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United States Government Accountability Office Finds Federal Contracting Rules do not Prohibit Labor Harmony Agreement Requirements

Labor Relations Update on **September 18, 2024**

In a decision issued on September 16, 2024, the United States Government Accountability Office ("GAO") ruled that federal contracting rules do not prohibit government agencies from requiring contractors to enter into labor harmony agreements.

In 2022, Maximus Federal Services, Inc. ("Maximus"), won a contract with the Department of Health and Human Services, Centers for Medicare and Medicaid Services for contract call center operations and other support services. Although the Center for Medicare and Medicaid Services possessed an option to renew the contract with Maximus, it instead decided to issue a request for proposal ("RFP") and seek new bids for the contract. As part of the RFP, the agency included a requirement that the ultimate successful bidder enter into a labor harmony agreement with any labor organization interested in representing the service employees performing work under the contract.

On June 20, 2024, Maximus filed a protest with GAO challenging the inclusion of the labor harmony agreement requirement in the RFP arguing that the provision (i) violated or was preempted by the Labor Management Relations Act ("LMRA") and the National Labor Relations Act ("NLRA"); (ii) violated or was not authorized under Federal Acquisition Regulation section 22.101-1; and (iii) was unduly restrictive of competition and/or ambiguous. Although GAO determined that the RFP was ambiguous as to the period of time the successful bidder would have to negotiate a pre-award labor harmony agreement, it rejected Maximus' remaining arguments.

GAO's decision is not yet publicly available, however, GAO's Managing Associate General Counsel for Procurement Law released a statement regarding the decision on September 17, 2024. In the statement, GAO noted that it dismissed Maximus' argument regarding violation and preemption of the LMRA and NLRA, finding that those arguments were beyond its jurisdiction and noting that neither statute is a procurement statute under the Competition in Contracting Act. Critically, as to Maximus' challenges pertaining to the Federal Acquisition Regulation, GAO concluded that those regulations do not prohibit an agency from requiring a contractor to enter into a labor harmony agreement. Per the statement, GAO also denied Maximus' challenge that the requirement was unduly restrictive of competition "because the record demonstrated that the clause was consistent with the agency's minimum needs."

This decision has implications for other government agencies and contractors alike as agencies may seek to include labor harmony agreement requirements in future solicitations. Notably, however, per its statement, GAO's decision "expresses no view regarding the value of including an LHA for these call-center services, or whether an LHA is consistent with federal labor laws. Further, judgments about an agency's needs are reserved for the procuring agencies, subject only to statutory and regulatory requirements." It remains to be seen how the National Labor Relations Board would rule on this issue.

We will continue to provide updates on this important topic as developments occur.

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Related Professionals

- **Paul Salvatore**
  Partner
- **Tony S. Martinez**
  Associate