



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Ideal Electronic Security Company, Inc.

File: B-283398

Date: November 10, 1999

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DIGEST

Protest challenging past performance evaluation and resulting source selection decision is denied where, notwithstanding limited contemporaneous documentation supporting award decision, record includes post-protest explanation consistent with the available contemporaneous documentation, both of which support agency's determination that proposals were technically equal and that lowest-priced proposal therefore represented best value to the government.

DECISION

Ideal Electronic Security Company, Inc., the incumbent contractor, protests the award of a contract to M.C. Dean under request for proposals (RFP) No. GS11P-99-ZGC-2001, issued by the General Services Administration (GSA) for maintenance of security equipment at the Ronald Reagan Building and International Trade Center (RRB). Ideal argues that GSA improperly failed to conduct a qualitative evaluation of past performance, as required by the RFP, and that the record therefore does not support the source selection decision.

We deny the protest.

The RFP, as amended, requested fixed-price offers for certain required personnel, materials, supplies and equipment, for a base and 4 option years, to maintain, support, inspect, and repair the RRB's integrated computerized security system. The

solicitation provided for award on the basis of the best value to the government, considering price and past performance.¹ Under past performance, the solicitation provided that, in order to be considered minimally acceptable, an offeror “must demonstrate performance of at least **four (4)** contracts of a similar nature within the past three years” and that “[s]ervices are considered similar if the functions, responsibilities, and control exercised by the contractor were essentially the same as required by the solicitation.” RFP amend. 01, § M.2.B, at IV-M. The RFP advised that “**[f]ailure to meet this requirement will render the offer technically unacceptable**” and, alternatively, that if the requirement was met, “the Government will evaluate the information to determine the quality of the offeror’s past performance,” “considering timeliness and technical success.” *Id.* In this regard, the RFP included a “Performance Evaluation” form, for submission by the offerors, that was to include specific past performance information on each identified contract, including references, complexity of work, and description/location of work. RFP amend. 01, § L.9.A, at IV-L-4 and exh. 3, at III-J-14.

The agency issued the RFP on a limited competition basis to six firms in the Washington, D.C. metropolitan area. Justification for Other than Full and Open Competition (Aug. 20, 1999). All six firms submitted proposals. M.C. Dean’s was low at \$1,426,810, and Ideal’s was second-low at \$1,534,363. (The other proposals are not relevant here.) Based on the submitted past performance information, the contracting officer determined that all firms met the minimum technical requirement of four similar contracts within the past 3 years. He then proceeded to evaluate the quality of past performance based on his review of comments from telephone interviews conducted with Ideal’s and M.C. Dean’s submitted contract references. These interviews were conducted by a different agency administrative assistant for each firm. The questions posed in the interviews were as follows: (1) “How was the offeror’s overall contract performance?”; (2) “Did the offeror perform work in a timely manner?”; and (3) “Did the offeror provide adequate staffing?” Supplemental Agency Report, Declarations of Administrative Assistants (DAA), Sept. 24, 1999. The agency administrative assistants who conducted the interviews typed comments from the interviewees on “Performance Reference” sheets. *Id.*

The interview comments documented from M.C. Dean’s four contract references were as follows: (1) “It was a complex project[;] M.C. Dean was above average as a contractor[;] [t]here was a staffing problem for a brief period”; (2) “It was a 50 million dollar contract[;] M.C. Dean maintained the best working contract with few, if any problems[;] [i]t was near Perfect”; (3) “M.C. Dean was a good contractor[;] [t]here was a 3-month period w[h]ere staffing was a problem[;] [i]t was resolved, and the contract continued successfully”; and (4) “M.C. Dean did a fine job.”

¹Where, as here, an RFP does not indicate the relative weight of technical and cost factors, offerors are entitled to assume that they are of equal weight. National Test Pilot Sch., B-237503, Feb. 27, 1990, 90-1 CPD ¶ 238 at 3, aff’d, B-237503.2, B-237503.3, June 22, 1990, 90-1 CPD ¶ 579.

Performance Reference Sheets for M.C. Dean. Also during the interviews, the agency administrative assistants obtained further explanation from the first and third interviewees concerning their comments on M.C. Dean. M.C. Dean's first reference explained that the staffing problem was "brief" and "did not [a]ffect the timeliness or technical success of Dean's performance." DAA on M.C. Dean's Reference Interviews, Sept. 24, 1999. M.C. Dean's third reference explained that "the staffing issues in contracts of this type were not unusual because the technician must have specific qualifications, and overall, Dean remedied the problem and provided adequate coverage such that she considered Dean to be a 'good' contractor." Id. These comments were not contemporaneously documented. However, they were known to the contracting officer at the time of the evaluation and were documented in post-protest statements. Contracting Officer's Statement of Fact and Position (COSF), Sept. 7, 1999, at 3-5; Declaration of Contracting Officer (DCO), Sept. 24, 1999, at 1.

As for Ideal, the agency administrative assistant was unable to contact one of the firm's submitted references; the documented interviewee comments for the firm's remaining contract references were as follows: (1) "Placed I[deal] under their General Contractor therefore they were able to have deadline met, within good timing"; (2) "Satisfactory, met the . . . deadlines"; (3) "was satisfied with their services and would recommend I[deal's] services . . ." Performance Reference Sheets for Ideal; DAA on Ideal's Reference Interviews, Sept. 24, 1999.

Based on the documented comments from the references and the additional unrecorded explanations from M.C. Dean's references, the contracting officer determined that "neither offeror [Ideal nor M.C. Dean] had negative past performance histories, that is neither offeror had problems with timeliness or technical success," and concluded that "Ideal and Dean were technically equal." COSF at 5; DCO at 1.

Subsequently, at the contracting officer's direction, a third agency administrative assistant requested that agency technical representatives (ATR) from the RRB's three tenant agencies and from GSA "review" the proposals and provide their "recommendations." E-Mail from GSA Administrative Assistant to ATRs, July 23, 1999. Positive and negative comments were received from the ATRs for both firms. E-Mail Responses from Customs Service and GSA, July 23, 1999; E-Mail Response from Agency for International Development, July 26, 1999; Memorandum Response from Environmental Protection Agency, July 23, 1999. The contracting officer reviewed the ATRs' comments and concluded that "none of the comments raised issues as to the offerors' compliance with the requirements of the solicitation" or "warranted changing [his] prior determination that the offerors were technically equal." COSF at 5-6; DCO at 1. Accordingly, in light of his determination that the two proposals were technically equal, the contracting officer concluded that M.C.

Dean's low price made the offer the best value to the government. The agency made award to that firm on August 1. Following a debriefing from the agency, Ideal filed this protest in our Office.

Ideal argues that the contemporaneous documentation in the record shows that the agency did not perform an adequate qualitative analysis of past performance, but instead merely confirmed that offerors had met the four-contract minimum requirement and then made award based on price. Ideal asserts that the remaining, noncontemporaneous record is insufficient to support the source selection decision because it contains statements as to how the evaluation was conducted which conflict with the explanation given at the debriefing. Ideal concludes that, given the flaws in the past performance evaluation, there was no reasonable basis for making award to M.C. Dean based on price.

In reviewing an agency's evaluation of proposals and source selection decision, we examine the record to determine whether the agency acted reasonably and consistent with the stated evaluation factors. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 4. Where a solicitation requires an evaluation of offerors' past performance, the agency has the discretion to determine the scope of the evaluation, provided that all proposals are evaluated on the same basis and the evaluation is consistent with the terms of the RFP. See USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 3. We will review the documentation supporting the source selection decision to determine whether the decision was adequately supported and rationally related to the evaluation factors. J.A. Jones Management Servs., Inc., B-276864, July 24, 1997, 97-2 CPD ¶ 47 at 4. Implicit in the foregoing is that the evaluation must be documented in sufficient detail to show that it was not arbitrary. Federal Acquisition Regulation §§ 15.305(a), 15.308; Quality Elevator Co., Inc., B-276750, July 23, 1997, 97-2 CPD ¶ 28 at 3; Adelaide Blomfield Management Co., B-253128.2, Sept. 27, 1993, 93-2 CPD ¶ 197 at 4. In reviewing the record, while we generally accord greater weight to contemporaneous evidence, we consider post-protest explanations, so long as those explanations are credible and consistent with the rationality of selection decisions. Jason Assocs. Corp., B-278689 et al., Mar. 2, 1998, 98-1 CPD ¶ 67 at 6-7; PRC, Inc., supra, at 4-5.

The evaluation and source selection decision were reasonable. First, although the evaluation record is relatively sparse, it clearly contained sufficient information to support a qualitative evaluation that enabled the agency to distinguish among the proposals to the extent they were distinguishable. As discussed, the offerors' references were asked the same specific questions as to how the offerors had performed on the contracts in question and the references furnished answers that revealed the extent of their satisfaction with the firms' performance. Where references indicated M.C. Dean had experienced staffing problems, the protest record shows that the agency sought and received explanation from the references. While these explanations were not documented at the time, the contracting officer has provided a declaration and statement establishing that he was aware of the

information at the time of the evaluation. There is nothing in the record that contradicts this declaration and statement or that casts doubt on its veracity. Jason Assocs. Corp., supra. We conclude that the past performance information received provided the agency with a basis for assessing the overall quality of the offerors' past performance, and for comparing the proposals in this regard. Nothing more was required by the RFP or by a standard of reasonableness.

Although the contracting officer did not contemporaneously document his evaluation conclusion that the proposals were technically equal, his statements to this effect credibly support the conclusion that he in fact made such a determination.

Specifically, the contracting officer states that he considered the recorded past performance reference comments and the explanations that staffing problems on two of M.C. Dean's contracts were resolved and did not affect the firm's overall successful performance. On this basis, the contracting officer states, he determined that the offerors' past performance was equal since neither offeror had a negative past performance history. COSF at 3-5; DCO at 1. The contracting officer's statements are corroborated by the fact that the references' comments clearly support a conclusion that the firms' past performance was equivalent. As discussed, the reference comments for M.C. Dean included remarks that the firm was an above average contractor and that staffing problems were either resolved such that the contract continued successfully or were brief and did not affect the timeliness or technical success of the firm's performance. For Ideal, the comments included remarks that the firm met deadlines with satisfactory performance and that its services were recommended. As shown by these examples, the comments for the firms were similar in that neither firm's performance was rated by the references as deficient and nothing in Ideal's reference comments suggested that its rating should have been better than M.C. Dean's.² In light of these comments, considered together with the explanations regarding M.C. Dean's staffing problems, it was reasonable for the agency to rate the proposals the same for past performance.

Ideal points to statements made by the agency at the debriefing that it asserts are inconsistent with a conclusion that the agency performed a qualitative past performance evaluation. Specifically, Ideal cites the statements: "Past performance evaluation: MDI qualified, etc. w/four similar contracts in past three years" and "Lowest price was selected of qualified offerors." Debriefing Minutes, Aug. 3, 1999. We do not agree with the protester. The failure of these cryptic statements to refer to an analysis does not constitute persuasive evidence that no analysis occurred; it appears to us that the statements were not intended as a comprehensive response to the question of whether or exactly how a past performance evaluation was conducted. In any case, given our finding that the past performance information

²We note that, while Ideal challenges the manner in which the agency conducted the past performance evaluation, it nowhere asserts that its past performance should have been rated superior to M.C. Dean's.

gathered supported a determination of technical equality, the contracting officer's statements that he made such a finding, and our conclusion that his finding was reasonable, these debriefing statements provide no basis for questioning the adequacy of the evaluation.

Ideal asserts that the contracting officer improperly considered the ATR comments (since the solicitation did not indicate such information would be considered), and Ideal's past performance at the RRB. Supplemental Comments, Oct. 4, 1999, at 1. Even if we accept the premise of Ideal's argument--that it was improper for the agency to consider this information--there is no indication in the record that the contracting officer relied at all on the additional information. In a post-protest statement, the contracting officer states that, although he read the ATR comments, he recognized that "several of the agency representatives provided qualitative comments about the proposals" but he "did not consider these qualitative comments." DCO at 3-4. The protester has not demonstrated otherwise. Moreover, since these comments included positive and negative remarks on both offerors, there would be no reason to believe they had a negative impact on the relative evaluation even if they were considered.

Similarly, there is no indication that reports of deficiencies in Ideal's performance of its current RRB contract played any part in the evaluation. The information regarding these deficiencies was submitted by the agency solely in support of its assertion that Ideal's past performance would no longer be considered equal to M.C. Dean's if the competition were reopened as a result of the protest. In a post-protest statement, the contracting officer states that, although he had knowledge of the deficient past performance, he did not consider it in the evaluation because it was not a product of the performance interviews. DCO at 4. This statement is consistent with the fact that the contracting officer determined that Ideal did not have a negative past performance history, and thus, as we have found with regard to the contracting officer's other statements, is credible.

Where, as here, proposals are determined to be technically equal, the only discriminator for award selection is evaluated cost or price. International SOS Assistance, Inc., B-245571.5, Jan. 26, 1993, 93-1 CPD ¶ 273 at 11. Since M.C. Dean offered the lowest evaluated price, the contracting officer properly selected that firm for award.

The protest is denied.

Comptroller General
of the United States