



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Ocean Technical Services, Inc.

File: B-288659

Date: November 27, 2001

Esteban Fernandez for the protester.
John J. Ralston, Esq., United States Coast Guard, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Where agency is not required to hold discussions or otherwise communicate with vendors regarding past performance information, and where agency has no reason to question the validity of past performance information received, agency can reasonably rely on information furnished without seeking to verify it or permitting the protester an opportunity to rebut it.

DECISION

Ocean Technical Services, Inc. (Otech), a small disadvantaged business concern, protests the United States Coast Guard's award of a contract to Wepfer Marine under request for quotations (RFQ) No. DTG80-01-Q-3FAG73 for repair of the Coast Guard cutter "Greenbrier," which is based in Natchez, Mississippi.¹ Otech questions the agency's evaluation of its quotation and the resulting selection decision.

We deny the protest.

The RFQ was issued pursuant to Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items, and FAR Subpart 13.5, Test Program for Certain Commercial Items, and the procurement was conducted using simplified acquisition procedures. The RFQ was issued on an unrestricted basis, but included a price adjustment provision for small disadvantaged business concerns.

¹ A "cutter" is a Coast Guard vessel 65 feet long or longer, with accommodations for crew to live aboard. Contracting Officer's Statement at 1.

The RFQ provided that the agency would evaluate quotations based on past performance and price, with past performance being slightly more important than price. Performance was to be evaluated under the following subfactors: quality of product or service; timeliness of performance; business relations (customer service); and subcontracts. Vendors were instructed to submit information on four relevant contracts that they had performed during the previous 3 years. The RFQ stated that in evaluating a vendor's past performance, the Coast Guard would also review its own contractor performance reports and would consider general trends in a contractor's performance. The RFQ stated that price would be evaluated for fairness and reasonableness, and that the foreseeable cost of transporting the Greenbrier to the vendor's commercial shipyard would be evaluated. RFP § E, at 15.

Otech, located in Harvey, Louisiana, and Wepfer, located in Memphis, Tennessee, submitted the only two quotations. An evaluation team (ET) was formed to rate the past performance of each vendor. The ET contacted the four past performance references provided by Otech for Coast Guard contracts. The record shows that the references rated the quality of Otech's services from "excellent" to "marginally satisfactory," with the more recently performed contracts receiving generally lower ratings for quality of services. Agency Report (AR), Tab J, Past Performance Questionnaire for Otech. The ET also reviewed customer surveys that the Coast Guard had on file for 12 contracts that Otech performed between 1998 and the current time. The Coast Guard's past performance survey log for Otech listed, as follows in relevant part, the firm's performance ratings:

Date Survey Received	Name of Vessel	Rating
11/1999	Ouachita	Satisfactory
11/1999	Cushing	Excellent
2/1999	Chandeleur	Excellent
11/1999	Kickapoo	Excellent
5/2000	Sciota	Excellent
6/2000	Cimarron	Excellent
8/2000	Pakota/Greenbrier	Good
4/2000	Chincoteague	Satisfactory
3/2000	Sapelo	Good
2/2001	Farallon	Fair
9/2000	Matagorda	Fair
7/2001	Pamlico	Good

Agency Report, Tab L, Past Performance Survey Log.

In their evaluation summaries, two ET members rated Otech's past performance as "marginal" overall, and the remaining member rated it as "acceptable" overall. AR, Tab O, Evaluation Summary Sheets for Otech. The summaries noted an apparent downward trend in Otech's performance over the past few years. The

summaries contained comments concerning changes in management, cost control issues, difficulties with customer relations, and a level of performance requiring more supervision and guidance from the Coast Guard. The ET arrived at a consensus rating of “acceptable, with significant [Coast Guard] assistance to control quality through stringent oversight by [Coast Guard] inspectors.” AR, Tab P, Consensus Rating Score Sheets for Otech.

For Wepfer, the ET contacted the four past performance references provided by the firm for Coast Guard contracts. These references gave Wepfer’s performance predominantly excellent ratings, and two references noted that the work was completed early. AR, Tab M, Past Performance Questionnaire for Wepfer. The ET also reviewed nine past performance surveys that were on file for Wepfer. The past performance survey log ratings for Wepfer, as relevant here, were as follows:

Date Survey Received	Name of Vessel	Rating
8/1998	Kankakee	Excellent
8/1998	Chippewa	Outstanding
10/1998	Sangamon	Excellent
10/1998	Chena	Satisfactory
10/1999	Muskingum	Outstanding
4/1999	Muskingum	Outstanding
4/2000	Cheyenne	Good
7/2001	Chena	Excellent
2/2001	Kanawha	Excellent

AR Tab N, Past Performance Survey Log.

In their evaluation summaries, each member of the ET rated Wepfer as “superior” overall. The summaries cited a consistent history of high quality work, completion of repair contracts ahead of schedule, and excellent management and customer relations. AR, Tab Q, Evaluation Summary Sheets for Wepfer. The ET gave Wepfer’s past performance a consensus rating of “superior.” AR, Tab R, Consensus Rating Score Sheets for Wepfer.

For price comparison purposes, the agency added a “cost and distance factor” to each submitted price to reflect the expense of transporting the cutter to the vendor’s facility, and then further increased Wepfer’s price by 10 percent to reflect the small disadvantaged business preference to which Otech was entitled. AR, Tab U, Price Evaluation. After these adjustments, Otech’s price was \$243,213.00, and Wepfer’s price was \$256,441.90. Id.

Based on Wepfer’s higher past performance rating and only slightly higher price, the ET determined that Wepfer’s quotation offered the “best value” to the government, and recommended awarding a contract to Wepfer. In its tradeoff analysis, the ET

noted the RFQ's slight emphasis on the importance of past performance, and it acknowledged Wepfer's superior past performance record as compared to Otech's. AR, Tab V, Tradeoff Analysis, at 2. The contracting officer agreed with the ET's analysis and awarded the contract to Wepfer. AR, Tab W, Report of Review.

Otech protests its past performance evaluation as "fatally flawed," challenging the accuracy of the performance evaluations for its three most recently completed Coast Guard contracts. Protester's Comments at 2. Otech points out that the contracting officer changed the performance report for Otech's contract on the Pamlico--lowering several ratings--after Otech had signed the report, but without showing Otech the changes. In this regard, Otech also alleges that until it received the agency report in response to its protest, it had never received the evaluation of its performance on contracts for two of the vessels, the Matagorda and the Farallon.

The agency reports that, although it cannot specifically refute Otech's allegation that the firm never received the performance evaluation surveys for the Matagorda and Farallon, it is Coast Guard practice to send these surveys to contractors just as it did for the other Otech contracts listed on the past performance survey log. The Coast Guard admits that the contracting officer for the Pamlico contract did unilaterally correct number ratings for the performance report because the contracting officer, having reviewed the narrative of the ratings, concluded that the project manager who rated Otech's performance had erroneously considered a higher numerical rating to be a negative, rather than a positive, rating. As an example, the agency points out that the rater gave Otech a "4" (which should be reserved for excellent performance) for business relations, while commenting that "the contractor was reactive rather than proactive," and that "the contractor was hesitant to take responsibility for this relatively simple change." Response to Protester's Comments at 1. The rating was changed to a "2" (fair). The Coast Guard asserts that, in any event, its evaluation of Otech's past performance is supported by Otech's past performance record, even if the three contracts at issue are discounted.

Otech objects to the substance of the ratings for the two contracts for which he contends he did not receive ratings and to the changes made in the numbers in the ratings for the Pamlico contract. Having reviewed the record, we find no basis to question the agency's actions in the procurement at issue here.

While we cannot resolve the dispute between the parties regarding whether Otech actually received the ratings for its work on the Matagorda and the Farallon, nor their dispute about the accuracy of the substance of those ratings, we conclude that the protester's contentions do not form a basis on which a protest can be sustained. The record shows that Otech is familiar with the agency's process for assessing performance on past contracts and the contractor's ability to review and comment on those assessments, see FAR § 42.1503(b), since it has provided comments on such assessments in the past. Thus, Otech knew (or certainly should have known) that its performance under each contract would be evaluated upon completion of those contracts, and, with regard to the reports it states that it did not receive, it should

have noted that it had not received a copy of those performance reports after completion of the contracts, and addressed the matter with the agency at that time. Our bid protest forum is not the place for a firm to first complain of not having received an assessment, nor do we serve as a forum for a firm to dispute the substance of an agency's assessment of the firm's work (as Otech attempts to do here with respect to the assessments regarding the Matagorda and Farallon contracts).

With regard to the Pamlico contract assessment, while Otech objects to changes having been made in the numbers after it received the assessment form, we view the narrative as the essential part of the assessment, and Otech did receive the narrative (which Otech does not allege was altered), and, indeed, responded to the assessors' critical statements about Otech's performance.² In its response, Otech wrote that (while the firm denied the reasonableness of the rater's position) it recognized that the situation "has left doubt of this contractor's ability in the mind of our customer." Protester's Oct. 3 Submission, exh. 1. While Otech obviously believes that the agency should have agreed with the firm's position and changed the narrative, that dispute is not for resolution by our Office.

Even if we were to agree, arguendo, with Otech's challenges to the validity of three of the performance assessments, there is nothing in the record to suggest that at the time the contracting officials evaluated the survey information and made the award decision here, they had any reason to question the accuracy of the information provided. Where an agency is not required to hold discussions or to otherwise communicate with vendors regarding past performance information, as is the case here where simplified acquisition procedures were employed, see FAR § 13.106-2(b)(2), and where the evaluators and selection official have no reason to question the validity of the past performance information, they can reasonably rely on the information furnished without seeking to verify it or permitting the protester an opportunity to rebut it. See A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5.

Finally, Otech insists that it "completed all contracts to the satisfaction of the government," and that "Otech is the evaluated low bidder with a history of performance and as such should be awarded the contract in question." Protester's Final Comments at 2. In a "best value" procurement, price is not necessarily controlling in determining the quotation that represents the best value to the government. Rather, that determination is made on the basis of whatever evaluation factors are set forth in the solicitation, with the source selection official often required to make a price/technical tradeoff to determine if one quotation's technical

² Our review confirms the reasonableness of the contracting officer's view that, in light of those critical statements, it appears that the rater simply misunderstood the numerical rating scale.

superiority is worth the higher price that may be associated with that quotation. In this regard, price/past performance tradeoffs are permitted when such tradeoffs are consistent with the solicitation's evaluation scheme. See Rotair Indus., Inc., B-276435.2, July 15, 1997, 97-2 CPD ¶ 17 at 3. Here, the RFQ established that past performance would be considered slightly more important than price. RFQ § E, at 16. The ET's consensus rating for Wepfer's past performance was "superior," a rating that Otech has not challenged, while Otech's consensus rating was a qualified "acceptable." AR, Tab V, Trade Off Analysis. In these circumstances, we find unobjectionable the Coast Guard's conclusion that "[b]alancing the Total Evaluated Prices and weight of the Past Performance ratings, . . . Wepfer Marine's higher performance evaluation, despite a slightly higher Total Evaluated Price . . . results in the best value to the government." Id. at 2.

The protest is denied.

Anthony H. Gamboa
General Counsel