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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Fishermen's Boat Shop, Inc.

File: B-287592

Date: July 11, 2001

Kevin W. Quigley for the protester.

John J. Ralston, Esq., United States Coast Guard, for the agency.

Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's downgrading of protester's technical proposal is unobjectionable where the record establishes that the evaluation is reasonable and consistent with the stated evaluation criteria; protester's disagreement with the agency's conclusions does not render the evaluation unreasonable.

DECISION

Fishermen's Boat Shop, Inc. (FBS) protests the award of a contract to Bellingham Bay Shipyard (BBS) under request for proposals (RFP) No. DTCG85-01-R-625178, issued by the United States Coast Guard, Department of Transportation. FBS asserts that its proposal was improperly downgraded and that the Coast Guard applied inequitable evaluation standards in retaliation for a prior successful FBS protest.

We deny the protest.

The RFP, issued on January 12, 2001, with an amended closing date of February 14, calls for dry-docking and repairs for two vessels, the United States Coast Guard Cutter Bayberry and Barge 60044, lists 36 definite and 11 optional items, and provides that the agency may award a contract without conducting discussions. Award was to be made on a best value basis, with the agency reserving the right to award to other than the lowest-priced offeror. Price and technical were equal in importance, with the RFP specifying four technical factors listed in descending order of importance: past performance, understanding scope of work, management control, and facilities.

The agency received six proposals by the closing time. To evaluate price, as provided for under the solicitation, the agency totaled the proposed prices for all of the definite and optional items and added certain other specified costs. FBS's evaluated price was \$352,950.20; BBS's was \$387,823.60. Agency Report at 8. In performing the technical evaluation, the agency assigned numerical scores under each factor and a cumulative total, with an associated narrative assessment of excellent, good, satisfactory, marginal or unsatisfactory, and a performance risk assessment of low, medium or high. FBS's technical proposal received a total point score of 74 out of 100 possible points, with satisfactory ratings under each of the four factors, for an overall rating of satisfactory with a moderate performance risk assessment. Agency Report at 4-5. BBS's proposal received a total point score of 95, with excellent ratings under the first three factors and a good rating under the fourth, least important, factor, for an overall rating of excellent with a low performance risk assessment. Agency Report at 5-6.

The source selection authority (SSA) awarded to BBS as offering the best value, without conducting discussions, based on a determination that BBS's excellent, highest rated, technical proposal provided benefits that outweighed the associated price premium of approximately 10 percent over the two lowest cost proposals (one of which was FBS's), both of which were significantly lower rated technically. Agency Report at 9. The SSA also noted that in light of BBS's excellent past performance, he believed that an early completion schedule proposed by BBS would result in cost savings to the government. *Id.* After receiving a debriefing from the Coast Guard, FBS filed this protest with our Office.

FBS agrees that the agency was not obligated to conduct discussions before making the award, and does not question the propriety of the particular tradeoff determination that award to a higher priced, significantly higher technically rated offeror was warranted. Protest at 3; Protester's Comments at 2. Rather, FBS asserts that its proposal was improperly downgraded, and states that it "is fearful that the [Coast Guard] may have purposely applied inequitable standards to FBS in retaliation for a prior FBS protest . . . that was decided in favor of FBS." Protest at 3.

In support of this position, FBS questions every instance in which the Coast Guard evaluated FBS's proposal as warranting less than the highest possible evaluation score, asserting that "the [Coast Guard] only identified issues of form as weaknesses and deficiencies" and that "those requirements as to form were not identified in the solicitation or logically discernible from the solicitation." Protest at 3. We have considered all of FBS's objections and find them without merit. This decision will address representative examples pertaining to the two most important technical factors.

The evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. *KRA Corp.*, B-278904, B-278904.5, Apr. 2, 1998, 98-1 CPD ¶ 147 at 7. In reviewing an agency's technical evaluation, we will not reevaluate the

proposal, but will examine the record to ensure that the evaluation was reasonable and in accordance with the stated evaluation criteria, and not in violation of procurement laws and regulations. Id. A protester's mere disagreement with the agency's judgment, standing alone, is not sufficient to establish that the agency acted unreasonably. Oceaneering Int'l, Inc., B-278126, B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 6-7

Under past performance, FBS's proposal received a numerical score of 30 out of 40 possible points and a rating of satisfactory. Agency Report, Tab M, FBS Technical Evaluation Report, at 4. While FBS was given credit for having satisfactorily performed work on the Bayberry, its past performance rating was downgraded because of unexplained slippage and extensions and deficiency reports on the contracts listed by FBS in its proposal, and because the four listed contracts were not identified as involving similar, that is, dry-dock, repair services. Agency Report at 4. The solicitation specifies schedule adherence as a past performance subfactor, RFP § M.6.4.1(A)(7), and requests that offerors submit information explaining "reasons for schedule slippage/extensions." RFP, attach. J.4, at 1. The solicitation also requests that offerors "[p]rovide information on problems encountered on the identified contract[s] and the offeror's corrective actions." Id.

FBS indicated late completion for three of four listed contracts, and provided as an explanation of the reason for slippages and extensions simply the notation "new work," which the agency viewed as insufficient. FBS argues that the solicitation called for concise descriptions (RFP § L.8.2.3), and views its notation as a "concise indication that the failure to deliver on time was not a result of fault of FBS." Protester's Comments at 2. Section L.8.2.3, to which FBS refers, is one which advises offerors that "[e]laborate artwork, expensive paper or bindings, and expensive visual or other aids are not necessary." The immediately preceding section advises offerors that "[e]ach technical proposal must be sufficiently specific, detailed and complete to clearly and fully demonstrate to the government that the offeror has a thorough knowledge and understanding of the technical requirements," and explicitly warns offerors to "[i]nclude all information required by Attachment J.4." RFP § L.8.2.2. As noted above, this attachment specifically calls for offerors to provide reasons for schedule slippage and extensions. In these circumstances, the agency reasonably expected a more detailed explanation for FBS's listed failures to meet contract schedule requirements, beyond the peremptory notation included by FBS, and therefore reasonably downgraded FBS's proposal in this regard.

In addition, FBS indicated that it had received deficiency reports under two of the listed contracts, without providing an explanation of the problems encountered or its corrective actions. In its comments, FBS explains that one of the deficiencies was minor and objects that this shortcoming was not identified by the agency at FBS's debriefing, and is therefore "suspect." Protester's Comments at 2-3. However, FBS does not dispute that it listed the deficiency reports without appropriate explanation in its proposal, and the record establishes that the agency reasonably evaluated the unexplained deficiencies as one of the bases for downgrading FBS's past

performance. The agency's failure to mention this particular weakness during the debriefing does not provide any basis to question the adequacy of this evaluation, which is otherwise substantiated by the record. Ideal Elec. Sec. Co., Inc., B-283398, Nov. 10, 1999, 99-2 CPD ¶ 87 at 5-6.

FBS also failed to indicate that the work listed under past performance was for dry-dock repairs. As the agency points out, attachment J.4 specifies that, for past performance evaluation, offerors should identify contracts for efforts similar to the current requirements, which the RFP specifies as dry-dock repairs (C.1), rather than dockside repairs. The Coast Guard points to the J.4 request to list "type of availability" as specifically calling for offerors to indicate the type of repair work. FBS points out that this term is not defined in the solicitation, and that in response it entered "fixed price," believing the solicitation sought an indication of contract type, rather than type of work. Protest at 4. Whether or not this term was clearly defined, the solicitation otherwise required that offerors provide evidence of past performance for efforts similar to the current requirements, that is, contracts for dry-dock repairs. FBS failed to indicate that the listed contracts were for similar work in this regard, as a result of which its proposal was reasonably downgraded, consistent with the evaluation criteria. In sum, the agency's evaluation of FBS's proposal as warranting only a satisfactory rating under past performance is unobjectionable, since it is based on a reasonable application of the solicitation evaluation criteria.

Under the understanding scope of work factor, the solicitation called for offerors to "[p]rovide a time-phased progress sequencing network, including milestones for each specification work item that demonstrates an understanding of the work in the immediate solicitation and the plan to accomplish that work." RFP attach. J.4, at 2. FBS provided a chart for the 36 definite items only, completely failing to address the 11 optional items that the RFP identified as part of the evaluation, and FBS's chart simply repeated the RFP description of the items, adding only start and finish dates. FBS asserts that this level of planning is sufficient to manage a project of this nature and that "additional disclosures constitute mere gilding of the lily by recording steps that shiprepair professionals and journeymen boilermaker and shipwrights take as second nature." Protester's Comments at 3. In view of the explicit RFP requirement to demonstrate understanding of the work and a plan to accomplish the work by providing milestones for each item, the agency reasonably downgraded FBS's proposal both for failing to reference the optional items, and for merely parroting back the solicitation description for the items which it did address. Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578 at 4.

Under these, and the other evaluation areas questioned by FBS, the record reflects that the agency evaluation was reasonable and consistent with the solicitation criteria; FBS's objections essentially reflect its view that based on its long and extensive experience, its proposal should have received the maximum possible score. This self-assessment and FBS's resulting disagreement with the agency's

assessments does not provide a basis to call into question the agency's evaluation here.

In light of reasonableness of the agency's evaluation of FBS's proposal, that evaluation does not provide any evidence of bias or retaliation. While FBS points to instances where it believes BBS's proposal was more favorably evaluated despite containing what the protester believes are lesser qualifications, the record establishes otherwise. Thus, for example, in objecting to its satisfactory evaluation under understanding scope of work, versus the excellent rating received by BBS, FBS complains that it proposed a management team with extensive experience, which it believes exceeds the experience offered by the BBS team. Protester's Comments at 3. In fact, FBS received credit for this extensive experience under the management control factor, which is the factor under which offerors were requested to list the kind and duration of experience for its key personnel. RFP attach. J, at 2.

BBS's proposal received a higher rating for the understanding factor because it contained a detailed sequencing chart, with item milestones, for all of the evaluated items, while FBS provided only the cursory and incomplete chart discussed above. This does not provide any basis to conclude that the agency applied the evaluation criteria in an inequitable manner. Without clear evidence of retaliation or bias, and the record here contains none, we will not attribute prejudicial motives to agency contracting officials on the basis of inference or supposition. E.L. Hamm & Assocs, Inc., B-280766.5, Dec. 29, 1999, 2000 CPD ¶ 13 at 9.

Accordingly, the agency evaluation was reasonable and consistent with the solicitation, and FBS has not provided any evidence to the contrary.

The protest is denied.

Anthony H. Gamboa
General Counsel