

INDEPENDENT JUDGMENT OF SOURCE SELECTION AUTHORITY

Copyright 2023 Richard D. Lieberman, Consultant & Retired Attorney

Federal Acquisition Regulation (“FAR”) 15.308 states that

[t]he source selection authority (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA’s independent judgment...

In *Peraton, Inc.*, B-420918, Dec. 8, 2022, the Government Accountability Office (“GAO”) considered and denied a protest that the SSA failed to exercise her independent judgment. The protest is an excellent tutorial of how procurements are frequently evaluated by a government “team,” keeping FAR 15.308 in mind.

The Social Security Administration issued a Request for Task Order Proposals (“RTOP”) for information technology (“IT”) infrastructure support services. The RTOP was issued under a multiple award IT support services, indefinite delivery, indefinite quantity contract. Peraton protested three things:

- 1) Unreasonable evaluation of its proposal by the agency
- 2) Unreasonable tradeoff determination (required by the RTOP)
- 3) SSA failed to exercise her independent judgment as required by FAR 15.308.

The GAO denied all three grounds of protest, and this blog considers only the third ground. In that protest, Peraton argued that the SSA didn’t exercise independent judgment because the Summary of Award references the contract specialist as comparing proposals, does not contain the SSA’s signature or any statement showing that the SSA reviewed the findings or exercised her independent judgment.

As is typical in many procurements, the Agency explained that the contract specialist drafted the Summary of Award, and the SSA ultimately reviewed a draft of it and relied on the findings therein to exercise her independent judgment. FAR 15.308, quoted above, permits the SSA to delegate preparation of the selection decision to another agency official, and may use any document prepared so long as the document reflects her (the SSA’s) independent judgment.

The Summary of Award includes multiple references to the contract specialist as participating in the tradeoff, the qualitative determinations and the comparison of proposals. However, when explaining the decision, the Summary of Award concludes that “the *agency* determines [concluding findings]...” Furthermore the record contained declarations from the SSA and contract specialist explaining that the SSA assigned the comparison and determinations, and the contract specialist confirmed that she did not exercise any independent authority, but included only the SSA’s judgments and determinations in the Summary of Award.

GAO denied the protest, stating it had

consistently recognized that agency selection officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation and comparison results in making their determinations....Our office has explained that as long as the ultimate selection decision reflects the [SSA's] independent judgment, agency selection officials may rely on reports, analyses and comparisons prepared by others. Further, the fact that a selection official based a decision on the recommendations of other agency evaluators, without performing an independent review of all documentation, is insufficient to show that the decision did not represent the selection official independent judgment.

Takeaway. Selection officials frequently rely on the analysis and work of others that are part of the team that is constituted to evaluate proposals. (Sometimes the team may simply be a contracting officer and a contract specialist; in other cases the team may include 5 or more people to evaluate technical, cost, risk or past performance features of proposals). The GAO will not find that the SSA had failed to exercise independent judgment simply because others have prepared analyses that the SSA has used. GAO will clearly require more than that. But the evidence must be much more compelling that really demonstrates that someone other than the SSA was "pulling the strings" for GAO to sustain a protest that the SSA didn't use independent judgment.