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**Comptroller General
of the United States**

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

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Decision

Matter of: DeLeon Technical Services, Inc.

File: B-293783

Date: June 4, 2004

Johnathan M. Bailey, Esq., Bailey & Bailey, for the protester.
Richard B. Oliver, Esq., McKenna, Long & Aldridge, for T Square Logistics Services Corporation, an intervenor.
Lt. Col. David L. Bell and Michele T. Lacey, Esq., Department of the Air Force, 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 agency's evaluation of past performance and source selection decision is denied where record shows that the evaluation and award decision were reasonable, consistent with the terms of the solicitation, and in accordance with applicable procurement rules.

DECISION

DeLeon Technical Services, Inc. protests the award of a contract to T Square Logistics Services Corporation under request for proposals (RFP) No. F41636-02-R-0045, issued as a small business set-aside by the Department of the Air Force for vehicle operations and maintenance at Lackland Air Force Base (AFB), Texas. DeLeon challenges the agency's evaluation of the offerors' past performance and the decision to award the contract to a lower-priced offeror; the protester believes that it has more relevant past performance experience than the awardee, and that the agency should have considered that in making its source selection.

We deny the protest.

The RFP, issued on December 16, 2002, contemplated the award of a fixed-price requirements contract for a base period and 4 option years. Offerors were advised that the agency would make a "best value" award decision using a performance/price trade-off (PPT). Under the RFP's PPT procedures, technically acceptable proposals would be evaluated for the quality of the firms' past performance, in order to assess performance confidence. RFP at 55-56. Past performance was to be evaluated based

on data submitted by the offerors, reference surveys, or other information obtained by the government regarding no more than five relevant contracts performed within the last 5 years. RFP at 54. The past performance evaluations were to include consideration of, among other things, the relevancy and recency of the work performed, the extent of performance, the size and complexity of the work relative to the current requirement, as well as performance quality, timeliness, results, and customer satisfaction. RFP at 56. To determine which proposal offered the “best value” for award, a trade-off between price and past performance was to be conducted, with past performance being significantly more important than price. RFP at 57. Where the lowest-priced proposal received an exceptional performance rating, however, the evaluation process was to end, that proposal was to be considered the “best value” to the government, and award was to be made to that offeror without further consideration of any other offers received. Id.

Of the six proposals received, three were included in the final competitive range, including DeLeon’s and T Square’s, which had both received “exceptional” past performance ratings. Award was made to T Square based upon its slightly lower evaluated price. This protest followed. DeLeon challenges the agency’s past performance evaluation and source selection, arguing that it has more relevant past performance experience, and that the agency should have determined that an award to DeLeon was warranted as the “best value” despite its higher price.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable, and in accord with the RFP criteria and applicable procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. UNICCO Gov’t Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

As an initial matter, we note that while the protester argues that its past performance experience is more relevant and substantial than the awardee’s, the RFP did not require a qualitative comparison of the merits of proposals rated exceptional for past performance. Rather, as stated above, the RFP expressly provided for selection of the lowest-priced proposal where it received a rating of exceptional for past performance. Accordingly, our review and discussion here of the agency’s evaluation of proposals is necessarily limited to the protester’s contention that T Square’s past performance information fails to reasonably support the exceptional rating it received. DeLeon also contends that the RFP required consideration of only those contracts comparable in size and complexity to the RFP’s requirements. As the agency points out, however, while the RFP sought past performance information about relevant contracts, the RFP did not restrict the evaluators’ consideration of an offeror’s past performance to only those contracts of the same size, scope or complexity; rather, the size and complexity of the prior contracts were factors to be

considered in the past performance evaluation along with others relating to the quality of performance. RFP at 56.

As stated above, DeLeon contends that the contracts reviewed by the agency for T Square's past performance evaluation were not adequately relevant to the RFP's requirements, and the evaluation was therefore unreasonable.¹ Our review of the record, including the evaluation record, source selection decision, and the proposals, fails to support the protester's challenge.

For instance, while DeLeon argues that T Square's vehicle operations and maintenance contract at Sheppard AFB was a smaller contract (at almost half the price anticipated here), the record confirms the reasonableness of the agency's judgment that the contract requirements (such as the number of vehicles to be serviced) are similar to those called for here and that the price difference instead primarily reflected the shorter performance period of that contract; we therefore see no reason to object to the agency's consideration of the exceptional ratings and the highly favorable customer satisfaction comments received from the past performance reference for T Square's work under the contract. Similarly, we have no reason to object to the agency's consideration of the highly favorable (exceptional) ratings given by a reference for a tactical wheel maintenance contract performed by T Square, or the very good ratings received for an airfield operations support contract. Although these contracts were smaller in scope than the overall effort required here, they were directly related to work required under the current RFP and therefore reasonably were considered in the agency's assessment of the firm's past performance.

Further, in assessing the awardee's past performance, the agency also considered information obtained from a past performance information retrieval system (PPIRS) maintained by the government that included five past performance reports for the firm for work (including the Sheppard AFB contract discussed above) considered relevant to the current requirement. Those PPIRS reports consistently rated T Square exceptional for quality of service, timeliness of performance, business relations, management of key personnel, and cost control; as stated above, these are all factors provided by the RFP for assessing an offeror's past performance and determining its overall performance confidence rating.

¹ While DeLeon protests the relevance of T Square's past performance, it does not challenge the high level of customer satisfaction and highly favorable commentary about the quality of the work performed by T Square that was considered by the agency, including the exceptional ratings submitted by the firm's references and contained in government performance records, as well as the highly favorable performance data submitted in the firm's proposal.

The record also shows that the agency considered T Square's proposed subcontractor's performance of substantially similar work (under a substantially larger contract than anticipated under the current RFP) at Tyndall AFB. Although DeLeon notes that a past performance reference survey was not submitted for this contract, the RFP did not limit the past performance evaluations to reference surveys; rather, as stated above, the agency was to consider data submitted by each offeror, as well as information obtained by the government from additional sources. Here, the agency found, and our review confirms, that the awardee's past performance proposal identified its subcontractor's substantially similar work at several other AFBs, and, in particular, its vehicle operations and maintenance work at Tyndall AFB. Additionally, T Square's proposal documented that firm's receipt of favorable performance ratings (i.e., the highest ratings available) under at least two agency reviews conducted during the term of that contract.

In sum, the protester has not provided, and our review of the record also does not show, any basis to question the reasonableness of the exceptional rating for past performance given to T Square. Since the RFP expressly provided for award to the lowest priced offeror where it received an exceptional past performance rating, the protester also has not shown that the award to T Square, the lowest priced offeror, was improper.² Accordingly, the protest is denied.

Anthony H. Gamboa
General Counsel

² In its comments, for the first time, DeLeon protests the reasonableness of price estimates included in the agency's report responding to the protest. In those comments, however, DeLeon also indicates that it had reason to question the agency's estimates as early as during discussions when the agency referred to some of DeLeon's prices as unreasonably high. DeLeon explains that, although it initially lowered its prices in response to the agency's comments during discussions, it ultimately raised its prices in its final proposal revision to better reflect what it considered to be more reasonable prices than had been indicated during discussions. In this regard, in its comments, the protester states that "[r]ecognizing the unrealistic nature of the Government's estimate . . . and that it could not capture the real costs [of the services,] DeLeon raised its price back to a reasonable level" Comments at 5. The protester's challenge to the agency's price estimates, however, was not raised by the firm in its initial protest to our Office despite having sufficient information to do so. The issue, raised for the first time in the protester's comments 6 weeks later, is untimely and will not be considered. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2004). A protest that could have been filed in a timely manner, but was not, cannot be revived by the protester's subsequent receipt of documents that confirms what the protester should have known and pursued much earlier. See Joppa Maint. Co., B-281579, B-281579.2, Mar. 2, 1999, 2000 CPD ¶ 2 at 6-7.