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## Decision

**Matter of:** Universal Fabric Structures, Inc.

**File:** B-284032

**Date:** February 10, 2000

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Robert Fryling, Esq., and Edward J. Hoffman, Esq., Blank, Rome, Comisky & McCauley, for the protester.

John E. Lariccia, Esq., Department of the Air Force, 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.

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### DIGEST

Protest against agency's evaluation of awardee's past performance is denied where record shows that agency had a reasonable basis for assigning an overall excellent rating to the firm's past performance.

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### DECISION

Universal Fabric Structures, Inc. protests the award of a contract to American Spaceframe Fabricators, Inc. (ASFI) under request for proposals (RFP) No. F08635-99-R-0077, issued by the Department of the Air Force for portable B-2 bomber shelter systems. Universal argues that the agency misevaluated ASFI's past performance.<sup>1</sup>

We deny the protest.

The RFP sought fixed-price offers for both a single unit for qualification testing and several additional optional production units. The shelters are essentially portable metal frame and fabric membrane structures that will be used to create a climate-

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<sup>1</sup> In its initial protest, Universal also argued that the agency improperly misled it during discussions and misevaluated its technical proposal. The agency provided its detailed response to these assertions, and Universal made no mention of the allegations in its comments responding to the agency report. We deem these arguments abandoned. Ventura Petroleum Servs., Inc., B-281278, Jan. 21, 1999, 99-1 CPD ¶ 15 at 4 n 1.

controlled environment for performing maintenance on the B-2 bomber. According to the agency report, these devices are necessary because the Air Force currently has no climate-controlled hangars at sites other than the home base for the aircraft, and the agency requires a transportable, easily erected shelter system that will enable it to perform aircraft maintenance anywhere in the world. Air Force Legal Memorandum at 1-2.

The RFP provided that the Air Force would award a contract to the firm submitting the proposal deemed to offer the best overall value to the government considering cost/price and several non-cost/price factors. RFP at M-1. The evaluation factors were past performance, mission capability, cost/price and proposal risk, with past performance and mission capability being equal in importance, and past performance, mission capability and proposal risk being, in combination, significantly more important than cost/price. RFP at M-2. The RFP stated that, for purposes of evaluating past performance, the agency would consider current and past contracts of the offeror and predecessor concerns, as well as key employee and subcontractor relevant experience. RFP at M-3. Current contracts were those performed within the last 5 years that had a dollar value of at least \$500,000. RFP at L-6.

The agency received several proposals, four of which were included in the competitive range. Detailed discussions were conducted with the competitive range offerors, after which the agency solicited two final proposal revisions (FPR). The record shows that after the second FPR, ASFI's proposal was the lowest priced and Universal's the second lowest priced. Proposal Analysis Report at 17. As for the past performance evaluation of ASFI's proposal--the subject of the protest--the record shows that ASFI received an exceptional rating; the agency also found that there was a high probability that the firm would successfully complete the contract. The Air Force based ASFI's rating on a review of four prior contracts. The record shows that the firm had provided information on five prior contracts, and that the agency was able to gather complete information relating to four of them. Agency Report, Exh. 16. On the basis of ASFI's past performance rating, the ratings assigned to ASFI's proposal for the remainder of the technical evaluation criteria, and ASFI's low price, the agency made award to it as having submitted the proposal offering the best overall value to the government.

Universal contends that the agency improperly rated ASFI exceptional/high for past performance. In its original protest, Universal argued that the agency improperly failed to consider the performance of a predecessor concern to ASFI on a previous relevant Air Force contract. According to Universal, the predecessor concern, American Space Frame, Inc. (which filed for bankruptcy in July 1997), performed poorly on a 1997 contract for the construction of a hangar for the C-130 aircraft. Subsequent to receiving the agency report, Universal also argued that the agency improperly relied on contracts performed by American Space Frame, Inc. in assessing the past performance of ASFI; according to the protester, since the record

shows that ASFI was incorporated only in March 1998, there was no reasonable basis for attributing American Space Frame, Inc.'s past performance to ASFI. Finally, the protester takes issue with the agency's rating on a substantive basis, maintaining that the information relied on by the agency could not reasonably have been interpreted as meriting the exceptional/high rating.

In reviewing an agency's evaluation of past performance, our Office considers whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria and applicable statutes and regulations. Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4.

The evaluation of ASFI's proposal under the past performance factor was reasonable and consistent with applicable statutes and regulations. As to the protester's original assertion--that the agency improperly failed to consider the contract performed by American Space Frame, Inc. in 1997--the record shows that, although the agency did not consider the information as part of its past performance evaluation, the agency did research the matter once Universal filed its protest.<sup>2</sup> That research showed that the contract in question had been for the construction of an aircraft shelter for the Idaho National Guard; that American Space Frame, Inc. had been a subcontractor on that effort; that there was no default on the part of the prime contractor; and that the structure in question is acceptable and currently in operation. Contracting Officer's Statement at 5-6. The cognizant Idaho National Guard personnel further advised that the prime contractor and American Space Frame, Inc. apparently had had a dispute relating to the performance and payment obligations of the parties, and that this dispute had resulted in American Space Frame, Inc.'s holding up deliveries at some point during the contract. Id. This version of events was corroborated by ASFI's president who, the agency reports, stated that there had been payment problems with the prime contractor and that American Space Frame, Inc. had delayed shipments on account of those problems. Id. Since the agency's research shows nothing more than a business dispute between American Space Frame, Inc. and its prime contractor, which had no apparent effect on the buyer's satisfaction, and since there is no evidence that American Space Frame, Inc.'s performance was otherwise problematic, there is no basis to conclude that American Space Frame, Inc.'s performance on that contract should have had a negative impact on ASFI's past performance rating.

Universal's second argument--that the agency improperly gave consideration to contracts performed by American Space Frame, Inc. in assessing ASFI's past performance--is similarly without merit. The Air Force represents--and the protester

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<sup>2</sup> We note that the information relating to the Idaho National Guard contract was not so close at hand that the agency was required to independently uncover and consider it during the evaluation. See TRW, Inc., B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 12.

has submitted no evidence to the contrary--that ASFI has the same management and employees as American Space Frame, Inc. and operates out of the same location. Air Force Supplemental Submission at 3. There thus is no basis to question ASFI's status as the successor firm to American Space Frame, Inc.<sup>3</sup> Moreover, even if we agreed that the agency should not have considered contracts performed by American Space Frame, Inc. in evaluating ASFI's past performance, there would be no material impact on the evaluation.<sup>4</sup> In this regard, the record shows that, of the four contracts considered by the agency in its review, only one was performed prior to the establishment of ASFI.<sup>5</sup> Since there was no requirement that the agency review a particular number of contracts, the agency properly could have excluded this contract from its consideration based on the conclusion that the two firms were distinct. The record shows that, although the firm's performance on that contract was rated favorably, it was nonetheless assigned the lowest relative past performance ratings among those contracts reviewed by the Air Force. It follows that if the agency eliminated this contract from consideration, the effect, if any, would be to improve ASFI's rating. Under these circumstances, there is no basis to question ASFI's exceptional/high past performance rating. See NAHB Research Ctr., Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 5.

Universal's final argument is that the agency's review improperly was based on contracts that had not yet been completed or involved only partial work on the part of ASFI. This argument also is without merit. Of the three contracts that were performed by ASFI, all appear extremely relevant, and the agency received overwhelmingly positive feedback regarding ASFI's performance. Two of the three contracts--which were being performed at the time of the agency's evaluation--involved the design and fabrication of similar structures (one is for the erection of an airplane hangar and one is for the erection of a sports and convention center dome) and met the dollar value threshold established by the solicitation (the project values are \$932,000 and \$3.5 million respectively). In both instances, the cognizant points of contact assigned ratings of excellent to ASFI's performance. Considering these

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<sup>3</sup> We also question how Universal logically can assert that the two firms should be considered interchangeable for purposes of considering the Idaho National Guard contract, but not for the other contracts where there were no alleged performance problems.

<sup>4</sup> Universal's pleadings tend to suggest that the RFP required 5 years of experience in the field; this is simply incorrect. The RFP specified the period of time that the agency was using to define "current" contracts (those performed within the last 5 years) but did not require offerors to have 5 years of experience. RFP at L-6.

<sup>5</sup> ASFI's proposal referenced five contracts, two of which were performed prior to the establishment of ASFI. Of those two, only one was reviewed by the agency in its past performance evaluation.

ratings and the relevance of the contract work, the agency reasonably could conclude that these contracts weighed in favor of an exceptional/high past performance rating, notwithstanding that performance had not yet been completed.

The third contract was for the design and fabrication of a large exhibition center structure in New York City. The record shows that the cognizant point of contact assigned ratings of excellent and good to ASFI's past performance on that contract. Universal suggests that this project was not a valid measure of ASFI's past performance because ASFI did not actually perform the installation, but merely designed and fabricated the structure. However, since the B-2 shelters are to be portable--and thus will not require installation--the agency reasonably concluded that this contract supported ASFI's exceptional/high past performance rating.

The protest is denied.

Comptroller General  
of the United States