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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: Bella Vista Landscaping, Inc.

File: B-291310

Date: December 16, 2002

Michael A. Gordon, Esq., and Susan E. Hughes, Esq., Holmes, Schwartz & Gordon, for the protester.

Timothy H. Power, Esq., for Maintenance Engineers, Inc., the intervenor.

Clarence D. Long, III, Esq., and Michaelisa T. Lander, Esq., Department of the Air Force, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of award to offeror that submitted lower-rated, lower-priced proposal in commercial services procurement for grounds maintenance services is denied where record shows evaluation and source selection were reasonable and consistent with evaluation scheme in which price and performance risk were considered approximately equal in importance; agency was neither required to give additional evaluation credit to protester for its performance as incumbent, nor to award on the basis of protester's superior performance risk rating where agency reasonably determined payment of associated cost premium was not warranted in light of awardee's lower proposed price and favorable performance risk rating.

DECISION

Bella Vista Landscaping, Inc. protests the award of a contract to Maintenance Engineers, Inc. (MEI) under request for proposals (RFP) No. F05611-010-R-0325, issued as a small business set-aside by the Department of the Air Force for grounds maintenance and landscaping services at the United States Air Force Academy. Bella Vista, the incumbent grounds maintenance contractor at the Academy, contends that the source selection was unreasonable and inconsistent with the RFP's evaluation criteria. Bella Vista contends that, in light of its successful performance of grounds maintenance services at the Academy, its proposal, with a superior performance risk rating and slightly higher price than the awardee's, should have been found to have offered the best value to the agency.

We deny the protest.

The RFP, which contemplated the award of a fixed-price contract for a base year and four 1-year option periods, was issued as a commercial services procurement. The streamlined evaluation scheme set forth in the RFP provided two evaluation factors for award, past performance and price; award was to be made to the offeror determined to have submitted the most advantageous proposal considering the two approximately equal factors. The RFP recognized the agency's right to award to a higher-priced offeror with a better performance risk rating if a performance risk/price tradeoff supported the award; in this regard, price and performance risk would be "traded off, one against the other" to determine which proposal offered the best value to the agency. RFP amend. 1 at 5-6. The RFP provided that the best value assessment was to be based upon "the price proposed and the performance risk rating assigned." Id.

In assigning a performance risk rating, evaluators were to consider the quality and extent, including complexity, of the offeror's relevant past performance. The RFP did not require offerors to demonstrate successful performance of each individual service called for under the RFP or to show successful performance of the identical services required at the Academy in order to be rated highly for past performance. The type of relevant experience that could demonstrate an offeror's ability to successfully perform the required services was broadly defined in the RFP, as follows:

Relevant experience includes, but is not limited to, grounds maintenance and landscaping services, including care of approximately 2,800 acres of improved & semi-improved grounds, 472,000 linear feet of sidewalks, curbs and driveways, 35,700 trees and shrubs, and 278 rock beds. Similar scope will reflect a similar magnitude of approximately \$1 million per year.

Id. at 6 (emphasis added). The RFP explained that "the purpose of the evaluation is to make an assessment of the government's confidence in the offeror's ability to perform the contract, that is, to assess the level of risk the Government will incur if an offeror is awarded the contract." Id. at 6-7.

The following six ratings were available under the RFP's evaluation scheme to identify the level of perceived risk in each offeror's performance: exceptional/high confidence ("essentially no doubt" exists that the offeror will successfully perform the required effort); very good/significant confidence ("little doubt exists" that the offeror will successfully perform the required effort); satisfactory/confidence ("some doubt exists" that the offeror will successfully perform the required effort); neutral/unknown confidence (where no performance record was identified, performance risk was to be rated neither favorably nor unfavorably); marginal/little confidence ("substantial doubt exists" that the offeror will successfully perform the required effort); and unsatisfactory/no confidence ("extreme doubt exists" that the

offeror will successfully perform the required effort). Id. at 7. The performance risk assessment was to be a subjective, unbiased judgment about the quality of an offeror's past performance. Offerors were advised, however, that the agency might limit the number of references that would be contacted or reviewed during the evaluation and that references other than those cited by the offeror could be contacted. Id. at 6.

Proposals and final revised proposals were received and reviewed. The lowest-priced proposal (at \$4,096,065) was rated as neutral for performance risk. The second lowest-priced proposal (at \$5,082,600), submitted by the awardee, MEI, was rated as very good for performance risk. The third lowest-priced proposal (at [deleted]), submitted by Byrd Enterprises Unlimited, was rated as exceptional for performance risk. The protester's proposal (at [deleted]), the fourth lowest-priced offer received, was also rated as exceptional for performance risk. Numerous additional proposals were received at higher prices; these proposals received performance risk ratings ranging from satisfactory to exceptional.

A performance risk/price tradeoff was conducted to compare proposal prices and performance risk ratings. MEI's proposal--the second lowest-priced with a "very good" performance risk rating--was found preferable to the lowest-priced proposal, which had received a neutral performance risk rating. Similarly, MEI's lower price, in conjunction with its favorable performance risk rating of very good (*i.e.*, representing "little doubt" of successful performance), was then determined to offer better value than Byrd's slightly higher-priced offer, which had received a performance risk rating of exceptional.¹ In its tradeoff analysis, the agency reasoned that there was only a slight difference in performance risk between the two highest performance risk ratings available under the RFP's evaluation scheme--exceptional, for use where there was essentially no doubt of successful performance, and very good, for use where there was little doubt of successful performance. The agency determined that both ratings (exceptional and very good) demonstrated an appropriate level of ability at an acceptably low level of risk regarding the likelihood of the offeror's successful performance of the work.² In light of the low risk

¹ The Byrd proposal, rated exceptional for performance risk, was priced [deleted] higher than the MEI proposal; the Bella Vista proposal, also rated exceptional for performance risk, was [deleted] higher than MEI's proposal.

² To the extent Bella Vista challenges the agency's determination that the difference between the two highest ratings is slight, by arguing that the RFP's use of multiple performance risk ratings indicates that there must be a distinct, substantial difference in risk between each rating, we do not find the argument persuasive. On the contrary, we believe the RFP's inclusion of multiple ratings indicates that the difference between ratings is reasonably limited; with multiple available ratings, covering a limited range of proposal merit, the magnitude of the qualitative difference between ratings logically decreases.

associated with both a “very good” performance risk rating (as received by the MEI proposal) and an “exceptional” rating (as received by the next higher-priced offeror, Byrd), the agency determined that award at a higher price for a slightly higher performance risk rating of exceptional was not warranted. Having traded price against performance risk rating, the agency determined that MEI’s proposal (at a price approximately [deleted] percent lower than Byrd’s and [deleted] percent lower than Bella Vista’s), offered the best value to the agency; award was subsequently made to MEI. After its debriefing, Bella Vista filed this protest.

Bella Vista contends that the only reasonable source selection determination the agency could have made here would have been to award the contract to Bella Vista. The protester argues that, in light of its successful 10-year incumbent contractor experience, which Bella Vista contends must be the most relevant of any offeror’s past performance experience, it should be afforded additional credit in the evaluation and performance risk price tradeoff. As such, Bella Vista argues that its exceptional performance risk rating should not only be considered stronger than MEI’s very good rating, but better than Byrd’s or any other offeror’s exceptional rating. Additionally, despite the RFP’s direction that any performance risk/price tradeoff was to assess prices proposed against performance risk ratings assigned, Bella Vista argues that the tradeoff instead should have considered the protester’s experience (and not only its rating) performing the Academy’s “unique” landscaping requirements.

In reviewing a protest against an agency’s evaluation of proposals and award, including tradeoff determinations, we examine the record to determine whether the agency’s judgment was reasonable and consistent with the solicitation’s evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. An agency may properly select a lower-rated, lower-priced proposal where it reasonably concludes that the cost premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. Walsh Distribution, Inc.; Walsh Dohmen Southeast, B-281904, B-281904.2, Apr. 29, 1999, 99-1 CPD ¶ 92 at 8. A protester’s mere disagreement with the agency’s determinations as to the relative merit of competing proposals and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4. Our review of the record here supports the reasonableness of the agency’s evaluation, tradeoff and award, which were consistent with the solicitation’s evaluation scheme.

As an initial matter, we note that the protester’s argument that the RFP’s landscaping requirements are unique is misplaced. This was a commercial services procurement for landscaping and grounds maintenance services readily available in the commercial marketplace. Bella Vista did not challenge the agency’s determination of the commerciality of the requirements prior to the closing time for submission of

proposals and it is untimely to do so now. See Bid Protest Regulations, 4 C.F.R. ¶ 21.2(a)(1) (2002). In any event, our review of the record indicates that Bella Vista itself now concedes that the high level of performance of grounds maintenance at the Academy is not necessarily unique, as the firm acknowledges that the Academy's high standards for the grounds work are similarly required at other high-visibility facilities. Protester's Comments at 3.

Bella Vista argues that it must be granted additional credit for its successful performance as the incumbent contractor of the required grounds maintenance services. We disagree. The RFP did not require each offeror to demonstrate experience with identical services, or that the offeror's relevant, similar work have been performed at the Academy; and no special consideration was to be granted under the RFP for the incumbent contractor's experience beyond consideration of that past performance to assign an adjectival performance risk rating to the proposal. In short, the RFP simply did not provide for the incumbent contractor preference Bella Vista now advocates.³

Bella Vista does not persuasively challenge the propriety of the "very good" past performance risk rating assigned to the MEI proposal. Although the protester alleges that it has more relevant experience than the awardee, given the relatively strong past performance record for MEI (which the protester does not specifically challenge), we have no basis to question the very good rating assigned to that offeror's performance risk.⁴ Further, as to the contention that Bella Vista has more relevant experience than MEI, having performed the work at the actual site solicited

³ To the extent Bella Vista contends that the solicitation should have included additional consideration of past performance as the incumbent, its protest is untimely, since it concerns an alleged impropriety apparent from the face of the RFP and was not raised prior to the closing time for submission of proposals. 4 C.F.R. § 21.2(a)(1).

⁴ To the extent the protester generally argues for the first time in its comments that "upon information and belief" MEI has had past performance problems at a facility not referenced in its proposal, the allegation provides insufficient basis to question the evaluation--in addition to constituting an improper piecemeal presentation of protest contentions, the unsupported allegation does not provide sufficient evidence to constitute a valid basis of protest for review. 4 C.F.R. §§ 21.1(c)(4) and (f); Federal Computer Int'l Corp.--Recon., B-257618.2, July 14, 1994, 94-2 CPD ¶ 24 at 1-2. As to Bella Vista's contention that the awardee's proposal failed to demonstrate the extent of its experience with several tasks required to be performed under the RFP, we note that, as stated above, the RFP did not require a demonstration of all tasks required under the RFP, especially, as in the case of MEI, where there has been a showing of substantial similar experience at other military installations at which the contractor received strong commendations.

under the RFP, our review of the record shows that the protester's proposal was properly credited for that experience, as reflected in its past performance risk rating of exceptional.

As noted above, in making the award decision, the agency conducted a tradeoff between MEI's proposal and the proposal submitted by Byrd. Like Bella Vista, Byrd had received an exceptional performance risk rating and offered a lower price than Bella Vista. Based on that tradeoff, the agency selected MEI's proposal, which had received a very good performance risk rating and was lower in price than Byrd's. Bella Vista essentially contends that its proposal--specifically, its incumbent contractor experience--was required to be considered in any tradeoff here because its experience as the incumbent (which was the basis for its exceptional rating) distinguishes it from other offerors, including Byrd, who also received exceptional ratings. We rejected above the protester's argument that the agency should have given additional evaluation credit under the RFP to Bella Vista's incumbent contractor performance; the RFP did not provide for such additional credit. Likewise, we reject Bella Vista's argument that the agency was required to give additional consideration to its incumbent contractor experience during the tradeoff analysis.

We cannot agree with the protester that the agency was required to do more than it did in trading off MEI's lower price (at a very good rating) against the offer (from Byrd) with the closest price and the highest past performance rating, exceptional. Since Bella Vista's proposal likewise received an exceptional rating, its proposal rating was, in effect, represented in the tradeoff analysis. That analysis concluded with a determination by the agency that, in light of the limited impact of the difference between the two low risk ratings of very good and exceptional, payment of the associated price premium for award on the basis of an exceptional performance risk rating would not be warranted.⁵ The protester does not provide,

⁵ To the extent the protester contends that the solicitation required the evaluators to independently obtain additional past performance data, we note that, as discussed above, the RFP specifically advised offerors that such independent investigation, if any, could be limited. In other words, the RFP provided that, although the agency could pursue additional information, it reserved the right to limit its investigation and review. Similarly, to the extent the protester argues that it recently learned potentially adverse past performance information about Byrd which had not been submitted to the agency in this procurement--and thus that Byrd's exceptional rating was not warranted, and, by extension, the tradeoff between Byrd's and MEI's proposals was flawed--this argument does not demonstrate that the evaluators acted unreasonably during the current procurement or that the source selection would be changed in any material way. We see nothing in the contemporaneous evaluation record that reasonably should have put the evaluators on notice of any questionable past performance information relevant to their evaluation. Barring a showing that
(continued...)

and our review of the record does not suggest, any basis to question the reasonableness of that tradeoff or the award to MEI on the basis of its slightly lower-rated, lower-priced proposal.

The protest is denied.

Anthony H. Gamboa
General Counsel

(...continued)

the agency evaluators were required to pursue, or should have known and considered, the past performance information in question at the time of their evaluation, we see no reason to consider this issue further. Further, even eliminating Byrd's proposal and substituting Bella Vista's proposal in the tradeoff, there is no basis to conclude that the agency's decision to select MEI would have been different, given that Bella Vista, like Byrd, had an exceptional rating but offered an even higher price than Byrd.