



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Jason Associates Corporation

File: B-278689; B-278689.2; B-278689.3

Date: March 2, 1998

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John R. Jefferies, Esq., Fennemore Craig, for Gutierrez-Palmenberg, Inc., an intervenor.

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DIGEST

1. Protest that source selection authority (SSA) acted improperly when, in response to eventual awardee's agency-level protest of the exclusion of its proposal from the competitive range, she reevaluated a portion of the proposal and reinstated it in the competitive range is denied; the SSA acted within her authority and her reevaluation was reasonable and consistent with the solicitation's evaluation factors.

2. Protest that SSA improperly considered the proposals of the protester and the awardee to be tied under the performance risk evaluation factor when the performance risk assessment group found distinctions is denied where the record shows that the SSA's conclusions were reasonable and consistent with the solicitation's evaluation scheme; agency's failure to check all references listed in the proposal is unobjectionable.

3. Protest that no contemporaneous documentation exists to show that the SSA followed the solicitation's weighted basis for award scheme in making her award decision is denied where her post-protest explanation, which is consistent with the contemporaneous documentation, provides a detailed rationale for her decision which is sufficient for our Office to conclude that her decision was both consistent with the solicitation and reasonable.

DECISION

Jason Associates Corporation protests the award of a contract to Gutierrez-Palmenberg, Inc. (GPI) under request for proposals (RFP) No. DAAD01-97-R-0001, issued by the Department of the Army to obtain environmental support services at the U.S. Army Yuma Proving Ground (USAYPG) in Yuma, Arizona. Jason challenges

various aspects of the Army's evaluation of GPI's proposal and its source selection decision.

We deny the protests.

BACKGROUND

The USAYPG conducts developmental and desert environmental testing of materiel, and must ensure that these testing activities and its facility operations comply with federal, state, and Army environmental/radiation statutes and regulations. To this end, the USAYPG requires the services of an environmental support contractor to provide scientific, engineering, technical, and regulatory compliance assistance. Tasks will generally fall within the areas of analyses, studies, remediation, evaluations of the effects of USAYPG activities, and preparation of reports and other required documents. RFP § C.1.

Commerce Business Daily announcements advised potential contractors that the Army intended to procure these services under a multi-phase acquisition set aside for small businesses. Under Phase I of the acquisition, offerors' "mini-proposals" were to be evaluated pursuant to a color-coded rating scheme to determine the firms' technical capabilities under various weighted factors.¹ Technically capable firms were to be down-selected to participate in Phase II of the acquisition.

The contracting officer, who served as the source selection authority (SSA) for this procurement, conducted the Phase I evaluation. The mini-proposals of Jason and GPI, the incumbent contractor providing these services, were evaluated as follows:

Phase I Factors	GPI	Jason
Contractor Experience (5)	Green	Blue
EPA Violations (5)	Green	Green
Key Personnel (4)	Green	Green
Quality Assurance Plan (4)	Blue	Green
Training Program (3)	Green	Green
Subcontracting (2)	Green	Blue

¹Proposals were to be rated "green" if they significantly exceeded the minimum requirements under a given factor; "blue" if they were acceptable; and "red" if they failed to meet the minimum requirements. The weight of each Phase I evaluation factor is set forth in parentheses in the table below.

The contracting officer's contemporaneous documentation shows that she ranked GPI's Phase I proposal first and Jason's third overall. Both firms were down-selected to participate in Phase II of the acquisition.

The RFP, issued May 29, 1997, explained that Phase II proposals were to be evaluated under three factors: technical merit, performance risk analysis, and cost. RFP Attachment (Att.) 2, ¶ 2. Technical merit, the most important factor, consisted of three equally important subfactors: understanding of problems/objectives; specific contractor capabilities and experience in cited subject areas; and technical report/writing quality. Id. at ¶ 2.A. The technical merit factor and its subfactors were to be color-rated as above. Id. The technical merit factor was significantly more important than the performance risk analysis factor, but performance risk would become more significant as technical merit tended to equalize. The performance risk analysis factor was slightly more important than cost. RFP Att. 2, ¶ 2.B.(4). The contracting officer was to make a competitive range determination after the Phase II proposals were evaluated. Offerors whose proposals were included in the competitive range were to be down-selected to participate in Phase III of the acquisition, oral presentations. RFP Att. 2, ¶ 3.a. and b.

A two-member evaluation board reviewed the nine Phase II proposals for technical merit. The proposals of Jason and GPI were rated blue under both the understanding and experience subfactors. Under the technical writing subfactor, however, Jason's proposal was rated green and GPI's proposal was rated red.

The prenegotiation objective memorandum discusses the Phase I evaluation, under which the contracting officer had previously ranked GPI's proposal first and Jason's third overall. The memorandum also includes a detailed discussion of the results of the technical merit and cost aspects of the Phase II evaluation.² Jason's Phase II technical proposal was ranked first overall, with a blue/green rating, and the proposals of three other offerors were ranked second and essentially equal overall with all blue ratings. The proposals of GPI and two other offerors were ranked third and essentially equal overall with blue ratings under the understanding and experience subfactors but red ratings under the technical writing subfactor. The remaining proposals were rated lower still.

The contracting officer included only the top four proposals in the competitive range. She excluded the remaining proposals, including GPI's, because, among other things, the red ratings they received under the technical writing subfactor were based upon finalized sample writings that had been submitted in connection

²The performance risk assessment was still in process, but a preliminary review showed that the performance risk for all offerors whose proposals were selected for inclusion in the competitive range would be low to negligible.

with other contracts. As a result, these ratings could not improve with discussions. See Prenegotiation Objective Memorandum at 6.

GPI filed an agency-level protest challenging the exclusion of its proposal from the competitive range. Along with specific allegations not at issue here, GPI complained that the exclusion of its proposal based upon the quality of its sample writings was improper because some of them had been delivered and approved by USAYPG under the prior contract for these services. As discussed further below, the contracting officer was troubled by this revelation and reevaluated GPI's sample writings. She found them to be at least acceptable (blue), and reinstated the proposal into the competitive range.

A separate evaluation board conducted the Phase III evaluation of oral presentations and concluded that the proposals of GPI and Jason were tied for first place and equally meritorious. As discussed further below, the performance risk assessment group (PRAG) evaluated both firms as presenting low performance risk but stated that Jason presented the lowest risk and GPI the third-lowest risk. GPI's evaluated cost over the 7-year life of this fixed-price contract with time-and-materials task orders was \$5.4 million, and Jason's was \$6.6 million.

Award was to be made to the offeror whose responses to the three phases of the acquisition represented the best buy to the government. RFP Att. 2, ¶ 4. The RFP set forth specific guidance for making the "best buy" determination:

Oral presentations are considered the most important, followed by Phase II technical ratings and Phase I ratings. Cost and past performance are considered least important with past performance being slightly more important than cost. . . . Significant differences in measured technical merit may or may not be deemed affordable depending on the best interests of the Government.

Id.

In the post-negotiation memorandum, which served as the source selection decision, the contracting officer explained the circumstances surrounding her reevaluation of GPI's sample writings and her decision to reinstate the firm's proposal into the competitive range. The document does not discuss the Phase I and II technical evaluation results, which had previously been addressed in the prenegotiation objective memorandum, but does include a detailed discussion of the Phase III evaluation results. Under the heading "Final Evaluation," the contracting officer summarily compared the Phase III technical rankings (GPI and Jason were "tied" for first place); the performance risk assessment (both GPI and Jason were low risk); and the offerors' evaluated costs. The contracting officer concluded:

Since GPI and Jason are essentially tied in technical merit and performance risk, the final determining factor for contract award is total evaluated cost. GPI's evaluated cost is approximately \$1.3 [million] (24%) lower than Jason's over the anticipated life of the contract. . . .

Based on the above, GPI is considered to represent the best buy to the Government. GPI has been evaluated as one of the two highest offerors in technical merit and is considered low risk for contract performance. GPI's total evaluated price is approximately 24% lower than the next low offeror, who is considered essentially equal to GPI in technical merit and performance risk.

Post-Negotiation Memorandum at 10-11.

The November 13 award to GPI was followed by Jason's initial protest and two supplemental protests. Jason argues that (1) the SSA improperly reevaluated GPI's Phase II proposal as to technical writing and improperly reinstated it into the competitive range; (2) the SSA erroneously considered both offerors to be tied under the performance risk analysis factor; and (3) the SSA improperly failed to follow the RFP's weighted basis for award scheme.³ We deny the protests based upon our review of the procurement record, the pleadings of all parties, and the testimony elicited at a hearing in this matter.

DISCUSSION

Reevaluation of GPI's Phase II Proposal

Jason asserts that the contracting officer was not authorized to reevaluate the technical writing aspect of GPI's Phase II proposal; that she improperly failed to contemporaneously document her reevaluation; and that her reevaluation was unreasonable because it was conducted solely to dispose of GPI's agency-level protest.

It is well-settled that source selection officials in negotiated procurements are not bound by the recommendations or evaluation judgments of lower-level evaluators, but may make their own judgments, subject to the tests of rationality and

³We need not consider Jason's allegation that the contracting officer improperly relied upon a USAYPG environmental attorney's parallel reevaluation of GPI's sample writings. Testimony provided during a hearing that our Office conducted in connection with these protests shows that the contracting officer did not rely upon that attorney's reevaluation, but used it merely to confirm her own reevaluation, which is at issue here. Hearing Transcript (Tr.) at 24, 117-118, 134.

consistency with the stated evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111, 1120-1121 (1976), 76-1 CPD ¶ 325 at 11-12; Environmental Chemical Corp., B-275819, Apr. 1, 1997, 97-1 CPD ¶ 154 at 5. Here, the record shows not only that the contracting officer, as the SSA for this procurement, was within her rights to reevaluate GPI's proposal, but that her reevaluation was reasonable.

GPI's agency-level protest was the contracting officer's first indication that two of the three sample writings, which the lower-level evaluators deemed so filled with errors and mistakes as to be unacceptable, had been submitted and approved by the very same contracting activity which now criticized them--USAYPG. Tr. at 83. This revelation troubled the contracting officer to such a degree that she decided to reevaluate the sample writings herself. Tr. at 20. She asked a lower-level evaluator to highlight each area of the sample writings that caused him to downgrade GPI's proposal. Her review of the highlighted passages, as well as the evaluator's contemporaneous margin notes, led her to conclude that his evaluation was "overkill" and largely reflected a difference in writing styles; in her view, the problems that did exist in the documents should not have resulted in GPI's exclusion from the competitive range. Tr. at 21-22, 91-92. She believed that the sample writings were at least acceptable--blue--under the RFP's definition. Tr. at 26. In this regard, proposals were to be rated blue if the sample writings reflected an acceptable knowledge of proper writing skills and techniques, as well as the subject matter. RFP Att. 2 at ¶ 2.A. The contracting officer did not contemporaneously document her reevaluation.

Jason does not directly challenge the reasonableness of the contracting officer's conclusion that GPI's sample writings were acceptable under the terms of the RFP, but, rather, complains that she improperly failed to contemporaneously document her reevaluation.

Where there is inadequate supporting documentation for an award decision we cannot conclude that the agency had a reasonable basis for the decision. Hattal & Assocs., 70 Comp. Gen. 632, 637 (1991), 91-2 CPD ¶ 90 at 7. However, where post-protest explanations provide sufficient detail by which the rationality of an evaluation decision can be judged, it is possible to conclude that the agency had a reasonable basis for the decision. Quality Elevator Co., Inc., B-276750, July 23, 1997, 97-2 CPD ¶ 28 at 3-4. Post-protest explanations that provide a detailed rationale for contemporaneous conclusions, as is the case here, simply fill in previously unrecorded details, and will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record.⁴ See Northwest Management, Inc.,

⁴In contrast, we give less weight to new, post hoc rationales and conclusions reached for the first time in response to a protest. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

B-277503, Oct. 20, 1997, 97-2 CPD ¶ 108 at 4 n.4. Here, the contracting officer's post-protest explanation of her reevaluation is sufficient to show that it was reasonable. See Quality Elevator Co., Inc., supra. As a result, her reinstatement of the firm's proposal into the competitive range is unobjectionable.

Jason also alleges that the reevaluation was unreasonable because it was done "solely" to dispose of GPI's protest. Jason asserts that if the contracting officer had genuine concerns about the quality of the evaluation, she would have reevaluated the two proposals which were rated equal to GPI's and also excluded from the competitive range.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Rockville Mailing Serv., Inc., B-270161.2, Apr. 10, 1996, 96-1 CPD ¶ 184 at 4. When the contracting officer was presented with information in GPI's agency-level protest which provided her a basis to question the evaluation of its sample writings, she properly did so. As she stated during the hearing, she had no basis to reevaluate the other proposals because their elimination from the competitive range was based, as well, upon their high evaluated costs. Tr. at 93. The evaluated costs of these two proposals were \$400,000 and \$2.2 million higher, respectively, than the competitive range offeror with the highest evaluated cost.

Performance Risk

Offerors were required to describe prior and current contracts relevant to the tasks listed under the solicitation's statement of work (SOW), and to identify contact persons for each contract. RFP § L.O.D.(2). This information would be reviewed to assess the quality of each offeror's past performance. RFP Att. 2, ¶ 2.B. According to its report, the PRAG reviewed the past performance information provided by each offeror to determine the relevance of each reference to the solicitation's requirements, and sent out two types of questionnaires, one concerning the offeror's performance with respect to contract administration matters, and one concerning the offeror's performance with respect to technical matters. PRAG Report, ¶¶ 3, 4.

With respect to Jason's proposal, the PRAG reviewed six contracts and five sets of questionnaire responses. The PRAG rated Jason's proposal above average under both the technical and administrative questionnaires--and low performance risk overall--based upon the fact that it and its subcontractor received almost all above average ratings on the questionnaire responses. The PRAG report does not discuss the nature of Jason's contracts or how their nature factored into the low risk rating. Id. at ¶ 10. With respect to GPI's proposal, the PRAG reviewed five contracts and three sets of questionnaire responses. The PRAG rated GPI's proposal above average under the technical questionnaire because a majority of its ratings were above average, and average under the administrative questionnaire because its

ratings were evenly divided between above average and average--GPI's proposal was rated low performance risk overall. Again, the PRAG report does not discuss the nature of GPI's contracts or how their nature factored into the low risk rating. Id. at ¶ 11.

The final paragraph of the PRAG report states that Jason had the lowest performance risk and GPI the third-lowest performance risk. Id. at ¶ 13. During the hearing, the contracting officer was asked to explain the apparent inconsistency between this statement and her statement in the source selection decision that the two offerors were "tied" with respect to performance risk.

The contracting officer explained that she expected the PRAG report to include a discussion of the relevance of the contracts that were rated to the work the agency planned to have the contractor perform, but the report merely focused on the number of average and above average ratings each offeror received. Since simply counting the number of average and above average ratings would not give a true picture of each offeror's past performance, she read the underlying questionnaires herself. Tr. at 28-29, 31, 51-53.

The only set of questionnaires returned for Jason concerned a contract for public affairs support, which did not have a lot of relevance to the work required here. Tr. at 29-30. However, three sets of questionnaires were returned for one of Jason's subcontractors concerning contracts for work directly relevant to certain portions of the SOW. Id. The remaining set of questionnaires, from the Department of Energy (DOE), was not for Jason or any of its subcontractors, but for a different firm altogether. While the PRAG had apparently considered these questionnaires, the contracting officer found no mention of the firm in Jason's proposal, so she did not consider them. Tr. at 42-43. With respect to GPI, three sets of questionnaires were returned, each of which concerned a contract relevant to the environmental support services required here. In particular, the contracting officer considered the most relevant of these contracts to be the prior contract for these same services at USAYPG. Tr. at 43, 105.

Based upon her determination of the relevance of the questionnaires and the underlying contracts they described, as well as the comments made on the questionnaires, the contracting officer stated that she saw nothing to show that one contractor posed lower risk than the other and she considered them to be equally low risk contractors. Tr. at 30-31, 52-53. The source selection decision, which stated that the two offerors were "tied" in this regard, merely reflected that view.

In its post-hearing supplemental protest, Jason argues that the contracting officer improperly failed to review the past performance information in its proposal when she made her determination as to the relevance of the firm's prior contracts. Jason asserts that, in so doing, she overlooked numerous relevant contracts performed by the firm. Jason also contends that the contracting officer improperly failed to

contact DOE to obtain the correct set of questionnaires for Jason; had she done so, Jason asserts, it might have received a lower performance risk rating than GPI.

A source selection official may reach her own conclusions about how much weight to accord PRAG information, provided her conclusions are reasonable and do not improperly disregard the RFP's evaluation scheme. Litton Sys., Inc., Amecom Div., B-275807.2, Apr. 16, 1997, 97-1 CPD ¶ 170 at 12. The record here provides us no basis to question the contracting officer's conclusions.

Each offeror was on notice that the subject of the performance risk evaluation was the quality of its past performance, and that this was to be ascertained by asking its customers for information regarding the firm's performance on relevant contracts. As indicated above, the PRAG reviewed the past performance proposals for relevance in order to determine to which contact persons questionnaires should be sent, and decided to review six contracts listed in Jason's proposal and five contracts listed in GPI's proposal. The contracting officer duly reviewed the questionnaires returned to the agency, and we have no basis to disagree with her conclusions. A review of Jason's past performance proposal, which set forth the relevance of its prior contracts to the work required here, would have provided her with little information concerning the objective quality of the firm's performance on these contracts. There is no legal requirement that all references listed in a proposal be checked. HLC Indus., Inc., B-274374, Dec. 6, 1996, 96-2 CPD ¶ 214 at 7. For this same reason, the contracting officer was under no obligation to contact DOE to obtain the correct questionnaire responses for Jason's contract. Moreover, as our review of the record shows that the DOE contract at issue was relevant to only some SOW requirements, we have no basis to conclude that its consideration would have resulted in a meaningfully better performance risk rating for Jason. See Northport Handling, Inc., B-274615, Dec. 18, 1996, 97-1 CPD ¶ 3 at 3-4.

Award Decision

Jason argues that no contemporaneous documentation exists to show that the contracting officer followed the RFP's weighted basis for award scheme in making her award decision.

As explained above, award was to be made to the offeror whose responses to the three phases of the acquisition were found to represent the best buy to the government. Oral presentations (Phase III) were considered most important, followed by the Phase II technical ratings, the Phase I ratings, and past performance, which was slightly more important than cost. RFP Att. 2, ¶ 4; Tr. at 14-15. Significant differences in technical merit might or might not be deemed affordable depending upon the best interests of the government. RFP Att. 2, ¶ 4.

The source selection decision's failure to discuss the results of Phases I and II of the acquisition suggested that the SSA had not considered these results in making

her award decision. Since the contracting officer's statement filed in response to the protest indicated that she did consider these results, she was asked to address this matter at the hearing.

The contracting officer explained that when she finished evaluating the Phase I proposals she ranked GPI's proposal first and Jason's third, a fact that she contemporaneously documented. When she received the results of the Phase II technical evaluation, she ranked Jason's proposal first and excluded GPI's proposal from the competitive range, a fact that she also contemporaneously documented. After her reevaluation, she considered Jason's proposal to be ranked first and GPI's to be tied for second, a ranking consistent with the contemporaneous documentation. Tr. at 35. She reviewed the strengths that caused GPI's proposal to be rated higher under Phase I--its experience in the context of key personnel and subcontractors--and the strengths that caused Jason's proposal to be rated higher under Phase II--its technical writing skills. Id. She did not consider that either of these strengths made one offeror superior to the other; while GPI's reports might not be as well-written as Jason's, GPI's experience would "pull that through." Id. As a result, the contracting officer stated, in her mind Jason and GPI were tied technically prior to her receipt of the Phase III results. Id. However, her decision-making from the point of the reevaluation to the point of receiving the Phase III evaluations was not documented. The contracting officer explains that she normally would have addressed these matters in the prenegotiation objective memorandum but, at the time that document was written, GPI's proposal had been excluded from the competitive range and the closeness between the two proposals was not an issue. After the reevaluation, she "completely forgot" to readdress the matter in the post-negotiation memorandum. Tr. at 63. The fact that she began her discussion of the final evaluation with the Phase III results reflected her belief that the two proposals were tied up to that point. Tr. at 36.

The contracting officer's post-protest explanation of her decision-making is not a new, post hoc rationale for her source selection, but simply fills in previously unrecorded details that are entirely consistent with the contemporaneous evaluation documentation. As a result, we find her explanation sufficient to show that her source selection decision was both reasonable and consistent with the solicitation's weighted basis for award scheme. See Northwest Management, Inc., supra. In this regard, Jason maintains that the contracting officer's selection of GPI reflects her failure to follow the weighted basis for award scheme for two reasons. First, Jason's Phase I proposal was rated green and GPI's blue under the quality assurance factor. Second, Jason's proposal was rated green under one Phase II factor and GPI's proposal was rated blue under all three factors, and the Phase II technical results were more important than the Phase I results.

Color-coded ratings, like point scores, are used as a guideline for intelligent decision-making by source selection officials; award should not and need not be based solely on these ratings or scores. See AlliedSignal, Inc., B-272290, B-272290.2,

Sept. 13, 1996, 96-2 CPD ¶ 121 at 7. Rather, a selection should reflect the procuring agency's considered judgment of whether significant technical differences exist in the proposals that identify a particular proposal as technically superior regardless of close scores or ratings among proposals. Id. The contracting officer here specifically found that GPI had excellent experience under Phase I, both in the context of key personnel and subcontracts, and that this strength gave GPI the edge over Jason's strength in the area of quality assurance. In this regard, the combined weight of the key personnel and subcontracts factors is nearly twice that of the quality assurance factor. Tr. at 73-74. Moreover, the contracting officer states that she considered the experience difference that GPI had under Phase I to be enough to offset the difference between the two proposals under Phases I and II. Tr. at 79. Jason's apparent disagreement with her conclusion does not render it unreasonable. See Global Assocs., Ltd., B-256277, June 6, 1994, 94-1 CPD ¶ 347 at 4.

The protests are denied.

Comptroller General
of the United States