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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: C. Lawrence Construction Company, Inc.

File: B-287066

Date: March 30, 2001

Doug R. Lawrence for the protester.

Larry E. Beall, Esq., and Joseph A. Gonzales, Esq., Department of the Army, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a solicitation providing for a tradeoff of past performance and price to determine the award, agency reasonably determined that awardee had more relevant and favorable past performance than did the protester and that this justified the relatively small price premium associated with accepting the awardee's proposal.

DECISION

C. Lawrence Construction Company, Inc. protests the award of a contract to Lord & Son Construction, Inc. under request for proposals (RFP) No. DACA01-01-R-0003, issued by the United States Army Corps of Engineers, for construction work. Lawrence contends that the Corps unreasonably evaluated its past performance.

We deny the protest.

The RFP, issued October 13, 2000, contemplated the award of a fixed-price contract to build a 24,000 square foot F-22 aircraft flight simulator and academic training facility at Tyndall Air Force Base, Florida. The RFP required construction of a single story steel frame building on spread footings with a concrete masonry unit exterior, a standing-seam metal roof, and interior rooms with limited raised flooring and computer room cooling. The estimated value of the project was between \$5 and \$10 million.

The RFP provided for award considering past performance and price, which were weighted equally. Past performance was to be evaluated as a performance risk assessment of the offeror's "specialized experience information" determined by

considering the quality of the offeror's performance on recent relevant projects of similar scope and magnitude to the RFP work. RFP § 00120 at 2.2.2.1.1. For this purpose, the RFP instructions stated:

(a) SPECIALIZED EXPERIENCE ON SIMILAR TYPE WORK:

Provide a list of at least five (5), but no more than ten (10), of the most relevant contracts performed for Government or commercial customers within the last 3 years. "Relevant" contracts are construction projects that are similar in scope and magnitude (\$5 – 7 million) to this project, such as, Office/Administrative, Instructional, and Light Commercial type facilities. . . . The Government will evaluate the quality and extent of Offeror's experience deemed relevant to the requirements of this Solicitation. The Government will use information submitted by the Offeror, as well as other sources, such as other Government agencies or commercial sources, to assess experience.

RFP § 00110 at 2.1.1(a).¹ Based on the agency's assessment of the quality of each offeror's past performance on its listed projects, each proposal was to receive an overall risk rating. The rating categories were unsatisfactory/no confidence, marginal/little confidence, neutral/unknown confidence, satisfactory/confidence, very good/significant confidence, and exceptional/high confidence. RFP § 00120 at 2.2.2.1.4. The RFP also provided for evaluating the fairness and reasonableness of the offerors' prices.

On November 28, the Corps received 13 proposals in response to the RFP. A technical evaluation team (TET) eliminated the lowest-priced proposal for failing to submit specialized experience information, but evaluated the past performance of the next seven lowest-priced proposals, including Lawrence's, whose proposed \$5,650,889 price was now the lowest, and Lord & Son's proposal, which offered the next lowest price of \$5,852,100.

The TET assigned Lawrence's past performance a satisfactory/confidence risk rating. The TET found Lawrence's proposal contained a "deficiency" because it listed only three relevant projects performed by Lawrence, instead of the requested five projects similar to scope and magnitude (that is, projects valued between \$5 and

¹ The RFP required the offeror to submit relevant projects on a form provided with the RFP entitled "Company Specialized Experience," which required an offeror to furnish, for example, the name of the project, the location, the owner, the general scope of construction, the company's role, construction cost, and extent and type of work subcontracted. Attached to this form was a performance survey form containing various ratings from unsatisfactory to exceptional where the reference was required to evaluate the offeror's performance on the project. RFP § 00110 at 0010-5-7.

\$7 million). In this regard, the TET found that of the four projects listed by Lawrence, which ranged from \$2 to \$4 million in value, two were combined to satisfy the \$5 million threshold. The TET also concluded that only one of the listed projects could be considered similar and/or relevant to the RFP project (even though that project did not satisfy the \$5 million threshold), and that the other listed projects were not “very relevant to the current project,” but were “primarily warehouses apparently with incidental offices.” See Agency Report, Tab D, Consensus Evaluation Sheet; Tab E, Memorandum For Record, at 2. Finally, the TET found Lawrence’s past performance surveys had ratings ranging from satisfactory to very good with some exceptional ratings, but with some comments related to delays in performance on the projects. Therefore, the TET found that “some doubt exists that [Lawrence] can successfully perform the work.”²

In contrast, the TET gave Lord & Son’s past performance a very good/significant confidence risk rating. Lord & Son listed eight projects, two of which were at prices of \$5.4 and \$10 million, and three others that the TET found were below but reasonably close to the \$5 million minimum dollar range.³ Further, the TET found Lord & Son’s projects relevant because they involved schools, offices and a church sanctuary, and that its past performance surveys reflected all very good and exceptional ratings. The TET concluded, based on Lord & Son’s experience, that “little doubt [exists] that [Lord & Son] can successfully perform the work.”⁴

After completing the evaluation, the Corps concluded that award could be made on the basis of initial proposals and performed a trade-off analysis of the proposals. Lord & Son’s proposal was determined to represent the best value. As between Lord & Son’s and Lawrence’s proposals, the Corps found that Lord & Son’s higher-rated proposal “represent[ed] less risk in the successful completion of this project,” and that “[a]lthough Lord’s price exceeds Lawrence’s price by . . . 3.6% . . . the higher price is warranted in order to reduce the risk of contract performance.” Agency Report, Tab E, Memorandum For Record, at 4. The Corps made award to Lord & Son on December 21. This protest followed.

Lawrence protests that the Corps’s past performance evaluation was unreasonable because it unduly focused on the dollar range of its projects to determine relevance,

² A satisfactory/confidence rating was assigned for past performance if “[b]ased on the Offeror’s performance record, some doubt exists that the Offeror will successfully perform the required efforts.” RFP § 00120 at 2.2.2.1.4.4.

³ The prices of these projects were \$4.6, \$4.6, and \$4.7 million. Agency Report, Tab D, Lord & Son Consensus Evaluation.

⁴ 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.” RFP § 00120 at 2.2.2.1.4.5.

instead of the similarity in size and construction methods, and because it ignored relevant projects performed more than 3 years before. Lawrence argues that a reasonable evaluation of relevant experience should have considered such factors as product similarity, product complexity, contract type, contract environment, and subcontractor interaction.

The evaluation of technical proposals, including the evaluation of past performance, is a matter within the discretion of the contracting agency. NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 13. In reviewing a protest against an agency's past performance evaluation, 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; the 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. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4.

Contrary to the protester's arguments, the agency did not unduly focus on the dollar value of the projects, but reasonably rated the relative past performance of the offerors consistent with the RFP evaluation scheme. With regard to past performance, the RFP provided that the evaluation would consider the quality of the offeror's experience, judged by its recency, relevance, and similarity in scope and magnitude to the RFP project, as well as the quality of the references received on the offeror's listed projects. The Corps was not required to consider other factors besides project type and cost, such as those suggested by the protester, to determine relevance, nor could it consider Lawrence's projects performed more than 3 years ago. In this regard, the RFP specifically states that relevant contracts would be defined in terms of dollar amount (\$5 to \$7 million) and building type (office/administrative, instructional, and light commercial) and thus it was appropriate for the agency to consider only these factors.⁵ Also, the RFP instructions expressly stated that only projects performed in the last 3 years would be considered.

Our review of the record confirms that the Corps reasonably determined that Lord & Son's past performance was superior to Lawrence's, so as to justify the award on the basis of Lord & Son's slightly higher-priced proposal. As noted, Lawrence's

⁵ For this reason, we find no merit to Lawrence's argument that the evaluation documents show no analysis by the agency of whether Lord & Son's projects were similar to the solicited project because the awardee identified its projects only by size and name. The record evidences that Lord & Son's proposal included all the information on its projects requested by the RFP, and while it did not furnish nearly the same level of detail concerning its projects as did Lawrence, there was no requirement for it to do so or for the agency to credit Lawrence's more in-depth descriptions of its projects.

proposal lists as specialized experience only four projects performed in the last 3 years and none of these meet the \$5 million threshold unless two are combined and considered a single project, which project was considered not “very relevant” because it was for warehouse space with incidental offices. In contrast, Lord & Son, while not listing five projects over \$5 million, listed two over that threshold and three others greater in value than those listed by Lawrence, and all of Lord & Son’s projects were considered relevant and similar in scope and magnitude.⁶ While it is true that the agency’s evaluation documentation does not recognize that one of Lawrence’s listed projects, a child development center project, seems as relevant as the school and church projects of Lord & Son, which were specifically found relevant by the Corps, the child development center project had a value of \$3.7 million, less than the five relevant projects listed by Lord & Son. Moreover, the record reflects that Lord & Son’s references generally gave more favorable responses as to the quality of Lord & Son’s past performance than did Lawrence’s references.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁶ Lawrence correctly notes in its comments that none of the evaluated proposals satisfied the requirement to provide five projects in the dollar range required by the RFP, yet its proposal was the only one with a noted deficiency for this problem. However, given Lord & Son’s superiority, whether a deficiency should have been found in Lawrence’s proposal for failing to list five projects is not relevant, since it did not affect the award selection.