



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Deva & Associates, P.C.

**File:** B-281393

**Date:** February 1, 1999

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John E. Jensen, Esq., Shaw Pittman Potts & Trowbridge, for the protester.  
James S. Phillips, Esq., and James S. DelSordo, Esq., Kinosky, Phillips & Lieberman, for Tessada & Associates, Inc., an intervenor.

John F. Ruoff, Esq., Defense Finance and Accounting Service, 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.

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## **DIGEST**

1. Protest that awardee should not have received favorable past performance rating because it is not an accounting firm is denied where solicitation provided that past performance evaluation would be based on offeror's performance of similar services, and did not refer to status as accounting firm.
2. Protest that agency's failure to consider references precluded it from properly evaluating past performance is denied where solicitation required offerors to furnish detailed past performance information and provided only that references may be contacted; information required by solicitation provided sufficient basis for past performance evaluation.
3. Protest that awardee's technical score should have been lowered based on the awardee's low proposed wage rates for accountants and its low overall price is denied where agency reasonably concluded that awardee's rates were not substantially different from rates offered by other competitive range offerors, and price would be adequate to cover costs of performance.
4. Protest that agency did not consider protester's superior past performance rating in performing price/technical tradeoff is denied where record shows that in performing the tradeoff the agency was aware of the past performance and technical ratings, as well as the proposed prices of all offerors.

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## DECISION

Deva & Associates, P.C. protests the award of a contract to Tessada & Associates, Inc. under request for proposals (RFP) No. MDA220-98-R-0005, issued by the Defense Finance and Accounting Service (DFAS) for contract reconciliation and special studies services. Deva argues that DFAS improperly evaluated past performance, failed to adequately assess the risk involved in awarding a contract to Tessada, and performed an improper price/technical tradeoff.

We deny the protest.

The solicitation was issued on February 17, 1998 for contract reconciliation and special studies services, including identifying and correcting out-of-balance conditions in contract payment and accounting records and systems; identifying and correcting unmatched disbursements and negative unliquidated obligations; performing tasks to support contract close-out requirements; and identifying and correcting problems with outstanding or remaining unliquidated obligations. RFP § C.1.1. The solicitation contemplated the award of an indefinite-delivery, indefinite-quantity contract, and provided that proposals would be evaluated against (in descending order of importance) technical, past performance and price factors.<sup>1</sup> RFP § M.

DFAS received nine proposals and, following the initial evaluation, selected four, including Tessada's and Deva's, to be included in the competitive range. After final proposal revisions were evaluated, Tessada's proposal was rated "better" under the technical factor and satisfactory under past performance, while Deva's was rated "better" under both factors. Contracting Officer's Statement at 6. However, Tessada's offered price (\$7,667,551.37) was the lowest received, and Deva's ([DELETED]) the highest, *id.*, and the agency determined that Tessada's proposal represented the best value to the government based on its low price. Technical Evaluation Report at 1; Post Negotiation Business Clearance Memorandum at 8.

### PAST PERFORMANCE

Deva protests that the agency improperly evaluated the proposals under the past performance factor. First, Deva argues that because Tessada is not an accounting

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<sup>1</sup>The technical proposals were to be adjectivally rated as outstanding, better, acceptable, marginal or unacceptable. RFP §§ M.2(b), M.3(c). The past performance proposals were to be adjectivally rated as neutral, outstanding, better, satisfactory or marginal. RFP §§ M.3(c), M.7(d).

firm, it should not have received a favorable past performance rating.<sup>2</sup> This argument is without merit. The solicitation neither required that offerors be accounting firms, nor provided that the past performance evaluation would take into consideration whether an offeror was an accounting firm. Rather, offerors were to submit detailed performance information on directly related or similar contracts, that is, information regarding contracts for reconciliation and special study work. RFP § L.4(c). It thus was evident from the RFP that the past performance evaluation was to focus on offerors' performance of the type of services under the contract. Consequently, the fact that Tessada is not an accounting firm does not provide a basis for questioning Tessada's past performance rating.<sup>3</sup>

Deva also argues that DFAS did not evaluate the quality of Deva's and Tessada's past performance, as required by the solicitation. Specifically, Deva asserts that the agency did not contact the references provided by Deva, and received information from only one of Tessada's references. Deva concludes that the agency had no basis on which to evaluate the quality of the offeror's past performance.

Procuring agencies are required to evaluate proposals in accordance with the evaluation criteria listed in the solicitation. 10 U.S.C. § 2305(b)(1) (1994); Federal Acquisition Regulation (FAR) § 15.304(d). Here, the solicitation stated that the government would evaluate the quality of the offerors' past performance. RFP § M.7(b). It did not state, however, that the quality of past performance would be evaluated through information obtained from references provided in the proposals. Rather, the solicitation stated only that the government might obtain information from sources to aid in its past performance evaluation. RFP § M.7(c). At the same time, the solicitation, at section L.4(c), specifically required offerors to provide detailed information concerning their performance of prior contracts, including the following:

- A. Contract number(s) and type of contract;
- B. Procuring agency and name of reference point(s) of contact . . . ;

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<sup>2</sup>Deva also challenges the evaluation of the proposal of ASI, which the agency ranked as next in line for award after Tessada. Because we find that the award to Tessada was proper, we need not consider that aspect of the protest.

<sup>3</sup>Deva also generally asserts that DFAS did not properly evaluate the relevance of Tessada's past performance. Deva does not explain the basis for this conclusory assertion, and such a general statement is not sufficient to constitute a basis of protest. Ogden Support Servs., Inc.--Recon., B-270354.3, June 11, 1997, 97-1 CPD ¶ 212 at 2.

- C. Dollar value of the Contract;
- D. Period of Performance;
- E. Detailed description of the work performed;
- F. Relevancy of the contract to this proposed requirement;
- G. Clear statements describing whether the contract was completed on time, with a quality product conforming to the contract, without any degradation in performance or customer satisfaction. Discuss any cost growth if the contract was not completed for the original contract amount; and
- H. The number, type, frequency, duration and impact of any quality, delivery or cost problems in performing the contract, the corrective action taken, if any, and the effectiveness of the corrective action.

This information, although obtained directly from the offerors, clearly was sufficient to allow DFAS to evaluate the quality of offerors' past performance, as required by the RFP. Deva has not challenged the conclusions reached by the agency in the past performance evaluation, and we see no basis to question the reasonableness of the evaluation.

#### RISK ASSESSMENT

The RFP provided that an offeror's technical score could be reduced where its proposed price was too low, or not consistent with its technical proposal, so as to raise concern about the offeror's ability to provide quality services and personnel at the price proposed over the life of the contract. RFP § M.5. Deva argues that Tessada's proposal should have been downgraded under this provision because its overall contract price and proposed wage rates are too low. Deva notes in this regard that its proposed price was based on several labor surveys and is approximately [DELETED] higher than Tessada's. Deva further asserts that these surveys show that Tessada's proposed salary for accountants is below the national average. In this regard, Tessada's proposed hourly direct labor rate for accountants ([DELETED]) is below Deva's ([DELETED]), as is its contract rate for accountants ([DELETED]) versus Deva's ([DELETED]). Final Revision Cost Spreadsheet at 1.

DFAS responds that the contracting officer found that Tessada's offered price was comparable to other competitive range proposals and that its rates were comparable to Deva's, Legal Memorandum at 11, and also determined that Tessada's rates correlated to the key personnel ratings and that its proposed price was adequate to cover the labor costs necessary to perform the contract. Contracting Officer's Statement at 11. The agency therefore did not downgrade Tessada's proposal for performance risk.

The evaluation of Tessada's proposal in this area was reasonable. First, the total proposed prices of the four proposals included in the competitive range were initially \$7.9 million (Tessada), \$7.9 million (ASI), \$7.7 million (fourth offeror), and [DELETED]. Contracting Officer's Statement at 5. In the final proposals, these prices were revised to \$7.6 million (Tessada), \$7.6 million (fourth offeror), \$8.6 million (ASI), and [DELETED] (Deva). *Id.* at 6. With respect to the direct labor rates for the accountant labor category, Tessada proposed an hourly rate of [DELETED] compared to Deva's [DELETED]. Price Comparison Chart, Sheet 5. Tessada's loaded rate was [DELETED], compared to [DELETED] for Deva, [DELETED], for ASI, and [DELETED] for the fourth offeror. Final Revision Cost Spreadsheet at 1. Based on these numbers, Tessada's proposed accountant wage rate and total price clearly were not out of line with the competitive range proposals taken as a whole. With regard to the surveys Deva cites, as the agency points out, these surveys represent average salaries, while the salaries paid by any particular employer may vary greatly, depending on such factors as the size of the business, accounting functional areas, and geographical factors. Supplemental Agency Statement at 7. The agency further points out, moreover, that Tessada's proposed accountant wage rate actually is within the margin of error for one survey and is not comparable to the rate used in the second survey, [DELETED]. *Id.* We conclude that there simply is no basis to question the agency's determination that Tessada's proposal did not carry with it any particular performance risk.

#### PRICE/TECHNICAL TRADEOFF

Deva maintains that the tradeoff is flawed because it did not take into account Deva's superior past performance. This argument is without merit. While the source selection official did not discuss Deva's superior past performance rating in detail when he agreed that the proposal submitted by Tessada offered the best value to the government, it is clear from the procurement record that the agency was fully aware that Deva's past performance was rated as superior to Tessada's when it made the decision. In this regard, the technical evaluation panel recommended to the contracting officer that Tessada be selected for award. In the recommendation, the panel specifically lists the ratings of each of the offerors for the technical and past performance factors, as well as their costs. Technical Evaluation Report at 1-2. The panel then states:

Tessada is recommended for award. The overall Technical Proposal rating of "Better", Past Performance rating of "Satisfactory", and Price (@ [DELETED] lower than ASI, @ [DELETED] lower than DEVA, and @ [DELETED] lower than [fourth offeror]) for Tessada were considered in making a best value determination. The price premiums for ASI and DEVA were considered while the overall technical rating for ASI, DEVA, and Tessada were "Better." A price premium is not justified.

In selecting Tessada, the contracting officer reviewed the evaluators' recommendation, and expressly adopted it. Post Negotiation Business Clearance Memorandum at 8. Since the agency determined that Tessada's lower proposed price more than offset Deva's past performance advantage, the tradeoff decision was proper.

The protest is denied.

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