

**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:** Hendall Inc.--Reconsideration

**File:** B-417513.5

**Date:** January 27, 2021

---

Matthew T. Schoonover, Esq., and John M. Mattox II, Esq., Schoonover + Moriarty LLC, for the protester.

Anthony E. Marrone, Esq., and Tami S. Hagberg, Esq., Department of Health and Human Services, for the agency.

Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

Request for reconsideration is denied where protester has not shown that our prior decision contained any error of fact or law that warrants reversal or modification.

---

## DECISION

Hendall, Inc., of Rockville, Maryland, requests partial reconsideration of our decision, *Hendall, Inc.*, B-417513.3; B-417513.4, Feb. 24, 2020, 2020 CPD ¶ 87. In that decision we denied in part, and dismissed in part, Hendall's protests against the issuance of a task order to IQ Solutions, Inc., also of Rockville, Maryland, under task order request for proposals (TORP) No. 2001, issued by the Department of Health and Human Services, National Institutes of Health (NIH), for communications support services.

In its protests, Hendall challenged the agency's evaluation under the technical and past performance factors, and the agency's best-value tradeoff decision. The protester also asserted that the agency engaged in disparate treatment of Hendall and IQ Solutions by providing IQ Solutions more substantive information regarding its evaluation in IQ's debriefings, and more details about its past performance during discussions. Hendall requests that we reconsider our decision to the extent it dismissed these issues.

We deny the request for reconsideration.

## BACKGROUND

The agency issued the TORP on December 18, 2018, pursuant to Federal Acquisition Regulation (FAR) part 16, as a small business set-aside, to holders of NIH Public Information and Communications Services II indefinite-delivery, indefinite-quantity (IDIQ) contracts. Contracting Officer's Statement (COS) at 1. The TORP provided for award on a best-value tradeoff basis, considering three factors, listed in descending order of importance: technical, past performance, and cost/price. Agency Report (AR), Tab 2d, TORP Evaluation Criteria at 1. The technical factor was scored numerically, with 100 possible points. *Id.* at 1-3. Under the past performance factor, the TORP provided that the agency would consider various aspects of the offerors's existing and prior contracts, including relevance and quality. *Id.* at 3-5. The TORP advised that the agency would assign an overall adjectival rating under this factor with "excellent" as the highest rating. *Id.* at 4.

The agency received and evaluated proposals from Hendall and IQ Solutions, and selected Hendall for award. On April 24, 2019, following a debriefing, IQ Solutions filed a protest with our Office challenging, among other things, the agency's evaluation of proposals, conduct of discussions, and award decision. The agency took corrective action which rendered the protest moot, and we dismissed the protest as academic. *IQ Sols., Inc.*, B-417513, May 9, 2019 (unpublished decision). After the agency's first round of corrective action, which included reevaluating the proposals and affirming its award to Hendall, on July 8, IQ Solutions filed a second protest following a second debriefing. The agency advised our Office that it would again take corrective action which rendered the protest moot, and we dismissed the protest as academic. *IQ Sols., Inc.*, B-417513.2, Aug. 13, 2019 (unpublished decision).

As part of its second round of corrective action, the agency amended the TORP, opened discussions, and requested and received final proposal revisions (FPRs).<sup>1</sup> The agency evaluated the FPRs as follows:

---

<sup>1</sup> The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule govern task and delivery order competitions conducted under FAR part 16, such as the procurement here. See *NCI Info. Sys., Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 9. In this regard, FAR 16.505 does not establish specific requirements for discussions in a task order competition; exchanges in that context, like other aspects of such a procurement, must be fair and not misleading. *CGI Fed. Inc.*, B-403570 *et al.*, Nov. 5, 2010, 2011 CPD ¶ 32 at 9. Where, however, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7.

	Hendall	IQ Solutions
<b>Technical</b>	97	94.5
<b>Past Performance</b>	Excellent	Excellent
<b>Total Evaluated Price</b>	\$26,545,716	\$22,561,974

AR, Tab 10, Award Determination, Nov. 19, 2019, at 2. Based on the evaluation, the evaluators' award recommendation, and "a detailed review of the positives and negatives associated with each proposal and [] special attention to the discriminating attributes of the proposals," the contracting officer concluded that IQ Solutions's FPR offered the best value to the government. *Id.* In comparing the FPRs from Hendall and IQ Solutions, the contracting officer acknowledged Hendall's higher price and technical superiority, and the offerors' equivalent past performance ratings.

On November 20, the agency notified Hendall of the award to IQ Solutions. After a debriefing, Hendall filed a protest with our Office.<sup>2</sup> Hendall protested, among other things, that the agency treated Hendall and IQ Solutions unequally with respect to the information it provided. Protest, Nov. 26, 2019, at 26. Hendall specifically complained that IQ Solutions had the benefit of two debriefings during which it received substantial information relating to the evaluation of its proposal, which allowed IQ Solutions to improve its proposal and chances for award, while Hendall did not receive the same caliber of information.<sup>3</sup> *Id.* at 26-28. Hendall argued that because the debriefings took place prior to the request for, and submission of FPRs, the debriefings should be considered discussions, which were required to be equal. *Id.* at 27-28.

Alternatively, Hendall argued that in any case, the agency was required to treat the offerors equally. Hendall specifically complained that in its two debriefings, IQ Solutions learned that Hendall's awards were based on a proposed price of \$22,585,702. Protest, Nov. 26, 2019, at 28. Hendall asserted that this information allowed IQ Solutions to submit an FPR at a proposed price of \$22,561,974, just below the price at which Hendall received the first two awards. *Id.* We dismissed this basis of protest as a challenge to the debriefing, an issue that we do not review. *Hendall, Inc.*, B-417513.3, B-417513.4, Feb. 24, 2020, 2020 CPD ¶ 87 at 4-5 n. 6.

---

<sup>2</sup> The protest was within our jurisdiction to hear protests of task orders placed under civilian agency multiple-award IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

<sup>3</sup> Hendall acknowledges that after the agency's corrective action in response to the firm's second protest (B-417513.2), which included holding discussions at Hendall's request to ensure that the playing field was level, the agency provided Hendall with additional information, including the identification of weaknesses, a request for information about the number of hours proposed, and an invitation to address the limited relevance of four past performance examples. Protest, Nov. 26, 2019, at 27.

In addition, Hendall protested that with respect to past performance, during the discussions that followed the agency's decision to take corrective action a second time, the agency provided IQ Solutions with information on the relevancy ratings of each past performance reference it submitted, thus allowing IQ Solutions to revise its proposal to address any past performance issues. Supplemental Protest, Jan. 2, 2020, at 2. In contrast, while the agency provided some information about Hendall's past performance references during discussions, it did not inform Hendall of two contracts that were rated low for relevance, and one that was rated very low relevance. *Id.* Hendall noted that while both offerors were rated excellent for past performance, the evaluators stated that IQ Solutions's past performance was slightly stronger as compared to Hendall's. *Id.* at 2-3. Hendall argued that if it had been informed of the three contracts that the agency rated low or very low relevance for past performance, it could have explained the relevancy of the past performance, or substituted different past performance references. *Id.* at 3. We dismissed this protest allegation on the basis that Hendall could not have received a rating higher than excellent for past performance, and thus was not prejudiced by any unequal treatment. *Hendall, Inc., supra*, at 10 n.8.

## DISCUSSION

Hendall requests that we reconsider our dismissal of these two issues. Req. for Reconsideration at 2-6. Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(a).

First, Hendall argues that our decision is legally and factually incorrect because it mischaracterized Hendall's argument with respect to the debriefings. Hendall states that it was not challenging the adequacy of its debriefing but was arguing that it had not been treated equally with respect to the information that was provided as a result of the debriefings IQ Solutions received. Req. for Reconsideration at 3. We acknowledge that Hendall claimed in its protest that the debriefings in this procurement created a "structural inequity" and unfair competition that should be remedied by providing Hendall with the "same caliber of information" during discussions that its competitor received during its debriefings. See Protest at 28.

This allegation, however, does not provide a basis to reach a different outcome about Hendall's protest. A debriefing is not tantamount to discussions even in the context of corrective action where new proposals are submitted. See *Next Tier Concepts, Inc.*, B-406620.3, B-406620.4, Nov. 13, 2012, 2013 CPD ¶ 5 at 3 (the purpose of a debriefing is not to give offerors the opportunity to cure deficiencies for the instant procurement, but to furnish the basis for the selection decision so they can better compete in the future; a subsequent reopening of a competition does not transform the debriefing into discussions). Further, an agency is not required to equalize the possible competitive advantage that an offeror receives as a result of the release of price or technical information during a post-award debriefing, when that release is not the result of preferential treatment or other improper action on the part of the agency.

*SYMVIONICS, Inc.*, B-293824.2, Oct. 8, 2004, 2004 CPD ¶ 204 at 6; *DynCorp Int'l LLC*, B-417704.5, Dec. 20, 2019, 2020 CPD ¶ 51 at 4.

Second, Hendall argues that it was prejudiced as a result of allegedly unequal discussions regarding its past performance. Req. for Reconsideration at 5. Hendall acknowledges that both IQ Solutions and Hendall were rated excellent for past performance.<sup>4</sup> *Id.* Hendall asserts that while it could not have received a rating higher than excellent for past performance, the evaluators considered IQ Solutions's past performance slightly superior even though both offerors received the same adjectival rating of excellent. *Id.* Hendall argues that with equal discussions it could have addressed past performance so that the agency might have found a basis to consider Hendall's past performance slightly superior.<sup>5</sup> *Id.*

On reconsideration we conclude that even if the agency discussed with Hendall (as it did with IQ Solutions) the relevance of each of its past performance references, Hendall was not competitively prejudiced here. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. *TMM Investments, Ltd.*, B-402016, Dec. 23, 2009, 2009 CPD ¶ 263 at 4.

At the conclusion of this competition, these proposals were very closely rated. To the extent Hendall argues that--if given the chance--it too could have achieved the same superiority over IQ Solutions under the past performance evaluation factor as IQ Solutions achieved (despite the excellent ratings received by both companies), it is useful to revisit the technical evaluation. The evaluation stated:

---

<sup>4</sup> Proposals with the same adjectival ratings are not necessarily of equal quality and an agency may consider specific advantages that make one proposal of higher quality than another. *Asset Protection & Security Services, LP*, B-417024.6, B-417024.7, Apr. 6, 2020, 2020 CPD ¶ 137 at 6.

<sup>5</sup> We note that for discussions to be meaningful, they must identify deficiencies, significant weaknesses, and adverse past performance to which the offeror has not yet had an opportunity to respond; however, agencies are not required to afford offerors all-encompassing discussions, or to point out every aspect of a proposal that offers a relatively less desirable approach. See *Maywood Closure Co., LLC*, B-408343 et al., Aug. 23, 2013, 2013 CPD ¶ 199 at 9. We have previously held that an evaluation panel's conclusion that a particular contract is not relevant does not rise to the level of a deficiency or significant weakness, and that such a determination does not constitute adverse past performance information. *Id.* Accordingly, we consider the issue here in the context of unequal discussions since an agency must treat offerors the same when holding discussions.

Though Hendall had a slight technical advantage, IQ Solutions' Technical Proposal was very close in merit to Hendall's proposal and offered advantages that were unique to it as well. Both offerors received a past performance rating of Excellent and their past performance is considered nearly equivalent in quality and relevancy, with IQ Solutions having a slight advantage.

AR, Tab 9, Technical Evaluation Team Award Recommendation at 10.

Based on these findings, the evaluators recommended that the task order be awarded to IQ Solutions based on its lower proposed price, recognizing that technical was the most heavily weighted factor and concluding that Hendall's unique technical advantages did not justify the price premium. *Id.* at 10-11. In reviewing the award recommendation, the contracting officer went even further, stating:

I concur with the evaluators' conclusions and rationale as related to this best value decision. In addition, even if Hendall and IQ Solutions were absolutely equal under the Past Performance factor, IQ Solutions still would have provided the best value in light of the entire evaluation and its nearly \$4 [million] lower price.

AR, Tab 10, Award Determination, Nov. 19, 2019, at 2.

The agency's considerations were not limited, however, to the possibility that these proposals might be viewed as equal under the past performance factor. The agency also contemporaneously made the following additional finding:

To justify the premium (even where Technical Proposal and Past Performance are significantly more important than cost or price), Hendall's unique advantages would need to be much more significant to contract performance and IQ Solutions' unique advantages would need to have a much lesser positive impact on contract performance.

*Id.*

In short, we see no support for a conclusion that Hendall could have achieved the needed significant advantages to contract performance the agency would have required to justify paying Hendall's price premium. On this record, we see no basis to grant the reconsideration Hendall seeks.

The request for reconsideration is denied.

Thomas H. Armstrong  
General Counsel