



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Kira, Inc.; All Star Maintenance, Inc.

File: B-291507; B-291507.2

Date: January 7, 2003

Alan M. Grayson, Esq., and James A. McMillan, Esq., Grayson, Kubli & Hoffman, for Kira, Inc., and Mitchell W. Quick, Esq., Michael Best & Friedrich, for All Star Maintenance, Inc., the protesters.

Timothy H. Power, Esq., for Dellew-PEMCO JV, an intervenor.

John D. Inazu, Esq., and C. Gordon Jones, Esq., Department of the Air Force, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where proposals were reasonably evaluated as technically equal in the area of past performance (the only technical evaluation factor), agency reasonably selected for award the proposal of the firm proposing the lowest price.

DECISION

Kira, Inc. and All Star Maintenance, Inc. protest the award of a contract to Dellew-PEMCO JV, under request for proposals (RFP) No. F64605-02-R-0003, issued by the Department of the Air Force for maintenance services in support of over 2,200 military family housing units at the Kaneohe Marine Corps Air Base, Hawaii. Kira and All Star challenge the evaluation of Dellew's past performance.

We deny the protests.

The RFP, issued on June 5, 2002, contemplated the award of a fixed-price requirements contract to the responsible offeror whose proposal was determined to represent the best overall value to the government, considering past performance and price, which were approximately equal in importance. With respect to the past performance evaluation factor, the RFP stated that the agency would assess an offeror's past performance "as a prime [contractor] or subcontractor on requirements of similar scope and magnitude." The RFP defined "scope and magnitude" in terms of the recency, currency, and relevance of a firm's past performance. RFP at 57-58. The RFP required an offeror to provide references for

similar military family housing maintenance requirements performed either as a prime contractor or subcontractor, while reserving the right of the agency to limit the number of references actually reviewed and/or consulted. The RFP provided that the offeror's past performance would be evaluated in the areas of quality of service, schedule, business relations, and management of key personnel. An offeror's past performance could receive one of the following ratings: outstanding/high confidence, very good/significant confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, and unsatisfactory/no confidence. As relevant here, the RFP defined the outstanding/high confidence rating as "[b]ased on the offeror's performance record, essentially no doubt exists that the offeror will successfully perform the required effort." RFP at 59. With respect to price, the RFP stated that an offeror's price would be evaluated for reasonableness. *Id.* Finally, the RFP advised that the agency intended to award the contract without conducting discussions.

Six firms, including Kira, All Star (the incumbent contractor), and Dellew (as teamed with PEMCO), submitted proposals by the closing time on July 15. Dellew submitted references for military family housing maintenance contracts it had been awarded at Wright-Patterson Air Force Base (AFB), Ohio (2,600 military family housing units) and Langley AFB, Virginia (1,253 units). As relevant to these protests, the government's standard form contract documents (copies of which were included in Dellew's proposal) show that both of the referenced contracts had been awarded to "Dellew Corporation" as the prime contractor. As part of its proposal, Dellew included the statement of work for each of the referenced contracts; under each contract, Dellew was required to provide, among other things, management, supervision, and other services necessary to perform military family housing maintenance requirements.

For its contract at Wright-Patterson AFB, Dellew also included in its proposal documentation addressed to the firm from the assistant to the base commander showing that for a 6-month period, Dellew's overall performance had been considered "very good," defined as "consistently above standard and exceed[ing] the standard in many tasks." Dellew received a 70-percent award fee for its "noteworthy accomplishments"; the assistant also commented that the agency was "very pleased with the present local management, Program Manager, Assistance Program, and Quality Control Manager[, and that Dellew] continue[s] to have good performance on Change of Occupancies and Quality of Work." Dellew's Past Performance Proposal, Memorandum from the Base Commander's Assistant at Wright-Patterson AFB to Dellew, May 9, 2002. Dellew also included documentation of contract discrepancy reports (CDR) issued to it under its Wright-Patterson contract (*e.g.*, CDRs in the areas of data entry input for job orders (request date, scheduled start date, and completion date); timeliness of job completions and missing appointments, and number of extensions; and current and updated master appliance list. The assistant to the base commander characterized the CDRs, except those involving the master

appliance list, as “minor . . . simply requir[ing] more noteworthy management oversight.” Id.

For its contract at Langley AFB, Dellew reported that no CDRs were issued. Dellew included in its proposal a letter of appreciation addressed to the firm from Langley’s Quality Assurance Manager, in which he expressed, among other things, his “gratitude for the outstanding support . . . provided by . . . [the] project and assistant project managers.” The quality assurance manager continued by stating that these two individuals were “by far, the best managerial team . . . [Langley AFB has] had the pleasure of working with since . . . 1994[,] the date of [Langley’s] first contract, with the original maintenance corporation.” Dellew’s Past Performance Proposal, Letter of Appreciation from Quality Assurance Manager at Langley AFB to Dellew, Mar. 27, 2001. The quality assurance manager also stated that Dellew’s two managers were very dedicated and committed, extremely competent and efficient, and more job knowledgeable than any of the previous contractor management teams; he pointed out that he “very seldom receive[d] customer complaints[, and] when [he did,] they [were] usually not legitimate.” Id.

In evaluating Dellew’s past performance, the evaluators noted as strengths the firm’s 70-percent award fee at Wright-Patterson AFB and that Dellew consistently exceeded quality of service standards; that the firm established strong working/partnering relationships with the government; and in terms of managing key personnel, Dellew was responsive to ensure effective project management. The only noted weakness in Dellew’s past performance involved the referenced CDRs, which the evaluators ultimately determined were minor in nature. AR, Tab 8, Evaluation Team Report for Dellew, Aug. 9, 2002, at 7-8.

More specifically, regarding these CDRs, the evaluators consulted the contract administrator at Wright-Patterson AFB, who confirmed that while Dellew had 22 CDRs, this was not, in her view, an indication of Dellew’s actual performance because the government played a role in the issuance of several (14) of the CDRs. For example, in the area of playground maintenance, the contract administrator reported that the government’s performance standard was considered unreasonable and unrealistic and subsequently was revised to more accurately reflect the agency’s needs. In another example, the contract administrator reported that because the government had failed to timely provide appliance repair listing information, Dellew was not entirely responsible for performance problems in this area. The contract administrator pointed out that Dellew was very responsive, as evidenced by the fact that the firm replaced the project manager, thus alleviating performance problems. Overall, the contract administrator reported that she was very satisfied with Dellew’s performance at Wright-Patterson AFB. Id.

In considering the past performance information as reported by the contract administrator at Wright-Patterson AFB, the evaluators determined that those CDRs based on unreasonable and unrealistic performance standards and those CDRs

generated where the government was a cause of performance problems did not constitute weaknesses in Dellew's past performance. With respect to the eight other CDRs (involving, for example, service call job orders, fan coil cleaning defects, the failure to request an extension due to parts being ordered, a service call delay due to the inability to contact a resident, a gutter downspout inspection, the failure to note tenant availability, and a service call extension request), the evaluators determined that these performance problems were minor, given the breadth of the contract environment, where Dellew was required to maintain 19 General Officer's Quarters (characterized by the evaluators as "an exceptionally high number," placing high demands on a contractor and requiring maximum contractor flexibility in order to meet the government's needs). In addition, the award fee documentation indicated that Dellew exceeded requirements in several areas. Finally, noting that Dellew's reference from Langley AFB reported no performance problems or issues, the evaluators concluded that the CDRs did not reflect a pattern of nonperformance by Dellew. On this record, the evaluators assigned an outstanding/high confidence rating to Dellew's proposal in the area of past performance. Id.

With respect to Kira, the agency contacted references at the Naval Air Station Lemoore, California (1,500 military family housing units), Keesler AFB, Mississippi (1,950 units) and Altus AFB, Oklahoma (970 units). The evaluators noted the following past performance strengths for Kira: Kira provided exceptional customer service and earned a 100-percent award fee; the firm exceeded schedule requirements; the firm established strong working/partnering relationships with the government; and the firm had exceptional project managers. The evaluators pointed out that Kira's references reported that the firm was very capable and consistently met contract requirements, exceeding requirements in some areas as demonstrated by its earning a 100-percent award fee. The evaluators noted no weaknesses in Kira's proposal and assigned an outstanding/high confidence rating to Kira's proposal in the area of past performance. AR, Tab 8, Evaluation Team Report for Kira, Aug. 9, 2002, at 6.

With respect to All Star, the agency contacted references at Kaneohe (2,608 military family housing units), Fort Lewis, Washington (3,639 units), and Hickam AFB, Hawaii (2,662 units). The evaluators noted the following past performance strengths for All Star: All Star earned the maximum award fee and provided excellent quality service; the firm established strong working/partnering relationships with the government; and the firm had excellent project managers. [Deleted] the evaluators assigned an outstanding/high confidence rating to All Star's proposal in the area of past performance. AR, Tab 8, Evaluation Team Report for All Star, Aug. 9, 2002, at 10.

In terms of price, Dellew submitted the low price; Kira's price was approximately [deleted] percent higher than Dellew's price and All Star's price was approximately [deleted] percent higher than Dellew's price. Agency Report (AR), Tab 9, Source Selection Decision Document, at 5-6. The source selection authority considered the

strengths in each offeror's proposal that resulted in the outstanding/high confidence past performance ratings, determining that the proposals were technically equal and that Dellew's low price meant that its proposal represented the best value to the government. Accordingly, the agency awarded a contract (without conducting discussions) to Dellew.

Kira and All Star challenge as unreasonable the outstanding/high confidence rating assigned to Dellew's proposal in the area of past performance. The protesters acknowledge that Dellew, a small business, was the named prime contractor under its contracts at Wright-Patterson AFB and Langley AFB. Kira's Protest, Oct. 9, 2002, at 6; All Star's Comments, Dec. 2, 2002, at 5. The protesters also point out that under these contracts, Dellew was a protégé of B-MAR, a large business and mentor to Dellew.¹ In this regard, the protesters allege that it was actually B-MAR, not Dellew, that successfully performed the requirements under the referenced contracts and, accordingly, the agency here unreasonably credited Dellew with B-MAR's favorable record of past performance.

In reviewing a protest against an agency's proposal evaluation, we will consider whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2. We conclude that the agency's evaluation of Dellew's past performance was reasonable and in accordance with the terms of the RFP.

Here, the RFP stated that the agency would assess an offeror's past performance as either a prime contractor or subcontractor on requirements of similar scope and magnitude, defined in terms of recency, currency, and relevance. The record shows that Dellew's contracts at Wright-Patterson AFB and Langley AFB were recent (both contracts were awarded to Dellew as the prime contractor in 2000), current (at the time of proposal submission, Dellew was performing as the prime contractor under the options exercised by the government under each of the referenced contracts), and relevant (both contracts were for the performance of military family housing

¹ Dellew and B-MAR worked together at Wright-Patterson AFB and Langley AFB pursuant to the Small Business Administration's (SBA) Mentor-Protégé Program. This SBA program is designed to encourage approved mentors to provide various forms of assistance (e.g., technical and contract management assistance, financial aid in the form of equity investments and/or loans, and subcontract support) to eligible protégé participants in order to enhance the capabilities of the protégés and to improve their ability to successfully compete for federal contracts. The amount of work performed by a protégé under this type of arrangement is governed by a written agreement between the protégé and mentor, which is approved by the SBA. For a detailed discussion of this program, see <http://www.sba.gov/8abd/indexmentorprogram.html>.

maintenance requirements).² While Dellew performed as a protégé of B-MAR under a government-sponsored program, this relationship is irrelevant, as it did not negate Dellew's status as the prime contractor ultimately responsible for all aspects of contract performance under both contracts. This point is supported by the facts, as detailed above, showing that Dellew, not its mentor, was named as the contract awardee in the government's standard form contract award documents (as acknowledged by the protesters) and Dellew, not its mentor, received the contract award fees, the CDRs,³ and the favorable performance comments and letter of appreciation. Moreover, the record shows that Dellew's references, as consulted by the agency, did not mention B-MAR; rather, these references commented favorably upon Dellew's performance as the prime contractor.

In these circumstances, where the agency reasonably evaluated Dellew's past performance as the prime contractor under two military family housing maintenance contracts in accordance with the terms of the RFP, we have no basis to question the selection of Dellew's technically equal, low-priced proposal for award.

The protests are denied.⁴

Anthony H. Gamboa
General Counsel

² For all offerors, in terms of magnitude, the agency generally considered maintenance of at least 1,000 military family housing units to be similar to the requirements of this RFP. AR, Tab 8, Evaluation Team Report, at 1. Thus, contrary to the protesters' assertion, we believe that the agency reasonably evaluated as similar Dellew's past performance at Langley AFB, which involved the maintenance of 1,253 military family housing units.

³ The protesters complain that the agency unreasonably characterized as minor eight of the CDRs issued to Dellew under its contract at Wright-Patterson AFB. The record shows, however, that the agency reasonably concluded that these CDRs were minor after consulting with the contract administrator at Wright-Patterson AFB and after considering its requirements under this RFP. Although the protesters disagree with the agency's assessment of these CDRs, such disagreement does not mean that the evaluation was not reasonable. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Birdwell Brothers Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

⁴ The protesters have raised other collateral issues and arguments, each of which we have considered and find without merit.