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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: DSC Cleaning, Inc.

File: B-292125

Date: June 25, 2003

David S. Cantu for the protester.

Capt. Gregory A. Moritz, Department of the Army, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal was properly excluded from the competitive range where, due to several serious evaluated deficiencies, it was not among most highly-rated proposals, and protester fails to show that evaluation was unreasonable.

DECISION

DSC Cleaning, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DAPC50-02-R-0023, issued by the Department of the Army for dining facility attendant services for Schofield Barracks and Wheeler Army Airfield, Oahu, Hawaii. DSC contends that the Army unreasonably evaluated its proposal with respect to performance risk.

We deny the protest.

The solicitation, issued on November 6, 2002 as a section 8(a) set-aside, provided for the "best value" award of a fixed-price contract for an 8-month base period, with four 1-year options. RFP, attach. 12, at 1-6. The RFP identified the following technical evaluation factors (and subfactors): Technical capability (Workforce Plan/Key Personnel Qualifications, Mobilization/Phase-in); Quality Control (Quality Control Plan, Safety and Training); and Performance Risk (Past Performance, Work Experience). The three factors were approximately equal in importance and, combined, approximately equal in importance to price. RFP, attach. 3, at 1-2.

The RFP advised offerors to address each evaluation factor and subfactor in their proposals. As relevant here, under performance risk the RFP specifically advised offerors to provide information pertaining to the experience of the firm and current

and previous federal, state, municipal or commercial contracts within the last 3 years, for services similar to this requirement. RFP, attach. 3, at 3. Additionally, offerors were to complete and submit with their proposals attachment 9, Experience Reference Information, for each reference and request that each reference complete and separately submit attachment 10, Past Performance Questionnaire. Id.

The solicitation stated that the agency would “subjectively assess performance risk based on the offeror’s overall past performance and experience,” defined experience as “those projects, in progress or completed, that are of services similar to this requirement,” and stated that “[p]ast performance reflects how well the offeror has performed these services.” RFP, attach. 3, at 4. The evaluation under past performance was to include, among other things, conformance to specification, quality of performance, customer satisfaction, adherence to work schedules, timely submittal of required reports, and the effectiveness of the contractor’s quality control process. Id. The evaluation of work experience was to include current and recent projects and/or the years of experience of the firm. The solicitation specified that the experience of offerors’ proposed project manager and other key personnel may be considered for those newly formed entities without previous work experience. Id.

The source selection evaluation board (SSEB) used color/risk ratings to evaluate proposals—blue/very low risk; green/low risk; yellow/moderate risk; pink/high risk; red/very high risk; and gray/unknown risk—under the performance risk factor (proposals received only color ratings under the technical capability and quality control factors). Agency Report (AR), Tab 10, Pre-Negotiation Objective Memorandum, at 6-7. A red/very high risk rating indicated that the offeror’s experience and past performance record provided extreme doubt that the offeror would or could successfully perform the required effort. A gray/unknown risk rating indicated that the offeror had no relevant performance record and an unknown probability of success.¹ Id. at 7.

The Army received several proposals by the amended December 17 closing time.² AR, Tab 2, Contracting Officer’s Statement, at 1. DSC’s proposal was rated

¹ Under the other technical factors, not in issue, the color ratings reflected the number of evaluated strengths and weaknesses. For example, pink could be assigned a proposal with no strengths, one or more weaknesses and a marginal or shallow understanding of the requirement, while red might be assigned for a proposal with no strengths, one or more major weaknesses and an unacceptable understanding of the requirement. AR, Tab 10, Pre-Negotiation Objective Memorandum, at 7.

² Because the protester proceeded pro se, we did not issue a protective order, and our decision therefore does not include any nonpublic information. Our

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pink/marginal under the technical capability factor, red/unacceptable under the quality control factor, and pink/high risk under the performance risk factor. AR at 3, 4. For the past performance subfactor under performance risk, the Army rated DSC's proposal gray/unknown risk based on its finding that DSC did not provide any of the required reference information—its proposal identified no references and did not include the Experience Reference Information (attachment 9) sheets for any references, and no reference returned the required Past Performance Questionnaire (attachment 10). The Army also found no past performance information for DSC in the Department of Defense's Past Performance Information Retrieval System. AR, Tab 10, Pre-Negotiation Objective Memorandum, at 12. DSC's proposal was rated red/high risk under the work experience subfactor based on the Army's finding that DSC provided no references to indicate that it had any experience in dining facility attendant services. Id.

The SSEB established a competitive range, representing the lowest-priced, highest-rated proposals. DSC's proposal was eliminated from the competitive range because it was not one of the most highly-rated; indeed, it was one of the lowest-rated proposals, with no overall acceptable or greater rating for technical capability or quality control, and a high performance risk.

DSC filed an agency-level protest when it learned of the Army's decision, and filed the instant protest with our Office prior to receiving an agency response. DSC maintains that, in rating its proposal gray/unknown risk under the performance risk factor, the Army improperly failed to consider three references it submitted, as well as the relevant experience of its proposed key employees. It concludes that the Army had no reasonable basis for eliminating its proposal from the competitive range. Protest at 1.

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable discretion of the procuring agency; in reviewing such a determination, we will consider only whether the documented evaluation was fair and reasonable and consistent with the evaluation criteria and procurement statutes and regulations. Matrix Gen., Inc., B-282192, June 10, 1999, 99-1 CPD ¶ 108 at 3. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of award. Federal Acquisition Regulation § 15.306(c)(1); Matrix Gen., Inc., supra, at 3; SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5.

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conclusions, however, are based on our review of the entire agency record in camera.

Our review of the record confirms the agency's finding that DSC's proposal included no references or reference information for DSC. Further, while DSC maintains that the agency was required to consider the experience of proposed employees, in fact, the RFP only stated that the agency "may" do so for newly formed entities without previous work experience. Nothing in the protester's proposal indicated that DSC was a new entity; indeed, the resume for the president of DSC indicates that DSC has been in business since 1994. In any case, while DSC submitted resumes for three individuals with its proposal, the proposal nowhere indicated that these individuals would be involved in the performance of the contract or, if so, in what capacities. Under these circumstances, we have no basis to object to the Army's evaluation.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ In its comments on the agency report, DSC argues for the first time that the evaluation of its proposal under the technical capability and quality control factors was improper. Our Bid Protest Regulations require that protests based on other than apparent solicitation improprieties be filed within 10 days of when the protester knew or should have known the protest basis. 4 C.F.R. § 21.2(a)(2) (2003). DSC was provided the information that should have put it on notice of these protest grounds on or around March 19, when it apparently received a March 13 letter from the Army listing the evaluated weaknesses and deficiencies in its proposal. Since DSC did not raise any objections to the evaluation under these factors prior to filing its comments on May 8, these allegations are untimely and will not be considered.