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Decision

Matter of: DGR Associates, Inc.

File: B-285428; B-285428.2

Date: August 25, 2000

Darcy V. Hennessy, Esq., Moore Hennessy & Freeman, for the protester.
Gregory H. Petkoff, Esq., John E. Lariccia, Esq., and Martin C. O'Brien, Esq.,
Department of the Air Force, for the agency.
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency unreasonably evaluated the protester's and awardee's competing proposals under certain technical evaluation factors is denied where the record shows that the evaluation was reasonable; the protester's mere disagreement does not render the agency's judgment unreasonable.
 2. Protester's contention that the evaluation of past performance was flawed because the awardee's performance history is not relevant to the solicited services is denied where the record shows that the solicitation anticipated reviewing a broader level of prior experience than the solicited services, and also shows that the assessment of the awardee's past performance was reasonable and consistent with the evaluation factor.
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DECISION

DGR Associates, Inc. protests the award of a contract to Chugach Management Services, Inc. (CMSI) under request for proposals (RFP) No. F04700-99-R-0043, issued by the Department of the Air Force for military family housing maintenance (MFHM) services at the Air Force Flight Test Center, Edwards Air Force Base, California. DGR principally challenges the evaluation of its own proposal as well as the awardee's proposal.

We deny the protests.

The solicitation was issued as a competitive procurement set aside for small disadvantaged businesses under the Small Business Administration's (SBA) section

8(a) program, 15 U.S.C. § 637(a) (1994). RFP § A. The RFP contemplated award of a hybrid fixed-price/award-fee contract, with fixed-price requirements as well as cost-reimbursement line items for a base period with six 1-year options. RFP § B. As amended, the RFP required a contractor to provide all labor, materials, equipment, and supervision to perform the solicited services in accordance with the performance work statement (PWS). The services to be provided include maintenance management, 24-hour service calls, change of occupancy maintenance, equipment maintenance, cleaning of abandoned quarters, facility upgrade/maintenance, and grounds maintenance. RFP attach. 1.

The RFP provided for award without discussions, on a best value basis, price and other factors considered. RFP amend. 6, § M.B.1.1. The evaluation factors were listed in descending order of importance as: mission capability, price, past performance, and proposal risk. Id. § M.B.2.1. The RFP further advised that the non-price factors were of equal importance and, when combined, were significantly more important than price; however, price was a substantial factor in award. Id. § M.B.2.2. Under the RFP's evaluation scheme, mission capability was to be assigned color/adjectival ratings of blue/exceptional, green/acceptable, yellow/marginal, or red/unacceptable, and assessed for proposal risk using the ratings of low, moderate, and high. Id. §§ M.B.7.1, M.B.7.3, M.B.6.0.

Past performance was to be evaluated through the assignment of a confidence assessment rating based on an offeror's demonstrated performance which is current, recent, and relevant to the mission capability factor and price.¹ The evaluation would focus on the offeror's demonstrated performance record in effective contract and subcontract management, responsive scheduling, timeliness, workload fluctuations, customer satisfaction, quality, government interface, effective use of resources, and environmental and safety compliance. Id. §§ M.B.5.1, M.B.7.4. The past performance evaluation also would include a performance assessment of subcontractors who would perform major or critical aspects of the

¹ The RFP stated that current and relevant performance would have greater importance in the performance confidence assessment than less recent and less relevant performance. Current and recent performance was described as ongoing contracts with a performance record of at least 1-year and contracts completed within 3 years from the solicitation's issuance date. Relevance was defined as services that are the same or similar in scope, magnitude and complexity as that described in the PWS. Id. § M.B.5.2.

solicited services; the RFP cautioned offerors that the agency also would consider information obtained from other sources. Id. §§ M.B.5.3, L.II.5.1. Price proposals were to be evaluated for affordability and reasonableness based on the total price for the basic requirements and all options. Id. § M.B.4.1.

The RFP included detailed instructions for the preparation of proposals, and requested that the offerors' proposals consist of three volumes. Volume 1 was to be organized to respond to the mission capability evaluation factor and was limited to 50 pages. Volume 2 was to include, among other things, a price proposal; there was no page limitation. Volume 3 was to describe the offeror's relevant past performance, and was limited to 20 pages. RFP § L.II.2.2.

As relevant here, offerors were instructed to include the following information in addressing mission capability:

Provide a complete **contract management structure** identifying key positions. As a minimum, the structure should address the Project Manager, Alternate Project Manager(s), Quality Control Inspectors, Safety Officer Identify the primary duties and responsibilities for each key position Illustrate lines of authority/chain of command and channel of communications. . . . Provide your **resource management** processes Provide your methodology for **schedule management** Provide a **draft quality control plan** for evaluation purposes, indicating specific quality control and inspection system procedures and detailed processes, . . . to include environmental, safety and subcontracts, for quality assurance . . . [and] [d]escribe your methodology for **customer satisfaction**

RFP amend. 6, § L.II.3.3.

Eight firms, including DGR and CMSI, submitted proposals by the amended closing date for receipt of proposals. The technical evaluation team (TET) summarized its findings in a consensus evaluation report for the source selection authority (SSA) that detailed the strengths, weaknesses, and risks presented by each offeror's proposal. The performance risk assessment group (PRAG) also prepared an evaluation report detailing its assessment of each offeror's past performance. The initial evaluation results, as well as the evaluated prices, were as follows:

Offerors	Mission Capability	Proposal Risk	Past Performance	Total Price (in millions)
CMSI	Blue/Exceptional	Low	Exceptional/ High Confidence	\$57.443
Offeror A	Blue/Exceptional	Low	Satisfactory/ Confidence	[DELETED]
Offeror B	Green/Acceptable	Moderate	Very Good/ Significant Confidence	[DELETED]
Offeror C	Green/Acceptable	High	Very Good/ Significant Confidence	[DELETED]
Offeror D	Green/Acceptable	High	Satisfactory/ Confidence	[DELETED]
DGR	Yellow/Marginal	Moderate	Exceptional/ High Confidence	[DELETED]
Offeror E	Yellow/Marginal	High	Exceptional/ High Confidence	[DELETED]
Offeror F	Yellow/Marginal	Moderate	Satisfactory/ Confidence	[DELETED]

Agency Report (AR), Tab 28, Source Selection Decision, at 2-3; AR, Tab 31, Price Competition Memorandum, at 3.

CMSI's blue/excellent rating under mission capability reflected the evaluators' judgment that the firm demonstrated a thorough understanding of the PWS requirements that would translate into effective and efficient contract management; the evaluators identified a number of strengths that CMSI had offered and only one weakness. For example, under contract management, the TET noted that CMSI proposed a quality control (QC) manager having independent authority. Under resource management, the TET found that CMSI proposed an automated material inventory and acquisition system which would reduce the likelihood of work being delayed due to supply shortages; however, the evaluators noted that CMSI failed to address resource estimating in its proposal. Under schedule management, CMSI proposed service call response times better than those specified in the PWS. Under customer satisfaction, the TET noted that CMSI proposed to share 35 percent of all award fees earned with its employees, and also proposed an exceptional employee incentive program.

CMSI's proposal risk rating reflected the evaluators' assessment that there was little potential in CMSI's approach to cause disruption in contract performance. AR, Tab 24, CMSI's Technical Evaluation. In assessing CMSI's past performance as exceptional/high confidence, the PRAG noted the firm's prior MFHM contracts, which were evaluated as highly relevant, as well as the prior contracts performed by CMSI's subcontractor, which were evaluated as relevant. AR, Tab 26, PRAG Evaluation Summary.

With respect to DGR's proposal, which received a yellow/marginal rating for mission capability, the evaluators noted both strengths and weaknesses. AR, Tab 25, DGR Source Selection Evaluation Document. For example, under resource management, the TET noted as a strength DGR's [DELETED] and identified as a weakness the firm's failure to address resource estimating. Under contract management, the TET noted a significant weakness in DGR's plan to use [DELETED] which, in their judgment, would cause "over-tasking" and conflicts of interest. Under quality control, DGR's proposal was assigned a deficiency rating because the firm had submitted a quality control plan which exceeded the page limitation for the mission capability volume and could not be evaluated. Id. DGR received a moderate proposal risk rating as a result of the evaluated significant weakness and deficiency identified in its proposal. AR, Tab 34, Post-Award Debriefing Charts, at 10.

The consensus evaluation results were presented to the SSA. After consideration of each proposal's relative strengths and weaknesses, the SSA concluded that discussions were not necessary because they would not materially enhance the potential for award of DGR and Offerors C, D, E and F. In this regard, the SSA noted that "any revisions to their proposals [those of DGR and Offerors C, D, E and F] would result in increases to their prices in order for them to overcome mission capability shortfalls and/or proposal risks for successfully performing the MFHM services." AR, Tab 28, Source Selection Decision, at 2. The SSA then performed an integrated assessment of the relative merits of the proposals of CMSI, Offeror A and Offeror B. The SSA concluded that CMSI's proposal represented the best overall value and selected CMSI for award. Id. at 2-4.

By letter dated May 1, 2000, the agency notified the unsuccessful offerors of CMSI's selection. On May 4, DGR filed a size and 8(a) eligibility protest with the contracting officer, who forwarded it to the SBA. On May 8, the SBA found CMSI to be both size and 8(a) eligible for this acquisition. AR, Tab 2, Contracting Officer's (CO) Statement, at 2; AR, Tab 33, SBA Eligibility Determination.

DGR requested and received a debriefing on May 11.² After reviewing the debriefing slides, DGR questioned one of CMSI's evaluated past performance references, a family housing maintenance contract at Elmendorf AFB, alleging that Chugach Development Corporation (CDC), not CMSI, was the prime contractor. The Air Force reviewed CMSI's past performance proposal and found two contracts--the Elmendorf AFB and the Army Posts in Alaska--were not performed by CMSI; thus,

² On May 10, in preparation for the scheduled telephonic debriefing, the agency sent DGR, by facsimile, DGR's source selection briefing slides to the SSA, redacted CMSI slides, and redacted SSA source selection decision documents. AR, Tab 2, CO Statement, at 2.

these contracts were not relevant references for CMSI.³ As a result, the PRAG removed both contracts from their assessment of CMSI's past performance. On May 12, the agency decided to take corrective action regarding the past performance evaluation. AR, Tab 2, CO Statement, at 2-3.

Thereafter, the agency reviewed additional CMSI past performance information provided by DGR as part of its May 4 size and eligibility challenge. The agency obtained, through government sources, performance questionnaire survey responses for CMSI's performance under two Simplified Acquisition of Base Engineering Requirements (SABER) contracts--contract No. F45613-98-D-0002 at Fairchild AFB, and contract No. F65503-96-0006 at Eielson AFB. The PRAG evaluated the survey responses, which gave CMSI high ratings for its past performance, and found both contracts were similar in scope to the solicited requirements; on that basis, the PRAG determined these two contracts were relevant. The survey respondents assigned CMSI strengths in the areas of contract management, resource management, schedule management, quality control, customer satisfaction and technical performance; as a result, the PRAG did not change the exceptional/high confidence assessment rating for CMSI under the past performance evaluation factor. AR, Tab 26, PRAG Evaluation Summary.

These findings were presented to the SSA who again determined that CMSI's proposal represented the best value to the government. In this regard, the SSA stated:

I find the exceptional/high confidence performance assessment rating [for CMSI] stronger than previously briefed to me. Wherein the previous assessment indicated that [CMSI] had highly relevant versus relevant past performance histories, I now find that [CMSI's] performance assessment to be exceptional in the areas of contract, resource, and schedule management, quality control, and technical performance. These exceptional strengths solidif[y] my previous decision that, based upon [CMSI's] exceptional performance record, there is essentially no doubt of their successfully performing the MFHM services.

AR, Tab 29, Supplemental Source Selection Decision, at 2.

³ For the record, we note that CMSI's past performance volume clearly identified CDC as the prime contractor for contract No. F65501-97-D-0016 (the Elmendorf AFB contract), and CDC as the managing partner of the joint venture (CDC and The Andrews Group) for DAHC76-96-D-0002 (the Army Posts contracts). AR, Tab 22, CMSI's Past Performance Proposal.

In its initial and supplemental protests, DGR challenges the evaluation of its own proposal and CMSI's proposal on several grounds. In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and applicable statutes and regulations. Seair Transport Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458 at 4. The protester must demonstrate that the evaluation was unreasonable, a burden that is not met by mere expressions of disagreement with that evaluation. CH2M Hill, Ltd., B-259511 *et al.*, Apr. 6, 1995, 95-1 CPD ¶ 203 at 4. We have examined the evaluation record here and based on our assessment of the record, we find the evaluation of DGR's and CMSI's proposals unobjectionable. We discuss some of DGR's key arguments below.⁴

MISSION CAPABILITY

Contract Management

DGR argues that the agency improperly downgraded its proposal because the protester proposed [DELETED], which the Air Force found would cause "over-tasking" and conflicts of interest. Protest at 4. According to the protester, nothing in the RFP requires that [DELETED]; DGR disputes the agency's assessment that its [DELETED] may be overburdened with duties if he also serves as the [DELETED]. Protester's Comments at 3-4.

This argument is without merit. The Air Force concedes that the RFP did not specifically require that two individuals staff the [DELETED] positions. However, given DGR's proposed approach to have one individual serve as [DELETED], the agency found that "[c]onflicting or multiple roles [DELETED] increases the risk of compromising [DELETED] in order to meet project schedules and cost control." AR, Tab 2, CO Statement, at 7. The agency concluded that "based on the magnitude of the MFHM requirements, [DELETED] are too extensive to be adequately supported by one individual." *Id.* DGR has not rebutted the agency's explanation in this regard and there is no basis to question the adverse evaluation regarding DGR's approach to staffing these positions. We conclude that the agency reasonably determined that this area of DGR's proposal evidenced a significant weakness.

Nonetheless, the protester insists that "[t]here is no difference between the scope of duties DGR intended to assign to the [DELETED], versus CMSI's [DELETED]." Protester's Comments at 3-4. The record shows, contrary to the protester's allegations, that while CMSI's [DELETED] would assume the duties/responsibilities

⁴ DGR identifies a number of examples of alleged unreasonable evaluation ratings and other flaws in the evaluation of proposals. We have reviewed them all and find that none provides any basis to disturb the award.

of the [DELETED] in his absence, the operations superintendent would not also perform the [DELETED], which are important to contract performance; rather, another individual would perform those functions. Similarly, the record does not support DGR's allegation that CMSI's proposal should have been downgraded because its proposed [DELETED] would also oversee the warehouse manager, thereby creating a similar conflict of interest and overburdening of duties, as noted by the evaluators with regard to DGR's approach to staffing [DELETED]. *Id.* The record shows that CMSI did not propose that the {DELETED} would perform the dual duties of the warehouse manager; instead, CMSI proposed two individuals to fill these two distinct and separate positions. AR, Tab 22, CMSI's Mission Capability Proposal, at 4. Thus, CMSI's approach presents no conflict of interest between the responsibilities of the [DELETED] and the warehouse manager; likewise, the record does not indicate that the awardee's [DELETED] would be overburdened by multiple duties.

As further evidence that the evaluation of DGR's proposal was inconsistent with that of CMSI's proposal, DGR alleges that CMSI was attributed a strength for proposing that its [DELETED]. Protester's Comments at 3-4. The contemporaneous evaluation record belies this allegation. The only strength assessed to CMSI's proposal in this area was based on the independent authority given to the QC manager to stop work and initiate corrective action. No strength was attributed to CMSI or to DGR based on [DELETED]. Thus, there is no basis to question the evaluation of proposals in this area.

Resource Management

DGR alleges that its proposal and CMSI's proposal were evaluated unequally in the resource management area, relying on the difference in terms used in the individual evaluator analysis worksheets. Specifically, the protester points out that the individual evaluator analysis worksheet gave DGR a rating of "fail" for not addressing resource estimating whereas CMSI was given a rating of "meets" although no resource estimating was included in CMSI's proposal. Protester's Comments at 5.

The record shows that while the consensus evaluation reflects the overall ratings that the individual members as a group agreed should be assigned to DGR's and CMSI's proposals, their ratings did not precisely track the terminology/rating used by individual evaluators on the evaluator analysis worksheets. Supplemental AR, July 10, 2000, at 1. However, the record also shows that the consensus evaluation report submitted to the SSA states that CMSI's proposal did not address estimating and that this was a weakness in CMSI's proposal. Our chief concern is whether the evaluation documentation communicates the principal strengths and weaknesses to the SSA and whether the record supports the evaluators' conclusions and the SSA's selection as reasonable and consistent with the solicitation criteria. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 14. The consensus evaluation report submitted to the SSA accurately conveyed the fact that DGR's and

CMSI's proposals failed to address resource estimating and stated that for both firms this lack of information was a weakness. AR, Tab 34, Source Selection Briefing Slides, at 11, 15. There is no basis to question the evaluation in this regard.

Quality Control Plan

As stated previously, the RFP specified that a draft QC plan was to be included as part of the 50-page mission capability volume and offerors were instructed as to the type of information that should be addressed in the quality control plan. RFP amend. 6, §§ L.II.3.3, L.II.2.2. DGR's QC plan was outside the 50-page mission capability volume limitation and therefore the agency considered only information concerning its QC plan that was included in the 50-page limit. The agency rated DGR's proposal as deficient for lack of a QC plan.

DGR argues that this area of evaluated deficiency was unreasonable because DGR's proposal was "replete with information about its quality control 'plan' and it provides within the 50-page proposal essentially no more and no less than CMSI's plan." Protester's Comments at 6. Had its QC plan within the 50-pages been evaluated, DGR asserts that its proposal would have been rated acceptable overall, rather than marginal, under the mission capability evaluation factor. Protester's Supplemental Comments, July 14, 2000, at 3.

While the protester focuses on the "abbreviated" QC information in its mission capability proposal, the record indicates that the evaluated deficiency related to DGR's failure to provide a QC plan which addressed specific quality control and inspection system procedures and detailed processes for ensuring that services would meet contract performance requirements. The agency found that while DGR's proposal references several concepts that its QC plan would identify, implement and document, DGR's proposal did not provide [DELETED]. For example, the agency notes that DGR proposed "[DELETED]." AR, Tab 23, DGR's Proposal, at 10. The agency found that DGR did not provide [DELETED] as required by the RFP; DGR does not rebut this finding. Supplemental AR, July 10, 2000, at 3.

In contrast, CMSI's proposal provided specific, measurable time frames and frequency for accomplishing its QC program and included a complete inspection schedule outlining specific procedures, processes, time frames and schedules, and a sample form for taking corrective action and reporting discrepancies. AR, Tab 22, CMSI's Mission Capability Proposal, at 35-41. We think the agency's evaluation of the two firms' QC programs was reasonable and supported by the record. The protester is simply disagreeing with the assigned deficiency rating based on its view that its "abbreviated" QC plan should have received some evaluation credit; however, that disagreement provides no basis to challenge the rating assigned by the evaluators.

Proposal Enhancements

DGR alleges that CMSI was not entitled to evaluation credit for the enhancements identified in its mission capability proposal since the agency did not incorporate CMSI's proposal into the resultant contract. Protest at 3. Since CMSI is not bound to honor the evaluated enhancements in its mission capability proposals, the protester alleges, a lower mission capability and/or higher proposal risk rating should have been assigned to CMSI's proposal. Id. at 3-5.

The Air Force concedes that because of an administrative oversight, the RFP inadvertently incorporated by reference Air Force Materiel Command Federal Acquisition Regulation Supplement § 5352.215-9006, entitled "Intent to Incorporate Contractor's Technical Proposal." Supplemental AR at 5. The agency explains that it was never the government's intent to incorporate all or part of the awardee's proposal in the resultant contract; rather, as a matter of contract administration, the Air Force would utilize the award fee to ensure quality contract performance by CMSI. Under the award fee plan for this contract, the agency maintains that CMSI will be rewarded only for exceeding contract standards and this would motivate the contractor to exceed performance standards and deliver on the representations the firm made in its technical proposal. Id.

DGR disputes the agency's position that the award fee process here would provide an incentive for CMSI to perform as proposed in its mission capability proposal. The protester argues that an enhancement should only be considered a "strength" if the agency incorporated the benefit into the contract or it was inherent in the offeror's process; as such, the protester challenges the strength assessed CMSI for reducing the response times specified in the PWS. Protester's Comments at 10-11.

As discussed previously, the record shows that both offerors were assigned evaluation strengths in areas where their proposals demonstrated the potential to exceed specified performance standards. CMSI had several evaluated strengths; DGR was assessed a strength in [DELETED]. To the extent DGR argues that the agency should not have rated either firm's proposal as offering a technical strength because their proposals would not be incorporated into the contract, the firms were not prejudiced by the agency's evaluation in this regard since both were given credit for their respective technical strengths.⁵

⁵ We also note that since offerors were on notice that their technical proposals would be incorporated into the contract, (even though ultimately this did not happen), in preparing their technical proposals, the offerors had no reason to believe that their promises would not be incorporated into the contract.

PAST PERFORMANCE

DGR raises a series of allegations in which it essentially disagrees with the re-evaluation of CMSI's past performance as exceptional/high confidence. DGR claims that CMSI's assessment rating is "totally unjustified" because the two SABER contracts evaluated by the PRAG have limited relevance to the services covered by the solicitation here. According to the protester, both SABER contracts are "nowhere near the same or similar in scope, magnitude or complexity" as the solicited requirements since neither contract includes any residential housing maintenance, service calls, change of occupancy maintenance, interior/exterior maintenance or grounds maintenance. Protester's Comments at 12. Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria, since determining the relative merits of offerors' past performance information is primarily a matter within the contracting agency's discretion. See Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3. We conclude that the past performance assessment challenged by DGR was reasonable.

As noted above, the RFP informed offerors that the agency would evaluate information provided by each offeror concerning contracts for "the same or similar" services to determine relevancy. Consistent with this advice, the agency evaluated the degree of similarity between CMSI's SABER contracts and the RFP requirements. Based on this analysis, the PRAG found that the awardee's SABER contracts were relevant because they were similar in scope and magnitude to the solicited requirements. AR, Tab 26, PRAG Evaluation Summary.

We think the agency could reasonably decide that these two SABER contracts were relevant to the proposed effort. Nothing in the definition of relevance, quoted above, limits offerors to precisely the same effort as covered by the solicitation here; rather, the solicitation anticipates review of a fairly broad range of experience in housing maintenance/minor repair construction. Therefore, to the extent the referenced SABER contracts were somewhat different from the scope of the solicited effort, the Air Force recognized the differences and concluded that CMSI's performance history was sufficiently close to be relevant. In short, the agency reasonably determined that CMSI's SABER contracts were relevant and we find no error with respect to the evaluation of CMSI's past performance.

Here, we conclude the SSA's decision to award to CMSI on the basis of a proposal that was higher rated and lower priced than DGR's proposal was reasonable. As discussed above, DGR's proposal reasonably was downgraded in several areas, for example, [DELETED], resulting in DGR's proposal being rated lower than CMSI's proposal under the mission capability evaluation factor. DGR's proposal also

reasonably warranted a moderate risk rating as compared to CMSI's. Further, there is no basis to question the past performance rating given to CMSI. On this record, we have no basis to object to the award to CMSI, the firm submitting a higher rated, lower priced proposal.

The protests are denied.

Robert P. Murphy
General Counsel