

## GAO Holds That Agency Improperly Credited Offeror With Past Performance of Affiliates

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*In [IAP World Services, Inc.; EMCOR Government Services, B-407917.2 et al. \(July 10, 2013\)](#), involving a protest challenging an award by the U.S. Department of the Navy (the “Navy”) for base operating support services, the Government Accountability Office (“GAO”) held that the Navy unreasonably credited the joint venture awardee with the corporate experience and past performance of two affiliates of one of the joint venture partners, where the record did not demonstrate that the affiliates would play a role in contract performance. The GAO reasoned that an offeror on a government contract may only rely upon and be credited for the past performance of an affiliate when the offeror’s proposal demonstrates that the affiliate will be meaningfully involved in the contract performance.*

In this case, the Navy issued a request for proposals (“RFP”) for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for base operating support services at Patuxent River Naval Air Station, Webster Field Annex, and Solomons Annex, Maryland. The RFP stated that award would be made on a best value basis, considering price and five non-price factors including, among others, corporate experience and past performance. For the past performance and corporate experience factors, offerors were required to submit information for no more than four contracts of similar size, scope, and complexity to the current solicitation that had been performed within the last five years. Under the past performance factor, offerors were required to submit completed past performance questionnaires for the same contracts.

The Navy received proposals from 10 offerors, including IAP World Services, Inc. (“IAP”), EMCOR Government Services (“EMCOR”), and J&A World Services LLC (“J&A”). J&A’s proposal explained that J&A is a joint venture comprised of J&J Maintenance, Inc. dba J&J Worldwide Services (“J&J”) and Alutiiq Global Solutions, LLC (“Alutiiq Global”). J&A’s proposal identified J&J as the managing partner and stated that both J&J and Alutiiq Global would contribute capital to the joint venture but did not specify any additional support by either of the joint venturers. As part of J&A’s proposal, J&A identified two projects that were performed by Alutiiq-Mele and Alutiiq Management Services, LLC (“Alutiiq Management”), two

separate corporate subsidiaries of Alutiiq Global's parent company Alutiiq, LLC. J&A's proposal also stated that the joint venture's board of managers had access to Alutiiq Global's parent and Alutiiq Global could channel resources from its corporate affiliates to the joint venture.

Initially, IAP was selected for award but the Navy took corrective action in light of a protest filed at the GAO by EMCOR. As part of its corrective action, the Navy requested revised proposals from those in the competitive range and after reevaluating proposals made the award to J&A. Following the award, IAP and EMCOR filed protests with the GAO challenging, among other issues, the evaluation of J&A's proposal, including the Navy's crediting J&A with the corporate experience and past performance of Alutiiq-Mele and Alutiiq Management.

The GAO has held that an agency may attribute the experience or past performance of a parent or an affiliated company to an offeror where the offeror's proposal demonstrates that the resources of the parent or affiliate "will have meaningful involvement in contract performance." *Ecompex, Inc., B-292865.4 et al.*, June 18, 2004, 2004 CPD ¶ 149 at 5. In *Ecompex*, the GAO denied the protest finding that the agency reasonably attributed experience of affiliated companies to the awardee where the proposal demonstrated a significant nexus to the affiliates, including the proposed use of affiliates' experienced employees as key personnel, and statement that the parent company would fully support the contract and that its financial resources would be available to the awardee. In *IAP*, the Navy defended its award decision by arguing that J&A's proposal likewise demonstrated a sufficient nexus between Alutiiq Global and its affiliates so that the agency could reasonably attribute the past performance of its affiliates to the joint venture. In *IAP*, however, the GAO disagreed.

In its decision sustaining IAP's and EMCOR's protests, the GAO held that the record failed to show that Alutiiq Global's affiliates would have any role in contract performance and that the Navy's attribution of corporate experience and past performance of the two affiliates to J&A was based solely on the parties' corporate affiliation. The GAO stated that "[t]he relevant consideration is whether the resources of the parent or affiliated company—its workforce, management, facilities, or other resources—will be provided or relied upon for contract performance such that the parent or affiliate will have meaningful involvement in contract performance." The GAO found insufficient support in J&A's proposal, which generally referred to the joint venture's ability to gain support from Alutiiq Global's parent company and that Alutiiq Global's parent company's vice president served on the board of managers of J&A. The GAO determined that there was no evidence that Alutiiq's affiliates would have any role in performance of the contract. Thus, for that reason and due to other errors in the evaluation process, the GAO recommended that the Navy reevaluate proposals, make a new selection decision, and terminate J&A's contract if the agency makes an award to a different offeror.

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