

Government Agencies' Evaluation of Offerors' Past Performance and Experience in the Context of Fair Competition

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Abstract

The government agencies of the R.O.C. use some rating methods, including numerical weights and ordinal ranking, to evaluate offerors' past performance or experience as evaluation factors in making a best-value source selection. Offerors' past performance or experience is weighed 10 scores (totaling up to 100) according to *the Most Advantageous Tender Source Selection Manual*. An offeror without a record of relevant past performance or for whom information on past performance is not available will fail to score. Do agencies, therefore, without proper reasons discriminate against these offerors? Do agencies improperly restrain offerors' full and open competition? What is the distinction between an offeror's past performance and its experience? If the offeror may not be evaluated favorably or unfavorably on past performance, there will be no argument about improper discriminatory measures and unfair competition.

There is no law or regulation governing the evaluation of the offeror without a record of relevant past performance. It becomes necessary to examine the laws and practice of the R.O.C. and the U.S. to see whether amendment to the law or regulation of the R.O.C. is required. This research on offerors' past performance information and experience focuses on the clauses in United States Code and the Federal Acquisition Regulations (FAR). Some decisions made by the Comptroller General dealing with issues in this area are discussed. This research first provides the requirement of full and open competition to see the laws and practice of these two countries. It then presents appropriate evaluation of contractors' proposals from viewpoint of economics. It also examines domestic laws,

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regulations, and practices of the US and the ROC regarding government procurement to see the shortcomings of Taiwan's domestic laws and regulations. This study then offers suggestions for establishing these laws and regulations.

Keywords: Government Procurement, Past Performance, Experience, Evaluation Factors, Rating.