

## **PROTESTS THAT AN AGENCY SHOULD USE MORE RESTRICTIVE SPECIFICATIONS**

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The Government Accountability Office's ("GAO") role in reviewing bid protests is to ensure that statutory requirements for full and open competition are met, not that more restrictive, less competitive specifications be written. *Appian Corp.*, B-417837.2, March 9, 2020.

Appian protested the specifications on an Internal Revenue Service ("IRS") procurement of a case management system. This protest occurred after an earlier protest of an award, where corrective action was taken by the Agency to amend specifications, and Appian's protest appeared to be timely.

Appian protested three changes in the specifications:

- 1) Requirement that the Federal Risk and Authorization Management Program ("FedRAMP") needed to be certified not at the time of proposal submission but only when the contractor reached the Cloud Level solution in the program
- 2) Requiring that the Federal Information Security Management Act ("FISMA") needed to be certified not at the time of proposal submission but only when the contractor reached the Cloud Level solution in the program.

The agency stated that the relaxation of the two requirements that it had made more accurately reflected the agency's needs. Appian admitted that if its protest were sustained, it would be the only vendor that met the solicitation's mandatory cybersecurity requirements. The GAO denied these two bases of protest, stating that Appian sought to make the solicitation more restrictive of competition. GAO held that it will not review a protest that an agency should have drafted more restrictive specifications in order to meet the protester's perception of the agency's minimum needs. GAO dismissed both bases of protest.

- 3) Changed the database licenses from being provided by the contractor to be provided as government furnished equipment ("GFE"). The agency noted that it had the licenses available and would not need to pay for licenses for the eventual awardee. Appian abandoned this ground of protest, and then asserted that the Agency would need to pay for contractors to store data if award went to another contractor.

The GAO noted that database licenses and database storage costs were two different things, and this ground of protest was never raised until after the closing time for receipt of quotations. GAO therefore dismissed this protest ground as untimely.

Takeaway: Don't protest at the GAO seeking to revise a solicitation to make the specifications more restrictive, and thus reduce competition. GAO's mission is to protect and enhance full and open competition, not to diminish it.

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