



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Omega World Travel, Inc.

File: B-271262.2

Date: July 25, 1996

Mark Pestronk, Esq., for the protester.

Tim Burke, WorldTravel Partners, an intervenor.

Lisa J. Obayashi, Esq., and Alden F. Abbott, Esq., Department of Commerce, for the agency.

Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's offer of airline travel upgrades from coach class to business/premium class was an improper gift to the government because premium class travel is prohibited for government employees is denied; Federal Travel Regulations permit business/premium class travel for long-haul international flights and awardee's proposal indicated offer was only for this type of allowable upgrade.
2. Protest against downgrading of protester's past performance based on evaluators' personal knowledge of complaints about protester's performance under incumbent contract is denied, where the evaluation judgments were documented in sufficient detail by internal agency memorandum and surveys of agency travelers to show reasonableness of evaluation.

DECISION

Omega World Travel, Inc. protests the award of a contract to WorldTravel Partners (WTP) under request for offers (RFO) No. 52-PAPT-5-00047, issued by the Patent & Trademark Office (PTO), Department of Commerce, for travel management services.¹ Omega challenges the evaluation and other aspects of the award process.

We deny the protest.

The RFO contemplated award of a no-cost contract under which the compensation to the contractor was limited to commissions and fees paid by the commercial travel industry. Technical proposals were called for and were to be evaluated under

¹Omega was the incumbent contractor for the services.

the following factors: office location/ease of accessibility by PTO employees; experience in providing government travel services; experience in providing international travel services; and customer service/satisfaction/past performance. To the extent proposals were evaluated as technically equal, the determining factor was to be the amount of proposed payments to the government in the form of rebates or concession fees, based on the amount of domestic air ticket sales. Award was to be made to the offeror providing the best value to the government.

Ten firms, including Omega and WTP, submitted proposals. After evaluation of best and final offers, WTP's proposal was the highest ranked with 88.31 (out of 100 possible) points (weighted), and a proposed rebate of 2.01 percent; the second-ranked proposal received 85.01 points and proposed a rebate of 3 percent; Omega's fifth-ranked proposal received 59.98 points and offered a rebate of 5 percent. Based on the evaluation results, the selection official determined that WTP's offer represented the best value to the government and made award to the firm.

IMPROPER UPGRADES

Omega argues that WTP's offer included a "gift" to the government--free upgrades to business-class airline seating on international flights--which violated government ethics standards (5 C.F.R. § 2635.201 et seq.) because business/premium travel is prohibited for government employees. Omega concludes that WTP's offer should have been rejected, or at least downgraded, on this basis. Omega's allegation is based on handwritten notations on the evaluation sheets² under the experience in providing international travel services factor. In this regard, one evaluator noted "[b]usiness class on long-haul flights" as a strength for WTP. Conversely, the same evaluator noted "[n]o mention of knowledge as to . . . upgrades on long-haul flights" as a weakness for Omega. The protester surmises from these notations that WTP's proposal score was upgraded for offering prohibited upgrades.

This argument is without merit. Contrary to the premise of the protester's argument, business/premium class air travel is not prohibited. Rather, the applicable Federal Travel Regulation (FTR), 41 C.F.R. § 301-3.3, allows premium-class travel under limited circumstances, such as "long-haul" international flights. More specifically, while the FTR provides that "[i]t is the policy of the government that employees who use commercial air carriers for domestic and international travel on official business shall use coach-class airline accommodations," the FTR nevertheless provides that premium-class may be used under certain circumstances, including when travel is between "origin and destination points which are separated

²Because the protester's counsel did not apply for admission to the protective order issued in this case, he and the protester received only a redacted agency report, which included WTP's evaluation scores, but not its proposal.

by several time zones, and either the origin or destination point is outside the continental United States (CONUS), and the scheduled flight time (including stopovers) is in excess of 14 hours." 41 C.F.R. §§ 301-3.3(d)(1) and (d)(5)(ix). Thus, the evaluator's notation regarding WTP's offer of business-class travel, by itself, gives no indication of any impropriety, either in the offer or the evaluation.

Moreover, WTP's proposal clearly establishes that the firm understood that upgrading of generally required coach-class was permitted only in limited circumstances, such as for the above-described "long-haul" international flights. Specifically, WTP's proposal indicates under the heading "Transportation" and subheading "Premium Class Travel" that "WTP understands that premium class travel is prohibited by the Federal Travel Regulations except for specific, pre-authorized instances" and "WTP shall receive written permission from PTO's Project Coordinator prior to issuing tickets for other-than-coach-class transportation." Additionally, under "International Travel Services," the proposal describes one of WTP's employees as "approved by the [General Services Administration] to provide quality control and fare audit services for government funded international itineraries—including, but not limited to . . . the use of business class services on long-haul flights." Thus, nothing in WTP's proposal raised ethical considerations, and there is no basis to object to the evaluation of WTP's proposal as superior to Omega's in this area.

PAST PERFORMANCE

Omega maintains that its proposal improperly was downgraded under past performance based on the undocumented personal knowledge of the evaluators.³ This allegation is based on narrative comments contained in the evaluation score sheets for two of the three evaluators, which state "info provided was responsive, but personal experience resulted in lower score" and "see [Solicitor of PTO's] memo" under weaknesses. The protester complains that, because the personal experience and Solicitor's memorandum referred to in the narrative comments were not included in the contemporaneous evaluation record, and the third evaluator made no narrative comment under weaknesses in this area, the evaluation was inadequately supported. In contrast to the evaluation score sheets, the protester cites a response to a reference check questionnaire (provided by the agency to references at random) which rated the firm "good" (under a rating scale of good, satisfactory, and unsatisfactory).

³Had Omega received all available points, its score under the customer service/satisfaction/past performance factor, the most important factor, its total score would have increased to 86.68 (as compared to WTP's score of 88.31), which, it maintains, would have put it in line for award given its higher offered rebate.

The agency explains that the evaluators' personal knowledge of Omega's past performance was based on numerous documented and undocumented complaints from PTO travelers. The documented evidence in the protest record includes two internal PTO memoranda to the Associate Commissioner of PTO—one dated August 24, 1995, from the PTO Solicitor, and one dated October 18, 1994, from the Assistant Secretary and Commissioner of Patents and Trademarks, both complaining about Omega's travel services. The record also includes responses to surveys (in preprinted questionnaire form entitled "travel evaluations," and referred to by the agency as "quality control surveys") from 16 PTO travelers who used Omega's travel services from the fall of 1992 to the fall of 1994; they are identified by the traveler's name and/or travel order number. Additionally, the agency has submitted post-protest declarations from the evaluators explaining the basis for their personal knowledge of the quality of Omega's service and the basis for their downgrading the firm's proposal, which include the above-described documented complaints, as well as other undocumented complaints.

An evaluator's personal knowledge of an offeror may be properly considered in a past performance evaluation. TRESP Assocs., Inc.; Advanced Data Concepts, Inc., B-258322.5; B-258322.6, Mar. 9, 1995, 96-1 CPD ¶ 8. More specifically, where the solicitation provides for references to be used in the evaluation, as here, the agency may consider the unsatisfactory past performance of an offeror under a recent contract with the agency, thus, in effect, furnishing its own reference. G. Marine Diesel; Phillyship, B-232619; B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90. In an evaluation which takes into account the agency's own knowledge of offerors, the fundamental requirement that evaluation judgments be documented in sufficient detail to show that they are reasonable and not arbitrary still must be met. Id.

The evaluation of Omega's past performance was reasonable based on the evaluation record, as supplemented by the internal PTO memoranda and surveys of PTO travelers, as well as the post-protest declarations by the evaluators. First, contrary to the protester's primary contention, the fact that the extrinsic evidence of Omega's past performance relied on by the evaluators (*i.e.*, the internal PTO memoranda and surveys of PTO travelers) was not physically included in or attached to the evaluation score sheets does not render them invalid as sources of information available to the evaluators, since the record, when read as a whole, shows that the evaluators relied on this evidence, the evidence was submitted into the protest record, and it clearly supports the reasonableness of the evaluation. In this regard, while we accord more weight to contemporaneous documents in determining whether an evaluation was reasonable, our review is based on all information in the record, including documentation prepared in response to the protest contentions. DynCorp, 71 Comp. Gen. 129 (1991), 91-2 CPD ¶ 575. The evaluators' declarations, which are not disputed by the protester, in two instances indicate reliance on the internal PTO memoranda and surveys of PTO travelers—one of the evaluators states, she "read" the memorandum from PTO's Solicitor; another

evaluator states, she was "in receipt" of the memorandum written to the Associate Commissioner of PTO (which the agency explains was the previously described memorandum from PTO's Assistant Secretary and Commissioner) and surveys of PTO travelers; and all three evaluators state they were aware of undocumented complaints about the quality of Omega's performance.

Further, notwithstanding that one or more positive reference questionnaires may have been received,⁴ the extrinsic evidence clearly establishes that there were problems with the quality of Omega's performance. Specifically, the PTO Solicitor's memorandum details several instances of poor service she experienced with Omega, including a 3-hour layover in Chicago when an earlier connecting flight to her destination was available. The PTO's Assistant Secretary and Commissioner's memorandum details numerous instances of poor service by Omega, including failure "to provide boarding passes and seat assignments prior to going to the airport for trans-Atlantic flights," failure to utilize "computers that show there are flights between Zurich and Geneva," and failure to "book a traveler in business-class where the duration of the flight calls for it." Of the 16 surveys of PTO travelers utilizing Omega's services, 8 rated Omega's services "substandard" overall (out of possible ratings of excellent, very good, standard, and substandard), 5 "standard," 1 "very good," and 2 no ratings/blank. Most of the surveys included negative comments, including those from four of the travelers who rated Omega standard and the one traveler who rated Omega very good.⁵

Based on these numerous documented complaints about Omega's past performance, which were the basis of the personal knowledge of two of the evaluators and which are undisputed by the protester, we have no basis to question the downgrading of Omega's proposal under past performance. (We note that, while the third evaluator's score sheet did not include any specific narrative comments under

⁴Additionally, we note that the record includes three other reference questionnaires, not cited by the protester, which include mixed responses, both positive and negative.

⁵Examples of negative comments on the surveys include "[t]elephone calls were not returned by travel agency," "[t]he people are rude on the phone, act like they don't want to help you," "[s]eat assignment requests were ignored," "[t]ravel agency too busy to handle large travel demands," "[o]verall, travel plans were found to be ineffective in meeting trip requirements due to departure time immediately after work with late night arrival at final destination," "[p]oor choice of airports . . . which resulted in unnecessary travel time," and "Omega seems to only book what is contract [i.e., contract carrier] and never mentions any other carriers' availability [even if more suitable]."

weaknesses, it is clear from her declaration that she was aware of the same kinds of complaints that appeared in the documented complaints.⁶⁾

ORAL PRESENTATION

Omega argues that the evaluation was conducted on an unequal basis because WTP allegedly was permitted to make an oral presentation, or discussions were conducted with the firm, while no similar opportunities were given to the protester. This allegation is based on one evaluator's narrative comment, "beautiful presentation, organized" on her score sheet. In response, the agency has submitted a declaration from this evaluator explaining that her comment "meant that WTP's written proposal was beautifully presented in an organized manner" [emphasis added] and "[a]t no time did [she] participate in any oral presentation by WTP." The agency also filed a supplemental declaration from all three evaluators and the contracting officer stating that "neither oral presentations, nor oral discussions of any type whatsoever, related to [the solicitation], were ever conducted or held during any phase of the procurement or acquisition." In the absence of any

⁶For example, she states that during a planning meeting for the procurement, where the views and opinions on the requirements for the procurement were sought from PTO "frequent-flyer" executives and travel coordinators, she "became aware of the level of dissatisfaction with the incumbent contractor" and that PTO was seeking (1) "a contractor who emphasized customer service, i.e., a vendor which was proactive in providing varied information on alternative travel arrangements rather than a vendor which had to be provided information by the traveler itself," and (2) "a travel services vendor with experience in international travel in an effort to alleviate undue hardship to the PTO international traveler."

evidence that WTP made an oral presentation to the agency or that the agency conducted discussions with the firm, Omega's allegation is pure speculation and not a valid basis of protest.⁷

The protest is denied.

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⁷Omega requests a hearing on this issue to ascertain the veracity of the statements in the declarations. However, the determination to hold a hearing is solely within the discretion of our Office, 4 C.F.R. § 21.7(a) (1996), and we generally will not hold a hearing merely to permit a protester to orally reiterate its protest allegations or otherwise embark on a fishing expedition for additional grounds of protest. See Border Maintenance Serv., Inc.—Recon., 72 Comp. Gen. 265 (1993), 93-1 CPD ¶ 473. Since there is no evidence to suggest that the declarations submitted by PTO were fabricated or otherwise are questionable, we think a hearing would be of little value in this case.