



GAO

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: JGB Enterprises, Inc.

File: B-291432

Date: December 9, 2002

Nancy M. Camardo, Esq., and Joseph A. Camardo, Jr., Esq., for the protester.
Robert F. Nelson for Angus Fire Armour Corp., the intervenor.
Mary E. Carney, Esq., Department of Justice, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated the protester's past performance is denied where the agency has provided a reasonable explanation for its evaluation and the protester has failed to rebut it.

DECISION

JGB Enterprises, Inc. protests the issuance of a purchase order by UNICOR (Federal Prison Industries) to Angus Fire Armour Corp. (AFAC) under request for quotations (RFQ) No. VC0038-02, for two commercial items, nonmetallic hose assemblies and clamp pipe couplings. JGB protests the evaluation of its past performance.

We deny the protest.

The RFQ contemplated the award of a 3-year fixed-price indefinite-delivery/indefinite-quantity contract. The RFQ specified that the technical and price factors, when combined, were equal in importance to past performance. Selection was to be based on identification of the responsible vendor whose quotation, conforming to the RFQ, was "most advantageous to the Government." RFP § M.1(a).

The RFQ required that each vendor identify at least three contracts performed in the last 3 to 5 years similar in scope to this RFQ requirement. Vendors were required to provide a reference for each contract listed.

The agency received quotations from JGB and AFAC by the due date. The contracting officer contacted three references for each vendor. The contracting

officer asked each reference a series of questions and asked each reference to rate the vendor's performance as either excellent, good, marginal, poor or neutral. Because all three of AFAC's references rated its performance "excellent," it received a perfect score for past performance. Because two of JGB's references rated the vendor's performance as "excellent" and one rated it as "good," JGB received a somewhat lower score for past performance.

The person that gave JGB a good rating for its past performance was not the reference named in JGB's quotation for a Fort Lee contract because the named reference had retired. Instead, this rating came from the Director of Contracting at Fort Lee, who also provided narrative comments and responded to specific questions regarding JGB's performance on the referenced contract.

This past performance evaluation was the only evaluated technical difference between the quotations. While JGB's quotation was slightly lower priced, the agency determined that AFAC's quotation represented the best value and selected that firm. This protest followed.

JGB contests the "good" rating that it received from the Fort Lee reference, arguing that it should have received an "excellent" rating. JGB contends that the rating is flawed because the reference had no personal knowledge of JGB's past performance, as evidenced by his statement that a problem existed with Item 1012. JGB contends that this was a misstatement because there was no reference to an Item 1012 for this contract. While JGB acknowledges that there was a problem with one of the products under this contract, it alleges that this problem was due to the government's ambiguous specification.

The agency responds that the Director of Contracting at Fort Lee specifically stated that he had personal knowledge of JGB's contract performance at Fort Lee, and states that the reference to Item 1012 was not a misstatement but was a reference to an "internal identification number" used by Fort Lee concerning an item that was "a similar or like project to the hoses that are the subject of this procurement." Supplemental Statement of the Contracting Officer at 1. As JGB has not taken issue with the agency's explanation, and as the actions of the agency appear reasonable, we conclude that there was nothing improper concerning the past performance evaluation of JGB's proposal. Chicataw Constr., Inc., B-289592, B-289592.2, Mar. 20, 2002, 2002 CPD ¶ 62 at 4-5.

In any event, we disagree with the protester's contention that a closer investigation to independently establish the validity of the statements of the Director of Contracting was required here. Where vendors are required to list prior experience and are aware that the source of this experience may be contacted, the contracting agency may generally contact these sources, including individuals who were not named by the vendors as references for the claimed experience, and consider their replies without further investigation into the accuracy of the information. Black & Veatch Special Projects Corp., B-279492.2, June 26, 1998, 98-1 CPD ¶ 173 at 8 (where

named reference was intentionally not contacted by the agency as a reference in favor of the project engineer that the agency believed had complete and relevant information about the protester's performance).

The protest is denied.

Anthony H. Gamboa
General Counsel