



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Entz Aerodyne, Inc.

File: B-293531

Date: March 9, 2004

Keith E. Entz, for the protester.

Vera Meza, Esq., United States Army Materiel Command, for the agency.

Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency, in evaluating past performance, improperly placed undue weight on whether offeror had previously produced same item is denied where agency, consistent with the terms of the solicitation which provided that an offeror's past performance producing the same item was "most relevant," reasonably assigned a higher rating to awardee's proposal because that firm previously produced the same item.

2. Protest that contracting agency failed to justify selection of another firm, notwithstanding protester's lower rated but lower priced proposal is denied where selected firm was found to have superior past performance, solicitation made past performance the most important factor, and source selection decision document reflected the agency's assessment that experience and expertise in producing item justified paying price premium.

DECISION

Entz Aerodyne, Inc., a small business, protests the award of a contract to Borisch Manufacturing Company (BMC) under request for proposals (RFP) No.

DAAE20-01-R-0236, issued by the Department of the Army for a power switching unit used on the Bradley Fighting Vehicle System and the Abrams Main Battle Tank. Entz challenges the agency's evaluation of the offerors' past performance, as well as the agency's decision to select the awardee's higher rated, higher priced proposal.

We deny the protest.

The power switching unit being procured is an essential component of the common power control unit, which provides electric power to weaponry on the Bradley

Fighting Vehicle System and to the thermal viewing system of the Abrams Main Battle Tank. This power switching unit is on back order and is critical to maintenance and repair of vehicles used in Operation Enduring Freedom and Operation Iraqi Freedom. Agency Report, Tab B, Source Selection Decision (SSD) at 23.

The RFP contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract with a 5-year ordering period. Proposals were to be evaluated on the basis of three factors, which were, in descending order of importance, past performance, price, and small business utilization. Award was to be made to the firm submitting the proposal representing the best value to the agency. RFP § M.1.1.

As relevant here, the RFP specified that the evaluation of an offeror's past performance would include currency, degree of relevance, source, and context of the past performance information, as well as general trends in an offeror's performance and demonstrated corrective actions. RFP § M.2.1.2. The Army highlighted the importance of relevant past performance in the RFP, stating that:

[t]he Government is especially interested in contracts meeting the following characteristics. These characteristics are in descending order of importance from the most relevant to the least relevant.

Circuit Card Assemblies¹ and/or Switching Units that were manufactured and delivered under a US Army Technical Data Package for the exact items contained in this solicitation.

Other Circuit Card Assemblies or Switching Units that were manufactured and delivered under a US Government Technical Data Package that are similar to the items contained in this solicitation.

Other Circuit Card Assemblies or Switching Units that were manufactured under commercial contracts that may be similar to the items contained in this solicitation.

RFP § L.2.1.2.

The past performance evaluation scheme called for evaluators to assign adjectival ratings ranging from "very low risk" to "high risk," essentially reflecting the

¹ Although the RFP initially requested proposals for both "Circuit Card Assemblies" and "Switching Units," amendment No. 7 entirely removed the requirement for circuit card assemblies.

assessment of how likely unsuccessful performance would be in light of the offeror's recent relevant past performance. RFP § M.2.2.

As reflected in the source selection decision, Entz submitted two past performance references, both of which were associated with similar items produced for commercial firms under commercial specifications. The Army concluded that each of these references qualified as "least relevant." SSD at 5. Although the references reported good past performance by Entz, the fact that the references were "least relevant" resulted in a past performance assessment of "Moderate," reflecting the Army's assessment that there was "some doubt" that Entz would successfully perform under a contract involving military specifications, standards, and testing. SSD at 5.

The record further shows that BMC submitted only one past performance reference, which the Army concluded qualified as "most relevant" because it involved the production for the Army of the exact same item specified in the RFP. The Army itself identified three additional past performance references, which it found were "relevant" because they involved similarly complex items produced for the Army, but not the "exact same item." SSD at 8. BMC's proposal was rated very low risk under the past performance evaluation factor. The agency evaluators assigned the proposals of both firms the same excellent rating under the small business utilization factor.

After reviewing the evaluation results, the source selection authority (SSA) determined that BMC's superior past performance rating, at a higher evaluated price, represented the best value to the government compared to the ratings and prices of the other offerors; the SSA, therefore, awarded the contract to BMC. This protest followed.

PAST PERFORMANCE EVALUATION

In its protest, Entz asserts that the agency erred in its evaluation of BMC's past performance by not giving appropriate weight to certain performance problems experienced by BMC in the production of power switching units under the one "most relevant" contract identified in its proposal, which had resulted in BMC making the final two deliveries 90 days late.

Our standard in reviewing challenges to the evaluation is to examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2. An offeror's mere disagreement with the agency's assessment of its past performance, or the merits of its proposal relative to others, does not render the source selection unreasonable. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4.

We conclude that the evaluation of BMC's past performance here was reasonable. The record shows that the SSA found that BMC's late deliveries under the prior

contract were caused by circumstances beyond BMC's control. SSD at 8. The SSA noted in her source selection decision that the late deliveries were caused by defects in a part produced by a source-controlled vendor, and the defect had been detected and addressed by BMC. Id. On that basis, the SSA concluded that BMC's past performance was reasonably described by the evaluators as a "very low" risk.

Entz also challenges the agency's decision to downgrade its past performance because its references were from commercial firms utilizing commercial technical specifications, as opposed to production under a government technical data package. We conclude that the agency's evaluation of Entz's proposal was consistent with the past performance evaluation scheme described above, which weighted past performance under commercial contracts as "least relevant." Here, under the RFP, the Army could reasonably conclude that some doubt remained whether the offeror would be successful under the conditions of this contract, since Entz's past performance was limited to commercial contracts for similar items.

The record thus shows that the agency reasonably evaluated the past performance of both BMC and Entz, and that those conclusions were consistent with the evaluation scheme set forth in the RFP. The protester's mere disagreement with the SSA's evaluation does not provide a basis to disturb the award decision.

REASONABLENESS OF TRADEOFF DECISION

Although couched in terms of a challenge to the "price reasonableness of the awardee's pricing," the substance of the protester's issue here is that it was unreasonable for the Army to pay a premium in excess of 40 percent in order to select an awardee with a superior past performance rating, particularly where that superiority depends significantly upon the offeror having produced the same item previously.

In her decision, the SSA notes the crucial role of this power switching unit to the functioning of two combat vehicles, the backlog of orders for the item, and the resulting Army decision to place significant weight on previous successful production of the "exact same item" in establishing the selection criteria. Id. at 23. In describing her tradeoff rationale, the SSA states, in part, that "[a]lthough [BMC]'s proposed price is higher than Entz Aerodyne[s] . . . proposed price[], it is more advantageous based on [BMC]'s past experience and expertise to pay the price premium." Id. at 26.

The protester has not shown that the tradeoff here was unreasonable. As described above, the RFP provided that past performance was more important than price. In making her tradeoff, the SSA noted that Entz and another offeror had lower evaluated prices, but that BMC had superior "experience and expertise," which she concluded justified paying the premium associated with BMC's proposal, given the agency's critical need for the item, which is not disputed by Entz. Id.

Where, as here, the RFP allows for a price/technical tradeoff, the selection official has discretion to select a higher priced, but technically higher rated proposal, if doing so is reasonably found to be justified. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10. Based on the record, the SSA's decision that BMC's proposal offered the best value selection was reasonable and consistent with the RFP.²

The protest is denied.³

Anthony H. Gamboa
General Counsel

² The source selection decision document understandably focused on the price premium reflected in the difference between the evaluated prices of BMC's and a third offeror because the SSA decided that these firms' proposals were the most advantageous to the government. However, the source selection decision document reflects that the SSA was aware of Entz's lower price. The source selection decision not only contained a ranking showing Entz as proposing the lowest evaluated price, but also explicitly stated the SSA's assessment that "[e]ven though Entz Aerodyne's proposed price is lower than [BMC]'s proposed price, it [Entz Aerodyne's proposal] does not offer any advantage over [BMC]'s higher priced proposal," primarily because Entz "has not manufactured the exact same item as in the solicitation." SSD at 25 (emphasis in original). On this record, the SSA's understanding of the price premium associated with BMC's proposal is adequately demonstrated in the contemporaneous record.

³ The protester raised a number of other arguments. We have reviewed them all and find that none has merit.