

ALERT

GAO Calls Foul on Foosball: Social Gatherings Taint NASA Acquisition

October 1, 2020

WHAT: The Government Accountability Office (GAO) sustained a protest filed by Teledyne Brown Engineering, Inc. (Teledyne) challenging the National Aeronautics and Space Administration's (NASA) award of a ground systems and operations services contract to SGT, LLC (SGT). Teledyne asserted that a NASA acquisition official's longstanding personal relationships with certain contractor personnel created a conflict of interest. GAO sustained the protest because the relationships in question created at least the appearance of a conflict of interest and NASA failed to resolve the issue during its ethics review. GAO recommended that NASA not only terminate the award to SGT but also cancel the solicitation and "begin its acquisition anew."

WHEN: On September 28, 2020, GAO released the public version of its September 25 decision.

WHAT DOES IT MEAN FOR INDUSTRY: This case demonstrates that contractors must fully understand the scope of any social relationships between their employees (or the employees of any subcontractor) and agency procurement officials. Where, as here, such relationships could give rise to the appearance of a personal conflict of interest and the procuring agency does not effectively resolve or mitigate the conflict, GAO may conclude that potential or actual conflicts tainted the acquisition process and award.

In this case, the NASA employee in question (referred to in GAO's opinion as Mr. X), a member of the procurement development team (PDT), played a leadership role "in the development of virtually every aspect of the agency's acquisition, from formulating procurement strategy, contracting approaches, and cost estimates, to evaluating

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risks, to developing the central acquisition documents, such as the RFP and source selection plan.” Additionally, “Mr. X participated extensively in the evaluation of proposals, was a voting member of the [source evaluation board (SEB)] responsible for assigning scores to the proposals, and participated in briefing the [source selection authority] on the results of the agency’s evaluation.” Simultaneously, Mr. X engaged in a weekly social gathering with a group of friends – for (according to Mr. X) “camaraderie, friendship, dinner, and to engage in competitive foosball” – that included “a senior-level employee” of COLSA Corporation (COLSA), one of SGT’s major subcontractors, and an employee of KBR Wyle, a company that merged with SGT during the acquisition.

When NASA’s ethics counsel was informed of Mr. X’s position on the SEB and his friendship with the COLSA employee, counsel recommended that Mr. X be removed from the SEB or refrain from participating in the weekly social gatherings during the procurement. NASA instead allowed Mr. X to remain on the SEB even after he refused to refrain from attending the social gatherings, but it did take certain steps to mitigate the apparent conflict, such as requiring that Mr. X “not discuss or disclose SEB activities outside of the SEB-controlled access area” and refrain from evaluating any proposal involving COLSA.

GAO, however, concluded that NASA’s efforts to mitigate the conflict associated with Mr. X’s participation in weekly social gatherings were insufficient. GAO noted several areas of specific concern. First, NASA effectively ignored its own ethics counsel’s recommendation that Mr. X either refrain from participating in the social gatherings or be removed from the SEB. Second, none of the agency’s ethics review activities or deliberations considered Mr. X’s role as the lead of the PDT or his friendship with the KBR Wyle employee who also attended the weekly gatherings, or how its mitigation plan should address either of these issues. Third, it was unclear to GAO how the mitigation plan developed by NASA would guard against improper influence by Mr. X on the evaluation process, since Mr. X was still permitted under the mitigation plan to evaluate proposals from other offerors and vote on the SEB’s overall scoring of SGT’s proposal. Ultimately, GAO concluded that the apparent conflict tainted the procurement such that Teledyne was entitled to a presumption of prejudice and recommended that NASA not only terminate the award to SGT but also cancel the solicitation and “begin its acquisition anew.”