

## **GAO WILL ALLOW CONSIDERATION OF REASONABLY RELATED ADDITIONAL VALUE IN EVALUATIONS OF OFFERS**

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A recent decision confirms that in a source selection, the Government Accountability Office (“GAO”) saw nothing unreasonable in giving credit to an offeror that exceeded the solicitation requirements but could provide value to the agency during contract performance. *Midnight Sun-Cetennial Sunnliq JV, LLC*, B-420583.4, May 11, 2023.

In a solicitation for design-build construction services related to Fort Bragg, NC, Midnight alleged that the evaluation was improper and used unstated evaluation criteria. The protest centered on a conceptual design for a seed/sample project. In questions asked before offers were submitted, the contracting agency, the Corps of Engineers, stated that “no detailed design is required for the [seed-]sample project.” Midnight asserted that the Corps unreasonably evaluated the awardee’s technical approach as superior due to its inclusion of a conceptual design. The Corps, in its response, noted that although offerors were not required to provide documentation for the seed/sample project such as a design concept, additional information was not prohibited.

The Corps concluded that the awardee’s proposal demonstrated significant technical approach strengths to justify the firm’s selection of additional cost line items and showed superior understanding of the contract requirements. (Awardee’s evaluated price was \$64.98 million while Midnight’s evaluated price was \$37.54 million).

In denying Midnight’s protest, the GAO noted that all evaluation factors must be included in the solicitation, but an agency is not required to list every area that may be considered in the evaluation—and the agency may evaluate areas that are reasonably related to or encompassed by the stated criteria. GAO found the evaluation to be reasonable. “While offerors were not required to provide a design or other narrative [and Midnight and others’ proposals were evaluated as acceptable], we see nothing unreasonable in the evaluators’ judgment that [awardee’s] inclusion of additional information to justify its approach to the seed/sample project provided strengths that exceeded the requirements and could provide value to the agency during performance.”

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