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Decision

Matter of: Mid Pacific Environmental

File: B-283309.2

Date: January 10, 2000

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DIGEST

Protest that agency failed to perform proper best value determination is denied where the source selection authority considered technical evaluations, past performance ratings and cost in his award determination and reasonably determined that the evaluated superiority of the highest technically rated proposal warranted payment of the associated cost premium.

DECISION

Mid Pacific Environmental protests the award of a contract to Willbros Operating Systems, Inc. under request for proposals (RFP) No. SPO600-R-0009, issued by the Defense Energy Support Center (DESC), Defense Logistics Agency to provide and operate an automated fuel dispensing facility at the U.S. Marine Corps Air Ground Combat Center, 29 Palms, California. Mid Pacific questions the propriety of the agency's evaluation of the awardee's past performance, and asserts that the resulting best value determination is flawed and inadequately documented.

We deny the protest.

The RFP, issued October 2, 1998, contemplated the award of a fixed-price contract for a 5-year base period with three 5-year option periods. RFP § L74 and amend. 8 § B34.01(6). The RFP, as amended, required that the facility consist of metered fuel pumps capable of fueling a minimum of 50 vehicles (trucks or equipment) per hour with JP8 (aviation), diesel, or unleaded gasoline, and 8 track-type vehicles (tanks) per hour with JP8 or diesel fuel. RFP amend. 8, § B34.01(2). Associated fuel dispensing storage was to include tanks for the 3 grades of government-provided

fuel. A minimum of one automated bulk truck loading facility was required for the three products, which was to be equipped with, among other things, overfill protection and spill containment. Id. The facility was to be configured to allow for future expansion. The dispensing pumps and islands were to be positioned to allow for unimpeded flow of vehicles and equipment to all pump positions and simultaneous use of all pumps. The track area was to have reinforced pivot pads for turning the tanks. Id. § B34.01(5)(a)(3). The RFP also required that the contractor furnish computer equipment capable of interfacing with the agency's Fuels Automated System (FAS) software programs and designed to interface all receipts, bulk and retail issues and accounting transactions to the FAS.¹ Id. § B34.01(5)(a)(4). Finally, the RFP required that the contractor provide an auxiliary power source to enable the facility to remain operational 24 hours per day during power outages and emergency situations. Id. § B34.01(5)(a)(13).

At section M28.100, the RFP provided for award to the responsible offeror whose proposal represented the best overall value to the government, considering price and technical factors, which were equal in importance. As proposals became more equal in technical merit, price would become more important. RFP amend. 4, §§ M28.100(a), (b). The amended RFP set forth three equally weighted technical evaluation factors, consisting of operational capability, past performance, and subcontracting. Id. § M28.100(b)(ii). Proposals were to be rated under each factor as "exceptional," "very good," "satisfactory," "marginal," or "unsatisfactory."² Id. § M28.100(c). With respect to past performance, the RFP instructed each offeror to list all contracts and subcontracts (completed or in progress) for the last 3 years for DESC, other government agencies, or the private sector that were related to the work required here. RFP § L2.31.100(b)(2)(ii). Each offeror was to provide for each contract, the contract type and dollar amount, a brief description of the work, and the point of contact for the contract. Id. The solicitation stated that the agency had

¹ The FAS is an automated information system designed to support DESC in performing its responsibilities in fuels management and distribution. FAS provides for point of sale data collection, inventory control, finance and accounting, procurement, and facilities management. RFP amend. 8, § B34.01(5)(a)(4).

² The agency's Source Selection Plan set forth evaluation standards for each of the three technical factors, outlining the requirements needed to obtain each of the five possible ratings. Agency Report, Aug. 24, 1999, Tab 14, Source Selection Plan, at 6-9. For example, to achieve a rating of "very good" in past performance, the source selection plan specified that, among other things, the offeror must demonstrate a history of very good performance in similar contracts of similar complexity with a commitment to customer satisfaction, adherence to contract deadlines and schedules and a good reputation for cooperation. The guidelines also provided that for a "very good" rating the offeror's past performance survey scores should average [deleted] "with no negative yes/no responses." Id. at 7.

the option to consider information from these sources, from the proposal, or from other sources in order to make an accurate assessment of the contractor's past performance. Id.; RFP amend. 4, § M28.100(b)(ii).

With respect to the price evaluation, the RFP provided that the agency reserved the right to award to other than the low evaluated offer and stated that the low offer would be determined by computing the total cost in current year dollars for the initial 5-year base period plus the cost for the three 5-year option periods. RFP amend. 4, § M28.100(b)(i). The RFP also provided for a 10 percent small disadvantaged business cost preference. RFP § I237.03.

DESC received seven offers by the January 14, 1999 closing date. Proposals were assessed under each evaluation factor by a Technical Evaluation Team (TET). For past performance, the contracting officer forwarded past performance surveys to the references provided by each of the offerors. Agency Report, Aug. 24, 1999, at 5. The survey contained 29 questions dealing with performance schedules, management of key personnel, quality of service, and business relations. Id. at 6. For 18 of the questions, survey respondents were asked to circle a numerical score of 1 to 5, representing ratings of "unsatisfactory," "marginal," "satisfactory," "good," or "excellent," respectively. Id. For 11 questions, respondents were asked to circle "yes" or "no." Id. at 7. Survey respondents could also submit narrative comments. The numerical scores for each offeror were initially keyed into DESC's database to produce a computer-generated average score. Based on the average score, each offeror's past performance was assigned a rating of "exceptional," "very good," "satisfactory," "marginal" or "unsatisfactory."³ In determining the overall adjectival rating, the agency also considered the yes/no answers and the narrative comments submitted by the references. Id. at 10.

The agency conducted discussions and revised proposals were received from all seven offerors. Id. at 13. Offerors were not given an opportunity to substitute past performance references in revised proposals, but were permitted to respond to negative comments from references. Id. at 12.

The TET performed a final evaluation of each proposal, using the guidance set forth in the Source Selection Plan, and prepared a written Final Technical Evaluation memorandum of its determinations. Id. at 13. In particular, the TET found that Willbros's proposal met and exceeded the RFP requirement to fuel 50 wheeled and 8 tracked vehicles per hour. Agency Report, Aug. 24, 1999, Tab 23, Final Technical Evaluation, at 1. The TET noted that the awardee's design included [deleted] bulk loading racks [deleted]. The TET found that Willbros's proposed traffic pattern was

³ An average score of [deleted] was considered "exceptional," [deleted] was considered "very good," [deleted] was "satisfactory," [deleted] was "marginal" and less than [deleted] was "unsatisfactory."

“exceptionally well designed, allowing for safe traffic flow within the facility, as well as safe entrance and exit of the facility.” Id. The evaluators noted that tanks would enter and exit [deleted]. Id. The evaluators also found that the proposed facility could be easily expanded and that the proposal exceeded the requirements for automation and interface with FAS based on the awardee’s proposed [deleted] computer system for timely data collection and information transfer. The TET specifically noted that Willbros’s proposed backup generator, [deleted], was exceptional, and that this system and the proposed configuration of tanks and pumps “offers assurance that the station will be operational 24 hours per day, 7 days per week for all three products.” Id. Finally, the TET noted that Willbros had proposed a paved facility with 8-inch wire mesh reinforced concrete, which would be increased in thickness at tank entrances and exits, exceeding the requirements of the RFP. Id. at 2.

With respect to Mid Pacific’s proposal, the TET found that it too exceeded the requirement to fuel 50 wheeled and 8 tracked vehicles per hour. Id. Mid Pacific proposed only one bulk loading rack and its traffic pattern was determined to be “acceptable for safe entrance and exit of the facility,” although track vehicles would have to make a 90-degree pivot on entering and exiting. Id. The evaluators found that Mid Pacific’s design allowed for future expansion and that it met the requirements for automation and interface with FAS. The agency found that Mid Pacific’s back up system, comprised of a diesel generator and standby pumps, was adequate. Like Willbros, the protester proposed to pave the facility with 8 inch wire mesh reinforced concrete with additional thickness at tank entrances and exits. Id.

In assessing the offerors’ past performance, DESC used computer calculations showing past performance survey averages of [deleted] for the awardee and [deleted] for the protester and, based on these scores and an analysis of adverse comments and rebuttals, the agency assigned Willbros a past performance rating of “exceptional” and assigned Mid Pacific a past performance rating of “satisfactory.” Agency Report, Aug. 24, 1999, Tab 15, Prenegotiation Memorandum, at 6, 9, 11. The SSA determined that the Willbros proposal offered the best value to the government and awarded the contract to Willbros.

Thereupon, Mid Pacific protested to our Office on July 26, 1999, arguing that DESC failed to conduct meaningful discussions, unreasonably evaluated past performance and operational capability and failed to properly apply the 10 percent small disadvantaged business price evaluation factor. Mid Pacific also argued that the agency had conducted a flawed best value determination. Protest, July 26, 1999, at 1-2. In response to the agency report, the protester withdrew its protest grounds concerning meaningful discussions, the evaluation of the operational capability of the offerors and the application of the 10 percent SDB evaluation factor. Protester’s Comments, Sept. 7, 1999, at 1 n.1. However, the protester reiterated its argument that the agency had improperly evaluated past performance and, using the data referenced by DESC, calculated a past performance survey average of [deleted] for

the awardee, as opposed to the agency's [deleted] average. Id. at 3. Based on this discrepancy, the agency determined that its computer-generated past performance score for Willbros was incorrect. In its investigation of the error, DESC found that its past performance database contained input errors and, in some cases, attributed past performance information to the wrong firm. Supplemental Agency Report, Sept. 27, 1999, at 2-3. Accordingly, DESC took corrective action commencing with a reevaluation of past performance for all offerors using hard data. Based on the reassessment, past performance ratings for three offerors remained the same, three were downgraded and one was upgraded. Id. at 3-7.

In performing Willbros's reevaluation, the agency used responses from four past performance surveys to calculate an average past performance survey score of [deleted]. Id. at 4. One survey had three negative responses to yes/no questions relating to negotiations on pricing issues under one contract. Specifically, the respondent noted that Willbros on several occasions [deleted]. Willbros had previously responded to each of these adverse comments. Id. at 4-6. All survey respondents indicated that they would hire this contractor again. Supplemental Agency Report, Sept. 27, 1999, Tab 7, Addendum to Source Selection Memorandum, at 2. Based on the surveys and the awardee's responses to the three adverse comments, the contracting officer downgraded Willbros's past performance rating from "exceptional" to "very good," consistent with its revised [deleted] average numerical score.⁴ Id. at 3.

For Mid Pacific, the agency used responses from two past performance surveys to calculate an average past performance survey score of [deleted], which was unchanged from the initial evaluation. Id. at 1. The surveys contained three adverse yes/no responses which were not rebutted by Mid Pacific. Mid Pacific's adjectival rating was "satisfactory." Id. at 2.

The final, recalculated technical ratings and final prices for Mid Pacific and Willbros were as follows:

⁴ Our Office dismissed the initial protest on October 1 because the corrective action rendered the protest academic. Because of the relatively late corrective action taken by the agency, DESC agreed to reimburse the protester its protest costs.

Contractor	Operational Capability	Past Performance	Subcontracting	Price ⁵
Mid Pacific	Very Good	Satisfactory	Satisfactory	\$ 9,562,980
Willbros	Exceptional	Very Good	Satisfactory	\$10,353,720

Id. at 3.

The SSA determined that Willbros's higher-priced proposal represented the best value to the government because of Willbros's exceptional design, better back-up systems and interface with FAS, and [deleted] bulk loading. As a result, the SSA again selected Willbros for award.

IMPROPER PAST PERFORMANCE EVALUATION

Mid Pacific first protests that DESC unreasonably evaluated the past performance of Willbros. Specifically, Mid Pacific points to language in the Source Selection Plan that specified that a "very good" rating would apply when an "[o]fferor's past performance survey scores average [deleted] with no negative yes/no responses." Agency Report, Aug. 24, 1999, Tab 14, Source Selection Plan, at 7. Mid Pacific contends that the agency ignored the adverse comments in assigning Willbros a "very good" rating. The protester takes the position that Willbros's responses to the adverse comments were not valid and that the agency did not explain why it accepted the explanations; therefore, based on the guidelines contained in the Source Selection Plan, the awardee should have received a "satisfactory" past performance rating. Protest at 9.

Mid Pacific's argument that DESC's failure to follow the Source Selection Plan is a fatal flaw in the evaluation is without merit. The evaluation "requirement" Mid Pacific relies upon is not an RFP requirement but rather is simply listed as one of several criteria in DESC's Source Selection Plan. Source selection plans provide internal agency guidelines and, as such, do not give outside parties any rights. Centech Group, Inc., B-278904.4, Apr. 13, 1998, 98-1 CPD ¶ 149 at 7 n.4; Ameriko, Inc., B-272989, Nov. 4, 1996, 96-2 CPD ¶ 167 at 3 n.3. It is the evaluation scheme in the RFP, not internal agency documents, such as the source selection plan, to which an agency is required to adhere in evaluating proposals and in making the source

⁵ Prices listed in the table are the offerors' proposed prices. When calculated in current year dollars with the 10-percent evaluation preference added to Willbros's offer (Mid Pacific is a small disadvantaged business), Willbros's price is \$9,257,983 and Mid Pacific's price is \$8,074,141. Agency Report, Aug. 24, 1999, at 15. These calculations are undisputed; the adjusted prices were used by the SSA in performing the best value determination.

selection. Centech Group, Inc., *supra*; General Atronics Corp., B-272685, Oct. 23, 1996, 96-2 CPD ¶ 157 at 3 n.4.

Here, the record shows that the agency did follow the RFP in evaluating past performance and the record provides no basis to call into question the propriety of the agency's evaluation. Specifically, the agency averaged the scores from the past performance surveys to calculate an average past performance score and considered the adverse comments received concerning each offeror's past performance. Indeed, the three adverse comments and Willbros's rebuttals are contained in full in the SSA's source selection statement. Supplemental Agency Report, Sept. 27, 1999, Tab 7, Addendum to the Source Selection Memorandum, at 2-3. Contrary to the protester's assertion that the agency never explains why it accepted Willbros's responses, the memorandum specifically states that the agency viewed the awardee's responses as adequate because "the three adverse responses all concerned negotiations" and because Willbros's pricing practices were confirmed by the Defense Contract Audit Agency. Based on Willbros's average score and its rebuttals to the adverse comments, DESC assigned Willbros a "very good" past performance rating. *Id.* at 3. While Mid Pacific disagrees with the agency's acceptance of Willbros's rebuttals, Mid Pacific's mere disagreement with this evaluation does not make it unreasonable and the record provides no basis to question the evaluation. Ogden Support Servs., Inc., B-270354.2, Oct. 29, 1997, 97-1 CPD ¶ 135 at 3. We also note that even under the Source Selection Plan guidelines, Willbros's past performance survey average is above the 2.5 to 3.49 range set forth for a "satisfactory" rating and thus, contrary to Mid Pacific's allegation, did not warrant a "satisfactory" rating. Accordingly, Mid Pacific's objection to the agency's past performance evaluation is without merit.

BEST VALUE DETERMINATION

Mid Pacific next contends that the agency "conducted a flawed best value determination by deciding to pay a premium of more than \$1.2 million to award the contract to Willbros" Protest at 2. The protester alleges that the SSA's selection decision is unreasonable essentially because it is based on an incorrect past performance rating for Willbros, and that it represents a superficial analysis of the strengths and weaknesses of the various proposals. Specifically, Mid Pacific argues that DESC did not analyze or document the comparative advantages of the Willbros and Mid Pacific proposals or explain why the advantages of the awardee's proposal warrant paying such a substantial premium. Protester's Comments at 8. The protester maintains that the Addendum to the Source Selection Memorandum prepared by the SSA in support of his selection decision "is woefully inadequate" because it reflects only the positive aspects of the awardee's proposal but contains no meaningful qualitative comparison of the awardee's proposal with the protester's proposal. *Id.* at 10. Finally, Mid Pacific argues that DESC's reevaluation and redetermined source selection should be disregarded because they were prepared

“in the heat of the adversarial process” and “may not represent the fair and considered judgment of the agency.” Id. at 12.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Grey Adver., Inc., B-184825, May 14, 1976, 76-1 CPD ¶ 325 at 12; Mevatec Corp., B-260419, May 26, 1995, 95-2 CPD ¶ 33 at 3. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation criteria. Id. We will uphold awards to offerors with higher technical ratings and higher costs so long as the results are consistent with the evaluation criteria and the contracting agency reasonably determined that the cost premium involved is justified given the technical superiority of the selected offeror's proposal. International Consultants, Inc.; International Trade Bridge, Inc., B-278165, B-278165.2, Jan. 5, 1998, 98-1 CPD ¶ 7 at 5-6.

First, to the extent that the protester's argument is premised on its assertion that Willbros was too highly rated on past performance, the argument is unfounded. As explained above, the agency followed the RFP in evaluating past performance and the record provides no basis to question the agency's rating. Next, despite the brevity of specific comparisons in the source selection statement, it is clear from the record that the SSA did consider technical merit and price in making the award determination and the record establishes that the best value determination was reasonable, substantiated, and consistent with the RFP evaluation scheme.

The record does not support the protester's contention that the SSA did not understand the differences between the proposals and did not document the comparative advantages of the Willbros proposal. Specifically, the agency report, which is signed by the SSA, states that in reaching the selection decision, the SSA “utilized information contained in the Final Technical Evaluation and was fully aware of the strengths and weaknesses of [Mid Pacific's], as compared to Willbros' proposal.” Agency Report, Oct. 21, 1999, at 14-15. The SSA had before him an accurate and thorough evaluation of the competing proposals. Additionally, the SSA had the past performance ratings, which he summarized in the Addendum to the Source Selection Memorandum, and the rankings and adjusted prices of the offerors. The SSA acknowledged in his Addendum that the Willbros proposal received the highest technical rating and that its technical proposal was rated exceptional on every requirement. Supplemental Agency Report, Sept. 27, 1999, Tab 7, Addendum to Source Selection Memorandum, at 4.

While the protester complains that the source selection memo did not contain a meaningful qualitative comparison of the proposals, the SSA expressly compared the Willbros proposal, which was the third low-priced proposal with both the low-priced and the second low-priced (Mid Pacific) proposals. The SSA eliminated the low-priced proposal because its technical ranking was sixth out of the 7 proposals and the offeror's proposed layout would result in congested and unsafe traffic

conditions. As for Mid Pacific, the SSA noted that it was ranked second in technical merit and that its past performance rating was “satisfactory.” Id. The SSA specifically cited adverse yes/no past performance survey responses relating to Mid Pacific’s failure to read and follow shut down requirements and effectively control the quality of services provided, and noted that these adverse comments were not rebutted by Mid Pacific. Id. at 2. The SSA then recited in detail the technical merits of the awardee’s proposal, including, for example, its proposed traffic pattern, [deleted] generator for providing full facility power and computer system and FAS interface capabilities. The SSA also noted that the proposed back-up systems would ensure that the facility would be operational 24 hours per day, 7 days per week. To the extent that Mid Pacific argues that the precise technical advantages were not quantified in determining that Willbros’s proposal warranted the payment of a price premium, in performing a cost/technical tradeoff there is no requirement that a selection official dollarize the process by making a precise mathematical calculation that an additional dollar will be paid only if there is a corresponding discrete technical advantage. KRA Corp., B-278904, B-278904.5, Apr. 2, 1998, 98-1 CPD ¶ 147 at 14. Here, the SSA specifically recognized that Willbros’s “evaluated price is about \$59,000 per year higher than Mid Pacific’s” but determined that this higher price was “justified by [Willbros’s] superior technical proposal and a better past performance rating.” Supplemental Agency Report, Sept. 27, 1999, Tab 7, Addendum to Source Selection Memorandum, at 4. The SSA recommended award to Willbros based on its price, exceptional technical design and capabilities and its “very good” past performance record. The SSA expressly stated that “[t]he assets that Willbros will bring to this project more than offset the 14% increase in price over Mid Pacific and the 18% increase in price over [the low-priced offeror].” Id. at 5.

We see nothing improper in this selection decision. It reflects an appropriate comparison of the competing proposals and a reasoned determination to select a higher-cost proposal because of its technical merit. Thus, we have no basis to object to the award decision.

Finally, we disagree with Mid Pacific’s assertion that the SSA’s reconsideration of his selection decision should be given no weight because it was prepared “in the heat of an adversarial process,” citing our decision in Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. In Boeing, the agency asserted throughout the protest process that there was no error in its evaluation, but also submitted a hypothetical reevaluation that it argued was not necessary. We discounted the agency’s after-the-fact decisional materials prepared for the sole purpose of ensuring that our Office would conclude there was no prejudice to the protester. Boeing Sikorsky Aircraft Support, *supra*. Here, in contrast, the agency admitted its error and took corrective action in the form of rescoring past performance scores and performing a new best value determination. Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition, and we will not object to an agency’s corrective action where

the agency discovers an obvious error in the evaluations and corrects the error by reassessing the proposals. Kellie W. Tipton Constr. Co., B-281331.3, March 22, 1999, 99-1 CPD ¶ 73 at 4-5. Here, as noted above, DESC learned of an error in its evaluation during the pendency of the initial protest and it was appropriate for DESC to correct the error by reassessing the past performance of all the offerors and performing a new best value determination. Under these circumstances, where the redetermination is reasonable and consistent with the evaluation criteria, we have no basis to reject the SSA's redetermination to award to Willbros.

The protest is denied.

Comptroller General
of the United States