

GAO Sued Over Refused Bid Protest Redactions - Law360

By **Bryan Koenig**

Law360, Washington (June 30, 2016, 1:37 PM ET) -- A security services contractor hit the U.S. [Government Accountability Office](#) with a lawsuit Wednesday in D.C. federal court to block the agency from releasing an unredacted bid protest decision containing sensitive information about the company it says could compromise its future competitive prospects.

Torres Advanced Enterprise Solutions LLC alleges that the GAO twice rejected every redaction the contractor proposed for a June 7 bid protest denial of Torres AES' challenge of an up-to-\$10.2 billion multicontractor [U.S. Department of State](#) security project. That rejection contradicts U.S. government policies protecting sensitive information, according to the complaint.

"The information that Torres AES sought to redact will prejudice it in competitively bidding on future bids for government contracts," the suit says. "By refusing to redact such source-selection information, the government unfairly chills bidders from filing bid protests out of concerns that their ability to compete fairly for future contracts will be compromised."

It is standard practice for the GAO to redact sensitive information from agency bid protest decisions. In this case, Torres AES wants the agency to keep secret, information related to how government offices analyzed the company's efforts on past projects, which in turn can be used to evaluate future bids and which the company says would give its competitors an advantage if they were to obtain it.

"The company asked us to redact past performance information and pricing information they did not want to be made public," Kenneth E. Patton, managing associate general counsel for procurement law with the GAO's Office of the General Counsel, said in an email Thursday. "We do not redact such information."

According to the complaint, the GAO said the information was not entitled to protection in part because the bid protest upheld the contract award to Torres AES' competitors and thus did not tell the State Department to reconsider. That means the information Torres AES wants kept secret would not impact "the competitive process in this specific matter," the GAO said, according to the complaint.

But that is not how it works, the suit counters.

"Nothing in the applicable regulation or bid protest guidelines limits the protection of protected information to a specific matter," Torres AES says. "The Federal Acquisition Regulations ('FAR') specifically recognize the need for protection of confidential information beyond the life of a single solicitation or protest."

That is in part because contractor assessments can be applied toward future award decisions, according to the complaint.

An attorney for Torres AES on Thursday called the GAO's reticence to redact highly unusual.

"It's pretty critical to the integrity of the process," said A. Jeff Ifrah of Ifrah PLLC.

Ifrah told Law360 that the information Torres AES wants kept secret is highly sensitive and applies broadly to future embassy protection contracts.

Nor did any of the other parties to the protest, including the government itself, object to the redactions, according to Ifrah, who said he was "dumbfounded" by the GAO's objections.

"These are very traditional redactions," Ifrah said.

Torres AES has already gotten a short reprieve on the decision's release, originally planned for June 30. According court documents, the GAO agreed to hold off for 30 days in reaction to Torres AES' pursuit of litigation.

As is common practice, when the GAO denied Torres AES' protest in early June, the agency held off on publishing the decision until the parties could submit any proposed redactions to keep confidential information that had been subject to protections during the protest itself. According to the complaint, however, three days after Torres AES submitted its proposed redactions June 17, the GAO disagreed with each of them and gave the contractor another two days to support why the information should be kept hidden.

Torres AES alleges that it tried to further justify the redactions June 22, only for the GAO to say six days later it disagreed with all of them and planned on publishing June 30, prompting this lawsuit, which accuses the agency of violating the Administrative Procedure Act.

According to the complaint, the GAO pointed to its guidelines in justifying the planned publication.

"But the guidelines published by the GAO are not regulations and, in fact, contradict the governing regulation," Torres AES says. "The governing regulation ... requires the GAO to redact protected information wherever possible."

Torres AES is represented by A. Jeff Ifrah and George R. Calhoun V of Ifrah PLLC.

The government is represented Brian J. Field of the [U.S. Department of Justice](#).

The case is Torres Advanced Enterprise Solutions LLC v. U.S. Government Accountability Office, case number [1:16-cv-01381](#), in the U.S. District Court for the District of Columbia.

--Editing by Edrienne Su.