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**Comptroller General
of the United States**

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

Decision

Matter of: Delco Industrial Textile Corporation

File: B-292324

Date: August 8, 2003

Wendy Diane Wayland, Esq., Cozen & O'Connor, for the protester.
Brandon Hoffmann, Weckworth-Langdon, an interested party.
Robert L. Mercadante, Esq., Defense Logistics Agency, for the agency.
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protester's assertion that its subcontractor bore responsibility for untimely delivery under its prime contracts with the agency presents no basis for questioning the agency's downgrading of protester's proposal based on conclusion that its delivery record under those contracts was poor; agency's evaluation properly was based on its reasonable perception of prior performance problems and, in any case, a prime contractor under a government contract is generally responsible for the performance of its subcontractors.

DECISION

Delco Industrial Textile Corporation protests the award of a contract to Weckworth Manufacturing, Inc. d/b/a Weckworth-Langdon under request for proposals (RFP) No. SP0560-02-R-0376, issued by the Defense Logistics Agency (DLA), Defense Supply Center Philadelphia (DSCP), for sling cargo nets. Delco contends that the award decision was unreasonable.

We deny the protest.

The RFP, issued July 3, 2002 as a small business set-aside, anticipated the award of a fixed-price contract for quantities of nylon, sling cargo nets, for use in moving cargo from ship to ship by helicopter. The RFP instructed offerors to provide a list of prior contracts performed, along with references. The solicitation also advised offerors that past performance would be evaluated using DLA's Automated Best Value System (ABVS), which assigns firms a numeric score based on their performance history, including delinquencies, length of delinquencies, contractor-caused

cancellations, product nonconformance, and packaging nonconformance. The ABVS score is comprised of a Federal Supply Class (FSC) score, which represents the offeror's DLA-wide performance for that FSC, and a DLA score, which reflects the offeror's performance for all FSCs.¹ RFP at 20. Both the FSC and DLA scores include scores for quality and delivery.

The RFP provided for award to the offeror whose proposal, conforming to the solicitation, was determined to be the "best value" to the government based on past performance, price and other related factors. The past performance factor included three subfactors: (1) product quality--conformance to contract requirements, specifications, and standards of good workmanship; (2) delivery--timeliness of performance; and (3) business relations--effective management and commitment to customer satisfaction. Performance was more important than price, and quality performance was more important than delivery performance. The non-price factors combined were significantly more important than price.

Ten proposals, including Delco's and Weckworth's, were received by the closing time. Following a request for clarification of past performance information and issuance of an amendment increasing quantities and extending delivery dates, six offerors, including Delco and Weckworth, submitted final proposal revisions. In the evaluation, DSCP determined that Weckworth's proposal, priced at \$1,823,406, offered the best value, with FSC and DLA quality scores of 100, an FSC delivery score of 78.1, and a DLA delivery score of 86.6. Agency Report (AR), Tab 10, Source Selection Decision Document, at 2. Delco's proposal, priced at \$1,881,800, also was evaluated with FSC and DLA quality scores of 100, and received an FSC delivery score of 82.2 and a DLA delivery score of 96.1. Id.

Although Delco's ABVS delivery scores were slightly higher than Weckworth's, the agency ultimately concluded that Weckworth's delivery performance was superior to Delco's based on information in Delco's proposal regarding late deliveries under two current contracts. Specifically, the protester noted that, under one current contract, it was late delivering three items: one item was to be delivered by February 8, 2003 but was not delivered until March 25, 47 days late; a second item had a contract delivery date of February 8 but was not delivered until March 27, 49 days late; and a third item had a contract delivery date of February 15 but was not received until April 23, 46 days late. Additionally, two other items under this contract, with delivery dates of February 22 and March 1, had not yet been delivered at the time of evaluation. On the second contract, Delco's proposal noted that two items had delivery dates of April 23 but had not yet been delivered. AR at 9. DSCP was also aware (although not from Delco's proposal) that, under a recent prior contract, Delco's supplier had imposed credit/quantity limitations, and the agency ultimately

¹ In this case, the ABVS FSC scores were based on the offeror's past performance on contracts for cargo nets and items related to cargo nets.

found it necessary to purchase the webbing and supply it to Delco as government-furnished material (GFM) in order to “optimize contract delivery.” AR, Tab 10, Source Selection Decision Document, at 5.

Based on this information, the agency concluded that Delco’s “minimal edge” in ABVS delivery scores was “more than offset by 1) the positive recommendation . . . for Weckworth; 2) Delco’s current delinquencies on the same item; and 3) Delco’s production delays for this same item on a previous contract which required intervention in the form of Government Furnished Material” AR, Tab 10, Source Selection Decision Document, at 9. Since the firms were rated the same for quality performance and Weckworth’s price was lower, the agency made award to Weckworth. Upon learning of the award, Delco filed an agency-level protest. That protest was denied, and Delco then filed this protest with our Office.

Delco argues that the evaluation of its delivery performance was unreasonable because the recent late deliveries that led to the downgrading of its proposal were due, not to its own actions, but to late deliveries by its webbing supplier. Delco asserts that it had expressed its concerns to the agency about its webbing supplier, and that the agency therefore knew that Delco was not to blame for the late deliveries. Delco also asserts that the agency improperly considered allegedly incorrect information from its supplier that Delco had credit problems and a poor payment history.²

The evaluation of past performance is a matter within the discretion of the contracting agency that our Office will review to ensure that it was reasonable and consistent with the stated evaluation criteria. NLX Corp., B-288785, B-288785.2, Dec. 7, 2001, 2001 CPD ¶ 198 at 7. An agency’s past performance evaluation may be based on a reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency’s interpretation of the underlying facts. Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 5.

The evaluation here was reasonable. First, while the record shows that the agency indeed was aware that Delco held its supplier responsible for the late deliveries, the agency had no information—and the record contains none—definitively showing that Delco’s position regarding the cause of the delinquencies was the correct one. Rather, the agency was aware that the delivery problems may be due to other problems Delco was having; the agency states—without purporting to adjudicate any

² In its protest, Delco also argued that the agency improperly evaluated its quality performance because it failed to consider Delco’s extensive experience in manufacturing large quantities of cargo nets. The agency responded to this argument in its report, and since Delco did not rebut the agency’s position in its comments on the report, we consider this issue abandoned. Westinghouse Gov’t and Env’tl. Servs. Co., Inc., B-280928 et al., Dec. 4, 1998, 99-1 CPD ¶ 3 at 7 n.6.

dispute--that it had “information from more than one source that problems [with Delco] did exist and were related to a history of late payments for materials by the protester to its subcontractor.” AR at 13. The agency also was aware that, as noted above, it had been necessary for it to provide webbing to Delco to “optimize” delivery under another recent contract. As indicated above, an agency’s evaluation properly may be based on its reasonable perception of inadequate prior performance, whether or not the offeror disputes the agency’s interpretation of the facts. The agency’s perception of Delco’s performance problems clearly was reasonable, since it had no information establishing that the information it had been presented was incorrect, and there had been no formal adjudication of the matter in Delco’s favor. Contrary to Delco’s assertion, we find nothing unreasonable in the agency’s considering the information furnished by the supplier; the mere fact that Delco disputed it did not render it invalid or any less reliable than the information Delco had furnished. In any case, Delco’s attempt to absolve itself of all responsibility for the delayed deliveries is unavailing; as the agency point out, a prime contractor under a government contract is normally responsible for the performance of its subcontractors. ViaSat, Inc., B-291152, B-291152.2, Nov. 26, 2002, 2002 CPD ¶ 211 at 8; Neal R. Gross & Co., Inc., B-275066, Jan. 17, 1997, 97-1 CPD ¶ 30 at 4. Delco has not established that a different rule should apply here.

The protest is denied.

Anthony H. Gamboa
General Counsel