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Decision

Matter of: OSI Collection Services, Inc.; C.B. Accounts, Inc.

File: B-286597.3; B-286597.4; B-286597.5; B-286597.6

Date: June 12, 2001

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Deneen J. Melander, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Financial Asset Management Systems, Inc.; Brian A. Darst, Esq., and Francis E. Purcell, Jr., Esq., Williams Mullen Clark & Dobbins, for Maximus, Inc.; and Saul L. Moskowitz, Esq., Dean Blakey & Moskowitz, for Diversified Collection Services, Inc., intervenors.
Jeffrey C. Morhardt, Esq., and Jose Otero, Esq., Department of Education, for the agency.
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests against award of federal supply schedule task order contracts for private collection agency services--following a reevaluation of offerors' past performance pursuant to prior protests and a new source selection decision--are denied where the record shows that the contracting agency's reevaluation of offerors' past performance was reasonable, consistent with the solicitation's stated evaluation criteria, and fully supported.

DECISION

OSI Collection Services, Inc. and C.B. Accounts, Inc. (CBA) protest the decision by the Department of Education to award federal supply schedule (FSS) task order contracts to 11 other firms under a request for task order proposal (RFTOP) for private collection agency (PCA) services. Both protesters contend that the agency improperly evaluated offerors' proposals with respect to past performance.

We deny the protests.

BACKGROUND

The agency's Office of Student Financial Assistance performs collection and administrative resolution activities on debts resulting from the nonpayment of student loans and the failure to fulfill grant requirements. When this solicitation was issued, 17 PCA contractors, including OSI and CBA, were performing these services for the agency. This follow-on RFTOP was issued in July 2000 to obtain the services of PCAs with contracts under the General Services Administration's Financial Asset Management Services Schedule. Task order contracts were to be issued to 10-12 FSS contractors, with at least two awarded under a small business set-aside. The agency estimates that, on average, each non-set-aside task order contract will generate approximately $25 million in commissions during its term. The agency planned to conduct an initial transfer of 20,000 accounts to each successful contractor, each of whom was to locate and contact the borrowers to demand payment of their debts or to otherwise resolve the account through such measures as wage garnishment, litigation, or other administrative resolutions. Additional account transfers were to occur throughout the life of the contract.

Incumbent contractors were invited to compete for the contracts if they had performed "consistently well" for the agency based upon its Competitive Performance and Continuous Surveillance (CPCS) evaluation. The CPCS evaluation, performed every 4 months, measures the relative performance of each contractor on all accounts transferred under various performance indicators and is used to determine bonus payments and the transfer of new accounts. Under the CPCS methodology, the contractor ranked the highest under a particular performance indicator receives the maximum number of points available for that indicator, and the remaining contractors receive points in proportion to their ranking relative to the leading contractor. Each contractor's overall CPCS score for each 4-month period is the sum of its scores for all of the performance indicators for that period.

Offerors were required to propose a commission or fee for each type of service to be performed under the contract. Since the RFTOP established target rates for these commissions or fees, "quality factors" and the commitment to small business were to be more important than price in making the award selection decision. Section M.1.b of the RFTOP stated that evaluation factors were to be considered in the following order of importance: past performance, including the past performance of key personnel; technical evaluation; commitment to small business; and price.

The past performance evaluation is the critical issue in these protests. In addition to the past performance of key personnel, the RFTOP provided that the following past performance information was to be obtained and considered: a Dun & Bradstreet (D&B) past performance evaluation for all offerors; information obtained when checking references for all offerors; and, "[f]or those companies with a current contract, the Department will use performance data that we have on hand such as the CPCS scores." RFTOP § M.2. Recent and relevant information was to receive greater consideration than less recent and less relevant information. The agency considered competitive ranking information to be "extremely relevant." Id.

Twenty-six FSS contractors submitted proposals in response to the RFTOP. Thirteen were large businesses currently performing PCA services for the agency; seven were non-incumbents; and six were small businesses invited to compete for award under the small business set-aside portion of the solicitation. A source evaluation board (SEB) evaluated proposals and submitted its award recommendation memorandum to the contracting officer, who served as the source selection authority (SSA). The SSA concurred with the SEB's recommendations, under which 11 firms--none of which were OSI or CBA--were proposed for award.

OSI subsequently filed protests in our Office challenging the agency's evaluation of its past performance. We sustained OSI's protests primarily because the record showed that the agency's evaluation of offerors' past performance, which largely relied upon a mechanical comparison of the cumulative periodic CPCS scores for incumbent contractors without examining the available past performance data behind those scores, was unsupported and unreasonable.[1] OSI Collection Servs., Inc., B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18. We recommended that the agency reevaluate proposals with respect to past performance, giving appropriate consideration and weight to the performance data in its possession.

During the reevaluation, the SEB reviewed each incumbent contractor's CPCS scores and rankings in the context of particularized facts about the contractor's performance in order to determine the underlying significance of the CPCS results. The SEB also considered the ratings and comments gathered about all offerors from D&B past performance evaluations and contractor reference surveys, as well as the past performance of key personnel. Based upon its analysis of this past performance information, the SEB developed an overall assessment of each offeror's past performance and assigned each offeror an overall past performance score. The SEB considered the results of its evaluations under the past performance, technical, small business and price factors to arrive at an overall assessment and ranking of each offeror's proposal.

The SSA's source selection decision document includes a detailed narrative justification supporting the SEB's rankings, as well as his source selections consistent with those rankings. The source selections were divided into several groupings based upon the SSA's level of confidence that a firm would successfully perform the contract; each grouping is supported by additional narrative explanation. The first grouping contained five incumbent offerors: Pioneer Credit

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[1] CBA had filed an agency-level protest challenging various aspects of the evaluation of its proposal. The agency dismissed the protest as moot when OSI's protest was sustained by this Office.

Recovery, Inc., Diversified Collection Services, Inc., Van Ru Credit Corporation, Nationwide Credit, and National Asset Management Enterprises, Inc. The second grouping was another incumbent offeror, Financial Asset Management Systems, Inc. (FAM). The third, fourth, and fifth groupings were three non-incumbent offerors: Recovery Bureau of America (RBA), USA Education Group, and Maximus, Inc., respectively. The sixth and final grouping contained two incumbent offerors, NCO Financial Systems, Inc. and Aman Collection Services, Inc.

The SSA discussed the merits of each remaining proposal and ranked them, but declined to award additional task order contracts to the succeeding offerors in line for award.[2] The SSA ranked OSI 17th in line for award and expressed his "very low confidence" in the firm's probability of successful performance. He stated that OSI's performance under the current contract was worse than that of its competitors; while performance under the current contract was generally an asset, the SSA stated that he could not ignore the quality of OSI's performance. The SSA ranked CBA 14th in line for award and stated that the firm was in the middle range of incumbent contractors.

Both OSI and CBA filed protests and supplemental protests in this Office after their debriefings. Both firms argue that the agency improperly evaluated nearly every aspect of offerors' past performance during the reevaluation.

DISCUSSION

As an initial matter, since the RFQ stated that the agency intended to issue task order contracts under the vendors' FSS contracts, the provisions of Federal Acquisition Regulation (FAR) Subpart 8.4 apply here. Those provisions anticipate that agencies will review vendors' federal supply schedules and place an order directly with the schedule contractor that can provide the supplies or services that represent the best value and meet the government's needs. FAR § 8.404(b)(2); Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 6. Where, as here, the agency intends to use the vendors' responses as the basis of a detailed technical evaluation and price/technical tradeoff, it may elect, as the agency did here, to use an approach that is like a competition in a negotiated procurement. Where an agency takes such an approach, and a protest is filed, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. Accordingly, while the provisions of FAR Part 15, which govern

[2] As the SSA explained, the award to Aman placed the agency within the range of the 10-12 contracts it planned. The SSA stated that awarding more than that number of contracts would increase the administrative burdens on the agency and dilute the performance incentives for contractors, and that he would not do so absent a compelling reason.

contracting by negotiation, do not directly apply, Computer Prods., Inc., B-284702, May 24, 2000, 2000 CPD ¶ 95 at 4, we analyze the protesters' contentions by the standards applied to negotiated procurements. Digital Sys. Group, Inc., supra.

Our Office will examine an agency's past performance evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the contracting agency's discretion. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 10; Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4. In conducting a past performance evaluation, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Arctic Slope World Servs., Inc., supra; Federal Envtl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 12. An agency may base its evaluation of past performance upon its reasonable perception of inadequate past performance, regardless of whether the contractor disputes the agency's interpretation of the facts. Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ __ at 5.

As explained in detail in our initial decision, the record of the original past performance evaluation showed that the agency heavily relied on a mere comparison of incumbent contractors' cumulative periodic CPCS scores in order to evaluate their past performance. We found that the nature of the performance data underlying the CPCS scores was such that the cumulative CPCS scores could not be relied on mechanically to assess offerors' past performance, and there was no evidence that the agency considered the performance data behind these scores. We recommended that the agency reevaluate the proposals with respect to past performance, giving appropriate consideration and weight to the performance data in its possession.

The record of the reevaluation shows that the agency gave careful consideration to our decision and how best to implement our recommendation. The SEB, in consultation with the SSA, analyzed the nine available sets of CPCS periodic scores and rankings, as well as such underlying performance data as the impact of the volume of account transfers and account inventory size on the CPCS scores, and fluctuations in performance over time. The SEB also reviewed the results of a D&B past performance evaluation survey that asked customers to score firms' performance under various factors, and the results of a contractor reference survey that asked questions designed to elicit both narrative comments and a score. Finally, the SEB reviewed information about the past performance of proposed key personnel. The SEB supported its analysis with detailed evaluations of each offeror, and a detailed narrative with its overall analysis, including its justifications for the performance data it did and did not rely upon. The SEB also explained its methodology for evaluating non-incumbent offerors with no CPCS data, and its rationale for ranking four non-incumbent offerors above lower-rated incumbent offerors. SEB Final Evaluation at 8-12. The SSA's source selection decision included a detailed justification in support of the SEB's rankings and his source selections, as well as an explanation of the reevaluation process and rationale, including that for ranking non-incumbent offerors ahead of incumbent offerors.

We have carefully reviewed each of the numerous allegations raised by each protester and find the agency's reevaluation unobjectionable. Our discussion analyzes the major allegations of each set of protests separately.

OSI Protests

OSI first alleges that the agency improperly failed to comply with the recommendation we made in our initial decision. As a general matter, the details of implementing our recommendations for corrective action are within the sound discretion and judgment of the agency. Rel-Tek Sys. & Design, Inc.--Modification of Remedy, B-280463.7, July 1, 1999, 99-2 CPD ¶ 1 at 3; Serv-Air, Inc., B-258243.4, Mar. 3, 1995, 95-1 CPD ¶ 125 at 1-3. We will not question the agency's ultimate manner of compliance so long as it remedies the procurement impropriety that was the basis for the decision's recommendation. Rel-Tek Sys. & Design, Inc.–Modification of Remedy, supra. While our decision pointed to different pieces of past performance information that the agency might consider, we left it to the agency's discretion to determine how best to implement the broad recommendation made in that decision. Our analysis here focuses on the reasonableness of the reevaluation itself.

OSI's proposal was ranked 17th in line for award. The SEB found that the most relevant and reliable past performance data for OSI was the CPCS period rankings and scores, and believed that this data suggested an overall past performance assessment in the low end of the below average performers. The SEB found that OSI's D&B information and contractor references were less reliable indicators of the firm's prospects for successful performance than the CPCS data, but noted that they did suggest that OSI had average to superior performance under these indicators. This information somewhat enhanced OSI's past performance assessment, but the past performance of the firm's key personnel diminished that assessment.

The SEB reviewed OSI's CPCS rankings and scores for all nine available CPCS periods.[3] The record shows that OSI's rankings for these periods were 1st, 4th, 15th,

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[3] OSI complains that the agency improperly considered data from the ninth CPCS period, which became available just before the reevaluation, but did not request updated information from D&B or from contractor references. We do not find the agency's actions improper. Whereas the RFTOP required the agency to consider performance data on hand, such as the CPCS data, it did not require the agency to initiate a search for updated D&B and reference data. Given the relatively short (continued...)

16th, 15th, 8th, 5th, 12th, and 14th, generally based on a universe of 17 PCA contractors. The SEB stated that, in the first period, OSI received an [DELETED] number one ranking but, soon thereafter, its performance declined to near bottom until the sixth period when it finished in 8th place. The SEB pointed out that, for five of the nine periods, OSI's performance was [DELETED] or [DELETED]. Its performance for the sixth and seventh periods was in the [DELETED] range, but the most recent ranking periods found its performance again in the [DELETED] range.[4]

The SEB also considered the volume of accounts each PCA received throughout the life of the contract and how that might have affected its CPCS scores and rankings.[5] The SEB did not believe that the volume of accounts transferred to OSI excused its continued relatively poor performance as compared to all other contractors. Although OSI received a transfer of 100,000 accounts because of its [DELETED] rating in the first period, three other contractors received between 90,000 and 113,333 accounts after that same rating period. One, FAM, performed in the [DELETED] range in the next, third, ranking period, and another maintained an [DELETED] rating for three of the next four periods. It was the SEB's view that management planning was the key to successfully handling a large transfer, and that the ability to handle large volumes efficiently was important to the agency's performance-based environment. The SEB found that the data suggested OSI had not done this as successfully as its competitors. The SEB further stated that OSI had not had the largest number of accounts transferred to it throughout the contract, but had had one of the lowest numbers of transfers of all incumbents. Whereas some PCAs had consistently received high volumes of transfers and performed well, OSI had gone without transfers for several periods and still had not pulled out of the performance slump. The SEB understood that a large volume of transfers might have some impact on a PCA's next CPCS rating period, but believed that it should not take a PCA 1 year (three periods) to overcome large transfer volumes. Overall, the SEB concluded that the CPCS data indicated the quality of OSI's past

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(...continued)
timeframe between the initial set of data and the reevaluation, we cannot conclude that the agency was required to do so.

[4] The SEB considered rankings of [DELETED] to be [DELETED]; [DELETED] to be [DELETED]; [DELETED] to be [DELETED]; [DELETED] to be [DELETED]; and [DELETED] to be [DELETED].

[5] OSI contends that the agency should have considered such things as the timing of these transfers, the fact that some PCAs did not receive large transfers, and PCAs' differing contractual standards and methods of managing inventory in evaluating past performance. Here, as in any procurement, the agency could have considered an infinite number of details regarding past performance. Our review of the agency's rationale for what it did and did not consider shows that it reasonably exercised its discretion to determine the scope of the performance information evaluated.

performance and its inability to satisfy the agency's performance requirements had been worse than most of its competitors. The SSA agreed with the SEB's conclusions.

Comparing its performance record with that of FAM, OSI asserts that the agency inconsistently treated large account transfers. OSI contends that both firms had large account transfers in the second period, and both suffered poor CPCS rankings for the next three periods, but only OSI was criticized for taking three periods to overcome the effects of the transfer. OSI's analysis is overly simplistic and fails to consider the data underlying the CPCS rankings.

As the agency explains, the effects of a large account transfer in one period appear in the rankings for the next period. In the second CPCS period, when OSI was ranked 4th, it received a transfer of 100,000 accounts. Its CPCS rankings for the next three periods were 15th, 16th, and 15th, and it received additional account transfers in only one of these three periods. In contrast, in the second CPCS period, when FAM was ranked 11th, it received a transfer of 113,333 accounts. Its CPCS rankings for the next three periods were 10th, 13th, and 11th, and it received additional account transfers in two of these three periods. Hence, OSI's performance dropped substantially to an [DELETED] rating after its large transfer and stayed there, whereas FAM's increased slightly to an [DELETED] rating then dropped down to positions at least two places higher than OSI. Moreover, the recovery in the sixth period was greater for FAM than for OSI, 2nd as opposed to 8th place. While OSI clearly disagrees with the agency's interpretation of its past performance, we cannot find it unreasonable. Ready Transp., Inc., supra. The differing outcomes for the two firms reflected their differing circumstances, not improper disparate treatment. Power Connector, Inc., B-286875, B-286875.2, Feb. 14, 2001, 2001 CPD ¶ 39 at 4.

OSI also contends that the agency inconsistently treated fluctuations in rankings. The protester asserts that the agency discounted the CPCS data for Aman and CBA due to extreme fluctuations in their CPCS rankings but did not also discount the CPCS data for OSI, which it asserts had similar fluctuations. We do not agree.

The rankings of Aman (6th, 6th, 14th, 15th, 5th, 1st, 6th, 14th, and 13th) and CBA (16th, 3rd, 7th, 16th, 9th, 7th, 2nd, and 9th) clearly show fluctuations from one extreme to another--from very high to very low. In contrast, with the exception of period one, OSI had three periods where it hovered around the same ranking, and spent the next three periods in rankings within four places of each other. As the SEB states, OSI's fluctuations were less pronounced, and thus did not diminish the reliability of the data as a predictor of OSI's future performance. OSI's evident disagreement with the agency's interpretation of the facts does not make it unreasonable. Ready Transp., Inc., supra.

OSI's contractor reference survey was comprised of references from two firms for an overall score of 1, where 1 was "extremely satisfied" and 4 was "never satisfied." The SEB stated that this score tied the firm for 1st place among all offerors under this indicator. The SEB also noted the references' statements that OSI's areas of strength were that it promptly returned telephone calls and had a cooperative, committed company, but there were some concerns with [DELETED]. Overall, the SEB stated that the contractor reference survey indicated that the quality of OSI's past performance was one of the best of all offerors. The agency's confidence was somewhat diminished in that it had responses from only two references.

OSI contends that the agency treated offerors disparately by making only one attempt to contact its third reference but more than one attempt to contact a reference for Maximus. There is no requirement that the agency make the same number of attempts to contact each offeror's references. The agency is only required to make a reasonable effort to contact each offeror's references, and we cannot conclude that the agency's efforts here, unsuccessful in both cases, were unreasonable. It is also not objectionable to evaluate an offeror's past performance based on fewer than the maximum possible number of references the agency could have received. Universal Bldg. Maintenance, Inc., B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 8 n.1; see IGIT, Inc., B-275299.2, June 23, 1997, 97-2 CPD ¶ 7 at 6 (although agencies are required to evaluate the past performance of all offerors on the same basis, there is no general requirement that an agency contact all of an offeror's references, or contact the same number of references for each offeror).

The D&B past performance evaluation for OSI shows that five customers rated the firm under various categories for an overall score of 1.69, where 1 is "outstanding" and 5 is "unacceptable." The SEB stated this score translated into an overall performance between "very good" and "outstanding" under D&B's adjectival scale; the score placed the firm 14^{th} of the 26 offerors under this indicator. The SEB noted that under the two categories of greatest significance to the agency, timeliness and technical, OSI also scored "very good" to "outstanding," and its scores ranked it 13^{th} and 4^{th}, respectively. The SEB also reviewed the results of a D&B competitive ranking survey and found nearly all of the respondents providing information about OSI appeared to be from the student loan environment: two rated OSI as the best of 13 and the best of 3, with first or second ranking in all categories. Considering all of the D&B information at hand, the SEB concluded that the quality of OSI's past performance was not significantly better or worse than most other offerors.

OSI contends that the agency inconsistently evaluated offerors because it "discounted" its rating under the contractor references indicator because only two firms responded, but did not "discount" awardees' D&B past performance evaluations when fewer than five responses were received.

Setting aside OSI's attempt to compare two different performance indicators, the RFTOP did not prescribe a minimum number of respondents to be evaluated. The critical question here is whether the agency had a sufficient number of respondents to give it confidence in the reliability of the results. As the SEB stated, in cases where there were fewer survey responses, the data was deemed less reliable and its impact in the overall evaluation was somewhat diminished. SEB Final Report at 10. Hence, the agency "discounted" D&B data for NAM because only two responses were received, but did not "discount" D&B data for NCO and Maximus where four responses were received. We do not find this objectionable.[6]

The SEB finally considered the past performance of OSI's key personnel. The SEB stated that the firm had [DELETED] years of student loan experience, and [DELETED] of its key personnel had agency experience with more than one contract. The SEB concluded that this experience had exposed the firm to various collection approaches and methods that should help it know what works and what does not work. However, the SEB also noted that these were the individuals who were responsible for OSI's [DELETED] to [DELETED] scores for five of nine CPCS ranking periods. In its view, the past performance of OSI's key personnel lowered its overall assessment.

OSI contends that the fact the agency considered key personnel responsible for CPCS scores improperly double-counted the CPCS scores. We do not agree. The record shows that the agency considered various aspects of the past performance of key personnel, including their years of experience on different types of contracts and their experience working on contracts generating CPCS rankings. It is obvious that the contributions made by key personnel to a firm's CPCS rankings are relevant to the SEB's consideration of their past performance. An agency is not precluded from considering an element, such as experience, under more than one evaluation criterion when the element is, as here, relevant and reasonably related to each criterion under which it is considered. RAMCOR Servs. Group, Inc. et al., Mar. 23, 1998, 98-1 CPD ¶ 121 at 9.

OSI also contends that the SEB inconsistently attributed CPCS performance to key personnel. The protester asserts that FAM's CPCS rankings placed its performance in the [DELETED] to [DELETED] range for five periods, but the SEB considered the experience of FAM's key personnel that led the firm to its CPCS performance to be a positive factor. OSI overlooks the fact that recent information was to be given greater consideration here. Beginning from the sixth CPCS period, FAM had three periods of [DELETED] rankings and one [DELETED] period. Overall, in fact, FAM had only one [DELETED] ranking. Given the overall successful performance of the firm, we cannot find the agency's evaluation unreasonable.

OSI finally contends that the agency inconsistently assessed key personnel who changed employers by attributing to them the performance of their prior employers during the time they are employed. OSI alleges that two of RBA's proposed key

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[6] The agency did mistakenly evaluate RBA as having four references instead of two. Since RBA's overall favorable assessment was not dependent upon this performance indicator, however, we cannot conclude that OSI suffered any prejudice as a result.

personnel worked for FAM when it performed poorly, but the SEB considered their prior employers to have had "[DELETED] to [DELETED] performance for many CPCS periods and very few periods of [DELETED] performance." RBA Reevaluation Document at 2. The record shows, however, that both of these individuals worked for FAM when it was ranked 13th, 11th, and 2nd, and one worked for OSI when it was ranked 1st, 4th, and 15th. As a result, we cannot conclude that the data is inconsistent with the SEB's finding.

In conclusion, OSI has given us no basis to question the agency's evaluation and ranking of its proposal. We need not consider OSI's contention that it should have been ranked ahead of Maximus, USA Education, and NCO. Even if these three firms were eliminated from award consideration, five interceding firms, not OSI, would be in line for award. OSI therefore lacks the direct economic interest necessary to maintain these bases for protest. 4 C.F.R. § 21.0(a) (2001); Quaker Valley Meats, Inc./Supreme Sales, GmbH, A Joint Venture; Upper Lakes Foods, Inc., B-279217 et al., May 20, 1998, 98-1 CPD ¶ 163 at 8-9.

CBA Protests

CBA's proposal was ranked 14th in line for award. The SEB found that the most relevant and reliable past performance data for CBA was the CPCS periodic rankings and scores, but that the extreme fluctuation in the firm's rankings over time led it to give more weight to the D&B information and contractor references. The SEB stated that the D&B information suggested that CBA's past performance was one of the worst of all offerors' performance, and the contractor references indicated the firm's performance was worse than most offerors'. Accordingly, the SEB reduced the firm's past performance score and found that its overall past performance was in the high end of the below average firms when compared to other offerors. The SSA agreed with the SEB's conclusions.

The SEB reviewed CBA's rankings and scores for all available CPCS periods[7] and noted what it considered to be extreme fluctuations in performance. CBA's rankings over the last eight periods were 16th, 3rd, 7th, 16th, 9th, 7th, 2nd, and 9th, generally based on a universe of 17 PCA contractors. As the SEB remarked, the firm's performance was [DELETED] for four periods, [DELETED] for two periods, and [DELETED] for two periods. Viewing the CPCS data as a whole, and considering these significant fluctuations, the SEB found that CBA's past performance and its ability to satisfy objective performance measures on the contract were neither significantly worse nor significantly better than its competitors, but the data indicated that CBA's performance had fluctuated widely. Because of this extreme fluctuation, the SEB had less confidence in the value of the CPCS data as a predictor of the firm's future

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[7] CBA was not awarded a contract in time to have data for the first CPCS period.

performance. As a result, the SEB stated that the other past performance indicators became more important in its overall assessment of CBA's past performance.

CBA asserts that the agency treated offerors disparately because its rankings did not fluctuate any more than those of Aman and Pioneer, which did not have their CPCS data discounted. CBA's assertion reflects a superficial review of the record. The record shows that the agency did evaluate Aman as having fluctuations and inconsistencies in its rankings over time and, as a result, considered its past performance under the current contract as a less reliable indicator of future success. The agency's overall assessment of Aman shows that, as with CBA, other past performance data was considered to be more reliable than the CPCS data due to these fluctuations. The reasons for Aman's selection for award are associated with other aspects of its past performance not addressed by CBA. The record also shows that Pioneer never ranked below [DELETED] for any period, and was ranked [DELETED] for five periods. Since the fluctuations in Pioneer's rankings did not range from [DELETED] to [DELETED], as did CBA's, we cannot say that the agency was required to discount the reliability of Pioneer's CPCS data.[8]

CBA also argues that the agency improperly failed to give more weight to offerors' most recent rankings and upward trends, since the RFTOP stated that recent and relevant information was to receive greater consideration. CBA asserts that it exhibited an upward trend in the last four periods, whereas Aman and Nationwide Credit had worse rankings in the most recent periods and were still selected for award.

The record shows that the agency did give greater consideration to more recent information for offerors in cases where, given all of the past performance data in its possession, it believed such consideration was warranted. As noted above, the SEB gave less weight to CBA's--and Aman's--CPCS data due to extreme fluctuations, and was not required to disregard this information in favor of a formulaic application of the firms' most recent standings. The SEB's overall performance assessment for Nationwide Credit shows that it considered a range of information, in addition to recent rankings, such as the fact that the firm's overall performance had been

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[8] CBA also argues that the agency treated offerors disparately with respect to how it considered the effect of large account transfers on offerors' subsequent CPCS rankings. CBA asserts that two offerors were given consideration for significant drops in their rankings after the transfer of a large number of accounts, but it was not given this same consideration. CBA is mistaken. One of the offerors was not given consideration for its ranking drops based on large account transfers, and the account transfer for the other was substantially larger than that for CBA. The differing evaluation outcomes for the firms reflected their different circumstances, not improper disparate treatment.

[DELETED] to [DELETED] with only one [DELETED] rating period, from which it recovered.

The D&B past performance evaluation for CBA shows that five customers rated the firm under various categories for an overall score of [DELETED]. The SEB acknowledged that this rating placed the firm's overall performance between "good" to "very good" on D&B's adjectival scale, but pointed out that CBA's score placed the firm 25th of the 26 offerors under this indicator. The SEB also stated that under the two categories of greatest significance to the agency, timeliness and technical, CBA was ranked 18th and 24th, respectively. CBA had the lowest score of all offerors in the technical category, which indicated to the SEB that the quality of the firm's past performance and, in particular, its timeliness, ongoing support, and other criteria measured by D&B surveys were among the worst of all offerors. The SEB also reviewed the responses to a separate D&B competitive ranking survey and found the results regarding CBA unremarkable.

CBA contends that one reference giving the firm a negative assessment is suspect, and provides a statement from an individual purported to be the only person authorized to provide reference information from this firm in which she states that she did not recall being contacted by D&B to give the reference and that, if she had been contacted, her reference would have been favorable. D&B is an independent and impartial data-gathering organization that enables government agencies to outsource the gathering of information on contractor past performance. See <http://www.dnb-dc.com/dnbngovt/dcppe.html>, D&B Past Performance Evaluations Web Site. Such evaluations are often used by contracting agencies in evaluating the past performance of potential contractors. The negative reference at issue is consistent with at least one other reference in CBA's D&B past performance evaluation, and there is no evidence that the agency had any information that would have alerted it to this alleged inaccuracy during the reevaluation. As a result, the agency had no reason to question the accuracy of the D&B past performance evaluation and, thus, no duty to independently verify the references. It was entitled to rely upon this information as a component of its past performance evaluation. See Harvard Interiors Mfg. Co., B-247400, May 1, 1992, 92-1 CPD ¶ 413 at 5 n.6.

CBA contends that if the agency were so concerned about timeliness it would have considered other indications of poor performance regarding timeliness. Our review of CBA's examples reveals the protester's inadequate review of the record. Both firms cited by CBA had references that responded negatively regarding their timeliness. The record shows that these comments were duly considered by the SEB, but that other past performance data not addressed by CBA resulted in higher overall evaluation results for these firms. CBA similarly contends that several successful offerors also had their lowest D&B scores under D&B's timeliness and technical categories but did not have their overall evaluations diminished. CBA has failed to consider that numerous elements of the past performance evaluation, aside from the D&B scores, went into the overall evaluation of each offeror's past performance. Our review of CBA's examples shows offsetting information that supports the ratings assigned.

CBA's contractor reference survey was comprised of references from three firms for an overall score of [DELETED], which meant that the respondents were "satisfied" to "extremely satisfied" with CBA's overall performance. The SEB stated that, while the comments by these references reported CBA's knowledge, cooperation, and experience, they also reported that CBA had [DELETED]. The SEB noted that CBA's reference score ranked it 16th of the 26 firms under this indicator, suggesting that its past performance as reported by its references was worse than most other offerors.

CBA objects that the agency treated offerors disparately because, while its score was [DELETED] and the SEB called its performance "worse than most," Progressive had the same score and Diversified had a similar score but the SEB called their performance "neither significantly worse or significantly better" than others. CBA's focus on the scores alone overlooks other data considered. As the SEB pointed out, the firm's references had unfavorable comments regarding [DELETED]. In contrast, references for Progressive reported strengths and no weaknesses, and references for Diversified reported strengths and weaknesses, such as that the firm could sometimes be overzealous, which the agency did not consider critical. The record shows that the agency properly did not rely merely on numeric scores in making its assessment. See OSI Collection Servs., Inc., supra, at 10.

The SEB finally considered the past performance of CBA's key personnel. The SEB stated that all of CBA's key personnel had experience with the agency's performance-based contract, and the director of student loans also had experience with previous agency contracts. The SEB noted that the proposed key personnel were responsible for CBA's overall average, but inconsistent, CPCS performance on the current contract, and were unable to consider the past performance for all of its key personnel because CBA listed four key personnel positions for which it had not included names or resumes.

CBA states that, after the initial debriefing and prior to the reevaluation, it submitted this missing information to the agency and that it should have been considered in the reevaluation. We do not agree. The RFTOP required offerors to submit, as part of their technical proposals, "resumes of key personnel." RFTOP § L.1.2. CBA's proposal listed four key personnel positions but did not include names or resumes for these positions.[9] An offeror has the burden of submitting an adequately written proposal for the agency to evaluate, Premier Cleaning Sys., Inc., B-255815, Apr. 6, 1994, 94-1 CPD ¶ 241 at 5, and CBA did not meet this burden. We agree with the

[9] CBA states that it "supposedly" did not submit this information with its initial proposal, but the firm does not deny the agency's assertion and we have no basis to conclude that CBA did include this information in its initial proposal.

agency that consideration of this late submission during the reevaluation would have been unfair to the firms who were not permitted to augment their proposal. As for CBA's assertion that the agency was required to review the information because our recommendation directed the agency to consider "all past performance data in its possession," the recommendation did not contemplate the mandatory review of late-submitted information such as this but, rather, the review of the performance data supporting the CPCS rankings and scores and other information that should have been fully considered in the initial evaluation.

CBA has given us no basis to question the agency's evaluation or ranking of its proposal.[10] The protester also argues, however, that the agency improperly evaluated the past performance of Maximus and USA Education. The record shows that, even if Maximus and USA Education were eliminated from award consideration, two interceding offerors, not CBA, would be in line for award. CBA therefore lacks the direct economic interest necessary to maintain these bases for protest. 4 C.F.R. § 21.0(a); Quaker Valley Meats, Inc./Supreme Sales, GmbH, A Joint Venture; Upper Lakes Foods, Inc., supra. Since a twelfth task order contract might have been awarded, however, we briefly discuss CBA's allegations with respect to one of these offerors.

CBA contends that the SEB improperly found that Maximus achieved a quality of performance as good or better than most offerors based on the fact that the firm's key personnel have collection experience with the National Directory of New Hires (NDNH). CBA asserts that this experience is of limited value because it comprises only a small portion of collections under the contract and because the agency plans to train the new contractors to use the NDNH.

Maximus's favorable assessment was based on its substantial experience in the area of child support collections, which the SEB believed was nearly as relevant as student loan collections experience. In addition, the SEB was impressed by Maximus's experience with the NDNH database, which the agency will begin using for the first time on the new contracts. The NDNH is a reporting mechanism by which employers report certain information on newly hired employees to designated state agencies in an effort to assist with interstate enforcement of child support;

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[10] CBA also contends that the agency improperly evaluated its proposal under the technical factor as having only a moderate probability of success. CBA alleges that its sole weakness was similar to that of two other offerors who received higher technical ratings. Our review of the record shows that CBA's allegation is without basis. In addition to the fact that both of these other offerors had more strengths than did CBA, both quantitatively and qualitatively, CBA's proposal also suffered from its failure to provide names or resumes for four of its key personnel.

Congress recently granted the agency access to NDNH to locate defaulted education loan borrowers or those who owe the government a refund because of an overpayment on a federal education grant. It is obvious that key personnel with hands-on experience using the NDNH offer a benefit to the agency. The SEB recognized that Maximus's experience was not the same as student loan experience, and discounted it accordingly, but its overall assessment was high enough to put it in line for award. CBA's disagreement with the SEB's conclusions does not make them unreasonable.

The protests are denied.

Anthony H. Gamboa
General Counsel