



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: Crockett Facilities Services, Inc.

File: B-406558.3

Date: December 13, 2012

Eden Brown Gaines, Esq., Brown Gaines, LLC, for the protester.
Keith L. Baker, Esq., and Bryan R. King, Esq., Barton, Baker, Thomas & Tolle, LLP, for TK Services, Inc., the intervenor.
Christian Guzzano, Esq., General Services Administration, for the agency.
Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that an agency's cost/technical tradeoff decision gave improper weight to price is denied, where the agency reasonably determined that the protester's technically superior proposal was not worth its much higher price.

DECISION

Crockett Facilities Services, Inc., of Bowie, Maryland, protests the award of a contract to TK Services, Inc., by the General Services Administration (GSA), Public Buildings Service, under request for proposals (RFP) No. GS-11P-11-YT-D-0272 for operations and maintenance services. Crockett also requests that we reconsider our November 9, 2012 dismissal of its supplemental protest.

We deny the protest and request for reconsideration.

BACKGROUND

The RFP, issued as a competitive section 8(a) set-aside, provided for the award of a contract for a base year and 4 option years for operations and maintenance services at the Prettyman Courthouse and Annex in Washington, D.C. RFP at 8. Offerors were advised that award would be made on a "best value" basis, considering price and the following three weighted technical evaluation factors: prior experience (40 percent), key personnel (35 percent), and past performance (25 percent). RFP amend. 2, at 163. Offerors were informed that the technical factors, combined, were more important than price. RFP at 165.

GSA received proposals from 10 offerors, including Crockett and TK Services. GSA awarded the contract to Crockett on February 24, 2012, and TK Services protested to our Office. GSA subsequently notified our Office that it would terminate Crockett's contract and make a new source selection decision. We dismissed TK Services' protest as academic. TK Services, Inc., B-406558, Apr. 3, 2012. Crockett then protested to our Office, complaining that it was prejudiced by the agency's intended corrective action, because the firm had graduated from the 8(a) program and would not be eligible for award. We dismissed Crockett's protest as not stating a valid basis for protest because Crockett remained eligible for award under the solicitation. Crockett Facilities Services, Inc., B-406558.2, Apr. 25, 2012.

In performing its promised corrective action, GSA did not obtain revised proposals but reevaluated the offerors' existing proposals. The source selection evaluation board (SSEB) prepared a new evaluation report that assigned adjectival and point scores and identified strengths and weaknesses in each offeror's proposal.¹ See AR, Tab 3, SSEB Report. Crockett's and TK Services' proposals were evaluated as follows:

	Crockett	TK Services
Prior Experience (40%)	Superior (38 points)	Successful (33 points)
Key Personnel (35%)	Poor (24 points)	Poor (23 points)
Past Performance (25%)	Highly Successful (23 points)	Successful (22 points)
OVERALL	Successful (85 points)	Marginal (79 points)²
Price	\$9,209,844	\$7,451,446

¹ Each evaluator rated proposals under each factor as either superior (95-100 points), highly successful (90-94 points), successful (80-89 points), marginal (70-79 points), or poor (60-69 points). The point scores were multiplied by the weight assigned to the factor. The consensus rating consisted of the average weighted score for each factor. As relevant here, a successful proposal was defined as having some significant and minor strengths, and a marginal proposal was defined as having some strengths and many weaknesses. AR, Tab 5, Source Selection Plan, attach. C, Technical Rating Scale; attach., Revised Evaluation Summary Matrix.

² Point scores do not add up due to rounding of the consensus scores.

Id. at 7, 11, attach., Revised Evaluation Summary Matrix.

The SSEB recommended to the contracting officer, who was the source selection authority for this procurement, that award be made to TK Services, as reflecting the best value to the government. Id. at 40. Specifically, the SSEB recognized Crockett's technical superiority, but noted that TK Services' proposal received a point score that was "barely outside of the Successful range." Id. at 39. In this regard, the SSEB noted that TK Services' much lower score rating under the prior experience factor primarily reflected the firm's failure to identify the security level for the four projects TK Services relied upon to establish its prior experience, its failure to indicate the number of key personnel involved in one of the projects, and the fact that TK Services had been a subcontractor for one of its identified projects and not the prime contractor. Crockett's superior rating under the prior experience factor reflected the SSEB's finding that three of its four projects demonstrated extensive experience at facilities with a security level comparable to the one at the Prettyman Courthouse. Id. The SSEB also noted, under the key personnel factor for which both firms' proposals were rated poor, that Crockett's proposed project manager and chief engineer had considerably more experience than TK Services' personnel. Id.

The SSEB concluded that the technical superiority of Crockett's proposal was not worth the 19 percent (\$1.75 million) price premium compared to TK Services' proposal. Id. Although the contracting officer recognized that the technical factors were more important than price, she agreed with the SSEB. Id. at 40; Contracting Officer's Statement at 1.

TK Services' proposal was selected for award. Following a debriefing, Crockett protested to our Office, complaining that the agency's price/technical tradeoff decision was unreasonable. After receiving the agency's report in response to its protest, Crockett filed a supplemental protest, complaining that GSA had failed to take into account adverse information in evaluating TK Services' past performance and misevaluated the firms' proposed prices. We dismissed Crockett's supplemental protest as untimely. Crockett Facilities Servs., Inc., B-406558.4, Nov. 9, 2012.

DISCUSSION

Crockett challenges GSA's selection of TK Services' lower-rated, lower-priced proposal as reflecting the best value to the government. Crockett contends that the agency placed too much emphasis on price in its selection decision. Protest at 4.

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 evaluation results; price/technical tradeoffs may be made, and the extent to

which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. World Airways, Inc., B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12. Even where, as here, technical merit is significantly more important than price, an agency may properly select a lower-priced, lower-rated proposal if it reasonably decides that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified. Hogar Crea, Inc., B-311265, May 27, 2008, 2008 CPD ¶ 107 at 8.

The record here does not support Crockett's contention that GSA's selection decision was inconsistent with the RFP's evaluation scheme.³ The contracting officer and the SSEB recognized that the RFP provided that technical merit was more important than price, and both recognized that Crockett's proposal was technically superior to TK Services'. The contracting officer and the SSEB nonetheless concluded that TK Services' much lower price outweighed Crockett's technical advantage. Although Crockett disagrees with that judgment, it has not shown it to be unreasonable.

Instead, Crockett complains that GSA's selection of TK Services' proposal was done to avoid responding to TK Services' original protest. Protest at 4. Crockett bases this complaint upon the fact that GSA did not obtain revised proposals and that the agency initially provided inaccurate information to Crockett concerning the termination of its contract. Crockett's arguments do not provide any basis for questioning the agency's motives for reevaluating the firms' proposals in response to TK Services' initial protest. Government officials are presumed to act in good faith, and a protester's assertion that contracting officials were motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6.

REQUEST FOR RECONSIDERATION

Crockett also requests that we reconsider our November 9, 2012, dismissal of the firm's supplemental protest, challenging the agency's evaluation of TK Services' protest and the agency's price evaluation. We dismissed the supplemental protest because it was untimely filed. Specifically, we found that Crockett's supplemental protest could have been raised within 10 days of the agency's early production of documents on October 2; instead, Crockett did not file its supplemental protest until November 5.

³ Crockett also argues that GSA failed to document its best value tradeoff analysis, as required by Federal Acquisition Regulation § 15.406. Protest at 4. The record shows that the agency adequately documented its selection decision.

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) (2012). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. Crockett's request does not meet our standard for reconsideration.

Crockett argues that it did not know, until the receipt of the agency's report on October 24, that the early documents provided by GSA on October 2 constituted the actual source selection documents for the second selection decision. We disagree. Not only was Crockett informed by GSA that the early documents were in response to the protester's request for documents, see GSA emails, Oct. 2, 2012, but the documents provided under the protective order include the SSEB's evaluation report and best value recommendation to the contracting officer and the contracting officer's concurrence.

We also do not agree that Crockett's challenge to GSA's price evaluation was raised in its initial protest. In its initial protest, Crockett challenged the agency's price/technical tradeoff decision, complaining that the agency placed undue emphasis upon the awardee's lower price. Crockett did not challenge the agency's price evaluation. Crockett's disagreement does not show our Office made an error of law or fact.⁴

The protest and the request for reconsideration are denied.

Susan A. Poling
General Counsel

⁴ We also find that Crockett's complaints with respect to GSA's production of documents and with respect to GSA's failure to provide a document index with its early production of documents do not show that we erred in dismissing the firm's supplemental protest.