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

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Decision

Matter of: Blackwater Lodge and Training Center, Inc.

File: B-311000.2; B-311000.3; B-311000.4

Date: November 10, 2008

Robert E. Korroch, Esq., and Francis E. Purcell, Esq., Williams Mullen, for the protester.

William W. Goodrich, Esq., Lisa K. Miller, Esq., and Kavitha Babu, Esq., Arent Fox, LLP, for Automation Precision Technology, Inc., an intervenor.

Sharon H. Sachs, Esq., Department of the Navy, 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's assigning protester's and awardee's technical proposals same evaluation rating was unreasonable where protester, but not awardee, offered to provide all training at its own facility within desired driving distance is denied, where protester's proposal was credited with strength on this basis, and evaluation rating was not based solely on ownership and location of facility.
 2. Protest that agency's evaluation unreasonably failed to take into account alleged safety concerns arising in connection with awardee's performance under prior contracts is denied where agency was aware of and considered safety concerns, but determined that awardee had adequately addressed the concerns during performance of the contracts.
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DECISION

Blackwater Lodge and Training Center, Inc., of Moyock, North Carolina, protests the award of a contract to Automation Precision Technology, Inc. (APT), of Norfolk, Virginia, under request for proposals (RFP) No. N61339-07-R-0039, issued by the Department of the Navy for a contractor to provide a training program for small arms live fire. Blackwater argues that the agency improperly evaluated APT's technical capability and past performance.

We deny the protest.

The RFP sought a contractor to provide training for the M9 pistol, 12-gauge shotgun, M16 rifle, and M60 medium machine gun. The RFP provided for the award of a contract on a “best value” basis considering the following factors (in descending order of importance): technical/management (with subfactors for technical understanding, technical capability, and management), past performance, and price. RFP at 72-77.¹ The agency received four proposals. After the evaluation of initial proposals, discussions, and the submission and evaluation of final proposal revisions (FPR), Blackwater’s and APT’s proposals both were rated highly satisfactory with low performance risk under each of the technical subfactors. Agency Report (AR) at 17. Blackwater’s past performance was rated very low risk and APT’s low risk. *Id.* Blackwater proposed a price of \$22,195,142.34, and APT \$20,179,016.00. *Id.* The agency determined that APT’s lower price was sufficient to offset Blackwater’s higher past performance rating, concluded that APT’s proposal thus represented the best value, and made award to APT.

Blackwater raises numerous challenges to the evaluation of APT’s technical and past performance proposals. In reviewing a protest against an agency’s proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Phillips Med. Sys. of N. Am., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have reviewed the record and find that Blackwater’s arguments are without merit. We discuss several of those arguments below.

TECHNICAL FACTOR EVALUATION

Blackwater’s overriding complaint regarding the evaluation of APT’s technical proposal concerns the location of the firing range where APT will conduct live fire training for the M60 machine gun. The solicitation provided that “[i]t is highly desirable that contractor facilities are located within one-hour driving distance from the main gates or student pick-up point . . .” RFP at 14. Blackwater offered to provide all training (33 days) at its own facility, which is within the desired 1 hour driving distance from the pick-up point. APT also offered to provide all training at its own facility within the 1-hour desired driving distance, except for 1 day of live fire training for the M60 machine gun, which APT proposed to provide at an Army base (Fort Pickett) approximately 2.5 hours away from the pick-up point. Source Selection Decision Document (SSDD) at 9. As noted, the agency assigned both proposals the same highly satisfactory/low risk rating under the technical factor.

¹Technical proposals were assigned an adjectival rating of outstanding, highly satisfactory, satisfactory, marginal or unsatisfactory, and a risk rating of low, medium or high. Past performance ratings were assigned in terms of risk—very low, low, moderate, high, or very high.

Blackwater asserts that APT's proposed use of an Army facility for M60 machine gun training made APT's proposal less advantageous than its own, since the Army facility is beyond the desired 1-hour distance, and APT may not be given unfettered access to the range. Blackwater concludes that its proposal should have received a higher technical rating than APT's.

The evaluation in this area was unobjectionable. Blackwater attaches unwarranted weight to the adjectival ratings, which serve only as a guide to intelligent decision making. Chapman Law Firm, LPA, B-293105.6 et al., Nov. 15, 2004, 2004 CPD ¶ 233 at 5. The essence of the evaluation is reflected in the evaluation record itself, not the adjectival ratings. In this regard, while the source selection evaluation board (SSEB) assigned Blackwater's and APT's proposals the same adjectival and risk ratings, the record shows that this was with full knowledge of the relative merits of the proposals. Specifically, in its report to the source selection authority (SSA), the SSEB listed as Blackwater's unique strengths that it would conduct all training within the highly desirable driving range, and that Blackwater has no risk of being denied access because it would conduct all training at a Blackwater-owned facility.² SSEB Report at 29. The SSA likewise recognized these unique strengths in Blackwater's proposal. However, the SSA determined that these considerations did not represent significant differences in the proposals, and thus concluded that Blackwater's proposal was only slightly superior to APT's regarding the training site. SSA report at 9, 10. In the final analysis, the SSA concluded that this slight advantage, together with Blackwater's past performance advantage, was not sufficient to warrant paying Blackwater's 10 percent higher price. Id. at 10. While Blackwater disagrees with the agency's judgment in this regard, the evaluation was in no way inconsistent with anything in the solicitation, and Blackwater has not established that it was otherwise unreasonable.

NORFOLK FLEET CONCENTRATION AREA (FCA)

In listing the purpose of the contract, the solicitation provided that training will be conducted in the "Norfolk, Virginia FCA." Statement of Work at 1. APT offered to perform 32 of 33 training days at its facility within the Norfolk FCA and (as discussed above) 1 day of M60 machine gun training at the Army facility located outside the Norfolk FCA. Blackwater asserts that this constituted a deviation from the RFP requirements, and that APT's proposal thus should have been rejected.

Our Office will not sustain a protest absent a showing of competitive prejudice. Thus, where a protester argues that an agency improperly relaxed a solicitation requirement for another offeror, the protester must demonstrate that, had it known

² We also note that ratings were not based solely on the location of the training facilities; APT's proposal was assigned strengths unique to its proposal that resulted in its overall highly satisfactory/low risk ratings.

of the relaxed requirement, it would have altered its proposal to its competitive advantage. Federal Computer Corp., B-239432, Aug. 29, 1990, 90-2 CPD ¶ 175 at 8. Blackwater does not assert that it would have proposed a different training facility, or would have otherwise altered its technical or price proposal, had it known that the Navy would allow an offeror to propose training outside the Norfolk FCA for 1 day. Accordingly, there is no basis for finding that any relaxation of the requirements relating to the location of performance resulted in prejudice to Blackwater.

PAST PERFORMANCE

Blackwater maintains that, in assigning APT a low risk rating for past performance, the agency improperly failed to consider APT's safety record under prior contracts.

This argument is without merit because the record shows that the agency was fully aware of, and considered, safety issues related to APT's performance of prior contracts. The agency rated APT's past performance based on questionnaire's submitted by APT's references and information provided by contracting personnel involved in APT's current contract for small arms training. AR at 46-48. During the initial evaluation, the agency found that APT had a strong background, with directly relevant past performance, exceptional past performance with respect to meeting schedules, personnel retention, and management of personnel, and good past performance with respect to quality of services and products. However, the agency assigned APT a moderate risk rating for past performance based on information regarding APT's current training contract that raised safety concerns. Id. at 48-49. Specifically, contracting personnel reported a May 2005 incident involving an explosive mishap with a 12-gauge shotgun, a May 2007 incident that involved the discharge of a 9mm pistol during a classroom training demonstration, and questions concerning weapons maintenance. Id.

The Navy brought these incidents to APT's attention during discussions, and requested that the firm provide information addressing systematic improvement plans to ensure that policies and procedures are in place to mitigate safety risks, ensure proper maintenance of weapons, ensure instructors meet all required qualifications regarding safety and maintenance, and provide for timely reporting of mishaps to the government. Id. APT responded with a list of its policies and procedures responsive to these issues. APT also specifically noted that it arranged for training so that instructors will understand the M60 weapon and how to maintain it to manufacturer specifications; that instructors are no longer authorized to have functional weapons or ammunition at locations other than the firing range; and that it investigated the explosive mishap, learned that the ammunition was faulty, reported the defect to the manufacturer--which agreed to adopt stricter quality controls--and now tests all ammunition before students discharge firearms. Response to Discussion Questions. In addition, APT noted that it continually evaluates and updates its procedures to enhance its safety program. Id. The SSEB

determined that this response was sufficient to address its concerns, and raised APT's past performance rating from moderate to low risk.

We conclude that, contrary to Blackwater's assertion, the agency's evaluation did take into account the safety concerns related to APT's prior contracts.

Blackwater asserts that the SSA incorrectly indicated in the SSDD that APT expanded its policies and procedures in order to address the safety issues raised during discussions, Protester Comments at 20; Blackwater maintains that, in fact, APT only listed its existing policies and that APT presented no information demonstrating that it expanded or modified any policies or procedures in response to the agency's concerns. We disagree. As noted, APT's response to the agency's concerns included, in addition to a listing of its policies and procedures, four specific actions it had taken in response to the safety issues that had been raised, for example, as noted, that APT now checks ammunition prior to use as a result of the explosive mishap. We think the agency reasonably viewed these actions as changes in policy or procedures in response to the problems that occurred under its current contract.³ We thus find no basis to question the reasonableness of the agency's conclusion that APT's proposal presented a low performance risk. See Firestorm Wildland Fire Suppression, Inc., B-310136, Nov. 26, 2007, 2007 CPD ¶ 218 at 3.

The protest is denied.

Gary L. Kepplinger
General Counsel

³ Blackwater argues that, in discussing APT's past performance, the SSA acknowledged only two safety issues concerning APT, rather than the three on which the SSEB based its moderate risk rating. The record shows, however, that, in fact, the SSEB based APT's final past performance on two safety concerns. SSEB Report at 28; SSDD at 4.