



**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:** M.C. Dean, Inc.

**File:** B-418553; B-418553.2

**Date:** June 15, 2020

---

John R. Prairie, Esq., Samantha S. Lee, Esq., J. Ryan Frazee, Esq., Moshe B. Broder, Esq., Sarah B. Hansen, Esq., and Adam R. Briscoe, Esq., Wiley Rein LLP, for the protester.

Richard B. Oliver, Esq., and J. Matthew Carter, Esq., Pillsbury Winthrop Shaw Pittman LLP, for PTSI Managed Services, Inc., the intervenor.

Laura A. Wallace, Esq., and Kathryn B. Codd, Esq., National Security Agency, for the agency.

John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

Protest is sustained where record shows that awardee had actual knowledge prior to award that one of its key personnel was unavailable to perform, but failed to notify the agency of this material change in circumstances.

---

## DECISION

M.C. Dean, Inc., of Tysons, Virginia, protests the award of a contract to PTSI Managed Services, Inc. (PTSI), of Pasadena, California, under request for proposals (RFP) No. H98230-19-R-0148, issued by the National Security Agency (NSA), Central Security Service, Maryland Procurement Office to provide maintenance, installation, and distribution services for the agency's comprehensive enterprise class physical security system. M.C. Dean challenges almost every aspect of the agency's evaluation.

We sustain the protest.

## BACKGROUND

According to the RFP, the agency's security and counterintelligence (S&CI) organization is responsible for protecting the agency's "classified and sensitive information, facilities, assets, infrastructure and personnel [DELETED], through a comprehensive analysis of risk and deployment of physical and technical security countermeasures." Agency

Report (AR), Tab 4, RFP, Statement of Work (SOW) § 1.0. To protect the agency’s assets, S&CI created the [DELETED] program, which the RFP explains is “an enterprise class physical security program.” *Id.* The objectives of this program include, among other things, upgrading [DELETED], developing [DELETED], enhancing [DELETED], and expanding [DELETED]. *Id.* This procurement, which the RFP refers to as KUVASZ, is for maintenance, installation, and distribution services for the [DELETED] program.<sup>1</sup> These services include [DELETED]. *Id.* § 2.0. Performance of the contract would occur at various agency facilities [DELETED]. See *id.* §§ 4.3, 6.0.

The agency intends to award a single indefinite-delivery, indefinite-quantity contract with fixed-price and time-and-materials delivery orders. RFP, Proposal Evaluation Criteria (PEC) § 1.0. The solicitation provided for a best-value tradeoff decision based on an evaluation of the following factors and subfactors:

<b>Factor 1: Management</b>
<b>Subfactor 1:</b> Quality Assurance Plan
<b>Subfactor 2:</b> Personnel Qualification
<b>Subfactor 3:</b> Configuration Management Plan
<b>Factor 2: Technical</b>
<b>Subfactor 1:</b> Technical Approach
<b>Subfactor 2:</b> Technical Scenario
<b>Factor 3: Price</b>

*Id.* §§ 1.0, 2.1. The management factor was more important than the technical factor, and when combined, the management and technical factors were significantly more important than price. *Id.* § 2.2. The subfactors under the management factor were of equal importance, and the subfactors under the technical factor are listed in descending order of importance in the above table. *Id.* §§ 2.2.1, 2.2.2. The RFP stated that the agency would assign an adjectival rating to each factor and subfactor.<sup>2</sup> *Id.* § 2.1. The RFP listed a number of criteria under each subfactor that the agency would evaluate. See *id.* §§ 3.1.1-3.2.2.

As relevant here, the RFP identified seven key personnel labor categories, including the program manager. SOW § 7.1. The RFP stated that the program manager “will be the

---

<sup>1</sup> The RFP does not indicate that [DELETED] or KUVASZ are acronyms, but refers to them using all capital letters, so we do the same in this decision. For reference, the prior contract, on which M.C. Dean was the incumbent, was referred to as MAREMMA. Protest at 1; Contracting Officer Statement (COS) at 2.

<sup>2</sup> The ratings were outstanding, good, acceptable, marginal, and unacceptable, and were to reflect a consideration of how well the proposal met and understood the requirements, as well as an evaluation of the risk of unsuccessful performance. RFP, PEC § 2.1.

[p]rogram [m]anagement [l]ead and the [p]rimary [p]oint of [c]ontact . . . and serve as the manager of the application of this contract.” *Id.* § 4.1. The RFP further stated that the program manager “shall be responsible for the successful cost, schedule, and performance of the contract.” RFP, app. B, Labor Category Description at 8. The RFP also provided security requirements for certain labor categories; the program manager “shall be required to possess [top secret/sensitive compartmented information (TS/SCI)] clearance with a full scope polygraph at award.” SOW § 10.0. The program manager would access classified information during performance of the contract. *Id.* Offerors were required to provide resumes for all of the key personnel. RFP, Proposal Preparation Instructions § 3.1.2. Offerors were also required to notify the agency for approval of any changes to the key personnel. SOW § 7.1.

Three offerors, including M.C. Dean, submitted proposals. COS at 7. After a round of discussions, the offerors submitted final proposal revisions (FPRs) in November 2019. *Id.* at 8. The agency evaluated M.C. Dean’s and the awardee’s FPRs as follows:

	<b>M.C. Dean</b>	<b>PTSI</b>
<b>Management</b>	<b>Acceptable</b>	<b>Good</b>
Quality Assurance Plan	Marginal	Good
Personnel Qualification	Good	Marginal
Configuration Management Plan	Acceptable	Good
<b>Technical</b>	<b>Marginal</b>	<b>Acceptable</b>
Technical Approach	Marginal	Good
Technical Scenario	Marginal	Acceptable
<b>Price</b>	<b>\$103,153,883</b>	<b>\$104,503,772</b>

AR, Tab 13, Source Selection Evaluation Board Recommendation Report at 3-17.

The agency ultimately selected PTSI’s proposal for award, noting that it received a good rating for the management factor and an acceptable rating for the technical factor. AR, Tab 15, Source Selection Authority Decision at 5. The agency also stated that PTSI was rated marginal in only one subfactor, personnel qualification, which contained only one significant weakness for the proposed key personnel resumes, but that this was “mitigated by their strong quality assurance and configuration management plans.” *Id.* In comparison, M.C. Dean’s proposal received marginal ratings in the quality assurance plan, technical approach, and technical scenario subfactors. *Id.* Thus, “[w]hile M.C. Dean submitted a lower priced proposal, its approach to meeting the management and technical requirements for KUVASZ were far weaker than [PTSI’s] approach, and did not demonstrate to the [g]overnment its full comprehension of the scope of the contract, and the effort needed to execute successful performance.” *Id.*

After M.C. Dean received its required debriefing, it filed this protest with our Office.

## DISCUSSION

M.C. Dean protests almost every aspect of the agency's evaluation and award decision, stating that the agency "failed to properly evaluate proposals under essentially every factor and subfactor of the [s]olicitation, resulting in a prejudicially flawed award." Protest at 2. Among the many protest grounds, M.C. Dean contends that PTSI was aware that its proposed program manager, identified in the RFP as one of the key personnel, became unavailable prior to award and remains unavailable to perform on the contract. Supp. Comments at 6-9. M.C. Dean maintains that as a result, PTSI's proposal is unacceptable. *Id.* at 9. For the reasons discussed below, we sustain the protest on this basis.

Our Office has explained that offerors are obligated to advise agencies of material changes in proposed staffing, even after submission of proposals. *General Revenue Corp. et al.*, B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 at 22. While an offeror generally is required to advise an agency where it knows that one or more key employees have become unavailable after the submission of proposals, there is no such obligation where the offeror does not have actual knowledge of the employee's unavailability. *DZSP 21, LLC*, B-410486.10, Jan. 10, 2018, 2018 CPD ¶ 155 at 10. This premise is grounded in the notion that a firm may not properly receive award of a contract based on a knowing material misrepresentation in its proposal. *Id.* When the agency is notified of the withdrawal of a key person, it has two options: either evaluate the proposal as submitted without considering the resume of the unavailable employee (where the proposal will likely be rejected as technically unacceptable for failing to meet a material requirement); or open discussions to permit the offeror to amend its proposal. *General Revenue Corp.*, *supra*; *Pioneering Evolution, LLC*, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 9.

In its protest, M.C. Dean asserts that PTSI's proposal was technically unacceptable because several of PTSI's proposed key personnel were not available to perform.<sup>3</sup> Protest at 43-44. In response, the agency acknowledges that "subsequent to the KUVASZ award . . . the agency was made aware that although 5 of [PTSI's] key personnel remained available, 3 needed to be replaced." Memorandum of Law (MOL) at 22. In this regard, the agency report included a declaration from an employee of PTSI's parent company, which explains that three key personnel are no longer available to perform. AR, Tab 25, PTSI Declaration ¶ 9. With respect to the program manager, the declaration states:

[The program manager] is an employee of [PTSI] and is currently available to be assigned to work on this contract. [The program manager] was hired

---

<sup>3</sup> This initial allegation was based on multiple job postings on PTSI's website that matched the descriptions for at least four of the key personnel positions. Protest at 43-44.

in May of 2019 and worked on the preparations for the possible [KUVASZ] contract until December 12, 2019, when the customer denied [him] a security clearance for this program. [The program manager] received his official denial letter on January 21, 2020. PTISI understood that [the program manager] would be appealing that denial of his security clearance. However, on March 16, 2020, after contract award, PTISI learned that [the program manager] has not appealed the denial of his security clearance.

*Id.*

Based solely on the declaration from PTISI, the agency argues that PTISI “had no reasonable basis to expect either at or before contract award” that the program manager would be unavailable to perform, and therefore had no obligation to inform the agency prior to award that the program manager was unavailable. MOL at 23. M.C. Dean maintains that once the program manager was denied a security clearance, PTISI had actual knowledge prior to award that the program manager was unavailable to perform on the KUVASZ contract, and therefore was required to notify the agency of this change in its proposal. Comments and Supp. Protest at 13, 15; Supp. Comments at 7-8. On this record, we agree with the protester.

The RFP required that the program manager have a security clearance to access classified information specific to the KUVASZ contract. SOW § 10.0. In November 2019, PTISI submitted its FPR in which it proposed this specific program manager.<sup>4</sup> One month later, NSA denied a security clearance for the proposed program manager, who received official notice of this decision in January 2020.<sup>5</sup> As a result of the denial,

---

<sup>4</sup> We note that PTISI’s proposal explained how the skillset of the proposed program manager would be beneficial to PTISI achieving the requirements of the contract. For example, PTISI’s proposal stated “[t]o highlight our agility, we introduce our [program manager] . . . . His extensive management experience on similar projects with [intelligence community] customers, along with his detailed knowledge of the technical systems already installed, will make him the ideal single point of contract . . . for both management and technical matters [DELETED].” AR, Tab 22, PTISI Proposal Vol. I, Management at 2. The proposal also stated that the program manager “will direct [DELETED].” AR, Tab 23, PTISI Proposal Vol. II, Technical at 2.

<sup>5</sup> The declaration from PTISI’s parent company stated that the program manager was denied a security clearance “for this program.” AR, Tab 25, PTISI Declaration ¶ 9. However, the agency clarified that the denial was not for the KUVASZ contract, but rather for a different NSA contract. Supp. MOL at 4; see *also* AR, Tab 31, Security Clearance Document (showing denial was for a contract other than KUVASZ). The agency explained [DELETED]. Neither the agency nor PTISI has claimed that there is a difference in the contracts such that the program manager could have received a security clearance for KUVASZ despite the denial on another contract.

PTSI had actual knowledge that its program manager would not be able to obtain the security clearance necessary to work on the KUVASZ contract, and thus would not be available to perform.<sup>6</sup> Indeed, PTSI stated that the program manager stopped working on preparations for the KUVASZ contract once he received notice of his denial, suggesting that PTSI understood that the denial rendered him unable to work even on contract preparations, let alone the contract. See AR, Tab 25, PTSI Declaration ¶¶ 9. PTSI therefore was required to inform the agency of the program manager's unavailability, which it failed to do. *DZSP 21, LLC, supra*.

The agency argues that the program manager had until March 6, 2020, to appeal the denial and “[a]s a result, the proposed [program manager] had not yet exhausted his legal remedies with respect to the adjudication of his NSA access at the time the KUVASZ contract was awarded on February 12.” Supp. MOL at 4. The agency asserts that given this timeline and ability to appeal, PTSI “could [not] be charged with actual knowledge of the [program manager’s] unavailability, as additional avenues of recourse remained available to him at the time of award to appeal his initial access denial.” *Id.* at 5.

We disagree. As noted above, PTSI stated that it merely “understood” that the program manager was going to appeal the security clearance denial. AR, Tab 25, PTSI Declaration ¶¶ 9. There is nothing in the record addressing whether or why PTSI believed an appeal would be successful, much less that an appeal would be successfully adjudicated prior to contract award. In fact, the program manager never actually appealed the denial. *Id.* Thus, the fact that the program manager could appeal the denial does not, by itself, excuse PTSI from having actual knowledge of the unavailability of its proposed program manager.<sup>7</sup>

The agency also repeatedly argues that it does not matter whether the program manager was unavailable because the agency’s reliance on the program manager’s resume was not material to its evaluation. MOL at 23, Supp. MOL at 6. In this regard, the agency notes that it assigned a weakness to the proposed program manager’s

---

<sup>6</sup> Although the declaration states that the program manager “is currently available to be assigned to work on this contract,” neither the agency nor PTSI has claimed that he would be able to work as the program manager. Given that this employee was identified in PTSI’s proposal as the program manager, and that this position requires a valid security clearance, we find this statement in the declaration irrelevant to the issue at hand.

<sup>7</sup> PTSI also claims that GAO should dismiss this protest ground because it involves a matter of contract administration since the agency-specific security clearance process would happen after award. Intervenor Supp. Comments at 11. However, whether PTSI had actual knowledge of the unavailability of its program manager prior to award, and was therefore required to notify the agency of this development, is not a question of contract administration.

resume for only minimally meeting the experience requirements. *Id.* The agency's argument conflates the standard for assessing whether a "bait and switch" occurred with the requirement for offerors to notify the agency when proposed key personnel become unavailable prior to award.<sup>8</sup> As noted above, where, as here, an offeror has actual knowledge that a proposed key person has become unavailable before award, they are required to notify the agency of this development. It is thus irrelevant whether the program manager's resume was material to the agency's evaluation of PTSI's proposed key personnel.

We find that PTSI had actual knowledge prior to award that its program manager would not be able to perform on the KUVASZ contract after he was denied a security clearance. Thus, PTSI had an obligation to inform the agency of the unavailability of its program manager, which it did not do. Accordingly, we sustain the protest on this basis.<sup>9</sup>

## RECOMMENDATION

We recommend that the agency either evaluate PTSI's proposal as submitted, without considering the previously proposed program manager, or open discussions with all offerors and allow for revised proposals to be submitted. We also recommend that the agency reimburse M.C. Dean the reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1).

---

<sup>8</sup> In order to establish an impermissible "bait and switch," a protester must show: (1) that the awardee either knowingly or negligently represented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish during contract performance, (2) that the misrepresentation was relied on by the agency, and (3) that the agency's reliance on the misrepresentation had a material effect on the evaluation results. *Patricio Enters. Inc.*, B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 4.

<sup>9</sup> We have considered M.C. Dean's various additional assertions, including its arguments regarding the availability of other key personnel, whether PTSI or its affiliated entities would be providing resources for the contract, the agency's evaluation, and that PTSI took exception to material terms of the RFP. In light of our decision that the PTSI had actual knowledge of the unavailability of a key person but failed to notify the agency, along with our recommendation below that the agency either exclude PTSI's proposal or reopen discussions, we need not address these allegations.

M.C. Dean should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of this decision.

The protest is sustained.

Thomas H. Armstrong  
General Counsel