

## **ABSENCE OF AN ADEQUATE RECORD: GAO**

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Meaningful resolution of any bid protest, whether at the Court of Federal Claims or the Government Accountability Office (“GAO”), is always dependent on the procurement agency’s production of an adequate record. *Seaward Services, Inc.*, B-420580, June 12, 2022 is an example of a bid protest where the agency submitted an extensively redacted agency report. Even though there was a protective order, the agency’s overly aggressive effort to limit documentation production to the GAO led GAO to conclude that there was no adequate record, and the agency’s evaluation and source selection were not reasonable—resulting in a sustained protest.

The Navy Military Sealift Command issue a Request for Proposals (“RFP”) for worldwide operation, maintenance and repair of the U.S. Navy Ship Guam. This was a best value procurement where the two non-price tradeoff factors (technical approach and past performance—deemed relatively equal in importance) were significantly more important than price. Seaward Services protested that the agency unreasonably evaluated proposals, and made an unreasonable source selection decision to award to Tote Services, LLC.

The agency found that both Tote’s and Seaward’s proposals were comparatively equal under the technical approach factor, and both were rated “good”. However, many of the details underlying the agency’s findings relating to the comparative merits were not discernable from the record because it was “so heavily redacted” (even for the GAO and the protective order admittees). For example, although there were disagreements among technical evaluators, the Source Selection Board and the Source Selection authority, those disagreements were not discernible from the record because it was so heavily redacted. In addition, the Tote proposals was so heavily redacted that the GAO could not ascertain basic details of the offer.

The GAO concluded that “in the absence of an adequate record, we cannot determine whether the agency’s finding of comparative equality between the proposals was reasonable or made in accordance with the terms of the RFP.” The GAO sustained the protest.

Takeaway: Agencies must provide an adequate record to the GAO or the Court of Federal Claims in any bid protest. Agencies cannot successfully hide a failure to properly evaluate and award procurements by redacting information from these two forums. If review of the agency’s actions by internal agency procurement counsel shows that the procurement was not properly awarded, the most likely response should be for the agency to take corrective action and re-evaluate.

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