



Bid Protest Weekly

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Introduction

General Counsel, P.C.'s Government Contracts Practice Group is pleased to provide you with the *Bid Protest Weekly*. Researched, written and distributed by the attorneys of General Counsel, P.C., the *Bid Protest Weekly* allows the Government Contract community to stay on top of the latest developments involving bid protests by providing weekly summaries of recent bid protest decisions, highlighting key areas of law, agencies, and analyses of the protest process in general.

General Counsel, P.C.'s Government Contracts Group has over fifty years of combined government contract law experience (both as in-house and outside legal counsel), helping clients solve their government contract problems relating to the award or performance of a federal government contract, including bid protests, contract claims, small business concerns, and teaming and subcontractor relations.

If you have any questions or comments regarding the discussed content, or questions about bid protests, please feel free to contact the attorneys at General Counsel, P.C. at (703) 556-0411 or visit us at www.generalcounselaw.com.

1. **Keystone Sealift Services, Inc., B-401526.3, April 13, 2010**

Link: [GAO Opinion](#)

Agency: Military Sealift Command

Disposition: Protest denied.

Keywords: Best value; Proposal Detail; Debriefing

General Counsel P.C. Highlight: Offerors bear the burden of submitting adequately written proposals. With some exceptions not applicable here, contracting agencies are not obligated to go in search of information that offerors have omitted, placed in other parts of their proposal, or failed to present in sufficient detail. Also, in resolving a protest, GAO will consider only the evaluation or decision itself and not any after-the-fact statements made by the Agency or descriptions offered during the debriefing.

The Navy's Military Sealift Command issued a request for proposals (RFP) for the operation and maintenance of a certain class of Navy ship as a part of the Navy's surge project, which involves the quick transition of ships from reduced to full operating status. The RFP contemplated the award of a fixed price contract on a "best value" basis. The evaluation for this award was based on four factors – technical, past performance, socioeconomic program utilization, and price. The technical factor was further divided into subfactors for ship operations and manning, maintenance and repair (M & R), contract administration, management of reimbursables and purchasing system, and accounting system.

Seven offerors submitted proposals. After an initial evaluation, the agency established a competitive range that included the protester and the awardee, entered into discussions with the offerors, and requested final proposal revisions. Based on the evaluation results, the source selection authority concluded that General Dynamics American Overseas Marine's (AMSEA) proposal was the best value. Keystone Sealift Services, Inc. (KSS) then protested, alleging the agency's evaluation of its proposal was unreasonable.

KSS challenged the rating of its proposal under several of the subfactors under the technical factor. Principally, KSS argued that the agency had improperly failed to assign certain strength ratings for work that it had completed on previous projects.

In considering a protest related to an agency's evaluation, GAO will examine the evaluation to determine whether it was reasonable and consistent with the terms of the RFP and applicable statutes and regulations. Here, GAO determined the evaluation to be reasonable. While KSS's proposal had referred to its experience on prior projects, it focused on the maintenance and repair work performed after conversion and reflagging, rather than any significant detail addressing the conversion work itself or how that work was relevant to the RFP requirements. Because of the lack of detail in the proposal for the conversion work, GAO determined the agency's assignment of a lower rating to be reasonable. Moreover, while there was information elsewhere in the KSS proposal that partially related to this factor, GAO asserted that, with some exceptions not applicable here, offerors bear the burden of submitting adequately written proposals and that contracting agencies are not obligated to go in search of information that offerors have omitted or failed to present in sufficient detail.

KSS also protested its evaluation under the contract administration and property management subfactors based on statements allegedly made at the debriefing. The alleged debriefing statements turned out to be incorrect and did not accurately reflect the evaluation record. GAO noted that a debriefing is only an explanation of the agency's evaluation and source selection decision, not the evaluation or decision itself. In resolving a protest, GAO will consider only the evaluation or decision itself and not any statements made by the Agency during the debriefing. Because the evaluation record did not support the protester's allegations, the protest in this regard was denied.

2. La Dolce Vida Catering, B-402421, April 15, 2010

Link: [GAO Opinion](#)

Agency: Department of Transportation

Disposition: Protest denied.

Keywords: Technical Evaluation

General Counsel P.C. Highlight: When GAO reviews a protest that alleges an improper evaluation, it does not substitute its judgment for that of the agency's, but rather examines the record to determine whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable law.

The Department of Transportation issued a small business set-aside request for proposals (RFP), which contemplated the award of a no-cost contract for operation of DOT's Volpe National Transportation Systems Center cafeteria. The RFP required each proposal to include a "technical description of the items being offered in sufficient detail to evaluate compliance with the requirements of the solicitation." The RFP also advised that award would be made based on an evaluation of technical capability, staffing, and relevant past performance, as well as the reasonableness of the firm's pricing structure.

The agency awarded the contract to Regent School Catering FCS, Inc., the company rated the highest in technical merit. La Dolce Vida Catering protested the award.

In its protest, La Dolce Vida challenged the agency's evaluation of the proposals and its selection of Regent. When GAO reviews a protest that alleges an improper evaluation, it does not substitute its judgment for that of the agency's, but rather examines the record to determine whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. Based on the record here, GAO found no basis to question the agency's evaluation. In fact, it found that in each evaluation area, the record reflected additional detail and strengths for the Regent proposal that were reasonably given more evaluation credit than La Dolce Vida's proposal. While both proposals contained strengths and weaknesses, the record sufficiently reflected the fact that La Dolce Vida's weaknesses were greater than Regent's, and thus warranted a lower evaluation rating. Based on this determination, GAO denied La Dolce Vida's protest.