



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: AVCARD

File: B-293775.2

Date: December 30, 2004

John P. Janecek, Esq., Jay P. Urwitz, Esq., and Aimen Mir, Esq., Wilmer Cutler Pickering Hale & Door, for the protester.

Craig A. Holman, Esq., and Kara L. Daniels, Esq., Holland and Knight, and Timothy W. Triplett, Esq., J. Michael Grier, Esq., Tamara L. Niles, Esq., and Seila L. Seck, Esq., Warden Triplett Grier, for Multi Service Corporation, an intervenor.

Louise Hansen, Esq., Defense Logistics Agency, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's evaluation and source selection decision were flawed is denied where the record shows that the agency's evaluation and source selection decision were reasonable and consistent with the solicitation's evaluation factors.

DECISION

Kropp Holdings, Inc., d.b.a. AVCARD, protests the award of a contract to Multi Service Corporation (MSC) under request for proposals (RFP) No. SP0600-04-R-0026, issued by the Defense Energy Support Center (DESC) for commercial charge card services for the "Aviation Into-plane Reimbursement (AIR Card) and Ships' Bunkers Easy Acquisition (SEA Card)" programs. AVCARD primarily objects to the agency's evaluation of proposals and the agency's source selection decision.

We deny the protest.

BACKGROUND

The solicitation was issued on January 16, 2004 for the award of a fixed-price contract to satisfy DESC's requirements to process retail fuel transactions using commercially available services and to input detailed transaction information for these purchases into DESC's "fuels automated system." The AIR and SEA cards will

be used by government air and sea crews to purchase aviation and ship bunker fuel and ancillary services at commercial airports and seaports worldwide.¹ The solicitation, as amended, contained a statement of objectives (SOO) that listed 26 minimum contract objectives that offerors were required to address in their proposals. RFP amend. No. 5, at 3.

The RFP provided that the award would be made on the basis of the proposal determined to represent the best value to the government. The RFP, as amended, contained four evaluation factors listed in descending order of importance—technical, price, past performance, and socioeconomic subcontracting plan. *Id.* at 7. The solicitation provided that the price factor was more important than the past performance factor and the socioeconomic subcontracting plan factor, both separately and combined. Offerors were further advised that the agency would evaluate technical proposals to determine the effectiveness and efficiency of the proposed solutions in meeting the SOO goals and that additional evaluation credits would be given to proposals that offered a single solution for both the SEA and AIR card requirements and offered innovative commercial approaches that satisfied the requirements of the SOO. Offerors could submit a proposal for the AIR card and the SEA card, individually or together.

The agency received four proposals by the closing date. The four offerors proposed to furnish both types of cards. After reviewing the results of the technical evaluation team’s evaluation of proposals, the contracting officer concluded that the offerors needed further guidance on DESC’s requirements. As a result, amendment No. 5 was issued to revise certain terms of the RFP. All of the original offerors submitted revised proposals by the June 16 closing date. After a review of the revised proposals, the agency conducted discussions with all offerors and received final proposal revisions. The evaluators’ final consensus ratings with offerors’ prices were as follows:

OFFEROR	TECHNICAL FACTOR	PAST PERFORMANCE FACTOR	SOCIOECONOMIC FACTOR	PRICE FACTOR
[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
MSC	Very Good	Exceptional	Very Good	\$6,274,688
AVCARD	Satisfactory	Very Good	Satisfactory	[DELETED]
[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]

¹ AVCARD is the incumbent contractor for the AIR card program, an established commercial card program for aviation fuel/related products and ancillary services. The SEA card is a new program, and the SEA card will operate as a purchase and charge card for ship propulsion fuel/related products and some ancillary services.

Agency Report (AR), Tab 25, Contracting Officer's Recommendation, at 1.

The contracting officer reviewed the evaluation results in order to make a recommendation to the source selection authority (SSA).² The contracting officer found that MSC and [DELETED] had submitted the highest rated and lowest priced proposals and proceeded to conduct a technical/price tradeoff between these two offerors' proposals. Comparing the MSC and [DELETED] proposals, the contracting officer noted that MSC and [DELETED] received identical ratings under the technical evaluation factor and the socioeconomic subcontracting plan factor. While the contracting officer recognized that [DELETED] received a satisfactory past performance rating compared to MSC's exceptional rating for past performance, the contracting officer concluded that it was not in the government's best interest to award a contract to MSC solely on the basis of a higher past performance rating, since MSC's proposal was nearly double the price of [DELETED] proposal. Consequently, the contracting officer recommended award to [DELETED]. As relevant here, the record shows that the contracting officer (and subsequently the SSA) excluded AVCARD's proposal from further consideration because AVCARD's proposal was lower rated and higher priced than those of [DELETED] and MSC. Id.

The SSA viewed MSC's proposal as exceptional based on the SSA's own review of the record, which included the proposals of [DELETED] and MSC, the evaluation record, and the contracting officer's analysis. More specifically, the SSA determined that the technical superiority of MSC's proposal, as well as MSC's overall business approach, superior past performance, and socioeconomic subcontracting plan made MSC's proposal the best value. AR, Tab 26, Source Selection Determination, at 10. The SSA based that decision on the added benefits proposed by MSC and MSC's comprehensive understanding of not only the credit card services required, but also the unique program needs of the AIR and SEA card programs. The SSA noted that MSC demonstrated the most extensive understanding of the ships bunker program and MSC proposed a flexible SEA card ordering mechanism. Recognizing that MSC's proposed price was higher than [DELETED] proposed price, the SSA concluded that MSC's superior technical proposal and its superior past performance justified paying the price premium. Award was made to MSC on September 23. After receiving a debriefing, AVCARD filed this protest with our Office on October 4.

With regard to AVCARD's protest of the evaluation and source selection decision, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. Here, the agency rated AVCARD's proposal lower than MSC's under all of the non-price evaluation factors. Given that AVCARD's proposal was significantly higher priced than MSC's,

² Two agency officials jointly served as the SSA for this acquisition.

in order to prevail in its protest, AVCARD would have to demonstrate that the agency should have rated AVCARD's proposal higher than MSC's proposal in at least one of the non-price evaluation areas. Based on our review of the record, AVCARD cannot demonstrate this, and therefore cannot establish the requisite prejudice.³

In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation only to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. See MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency's evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

TECHNICAL FACTOR

The protester argues that the agency misevaluated its proposal under the technical evaluation factor. As relevant here, one objective, identified as No. 26, provided for the successful contractor to obtain and pass on to the government any negotiated fuel discounts or savings obtained vis-à-vis the airfield/port suppliers' offered prices. The protester maintains that because of the importance of fuel savings in this procurement, the superior fuel savings proposed by AVCARD should have been given more weight in the evaluation than the other 25 objectives.

Here, while the RFP called for the agency to evaluate the offeror's approach to meeting the 26 objectives, the RFP did not state that any individual objective would be given greater consideration during the evaluation process than any other objective. As the agency points out, with respect to technical and price evaluation factors, where the RFP is silent as to their relative weights it must be presumed that they are of equal weight. Intermagnetics Gen. Corp., B-286596, Jan. 19, 2001, 2001 CPD ¶ 10 at 8 n.7. The record shows that the agency evaluated AVCARD's proposal for fuel discounts but gave this objective the same weight as any of the other objectives; in the agency's view, this approach was consistent with our caselaw on the weighting of evaluation factors. In our view, the agency's approach was reasonable. To the extent the protester argues that the fuel savings objective should have been given more weight during the evaluation than the other objectives, its protest involves a challenge of an alleged solicitation impropriety that had to be filed prior to the closing time for the submission of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2004); Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 3.

³ As a result, we do not reach the question of AVCARD's ratings vis-à-vis those of [DELETED].

The protester also maintains that, in evaluating its proposal, the agency improperly found that AVCARD had overemphasized the AIR card. AVCARD does not deny that its proposal emphasized the AIR card; rather, it argues that it was justified in doing so by the nature of the contract. Protester's Comments at 12. The protester contends that it was reasonable for an offeror to emphasize the AIR card, since 99 percent of the transactions would be AIR card transactions. In the protester's view, if the agency had properly considered the importance of the AIR card during the evaluation, it would have materially raised AVCARD's technical rating.

The RFP, however, stated that the RFP's purpose was to acquire a credit card processing system for the purchase of both aviation and bunker fuel; the RFP did not stress the importance of one type of card over the other. RFP amend. No. 6, at 3. The RFP simply listed the objectives for both the AIR card and the SEA card. As discussed above with respect to the importance of the fuel savings objective, if AVCARD believed that more weight should have been given to the AIR card as opposed to the SEA card in the evaluation, AVCARD's protest again concerns a solicitation impropriety that should have been protested prior to the receipt of the proposals. 4 C.F.R. § 21.2(a)(1).

Turning to the evaluation itself, our review of the record shows that the agency reasonably found that, while AVCARD's proposal provided details concerning the AIR card, with respect to the SEA card, AVCARD essentially proposed to modify its existing materials developed for the successful introduction of the AIR card as the framework for the SEA card roll-out. AR, Tab 8, AVCARD's Proposal, at 3. Under these circumstances, we do not find unreasonable the agency's concern about AVCARD's proposal's lack of detail regarding the SEA card.⁴

AVCARD also complains that the agency improperly evaluated the proposals of AVCARD and MSC under objective No. 25, which required offerors to aggressively pursue agreements with suppliers for maximum coverage. The record shows that the agency recognized AVCARD for its worldwide network of suppliers, but also recognized that MSC had a partnership with "Air BP" which provided a larger network of suppliers than AVCARD had identified. The record shows that objective No. 25 was not a discriminator between MSC and AVCARD for the contracting officer or the SSA. AR, Tab 25, Contracting Officer's Recommendation, at 3; AR, Tab 26, Source Selection Determination, at 8. AVCARD does not dispute that MSC, through its partnership with Air BP, has a larger number of locations; rather AVCARD argues that the agency should have given consideration to the remoteness

⁴ The agency reports that while there are more aviation transactions, the dollar value and quantities of bunkers' transactions are comparable. For fiscal year 2003, the total aviation quantities and dollars were 262.9 million gallons and \$355.3 million. RFP amend. No. 1, Enclosure A at 4. The marine bunker quantities and dollars were 284.9 million gallons and \$286.9 million. Id.

of the locations and the nature of the arrangement MSC has at these locations. While it is clear from the evaluation record that the agency in its evaluation merely counted the number of locations and did not evaluate the location of suppliers, we do not view this as inconsistent with the solicitation language, which basically called for offerors to show their capability to aggressively pursue supplier agreements for maximum coverage. In our view, the agency could reasonably decide that the number of existing locations was an indicator of an offeror's ability to meet the RFP requirement, and we see no basis to find that AVCARD's proposal was required to be rated superior to MSC's for this objective.

In sum, we find no basis to question the evaluation of AVCARD's proposal under the technical evaluation factor and, therefore, we have no basis to conclude that AVCARD's satisfactory rating under this factor was unreasonable.⁵

PAST PERFORMANCE FACTOR

AVCARD objects to its past performance rating of very good. AVCARD primarily objects to the fact that it received only a satisfactory rating for its past performance as the incumbent under the AIR card. The agency reports that AVCARD received a very good past performance rating based on interviews and/or questionnaires submitted by four of AVCARD's commercial customers and consideration of AVCARD's performance on the AIR card contract. More specifically, two former AVCARD commercial customers rated AVCARD exceptional for past performance and two commercial customers rated AVCARD very good. AR, Tab 14, Past Performance Worksheet. The record also shows that while the evaluators characterized AVCARD's performance on the AIR card contract as only satisfactory, the SSA recognized the merits of AVCARD's performance on that contract as supporting the overall very good rating. The SSA specifically found that AVCARD's performance in providing the first credit card program was a major factor in rating AVCARD very good overall for its past performance and that AVCARD had provided very good customer support under the AIR card contract as evidenced by an agency award. AR, Tab 26, Source Selection Determination, at 8. While AVCARD disagrees with the agency's conclusion that AVCARD's past performance was only very good overall, we have no basis to find that the agency's past performance evaluation was unreasonable. Moreover, even if AVCARD received a consensus rating of exceptional for past performance, AVCARD's rating would be identical to MSC's under this factor, since AVCARD does not challenge the evaluation and rating of

⁵ AVCARD argues that in certain respects MSC's proposal was misevaluated. For example, AVCARD asserts that MSC was credited for potential fuel savings beyond what it claimed in its proposal. However, even assuming this allegation is something other than mere disagreement with the agency's evaluation conclusion, the record shows that the SSA did not consider MSC's proposed fuel savings as a strength. AR, Tab 26, Source Selection Determination, at 5

MSC under the past performance factor. Given AVCARD's higher proposed price, assigning an exceptional rating to AVCARD's proposal in the past performance area would not have materially affected the award decision.⁶

In sum, we find that the agency's evaluation of AVCARD's proposal was reasonable. In light of that, and given AVCARD's higher price, we have no basis to object to the source selection decision.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁶ AVCARD also complains that the agency misevaluated its proposal under the socioeconomic subcontracting plan factor, the least important factor. AVCARD received a satisfactory rating under this factor because the agency concluded that AVCARD did not exceed the agency's small business subcontracting goals. AVCARD states that its goals were below the agency's goals because it calculated its subcontract values by including projected fuel purchases in the total dollars to be subcontracted. AVCARD contends that [DELETED]Comdata's and MSC's failure to include fuel purchases in their subcontracting total was contrary to law. AVCARD maintains that if the agency was unclear about how AVCARD selected its goals, preferred an individual plan to a commercial plan, or thought that AVCARD's goals were too low, the agency should have raised these issues during discussions. Even if the agency should have held discussions with AVCARD concerning its subcontracting plan, given AVCARD's high price, there is no basis to conclude that AVCARD was prejudiced by the agency's failure to discuss this issue.