



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: DeLeon Technical Services, Inc.; TekStar, Inc.

File: B-288811; B-288811.2; B-288811.3

Date: December 12, 2001

Kevin P. Mullen, Esq., Piper Marbury Rudnick & Wolfe, for DeLeon Technical Services, Inc., and Robert S. Gardner, Esq., for TekStar, Inc., the protesters. Craig A. Holman, Esq., and Kara L. Daniels, Esq., Holland & Knight, for Phoenix Management, Inc., an intervenor.

Warren D. Leishman, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests relating to the propriety of an agency's evaluation of proposals are denied where record shows that agency's evaluation was reasonable and consistent with the evaluation scheme outlined in the solicitation; protesters' disagreement with agency's evaluation conclusions is inadequate to show evaluation was unreasonable.
 2. Protest that agency failed to engage in adequate discussions is denied where record shows that offerors were led into areas of their proposals requiring amplification or correction; agencies are not required to "spoon feed" offerors with respect to each and every element of their proposals found deficient.
-

DECISION

DeLeon Technical Services, Inc. and TekStar, Inc. protest the award of a contract to Phoenix Management, Inc. under request for proposals (RFP) No. F05603-00-R0001, issued by the Department of the Air Force for logistics support services at several Air Force installations. Both protesters maintain that the agency miscalculated proposals in several respects and failed to engage in meaningful discussions.

We deny the protests.

The RFP contemplated the award of a contract to perform consolidated logistics support services at four Air Force installations: Peterson Air Force Base (AFB), F.E. Warren AFB, Malmstrom AFB, and Vandenberg AFB. Performance is for a basic

contract period of 1 year, with 5 option years, and is to commence initially only at Peterson AFB, with the other installations being phased in gradually over a period of approximately 4 years (as preexisting contracts at the other installations expire). Award was to be made to the firm submitting the proposal deemed to offer the best value to the government considering price and non-price factors. RFP § M-1. There were three non-price evaluation factors: past performance/confidence, proposal risk, and mission capability. Past performance/confidence and proposal risk were equal in importance, and both were more important than mission capability; each of the three factors was more important than price, and the three combined were significantly more important than price. RFP § M-3.

The Air Force received numerous proposals and, after an initial evaluation, established a competitive range comprised of DeLeon, TekStar and Phoenix. After engaging in discussions and obtaining final proposal revisions, the agency rated the proposals as follows:

| | Phoenix | DeLeon | TekStar |
|---------------------------------|--------------------------------|---|-----------------------------|
| Past Performance/ Confidence | Exceptional/High Confidence | Very Good/ Significant Confidence | Satisfactory/ Confidence |
| Proposal Risk | Low | Moderate | Low |
| Mission Capability | Green/Acceptable | Green/Acceptable | Green/Acceptable |
| Price | \$64,504,485 | \$57,517,350 | \$61,363,066 |

On the basis of these evaluation results, the agency concluded that Phoenix’s technically superior proposal offered the best overall value to the government notwithstanding its higher cost, and therefore made award to that firm.

TEKSTAR’S PROTEST

Mission Capability Evaluation

The RFP required the successful contractor to establish a consolidated/integrated supply “back shop,” where common supply functions for all four installations would be performed, thereby eliminating duplicative logistics and supply operations at the various locations. The mission capability criterion included a subfactor under which offerors’ approaches to centralization and management of the supply back shops would be assessed. RFP §§ M-5.B, M-5.B.2.

TekStar contends that the agency improperly applied an unstated evaluation consideration in distinguishing between its and the awardee’s proposals under the mission capability factor. Specifically, TekStar claims the agency improperly highlighted the point in time when each firm proposed to establish the consolidated

supply back shop.¹ We note in this connection that offerors were required to meet a minimum threshold for establishing the centralized supply back shop--no later than the fourth option year--but permitted offerors to exceed that minimum threshold. RFP § M-5.B.1; Agency Report (AR) exh. 20, at 1238. The record also shows that Phoenix proposed to establish its centralized back shop at [deleted], whereas TekStar proposed to establish its centralized facility [deleted]. AR exh. 41, at 17, 20. The agency viewed this as a relative strength for Phoenix. According to the protester, however, once the agency considered the point in time when the firms would establish their centralized back shops in the course of assigning the adjectival ratings, it was improper for it to then highlight that consideration in the narrative materials presented to the source selection authority. In the protester's view, this amounted to using an unstated or additional evaluation criterion.

This assertion is without merit. Source selection officials are not restricted to making award decisions based solely on adjectival ratings (which are merely guides to intelligent decision making); they properly may find one proposal superior to another based on features encompassed within the stated evaluation criteria, regardless of the relative closeness of the scores assigned to the proposals. F2M-WSCI, B-278281, Jan. 14, 1998, 98-1 CPD ¶ 16 at 7-8. Here, the agency merely highlighted the differences between the TekStar and Phoenix proposals using narrative commentary that noted the slight superiority of the Phoenix proposal in terms of when the firm offered to centralize the supply back shops. This was entirely consistent with the terms of the solicitation, and we have no basis to object to the agency's action; the essence of any best-value determination is the agency's making distinctions among the proposals based on judgments about the relative value of particular features offered by one or another proposal. Id.

Past Performance Evaluation

The record shows that TekStar's rating was lowered to [deleted] under the past performance factor based principally on a contractor performance assessment report (CPAR) for a contract at [deleted], under which the protester received [deleted] ratings for management of key personnel and schedule. The protester maintains that the agency gave too much weight to these [deleted] ratings, noting that it received an overall [deleted] rating for its performance on the [deleted] contract.

¹ In its initial protest, TekStar asserted that Phoenix was improperly permitted to consolidate several installation supply back shops prior to the date permitted under the RFP. In its comments responding to the agency's report, TekStar makes no mention of this assertion, and we deem it abandoned. See Teledyne-Commodore, LLC, B-278408.5, B-278408.6, Mar. 8, 1999, 99-1 CPD ¶ 60 at 6 n.8.

An agency properly may base its evaluation of past performance on its reasonable perception of the importance of certain inadequate prior performance. See Quality Fabricators, Inc., B-271431, B-271431.3, June 25, 1996, 96-2 CPD ¶ 22 at 7. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the judgment was unreasonable. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.²

The Air Force's reliance on the [deleted] ratings was reasonable. The record shows that the agency considered the probity of the [deleted] ratings, and specifically determined that the current requirement encompasses services identical to those required under the prior contract, and that the problems associated with the prior contract, if they arose in connection with the current requirement, could negatively affect performance. AR exh. 40, at 11-13. In particular, the agency noted [deleted]. Id. at 11. The agency concluded that [deleted]. Id. The same concern [deleted] was stated with respect to the firm's ability to implement a particular program [deleted]. The agency concluded that these concerns were significant because, if TekStar's past performance experience were to carry forward to the present requirement, it would result in the need for additional government oversight and might result in schedule disruption. Id.

TekStar has provided no evidence or argument demonstrating that the agency's concerns were not legitimate or why the problems indicated could not have a significant impact on successful performance of this requirement. As such, its protest essentially amounts to disagreement with the agency as to the relative importance assigned to the [deleted] ratings. Given the agency's rationale, we find nothing improper in its focusing on the [deleted] ratings, notwithstanding TekStar's overall [deleted] rating for the contract and its higher ratings under other contracts.

TekStar contends that the agency improperly assigned only a [deleted] rating for a contract it performed at [deleted]. The record shows, in this regard, that the agency arrived at this rating based principally on responses to several past performance questionnaires (PPQs). AR exh. 25, at 180-94. TekStar maintains that the agency also should have considered the award fee determinations that have been made under that contract, noting that these ratings have been either "[deleted]" or "[deleted]."

We need not resolve this issue since, as noted above, the [deleted] CPAR ratings assigned TekStar under its [deleted] contract were the primary reason advanced by the agency evaluators for downgrading TekStar's proposal in the past performance

² The record shows that TekStar was afforded an opportunity to comment on the [deleted] ratings at the time they were being assigned, and was also afforded an additional opportunity to comment on those ratings during discussions conducted in connection with this acquisition. AR exh. 25.

area,³ and we have concluded that the evaluation was reasonable in this regard. In any case, while the record does show that TekStar received [deleted] and [deleted] ratings for purposes of the award fee determinations under that contract, we do not think it was unreasonable for the agency to rely on the results of the PPQs; the PPQs, unlike the award fee determinations, were tailored to assess past performance as it related to performance under this RFP. We conclude that this aspect of the evaluation was reasonable.

Price Evaluation

TekStar contends that the agency improperly applied an unstated price evaluation criterion by using an “average price per employee” figure (total price divided by number of proposed employees) during its source selection deliberations. AR exh. 41, at 25. TekStar maintains that this was contrary to the RFP, which provided that, in making its best value determination, the agency would use the “total price” proposed for the basic period and all option periods.⁴ RFP § M.5.D. TekStar maintains that the agency’s use of a price per employee figure was prejudicial because it trivialized its price advantage over Phoenix.

This argument is without merit. While a price per employee calculation obviously has a price aspect to it, the calculation here had nothing to do with the price evaluation per se, which, the record shows, was based on the offerors’ total prices, as required by the RFP. AR exh. 43, at 3-4. Rather, the calculation merely gave the agency another piece of information to use in making its tradeoff decision. In this regard, the essence of every best-value tradeoff determination is a judgment on the part of the agency regarding whether the technical superiority of a higher-priced offer is worth its added cost. Developing a price per employee is but one way of assessing two proposals’ relative value, and we find no basis for objecting to an agency’s using it in a tradeoff analysis. It certainly was not inconsistent with the terms of the solicitation.

DeLEON’S PROTEST

³ In fact, the wording of the agency’s source selection decision document (SSDD) suggests that these ratings were deemed so significant that, but for higher-rated past performance under its other contracts, TekStar may not even have received a satisfactory rating for past performance. In this regard, the SSDD provides: “This marginal rating was considered to increase the risk But, we kept their overall quality rating at satisfactory considering [the ratings assigned for its other contracts].” SSDD at 3.

⁴ DeLeon makes the same argument in its protest; we deny that aspect of its protest for the same reasons discussed here.

Adequacy of Discussions

The record shows that DeLeon's moderate risk rating related to the adequacy of its proposed staffing. Specifically, the agency was concerned because DeLeon's proposed staffing in option year 5 (the point in time when all installations would be included under the contract) was only 83.5 percent of the staffing under the government estimate. AR exh. 40, at 15-16. The agency provided DeLeon discussion questions relating to its staffing, but DeLeon increased its staffing only marginally in response to those questions. DeLeon maintains that discussions in the area of staffing were inadequate. It claims that the discussions were limited to the adequacy of staffing at only three of the installations, even though the Air Force believed its overall staffing posed a risk.

Discussions must be meaningful, equitable, not misleading, and fair. I.T.S. Corp., B-280431, Sept. 29, 1998, 98-2 CPD ¶ 89 at 6. While agencies generally are required to conduct meaningful discussions by leading offerors into the areas of their proposals requiring amplification, this does not mean that an agency must "spoon-feed" an offeror as to each and every item that could be revised or otherwise addressed to improve its proposal. LaBarge Elecs., B-266210, Feb. 9, 1996, 96-1 CPD ¶ 58 at 6.

The discussions here were unobjectionable. The record shows that the agency tendered two written discussion questions to DeLeon relating to the adequacy of its staffing. The first question provided: "Offeror's proposed savings is based on the number of people cut, which is believed to be entirely too much for most of the bases. Example: [Vandenberg AFB] is reduced from 60 to 30 personnel, that is fifty percent of [Vandenberg AFB] manning." AR exh. 38A, at 3750.⁵ The agency's second question relating to staffing provided: "Low number of employees for Malmstrom, Warren, and Vandenberg lays the foundation for disruption of schedule or services and increases in cost." Id. at 3752. These questions, read together, put DeLeon on notice that the agency had overall concerns relating to the adequacy of its staffing at "most of the bases," as well as specific concerns relating to the adequacy of its staffing at the three enumerated installations. Further, the second question included a specific reference to the proposal risk evaluation factor, and therefore clearly conveyed to DeLeon that the agency was evaluating the adequacy of the firm's staffing within the context of its evaluation of proposal risk. In addition to these

⁵ Although this question was identified as relating to the centralization and management of the supply back shops plan, and referenced RFP section L-505B2a, its reference to the total staffing at Vandenberg AFB indicates that the agency also was referring to the firm's overall proposed staffing. It appears DeLeon clearly understood that this was a reference to its overall staffing because, in answering the question, DeLeon referenced the second discussion question, which specifically referenced the proposal risk factor. AR exh. 38A, at 2.

written questions, the agency engaged in oral discussions with DeLeon, during which the adequacy of the firm's proposed staffing was again raised by the agency. In this regard, the agency stated that an offeror proposing staffing below the government estimates included in the RFP would have to identify innovations that would support the reduced staffing, that proposal risk was more important than price and that staffing was directly related to proposal risk. AR exh. 38B, at 2.

These oral and written discussion questions were adequate to advise DeLeon that the agency had concerns relating to the adequacy of the firm's proposed staffing both overall and, in particular, at Malmstrom, Warren and Vandenberg AFBs. We note, moreover, that while DeLeon focuses on its overall staffing deficiency, the record shows that it was the firm's staffing deficiencies at the three identified installations that were the focus of the agency's concerns, as well as the specific basis for its risk rating. In this regard, the proposal analysis report (PAR) states:

The low number of employees for Malmstrom AFB, F.E. Warren AFB and Vandenberg AFB lays the foundation for a disruption of schedule or services and increases in cost. . . . [DeLeon] responded with a proposed increase in manning at Malmstrom, F.E. Warren and Vandenberg AFBs. However, the manning levels were not increased enough to merit a low risk assessment.

AR exh. 40, at 15; see also AR, exh. 43, at 2.

DeLeon also asserts that the agency improperly failed to advise it of a particular staffing deficiency later identified in the agency's evaluation; specifically, by way of example, the PAR noted that DeLeon failed to propose any truck driver staffing at the three specified installations for supply to perform pick-up and delivery services. AR exh. 40, at 15. DeLeon contends that the agency should have expressly brought this concern to its attention.⁶ However, as noted, agencies are only required to lead offerors into those areas of their proposals requiring amplification; they are not required to "spoon-feed" offerors with respect to each and every element of their proposals that would benefit from revision. LaBarge Elecs., supra. As already discussed, the agency advised DeLeon that it had concerns relating to the adequacy of its proposed staffing at the three identified installations; the Air Force was not obliged to further identify its concern regarding truck driver staffing.⁷

⁶ To the extent that DeLeon's protest amounts to a contention that the agency should have discussed the matter a second time after reviewing the firm's revised staffing, it is without merit. Agencies are under no obligation to engage in successive rounds of discussions until proposal deficiencies or omissions are corrected. OMV Med., Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 7.

⁷ DeLeon asserts that the agency engaged in disparate treatment during discussions because it advised Phoenix of two specific staffing deficiencies. This argument is
(continued...)

Proposal Risk Evaluation

DeLeon asserts that the agency improperly assigned its proposal a moderate risk rating. Specifically, the protester contends that the Air Force determined proposal risk simply on the basis of whether a firm's proposed staffing conformed to the government estimate, without regard to a statement in the RFP that the estimated staffing did not represent any sort of ideal staffing from the government's standpoint. See RFP § M-5.C. DeLeon asserts that its proposed technical approach, which included using one of the current incumbent contractors at Peterson AFB, and the fact that it is successfully performing under other government contracts using reduced staffing, mitigated any perceived risk in its proposed staffing. DeLeon also asserts that it was improper for the agency to assign a moderate risk rating to its proposal while at the same time assigning a low risk rating to TekStar's proposal, which also used comparatively low staffing.⁸

In reviewing protests challenging an agency's evaluation of technical proposals, we will not independently reevaluate the proposals; rather, our review is limited to considering whether the evaluation was reasonable and consistent with the solicitation's evaluation scheme and applicable procurement statutes and regulations. McHargue Constr. Co., B-279715, July 16, 1998, 98-2 CPD ¶ 21 at 5.

We find nothing improper in this aspect of the evaluation. DeLeon has not directed our attention to any aspect of its proposed technical approach that shows the agency's judgment was unreasonable or improperly critical. For example, the firm has not shown that the agency's determination that it failed to include truck driver staffing for three of the installations (a total of 22 full time equivalents (FTEs) over

(...continued)

without merit. The record shows that the two staffing questions the agency asked Phoenix were specific because these were the agency's only concerns relating to the firm's proposed staffing which, overall, was found to be adequate. AR exh. 36, at 38. Applicable regulations contemplate that discussions will be tailored to each offeror's particular proposal weaknesses in this fashion. Federal Acquisition Regulation (FAR) § 15.306(d)(1); CHP Int'l, Inc., B-266053.2, Apr. 29, 1996, 96-2 CPD ¶ 142 at 6-7.

⁸ DeLeon also asserts that the agency's evaluation ignores differences between the government estimates included in the RFP and the actual staffing currently being used at Peterson AFB. DeLeon bases this assertion on the activities of its subcontractor, TECOM, which it claims has been performing at Peterson AFB using significantly less staff than that called for under the RFP. This assertion is dismissed as untimely. To the extent DeLeon thought that such a solicitation deficiency existed, it was required to raise the issue prior to the deadline for submitting proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2001).

the life of the contract, according to the protester) was factually incorrect, or that some innovative aspect of its technical approach somehow otherwise addressed this identified deficiency.

In addition, DeLeon's reliance on the RFP's statement that the government's estimate of required staffing did not necessarily reflect the agency's determination of ideal staffing is misplaced because it fails to take cognizance of the agency's advice during oral discussions that DeLeon would have to identify innovations that would support its low proposed staffing. AR exh. 38B, at 2. Again, DeLeon has not identified anything innovative in its proposal aimed at supporting its low staffing that the agency ignored in the evaluation.

Moreover, we note that a careful examination of DeLeon's proposed staffing at the installations that were identified by the agency as being of concern (Malmstrom, Vandenberg and Warren AFBs) reflects greater variation between DeLeon's proposed staffing and the government's estimate than the variation between DeLeon's overall staffing and the government estimate (DeLeon was found to have proposed only 83.5 percent of the overall staffing used in developing the government estimate for option year 5). For example, the record shows that DeLeon's staffing for the supply functions at the three installations (by far the largest component of staffing) was only 80 percent of the government's estimate--20 FTEs (or 80 percent of the government estimate) at Malmstrom AFB, 19 FTEs (or 84 percent of the government estimate) at F.E. Warren AFB,⁹ and 31 FTEs (or 77 percent of the government estimate) at Vandenberg AFB. AR exh. 40, at 28. These figures support the reasonableness of the agency's particular concern over the adequacy of DeLeon's proposed staffing at the three installations.¹⁰ Further, while DeLeon may be performing at other installations with reduced staffing, the agency found its staffing reductions at those installations were only from 15 to 18 percent (AR exh. 40, at 15),

⁹ The record is unclear regarding what precisely DeLeon proposed for F.E. Warren AFB in terms of the supply function. The PAR suggests that DeLeon raised its proposed staffing for this function from 15 FTEs to 19 FTEs during discussions, but that it offered only 15 FTEs in its final proposal revision. AR exh. 40, at 23, 28. On the other hand, the copy of DeLeon's proposal which we have been provided reflects 19 FTEs for this function. AR exh. 26, at 2-6. To the extent that the PAR is correct (and DeLeon offered only 15 FTEs for this function at F.E. Warren AFB), DeLeon's proposed staffing would be only 66 percent of the government's estimate at that installation, and this would reduce its staffing for the supply function at all three installations to only 75 percent of the government estimate.

¹⁰ While DeLeon contends that its use of the incumbent contractor at Peterson AFB mitigates any perceived risk, it is not apparent (and DeLeon does not explain) why the use of a particular contractor would be expected to eliminate the agency's concern based on inadequate staffing.

versus the 20 percent shortfall identified for this acquisition. Finally, as for DeLeon's claim of disparate treatment *vis-à-vis* TekStar, the record shows that TekStar proposed 90.46 percent of the staffing under the government estimate, considerably more than DeLeon. (We point out as well that TekStar's proposed staffing for Malmstrom and F.E. Warren AFBs for supply actually exceeded the government estimate.) We conclude that the agency reasonably assigned a moderate risk rating to the DeLeon proposal for its staffing approach.

Past Performance Evaluation

DeLeon maintains that the agency engaged in disparate discussions in the area of past performance because it afforded TekStar an opportunity to provide input relating to a [deleted] rating on one of its prior contracts, but did not provide DeLeon the same opportunity with respect to a [deleted] rating on one of its subcontractor's prior contracts at [deleted]. This argument is academic. Even if DeLeon were correct that TekStar gained a relative advantage over DeLeon by virtue of the discussions in question, TekStar did not receive the award. Honeycomb Co. of Am., B-225685, June 8, 1987, 87-1 CPD ¶ 579 at 8. Any relative advantage gained by TekStar thus had no effect on DeLeon's award chances.

DeLeon also asserts that the Air Force engaged in disparate treatment by investigating the [deleted] rating on one of Phoenix's contracts, while at the same time not investigating DeLeon's subcontractor's [deleted] rating. This argument is without merit. After reviewing the questionnaires for the Phoenix contract in question (for vehicle maintenance) and comparing them to the CPARs which had been received for the same contract, the Air Force contacted the cognizant contracting officer to further inquire because of inconsistencies between the questionnaires and the CPARs. Specifically, the CPARs all reflected much higher ratings than the PPQs, and the PPQs themselves included an indication that Phoenix was performing at a level better than [deleted]. AR exh. 30, at 4267-74; exh. 31, at 3139, 3149. In particular, the CPARs consistently rated Phoenix either [deleted] or [deleted] in all categories, AR exh. 30, at 4267-74, and the PPQs also reflected that, although the firm was required to meet a vehicle-in-commission rate of between 92 and 95 percent (depending on the type of vehicle), Phoenix maintained a fleet-wide vehicle-in-commission rate of [deleted] percent. AR exh. 31, at 3139, 3149. After discussing the matter with the contracting officer, and considering all of the information (including the CPARs and the PPQs), the agency assigned an [deleted] rating to Phoenix's past performance on that contract. We find nothing unreasonable in the agency's clarifying conflicting past performance information in this manner.

In contrast, there was no similar disparity between the ratings assigned for DeLeon's subcontractor in the CPARs and the PPQs. The record shows that DeLeon's subcontractor received mixed CPAR ratings for its [deleted] AFB contract, with a predominant number of categories being rated [deleted] under each of the four

CPARs (for the first CPAR, eight categories were rated [deleted], one [deleted] and one [deleted]; for the second and third CPARs, five categories were rated [deleted], three were rated [deleted] and one was rated [deleted]; and for the fourth CPAR, five categories were rated [deleted], four [deleted] and one [deleted]). AR exh. 24, at 2456-63. These CPAR ratings were largely consistent with the [deleted] ratings assigned under the [deleted] AFB PPQ, and thus did not reflect the same disparity seen in the past performance materials for Phoenix's contract. Consequently, there was no reason for the agency to further investigate the subcontractor's performance of the [deleted] AFB contract.

Finally, DeLeon asserts that the agency improperly assigned Phoenix an overall exceptional past performance rating, while rating DeLeon only very good. The record shows that Phoenix and its subcontractor received [deleted] ratings for four prior or ongoing contracts, and [deleted] ratings for two other contracts, one of which the agency did not consider. AR, exh. 40, at 10. DeLeon claims it was improper for the agency to ignore the second [deleted] rating. However, even had the agency considered this rating, given the overall array of the ratings, there is no reason to believe that Phoenix's exceptional past performance rating would have been lowered. As for DeLeon, as discussed, the agency reasonably assigned a [deleted] rating for its subcontractor's [deleted] AFB contract, and DeLeon does not challenge its very good past performance rating on any other basis. We conclude that the evaluation in this area was reasonable.

The protests are denied.

Anthony H. Gamboa
General Counsel