



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: J. A. Jones Grupo de Servicios, SA

File: B-283234

Date: October 25, 1999

Douglas L. Patin, Esq., and Peter J. Skalaban, Jr., Esq., Spriggs & Hollingsworth, for the protester.

James G. McLaren, Esq., Naval Supply Systems Command, for the agency.

C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Message--sent before submission of initial offers--reminding incumbent contractor to follow solicitation instructions for submitting information for evaluation, rather than rely upon the agency's familiarity with incumbent's capabilities, is not evidence of bias where apparent purpose of message was to enhance competition under the procurement, and the message would have been inapplicable to other potential offerors, who were not the incumbent.

2. There is no basis for sustaining protest allegation that evaluation was unreasonable because incumbent received "outstanding" ratings, where protester fails to raise specific challenges to the evaluation of the incumbent's proposal.

3. Where section of solicitation providing instructions on preparation of offers asked for information about past performance on "directly related or similar" contracts "similar in scope, magnitude and complexity" to the instant effort, agency reasonably considered similarity of contracts involved in its past performance evaluation, despite statement in section M that agency would base its past performance evaluation on customer satisfaction.

DECISION

J.A. Jones Grupo de Servicios, SA, protests the award of a contract to InterjetServe under request for proposals (RFP) No. N68171-99-R-0024, issued by the Naval Regional Contracting Center in Naples, Italy, for air terminal services at Rota, Spain.

The protester asserts that the agency was biased in favor of Interjet, that the evaluation of proposals was unreasonable and inconsistent with the solicitation criteria and that the selection of Interjet was unjustified.

We deny the protest.

BACKGROUND

On April 12, 1999, the agency issued the RFP for a fixed-price contract for all personnel, equipment, computers, tools, materials, supervision, consumables and supplies necessary to perform air terminal and ground handling services at Rota. The RFP established an 8-month base period of performance, with nine 1-year option periods and a tenth option period of 4 months. The agency had earlier--on February 17--issued a draft solicitation, with a cutoff date of March 25, 1999 for comment.

The solicitation contained a statement of work (SOW) that required a contractor to provide all personnel, equipment, materials, and services to perform air terminal and ground handling services for United States military, North Atlantic Treaty Organization and Air Mobility Command (AMC) military and commercial contract aircraft at Rota, 24 hours a day, 7 days a week. RFP amend. 1, ¶ 1, at 10. It required a capability for simultaneous service of five aircraft--three wide bodied (C-17, C-5, DC-10, or larger) and two narrow body aircraft (C-130, C-9, C-12/C-21), as well the capability of responding to unforeseen increases in workload (seven aircraft--four wide body and three narrow body--simultaneously). The SOW provided detailed information on specific services, among them: Air Terminal Operations Center operations (ATOC) (Id. ¶ 1.1, at 10) involving information control, load planning, capability forecasting, and ramp coordination; cargo services (Id. ¶ 1.2, at 12); fleet services involving the loading and unloading of equipment involved in maintaining lavatories and galleys and cleaning the aircraft (Id. ¶ 1.3, at 15); aircraft services including positioning the aircraft for ground maintenance and marshalling chocks, boarding ladders, and maintenance stands (Id. ¶ 1.3.3, at 16); passenger services (Id. ¶ 1.4, at 17); communications and management of information systems (Id. ¶ 1.6, at 21); and transportation, including aircrew transportation to nearby hotels and dining (two 20-member crews, within a 50-kilometer radius) and base transportation (on-base quarters) for up to 40 personnel (Id. ¶ 1.15, at 27-28). The SOW also contained requirements for personnel management, safety, record maintenance, training, security, and quality control.

The solicitation provided for award based on best value, considering technical acceptability, evaluated on a pass/fail basis, price, and relative capability. Id. at 98. The agency would determine relative capability on the basis of past performance and understanding of government requirements. Id. The RFP stated that the agency would contact each offeror's customers for information on past performance, defined as "a measure of the degree to which an offeror satisfied its customers in the past." Id. It directed offerors to "describe your company's past performance on

directly related or similar Government or commercial contracts and subcontracts that are similar in scope, magnitude and complexity to that required by the RFP,” including current contracts and those completed within the prior 5 years. Id. at 97. The solicitation provided that the agency would evaluate each offeror’s relative understanding of the government’s requirements and its ability to perform on the basis of an oral presentation. Id. at 99. This portion of the evaluation included five factors, as follows: understanding and approach; management of the operation and key personnel; staffing; phase-in plan; and risk analysis. Id. The first three factors were equal in importance; the combined weight of the fourth and fifth factors, which were equal in weight to each other, was equal to that of each of the first three factors. Id. The RFP advised offerors what information to provide at their oral presentation.

Prior to the receipt of offers on May 24, the contracting officer and the incumbent contractor, Interjet, exchanged several electronic mail messages, chiefly related to the release of information concerning Interjet’s existing labor agreements. In one of these, dated May 6, the contracting officer addressed and advised the incumbent as follows:

Buon giorno[.] This is just a little gentle advice. When it comes to oral presentations, don’t make the mistake of thinking the customer already knows you and how well you understand the requirement - so you don’t need to prepare/present as good a case as a “newcomer”. The oral presentations will be evaluated on what the panel hears that day. I only offer this as good advice, for I have seen incumbents who went into the process with a “you know me”...and in the process were not very convincing.

Copy of Electronic Mail Message, Subject: Sending E:mail to NRCC, from the Contracting Officer to Interjet (May 6, 1999).

The incumbent expressed its gratitude--“Muchisimas gracias”--by return electronic mail on the next day. Copy of Electronic Mail Message, Subject: Sending E:mail to NRCC, from Interjet to the Contracting Officer (May 7, 1999). The agency received three offers, including those of Jones and Interjet. Interjet made its oral presentation on June 9, and Jones made its presentation on June 11. Evaluators assigned an overall “better” rating to Jones’s proposal and an overall “outstanding” rating to Interjet’s proposal.¹ On June 16, the contracting officer established a competitive range, eliminating one of the three proposals received; she noted a need for discussions with the two remaining offerors. In the case of Jones, the major issues

¹Jones’s presentation received “better” ratings for all criteria except phase-in plan, for which it received a “satisfactory” rating, and Interjet received “outstanding” ratings for all criteria.

involved Jones's [Deleted] on the Navy's price estimate.² In the case of Interjet, one issue involved the incumbent's separate pricing of start up costs, which the RFP required offerors to include in their base year prices. At a meeting on June 28, Interjet provided the contracting officer with a corrected pricing schedule that conformed to the RFP instructions.

As a result of discussions, the contracting officer, who performed the past performance evaluations, rated Jones as "better" for past performance and Interjet as "outstanding." On June 30, she provided Jones and Interjet with the "opportunity to submit a final proposal revision (pricing)." Copy of Electronic Mail Messages, Subject: Final Proposal Revisions-N68171-99-R-0024 (June 30, 1999). Jones attempted to submit new proposed staffing, but the agency, consistent with the solicitation and its June 30 message, declined to consider any supplement to the oral presentation, except as support for the protester's final pricing. Interjet submitted an untimely final offer, but the contracting officer used the schedule submitted during discussions on June 28 to evaluate Interjet's final offer. On July 6, contracting personnel prepared a business clearance memorandum (BCM), which noted Jones's lower price but concluded that "a 5.96% differential (\$290,000 a year) is a modest and marginal differential to pay for the higher (outstanding) capability of Interjet, a contractor who, from every indicator, will perform in an outstanding, quality, timely manner, with the highest customer satisfaction, for the next 10 years." Agency Report, Post-Negotiations BCM, at 11. The agency's Contract Review Board endorsed this recommendation on July 9, and the contracting officer, acting as the source selection authority, selected Interjet as the "best value."

By letter dated July 12, the agency notified Jones of its selection decision and offered to provide the unsuccessful offeror with a debriefing, an offer immediately accepted. During the debriefing, by telephone on July 13, Jones questioned some of the agency's conclusions. This protest followed.

INTERJET EVALUATION

The protester contends that the contracting officer, who performed the past performance evaluation, drafted and essentially controlled the written form of the evaluators' findings, and made the selection decision, which the contract review board approved, was biased in favor of the awardee.³ Jones essentially contends that

²The agency initially provided a price estimate, using the existing contract as a baseline, inviting offerors to identify areas where solicitation requirements were driving prices up, so that the agency might revise its requirements to gain a price advantage. Jones's comments indicated that the agency had underestimated inflation; the agency increased the rate. [Deleted.]

³The protester appears to suggest that it was improper for the contracting officer here to have multiple roles in the procurement. We see nothing inherently wrong (continued...)

the “outstanding” ratings received by Interjet were irrational, considering the merits of the two proposals, and that there was no basis to pay a premium for the awardee's proposal.

Where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and showing that the agency's bias translated into action that unfairly affected the protester's competitive position. Dynamic Aviation--Helicopters, B-274122, Nov. 1, 1996, 96-2 CPD ¶ 166 at 4. Here, we find nothing in the record, including a hearing in which the contracting officer testified, to show that the contracting officer was biased, or that the evaluation or source selection decision was unreasonable.

As evidence of bias, Jones points to the generally “playful” tone of the message exchanges between the contracting officer and the awardee, quoted above, and asserts that her May 6 message, warning the incumbent against complacency based on the agency's knowledge of its capabilities, was improper coaching and should have been shared with the other offerors. We see nothing improper in the exchange, which occurred prior to submission of initial offers; rather, the advice provided by the contracting officer appears to have been no more than a conscientious effort to enhance competition by ensuring that a significant competitor--the incumbent contractor--avoid a mistake often made by incumbents, which is failing to provide information needed for the evaluation, in the belief that the agency already has that information. The message here, in fact, refers to the contracting officer's past experience with such problems. We have no basis to object to the contracting officer's “gentle advice,” apparently given for the purpose of enhancing competition. Cf. Fort Biscuit Co., B-247319, May 12, 1992, 92-1 CPD ¶ 440 at 3 (extending time for submission of best and final offers to accommodate an offeror who failed to submit a timely offer unobjectionable, where purpose is to enhance competition). Moreover, since the advice related to incumbency and therefore was applicable only to Interjet, we see no benefit to be served by sharing the exchange with other offerors, who were not incumbents.

Similarly, we see no merit to the protester's assertion that bias was evident in the fact that the agency accepted untimely comments on the draft RFP from Interjet. Such comments are for the benefit of the agency. Further, the comments of the incumbent contractor are particularly valuable in defining what a draft solicitation may have added or left out of the SOW. In any event, Jones makes no showing that the agency's consideration of those comments resulted in a competitive advantage

(...continued)

with the contracting officer's multiple roles in this procurement, nor does the protester identify any impropriety. See TEAM Support Servs., Inc., B-279379.2, June 22, 1998, 98-1 CPD ¶ 167 at 3-6.

for Interjet or unfairly affected Jones's competitive position, nor is it at all clear how such a result could occur merely by considering the incumbent's comments. Jones contends that it was unreasonable for Interjet to receive so many ratings of "outstanding," as compared to Jones's "better," and that the only explanation for this difference is the incumbency of Interjet, and that Interjet's incumbency improperly influenced the selection decision. In reviewing an agency's evaluation of proposals, our Office will question the evaluation only where it lacks a reasonable basis or is inconsistent with the RFP's stated evaluation criteria. TEAM Support Servs., Inc., *supra*, at 7.

The SSEB report, which we have reviewed, identifies specific strengths in the Interjet proposal, as compared with the Jones proposal, to support the higher ratings assigned to the Interjet proposal as reasonable and consistent with the stated criteria. The record shows that the evaluators rated the incumbent's proposal "outstanding" for all five factors of the oral presentation--understanding and approach, management of the operation and key personnel, staffing, phase-in plan, and risk analysis--and "outstanding" on the oral presentation overall. It contains detailed information that supports these ratings, and the board's findings consistently follow the stated evaluation criteria. Except in one instance, as noted below, Jones raises no specific challenge to any of the "outstanding" ratings that Interjet received, or to the findings of evaluators that formed the foundation for those ratings.

The only specific objection to the evaluation of the awardee's proposal raised by Jones relates to the risk analysis. Jones points out that the evaluators noted that Jones's proposal, which received a "better" rating for risk analysis, might have received a higher rating if its contract at [Deleted]. Specifically, the record shows that, to mitigate the risk of equipment failure, the protester had indicated that [Deleted]. While Jones argues that Interjet, by contrast, had no other contract from which it might transfer assets in the event of equipment failure, and therefore should not have received an "outstanding" rating. Interjet proposed to purchase new equipment to reduce breakdowns and represented that it had arranged to rent or borrow vehicles in the case of breakdown. In short, [Deleted] while Interjet's proposal did not. Therefore, in our view, it was not unreasonable for evaluators to rate the one proposal as "outstanding," while rating the protester as only "better," given the different strategies that they proposed for addressing equipment failure risk.

Other than the challenge to the risk analysis evaluation, which we conclude has no merit, Jones makes no specific challenge to any of the "outstanding" ratings received by Interjet. Based on the record, we cannot conclude that the "outstanding" ratings assigned to Interjet's proposal were unreasonable in any area, or that the overall "outstanding" rating was either unreasonable or inconsistent with the RFP.

JONES EVALUATION

Jones contends that the RFP provided for an evaluation of past performance based on “customer satisfaction,” rather than on performance of similar contracts. It was therefore improper, the protester asserts, for the agency to consider the size of its prior contracts during the past performance evaluation.

As noted above, the RFP defined past performance as “a measure of the degree to which an offeror satisfied its customers in the past.” RFP amend. 1, at 98. However, it also asked offerors to submit information on contracts “similar in scope, magnitude and complexity to that required by the RFP.” *Id.* at 97. We note, further, that whatever language an RFP may use, Federal Acquisition Regulation (FAR) § 15.305(a)(2) requires that contracting officers at least consider the relevance of past performance information in their evaluations. While we have held that the RFP must advise offerors of the criteria by which the agency will judge the merit of their proposals, an agency may consider specific, albeit not expressly identified, matters logically encompassed by or related to the stated criteria. Science Management Corp., B-207670, Sept. 23, 1983, 83-2 CPD ¶ 362 at 5. Indeed, we consider it both illogical and unreasonable to presume that an agency will pay no attention to the size and similarity of past contracts in its evaluation, factors that are germane to the relevance of the past performance information, especially where, as here, the RFP requires offerors to submit such information, and we cannot find the agency’s evaluation of past performance here unreasonable.

Jones also objects to certain of the agency’s evaluation findings regarding its proposal. For instance, evaluators, who rated the protester as “better” for understanding of communication/management of information systems, noted that [Deleted]. Jones argues that the RFP did not require such a commitment. The record, however, does not show that evaluators treated a commitment from the systems administrator as a requirement. Rather, the evaluators believed only that such a commitment would have strengthened a proposal that essentially offered that individual as a means of meeting RFP requirements [Deleted]. We cannot find the evaluation unreasonable in this regard.

Evaluators also rated the protester’s proposal as “better” for understanding of transportation services. In assigning this rating, evaluators concluded that the protester may have assumed that the solicitation overstated requirements, in terms of the number of people who would require transportation at any given time; however, they concluded that the backup capabilities proposed would be sufficient to meet requirements. Jones contends that it was inconsistent to conclude that it had underestimated requirements, while also concluding that it had proposed sufficient capacity to meet those requirements. The evaluators concluded that Jones had sufficient capacity if they factored in the proposed backup resources capability. It was not unreasonable, as here, for the agency not to give the Jones proposal the highest rating, where the proposal offers resources that provide sufficient capacity in normal operations, only if its “backup” resources are used.

As noted above, the agency's request for final proposal revisions was an invitation for revised pricing, and the agency declined to consider Jones's proposed staffing revisions. Jones protests this refusal. We consider the refusal to consider these changes, however, consistent not only with the request for final revisions but with the initial RFP, which provided for an evaluation based on the offeror's oral presentation.⁴

SOURCE SELECTION

With regard to the selection decision, the solicitation provided for award on a best value basis, with relative capability of equal importance with price in the selection decision. The selection decision here, came down to whether the "marginal" difference in capability is worth the 'marginal' difference in price." Post-Negotiation BCM at 7. As quoted above, the contracting officer concluded that the awardee's "outstanding" proposal was worth the 5.96 percent premium compared with Jones proposal. We have no basis to find that it was unreasonable to select Interjet considering the differential here and the RFP provisions for award based on best value.

To the extent the protester argues that the agency could not take into consideration that the incumbent contract "required little attention and management," Protester Hearing Comments at 1, we think it was entirely appropriate for the evaluators and contracting officer to consider this favorable past performance. This is precisely the type of information that should be considered in a source selection. TEAM Support Servs., Inc., supra.

The protest is denied.

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⁴At a hearing conducted for the purpose of resolving the bias issues, Jones asserted, for the first time, that, while the agency evaluated past performance for similarity of past contracts, there was no basis to rate Interjet's past performance as "outstanding," since the ATOC operation had never been performed by Interjet under its prior contracts. In this regard, although the contracting officer testified that the ATOC operation was only a "little" part of the operation, she also inconsistently referred to it as the "heart" of the operation. Jones Post-Hearing Comments at 3-4. We note that the record here shows that, although Interjet was never responsible for ATOC operations under its current contract, it was intimately familiar with the overall operation and that its technical proposal showed "outstanding" understanding of the requirement. Ultimately, however, this challenge to the past performance evaluation, first raised at the hearing on September 14, 4 weeks after the protester received the complete record from the agency, is untimely. 4 C.F.R. § 21.2(a)(2) (1999).