

## IS A PARTIALLY PERFORMED CONTRACT RECENT?

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The Government Accountability Office (“GAO”) recently considered an award where the awardee had performed part of a past performance reference and agreed with the agency that it demonstrated the awardee’s capability. *LPE Strategy, LLC*, Be-427723.2, .3, October 16, 2023.

LPE submitted its proposal for Data Management Services to the Food and Drug Administration (“FDA”), but the award was made to MPZA, LLC. LPE protested that the agency improperly accepted MPZA’s past performance under a bridge contract, had improperly evaluated proposals technically, and made an improper best value selection.

GAO noted that the evaluation of past performance is a matter of discretion which will only be disturbed if the Agency’s assessments are unreasonable. GAO noted that the FDA considered MPZA’s performance in a bridge contract, noting that the RFP stated that “recent experience was experience gained within the last five years.” The bridge contract was a follow-on to the predecessor contract, and was similar in scope and complexity to the current procurement. However, the bridge contract was only performed from September 2017 to June 2018, or less than 5 years. GAO held that it was reasonable to consider MPZA’s performance under the bridge contract.

The GAO further found that FDA’s evaluation of the technical proposals was reasonable.

Finally, with regard to the best value selection and pursuant to the RFP, the offerors’ ratings and prices were as follows:

	<u>Prior Experience</u>	<u>Technical Approach</u>	<u>Past Performance</u>	<u>Price</u>
MPZA	High confidence	Some confidence	High confidence	\$25.4mil
LPE	High confidence	High confidence	High confidence	\$28.7mil

MPZA’s price was \$25.4 million while LPE’s price was \$28.6 million. The Source Selection Official noted that the evaluation team’s concerns were “not significant in nature” and the technical superiority reflected in LPE’s technical proposal was insufficient to justify its associated price premium (13 percent). In the end MPZA received award as best value.

Takeaway. A similar contract, even if performed for a limited time, will be accepted as relevant prior past performance/experience by the GAO, provided it is similar in scope to the new procurement. Furthermore, a Source Selection Official may disagree—with explanation—with its evaluation teams, and award to a lower priced, but lower rated technical proposal, where the price premium is not justified.

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