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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Beck's Spray Service, Inc.

File: B-299599

Date: June 18, 2007

Gregory M. Beck for the protester.

Rod Thomas, for Thomas Helicopters, Inc., an intervenor.

Sherry Kinland Kaswell, Esq., and Alton E. Woods, Esq., Department of the Interior, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluation of protester's technical proposal, resulting in score of less than half the available points, was unobjectionable where proposal lacked information on prior experience with required navigation system and ground operations, most past performance references were of limited relevance, and single responding reference stated it would hire offeror again "with hesitation."

2. Where solicitation provided for comparative evaluation and identified experience and past performance as technical evaluation factors, and agency in fact evaluated proposals on comparative basis, agency's downgrading of protester's proposal under identified factors did not constitute nonresponsibility determination, and thus was not subject to regulations applicable to such determinations.

DECISION

Beck's Spray Service, Inc. protests the award of a contract to Thomas Helicopters, Inc. under request for proposals (RFP) No. NAR070059, issued by the Department of the Interior, Bureau of Land Management (BLM), for aerial spraying of herbicide. Beck's challenges the evaluation of its proposal and the source selection.

We deny the protest.

The RFP sought proposals for all labor, equipment, tools, materials, supervision, supplies, and incidentals for aerial spraying of government-furnished herbicide on approximately 28,472 acres of land located in and around BLM's Boise, Idaho field

office. Award was to be made on a “best value” basis, with proposals evaluated under three factors—experience/technical capability, past performance, and price. The non-price factors, combined, were significantly more important than price.

Three firms submitted proposals, including Beck’s and Thomas, and all three were considered acceptable. Beck’s proposal offered the lowest price, but received the lowest technical score based on its submission of abbreviated experience information and its limited past performance with herbicide applications. Thomas’s proposal offered the second-lowest price and received the highest technical score based on its high degree of experience and highly favorable past performance recommendation. The contracting officer selected Thomas’s proposal as the best value based on her determination that its technical advantage over Beck’s (and the other offeror’s) proposal more than justified its higher price. After receiving a debriefing, Beck’s filed this protest.

Beck’s asserts that the technical evaluation was flawed under the experience and past performance factors. In the protester’s view, the agency failed to recognize its long flying experience, including global positioning system (GPS) experience, and its good past performance record. In considering a protest of an agency’s proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. The evaluation here was unobjectionable.

EXPERIENCE

Under the experience factor, offerors were required to address: their experience and knowledge of their differentially corrected GPS (DGPS) guidance system, including where and for whom the system was used; the applicator’s actual experience and company experience with forestry, rangeland, and chemical applications in agricultural projects; method of distribution; experience with equipment used on the project; work crew experience; experience with remote locations in difficult terrain; and safety and spill containment equipment. Regarding the DGPS system, the agency states that it is important to performance because it provides both a documented record of the herbicide application and proof of coverage for contract payment purposes. In the agency’s view, use of the DGPS requires experience, and knowledge of the system is “paramount” to making it function properly.¹ Supplemental Agency Report at 1.

¹ The evaluation panel noted that use of the DGPS also was connected to liability issues and referred to significant litigation (not involving Beck) pending in Idaho over alleged improper application of another chemical treatment. In its comments, Beck’s asserts that this criticism is improper because the problems in Idaho were attributable to herbicide application under improper conditions, not the failure to

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The agency downgraded Beck's proposal—it received 19 of the 45 available points—for failure to satisfactorily address the elements listed above. In this regard, Beck's proposal indicated long-term experience in spray operations, but its narrative of required information was very brief, covering only 1½ pages. Thus, for example, although Beck's proposal indicated extensive herbicide spraying experience in three states, it provided little information on its method of distribution; no information on spraying in remote locations and/or difficult terrain; was silent with regard to safety and spill containment equipment; and failed to mention its work crew or work crew experience. Further, while Beck's proposal mentioned extensive flying and mapping experience with a GPS, it also indicated that it was new to the DGPS, having purchased it in December before submitting its proposal in February, and identified only one aerial seeding job using the system. An offeror has the burden of submitting an adequately written proposal and runs the risk that its proposal will be evaluated unfavorably where it fails to do so. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3, 6. Since Beck's proposal failed to provide all of the information required by the RFP, and since Beck's lacked DGPS experience, there is no basis for us to object to the agency's downgrading the firm's proposal under the experience factor.

PAST PERFORMANCE

Under the past performance factor, offerors were required to list references for contracts and subcontracts for similar services completed in the past 5 years, as well as for current contracts and subcontracts. For each reference, offerors were required to identify the name of the contracting activity, contract type, total contract value and work, as well as contact information. Beck's listed 10 references, including itself, but failed to list the contract type and value for any of them, which, the agency found, made it difficult to evaluate the size, scope, and difficulty of each project. Source Selection Statement at 3. The evaluators contacted two of Beck's references for BLM herbicide contracts, under which Beck's was a subcontractor. The agency reports that one reference did not return a voicemail message. The second reference was unable to provide information on Beck's ground operations because Beck's had used the prime contractor's ground crew rather than its own; stated that Beck's had not used DGPS on the contract and had trouble with the swath width as a result; and stated that it would hire Beck's again, but "with

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use DGPS. Initial Comments at 2-3. The agency responds that the pending litigation is an example of why it is important to require accurate application and documentation of chemical spray contracts. Supplemental Agency Report at 2. Regardless of the ultimate cause of the improper application, the agency reasonably downgraded Beck's proposal for failure to provide information demonstrating DGPS experience, as specifically required by the RFP.

hesitation.” Source Selection Statement at 2. The evaluators concluded that Beck’s list of prior contracts failed to provide adequate information showing that the projects were similar to the one here and that Beck’s had the necessary expertise, experience, or qualifications to perform. Based on this lack of information, the limited relevance of most of Beck’s references, and the single responding reference’s qualified endorsement of Beck’s performance, the agency assigned Beck’s proposal only 18 of the 35 available points under the past performance factor. Since the record confirms the presence of these deficiencies in Beck’s proposal, we have no basis to question the evaluation in this area.

Beck’s asserts that the agency should have contacted more of its references. However, unless the solicitation specifies otherwise, there is no legal requirement that all, or any specific number, of listed references be included in a review of past performance. Advanced Data Concepts, Inc., B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 10. Further, an agency is only required to make a reasonable effort to contact an offeror’s references and, where it is unable to contact some references, it properly may evaluate the offeror based on the references received. See Universal Bldg. Maint., B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 8 n.1. Most of Beck’s references were not contacted because either Beck’s proposal only identified the prime contractor, and not the customer; the referenced contracts were viewed as not relevant because they concerned seeding work instead of herbicide application; and/or the referenced contracts predated Beck’s recent acquisition of a DGPS system. We find nothing unreasonable in the agency’s judgment regarding the contacting of Beck’s references. Moreover, in view of the limited relevance and lack of customer information for the majority of Beck’s references, there is no reason to believe that contacting those references would have provided more favorable past performance information. We note, furthermore, that it appears the agency treated all offerors equally; it successfully obtained past performance information from one reference for each offeror.²

NONRESPONSIBILITY

Beck’s argues that the agency’s downgrading its proposal based on experience and past performance was tantamount to a nonresponsibility determination, and violated Federal Acquisition Regulation (FAR) §§ 9.104-1(c) and 9.105-1(a)(b), which outline standards and information necessary for making responsibility determinations. In particular, Beck’s notes the evaluation panel’s finding that its price was 50 percent below the government estimate, and its inference that Beck’s did not understand the scope and complexity of the project.

² Beck’s asserts that it was treated disparately because the evaluation report indicated that more than one reference was used in evaluating the awardee’s past performance. The agency explains that the report contained a typographical error, and that it in fact used only one reference for the awardee.

This argument is without merit. The agency denies making a determination that Beck's is not responsible, and the record does not reflect any such determination. Contracting Officer's Statement at 6. Rather, the agency downgraded Beck's proposal under the experience and past performance evaluation factors pursuant to its best value determination. In this regard, an agency properly may incorporate traditional responsibility factors--such as experience and past performance--into a proposal as technical evaluation factors where, as here, a comparative evaluation of those areas is to be performed. Advanced Res. Int'l, Inc.-Recon., B-249679.2, Apr. 29, 1993, 93-1 CPD ¶ 348 at 2. A comparative evaluation means that competing proposals will be rated on a scale relative to each other, rather than on a pass/fail basis. Dynamic Aviation--Helicopters, Nov. 1, 1996, 96-2 CPD ¶ 166 at 3. The agency ultimately found that Thomas's proposal was technically superior to Beck's, and that this advantage outweighed Beck's lower price.³ The evaluators' observations that Beck's proposal deficiencies indicated a lack of understanding were legitimately related to the evaluation under the technical capability factor, and did not constitute a nonresponsibility determination.⁴

The protest is denied.

Gary L. Kepplinger
General Counsel

³ Beck's asserts that the quickness of the evaluation (3 days), use of a single past performance reference, reliance on offerors' asserted competence and honesty, and Thomas's higher price together indicated a "conflict of interest" in the government-contractor relationship. We fail to see how any of these considerations evidences an impermissible conflict. For example, neither the quick review of proposals for relatively small projects, nor the consideration of offeror representations as to experience is unusual in federal procurements.

⁴ We note that, even though the agency questioned the protester's understanding based on its below-estimate price, it received the maximum evaluation credit (20 points) for price.