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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Sonetronics, Inc.

File: B-289459.2

Date: March 18, 2002

Gary S. Kuskin and Debi F. Kuskin for the protester.
Mary E. Carney, Esq., Department of Justice, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency's past performance evaluation of awardee, based solely on a supply contract that the awardee had yet to perform, lacks a reasonable basis and is inconsistent with the solicitation, which required vendors to identify three "completed" contracts for the past performance evaluation.

DECISION

Sonetronics, Inc. protests the issuance of a purchase order to Maranatha Industries, Inc. under request for quotations (RFQ) No. VC0008-02 issued by UNICOR (Federal Prison Industries) for handsets. Sonetronics challenges the past performance evaluation of Maranatha.

We sustain the protest.

The RFQ, issued October 19, 2001, was conducted under the simplified acquisition and commercial items procedures contained in Federal Acquisition Regulation (FAR) Parts 12 and 13. The RFQ sought quotes for an estimated 30,000 handsets for military radios to be delivered to UNICOR, Three Rivers, Texas, under a 4-year, fixed-price, indefinite-quantity contract. The award was to be made on a "best value" basis, considering past performance, technical, and price. Under the evaluation scheme, technical and price when combined were worth 50 percent and past performance was worth 50 percent of a 100 possible points. To assess past performance, the RFQ (at section L.4) advised that "[o]fferors must identify previous federal, state, and local governments and private contracts that they have completed and that are similar to the contract being evaluated. (List at least three (3) no more than five (5) contracts for evaluation)."

UNICOR received five quotes, including those of Sonetronics and Maranatha, by the November 20 closing date. For the past performance evaluation, Sonetronics listed three completed contracts with UNICOR for these handsets and one Army contract that had not yet been completed; Maranatha listed three contracts for handsets: one Army contract for which first article testing had not been completed and deliveries had not started; one completed contract for a company that the record indicates may be a distributor for Maranatha; and one subcontract still being performed for an Army contractor.

To evaluate past performance, the contracting officer contacted a reference from each vendor's most recent and most similar contract to address the following:

- Were there any delivery problems?
- If so, how were they handled/resolved?
- What was the quality of the products delivered?
- Were there any administrative problems?
- If so, how were they handled/resolved?
- Would you ever do business with this vendor again?

Contracting Officer's Statement at 1-2.

Based on the responses, both Maranatha and Sonetronics received the maximum score of 50 points under the past performance factor. According to UNICOR, Maranatha's score was based upon its Army contract, while the score for Sonetronics was based upon a completed UNICOR contract for the handsets. See Agency Report, Tab D, Evaluation Documents. Maranatha and Sonetronics also received the same maximum technical score of 25 points because they offered the exact product being solicited. Price was point-scored and Maranatha's quote of \$925,500 (which was only \$1,500 above the lowest quote) received the maximum 25 points for price; Sonetronics quote of \$1,102,500 received 20.96 points for price. Overall, then, Maranatha's quote received 100 points (a perfect score), while the quote of Sonetronics received 96 points.¹ UNICOR made award on the basis of Maranatha's quote on November 27. This protest from Sonetronics followed.

Sonetronics contends that the awardee's perfect past performance score was unreasonable because Maranatha has limited experience manufacturing these handsets and the agency's rating was based on a contract on which Maranatha had yet to pass the first article testing and had made no deliveries. We agree.

Generally, the evaluation of an offeror's past performance is a matter within the discretion of the contracting agency, and we will not substitute our judgment for

¹ The other quotes received much lower scores.

reasonably based past performance ratings. However, we will question such conclusions where they are not reasonably based or are undocumented. OSI Collection Servs., Inc., B-286597; B-286597.2, Jan. 17, 2001, 2001 CPD ¶18 at 6.

In awarding Maranatha a perfect past performance score, UNICOR relied upon a contract that had not been “completed”; indeed, the firm had yet to pass first article testing or deliver any handsets under the contract (although the Army reference was very satisfied with Maranatha’s contract performance to date).² However, the RFQ contemplated that “completed” contracts would be the basis for the past performance evaluation. Moreover, we question how Maranatha’s performance on a contract where it had made no deliveries and had not yet passed first article testing could reasonably be found to justify a perfect score. In this regard, the questions quoted above that the contracting officer said she asked the references primarily pertained to contracts where products were delivered. Furthermore, even though the RFQ requested “at least” three “completed” contracts, Maranatha’s quote listed only one completed contract.³ Thus, Maranatha’s perfect past performance rating is neither reasonable nor consistent with the RFQ’s evaluation scheme.⁴ See Johnson Controls World Servs., Inc.; Meridian Mgmt. Corp., B-281287.5 et al., June 21, 1999, 2001 CPD ¶ 3 at 6-7.

We recommend that UNICOR reevaluate the vendors’ past performance and make a new award decision. If another vendor is selected, the agency should terminate the purchase order issued to Maranatha. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for such costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel

² The past performance evaluation document for Maranatha also references Maranatha’s subcontract with an Army prime contractor (under a contract that had yet to be completed), and indicates that the Army contractor was satisfied with Maranatha’s performance.

³ In contrast, the record reflects that the quote of Sonetronics did include three completed contracts and the UNICOR reference rated its performance “excellent.”

⁴ Sonetronics also questions whether the handsets are a commercial item, as opposed to a “100% qualified Mil-Specification product.” This aspect of the protest is untimely because it was apparent prior to the closing date and should have been protested at that time. See 4 C.F.R. § 21.2 (a)(1) (2001).