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**Comptroller General
of the United States**

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

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Decision

Matter of: U.S. Textiles, Inc.

File: B-289685.3

Date: December 19, 2002

E.R. Hembree for the protester.

Michael W. Clancy, Esq., Holland & Knight, for Dorothea Knitting Mills U.S., Ltd., an intervenor.

James J. McCullough, Esq., and Abram J. Pafford, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Bancroft Cap Company, Inc., an intervenor.

Sean P. Bamford, Esq., and Marlene Surrena, Esq., Defense Logistics Agency, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably attributed experience/past performance of an affiliated, foreign company to a domestic offeror where the offeror proposed to relocate required specialized equipment from the foreign affiliate's facilities to new domestic production facility, train senior supervisory personnel at the foreign affiliate's facilities (where item being procured currently is being produced), and have the foreign affiliate's management and senior technical personnel be involved in training and be "hands on" at the new domestic facility.

DECISION

U.S. Textiles, Inc. (UST) protests the Defense Logistics Agency's (DLA) award of a contract to Dorothea Knitting Mills U.S., Ltd. (DKMUS), under request for proposals No. SP0100-01-R-0045, for military berets. UST challenges the evaluation of proposals and price/technical tradeoff.

We deny the protest.

The solicitation provided for award of two contracts to different offerors, for a 24-month base period with 3 option years, for military wool berets for the U.S. Army and Air Force, including 1 (line item No. 0001) for 3,643,488 berets of various colors, and a second (line item No. 0002) for 3,643,440 black berets. Award was to be made to the responsible, small business offerors whose conforming proposals were most

advantageous to the government. The solicitation provided for proposals to be evaluated with respect to price and several technical factors, including (in descending order of importance) experience/past performance, manufacturing plan, quality control plan, and participation in the DLA Mentoring Business Agreements Program. Under the experience/past performance factor, offerors were required to “describe their experience with producing the same or items of similar complexity within the past two (2) years.” RFP § L at 129. Technical factors were more important than price.

Sixteen offerors submitted proposals; six proposals for item No. 0001 and five for item No. 0002 were included in the competitive range. Price Negotiation Memorandum, May 28, 2002, at 1-10. After discussions with the offerors in the competitive range, DLA requested submission of final proposal revisions (FPR). Based upon its evaluation of FPRs, DLA determined that DKMUS’s proposal for item No. 0001 was most advantageous because, while DKMUS’s price (\$31,465,877) was somewhat higher (approximately 14.5 percent) than UST’s (\$27,470,470), the price premium was offset by the technical superiority of DKMUS’s proposal; DLA found that DKMUS’s technical proposal was “far superior” to UST’s and, in particular, that it was clearly superior in the area of experience/past performance, the most important technical factor. Source Selection Decision Document, Item No. 0001, at 1-3. DLA therefore awarded item No. 0001 to DKMUS.

UST challenges the agency’s determination that DKMUS was superior with respect to experience/past performance on the basis that UST has “vast experience in related textile manufacturing,” and that the experience cited for DKMUS was outside of the United States. UST Comments, Nov. 15, 2002, at 3.

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. Hago-Cantu Joint Venture, B-279637.2, July 20, 1998, 98-2 CPD ¶ 99 at 11. In reviewing an agency’s technical evaluation, we will not reevaluate the proposal, but will examine the record of the evaluation to ensure that it was reasonable and in accordance with stated evaluation criteria and not in violation of procurement laws and regulations. Id. The evaluation here was unobjectionable.

DKMUS’s higher rating under the experience/past performance factor was based on DLA’s finding that, whereas Dorothea Knitting Mills (Canada) (DKM Canada), a company associated with DKMUS through common ownership, had successfully produced more than 950,000 berets for the U.S. government since November 2000, and 200,000 berets for the Canadian military during the prior 2 years, UST had never produced berets. Further, UST furnished no information concerning production more recent than July 2000 (at the beginning of the 2-year period being evaluated), and the information it did furnish covered only contracts for throw rugs and various sportswear. DLA viewed the woven throw rugs and the cut-and-sew sportswear produced by UST as significantly less complex than berets, which require knitting,

felting, dyeing, drying, shearing, binding, and blocking using specialized equipment. In addition, DLA contracting officials reported that DKM Canada had been an outstanding contractor with respect to its contract to furnish berets to the U.S. Army; DKM Canada had a perfect quality record on that contract, had accommodated customer preferences for altered sizing and, except for an initial excusable delay related to a change, had exceeded every monthly incremental delivery requirement. While UST furnished customer references indicating that it had always met delivery demands and provided the highest quality on its referenced contracts, the agency noted, again, that the referenced contracts were for significantly less complex, dissimilar items, and had been performed nearly 2 years ago. Source Selection Decision Document, Item No. 0001, at 1-3.

DKMUS's proposal also was found to be more advantageous under other evaluation factors. DKMUS's proposal had an advantage with respect to demonstrated ability to commence production and successfully produce the required berets. While DLA considered DKMUS (as well as UST) to be a first-time producer of berets--since DKMUS intended to produce the berets at a new plant in the U.S. rather than at DKM Canada's facilities where U.S. Army berets are being produced--the agency found DKMUS's plans for commencing production to be superior to UST's. DKMUS proposed to relocate required specialized equipment from DKM Canada's facilities to its new U.S. production facility; train senior supervisory personnel at DKM Canada's facilities; and have DKM Canada management and senior technical personnel be involved in training and be "hands on" at the new facility. DKMUS Technical Proposal, Experience and Past Performance, at 1-2, Manufacturing Plan, at 8-12. In contrast, UST, in commencing beret production for the first time, could not rely on a similar transfer of equipment and expertise from a plant currently producing berets. DKMUS's proposal also was found superior with respect to its manufacturing plan (in part for the reasons discussed above with respect to plans for commencing production), and slightly superior with respect to its quality plan. (Neither offeror proposed participation in the DLA Mentoring Business Agreements Program.)

We find no basis to question the determination that DKMUS's proposal indicated superior experience/past performance. Although UST questions the agency's consideration of experience/past performance in Canada, it has cited no provision of the solicitation, nor are we aware of any such provision, precluding consideration of that experience/past performance. Rather, the relevant question is whether the agency reasonably attributed the experience of an affiliated company to DKMUS in the evaluation. In this regard, where, as here, no provision in the solicitation precludes offerors from relying on the resources of affiliated companies in performing the contract, an agency properly may attribute the experience or past performance of an affiliated company to an offeror whose proposal demonstrates that the affiliate's resources will affect the performance of the contract. Universal Bldg. Maint., Inc., B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 6. The relevant consideration is whether the resources of the affiliate--its workforce, management, facilities or other resources--will be provided or relied upon, such that it will have

meaningful involvement in contract performance. Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4-5; NAHB Research Ctr., Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 4-5; Physician Corp. of Am., B-270698 et al., Apr. 10, 1996, 96-1 CPD ¶ 198 at 13.

Here, DKMUS proposed substantial involvement by DKM Canada: specialized equipment would be relocated to the new facility from DKM Canada's facilities; senior supervisory personnel would be trained in a beret production environment at DKM Canada's facilities; and DKM Canada management and senior technical personnel would be involved in training at the new U.S. facility. Given this commitment of DKM Canada's equipment and expertise to the contract, the agency reasonably could conclude that DKM Canada will have a meaningful involvement in DKMUS's contract performance. It follows that DLA reasonably attributed DKM Canada's experience/past performance to DKMUS in the evaluation.

Further, DLA reasonably determined that DKMUS's experience/past performance was superior to UST's, since only DKMUS (through DKM Canada) possessed experience with the specialized processes and equipment necessary for the production of berets. DLA specifically determined that UST's experience manufacturing woven throw rugs and cut-and-sew sportswear was not comparable work from a complexity standpoint, and UST has not shown this determination to be unreasonable. Accordingly, we have no basis to question the evaluation.

UST asserts that award to UST, a Historically Underutilized Business Zone (HUBZone) company, would best serve to ensure a domestic small business industrial base for the production of berets. However, the solicitation's evaluation criteria did not include HUBZone or industrial mobilization base evaluation factors.

UST argues that the agency did not adequately factor UST's lower price into the award decision. This argument is without merit. Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Mevatec Corp., B-260419, May 26, 1995, 95-2 CPD ¶ 33 at 3. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation criteria. Id. Here, DKMUS's proposal was determined to be clearly superior under the experience/past performance factor, the most important technical evaluation factor, and to be more advantageous with respect to manufacturing and quality control plans, two of the other technical factors, resulting in a technical proposal which was "far superior" to UST's. Given the extent of DKMUS's technical superiority, and the fact that the technical factors were more important than price,

there is no basis to question DLA's determination that DKMUS's technical superiority warranted payment of an approximately 14.5 price premium.

The protest is denied.

Anthony H. Gamboa
General Counsel