Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Quaker Valley Meats, Inc./Supreme Sales, GmbH, A Joint Venture; Upper Lakes Foods, Inc.

File: B-279217; B-279217.2; B-279217.3; B-279217.4

Date: May 20, 1998

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Jerry L. Hester for Theodor Wille Intertrade, an intervenor.
Portia Bonavitacola, Esq., and Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests challenging various aspects of agency's technical evaluation of proposals are denied where record shows that evaluation was reasonable and consistent with stated evaluation criteria.

2. Agency properly assessed realism of proposals based on offerors' showing that prices for commercial items were based on actual, recent invoices for products being acquired; agency rated proposals higher (and lower risk) where proposed pricing was supported with invoices as opposed to vendor quotations.

3. Protester is not an interested party to challenge eligibility of awardees to receive contracts where record shows that, even if protester were correct, intervening offerors, not protester, would be next in line for award.

4. Agency's price/technical tradeoffs are reasonable where record shows agency weighed technical merit against price in determining that one offeror's technically superior, higher-priced proposal represented best value for one award, and that another offeror's low-priced, technically inferior proposal represented the best value for second award.

DECISION

Quaker Valley Meats, Inc./Supreme Sales, GmbH, A Joint Venture, and Upper Lakes Foods, Inc. protest the award of two contracts under request for proposals (RFP) No. SP0300-97-R-4007, issued by the Defense Logistics Agency (DLA) for full line food distribution for all military bases, hospitals and United States Navy Ships throughout Europe and the Middle East. The protesters raise numerous objections to the agency's evaluation of proposals and source selection decisions.

We deny the protests.

BACKGROUND

The RFP contemplated the award of two indefinite-delivery, indefinite-quantity contracts, each for a base year with four 1-year options, to provide full line food distribution for all military personnel and their dependents. The RFP divided the requirement between a northern zone (comprised of northern and central European countries) and a southern zone (comprised of southern European and Middle Eastern countries), and advised offerors that firms were eligible for award of a contract for one, but not both, zones. The RFP further provided that the contractor in each zone would be required to serve as a back-up contractor for the other zone where, due to unforeseen events, such as a large-scale military mobilization, there might be a sudden surge in the requirement for the other zone.

Offerors were required to submit detailed technical proposals showing how they intended to accomplish contract performance on a day-to-day basis, how they could meet the agency's surge and mobilization requirements should an unforeseen event within the zone for which they were awarded a contract occur, and how they intended to meet their obligation to act as a back-up contractor for the other zone. For evaluation purposes, the RFP specified the following eight criteria, in descending order of importance: Distribution; Experience/Past Performance; Quality; Contingencies; Back-Up Zone Plan; Procurement/Pricing; Socioeconomic Considerations; and DLA Mentoring Business Agreement. (Each of these criteria had several subelements, discussed below.) Offers were evaluated by assigning an adjectival rating of either excellent, good, fair, or poor to each subelement, each criterion and the proposal overall. (Adjectival ratings were not assigned under the DLA Mentoring Business Agreement criterion--proposals were simply ranked numerically, from first to last.)

Offerors were to submit prices for a selected "market basket" of 120 core items being procured. The price of each item was to be comprised of two elements, the "delivered price" and the "distribution fee." The delivered price represents the amount that the offeror, as prime vendor, pays to its supplier for the item. The distribution fee represents the contractor's fee, including profit, for transportation, storage and delivery of the food item to its ultimate destination. (Thus, for example, an offeror could propose to provide potatoes for $1 per pound, with the price reflecting a delivered price of $.75 per pound and a distribution fee of $.25 per pound.) The RFP advised that, during the life of the contract, delivered prices would be adjusted every 2 weeks to account for market fluctuations. For purposes of substantiating their pricing, firms were asked to provide recent invoices that actually reflected the delivered prices being proposed; where the firm did not provide an invoice, a vendor quote was required. The distribution fee, on the other hand, was essentially a fixed element of the offeror's price, and would only change based on the terms of the offer (for example, where a firm's price was raised by a stated percentage during an option year). Award was to be made on a best value basis, with technical considerations carrying greater weight than price.

The agency received several initial offers for each zone. After evaluating the offers (and eliminating one from further consideration), conducting discussions, performing site visits and obtaining best and final offers (BAFO), DLA made award to Theodor Wille Intertrade for the northern zone and Ebrex Food Services for the southern zone. In both zones, the agency found particularly important the fact that the awardees' proposals had received excellent scores for the most important evaluation criterion, Distribution. For the northern zone, the agency found that Theodor Wille's excellent Distribution rating was sufficiently important that it was willing to pay the firm's price premium. In the southern zone, the agency found that Ebrex's excellent Distribution rating, in combination with its low price, outweighed its poor ratings elsewhere in the evaluation (in particular, its poor ratings in the Contingencies area).

UPPER LAKES' PROTEST

Upper Lakes raises numerous arguments regarding the agency's technical evaluation of its and the awardees' proposals. We have examined Upper Lakes' contentions and find them to be without merit. We discuss the most significant arguments below.[1]

Distribution Criterion

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[1]Among the contentions we will not discuss, for example, is Upper Lakes' assertion that the agency misevaluated Ebrex's proposal under the mobilization subelement of the Contingencies criterion, maintaining that it should not have received an excellent rating for this subelement, or a good for the Contingencies criterion. The record shows, however, that Upper Lakes is simply incorrect from a factual standpoint; Ebrex's proposal was rated poor under the mobilization subelement and poor for the Contingencies criterion in the southern zone, where it received award.

Upper Lakes argues that the agency improperly evaluated proposals under the Distribution evaluation criterion for the northern zone, specifically, that it misevaluated proposals under the product availability and location subelements. Under those subelements, Upper Lakes received ratings of good and fair, respectively, while the awardee (Theodor Wille) received ratings of excellent under both.[2] The focus of Upper Lakes' allegation is the solicitation's requirement for deliveries to all points within 48 hours of when an order is placed; Upper Lakes contends that it was unreasonable for the agency to require deliveries to Bosnia within 48 hours because Bosnia should have been considered a "remote" point of delivery within the meaning of the RFP, which exempted such areas from the 48-hour requirement.

The RFP requires deliveries to be made to all points within 48 hours unless the delivery point is deemed "remote." RFP at 204. The solicitation further specifies numerous remote delivery points (primarily located in southern Europe and the Middle East) but does not include Bosnia among the remote locations. Id. The agency explains that Bosnia was not designated as a remote area because the RFP as written did not require delivery to numerous points in Bosnia, but only to a single staging area delivery point in Croatia. The RFP does provide, however, that although the current requirement is for delivery to this single point, in the future the requirement could be expanded to 15 delivery points. RFP at 83. Upper Lakes' concern arises from the possibility that the agency may elect to expand the requirement to include the 15 delivery points.

To the extent that Upper Lakes' argument amounts to a challenge regarding the RFP's designation of remote points, it is untimely. The delivery requirement for Bosnia--as well as the possible expansion of the requirement to include an additional 15 delivery points--was clearly spelled out in the RFP, and it also was c/lear from the RFP that Bosnia was not designated a remote area. If Upper Lakes was concerned that the 48-hour delivery requirement was infeasible for Bosnia, it should have raised its objection prior to the deadline for submitting initial offers; protests of alleged solicitation improprieties such as this must be filed no later than the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1998). Since Upper

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[2]Upper Lakes asserts that its rating under the Distribution evaluation criterion was changed from good to excellent during the agency's evaluation of revised proposals, but that this rating change was not "implemented." A review of the consensus evaluation report for the firm, however, shows that the rating was not changed. Rather, it is clear that the narrative portion of the price negotiation memorandum that discusses the Upper Lakes proposal erroneously notes that Upper Lakes' rating under the criterion was changed from good to excellent. The lower, correct, ratings are reflected in the portion of the price negotiation memorandum that contains the agency's comparative analysis of the proposals, and also in the consensus evaluation report.

Lakes did not raise the argument until after award, its protest in this regard is untimely and will not be considered.

We also find that DLA had a reasonable basis for distinguishing between Upper Lakes' and the awardee's proposals in the identified areas. (As noted, Upper Lakes received a fair and good rating under the two subelements, while the awardee received excellent ratings.) Our Office reviews agency evaluations only to ensure that they are reasonable and consistent with the RFP's evaluation criteria. Magnum Prods., Inc.; Amida Indus., Inc., B-277917 et al., Dec. 8, 1997, 97-2 CPD ¶ 160 at 2-3. The record shows that Upper Lakes, even after discussions relating to the matter, was unwilling to commit to meeting the 48-hour delivery requirement for Bosnia. The firm stated instead that, while it would endeavor to meet the requirement, it was nonetheless a goal rather than a firm commitment, especially in view of the possibility that hostilities in the area might impede its delivery efforts. In contrast, the awardee committed to meeting the 48-hour delivery requirement, even for Bosnia, stating that it would use a continuously circulating fleet of satellite-controlled vehicles that would be dedicated exclusively to the Bosnia route. Given the RFP's current requirement for delivery to only one location in Croatia for deliveries to Bosnia, as well as the awardee's proposal of an innovative method for meeting the 48-hour requirement (the use of satellite-controlled vehicles), we conclude that the agency had a reasonable basis for rating the awardee's proposal superior to Upper Lakes' in this area.[3]

Experience/Past Performance

Upper Lakes argues that the agency misevaluated its and the awardees' proposals under the Experience/Past Performance criterion. In the southern zone, Ebrex received an overall criterion rating of good, with ratings of fair for the experience subelement and excellent for the past performance subelement; Upper Lakes also received an overall rating of good, with a good rating for experience and an excellent rating for past performance. In the northern zone, Theodor Wille received an overall criterion rating of good, with a rating of good for experience and excellent for past performance, while Upper Lakes received an overall rating of good, with good ratings for both subelements. Upper Lakes maintains that it should

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[3]Upper Lakes also argues that Ebrex (the southern zone awardee) refused in its northern zone proposal to commit to deliveries to Bosnia within 48 hours. According to the protester, this should have negatively affected its proposal rating for the southern zone under the Back-Up Zone Plan evaluation criterion because, if Ebrex were required to act as the back-up contractor for the northern zone, it would not be bound to meet the 48-hour requirement for deliveries to Bosnia. The record shows, however, that Ebrex, in its southern zone proposal, committed unequivocally to perform as the back-up contractor for the northern zone within the time frames specified in the RFP.

have received excellent ratings in both zones because it has the greatest amount of relevant experience in performing contracts similar to this requirement.

Even if Upper Lakes is correct regarding the evaluation in this area, any error did not result in competitive prejudice to Upper Lakes. Prejudice is an essential element of every viable protest, and our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

For the southern zone, the record shows that Interdyne was ranked first technically, Upper Lakes second and Ebrex third. (Ebrex was ultimately ranked first for award purposes because of its significantly lower price--approximately [deleted] less than Interdyne's.[4]) Interdyne's proposal received excellent ratings under three of the eight major criteria, with an excellent rating under the most important criterion, Distribution. Upper Lakes does not challenge the agency's rating of Interdyne's proposal. In comparison, Upper Lakes' proposal received an excellent rating only for the least important Socioeconomic Considerations criterion, with good or fair ratings for the remaining criteria; significantly, and as discussed above, Upper Lakes' proposal properly received only a good rating under the Distribution criterion. Accordingly, even if Upper Lakes' arguments regarding the evaluation of proposals under the Experience/Past Performance rating were correct (and this resulted both in Upper Lakes' proposal's rating being raised to excellent and Ebrex's proposal being displaced for award purposes because of a reduction in its rating in this area), Interdyne's proposal would remain technically superior overall, and under the Distribution criterion. Since Interdyne's proposed price also was [deleted] lower (approximately [deleted] less) than Upper Lakes', there is no reasonable possibility that DLA would have made award to Upper Lakes based solely on a change in its rating under this criterion. This is confirmed by the agency's overall ranking of the proposals in the southern zone, which shows that Upper Lakes was ranked last in the agency's best value determination.

Similarly, in the northern zone, Upper Lakes' proposal was ranked third technically, behind Theodor Wille's and Ebrex's. As discussed above, the Theodor Wille and Ebrex proposals received excellent ratings under the Distribution criterion, while Upper Lakes' received only a good rating. The record further shows that Theodor Wille received excellent ratings under two other criteria (Contingencies and

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[4]We arrived at this diffference after correction of a mathematical error in the agency's calculations of Interdyne's evaluated BAFO price; we also use the corrected figure for Interdyne's BAFO below in arriving at the difference between its evaluated BAFO price and Upper Lakes' evaluated BAFO price.

Socioeconomic Considerations), for a total of three excellent ratings, while Upper Lakes received only one excellent rating. In comparison, even if Upper Lakes' proposal were rated excellent under the Experience/Past Performance criterion, it still would have only two excellent ratings, and only a good rating under the Distribution criterion.[5] Since Upper Lakes' proposal was also ranked last overall because of its [deleted] higher evaluated price (slightly more than [deleted] higher than Theodor Wille's price), it is clear any error in the Experience/Past Performance ratings did not competitively prejudice Upper Lakes.[6] Moreover, even if this were not the case (and Theodor Wille were not in line for award because of the evaluation in the Experience/Past Performance area), Upper Lakes does not challenge the agency's ultimate conclusion that Quaker Valley's would have been next in line for award based on its technically comparable proposal and [deleted] lower (approximately [deleted] lower than Upper Lakes) evaluated price. We conclude that any possible error on the part of the agency in evaluating Experience/Past Performance was not prejudicial to Upper Lakes.

Realism

Upper Lakes argues that the awardees' prices are unreasonably low and that, if the agency had conducted a realism evaluation of the business proposals, it would have discovered this fact. According to Upper Lakes, both awardees' delivered prices (that is, the invoice-based prices for the products being procured) and distribution prices were low as compared to both its offer and the government estimate for the acquisition.

The agency adequately evaluated the proposed prices. The RFP provided that proposals that were unrealistic as to technical approach, scheduling or pricing would be found to reflect a lack of understanding of the requirement, and that business (price) proposals had to be complete, realistic and reasonable.
RFP at 152. The RFP further advised that proposals that contained major technical or business omissions, or that were out of line as to price, would be eliminated from further consideration if the agency determined that the deficiencies could not be remedied through discussions. RFP at 184. The solicitation also stated that

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[5]Upper Lakes argues elsewhere that its proposal should have received an excellent rating under the rebates/discounts subelement of the Procurement/Pricing criterion. Even if the rating in this area were raised, however, Upper Lakes' proposal still would receive only an overall good rating under the criterion, the same rating Theodor Wille's proposal received. This would leave Upper Lakes' proposal with only two excellent ratings as compared to Theodor Wille's three excellent ratings.

[6]We note, in any case (as we point out in our discussion of the Quaker Valley protest below), that the agency had a reasonable basis for the Experience/Past performance ratings that it assigned to the Theodor Wille proposal.

more consideration would be given to proposals based on actual invoice-based prices as compared to proposals based on industry quotes. RFP at 208. Invoice-based prices were deemed more realistic since, unlike industry quotes, they formed the basis for a company's prior actual transactions.

The record shows that, in evaluating proposals, the agency did precisely what it represented; it assessed realism as reflected by the number of invoice-based prices submitted by the offerors. Under the Procurement/Pricing criterion, the agency based its adjectival ratings in part on the number of invoice-based prices submitted by the offerors. Thus, Ebrex's proposal was assigned a good rating under the pricing plan subelement for the southern zone because it based a majority of its prices on invoices. For the northern zone, Theodor Wille's proposal was assigned an excellent rating under this subelement because it based its prices for 115 of the 120 core items on actual invoice prices. The record further shows (as discussed in more detail below) that the agency assigned an overall moderate risk rating to the Quaker Valley proposal precisely because it had submitted so few invoice-based prices. This was a reasonable means of assessing realism.[7]

"Bait and Switch" Prices

Upper Lakes also contends that the awardees have offered a "bait and switch" to the agency in the form of unreasonably low delivered prices. According to the protester, the firms will escalate their prices immediately after award to avoid losses based on the low pricing offered in their proposals. The protester also contends that both awardees' proposals show that the firms intend to violate the Berry Amendment, 10 U.S.C. § 2241 <u>note</u> (1994) and the Buy American Act, 41 U.S.C.A. § 10a-10d (West Supp. 1998), in performing the contract because they will be furnishing foreign products; Upper Lakes further contends that the agency improperly failed to apply the 50-percent price evaluation factor called for under the Buy American Act to the awardees' offers before making its award decisions.

We dismiss these allegations because Upper Lakes is not an interested party to maintain them. The record shows that the agency ranked Upper Lakes' proposal last overall in both zones, and that in each zone there were two lower-priced proposals ranked ahead of Upper Lakes' for award purposes. (For the northern

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[7]We note as well that the agency concluded, based on a comparison of the offerors' delivered prices to one another, and to the government estimate, that the delivered prices offered were reasonable. This was all DLA was required to do in its price realism analysis, and our review of the record indicates that DLA's analysis, and its conclusion, were reasonable. Federal Acquisition Regulation (FAR) § 15.805-2 (June 1997); <u>see</u> <u>Ameriko, Inc.</u>, B-277068, Aug. 29, 1997, 97-2 CPD ¶ 76 at 3. As for the distribution fee element, no realism assessment was necessary since the prices for that aspect of the contract were fixed-price in nature.

zone, Quaker Valley and MDV/Nash Finch were ranked ahead of Upper Lakes. In the southern zone, Interdyne, Inc. and Doughties Foods were ranked ahead.) Upper Lakes does not allege that these firms engaged in a "bait and switch" and, in each zone, either of the two interceding firms would be in line for award ahead of Upper Lakes, according to the agency's evaluation materials. Upper Lakes also does not allege that any of the interceding firms' offers violate either the Berry Amendment or the Buy American Act. Consequently, even if the awardees were eliminated from award consideration (either because they were deemed ineligible for award by virtue of their failure to abide by the terms of the Berry Amendment, or because their offers were not found to be the best overall value after application of the Buy American Act 50-percent evaluation factor), one of the interceding firms, not Upper Lakes, would be in line for award. Upper Lakes therefore lacks the direct economic interest necessary to maintain these bases for protest. 4 C.F.R. § 21.0(a) (1998); Continental Serv. Co., B-274531, Dec. 17, 1996, 97-1 CPD ¶ 9 at 8.[8]

Improper Discussions

Upper Lakes argues that the agency engaged in improper post-award discussions with Quaker Valley. In this connection, the agency and Quaker Valley discovered during the course of the firm's debriefing that the Quaker Valley offer contained a clerical error that resulted in the agency's miscalculating Quaker Valley's offered distribution cost for one item; specifically, the firm had misplaced a decimal point in one of its prices that resulted in the price being miscalculated as higher than it actually was. Upper Lakes alleges that the agency improperly accepted the submission of Quaker Valley's price preparation spreadsheet to support its claim of a clerical error, and that this amounted to improper post-award discussions.

This contention is without merit. The record shows that the pricing sheet in question was included with Quaker Valley's BAFO submission. Consequently, the firm did not submit any materials after discovery of the clerical mistake; the agency reviewed the question based on materials presented with Quaker Valley's BAFO, and thus did not afford Quaker Valley an opportunity to revise or modify its proposal, a requirement for discussions to have occurred. FAR § 15.601.

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[8]For the same reason, Upper Lakes in not interested to pursue its argument that the agency improperly failed to adhere to the terms of the RFP in making award to lower-priced offerors despite the fact that the solicitation provided that price would be less important than technical merit.

QUAKER VALLEY'S PROTEST[9]

Distribution Criterion

Quaker Valley argues that the agency's evaluation under the Distribution criterion was erroneous under two subelements, product availability and location. Regarding product availability, Quaker Valley maintains that DLA improperly assigned an excellent rating to Theodor Wille's proposal while assigning its proposal only a good rating. According to the protester, the basis for the agency's distinguishing between the firms' proposals was their proposed "fill rates" (a percentage measurement of the number of cases of items ordered versus the number of cases delivered) and the location of their warehouses. As for fill rate, Quaker Valley maintains that Theodor Wille's proposal only indicated a rate of 98 percent in Europe (that is, outside the continental United States, or OCONUS), and a 99.5 percent rate for its facilities in the continental United States (CONUS). According to Quaker Valley, a firm's CONUS fill rate is irrelevant for purposes of performance in OCONUS (the primary performance location), and Quaker Valley's proposed fill rate in OCONUS was also 98 percent. Quaker Valley concludes that there thus was no reasonable basis to distinguish between the proposals. As for warehouse location, Quaker Valley maintains that the agency improperly failed to credit its proposal under this subelement after discussions, during which Quaker Valley proposed a new warehouse in Mainz, Germany as a substitute for the warehouse it initially proposed. Quaker Valley notes that Theodor Wille also proposed a warehouse in Mainz, for which it received an excellent rating; it concludes that its proposal thus should have received the same rating.

These arguments are without merit. Contrary to Quaker Valley's assertion, Theodor Wille's offer in fact unequivocally stated a 99.5 percent fill rate for CONUS, and 99.8 percent for OCONUS. The record also shows that the awardee proposed to have on hand 60 days worth of stock in its inventory, whereas Quaker Valley offered only 45 to 60 days worth of stock. In this connection, Theodor Wille offered to keep inventory at a level approximating 200 percent of the contract requirements, with a view toward totally eliminating possible "not-in-stock" situations. In contrast, Quaker Valley offered a fill rate of only 98 percent and stated it would resolve "not-in-stock" situations by monitoring product flow with an

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[9]Quaker Valley contended in its original protest that the evaluation was improper under the Quality criterion's supplier selection subelement, the Contingencies criterion's operational deployment subelement, the Back-Up Zone Plan criterion's operational deployment subelement and the Procurement Pricing criterion's rebates/discounts subelement. In addition, Quaker Valley argued that the agency engaged in improper discussions with Theodor Wille. In its comments, Quaker Valley makes no mention of these contentions. We deem them abandoned. TMI Servs., Inc., B-276624.2, July 9, 1997, 97-2 CPD ¶ 24 at 4 n. 3.

automated system that would flag "not-in-stock" items and advise ordering activities of such circumstances the same day an order is placed. While the protester characterizes these distinctions as relatively minor, the magnitude of goods being furnished under the contract is such that the agency could reasonably discriminate between the proposals on this basis, especially in view of the fact that these considerations were specifically identified in the RFP as the basis for evaluating proposals under the product availability subelement.

The warehouse evaluation also was unobjectionable. While the revised price negotiation memorandum apparently does erroneously refer to Quaker Valley's initially-offered facility under the product availability subelement, its Mainz warehouse is correctly discussed under the location subelement. The record shows that the agency identified several qualitative differences between the protester's and Theodor Wille's facilities, which led to the different ratings. The warehouse proposed by Theodor Wille has a larger number of pallet slots (it can accommodate 3,000 pallets of dry or chilled goods and 2,000 pallets of frozen goods, compared to Quaker Valley's, which can accommodate only 1,356 pallets of frozen goods and 1,989 pallets of dry or chilled goods); has more loading ramps (16 versus 6); and can accommodate up to 10 times the required inventory in the event of a surge requirement (Quaker Valley's proposed solution in the event of a surge would be to increase turnover at the warehouse which would be used during normal operations at approximately its capacity). The record also shows that, although both facilities needed modification in order to make them acceptable, Theodor Wille did not indicate that it required any significant amount of time to effect the modifications, whereas Quaker Valley stated that it needed 75 days to complete its refurbishment, which included, among other things, installation of additional refrigeration equipment. We conclude that the agency did consider Quaker Valley's Mainz facility, and that there was a reasonable basis for rating Theodor Wille superior under this subelement.

Experience/Past Performance

Quaker Valley also takes issue with the agency's evaluation under the Experience/Past Performance criterion, under which the agency assigned its and Theodor Wille's proposals overall ratings of good; Quaker Valley's was rated good under both subelements, while Theodor Wille's was rated good under the experience subelement and excellent under the past performance subelement. The protester maintains that (1) Theodor Wille and its primary CONUS subcontractor, Joseph Foodservice, Inc., lack experience with contracts similar in magnitude and nature to the current requirement, and also lack adequate financial capacity, and thus should have received only fair ratings; and (2) in light of Quaker Valley's own experience and past performance--it allegedly is the only firm that has experience of a similar nature to the present requirement because it is a prime vendor contractor to the British military under a similar requirement--it should have received excellent ratings under both subelements.

The evaluation in this area was unobjectionable. Regarding the experience subelement, the record shows that Theodor Wille performs approximately $10 million worth of food distribution per year, and its proposal team (including its subcontractors) performs an estimated $168 million worth of food distribution per year. Theodor Wille's CONUS subcontractor, Joseph Foodservice, has experience similar to the present requirement as the leading prime vendor supplier under the Department of Defense's MWR (morale, welfare and recreation) program for Europe, the Middle East and the Caribbean; the firm has been performing this contract since 1991 which, although somewhat smaller in dollar value than the current requirement, is deemed to be more complicated from a logistics standpoint, since it involves approximately 100 program orders per week (compared to the approximately 20 program orders per week anticipated here). Theodor Wille and its OCONUS subcontractors also have numerous prime vendor contracts which reflect similar experience. For example, Theodor Wille's German subcontractor, Pinguin Group, performs food distribution for the United States Army, delivering food to 67 delivery points in Germany and several neighboring countries. Further, the record shows that, while the evaluators initially questioned the financial capacity of Theodor Wille and its CONUS subcontractor, Joseph Foodservice, under the experience subelement, their concern was alleviated during the course of the acquisition because Joseph Foodservice was purchased by The Institutional Jobbers Company, a $250 million food distribution concern. The evaluators found that this injected sufficient economic strength into the overall relationship. We conclude that the agency reasonably assigned both Theodor Wille's and the protester's proposals good ratings under this subelement.

As for the past performance subelement of the Experience/Past Performance criterion, Quaker Valley raises no specific objections beyond asserting that its proposal should have received a higher rating and Theodor Wille's a lower rating. This amounts to no more than disagreement with the agency's evaluation conclusions, which is inadequate to show that the agency's evaluation was unreasonable. Pickering Firm, Inc., B-277396, Oct. 9, 1997, 97-2 CPD ¶ 99 at 4. In any case, even if Quaker Valley's rating for past performance were raised to excellent, this would not have affected the ratings for this criterion overall; its proposal still would be only technically equal to the awardee's (both would be good/excellent under the subelements and good overall) under this criterion. Therefore, there is no basis for questioning the firms' ratings under the Experience/Past Performance criterion.

Inspection/Sanitation

Quaker Valley argues that the agency improperly assigned its proposal only fair ratings for the inspection/sanitation subelement under both the Quality and Back-Up Zone criteria. The record shows that the primary basis for these ratings was the firm's failure to provide current sanitary ratings for its warehouse and distribution facilities. The protester maintains that the RFP did not call for it to provide such ratings, and notes that it advised the agency of its internal inspection procedures and the "ratings" assigned by its quality inspectors of either "o.k.," "needs attention" or "critical." The protester further asserts that, in any event, its facility is approved by the United States Department of Agriculture (USDA), and that the USDA does not assign ratings, but merely passes or fails a facility. The protester states that facilities that fail are closed until deficiencies are cured, and that its facility has never been closed, as it explained to the agency during a site visit.

There simply is no reasonable basis for the protester's assertion that the RFP did not call for sanitary ratings. The RFP specifically called for offerors to indicate the dates of the last sanitary inspections and the ratings assigned for all distribution facilities to be used during contract performance. RFP at 189, 192. In addition, the record shows that, although the protester was specifically advised during discussions that its proposal did not include sanitary ratings, Quaker Valley did not furnish the information. Further, there was no basis for the agency simply to infer from the fact that its United States facility had not been closed by the USDA (or from the firm's proposal) that all of its proposed distribution facilities were necessarily satisfactory in the area of sanitation. The requirement here--as reflected in Quaker Valley's proposal--includes distribution facilities in both the United States, where the USDA has authority to inspect facilities, and Europe, where it does not; indeed, the RFP specifically called for the information for both United States and overseas facilities. RFP at 192. There thus is no basis to question the agency's assignment of fair ratings under these two subelements.

Invoice Prices

Quaker Valley takes issue with the evaluation concerning the number of invoices the firm presented to support its proposed delivered prices; Quaker Valley submitted invoices for only 14 of the 120 core items and, on that basis, the agency assigned its proposal a moderate risk rating.[10] Specifically, Quaker Valley contends that it was unaware from its reading of the RFP that it could furnish invoices from its subcontractors--it believed it could provide invoices only from one of its joint venturers--and that, had the RFP been clear in this regard, it would have submitted invoices from its subcontractors. In support of its position, Quaker Valley has submitted a letter from one of its subcontractors which states that the firm could have produced invoices for 55 of the core items.

The RFP at 208 provided:

> The Government will evaluate the number of top 120 core item delivered prices that are based on actual current invoice prices of the

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[10]The parties dispute whether Quaker Valley included invoice-based prices for 6 or 14 items. We use the higher figure--14--alleged by Quaker Valley.

> offeror against the number of prices that are based on industry quotes. More consideration will be given to offers indicating a high number of delivered prices are based on actual invoice prices of the offeror. The Government reserves the right to validate any or all delivered prices.

Quaker Valley's reading of the RFP is simply unreasonable. Nothing in the quoted language describing the invoice-based pricing requirement limits offerors to submitting invoices only from the prime contractor and, in light of the purpose of the requirement (to establish the validity of proposed prices), it is not clear why an offeror would have read the RFP in this manner. Quaker Valley's argument places great emphasis on the fact that the instruction provision referred to "the offeror," but this term also appeared in virtually every other instruction provision, and Quaker Valley read those provisions as encompassing subcontractor information (for example, in describing how it would meet the CONUS warehousing requirement, Quaker Valley referred to both its own and a major subcontractor's responsibilities). On a more practical level, moreover, the agency represents that even the additional subcontractor invoices Quaker Valley has presented here would not have made a material difference in the firm's rating. This is confirmed by the source selection plan, which provides that 55 invoices warrant only a fair rating. (We note that, according to the source selection plan, Quaker Valley's proposal actually should have received a poor, instead of a fair, rating in this evaluation area for including 47 or fewer invoice-based prices.)

Quaker Valley maintains that the agency improperly assigned its proposal a moderate risk rating based solely on the small number of invoice prices it submitted. Quaker Valley concludes that this sole deficiency did not provide a reasonable basis to assign its proposal a moderate risk while assigning a low risk to Theodor Wille's proposal, since Theodor Wille will be able to seek adjustments to its delivered prices soon after contract award.

This argument is without merit. As discussed above, Theodor Wille supported 115 of its 120 core item prices with invoices showing the actual purchase price of the items. The agency used the level of invoice-based pricing, among other things, to assess the realism of the proposals. Central to the assigning of Quaker Valley's moderate risk rating was the agency's conclusion that, because of the lack of invoice-based prices, Quaker Valley's proposed pricing, which was based primarily only on quoted prices, might not be nearly as advantageous as it appeared. In contrast, the agency rated Theodor Wille's proposal as low risk because it supported the realism of its proposed pricing with evidence that it had actually obtained the prices being offered on a vast majority of the core items. This was a reasonable basis upon which to distinguish between the proposals.

Price/Technical Tradeoff

Quaker Valley challenges the agency's source selection decision, maintaining that since both its and Theodor Wille's proposals received overall good ratings, the award to Theodor Wille at a price premium of approximately [deleted] dollars was unreasonable. The protester contends that the differences in the ratings of the proposals (such as Theodor Wille's higher fill rate) were minor and thus did not warrant this price premium.

Agencies enjoy a relatively broad discretion in making best value tradeoffs; such tradeoffs are governed only by the test of rationality and consistency with the stated evaluation factors. GTE Hawaiian Tel. Co., Inc., B-276487.2, June 30, 1997, 97-2 CPD ¶ 21 at 16-17.

The source selection was reasonable and consistent with the terms of the solicitation. The record shows that the source selection official based his decision on the integrated cost and technical evaluation that ranked Theodor Wille's proposal first in terms of technical merit. As noted earlier, Theodor Wille's was the only eligible[11] competitive range offer in the northern zone to receive an excellent rating under the Distribution criterion, the most important evaluation area. The record further shows that the agency gave weight to the other technical areas where Theodor Wille received excellent ratings; in all, the firm's proposal was awarded 15 excellent and 15 good ratings, whereas Quaker Valley scored only 8 excellent, 20 good and 2 fair ratings. (The agency also considered it significant that Theodor Wille's proposal had not been assigned any ratings below good whereas Quaker Valley's proposal had received fair ratings under the inspection/sanitation subelements.) The agency specifically determined that these technical advantages were worth the price premium associated with Theodor Wille's

[11]Ebrex was ineligible because it received award in the southern zone.

proposal. Given that technical considerations were more important than price, and the fact that Quaker Valley's price advantage was somewhat mitigated by its moderate risk rating, this determination was reasonable.[12]

The protests are denied.

Comptroller General
of the United States

[12]Quaker Valley also challenges the award decision on the ground that the percentage difference between the firms' distribution prices, which was even greater than the percentage difference between the firms' prices overall, should have been more significant in the price evaluation, since the delivered prices were unreliable because they could change after award. However, the RFP did not provide for according the distribution prices any greater weight. Moreover, the invoice-based pricing requirement operated to ensure that proposed delivered prices in fact were reliable. It was Quaker Valley's failure to provide invoice-based prices that led the agency to assign the firm's proposal a moderate risk.