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**Comptroller General
of the United States**

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

Decision

Matter of: Efficiency Management & Engineering Company;
Norcor Technologies Corporation

File: B-292676; B-292676.2

Date: October 31, 2003

Emory B. Woods, Efficiency Management & Engineering Company, and Wes Clayton, Norcor Technologies Corporation, for the protesters.

Eric Kattner and Dennis A. Walker, Esq., Department of the Air Force, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's consideration of more than three contracts in evaluating offerors' past performance was unobjectionable where solicitation required offerors to submit detailed information on three most relevant contracts, but did not specify three as the maximum, and specifically requested offerors to include in their proposals a listing of all contracts performed within past 3 years.
2. Agency's price reasonableness evaluation, which compared overall and individual prices, but did not penalize offeror for proposing lower rates than the incumbent, was unobjectionable; purpose of price reasonableness review is to determine whether prices offered are higher--as opposed to lower--than warranted.
3. In price/technical tradeoff decision, where past performance and price were of approximately equal weight, and agency was fully aware of the proposals' relative technical and price advantages, agency reasonably determined that awardee's proposal with rating of very good/significant confidence and higher price was best value compared to one protester's proposal with neutral/unknown confidence rating and lower price and second protester's proposal with exceptional/high confidence rating but higher price.

DECISION

Efficiency Management & Engineering Company (EMEC), the incumbent contractor, and Norcor Technologies Corporation protest the award of a contract to Cirrus

Technologies, Inc. under request for proposals (RFP) No. F09650-03-R-0006, issued by the Department of the Air Force for advisory and assistance services. EMEC and Norcor challenge the agency’s proposal evaluation and award decision.

We deny the protests.

The RFP was issued as a competitive section 8(a) set-aside for contract administration, reconciliation, and closeout services for physically completed contracts in support of the various directorates at Warner Robins Air Force Base, Georgia. The RFP contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract with a 5-year ordering period. Proposals were to be evaluated on the basis of two factors of approximately equal value—past performance and price—and award was to be made to the firm submitting the proposal representing the “best value” to the agency. Past performance information was to be evaluated on the basis of relevance—very relevant, relevant, semi-relevant, or not relevant—and based on the evaluation of past performance, the agency was to make an overall confidence assessment—exceptional/high confidence, very good/significant confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, or unsatisfactory/no confidence.

Twelve firms, including Norcor, EMEC, and Cirrus, submitted proposals. After an initial review of the proposals, the agency issued evaluation notices seeking clarification of offerors’ past performance. The final evaluations were as follows:

	Past Performance	Price
Norcor	Neutral/Unknown Confidence	\$4,182,298.80
Offeror 2	Satisfactory/Confidence	\$4,335,001.20
Cirrus	Very Good/Significant Confidence	\$4,820,113.20
Offeror 4	Neutral/Unknown Confidence	\$5,079,895.20
Offeror 5	Neutral/Unknown Confidence	\$5,095,416.00
EMEC	Exceptional/High Confidence	\$5,404,648.80

The source selection authority (SSA) conducted an integrated assessment of the offerors’ past performance ratings and prices. Based on his review, he determined that Cirrus’s higher past performance rating, at a higher price, represented the best value to the government over the ratings and prices of the other offerors, and he awarded Cirrus the contract. After receiving notice of the award and debriefings, EMEC and Norcor filed these protests.¹

¹ Both EMEC and Norcor raise a number of arguments. We have reviewed them all and find that none has merit. This decision addresses only the more significant issues raised by each protester.

EMEC's PROTEST

Evaluation of Cirrus's Past Performance

EMEC asserts the agency erred in its evaluation of Cirrus's past performance by considering more contracts than the RFP allowed.² In this regard, while the agency based its "very good/significant confidence" rating for the awardee on two contracts for Cirrus and five contracts for its subcontractor, EMEC asserts that the RFP limited the agency to considering a maximum of three contracts for each team member.

In reviewing a protest of an agency's proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2.

The evaluation here was unobjectionable; nothing in the RFP prohibited offerors from submitting more than three contracts for each team member or the agency from considering more than three. While the RFP required that each offeror submit specified information on its three most relevant contracts performed within the past 3 years for itself and its critical subcontractors, RFP § L-900(c)(1), it also specifically required that offerors submit two additional pages listing all contracts that the offeror was performing or had performed in the past 3 years and provided that the "Government may obtain and use performance information on any or none of these programs." Id. § L-900(c)(3). Thus, there was nothing improper in the agency's consideration of five contracts in evaluating the past performance of Cirrus's subcontractor.³

² Noting an Air Force memorandum on justification and documentation of best value decisions, EMEC also asserts that the agency failed to have or to follow an evaluation plan. For example, it notes that the RFP did not define the relationships between relevance and assessment ratings. There is no evidence in the record that the evaluators did anything other than evaluate the proposals in accordance with the criteria disclosed in the RFP. Further, failure to follow internal agency instructions for reviewing proposals, or alleged deficiencies in the application of an evaluation plan, do not provide a basis for questioning the validity of the award selection; these plans are internal agency instructions and as such do not give outside parties any rights. Management Plus, Inc., B-265852, Dec. 29, 1995, 95-2 CPD ¶ 290 at 2 n.2.

³ In fact, the "five" contracts the agency considered were simply separate task orders under three contracts. The protester's own three contract submissions themselves encompassed four task orders, and the agency considered them all in its evaluation. In any event, EMEC was not prejudiced by the agency's consideration of more past performance examples for the Cirrus team; Cirrus did not receive a higher past

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EMEC asserts that the agency was required to, but did not, evaluate Cirrus's key personnel. EMEC notes in this regard that offerors were required to "[s]pecify, by name, key individual(s) who will participate in the proposed effort under this acquisition who also participated in the program identified [on a past performance 'FACTS Sheet'] and indicate their contract role [and] [d]escribe how participation of these key personnel contributed to the success of the previous effort and how this indicates probability of success on the proposed effort." RFP, attach. 1.

This argument is without merit. While the RFP indicated that the agency would consider the relevance of past performance information concerning proposed key personnel (RFP § M-900(b)(1)(iii)), it did not require offerors to separately propose specific key personnel to perform the contract. Rather, the performance work statement (PWS) stated that "[p]ersonnel qualifications will be assessed at each task order." PWS § 2.1. The FACTS sheet plainly was designed to include all information regarding each contract submitted by the offerors as part of their past performance proposals; it did not establish a separate requirement for the proposal of key personnel. Since the RFP did not provide for evaluation of the qualifications of personnel identified on a FACTS sheet, the absence of such an analysis does not provide a basis for questioning the evaluation.

Price Evaluation

EMEC asserts that the agency's price reasonableness evaluation was flawed, as evidenced by Cirrus's low price. Based on EMEC's calculation of the average labor rates proposed by itself and Cirrus, it believes that Cirrus's price was unreasonably low.

EMEC's assertion that Cirrus's rates were too low provides no basis to question the reasonableness of its proposed prices. The purpose of a price reasonableness review is to determine whether the prices offered are higher--as opposed to lower--than warranted. Rodgers Travel, Inc., B-291785, Mar. 12, 2003, 2003 CPD ¶ 60 at 3 n.1. Thus, we find nothing objectionable in the price evaluation.⁴ As for whether

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performance rating and EMEC, with fewer contracts evaluated, received the highest possible past performance rating.

⁴ EMEC also asserts that the agency should have provided it with discussions if it found EMEC's labor rates too high. This argument is without merit. The solicitation incorporated the clause at FAR § 52.215-1, which advised offerors that the government intended to evaluate proposals and might award a contract without discussions, and that offerors' initial proposals should therefore contain their best terms from a technical and cost or price standpoint. There is no requirement that the agency hold discussions where the solicitation advises offerors of the possibility
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Cirrus's price otherwise was too low, the RFP advised offerors that the Service Contract Act was applicable and, because the specified labor categories were not defined in the wage determination, set a minimum rate. The price evaluators analyzed the individual line item labor rates, and determined that all were within a reasonable range of those proposed by the other offerors. Agency Report (AR), Tab 11. In this regard, while EMEC's labor rates were higher than those proposed by Cirrus, Cirrus's rates were comparable and well exceeded the minimum set forth in the RFP.

NORCOR'S PROTEST

Norcor asserts that the agency failed to evaluate its past performance information. In the protester's view, its evidence of prior contract experience was sufficient and relevant, and there thus was no basis for the agency's rating Norcor's proposal neutral under the past performance factor.

Norcor's argument is without merit. The RFP stated that the past performance evaluation would assess the offeror's ability to successfully accomplish the proposed effort, based on the relevance, currency, source of information and performance trends of the offeror's demonstrated present and past work record. The RFP provided that the relevance of an offeror's past performance was based on the extent to which its "[p]resent/past performance programs involved [different levels of the] magnitude of effort and complexities which are . . . what this solicitation requires, including contract administration, reconciliation and closure of physically complete contracts." RFP § M-900(b). Very relevant contracts were those involving "essentially" what the contract required; relevant ones were those involving "most" of what was required; semi-relevant ones were those involving "some" of what was required; and not relevant were those that did not involve "any significant aspects of above." Id.

Norcor submitted information on five past contracts, including four for delivery of heating, ventilation, and air conditioning equipment or generators. Work on these efforts included coordinating with other contractors on exact placement of the equipment, coordinating invoicing from suppliers to the general contractor for billing and payments, and closeout of contract and contract payments. The other contract was for purchase and installation of metal frames and drywall and finishing of surfaces. Work on this effort included arranging safety meetings and coordinating schedules and completion of work at various locations on a military installation. The evaluators found that none of these contracts was relevant because none involved the administration, reconciliation, and closure of physically completed contracts as

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of award without discussions. FAR § 15.306(a)(3); Kahn Instruments, Inc., B-277973, Dec. 15, 1997, 98-1 CPD ¶ 11 at 8.

required by the PWS. When provided an opportunity to submit additional information to clarify the relevance of these contracts, Norcor simply provided information similar to that already submitted; for example, it highlighted its past work in manufacturing and services, oil and gas well drilling and operation, computer store operation, and its contract performance coordination experience. AR, Tab 8. While Norcor's prior contracts effort involved closeout services associated with performance of those contracts, closeout services were not part of the subject matter of those contracts. This being the case, we believe the evaluators reasonably concluded that Norcor lacked relevant past performance and that a neutral rating therefore was warranted.⁵

PRICE/TECHNICAL TRADEOFF

Both protesters challenge the award determination. Norcor asserts that the SSA erred by selecting Cirrus's higher-priced proposal, and EMEC asserts that the SSA erred in selecting Cirrus's proposal because it was technically inferior to EMEC's.

In deciding between competing proposals, tradeoffs, such as between past performance and price, may be made. The propriety of the tradeoff does not depend on the mere difference in technical scores or ratings, but on the reasonableness of the source selection official's judgment concerning the significance of the difference. Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 7. A protester's mere disagreement with the agency's determinations as to the relative merit of competing proposals and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

The tradeoff here was reasonable. The RFP provided that past performance and price were approximately equal and that the award would be based on tradeoffs between the two. RFP § M-900(a). In making his tradeoff decision, the SSA noted that Norcor had the lowest evaluated price, but had no relevant past performance. Similarly, even though the second low offeror's subcontractor had three very relevant contracts, the offeror itself, with overall performance responsibility, had no

⁵ In a related argument, Norcor asserts that the agency's evaluators were either biased against it or lacked the appropriate experience to perform the evaluation. Norcor has furnished no credible evidence in support of its arguments. Norcor merely infers bias based on the evaluation. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. Norcor also has not refuted evidence in the agency report of the evaluators' and contracting officer's significant experience. In any case, absent evidence of bias, fraud or conflict of interest, we will not review protests based on evaluators' alleged lack of qualifications. Emmert Int'l, B-280478, B-280478.2, Oct. 7, 1998, 98-2 CPD ¶ 112 at 8.

relevant past performance. Based on Cirrus's higher past performance score and the SSA's assessment that its price, 11.6 percent higher than Offeror 2's, was not significant over the life of the contract, the SSA determined that Cirrus's proposal represented the best value to the agency. Where, as here, the RFP allows for a price/technical tradeoff, the selection official retains discretion to select a higher-priced, but technically higher-rated submission, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation scheme. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10. In view of Cirrus's clear past performance advantage over Norcor and the SSA's specific determination regarding the impact of Cirrus's higher price, we find nothing unreasonable in the SSA's decision.

While the source selection decision document does not specifically discuss a tradeoff between Cirrus's and EMEC's proposals, it does state that the SSA's decision was based on his "assessment of all proposals." AR, Tab 12, at 2. In this regard, according to his supplemental statement, the SSA considered the relative past performance and price for EMEC and the other eight offerors and concluded that the combination of performance and price for these offerors "was such that it would not have warranted a trade-off to pay a higher price for the associated confidence rating" over Cirrus's. SSA Statement, Sept. 19, 2003. Specifically, as to EMEC, the SSA noted that, although its past performance rating was exceptional/high confidence, its price was 12 percent higher than Cirrus's. Id. Based on his integrated assessment of the offers, the SSA found that the "higher rated confidence assessment for EMEC did not merit [the] price difference over Cirrus." Id. An agency properly may select a lower-rated, lower-priced proposal where, as here, it concludes that the cost premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. Walsh Distribution, Inc.; Walsh Dohmen Southeast, B-281904, B-281904.2, Apr. 29, 1999, 99-1 CPD ¶ 92 at 8.

The protests are denied.

Anthony H. Gamboa
General Counsel