



# FEDERAL CONTRACTS



## REPORT

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DOD

### **A Suggestion Related to “A Simple—And Overlooked—Change That Will Reduce the Cost of Defense Systems”**

DICK LIEBERMAN

**M**arcia Madsen has thoughtfully suggested that in best-value source selections, “Congress may want to consider revising the statutes to provide that cost or price must be a significant evaluation factor” (91 FCR 500, 6/16/09). I concur wholeheartedly in this suggestion for both military and civilian procurements, but urge more than just a repetition of what is already in the statutes. Why not give a minimum percentage for cost or price, as explained below?

At present, the Competition in Contracting Act of 1984 includes the following:

[A] solicitation for competitive proposals shall at a minimum include—(A) a statement of—(i) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating [ ]competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and (ii) the relative importance assigned to each of those factors and subfactors. . . .

10 U.S.C. § 2305(a)(2)(A). Similar language appears at 41 U.S.C. § 253a(b)(1). The Government Accountability Office has reasonably interpreted these provisions of CICA to require agencies “to include cost or price as a significant factor in the evaluation of proposals.” *Lockheed, IMS*, B-248686, Sept. 15, 1992, 92-2 CPD ¶ 180; *Boeing Sikorsky Aircraft Support*, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91.

The problem is very simple: what is “significant?” GAO has never fully explained this, but it has given some incomplete guidelines. In *Coastal Science and Eng’rg, Inc.*, B-236041, Nov. 7, 1989, 89-2 CPD ¶ 436, GAO noted the discretion granted to agencies in making cost technical tradeoffs, but found that the weights assigned to cost (10 percent) and technical (90 percent) “so minimize[d] the potential impact of price that it [made] a nominal technical advantage essentially determinative, irrespective of an overwhelming price premium. We also question whether such a formula is consistent with the [CICA requirement] that price be one of the significant factors in the evaluation of competitive proposals.” A year later, in *Video Ventures*, B-240016, Oct. 19, 1990, 90-2 CPD ¶ 317, GAO criticized a solicitation where technical was weighted 91 percent and price only 9 percent.

Finally in *Lockheed and Boeing Sikorsky*, cited above, GAO again explained that price must be a significant factor, and cited *Coastal’s* 10 percent price/90 percent technical as not providing for significant consideration to cost.

So there are two questions: (1) What minimum percentage must cost be given in a best value source selection under present law and regulation; and (2) Is there a better way to accomplish the purpose intended by the Congress? GAO seems to think that in a current best value procurement, price must be accorded a weight more than 10 percent, but has never given a definitive number. Even at 11-15 percent, there is a question of

whether or not there is “significant consideration” given to cost.

My recommendation would be to establish a floor of 25 percent as the weight that must be given to cost or price in a best value procurement. Surely a number that high is “significant” and cannot be easily overwhelmed by the technical considerations. Why not place such a minimum percentage in law or in the Federal Acquisition Regulation, and direct all contracting officers to adhere to it? While I realize the screams may be many or

loud, the simple fact is that contracting officials need a few hard and fast rules in order to accomplish their missions. This simple and clear rule might make it easier for contracting officers to adhere to CICA.

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*Dick Lieberman is a principal at McCarthy, Sweeney & Harkaway, P.C. He is a former deputy inspector general at the Department of Defense, and teaches government contracts law at the George Washington University Law School.*