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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Power Connector, Inc.

File: B-286875; B-286875.2

Date: February 14, 2001

Pamela J. Mazza, Esq., and Andrew P. Hallowell, Esq., Piliero, Mazza & Pargament, for the protester.

Geoffrey A. Barrow, Esq., Jenner & Block, for Day Leather Corporation, an intervenor.

Michael A. Lewis, Esq., Federal Prison Industries, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In evaluating past performance under solicitation for quantity of leather, agency reasonably disregarded non-leather supply contracts in its evaluation of the protester, and limited its evaluation to leather contracts, on the basis that leather contracts were the most relevant.

DECISION

Power Connector, Inc. (PCI) protests the award of a contract to Day Leather Corporation under request for quotations (RFQ) No. 6200000119, issued by the Federal Bureau of Prisons, UNICOR, for leather to be used in manufacturing work gloves. PCI argues that UNICOR should have rejected Day's quotation as materially unbalanced, and that it misevaluated PCI's past performance.

We deny the protest.

The solicitation provided for a best value award of a fixed-price, indefinite-quantity contract for a base year, with four 1-year option periods. The quotations were to be evaluated against three factors, listed in descending order of importance--past performance, compliance with technical specifications and price; the past performance and technical factors combined were significantly more important than price. RFQ at 39. In order to establish compliance with the technical specifications, vendors were required to submit samples and lab test results for evaluation on a pass/fail basis. Regarding past performance, vendors were required to complete a

business management questionnaire listing, among other things, from three to five references for previous similar contracts performed within the past 3 years. Id. at 34. Prices were to be quoted on a per-foot basis for estimated quantities, with the evaluation to be based on the total extended prices for the base and option years.

Four quotations, including PCI's and Day's, were received and found to comply with the technical specifications. Day's price (\$9,720,000) was low, and PCI's (\$9,975,000) second low. Agency Report (AR) at 3. Day was rated overall excellent for past performance based on three references for leather contracts (two excellent ratings, one good), and PCI was rated good based on three references for leather contracts (one excellent, two good ratings). Id. at 4-5. The contracting officer selected Day for award, citing its superior past performance. Price Analysis at 2.

UNBALANCED PRICING

PCI maintains that Day's quotation should have been rejected as materially unbalanced because it quoted \$1.36 per foot for the base year and \$1.28 for each of the option years, despite the fact that the solicitation requests the same item for each year.

The concept of unbalanced pricing has only limited application in the context of a procurement under which the government's primary objective is the best overall value rather than the lowest price, USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 6; we apply the concept of unbalancing in such cases only where price constitutes the basis for the source selection. MG Indus., B-283010.3, Jan. 24, 2000, 2000 CPD ¶ 17 at 7.

Here, although the award was ultimately made to the low-priced vendor, price was listed as the least important award factor, and the solicitation specifically provided that the technical and past performance factors were significantly more important than price. In addition, while in her source selection decision the contracting officer recognized that Day's price was low, it is clear that price was not the basis for her award decision. Rather, the source selection decision states, "In conclusion, it has been determined that award should be made to Day Leather Corporation due to the experience they have with the leather business." Price Analysis at 2. Since technical and past performance factors were more important than price, and since price did not dictate the award decision, the concept of unbalancing does not apply, and this argument could not provide a basis for sustaining the protest. Human Resource Sys., Inc.; Health Staffers, Inc., B- 262254.3 et al., 96-1 CPD ¶ 35 at 7-8. We therefore do not address it further.

PAST PERFORMANCE

PCI listed four past performance references in its business management questionnaire, two for leather contracts and two for communications components contracts. Contracting Officer's Declaration at 3-4. After concluding that the

communications components contracts were not similar to the leather supply requirement here, the contracting officer checked UNICOR's database and found that PCI had a current contract to supply leather to UNICOR. Since she viewed this contract as similar to the solicited requirement, she used it--instead of one of the communications components contracts--as PCI's third past performance reference. Id. Based on the ratings for these three contracts--one excellent, two good--the contracting officer evaluated PCI as overall good for past performance. Id. at 5. PCI challenges this rating, asserting that the contracting officer improperly failed to consider the two communications components contract references listed in its quotation; it concludes that, had she done so, PCI would have received all excellent references, would have been rated overall excellent for past performance, and would have been in line for the award.¹

We review an agency's evaluation of vendors' submissions (such as the quotation at issue here) to ensure that it is fair, reasonable and consistent with the evaluation criteria stated in the solicitation. In evaluating past performance, an agency has discretion to determine the scope of the vendors' performance history to be considered, provided that it evaluates all submissions on the same basis and consistent with the solicitation. OMV Medical, Inc.; Saratoga Medical Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 4. An agency properly may base its evaluation on contracts it believes are most relevant to the solicitation, USATREX Int'l, Inc., supra, at 4; Braswell Servs. Group, Inc., B-278921.2, June 17, 1998, 98-2 CPD ¶ 10 at 6; it has discretion to consider information other than that provided by the vendors, TEAM Support Servs., Inc., B-279379.2, June 22, 1998, 98-1 CPD ¶ 167 at 6, and need not consider all references a vendor submits. Advanced Data Concepts, Inc., B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 10.

UNICOR's actions fall within the above standard. The contracting officer sought to identify the most relevant contracts for purposes of assessing PCI's past performance and, in doing so, considered a relevant contract not listed in PCI's quotation and disregarded two listed contracts which were not similar to the current requirement. This was reasonable, and well within the agency's discretion. Moreover, although we think the logic of evaluating similar contracts to assess past performance is obvious, the RFQ requirement that firms provide references for "similar" contracts put PCI and the other vendors on notice that the agency wanted to evaluate similar contracts; thus, the agency's reliance on PCI's ongoing leather contract was fully consistent with the evaluation scheme.

¹ PCI also argues that UNICOR should have engaged in clarifications or discussions with it on the issue of past performance. See Federal Acquisition Regulation § 15.306. However, UNICOR did not find PCI's past performance deficient or unclear in any way, and did not receive adverse past performance information that PCI had not had an opportunity to address. Under these circumstances, there was no requirement for discussions or clarifications with PCI. Id.

PCI argues that UNICOR's failure to consider its two listed communications components contract references constituted disparate treatment, since the agency did consider a dissimilar contract (for fiberboard) in evaluating the past performance of another vendor (not the awardee). The agency acknowledges that it considered dissimilar contracts in evaluating that other vendor's past performance, but explains that it did so only because they were the only contracts the vendor listed, and a search indicated no other similar contracts. AR at 6. The contracting officer rated this vendor overall good for past performance because all three references rated the vendor good. Contracting Officer's Declaration at 5. However, she indicated on the evaluation form that the contracts were not for similar items, see Past Performance Evaluation, and also concluded in making the selection decision that, due to the vendor's lack of experience on similar contracts, an award to that firm would result in an unacceptable performance risk. Price Analysis at 2.

We find nothing unfair or otherwise improper in the contracting officer's actions. Her different approach to evaluating PCI and the other vendor reflected those firms' different circumstances, not improper disparate treatment. In evaluating both firms, the contracting officer considered similar contracts to the extent possible, consistent with the RFQ reference to "similar" contracts. Similar (leather supply) contracts, including the one she discovered in the agency's records, were available for PCI, so she considered those in PCI's evaluation. Since the other vendor had not performed leather supply contracts, she could not consider similar contracts to evaluate its past performance. Thus, she considered the firm's dissimilar contracts, and then penalized it in the evaluation by finding that the lack of past similar contracts made the performance risk too great to permit award to the firm. In our view, nothing in this record indicates that the treatment of PCI was unreasonable.²

PCI also asserts that two UNICOR employees--the chief of procurement and the general counsel--told PCI that it was appropriate to include the communications components contracts as past performance references for this solicitation.³ Both

² PCI argues that the agency could not consider performance risk in the evaluation because it was not specified as an evaluation factor in the RFQ. However, risk is an element of quotation evaluation that may be considered even where it is not specifically listed as an evaluation factor. See Information Spectrum, Inc., B-256609.3, B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251 at 6; Frequency Eng'g Labs. Corp., B-225606, Apr. 9, 1987, 87-1 CPD ¶ 392 at 8-9.

³ PCI maintains that it appears from the record that two references for one of its listed prior contracts were not advised that they could rate PCI's performance excellent, and that their rating of PCI's past performance as good therefore did not accurately reflect the level of their satisfaction with its performance. However, the two references have stated that they knew the excellent rating was available, but chose to rate PCI good, and the contracting officer states that she informed all

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employees deny discussing with PCI the references it intended to submit. Declarations of the Procurement Chief and General Counsel. In any case, however, PCI was not downgraded in the evaluation for listing these contracts and, moreover, this advice would not diminish the contracting officer's discretion to consider the most relevant contracts in evaluating PCI's past performance.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

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references of each possible rating, including excellent. Declaration of Contracting Officer, Jan. 23, 2001, at 1.