

June 6, 2002

P.S. Protest No. 01-12

HIGH COUNTRY CHEMICAL SUPPLIES, INC.

Solicitation No. 483083-01-A-0074

DIGEST

Protest of award of contracts for supply of custodial products is denied. Protester's offer was properly evaluated; discussions concerning the offer were not required, and various actions taken in the course of evaluation and award did not prejudice the offeror.

DECISION

High Country Chemical Supplies, Inc., protests the award of contracts for custodial products to Cleanwise, Inc., and W.W. Grainger, Inc.

On March 23, 2001, the Dallas Purchasing and Materials Service Center issued an Invitation to Pre-Qualify seeking "a select number of 'best-qualified' suppliers in anticipation of issuing a solicitation for custodial products on a national basis." Prospective suppliers were to complete a Prequalification Statement responding to four evaluation factors. Three of the factors (electronic data interchange capability, national capability, and financial capability) were to be scored on a pass/fail basis; the fourth factor, past performance (which also included a key personnel requirement) was scored on the basis of as many as 950 points. Nineteen suppliers responded to the invitation; ten suppliers, including High Country, were selected for the prequalified list. Those ten included all of the firms which had met the requirements of the first three factors; their scores for the fourth factor ranged widely, from the low 900s to the low 400s.

On June 4, the P&MSC issued solicitation 483083-01-A-0074 to the ten prequalified offerors. Paragraph 1.1.1. of attachment #5, Statement of Work, noted the Postal Service's intent "to award multiple, full-line, national contracts for custodial products to a limited number of preferred suppliers."

Section M.3., Contract Award and Proposal Evaluation, provided as follows:

a. Award will be made to the responsible offerors whose proposal [sic] offer the best value to the Postal Service, (i.e., a combination of price, price-related factors and/or other factors). The primary areas to be used in determining which proposals offers [sic] the best value to the Postal Service are listed below in descending order of importance:

- National Capability
- Electronic Data Interchange . . .
- Management and Implementation Plan
- Catalogs
- Product Offering (including JWOD items)^[1]
- Alternative Ordering Processes
- Delivery and Distribution
- Supply Chain Management
- Training (product and customer service)
- Reporting
- Quality Assurance
- Environmental Issues Compliance
- Sub-Contracting Plans
- JWOD Compliance

b. Cost/price will be considered in the award decision, although the award may not necessarily be made to the offeror submitting the lowest price.

c. Subcontracting plans, if required, will be reviewed for acceptability in the types and amounts of subcontracts to small, minority-owned, and woman-owned business concerns. If the solicitation results in a contract for more than \$1 million, the otherwise successful offeror must have an acceptable Small, Minority-owned, and Woman-owned Business Subcontracting plan to receive award of the contract. (See Clause 10-2, Small, Minority-owned and Woman-owned Business Subcontracting Requirements.^[2]^[3])

¹ "JWOD" is a shorthand reference to the procedure under which the Postal Service and other federal agencies are required, pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. §§ 46-48, to purchase certain supplies from workshops which employ people who are blind or severely disabled. See, generally, Purchasing Manual (PM) 3.3.3.

² The clause with this title (PM clause 3-1) appeared at H.18 of the solicitation. It advised, in part, that "[a]ll suppliers except small business must submit a subcontracting plan that is specific to this contract, and that separately addresses subcontracting with small, minority and woman-

(Footnote continued on next page.)

The solicitation included Attachment 9, Evaluation and Selection Process, (E&S) which provided five pages of direction concerning the preparation of proposals. The first paragraph (1.0.1) of the attachment included this statement:

Suppliers should be sure to address *all* of the evaluation factors in their Technical Proposals so that evaluators will clearly understand how the supplier intends to meet Postal Service performance expectations. [Emphasis in original.]

Section 3.0 of attachment 9 instructed offerors how to submit pricing information on Excel spreadsheets for 97 non-JWOD products and 95 JWOD products using the diskette furnished with the solicitation which indicated the appropriate unit of issue and the estimated annual demand. Offerors were to furnish for each item their most-favored-customer price and the percentage discount from that price for the Postal Service.

Nine of the ten pre-qualified offerors submitted proposals. The contracting officer assembled six specialists in material management, equipment, and maintenance operations from throughout the Southwest Area to evaluate and score the pro-

(Continued from previous page.)

owned businesses.” Similar advice was provided by the provision at K.20, Notice of Small, Minority and Woman-owned Business Subcontracting Requirements, which stated:

All suppliers, except small businesses, or unless this purchase is being made under commercial purchasing procedures, must submit with their proposals the contract-specific subcontracting plan required by the Clause 3-1, Small, Minority, and Woman-owned Business Subcontracting requirements. Generally this plan must be agreed to by both the supplier and the Postal Service before award of the contract.

Section 1.0.4 of Attachment 9 discussed the requirement for a subcontracting plan in somewhat different terms from H.18 and K.20:

Suppliers must have an acceptable Small, Minority-owned, and Woman-owned Business Subcontracting Plan to be considered for contract award. Subcontracting plans will be reviewed for acceptability in the types and amounts of subcontracts to small, minority-owned, and woman-owned business concerns.

³ Section 1.1.1 of Attachment 9 to the solicitation, Evaluation and Selection Process, set out a slightly different weighting scheme than that of provision M.3:

The supplier’s demonstrated technical understanding of National Capability, Electronic Data Interchange (EDI), and the Management and Implementation Plans are performance evaluation factors of equal importance. All other evaluation factors are listed in descending order of importance.

posals. The offerors' electronic data interchange (EDI) capabilities were evaluated by postal headquarters' System Integration office, and those scores were incorporated in the final technical score for each vendor.

The evaluation team and some of the offerors identified errors in the submitted pricing data. The typical form of error was listing a price for a multiple-unit case rather than for a single unit of the item as requested. In addition, the team identified approximately fifteen individual product items where problems with the offerors' pricing were identified. Those items were deleted from the price evaluations for all offerors.

The members of the technical evaluation team reviewed and scored each vendor's proposal individually. Then, as a group, they discussed each proposal in order to reach a consensus score for each evaluation factor. The team then prepared a Consensus Summary Report for each proposal that set out the consensus score for each factor. Finally, the core purchase team, seven purchasing specialists from the Dallas P&MSC, compared the scored proposals to rank them and to make a recommendation to the contracting officer. The contracting officer considered the recommendations and reviewed the proposals as necessary.

The final consensus of the technical evaluators rated W.W. Grainger first in the final ranking, Cleanwise second, and High Country seventh. In the evaluated pricing, Cleanwise was ranked first,⁴ W.W. Grainger was ranked third, and High Country was ranked fourth. The offeror ranked second as to price had been ranked eighth technically and was not further considered. Cleanwise had not been required to submit a subcontracting plan because it was a small business. Prior to reaching an award decision, the contracting officer requested it to submit a subcontracting plan and did not make award until the plan was received and determined to be acceptable.

Contracts were awarded to W.W. Grainger and Cleanwise on August 13, and the other offerors were notified of the awards by letters of that date. The letters noted the awardees' technical and price rankings, and advised offerors that debriefings could be requested in writing and that "brief questions" could be posed by telephone.

High Country requested a debriefing, which it received by telephone on August 23. The contracting officer's statement describes the debriefing thus:

⁴ Johnson Wax offered the same prices as Cleanwise. According to the "Contracting Officer's Business Decision" discussing the basis for award, Johnson Wax and Cleanwise were "working in an ongoing partnership." Johnson Wax had the fifth-highest technical score.

[T]he contracting officer discussed the technical and price rankings, as well as the shortcomings of High Country's proposal. High Country was concerned about its EDI ranking, but the contracting officer explained that EDI was one of the company's strengths. . . . Near the conclusion of the discussion, the contracting officer offered to provide in writing information about the strengths and weaknesses of High Country's proposal. High Country accepted the offer but asked that he focus simply on the weaknesses.

The contracting officer's August 21 letter described High Country's technical and price ranking as set out above, and included the following two paragraphs:

Your proposal focused primarily on how you support the Western US in your current regional contract. You did not elaborate sufficiently in addressing the specifics of the Statement of Work in meeting our nationwide needs. Shortcoming were in National Capability, Delivery & Distribution, Training, and Environmental.

Your Customer Service Unit has only minimal staff, which is viewed as insufficient to support the possible alternatively processed orders.

The contracting officer's statement summarizes the "four iterations"⁵ of High Country's protests. "The thrust of High Country's protest is threefold. First, the Postal Service's evaluation of its technical proposal was flawed and that, with a proper evaluation, High Country's proposal 'would have resulted in High Country's proposal being ranked as the highest technically-rated offer' rather than seventh out of the nine proposals submitted. Second, the Postal Service failed to conduct meaningful discussions. Finally, the Postal Service's ranking of High Country's pricing as fourth in a field of nine indicates that its pricing was not properly evaluated." (Citations omitted.)"

As to the first point, "High Country has protested the reasonableness of the Postal Service's evaluation of its national capability, its delivery and distribution, its product and customer service training, and its compliance with the environmental-issues factor. It also contends, in connection with the award of contracts to Grainger and Cleanwise, that the Postal Service failed to evaluate — or ig-

⁵ "The company president's letter dated September 4, 2001, was followed by Supplemental Statements from protester's counsel dated, respectively, September 6, October 9, and October 18. The initial protest from the company president raised issues different from those subsequently raised by counsel, suggesting that "internal politics" involving the assignment of the custodial solicitation to the Dallas P&MSC instead of the Denver P&MSC affected its technical score, and that its interview of a member of the prequalification team revealed bad faith or prejudice in the selection of awardees. Because those points were not pursued and nothing in the protest record suggests their merit, these issues are not further discussed.

nored — the technical-proposal requirements that offerors provide a subcontracting plan and an explanation as to how to assure compliance with the Javits-Wagner O’Day (“JWOD”) Act requirements.”

As to the second point, “High Country alleges that the Postal Service should have conducted adequate discussions with High Country to provide it an opportunity to correct weaknesses the Postal Service perceived in its proposal. . . . High Country [also] complains that the Postal Service’s failure to hold a discussion with High Country to permit it to explain where certain information was located was unfair, particularly since the Postal Service admitted it held discussions with Grainger and Cleanwise.”

As to the third point, “High Country complains that the evaluation failed to encompass certain price discounts it offered.”

“Central to High Country’s protest are issues involving the Quality Supplier Award (QSA) that the Postal Service awarded to High Country on May 11, 2001.⁶ First, should the QSA, by itself, have given High Country any special status or additional scoring advantage in the custodial products acquisition[?] And second, was the QSA considered at all by the evaluators[?]”

With regard to these matters, the contracting officer’s statement makes the following points:

- While High Country has standing to challenge the evaluation of its proposal, it has standing to challenge the awards to Grainger and Cleanwise only if it prevails sufficiently in its challenge to its evaluation to be in line for award if the decision with respect to the successful proposals were reversed.
- “High Country’s allegations [concerning the evaluation of its proposal] do not overcome the ‘presumption of correctness’ afforded the contracting officer’s statements and, thus, the contracting officer’s decision must stand.”
- “The Postal Service’s evaluation of High Country’s technical proposal was reasonable, and High Country’s unsupported allegations do not prove an arbitrary or capricious decision on the part of the contracting officer. High Country’s proposal was fully and fairly evaluated in accordance with the solicitation”
- “High Country’s technical proposal[‘s] . . . ranking was not arbitrary High Country simply did not provide all necessary information in its techni-

⁶ High Country was one of nine award winners in 2001, winning in the category “Small Business – Operational Supplies.”

cal proposal. High Country failed to address requirements that the supplier currently have 'the distribution network . . . to satisfy all Postal Service requirements for custodial products on a national level' (SOW § 2.1) or to explain (E&S section 2) how it would meet the requirements for a national distribution network, including Alaska, Hawaii and its related islands, Puerto Rico and the U.S. Virgin Islands."

- SOW § 2.10 and E&S § 2.3 discussed customer-service processes to support the contract and training, including fourteen elements of customer service training. "High Country's proposal talked primarily of the product training it offers in addition to training on its electronic ordering system. . . . High Country did not, however, adequately address the customer-service requirements, and that failure was reflected in its score. . . ."
- The SOW identified environmental issues relevant to the procurement, including the availability of Material Safety Data Sheets ("MSDS") and the solicitation also required that the offeror describe its plan to include recycled, recyclable and recycled-content products; address how it would assist the Postal Service in eliminating or reducing seventeen targeted chemicals; and address how it would provide more environmentally preferable products. "It appears from the scoring that few, if any, points were given for this section of High Country's proposal because the only required element addressed was that of the availability of MSDS's"
- Some information relevant to High Country's specific capabilities which were to be supplied in its offer (e.g., its national distribution capabilities) had been included among data submitted earlier as part of High Country's pre-qualification package. The protester alleges that such information was readily available and at the Postal Service's fingertips. High Country "ignored specific instructions in the solicitation to 'be sure to address *all* of the evaluation factors in its Technical Proposal so that evaluators will clearly understand how the supplier intends to meet Postal Service performance expectations.' . . . As the General Counsel's office has noted, 'the contracting officer [is] not obligated to seek out information that should have been in the proposal. The burden to submit an adequately written and complete proposal [is] the protester's.' *Paramount Mechanical Corporation*, P.S. Protest No. 97-24, November 12, 1997, at 7"
- "The Postal Service's purchasing regulations explicitly exclude any requirement for discussions with multiple offerors when discussions are held with one offeror. ([PM] 4.2.5.c.2.) 'Discussions need not be held with individual suppliers when, after evaluation and comparison of their proposals, it becomes apparent that their proposals do not offer the best value to the Postal Service and could not be improved to do so without extensive and substantial revision.' *The Datastore Incorporated*, P.S. Protest No. 00-04, May 25, 2000, at 4 (quoting PM 4.2.5.c.2.). Here, after the evalua-

tions and comparisons of the proposals, neither the evaluation team nor the contracting officer found it necessary to initiate discussion with High Country.”

- “[T]he solicitation provided that the contract could be awarded on the basis of initial proposals received, without discussions. . . . The solicitation further cautioned offerors that ‘each initial proposal should contain the offeror’s best terms from a cost or price and technical standpoint.’ . . . The Postal Service was not unfair in not holding a discussion to clarify where missing information might be found. High Country simply failed to sustain its burden of submitting an adequately written and complete proposal. And, after evaluation and comparison of the offerors’ proposals, it became apparent that High Country’s proposal did not offer the best value to the Postal Service without extensive and substantial revision. As such, there was no need to hold discussions with High Country. . . .”
- The price discounts High Country contends should have been considered were not requested in the solicitation. High Country proposed additional discounts in the form of rebates based on purchases that exceeded specified dollar thresholds. In addition, it offered a discount on individual orders over a specified dollar amount. “High Country’s additional rebates and discount were not considered in the price evaluations for two reasons. The first reason was the uncertainty of achieving the dollar levels or order size necessary to activate the rebates or discount. The second — and more important — reason was that the solicitation prescribed how pricing data were to be submitted and described how the data would be evaluated. Section 3.0 of the E&S stated that all price proposals would be evaluated on the same items and quantities, using the vendor’s proposed discount from its most-favored-customer pricing. As described above, the evaluation committee followed these directions exactly for all vendors. . . . Using the price discounts offered by High Country would not have been consistent with the terms of the solicitation. Notwithstanding High Country’s complaints, the Postal Service could not properly consider the proposed discounts in its evaluation.”
- A Quality Supplier Award recognizing excellence in performance would have been considered as an element of past performance, a major evaluation factor in the prequalification process. However, High Country received the QSA award five weeks after the request for prequalification statements had closed, and in the same week that the prequalification evaluators wrapped up their report. High Country’s past performance was fully evaluated without regard to the QSA. All ten of the prequalified firms then started on an equal footing as offerors with respect to the solicitation.
- “In contrast to the supplier-specific orientation of the prequalification process, the proposal evaluation process was contract specific. That is, it fo-

cused on whether and how well an offeror (already determined to meet certain minimum standards) could perform the specific contract at issue. The QSA and its component elements were not among the fourteen evaluation factors in this solicitation. Therefore, the fact of the award was, properly, not considered by the evaluators of the proposals. . . . Nevertheless, to the extent information relevant to the performance of the contract at issue was also reflected in the QSA information, the evaluators considered it in scoring High Country's submission."

- High Country's allegation that the awardees may not furnish the various JWOD products timely or (in some cases) not at all is unsupported. The protester has offered no factual basis for this ground of its protest, and the contracting officer is aware of none. High Country's allegations thus are mere conjecture and, as such, are insufficient to support a successful protest.

The protester submitted additional comments which the contracting officer has rebutted as follows:

- "High Country's repeated allegations that the Postal Service's evaluation of the vendors' technical proposals failed to meet the section 4.2.5 requirements of the Purchasing Manual do not withstand scrutiny. The record compiled by the technical evaluation team, the core purchase team, and the contracting officer fully supports the technical evaluation of High Country's proposal. . . . The . . . case relied on by High Country, [*J. W. Associates, Inc.*, Comp. Gen. Dec. B-275209, 1997 U.S. Comp. Gen. LEXIS 48 (January 30, 1997)] requires no more." There, the GAO held that the record, which lacked among other things contemporaneous documentation to show how each proposal was evaluated under each technical evaluation factor, was too skimpy to support the evaluations and award. "In contrast, the Postal Service has sufficiently and contemporaneously documented its evaluation process and conclusions."
- "High Country has not sustained its high burden of establishing that the contracting officer's technical evaluation of High Country's 'national capability' and 'delivery and distribution systems' had no reasonable basis but was arbitrary or capricious. . . . Rather, an examination of High Country's proposal . . . would show . . . that the numerical scores as well as the qualitative comments were fully justified. . . . The evaluators, relying on the information before them, ranked High Country's proposal seventh out of the nine submitted because it did not address all aspects of the evaluation factors. Responding to this criticism, High Country has reiterated information that was included in its proposal on this technical factor, including a discussion of its partnering relationship with a buying group through which it and the other members can and do jointly service national accounts. However, High Country does not discuss its role in these national

contracts – that is, whether they are High Country’s contracts or whether High Country is just a local supplier. . . . It also has attached seven additional pages of information its partners could assist in distribution to locations not within the forty-eight contiguous United States. Such information may or may not have changed High Country’s ranking. The present submission of additional information supports the Postal Service’s position that not all requested information was included in the proposal. High Country also points out its mention of a local partner in Alaska, implying that the information that the evaluators claimed was missing was in fact included. Even if the full list of partners furnished with its Pre-qualification Statement were to be considered part of its proposal, that list, absent further explanation, falls short of an explanation of how High Country would perform the national contract it sought.”

- “. . . High Country complains that it wasn’t treated fairly because the Postal Service didn’t hold discussions with it to enable it to submit additional information to shore up perceived weaknesses in its proposal. . . . Once the evaluators determined after evaluation and comparison of the proposals that High Country was not in the top group and did not offer the best value to the Postal Service, there was no requirement or reason to hold discussions with it. The contracting officer has stated that he held no discussions with offerors until after the evaluations were complete. . . . High Country however insinuates that other offerors were permitted — through ‘substantial discussions’ — to revise and bolster their proposals during the evaluation process while it was denied the same opportunity. This allegation is patently incorrect. . . . High Country’s principal contention — that the contracting officer permitted Cleanwise to revise its proposal and submit a subcontracting plan after it failed to do so with its initial proposal — is nothing but a misstatement. As the contracting officer made clear to High Country, Cleanwise is a small business and was not required under the solicitation to submit a subcontracting plan. However, when the technical evaluations had been completed and it became clear that Cleanwise would be one of the top-rated offerors, the contracting officer requested a subcontracting plan prior to award because of the size of the contract. The Postal Service did not give points for the subcontracting plan because it was not requested for purposes of the technical evaluation; rather, the evaluations were done and Cleanwise had already ranked second.”
- High Country is fully aware of the relationship and partnership arrangement of Cleanwise and Johnson Wax. The relationship and the fact that both vendors were quoting the same items and prices have been fully disclosed by Cleanwise and Johnson Wax and are documented in the record. . . . High Country now complains, however, that Johnson Wax and Cleanwise were able to speak for each other and therefore Cleanwise was

bidding as the 'alter ego' of Johnson Wax. As such, it contends, Cleanwise could not properly be treated as a small business for purposes of submitting a subcontracting plan.”

- “The Cleanwise/Johnson Wax partnering was not, as implied by High Country, a subterfuge to enable Cleanwise to avoid submitting a subcontracting plan. Although both companies quoted the same products and prices as they were working in an ongoing partnership, each company submitted its own separate technical proposal. Johnson Wax, as a large company, also submitted a subcontracting plan that was scored by the technical evaluation team. . . . The Postal Service and Cleanwise met — and likely exceeded — all legal requirements in this regard.”
- “High Country has attacked the partnering arrangement of Cleanwise and Johnson Wax on a second front. It contends that, if Cleanwise and Johnson Wax are not affiliated, the offerors may have violated the solicitation’s Certificate of Independent Price Determination (solicitation clause L.5). This allegation is without merit. . . . Affiliated offerors can submit multiple proposals without violating the certificate of independent price determination and without engaging in collusive bidding. The General Counsel’s office has recognized that the GAO takes the position that multiple bidding is not prohibited or even undesirable. . . . As a general rule then, ‘multiple bids may be accepted unless such multiple bidding is prejudicial to the interests of the government or other bidders in which case it is clear that the reason for multiple bidding was not legitimate.’ *Pioneer Recovery Systems, Inc.*, [Comp. Gen. Dec.] B-214700, B-214878, 1984 U.S. Comp. Gen. LEXIS 257 (1984). Similarly, the certificates of independent price determination submitted by affiliated bidders are not false just because the prices submitted were determined jointly by the related vendors. Rather, as the GAO has held, the certificates ‘submitted by multiple bidders should be regarded only as indicating that the prices submitted . . . were not discussed or communicated to any competitor . . . or to any prospective bidder . . . and that no attempt has been made’ to restrict competition. *Id.*; *accord David I. Abse.*, [Comp. Gen. Dec.] B-174449, 1972 U.S. Comp. Gen. LEXIS 216 (1972). There is also nothing to suggest that the partnering arrangement was in any way prejudicial to the government or other offerors. While Cleanwise and Johnson Wax obviously discussed their bid pricing with each other, such discussion is not improper where the teaming arrangement is disclosed, and it does not violate the certification of independent price determination.”
- “High Country raises a new protest issue . . . that the Postal Service’s price evaluation is fatally flawed because approximately fifteen individual product items, where the pricing indicated widespread misreading of some element of the data, were deleted from the price evaluations for all offer-

ors. . . . Some JWOD items were deleted because the JWOD committee could not provide any price for the item. . . . Since no offeror could supply a price for those items, they were deleted for all. On other items, the evaluation team and some of the offerors identified errors in the submitted pricing data. The typical form of error was listing a price for a multiple-unit case rather than the individual item as requested. . . . Where a substantial variance in pricing existed, indicating widespread misreading of the data as to certain items, those items were deleted from the price evaluations for all offerors. Thus, comparisons of prices and discounts among all offerors were based upon identical product lists and commodity classes.

- High Country argues that deleting these items provides no reasonable indication of the actual cost of performance as some of the deleted items were likely Postal Service high volume items, the pricing of which could differ significantly from vendor to vendor. Moreover, High Country contends that the mix of products played a significant role in offeror pricing strategy in that some items might be priced as higher profit items by some while priced as complimentary items by others. High Country’s contention ignores the requirements for pricing set out in the solicitation. The Postal Service did not want unbalanced pricing submitted in the proposals. Rather, the solicitation prescribed how pricing data were to be submitted and described how the data would be evaluated. Section 3.0 of the E&S stated that all price proposals would be evaluated on the same items and quantities, using the vendor’s proposed discount from its most-favored-customer pricing. The evaluation committee followed these directions exactly for all vendors. Moreover, vendors at the June 14 pre-proposal conference (including High Country) were advised that, if a consensus was not reached of needed changes to the products list, the item may be eliminated from the list for bidding purposes. . . . If vendors followed the directions in the solicitation to provide their proposed percentage discounts off most-favored-customer prices (or for JWOD items, their cost plus percentage markup), the deletion of items should have caused no problem.”

W. W. Grainger, Inc., submitted comments on the protest which included the following points;

- Both the contracting officer’s statement and the underlying documentary record demonstrate that High Country has no credible basis to contest the selections of Grainger and Cleanwise under the solicitation’s terms. Both offerors had substantially higher-rated technical proposals and significantly lower evaluated prices.
- The suggestion that the relationship between Johnson and Cleanwise was collusive or violated the certificate of independent price determination is not “identified as an independent ground of protest” and should not be

recognized as one. However the facts demonstrate that it the relationship was not improper.

- The technical evaluation of High Country’s offer met the PM’s requirements; the requirement for a scoring rationale was met by the narrative statement in the Consensus Summary Report, and the requirement for a comparative valuation was met by the ranking prepared by the core purchase team. A complete record “demonstrates a thorough and reasonable evaluation process” and the protester’s objections to the evaluators’ conclusions do not provide a basis to sustain the protest.
- The Postal Service’s action in deleting 15 items from the market basket was reasonable and necessary to perform the price evaluation; High Country’s assertions that it was harmed by that action were conclusory and unsupported, and, given the variance in between its pricing and that of the awardees, fails to demonstrate prejudice.

DISCUSSION

Primary among High Country’s challenges to these awards is its contention that its offer was not properly evaluated.

We restated our well-settled standard for the review of proposal evaluations:

It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal de novo, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. We will not overturn the determinations of a contracting officer unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. Similarly, we will not substitute our views for the considered judgment of technical personnel upon which such a determination is premised in the absence of fraud, prejudice, or arbitrary and capricious action.

The protester bears the burden of proving its case affirmatively. This burden must take into account the "presumption of correctness" which accompanies the statements of the contracting officer, and if such allegations do not overcome the presumption of correctness, we will not overturn the contracting officer's position.

Further, as the Comptroller General has noted, "[i]n determining the rationality of an agency's evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments, explanations,

and hearing testimony." *Southwest Marine, Inc.; American Systems Engineering Corporation*, Comp. Gen. Dec. B-265865.3, B-265865.4, January 23, 1996, 96-1 CPD ¶ 56.

Washington Occupational Health Associates, Inc., P.S. Protest No. 97-07, August 28, 1997 (Citations and internal quotations omitted.)

Review of the contracting officer's report, including the evaluator's consensus scoring of the offers and the contracting officer's narrative discussion of the basis for the awards indicates that the award decision was neither arbitrary nor capricious. The evaluators appropriately downrated its proposal for the failings discussed in the debriefing. In making that determination, the evaluators were not required to consider information not encompassed within High Country's proposal. "In a negotiated procurement, since the agency's technical evaluation is based upon information submitted with the proposal, the burden is clearly on the offeror to submit an adequately written proposal." *ATI Industries*, Comp. Gen. Dec. B-215933, November 19, 1984, 84-2 CPD ¶ 540, citing *Marvin Engineering Co., Inc.*, B-214889, July 3, 1984, 84-2 CPD ¶ 15.⁷

High Country also objects to the contracting officer's failure to consider its rebates on purchases over specified thresholds and discounts on orders over specified amounts. These rebates and discounts were inconsistent with the solicitation's terms, which contemplated the calculation of an offeror's total price based on the application of a single discount to be taken from the offeror's most favored customer pricing. To the extent that High Country's offer varied from this requirement, it was appropriately not considered. *Equipment Marketing Consultants Corporation*, P.S. Protest No. 90-07, April 17, 1990.

The applicable purchasing regulation did not require that the weaknesses in High Country's offer be the subject of discussions.

In the context of postal purchasing, "[d]iscussions include all communications held with suppliers during the purchasing process." PM 4.2.5.c 1. "Discussions need not be held with individual suppliers when, after evaluation and comparison of their proposals, it becomes apparent that their proposals do not offer the best value to the Postal Service and could not be improved to do so without extensive and substantial revision." PM 4.2.5.c 2.

⁷ Further, any failure to consider High Country's receipt of its Quality Supplier Award did not affect the evaluation of its offer. Past performance, to which the consideration of the QSA would be relevant, was a matter considered in the initial round of prequalification. Since all prequalified offerors started off on an equal basis in the technical evaluation, any improvement in its prequalification score which might have resulted from the award would have had no effect in that second round.

The Datastore Incorporated, supra. The revisions necessary to improve High Country's offer would clearly have been "extensive and substantial," and under the Postal Service's procedure, "the fact that discussions are held with one or more offerors does not require that discussions be held with other offerors if there is no business necessity for additional discussions. Offerors whose offers are not the subject of discussions need not be afforded a specific opportunity to revise their offers." PM 4.2.5.c.3.(b).

The protester's contention that the omission of various items from the pricing affected its relative pricing is unsupported on the record.⁸ The elimination of items which the JWOD agencies could not price could not have affected any offerors, and High Country has failed to demonstrate how the removal of a few other items could have had a significant effect.

Because High Country has not met its burden of establishing its evaluation was flawed, it would not be in line to receive the award if its challenges to the evaluation of the Grainger and Cleanwise awards were upheld. As a result, it lacks standing to make those challenges. *Compu-Copy*, P.S. Protest No. 90-21, July 5, 1990. It may be briefly noted, however, that its contentions that the Postal Service may have failed to evaluate elements of Grainger's and Cleanwise's offers is unsupported on the record, as is its assertions that there was some impropriety in Cleanwise's partnering with Johnson Wax or in their certificates of independent price determination. Similarly, we can perceive no prejudice to High Country in the contracting officer's requirement that Cleanwise provide a subcontracting plan. Under the solicitation's terms, Cleanwise had no obligation to provide one, since it was a small business. That it provided one following the request did not affect its eligibility for award or change its evaluation or ranking.

The protest is denied.

William J. Jones
Senior Counsel
Contract Protests and Policies

⁸ This contention, first raised in comments subsequent to the contracting officer's statement, may also be faulted as untimely. PM 3.6.4.d. *Cf. Washington Occupational Health Associates, Inc.*, P.S. Protest No. 97-07 August 28, 1997.