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: Ogden Support Services, Inc.

File: B-270012.4

Date: October 3, 1996

Ronald K. Henry, Esq., and Mark A. Riordan, Esq., Kaye, Scholer, Fierman, Hays & Handler, for the protester.
Dennis J. Riley, Esq, and Joseph G. Billings, Esq., Riley & Artabane, P.C., an intervenor.
Diane Florkowski, Esq., Central Intelligence Agency , for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency had no reasonable basis to give a near perfect score for past performance to the proposal of the awardee of a contract for mail courier services where the record reflects the awardee had limited past performance in this area while the protester's proposal, with clearly superior past performance, was given only a slightly higher score.

DECISION

Ogden Support Services, Inc. protests the award of a contract to American Systems Corporation (ASC) under request for proposals (RFP) No. 95-W001, issued by the Central Intelligence Agency (CIA), Office of Information Technology, for mail and courier services.

We sustain the protest.

This award was the subject of our decision in Ogden Support Servs., Inc., B-270012.2, Mar. 19, 1996, 96-1 CPD ¶ 177, in which we sustained Ogden's protest against the award to ASC on the basis that the high evaluation rating of ASC's past performance was unsupported and thus the determination that ASC's and Ogden's proposals were technically equal, upon which the selection of ASC's lower evaluated cost proposal was based, was not justified. Specifically, we found that the record contained insufficient information and analysis justifying ASC's near perfect rating for past performance because ASC's proposal reflected only limited experience in mail and courier and/or similar administrative support services.

(The RFP called for information from offerors that "demonstrated successful performance on similar efforts" and defined"similar experience" as "providing support to similar type mail and courier efforts and/or administrative support service type efforts.") We recommended that the CIA reevaluate ASC's and Ogden's technical proposals in this respect and then determine and document whether they in fact were technically equal.[1]

The CIA did not request reconsideration. Neither did it obtain additional information from the offerors before reevaluating their past performance or, if it believed that the description in the RFP of experience to be considered in evaluating past performance was too narrow, revise the RFP and request revised proposals. Instead, it instructed its same evaluators (who were not provided a copy of our decision) to reevaluate proposals, to consider only the existing documentation of past performance, and to consider experience on contracts for "maintenance, janitorial, and facilities-type services" as "similar administrative services." In accordance with these instructions, the evaluators simply confirmed ASC's near perfect score for past performance; based on the fact that the point scores did not change and that "the TMET [Technical Management Evaluation Team] report identified neither distinguishing strengths nor any weaknesses related to past performance," the CIA then confirmed the award to ASC based on ASC's and Ogden's technically equal proposals and ASC's lower evaluated cost.

We sustain this protest because the CIA's actions here ignore our prior decision, the thrust of which was that the record did not support ASC's high point score for past performance and the resulting conclusion that the competing proposals were essentially equal technically. There is no new information in the record, and no new meaningful rationale to support the ASC 's past performance score or the ultimate technical equality determination. The CIA in essence did no more than reiterate its earlier conclusions. As before, we find that these conclusions lack a reasonable basis.

As noted by the TMET, the mail and courier service in ASC's referenced prior contracts was only peripheral and "unlike that of the effort defined in the SOW." Moreover, as stated in our prior decision as well as the prior TMET report, only two of ASC's contracts included any meaningful mail or courier service; indeed, the prior TMET report identified this as one of the two weaknesses in ASC's proposal. Furthermore, neither of these contracts was exclusively for mail or courier

---

[1]In our decision, we found the other issues raised by the protester relating to the technical evaluation and conduct of discussions to be without merit. Thus, to the extent Ogden again raises these issues they will not be considered. See Ogden Support Servs., Inc., B-270012.3, Apr. 24, 1996, 96-1 CPD ¶ 291.

services--one was an engineering and technical support services contract which expressly included mail pickup delivery services and the other was for support services in support of a command, control and communications system which included the transportation of classified documents between various locations. The other four referenced contracts considered by the evaluators as providing "similar experience" did not include any significant mail or courier services. One involved the installation of computer hardware, where presumably the hardware and documentation was delivered to job-sites; a second was for maintenance of classified electronic equipment, with no indication that mail courier services were involved; a third was for the installation of cable, which involved the delivery of material to different locations; and the fourth was to acquire and integrate electronic equipment, which included the shipment of classified equipment. Furthermore, we question whether these latter four contracts can even be considered "maintenance, janitorial and facilities-type services" under the CIA's relaxed definition of "similar experience."

The CIA does not explain why positive experience in "maintenance, janitorial, and facilities-type services" or other services that only peripherally involve mail or courier service, such as the contracts performed by ASC, justifies an excellent rating for past performance, and nothing in the record indicates how ASC's past performance on such contracts could justify such a rating.[2] In this regard, since the RFP indicated that proposals would be qualitatively evaluated, it follows that a proposal reflecting more relevant successful past performance should be rated higher than a proposal reflecting clearly less relevant past performance. See Fidelity Technologies Corp., B-258944, Feb. 22, 1995, 95-1 CPD ¶ 112. Ogden's referenced contracts were for highly relevant mail and courier services, for which it received a perfect score for past performance. Had ASC's past performance been reasonably evaluated in accordance with the RFP, in light of its significantly more limited, albeit successful, experience it should not have received anything close to a near perfect score. Awarding ASC a near perfect score for past performance effectively removed the evaluation weight assigned the past performance criterion. See Trijicon, Inc., 71 Comp. Gen. 41 (1991), 91-2 CPD ¶ 375.

We further note that under the agency's source selection plan, an "excellent" score should be awarded a proposal for:

> "a comprehensive and thorough presentation of exceptional merit with one or more identified major strengths. There are all strong points and no weaknesses or deficiencies identified."

---

[2]As stated in our prior decision, ASC's near perfect past performance rating could not reasonably be justified "without additional information and analysis" in the record; there is no further information or analysis presented here.

The record indicates no "identified major strengths" that would support such a rating for ASC's past performance.

In sum, the record still does not reasonably support ASC's past performance score; therefore, the CIA did not have a proper basis upon which to conclude that Ogden's and ASC's proposals were technically equal overall.

We again recommend that the CIA properly evaluate ASC's past performance and then determine whether ASC's and Ogden's proposals are, in fact, technically equal or whether Ogden's proposal is actually technically superior as is suggested by the record. We further recommend that the contract awarded to ASC be terminated for convenience and award made to Ogden unless the CIA can reasonably determine, in accordance with this decision, that the proposals are technically equal or that any superiority in Ogden's proposal does not offset ASC's cost advantage.[3] If this determination cannot be made, inasmuch as the first year of contract performance almost has been completed, we recommend that Ogden be reimbursed its proposal preparation costs. 4 C.F.R. § 21.8(d)(2) (1996). Alternatively, if the agency finds that the RFP defined "similar experience" too narrowly, it may amend the RFP accordingly, obtain revised proposals, and make award as appropriate. In any case, we recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs to the contracting agency within 90 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General
of the United States

---

[3]As indicated in our prior decision, the agency should properly calculate the amount of ASC's cost advantage since the record contains no documents that reflect ASC's actual advantage.