



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Environmental Tectonics Corporation

File: B-280573.2

Date: December 1, 1998

Cliff G. Russell, Esq., for the protester.

John A. Evans, Esq., Department of the Navy, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably assigned a high risk rating to the protester, the low-priced vendor, for past performance and reasonably made a price/past performance tradeoff resulting in the issuance of a purchase order to a higher-priced vendor with a higher past performance rating where the agency determined that it was worth paying a price premium to a firm with a superior past performance history and a minimal performance risk.

DECISION

Environmental Tectonics Corporation (ETC) protests the issuance of a purchase order to USA Models, Inc. under request for quotations (RFQ) No. N61339-98-Q-2010, issued by the Naval Air Warfare Center Training Systems Division (NAWCTSD), Department of the Navy, for acrylic replacement windows for hypobaric low pressure chambers.¹ ETC challenges the agency's evaluation of its past performance and the agency's decision to issue a purchase order to a higher-priced vendor.

We deny the protest.

The RFQ, issued in April 1998 as a combined synopsis/solicitation for commercial items, provided that the agency intended to issue a purchase order to the

¹The acrylic windows, which represent a safety upgrade, will replace existing glass windows which may implode into the chambers when internal pressures are lowered, causing injury or death to government personnel. The window replacement has been ranked a top priority modification for aviation physiology trainers. Contracting Officer's (CO) Statement at 1; Source Selection Decision (SSD), Sept. 4, 1998, at 1.

responsible vendor whose quotation was most advantageous to the government, price and other factors considered. The RFQ provided that the best value award factors, in descending order of importance, were pricing, delivery schedule, risk, and past performance. Combined synopsis/solicitation, Apr. 8, 1998; CO Statement at 1. The RFQ stated that simplified acquisition procedures applied to this procurement. See Federal Acquisition Regulation (FAR) Part 13.

Three firms, including ETC and USA Models, submitted quotations which were rated as follows:²

	ETC	USA Models
Delivery Schedule	Acceptable	Acceptable
Risk	Acceptable	Acceptable
Past Performance	High Risk	Low Risk

ETC's quotation was approximately 46 percent lower than the quotation from USA Models. SSD at 2.

With respect to past performance, for ETC, the agency checked the firm's performance under eight contracts for various training equipment. Three contracts were with the British government. The British references (a contracting director and a technical person) reported that ETC's performance under a contract for a fire service trainer had deficiencies which took the firm a long time to correct; ETC's performance under a contract for a maintenance trainer had delivery delays; and ETC's performance under a contract for a critical design review for a human-carrying centrifuge had delivery delays and, over the objections of the British government, ETC ordered long lead-time items prior to design approval. The British references further reported that [deleted]. Past Performance Questionnaire (PPQ), July 20, 1998. In addition, the British references reported [deleted]; the British references reported that they [deleted]. Id.; see also Memo to the File, July 20, 1998. Another contract (the one listed by ETC in its quotation as a past performance reference) was for two unique high altitude chambers for the Federal Aviation Administration (FAA). The FAA reference (the contracting officer), noting that "ETC had very good people and a very good product," reported that ETC had delayed delivery of the product and was "slow in delivering," but eventually had resolved technical and software problems. Memo to the File, Oct. 1, 1998; PPQ, July 21, 1998. Finally, NAWCTSD had a contract with ETC to provide a

²These ratings reflect the agency's assessment after taking corrective action in response to an earlier protest filed by ETC challenging, among other things, the agency's evaluation of the firm's past performance.

centrifuge-based flight environment trainer (CFET). The agency reported late, unacceptable delivery by ETC; agency acceptance of the trainer as nonconforming; and difficulty in engaging in discussions with ETC to settle a substantial monetary claim filed by the firm under the CFET contract. PPQ, Aug. 13, 1998.³

For USA Models, the agency checked the firm's performance under four contracts.⁴ The reference for a contract for a prototype of a smoke control model to be used as a teaching tool reported that USA Models was ahead of schedule and was an outstanding performer, delivering the highest quality product. PPQ, Aug. 5, 1998. The reference for an acrylic windows contract reported timely and very good performance by USA Models. PPQ, Aug. 5, 1998. The reference for a contract for plastic acrylic models of rockets and mines reported early delivery by USA Models, with the firm doing extra work under the contract. PPQ, Aug. 3, 1998. Finally, the reference for a contract for various trainers, including a cockpit simulator, reported on-schedule delivery and correction of a deficiency by USA Models. PPQ, Aug. 3, 1998.

The contracting officer, who served as the source selection authority, selected USA Models as the most advantageous vendor. In this regard, the contracting officer determined that ETC's low-priced quotation did not offset the unacceptably high risk of ETC not meeting the critical terms and conditions of the contract, based on ETC's past performance history showing that its corporate management had not committed to timely delivery of quality products, to correcting deficiencies, and to settling disputes. The contracting officer concluded that the performance risk associated with ETC outweighed the value to the agency of the firm's low-priced quotation. Therefore, given USA Models' record of superior past performance history and its minimal performance risk, the contracting officer determined that it was worth paying a price premium to that firm. Accordingly, the agency issued a purchase order to USA Models as the most advantageous vendor. SSD at 3-5.

ETC challenges the agency's evaluation of its past performance, objecting to the agency's consideration of its performance under the CFET contract and the British contracts, which were not listed in ETC's quotation for past performance references. ETC maintains that its performance under these contracts is not relevant because the deliverables were for sophisticated design/build, as opposed to commercial, items. ETC believes only the FAA contract (listed in its quotation for a

³The agency also checked references for an Air Force contract for centrifuge maintenance, PPQ, July 28, 1998, and two Navy contracts for environmental chambers at China Lake. PPQ, July 21, 1998. These references, which reported satisfactory performance by ETC, were also considered by the agency.

⁴ETC does not challenge the agency's evaluation of USA Models' quotation.

past performance reference) and the China Lake contracts should have been considered by the agency in evaluating the firm's past performance.

When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition, and must evaluate quotations in accordance with the terms of the solicitation. M3 Corp., B-278906, Apr. 1, 1998, 98-1 CPD ¶ 95 at 3. In reviewing protests against an allegedly improper evaluation, we will examine the record to determine whether the agency met this standard and reasonably exercised its discretion. Id.

Contrary to ETC's assertion, in evaluating quotations, an agency may properly consider evidence of a vendor's past performance from sources that are not listed in the vendor's quotation. See, e.g., TEAM Support Servs., Inc., B-279379.2, June 22, 1998, 98-1 CPD ¶ 167 at 6. Here, the agency had direct knowledge of ETC's performance and associated problems under the Navy's CFET contract, and the agency sought specific information addressing ETC's performance under the British contracts. In response to ETC's primary contention, while the design/build technology for the deliverables under the Navy CFET and British contracts may have been distinguishable from the commercial item technology for the acrylic windows being procured under this RFQ, the record shows that for the most part, the negative past performance information conveyed to the agency by the various references related not so much to the technical aspects of ETC's performance, but to broader aspects of ETC's performance--ETC's corporate management's effectiveness in ensuring timely delivery of products and timely correction of deficiencies, and its receptiveness to engaging in claims settlement discussions. In fact, consistent with what was reported by the Navy and the British references, the FAA contracting officer also reported that ETC was slow to deliver. Because timeliness of delivery, timeliness of resolving deficiencies, and corporate attitude and responsiveness are considerations which are common to all contracts regardless of the technology involved, we believe the information reported concerning ETC's corporate management's working relationship with its customers is clearly relevant to the agency's evaluation of ETC's past performance. Id.; see also SDA Inc., B-256075, B-256206, May 2, 1994, 94-2 CPD ¶ 71 at 6-7. Accordingly, based on reports of ETC's past performance and the agency's own experience with ETC, we believe the agency could reasonably conclude that ETC presented a high performance risk.

ETC also argues that the agency was required to conduct discussions with the firm regarding the referenced negative past performance information. However, ETC confuses the requirements applicable to negotiated procurements with those applicable to procurements using simplified acquisition procedures. Specifically, the provisions of FAR Part 15, see FAR § 15.306 (FAC 97-02), governing exchanges with offerors in a negotiated procurement about their past performance are not applicable in a procurement, like this one, conducted using simplified acquisition

procedures. See M3 Corp., supra, at 4-5. While FAR Part 13, see FAR § 13.106-2(b)(1), affords an agency the discretion to use the provisions of FAR Part 15 in conducting a simplified acquisition procurement, the agency, here, exercised its discretion and chose not to conduct exchanges concerning vendors' past performance during the reevaluation of quotations.⁵ We have no basis to object to the agency's action in this regard.

Finally, ETC, the low-priced vendor, challenges the agency's best value determination resulting in the issuance of a purchase order to USA Models, a higher-priced vendor.

In a best value procurement, price is not necessarily controlling in determining the quotation that represents the best value to the government. Rather, that determination is made on the basis of whatever evaluation factors are set forth in the solicitation, with the source selection official often required to make a price/technical tradeoff to determine if one quotation's technical superiority is worth the higher price that may be associated with that quotation. In this regard, price/past performance tradeoffs are permitted when such tradeoffs are consistent with the solicitation's evaluation scheme. See Rotair Indus., Inc., B-276435.2, July 15, 1997, 97-2 CPD ¶ 17 at 3. In this case, where the RFQ does not expressly specify that price will be the determinative factor for award, the agency retains the discretion to select a vendor with a higher-priced quotation and higher past performance rating, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. See University of Kansas Med. Ctr., B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6.

While ETC's quotation was approximately 46 percent lower than the quotation of USA Models, we conclude that the contracting officer reasonably determined that the performance risk associated with ETC, based on past performance information, outweighed the value to the agency of the firm's low price. More specifically, five of the eight past performance references for ETC reported poor timeliness and quality of performance and provided an overall negative past performance assessment. SSD at 3. The contracting officer noted that at the time of his selection decision, only the Navy CFET trainer and the British fire trainer had been delivered, inspected, and accepted; both of these contracts were delivered late and with major deficiencies. Id. The contracting officer noted that meeting the schedule under this RFQ is a critical factor, and based on ETC's past performance

⁵Although the agency held discussions with vendors, including ETC, prior to taking corrective action, during the reevaluation process, the agency did not conduct discussions. Since the reevaluation process superseded and mooted the initial evaluation process, consistent with the terms of the RFQ, the agency could properly issue the purchase order to USA Models on the basis of initial quotations without conducting discussions. See Combined synopsis/solicitation, supra.

history, concluded that ETC's inability to timely deliver quality products made ETC an unacceptably high performance risk. Id. at 4. In addition, the contracting officer expressed a concern with ETC's lack of willingness to resolve disputes in a cooperative and businesslike manner, as evidenced by the Navy's experience with ETC in attempting to resolve the claim under the CFET contract. Id.

Therefore, based on this record, the contracting officer concluded there was an unacceptably high risk of ETC not performing in accordance with the terms of the RFQ because its corporate management failed to demonstrate on other contracts a firm commitment to timely delivery of acceptable products, to correcting deficiencies, and to settling disputes. Id. The contracting officer believed the performance risk associated with ETC outweighed any price savings associated with its low-priced quotation. Id.

In contrast, USA Models had a superior past performance history, delivering products on time or ahead of schedule, performing in a highly satisfactory manner, doing extra work, and correcting deficiencies. The contracting officer believed USA Models would satisfy the RFQ requirements in a timely manner, and that the firm's superior past performance history justified the payment of a price premium and outweighed the price differential between ETC and USA Models. Id. at 5.

Under these circumstances, we have no basis to question the reasonableness of the agency's price/past performance tradeoff and its decision to issue a purchase order to USA Models as the most advantageous vendor.⁶

The protest is denied.⁷

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⁶The record shows that the agency did not evaluate past performance on a pass/fail basis and did not reject ETC as nonresponsible, which would have necessitated a referral to the Small Business Administration for the possible issuance of a certificate of competency. See, e.g., Nomura Enter., Inc., B-277768, Nov. 19, 1997, 97-2 CPD ¶ 148 at 3.

⁷Since we conclude that the agency's evaluation of ETC's past performance was reasonable, there is no credible basis to find that the agency acted in bad faith in performing this evaluation. Moreover, contrary to ETC's assertion, the agency chose not to issue the purchase order to the firm as a result of the price/past performance tradeoff based on the underlying evaluation, not because the agency had de facto debarred the firm.