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Decision

Matter of: Albert Moving & Storage

File: B-290733; B-290733.2

Date: September 23, 2002

Kenneth S. Nankin, Esq., Nankin & Verma, and Brian W. Craver, Esq., Person & Craver, for the protester.
Warren D. Leishman, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation defined a “satisfactory” past performance rating as permissibly encompassing minor problems which were satisfactorily corrected, agency reasonably rated awardee’s past performance as “satisfactory,” based on the agency’s consideration of various past performance information, including a past performance questionnaire, the awardee’s response to certain performance problems, and other additional information submitted by the awardee.
 2. Agency reasonably included awardee’s proposal in the competitive range where contracting officer considered and documented various deficiencies that existed in awardee’s initial proposal and concluded they were not significant enough to require proposal’s elimination from the competitive range.
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DECISION

Albert Moving & Storage protests the Department of the Air Force’s contract awards to Ace Movers and Dwight Transfer & Storage under request for proposals (RFP) No. F41612-01-R-0119 to perform services related to shipment of personal property for Department of Defense personnel moving to or from Sheppard Air Force Base (SAFB), Texas. Albert protests that the agency miscalculated proposals with regard to past performance and that Dwight’s proposal should not have been included in the competitive range.

We deny the protest.

BACKGROUND

The Air Force issued solicitation No. F41612-01-R-0119 on August 29, 2001, seeking fixed-price proposals to perform specified packing and moving services for a 1-year base period with four 1-year option periods. As amended, the RFP divided the required services into three parts: schedule I, which included tasks related to outbound shipments; schedule II, which included tasks related to inbound shipments; and schedule III, which included tasks associated with intra-area moves.¹ Offerors were required to submit technical proposals, past performance proposals, and price proposals. The solicitation provided that technical proposals would be evaluated for technical acceptability on a “pass/fail” basis, and that, for technically acceptable proposals, award determinations, by schedule and area, would be based on “best value” tradeoffs between past performance and price.

With regard to past performance, offerors were required to identify prior customers for whom they had performed activities similar to those solicited here, and to provide those customers with a “past performance questionnaire” (which was included as part of the solicitation), and request that the customer complete the questionnaire and forward it to the specified SAFB contracting officer. The solicitation provided that offerors’ past performance would be evaluated under an adjectival rating system using the terms “exceptional,” “very good,” “satisfactory,” “neutral/not applicable,” “marginal,” and “unsatisfactory.”

Three companies – Albert, Dwight, and Ace – timely submitted proposals by the specified closing date. The agency performed a preliminary evaluation of proposals and concluded that all three should be included in the competitive range. Thereafter the agency conducted discussions with each of the offerors, and requested submission of final revised proposals.

Upon receiving and evaluating the final proposals, the agency concluded that all three proposals were technically acceptable, that Albert’s and Ace’s proposal warranted “very good” past performance ratings, and that Dwight’s proposal warranted a “satisfactory” past performance rating. Agency Report, Tab 2, Contracting Officer’s Statement, at 3-4. The proposed prices for area 1 of the three schedules were as follows.²

¹ Each of the three schedules was further divided into four geographic areas.

² Albert received contract awards for areas 2, 3, and 4 under all three schedules. Accordingly, those portions of the solicitation requirements are not at issue here.

	Albert	Ace	Dwight
Schedule I	\$ 353,046	\$ [deleted]	\$ [deleted]
Schedule II	[deleted]	[deleted]	1,802,754
Schedule III	[deleted]	2,126,800	[deleted]

Agency Report, Tab 2, Contracting Officer's Statement, at 5-6.

The agency then performed trade-off assessments between the offerors' proposed prices and past performance ratings, awarding the following contracts: schedule I – Albert (\$353,046); schedule II – Dwight (\$1,802,754); schedule III – Ace (\$2,126,800). Albert's protest challenging the awards to Dwight and Ace followed.

DISCUSSION

Albert's Initial Protest

In its initial protest, Albert challenges the agency's "satisfactory" evaluation of Dwight's past performance as unreasonably high, asserting that "the quality of Dwight[s] . . . work, and [its] reputation therefor, is poor." Protest at 3.³

With regard to evaluation of offerors' past performance, the solicitation stated:

Means of Evaluation: All offerors will be given a risk assessment rating. The primary means of evaluation will be the Contractor Performance Assessment Questionnaire. However, the government reserves the right to consider any other information obtained through other means

Agency Report, Tab 5, RFP amend. No. 3, at 314.

As noted above, the solicitation advised offerors of the adjectival rating scheme the agency intended to use in evaluating past performance. The solicitation further

³ Albert also protested that the agency's "very good" past performance rating for Albert was unreasonably low; that the agency's "very good" past performance rating for Ace was unreasonably high; and that Dwight's and Ace's proposed prices were unrealistically low. The agency addressed each of these issues in its report responding to Albert's protest. In its comments following receipt of the agency report, Albert failed to address these issues in any way, focusing only on Dwight's past performance rating. Accordingly, we view Albert as having abandoned its assertions regarding its own and Ace's past performance ratings, and the assertion that Dwight's and Ace's prices were unrealistically low. See Datum Timing, Div. of Datum, Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328 at 5.

provided definitions for each term to be used. With regard to the term “satisfactory,” the solicitation provided the following definition: “Performance met all contract requirements. There were some minor problems and corrective actions taken by the contractor were satisfactory.” Id.

The record shows that, in evaluating Dwight’s past performance, the agency relied upon the past performance questionnaire completed by the SAFB Traffic Management Office (TMO).⁴ That questionnaire sought adjectival rating responses (using the same terms established in the solicitation for evaluation of past performance) to 26 questions. In response, the SAFB TMO rated Dwight’s performance [deleted].⁵ Agency Report, Tab 13, Completed Questionnaire for Dwight. Overall, the SAFB TMO stated that it “probably would” award Dwight another contract. Id.

Regarding the [deleted], the contracting officer brought these matters to Dwight’s attention during discussions, giving Dwight an opportunity to [deleted].⁶ With regard to [deleted], Dwight responded that it [deleted].⁷ Agency Report, Tab 13, Letter from Dwight to Contracting Officer (Nov. 5, 2001). With regard to [deleted], Dwight provided the contracting officer with its earlier correspondence to the agency, which described the actions Dwight had taken [deleted].⁸ Id.; Agency Report, Tab 13, Letter from Dwight to SAFB TMO (June 20, 2001).

⁴ The record shows that the SAFB TMO completed a performance assessment questionnaire for each of the three offerors. Agency Report, Tab 13. It is clear that these documents were primary considerations regarding each offeror’s past performance rating.

⁵ No responses or “do not know” responses were provided for the remaining questions. [Deleted].

⁶ In this regard, the agency was relying on the provisions of Federal Acquisition Regulation (FAR), applicable at the time, which state:

[t]he contracting officer shall . . . indicate to, or discuss with, each offeror still be considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal’s potential for award.

FAR § 15.306(b)(1)(i).

⁷ [Deleted].

⁸ At that time, Dwight also provided various letters of commendation received from other customers. Agency Report, Tab 13.

The contracting officer considered all of the information provided and ultimately concluded that the required risk assessment related to Dwight's past performance was "satisfactory." Albert argues that, [deleted], it was inappropriate for Dwight to receive a "satisfactory" rating. We disagree.

Our Office will question an agency's past performance evaluation only where it lacks a reasonable basis, violates statute or regulation, or is inconsistent with the stated evaluation criteria. An agency may base its evaluation of past performance upon its reasonable perception of prior performance, regardless of whether the contractor disputes the agency's interpretation of the facts. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129; Quality Fabricators, Inc., B-271431, B-271431.3, June 25, 1996, 96-2 CPD ¶ 22 at 7. A protester's mere disagreement with the agency's judgment does not establish that the agency acted unreasonably. Coffman Specialties, Inc., B-284546, B-284546.2, May 10, 2000, 2000 CPD ¶ 77 at 5.

As noted above, the solicitation provided that, in evaluating offerors' past performance for purposes of making source selection decisions in the procurement at issue here, each offeror would be given a "risk assessment rating," and that this rating would be based in large part, but not exclusively, on prior performance as reflected in the past performance questionnaires. Agency Report, Tab 5, RFP amend. No. 3, at 314. That is, offerors were advised that the agency would make risk assessments regarding the level of performance that each offeror was likely to provide under the pending solicitation, based on considerations of how each offeror had previously performed similar requirements. The solicitation further provided that an offeror could obtain a "satisfactory" risk assessment, notwithstanding minor performance problems, provided those problems had been satisfactorily corrected. Id.

Here, the record shows that, although Dwight encountered problems during its prior performance, it corrected those problems to the satisfaction of the agency. Based on our review of the record, including the information relating to Dwight's prior corrective actions, we find that the contracting officer reasonably made a risk assessment of "satisfactory" with regard to Dwight's proposal. Albert's assertions to the contrary are without merit.

Albert's Supplemental Protest

Following receipt of the agency report responding to the initial protest, Albert filed a supplemental protest, asserting that the agency improperly included Dwight's proposal in the competitive range. Albert does not dispute that Dwight's final revised proposal was properly rated as technically acceptable; nonetheless, Albert maintains that [deleted] should have precluded Dwight from being given an opportunity to further compete for the requirements. We disagree.

The determination of whether a proposal is in the competitive range is principally a matter within the sound judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. While exclusion of technically unacceptable proposals is frequently permissible, it is not generally required. More specifically, the significance of the weaknesses and/or deficiencies in an offeror's proposal, within the context of a given competition, is a matter for which the procuring agency is, itself, the most qualified entity to render judgment. Our Office will review that judgment only to ensure it was reasonable and in accord with the solicitation provisions, and a protester's mere disagreement with an agency's judgment does not establish that the judgment was unreasonable. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 3-4; Keco Indus., Inc., B-261159, Aug. 25, 1995, 95-2 CPD ¶ 85.

The record here contains the contracting officer's contemporaneous documentation supporting his decision to retain Dwight in the competitive range. Agency Report, Tab 11, Competitive Range Determination. In making the determination, the contracting officer specifically discussed Dwight's proposal in the context of each of the three technical evaluation factors.⁹ [Deleted], the competitive range determination provides a reasonably detailed analysis regarding the specific type of information Dwight would need to provide [deleted]. For example, [deleted]. Agency Report, Tab 11, Competitive Range Determination at 3. With regard to the [deleted], the contracting officer noted that, [deleted]. *Id.* Based on his analysis that the problems identified by the evaluators were mostly informational in nature, the contracting officer concluded that Dwight's proposal, [deleted], had a reasonable chance of receiving an award.

Based on our review of the entire procurement record, including the agency's contemporaneous documentation reflecting its judgment regarding the significance of the [deleted] in Dwight's initial proposal, we do not find Dwight's initial technical proposal to [deleted] as to require exclusion from further consideration. (That is, of course, not to say that the contracting officer was legally required to keep the proposal in the competitive range.) Dwight's subsequent submission of revisions and additional information which rendered its proposal acceptable – a fact Albert does not dispute – supports the reasonableness of the contracting officer's

⁹ The solicitation identified the following three technical evaluation factors: management/manpower/experience, understanding the task, and quality control plan.

determination. Accordingly, Albert's assertion that Dwight's proposal should have been excluded from the competitive range is without merit.

The protest is denied.

Anthony H. Gamboa
General Counsel