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Decision

Matter of: Thomas Brand Siding Company, Inc.

File: B-286914.3

Date: March 12, 2001

Kenneth T. Roberts, Esq., Roberts & Bishop, for the protester.
John D. Inazu, Esq., and Russell R. Sibbel, Esq., Department of the Air Force, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under solicitation that provided that submission of fewer than three questionnaires from offeror's past performance references could be regarded as inadequate to evaluate offeror's past performance, agency reasonably assigned past performance rating of neutral/unknown confidence to offeror for whom it received only one relevant contract reference.

DECISION

Thomas Brand Siding Company, Inc. protests the evaluation of its proposal under request for proposals (RFP) No. F25600-00-R0145, issued by the Department of the Air Force for military family housing maintenance services at Offutt Air Force Base, Nebraska. Specifically, the protester objects to the agency's rating of its past performance as neutral/unknown confidence.

We deny the protest.

The RFP, which was issued on September 15, 2000, contemplated the award of a requirements contract for a base period of 10 months and four option periods of 1 year each. Services to be performed include quarters cleaning, painting, refinishing of hardwood floors, refinishing and replacement of bathroom fixtures, replacement of outlets, and appliance replacement. The solicitation provided that two factors, past performance and price, would be considered in the evaluation of proposals, with past performance of significantly greater importance than price.

To facilitate evaluation of their past performance, offerors were instructed to identify not more than five recent, simultaneously-managed, multi-discipline service

projects of varying complexity, each exceeding \$500,000. RFP amend. 2, at 2. Offerors were to furnish copies of a past performance questionnaire to the agencies/firms responsible for the administration of these projects. The RFP advised offerors that they were responsible for ensuring that their references received, completed, and returned the questionnaires to the issuing office on time. Id. at 3. The RFP further advised that “[t]ypically, less than 3 submitted questionnaires could be regarded as inadequate to properly evaluate an offeror’s past performance.” Id. Elsewhere, the RFP defined relevant experience for purposes of the solicitation as “similar end items (i.e., Family Housing maintenance on at least 1,000 units, multiple projects concurrently accomplished, and efforts with similar services),” and provided that “[c]urrent and relevant performance will have greater impact in the performance confidence assessment than less recent or non-relevant performance.” Id. at 5.

[Deleted] offerors submitted proposals by the October 23 closing date. Upon initial evaluation, the agency evaluators assigned Brand a past performance rating of neutral/unknown confidence because past performance questionnaires had been received from only two of its references. Because Brand had submitted the lowest-priced proposal, the agency contacted it regarding its neutral rating, informing the protester that questionnaires had been received from Maxwell and Shaw Air Force Bases (AFB) only. The protester responded by contacting a third reference to whom it had furnished a past performance questionnaire, the contracting officer for a contract that it was performing at Fort Benning, Georgia, to find out why a completed questionnaire had not been submitted. The Fort Benning contracting officer responded by furnishing a copy of a past performance questionnaire to the evaluators.

Upon receipt of the questionnaire from Fort Benning, agency officials informed Brand that they would not consider it because the reference had completed the wrong form. (Amendment 2 to the RFP, issued on October 10, included a revised past performance questionnaire, which offerors were to furnish to their references; Brand’s Fort Benning reference instead submitted a copy of the past performance questionnaire that had been included in the original RFP.) On November 7, the reference furnished a copy of the correct questionnaire to the contracting office, but the evaluation board again refused to consider it.

On November 10, the protester filed an agency-level protest requesting acceptance of the corrected questionnaire. The agency denied the protest, and on December 1, Brand filed a protest with our Office. On December 5, the Air Force notified our Office that it had decided to take corrective action with regard to the protest and that it would accept the revised questionnaire.

The evaluation panel rated Brand's performance on the Fort Benning contract as exceptional/high confidence, but determined that Brand's overall past performance rating should remain as neutral/unknown confidence because even after the Fort Benning questionnaire was taken into account, the protester lacked three relevant references. In this regard, the evaluators had found at the time of the initial evaluation that neither the Maxwell nor the Shaw AFB contracts, both of which involved protective coating maintenance, were for relevant services.

The prices and past performance ratings of the three lowest-priced offerors were as follows:

<u>Offeror</u>	<u>Price</u>	<u>Confidence Rating</u>
Thomas Brand	\$15,799,025	Unknown (Neutral)
[Deleted]	\$16,824,388	Unknown (Neutral)
DGR	\$16,839,661	High Confidence

The source selection authority determined that DGR's higher confidence rating was worth its additional cost and that DGR's proposal represented the best value to the government. On December 14, the agency awarded DGR a contract. The agency debriefed Brand by telephone on December 28, and Brand filed a protest with our Office on January 5, 2001.

Brand objects to several procedural aspects of its past performance evaluation. First, the protester complains that the composition of the evaluation board was changed.

The record shows that the original contracting officer, who was one of four members of the evaluation board, retired and was replaced as contracting officer and as a member of the evaluation board prior to completion of the evaluation process. We see nothing objectionable in this substitution, nor does the record in any way suggest that the protester was prejudiced by it. The only questionnaire that was evaluated after the substitution was the Fort Benning one, and Brand received a rating of exceptional/high confidence on it. To the extent that Brand argues that it was the replacement contracting officer who determined that offerors with fewer than three relevant questionnaires would receive past performance ratings of neutral, the record does not support the protester's position; rather, it shows that this standard had already been adopted by the evaluators at the time of the initial past performance evaluation (*i.e.*, prior to replacement of the contracting officer). In the proposal evaluation report (Section II Evaluation of Proposals--Past Performance Assessment), the assessments of three offerors other than the protester open with the following two sentences: "Two (2) past performance questionnaires were submitted. The offeror was rated Neutral/Unknown confidence for failure to provide adequate relevant past performance information in accordance with the solicitation."

Next, the protester complains that the replacement contracting officer should not have been involved in the reevaluation of its past performance because she had denied its earlier agency-level protest seeking consideration of the Fort Benning questionnaire.

The protester is arguing, in essence, that the replacement contracting officer was biased against it, but we see no evidence of such bias in the record. Clearly, the contracting officer did not influence the evaluation panel negatively in its evaluation of the Fort Benning questionnaire since Brand received a rating of exceptional/high confidence on it. Moreover, to the extent that Brand is suggesting that at the time of its past performance reevaluation, the replacement contracting officer influenced the evaluation panel to change its assessment of the Shaw and Maxwell AFB contracts, the agency reports that the determination of irrelevance with regard to these two contracts was made at the time of the initial past performance assessment, before the substitution of personnel. Contracting Officer's Statement, Jan. 18, 2001, at 2.

Third, Brand argues that it was unfair for the evaluators to have discussed and rated the Fort Benning questionnaire via teleconference when they met in person to rate other offerors' past performance. Since the protester has failed to offer any explanation--and we fail to see--how it was injured by the decision to discuss via telephone rather than in person, we see no merit in this argument.

Brand also takes issue with the agency's rating of its past performance, arguing that it was unreasonable to give it a rating of neutral/unknown confidence because it had fewer than three relevant references. In the alternative, the protester asserts that all three of its references were in fact relevant.

Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria, since determining the relative merits of offerors' past performance information is primarily a matter within the contracting agency's discretion. DGR Assocs., Inc., B-285428, B-285428.2, Aug. 25, 2000, 2000 CPD ¶ 145 at 11. Here, we see no basis to object to the evaluation.

Regarding the protester's first argument, it was clearly consistent with the terms of the solicitation, which provided that "[t]ypically less than 3 submitted questionnaires could be regarded as inadequate to properly evaluate an offeror's past performance," RFP amend. 2, at 3, for the agency to assign offerors with fewer than three questionnaires a past performance rating of neutral/unknown confidence. Moreover, we think that the agency reasonably viewed fewer than three questionnaires as an inadequate basis upon which to evaluate an offeror's past performance and on that basis assigned a neutral rating.

Regarding the protester's argument that its contracts at Shaw and Maxwell AFBs should have been viewed as relevant, the solicitation explicitly defined relevant

experience as “similar end items (i.e., Family Housing maintenance on at least 1,000 units, multiple projects concurrently accomplished, and efforts with similar services.” RFP amend. 2, at 5. Neither the Shaw nor the Maxwell AFB contracts involved the range of housing maintenance services called for under the solicitation here (e.g., quarters cleaning, refinishing of hardwood floors, refinishing and replacement of bathroom fixtures, replacement of outlets, and appliance replacement); instead, both focused more narrowly on protective coating maintenance services. Given that the RFP placed offerors on notice that only contracts for family housing maintenance and efforts with similar services would be viewed as relevant experience, we think that the evaluators reasonably determined that Brand’s contracts for protective coating maintenance at Shaw and Maxwell AFBs were not relevant. See Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4.

The protester also complains that the RFP placed responsibility for ensuring that the past performance questionnaires were completed and returned on the offeror, who in fact has no control over whether its references fill out and return the forms.

The protester’s objection is untimely because it is based upon an alleged impropriety in the solicitation, which was not protested prior to the closing time for receipt of proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2000). In this regard, the RFP, as revised by amendment 2, explicitly provided that “[o]fferors are responsible to ensure that their reference sources receive, complete, and return the questionnaires on time to the issuing office.” RFP amend. 2, at 3. In any event, it appears that the failure of two of Brand’s references to return past performance questionnaires did not have an impact on the protester’s past performance rating because both of the contracts for which questionnaires were not returned were also for protective coating maintenance services and, as such, would have been regarded by the evaluators as irrelevant.

Finally, Brand argues that the agency should have selected its proposal, which was lowest in price, for award because its past performance confirmed that it had the capability to perform.

The RFP here did not provide for award to the lowest-priced responsible offeror; it provided for award to the offeror whose combination of past performance and price represented the best value to the government. The evaluators determined that DGR’s offer, while higher in price than Brand’s, represented the best value to the government because DGR had received a past performance rating of high confidence, whereas Brand had received a neutral rating. Since such a

determination was both reasonable and consistent with the stated evaluation scheme, we see nothing objectionable in it.

The protest is denied.

Anthony H. Gamboa
General Counsel