *final* prices to one another or to make any findings about why BAH’s price should be viewed as reasonable. Accordingly, GAO sustained the protest.

The takeaway. First, agencies should be cautious about comparing proposed prices to ensure they are reasonable. An agency should ensure that it is using *final* prices, not *initial* prices. And second, when using the process of comparing prices in order to establish reasonableness and fairness, an agency should seriously consider the reasons why the higher (or highest) price should be viewed as reasonable.

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