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**Comptroller General
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Decision

Matter of: Universal Fidelity Corporation

File: B-294797.2

Date: February 7, 2005

O. Kevin Vincent, Esq., and Robert J. Wagman, Jr., Esq., Baker Botts, for the protester.

Jeffrey C. Morhardt, Esq., and Jose Otero, Esq., Department of Education, for the agency.

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DIGEST

Protest challenging agency's past performance evaluation is denied, where the source selection authority considered the quality and relevance of vendors' past performance information consistent with the terms of the solicitation.

DECISION

Universal Fidelity Corporation (UFC) protests the rejection of its proposal under "Request for Task Order Proposals for Private Collection Agency (PCA) 2004" issued by the Department of Education for proposals for collection services related to defaulted federal student loans.

We deny the protest.

Education performs collection and administrative resolution activities with respect to defaulted federal student loans and, since 1981, has contracted with PCAs for these services. Statement of Work (SOW) at 1. Specifically, the agency contracted with a number of PCAs, initially assigning each the same number of accounts. Thereafter, the agency periodically evaluated the performance of each PCA under three criteria: dollars collected, accounts serviced, and administrative resolutions. The performance of the PCAs was ranked, and bonus payments and additional account assignments were based on each PCA's relative performance. Solicitation at 14; SOW at 4. This performance evaluation process is known as the "Competitive Performance and Continuous Surveillance (CPCS)" system. Solicitation at 14.

In addition to the CPCS evaluation, there are other aspects of the collection services sought here that are unique to federal student loan accounts. For example, federal student loan collections involve the use of administrative wage garnishments and federal employee salary offsets. Agency Report (AR) at 2; see SOW at 10-11. In this regard, the agency states that successful contract performance depends upon a firm's familiarity with these tools and its ability to use them effectively, and upon PCAs having intimate knowledge of applicable federal statutes, regulations, policies and procedures. AR at 2-3; see SOW at 3-4. Other types of collections do not generally involve information systems and information management procedures of a size and complexity similar to that of federal student loan collections. Also, firms collecting loans, other than federal student loans, generally have smaller account volumes, and these other types of collections generally involve loans that have smaller average balances and shorter repayment terms. AR at 3, see SOW at 23-25.

The solicitation, as amended, provided for multiple awards of task orders to vendors under their Federal Supply Schedule (FSS) contracts.¹ Solicitation at 1, 10, 13. The agency reserved the right to award task orders without conducting discussions. Solicitation at 39. Vendors were informed that award would be made based on the evaluation of the following factors, which were identified as being in descending order of importance:

Past Performance, including the past performance of key personnel,
Technical Evaluation,
Commitment to Small Business, and
Pricing.²

Solicitation at 40.

¹ A number of awards were set aside for small business concerns; the solicitation informed vendors that at least three task orders would be awarded to small business concerns. See Solicitation at 40. In fact, five task orders were awarded to small business concerns under the set-aside portion of the solicitation. AR at 5. The protester does not challenge these awards.

² The solicitation identified the agency's target price rates and fees and requested that vendors state whether they accepted the stated prices. Vendors could propose changes to the target prices, and the solicitation stated that price rates would be evaluated to determine whether the rates were both high enough to provide the contractor with adequate compensation and an incentive to maximize production, and low enough to ensure that the agency receives a reasonable return on its assets. To be considered for award, pricing must be fair and reasonable, and the solicitation stated that the agency's target rates were considered to be fair and reasonable pricing. Solicitation at 34, 40, 44.

With respect to the past performance factor, vendors were required to identify three examples of relevant past performance in a competitive environment since January 1, 2001. Vendors were also informed that the agency might consider other information available to it. The solicitation instructed vendors to:

explain how this past performance is relevant to this task order's requirements. The Department considers the following to be the most significant factors contributing to relevance:

- Performance in a competitive environment (especially on CPCS),
- Performance collecting student loan debt,
- Performance collecting nationwide, and
- Performance handling large account volumes

Other factors, such as debt types similar to student loan debt, may contribute to a lesser degree.

Id. at 36. The solicitation also informed vendors that

[e]valuators will rate past performance on the likelihood that the offeror would excel in task order performance. The Department will consider both the quality and relevance in its evaluation of past performance. The Department considers competitive ranking information to be extremely relevant. The Department considers CPCS data, ratings and rankings to be the most relevant and reliable past performance information available.

Solicitation at 41.

The agency received 27 proposals, including that of UFC, from vendors that were invited by the agency to submit proposals. Following an initial evaluation, the agency established a "competitive range" consisting of 20 proposals, including UFC's.³ In the agency's final evaluation, all of the proposals included in the "competitive range" received the same rating for the technical evaluation factor, and

³ Although the agency described the selection of these proposals as reflecting the establishment of a "competitive range," discussions with these vendors were not contemplated, and no discussions were conducted. AR at 13. Rather, the "competitive range" consisted of those proposals for which the agency wished to perform a more detailed evaluation. UFC's proposal was not initially included within the "competitive range." UFC protested to our Office, and the agency subsequently determined that it would include UFC's proposal in the "competitive range." AR at 11-12.

all vendors accepted the agency's stated target pricing rate.⁴ AR at 24. The only evaluated differences among the proposals were under the past performance and the commitment to small business factors. However, because consideration of the commitment to small business ratings did not materially change the relative ranking of the proposals, the evaluated difference in the vendors' past performance became the primary discriminator for award.⁵ Id.

Past performance was evaluated for relevance and quality by the agency's source selection evaluation board (SSEB), which both point-scored and adjectivally rated the relevance and quality of a vendor's past performance under the following evaluation scheme:

RELEVANCE SCALE	POINTS AVAILABLE	QUALITY SCALE
Most Relevant	41-50	Outstanding
Highly Relevant	31-40	Excellent
Considerably Relevant	21-30	Good
Somewhat Relevant	11-20	Average
Minimally Relevant	0-10	Below Average

See AR, Tab 68, Final SSEB Report, at 5-6. A vendor's total past performance score was the sum of the proposal's relevance and the quality scores; thus the highest possible past performance point score was 100 points. Id. at 6, 8. For each vendor, the SSEB prepared a narrative report, describing the basis of the vendor's relevance and quality ratings and identifying the vendor's strengths and weaknesses. See, e.g., AR, Tab 67, Final Evaluation Sheet for UFC, at 1-4.

With respect to the relevance scale, the SSEB generally relied on a vendor's most relevant example to determine the applicable rating category and then assigned a point score within the range available for that category based on the offeror's other

⁴ UFC does not challenge the agency's evaluation under the technical evaluation factor or its price evaluation.

⁵ UFC protested that the agency's evaluation of its protest under the commitment to small business factor was unreasonable. In its report on the protest, the agency responded to this complaint, explaining the basis for UFC's evaluation rating under this factor. Specifically, the agency explained that UFC's lower rating was due largely to UFC's quotation proposing [DELETED]. AR at 37-38; Tab 67, Final Evaluation Sheet for UFC, at 7-9. Although the protester stated in its comments that it did not abandon this basis of protest, it also did not substantively address the agency's explanation of its evaluation. We find that UFC's mere disagreement with the agency's evaluation does not show that the agency's evaluation was unreasonable.

examples, unless those other examples were deemed significantly less relevant. With respect to the quality scale, the SSEB considered not only the vendor's overall performance, but also assessed upward or downward swings in the quality of the vendor's performance. The SSEB also considered "the competitiveness of the competitive environment," such that placing behind known top-performing collection agencies was deemed as more positive than similar rankings among "normal" competitors. The SSEB evaluated the quality of the multiple examples of performance that vendors had identified by giving greater weight to more relevant past performance. Id. at 5-6.

In evaluating UFC's past performance, the SSEB considered the three examples of commercial consumer debt collection performed in a competitive environment that UFC identified in its proposal, and also considered, as an additional example of UFC's past performance, UFC's performance of a contract with Wells Fargo Bank for the collection of private education loans. In response to the SSEB's inquiry, Wells Fargo informed the agency that it did not consider the collection of these loans to be performance in a competitive environment with other contractors. AR, Tab 6, UFC's Proposal, at 1-2; Tab 67, Final Evaluation Sheet for UFC, at 1-4.

The SSEB determined that UFC's past performance was "somewhat relevant" because UFC's performance reflected a high-volume, nationwide collection of small-balance consumer debt in a competitive environment, the performance by key personnel under a prior agency contract, and the collection of private (non-federal) student loans "that were not fully in a competitive environment." AR, Tab 67, Final Evaluation Sheet for UFC, at 1. UFC's proposal received a point score of 19 points for the relevance of its past performance. The SSEB also found that the quality of UFC's performance was "outstanding." UFC received a point score of 42 points for the quality of its past performance, and a total past performance score of 61 of a possible 100 points. Id. UFC's proposal was ranked nineteenth of twenty proposals in the "competitive range." AR, Tab 68, Final SSEB Report, at 8.

The SSEB's adjectival and point score ratings of the "competitive range" proposals were provided to the agency's source selection authority (SSA), who reviewed the SSEB's report and agreed with the SSEB's ratings and rankings of proposals. AR, Tab 69, Source Selection Decision, at 5. In his decision, the SSA analyzed the relevance and quality of each vendor's past performance examples, grouping the proposals based on the SSA's assessment of similar levels of past performance. For example, the SSA grouped the top three vendors in the SSEB's ranking as representing the highest level of confidence for successful performance, stating that these vendors were incumbent contractors and top performers under the CPCS. The proposals, the SSA stated, "stand out above the others as obvious selections"; the SSA selected all three proposals award. Id. at 6. The SSA proceeded through the proposals in the order ranked by the SSEB, identifying individual proposals, or groups of proposals, with which he found progressively lower levels of confidence

that the vendors would successfully perform the task orders. Id. at 6-10. With respect to UFC'S proposal, the SSA found as follows:

UFC had outstanding past performance but the relevance of that past performance was the lowest of any other offeror in the competitive range. UFC's past performance included collection of relatively small balance consumer debts that are not particularly similar to defaulted Federal student loan collections. By contacting a client (Wells Fargo) that UFC had not included among its references, the SSEB was able to confirm that UFC has some past performance collecting student loans. However, this was for collection of non-Federal student loans in less than a fully competitive environment. UFC also had the lowest commitment to small business. It proposed [DELETED].

Id. at 9.

The agency awarded task orders to twelve vendors under those firms' FSS contracts, but not to UFC, and this protest followed.

UFC complains that the agency employed an "overly mechanical" evaluation of vendors' past performance. Protest at 7; Comments at 2. Specifically, UFC complains, citing our decision in American Dev. Corp., B-251876.4, July 12, 1993, 93-2 CPD ¶ 49 at 10-11, that separately evaluating relevance and quality of past performance improperly favored incumbent contractors.

In American Dev. Corp., we found that an agency's methodology for assessing offerors' past performance was unreasonable, where the methodology "rewarded offerors which had held at least one contract relevant to the work to be performed under the RFP without consideration of the quality of the work performed under that contract." American Dev. Corp., supra, at 10. In that case, we found that although the agency reasonably assessed the relevance of offerors' past performance (even where the solicitation did not specifically identify the relevance of past performance as a evaluation factor), the agency could not make award to the incumbent contractor based upon its more directly relevant past performance without considering the quality of the incumbent's performance under that contract.

We do not agree with the protester that Education's evaluation failed to properly evaluate the quality and relevance of the vendors' work. Although it is true that the SSEB separately assigned points and adjectival scores for relevance and quality, here, unlike in American Dev. Corp., the vendors' past work that was evaluated for relevance was also evaluated for quality. In this regard, the SSA's source selection decision documents that the SSA considered both the relevance and quality of each vendors' past performance. See AR, Tab 69, Source Selection Decision. Thus, for example with respect to the proposal of one of the incumbent contractors, the SSA noted that although this vendor's past performance was "highly relevant," this

vendor had not performed well in the last year of that contract; the SSA did not select this vendor's proposal to receive a task order. See Id. at 9.

UFC also complains that its proposal should have been ranked higher than a number of firms' proposals that were selected for award, because UFC's past performance quality rating was higher than the quality rating that these vendors received.⁶ This argument ignores, however, the solicitation's evaluation scheme that provided that both the quality and relevance of a vendor's past performance would be considered. See Solicitation at 41. Here, the record reflects that although the quality of UFC's past performance was rated higher than that of some firms that received awards, all of these other vendors had substantially higher past performance relevance scores. In this respect, as explained above, the SSA considered both the evaluated relevance and quality of the vendors' past performance. Thus, with respect to UFC's past performance, the SSA recognized the protester's outstanding performance, but also considered that this was for the performance of contracts that the SSA found to be the least relevant to the solicitation requirements as compared to the past performance of other vendors. See id. at 9. To the extent that UFC disagrees with the SSA judgment as to the relative merits of the vendors' past performance, considering both quality and relevance, UFC has not shown that the SSA's judgment was unreasonable or inconsistent with the solicitation factors.

UFC also complains that its past performance should have been rated "highly relevant" because it had performed contracts in a competitive environment, which UFC argues satisfies the SSEB's definition for the "highly relevant" rating category.

The SSEB defined "highly relevant" to be:

The offeror's past performance involved performance of work comparable in magnitude of effort and complexities in competitive environments such as collecting Federal student loans for a guaranty agency, State institution or university or performance on the previous FSA Collections PCA contract.

AR, Tab 68, Final SSEB Report, at 5 (emphasis added).

Vendors were informed that performance in a competitive environment was an extremely important consideration in determining relevance. See Solicitation at 36, 41. Here, UFC's performance in a competitive environment was limited to contracts

⁶ Although some vendors with higher-ranked proposals had lower quality ratings than UFC, none were poor performers. In fact, all of the awardees with lower relative quality evaluations had quality levels of "good" or higher, and had performed on projects that were evaluated as either "highly relevant" or "most relevant." See AR, Tab 69, Source Selection Decision, at 10.

for consumer debt collection that, though somewhat similar, were not “comparable in magnitude of effort and complexities” to federal student loan collections. We find reasonable the agency’s assessment that UFC’s past performance in competitive environments was not “highly relevant.” In contrast, UFC’s past performance was consistent with the “somewhat relevant” rating that its proposal received. The SSEB defined “somewhat relevant” to be:

The offeror’s past performance involved less magnitude of effort and complexities, but included some of the tasks and capabilities. Collection of dissimilar debt types, for example, consumer debts other than student loans fell in this category.

Id. We find no basis to conclude that the agency unreasonably determined that UFC’s past performance was only “somewhat relevant.”

The protester also challenges the reasonableness of the agency’s evaluation that UFC’s performance of the Wells Fargo contract as reflecting performance that was not in a “fully competitive environment.” See Agency Report, Tab 67, Final Evaluation Sheet for UFC, at 1, 3, Tab 69, Source Selection Decision, at 9. UFC contends that performance is either in a competitive environment or a non-competitive environment. Therefore, the protester argues that because the agency determined that the firm’s Wells Fargo contract performance was at some level in a competitive environment, the agency should have assessed higher relevance score for this performance.

The record does not support the protester’s argument. Wells Fargo informed the agency that UFC had not performed in a competitive environment. AR, Tab 66, Past Performance Questionnaire Responses for UFC, at 10. When the agency “pressed” Wells Fargo for comparative data on UFC’s recovery results in comparison to Wells Fargo’s other contractors, Wells Fargo provided additional information, but again emphasized that its contractors did not compete and that Wells Fargo did not evaluate UFC’s performance under the data that the SSEB had requested. Id. Nevertheless, the SSEB concluded that this contract involved “some elements similar to those in a competitive environment” because the agency could compare UFC’s recovery results against those of Wells Fargo’s other contractors. Agency Report, Tab 67, Final Evaluation Sheet for UFC, at 2. The SSEB and SSA decided to consider UFC’s performance of the Well Fargo contract as in a limited competitive environment, or, stated another way, as not in a fully competitive environment. In fact, the record shows that UFC’s performance under the Wells Fargo contract was not in a competitive environment at all.⁷ It was thus to UFC’s benefit that its

⁷ UFC also suggests that the agency’s apparent evaluation of the relative degree of competitiveness in a competitive environment under the Wells Fargo contract constituted an unstated evaluation factor. Comments at 14-15. Given that the Wells
(continued...)

performance under that contract was viewed to be more relevant than performance in a non-competitive environment. We find no support for UFC's allegation that the agency should have more highly rated the relevance of its Wells Fargo contract performance.

The protester also protests that the agency's evaluation of UFC's past performance constituted "adverse information," which the agency was required to give UFC an opportunity to address. Specifically, the protester contends that the agency should have provided UFC with an opportunity to explain the relevance of its past performance information. Even in a negotiated procurement under Federal Acquisition Regulation Part 15, rather than one, as in this case, conducted under FSS procedures, an agency is not required to communicate with vendors regarding past performance information where, as here, discussions are not conducted, unless there is a clear reason to question the validity of the past performance information. See United Coatings, B-291978.2, July 7, 2003, 2003 CPD ¶ 146 at 13. The protester has not shown that there was anything on the face of UFC's past performance information that creates concerns about the information's validity. Moreover, the protester has not identified any information that it could or would provide that might alter the agency's evaluation of the relevance of UFC's past performance. We do not find that the agency had any requirement to communicate with UFC concerning the agency's view of the relevance of UFC's past performance.

The protest is denied.

Anthony H. Gamboa
General Counsel

(...continued)

Fargo contract was not performed under a competitive environment, we fail to see any prejudice to UFC, even were we to accept UFC's argument.