



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Crown Clothing Corporation

File: B-277505.2

Date: October 31, 1997

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Maria Ventresca, Esq., Defense Logistics Agency, for the agency.

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

DIGEST

1. Protest challenging agency's evaluation of awardee's past performance is denied where the record shows that the evaluation was reasonable and consistent with the evaluation criteria set forth in the solicitation.
 2. Protest challenging source selection decision in best value procurement is denied where agency reasonably concluded that the protester's higher-priced proposal offered no advantages that warranted paying the associated price premium.
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DECISION

Crown Clothing Corporation protests the evaluation of proposals and the source selection decision under request for proposals (RFP) No. SPO100-96-R-0213, issued by the Defense Personnel Support Center (DPSC), a field activity of the Defense Logistics Agency, for the manufacture of Army dress coats for men.

We deny the protest.

The RFP was issued in December 1996, as a total small business set-aside, to serve in part as a formal market survey to permit the agency to decide whether the current market offered a better value than could be obtained by exercising an option available under an existing contract. It contemplated the award of an indefinite quantity contract for the manufacture of Army dress coats, listing maximum and minimum quantities for a base year with 1 option year. The RFP, at section L, advised offerors that proposals would be evaluated for both technical merit and price reasonableness, following the evaluation procedures in section M of the RFP. The solicitation stated that award would be made to the responsible offeror whose offer conformed with this solicitation and was most advantageous to the government. In that regard, the RFP stated that technical quality was more

important than cost or price, but that, the more proposals were equal in their technical merit, the more important evaluated cost or price would be.

The RFP stated that technical proposals would be used to assess the efficiency of the offeror's production methods and the effectiveness of their quality control procedures.

Offerors were instructed to submit a sample coat, referred to as a "product demonstration model" (PDM), as part of their proposals. The RFP identified the specification for the PDM as MIL-C-44211B and stated that the failure of a model to conform to all requirements of the specification could result in an unfavorable evaluation of the offer.

The RFP listed the following technical evaluation factors, in descending order of importance:

1. Product Demonstration Model
2. Past Performance
3. Electronic Data Interchange Capability
4. Manufacturing Plan [with four subfactors]
5. Quality Assurance Plan
6. Socio-Economic Program Support

The RFP provided some narrative guidance regarding the basis for evaluating each of these factors. For example, it stated that the PDM would be evaluated for conformance to visual and dimensional requirements of the specification and standard. Regarding past performance, it stated that the assessment of past performance would be used in two ways: to evaluate the credibility of the offeror's proposal, and to evaluate the relative capability of the offeror and the other competitors to meet the performance requirements of the proposed contract. Further, it stated that evaluation of past performance would be a subjective assessment based on a consideration of all relevant facts and circumstances and would not be based on absolute standards of acceptable performance. Offerors were instructed to describe their experience with producing the same or a similar item within the last 2 years. The RFP required offerors to describe both delivery and quality performance under government and commercial contracts and advised offerors to furnish an explanation of substandard quality and/or delinquent delivery, where applicable.

The RFP provided that after technical evaluation, technical proposals would be given an adjectival rating of highly acceptable, acceptable, marginally acceptable, or unacceptable. The RFP provided some description of the adjectives' application to each of the evaluation factors. For example, it stated that a highly acceptable PDM would meet the stated requirements of the specification and have no deficiencies, whereas an acceptable PDM would meet the stated requirements of the

specification but would exhibit deficiencies that would be easily correctable during production.

Four firms, including Crown, submitted proposals with PDMs. Technical proposals were evaluated and given adjectival ratings. After reviewing the evaluations, the contracting officer assigned an overall rating to each proposal. Crown's proposal and the proposal of one other offeror, DeRossi and Son Co., were rated acceptable overall, based on the following ratings:

	Crown	DeRossi
PDM	Acceptable	Highly Acceptable
Past Performance	Acceptable	Acceptable
EDI	Acceptable +	Acceptable +
Mfg. Plan	Acceptable	Acceptable
Q/A Plan	Acceptable	Acceptable
Overall	Acceptable	Acceptable

The remaining two proposals received lower ratings. DeRossi's price was the lowest submitted and was substantially lower than Crown's price, which was the highest for both the base year and the option year.

The contracting officer determined that DeRossi's proposal represented the best value to the government, based on its technical superiority and low price. The contracting officer also determined that it would be more beneficial to award a contract under the solicitation at issue than to exercise the available option. The contract was awarded to DeRossi without discussions (as permitted by the terms of the solicitation), and this protest followed.

Crown protests that it was unreasonable for DeRossi's proposal to receive an acceptable rating for past performance, that Crown's PDM should have been rated highly acceptable, and that the RFP award provision required that the source selection decision be based solely on technical factors without considering price.

In reviewing whether a proposal was properly evaluated, our Office will not reevaluate the proposal, as the determination of whether a proposal meets the contracting agency's needs is a matter within the agency's discretion. We will

examine the record to determine whether the evaluators' judgments were reasonable and consistent with the stated evaluation criteria. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 2. Here, the record supports the agency's evaluation of DeRossi's and Crown's proposals.

At the core of the past performance evaluation issue is a dispute regarding the performance of a prior DPSC contract under which DeRossi was the prime contractor and Crown performed as subcontractor. This contract, No. 95-C-0311 (-0311), was awarded to DeRossi in 1995 for the manufacture of approximately 177,000 Air Force dress coats. DeRossi subcontracted for approximately 15,000 coats with Crown. During the course of performance, slightly fewer than 4,000 coats that were produced by Crown were found to be defective and were ultimately repaired or replaced by DeRossi. Crown essentially argues that responsibility for the deficiencies under that contract should be assessed against DeRossi as the prime contractor. However, while Crown and DeRossi vigorously dispute many aspects of the performance of that contract, the record shows that Crown's President admitted responsibility for the problem at the time it occurred, stating that the defects were caused by a breakdown in Crown's sewing section.¹ Although a prime contractor is responsible for the performance of its subcontractor, Neal R. Gross & Co., Inc., B-275066, Jan. 17, 1997, 97-1 CPD ¶ 30 at 4, a protester will not be heard to challenge the past performance of a competing offeror as a prime contractor based on its deficient performance as that competing offeror's subcontractor. Particularly in light of Crown's concession, the agency reasonably viewed Crown as primarily responsible, since the defective articles were produced by Crown and shipped directly by Crown to the agency, whereas the coats that DeRossi produced were both acceptable and delivered within the established schedule. Moreover, even if DeRossi is considered responsible based on its obligation as the prime contractor, the agency reasonably rated DeRossi's proposal acceptable overall for past performance based on other information in the record that is not disputed.

The RFP instructed offerors to describe their experience with producing the same or a similar item within the last 2 years. DeRossi's proposal listed contracts under which it was currently performing and an additional 14 contracts for men's and women's coats that had been awarded to the firm since 1994; for each of these, delivery was made on or ahead of schedule. The evaluation sheet noted that the

¹Crown raises a number of allegations concerning that contract's performance, such as whether additional defects were present in coats manufactured by DeRossi that should have caused the rejection of additional lots (but did not) and whether the agency held Crown responsible for the deficient coats under the evaluation of Crown's proposal under other solicitations, which are simply not relevant to the issue of whether DPSC's evaluation of past performance under this procurement was reasonable.

standard for past performance is met when "[p]revious performance demonstrates ability to meet contract delivery schedules without significant quality problems." Under the evaluation scheme established in the RFP, an acceptable rating for past performance is given when an "[o]fferor's record of past performance demonstrates an acceptable commitment to customer satisfaction and an overall record of timely delivery of quality products/services." The evaluation sheet for DeRossi's proposal includes the following summary narrative justification of the rating given to DeRossi for this factor:

Highly experienced. Deliveries are always on time or ahead of schedule. One quality problem noted but only on the portion subcontracted to Crown. To DeRossi's credit, this portion they quickly replaced/repared. No negative impact on supply position.

Regardless of whether DeRossi or Crown was ultimately responsible for the defective coats under contract -0311, it is clear from the record that these coats represent a small fraction of the coats delivered under that contract, and an even smaller fraction of the total deliveries made by DeRossi during the 2-year period being evaluated. Further, the agency explicitly took into account the performance problem that Crown insists should be attributed to DeRossi but also recognized that DeRossi had repaired or replaced the defective coats quickly enough to still meet its deadline under that contract. In view of the fact that DeRossi had performed all of the other numerous contracts listed in its proposal without any deficiencies and in a timely manner, the agency had a reasonable basis for its determination that DeRossi's overall past performance "demonstrates ability to meet contract delivery schedules without significant quality problems." In short, we conclude that the acceptable rating given to DeRossi's past performance gives appropriate consideration to DeRossi's performance under contract -0311 and was reasonable and consistent with the terms of the RFP.

Crown also objects to its own evaluation under the past performance factor, arguing that it should have been rated highly acceptable. The record shows that Crown listed six contracts that it had performed, including the subcontract with DeRossi. Although four of the five contracts that Crown performed as the prime contractor were delivered on or ahead of schedule, under one of its larger-volume contracts, the firm's delivery was late by nearly 3 weeks and the delinquency was considered inexcusable. In order to satisfy the standard established in the RFP for a highly acceptable rating for this factor, an offeror's record of past performance must demonstrate "an exceptional commitment to customer satisfaction and a superior overall record of timely delivery of quality products." Crown's inexcusable delinquency under one of its large volume contracts by itself provides a reasonable basis for the agency's conclusion that Crown's performance record fell short of the highly acceptable standard, and instead fell under the standard of demonstrating "an acceptable commitment to customer satisfaction and an overall record of timely delivery of quality products." In sum, the record simply does not support Crown's

contention that its past performance record should have been rated higher than DeRossi's.

Crown also argues that the agency improperly considered price in its source selection decision. Crown alleges that the agency's deletion of a requirement in the RFP evaluation section for a "business evaluation," which calls for pricing information and a cost realism evaluation, "tells offerors distinctly that technical qualifications will be the determining factors regardless of prices offered."

This argument is frivolous. The RFP stated that the award would be made to the offer that was most advantageous to the government and it clearly indicated that price was part of this assessment. Further, the evaluation provision specifically stated that price would become more important as technical proposals became more equal in technical merit. Crown's reading of the solicitation is inconsistent with the terms of the selection clause and would call for the legally impermissible selection of the highest technically rated proposal without consideration of cost. Such a result is inconsistent not only with the RFP but with the requirement in the Competition in Contracting Act of 1994 (CICA) that the government consider cost or price as a significant factor in all its selection decisions. See 10 U.S.C. § 2305(a)(2)(A) (1994); Federal Acquisition Regulation § 15.605(b)(1)(i). An evaluation and source selection which fails to give significant consideration to cost is inconsistent with CICA and cannot serve as the basis for a reasonable source selection. See Coastal Science and Eng'g, Inc., 69 Comp. Gen. 66, 67-68 (1989), 89-2 CPD ¶ 436 at 3.

DeRossi proposed the lowest price, and the total price difference between DeRossi's proposal and Crown's proposal was more than a million dollars in a procurement with a total value of approximately \$16 million. Even if Crown's overall technical rating were equal to DeRossi's, which would be the case if the rating for its PDM were changed to highly acceptable,² the price difference would justify the selection of DeRossi as the best value offeror. As noted above, RFP clause 52.215-9P19, "Evaluation Factors for Award," expressly stated that "[a]s proposals become more equal in their technical merit, the evaluated cost or price becomes more important."

²Crown also protests that its PDM was improperly evaluated. DPSC gave the protester's PDM an acceptable rating, noting as the only minor deficiency that "the second and third front buttonholes are slightly crooked." Crown disputes this finding as incorrect and argues that its PDM should have been rated highly acceptable. We will not resolve this matter since Crown would not be entitled to the award even if we agreed that the buttonholes on its PDM were not crooked and that its PDM therefore should have been rated highly acceptable.

Thus, even if we were to conclude that the two proposals should have been considered technically equal, the price advantage offered by DeRossi provides a reasonable basis for DPSC's selection of DeRossi's proposal as representing the best value to the government.

The protest is denied.

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