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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Knit-Rite, Inc.

File: B-293088.3

Date: August 5, 2004

David Taylor, Esq., Tighe Patton Armstrong Teasdale, for the protester.
Maura C. Brown, Esq., Department of Veterans Affairs, for the agency.
Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In procurement of socks for use by diabetic patients, where evaluation was based on medical judgments of evaluators with substantial expertise in the field, GAO will not question such medical judgments in the absence of any showing that product testing was unfairly administered.

2. Agency's use of subjective, rather than objective, technical evaluation methodology--the evaluators' ratings were based on their findings from walking in the socks--was unobjectionable where approach was consistent with solicitation plan, which specifically advised that "a subjective evaluation of the socks" would be performed.

DECISION

Knit-Rite, Inc. protests the award of a contract to Southern Hosiery Mills, Inc. under request for proposals (RFP) No. 797-NC-03-0024, issued by the Department of Veterans Affairs (VA) for diabetic socks.[1] Knit-Rite challenges the technical evaluation and the award decision.

We deny the protest.

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[1] The solicitation defined a diabetic sock as "hosiery specifically designed to reduce pressure or friction to the foot. They should be devoid of large seams or creases that could impart clinically significant pressure to an insensitive foot and should be loose fitting proximally, as not to restrict circulation." RFP at 4.

The RFP, issued as a small business set-aside, contemplated the award of a fixed-price requirements contract for a base year, with four 1-year options, for quantities of diabetic socks. Offerors were required to submit product samples that were to be evaluated by experts in treating VA's elderly diabetic population and other patients at risk of limb-threatening foot problems. The evaluation was to consist of an initial determination of whether the offered items met the minimum requirements and, for those found acceptable, an evaluation under three factors--technical, price and quality/past performance (in descending order of importance). Award was to be made, without discussions, to the offeror whose proposal would be most advantageous to the government, that is, on a "best value" basis.

The agency received proposals from 32 offerors, including Knit-Rite and Southern. The technical evaluation panel (TEP), which included two doctors of podiatry and a chief of prosthetics trained as an orthotist, evaluated each proposed sock. Agency Report (AR) at 5. The TEP rejected a significant number of socks in the initial evaluation and then evaluated those remaining. The final evaluation for Knit-Rite and Southern was as follows:

	Knit-Rite	**Southern**
Technical	Fair	Acceptable
Price	$3,080,000	$1,572,200
Past Performance	Acceptable	Acceptable

Prior to the agency's making an award determination, another offeror, Apex Foot Health Industries, filed a protest with our Office challenging the rejection of its offered socks. The procurement was suspended until issuance of our decision denying Apex's protest. See Apex Foot Health Indus., B-293088, Jan. 23, 2004, 2004 CPD ¶ 30. After the resolution of that protest, the contracting specialist reviewed the TEP's evaluations and conducted a tradeoff analysis between Southern and each of the other offerors, concluded that Southern's proposal represented the best value, and recommended that Southern receive the award. The contracting officer agreed with the recommendation and awarded Southern the contract. This protest followed.[2]

Knit-Rite asserts that the technical evaluation and award decision were flawed because the TEP used a subjective, rather than an objective, technical evaluation methodology, and thus improperly concluded that its sock was inferior to the awardee's.

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[2] Knit-Rite raised numerous issues in its submissions to our Office. We have considered them all and find that none has merit. This decision addresses the principal issues raised.

In reviewing a protest of an agency's evaluation of proposals and source selection decision, our review ordinarily extends to determining whether the agency acted reasonably and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. However, we have held that matters involving medical judgments and policies are inappropriate for review under our bid protest function. Apex Foot Health Indus., supra, at 3; GlaxoSmithKline, B-291822, Apr. 7, 2003, 2003 CPD ¶ 77 at 5. The scope of the evaluation here, and the agency's determination that Knit-Rite's sock was, at best, overall fair in meeting the stated requirements, involve such medical considerations. The evaluation testing was conducted by, and the evaluation conclusions were those of, three evaluators with substantial expertise in the area: the TEP Chairperson, who is a podiatrist as well as a member of the Prosthetic Clinical Management National Workgroup on Diabetic Socks; a chief of prosthetics who was trained as an orthotist; and a podiatric physician. In order for our Office to agree with Knit-Rite that its sock was superior to Southern's, we necessarily would have to adopt Knit-Rite's judgments about its own sock and reject as incorrect or unreasonable the medical judgment--i.e., that Knit-Rite's sock is more likely than Southern's to cause irritation to the diabetic foot--of these experienced practitioners. Under the above standard, we will not question such agency judgments.[3]

As for Knit-Rite's challenge to the agency's technical evaluation methodology, we find that the methodology was reasonable. Indeed, we already held--in Apex Foot Health Indus., supra--that the agency's evaluation methodology under this RFP was reasonable. Apex objected there--as Knit-Rite objects here--to the subjective nature of the evaluation. We rejected this argument, noting that, while the evaluation was subjective, this is what the RFP provided for; the RFP did not state that an objective, scientific process would be used in testing offered socks, but that a "subjective evaluation of the socks" would be performed.[4] RFP at 28. The evaluation consisted

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[3] In any case, we would have no objection to the evaluators' conclusions in this case. The evaluators rated Knit-Rite's sock as fair overall based on scores of fair under the areas of seams and comfort; acceptable under the foot pressure and fit areas; good under the lack of restriction area; and failed under the ambulation area due to its inability to stay up during ambulation. TEP Report, AR Tab 11. The TEP specifically noted as a weakness under several evaluation areas that the sock "slid down leg after only a few strides on all evaluators," and that the sock bunched up in the shoe when it slid down resulting in "significant irritation" on one evaluator's foot. AR Tab 11 at 2-4. In view of the protester's sock's failure to meet the ambulation test and the importance of avoiding foot irritation, there was nothing objectionable in the evaluators' conclusion that Knit-Rite's sock warranted a rating of fair.

[4] Knit-Rite's additional assertions, that objective testing equipment is superior and should have been used, are untimely; protests of alleged solicitation improprieties

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of the evaluators visually inspecting the socks, with special attention given to the seams, and then walking in the socks, with shoes, on carpeted and concrete floors, for approximately 10 minutes. The evaluators wore shoes "to simulate actual usage and to assist in determining whether pressure was placed on the foot from any seam or crease." AR, exh. 6, Declaration of TEP Chairperson, at 2. It remains our view that the agency's methodology was reasonable and consistent with the evaluation scheme set forth in the RFP.

Knit-Rite asserts that the evaluation was flawed because the TEP failed to take into account the protester's proposal submissions attesting to the superior attributes of its sock.[5] Comments at 4-5. This assertion is without merit. The TEP reviewed all of Knit-Rite's technical submissions, but relied on wearing the socks as a more effective way of evaluating them. Supplemental Contracting Officer's Statement at 2. Further, while Knit-Rite asserts, for example, that its sock is the only seamless sock available, and that the agency failed to properly credit this in the evaluation, there was no requirement that the socks be seamless, nor did the RFP provide for extra credit for such an attribute.

The protest is denied.

Anthony H. Gamboa
General Counsel

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must be raised prior to the closing time for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2004).

[5] In a related argument, Knit-Rite asserts that the agency failed to contact its past performance references and failed to seek information about the performance of its socks. This argument is without merit. The evaluation record, as supplemented by various declarations, shows that the agency not only contacted all of the protester's references, but that the past performance survey included a question on product quality under which Knit-Rite received uniformly positive evaluations.