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Decision

Matter of: Propper International, Inc.

File: B-297950.3; B-297950.4; B-297950.5

Date: March 19, 2007

Ronald K. Henry, Esq., Kaye Scholer LLP, for the protester.
Ruth E. Ganister, Esq., Rosenthal and Ganister, for Tennier Industries, Inc., an intervenor.

Maria Ventresca, Esq., Defense Logistics Agency, Defense Supply Center Philadelphia, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of evaluation of proposals and award to offeror with slightly higher-priced, higher technically rated proposal is denied where the record shows that the evaluation and source selection were reasonable and consistent with the terms of the solicitation.

DECISION

Propper International, Inc. protests the award of a contract to Tennier Industries, Inc. under request for proposals (RFP) No. SPO100-04-R-0151, issued by the Defense Logistics Agency (DLA), Defense Supply Center Philadelphia (DSCP), for all-purpose environmental camouflage system (APECS) parkas and trousers. The protester primarily contends that the past performance evaluation and source selection determination were unreasonable. The protester asserts that the agency's attempts to find past performance references for the firm's previous work were insufficient. The protester also contends that given its previous experience manufacturing and participating in the development of the APECS items, commendations it received for those efforts during part of the RFP's rating period, and its lower price, its proposal should have been considered the best value for award.¹

¹ Propper earlier protested the initial award to Tennier under the RFP. Following alternate dispute resolution procedures conducted by our Office in that protest, in which we expressed concern about the agency's apparent failure to properly consider the relevance of offerors' past performance information, the agency chose

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We deny the protest.

The RFP, issued on October 4, 2004, contemplated the award of an indefinite-delivery/indefinite-quantity contract for a base year and 2 option years. Award was to be made to the firm that submitted the proposal deemed to offer the best value to the agency, with the technical factors combined being significantly more important than price. RFP at 90. The RFP's technical evaluation factors, listed in descending order of importance, were: (1) product demonstration model (PDM) (including testing of each offeror's parkas, trousers and cloth for compliance with technical specifications); (2) past performance (including consideration of the firm's adherence to delivery schedules, quality of product/service, manufacturing experience, and customer satisfaction); (3) surge capacity (including capability to increase monthly production by 50 percent); (4) socioeconomic evaluation (including planned development of and participation by small businesses); (5) DLA mentoring business agreements program (including planned tutoring of and assistance from small businesses); and (6) opportunities for Javits-Wagner-O'Day (JWOD) Act entities (including subcontracting opportunities for qualified disabled entities).

Offerors were instructed to provide detailed technical proposals to demonstrate the ability to meet the RFP's requirements; the RFP also emphasized that the failure to provide the required information could negatively impact their evaluation. The RFP emphasized the importance of the past performance evaluation, the second most important factor for award; in this regard, the RFP made clear that the agency would be assessing and relying on the awardee's demonstrated ability to timely deliver quality products requiring minimal agency oversight. Id. at 81. The past performance evaluation was to assess the efficiency of production methods and the effectiveness of quality control procedures to reduce delinquencies and administrative costs to the agency; offerors were advised that "those offerors who consistently demonstrate an ability to deliver on time while consistently improving the quality of the products they produce will receive more favorable consideration than those who do not." Id. For the evaluation of past performance, offerors were required to detail their experiences providing the same items or items similar in complexity within the past 2 years, and provide the name, address, and telephone number of the point of contact, the dollar value, date and quantity, and period of performance of the contract or delivery order, as well as a brief description of the item. For government contracts, each offeror was to detail, among other things, the

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to conduct additional discussions with the offerors whose proposals were in the competitive range regarding the past performance information considered in the evaluation. Subsequently, a new past performance evaluation and comparative evaluation of proposals was conducted. That evaluation and the agency's subsequent award determination are at issue here.

contracting officer, delivery and quality of performance (including whether performance was ahead of or behind schedule), the reason for any delivery schedule revisions, any delinquencies, and any mitigating circumstances. *Id.* at 84, 92. For first time manufacturers of the items, information was to be provided to demonstrate the offeror's ability to perform without significant quality or schedule problems.

Adjectival ratings were assigned to the proposals under each technical evaluation criterion. For the evaluation of the PDM (the only one of the RFP's six technical evaluation factors under which the Propper proposal was considered to any degree technically superior to Tennier's proposal), Propper's proposal was found to be slightly stronger technically because it had two fewer defects than the Tennier proposal; both firms' PDM defects were considered minor and easily correctable during production.

For past performance, the second most important factor, Tennier's proposal was rated exceptional and considered substantially stronger than Propper's. The rating was mainly due to the level of detail provided by Tennier about its highly favorable performance of substantially similar work demonstrating timely delivery (meeting or exceeding delivery schedule requirements) of a much larger quantity of extended cold weather camouflage system (ECWCS) garments (considered substantially similar to the APECS items in terms of sewing operations and seam sealing and testing requirements) with no quality problems. Tennier's delivery of a multitude of modular sleeping bag systems, also found to be similar in terms of the need for seam sealing and testing, also reflected highly favorable performance by the firm.

Propper, which was rated satisfactory for past performance, failed to detail its APECS contract work (other to identify a single point of contact who did not respond to agency requests for performance information for the firm). As a result, the firm was evaluated primarily on information contained in the agency's contract performance records, information obtained from an APECS reference found by the agency (who was only generally familiar with Propper's prior performance under several delivery orders), and other references cited in the firm's proposal for less relevant work. The agency's past performance evaluation for Propper noted numerous delivery delays by the firm (many considered inexcusably late); while the quality of its APECS items was considered favorable, two significant quality defects (stemming from gluing problems) were cited in connection with a less relevant contract for the production of protective aprons and hoods.

For the third most important technical evaluation factor, surge capacity, the firms' proposals were considered comparable. For the three remaining technical evaluation factors (socioeconomic considerations, DLA mentoring business agreements, and JWOD opportunities), Tennier's proposal was ranked technically superior to Propper's proposal.

In considering the firms' proposals and the evaluation results, the source selection authority determined that Tennier's proposal was technically superior to the Propper proposal under four of the six technical factors and that its technical superiority warranted the payment of the slight price premium (less than 4 percent) associated with an award to the firm. Based on the conclusion that Tennier's proposal offered the best value to the agency, award was made to Tennier for \$25,202,763.36. This protest followed.

Propper challenges the agency's evaluation of its past performance as unreasonable; the firm contends that in light of its previous experience manufacturing and participating in the development of APECS items, its receipt of a large business DLA Vendor of the Year award and an agency certificate of appreciation in 2004, and its explanations during discussions regarding its late deliveries, the agency should have given the firm's past performance a higher rating. While the protester does not refute the agency's assertion that its proposal failed to provide detailed information as required by the RFP for evaluation of its past performance, it generally contends that the agency was required to conduct a more comprehensive investigation to obtain additional past performance references for the firm.

In reviewing protests of alleged improper evaluations and source selections, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate, and an offeror fails to do so at its own risk. See United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19. A protester's mere disagreement with the evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10.

Here, offerors were instructed to provide details of their past performance for evaluation. Our review of the record confirms the agency's view that Propper failed to provide sufficient detail in its proposal to demonstrate the favorable performance it now claims for its APECS items and other relevant work; the firm did not, for instance, list contacts for all of its APECS work, and it did not elaborate in its proposal on the delivery and quality of the items it provided under prior contracts. Using the limited past performance information the firm did provide, the agency contacted at least one reference outside of the agency familiar with Propper's delivery of APECS garments, and one reference within the agency who was also familiar with some of Propper's prior APECS work. While the first contact reported that the customer was satisfied with the firm's performance, the agency's own experience with Propper's past APECS contract was that the items were delivered significantly late due to the firm's inability to meet an accelerated delivery schedule it had agreed to. To the extent the protester contends that the agency was required to conduct additional research to locate more knowledgeable, and possibly more

favorable, references for the firm, Propper is incorrect. There is no legal requirement that an agency attempt to contact all past performance references that may be listed in a proposal or may be available for each contract performed by a contractor. See, e.g., Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 8. Here, the record shows that the agency reasonably considered past performance information it obtained from sources identified to it as knowledgeable about the firm's prior contract work, as well as information close at hand regarding its own experience with the firm. Given these circumstances, including Propper's failure to persuasively demonstrate its ability to meet all contract performance requirements by submitting the required detailed past performance information, we cannot find that the agency was obliged to investigate the firm's performance beyond the information it considered.

Our review of the record also confirms that the agency performed a comprehensive evaluation of the overall proposals, and provides no basis to question the reasonableness of the evaluation of Propper's past performance or the comparative evaluation supporting the award to Tennier. Despite Propper's contention that only it, and not Tennier, had previously manufactured the APECS garments, the record supports the reasonableness of the evaluators' and SSA's determinations that the larger quantity of ECWCS garments successfully provided by Tennier demonstrated that firm's ability to perform the work under the current RFP. As reported by the evaluators, the ECWCS items are substantially similar in important manufacturing aspects, including the use of similar cloth and sewing operations, and the skillful application of seam sealing tape; both items also require successful end-item hydrostatic resistance testing. Moreover, the record shows that the awardee's performance of its large volume ECWCS contracts was completed on or ahead of schedule, providing further support for the exceptional past performance rating assigned to it.

The record is also clear that Propper's past performance was reasonably rated as inferior to Tennier's. At least 19 of Propper's prior contracts and delivery orders for relevant items were considered inexcusably late. While we recognize that Propper contends that its late deliveries can all be explained by the firm, and should be excused for a variety of reasons, our review of the agency's consideration of the protester's explanations, at least for many of the cited contract actions, supports the agency's conclusions of deficient performance in terms of late deliveries. For instance, while Propper argues that it should not be held liable for problems attributable to its suppliers' inability to timely perform or acquire required materials, it is generally reasonable to hold a prime contractor accountable for the performance of its suppliers. See Marathon Watch Co., Ltd., B-247043, Apr. 23, 1992, 92-1 CPD ¶ 384 at 4. Further, while Propper contends it should not be held responsible for a late delivery of APECS items to the agency resulting from its agreement to an accelerated delivery schedule that, Propper now maintains, could not be met from a "cold" production start, as the agency points out, the terms of that delivery order were mutually agreed upon by the agency and Propper and, in

accordance with those terms, the firm was reasonably held responsible for failure to meet the scheduled delivery.

While Propper contends that the agency failed to recognize that it had received a DLA large business Vendor of the Year award in 2004, as well as a certificate of appreciation for certain contract performance, including consideration of successful contract deliveries, the agency reports, and our review confirms, that the awards were considered but not found controlling in light of other adverse past performance information available to the evaluators. The agency also reasonably explains that the nominations for the awards were not subject to as stringent an evaluation as is required for this procurement and that, in any event, the awards only reflected performance of contracts known to the agency at that time and for only a portion of the 2-year past performance rating period applicable to this RFP. The record provides no basis to question the reasonableness of the agency's review in this regard.²

Additionally, while Propper contends the agency failed to give it sufficient credit for the high quality of APECS items it now contends it has delivered, and instead downgraded the firm for quality defects found in a less relevant apron and hood contract, that information was not included by the firm in its proposal, as required by the RFP here. Accordingly, we cannot agree with Propper that its performance has been shown to approach the exceptional level of performance consistently shown by the awardee, including Tennier's outstanding delivery record of high-quality items in production amounts far exceeding those claimed by the protester.

In sum, given the terms of the RFP, where technical superiority was significantly more important than price for award, and Tennier's demonstrated technical superiority under four of the six technical evaluation factors, we have no basis to question the reasonableness of the agency's determination, consistent with the RFP's

² As part of the past performance evaluations, the agency also generally considered the offerors' commitment to socioeconomic goals, including work given to small businesses. Information available for Propper, a large business, indicated that the firm had an acceptable commitment to socioeconomic goals despite a relatively low percentage of work having been subcontracted to small businesses; information on Tennier's (itself a small business) subcontracts to other small businesses was not available. The protester has failed to show its rating in this area should be higher, and, in any event, given the satisfactory rating received by the protester in this area, and the minimal role this subfactor had in the overall past performance evaluation, we cannot agree with the protester that it has been prejudiced by the evaluation in this regard.

evaluation terms, that the awardee's overall technical superiority and slight price premium reasonably were determined to offer the best value to the agency. Accordingly, the protest is denied.

Gary L. Kepplinger
General Counsel