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Decision

Matter of: Dismas Charities, Inc.

File: B-289575.2; B-289575.3

Date: February 20, 2004

Alex D. Tomaszczuk, Esq., and Daniel S. Herzfeld, Esq., Shaw Pittman, for the protester.

Joseph A. Camardo, Jr., Esq., and Kevin M. Cox, Esq., for Bannum, Inc., an intervenor.

Katherine A. Day, Esq., Bureau of Prisons, 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

1. Protest that agency improperly failed to accord past performance factor greater weight in evaluation than other factors--as provided in solicitation--is denied where record shows that agency did give past performance greater weight than other factors--in the form of 100 more possible evaluation points--but determined that, despite protester's scoring advantage for past performance, proposals were equal under all technical factors combined, leading to award based on awardee's lower price.
 2. Agency was not required to perform price realism analysis where solicitation contemplated award of a fixed-price, rather than a cost-reimbursement, contract and did not provide that such an analysis would be performed.
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DECISION

Dismas Charities, Inc. protests the award of a contract to Bannum, Inc. under request for proposals (RFP) No. 200-0669-SE, issued by the Bureau of Prisons (BOP) for Community Corrections Center services for federal offenders held in Savannah, Georgia. Dismas complains that BOP failed to make award in accordance with the solicitation, and improperly evaluated Bannum's prices.

We deny the protest.

The solicitation, which contemplated the award of a fixed-price contract, provided for a "best value" award based on an evaluation under four factors: past

performance, technical, management and price. Past performance was identified as the most important factor, with the remaining three factors being equal in weight. The non-price factors combined were significantly more important than price.

Four proposals, including Dismas's and Bannum's, were received. A source selection evaluation board (SSEB) evaluated the technical and management proposals by assigning them point scores under each factor, and the contracting officer evaluated price and past performance. Following multiple rounds of discussions and the submission of final proposal revisions (FPR), Dismas's proposal received [DELETED] (of 1,000 possible) points, with [DELETED] (of 325) for past performance, [DELETED] (of 225) for the technical factor, [DELETED] (of 225) for the management factor, and [DELETED] (of 225) for price. Bannum's proposal received [DELETED] points, with scores of [DELETED] for past performance, [DELETED] for the technical factor, [DELETED] for the management factor, and [DELETED] for price. The agency determined that the two offerors' non-price proposals were technically equal, and thus made award to Bannum based on its lower price. This protest followed.

Dismas raises a number of issues concerning the evaluation and award decision. We have considered each issue and find them all to be without merit. We discuss several examples below.

PAST PERFORMANCE

Dismas asserts that the agency failed to give appropriate evaluation weight to past performance, as evidenced by the agency's determining that Dismas's and Bannum's proposals were technically equal despite the fact that Bannum's proposal score was lower than Dismas's for past performance and for all non-cost factors combined. Dismas asserts that, had past performance been weighted properly, its [DELETED]-point advantage over Bannum for that factor would have led the agency to conclude that Dismas's proposal was superior, rather than equal, to Bannum's.

This argument is without merit. While the RFP provided that past performance was the most important factor, this was reasonably reflected in BOP's assigning past performance 325 possible points, and the technical and management factors only 225 points each. Further, while Dismas enjoyed a [DELETED]-point advantage over Bannum for past performance, the results of the overall point-scoring show that most of this advantage was offset by Bannum's superiority under the other factors. In any case, point scores are only guides to assist source selection officials in evaluating proposals; they do not mandate automatic selection of a particular proposal. The question ultimately is whether the record supports the agency's conclusions regarding the relative merits of the proposals. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 9. Here, the record shows that the source selection authority (SSA) was aware of the differences in Dismas's and Bannum's past performance scores, and the substantive reasons for those

differences, Source Selection Document at 4, 5, 7, but ultimately concluded that the proposals were equal overall under all non-price factors. Dismas has not established that this conclusion was unreasonable.

TECHNICAL AND MANAGEMENT FACTORS

In its comments in response to the agency report, Dismas argues that the scoring system was flawed because it resulted in Dismas's proposal receiving a lower weighted score than Bannum's under the technical and management factors, even though it received a higher raw score. Dismas also argues that one of the evaluators improperly lowered her score for Dismas' proposal after the fourth round of discussions.

Under our Bid Protest Regulations, protest arguments, such as these, that do not involve an apparent solicitation impropriety, must be raised within 10 days after the bases of protest were, or should have been, known. 4 C.F.R. § 21.2(a)(2) (2003). Where, as here, a required debriefing is provided, protests raising arguments based on information known prior to, or learned at, the debriefing must be filed within 10 days after the debriefing. *Id.* BOP reports, and Dismas does not dispute, that Dismas was provided with the scores on which these arguments are based no later than October 2, 2003, during litigation initiated by Bannum in the United States Court of Federal Claims with respect to the solicitation under protest here. Agency Report at 5; Supp. Agency Rept. at 4-5; Supp. Comments at 1-2. Dismas therefore was aware of these bases of protest when it filed its initial protest on December 3, following its debriefing. Since Dismas did not raise these issues until January 12, they are untimely.

Dismas argues that these evaluation arguments are timely because it challenged the evaluation under the technical and management factors in its December 3 protest. This argument is without merit. In its initial protest, Dismas's argument with respect to the technical and management factor evaluation consisted solely of the following general statement: "Upon information and belief, BOP improperly conducted the evaluations under the Technical and Management factors. In particular, BOP failed properly to score the evaluations of Dismas and Bannum." The protest included no details explaining why the evaluation was unreasonable, or why Dismas believed the proposals were improperly scored. Dismas first provided specifics in its comments, where it asserted that its higher raw score improperly resulted in a weighted score lower than Bannum's, and that one of the evaluators improperly lowered Dismas's score after the fourth FPR. Where a protester presents a general allegation in its initial protest, it does not render timely subsequently submitted specific examples of the alleged general flaws in the evaluation. *CAE USA, Inc.*, B-293002, B-293002.3, Jan. 12, 2003, 2004 CPD ¶ __ at 11 n.9; see *LeBoeuf, Lamb, Greene & MacRae*, B-283825, B-283825.3, Feb. 3, 2000, 2000 CPD ¶ 35 at 11-12. Accordingly, Dismas's specific arguments regarding the evaluation, first raised in its comments, are

untimely and will not be considered. Battelle Mem'l Inst., B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 24 n.32.

PRICE EVALUATION

Dismas maintains that BOP improperly failed to assess the realism or reasonableness of Bannum's proposed price, or to consider that Bannum's price is unbalanced between the base and option years.

These arguments are without merit. First, price realism is not required to be considered in the evaluation of proposals for the award of a fixed-price contract unless the solicitation provides for a price realism analysis to assess an offeror's understanding of the requirements or the risk of poor performance inherent in a proposal. AllWorld Language Consultants, Inc., B-291409, B-291409.2, Dec. 16, 2002, 2003 CPD ¶ 13 at 2. Here, as the solicitation did not require a price realism analysis, the agency was not required to perform one.

Dismas's argument regarding price reasonableness is based on the agency's alleged failure to use Bannum's revised prices in a comparison with the government estimate. According to Dismas, BOP used prices of \$73.00 for Bannum's base period and \$64.00 for the two option periods, instead of Bannum's revised prices of \$72.50 for the base period and \$63.00 for the option periods. This argument is without merit. The purpose of a price reasonableness evaluation, is to determine whether offered prices are higher, not lower, than warranted. Efficiency Mgmt. & Eng'g Co., Norcor Techs. Corp., B-292676, B-292676.2, Oct. 31, 2003, 2003 CPD ¶ __. Since the agency found that prices higher than Bannum's revised prices were reasonable, using Bannum's lower revised prices in the comparison obviously would not affect the price reasonableness determination.

Dismas argues that Bannum's prices of \$73.00 for the base year and \$64.00 for the option years are unbalanced and should be rejected. However, the difference in Bannum's base and option year prices--approximately 14 percent--is not so extreme as to render the offer unbalanced. See Laidlaw Envt'l Servs. (GS), Inc., B-261603, Oct. 11, 1995, 95-2 CPD ¶ 171 at 4 (pricing not unbalanced where base year price is 36 percent higher than option year price).

The protest is denied.

Anthony H. Gamboa
General Counsel