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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Weber Cafeteria Services, Inc.

File: B-290085.2

Date: June 17, 2002

Ralph Weber for the protester.

Sherry Kinland Kaswell, Esq., Alton E. Woods, Esq., and Hugo Teufel, Esq.,
Department of the Interior, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the awardee's proposal was unbalanced is denied where there is no evidence that any of awardee's prices were so overstated as to create any concern of risk to the government.
 2. Protest against agency's past performance evaluation is denied where the record shows the evaluation was reasonable and consistent with the evaluation criteria; agency was not required to give evaluation preference or additional credit for protester's past performance as the incumbent.
 3. Where protester's and awardee's proposals were properly evaluated as technically equal, and awardee's proposed price was lower than the protester's, the agency reasonably determined that awardee's proposal represented the best value to the government.
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DECISION

Weber Cafeteria Services, Inc. protests the award of a contract to Acores Foods, LLC, under request for proposals (RFP) No. RMK0E020012, issued by the Department of the Interior, Bureau of Indian Affairs (BIA), for food services at the BIA Southwestern Indian Polytechnic Institute (SIPI), Albuquerque, New Mexico. Weber, the incumbent contractor, contends that BIA misevaluated offerors' proposals and that the agency's award decision was improper.

We deny the protest.

The RFP, issued on November 20, 2001, contemplated the award of a fixed-price contract for a base year, with four 1-year options, to provide a complete food service program for the students attending BIA-SIPI. The RFP notified offerors that the two evaluation factors for award, past performance and price, were equal in weight, and that award would be made to the offeror whose proposal was most advantageous to the government. RFP amend. 2, § 52.212-2. The RFP instructed offerors that the submission of past performance information was to include "recent and relevant contracts for the same or similar items." *Id.* § 52.212-1(b)(10). The RFP's price schedule required that offerors provide both unit and extended prices, in each performance period, for the base meal program, the Summer Upward Bound student program, catering services, and the "50/50 program."¹

Four proposals, including those of Weber and Acores, were received by the RFP's closing date. Weber's proposal was rated "very good" under the past performance criterion at a proposed price of \$5,939,743.55; Acores' proposal was rated "very good" under the past performance criterion at a proposed price of \$5,855,235.05.² Having found that Acores and Weber were equal in terms of past performance, and that Acores was the lowest-priced offeror, the agency determined that Acores' proposal offered the best value to the government.³ Agency Report at 1; Contracting Officer's Statement, Apr. 25, 2002, at 2. On February 21, 2002, BIA announced its intent to make contract award to Acores. This protest followed.

Weber protests that the agency's decision to make award to Acores was improper. The protester contends that Acores' offer was unbalanced and should not be accepted for award. Weber also asserts that the agency's evaluation of proposals under the past performance factor was flawed, and BIA's selection decision was

¹ The 50/50 program requires the contractor to provide a package meal to students who miss the breakfast or lunch meal. RFP amend. 2, Price Schedule at 4.

² The agency determined that the prices proposed by the remaining two offerors were unreasonably high. Agency Report at 1; Contracting Officer's Statement, Apr. 25, 2002, at 1.

³ During evaluation of proposals, BIA realized that the RFP's price schedule for the base meal program contained an error that significantly affected offerors' extended prices: while worksheets accompanying the price schedule accurately reflected the estimated number of students per meal for each school trimester, the price schedule improperly aggregated the estimated number of students per meal for the entire school year for purposes of calculating offerors' extended prices. The agency analyzed Weber's and Acores' prices on the basis of the worksheets, and determined that while the price difference was smaller than when the price schedules were compared, Acores' proposal was still lower-priced. Contracting Officer's Statement, June 6, 2002; Agency Report, Tab L, Price Abstract for Weber; Tab M, Price Abstract for Acores.

unreasonable. Weber also argues that the agency improperly calculated the protester's proposed price.

Unbalanced Pricing

Weber argues that Acores' offer was unbalanced and could not be accepted for award because its prices for the 50/50 program were improperly overstated. A price abstract provided to all offerors shows that Acores' prices for the 50/50 program were approximately twice that proposed by Weber (e.g., \$18,990 for the awardee as compared to \$8,862 for the protester for the base year). Agency Report, Tab K, Price Abstract. Weber alleges that Acores' overstated prices to the agency for the 50/50 program, together with the income to be generated from students under this contract line item, permitted Acores to understate its pricing for the much larger, base meal program.

Unbalanced pricing exists where the price of one or more contract line items is significantly overstated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). See Federal Acquisition Regulation (FAR) § 15.404-1(g)(1). While unbalanced pricing may increase risk to the government, agencies are not required to reject an offer solely because it is unbalanced. *Id.* Rather, where an unbalanced offer is received, the contracting officer is required to consider the risks to the government associated with the unbalanced pricing in making the award decision, including the risk that the unbalancing will result in unreasonably high prices for contract performance. FAR § 15.404-1(g)(2).

Even assuming, arguendo, that Acores' prices for the 50/50 program were overstated, the record shows that BIA analyzed Acores' proposal and reasonably concluded that the awardee's pricing did not pose an unacceptable risk. The 50/50 program represents only a very small part of the BIA-SIPI food services program, and constituted a very minor portion of each offeror's total proposed price. As shown above, while Acores' prices for the 50/50 program were twice those proposed by Weber, the price difference between the two offerors for the program amounted to only approximately \$10,000 annually. This amount is insignificant in comparison to the offerors' prices for the much larger, base meal program. There is simply no evidence that any of Acores' prices were so overstated as to create any concern of risk to the government.

Past Performance

Weber argues that Interior's evaluation of proposals under the past performance criterion was faulty. Specifically, the protester contends that given its successful past performance as the incumbent contractor at BIA-SIPI, the agency could not properly assign an equal past performance rating to another offeror. Weber also asserts that, regardless of the awardee's performance at other locations, the

protester was the only offeror with proven past performance with this particular agency or with a "culturally sensitive customer base."

In reviewing a protest against an agency's evaluation of proposals, we 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 judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4. As discussed below, we find that the agency's evaluation of the protester's and awardee's past performance was reasonable and consistent with the evaluation criteria.

After receipt of proposals, BIA sent past performance questionnaires to the references submitted by each offeror.⁴ The agency received responses from four references for Acores, who rated Acores' past performance in all areas as either exceptional or very good.⁵ All four past performance references rated overall satisfaction with Acores' performance as exceptional, and three references provided favorable narrative comments. Agency Report, Tab O, Past Performance Questionnaires for Acores. Based on a review of Acores' past performance references, BIA assigned a rating of very good to Acores. Contracting Officer's Statement, Apr. 24, 2002, at 1-2.

BIA also received responses from four references for Weber, including from the contracting officer representative (COR) for the previous contract at BIA-SIPI.⁶ The

⁴ Specifically, the questionnaires sought past performance information in the areas of quality control, scheduling methodologies, personnel, equipment and supplies, cost, and overall customer satisfaction. Contracting Officer's Statement, Apr. 24, 2002, at 1.

⁵ An exceptional/high confidence rating was assigned for past performance if "[b]ased on the offeror's performance record, essentially no doubt exists that the offeror will successfully perform the required effort." A very good/significant confidence rating was assigned for past performance if "[b]ased on the offeror's performance record, little doubt exists that the offeror will successfully perform the required effort." Agency Report, Tab N, Past Performance Questionnaires for Weber, at 1.

⁶ Weber also protests that the COR from the previous contract should have been involved in the evaluation of proposals. The choice of individuals to serve as proposal evaluators is a matter within the discretion of the contracting agency; our Office will question this discretion only if there is evidence of bad faith, bias, or

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references rated Weber's past performance in almost all areas as either exceptional or very good. Two past performance references, including the COR for the previous contract at BIA-SIPI, rated overall satisfaction with Weber's performance as exceptional, and two references rated overall satisfaction with Weber as very good. Two references also provided favorable narrative comments. Agency Report, Tab N, Past Performance Questionnaires for Weber. After review of the ratings from all of Weber's past performance references, the contracting officer assigned a rating of very good to Weber. Contracting Officer's Statement, Apr. 24, 2002, at 1-2. We find BIA's ratings of both Acores' and Weber's past performance to be reasonable.

Weber's contention that its successful performance as the incumbent contractor should result in special consideration or additional evaluation credit (and presumably, a higher past performance rating) is also without merit.⁷ In preparing a solicitation, a procuring agency has broad discretion in identifying the factors which will form the basis for the source selection decision. However, once the solicitation is issued and offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria in making its award decision, or inform all other offerors of any significant changes made in the evaluation scheme. QuesTech, Inc., B-255095, Feb. 7, 1994, 94-1 CPD ¶ 82 at 7. Quite simply, an agency may not announce in the solicitation that it will use one evaluation plan, and then follow another. Here, the solicitation stated that the contracting agency sought past performance information regarding offerors' "recent and relevant contracts for the same or similar items." RFP amend. 2, § 52.212-1(b)(10). The RFP did not specify that an offeror had to have food service experience with BIA-SIPI or with "a culturally sensitive customer base," nor did the RFP provide that the past performance of the incumbent contractor would be given special recognition or consideration. Accordingly, the agency properly declined to afford Weber an evaluation preference or additional credit for its performance as the incumbent contractor on the preceding contract.

Award Selection Decision

Weber also protests the agency's award selection decision. The protester argues that given the "statistically insignificant" price difference between itself and Acores, and Weber's proven past performance as the incumbent contractor, BIA's decision to

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conflict of interest, none of which has been alleged or is evident in this case. ELS Inc., B-283236, B-283236.2, Oct. 25, 1999, 99-2 CPD ¶ 92 at 12.

⁷ To the extent Weber is protesting that the RFP should have provided for special consideration of past performance as the incumbent, its protest is untimely since it concerns an alleged impropriety apparent from the face of the RFP and was not raised prior to the closing time for submission of proposals. 4 C.F.R. § 21.2 (a)(1) (2002).

make award to Acores was improper and did not actually represent the best value to the government. We disagree.

A price/technical tradeoff, as advocated by the protester here, is necessary only where one proposal is rated higher technically than another, but the other is lower in price. As discussed above, we have rejected the protester's arguments that the agency should have rated Weber's past performance higher by providing special consideration to past performance as the incumbent contractor, and Weber has not otherwise demonstrated any flaw in the agency's determination that the protester's and awardee's past performance were essentially equal. Since Acores' proposal was both technically equal to Weber's and lower priced, no tradeoff was required; Acores' proposal represented the best value to the government. State Mgmt. Servs., Inc.; Madison Servs., Inc., B-255528.6 et al., Jan. 18, 1995, 95-1 CPD ¶ 25 at 6-7.

Calculation of Weber's Price

Weber also protests that the agency miscalculated its proposed price, thereby resulting in the improper addition of \$16,920 to its evaluated offer. The agency argues that its upward adjustment of Weber's proposed price was proper, as the protester's extended price for the special meals line item (within the base meal program) in each performance period was inconsistent with its unit price for the same item.⁸ Even assuming that the agency improperly computed Weber's extended price as the protester alleges, Weber has not demonstrated that it was prejudiced by the agency's action. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Parmatic Filter Corp., B-285288.3, B-285288.4, Mar. 30, 2001, 2001 CPD ¶ 71 at 11; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, even if Weber's evaluated price is reduced by \$16,920, Acores' offer remains lower priced. Accordingly, the computation error alleged by Weber would not affect the award decision.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁸ Weber does not assert that the agency miscalculation of the protester's price was repeated when BIA analyzed Weber's and Acores' prices on the basis of the price schedule worksheets.