



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: SWR Inc.

File: B-286044.2; B-286044.3

Date: November 1, 2000

Benjamin M. Bowden, Esq., Albrittons, Clifton, Alverson & Moody, for the protester.
Jacob B. Pompan, Esq., and Gerald H. Werfel, Esq., Pompan, Murray & Werfel, for
Pentad Corporation, an intervenor.
Sharon A. Jenks, Esq., Department of the Air Force, for the agency.
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Past performance evaluation is unobjectionable where it was conducted in accordance with stated evaluation criteria and is supported by the record; protester's proposal was reasonably rated neutral under past performance factor where it showed no relevant prior performance by offeror and, although protester argues that the relevant experience of its proposed project manager should have been attributed to the protester, agency reasonably declined to do so where the individual was not currently employed by the protester, and the proposal did not contain a firm commitment by the individual to work for the protester.

DECISION

SWR, Inc. protests the award of a contract to Pentad Corporation under request for proposals (RFP) No. F09607-00-R0003, issued by the Department of the Air Force for mess attendant services at Moody AFB, Valdosta, Georgia. SWR challenges the evaluation of the proposals.

We deny the protest.

Under the statement of work, the contractor was to provide all personnel, supervision, and any items and services necessary to perform food service attendant services. RFP attach. 2 at 3. The RFP, a total small business set-aside, contemplated the award of a fixed-price contract for a 5-month base period, with three 1-year options. RFP attach. 3 at 3. The RFP provided for a best value evaluation based on

past performance and price, with past performance being significantly more important than price. RFP attach. 5 at 1. The past performance factor included the following subfactors: quality of service, management, and compliance with contract requirements. Id. at 3. Offerors were required to submit relevant past performance information, including a list of their last 5 contracts performed within the last 5 years, and all contracts currently in progress. RFP attach. 4 at 3. The RFP provided that past performance would be considered relevant “if the services provided are of a similar nature and scope as the requirements contained in this solicitation Past performance, for the purpose of satisfying this requirement, means quality and quantity and level of work essentially comparable to this acquisition.” Id. Following the evaluation, proposals would be assigned a “Confidence Assessment Rating,” based on an assessment of performance risk. RFP attach. 5 at 2. Offers having no relevant past performance would be given a neutral rating for past performance. Id. at 3. The RFP warned that, although price would be evaluated, the government might award to other than the low-priced offeror. Id. at 1.

Several proposals were received and evaluated. Although all seven past performance references provided by SWR rated the firm exceptional or very good under each past performance subfactor, the agency found that the prior contracts were not similar in nature and scope to the RFP requirement, and therefore were not relevant; SWR’s proposal thus was rated neutral overall for past performance. Agency Report (AR), § 10, at 2. Pentad’s proposal referenced three current food service contracts at defense installations, all of which were deemed relevant. For two of the contracts, Pentad’s performance was rated exceptional, and for the third it was rated very good; this resulted in an overall exceptional rating under the past performance factor. Id. at 4. Pentad’s price, \$1,829,979.81, was the lowest among four proposals rated exceptional; SWR’s proposal was one of five rated neutral, and was the lowest-priced overall at \$1,644,542.80. Id. at 7, 8. The source selection authority (SSA) compared Pentad’s proposal to the one proposal rated satisfactory (which was the second lowest-priced overall at \$1,649,817.90), and determined the premium was reasonable given the superior quality reflected in Pentad’s exceptional past performance rating. Thus, Pentad’s offer was determined to represent the best value to the government, and award was made to that firm. Id. at 8, 9. Following a debriefing, SWR filed this protest. AR, Memorandum of Law, at 1.

SWR objects to its neutral past performance rating. SWR acknowledges that it has no history of providing the identical services required here, but maintains that the agency was required--under the terms of the RFP and the Federal Acquisition Regulation (FAR)--to consider the experience of its proposed project manager, a key employee, who has worked in the same capacity for the incumbent contractor for 3 years. SWR concludes that, had the agency considered its project manager’s past performance, SWR would have received a higher rating and, based on its lowest price, its proposal would have been determined the best value to the government.

We will review a proposal evaluation to ensure that it was reasonable and consistent with the solicitation and applicable statutes and regulations. JRS Management, B-278182, Nov. 10, 1997, 97-2 CPD ¶ 137 at 2. A protester's mere disagreement with the agency's evaluation does not render the evaluation unreasonable. Command Technology, Inc., B-277538.2, Apr. 28, 1998, 98-1 CPD ¶ 123 at 4.

SWR is correct--and the agency does not dispute--that the RFP indicated that the past performance evaluation would include key personnel. In this regard, the RFP stated under the heading "Past Performance Procedures," that "[i]nformation will also be considered regarding any significant subcontractors, and key personnel records." RFP attach. 5 at 2 (emphasis added). The RFP also referenced FAR § 15.305(a)(2), id. at 3, which states, in relevant part, that the agency should consider past performance information concerning "key personnel who have relevant experience . . . when such information is relevant to the instant acquisition."

SWR's proposal indicated that the individual it was proposing as project manager was not a current SWR employee, but was employed as the project manager for the incumbent contractor. SWR Proposal at 2, 18. In order to establish that the individual intended to be employed by SWR, the firm included in its proposal a letter, purportedly from the individual, that reads as follows:

If upon successful Award of the Food Service contract with your Company and Moody Air Force Base, Valdosta Georgia. Please accept this letter as my intent to continue employment as Project Manager at that facility for as long as the contract is in force.

SWR Proposal at 19. The typed name of the project manager appears in the signature block, but the letter is unsigned. The letter is addressed to "To Whom this may concern," and there is no reference in the letter to SWR or any SWR employee.

The agency takes the position that the letter from the proposed individual did not reliably convey that she would, in fact, perform as project manager for SWR, and that it therefore reasonably did not attribute her experience to SWR. We agree. The possibility that, due to unforeseen circumstances, a proposed key individual may not be hired by the offeror, is an appropriate consideration for an agency in deciding whether the individual's experience should be imputed to the offeror for evaluation purposes. See Pacific Architects & Eng'rs, Inc., B-262243, B-262243.2, Dec. 12, 1995, 95-2 CPD ¶ 253 at 7-8. The letter included in SWR's proposal established no commitment on the part of the proposed individual to work for SWR and, indeed, did not even refer to SWR, and there was nothing else in the proposal indicating that SWR and the individual had even discussed specific employment terms. We think the agency reasonably could decline to impute the proposed individual's experience

to SWR based on the absence of stronger evidence of an employment commitment, or other evidence indicating that the individual would in fact be employed by SWR.¹

SWR asserts that the absence of a firm employment commitment should not be relevant, since the RFP did not require firm letters of commitment from proposed employees. However, our above conclusion is not dependent upon such a requirement; rather, it is based on the inherent rationality of an agency's assessing whether a proposed individual will be employed by an offeror before it imputes that employee's past performance to the offeror. The fact that letters of commitment were not required did not preclude the agency from making this assessment based on all relevant considerations.

In a supplemental protest filed on September 18, SWR argues that the agency improperly failed to evaluate each offeror's quality control plan and phase-in plan. Under our Bid Protest Regulations, protests of alleged improprieties in a solicitation which are apparent prior to the time for receipt of proposals, must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (2000). Although the RFP provided that the quality control plan and phase-in plan were mandatory parts of every offer, RFP attach. 8 at 1, it also provided that only price and past performance would be evaluated. RFP attach. 5 at 1. The agency evaluated the proposals under these two factors, in accordance with the RFP. If SWR believed other parts of its proposal submission should have been evaluated, it was required to protest on this basis prior to the closing time for receipt of proposals; it could not wait until the agency actually evaluated the proposals as it said it would. Because it did not raise this allegation prior to the closing time, this aspect of its protest is untimely.

SWR also argues in its supplemental protest that the agency improperly failed to consider past performance information in its proposal regarding its ongoing contract for repair and maintenance of food service equipment in the dining facility at Ft. Shafter, Hawaii; SWR asserts that its past performance on this contract should have been considered relevant. This argument also is untimely. Protests concerning other than solicitation deficiencies must be filed within 10 days after the protester knew or should have known the basis for the protest. 4 C.F.R. § 21.2(a)(2). New protest grounds raised in a supplemental protest must independently satisfy the timeliness requirements of our Regulations. RAMCOR Servs. Group, Inc., B-276633.2 et al., Mar. 23, 1998, 98-1 CPD ¶ 121 at 9 n.9. As of its August 3 debriefing,

¹We note that, even had the evaluators imputed the relevant experience of its proposed project manager to SWR, the record is not clear that the result would have been favorable to SWR. The agency asserts that it would not have been favorable, and has provided numerous contract discrepancy reports with respect to the incumbent contractor, at least one of which is specifically critical of the project manager. AR, § 12, exh. 2, at 19.

SWR was aware that, notwithstanding that it had included the Ft. Shafter contract information in its proposal, it had been rated neutral for past performance. Since the RFP specified that a neutral rating would be assigned where the agency found no relevant experience, it should have been clear from the debriefing that the agency did not consider the Ft. Shafter contract to be relevant experience. Therefore, this argument was required to be raised no later than August 14 (the next business day following August 13). Because it was not raised until September 18, it is untimely and will not be considered.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel