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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: CC Distributors, Inc.

File: B-406450; B-406450.2

Date: May 25, 2012

Michael F. Mason, Esq., C. Peter Dungan, Esq., and Erin L. Alexander, Esq., Hogan Lovells US LLP, for the protester.

Michael A. Hordell, Esq., Michael R. Golden, Esq., Heather Kilgore Weiner, Esq., and Samuel W. Jack, Esq., Pepper Hamilton LLP, for Noble Supply & Logistics, the intervenor.

Col. Mark S. Teskey and Lt. Col. Paul E. Cronin, Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably evaluated the awardee's past performance as excellent/high confidence, where agency considered the awardee's and its proposed subcontractor's history of relevant past performance and the positive comments made by the awardee's references regarding its past performance.
2. Agency performed a reasonable price evaluation of awardee's proposal by comparing the line item prices proposed to other offerors' proposed prices and the agency estimates, and requesting verification for each of the line item prices that appeared unrealistically low or high.

DECISION

CC Distributors, Inc., of Corpus Christi, Texas, protests the award of a contract to Noble Supply & Logistics, of Rockland, Massachusetts, under request for proposals (RFP) No. FA4418-11-R-0018, issued by the Department of the Air Force for the operation of two contractor operated civil engineering supply stores (COCESS) located at Joint Base Charleston, South Carolina. The protester objects to the agency's evaluation of the awardee's proposal and its selection for award.

We deny the protest.

BACKGROUND

The solicitation, issued under the commercial item acquisition procedures of Federal Acquisition Regulation part 12, provided for the award of a fixed-price contract with economic price adjustment for the operation of two COCESS facilities for a base year and 4 option years. A COCESS is a contractor operated store on an Air Force base that provides hardware, construction materials, and building supplies for purchase by civil engineering personnel.

Offerors were informed that award would be made on a best value basis, considering past performance and price. RFP at 10. Past performance was stated to be significantly more important than price. Id. The RFP provided that if the lowest-priced offer is judged to have an exceptional performance risk rating, that offer represents the best value. Id. at 12.

With regard to past performance, offerors were to provide a list of not more than five relevant contracts, performed for federal agencies and commercial customers within the last three years. RFP at 43. A relevant contract was defined as one where the present/past performance effort involved much of the same magnitude of effort and complexities as the work solicited here.¹ Id. at 11. The RFP explained that the evaluation of past performance information would take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition. Id. The RFP also stated that the agency would consider the information provided by the offeror and may consider any other source when evaluating an offeror's past performance. Id.

Under the past performance factor, the RFP provided for a performance confidence assessment based on an evaluation of the offeror's present and past work record to assess the government's confidence that the offeror will successfully perform the contract as proposed. Id. The RFP further provided that past performance would be evaluated as exceptional/high confidence, very good/significant confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, or unsatisfactory/no confidence.² Id. at 12.

¹ The RFP also defined a very relevant contract to be where the present/past performance effort involved essentially the same magnitude of effort and complexities as the work solicited here. RFP at 11.

² An exceptional/high confidence rating was defined as "essentially no doubt exists that the offeror will successfully perform the required effort." RFP at 12.

With respect to price, the RFP provided a consolidated stock listing (CSL) that identified various hardware, construction, and building supply items and their estimated annual quantities. RFP at 46-142. Offerors were required to provide a unit price for each item and an extended annual cost for each item. The RFP also required offerors to propose a charge to procure a non-priced item (NPI)--that is an item not included on the CSL--and stated that this charge would include any and all costs such as labor, materials, overhead, general & administrative (G&A), profit but not the actual cost of the item or of its transportation. See id. at 45.

Offerors were informed that price would be evaluated for fairness, reasonableness, and realism. Id. The RFP stated that one of the following techniques may be used in performing the price analysis:

1. Comparison of proposed prices received in response to the solicitation.
2. Comparison of prior prices and contract prices with current proposed prices for the same or similar end items.
3. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
4. Comparison of proposed prices with independent government cost estimates. Proposals unrealistically high or low in cost or price, when compared to the government estimate, may be deemed reflective of an inherent lack of understanding of risks of the solicitation and may result in proposal rejection.

RFP at 13. The RFP did not require the submission of cost or pricing data.

The agency received three proposals, including proposals from Noble and CC Distributors. Noble, which proposed [Deleted] as a subcontractor, submitted the lowest-priced proposal. CC Distributors submitted the second-lowest priced proposal. The three offerors, each of which submitted an offer that was less than the independent government estimate (IGE), were all evaluated as having exceptional/high confidence past performance.³

³ Offerors' past performance was evaluated by the agency's source selection evaluation team (SSET), which considered the offerors' past performance submissions and information from the Contractor Performance and Assessment Reporting System (CPARS) and Past Performance Information Retrieval System (PPIRS).

Based upon its comparison of offerors' proposed prices with each other and with the IGE, the agency concluded that there were a number of prices for CSL items that required further examination. Contracting Officer's Statement at 5. In this regard, the SSET identified 457 items where Noble's prices varied from the IGE, 143 such items for the protester and 202 items for the third offeror.⁴ Id.

The Air Force decided to conduct discussions, and included all three offers in the competitive range. The agency conducted several rounds of discussions, sending written evaluation notices (ENs) that identified offerors' CSL item pricing that appeared to be excessively high or low. See Agency Report (AR), Tab 12, Protester's ENs; Tab 13, Awardee's ENs. The protester acknowledged that there were some errors in the proposed pricing of the 143 identified items and stated that, if requested, it would submit a best and final offer. AR, Tab 16, Protester's EN Response. Noble also acknowledged some errors in the pricing of the 457 items. AR, Tab 17, Noble's EN Response.

Revised proposals were requested and received from the competitive range offerors. Offerors were advised that, if there were no pricing revisions, they should submit a statement that prices were the same as in the initial proposal. See, e.g., AR, Tab 14, Request to Protester for Revised Proposal. Following the evaluation of the first revised proposals, the SSET determined that there were still questions with respect to NOBLE's pricing of several items. The Air Force asked offerors to either provide another revised proposal or send assurance of their submitted pricing. See AR, Tab 20, Agency Letter to Protester; Tab 22, Agency Letter to the Awardee. In response, Noble submitted a revised proposal increasing its price; the protester assured the agency that CC Distributor's pricing was accurate and was unchanged. In its review of Noble's second revised proposal, the SSET identified 13 remaining items where Noble's price substantially varied from that of the IGE. AR, Tab 32, Proposal Analysis Report, at 32. Noble was requested to verify its pricing for these 13 items. In response, Noble stated that it had made miscalculations and submitted another revised proposal.

The offerors' final proposal revisions were evaluated as follows:

OFFEROR	PRICE	PAST PERFORMANCE
Noble	\$3,753,472.50	Exceptional/High Confidence
CC Distributors	\$4,281,748.25	Exceptional/High Confidence
Offeror A	[Deleted]	Exceptional/High Confidence

⁴ The SSET's price analysis was based upon identifying offerors' unit prices that were either 50 percent less than, or 150 percent greater than, unit prices in the IGE. See Contracting Officer's Statement at 5.

AR, Tab 33, Source Selection Decision, at 2.

Because Noble submitted the lowest-priced offer evaluated as having exceptional/high confidence past performance, its offer was selected for award. Following a debriefing, CC Distributors filed this protest.

DISCUSSION

CC Distributors challenges the agency's technical and price evaluation of Noble's proposal. Specifically, the protester complains that it was unreasonable to assess the awardee's past performance as excellent/high confidence arguing that Noble has no relevant past performance. Protest at 9. CC Distributors also argues that the agency failed to adequately consider the realism and reasonableness of Noble's low prices. Protest at 10; Protester's Comments & Supp. Protest at 18. CC Distributors contends that, but for these errors, it would have received award.

Past Performance

The protester contends that Noble is "a relatively new entrant to the COCESS industry" and has only recently been awarded a COCESS contract for one of the smallest facilities in the program. Protest at 9. CC Distributors argues that Noble has no relevant past performance and should have received a neutral rating under the past performance factor. The protester also contends that there is no evidence that the agency meaningfully compared Noble's and the protester's past performance in making the selection decision. Protester's Comments & Supp. Protest at 9-10.

In reviewing a protest challenging an agency's past performance evaluation, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. A protester's mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. Of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Here, the record shows that the agency reasonably evaluated Noble's past performance. Of the five references provided by Noble for itself and its subcontractor, the Air Force received three questionnaire responses. Two of these responses were for work that the agency found was very relevant, and the remaining response was found relevant. AR, Tab 9, Protester's Past Performance Evaluation, at 2. Specifically, the Air Force found Noble's subcontractor's performance of a COCESS contract at [Deleted], and Noble's performance of COCESS-type contract at Travis Air Force Base, California, to be very relevant given its similarity in scope,

magnitude, and type of work. Id. at 3-4. The Air Force also found that Noble's performance of a commercial contract with [Deleted] to be relevant. Id. at 4. The agency also did a search of the PPIRS but found no additional relevant/recent assessments on file for Noble or [Deleted].

The feedback from all of Noble's references was very positive and ranged from very good to exceptional, with the majority of feedback reflecting exceptional performance. Based on the overall ratings provided by Noble's references the SSET assigned Noble an overall performance confidence rating of exceptional/high confidence. AR, Tab 9, Noble Rating Worksheet, at 4. Although the protester contends that the agency could only rate Noble's past performance as exceptional/high confidence if it determined that there was no doubt regarding Noble's ability to perform, see Protester's Comments at 2, the record demonstrates that the Air Force reached precisely that conclusion--i.e., that it had no doubt about Noble's ability to perform.⁵

Lastly, the protester complains that the agency did not meaningfully compare the firms' past performance. We find that the agency's consideration of past performance was consistent with the RFP, which provided for the selection of the lowest-priced proposal that received an exceptional past performance rating.

Price Realism

CC Distributors also challenges the agency's price realism analysis, arguing that while the agency performed the price analysis required by the RFP in its review of initial proposals, the agency did not follow through in discussions to ensure that pricing which was deemed too high or too low was either changed or explained by Noble to demonstrate realism. Comments at 11. The protester notes that Noble changed only its pricing for 21 out of the 362 items identified by the agency in the first evaluation notice as being priced unrealistically low.⁶ Id.

⁵ The protester complains that the agency did not consider information in CPARS concerning the performance of [Deleted], Noble's subcontractor. It is true that the agency researched the PPIRS, which includes CPARS, and found no past performance assessments for [Deleted]. Nonetheless, the record also shows that the agency contacted the contracting officer for the [Deleted] COCESS contract performed by [Deleted]. [Deleted] received the "highest possible marks" for its performance of this "very relevant" contract. Contracting Officer's Supp. Statement at 6.

⁶ Similarly, CC Distributors only changed its pricing for 14 of the 143 items identified by the Air Force. See Supp. AR at 6.

Where the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-priced contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. However, an agency may, as it did here, provide in the solicitation for a price realism analysis for such purposes as measuring an offeror's understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide goods or services at little or no profit. The depth of an agency's price realism is a matter within the sound exercise of the agency's discretion. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5. In reviewing protests challenging price realism evaluations, our focus is whether the agency acted reasonably and in a manner consistent with the terms of the solicitation.

Here, the agency in its price analysis compared individual CSL item pricing to the IGE and to proposed prices received in response to the solicitation. Contracting Officer's Statement at 5. Based on an analysis of unit prices from all offerors that were either lower than 50 percent or greater than 150 percent of the IGE, the agency found that all three offerors' prices for a significant number of items varied substantially from the IGE. These items were identified to the offerors and each offeror was given the opportunity to revise or confirm the prices. The agency received proposal revisions, including confirmation of pricing, from each offeror, and was satisfied with the price realism of all offerors. AR, Tab 32, Proposal Analysis Report, at 3.

We find, from our review of the contemporaneous record, that the agency had concerns with the unit prices proposed by all offerors, and that it handled these concerns in a reasonable manner. That is, the record shows that the agency accurately identified the items for which CC's and Noble's proposed prices varied substantially with the IGE. The agency required that both companies verify their prices, and was satisfied with the responses it received. We also note that the record shows that the protester's and Noble's pricing patterns were very similar. The protester argues, however, that because it had significantly fewer questionably priced items, it was somehow prejudiced by the agency's acceptance of the awardee's prices.

In our view, the record shows that the agency treated the offerors equally in accepting their prices. There is no requirement that an agency conduct a "cost realism" analysis in evaluating proposals for a fixed-price contract, as the protester argues, nor is an agency required to reject a proposal simply because its prices are inconsistent with the IGE. Here, the agency determined that based on a comparison of prices with the IGE and prices received, the proposed prices of all offerors were reasonable and realistic. We see nothing improper about this determination.

Source Selection

CC Distributors also contends that the agency's selection decision was unreasonable, given the past performance and price realism evaluation errors asserted by the protester. Given our determination above finding reasonable the agency's past performance and price realism evaluations, the record provides no basis to question the agency's selection decision.⁷

The protest is denied.

Lynn H. Gibson
General Counsel

⁷ The protester also contends that Noble took exception in its proposal to an RFP requirement that the contractor must use the Air Force's Civil Engineering Acquisition System to maintain all inventory items identified in bench stock. See Protester's Comments & Supp. Protest at 22. The record shows that Noble did not take exception to this requirement, but stated that it would comply with all terms and conditions of the RFP and that it wished to discuss the future possibility of using an alternative system. To the extent that the protester contends that the agency will not require Noble to comply with this requirement, this concerns a matter of contract administration, which is not for review by our Office. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2011).