



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pacific Photocopy and Research Services

File: B-278698; B-278698.3

Date: March 4, 1998

Bernard Dane Stein, Esq., for the protester.

Harry D. Lewis, Esq., for Judicial Research and Retrieval Services, Inc., the intervenor.

Roberta M. Echard, Esq., Administrative Office of the United States Courts, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that the prior experience and past performance of the awardee of two license agreements for photocopying services were acceptable, and, consistent with the solicitations' evaluation criteria, made award based on the awardees' low prices.

DECISION

Pacific Photocopy and Research Services protests the award of two license agreements to Judicial Research and Retrieval Services, Inc., under requests for quotations (RFQ) issued by the Administrative Office of the United States Courts for off-site copy centers.

We deny the protests in part and dismiss them in part.

The two RFQs provided for the award of 2-year, revocable, non-exclusive license agreements for providing off-site copy services to the public in Fort Lauderdale and West Palm Beach, Florida. The RFQs required, among other things, that vendors have certain specified equipment, and set forth estimated quantities of services to be performed during each year of the agreements. The RFQs stated that the "license agreement[s] will be awarded to the responsible vendor who offers the lowest price and is deemed acceptable in the areas of experience and prior performance." To facilitate this evaluation, the RFQs required that each vendor "provide three references for whom the vendor has provided similar services," and

"a list of any courts for which they are, or previously have, performed similar photocopying and related services."¹

The agency received quotes from two firms in response to the West Palm Beach RFQ, and quotes from three firms in response to the Fort Lauderdale RFQ. Judicial Research submitted the lowest quotes for both locations. The agency contacted the references provided by the vendors, and based upon their responses, determined that each of the quotes was acceptable. On October 6, 1997, the agency awarded the license agreements to Judicial Research as the firm submitting the lowest acceptable quotes.

Pacific Photocopy, the incumbent contractor, protested the awards to the agency by letter dated October 10. This protest was denied by the agency on November 12 (received by Pacific Photocopy on November 13). On November 24, Pacific Photocopy timely filed its protest against the awards with our Office.

Pacific Photocopy argues, consistent with its agency-level protest, that Judicial Research's quotes should have been rejected by the agency as unacceptable because that firm lacks an acceptable level of prior experience. The protester argues that "[i]t is clear from the responses which [the agency] got to its inquiries . . . that those interviewed and the references which were obtained did not or could not differentiate [Judicial Research], the bidder, from its [principal]." The protester contends that the experience of Judicial Research's principal, or president, should not have been considered by the agency because the president's experience is solely the result of his past employment by Pacific Photocopy.

The evaluation of competing quotations is primarily a matter within the discretion of the contracting agency, which we will examine solely to ensure that it was reasonable and consistent with the evaluation criteria. MAC's Gen. Contractor, B-276755, July 24, 1997, 97-2 CPD ¶ 29 at 3.

The record here provides no support for the protester's assertion that Judicial Research's references did not or could not differentiate between Judicial Research and its principal, and thus no support for the protester's contention that the agency's evaluation was unreasonable. The three references provided by Judicial Research in its quote were contacted by the agency. The record of the reference checks, which consists of three completed "Question Sheet for Reference Checks," shows that the agency was seeking comments as to the performance of Judicial Research as a vendor. According to the question sheets, each reference confirmed Judicial Research's experience in providing similar services and the reference's satisfaction with Judicial Research's performance. Contrary to the protester's

¹The RFQs were identical with the exception of location (i.e., Fort Lauderdale or West Palm Beach) and the estimated quantities of services to be performed.

assertion, there is no indication whatsoever in the record that the three references contacted by the agency confirmed anything other than the references' experience with Judicial Research.² Thus, we find no basis to question the agency's determination that Judicial Research's prior experience and past performance were acceptable.

Pacific Photocopy also argues that the RFQs improperly considered the cost of courier services in the price evaluation. This protest, filed after the award of the license agreements to Judicial Research, is untimely because it challenges an alleged impropriety in the solicitation that should have been protested before the initial closing time for submission of quotes. Our Bid Protest Regulations specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1) (1997); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324 at 7.

Pacific Photocopy argues, for the first time in its protest to our Office, that Judicial Research did not meet the equipment requirements set forth in the RFQ, which Pacific Photocopy contends are definitive responsibility criteria. Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Our Regulations also provide that a matter initially protested to the agency will be considered if the initial protest to the agency was filed within the time limits for filing a protest with our Office, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. 4 C.F.R. § 21.2(a)(3); Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206 at 1. Here, because Pacific

²In its quote, Judicial Research also provided references from three individuals that had worked in three different courts. Two of these references were not pursued by the agency because the letters of reference were more than 10 years old. The remaining letter of reference, which was more than 4 years old, was also not considered by the agency because the individual who wrote the letter, when contacted, indicated that he had no knowledge of Judicial Research and was familiar with the president of the firm only because of the president's prior employment with Pacific Photocopy. This last reference appears to be the basis for the protester's contention that the references contacted could not differentiate "the bidder . . . from its [principal]." However, the record shows that this reference was not considered by the agency in determining that Judicial Research's experience and past performance were acceptable, and, contrary to the protester's assertion, this reference was clearly able to differentiate between Judicial Research and its president.

Photocopy did not challenge this matter in either its protest to the agency or to our Office within 10 days of learning of the award of the license agreements to Judicial Research, this aspect of its protest is untimely.

In addition, Pacific Photocopy argues for the first time in a protest to our Office received on January 28, 1998, that the estimates set forth in the RFQs were not accurate. In support of this contention, Pacific Photocopy explains that it had filed another protest against the terms of an RFQ issued for photocopying services to be performed in another location in Florida, and that the agency, in response to the protest, canceled the solicitation to perform the photocopying services "in-house." Pacific Photocopy asserts that, during a telephone discussion of January 27, the agency's attorney stated that the agency's "contract branch had come to the conclusion that their estimates were not current and that as a consequence, the RFQ had been withdrawn." The protester concludes that "[l]ogically, because . . . the estimates for Miami were not current, there is no reason to suppose that the estimates for West Palm Beach or Fort Lauderdale are any more current, accurate, reasonable or reliable."

We dismiss the protest because, as filed with our Office, it does not establish a basis for challenging the agency's action. The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-3556 (West Supp. 1997). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Management Servs., Inc.--Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299 at 4. To achieve this end, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge--Recon., 68 Comp. Gen. 352, 353 (1989), 89-1 CPD ¶ 335 at 2.

Pacific Photocopy's protest does not include sufficient factual information to establish the likelihood that the agency in this case violated applicable procurement

laws or regulations. The fact that estimates for other RFQs for the same services are inaccurate does not indicate that they are inaccurate for these RFQs.³

The protests are denied in part and dismissed in part.

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³We note that Pacific Photocopy, as the incumbent contractor with regard to both the West Palm Beach and Fort Lauderdale RFQs, would appear to be in a position to have some insight as to the accuracy of the RFQs' estimates.