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Decision

Matter of: SCS Refrigerated Services, LLC

File: B-298790; B-298790.2; B-298790.3

Date: November 29, 2006

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Harold G. Bailey, Jr., Esq., Richard D. Gluck, Esq., Aaron W. Knights, Esq., and Robert A. Boraks, Esq., Garvey Schubert Barer, for Spokane Produce, Inc., an intervenor.

Elliot J. Clark, Jr., Esq., Defense Commissary Agency, for the agency.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging proposal evaluation and source selection decision is denied where record shows evaluation and award decision were reasonable and consistent with solicitation's evaluation terms and applicable procurement regulations.

DECISION

SCS Refrigerated Services, LLC protests the award of a contract to Spokane Produce, Inc. under request for proposals (RFP) No. HDEC02-06-R-0007, issued by the Defense Commissary Agency (DeCA) for providing fresh fruits and vegetables to commissaries located in DeCA's west region (Area 4). SCS argues that DeCA improperly evaluated its proposal and that the best value award decision was unreasonable.

We deny the protest.

DeCA operates commissary stores, which provide for the sale of groceries and household supplies to members of the military and authorized patrons. On April 21, 2006, DeCA issued the subject solicitation as a small business set-aside for the procurement of fresh fruits and vegetables for 14 commissaries located in DeCA's west region (Area 4). Area 4 was divided into Groups 1 and 2. Group 1 consisted of nine commissaries located on military installations in Washington,

Montana, and Idaho, and Group 2 consisted of five commissaries located on installations in Alaska.¹ The RFP provided for the award of individual contracts for Groups 1 and 2, each for a base term of 2 years, with two 12-month option periods. Only the Group 1 award is at issue in this protest.

Pursuant to the RFP, award was to be made to the offeror whose proposal represented the best value to the government based upon the evaluation factors of technical capability, past performance, and price. The solicitation specified that technical capability was significantly more important than past performance, and when combined, technical capability and past performance were significantly more important than price. RFP amend. 4, at 14.

Under the technical capability factor, the solicitation included the following four subfactors: (1) experience, (2) quality program, (3) production capability/distribution plan, and (4) additional support/promotion plan, which was “slightly less important” than the other three equally weighted subfactors. The past performance factor was comprised of the following three subfactors: (1) product delivery, (2) quality history/customer satisfaction, and (3) business relations, which was “slightly less important” than the other two equally weighted subfactors. Under the terms of the RFP, technical capability was to be evaluated based on narratives and information submitted by the offerors in their technical proposals and past performance was to be evaluated based on responses to past performance surveys provided by the offerors’ references and any other past performance information available to the contracting officer. RFP amend. 4, at 14-15.

Due to the inherent variability of prices for fresh fruits and vegetables, the RFP did not seek fixed prices for produce; rather, offerors were required to propose what the solicitation termed the offeror’s “percentage of patron savings,” which was defined as follows:

the average amount the contractor will save the commissary patron on all core items over the selling price of the same or similar items from comparable commercial operations within the local commuting area and/or geographical area within a 20-mile radius of the commissary location (excluding membership clubs and convenience type stores), called **Market Basket Pricing**. . . . The contractor will be required to

¹ As it relates to the protest, Group 1 included commissaries at the following locations: (1) Bangor Naval Submarine Base, Washington; (2) Bremerton Naval Station, Washington; (3) Fairchild Air Force Base, Washington; (4) Fort Lewis, Washington; (5) Malmstrom Air Force Base, Montana; (6) McChord Air Force Base, Washington; (7) Mountain Home Air Force Base, Idaho; (8) Smokey Point, Washington; and (9) Whidbey Island, Washington.

maintain the minimum percentage of patron savings throughout the life of the contract.

RFP amend. 4, at 21.²

In response to the RFP, DeCA received timely proposals from six offerors, including SCS and Spokane, for the Group 1 requirement. After the closing date for receipt of proposals, the offerors, as required by DeCA, made oral presentations to the technical evaluation board (TEB) established by DeCA for the purpose of evaluating offerors under the technical and past performance factors. After the completion of oral presentations and the TEB's initial evaluations, DeCA held discussions with all six offerors. In its discussions with SCS, DeCA raised several issues regarding its evaluation of SCS's proposal under the technical and past performance factors.

After receipt of final proposal revisions, DeCA's final evaluation of proposals reflected the following ratings:

Final Evaluation Results Group 1	Maximum Points	Spokane	A	B	C	SCS	D
Technical Capability							
Experience	30	28 (EX)	27	27	25	26 (VG)	27
Quality Program	30	28 (EX)	27	27	27	27 (EX)	27
Production Capability/Distribution Plan	30	28 (EX)	25	24	23	23 (VG)	22
Additional Support/Promotion Plan	20	18 (EX)	18	18	17	18 (EX)	13
Total Score:	110	102 (EX)	97	96	92	94 (VG)	89
Past Performance							
Product Delivery	30	28 (EX)	28	28	28	28 (EX)	28
Quality History/Customer Satisfaction	30	27 (EX)	27	27	26	25 (VG)	20
Business Relations	20	18 (EX)	18	19	18	15 (VG)	13
Total Score:	80	73 (EX)	73	74	72	68 (VG)	61
Total Technical and Past Performance Score:	190	175	170	170	164	162	150
Proposed Minimum % of Patron Savings:		40%	40%	40%	41%	51%	42%

² Offerors were also required to submit unit prices for 37 in-season "high volume core items", which were to reflect the offeror's proposed patron savings percentage. RFP at 18. The unit prices were to be evaluated for reasonableness and were intended to provide DeCA with a basis for assessing price realism. RFP amend. 4, at 8.

Agency Report (AR), Tab 12, Decision Summary Document, at 35.³

In making its best value decision, DeCA compared Spokane's proposal (the highest technically rated proposal) with each proposal submitted for the Group 1 requirement, including SCS's proposal. Based on a detailed comparison of Spokane's and SCS's proposals under each factor and subfactor independent of the point scores and adjectival ratings assigned, the contracting officer concluded that notwithstanding Spokane's lower percentage of patron savings of 40 percent, as compared to SCS's higher savings percentage of 51 percent, Spokane's higher technically rated proposal represented the best value to the government. After receiving notice of award and a debriefing, SCS filed the subject protest with our office.

In its protest, SCS challenges DeCA's evaluation of its proposal, DeCA's evaluation of the proposal submitted by Spokane, as well as DeCA's best value decision. Specifically, SCS argues that it should have received higher ratings under several of the technical capability subfactors, as well as under the past performance subfactor, business relations. According to SCS, weaknesses attributed to its proposal under these subfactors were inconsistent with the evaluation criteria set forth in the solicitation and unreasonable given the information provided in its proposal. In the alternative, assuming that its proposal was properly evaluated, SCS maintains that Spokane's proposal should not have been rated higher than SCS. As a final matter, SCS argues that DeCA failed to consider price as part of its tradeoff award decision as required by the RFP and that the award decision lacked a reasonable basis.⁴

In reviewing an agency's evaluation, we will not reevaluate offerors' proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. A protester's mere disagreement with the agency's evaluation is not sufficient to render the evaluation reasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

³ As reflected by the record, our office modified the above table from the one included in the agency report to indicate the maximum point values for each factor and subfactor, as well as the adjectival ratings associated with the numerical scores earned by Spokane and SCS. In this regard, the notations (EX) and (VG) refer to ratings of "exceptional" and "very good," respectively.

⁴ SCS expressly withdrew its allegation that award to Spokane was improper due to an impermissible conflict of interest.

Here, the record reflects that DeCA conducted a detailed evaluation of the proposals submitted by SCS and Spokane, and then, as part of the best value decision process, DeCA specifically compared the substantive aspects of SCS's proposal with Spokane's proposal and concluded that Spokane was technically superior. In challenging DeCA's evaluation under the experience subfactor (under which it received 26 of 30 available points), SCS suggests that it was entitled to the maximum point score and challenges two remarks contained in DeCA's source selection decision. Specifically, SCS challenges a comment stating that SCS's corporate structures and level of authority were "less defined" as compared to those of Spokane, and the comment that, as a consolidator with direct access to farms and orchards, SCS held an "(undefined) 'edge' in providing DeCA with the best possible quality produce." AR, Tab 12, Decision Summary Document, at 44. According to SCS, these comments did not reflect valid weaknesses of its proposal.

Initially, we note that the latter comment does not appear to be an adverse comment concerning SCS. In any event, the evaluation record does not indicate any weaknesses attributed to SCS's proposal under the experience subfactor; thus there is nothing to suggest that SCS was downgraded as a consequence of the above remarks it challenges. Rather, these comments reflect a comparative assessment of SCS's proposal with the proposal submitted by Spokane and the one comment on corporate structure articulates a basis to support the 2-point numerical advantage held by Spokane under this subfactor. To the extent SCS contends that considerations of corporate structures and levels of authority were not valid bases for comparison because they were outside the scope of the experience subfactor, this argument is misplaced given that, under the experience subfactor, the RFP specifically required offerors to "[d]escribe [their] corporate structure, to include departments such as buying, quality assurance, food safety, customer service, and transportation." RFP amend. 4, at 11. Most importantly, SCS ignores DeCA's general conclusion under this subfactor that Spokane, as compared to SCS, had "slightly stronger company profiles with related experience of individuals who will be involved in all aspects of performance under the resultant contract." AR, Tab 12, Decision Summary Document, at 44. This unchallenged conclusion was consistent with Spokane's slightly higher rating under this subfactor.

SCS also challenges specific weaknesses attributed to its proposal under the technical capability subfactor, production capability/distribution plan, and concerns regarding its past performance. During its discussions with SCS regarding production capability/distribution plan, DeCA asked SCS to explain how it intended to handle emergency, out-of-cycle, or replacement orders at stores located in the Puget Sound area since, in DeCA's opinion, the location of SCS's distribution center would make it difficult for SCS to respond to such orders in a timely manner. DeCA also asked SCS to identify its alternate source or sources of supply in the event one or more of its transport trucks is unable to complete deliveries to a commissary store location due to inclement weather, and to explain its plans for providing replacement products to the Malmstrom and Mountain Home stores from a local

source in the event a product is rejected upon delivery at these locations.⁵ AR, Tab 8, SCS Discussion Questions, at 2.

Under the past performance factor, DeCA informed SCS during discussions of a negative comment regarding its past performance, which stated that SCS “sometimes takes too long in providing answers to problems or issues.” *Id.* at 3. Because of this comment, DeCA asked SCS to explain how it would be able to respond timely to problems or issues raised by commissary personnel.

While SCS maintains that it addressed each of the above concerns in its response to DeCA’s discussion questions, the record reflects that DeCA’s concerns regarding SCS’s distribution plans and its past performance remained—SCS’s challenges reflect nothing more than its disagreement with DeCA’s evaluation. Specifically, regarding DeCA’s request for further information regarding SCS’s emergency, out-of-cycle, or replacement products for the Puget Sound area stores, SCS responded, in part, by stating that “[d]epending on the nature of the emergency, response time could be less than 4 hours or as much as next delivery.” AR, Tab 8, SCS’s Response to Discussions at 5. As a consequence of this statement, DeCA was concerned that emergency orders to the Puget Sound stores would not be timely. The TEB noted that emergency orders are needed within an hour or two, or at the very latest the next day, and it viewed SCS as indicating an emergency response time potentially extending until the next delivery date, which might not be until the following week. AR, Tab 11, Technical Evaluation of SCS, at 5. According to the TEB, this would result in customers not being able to purchase produce and lost sales. *Id.* As a consequence, the TEB did not adjust SCS’s score upward based on its response to this issue.

SCS also maintains that its score under the production capability/distribution plan subfactor should have been higher since, as requested by DeCA, it identified its alternate sources of supply in the event one or more of its transport trucks is unable to complete deliveries to a commissary store location due to inclement weather, and explained its plans for providing replacement products to the Malmstrom and Mountain Home stores from a local source in the event a product is rejected upon delivery at these locations. While the record reflects that SCS did in fact address these issues, DeCA concluded that SCS’s responses did not fully allay its concerns. Specifically, while SCS had named a primary alternate source for deliveries, Duck

⁵ While SCS repeatedly maintains that its discussions were not meaningful because it was not apprised of weaknesses identified in its proposal, the record reflects that SCS was in fact informed of the various weaknesses identified by DeCA as part of its technical evaluation. To the extent SCS complains that the agency should have held a second round of discussions, thereby allowing SCS to address DeCA’s concerns regarding SCS’s responses to DeCA’s discussion questions, DeCA was not required to do so. See Nomura Enter. Inc., B-251889.2, May 6, 1993, 93-1 CPD ¶ 490 at 5.

Delivery of Sumner, Washington, DeCA faulted SCS for failing to provide a formal contract or written agreement with this source. In addition, DeCA had concerns about SCS's plans to use Peirone Produce for replacement products at the Malmstrom and Mountain Home stores, as opposed to a local source, since, according to DeCA, Peirone Produce was an 8-10 hour drive from these stores.⁶ Moreover, DeCA found SCS's representations that it would work to maintain relationships with the commissaries' current emergency suppliers lacked specific information to guarantee a future relationship with these suppliers. While SCS maintains that DeCA's concerns were unreasonable, its arguments amount to mere disagreement with the agency's evaluation and do not provide a basis for sustaining its protest.

Moreover, SCS contends that the agency improperly considered the "location" of its suppliers and its failure to provide evidence of formal contracts or agreements with its contingency suppliers since these were not stated bases of evaluation. While procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they are not required to identify every aspect of each factor that might be taken into account; rather, agencies reasonably may take into account considerations, even if unstated, that are reasonably related to or encompassed by the stated evaluation criteria. See Ridoc Enter., Inc., B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 4; Network Eng'g, Inc., B-292996, Jan. 7, 2004, 2004 CPD ¶ 23 at 3.

These aspects of the evaluation were reasonable. Under the production capability/distribution plan subfactor, the solicitation required offerors to provide detailed descriptions of their contingency plans for delays, how they would handle out-of-cycle and emergency orders, how they would handle produce shortages, and to identify back-up sources. RFP amend. 4 at 12-13. Given the scope of the requested information, we think the location of an offeror's back-up suppliers and the certainty of its relationships with its back-up suppliers were reasonably related to an offeror's ability to respond to distribution challenges so as to timely and adequately meet the produce needs of the various Area 4, Group 1 commissaries. As a consequence, DeCA's concerns did not reflect the application of unstated evaluation factors.

⁶ While SCS challenges DeCA's characterization of the drive time between Peirone Produce and Malmstrom and Mountain Home as being 8-10 hours, arguing that the drive time is closer to 6-7 hours, the agency notes that its projected time was only an estimate and provided a detailed discussion of the topography of the travel route to explain why it believes the drive time would be greater than that projected by SCS. There is nothing in the record to suggest that the agency's evaluation in this regard was unreasonable.

SCS maintains that DeCA unreasonably evaluated its proposal under the past performance subfactor, business relations, as well. According to SCS, it addressed DeCA's concerns resulting from a past performance reference commenting that SCS "sometimes takes too long in providing answers to problems or issues," by proposing a full-time military manager dedicated exclusively to the commissaries' needs. AR, Tab 8, SCS Discussion Questions, at 3. In addition, SCS contends that since this concern was considered by the agency to be only a "slight problem," a point score of 15 out of 20 points was not warranted. AR, Tab 11, Technical Evaluation of SCS, at 8.

The record shows that the agency found SCS's response unpersuasive since it was merely a restatement of information in its proposal and did not provide DeCA with any further assurances that its responses to concerns of the commissaries would be timely. As explained by the contracting officer, the TEB found that SCS's military manager was identified as having numerous responsibilities, and given these varied responsibilities, DeCA questioned whether the military manager would be capable of promptly addressing concerns at all of the Area 4, Group 1 commissaries. AR, Contracting Officer's Statement, at 16. Regarding its point score under this subfactor, SCS's argument underscores its mistaken belief that absent a weakness, it was entitled to a rating of exceptional. DeCA's evaluation, however, contemplated assessments of offerors' strengths and weaknesses; thus, a proposal without any weaknesses was not automatically entitled to a rating of exceptional. In any event, the record reflects that SCS's score corresponded to an adjectival rating of "very good," which appears reasonable given SCS past performance record which reflected ratings of satisfactory through excellent, as well DeCA's reasonable concern regarding SCS's ability to timely respond to the concerns of the commissaries as discussed above. Ultimately, SCS's protest of its past performance evaluation reflects nothing more than its disagreement with DeCA's judgments regarding this aspect of its proposal.

SCS also challenges the evaluation of its proposal under the technical capability subfactor, quality program. Specifically, DeCA had asked SCS during discussions to provide additional information explaining SCS's fresh-cut process and defining the number of days SCS will guarantee the shelf life of fresh-cut fruit and vegetables. AR, Tab 8, SCS Discussions Letter at 2. SCS maintains that it addressed this area of concern in its proposal and that DeCA failed to consider its response. As a consequence, SCS maintains that it unreasonably received a score which was 1 point below the score received by Spokane under this subfactor. While the contemporaneous record does not clearly reflect the extent to which DeCA considered SCS's response in this regard, it does show that SCS received the highest rating of "exceptional" under this subfactor, which was specifically noted in the source selection decision document. Moreover, DeCA found that SCS also had "a strong quality assurance program," and there was no mention of the above concern in the source selection decision document. AR, Tab 12, Decision Summary

Document, at 45. Thus, there is no indication in the source selection record that the above area of concern had any material bearing on the award decision.

In challenging DeCA's evaluation of Spokane's proposal, SCS argues that the evaluation record reflects disparate treatment under the production capability/distribution plan subfactor of the technical capability factor.⁷ According to SCS, a side-by-side comparison of proposals demonstrates that Spokane's proposal was "vague and anemic" as compared to SCS's proposal under this subfactor, and that Spokane's superior rating was unreasonable. SCS's Comments at 46. SCS argues that disparate treatment is also reflected by the fact that Spokane received a high rating notwithstanding that Spokane's response to its discussion questions suffered from the same weakness attributed to SCS's responses. The record does not support SCS's arguments.

In evaluating Spokane's proposal under the production capability/distribution plan subfactor, DeCA determined that Spokane's proposal contained several strengths with regard to its ability to address emergency, out-of-cycle, or replacement products with little or no risk, including the fact that Spokane's teaming arrangement provides for a teaming partner to be located within hours of a commissary and to thereby rapidly respond to the needs of the commissaries. AR, Tab 11, Technical Evaluation of Spokane, at 4. This strength was specifically noted in the source selection tradeoff decision comparing the proposals of SCS and Spokane. AR, Tab 12, Decision Summary Document, at 45. By comparison, DeCA had concerns about SCS's ability to timely address emergency, out-of-cycle, or replacement orders at commissaries in the Puget Sound area given the location of SCS's distribution center and, as discussed above, DeCA found SCS's response to this issue troubling to the extent that SCS stated that emergency needs may be delayed until the next delivery. Similarly, DeCA had raised concerns about SCS's ability to provide replacement products to the Malmstrom and Mountain Home commissaries in a timely manner, concerns which were absent from DeCA's evaluation of Spokane's proposal. In this regard, DeCA specifically noted that Spokane had been the primary supplier of fresh

⁷ SCS also argued that DeCA improperly considered attachments, included as appendices to Spokane's proposal, since they exceeded the RFP's 100-page limit. The RFP, under the heading "General Instructions", however, merely stated that "[e]ach volume of the proposal should not exceed 100 pages including all exhibits provided by the offeror." RFP at 13 (emphasis added). Given the context of the RFP's use of the term "should" as opposed to terms such as "shall" or "must", it appears that the agency intended the page limit to be precatory as opposed to mandatory. For example, two sentences after the term "should" is used as quoted above, the RFP uses the term "must", thereby indicating that the agency intended a distinction between these terms. Thus it was not improper for DeCA to consider the additional information contained in Spokane's proposal. See Steelcase Inc., B-260781, July 21, 1995, 95-2 CPD ¶ 41 at 4.

produce to the Malmstrom and Mountain Home commissaries since 2001 and that its proposal reflected an understanding of the distribution challenges associated with those stores.

During discussions, DeCA did ask Spokane for further information regarding its plans for addressing delays caused by mechanical breakdowns, inclement weather, or other transportation anomalies, as well as its contingency plans for unforeseen work stoppages, and the record reflects that Spokane provided a detailed response. In fact, DeCA was impressed by Spokane and its team members' utilization of their own mechanics to maintain their fleet of trucks, as well its "large network of repair facilities in the delivery areas," thereby reducing the risk that mechanical breakdowns would be a cause of delay for deliveries, in DeCA's opinion. AR, Tab 12, Decision Summary Document, at 45. As noted above, DeCA's discussions with SCS pertained to wholly different concerns regarding its proposal under this subfactor. Given that DeCA's discussions were tailored to the specific information contained in Spokane's and SCS's proposals and therefore were substantively different, SCS's comparisons of its discussion responses with Spokane's is misplaced and does not support its allegations of disparate treatment.

As a final matter, SCS argues that the agency's source selection decision was flawed because it was based on a mechanical application of the numeric scores and thus failed to provide a meaningful consideration of SCS's significantly lower price.

In a best value procurement, such as this, a procuring agency properly may select for award a higher-rated technical proposal with a higher price, where the agency determines that the price premium is justified considering the technical superiority of the selected proposal. BTC Contract Servs., Inc., B-295877, May 11, 2005, 2005 CPD ¶ 96 at 6. Contrary to SCS's assertions, DeCA's source selection decision did not reflect a meaningless mechanical application of point scores without consideration of SCS's price advantage. Rather, the record of the source selection decision demonstrates a detailed discussion of the relative advantages of Spokane's proposal as compared to SCS's proposal under the technical capability and past performance factors and each of their corresponding subfactors, and an express recognition of SCS's advantage with regard to the minimum guaranteed percentages of patron savings--an advantage that DeCA described as "significant." AR, Tab 12 Decision Summary Document, at 46. Notwithstanding SCS's high percentage of patron savings, DeCA concluded that Spokane's proposal represented the best value. In explaining its selection decision, DeCA discussed how Spokane's technical

advantages corresponded to a superior product with less risk. This tradeoff in favor of Spokane's evaluated technical superiority under the technical capability and past performance factors was reasonable and consistent with the express terms of the RFP, which provided that these factors, when combined, were "significantly more important" than price.

The protest is denied.

Gary L. Kepplinger
General Counsel