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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Satellite Services, Inc.

File: B-295866; B-295866.2

Date: April 20, 2005

Susan L. Schor, Esq., Laurence Schor, Esq., and Dennis C. Ehlers, Esq., McManus, Schor, Asmar & Darden, LLP, for the protester.

Jennifer M. Miller, Esq., and Benjamin N. Thompson, Esq., Wyrick Robbins Yates & Ponton LLP, for Sunny Point Support Services, an intervenor.

Maj. Robert B. Neil, Department of the Army, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency performed improper price realism analysis of awardee's proposal is denied where fixed-price contract was to be awarded and agency determined that awardee proposed an acceptable technical approach, sufficient staff to perform, and a price sufficient to cover the technical approach.
 2. In evaluating protester's past performance, agency reasonably concluded that protester's proposal represented a moderate rather than a low performance risk based on fact that protester currently was late on approximately 11 percent of current contract orders.
 3. Protest that evaluators misunderstood protester's technical proposal and, as a result, improperly found that proposal had weaknesses in areas of safety plan and inspections, is denied where, even if protester is correct that the weaknesses were unwarranted, the weaknesses were not included in the technical evaluation summary report and were not considered in award decision.
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DECISION

Satellite Services, Inc. (SSI) protests the award of a contract to Sunny Point Support Services, a joint venture comprised of Bering Straits Aki, LLC and LB&B Associates, Inc., under request for proposals (RFP) No. W81GYE-04-R-0047, issued by the Department of the Army for the operation, maintenance, repair and construction of real property facilities at the Army Military Ocean Terminal in North Carolina.

SSI complains that the award decision was based on an improper evaluation of proposals.

We deny the protest.

The RFP called for the award of a fixed-price contract on a “best value” basis, applying four evaluation factors: past performance, safety and environmental performance record, management approach, and price (including realism). The past performance factor was the most important, having the same weight as the safety and environmental performance record and management approach factors (which were equal in weight) combined. The non-price factors combined were significantly more important than price. The RFP further advised that the Army intended to make award without holding discussions.

The Army received five proposals, including those of SSI and Sunny Point. A past performance evaluation team assigned past performance risk ratings of high, moderate or low; a technical evaluation team rated the technical proposals excellent, good, satisfactory or unsatisfactory; and a price evaluation team reviewed the prices. SSI offered a price of \$8,155,191.12 and its proposal received final ratings of moderate risk for past performance, satisfactory for safety and environmental performance record,¹ and excellent for management approach. Sunny Point offered a price of \$6,063,661.68 and its proposal was rated moderate risk for past performance and good for both safety and environmental performance record and management approach. The source selection authority (SSA) reviewed the evaluation record and determined that, notwithstanding the ratings, and based on the identified risk areas and advantages: SSI and Sunny Point were equal with respect to past performance, Sunny Point’s proposal had a slight advantage under the safety and environmental performance record factor, and SSI’s proposal had a slight advantage under the management approach factor. Source Selection Decision (SSD) at 2. The SSA concluded that the technical proposals were essentially equal and awarded the contract to Sunny Point based on its lower price. *Id.* This protest followed.

SSI challenges the evaluation of its and Sunny Point’s proposals on a number of bases.² We have reviewed all of these allegations and find them to be without merit. We discuss several of SSI’s allegations below.

¹ The technical evaluation team rated SSI good for safety and environmental plan, but the source selection authority (SSA) reduced the rating to satisfactory.

² SSI also asserts that, to the extent the Army had concerns, it should have allowed SSI to clarify its technical and past performance proposals. However, where, as here, a procuring agency plans to award a contract without holding discussions, the agency may, but is not required to, give offerors an opportunity to clarify aspects of their technical proposals. See AIA-Todini-Lotos, B-294337, Oct. 15, 2004, 2004 CPD

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PRICE EVALUATION

SSI asserts that the Army did not adequately evaluate the realism of Sunny Point's price proposal.³

Cost realism is not considered in the evaluation of proposals for the award of a fixed-price contract, because these contracts place the risk of loss upon the contractor. However, when awarding a fixed-price contract, an agency may provide, as it did here, for a price realism analysis for the purpose of measuring an offeror's understanding of the solicitation requirements, or of assessing the risk inherent in an offeror's proposal. Consolidated Eng'g Servs., Inc., B-279565.5, Mar. 19, 1999, 99-1 CPD ¶ 76 at 10.⁴ The nature and extent of an agency's price realism analysis are matters within the sound exercise of the agency's discretion; we will review such analyses under the same standard applicable to evaluation challenges generally--for reasonableness and consistency with applicable laws and regulations. Science & Mgmt. Resources, Inc., B-291803, Mar. 17, 2003, 2003 CPD ¶ 61 at 3; see Philips Med. Sys. of North Am. Co., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2.

The realism analysis here was unobjectionable. The Army evaluated Sunny Point's proposal and determined that the proposed labor mix and hours were consistent with its technical proposal and acceptable to perform the contract. SSD at 3. The Army also reviewed Sunny Point's price proposal and found that it was complete and adequate, Price Analysis Worksheet at 1, and also determined that it complied with the Service Contract Act wage determination with respect to both rates and fringe benefits. Price Analysis Report at 1. The Army noted that Sunny Point's price was lower than the government estimate, but attributed this to the fact that Sunny Point

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¶ 211 at 12. This is also true regarding past performance information on which an offeror has not had a chance to comment, unless the agency has reason to question the validity of the information, which is not alleged here. NMS Mgmt., Inc., B-286335, Nov. 24, 2000, 2000 CPD ¶ 197 at 3.

³ SSI also asserts that the Army did not properly evaluate the reasonableness of Sunny Point's low proposed price. Since a price reasonableness evaluation is intended to determine whether offered prices are higher than warranted, not lower, this allegation provides to basis no question the award decision. Efficiency Mgmt. & Eng'g Co., Norcor Techs. Corp., B-292626.2, Oct. 31, 2003, 2003 CPD ¶ __ .

⁴ The solicitation provided that price would be evaluated for reasonableness and completeness. RFP § 4.1.4. It also stated that a proposal that is unrealistic in terms of approach or price may be deemed reflective of a lack of technical competence or a failure to comprehend the complexity and risks of the government's requirements. RFP § 4.1.

proposed a labor mix and staffing level different—but acceptable to perform—than that on which the government estimate had been based. SSD at 3. The agency also concluded that the government estimate was overstated. Id. Given this analysis, we have no basis to question the Army’s realism evaluation.⁵ Science & Mgmt. Resources, Inc., supra.

PAST PERFORMANCE

The RFP instructed offerors to provide information regarding up to five relevant contracts completed within the past 10 years by the contractor, and by each subcontractor proposed to perform at least 25 percent of the contract effort. The solicitation went on to provide as follows:

The Government will conduct a performance risk assessment based upon the quality of the offeror’s past performance as well as that of its proposed subcontractors as it relates to the probability of successful accomplishment of the required effort.

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Each performance risk assessment will consider the number and severity of negative findings, the effectiveness of corrective actions taken, and the overall work record. The assessment of performance risk is not intended to be the product of a mechanical or mathematical analysis of an offeror’s performance on a list of contracts, but rather the product of subjective judgement of the evaluation team after it considers all available, relevant and recent information.

SSI listed five contracts and Sunny Point listed four contracts performed by Bering Straits and four performed by LB&B. The agency received one completed reference questionnaire for SSI and two for Sunny Point. Based on the information received from the references and the information submitted by the offerors in their proposals, the agency rated both SSI and Sunny Point moderate risk.

⁵ SSI argues that Sunny Point’s price is unrealistic when compared to SSI’s and the incumbent’s proposed prices. However, there is no requirement that an agency base its determination of price realism on a comparison with other offered prices; in particular, the mere fact that the awardee’s price is lower than the protester’s is not a basis for questioning the agency’s determination that the awardee’s price is realistic. Science & Mgmt. Resources, Inc., supra. Moreover, the Army found that SSI’s and the incumbent’s prices for a number of line items were substantially higher than the average prices proposed by the other offerors. Price Analysis Report at 3-4.

SSI complains that the agency did not make a reasonable attempt to contact its references. However, the solicitation did not state that the agency would contact all, or for that matter any, of the offerors' references. Rather, the solicitation required only that offerors provide detailed information on the contracts they listed, including a summary pertaining to the specified work in the performance work statement (PWS), past ratings, examples specific to the PWS regarding the quality and timeliness of performance, and cure notices or show cause letters received in the last 3 years. This information was sufficient to allow the agency to evaluate past performance; there is no legal requirement that all, or any, references be contacted in order for a past performance evaluation to be deemed reasonable. ROCA Mgmt. Educ. & Training Inc., B-293067, Jan. 15, 2004, 2004 CPD ¶ 28 at 5.⁶

SSI asserts that, since the one completed past performance questionnaire the Army received rated SSI's performance very good in six categories and excellent in two categories and gave SSI high praise for its competence and professionalism, the Army should have rated SSI as a low rather than moderate risk under the past performance factor.

The evaluation in this area was reasonable. In evaluating SSI's past performance, the Army considered the response from the reference, as well as the information SSI provided in its proposal. While the proposal information showed that SSI had performed in all nine functional areas covered by the RFP, and the reference provided SSI with an overall positive rating, the reference also reported that SSI was currently delinquent on 11 percent of its orders and had been behind on up to 35 percent of its orders.⁷ Past Performance Assessment Report--SSI. We find nothing unreasonable in the agency's assigning SSI a less favorable past performance rating based on information showing performance delinquencies. SSI's view that its past performance nevertheless does not warrant downgrading is not sufficient to show that the evaluation was unreasonable. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

⁶We note that the contract specialist who worked on the past performance evaluation reports states that she either faxed or e-mailed the past performance questionnaires to each reference that the offerors listed, received confirmation that they were received, and left voice mail messages with those who did not respond. Statement of Contract Specialist. These efforts evidence a reasonable attempt to contact the references.

⁷The reference also reported that the SSI corporate office was slow to submit cost proposals and often provided incomplete information. The agency discounted this information because the current solicitation is for a fixed-price contract.

SAFETY AND ENVIRONMENTAL PERFORMANCE RECORD

With respect to the safety and environmental performance record factor, offerors were to submit detailed information on their safety and environmental program as it pertains to the requirements outlined in the performance work statement, including programs and manuals, awards, certifications, violations, citations, accidents and fines. RFP, amend. 2, at 13-14. The solicitation provided that “[t]he Government will evaluate the adequacy of the Offeror’s safety and environmental program plans and the degree to which the offeror can demonstrate successful implementation as indicated by the number of awards and the frequency and severity of violation (Notice of Violations), citations, accidents or fines.” RFP at 43.

SSI asserts that the agency unreasonably downgraded its proposal for failing to indicate whether its pest control subcontractor would work under its own or SSI’s safety plan, and for proposing to use an environmental consultant who would inspect the work of the pest control subcontractor only two times per year. SSI maintains that the Army misunderstood its proposal. Specifically, SSI asserts that its proposal actually indicated that the pest control subcontractor would be held to the same safety and inspection requirements as SSI, and that an SSI quality control inspector would perform inspections as work was completed, with the consultant proposed simply to assist SSI in reviewing its safety plan.

While the technical evaluation team listed the above two concerns as weaknesses in SSI’s proposal, these weaknesses did not have any impact on the award decision. Specifically, these weaknesses were not included in the consensus ranking and rating summary report that the evaluation team prepared to justify the good rating it assigned SSI under this factor. More importantly, the SSA did not identify the two concerns as weaknesses in SSI’s proposal, and there is no indication that the SSA considered them in making the award decision. In this regard, in discussing SSI’s proposal under the safety and environmental performance record factor in the preobjective and negotiation memorandum, the SSA states that “[t]he offeror had three advantages and no deficiencies noted.” Preobjective and Negotiation Memorandum at 7. Nor did the SSA identify these weaknesses in the source selection decision document. Thus, as these weaknesses were not considered in the award decision, even if SSI is correct that they were unwarranted, the protester was not prejudiced by the fact that they were identified by the technical evaluation team. Quachita Mowing, Inc., B-276075, B-276075.2, May 8, 1997, 97-1 CPD ¶ 167 at 4-5.

SSI also complains that the evaluation team noted that SSI’s proposal did not list any awards, and that the SSI’s proposal was rated satisfactory rather than good or excellent for this reason. SSI maintains that this “awards received” criterion constitutes an undisclosed evaluation factor and thus did not provide a proper basis for downgrading its proposal. We disagree. The solicitation specifically advised offerors that the agency would consider the number of awards received in evaluating

proposals under this factor. RFP at 43. Thus, this was not an undisclosed evaluation factor. The Army was not required to disclose how awards or the lack of awards

would affect the rating given to the proposals. ABB Power Generation, Inc., B-272681, B-272681.2, Oct. 25, 1996, 96-2 CPD ¶ 183 at 4 (agency is not required to disclose guidelines that indicate how certain features will effect evaluation).

The protest is denied.

Anthony H. Gamboa
General Counsel