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Comptroller General
of the United States

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Decision

Matter of: Birdwell Brothers Painting & Refinishing

File: B-285035

Date: July 5, 2000

Barry Birdwell and David K. Eary for the protester.
Theodore M. Bailey, Esq., and Johnathan M. Bailey, Esq., for Red River Services Corporation, an intervenor.
Gregory H. Petkoff, Esq., Warren D. Leishman, Esq., and Capt. Leonard Garner, Department of the Air Force, for the agency.
C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluation of “customer satisfaction” was reasonable where it considered specific examples of protester’s past performance problems noted by government inspectors, notwithstanding that the protester was only a subcontractor in those examples.
 2. Where the solicitation provided for consideration of “comparable” services in the evaluation of past performance, the source selection authority reasonably could consider the advantages of awardee’s past performance of contracts of similar size and similar scope of work in selecting a contractor for award, even though the solicitation did not include a specific subfactor for size of contract or scope of work.
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DECISION

Birdwell Brothers Painting & Refinishing protests the award of a contract to Red River Services Corporation under request for proposals (RFP) No. F04666-99-R-0002, issued by the Department of the Air Force for housing maintenance services. Birdwell contends that the agency’s evaluation and selection decision were unreasonable and inconsistent with the solicitation.

We deny the protest.

On June 14, the agency issued this solicitation for maintenance of 1,394 military family housing units at Beale Air Force Base (AFB) in California pursuant to the commercial item procedures of Federal Acquisition Regulation Part 12 for a 9-month fixed-price requirements contract, with six 1-year option periods, with an award fee provision. RFP at 1, 30, 35. The statement of work (SOW) included change of occupancy maintenance (preparing a house for new occupants, including painting, purchase and installation of appliances, lead and asbestos abatement, and pest control), service calls (plumbing and lockouts), preventive maintenance (interior, exterior, playgrounds, fireplaces and chimneys, drains, and gutters), environmental protection (hazardous waste management, solid waste removal, and recycling), major response work (sidewalks and special projects), as well as stocking and operating a store for minor self-help repairs. RFP attach. 1, at 4, 17-18, 20, 23-24.

The RFP provided for selection of a contractor based on a tradeoff between past performance and price. RFP amend. 1, at 43. Past performance would be “significantly more important” than price. RFP amend. 1, at 44. In evaluating past performance, the agency would assign a confidence assessment rating based on an assessment of performance risk and assign adjectival ratings of “exceptional,” “very good,” “satisfactory,” “neutral,” “marginal,” or “unacceptable.”¹ RFP amend. 1, at 43-44. The agency would perform this assessment and evaluate past performance on the basis of seven subfactors, as follows:

- (a) Contractor Responsiveness
- (b) Quality of Service and Workmanship
- (c) Customer Satisfaction
- (d) Contract Management
- (e) Compliance with sub-contracting goals
- (f) Compliance with environmental laws/safety and security
- (g) Contractual Obligations

Id. at 44.

The solicitation contained a past performance questionnaire, for mailing to prospective references. The agency reserved the right to look into all or a portion of the offeror’s references and collect data either through the questionnaire or by telephone from the listed references or from other sources. RFP at 44. The RFP stated that each offeror would have an opportunity to respond to any derogatory or

¹ The RFP contained definitions for each rating. As relevant here, a rating of “very good” essentially meant that “little doubt” existed that the offeror would perform successfully. A rating of “satisfactory” meant that there was “some doubt,” and a rating of “marginal” meant that there was “substantial doubt.”

adverse past performance information, defined as “any information obtained that falls below a satisfactory/confidence performance rating.” The final determination of the offeror’s rating would rest with the contracting officer. Id. at 44.

The agency received 18 proposals by September 28, the date for submission of offers. Contracting Officer’s Statement at 1. In its proposal, the protester advised the agency that it had supplied references for two subcontracts with potential competitors on the Beale AFB and other procurements, who, the protester suggested, “could be prejudiced” against Birdwell. Birdwell Past Performance Information, July 7, 1999, at 3. Birdwell “strongly urge[d]” the agency to obtain its past performance information for those subcontracts from “government contracting authority,” not from the prime contractors. Id.

The agency referred proposals to a source selection team (SST) consisting of two members of its housing staff and one representative from its contracting office. Contracting Officer’s Statement at 2. The SST conducted its evaluation of past performance by analyzing responses to the questionnaires in terms of the seven subfactors listed in the RFP. Proposal Evaluation Report at 3-6. As the protester had requested, evaluators did not contact the firms competing with Birdwell, but they did request information from the government quality assurance evaluators (QAE) involved. Contracting Officer’s Statement at 2.

The agency allowed the protester an opportunity to respond to adverse information received from another prime contractor, as well as several QAEs, who had generally rated the protester as [deleted] for past performance. Agency Memorandum for Record 1 (Jan. 4, 2000). Birdwell responded that the prime contractor involved was a competitor with Birdwell and that its information should be disregarded. Letter from Birdwell to Contracting Officer 1 (Dec. 14, 1999). The protester also questioned whether the QAEs might be biased, because of their working relationship with prime contractors, and argued that they lacked any direct knowledge of Birdwell’s performance and Birdwell’s agreements with the prime contractors establishing responsibility for quality control. The agency ultimately disregarded the information from the prime contractor, but decided to consider the comments from the QAEs, under the subfactor of customer satisfaction. Contracting Officer’s Statement at 3.

The SST rated Birdwell as [deleted]. Proposal Evaluation Report at 3. The team found that, although the protester had experience with some of the disciplines required under the Beale AFB SOW, it had not performed a contract comparable in size and management requirements. Id. [deleted]

The SST provided its proposal analysis report to the source selection authority (SSA), who determined that the RRSC proposal provided the best overall value to satisfy the requirement. Source Selection Decision Document (SSDD) at 23. The SSA noted that Birdwell had submitted the lowest price, with RRSC second low, and acknowledged that the past performance reports for the protester showed that Birdwell had performed well as a prime contractor. Id. at 21. However, he noted

that the contracts (and subcontracts) previously performed were not of the scope or magnitude of the contemplated effort at Beale AFB. Id. at 22. The two prime contracts were 2-3 percent of the estimated value involved here; of eight subcontracts, six were for painting and floor refinishing, which the agency estimated would constitute only 10 percent of the instant effort. Id. at 21. [deleted] to the Beale AFB SOW in size, scope, and magnitude. Id. at 22. By contrast, RRSC presented several examples of success, as a prime contractor, in managing contracts of a similar size. Id. There were reports of problems with RRSC's performance, but evaluators found that the awardee had promptly and satisfactorily resolved those problems. Id. RRSC received an overall rating of very good for past performance.² Proposal Evaluation Report at 6. Since RRSC had received a higher rating and its performance appeared more relevant to what a contractor would perform under the solicitation, the SSA determined that an award to RRSC would be worth the additional price, about 4 percent, or \$500,000, over Birdwell's price. SSDD at 22. More specifically, the SSA stated as follows:

[I]t is the SSA's decision that paying \$500K more for RRSC which has a demonstrated record of proactive responses to contract problems; considerably more experience in management of high dollar MFH Maintenance contracts and; a better record of past performance ratings is a better value in the long run to the Air Force than awarding to a lower priced offeror ([Birdwell]) [deleted]. . . . [I]t is my decision that the proposal submitted by [RRSC] represents the best overall value to the government.

Id. at 22-23.

The agency advised the protester of its selection decision and, on February 17, provided Birdwell with a debriefing. Contracting Officer's Statement at 4. Five days later, Birdwell filed a protest with the agency. In the course of its response, the agency discovered an error in one of the prime contractor reports, which resulted in an increase in the protester's score for the customer satisfaction subfactor from [deleted]. Letter from SSA to Birdwell 1-2 (Mar. 24, 2000). However, the agency determined that the overall past performance rating of [deleted] did not change and that the SSA's selection analysis, quoted above, remained valid. Id. at 2, 4. The agency informed the protester of its decision verbally, following up by letter dated March 24, and this protest to our Office followed. Contracting Officer's Statement at 5.

² With regard to the seven subfactors, Birdwell received [deleted] as noted, while RRSC received five such ratings. Proposal Evaluation Report at 3, 6.

Birdwell argues that the agency performed an unreasonable evaluation of its past performance because the agency accepted the opinions of the government inspectors. Protest attach. I, at 6. Birdwell argues generally that the QAEs do not have the capacity to judge whether performance problems should be attributed to a prime contractor or to a subcontractor. Id. at 6-7. Rather than accept the QAE opinions, Birdwell contends that the agency should have reviewed the relevant contract files, which would contain information on whether the prime contractor or the subcontractor was responsible for defects. Id.

In reviewing an agency's evaluation of proposals, our Office will question the agency's evaluation only where it violates a procurement statute or regulation, lacks a reasonable basis, or is inconsistent with the stated evaluation criteria for award. See B. Diaz Sanitation, Inc., B-283827, B-283828, Dec. 27, 1999, 2000 CPD ¶ 4 at 6. An agency may base its evaluation of past performance upon its reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency's interpretation of the facts. Quality Fabricators, Inc., B-271431, B-271431.3, June 25, 1996, 96-2 CPD ¶ 22 at 7. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Coffman Specialties, Inc., B-284546, B-284546.2, May 10, 2000, 2000 CPD ¶ ____ at 5. We conclude that the agency reasonably considered the comments of the government inspectors in evaluating Birdwell's past performance under the "customer satisfaction" subfactor.

The agency acknowledges that QAEs work primarily with the prime contractors; for this reason, they rarely prepare documentation of deficiencies encountered in work being done by subcontractors. Contracting Officer's Statement at 3. Nonetheless, the Air Force argues that the inspectors' satisfaction--i.e., the "customer satisfaction" that constituted a subfactor of the evaluation--is relevant to the evaluation. Id. For that reason, the agency did consider the QAE comments, although solely in evaluating the "customer satisfaction" subfactor. Id. Since the QAE specifically did inspect Birdwell's work, we have no basis to object to the agency's considering QAE comments in its past performance evaluation.

The record here, including the specific comments by the QAEs, [deleted]

Past Performance Questionnaire, Birdwell Bros. No. 3, at 3.

[deleted]

Past Performance Questionnaire, Birdwell Bros. No. 1, at 4.

[deleted] that the prime contractor, not the subcontractor, is responsible for overall quality control, the protester provides no substantive evidence that the problems were somehow attributable to the prime contractor. Protester Comments attach. II, at iv-vi; exh. II-A, II-B. The record here shows that the agency considered the QAE comments for the limited purpose of evaluating customer satisfaction and we do not

find it unreasonable that the agency gave the opinions of the government's own inspectors some weight in that aspect of the evaluation. [deleted] that it deserved a past performance rating equal to, or higher than RRSC's "very good" rating.

Birdwell also argues that the selection decision was not consistent with the solicitation. Specifically, Birdwell objects that, in selecting RRSC, the agency considered the magnitude (size) of contracts, as well as the multidisciplinary nature (complexity) of those contracts. Protest attach. I, at 9. Birdwell contends that the solicitation, at 41, asked for offerors to provide a list of "relevant" contracts, which the RFP defined as "comparable housing maintenance services." *Id.*; RFP at 41. None of the stated subfactors, Birdwell asserts, identified the size or complexity of the contracts as a basis for evaluation. Protest attach. I, at 9.

We find the tradeoff analysis consistent with the solicitation. As Birdwell acknowledges, the RFP required a list of relevant contracts and defined "relevant" as "comparable" housing maintenance services. Birdwell correctly points out that the original RFP language further defined "comparable" to specifically include "this type of service, this type of project, the number of units and complexity," and that by amendment this language was deleted. RFP amend I, at 41. While the agency does not explain why it deleted this language, we think the terms "relevant" and "comparable" reasonably encompass such factors as size and complexity, and that the SSA's consideration of these factors in his tradeoff analysis was consistent with the RFP.

Even accepting Birdwell's argument that the RFP did not explicitly advise that magnitude and complexity would be evaluated, an agency may consider specific, albeit not expressly identified, matters logically encompassed by or related to the stated criteria. Science Management Corp., B-207670, Sept. 23, 1983, 83-2 CPD ¶ 362 at 5. Indeed, we have stated that it is both illogical and unreasonable to presume that an agency will pay no attention to the size and similarity of past contracts in its evaluation, since such factors are germane to the relevance of the past performance information. J. A. Jones Grupo de Servicios, SA, B-283234, Oct. 25, 1999, 99-2 CPD ¶ 80 at 7. In our view, the SSA reasonably considered and evaluated the size and complexity of offerors' contracts under past performance.

The record shows that Birdwell had never performed a contract of this size and that, even for those contracts where it had primary responsibility for performance, the work was only a small portion of the effort required here. SSDD at 22. As noted above, its past prime contracts were insignificant in value, 2 to 3 percent of what the agency anticipates here. *Id.* at 21. The SOW here contained numerous specialized elements--not only painting, but purchasing and installation of appliances, hazardous management, pest control, plumbing and locksmithing and the operation of a self-help store--which Birdwell has not managed or performed previously. RFP attach. 1; Proposal Evaluation Report at 3-5. In contrast, the record showed that RRSC's prior contract included most of the services required under the Beale AFB SOW, and that RRSC had performed contracts of comparable size, involving a

similar coordination of disciplines. Id. at 6-7. We cannot conclude that the agency was unreasonable, in its selection decision, in placing significant emphasis on RRSC's far more extensive experience and past performance history in managing, as a prime contractor, efforts such as those contemplated here. We find the evaluation and the selection decision were reasonable and consistent with the solicitation.

The protest is denied.

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of the United States