



GAO

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: D.N. American, Inc.

File: B-292557

Date: September 25, 2003

Kenneth A. Martin, Esq., Martin & Associates, PLLC, for the protester.

Richard J. Webber, Esq., Arent Fox Kintner Plotkin & Kahn, PLLC, for Daston Corporation, an intervenor.

Debra R. Tabor, Esq., Department of the Army, for the agency.

Sharon L. Larkin, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's use of color coded scoring methodology was unobjectionable, where color scheme was consistent with, and directly correlated to, the solicitation's stated evaluation criteria; scoring methodology, unlike evaluation factors, need not be disclosed.
 2. In a best value procurement, agency reasonably selected higher technically rated and lower priced proposal for award, where evaluation is consistent with the solicitation's stated evaluation criteria and agency's conclusions are reasonably based.
 3. Protest that agency failed to conduct adequate discussions is denied, where record shows that agency reasonably discussed with protester areas of significant concern.
-

DECISION

D.N. American, Inc. protests the award of a contract to Daston Corporation under request for proposals (RFP) No. DACW69-03-R-0022, issued by the Department of the Army for computer help desk services. D.N. challenges the reasonableness of the Army's evaluation and rating methodology.

We deny the protest.

The RFP, issued as a small business set-aside, sought "multi-tiered" help desk services for the Great Lakes and Ohio River Division of the Huntington District of the

U.S. Army Corps of Engineers.¹ The help desk is to be the single point of contact for all software and hardware problems and service requests of the District employees. The required help desk services include an off-site Answer Call Service (ACS) for answering, logging, and solving calls related to commercial off-the-shelf and Corps-owned software; on-site support covering hardware, software, and network support; field dispatch on-site support; services requiring a “Subject Matter Expert;” and administrative services. The selected contractor is to provide “all of the personnel, equipment, tools, materials, supervision and other items necessary” to perform these services. RFP at 7-9.

The RFP provided for award of a blanket purchase agreement for a base year with nine 1-year options under the selected contractor’s General Services Administration Federal Supply Schedule. Award was to be made to the offeror whose proposal was evaluated to be the “most advantageous to the Government,” considering, in descending order of importance, past performance, help desk model, contractor expertise, and price. Combined technical factors were “significantly more important than” price.² However, the RFP provided that as technical merit became more equal, price would become more important in the selection and could be the “deciding factor” for award. RFP amend. 1, at 10, 17.

With regard to past performance, the RFP required offerors to identify a minimum of three company projects that “are similar in scope” to this effort. RFP amend. 1, at 17. The RFP further stated that contractors “shall have existing services that support a similar size and scope specified in this contract and demonstrate the ability to accommodate this additional workload without significant expansion of their existing help[desk] service infrastructure.” RFP at 7. Under the help desk model evaluation factor, offerors were to describe each component of the help desk model they were proposing, “addressing at a minimum, service levels, . . . answer call, on-site support, field dispatch, continuous improvement, tracing software, [k]nowledge base software, and reports.” RFP amend. 1, at 17. For contractor expertise, offerors were to identify for evaluation the “[c]ontractor qualifications/expertise [that] are listed in paragraph 15 [of the RFP]”³ and any additional expertise. Id. Pricing was to be provided on a fixed-price “per seat” basis

¹ Each tier—gold, platinum, and silver—was based upon different response and resolve times, and there were two priority levels for handling calls under each tier. RFP amend. 1, at 19.

² The Army established the relative weights of the technical factors to be 40 percent for past performance, 35 percent for the help desk model, and 25 percent for contractor expertise. These weights were not disclosed to the offerors.

³ The referenced paragraph listed qualifications relating to education, work experience, general business skills, and subject matter expertise. RFP at 14.

for the base year and the first 4 option years; the RFP specified that offerors' pricing for the options years would be considered along with the base year to determine the lowest priced offer. RFP at 2, 7; amend. 1, at 17.

D.N. and Daston were among eight offerors that submitted proposals in response to the RFP. The Army evaluated each proposal and rated it green (superior), blue (exceptional), purple (acceptable), yellow (marginal), or red (unacceptable) under each of the technical evaluation factors.⁴ Each color rating was defined in a manner that was tailored to the evaluation criteria. For example, blue and purple were defined under the past performance factor as follows:

EXCEPTIONAL (BLUE): The technical proposal clearly demonstrates the offeror's experience on projects with similar work. A minimum of three current company projects that are similar in scope including points of contact, titles, and phone numbers are provided. All references for past performance are at least very high (exceptional). There is a high probability of successful performance on this contract.

ACCEPTABLE (PURPLE): The technical proposal established and outlines the experience of the offeror with similar work. Three current company projects that are similar in scope including points of contact, titles, and phone numbers are provided. All performance ratings are at least satisfactory (acceptable). There are no significant doubts that the offeror would be successful with this contract.

AR, Tab E, Technical Proposal Evaluation Worksheet, at 2.

For the help desk model factor, blue and purple were defined as follows:

EXCEPTIONAL (BLUE): The offeror provides a detailed description of each component of the Help Desk Model they are proposing, addressing in detail more than the minimum, service levels, authorized warranty repair provider status, answer call, on-site support, field dispatch, continuous improvement, tracking software, [k]nowledge base software, and reports. The information provided substantiates that there is a high probability of successful performance on this contract.

ACCEPTABLE (PURPLE): The offeror provides a detailed description of each component of the Help Desk Model they are proposing, addressing at a minimum, service levels, authorized warranty repair provider status, answer call, on-site support, field dispatch, continuous

⁴ The past performance factor also had a neutral rating of "purple/yellow."

improvement, tracking software, [k]nowledge base software, and reports. There are no significant doubts that the offeror could perform satisfactorily on this contract.

Id. at 4.

For the contractor expertise factor, blue and purple were defined as follows:

EXCEPTIONAL (BLUE): The proposal provides a complete list of contract qualifications, including all expertise required. There is a high probability of successful performance on this contract.

ACCEPTABLE (PURPLE): The proposal provides most of the qualifications required. There are no significant doubts that the offeror could satisfactorily perform on this contract.

Id. at 8. This color coded scheme was not disclosed to the offerors.

The Army initially rated Daston's proposal blue for past performance and purple for the help desk model and contractor expertise, and rated D.N.'s proposal purple for all three factors. The Army then issued written discussion questions to both Daston and D.N. (as well as other offerors) and sought and evaluated final proposal revisions (FPR). After evaluating offerors' responses to discussion questions and FPRs, the Army rated Daston's final proposal blue and D.N.'s final proposal purple for all three technical factors. Based upon these ratings, Daston's proposal was ranked the second highest technically, and D.N.'s proposal was ranked fifth.

Specifically under the past performance evaluation factor, the Army stated that Daston received a blue rating because it "had contracts of similar size and scope and has demonstrated some of their proposed model in past performance . . . [and had] multiple Government contracts for help desk support" D.N. was rated purple under this evaluation factor because, while it had "multiple military and Government contracts with similar scope" and is "the incumbent help desk provider," "the size serviced [by the incumbent contract] is substantially lower than the potential on this contract." AR, Tab J, Memorandum for Record, June 19, 2003, at 5-6.

Under the help desk model evaluation factor, the Army explained that Daston was rated blue because its "ACS and knowledge base implementations are integrated and their model is consistent with the [statement of work]," the number of ACS personnel "appears to be adequate due to their ability to call on their personnel worldwide," and Daston's "[k]nowledge base has [commercial off-the-shelf software] pre-loaded and will collect site specific data and will be accessible to all endusers." D.N. was rated purple because "they had a well defined ACS process and call ownership is clearly defined" and the "entire team uses AIRTIME system." Id. at 6-7.

Under the contractor expertise factor, the Army explained that Daston was rated blue because it was “providing employees who are familiar with current Corps business practices and knowledge of software.” The Army noted that all of the proposed employees did not have all desired certifications, but found that a training plan addressed this concern. The Army also noted that Daston’s staffing plan provided a “more than adequate number of personnel.” D.N. was rated purple because, as the Army found, D.N.’s “ACS personnel have a training plan and good qualifications,” but “some existing team members needed to get some certifications.” Id. at 7.

The Army also evaluated price and determined that Daston’s proposal was the lowest priced over the first 5 years of the contract.⁵ The Army then determined that Daston’s proposal was “most advantageous” because of its “high technical capability and lower cost over the five year period.” Id. at 9-10.

In comparing proposals, the Army specifically noted Daston’s “excellent past performance” of the “same size and scope” as the solicited effort. The Army also found that Daston’s proposal “clearly addressed how best practices would be shared and leveraged throughout the company.” In contrast, the Army noted that D.N. had “never performed services of this size before” and that it would be a “major ramping up” for D.N. to support this effort. Additionally, the Army found that Daston’s staffing plan included an adequate number of on-site personnel, whereas D.N.’s proposed staffing for the Huntington site appeared to be low. Daston’s team was also found to be “already providing full seat management services to over \$1.6 [million] seats worldwide,” while in contrast, D.N. was not now providing full seat management (although the Army also noted that D.N. “gave an indicator that they could possible provide these services in the future”). The Army also found advantageous Daston’s proposed help desk model, noting that parts of Daston’s model had been demonstrated in its past performance, while D.N.’s proposed model would have to be completely developed and was new to the team. Specifically with

⁵ Daston’s and D.N.’s proposed “gold tier” pricing, and the total evaluated prices for their proposals, are as follows:

	Base Year	1 st Option	2 nd Option	3 rd Option	4 th Option	Total Evaluated Price (for all levels)
Daston	\$ [deleted]	\$ [deleted]	\$ [deleted]	\$ [deleted]	\$ [deleted]	\$ 9,387,000
D.N.	\$ [deleted]	\$ [deleted]	\$ [deleted]	\$ [deleted]	\$ [deleted]	\$ 9,419,508

Both offerors proposed base year prices that were below the government estimate, which was \$50. AR, Tab J, Memorandum of Record, June 19, 2003, at 8, 10, 12.

regard to the ACS, Daston was found to have personnel available worldwide and to have fully discussed how level I and II calls would be answered, while it was unclear to the Army whether D.N.'s ACS met the requirements of the statement of work or where level II calls would be handled. Id. at 9.

Award was made to Daston and this protest followed.

D.N. challenges the Army's rating methodology and technical evaluation of proposals. Our Office reviews challenges to a technical evaluation to ensure that the evaluation was conducted consistent with the RFP and applicable procurement laws and regulations. Tri-J Contractors, B-277063.3, July 6, 1998, 98-2 CPD ¶ 25 at 2. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Microcosm, Inc., B-277326 et al., Sept. 30, 1997, 97-2 CPD ¶ 133 at 4.

D.N. first complains that the Army's "scoring methodology"—that is, the color rating scheme—bears no rational relation to determining which proposal was most advantageous to the government.⁶ However, our review of the record reveals that the rating definitions used by the Army directly correlate to the stated evaluation criteria. For example, the blue and purple ratings are defined for past performance to consider experience with "similar work," are defined for the help desk model to consider evaluation elements such as "service levels . . . answer call, on-site support, field dispatch . . . [etc.]," and are defined for contractor experience to consider contractor qualifications; these definitions reflect the same or similar language in the RFP. The evaluation ratings also distinguish the relative merits of proposals in that, for example, a blue (exceptional) rating is warranted for a "high probability of successful performance," and a purple (acceptable) rating is warranted when there are "no significant doubts" as to successful performance. AR, Tab E, Technical Proposal Evaluation Worksheet, at 2, 4, 8. Although D.N. objects to the subjective nature of the evaluation scheme, we find the scheme not only consistent with the evaluation criteria, but also consistent with the Federal Acquisition Regulation

⁶ To the extent that D.N. contends that the "scoring methodology" was not disclosed to offerors, we note that unlike evaluation factors for award, an agency is not required to disclose its specific rating methodology like the color coded scheme here. ABB Power Generation, Inc., B-272681, B-272681.2, Oct. 25, 1996, 96-2 CPD ¶ 183. To the extent that D.N. complains that the Army did not disclose the relative weights of the evaluation factors—40 percent for past performance, 35 percent for help desk model, and 25 percent for contractor experience—we find that these percentages are not inconsistent with the RFP, which listed the factors in "descending order of importance," and given, as discussed fully above, that D.N. reasonably received purple ratings for each of the factors and Daston reasonably received blue, D.N. has not shown how it was prejudiced as a result of the Army's failure to disclose the exact percentages applied.

(FAR) mandate in a negotiated procurement to qualitatively assess proposals, see FAR § 15.305(a), which implicitly requires some level of subjectivity. See TESCO, B-271756, June 24, 1996, 96-1 CPD ¶ 284 at 2 (“where technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merits of competing proposals, offerors are on notice that qualitative distinctions will be made under the various evaluation factors”).

D.N. next complains that the technical evaluation was arbitrary and inconsistent, arguing primarily that Daston was improperly upgraded to blue in the final evaluation, while D.N. was rated purple for essentially the same features. We find no merit to these arguments. Under past performance, for example, Daston reasonably was found to have contracts of similar size and scope, while D.N.’s contracts were only of similar scope and not size. Under the help desk model factor, even though the Army favorably commented on both offerors’ ACS processes, it noted that Daston’s proposal provided additional advantages of offering pre-loaded software and having adequate help desk personnel available worldwide. We think these advantages reasonably support the Army’s determination to give Daston higher technical ratings than D.N.

Further, although D.N. disagrees with the Army’s final rating determinations, it has not shown them to be unreasonable. For example, D.N. argues that the Army failed to consider the quality of Daston’s past performance, that is, whether or not it had “at least very high” past performance, as required by the blue rating definition. However, the record shows that quality was indeed considered and Daston was found to have “excellent” past performance. See, e.g., AR, Tab J, Memorandum for Record, June 19, 2003, at 9; Tab K, Daston Initial Evaluation Worksheets, at 10. D.N. also contends that Daston should not have received a blue rating for the past performance factor because it did not provide a “minimum of three” past performance references specifically concerning its help desk model, parts of which were noted by the Army as being new to the Daston team. However, the past performance factor required references only for similar work (for which Daston provided more than three references), and did not require references for the exact model proposed under this effort; where features of the model appeared in past performance, the agency reasonably recognized this as a strength. Moreover, D.N. likewise did not have past performance concerning its help desk model (since its model was being developed from scratch) and was not downgraded for this, so we find no unequal treatment in this regard. Finally, D.N. argues that it was deserving of a higher past performance rating given its incumbent contract experience, but the Army considered this experience and found that, although it was similar in scope, it was far smaller in size than the required effort.⁷ We find this conclusion reasonable.

⁷ D.N. also argues that its proposal should not have been assessed a weakness for “ramping up” because its subcontractor is currently servicing “millions of clients,” but it is not clear whether this information was presented to the agency during the

(continued...)

D.N. also complains that the evaluation of contractor expertise was unequal. Here, D.N. argues that neither offeror had all of the required certifications, which were necessary for a blue rating, and thus Daston should only have received a purple rating like D.N.⁸ Although we agree with D.N. in this regard, we see no prejudice to D.N. from this error. Daston was still rated superior to D.N. in the two more important technical factors, and was lower in price, so even if the contractor expertise ratings were made equal, there is no reasonable basis to conclude that D.N.'s proposal would have had a reasonable probability of being selected for award. See J.A. Jones/Bell, A Joint Venture, B-286458, B-286458.2, Dec. 27, 2000, 2001 CPD ¶ 17 at 4 n.1.

D.N. next complains that weaknesses found in its proposal under the technical factors reflect the Army's use of unstated criteria. For example, D.N. contends that offerors were not informed that the size of prior contracts would be considered under past performance or that "ramping up" would be a factor for award.⁹ However, as noted above, the RFP announced that offerors "shall have existing services that support a similar size and scope specified in this contract and demonstrate the ability to accommodate this additional workload without significant expansion of their existing help[desk] service infrastructure." RFP at 7. We think this language clearly placed offerors on notice that size of past projects and the contractor's staffing levels would be considered.¹⁰

(...continued)

evaluation and, in any event, the services provided by the subcontractor, as identified in its past performance, pertain only to hardware and not software support.

⁸ D.N. also claims that it has familiarity with the Corps' business practices, which was noted as a strength in Daston's proposal under this factor, but not in D.N.'s proposal.

⁹ D.N. additionally argues that Daston also would have to "ramp up," since no contractor would have staff currently in place to perform future efforts. However, the agency specifically noted that, unlike D.N., Daston was currently servicing \$1.6 million seats worldwide, had personnel available worldwide to support the effort, and included sufficient numbers of personnel in its staffing plan. AR, Tab J, Memorandum for Record, June 19, 2003, at 9.

¹⁰ In any event, D.N. has not explained how it was prejudiced, since it does not contend it would have provided past performance of similar size contracts or had staff currently in place to perform the effort without expansion, had it been informed of these requirements.

D.N. also contends that the Army failed to conduct meaningful discussions concerning weaknesses found in its proposal. Although an agency is required to discuss with each offeror considered for award “deficiencies” and “significant weaknesses” in its proposal, FAR § 15.306(d)(3), the agency is not required to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score. MarLaw-Arco MFPD Mgmt., B-291875, Apr. 23, 2003, 2003 CPD ¶ 85 at 4.

Here, contrary to the protester’s allegations, the record shows that discussions adequately addressed significant areas of concern. For example, D.N. complains it was not informed that it would have to “ramp up” to meet requirements, that its long term staffing plan was considered low, that it had to acquire a loaner pool, or that it was not clear where level II calls would be handled. However, D.N. was indeed asked whether the D.N. team had the “ability to transition into new seat management areas,” how its “on-site personnel will be able to handle overflow during high call volumes,” and to explain the “different levels of support available at the Help Desk,” which reasonably led D.N. into the areas of staffing concern. Similarly, D.N. was asked to explain its training plan for getting incumbent staff appropriately certified, which was another weakness identified in D.N.’s proposal.¹¹ AR, Tab I, D.N. Discussion Questions and Responses, at 1.

D.N. also contends that the Army failed to raise during discussions that the size of past projects was a concern in the evaluation of past performance, or that its subcontractor’s past performance under military contracts was limited to hardware support. Although these issues were not specifically raised during discussions, D.N. has not shown that it was prejudiced. It does not argue that it would have, or could have, identified contracts of a larger size, or that its subcontractor’s references would have included other than contracts for hardware support had these issues been raised, or that as a result of discussions its proposal would have been found sufficiently superior to Daston’s lower priced proposal to be selected for award. Continental Serv. Co., B-271754, B-271754.2, July 30, 1996, 96-2 CPD ¶ 65 at 6.

D.N.’s remaining protest allegations are primarily based on information D.N. contends was provided at the debriefing, which allegations are not supported by the record. For example, D.N. complains that its subcontractor was criticized under the past performance factor for referencing military as opposed to commercial experience. However, the actual criticism was not that the firm lacked commercial experience, but rather that the firm only referenced one military contract that was

¹¹ D.N. also complains that it was improperly criticized for its sharing of best practices. This issue was admittedly raised during discussions, but D.N.’s response does not appear to have alleviated the Army’s concerns. See AR, Tab M, D.N. Final Evaluation Worksheets, at 3, 5, 10. D.N. has not provided us any basis to find the Army’s conclusions unreasonable in this regard.

limited to hardware support, rather than software and hardware support as was required for this effort. AR, Tab L, D.N. Initial Evaluation Worksheets, at 3.

In any event, we have reviewed each of D.N.'s arguments and find them to be without merit. The Army, in our view, reasonably and fairly evaluated proposals in accordance with the stated evaluation criteria and reasonably selected Daston for award based upon its higher technical rating and lower price.

The protest is denied.

Anthony H. Gamboa
General Counsel