



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Contrack International, Inc.

File: B-270102; B-270102.2

Date: February 8, 1996

Edward J. Tolchin, Esq., Fettmann & Tolchin, for the protester.

John Kennedy for Gulf Housing & Construction, an intervenor.

Bruce H. S. Anderson, Esq., and Ronald W. Breen, Department of the Army, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Procuring agency's decision to award contract to lower-priced, lower technically rated offeror was reasonable, where the solicitation made price the most important evaluation factor and the technical differences between the protester's and awardee's proposal were reasonably found not significant and the price difference was considered significant in the circumstances.

DECISION

Contrack International, Inc. protests the award of a fixed-price contract to Gulf Housing & Construction Co., W.L.L., under request for proposals (RFP) No. DACA78-95-R-0021, issued by the Army Corps of Engineers for the construction of warehouse and storage facilities in Qatar. Contrack asserts that the award was based on an unreasonable price/technical tradeoff.

We deny the protest.

BACKGROUND

The solicitation provided that proposals would be evaluated against the following criteria, listed in descending order of importance: price; experience; past performance; and management and execution plan. Experience and past performance were to be point-scored and management/execution plan was to be evaluated on a pass/fail basis. Prices were to be evaluated for reasonableness. The solicitation further provided:

"Award will be made to the offeror whose proposal contains the combination of those criteria offering the best overall value to the Government. This will be determined by comparing differences in the

value of the technical and management features with differences in cost to the Government.

"In making this comparison, the Government is more concerned with making an award at the lowest overall cost to the Government than with obtaining superior technical or management features. However, the Government will not make an award based on a proposal with significantly inferior technical or management features to achieve a small savings in cost to the Government.

"When making tradeoff decisions during proposal evaluation, offerors should remember that the Government prefers to obtain better offeror experience, past performance and better management execution plan quality rather than to obtain relatively small price savings."

Eight offers were received. Based on the evaluation of initial proposals (the technical proposals were evaluated by a technical evaluation team (TET) and the price proposals were evaluated by a cost/pricing team (CPT)), four offers, including the protester's and the awardee's, were included in the competitive range. Both proposals were rated acceptable for the management/execution plan. The protester's proposal received 52 out of 60 points for experience and 56 out of 60 points for past performance, for a total technical score of 108 points. Gulf's proposal received 44 points for experience and 28 points for past performance, for a total technical score of 72.

After discussions were held and best and final offers were submitted, Gulf had the lowest priced proposal (\$4,201,503), and Contrack the second lowest-priced proposal (\$4,394,400). The CPT found that Gulf's proposed price was reasonable and recommended award to Gulf if it met all other solicitation requirements. The contracting specialist performed a pre-award survey of Gulf, during which she contacted several former customers of Gulf. Based on the information she received, she also recommended award to Gulf.

The contracting officer reviewed the award recommendation and the evaluation results, and questioned whether an award to Gulf was in accordance with the solicitation criteria. Specifically, he was concerned that Gulf's low past performance score indicated significant inferiority (compared to Contrack) in this area and that Gulf's price appeared to only offer a relatively small price savings. The contracting officer asked the TET to explain the difference in the past performance scores of Gulf and Contrack. In response, the TET stated that those scores were based completely on information that was included in the proposals. Gulf's proposal included relatively little past performance information, while Contrack's included a number of congratulatory letters from former customers; Contrack's higher score was based on these laudatory letters. The contracting

officer noted that the solicitation permitted the evaluators to consider information which the agency obtained on its own in evaluating past performance. He also noted that the pre-award survey indicated that Gulf's past performance was excellent. He therefore raised Gulf's past performance score by 20 points, to 48, and determined that the difference in past performance scores--56 for Contrack versus 48 for Gulf--was not significant. He also determined that while the 4.38-percent price difference between the offers appeared small, the difference in fact was significant in the circumstances because the agency had no contingency funds available for change orders. Based on his conclusions that the difference in the technical scores was not significant, and that the difference in price was, the contracting officer selected Gulf for award.

DISCUSSION

Contrack argues that the award to Gulf was improper because it was based on an unreasonable price/technical tradeoff. Specifically, Contrack argues that the contracting officer erroneously determined that the difference in the scores under the experience (44 for Gulf versus 52 for Contrack) and past performance factors (48 for Gulf versus 56 for Contrack) was not significant, and that the price difference (\$192,897) was significant.

Experience Factor

Contrack argues that its proposal received a higher score under the experience factor because it has experience constructing warehouse and storage facilities for the Corps--work under the RFP here valued at more than \$4 million--and Gulf does not. Contrack concludes that it was unreasonable for the agency to find that the scoring difference did not indicate that Gulf's experience was significantly inferior to Contrack's.

In evaluating Contrack's proposal, the agency recognized that Contrack had more than adequate experience performing the same kind of work called for under the solicitation. However, the solicitation did not require offerors to demonstrate experience performing identical work. Rather, it provided that the government would evaluate ". . . the relative depth and breadth of experience in the technical execution of work experiences similar to that included in this solicitation." In evaluating Gulf's experience, the agency found that Gulf had adequate experience performing similar projects. Specifically, the evaluators stated that, based on the projects Gulf had undertaken, which were primarily construction of office and commercial buildings, Gulf had adequate experience, its key personnel had substantial experience, and Gulf had experience with the Corps on a project in which it participated as a joint venture partner. In addition, one of the evaluators, while recognizing that Gulf had no experience constructing warehouse and storage facilities, determined that the projects Gulf had completed were technically

equivalent to, or more complex, than the construction called for by the current solicitation. The evaluators also recognized that Gulf had experience in Qatar. Since the solicitation did not require experience performing work identical to that required under the solicitation, and the evaluators specifically found that Gulf had adequate experience performing similar work, the contracting officer reasonably determined that the scoring difference based on Contrak's experience performing identical projects did not indicate that Gulf's experience was significantly inferior to Contrack's.

Past Performance

Contrack questions why Gulf's proposal received a score only 16 percent lower than Contrak's, given that Contrak provided many more examples of past performance on similar projects.

With respect to past performance the solicitation stated that:

"The Government . . . will compare, rank and score competing offerors on the basis of the relative favorableness of their past performance. By past performance the Government means an offeror's reputation for satisfying its customers by delivering quality work in a timely manner at a reasonable cost. Past performance also includes an offeror's reputation for integrity, reasonable and cooperative conduct, and commitment to customer satisfaction. All other points of comparison being equal, the Government will place greater weight on performance of work more closely related to that which is the same as or similar to the work included in this solicitation."

During the pre-award survey, the contracting specialist spoke with the project director for a school and sports hall that Gulf constructed in Qatar. The project officer stated that Gulf was responsible for the construction, including all mechanical and electrical services and external work, was one of the best contractors in Doha, and was professional at all times and performed with no cost or time overruns. In addition, she stated that Gulf had one of the best labor pools in Qatar and that she had also worked on a large project in the oil fields on which Gulf performed extremely well as a subcontractor.

The contracting specialist also contacted the architect on a residential villa project built by Gulf. The specialist's report states

". . . [The architect] stated that he has been involved in business off and on with Gulf Housing over the past 15 years and it has always been a pleasurable experience. This project was for the construction of fourteen (14) residential units including all mechanical, electrical

and external works. Stated they are well organized and performed well. There was an increase in cost and time on the project but that was due to changes requested by the owner. . . . [He] also worked on a project with Gulf ten (10) years ago in which they constructed two large office buildings and performed well on those also."

A third contact, from Qatar General Petroleum Corporation, informed the contracting specialist that Gulf had performed similar work for them on more than one occasion, that all work was completed in accordance with the corporation's standards, and that Gulf was a good civil contractor.

This information in the pre-award survey, all provided by customers for whom Gulf had performed more than one project, gave the contracting officer a reasonable basis to find that Gulf performed well, satisfied its customers, completed its work in a cost effective and timely way, and had integrity. While Contrack provided more information regarding past performance on similar projects, there is no basis to conclude that Contrack's proposal should have received a score more than 16 percent higher than Gulf's for past performance.¹

Contrack argues that the use of information from the pre-award survey to raise Gulf's past performance score constituted discussions and required the Corps to open discussions with all competitive range offerors. We disagree. Discussions are written or oral communications between the government and an offeror which concern information necessary to determine the acceptability of a proposal or which provide an offeror with the opportunity to modify its proposal. Federal Acquisition Regulation (FAR) § 15.601. Here, the communication was not between Gulf and the Corps; it was between the Corps and the contacts Gulf listed in its initial proposal for prior contracts it performed. (The solicitation permitted the agency to base the past performance evaluation on information other than that provided in the proposal.) Such communications do not constitute discussions. See Professional Safety Consultants Co., Inc.--Recon., B-247331.2, Sept. 28, 1992, 92-2 CPD ¶ 209; Action Serv. Corp., B-246413; B-246413.2, Mar. 9, 1992, 92-1 CPD ¶ 267.

¹Contrack also maintains that the contracting officer unreasonably determined that the 50-percent difference in the total technical scores--72 for Gulf's proposal, compared to 108 for Contrack's--was not significant. This argument is based on Gulf's score before it adjusted upward to 92 points by the contracting officer. As discussed above, the remaining 16-point difference in the experience and past performance areas reasonably was determined not to be significant.

Price Difference

Finally, Contrack challenges the contracting officer's conclusion that the \$192,897 cost difference was significant. Noting that this conclusion was based on the lack of contingency funds for contract changes, Contrack maintains that the contracting officer improperly did not consider that such funds would be unnecessary if award were made to Contrack, due to its greater experience and superior past performance.

As discussed above, the contracting officer reasonably determined that Contrack's experience and past performance were not significantly superior to Gulf's; it follows, we think, that the contracting officer was not compelled to determine that the likelihood of changes would be less likely if award were made to Contrack. In any case, the need for changes could arise independent of the contractor's capabilities, due to changes in agency preferences or unforeseen events, so some amount of contingency funds could be necessary no matter to which offeror the award were made.

The protest is denied.

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