



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: San Diego Beverage & Kup, Inc.

File: B-278881

Date: March 24, 1998

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D. Michael Fitzhugh, Esq., Robert J. Sherry, Esq., and Francis E. Purcell, Jr., Esq., McKenna & Cuneo, for Dispenser Juice, Inc., the intervenor.

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DIGEST

Contracting agency reasonably evaluated the awardee's proposal as "excellent" under the solicitation's experience/past performance and management plan evaluation factors, and the protester's proposal as "good" under the same factors; the protester's mere disagreement does not render the agency's judgment unreasonable.

DECISION

San Diego Beverage and Kup, Inc. protests the award of a contract to Dispenser Juice, Inc., under request for proposals (RFP) No. SPO300-97-R-M039, issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency (DLA), for juice, coffee, and tea products, as well as dispensing equipment, for Department of the Army troops at various sites in South Korea. San Diego Beverage contends that the agency's evaluation of its and Dispenser Juice's proposals, and selection of Dispenser Juice's higher-priced proposal for award, were unreasonable.

We deny the protest.

The RFP, issued July 11, 1997, on an unrestricted basis, provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a base period of 1 year with one 1-year option. The successful contractor under the RFP will be required to provide the juice, coffee, and tea products ordered by the agency to

either of two ports in California for shipping to South Korea.¹ The contractor will also be required to furnish, install, maintain, repair and/or replace the juice, coffee, and tea dispensing equipment in the facilities in South Korea.

The RFP stated that award would be made to the offeror submitting the proposal representing the best value to the government, price and other factors considered, and listed the following technical evaluation factors and subfactors in descending order of importance:

- (1) Experience and Past Performance
- (2) Management Plan
 - a. Quality
 - i. Shelf Life
 - ii. Production Capacity
 - iii. Product Identity
 - b. Distribution to the Port of Embarkation
 - c. Customer Service
 - i. Installation and Maintenance of Equipment
- (3) Socioeconomic Considerations
- (4) DLA Mentoring Business Agreement

The solicitation noted that the socioeconomic considerations and DLA mentoring business agreement evaluation factors would not be rated, but that the offerors' responses would be compared to each other and ranked, with the response indicating the most comprehensive plan for tutoring small businesses, small disadvantaged businesses, or women-owned small businesses receiving the highest ranking. The RFP included a "Notice of Evaluation Preference for Small Disadvantaged Business Concerns," which provided that offers would be evaluated by adding a factor of 10 percent to the evaluated price of all offers, except those received from small, disadvantaged business (SDB) concerns.

The RFP provided detailed instructions for the preparation of proposals, and requested that offerors submit a technical proposal, organized to respond to the technical evaluation factors listed, and a business proposal. Offerors were required to prepare their business proposals primarily by completing the price schedule set forth in the RFP.

The agency received three proposals, including those of San Diego Beverage (an SDB concern) and Dispenser Juice (a small business), by the RFP's closing date. The proposals were evaluated, written discussions were conducted, and best and final offers (BAFOs) were received and evaluated. San Diego Beverage's BAFO was

¹The products will be transported to the individual dining facilities in South Korea by the government.

rated as "good" under the experience and past performance and management plan evaluation factors, and "good" overall.² Dispenser Juice's BAFO was rated as "excellent" under the experience and past performance, and management plan evaluation factors, and "excellent" overall. The source selection authority (SSA), while recognizing that Dispenser Juice's total proposed price for the base period and option year of \$7,220,345 was 1.2 percent higher than San Diego Beverage's total proposed price, and 11.2 percent higher with the application of the SDB evaluation preference, directed that the contract be awarded to Dispenser Juice as the offeror submitting the proposal representing the best value to the government.

San Diego Beverage first challenges the agency's evaluation of its and Dispenser Juice's proposals as "good" and "excellent," respectively, under the experience and past performance evaluation factor. The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

The RFP informed offerors that the experience and past performance section of their proposals should, among other things, "describe the extent of their experience of their own corporate entity, any partners, joint ventures, subcontractors, etc. who will be performing the contract." The RFP added here that offerors "shall provide a list of their Government contracts entered into within the last two years," and explained that the list would be used "to determine if the offeror has consistently demonstrated a commitment to customer service satisfaction and timely delivery of quality goods." The RFP added that the proposals were to include "a point of contact and telephone number, dollar value, date of contract, contract quality, and period of performance for each listed contract."

The agency found in reviewing Dispenser Juice's proposal that Dispenser Juice currently had contracts, similar to the contract to be awarded under this RFP, for various Department of the Air Force dining facilities in Hawaii, and with DPSC for the agency's requirements in Okinawa. The agency was also aware of Dispenser Juice's current support of DPSC's juice, coffee, and tea requirements in South

²The adjectival ratings used by the agency in evaluating proposals were excellent, good, fair, and poor.

Korea. The agency found that the "fill rate" for the facilities in Okinawa and Korea was 99.7 percent.³ The evaluation record notes with regard to the Okinawa contract that "Dispenser Juice has been very responsive to delivery dates, delivering on-time to the port," and that "[t]o date no product has been returned and no non-conformances have been reported," and that when "problems with mix ratios" were reported by the Okinawa facility, Dispenser Juice "responded within 8 hours to correct the problem," and that "[n]o problems have been reported since." The agency also contacted the Department of the Air Force, which reported a fill rate of 100 percent for the facilities in Hawaii. The agency concluded that Dispenser Juice's experience and record of past performance merited a rating of "excellent" under the experience and past performance evaluation factor.

San Diego Beverage's proposal demonstrated that it had no experience providing products to overseas facilities, and listed only one contract, which had been performed by Barrios Distributing, one of San Diego Beverage's proposed subcontractors, that indicated experience in providing items overseas. This contract was for the supply of shake and yogurt mix and ice cream to South Korea, with a value of \$252,000 per year. The agency concluded that the experience and record of past performance of San Diego Beverage and its proposed subcontractors were "respectable" and thus merited a "good" rating under the experience and past performance evaluation factor.

The protester contests much of the agency's evaluation of its and Dispenser Juice's proposals under the experience and past performance evaluation factor. For example, with regard to its own proposal, the protester argues that the agency, in rating San Diego Beverage's proposal as "good" under the experience and past performance evaluation factor, failed to adequately consider Barrios Distributing's "substantial overseas shipping experience." The protester points out that according to the evaluation record, its initial proposal, which did not include Barrios Distributing as a subcontractor, received a "good" rating under the experience and past performance evaluation factor, and that its BAFO also received a "good" rating under this factor, even though the Barrios Distributing had been added to San Diego Beverage's proposal. The protester claims that Barrios Distributing has performed numerous "overseas" contracts, and that even though these contracts were not listed or otherwise mentioned in its proposal, the agency could have learned of Barrios Distributing's "substantial overseas shipping experience" because, according to the protester, Barrios's experience is reflected in "over fifty DPSC purchase orders for beverages shipped overseas." The protester adds that the agency considered "fill-rate information obtained 'in-house'" regarding Dispenser Juice's performance on its

³"Fill-rate" is defined by the agency "as the percentage of items delivered as compared to the total number ordered, in the time specified in the contract." That is, a 99.7-percent fill rate means that the contractor has delivered 99.7 percent of the products ordered by the agency in the time required by the contract.

contracts with DPSC for the supply of products to facilities in Okinawa and South Korea, and argues that the agency was thus required to "consult[] its available 'in-house' information concerning Barrios." The protester also argues that it did not receive adequate credit for its proposed use of a Korean firm to install and service the dispensing equipment.

From our review of the record, we find the agency's evaluation of Dispenser Juice's and San Diego Beverage's proposals under the experience and past performance evaluation factor as "excellent" and "good," respectively, to be reasonable. San Diego Beverage's assertion regarding its subcontractor's "substantial overseas experience" appeared for the first time in San Diego Beverage's protest. As conceded by the protester, its BAFO referenced only one overseas contract that had been or was being performed by Barrios, and this contract was relatively small in dollar value, and was not for juice, tea or coffee products. Similarly, San Diego Beverage's proposal provided very little information regarding the experience of the Korean contractor it proposed to have install the dispensing equipment, and failed to list any contracts that have been performed by that firm.

In light of the fact that the contract performed by Barrios Distributing was the only contract listed in San Diego Beverage's proposal that reflected any overseas experience, we do not find the agency's rating of San Diego Beverage's BAFO as "good" under the experience and past performance evaluation factor unreasonable, nor do we find it objectionable that the addition of this listing in the BAFO did not prompt the agency to raise its rating of the protester's proposal to "excellent." To the extent that Barrios Distributing does possess "substantial overseas experience," San Diego Beverage had the burden of submitting an adequately written proposal for the agency to evaluate, and in light of San Diego Beverage's failure to fulfill its obligation in this regard, we see no basis to criticize this aspect of the agency's evaluation. GEC-Marconi Elec. Sys. Corp., B-276186; B-276186.2, May 21, 1997, 97-2 CPD ¶ 23 at 7.

Nor does the record indicate, as the protester suggests, that the agency failed to treat the offerors equally in evaluating the proposals. The RFP clearly contemplated that in evaluating the offerors' experience and past performance the agency would contact individuals or entities regarding the contracts listed by the offerors in their proposals to gather information regarding the offerors' past performance. That the agency did this with regard to the contracts listed in the offerors' proposals (including Dispenser Juice's), but did not search its files for contracts that were not listed in the offerors' proposals (such as San Diego Beverage's), does not evidence

unequal treatment, particularly given the obligation of the offeror to list its relevant experience.⁴

In sum, the record reflects that the major discriminator between the proposals of Dispenser Juice and San Diego Beverage with regard to the experience and past performance evaluation factor and the reason why Dispenser Juice's proposal was rated by the agency as "excellent" and San Diego Beverage's as "good" under this factor was Dispenser Juice's successful performance of a number of overseas contracts (as detailed previously) similar to that contemplated by the RFP. San Diego Beverage's proposal simply does not reflect comparable experience, and while the protester clearly disagrees with the agency's evaluation of the proposals under this factor, its disagreement with the agency's evaluation does not render it unreasonable.⁵

The protester also argues that the agency's evaluation of its proposal under the management plan evaluation factor as "good" was unreasonable. The protester asserts that it did not receive adequate credit for its proposed use of new (rather than used) dispensing equipment or for its plan to warehouse its coffee products in Korea. The protester concludes that because of this its "technical evaluation was significantly lower than warranted."

The agency responds that it has no preference for new, rather than used, dispensing equipment, and that, accordingly, the RFP did not indicate any preference.

⁴The agency states that in light of the protester's contentions regarding Barrios's experience, it researched its files and found that although Barrios has filled a substantial number of delivery orders for the agency since 1992, these "small purchases were not required to be shipped overseas, as the protester alleges." The protester contends that the agency is incorrect, stating that "Barrios has filled hundreds of DPSC orders for juice, many for export . . . and for shipboard use." We need not resolve this dispute, since as discussed above, the agency was not required during the evaluation process to search its files for contacts that were not listed by the offerors in their proposals.

⁵The protester also asserts, based "[u]pon information and belief," that Dispenser Juice does not hold contracts for the facilities in Hawaii that were listed in its proposal, but that it "rather provides juice through individual purchase orders awarded by a Hawaiian distributor." As indicated, the protester has not provided any support for this assertion, and the record reflects that Dispenser Juice is performing these contracts. For example, the agency contacted the facilities, requesting "a brief summary of how Dispenser Juice, Inc. has performed," with the facility replying that "we have had no problems with Dispenser Juice, Inc. Their fill rate has been 100 [percent]."

Specifically, under the customer service subfactor to the management plan evaluation factor, the solicitation provided only that the agency would "evaluate the offeror's plan to install and maintain equipment necessary for dispensing . . . juice," and stated that "[a]ll costs to install, repair and maintain equipment shall be the sole responsibility of the contractor." With regard to San Diego Beverage's proposed plan to warehouse its coffee products in Korea, the agency responds (and the record reflects) that San Diego Beverage's proposal failed to provide any details with regard to this plan, stating only that a benefit of its proposed plan "is the coffee which is warehoused in Korea and can be delivered to the port directly." The agency concludes here that because the protester's proposal lacked any explanation at all regarding the protester's plan to warehouse its coffee products in Korea, and it sees little, if any, benefit in the use of new, rather than used, dispensing equipment, a rating of "excellent" under the management plan evaluation factor of customer service subfactor simply was not warranted.

Again, while San Diego Beverage clearly disagrees with the agency's evaluation of its proposal as "good" under the management plan evaluation factor, its disagreement with the agency's evaluation does not render the agency's rating of the protester's management plan unreasonable. That is, there is nothing in the record to suggest that the proposed use of new dispensing equipment and plan to warehouse coffee in Korea, without any explanation as to how this would be accomplished, mandated a rating of "excellent."

The protester argues that there were other inconsistencies in the evaluation that render it unreasonable. The protester points out that "[f]or example, one evaluator complained that it was difficult to determine the shelf-life of the products offered by [San Diego Beverage]," and contends that although Dispenser Juice's proposal was similar with regard to its description of the shelf-life of the products offered, its proposal was not similarly criticized.

The RFP's proposal preparation instructions requested that proposals "state the shelf life at time of production . . . [and] at Point of Embarkation (POE)." The RFP added here that the "[s]helf life remaining at the POE shall be a minimum of 71%."

San Diego Beverage's proposal stated with regard to 11 different flavored products (i.e., grape, orange, etc.) that the products' shelf life at time of production was 180 days, and at POE was "135-170 days 75-94%." Dispenser Juice's proposal specified with regard to the same 11 flavors that its products' shelf life at time of production was 6 months at 40° fahrenheit (F) and 3 months at 70° F, with a shelf life at POE of 5 1/2 months at 40° F. Given that San Diego Beverage's proposal indicated a range of 135 to 170 days as the shelf life for the products, whereas Dispenser Juice's proposal stated the shelf life with specificity, we cannot find that the evaluator's criticism that it was difficult to determine the shelf life of the products offered by San Diego Beverage either unreasonable or, as suggested by the

protester, indicative of unequal treatment of the proposals during the evaluation process.

San Diego Beverage initially also protested that the agency's price evaluation was flawed because the analysis was performed "without taking into consideration that the actual price for gallon of reconstituted juice would depend on the mix ratio of the concentrate provided." In its report in response to the protest, the agency concedes that it "did make an improper calculation," and provides a revised price analysis, which calculates the proposed prices based upon the mix ratio of the concentrate provided. Under this analysis, Dispenser Juice's proposed price per year of \$3,772,628 is .2 percent lower than San Diego Beverage's total proposed price and 9.9 percent higher with the application of the SDB evaluation preference.⁶ As mentioned previously, the SSA had found that Dispenser Juice's proposal represented the best value to the government when its prices were believed to be 1.2 percent higher than San Diego Beverage's total proposed price, and 11.2 percent higher with the application of the SDB evaluation preference. Because under the revised price analysis, the price differential between the offers is less than was thought at the time the initial source selection was made, there is no possibility that the protester was prejudiced by the agency's initial flawed price analysis. Continental Airlines, Inc., B-258271.4, July 31, 1995, 97-1 CPD ¶ 81 at 8.

San Diego Beverage nevertheless contends that the agency's price and best value analyses are flawed because the agency did not credit it with the cost savings associated with its plan to warehouse its coffee products in Korea and proposal of "more concentrated products," which would result in lower freight costs.

The RFP did not list freight or warehousing costs as an evaluation factor, or otherwise indicate that such costs would be considered during either the evaluation of proposals or the best value determination. The agency thus acted properly in not considering such costs in either its price or best value analysis; once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria or inform all offerors of any change made in the evaluation or source selection scheme. Cherokee Elecs. Corp., B-240659, Dec. 10, 1990, 90-2 CPD ¶ 467 at 4-5; Olympic Container Corp., B-219424, July 24, 1985, 85-2 CPD ¶ 83 at 3.

San Diego Beverage contends that price analysis is also flawed because the "standard marketing information received from [Dispenser Juice's] coffee supplier indicated that the coffee reconstitution ratio was 25 to 1," whereas Dispenser Juice's proposal provides for a 30 to 1 reconstitution ratio for coffee products. The protester asserts that "the Government will either ultimately pay more for the [Dispenser Juice] coffee if the manufacturer's suggestions are followed when

⁶San Diego Beverage does not challenge these calculations.

diluting the concentrate, or the troops will be drinking significantly weakened coffee." The protester thus contends that "using the constitution ratio suggested by the supplier" of 25 to 1--rather than the ratio of 30 to 1 provided by Dispenser Juice in its proposal and used by the agency in its price analysis--San Diego Beverage's "prices would be significantly lower than [Dispenser Juice's]," which would increase its price advantage.

The agency points out that the RFP only requested prices for "bag-in-the-box" liquid concentrate coffee products, and "did not specify what reconstitution ratio was required for coffee products." The agency adds that Dispenser Juice "is currently supplying coffee product under the Okinawa contract . . . at a 30 to 1 ratio, and there have been no complaints to date."

The literature provided with San Diego Beverage's proposal regarding its proposed coffee products provides for reconstitution ratios ranging from 30 to 1, to 45 to 1.⁷ Yet San Diego Beverage's business proposal, rather than providing the range of reconstitution ratios stated in its literature or some average reconstitution ratio, references a 45 to 1 reconstitution ratio for price evaluation purposes (which has the effect of making its evaluated price lower). Because any upward adjustment to Dispenser Juice's proposed price to account for its alleged deviation from its supplier's suggested coffee reconstitution ratio would necessitate a similar upward adjustment to San Diego Beverage's proposed price to reflect the range of reconstitution ratios suggested by its supplier, the protester was not prejudiced by the asserted defect in the agency's price evaluation. MAR, Inc., B-255309.4, B-255309.5, June 8, 1994, 94-2 CPD ¶ 19 at 8-9; Picker Int'l, Inc., B-249699.3, Mar. 30, 1993, 93-1 CPD ¶ 275 at 7.

Finally, San Diego Beverage challenges the agency's price/technical tradeoff determination based upon its contentions that the agency's evaluation of its and Dispenser Juice's technical and business proposals was unreasonable. As explained in the analysis above, we cannot find the agency's evaluation of San Diego Beverage's and Dispenser Juice's proposals to be unreasonable.⁸ Because the agency in its award selection document reasonably explained why Dispenser Juice's higher-rated proposal was worth its evaluated price premium, the protester's

⁷Dispenser Juice's proposal also contains literature from its supplier suggesting that the reconstitution ratios for coffee vary.

⁸San Diego Beverage has made a number of other related contentions during the course of the protest having to do with the agency's evaluation of its and Dispenser Juice's proposals. Although not all of San Diego Beverage's contentions are specifically addressed in this decision, each was considered by our Office and found to be either insignificant in view of our other findings, or invalid based upon the record as a whole.

contentions here provide no basis for overturning the award. Matrix Int'l Logistics, Inc., B-277208, B-277208.2, Sept. 15, 1997, 97-2 CPD ¶ 94 at 14; Hughes Georgia, Inc., B-272526, Oct. 21, 1996, 96-2 CPD ¶ 151 at 8.

The protest is denied.

Comptroller General
of the United States