



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Voices R Us

File: B-274802.2

Date: December 24, 1997

Hari P. Kunamneni for the protester.

Marian E. Sullivan, Esq., and Lawrence W. Kelly, 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.

DIGEST

Discussions in the area of past performance were adequate where agency identified the categories of concern with protester's prior performance and provided an opportunity to address those concerns.

DECISION

Voices R Us (VRU) protests the award of a contract to Western Environmental Corporation under request for proposals (RFP) No. F33659-96-R-7502, issued by the Department of the Air Force for the installation of an environmental monitoring system. VRU maintains that the agency failed to engage in meaningful discussions, and that its ranking under the solicitation's past performance criterion would have been better had it had an opportunity to respond to the agency's concerns.

We deny the protest.

The RFP sought fixed-priced offers to install an environmental monitoring system at the agency's metrology laboratories in Heath, Ohio. Firms were advised that proposals would be evaluated for compliance with the RFP's technical specifications and would be assigned a performance risk rating based on the agency's assessment of the offerors' past performance on similar contracts. As part of their proposals, firms were to provide a minimum of three references for similar prior contracts.

The agency received several offers in response to the RFP. VRU's proposal was found to be incomplete because the firm had not included information relating to prior contracts. After being contacted several times by the agency concerning the matter, VRU submitted references relating to six earlier contracts. The agency reviewed the submitted references and, after contacting each one, determined that five were for contracts that were not sufficiently similar to the requirement being

solicited; these were contracts for computer configuration and installation requirements as opposed to the installation of test or monitoring equipment. The agency found VRU's remaining reference, a Department of the Navy contract for the installation of computer link-ups for test stands and other measurement equipment, relevant.

After contacting the Navy and obtaining a written review of VRU's performance on the prior contract, the agency evaluators assigned a high risk rating to VRU's proposal. The Navy's written review provided that VRU's performance had been deficient in numerous respects--including the areas of timely performance, adequate communication between the contractor and agency personnel, cost control, compliance with contract terms (such as agreed-upon labor rates and the provision of adequate staffing)--and that the protester overall lacked business experience. The Navy concluded by describing VRU's performance as "a nightmare."

The agency sent VRU a discussion letter stating that its proposal had been found deficient under the past performance criterion in the areas of quality, delivery of goods and services, and management of projects. The letter went on to state that the agency's past performance review encompassed consideration of the offeror's record of conforming to purchase descriptions and contract schedules, good workmanship and commitment to customer satisfaction, and reasonable and cooperative behavior during contract performance. VRU did not respond to the agency's discussion letter.

After this round of discussions, the agency (in response to an unrelated bid protest to our Office) amended the RFP and solicited best and final offers. The Air Force provided VRU another opportunity to respond to its concerns regarding its past performance. In this second letter the agency was still more specific. The Air Force noted that VRU's negative past performance rating was based on its performance of the Navy contract and went on to state that the agency's review showed problems in the areas of quality of workmanship, management control, timely completion of contract schedules, system reliability, and ease of use.

VRU chose to respond to the agency's letter during this round of discussions, providing an explanation of its performance during the Navy contract. After reviewing the protester's response, the agency concluded that VRU's proposal still merited a high risk rating in the past performance area in light of the number and severity of the firm's performance problems on the prior Navy contract. Thereafter, the agency made award to Western Environmental.

VRU maintains that the agency did not engage in adequate discussions. According to the protester, the agency failed to advise it that there was a concern relating to the fact that VRU is a "one-man" company that might not have the capability to complete the requirement, that the agency was concerned with the amount of environmental monitoring contract experience the firm had, and that there had been

problems with performing the prior Navy contract to the satisfaction of the user agency and in accordance with its terms. VRU states that it was advised of these concerns for the first time during its debriefing and maintains that it would have received a better rating had it been afforded an opportunity to discuss these matters with the agency.

In conducting adequate discussions in the past performance area, agencies are not required to provide offerors with verbatim comments regarding all past performance surveys received; rather, agencies are required to impart sufficient information to afford the offeror a fair and reasonable opportunity to respond to the problems identified. Pacific Architects & Eng'rs, Inc., B-274405.2, B-274405.3, Dec. 18, 1996, 97-1 CPD ¶ 42 at 4. An agency discharges its obligation where it simply identifies categories of past performance problems that relate to the specific problems found in the past performance surveys. Id. at 4-5.

The Air Force discharged its obligation to engage in meaningful discussions with VRU. As noted, the agency sent VRU two separate discussion letters (to one of which the firm chose not to respond) that collectively identified virtually all categories where the firm's past performance on the prior Navy contract was considered deficient, including quality of workmanship, management control, timely completion of contract schedules, system reliability and ease of use, and customer satisfaction. The letters also made clear that the remainder of VRU's contracts were not considered relevant because they were not sufficiently similar to the environmental monitoring system being procured; in making this point, the agency clearly alerted VRU to its concern over the amount of environmental monitoring contract experience the firm had.

VRU also has not submitted any evidence during the course of the protest in an effort to show that the agency's concerns were unfounded; in fact, VRU opted not to submit any substantive comments in response to the agency report. Under these circumstances, and in light of the level of detail included in the agency's discussion letters, there is no basis to question the adequacy of discussions in this case. Moreover, VRU's reported poor performance on the Navy contract provided a reasonable basis for the agency's assigning a high risk rating to the firm's proposal in the past performance area.

The protest is denied.

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