



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

## DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

**Matter of:** Continental Service Company

**File:** B-271754; B-271754.2

**Date:** July 30, 1996

---

Ronald H. Uscher, Esq., Bastianelli, Brown, Touhey & Kelley, for the protester.  
Kim N. Haris, Esq., Defense Logistics Agency, for the agency.  
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

Protester was not prejudiced by any errors that may have occurred during discussions where the record shows that even accepting the protester's contentions, and based on the protester's own calculations of the ratings it would have received following adequate discussions, its proposal's overall rating would not surpass the awardee's higher-rated, slightly lower-priced proposal.

## DECISION

Continental Service Company protests the award of a contract to Management Engineering Associates, Inc. (MEA) under request for proposals (RFP) No. SP0600-96-R-0006, issued by the Defense Fuel Supply Center (DFSC), Defense Logistics Agency, for operation, maintenance, security, and protection services at the Defense Fuel Support Point (DFSP), Charleston, South Carolina. The protester argues that the agency failed to provide Continental with a meaningful opportunity to discuss unfavorable ratings it received related to its past performance—the only factor evaluated by the agency besides price—resulting in a flawed evaluation.

We deny the protest.

## BACKGROUND

The RFP was issued on October 27, 1995, as a total small business set-aside, and contemplated the award of a fixed-price contract with cost reimbursement provisions for a 3-year period. Section M of the RFP stated that proposals would be evaluated based on past performance and price. Offerors were required to submit references on three recent contracts for similar services. In evaluating past performance, the RFP stated that the agency would contact the references provided

by the offerors and that the agency reserved the right also to consider any additional information it obtained on the offerors' performance by other means. The RFP explained that the agency was more interested in obtaining superior performance than low price. Award was to be made to the offeror whose proposal was deemed to represent the best value to the government considering past performance and price.

Seven offerors, including the protester and the awardee, responded to the RFP by the time set on December 12 for receipt of initial proposals. As required by the RFP, Continental submitted references on three DFSC contracts the firm is currently performing at DFSP facilities in Cincinnati, Ohio; Charleston, South Carolina; and Searsport, Maine. After receipt of initial proposals, the contracting officer forwarded past performance surveys to each of Continental's three references.

Each survey consisted of a series of items grouped into two parts. Part I required respondents to rate the offeror on each of 13 different statements on a numerical scale ranging from 1 to 5 (1=unsatisfactory; 2=marginal; 3=satisfactory; 4=good; 5=excellent; or "N/A"). Part II required respondents to answer either "yes" or "no" to nine questions and to explain any "yes" answer under this section.

The contracting officer then calculated a point score for each offeror based on the survey responses. For each of the 13 items in part I, the contracting officer adopted the numerical rating assigned each response (e.g., a "marginal" rating on any item was worth 2 points; a "satisfactory" rating was worth 3 points, etc.). In calculating a score for part II of the survey (except for question No. 9), the contracting officer assigned a numerical rating of 2 points to any "no" response and -2 points to any "yes" response. For question No. 9 ("WOULD YOU AWARD SIMILAR CONTRACTS TO THIS CONTRACTOR?"), the contracting officer assigned a rating of 4 points for a "yes" response, and -4 points for a "no" response. The contracting officer then calculated a total score and divided that score by three to obtain an average past performance rating for each offeror.<sup>1</sup> By letter dated March 11, 1996, the contracting officer forwarded to the protester a document showing its proposal's numerical ratings on each survey item, on each of the three DFSC contracts reviewed.

Continental submitted its comments on the ratings in a letter dated March 12. Subsequently, the agency granted an extension of time in which to file comments on the survey responses; Continental amended its initial comments by letters dated

---

<sup>1</sup>Based on this approach, and assuming no respondent assigned a rating of "N/A" on any survey item, the maximum number of points available on each survey was 85 points.

March 14 and 22. The contracting officer then reviewed Continental's comments and DFSC's contract files for each of the contracts reviewed. She also contacted the survey respondents to clarify and resolve matters that remained unclear after her review of the surveys and the contract files.

In a memorandum to the file dated March 27, the contracting officer discussed each item in which the respondents assigned an unfavorable or "negative" score to Continental's performance.<sup>2</sup> Based on her review of the survey responses, the protester's comments, the contract file, and the additional information obtained from the references she contacted, the contracting officer concluded that (with one exception not relevant here) Continental's past performance score did not warrant any adjustments.

The contracting officer then ranked the offerors' proposals based on their past performance scores and proposed monthly prices with the following results:

Offeror	Rating	Price
A	76	\$35,265
B	68	42,460
MEA	[DEL]	30,618
C	61	43,999
D	60	37,886
Cont.	[DEL]	30,700
E	45	30,776

Based on these results, the contracting officer concluded that MEA's proposal represented the best value to the government, and awarded the contract to that firm on April 1. This protest to our Office followed a debriefing by the agency.

---

<sup>2</sup>The contracting officer defined a "negative" score as a response of "2" (marginal) or "1" (unsatisfactory) in any of the items in part I of the surveys, and a "yes" response to any question in part II. No respondent considered Continental's performance [DELETED] on any survey item.

## DISCUSSION

Continental argues that the agency failed to provide the firm with a meaningful opportunity to discuss the "negative" ratings it received in response to the past performance surveys in contravention of Federal Acquisition Regulation (FAR) § 15.610(c)(6) (FAC # 90-31), resulting in a flawed evaluation under the only factor considered by the agency (besides price)—past performance. Specifically, Continental argues that if the agency's discussion questions had been more specific with respect to the findings underlying the numerical ratings, Continental could have provided explanations that could have changed the ratings its proposal received.

The contracting officer's March 11, 1996 letter to Continental contained a listing of the survey items and the corresponding numerical ratings assigned by the respective respondents for each of the three contracts reviewed. In addition, that letter explained the rating scale used by the respondents to assess the contractor's performance. The record shows that Continental realized, as evidenced in its comments in response to the contracting officer's letter, that the [DELETED] ratings reflected performance problems in the specific areas covered by the surveys.

We recognize that more specific discussion questions often will yield more specific—and therefore more useful—responses. An agency is not required to "spoon-feed" offerors, however. See Research Analysis and Maintenance, Inc., B-242836.4, Oct. 29, 1991, 91-2 CPD ¶ 387. In evaluating whether there has been sufficient disclosure during discussions, the focus is not on whether the agency described its concerns in such detail that there could be no doubt as to their identification and nature, but whether the agency imparted enough information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to respond to the areas of weakness in its proposal. Aydin Computer and Monitor Div., Aydin Corp., B-249539, Dec. 2, 1992, 93-1 CPD ¶ 135.

In this case, however, we need not decide whether the discussions should have been more specific because it is clear that even if such discussions had resulted in the higher past performance rating that Continental says it should have received (with the one exception discussed below), it would still not be in line for award. In this respect, Continental contends that its proposal should have been rated [DELETED] in the pollution prevention area, for an additional [DELETED] points; [DELETED] with respect to compliance with terms and conditions and personnel training at Searsport, for an additional [DELETED] points; and [DELETED] in overall safety, for [DELETED]. Thus, Continental asserts that its proposal would have received a total of [DELETED] more "raw" points.

Based on the protester's own calculations of the ratings that would have resulted from more specific discussions (not including question no. 9 in part II of the

survey), Continental's "raw" score from the three surveys combined would be [DELETED] points. Applying the formula used by the contracting officer to calculate final past performance ratings, that score would yield an overall performance rating for Continental of [DELETED] points. However, that rating would not surpass MEA's proposal's overall rating of [DELETED] points.

With respect to the only other survey item at issue--the Searsport respondent's negative answer to item no. [DELETED] of the survey [DELETED] Continental suggests that had it been given more precise information during discussions and had its scores improved in the evaluation areas discussed above, its score would have changed for item no. [DELETED] from [DELETED]. However, this question appears to be an attempt to capture the respondent's impression of his or her overall experience with the contractor. In this case, the respondent's opinion was based on his negative experiences with several aspects of Continental's performance (as reflected in the [DELETED] ratings assigned the individual survey items), which led to his opinion that he [DELETED]. While Continental takes issue with the significance and severity of the events in question, maintaining that it resolved the problems to the agency's satisfaction, the record is clear that the perceived problems did occur. In this connection, we note, for instance, that Continental does not dispute that CARs were issued to correct performance problems. The fact that Continental may have responded adequately to CARs is no basis to discount automatically the fact that CARs were necessary to address performance problems, or that the contractor required close monitoring and supervision to ensure contract compliance.

While there may be circumstances under which a respondent's negative answer would nonetheless not warrant a [DELETED] rating--perhaps where a contractor is rated "excellent" in all past performance categories--those circumstances clearly are not present here. Accordingly, we see no basis for concluding that under the evaluation scheme used here for this item Continental's score would have changed.

Competitive prejudice is an essential element of a viable protest. Lithos Restoration Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Where no prejudice is shown, or is otherwise evident, our Office will not disturb an award, even if some technical deficiency in the award process arguably may have occurred. Merrick Eng'g, Inc., B-238706.3, Aug. 16, 1990, 90-2 CPD ¶ 130, aff'd, B-238706.4, Dec. 3, 1990, 90-2 CPD ¶ 444. In order to establish prejudice, Continental, at a minimum, had to present credible evidence that had discussions concerning its past performance been more specific, its proposal reasonably could be found sufficiently superior to that of

MEA's lower-priced proposal such that Continental could have been selected for award. As explained above, however, even accepting the protester's contentions, Continental's past performance rating would not surpass MEA's overall rating. Accordingly, on this record, we have no basis to sustain the protest.<sup>3</sup>

The protest is denied.

Comptroller General  
of the United States

---

<sup>3</sup>Since we conclude that the protester was not prejudiced by any improprieties that may have occurred during discussions, we need not address the protester's contentions that the improper discussions led to a flawed evaluation of its past performance.