

GAO Sustains \$10B Criminal Justice Contract Protest

By **Juan Carlos Rodriguez**

Law360, New York (April 12, 2012, 3:34 PM ET) -- The U.S. Government Accountability Office said Tuesday that it had overturned part of a \$10 billion contract award to help develop criminal justice programs in several countries including Afghanistan and Iraq because the U.S. Department of State did not follow its own bid evaluation scheme.

The decision to sustain losing bidder Emergence Group Advisors LLC's bid protest for a small-business set-aside was made on Feb. 29, but released publicly Tuesday.

"Contracting agencies do not have the discretion to announce in the solicitation that they will use one evaluation plan, and then follow another," the GAO decision said.

Emergence Group Advisors had targeted the State Department's evaluation of bidders' past performance records, saying that none of the awardees had the required number of relevant prior projects — acting as prime contractors, as defined in the request for proposals — to justify the agency's confidence ratings.

The company said only its proposal included the requisite number of relevant projects.

BlueLaw International LLP, Bering Straits Orion Management Joint Venture, Team Crucible LLC, FedSys Inc. and Global Criminal Justice Solutions LLC were the companies awarded the contract. It was unclear exactly how much the companies would get from the award because there was an unrestricted bid process in addition to the small business set-aside.

The contract was offered to help the State Department's Bureau of International Narcotics and Law Enforcement Affairs, or INL, in implementing civilian police and criminal justice assistance programs overseas, both as contributions to broader international peacekeeping missions and as stand-alone U.S. missions

Among other things, the contract required support with INL's requirements for adviser staffing, adviser deployment, life and mission support, program management and security.

The GAO agreed with the Emergence Group's analysis of the awards, saying the State Department's argument is predicated on the assumption that even contracts that are not relevant under the solicitation's evaluation scheme could nevertheless be considered under the price and contractual history subfactors of the past performance factor.

"Only relevant past performance should be considered in a past performance evaluation," the GAO said. "We think a contractor's successful price and contractual history on irrelevant contracts is not material or pertinent to whether an offeror could successfully perform the agency's requirements here."

The State Department's evaluation of the proposals created a situation in which bids were being judged differently than spelled out in the request for proposals, the GAO said.

"Once bidders are informed of the criteria against which the proposals will be evaluated, the agency must adhere to those criteria or inform all bidders of any significant changes made in the evaluation scheme," it said.

The GAO said because the record shows the State Department did not adhere to the announced evaluation scheme in evaluating past performance, the agency's past performance evaluation of the proposals was unreasonable and improper.

The contract was first put out to bid in April 2010, and Emergence Group Advisors had already successfully protested the contract once before, when it was initially awarded in February 2011.

After the State Department went back and re-evaluated the proposals, it awarded the contract to the five companies, and Emergence Group Advisors protested again.

The GAO said if the terms of the request for proposal's evaluation scheme overstate the State Department's actual requirements — and the GAO said they may — it recommend that the State Department amend the RFP, obtain revised proposals and make a new source selection decision.

Emergence Group Advisors is represented by Daniel R. Forman, Puja Satiani and James G. Peyster of Crowell & Moring LLP.

--Editing by Katherine Rautenberg.