

CLIENT ALERT

RFP Must State Whether Or Not Subcontractor Past Performance Will Be Considered

Nov.16.2006

In a shift away from the discretion it has typically afforded agencies in the evaluation of subcontractor past performance, the GAO in *Singleton Enterprises*, (Oct. 30, 2006 <http://www.gao.gov/decisions/bidpro/298576.pdf>), held that a latent ambiguity with respect to the evaluation of subcontractor past performance was created where an RFP stated merely that the past performance of the "offeror" would be considered, and that the protester's interpretation that the agency (GSA) would also evaluate subcontractor past performance was reasonable in light of the FAR provision that subcontractor performance "should" be evaluated. GAO held that GSA's categorical refusal to consider subcontractor past performance was improper without further guidance provided in the RFP and recommended that GSA amend its solicitation to clearly advise offerors of what past performance information the agency will consider.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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