



Decision

Matter of: Advanced Computer Concepts

File: B-408084

Date: May 30, 2013

Mary Zarafshar and Reza Zarafshar for the protester.
Sarah L. Carroll, Esq., General Services Administration, for the agency.
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest objecting to a marginal past performance rating is denied where the agency reasonably relied upon information showing that the protester had four Federal Supply Schedule orders terminated for cause.

DECISION

Advanced Computer Concepts, of McLean, Virginia, protests the issuance of a delivery order to Futron, Inc., of Woodbridge, Virginia, under request for quotations (RFQ) No. 761233, issued by the General Services Administration, for Cisco TelePresence EX90 Series Systems and related items. Advanced Computer challenges the agency's evaluation of the firm's past performance.¹

We deny the protest.

BACKGROUND

The RFQ, issued pursuant to the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, sought quotations from vendors holding FSS contracts under schedule 70, National Information Technology Commodity Program--Video Teleconferencing Equipment. Vendors were informed that GSA sought fixed-price quotations for 70 new Cisco TelePresence EX90 Series Systems and related items.

¹ Advanced Computer states that it is CISCO Gold Certified reseller. Protest at 1.

The RFQ provided that the delivery order would be issued without discussions on a best value basis, considering technical acceptability, past performance, and price. RFQ at 2-3. Technical acceptability, which was to be evaluated on a pass/fail basis, was defined as providing the brand name item and complying with the required delivery schedule. Past performance was to be comparatively evaluated, and vendors were informed that the agency would assign a confidence rating in evaluating a vendor's relevant past performance.² Id. In this regard, vendors were informed that the agency would consider past performance information contained in the Past Performance Information Retrieval System (PPIRS) and the Federal Awardee Performance and Integrity Information System (FAPIS), as well as any other credible information, including the agency's own experience. Id. The past performance factor was stated to be significantly more important than price. Id.

GSA received quotations from four vendors, including Advanced Computer and Futron, which were evaluated as follows:

	Advanced Computer	Futron
Technical acceptability	Pass	Pass
Past Performance	Marginal Confidence	Good Confidence
Price	\$795,270	\$813,184

AR, Tab 15, Best Value Determination, at 4. Advanced Computer's marginal confidence rating was based upon the fact that, although the PPIRS included past performance information for five FSS orders for which Advanced Computer received exceptional or satisfactory ratings, GSA learned from the PPIRS Department of Defense Termination List that four other FSS orders with the Air Force were terminated for cause. Id. at 3. Specifically, this database indicated that Advanced Computer had been unable to deliver Cisco switches because of "manufacture[r] change of distributor GSA requirements." AR, Tabs 11-14, PPIRS Report Cards. GSA's contracting officer contacted the Air Force official identified in these reports, and he confirmed that Advanced Computer had failed to deliver the required items. Contracting Officer's Statement at 5.

² Past performance was rated as excellent high confidence, good confidence, neutral confidence, marginal confidence, or unsatisfactory confidence. Agency Report (AR), Tab 1, Acquisition Plan § 7.105(b)(4). As relevant here, a marginal confidence rating reflected substantial doubt, based upon a vendor's past performance record, that the firm would successfully perform the required effort. Id.

Futron's good confidence rating was based upon past performance information for eight contracts in the PPIRS, for which Futron received excellent, very good, or satisfactory ratings. AR, Tab 15, Best Value Determination, at 3. There were no reports listed for Futron on the PPIRS Termination List. Id.

The agency's source selection authority (SSA) concluded that Futron's quotation reflected the best value to the agency. In this regard, the SSA noted that Futron had received a "substantially better past performance rating" than Advanced Computer, and that Futron's better past performance was "a reasonable trade-off to the small difference in price between the two offerors (2 [percent])." Id. at 5, 6.

The delivery order was issued to Futron, and this protest followed.

DISCUSSION

Advanced Computer challenges the agency's evaluation of its past performance, complaining that GSA failed to take into consideration the circumstances surrounding the termination of the firm's four orders with the Air Force. Protest at 2. Specifically, the protester states that its failure to deliver was because its supplier of the items was "punishing" Advanced Computer for offering the items at prices below the manufacturer's GSA schedule prices. Id. The protester contends that its failure to perform these four orders cannot be considered by GSA because Advanced Computer acted properly in refusing "to collude to fix prices."³ Advanced Computer also contends that the manufacturer and its supplier "ultimately paid GSA \$48 million as a settlement for such practices." Protest at 2.

The evaluation of past performance is a matter of agency discretion, and we will review the evaluation only to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. Guam Shipyard, B-311321, B-311321.2, June 9, 2008, 2008 CPD ¶ 124 at 3. The evaluation by its very nature is subjective; an offeror's disagreement with the agency's evaluation judgments does not demonstrate that those judgments are unreasonable. SDV Telecomms., B-279919, July 29, 1998, 98-2 CPD ¶ 34 at 2.

Based on our review of the record, we see nothing improper about GSA's evaluation of Advanced Computer's past performance. The record shows that the contracting officer reviewed available information in the PPIRS for both vendors,

³ Advanced Computer also argues that GSA's marginal rating of Advanced Computer's past performance was based upon inaccurate information because these terminations for default were not contained in the PPIRS system. Not only does Advanced Computer not dispute that these orders in fact were terminated for cause, but the record shows that the default terminations were listed on a Termination List contained in PPIRS.

consistent with the terms of the RFQ. The contracting officer also contacted the Air Force and confirmed the termination of Advanced Computer's orders for cause.⁴ See Contracting Officer's Statement at 5. Although the protester argues that it should not have been held responsible for its failure to deliver, Advanced Computer's quotation provided no explanation of the surrounding circumstances for this negative past performance information, nor has the protester explained why the agency should have been aware of this information such that GSA was required to consider it as part of the evaluation.⁵

In summary, while we acknowledge that the protester views GSA's assessment to be unfair, and while we acknowledge that the Air Force appears to hold the protester blameless for these past performance issues, we see no basis for concluding that GSA acted improperly in reaching its assessment. As a result, we deny Advanced Computer's challenge to the reasonableness of GSA's evaluation.

Finally, the protester also contends that GSA should have given more weight to the fact that the more recent past performance information for Advanced Computer was positive. Protest at 2. This does not demonstrate, however, that the agency's judgment concerning Advanced Computer's default terminations was unreasonable. In this regard, the default terminations in the PPIRS were all within 3 years of the issuance of the RFQ.

The protest is denied.

Susan A. Poling
General Counsel

⁴ In its comments, Advanced Computer provided an email from an Air Force contracting officer that appears to show the Air Force does not hold Advanced Computer responsible for its failure to deliver. The Air Force contracting officer also suggests that Advanced Computer explain its failure to deliver in future quotations, which, as noted above, the protester did not do here. This email, which was sent to Advanced Computer after the firm's protest to our Office, was not seen or considered by GSA before its selection decision.

⁵ Advanced Computer cites to a news account stating that CISCO and another firm, Westcon Group North America, paid a \$48 million fine to the United States to settle claims that they had made misrepresentations to GSA in violation of the False Claims Act. Although the protester generally argues that this absolves the firm of responsibility for performing the terminated orders with the Air Force, Advanced Computer has not shown why this legally excuses its failure to deliver the required items.