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**Comptroller General  
of the United States**

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

# Decision

**Matter of:** Forest Regeneration Services LLC

**File:** B-290998

**Date:** October 30, 2002

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Barry S. Rose and Linda L. Rose for the protester.

Lynn W. Flanagan, Esq., and Daniel N. Hylton, Esq., Department of Agriculture, for the agency.

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## **DIGEST**

Challenge to agency's evaluation of protester's proposal is denied where the record shows that the agency reasonably evaluated the proposal in accordance with the solicitation's evaluation factors.

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## **DECISION**

Forest Regeneration Services LLC (FRS) protests the award of a contract to Turner Enterprises under request for proposals (RFP) No. NEAT-02-096, issued by the Forest Service, Department of Agriculture, for herbicide spraying services within the Allegheny National Forest, Pennsylvania. FRS alleges that the evaluation of its technical proposal was unreasonable.

We deny the protest.

The RFP, issued on May 8, 2002, contemplated the award of a fixed-price, incentive-fee contract for a base year and two 1-year options for the spraying of herbicides on understory vegetation in designated areas of the Allegheny National Forest. The solicitation established five technical evaluation factors in descending order of importance: technical approach, past performance, key personnel qualifications and experience, offeror's support equipment and facilities, and offeror's organization, qualifications and experience. The RFP also notified offerors that price was an important factor. The solicitation stated that the Forest Service intended to make award, without discussions, to the offeror whose proposal was technically acceptable and whose technical/price relationship was most advantageous to the government.

Three offerors, including FRS and Turner, submitted proposals by the June 7 closing date. FRS submitted the lowest price of \$394,305, and Turner the second-lowest price of \$412,533.40.<sup>1</sup> A technical evaluation board (TEB) rated the technical proposals of the offerors utilizing an adjectival rating system.<sup>2</sup> The technical evaluation ratings of the proposals of Turner and FRS, the two highest-rated, were as follows:

<b>Technical Factor</b>	<b>Turner</b>	<b>FRS</b>
Technical Approach	Acceptable	Acceptable
Past Performance	Exceptional	Unacceptable
Key Personnel	Acceptable	Marginal
Support Equipment & Facilities	Marginal	Acceptable
Organization, Qualifications & Experience	Acceptable	Marginal to Acceptable

Agency Report, Tab 9, Technical Evaluation of FRS, at 1; Tab 10, Technical Evaluation of Turner, at 1.

After evaluating technical proposals, and being informed of the offerors' prices, the TEB recommended that contract award be made to Turner. The contracting officer then separately reviewed the offerors' proposals, as well as the evaluations and recommendation of the TEB. He determined that Turner's technical proposal was "significantly stronger" than that of FRS with regard to the technical approach and past performance factors, and "slightly stronger" than FRS's proposal with regard to the key personnel factor. The contracting officer concluded that the difference in technical proposals between Turner and FRS justified the slightly higher price (approximately 4 percent), and awarded the contract accordingly. Agency Report, Tab 13, Source Selection Decision, at 3. Following a debriefing, FRS filed this protest.

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<sup>1</sup> As permitted by the RFP, Turner submitted alternative proposals—one priced at \$404,914.60, and a second that offered use of a tracked sprayer unit for difficult terrain areas at a higher unit price. After determining the amount of difficult terrain acreage, the Forest Service computed the price of Turner's alternate proposal to be \$412,533.40. Agency Report, Tab 12, Recommendation of TEB.

<sup>2</sup> The TEB rated proposals by having each member separately identify strengths and weaknesses and independently assign an adjectival rating of exceptional, acceptable, marginal, or unacceptable (or neutral for past performance) to each of the technical factors. The TEB then developed consensus ratings based upon discussions among the members of the strengths and weaknesses of each proposal.

FRS contends that the Forest Service's evaluation of its technical proposal with regard to the technical approach and past performance factors was unreasonable. FRS also argues that, as evidenced by the evaluation of its proposal, the RFP failed to inform offerors that certain types of herbicide sprayers would not be considered acceptable. As set forth below, we find that the agency's evaluation of FRS's proposal was reasonable, and did not include an unstated requirement regarding the herbicide spraying unit.

In reviewing a protest against an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4. Here, the record shows that the agency's evaluation of FRS's technical proposal was reasonable and consistent with the evaluation criteria.

As a preliminary matter, we note that FRS's belief that its proposal was unreasonably evaluated and/or misunderstood was in part the result of issues brought up by the Forest Service in the debriefing (e.g., water supply sources, communications systems) that were not in fact considered weaknesses in the evaluation of FRS's proposal or reasons for the agency's award decision. See Agency Report, Tab 9, Technical Evaluation of FRS, at 1; Tab 12, Recommendation of TEB; Tab 13, Source Selection Decision. The agency states that it did not misunderstand FRS's proposal, but only brought up such issues in the debriefing "for the purpose of helping [FRS] write a better proposal next time." Agency Report, Tab 2, Statement of TEB Chairman. The purpose of a debriefing is to furnish the basis for the selection decision and contract award. 10 U.S.C. § 2305(b)(5) (2000); OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281388 et al., Feb. 3, 1999, 99-1 CPD ¶ 53 at 9 n.3. While it may be helpful in other contexts for an agency to make suggestions to an offeror for future procurements, here the agency's debriefing remarks were, perhaps quite understandably, misconstrued by the protester. To the extent that FRS protests that its proposal was unreasonably evaluated in these areas, however, our review of the record does not bear this out.

FRS challenges the evaluation of its proposal under the technical approach factor, specifically with regard to its sprayer equipment. The RFP required offerors to provide a detailed work plan indicating how each aspect of the statement of work would be accomplished and thereby demonstrating a clear understanding of the nature of the work to be performed. RFP § L, at 31. The TEB determined that one of the weaknesses in FRS's technical approach was its use of what is, in the TEB's view, an outdated sprayer unit. Notwithstanding this conclusion, however, the TEB found that FRS's proposal demonstrated a strong understanding of the herbicide

spraying project, and assigned it an overall rating of acceptable as to technical approach.<sup>3</sup>

FRS argues that the agency failed to fairly consider its proposed sprayer unit. While FRS concedes that its sprayer system originally had air flow problems that reduced spraying efficiency, FRS contends that it has improved the sprayer and remedied the airflow problem by attaching remote-controlled actuators to each fan housing. The agency states that the evaluators were aware of the addition of actuators to the sprayer, but nevertheless believed that this design change did not remedy the basic problem they perceived with the sprayer (insufficient airflow). Agency Report, Tab 2, Statement of TEB Chairman. While FRS clearly disagrees with this assessment of its sprayer, that disagreement, standing alone, does not show that the agency's technical judgment was unreasonable. See Magnum Prods., Inc.; Amida Indus., Inc., B-277917 et al., Dec. 8, 1997, 97-2 CPD ¶ 160 at 3. Accordingly, we have no basis to question this aspect of the evaluation.<sup>4</sup>

FRS also challenges the evaluation of its proposal under the past performance factor. The RFP directed offerors to provide information regarding their experience, background, and qualifications. The solicitation also stated that for prior similar or related contracts, offerors were to include the name of the customer, contract number, dollar amount, time of performance, and the names and telephone numbers of the project officer and/or contracting officer. RFP § L, at 31. In its proposal, FRS stated that since 1998 it had accomplished "like work" of spraying herbicides on understory vegetation for various government, educational, and private entities in Pennsylvania and New York under its previous company name of ReGenesis LLC. FRS's proposal also stated that performance references were available upon request. Agency Report, Tab 6, FRS Proposal, Technical Proposal at 3.

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<sup>3</sup> In the subsequent comparison of proposals, the contracting officer determined that while FRS and Turner were both rated acceptable as to technical approach, the difference in sprayer system technologies being proposed by the offerors, as well as Turner's ability to employ a tracked vehicle for difficult terrain areas, made Turner's proposal significantly stronger than that of FRS with regard to this evaluation factor. Agency Report, Tab 13, Source Selection Decision.

<sup>4</sup> FRS contends that it should have been given an opportunity to either explain the changes made to the sprayer or demonstrate the proposed unit. The RFP advised offerors that the agency reserved the right to make award without discussions, RFP § L, at 30 (incorporating by reference Federal Acquisition Regulation (FAR) § 52.215-1); accordingly, the agency was not required to conduct discussions with offerors or to permit technical demonstrations.

In its evaluation of FRS's past performance, the TEB determined that FRS's proposal failed to comply with the RFP. Specifically, the TEB found that FRS's proposal did not demonstrate the past performance claimed, lacked the information required by the solicitation, and provided no record of whether past customers were in fact satisfied with the work performed. Agency Report, Tab 9, TEB Evaluation of FRS, at 1. The TEB also took into consideration that the proposal of a third offeror, which had been a partner with FRS while jointly doing business as the predecessor company ReGenesis, acknowledged that ReGenesis had been unable to accomplish all work assigned on two prior herbicide spraying contracts.<sup>5</sup> Agency Report, Tab 8, J & R Forestry Proposal, at 6; Tab 12, TEB Evaluation Summary at 1. The TEB assigned FRS's proposal an overall rating of unacceptable as to past performance. Agency Report, Tab 9, TEB Evaluation of FRS, at 1.

FRS argues that the agency's evaluation of its past performance was unreasonable. Specifically, FRS contends that the Forest Service should have investigated the adverse past performance information it possessed by contacting FRS's references. FRS also essentially asserts that, based upon the letters of reference enclosed with its protest, its past performance warranted an acceptable rating. We disagree.

The solicitation expressly directed offerors to provide certain past performance information, and FRS failed to comply with this unambiguous instruction. While FRS agreed to provide the agency with references upon request, and in fact enclosed certain letters of reference with its protest, it did not provide that information with its proposal. An offeror in a negotiated procurement acts at its peril when its proposal does not provide specific information requested by the solicitation's instructions. *Jet Invs., Inc.*, B-276215, B-276215.2, May 22, 1997, 97-1 CPD ¶ 193 at 2. Here, the TEB reasonably determined that there was no substantiation within FRS's proposal for the extent and successfulness of the past performance claimed, and rated the proposal as unacceptable.<sup>6</sup>

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<sup>5</sup> The protester points out, and the agency acknowledges, that both the TEB's recommendation and the contracting officer's award decision erroneously characterized the two ReGenesis contracts as "defaults." Agency Report, Tab 16, Summary of FRS Debriefing, at 2. Even though the term used by the agency was mistaken, it is clear from the record that the evaluators' focus in relying on this information was on the fact that there were performance problems under previous contracts, not on whether the contractor technically was in default on the contracts.

<sup>6</sup> Although FAR § 15.305(a)(2)(iv) requires an agency to assign a neutral rating where past performance information is not "available," here, the protester's proposal represented that it had 4 years experience performing like services and that its references were available upon request. The information thus was available, but FRS chose not to present the information in its proposal, in direct contravention of the RFP's instructions. In our view, an offeror cannot simply choose to withhold past performance information--and thereby obtain a neutral rating--where the

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FRS also objects to the TEB's reliance on adverse past performance information from another source. As noted above, the TEB learned of certain past performance information adverse to FRS, and considered the information credible because it was a statement against the interest of its author--another offeror who had been FRS's partner in a predecessor company. An agency is not limited to the "four corners" of an offeror's proposal in the evaluation of proposals, and may use other information known by its own evaluators. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 7. While the Forest Service could have given FRS the opportunity to respond to this adverse past performance information, see FAR § 15.306(a)(2), we see no basis to conclude that it was unreasonable for the agency not to do so. See NMS Mgmt., Inc., B-286335, Nov. 24, 2000, 2000 CPD ¶ 197 at 3 (in the absence of a clear basis to question adverse past performance information, agency reasonably may decide not to ask for clarification). In any event, FRS's focus on the agency's reliance on this information ignores the basic problem with its proposal. Quite simply, it was the responsibility of FRS to demonstrate in its proposal past performance relevant to the instant procurement; it was not the agency's obligation during the evaluation process to fill in the gaps. Since FRS had the burden of submitting an adequately written proposal, yet failed to do so, we have no basis to question the reasonableness of the agency's evaluation.<sup>7</sup> G&M Indus., B-290354, July 17, 2002, 2002 CPD ¶ 125 at 4.

FRS also protests that the agency evaluated technical proposals against an unstated requirement as evidenced by its determination that the type of herbicide sprayer FRS proposed would never be considered acceptable. FRS argues the solicitation should have expressly stated that certain sprayer systems would not be considered, or alternatively, specified the design and air flow characteristics of the sprayers that would be considered acceptable. The protester's allegation here is not supported by the record. The Forest Service's evaluation did not find FRS's proposed sprayer to be unacceptable. Rather, the record shows that the agency found the awardee's

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solicitation expressly states that the information should be furnished, and where the information is readily available to the offeror. Menendez-Donnell & Assocs., B-286599, Jan. 16, 2001, 2001 CPD ¶ 15 at 4.

<sup>7</sup> The protester also asserts that the Forest Service's evaluation of its proposal was biased. Government officials are presumed to act in good faith and, where a protester contends that contracting officials are motivated by bias or bad faith, it must provide convincing proof, since our Office will not attribute unfair or prejudicial motives to procurement official on the basis of inference or suppositions. ACC Constr. Co., Inc., B-289167, Jan. 15, 2002, 2002 CPD ¶ 21 at 4. Here, FRS has not provided any proof, convincing or otherwise, to support this allegation.

sprayer preferable to FRS's, a determination that in no way created an unstated requirement for a certain type of sprayer.

The protest is denied.

Anthony H. Gamboa  
General Counsel