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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: BTC Contract Services, Inc.

File: B-295877

Date: May 11, 2005

Benjamin N. Thompson, Esq., and Jennifer M. Miller, Esq., Wyrick Robbins Yates & Ponton LLP, for the protester.

Michael A. Gordon, Esq., and Fran Baskin, Esq., Holmes & Gordon, for Joppa Maintenance Company, an intervenor.

Maj. Rebecca R. Vernon, and Capt. Paul E. Cronin, Department of the Air Force, for the agency.

Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency record provides reasonable basis for selecting the higher-priced proposal because of awardee's more favorable past performance evaluation.

DECISION

BTC Contract Services, Inc., a small business, protests the award of a contract under request for proposals (RFP) No. FA4418-04-R-0007, issued by the Department of the Air Force, for grounds maintenance and sprinkler/irrigation maintenance services at Charleston Air Force Base (AFB), South Carolina. BTC objects that the agency's evaluation of past performance was unreasonable and, as a consequence, the source selection decision to award to Joppa Maintenance Company, the incumbent contractor, whose proposal was higher-priced and higher-rated, was unreasonable.

We deny the protest.

The procurement was conducted as a commercial item acquisition under Federal Acquisition Regulation (FAR) Part 12, and was a total set-aside for Historically Underutilized Business Zone small businesses. RFP at 1. The RFP sought fixed-price proposals to furnish services for a base period of 8 months and four 1-year option periods. RFP amend. 23. The RFP provided that the award would be based on the evaluation of past performance and price, with past performance being considered significantly more important than price. RFP at 22-23.

Under the heading of “PAST PERFORMANCE INFORMATION,” the RFP noted that “Only references for [the] same or similar type contract [are] desired,” and also stated:

Provide a list of no more than seven (7) contracts, performed for Federal Agencies and commercial customers that have been performed within the last three (3) years. Relevant contracts include, but are not limited to, those contracts where Grounds Maintenance and Sprinkler/Irrigation Maintenance Services, of similar scope, magnitude and complexity to the services required to be performed at Charleston AFB, SC. Items to include but not limited to are pruning shrubs, policing grounds and maintaining grounds of Taxiways and Runways, coordinating and multitasking of various areas to include runways, residential housing and common areas. Contracts under which more than one grounds maintenance type of service has been performed will be considered more relevant than those contracts under which only a single grounds maintenance type of service has been performed.

RFP amend. 20 at 30.

The RFP elsewhere stated as follows:

The purpose of the past performance evaluation is to allow the Government to assess the offeror’s ability to perform the efforts as described in the solicitation, based on the offeror’s demonstrated present and past performance. The assessment process will result in an overall risk rating of exceptional, very good, satisfactory, neutral, marginal or unsatisfactory.

RFP at 23.

The RFP also explained that, “In evaluating past performance, the Government reserves the right to give greater consideration to information on those contracts deemed most relevant to the effort described in this solicitation.” Id.

The agency received 15 proposals, conducted discussions with three offerors (including both BTC and Joppa), and thereafter selected for award the proposal of the second lowest priced offeror, Joppa, on the basis of its superior record of past performance. Although BTC’s proposal was lower-priced than Joppa’s proposal, the agency rated BTC’s past performance less favorably than Joppa’s.

While the services required under the contract included grounds maintenance operations for housing and common areas, approximately 60 percent of the grounds that the contractor must maintain are those surrounding the airfield. The RFP indicated that maintenance of the airfield area requires additional training for maintenance operations on the flight line and involves different standards for

maintenance of the vegetation surrounding the airfield. RFP amend. 19 at 10; RFP amend. 20, Revised Statement of Work, at 2, 6. As explained by the Air Force, performance of the grounds maintenance at an active airfield, such as Charleston AFB, poses more complications than more typical grounds maintenance service contracts, including significant risks to life and property. Contracting Officer's Statement at 7. In conducting her tradeoff between past performance and price, and concluding that Joppa's proposal offered the best value, the contracting officer specifically noted, among other things, that 60 percent of the area being maintained under the contract at Charleston AFB was the grounds surrounding the active airfield and that, in contrast to Joppa, "BTC has no experience in maintaining areas in and around active taxiways and runways." AR, Tab 10, Revised Source Selection Decision (Jan. 13, 2005), at 5.

BTC raises a number of objections related to the agency's conduct of the past performance evaluation and the agency's conclusions. Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the solicitation's evaluation criteria, since determining the relative merits of offerors' past performance information is primarily a matter within the contracting agency's discretion. DGR Assocs., Inc., B-285428, B-285428.2, Aug. 25, 2000, 2000 CPD ¶ 145 at 11.

As quoted above, the RFP required that the offerors furnish no more than seven contract references. Joppa furnished 16 references; BTC furnished 6 references. Since Joppa exceeded the number of references to be provided for evaluation purposes, the agency reports that it selected for evaluation the seven most relevant references.

BTC argues that the agency should not have allowed Joppa to submit more references than the limit specified in the RFP. Protester's Comments at 14. BTC objects that the agency "cherry-picked" past performance references that favored Joppa, and that the agency's explanation that it selected the most relevant references is "not supported by anything in the record." Id. at 14; Protester's Supplemental Comments at 4. BTC argues that the agency simply should have used the first seven references listed by Joppa.

However, BTC concedes that "the Air Force presumably had no way of knowing at the time it selectively chose Joppa's references for [evaluation] whether or not these contracts were the 'five most highly-rated.'" Protester's Supplemental Comments at 4. While Joppa did submit more than the RFP limit of seven references, BTC has not shown that it was competitively prejudiced by the agency's selection of the seven references on which to evaluate Joppa, nor does BTC argue that it could have provided additional relevant references beyond the six that it furnished to the agency in its initial proposal.

BTC next argues that the agency treated BTC and Joppa unequally with respect to the use of database past performance information. The record shows that the

agency utilized the Past Performance Information Retrieval System database, which collects past performance data on contractors in its evaluation here. See, e.g., AR, Tab 8, Past Performance Evaluation, at 2. As relevant here, the record shows that the database contained some unfavorable past performance ratings for a BTC grounds maintenance contract at Fort Jackson, South Carolina. The record also shows that the database contained unfavorable past performance ratings for Joppa's grounds maintenance contract at Pope AFB and for Joppa's incumbent contract at Charleston AFB.

BTC argues that the agency unreasonably downgraded BTC on the basis of a less favorable database rating for BTC's performance at Fort Jackson, rather than consider a more favorable (and more recent) survey response for that contract. Protester's Comments at 15. BTC then argues that when the agency evaluated Joppa, the agency discounted the less favorable database information in two instances—specifically that the agency used a survey response regarding a contract at Pope AFB, rather than less favorable information in the database and that the agency relied on the contracting officer's favorable personal assessment of Joppa regarding performance at Charleston AFB, rather than less favorable information contained in the database. Id. at 16.¹

With respect to BTC, the contemporaneous evaluation record shows that the agency based its past performance evaluation of BTC on the more favorable survey response; while recognizing the lower database rating, the agency did not actually use that less favorable information to downgrade BTC's overall past performance. AR, Tab 8, Revised Past Performance Evaluation, at 3.

With respect to Joppa, the contemporaneous evaluation record shows that the database information reflected a review of Joppa's performance at Charleston AFB from October 2002 through September 2003 and did not include any past performance information for the intervening period of nearly 2 years. AR, Tab 16, Contractor Past Performance Assessment Report for Charleston AFB, at 1. The contracting officer relied more on her own current evaluation of Joppa's performance at Charleston AFB than the less favorable database information. At Pope AFB, the database information again related to a period more than 2 years old.

¹ In a supplemental agency report requested by our Office, the agency conceded that it erroneously treated two separate contracts, both being performed by Joppa at Charleston AFB, as one contract in the past performance evaluation. The agency acknowledges that the RFP required the agency to treat these separately. Supplemental Contracting Officer's Statement at 6. However, other than alleging "unfair and unreasonable evaluation," BTC does not meaningfully challenge the agency's assertion that the error did not prejudice BTC because if the two contracts had been properly evaluated separately, Joppa would have received a favorable evaluation on two contracts, instead of one.

AR, Tab 16, Contractor Past Performance Assessment Report for Pope AFB, at 1. The contracting officer also relied more on a current reference obtained from Pope AFB. The record thus shows that the contracting officer treated both offerors fairly and equally; that is, she relied on the more favorable assessment in each case (in favor of both offerors).

BTC also argues that the agency, in determining the relevance of the contracts furnished under the past performance factor, unreasonably emphasized offerors' past performance contracts that included grounds maintenance on an active airfield and contracts that were "performance-based," that is, contracts that required less direction by the agency and more coordination by the contractor. Protester's Supplemental Comments at 12-13. BTC bases its argument on the fact that it initially received an adjectival rating of "Very Good" under the past performance factor, but after receiving feedback from an internal agency review, the agency conducted discussions focusing on past performance at active airfields. AR, Tab 17, E-mail from Chief of the Operational Branch to Contracting Officer (Sept. 24, 2004). After discussions, the agency then revised the past performance evaluation of BTC downward to "Satisfactory."

In response, the agency explains that during discussions, it determined that BTC's reference for grounds maintenance at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia had been incorrectly characterized during the original evaluation as "the same services . . . on a smaller scale." AR, Tab 8, Past Performance Evaluation, at 2. After discussions, the agency determined that the lack of an active airfield at FLETC, and the absence of any significant performance-based requirements under the FLETC contract, meant that the FLETC contract was actually "less complex than [the work to be performed at] Charleston." AR, Tab 8, Revised Past Performance Evaluation, at 3. BTC argues that "the Solicitation simply does not support the Contracting Officer's elevation of these two types of experience to the exclusion of all others in determining the relevanc[e] of a given contract." Protester's Supplemental Comments at 12. However, as described above, under the RFP, the agency would consider contracts that were "similar scope, magnitude and complexity to the services required to be performed at Charleston AFB," and specifically identified such things as maintaining grounds of taxiways and runways and coordinating multitasking of various grounds maintenance areas as relevant to its evaluation. RFP amend. 20, at 29-30.

An offeror's mere disagreement with the agency's assessment of its past performance, or the merits of its proposal relative to others, does not render the source selection unreasonable. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4. Here, since the RFP indicated that the past performance evaluation would take into account the similarity in scope, magnitude, and complexity of an offeror's past performance to the services required to be performed at Charleston AFB, the record, as described above, supports the reasonableness of the agency's evaluation of BTC's past performance as "Satisfactory."

Finally, BTC objects to the tradeoff decision. Where, as here, the RFP allows for a price/technical tradeoff, the selection official has discretion to select a higher-priced, but technically higher-rated proposal, if doing so is reasonably found to be justified. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10. The RFP award criteria emphasized past performance over price and, consistent with the RFP, the contracting officer placed significant emphasis on the importance of excellent performance in highly similar work, and concluded that the evaluation record supported the award to Joppa at a price premium on the basis of its “exceptional” past performance rating on very relevant contracts. AR, Tab 10, Revised Source Selection Decision (Jan. 13, 2005), at 4. We have no basis to question the reasonableness of the contracting officer’s decision to award to Joppa.

The protest is denied.²

Anthony H. Gamboa
General Counsel

² BTC challenged the past performance evaluation on multiple grounds. This decision addresses BTC’s key arguments. However, we have reviewed the record and find all of BTC’s arguments to be without merit.