



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Randolph Engineering Sunglasses

File: B-280270

Date: August 10, 1998

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John F. Kearney, Esq., AO Sunwear USA, Inc., an intervenor.
J. Albert Calluso, Esq., Defense Logistics Agency, for the agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In procurement set aside for small businesses, where protester fails to timely challenge proposed awardee's size status after receiving agency notice of intent to award and contracting officer otherwise had no information prior to award that impeached awardee's certification that it is a small business, contracting officer acted reasonably in not questioning that certification.
 2. Protest of price/technical tradeoff in best value procurement is denied where source selection authority reasonably determined that protester's "excellent" past performance rating did not justify paying a significantly higher price than that proposed by an offeror with a "good" past performance rating.
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DECISION

Randolph Engineering Sunglasses protests the award of a contract to AO Sunwear USA, Inc. under request for proposals (RFP) No. SPO200-97-R-5014 for aviation sunglasses issued by the Defense Supply Center Philadelphia (DSCP), Defense Logistics Agency. Randolph questions the compliance of AO's proposed product with the RFP specifications and protests the award determination and the agency's acceptance of AO's certification that it is a small business.

We deny the protest.

The RFP was issued as a total small business set-aside for the supply of aviation sunglasses made in accordance with military specifications incorporated in the RFP. The RFP contemplated award of a fixed-price, indefinite-quantity, indefinite-delivery contract for a base year with two 1-year options at an estimated quantity of 40,920 sunglasses for each year.

Technical proposals were to be evaluated under two factors: past performance and electronic data interchange (EDI) capability.¹ Together these factors were considered significantly more important than price. Award was to be made to the offeror whose proposal was evaluated as most advantageous to the government. The RFP at section 52.212-2, Addendum, also provided that the agency would develop a level of confidence assessment for each offeror which was to reflect the government's "degree of confidence in the offeror's ability to keep promises it has made in its proposal." This rating was to be used in adjusting the evaluation of the offeror's proposal and "could be highly influential in determining which offeror represent[ed] the best overall expected value." The RFP went on to state that the most important factor in the development of the assessment rating would be the offeror's record of past performance and experience.

Randolph, AO, and two other offerors submitted proposals by the November 24, 1997 closing date. After evaluating the proposals and conducting discussions, the agency obtained best and final offers from each offeror in the competitive range.² The final ratings and prices for Randolph and AO are as follows:

Offeror	Past Perform.	EDI	Confidence Level	Total Est. Quantity Price
Randolph	Excellent	Acceptable	High	\$1,273,021
AO	Good	Acceptable	High	\$ 913,334
Offeror C	Good	Acceptable	Moderate	\$ 979,215

In making his award determination, the contracting officer, as source selection authority, considered Randolph's higher past performance rating and the price differential between AO and Randolph. Based on the fact that Randolph's price was approximately 40 percent higher than AO's price, the contracting officer reasoned that "the price differential is significant and does not warrant making award to Randolph Engineering based on a marginally superior rating for past performance." Source Selection Decision Document. He therefore determined that AO's proposal represented the best value to the government.

¹The RFP advised that DSCP intended to use EDI to send delivery orders to, and receive invoices from, the contractor.

²The fourth offeror's proposal was eliminated from the competition because it did not meet the small business size standard.

The contracting officer notified Randolph of his intent to award the contract to AO on May 22, 1998, in order to provide it an opportunity to challenge AO's size status. In the absence of any challenges, the contracting officer awarded AO the contract on May 28. This protest followed. After initially staying performance of the contract, the agency determined to override the stay based on the best interest of the government.

Randolph first challenges AO's status as a small business based upon a 1993 ruling by the Small Business Administration (SBA) that AO, then operating under a different name, was considered other than small due to its affiliation with a large business. The Small Business Act, 15 U.S.C. § 637(b)(6) (1994), gives the SBA, not our Office, the conclusive authority to determine matters of small business size status for federal procurements. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1) (1998); Survive Eng'g Co., B-235958, July 20, 1989, 89-2 CPD ¶ 71 at 2. We therefore will not review a protester's challenge to another company's size status, nor will we review a decision by the SBA that a company is, or is not, a small business for purposes of federal procurements. Survive Eng'g Co., *supra*; Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297 at 2. Accordingly, this issue is not for our consideration.

Randolph also argues that AO, having been declared other than small in 1993, was not allowed to self-certify itself as small unless it had obtained a recertification from the SBA, *see* 13 C.F.R. § 121.1009(g)(3), and that the contracting officer was on notice that AO's self-certification as a small business should be questioned. While our Office will review whether an offeror's self-certification as a small business should have been challenged by the contracting officer, Fiber-Lam, Inc., B-237716.2, Apr. 3, 1990, 90-1 CPD ¶ 351 at 4, we will not consider the issue here, because it was untimely raised. Our Bid Protest Regulations require that a protest be filed within 10 days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Randolph asserts that it learned this basis of protest after review of the agency report in which it found a letter AO submitted with its offer which allegedly called into question AO's self-certification. Randolph received the agency report, including AO's submission, more than 10 days before it raised this issue in its comments on the agency report, and it is therefore untimely.

In any event, we note that a contracting officer generally may accept, at face value, an offeror's self-certification, unless he has information prior to award that reasonably impeaches the certification. Fiber-Lam, Inc., *supra*. Here, the contracting officer had before him only AO's submission stating that "[p]rior to June 1996 AO, [under its former name] was considered a large business only because its Board of Directors were the same [as those] of American Optical Corporation, which prior to June 1996 was a large business." Letter from the President of AO Sunwear USA, Inc., to the Contracting Officer (Nov. 19, 1997). The statement went on to state that both AO and American Optical each employed less than 50 people and would both be considered small businesses. These statements do not

constitute information that can be considered to "reasonably impeach" AO's self-certification so as to create an obligation on the part of the contracting officer to refer the matter to the SBA.

Randolph next contends that the agency's award determination was flawed because it was based on an improper evaluation. Where there is a challenge to the evaluation of proposals in a negotiated procurement, it is not the function of our Office to evaluate the proposals de novo. Rather, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of competing proposals is primarily a matter within the contracting agency's discretion. Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3; Information Sys. & Networks Corp., B-237687, Feb. 22, 1990, 90-1 CPD ¶ 203 at 3.

Past performance was to be evaluated under the following subfactors: offeror's reputation for conforming to specifications and standards of good workmanship; adherence to contract schedules; and reasonable and cooperative behavior, commitment to customer satisfaction, and having a business-like concern for the customer's interests. RFP at § 52.212-2, Addendum. The difference between an "excellent" rating and a "good" rating under the past performance factor is based upon relatively slight degrees of divergence. Thus, to achieve an "excellent" rating, the "majority" of past performance contacts must indicate that the offeror has a record of "complete conformance" with specifications and an "outstanding" reputation for good workmanship and manufacturing practices. To achieve a "good" rating, "most" of the contacts must indicate a "better than average" record of performance, specification compliance and good workmanship reputation. With regard to timely performance, an "excellent" record is necessary for an "excellent" rating, while a "good" rating is based on a "better than average" delivery record. With regard to complaints, an "excellent" rating is based on complaints being "negligible or unfounded" and on an "excellent" record of responding to customer complaints." A "good" rating is based on "perhaps valid" complaints being "few and relatively minor." Technical Evaluation, Rating Scale.

Randolph argues that in making its award determination, the agency failed to properly consider the "huge" differences between the bases for Randolph's "excellent" past performance rating and AO's "good" rating. Given those differences, Randolph asserts that AO's "high" confidence assessment was unwarranted. Based on our review of the record, the agency's evaluation and the award determination were both reasonable.

In this regard, the agency found that both offerors had successful technical experiences in building metal frames and electroplating. The evaluators also noted that AO was the originator of the frame style to be supplied. While Randolph was given credit for its "many sizeable contracts [mainly metal wire frames and gas

mask inserts] with DSCP in the past 15 years," AO was credited for its "many" contracts (mainly metal frames) with DSCP during the same period. The end-users liked both offerors' workmanship. While Randolph's delivery was "always" on time, AO's was "mostly" on time. There was no history of complaints against Randolph, and while there was a history of some complaints against AO, AO was "willing to correct the deficiencies quickly." The evaluators noted that in the many purchases over the last year, there had been no complaints about AO's workmanship. Randolph "always" adhered to the contract delivery schedules and was recognized for its "extra efforts" in meeting a surge requirement for gas mask inserts during Operation Desert Storm, while AO "mostly" adhered to the delivery schedules. Randolph was evaluated as being "very cooperative" with the government's interest including development of competitive products with lower cost and development of prototypes for evaluation at no cost to the government. AO was evaluated as "reasonably cooperative" with the government's interest and although the company had changed hands "many times" during the past 20 years, AO continued to work toward furthering the "mutual interest" of the company and the government.

While the agency recognized differences in Randolph's and AO's past performance, we do not agree with Randolph that these differences should be viewed as "huge." Rather, as recognized by the evaluators, Randolph's past performance was better than AO's, and warranted an "excellent" rating, while AO's performance was not as outstanding, but warranted a "good" rating. The fact that the differences were significant enough to warrant the respective ratings does not mean that they were significant enough to warrant a less than "high" confidence assessment for AO. In this regard, the confidence assessment is a subjective judgment about how much confidence, trust, or reliance the agency has in an offeror's promises to perform. In view of AO's complaint-free performance in the preceding year while filling multiple small orders for sunglasses, its willingness to quickly correct any deficiencies, and its overall "good" past performance rating, the agency reasonably assessed its confidence in AO's ability to perform its promises as "high." Randolph's mere disagreement with the evaluators' judgment does not render the evaluation unreasonable. See Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115 at 8.

Likewise, Randolph's disagreement with the contracting officer's tradeoff determination does not make it unreasonable. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. Price/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. General Servs. Eng'g. Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 9. Here, the contracting officer considered the difference in the offerors' past performance ratings. He specifically noted that multiple small orders had been issued to both offerors and both had an excellent record of filling the orders. While recognizing Randolph's higher past performance rating, the contracting officer determined that it was not high enough to justify paying the substantial price premium represented by Randolph's proposal.

In this regard, he specifically noted that paying a price premium of less than 6 percent could have been justified by Randolph's superior past performance. Price Negotiation Memorandum at 2. In view of the relatively close technical merit of the two proposals and the significant price differential, the contracting officer's tradeoff cannot be considered unreasonable.

Finally, Randolph challenges AO's compliance with the applicable military specification. According to Randolph, the temples on AO's sunglasses do not meet the size and "swedging" process requirements. The agency has submitted statements from an agency engineer that AO's sunglasses in fact meet the temple thickness specifications and that AO employs the "swedging" process to meet the temple thickness requirements. In the absence of any evidence from Randolph to rebut the engineer's statements, there is no basis to conclude that AO's sunglasses do not meet all specifications.

The protest is denied.

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