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Washington, DC 20548

Comptroller General
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Decision

Matter of: Dan River, Inc.

File: B-289613

Date: April 5, 2002

Christopher M. Okay, Esq., for the protester.

Douglas E. Eckert, Esq., Bradley, Arant, Rose & White, for Russell Corporation, an intervenor.

Katherine A. Day, Esq., Department of Justice, Federal Bureau of Prisons, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that awardee had performed contracts “similar or relevant” to the current requirement, as provided under solicitation’s past performance evaluation factor, where, although those contracts were of lesser dollar value, they were for similar item, and solicitation did not define “similar or relevant” in terms of dollar value.

DECISION

Dan River, Inc. protests the award of a contract to Russell Corporation under request for proposals (RFP) No. TX00093-02, issued by the Department of Justice, Federal Bureau of Prisons (BOP), for the manufacture of a quantity of woven shirting fabric conforming to military specification MIL-C-43992B. Dan River maintains that the agency misevaluated Russell’s past performance.¹

We deny the protest.

¹ Dan River raised numerous additional arguments (for example, that the agency improperly extended the deadline for submitting proposals to accommodate Russell’s submission of a late proposal) in its initial protest. The agency responded to those arguments and Dan River did not rebut the agency’s position in its comments. Under the circumstances, we deem these arguments abandoned. Hedgecock Elec., Inc., B-285655, Sept. 8, 2000, 2000 CPD ¶ 142 at 4-5, n.3.

The RFP contemplated the award of an indefinite-quantity, fixed-price contract to manufacture shirting fabric for a period of 3 years, and had a guaranteed minimum quantity of 410,000 yards of fabric. Award was to be made to the firm submitting the proposal deemed most advantageous to the government, considering past performance (weighted at [deleted] percent of the evaluation), conformance to the specifications ([deleted] percent) and price ([deleted] percent). The agency reserved the right to make award on the basis of initial proposals, without conducting discussions.

The agency received several proposals, including Russell's and Dan River's. Russell received [deleted] of the possible [deleted] points in the past performance area, [deleted] of the possible [deleted] points in the conformance to the specifications area, and offered the lowest price. In comparison, Dan River received [deleted] points in the past performance area, [deleted] points in the conformance to the specifications area, and offered the second lowest price. Based on these evaluation results, BOP determined that Russell's proposal was the most advantageous to the government.

Dan River argues that it was improper for the agency to assign a superior past performance rating to Russell's proposal because that firm had not performed contracts that were similar to the contract in question. According to the protester, Russell's prior contracts have involved knitted, as opposed to woven, fabrics (required here), and the two types of manufacturing involve entirely different processes. The protester also contends that the dollar value of Russell's prior contracts was small compared to the requirement here.²

The evaluation of past performance is a matter within the discretion of the contracting agency, which our Office will review only to ensure that it was reasonable and consistent with the stated evaluation criteria. Sterling Servs., Inc., B-286326, Dec. 11, 2000, 2000 CPD ¶ 208 at 2-3. The evaluation here was reasonable.

The RFP defined the types of contracts that the agency would consider in evaluating offerors' past performance, as follows:

² Dan River alleges that Russell's proposal failed to meet the requirements of the RFP because some of its listed contracts were not completed as of the time proposals were submitted. The protester relies on the instructions to offerors which provided that they were to list previous contracts that were "completed." RFP at 26. However, the instructions notwithstanding, nothing in the RFP precluded offerors from also listing, and the agency from considering, ongoing contracts; in fact, the past performance evaluation criterion expressly advised offerors that the agency sought to evaluate both how well an offeror had performed in the past and how it was currently performing. RFP at 30.

Past performance criteria are used to measure how well an offeror has performed in the past or how well it is currently performing on similar or relevant procurements. The Government will consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. The Source Selection Authority will determine the relevance of similar past performance information.

RFP at 30. In evaluating Russell's and Dan River's past performance, BOP conducted three oral interviews with references either furnished by the firms in their proposals or otherwise identified by the agency. It then assigned numeric scores on the basis of the interview results and averaged those scores to arrive at a composite score for each firm.³

One of the two contracts considered for Russell was a subcontract under which it manufactured the exact item called for under the solicitation. The reference (an employee of the prime contractor) interviewed by the agency rated Russell's performance "outstanding" overall, and also stated that Russell had exceeded the contract's delivery requirements.⁴ AR exh. 16. The agency assigned this contract [deleted] (of [deleted] possible) points. *Id.* We have no basis to question this rating. The contract was for the manufacture of the exact item being purchased and, substantively, the agency's rating is supported by the notes that memorialize the interview with the reference. AR exh. 16.⁵ While this contract had a smaller dollar

³The record shows that, subsequent to the initial calculation of the firms' scores, the agency recalculated the averages using only the two highest scores for each firm because two other firms had only two references. Contracting Officer's Statement at 9-10. This rescoring did not affect the relative standing of Russell and Dan River, and thus is irrelevant here. Agency Report (AR) exhs. 17, 18.

⁴ This same individual also provided information relating to Dan River's performance as a subcontractor under the same contract (even though Dan River had included another individual as its reference at the company); he stated that Dan River's quality was "average" and assigned the firm an overall rating of "average." AR exh. 11. Dan River alleges that the agency should have held discussions with it in connection with this rating. However, the record shows that the results of the interview were never used in arriving at Dan River's ultimate score. AR exh. 18. In any case, agencies are not required to discuss proposal elements that receive acceptable, but not optimal, scores. ValueCAD, B-272936, Nov. 7, 1996, 96-2 CPD ¶ 176 at 4.

⁵ Russell has performed more than one delivery order for this concern. Russell Proposal at 32. Additionally, one of Russell's corporate officials states in an affidavit that Russell has manufactured approximately 700,000 yards of the material for this and other prime contractors. Russell Comments, Feb. 15, 2002, exh. A.

value than the current requirement, nothing in the solicitation required that the contract be for a comparable dollar value in order to be considered “similar or relevant.”⁶

The other contract reviewed by the agency for Russell was a commercial contract for manufacturing apparel fabric. The description of the work performed under this contract is identical to the work under Russell’s other contract that was reviewed, with the exception that there was no requirement for conformance to a military specification. Under both contract descriptions, the statement of services performed provides: “A vertical manufacturer of yarn dyed apparel fabric, including yarn manufacturing, yarn dyeing, weaving, finishing inspection and packaging.” Russell Proposal at 27, 29. BOP interviewed an employee of the concern, who rated Russell’s performance overall as “excellent,” and described its quality as “outstanding.” AR exh. 14. The agency assigned a numeric score of [deleted] points to this contract. We have no basis for questioning this rating. As with the first contract (discussed above), Dan River does not challenge the rating itself; rather, it asserts that the dollar value was too small for the contract to be relevant. However, as discussed above, the fact that the dollar value may not have been comparable did not

⁶ Dan River cites our decision in ACS Govt. Solutions Group, Inc., B-282098 et al., June 2, 1999, 99-1 CPD ¶ 106, in support of its position that prior contracts evaluated for past performance must be largely identical to the contract being awarded—in terms of both deliverables and size—in order to be relevant. Dan River’s reliance on that decision is misplaced. First, the solicitation there required prior contracts to be for “the same or substantially the same” deliverables as the services being acquired, id. at 9, whereas here the prior contracts only had to be “similar or relevant,” which establishes a less stringent standard. Moreover, we sustained the protest, not based on dollar value dissimilarity, but because the prior contracts in issue did not cover the full range of services required, and thus did not support the agency’s finding that the firm had “extensive experience.” Id. at 13.

preclude the agency from determining that the contract was relevant for purposes of evaluating Russell's past performance. We conclude that the evaluation of Russell's past performance was unobjectionable.⁷

The protest is denied.

Anthony H. Gamboa
General Counsel

⁷ As a final matter we note that Dan River's arguments focus to a large extent on contracts that were listed in Russell's proposal to demonstrate its ability to meet the conformance to the military specifications requirement of the RFP. RFP at 30. Although it appears that some of these contracts may be for knitted—as opposed to woven—fabric, the agency did not evaluate contracts from this list in assessing Russell's past performance. Rather, the agency drew solely from the contracts listed in the business management questionnaires submitted by Russell; that section of its proposal listed only contracts for woven fabric. Russell Proposal at 26-31.