



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: United Ammunition Container, Inc.

File: B-275213

Date: January 30, 1997

Robert G. Fryling, Esq., Blank, Rome, Comisky & McCauley, for the protester.
Douglas Patin, Esq., and Robert Symon, Esq., Spriggs & Hollingsworth, for Omega
Container, Inc., an intervenor.

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agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. In solicitation which identifies technical approach, management, and past performance as separate and independent evaluation factors, protest that agency should have considered offeror's allegedly poor past performance record under other evaluation factors as well is denied since such consideration would have been inconsistent with solicitation evaluation scheme and led to improper exaggeration of the importance of the past performance factor.

2. Agency's evaluation of proposed option pricing based on a combination of separate prices for each range under each option, up to the maximum quantities, rather than on a single price representing the maximum quantities, is unobjectionable where it is consistent with the evaluation methodology set forth in the solicitation.

DECISION

United Ammunition Container, Inc. (UAC) protests the award of a contract to Omega Container, Inc. under request for proposals (RFP) No. DAAE30-96-R-0020, issued by the Department of the Army for the supply of inner containers for the 120 millimeter mortar. UAC challenges the agency's evaluation of Omega's past performance and its method of evaluating option prices.

We deny the protest.

The RFP contemplated award of a firm, fixed-price contract for a base quantity of 58,782 inner containers with two options for quantities of 11,000 to 80,000 and 16,000 to 115,000 units. Proposals were to be evaluated on the basis of price and

three factors, listed in descending order of importance: technical, management, and past performance. The technical factor was "overwhelmingly more important" than management and past performance combined and all three factors were considered more important than price. The evaluated price was to be determined by adding the price of the basic quantity, first article testing (FAT), and option quantities. Award was to be made to the offeror whose proposal was determined to be the most advantageous to the government.

UAC and Omega were the only two offerors submitting proposals by the August 30, 1996, closing date. Both proposals were considered unacceptable as submitted, but both were placed in the competitive range because each offeror had produced the same or similar items and the agency expected their proposal scores to increase after discussions. After the conduct of discussions and the submission of best and final offers (BAFO), the final technical evaluation was as follows:

Offeror	Technical (82)	Management (10)	Past Perf. (8)	Total (100)
Omega	81	9	3	93
UAC	79.2	10	8	97.2

The slight difference in scores was directly attributable to Omega's low rating under past performance. Taking into consideration the fact that the technical factor was significantly more important, the contracting officer determined that the proposals were essentially technically equal.

Omega's evaluated price was found to be lower than UAC's. In the price evaluation, the agency calculated option prices by multiplying the unit price for each range by the maximum quantity in each range and added the results to the FAT and basic quantity prices for each offeror. UAC also submitted an alternate price schedule, which was based on the agency's early exercise of both options and delivery of all option quantities immediately following delivery of the production quantities. The agency did not consider this offer since it took exception to the RFP's stated delivery schedule and because the agency was unable, for funding and other reasons, to exercise the options so soon.

Based on its finding of technical equivalency and that Omega's evaluated price was lower than UAC's, the agency awarded the contract to Omega. After receiving notice of the award and a debriefing, UAC filed this protest challenging the technical and price evaluations.

In its original price evaluation, Omega's evaluated price was lower than UAC's proposed price by more than \$500,000 and lower than UAC's alternate price by

approximately \$75,000. After reviewing the protest, the agency realized it had improperly calculated prices for more option units than could be ordered under the terms of the contract. The agency recalculated the prices based upon the maximum number of units and found that Omega's evaluated prices remained lower than UAC's proposed price by approximately \$235,000 and lower than its alternate price by approximately \$11,000.

EVALUATION OF PAST PERFORMANCE

Where an evaluation is challenged, we will examine the evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. Mere disagreement with the agency's evaluation does not itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

UAC contends that the evaluation of Omega's proposal was flawed because the agency only considered Omega's past performance record under the "past performance" factor. UAC observes that under the technical factor, the most important of six subfactors was "manufacturing approach." Among other matters, an offeror's manufacturing approach was evaluated on the basis of the offeror's ability to identify all of the general/critical manufacturing processes associated with fabrication of its design; the procedures in place for each process; its availability of plant, equipment, and qualified personnel; and a showing that production flow from these processes would meet the delivery schedules. Under the management factor the agency evaluated the performance of the offeror's organization. In UAC's view, an offeror's ability to meet delivery schedules had an impact on these subfactors, hence Omega's past performance should have been considered under them, and its technical score should have been lower. We disagree.

UAC's contentions ignore the RFP's explicit evaluation scheme which provided for the evaluation of past performance under the "past performance" factor. To this end, offerors were required to submit a record of previous and current experience and performance on similar/related efforts over the last 3 years, specifically identifying those efforts of equal or greater complexity performed using the offeror's existing plant capability. Under this factor, the agency intended to assess performance risks based on an offeror's past performance by examining the offeror's record of performance in connection with cost, schedule, quality of product, timeliness of performance, business practices, and customer significant achievement. In other words, the agency was to evaluate how an offeror might perform, based on how it performed in the past. This is distinct from what the agency sought to evaluate under the manufacturing approach subfactor, that is, an offeror's current ability to meet the RFP's requirements based on how it proposed

to do so and whether it currently possessed an adequate facility and qualified personnel to ensure timely performance. Thus, had the agency considered past performance under this subfactor, it would have deviated from the RFP evaluation scheme and improperly double counted or otherwise exaggerated the importance of the past performance factor.¹ See J.A. Jones Management Servs., Inc., B-254941.2, Mar. 16, 1994, 94-1 CPD ¶ 244.

UAC also contends that the agency failed to consider Omega's past performance in its assessment of which proposal represented the best value. The record establishes otherwise. In making her award determination, the contracting officer recognized the overwhelming importance of the technical factor and the substantially lesser significance of the past performance factor. She also noted that Omega's past performance score of 3 out of 8 points was attributable to a lack of sufficient detailed information regarding cost and schedules in Omega's proposal. She also considered that, during the evaluation, the agency contacted other sources familiar with Omega's past performance who indicated that Omega's performance was satisfactory and that any delays previously experienced were either insignificant or excusable.² In light of this information and Omega's higher score in the technical area, the contracting officer found that the 4.2-point difference between the proposals' merit ratings was insignificant and that the two proposals were essentially technically equal, which led her to award the contract to Omega, the offeror with the lowest-evaluated price. We see nothing unreasonable with the contracting officer's determination. To the extent UAC disagrees with the lesser significance placed on past performance, its protest of this solicitation provision after award is untimely. Bid Protest Regulations, Section 21.2(a)(1), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(1)).

¹In a related argument, UAC contends that the agency improperly considered contracts of smaller size than that contemplated by the RFP. However, the RFP did not make performance of similarly sized contracts a matter for specific consideration in the past performance evaluation. Rather, the agency sought information about similar efforts of greater or equal complexity. While contract size may be relevant to contract complexity, the fact that the contract to be awarded is larger in size (e.g., more units must be delivered) does not necessarily mean that the larger contract is more complex. See PMT Servs., Inc., B-270538.2, Apr. 1, 1996, 96-1 CPD ¶ 98. Here, the agency explains, without contradiction, that the containers to be supplied are not complex items and both offerors elected to use the government's technical data package rather than develop their own design.

² While the agency made no adjustment to Omega's past performance score at that time, it now states that the additional information it received warranted a three-point increase under Omega's past performance assessment.

EVALUATION OF OPTION PRICES

According to the RFP, options were to be evaluated for award purposes by adding the total price for the highest quantity of each option range to the total price for the basic requirement. Section B.1 of the RFP provided space for option unit prices as follows: "Option I . . . Ranges" (11,000 to 35,000; 35,001 to 60,000; 60,001 to 80,000); and "Option II . . . Ranges" (16,000 to 50,000; 50,001 to 84,000; 84,001 to 115,000). As originally conducted, the evaluation of options complied literally with the provisions of the RFP and the agency arrived at option prices representing 175,000 units under Option I and 249,000 units under Option II. However, the maximum quantities which could be ordered under the options were 80,000 and 115,000 units, respectively.

After UAC challenged this methodology in its protest, the agency recognized that it was improper for it to have calculated the total option prices based upon quantities exceeding those which could be ordered under the RFP's option clauses, and reevaluated the option prices for each range by multiplying the unit price for the first range under each option by the maximum quantity for that range and by multiplying the remaining two ranges by the representative difference in the ranges. For example, under Option I, it multiplied the first range's unit price by 35,000, the second range's unit price by 24,999 (the difference between 35,001 and 60,000), and the third range's unit price by 19,999 (the difference between 60,001 and 80,000).³ Because Omega's prices remained lower than either UAC's proposed or alternate prices, the agency determined that the award was proper.

UAC now challenges the agency's reevaluation of option prices. In UAC's view, the agency was required to evaluate option prices by calculating the price only of the highest quantity for each option. That is, instead of calculating three separate prices for each range, the agency should have used the unit price for the highest range to multiply the maximum number of units in each of the two options. Using UAC's method, its alternate proposal would be lower in price than Omega's.

UAC's suggested method gives no effect to the plain language of the RFP that options would be calculated by "adding the total price for the highest quantity of each option range." (Emphasis added.) Since the RFP identified three separate ranges and called for prices for each range of the two options, the RFP clearly contemplated adding three separate quantity prices to calculate the prices of each option. While UAC's suggested method might be reasonable under a different RFP

³The protester points out that the combined figure does not represent the maximum number of option quantities under each option. While this is true, the resulting difference in each offeror's price is less than \$40, an insignificant figure which has no impact on this procurement.

provision, it is not a reasonable interpretation of the option evaluation clause here. We find nothing objectionable or unreasonable in the agency's reevaluation methodology.

In any event, the agency explains that UAC's alternate proposal represented an unacceptable, material change to the terms of the solicitation. The RFP provided a detailed delivery schedule calling for the FAT to be completed 8 months after contract award; production quantity in two parts at 9 and 10 months after award; Option I quantities (assuming the maximum ordered) in three parts at 2, 3, and 4 months after option award; and Option II quantities (assuming a maximum order) at 2, 3, 4, and 5 months after Option II award. The options could be exercised/awarded within 12 months (Option I) and 20 months (Option II) of contract award.

UAC's alternate pricing was contingent on the agency's early exercise of the options and agreement to accept delivery of option quantities immediately following delivery of the basic quantity. As the agency correctly observes, in order to consider UAC's alternate offer it would have had to amend the RFP to allow Omega to submit an offer on the same terms. The agency chose not to issue an amendment and not to consider the alternate pricing because funding contingencies and the additional risk to the agency from exercising options prior to the completion of the FAT made the proposed contingencies unacceptable.⁴

The protest is denied.

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⁴UAC also argues that by failing to advise it that these terms were unacceptable, the agency failed to conduct meaningful discussions. While the agency did not expressly state that it considered the alternate proposal unacceptable and why, the agency did advise UAC that all terms and conditions of the solicitation remained as stated in the initial solicitation and would not be changed. Under the circumstances of this case, we believe this was sufficient to lead UAC into this area of its proposal which clearly sought to change terms and conditions of the solicitation. Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530. UAC further claims that had it been more plainly told that its alternate terms were unacceptable, it would have deleted those terms and left its alternate pricing unchanged. Since UAC's primary BAFO, proposing a significantly higher price, was already based on the RFP's terms, we find this argument implausible as it is contradicted by UAC's extant pricing methodology.