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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: Kay & Associates, Inc.

File: B-291269

Date: December 11, 2002

Kevin P. Connelly, Esq., Joseph J. Dyer, Esq., and Grace Bateman, Esq., Seyfarth Shaw, for the protester.

Douglas M. Flinn, Esq., Sherman & Howard, for Doss Aviation, Inc., an intervenor.
Andrew D. Fallon, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's evaluation record reasonably supports evaluation of awardee's past performance record as [deleted] and protester's past performance record as [deleted].
 2. Agency reasonably concluded that awardee's higher past performance rating was more valuable to the government than protester's somewhat lower price.
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DECISION

Kay and Associates, Inc. (KAI) protests the Department of the Air Force's award of a contract to Doss Aviation, Inc. under request for proposals (RFP) No. F05604-01-R-9004 to provide helicopter maintenance services at various Air Force bases. KAI protests that the agency improperly evaluated Doss's and KAI's past performance, and failed to perform a reasonable tradeoff between price and past performance.

We deny the protest.

BACKGROUND

On March 6, 2002, the agency issued solicitation No. F05604-01-R-9004 seeking proposals to perform helicopter maintenance on UH-1N helicopters at five Air Force

bases in the United States and Japan.¹ The solicitation contemplated award of a fixed-price contract for a 1-year base period and six 1-year option periods. The solicitation required each offeror to submit a price proposal, technical proposal, and past performance information,² provided that technical proposals would be evaluated only on a pass/fail basis, and advised offerors that, with regard to technically acceptable proposals, award selection would be based on a tradeoff between price and past performance. Agency Report, Tab 8, RFP at 125.

Regarding evaluation of past performance, the solicitation provided that the agency would assign “confidence assessment ratings” pursuant to the provisions of Air Force Federal Acquisition Regulation Supplement (AFFARS) § 5315.305(a)(2),³ and stated that the ratings assigned would reflect consideration of the offerors’ past performance in the following six areas: maintenance of similar types of aircraft; maintenance and management support for missions demanding quick turnaround with short notice; maintenance and management support at multiple sites, in varying climates, with substantial workload fluctuations; employee hiring, training and retention; participation of small disadvantaged business concerns; and corrective actions taken from past experience. RFP at 126.

On or before the April 12, 2002 closing date, proposals were submitted by nine offerors. In evaluating past performance, the agency reviewed the completed questionnaires, considered information contained in the performance assessment reporting system (CPARS), and conducted telephone interviews with government personnel who had oversight of the various contracts identified by the offerors. Agency Report, Tab 14, Proposal Analysis Report, at 4. Ultimately, the agency sought final proposal revisions (FPRs) from four offerors, including KAI and Doss.⁴ The agency’s final evaluation resulted in the following assessments:

¹ The specified locations were: Malmstrom Air Force Base (AFB), Montana; Minot AFB, North Dakota; Vandenburg AFB, California; F.E. Warren AFB, Wyoming; and Yokota Air Base, Japan.

² Offerors were directed to identify contracts they had recently performed that had requirements similar to the requirements here. The solicitation contained, as an attachment, a past performance questionnaire that offerors were directed to provide to personnel capable of evaluating their performance under those prior contracts.

³ As relevant here, the ratings, and accompanying definitions, were identified as: “exceptional/high confidence,” reflecting “essentially no doubt” that the offeror will successfully perform; and “very good/significant confidence,” reflecting “little doubt” that the offeror will successfully perform. AFFARS § 5315.305(a)(2).

⁴ The proposals of the other offerors, and the agency’s evaluation of those proposals, are not relevant to this protest and are not further discussed.

EVALUATION FACTOR	KAI	DOSS
Technical	Pass	Pass
Past Performance	[deleted]	[deleted]
Price	[deleted]	[deleted]

Upon completion of the final proposal evaluation, the source selection evaluation team (SSET) chair prepared a report for the source selection authority (SSA) which stated, among other things:

The trade-off decision recommendation is between Doss . . . and Kay. . . Doss' past performance references indicate proactive and innovative contract performance with a stronger ability to handle fluctuating workloads at multiple sites. Their past performance/performance risk references indicate Doss' ability to form cohesive teams that will reduce the likelihood of problems in hiring, training, and retaining skilled helicopter maintenance personnel at multiple sites including sites at overseas locations.

Agency Report, Tab 14, Proposal Analysis Report, at 19.

Thereafter, the SSA determined that Doss's proposal represented the best value to the government, specifically concluding:

Due to Doss Aviation's higher past performance rating and their lower risk of contract non-performance, their offer is the best value to the Government despite the [deleted] percent price difference⁵.

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The [deleted] percent difference in price is well worth the additional price of Doss' proposal because their higher past performance rating increases the likelihood of successful performance, reducing the labor load of Government oversight on a daily basis. This provides lower costs for changes, resolving concerns earlier in the processes, at a lower management level. The cohesive teamwork of Doss ensures successful mission accomplishment at multiple locations, including overseas with less Government involvement and a more stable workforce. Doss innovative style provides a definite advantage in

⁵ Doss's price of [deleted] was [deleted] – or [deleted] percent – higher than KAI's price of [deleted].

resolving issues at multiple sites with substantial fluctuations in workload and makes them the best value offeror. Because Doss has a higher Performance Risk rating, they have a lower possibility of performance failure which results in less Government costs associated with solicitation re-competition and change-over costs.

Agency Report, Tab 13, Source Selection Decision Document, at 2.

On August 30, a contract was awarded to Doss. This protest followed.

DISCUSSION

KAI first protests that the agency was required to give KAI a past performance rating of [deleted], rather than [deleted], because “there is nothing in KAI’s past performance history to indicate that KAI cannot successfully perform this contract.”⁶ Protest at 12. Alternatively, KAI asserts that there “is no logical rationale” for Doss’s [deleted] rating, maintaining that the agency applied unstated evaluation criteria and complaining that “it is KAI’s understanding that the vast majority of Doss’s experience is on fixed-wing aircraft.” Protest at 13, 14. In short, KAI concludes that Doss “could not have been entitled to a higher past performance rating than the rating KAI received.” Protest at 14.

Our Office will examine an agency’s past performance evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors’ past performance records are primarily matters within the contracting agency’s discretion. Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4. In this regard, our Office will not question an agency’s determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

Here, the record shows that, in evaluating KAI’s past performance, the agency considered six prior KAI contracts which KAI had identified as representative of the work to be performed. Of these contracts, KAI’s past performance was rated [deleted] in two, [deleted] in three, and [deleted] in one. Agency Report, Tab 21, Summary of KAI Past Performance Rating, at 3. These ratings are supported by questionnaires submitted by individuals who had been associated with KAI’s performance of the various contracts. Id. at 35-117. We have reviewed the substantial contemporaneous evaluation record and find nothing unreasonable in the agency’s assessments. Although KAI maintains that its performance under each

⁶ KAI also lists various honors and awards it has received in connection with its prior contract performance. Protest at 12.

prior contract should have been rated as [deleted], we view its arguments as reflecting mere disagreement with the agency's judgments.

Similarly, in evaluating Doss's prior performance record, the agency reviewed information regarding Doss's performance of three prior contracts involving requirements similar to the requirements under this solicitation. Based on the past performance information the agency obtained, including questionnaires submitted by personnel associated with the prior contracts, Doss's past performance was reasonably rated [deleted] for each contract. Agency Report, Tab 23, Summary of Doss's Past Performance Rating, at 3, 32-88.

Although KAI complains that Doss should have received less than an [deleted] due to KAI's "understanding" that "the vast majority of Doss experience is on fixed-wing aircraft," Protest at 14, KAI's arguments in this regard are directly contrary to the solicitation provisions. Specifically, the solicitation advised offerors that experience with "both helicopter and/or fixed wing aircraft" would be considered "similar" to the requirements of this solicitation for purposes of the agency's past performance evaluation. Agency Report, Tab 8, RFP at 126. Thus, it is clear that the solicitation clearly contemplated consideration of offerors' past performance with regards to both helicopter and fixed wing aircraft.

KAI also complains that the agency's consideration of Doss's "proactive and innovative contract performance" and its "ability to form cohesive teams" was improper because "neither 'proactive/innovative' management nor 'ability to form cohesive teams' is listed among the six past performance evaluation factors." KAI Comments on Agency Report, Oct. 21, 2002, at 18.⁷

As noted above, the solicitation specifically advised offerors that their past performance records would be assessed with regard to various criteria, including: support for missions demanding quick turnaround and short notice, and fluctuating workloads at multiple sites. Agency Report, Tab 8, RFP at 126. In our view, the agency's consideration of Doss's prior "proactive and innovative contract performance" was clearly appropriate under these specifically identified evaluation factors. Similarly, the solicitation advised that past performance would be evaluated with regard to employee hiring and retention. *Id.* In considering Doss's demonstrated ability to "form cohesive teams," the agency expressly noted that this ability "will reduce the likelihood of problems in hiring, training and retaining skilled

⁷ Although KAI received the SSA's rationale, including the references to Doss's "proactive/innovative contract performance" and "ability to form cohesive teams," prior to filing its September 9 protest, *see* Protest at 10, KAI failed to raise this issue until filing its October 21 comments on the agency report. Accordingly, although we find no merit in KAI's assertion in any event, the matter is not timely raised. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2002).

helicopter maintenance personnel.” Agency Report, Tab 14, Proposal Analysis Report, at 19. Here again, consideration of this aspect of Doss’s past performance was, in our view, clearly appropriate. In summary, based on our review of the record here, we find nothing unreasonable in the agency’s evaluation of the offerors’ respective past performance records.

Finally, KAI asserts that the agency had no rational basis to view Doss’s higher past performance rating as more valuable than KAI’s somewhat lower price. We disagree.

Source selection officials in negotiated procurements have broad discretion to determine the manner and extent to which they will make use of evaluation results; tradeoffs between price and non-price factors may properly be made, subject only to the test of rationality and consistency with the established evaluation factors. Creative Apparel Assocs., B-275139, Jan. 24, 1997, 97-1 CPD ¶ 65 at 6.

As discussed above, the agency considered, and documented, the manner and extent to which Doss’s higher rated past performance record would affect the agency’s expenditure of various resources during contract performance. Among other things, the SSA noted that the higher rating was worth the additional price because the higher likelihood of successful performance will likely “reduc[e] the labor load of Government oversight on a daily basis [due to] resolving concerns earlier in the processes, at a lower management level.” Agency Report, Tab 13, Source Selection Decision Document, at 2. On the record here, we find no basis to question the agency’s tradeoff decision.

The protest is denied.

Anthony H. Gamboa
General Counsel