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Comptroller General
of the United States

Washington, D.C. 20548

346204

Decision

Matter of: Ashland Sales and Service Company

File: B-259625; B-259625.2

Date: April 14, 1995

Ruth E. Ganisver, Esq., Rosenthal and Ganister, for the protester.
Gweyn Colabardino, Esq., and Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated technical proposals in negotiated acquisition is denied where record shows that agency's evaluation was reasonable and consistent with the solicitation's evaluation scheme.

2. Agency conducted adequate price reasonableness evaluation where it: (1) compared the offers received to one another, historical price data and an independent government estimate; and (2) obtained limited cost data from awardee that showed that awardee's prices were based directly on its costs to manufacture the item.

DECISION

Ashland Sales and Service Company protests the award of a contract to Lion's Volunteer Blind Industries, Inc. (VBI) under request for proposals (RFP) No. DLA100-93-R-0288, issued by the Defense Logistics Agency (DLA) for a quantity of fire resistant flight deck jerseys. Ashland maintains that the agency misevaluated the offerors' technical proposals, and that VBI's offer should have been rejected as unreasonably low priced.

We deny the protest in part and dismiss it in part.

The RFP sought fixed-price offers to manufacture an indefinite quantity of fire resistant flight deck jerseys during a base year with 1 option year; during each of the contract's 2 years, the agency could order between 150,000 and 225,000 jerseys of varying sizes and colors.

Firms were required to submit a technical proposal, a cost proposal, and a production demonstration model (PDM). Award was to be made to the firm submitting the proposal representing the best overall value to the government in light of technical considerations (most important) and price (which would become more important as technical proposals became more equal). There were four technical criteria listed in descending order of importance, as follows: (1) conformance of the PDM to visual, dimensional, and manufacturing operations requirements; (2) experience/past performance; (3) manufacturing plan, including manufacturing procedures, production scheduling, material scheduling, production personnel and equipment and management plan; and (4) quality assurance plan. Proposals were to be rated adjectivally (highly acceptable, acceptable, marginally acceptable or unacceptable). Prices would be evaluated for price reasonableness. The PDM was to be evaluated to ensure that the offerors were capable of manufacturing a flight deck jersey in accordance with the solicitation's specifications.

DLA received five offers, four of which (including Ashland's and VBI's) were included in the competitive range; both VBI and Ashland were found marginally acceptable, with minor but correctable weaknesses in their technical proposals. Following discussions and submission of revised proposals, DLA found that VBI and Ashland still had numerous deficiencies in their offers. DLA therefore conducted another round of discussions. VBI's and Ashland's second revised proposals still were only marginally acceptable overall, and since one of the other three offerors withdrew and the other's price was deemed unreasonably high, DLA conducted yet another round of discussions. After concluding these negotiations, DLA was satisfied with the technical ratings and solicited best and final offers (BAFO). DLA found that VBI had submitted the best overall BAFO and thus made award to the firm.

Ashland maintains that the proposal evaluation was improper in various respects. First, Ashland argues that DLA misevaluated its PDM. Ashland maintains that its PDM had only a few minor deficiencies which were found to be readily correctable, and that it was not required to correct those deficiencies in order to demonstrate that it could in fact manufacture a PDM with no deficiencies. Ashland concludes that it should have been rated highly acceptable rather than acceptable in this area.

The evaluation of technical proposals is primarily a matter within the discretion of the procuring agency, and we will not question it unless we find that the evaluation was unreasonable or inconsistent with the solicitation's

evaluation scheme. A Plus Servs. Unlimited, B-255198.2, Jan. 31, 1994, 94-1 CPD ¶ 52.

The evaluation of Ashland's PDM was both reasonable and consistent with the terms of the RFP. The RFP provided detailed definitions for the agency's adjectival ratings. As for the ratings to be applied to the PDMs, the RFP stated that a rating of highly acceptable would be assigned only where "the PDM meets the stated requirements of the specification/commercial product description and has no deficiencies." In contrast, a rating of acceptable was to be assigned where "the PDM meets the stated requirements of the specification/commercial product description but exhibits deficiencies that are easily correctable during production." Ashland concedes that its PDM had minor deficiencies that were readily correctable during production. Consequently, the agency's assignment of an acceptable rating was both reasonable and consistent with the terms of the RFP.

Ashland also challenges its rating under the experience/past performance criterion. The RFP stated that experience/past performance would be rated highly acceptable where the offeror's past performance demonstrated an exceptional commitment to customer satisfaction and a superior overall record of timely delivery of high quality products. An acceptable rating, on the other hand, would be assigned where there was an acceptable commitment to customer satisfaction and an overall record of timely delivery of quality products. Ashland maintains that it should have received a highly acceptable rating because it had no delinquencies on its previous contracts and because its subcontractor, Thomasville Apparel Corporation, also had a satisfactory past performance record.

This aspect of the evaluation also was reasonable. Ashland's rating in this area was based primarily on two considerations: (1) Ashland had not previously performed as a prime contractor for the government, and its only government-related experience was as a subcontractor to another firm under one previous contract;[1] and (2) Ashland's proposed subcontractor's references indicated

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[1]The record shows that Ashland is a firm distinct from another firm, Ashland Sales and Service, Inc. The protester apparently is a newly organized company that has only been in business since January 1994. Although the agency reviewed contracts performed by Ashland Sales and Services during its initial review, it learned through discussions that the two firms were distinct. Accordingly, DLA agreed to review only the contracts performed by the protester during the approximate 10-month period since its inception.

that during the preceding 2 years, the subcontractor had initially experienced delivery and quality problems but, more recently, had performed on time with acceptable quality." We think this information was appropriate for consideration under this criterion, and that, in light of it, there was an inadequate basis for concluding that Ashland had demonstrated an exceptional commitment to customer satisfaction and a superior overall record of timely delivery of quality products. (By way of comparison, the agency, in reviewing the past performance of another offeror, declined to assign a highly acceptable rating to its proposal because, although there was no information relating to performance problems of any kind, the firm had no government contracting experience.)

Ashland alleges that the evaluation of the other proposals in this area improperly failed to consider a number of the firms' prior contracts. The record shows in this regard that DLA did not consider two contracts performed by each of the other two offerors. DLA's decision to exclude these contracts from its review was based on its conclusion that they were not sufficiently similar to the requirement being solicited to be of any probative value in rating experience and past performance. Two of these contracts were for life preserver covers and two were research and development contracts. DLA concluded that these contracts either were for the manufacture of substantially different items, or were for requirements that did not involve the production of substantial quantities of items in a manufacturing setting. We find that, because the solicitation provided that the agency would review only contracts "for the same or similar items," DLA reasonably excluded these contracts from consideration.

Ashland maintains that VBI's offer should have been rejected for unreasonably low prices.[3] Ashland claims that the

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[2]Ashland maintained in its initial comments to the agency report that there is nothing to substantiate the fact that DLA contacted Thomasville's commercial references. In response to this allegation, the contracting official who talked with these references submitted an affidavit that sets forth the facts and circumstances surrounding his contacts. There is no basis for questioning the accuracy of this affidavit.

[3]To the extent Ashland is alleging that VBI's offer essentially represents a below-cost offer to perform the requirement, there is nothing legally objectionable in the submission or acceptance of a below-cost offer in a fixed-price contract setting. Intown Properties, Inc., B-256742, July 11, 1994, 94-2 CPD ¶ 18.

agency did not perform a price reasonableness evaluation before making award to VBI and that had it done so, it would have found that VBI's prices were below cost.

A determination of price reasonableness is a matter of agency discretion which we will not question absent a showing that the determination was unreasonable or made in bad faith. Golden Mfg. Co., Inc., B-255347, Feb. 24, 1994, 94-1 CPD ¶ 183. An agency may properly base its price reasonableness determination on comparisons with government estimates, past procurement history, current market conditions, or any other relevant factors, including information revealed by the competition. Id.; Federal Acquisition Regulation (FAR) SS 14.407-2 and 15.805-2.

DLA evaluated VBI's prices for reasonableness using a number of techniques: (1) comparison of VBI's price to the other offers received; (2) comparison to the pricing for prior garment acquisitions after adjusting the historical pricing information for differences in materials (the jerseys under the prior contract were not made with fire resistant material); (3) comparison with an independent government estimate developed by using reverse engineering techniques; and (4) obtaining limited cost data from the offerors--and VBI in particular--which showed that the firm's pricing was directly related to its costs to produce the jerseys[4]. We conclude that DLA in fact evaluated VBI's price in accordance with the standards outlined in FAR §§ 14.407-2 and 15.805-2, and that it reasonably concluded that the price was reasonable.

Ashland argues that, because VBI (allegedly) submitted a below-cost offer, the agency was obliged to consider whether the firm had the financial resources necessary to perform at a loss. This constitutes a challenge to the contracting officer's affirmative determination of VBI's responsibility, a matter which our Office will not review except in circumstances not present here. 4 C.F.R. § 21.3(m)(5) (1995). Ashland also asserts that the agency improperly failed to consider whether VBI made a mistake in its offer. We dismiss this aspect of Ashland's protest because the protester is not an interested party to maintain this allegation; it is the responsibility of the contracting parties--the government and the low bidder or offeror--to

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[4]Ashland makes numerous allegations concerning the accuracy of the government's estimate and its adjusted historical pricing information. Even if these allegations were true, the fact remains that DLA evaluated the VBI offer for price reasonableness based on the firm's actual cost data and concluded that the prices offered were reasonable in light of the firm's costs.

assert rights and bring forth evidence to resolve mistake questions. Neighborhood Dev. Corp., B-246166, Feb. 7, 1992, 92-1 CPD ¶ 162. Finally, Ashland contends that, during contract performance, VBI may not in fact provide jerseys made from material that has been treated for fire resistance using one of the RFP's three specified methods. We dismiss this aspect of Ashland's protest as well, since this is a matter of contract administration, and thus is beyond the scope of our bid protest jurisdiction. 4 C.F.R. § 21.3(m)(1); Mandex, Inc., B-252362.4, Feb. 1, 1994, 94-1 CPD ¶ 56.

The protest is denied in part and dismissed in part.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel