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Comptroller General
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Decision

Matter of: North American Aerodynamics, Inc.

File: B-285651

Date: September 15, 2000

James J. McCullough, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.

Michael A. Hordell, Esq., and Laura L. Hoffman, Esq., Gadsby & Hannah, for Triangle Parachute LLC, an intervenor.

Brian Howell, Esq., Department of the Navy, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of protester's past performance was reasonably based upon comments received from one of protester's references and the agency's assessment of protester's subcontract performance under the prior contract for the required items, where the agency, despite repeated attempts, could contact only one of protester's three references listed in the protester's proposal.

DECISION

North American Aerodynamics, Inc. protests the award of a contract to Triangle Parachute LLC under request for proposals (RFP) No. N00174-00-R-0018, issued by the Department of the Navy, for the manufacture of subassembly panels, parachutes, and deployment bags in support of the Navy's Distributed Explosive Technology (DET) system.¹ North American challenges the agency's evaluation of its and Triangle's proposals, and contends that Triangle misrepresented its commitment to meet the contract delivery schedule.

We deny the protest.

¹ The DET is a mine clearance system, using a rocket-launched explosive array that is deployed from the deck of a landing craft to clear mines in a launch zone. See <www.peomiw.navsea.navy.mil/det.htm>

The RFP, issued as a small business set-aside, provided for the award of a fixed-price contract for the manufacture of parachutes and other supplies in accordance with government drawings and design specifications. Delivery was required within 120 days after contract award, and offerors were informed that failure to propose a delivery schedule consistent with this requirement would result in the rejection of the offer.

The RFP provided for award without discussions on the basis of a cost/technical tradeoff, and stated the following evaluation factors and subfactors:

Offeror submission	
Offeror capability	
	1. Technical capability
	a. Manufacturing experience and capability
	b. Quality assurance
	c. Inspection
	2. Facilities
	3. Past Performance
Price	

Offerors were informed that the offeror submission factor (which concerns the offerors' completion of Standard Form 33 and promise to meet requirements such as the delivery schedule) would be evaluated on a pass/fail basis and that the offeror capability factor would be qualitatively evaluated. Within the offeror capability factor, the past performance subfactor was stated to be equal in value to the technical capability and facilities subfactors. The RFP provided that the evaluation ratings for the offeror capability factor would be used to calculate a level of confidence rating (LOCAR). The LOCAR score was stated to be more important than price.

Detailed proposal preparation instructions were provided with regard to each of the offeror capability evaluation factors and subfactors. With respect to the technical capability subfactor, offerors were instructed to provide information demonstrating the firms' "having gained experience in the manufacturing of same or similar panels, parachutes and bags" on contracts within the past 5 years and to provide a brief description of the scope of past contracts that "demonstrate the offeror's ability to meet the requirements of the [statement of work];" offerors were also required to demonstrate the capability to develop and implement a strong quality assurance program and product inspection plan. RFP at 40. For the facilities subfactor, offerors were to identify their proposed facilities and "the specific equipment and tooling located at the facility(s) which will be utilized to support manufacturing efforts." RFP at 41. With respect to the past performance subfactor, offerors were instructed to provide at least three references who would be able to provide

information for contracts within the past 3 years concerning the quality and timeliness of the offeror's work; the reasonableness of its pricing, costs, and claims; the reasonableness of its business behavior; its concern for the interest of its customers; and its integrity. Offerors were cautioned that the "[f]ailure of an offeror's references to respond within the allotted time frame will result in the inability of the Government to rank the offeror's past performance and will [a]ffect the overall LOCAR." Id.

The Navy received offers from North American and Triangle, which were evaluated as follows by the agency's technical evaluation panel (TEP):

	North American	Triangle
Offeror submission	Pass	Pass
Offeror capability	Good	Good
Technical capability	Good	Good
Facilities	Good	Good
Past Performance	Good	Good
LOCAR	.80	.80
Price	\$(DELETED)	\$175,476

Agency Report, Tab D, Business Clearance Memorandum (BCM), at 7-8. The TEP found that both the protester and awardee demonstrated "full knowledge and understanding of the steps required to produce array panels and parachutes" under the RFP and had "demonstrated the experience and capability to manufacture array panels as required by drawings/specifications." Id., Tab F, Technical Evaluation, at 4-5. The TEP also cited North American's and Triangle's proposed personnel, equipment, and material as providing the evaluators with confidence in North American's and Triangle's manufacturing experience and capability. Specifically, with respect to the facilities subfactor, the TEP made the identical finding that the firms had "all of the resources and facilities to ensure that they meet or exceed all of our drawing/specification requirements." Id. Both firms' past performance references were found to justify a "good" evaluation rating; the TEP noted with respect to North American as follows:

Sources indicate, however, that North American takes a while to come up to speed for production and that previous flaws and reworks pertaining to past purchases of nets were on the high side which is contrary to what North American claims in the report.

Id. at 5. The TEP recommended that the award decision be based upon price, given the firms' identical LOCAR scores. Id.

The contracting officer concluded that the two offers were technically equal, which resulted in an award without discussions on May 4, 2000 to Triangle on the basis of

that firm's lower proposed price. Id., Tab D, BCM, at 10. After receiving a debriefing, North American filed this protest.

North American first objects to the Navy's evaluation of its proposal under the past performance subfactor as "good," complaining that the Navy contacted only one of its three listed references and that the Navy misevaluated the comments made by this reference.² North American also objects to the Navy's assessment of North American's subcontract performance under the prior contract for these items, which was not a listed past performance reference, and which the Navy found to be "good," because it is based upon comments made by an evaluator in the evaluation of North American's proposal under the technical capability subfactor and not the past performance subfactor. The protester asserts that its past performance should have been evaluated as "excellent."

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

Here, the RFP provided for a qualitative evaluation of offerors' past performance and requested that offerors provide references for work performed in the past 3 years that would provide the basis for this evaluation. As the Navy points out, the RFP placed the risk of failure to reach references on the offeror. See RFP at 41. The Navy states that it repeatedly attempted to contact the protester's three references, leaving messages for two of the references, and ultimately receiving a response from only one of the references.³ Agency Report at 5-6. Using that response, and its own knowledge of the protester's past performance as a subcontractor under the prior contract, the Navy concluded that the protester's overall past performance was "good."⁴

² The protester appears to believe that it was permitted to provide only three references for the past performance evaluation. See Protester's Comments at 13. This is incorrect inasmuch as the RFP requested a "minimum of three (3) references." RFP at 41.

³ The two nonresponding references are located in Thailand and Ireland.

⁴ The Navy's source selection plan provides that past performance would be rated "good" where most sources of information state that the firm's performance was good, and that any complaints are few and minor. An "excellent" rating was stated to represent that a significant majority of sources are consistently firm in stating that the offeror's performance was superior.

The Navy and protester have filed competing affidavits (from the Navy's past performance evaluators and the protester's three listed references), from which the protester requests that we find that the Navy did not attempt to contact the two references outside the United States and that the Navy misevaluated the information it received from the one response.

With respect to whether the Navy attempted to contact the two references outside the United States, we have no basis to conclude the Navy did not repeatedly attempt to contact these references, as the agency states. The affidavit from a Navy past performance evaluator describes with some specificity her attempts to call one reference whose telephone was never answered and her leaving of messages for another reference who did not respond to the Navy.⁵ This affidavit is consistent with the evaluation documentation in the record. Agency Report, Tab F, Technical Evaluation at 22-23.

The protester states, with respect to the reference in Ireland, for which the Navy states the telephone was never answered, that this reference did not receive a call, does not have an answering machine, works alone in his office, and could only have been reached during a 2½-hour period of the Navy's business day (considering time zone differences). We find that the evaluator's affidavit is not inconsistent with that submitted by the protester; both affidavits reflect that the Navy was unable to reach this reference.

The protester states, with respect to the reference in Thailand, for which the Navy states that it left messages either with someone or on an answering machine, that this reference also does not have an answering machine or voice mail and that neither the reference, nor his wife or secretary received any calls. The reference also states that his business phone also rings in his home, in which he has three servants, but that none of the servants speak English. We find that this statement fails to establish that no one in the individual's office or home received a message from the Navy. Although the reference insists that, if a message had been received, he would have been informed, we find, given the number of people other than the individual that could have answered the telephone (five other persons), that this does not affirmatively rebut the Navy's sworn statement that the calls were made and messages left.⁶

⁵ We note that another evaluator also states that he unsuccessfully tried to reach these references.

⁶ We recognize that the Navy's past performance evaluator stated in her declaration that she either left a message with someone or on an answering machine and that the reference in Thailand states that he does not have an answering machine. The Navy's evaluation documentation does not indicate how the message was left. We do not find that the evaluator's lack of recollection on this point discredits the

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North American also argues that the affidavit of the one reference that responded to the Navy's request for information demonstrates the unreasonableness of the Navy's assessment of the protester's past performance as good. Specifically, this affidavit declares that this reference left a voice mail for the Navy stating that North American was

a quality supplier for me, that they had always produced a top quality product, that they provided excellent technical assistance, that their price was always well within reason, and they had always met their delivery schedules. I recall concluding my voice mail message with a statement to the effect of "I do not believe the Navy could find a better supplier."

Even if we agree with the protester that the information provided by this reference should have led to an "excellent" rating for this reference, this does not demonstrate that the agency's overall past performance rating of "good" was unreasonable. Specifically, the Navy also considered North American's past performance as a subcontractor under the prior contract manufacturing DET exoskeletons and associated items, and assessed this subcontract performance as only good.

The protester does not contend that its subcontract performance should be rated higher than "good," but objects that the information forming the basis for this rating was taken from an evaluator's comments under the technical capability subfactor. This particular evaluator, however, was the technical representative for the prior contract under which North American's subcontract services were performed and thus had personal knowledge of North American's performance. In this regard, North American's proposal recognized the evaluator's familiarity with its subcontract performance, in that the technical capability portion of the proposal listed this subcontract and identified him as the technical point of contact. Also, the contracting officer states that he has personal knowledge of North American's subcontract performance under this subcontract and considered its performance to warrant a "good" rating.

In sum, we think the agency reasonably found North American's overall past performance to be good, as defined in the source selection plan, considering its subcontract performance, even giving the protester the benefit of the doubt regarding the information provided by the reference who responded to the Navy.

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remainder of her statement that she left a message, given the evaluation documentation that indicates that messages were left in some fashion.

North American also complains that if the Navy is allowed to consider its subcontract performance in the past performance evaluation, the Navy should also evaluate Triangle's performance prior to 1996 of a development contract with the Navy for panel subassemblies (part of the required items under this contract). North American alleges that Triangle was not required to meet the Navy's specifications in producing these developmental items.⁷

We disagree with the protester. The RFP provided that only contract performance within the past 3 years would be considered in evaluating proposals under the past performance subfactor. The Triangle contract performance, to which North American points, is outside the past 3 years. Moreover, unlike North American, Triangle identified more than the minimum three references for past performance, and the Navy had no difficulty obtaining past performance information from Triangle's references upon which to base its evaluation.

Also, based on a declaration submitted by the protester, North American argues that Triangle's technical capability should have been judged inferior to North American's, because North American assertedly performed to the specifications and Triangle in its performance of this one developmental contract assertedly did not. In the evaluation of Triangle's proposal under the technical capability subfactor, the Navy credited Triangle with having performed contracts in accordance with specifications.

That declaration does not provides us with a basis to question the Navy's assessment of Triangle's technical capability as "good." As noted above, the protester alleges that Triangle was not required to meet the Navy's contract specifications in performing a developmental contract prior to 1996 for panel subassemblies. Specifically, the declaration states that "[i]n producing these developmental items, I believe the Navy was more concerned with obtaining a functional item than with meeting the exact tolerances set forth in the specification." Even accepting these statements on their face regarding this one contract,⁸ we note that the Navy's evaluators based their decision on Triangle's performance of a number of contracts "for this type of work," Agency Report, Tab F, Technical Evaluation, at 13, and Triangle's proposal identifies a number of contracts that the awardee has had with the Navy to manufacture items for the DET system. Agency Report, Tab G, Triangle Technical Proposal, exh. A. The protester does not state which, if any, of Triangle's listed contracts is the developmental contract to which it refers. Also, most of the listed contracts were performed after the signer of the declaration had left Triangle's

⁷ The protester acknowledges in the declaration submitted with its comments that the specifications have been revised since the time Triangle was producing the initial developmental items.

⁸ In this regard, we note that it is not unusual in developmental contracts for the contract specifications to be modified.

employ, and thus he could not be familiar with Triangle's performance of these contracts. Given that the evaluators relied upon Triangle's performance of a number of contracts, we do not think that North American's arguments concerning one developmental contract demonstrate the agency's technical capability evaluation was unreasonable.

Moreover, the RFP provided that the consideration of an offeror's technical capability would consider a number of elements, including the offeror's manufacturing experience and capability, quality assurance program, and product inspection plan. RFP at 40, 45. Consistent with this, the Navy determined that Triangle's technical capability was "good" overall, considering the firms' past manufacturing experience, personnel and equipment, quality assurance program, and proposed inspection plan. Agency Report, Tab F, Technical Evaluation, at 3. Because the evaluators' reference to Triangle's performance of previous contracts formed only one part of Triangle's overall rating for this subfactor, it does not appear that Triangle's performance of this one contract, even if it had been considered and different specifications were involved, would have any substantial impact on the overall technical capability rating.

North American also protests that Triangle misrepresented its ability to satisfy the contract delivery schedule. Specifically, the protester argues that immediately after being notified of the intended award to Triangle, North American informed the Navy that Triangle could not obtain sufficient quantities of 2-inch Kevlar tape from its anticipated supplier, Bally Ribbon Mills, within the time required to allow for performance because Bally did not have sufficient quantities of the tape in inventory and had a long-lead time to supply the tape. North American also informed the Navy that Triangle did not have the specialized tooling necessary to perform within the time required.

In response to North American's complaint, the Navy called Triangle on May 2 to confirm whether Triangle intended to satisfy the contract delivery schedule, considering the availability of Kevlar tape.⁹ Agency Report, Tab G, Note of Navy's Telephone Call, May 2, 2000. Triangle responded to the Navy with a written memorandum confirming that Triangle would satisfy the contract delivery schedule; Triangle stated that it planned to use multiple sources for the 2-inch Kevlar tape, including Bally and Narricot Industries, and that Triangle was willing to devote

⁹ North American initially protested that the agency's request for information from Triangle concerning that firm's intent to satisfy the delivery schedule constituted discussions, which required discussions with North American and a request for final proposal revisions. The Navy responded in some detail in its report that the request constituted clarifications and not discussions. North American did not address the agency's response in its comments, and accordingly we consider this allegation to have been abandoned.

whatever resources were necessary, including scheduling additional manufacturing shifts, to satisfy the contract schedule.¹⁰ Agency Report, Tab G, Awardee's Memorandum to the Navy, May 2, 2000. The Navy concluded that this was sufficient to establish that the awardee was promising to satisfy the contract schedule. On July 25, well after contract award and the filing of this protest, the Navy visited Triangle to assess the firm's contract progress and found that, after consideration for the agency's stop work order due to the protest, Triangle will timely complete the contract in September. Agency Trip Report, July 26, 2000.

We find that the question of whether Triangle will be able to meet the required delivery schedule concerns the affirmative determination of Triangle's responsibility. Offerors were not requested to describe their proposed technical approach to performing the contract or how they intended to satisfy the contract delivery schedule. Rather, offerors could either promise to satisfy the RFP delivery schedule of 120 days after contract award or propose a quicker delivery schedule. Triangle promised to delivery within 120 days of contract award. We will not review affirmative determinations of responsibility absent a showing of possible bad faith on the part of government officials or that definitive responsibility criteria in the solicitation were not met, neither of which circumstance exists here. 4 C.F.R. § 21.5(c) (2000).

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

¹⁰ We recognize that the RFP requested that offerors, in addressing the facilities subfactor, identify the specific equipment and tooling located at the facility the firm intended to use for performance. RFP at 41. Both Triangle and North American provided general statements in their proposals that the firms had performed the work in the past and had the same facilities available. See Agency Report, Tab G, Triangle Technical Proposal, at 10; Tab H, North American Technical Proposal, at 5. We find that the firms were treated equally with respect to this subfactor.