



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

**United States Government Accountability 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:** James Construction

**File:** B-402429

**Date:** April 21, 2010

---

David E. White, Esq., Babst Calland Clements Zomnir, PC, for the protester.  
David F. Innis, Esq., Department of the Army, for the agency.  
Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### **DIGEST**

Agency reasonably determined that protester's lower-priced proposal, which contained significant weaknesses and risks, was not the best value as compared to the awardee's technically superior, higher-priced proposal.

---

### **DECISION**

James Construction, of Carnegie, Pennsylvania, protests the award of a contract to Greenleaf Construction Co., Inc., of Kansas City, Missouri, by the United States Army Corps of Engineers, Kansas City District, under request for proposals (RFP) No. W912DQ-10-R-4008 for the repair and modernization of an advanced individual training barracks building at Fort Leonard Wood, Missouri.

We deny the protest.

### **BACKGROUND**

The RFP was issued on November 14, 2009, as a 100-percent small business set-aside.<sup>1</sup> The RFP stated that the award would be made on a best-value basis and that an award, without discussions, was intended. RFP at 8, 13. The solicitation's four technical factors, listed in descending order of importance--past performance, quality of building systems and materials, contract duration and summary schedule, and staffing--when combined, were approximately equal to price. RFP at 22-28.

---

<sup>1</sup> The RFP was funded under American Recovery and Reinvestment Act of 2009.

The Corps received seven proposals by the closing time for receipt of proposals on December 15. Proposals were evaluated by a source selection evaluation board (SSEB) that consisted of a technical evaluation team (TET) and a price evaluation team (PET). The TET met for 2 days to evaluate technical proposals. Each TET member individually evaluated and rated the proposals, and the TET later met as a team to discuss the individual ratings and arrive at a consensus rating for each evaluation factor listed in the RFP. The PET evaluated the price proposals for reasonableness by comparing proposed fixed prices against the independent government cost estimate, market value, and construction cost limitations.

The agency's SSEB evaluation resulted in the following consensus adjectival ratings and prices for James' and Greenleaf's proposals, which were presented and accepted by the source selection authority (SSA).

	<b>James</b>	<b>Greenleaf</b>
Past performance	Acceptable	Good
Quality of building systems and materials	Marginal	Good
Contract duration and summary schedule	Acceptable	Excellent
Staffing	Acceptable	Acceptable
Price	\$7,912,000	\$8,499,786

Agency Report (AR), Tab 13, SSEB Report to SSA, at 9; *Id.*, attach. 1, Pricing Schedule Summary, at 1.

The SSA determined that Greenleaf's proposal represented the best value to the government. In comparing Greenleaf's proposal to James', the SSA noted that James' proposal was rated lower than Greenleaf's proposal under the three most important technical factors, and that James' proposal could not be considered the best value, notwithstanding its lower price, because of the "significant technical weaknesses" in its proposal. Specifically, the SSA found

Most significantly, on Factor 2, Quality of Building [Systems] Materials, James was rated Marginal while Greenleaf received a Good rating. James failed to include required discussions of significant technical issues: LEED [Leadership in Energy and Environmental Design], ATFP [Anti-Terrorism Force Protection] considerations, energy conservation, and interoperability. This failure created a high risk that James did not understand the requirements of the project and would not successfully complete performance at the offered price.

AR, Tab 14, Source Selection Decision, at 9.

Award was made to Greenleaf on December 30. James requested and later received a written debriefing on January 11, 2010. James filed this protest on January 15.

## DISCUSSION

James protests the agency's evaluation and adjectival rating of its proposal under each evaluation factor, as well as the source selection decision.<sup>2</sup> James also complains that the agency's consensus ratings did not bear a rational relationship to the TEP member's individual ratings, and the TEP member's individual rating sheets appear to have been altered to justify a lower overall consensus score.

In reviewing a protest of an alleged improper evaluation, it is not our role to reevaluate proposals. Rather, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. Further, source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price results subject only to the tests of rationality and consistency with the RFP's evaluation factors. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 3.

With regard to the past performance factor, James asserts that the agency erred in finding that James' past performance was only acceptable, evidenced no experience with military customers, and was limited to relatively small projects. As examples of why it believes that the agency incorrectly evaluated James' past performance as acceptable, instead of good or excellent, James references the four past performance questionnaires submitted with its proposal. These references, in the protester's view, demonstrate its above-average experience with complex, high-priced projects, and reference its prior work with the Corps as evidence of its military experience.

Consistent with the RFP, the agency evaluated James' four questionnaires as well as seven projects that were listed on the Construction Contract Appraisal Support System (CCASS), considering such criteria as the quality of service provided, age of the data, and its relevance. While James' proposal identified four projects that were high-priced, complex, and received above average quality ratings, the results of the CCASS survey showed much smaller projects, completed with a mix of outstanding to unsatisfactory ratings. Most important here, however, is the fact that the agency determined that none of projects reviewed was sufficiently relevant to the work contemplated by this RFP to justify a higher past performance rating than

---

<sup>2</sup> In its initial protest, James also alleged that the agency improperly considered another offeror's proposal when evaluating James' proposal and failed to seek clarifications with James regarding weaknesses and deficiencies in its proposal. Although the agency report addressed these issues, the protester failed to reply in its comments; we therefore regard these protest grounds as abandoned. See Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4. Moreover, while we have reviewed each of James' evaluation challenges, we will only provide herein a discussion of the most relevant.

acceptable. In this regard, James' proposal included projects involving [REDACTED]. None of these projects, nor those identified by the CCASS, were for military or commercial housing. Moreover, James' experience with military customer work bore little similarity to the barracks construction being awarded in this procurement. Thus, notwithstanding James' disagreement, we find that the agency's rating of James' past performance as acceptable was reasonable and consistent with the solicitation.

James also challenges the agency's marginal rating for its proposal under the quality of building systems and materials evaluation factor, arguing instead that its proposal met all of the requirements for an acceptable rating. With regard to this factor, the RFP specified that, "[i]t is the responsibility of the proposer to ensure that all aspects identified in the evaluation criteria below are addressed." RFP at 23-24. Nine criteria for this factor were listed: (1) architectural finishes, (2) mechanical systems, (3) plumbing systems, (4) electrical systems, (5) ATFP considerations, (6) energy conservation, (7) achievement of the LEED Silver requirement, (8) interoperability, and (9) site utilities and site systems. RFP at 24. Each criterion included a description of what needed to be addressed by the offeror.

The agency rated James' proposal as marginal under quality of building systems and materials factor because the proposal did not include information addressing four of the nine criteria for this factor: [REDACTED].

James responds that, contrary to the agency's conclusion, it fully understood these requirements and its proposal addressed these criteria. James argues that it demonstrated its understanding of [REDACTED] when it submitted pre-offer questions on this topic to the agency during the question and answer period and by referring to [REDACTED] in its proposal.<sup>3</sup> Protest at 6. James asserts that it addressed [REDACTED] by stating elsewhere in its proposal that, [REDACTED]. Id.; see AR, Tab 7, James' Technical Proposal, at page I-33-34. For [REDACTED], James argues that its proposal provided resumes of a project team that are [REDACTED]. Protest at 5. Finally, James states that it addressed [REDACTED] in its pre-offer questions and its proposal elsewhere stated, [REDACTED]. Protest at 6; see AR, Tab 7, James' Technical Proposal, at page I-33.

Based on our review of the record, we conclude that the agency reasonably determined that James' proposal did not provide the information required by the solicitation for these four criteria of the quality of building systems and materials factor. It is an offeror's responsibility to submit an adequately written proposal in order to establish that what it proposes will meet the government's needs; an offeror

---

<sup>3</sup> James' sent a series of pre-offer questions to the agency from November 20 to December 8. Protest, attach. B, at 1-4. These questions were not included as part of James' proposal and were therefore not considered by the agency in the evaluation.

runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Herndon Sci. and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46 at 4. Although, as James contends, James' proposal contained general references in various parts of the proposal to facts that could constitute elements of the information required by the criteria, the agency was not required to piece together disparate parts of the James' proposal to determine its intent. Interaction Research Inst., Inc., B-234141.7, June 30, 1989, 89-2 CPD ¶ 15. Moreover, the agency properly did not consider James' pre-offer statements that were not included in its proposal. In this regard, an agency is not required to infer information that the protester elected not to provide in its proposal. Abacus Enters., B-248969, Oct. 13, 1992, 92-2 CPD ¶ 242 at 4. Since offerors are expected to respond explicitly to RFP requirements, the protester acted at its own peril when it chose not to submit the requested data with its proposal. Id. Based on our review, we find the agency's marginal rating for this factor was reasonable and consistent with the solicitation.<sup>4</sup>

James also complains that the agency unreasonably evaluated its proposal because the agency's consensus ratings did not bear a rational relationship to the TEP member's individual ratings, and that the individual rating sheets appear to have been altered to justify a lower overall consensus score.

The ratings for James' proposal of the individual TEP members, and the TEP consensus rating, are set forth below as they appear in the record:

	<b>Evaluator #1</b>	<b>Evaluator #2</b>	<b>Evaluator #3</b>	<b>Consensus</b>
Past Performance	Good / Acceptable	Good	Good	Acceptable
Quality of building systems and material	<del>Good</del> / <del>Acceptable</del> <sup>5</sup> Marginal	Acceptable	<del>Acceptable</del> Marginal	Marginal
Contract duration and summary schedule	<del>Good</del> Acceptable	Acceptable	Acceptable	Acceptable
Staffing	Acceptable	Acceptable	<del>Good</del> Acceptable	Acceptable

AR, Tab 11, Individual Rating Sheets; AR, Tab 13, SSEB Report to SSA, at 9.

<sup>4</sup> We have also reviewed James's contentions regarding the evaluation of the two lowest weighted factors and found the evaluation of these factors was reasonable and consistent with the solicitation.

<sup>5</sup> Text that has been struck through represents a change in individual rater's score as reflected on the individual rating sheets.

As an initial matter, we find no support in the record for James' claims that the individual rating sheets may have been altered in order for James to have a lower overall consensus score. In this regard, the agency provided detailed statements from the TEP members and chairman, which are consistent with the contemporaneous documentation, explaining the reasons for the changes in the ratings, and how and why the TEP determined the consensus ratings.

With respect to the allegation that there is a discrepancy between the initial and consensus ratings, it is not unusual for individual evaluator ratings to differ significantly from one another, or from the consensus ratings eventually assigned. In this regard, such ratings properly may be determined after discussions among the evaluators, which is what occurred and was adequately documented here. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 4; I.S. Grupe, Inc., B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 5-6. The overriding concern for our purpose is not whether the final ratings are consistent with earlier, individual ratings but, again, whether they reasonably reflect the relative merits of the proposals. Brisk Waterproofing Co., Inc., *supra*, at 2 n.1. Based on our review, we see nothing unreasonable about the changes between the initial ratings assigned, and the final consensus evaluation ratings.

With regard to past performance, the agency explained that, even though the initial individual ratings displayed two good ratings and an acceptable rating, the consensus of the panel was that James' proposal should be rated acceptable after considering the relevance of the projects reflected in James' performance questionnaires and the CCASS evaluations. For the reasons stated above, we conclude that the acceptable past performance rating reasonably reflects the relative merits of James' past performance.

Similarly, with regard to the quality of building systems and materials evaluation factor, the individual evaluators initially scored James' proposal with two acceptable ratings and one acceptable/marginal rating, but the consensus rating was marginal. Again, during the consensus discussions the evaluators noted that James' proposal did not satisfy four of the nine criteria in the RFP. Thus, the consensus of the panel was that a marginal rating reasonably reflected the merits of James' proposal. As discussed above, we see nothing unreasonable about this rating.

James finally argues that the SSA failed to perform a proper best value trade-off, since its proposal, if properly evaluated, would have received similar ratings to Greenleaf's and the SSA would not be able to then justify the award based on the higher-priced proposal. This contention has no merit since we find the agency's evaluation of the non-price factors was reasonable for the reasons stated above. Moreover, as indicated above, the SSA's source selection decision was reasonably

based upon the factors established by the solicitation and the SSA's integrated assessment and comparison of the proposals' strengths, weaknesses, and risks.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel