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Decision

Matter of: Paradise Landscape Maintenance, Inc.

File: B-293097

Date: January 29, 2004

Terry E. Thomason, Esq., and Peter S. Knapman, Esq., Alston, Hunt, Floyd & Ing, for the protester.

Peter J. Lenhart, Esq., for KN Lawn Service, Inc., an intervenor.

Damon Martin, Esq., Richard G. Welsh, Esq., Robert Little, Esq., and Ron R. Ashlock, Esq., Department of the Navy, Naval Facilities Engineering Command, 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 decision is denied where record shows evaluation and source selection were reasonable and consistent with solicitation's evaluation scheme.

DECISION

Paradise Landscape Maintenance, Inc. protests the evaluation of proposals and award to KN Lawn Service, Inc. under request for proposals (RFP) No. N62742-02-R-2211, issued as a competitive section 8(a) set-aside by the Department of the Navy, Naval Facilities Engineering Command, for grounds and tree maintenance services at Pearl Harbor, Hawaii. The protester challenges the reasonableness of the agency's evaluation of the awardee's proposal and contends that the agency should have awarded the contract to Paradise on the basis of its substantial experience despite its significantly higher price.

We deny the protest.

The RFP contemplated the award of a fixed-price contract with an indefinite-quantity item for a base year and 4 option year periods. The RFP provided the following two equally weighted factors for award: price and technical. The technical factor was comprised of two equally weighted subfactors, past performance/experience and "execution," and was to include evaluation of the experience and qualifications of proposed key personnel and subcontractors. Under

the past performance sub-subfactor, offers were to be evaluated for quality of services, schedule, cost control, business relations, management of key personnel, and quality awards and certifications; the evaluation was to be based on customer surveys for “similar” grounds and tree maintenance work. RFP amend. 4, at 2. A rating of “exceptional” for past performance was to be assigned where performance was reported to have exceeded many contractual requirements to the government’s benefit. Id. at 4. For the “experience” sub-subfactor, the extent of the offeror’s relevant experience on similar contracts was to be evaluated “to assess an offeror’s qualifications to manage and complete the requirements on the solicitation.” Id. at 5. Adjectival ratings for the experience criterion were provided to assess the amount of the firm’s similar experience (e.g., “substantial” or “adequate” experience). Additionally, past performance/experience risk was to be assessed in terms of “potential future performance.” Id.

The execution subfactor had two equally weighted sub-subfactors: management and method. Adjectival ratings were to be assigned; for example, a rating of “very good” was to be assigned for exceeding requirements, being innovative and setting out plans, approaches, and analyses showing a good probability of success; and “acceptable” was to be assigned where requirements were met, but not exceeded, and the proposal showed a probability of success. Under the management sub-subfactor, proposals were to be evaluated for organizational structure, staffing/personnel, and cost control; under cost control, proposals were to be credited for exceeding requirements, such as for offering innovative approaches to reduce costs in the option periods. Id. at 6. For evaluation under the “method” sub-subfactor, offerors were to demonstrate their understanding of and approach to the work in the following areas: skills, techniques, equipment and supplies; risks expected to be encountered and mitigated; and quality control program. Additionally, management/method risk was to be evaluated and a rating of “low” risk was to be assigned to proposals showing “little potential to cause disruption of schedule, increase in costs, or degradation of performance.” Id. at 7. The RFP notified offerors that award would be made to the firm whose offer provided the best value to the agency in terms of price and technical factors.

Eight proposals were received in response to the RFP. Two rounds of discussions were conducted and final proposal revisions were received from five firms. Paradise submitted the highest priced proposal, at \$14,705,853.80 (including option periods); KN’s was lowest, at \$10,395,686.75. Another firm’s proposal was only slightly higher priced than the KN proposal, but received slightly lower technical ratings than KN’s and Paradise’s proposals.

The Paradise and KN proposals received identical technical ratings (including the risk ratings), except under two sub-subfactors, experience and management. Paradise’s proposal received a higher experience rating (of “substantial”) than the KN proposal based on the protester’s additional similar experience, including its incumbent contract for the services sought under the RFP. KN’s proposal set out the

firm's and its proposed subcontractor's relevant experience on smaller, yet similar, contracts; the largest grounds maintenance services contract reported was for \$1.7 million, more than half the amount of the agency's estimate for the base work under the RFP. The KN proposal received a rating of "adequate" experience. Under the management sub-subfactor, KN's proposal received a rating of "very good" (for exceeding requirements in providing an innovative approach to cost control), which was higher than that received by the Paradise proposal (rated as "acceptable" for meeting the RFP's requirements).

The agency determined that Paradise's additional experience did not outweigh the significant cost premium associated with that proposal (\$4,310,167.05, approximately 41 percent of KN's price). Having determined that KN submitted the proposal that offered the best value to the agency, the agency awarded a contract to KN.

Paradise challenges the agency's evaluation of the awardee's proposal in three evaluation areas: past performance, management, and execution risk. The protester contends that the agency failed to follow the RFP's evaluation terms and that the challenged favorable ratings received by KN's proposal are unsupported. The protester contends that the agency should have decided that Paradise submitted the best value proposal in light of its more substantial relevant experience, which the protester asserts is worth its significantly higher price.

In reviewing a protest against an agency's evaluation of proposals and award, including tradeoff determinations, we examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation's evaluation criteria and applicable statutes and regulations. Bella Vista Landscaping, Inc., B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4. A protester's mere disagreement with the agency's determinations as to the relative merit of competing proposals, and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Id.; Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, CPD ¶ 99 at 4. Our review of the record here provides no basis to question the reasonableness of the agency's evaluation or source selection, which were consistent with the RFP's evaluation terms.

The protester first contends that KN's proposal did not deserve the "exceptional" past performance rating it received. The protester, whose proposal also received an "exceptional" past performance rating, does not challenge the accuracy of the numerous highly favorable past performance reference surveys for KN and its proposed subcontractor; those surveys report performance consistently exceeding contract requirements to the government's benefit. Rather, Paradise argues that it was unreasonable to give both KN and Paradise the same "exceptional" rating, in view of Paradise's greater experience. In this regard, the protester contends that although the awardee and its proposed subcontractor have performed grounds and tree maintenance contracts, only Paradise, the incumbent contractor, has performed the RFP's actual requirements. Paradise also argues that its past contracts are larger

(in terms of cost and complexity) than those listed by KN. Contending that its past contracts are more similar to the RFP's requirements than KN's contracts, Paradise asserts that only its proposal should have been rated as "exceptional" for past performance.

In response, the agency points out that the RFP required a determination of the offeror's capability to perform the current requirements relative to the past performance surveys completed for "similar" work and that the measure of similarity of work was to be based on the nature of the work (*i.e.*, grounds and tree maintenance services). The agency reports that past performance references for work determined to be similar in nature were then reviewed for the quality of services rendered. The agency explains that its quantitative measure of similar experience, including review of the degree of relevance of that work, was reflected in the rating assigned under the RFP's experience sub-subfactor. Specifically, the agency reports that the difference in the level of the offerors' relevant experience pointed to by Paradise is appropriately reflected in the evaluation ratings assigned under this sub-subfactor, with Paradise receiving a "substantial" experience rating, and KN receiving a rating of "adequate" experience.

Our review of the record confirms that the comparative evaluation of the degree of relevant experience between the two offerors is reflected in the experience evaluation, consistent with the RFP's evaluation scheme. While the protester seeks to have its greater amount of more relevant experience counted under the past performance rating as well, suggesting that only its experience can justify a past performance rating of "exceptional" here, our review of the RFP's evaluation scheme and the evaluation record does not support its view. Rather, under the solicitation's evaluation terms, once work was determined to be "similar," an offeror was to receive evaluation credit for that work based on both the extent of its relevance (which was separately measured under the experience criterion), and on the quality of the work provided (*i.e.*, under the past performance criterion, considering quality of service, schedule, cost control, business relations, management of key personnel, and awards and certifications received). Our review of the record confirms that the agency reasonably determined that the grounds and tree maintenance work reported in the awardee's past performance surveys was sufficiently similar to the work under the RFP, and reasonably reflected the smaller scope of the work in its determination of KN's rating of "adequate" experience. Our review of the record also confirms the reasonableness of the "exceptional" past performance rating given to KN's proposal as it is based upon the highly favorable survey references received for KN for consistently exceeding many contractual requirements to the government's benefit. As noted above, Paradise does not challenge the quality of KN's past work. Consequently, the record provides no basis to question the reasonableness of the agency's evaluation under the RFP's past performance/experience subfactor, which properly reflected the assessment of both the quality of past work and the magnitude of the offerors' experience.

Next, the protester argues that the agency's evaluation of KN's proposal under the management sub-subfactor of the execution subfactor was unreasonable. Paradise does not challenge its own rating of "acceptable" in this evaluation area, but rather contends that KN's proposal does not warrant the "very good" management rating it received. We disagree. As stated above, the RFP provided for evaluation of innovative cost control measures and called for a "very good" management rating where the proposal was found to exceed performance requirements to the agency's benefit, and where plans, approaches and analyses showed a good probability of success in performance of the contract. KN was the only offeror found to have proposed an innovative method to reduce costs in the option periods, and, consistent with the RFP, received additional credit for its proposed cost control efforts.

KN's proposed cost control effort involved [deleted]. The protester does not contend that [deleted] cannot reasonably reduce costs under the contract. Paradise only argues that the anticipated savings are not guaranteed because [deleted] have not been approved yet by the agency. According to Paradise, the agency improperly gave the KN proposal additional credit without having the firm demonstrate that cost savings were guaranteed. Contrary to the protester's suggestion, however, there simply is no requirement in the RFP that cost savings from innovative measures be guaranteed in order for an offeror to receive evaluation credit for exceeding RFP requirements. We recognize, as Paradise argues, that the agency failed to give evaluation credit for another one of KN's cost savings measures because the savings were not certain. In this regard, KN had also proposed [deleted]. The agency did not assign any additional credit for this proposal, recognizing that [deleted] might not be granted and thus that the cost savings were not assured. The fact that the agency decided not to give KN credit for this proposed cost saving measure does not make unreasonable its decision to give KN credit for the cost savings anticipated from the proposed [deleted]. As stated above, the RFP did not require a guarantee of savings from the innovative approach, and we think it was a reasonable exercise of discretion for the agency to decide that the cost savings from [deleted] were too uncertain to warrant extra credit, while the potential savings from [deleted] could reasonably be anticipated, and so should be credited in the evaluation.

Lastly, Paradise contends that the agency's assignment of "low" execution risk to KN's proposal was unreasonable. Specifically, Paradise notes that KN's proposal provided an extensive list of grounds maintenance equipment and vehicles it intends to purchase after award to add to its current equipment and vehicles for performance of the RFP's requirements. Paradise questions KN's financial ability to acquire all of the new equipment prior to the start of performance, and argues that the agency should have given a less favorable execution risk rating to the KN proposal on this basis, because during its pre-award survey of KN, the agency learned that the firm had acceptable, but relatively limited available funds.

The agency responds that its evaluation of financial capacity was related to its determination of KN's responsibility prior to award and was performed after the

technical evaluation process, which did not contemplate review of financial ability. The record shows that the evaluators considered KN's current equipment and vehicles, its intended additional acquisitions, as well as its subcontractor's extensive inventory of available equipment and vehicles in evaluating the awardee's approach and qualifications. The agency concluded that it had no reason to believe KN's performance would be disrupted due to limited equipment availability or otherwise, resulting in the assessment of "low" execution risk.

The RFP did not require all of the equipment and vehicles included in the awardee's desired acquisition list, nor was there any requirement for the full list to be acquired prior to the start of performance. Further, the protester does not challenge the agency's consideration of the awardee's subcontractor's substantial equipment and vehicle fleet in the evaluation of the firm's proposed execution of contract requirements, which, in our view, also supports the reasonableness of the awardee's "low" execution risk rating. The protester's speculation regarding KN's acquisition of additional equipment and vehicles and its disagreement with the evaluation provide no reason to question the reasonableness of the agency's evaluation.

In sum, given the agency's reasonable finding of strength in the awardee's technical proposal and its significantly lower price, we have no basis to question the reasonableness of the agency's evaluation and tradeoff determination, consistent with the RFP's evaluation scheme, that Paradise's additional experience did not warrant payment of the significant cost premium associated with Paradise's proposal.

The protest is denied.

Anthony H. Gamboa
General Counsel