

HQ, U.S. ARMY LITIGATION CENTER  
DEPARTMENT OF THE ARMY  
CONTRACT APPEALS DIVISION, USALSA  
901 N. STUART STREET, SUITE 500  
ARLINGTON, VA 22203-1837  
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703-696-2835 phone  
703-696-1537 fax

*facsimile transmittal*

Date: 23 September 2004  
Re: GAO Protest of Government Contracts Consultants (B-294335)  
From: Susan G. Kelly, Paralegal Specialist

NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 7

Name	Firm/Agency	Phone No.	Fax No.
Mr. Kevin LaChance, Esq.	AFZN-JA-CIV	785-239-6175	785-239-0575
Ms. Joann Langston	PARC	757-788-2784	757-788-4179
Julie Bowell	Contracting Officer	785-239-0461	785-239-0575
Mr. Roger Neds	ACA	757-788-5455	757-788-2656

**MESSAGE**

Accompanying this header sheet is notification of a GAO Decision and the Bid Protest After Action Report pertaining to the above-mentioned subject matter. If transmission problems occur, please contact Ms. Susan G. Kelly, 703-696-2835 or DSN: 426-2835. All other matters please contact MAJ Jennifer S. Zucker, Trial Attorney, at 703-696-2805 or DSN 426-2805.

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REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
UNITED STATES ARMY LEGAL SERVICES AGENCY  
901 NORTH STUART STREET  
ARLINGTON, VA 22203-1837  
(703) 696-2835 DSN 426; Fax ext. 1637  
E-mail: Susan.Kelly@hqda.army.mil

S: 08 October 2004

JALS-CA (715y)

23 September 2004

MEMORANDUM FOR HQ, U.S. Army Garrison, ATTN: AFZN-JA-CIV (Kevin LaChance, Esq.), Bldg 200, Patton Hall, Fort Riley, KS 66442-0248

SUBJECT: GAO Protest by Government Contracts Consultants (B-294335)

1. We enclose for your information and appropriate action a copy of the decision denying the subject protests.
2. In accordance with AFARS § 33.190-1, you are required to submit a bid protest after-action report (including agency-level protest) to this office not later than 15 days following the notification of resolution of the protests, including resolution by withdrawal.
3. If you should have any questions or comments, please contact Ms. Susan G. Kelly, Paralegal Specialist, at DSN 426-2835 or commercial 703-696-2835. Ms. Kelly's e-mail address is Susan.Kelly@hqda.army.mil.

Sincerely,

*for Susan Kelly*  
 RAYMOND M. SAUNDERS  
 Chief Attorney for Bid Protests  
 Contract Appeals Division

Encls

1. Decision
2. After-Action Report Form

Copies Furnished:

U.S. Army Contracting Agency, Headquarters, Northern Region, ATTN: SFCA-NR  
 (Joann Langston, PARC), 11 Bernard Road, Fort Monroe, VA 23651-5000  
 - via facsimile 757-788-4179

Department of the Army, Office of the Assistant Secretary of the Army, Acquisition  
 Logistics and Technology, Army Contracting Agency, Directorate of Contracting,  
 ATTN: Julie A. Bowell, Contracting Officer, P.O. Box 2248, , Fort Riley, Kansas  
 66442-5000 - via facsimile 785-239-0575



**GAO**

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United States General Accounting Office  
Washington, DC 20548

## Facsimile Transmission Sheet

**Date:** September 23, 2004

Number of pages, including this cover sheet:

**Re:** B-294896

If transmission problems occur, please call  
202-512-1768.

Protest of Gov't Contracts Consultants

Our fax number is 202-512-8749.

**From:** Jennifer Westfall-McGrail, Senior Attorney

Name	Firm/Agency	Phone	Fax
James D. Bailey	Government Contract Consultants	301-722-4484	301-722-4487
Major Jennifer Zucker	Department of the Army	703-696-2805	703-696-1537



**G A O**

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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Government Contracts Consultants

**File:** B-294335

**Date:** September 22, 2004

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James D. Bailey for the protester.

Maj. Jennifer S. Zucker, Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protester's contention that awardee's price is too low to have been based on an adequate staffing level does not raise serious concerns that contracting officer ignored relevant information in finding awardee responsible so as to trigger GAO review of contracting officer's affirmative responsibility determination.

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### DECISION

Government Contracts Consultants (GCC) protests the Department of the Army's selection of Ultima Services Corporation under request for quotations (RFQ) No. W911RX-04-T-0100, for postal services at Fort Riley, Kansas. The protester contends that Ultima's price is unreasonably low and that the awardee lacks relevant experience.

We deny the protest.

The RFQ requested prices for a base and 3 option years and contemplated the award of a fixed-price contract.<sup>1</sup> In section M, the RFQ provided both for award to the lowest-priced responsible vendor, and for award to the responsible vendor submitting the quotation evaluated as most advantageous to the Government, price and past performance (which were of equal weight) considered.

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<sup>1</sup> We note that while the solicitation was styled a request for quotations, in various places it uses terms associated with a request for proposals, and specifically provides for award of a contract to the successful firm. See RFP § L at 58; § M at 60.

Only GCC and Ultima submitted quotations. Ultima's quoted price of \$517,450.71 was less than half GCC's price of \$1,115,182.66, and both vendors were found to have good past performance. The contracting officer selected Ultima's quotation for award.<sup>2</sup>

The protester argues that Ultima's price is too low to be based on the minimum number of personnel required to perform the contract work satisfactorily, and that the agency was remiss in failing to perform a price realism analysis of the quotation.

Regarding the protester's assertion that Ultima's price is too low, a protester's claim that another firm submitted an unreasonably low price—or even that the price is below the cost of performance—is not a valid basis for protest. Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 4. A firm, in its business judgment, properly may decide to submit a price that is extremely low. Id. An agency decision that the firm can perform the contract at the offered price is an affirmative determination of responsibility that we will not review absent an allegation that definitive responsibility criteria in the solicitation were not met or the identification of evidence raising serious concerns that, in reaching the responsibility determination, the contracting officer unreasonably failed to consider available relevant evidence or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2004); Consortium HSG Technischer Serv. GmbH and GeBe Gebäude- und Betriebstechnik GmbH Südwest Co., Mgmt. KG, B-292699.6, June 24, 2004, 2004 CPD ¶ 134 at 4. The protester has not alleged that definitive responsibility criteria were not met and its only evidence that the contracting officer failed to consider available relevant evidence in determining Ultima responsible is that Ultima's price is, in the protester's judgment, too low to have been based on an adequate level of staffing. This is not, in our view, a proffer of evidence sufficient to raise serious concerns that the contracting officer ignored relevant information in making her determination.

Further, regarding the protester's claim that the agency should have performed a realism analysis of Ultima's quoted price, where, as here, a solicitation contemplates the award of a fixed-price contract, the agency is not required to conduct a realism analysis. This is because a fixed-price (as opposed to a cost-type) contract places the risk and responsibility for loss on the contractor. Rodgers Travel Inc., B-291785, Mar. 12, 2003, 2003 CPD ¶ 60 at 2.

GCC also argues that Ultima "lacks the required relevant experience to perform." Protest at 4. The protester asserts in this regard that Ultima has not previously

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<sup>2</sup> At the time the contracting officer selected Ultima for award in late June, funding for the contract, on which performance was to begin in fiscal year 2005, was not yet available; hence, no award was made at that time.

performed a contract for postal operations, and that Ultima is currently performing a contract at Fort Riley for school crossing guard services.

The solicitation did not require that vendors have experience in the operation of a postal facility; it merely required that they furnish three references for work the same as or similar to the work set forth in the solicitation to permit the agency to perform an evaluation of their ability to perform.<sup>3</sup> To the extent that the protester is arguing that because Ultima had not previously performed a contract for postal operations, the agency could not reasonably have determined it responsible, as noted above, we will not—except in circumstances not present here—review an affirmative determination of responsibility. In the alternative, to the extent that the protester is arguing that the agency could not reasonably have rated Ultima's past performance as good, the record shows that the evaluation was based on favorable references from four prior contracts, three of which involved work considered by the agency to be similar to the work required under the RFQ. We see no basis to find unreasonable the agency's determination that three of the awardee's contracts were relevant and warranted a "good" rating in the past performance area.<sup>4</sup>

Finally, the protester complains that the RFQ was ambiguous in that it provided for award on two different bases, *i.e.*, to the lowest-priced responsible vendor, and to the responsible vendor submitting the quotation evaluated as most advantageous to the government, price and past performance considered. This complaint, which is based on an alleged impropriety apparent on the face of the solicitation, is untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (protests based on alleged improprieties in a solicitation which are apparent prior to the time set for receipt of quotations shall be filed prior to the time set for receipt); *Watchdog, Inc.*, B-258671, Feb. 13, 1995, 95-1 CPD ¶ 69 at 5. In any event, the selection of Ultima, which had a past performance rating equivalent to and a price significantly lower than the protester's, was consistent with both methodologies.

The protest is denied.

Anthony H. Gamboa  
General Counsel

<sup>3</sup> As the protester points out in its comments, the RFQ did require that both the project manager and alternate project manager have experience with a mail distribution center; we fail to see the relevance of these requirements pertaining to employee qualifications to the protester's argument, however.

<sup>4</sup> Our discussion of the agency's evaluation of the awardee's past performance is necessarily limited because the specific information considered was designated as protected by the agency and therefore not furnished to the protester. Our Office received and reviewed all the information, however.

**5153.9006 - Format for a Bid Protest Action Report.**

**Bid Protest Action Report**

Protester: \_\_\_\_\_

Protest number: \_\_\_\_\_

Protest Forum (GAO/AGENCY): \_\_\_\_\_

Has there been a FOIA request or Congressional, OSD, HQDA, media, or other high level interest in any aspect of the protested acquisition or action (including the time period prior to any protest)?

**Circle One: Preaward/Post Award Negotiated/Sealed Bid**

**Best Value: Yes No**

Description of item or service:

Solicitation No:

Contract No:

Awardee:

Award Date: \_\_\_\_\_ Award Amount:

Estimated Amount (if preaward):  
(Do not round off/abbreviate dollar amounts)

Stop Work? Yes No If Yes, date issued:

Attorney assigned to the protest (include phone):

Contracting Officer (include phone):

Lessons Learned and legal/acquisition costs are to be submitted by letter covering a copy of decision.

\*\*\*\*\*  
\*\*\* RX REPORT \*\*\*  
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RECEPTION OK

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