



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: SDV Telecommunications

File: B-279919

Date: July 29, 1998

Christopher T. Voors for the protester.

Jacquelyn A. Redditt, Esq., Department of the Navy, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where record shows that both protester and awardee had difficulties in performing prior contracts for maintenance and repair of communications equipment, agency's evaluation, which concluded that there was no significant difference in the past performance of the two offerors, and selection of the lower-priced proposal were reasonable and consistent with solicitation.

DECISION

SDV Telecommunications protests the award of a contract to Carrier Communications under request for proposals (RFP) No. N689936-98-R-0060, issued by the Department of the Navy for maintenance and repair of communication equipment. The protester challenges the agency's evaluation of the awardee's past performance.

We deny the protest.

On February 19, 1998, the agency issued the RFP for a fixed-price indefinite-delivery, indefinite-quantity contract, for a base period with three 1-year option periods, to provide preventive maintenance and remedial repair of ground-based communication equipment at the Naval Air Weapons Station at Point Mugu, California. The RFP provided for award based on the offer most advantageous to the government, considering price and other factors, including past performance, which were "significantly less important" than price as selection criteria. RFP § M.

The agency received five proposals and established a competitive range of three. As a result of discussions, the agency reduced the competitive range to two--SDV and Carrier--and requested best and final offers (BAFO). Carrier offered a lower price than SDV. After review of the BAFOs, the agency determined that the two offers were essentially equal technically and that either offeror could adequately

perform the work required. Since Carrier offered a lower price than SDV, the agency selected Carrier for award.

The protester challenges the agency's evaluation of Carrier's past performance. Specifically, SDV states that it is the incumbent contractor and took over performance from Carrier, the previous incumbent, in September 1997. The protester contends that, at the beginning and throughout its performance of the current contract, it identified many instances of substandard performance by Carrier. Considering this poor performance by Carrier on the previous contract, SDV contends, it was unreasonable to consider Carrier's proposal technically acceptable under the criterion of past performance.

In reviewing an agency's evaluation and selection decisions, we examine them to ensure that they were reasonable and consistent with the stated criteria. LTR Training Sys., Inc., B-274996, B-274996.2, Jan. 16, 1997, 97-1 CPD ¶ 71 at 4. The evaluation of proposals is by its nature often subjective; the protester's mere disagreement with the evaluation does not demonstrate that the evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 6-7. The record here supports the agency's determination that, in terms of past performance, there was no essential difference between the two offerors.

With respect to Carrier's performance of the previous contract, the record shows that, in general, the agency found Carrier disorganized but cooperative, and its personnel experienced. Carrier's performance was considered satisfactory, it was flexible in working with the requiring activity, and it always ensured that there were enough personnel to handle the workload. After SDV assumed responsibility for repairs from Carrier, the agency found problems with the records of work in progress left by Carrier, as well as with identifying the organizations to which equipment in repair belonged. The agency concluded, however, that these problems could be avoided under a new contract by additional monitoring by the contracting officer's representative.

With respect to SDV's performance, the record shows that the agency found the quality of SDV's work superior, but that equipment often stayed in the shop for 1 to 3 months, well past the contract's 10-day requirement. In addition, apart from the supervisor, SDV's personnel had limited experience, and the staff's responsiveness to concerns was highly dependent on whether the supervisor was present at any particular time.

Based on the record here, we see no basis to question the agency's determination that Carrier's past performance was acceptable, or to conclude that its performance problems were materially different in nature from those noted in SDV's past performance, such that it was improper to rate both firms acceptable in the area of past performance. Since the agency reasonably concluded that Carrier and SDV were essentially equivalent in the area of past performance--as well as under the

other technical evaluation factors, none of which is at issue here--the selection of Carrier, which offered a lower price than SDV, was reasonable and consistent with the RFP, which placed primary emphasis on price.¹

The protest is denied.

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¹The protester suggests that, by failing to perform preventive maintenance under the prior contract, while submitting monthly invoices, Carrier was filing false claims. Such allegations of criminal conduct are within the cognizance of the Department of Justice; they are outside the scope of our bid protest function. All Rite Rubbish Removal, Inc., B-241288, Jan. 31, 1991, 91-1 CPD ¶ 99 at 3.