



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kings Point Industries, Inc.

File: B-249616

Date: December 7, 1992

Harold Rosenbaum for the protester.
Gweyn Colaberdinio, Esq., Defense Logistics Agency, for the agency.
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Technical rating of "marginally acceptable" as to past performance evaluation factor is reasonable where firm has been delinquent on recent contracts for similar items, and record shows that delinquencies were attributable at least in part to protester.

DECISION

Kings Point Industries, Inc. protests the award of a contract to J. E. Morgan Knitting Mills, Inc., under request for proposals (RFP) No. DLA100-92-R-0062, issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency, for 42,400 flyer's aramid drawers, with a 100-percent mandatory option. Kings Point challenges the agency's evaluation of its past performance and the award to a higher-priced offeror.

We deny the protest.

The RFP, issued on January 10, 1992, provided that award would be made to the responsible offeror whose offer conformed to the solicitation and was most advantageous to the government, cost or price, technical quality, and other factors considered. The RFP also stated that technical merit was more important than cost, but that as proposals became more equal in technical merit, cost would become more important. The technical evaluation factors, listed in descending order of importance were: Product Demonstration Model (PDM), Past Performance, and Manufacturing Plan. Offers were to be evaluated and then given adjectival ratings--highly acceptable, acceptable, marginally acceptable, or unacceptable. The solicitation also provided that:

"[e]valuation of past performance will be a subjective assessment based on a consideration of all relevant facts and circumstances. It will not be based on absolute standards of acceptable performance. The Government is seeking to determine whether the offeror has consistently demonstrated a commitment to customer satisfaction and timely delivery of quality goods and services at fair and reasonable prices. . . .

"By past performance, the Government means the offeror's record of conforming to Government specification requirements and to standards of good workmanship; the offeror's adherence to contract schedules, including the administrative aspects of performance; the offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the offeror's business like concern for the interests of the customer."

Three proposals were received by the February 20 closing date. The PDMs were evaluated by a technical specialist, the manufacturing plans by a production specialist, and past performance by a contract specialist. Those evaluations were reviewed by the contracting officer, who then assigned values to each evaluation factor and an overall rating for each proposal.

J.E. Morgan and another offeror were rated acceptable on every evaluation factor and overall. Kings Point's proposal was rated marginally acceptable for all three factors due to a dimensional defect in its PDM, a history of contract delinquency and some quality problems, and a failure to submit detailed information regarding its manufacturing plan. All three offerors were determined to be in the competitive range for negotiation purposes. Kings Point was notified by letter of April 20 of its deficiencies and the opportunity to correct them. In its response, Kings Point cured the defects in its PDM and manufacturing plan, but its past performance rating remained marginally acceptable due to four delinquent contracts within the prior 3 years. As a result, Kings Point's overall rating remained marginally acceptable; the other two offerors' proposals remained acceptable under all factors.

Following negotiations, best and final offers (BAFO) were obtained. Kings Point offered a BAFO unit price of \$19.80, for a total offer of \$1,679,040, and J.E. Morgan offered \$20.01 per unit, for a total of \$1,696,624. (The third offer was considerably higher than both.) After comparative analysis of the offers, the contracting officer determined that J.E. Morgan's proposal represented the best value to

the government and that its price was fair and reasonable under existing market conditions. On July 22, Kings Point was notified of award to J.E. Morgan. It filed this protest on July 30. Performance of the contract initially was stayed, but on October 16 the government proceeded with performance based on urgent circumstances seriously affecting the interests of the United States. See Federal Acquisition Regulation (FAR) § 33.104(c)(2).

Kings Point contests the marginally acceptable rating assigned to its proposal under the past performance evaluation factor, claiming that it's based on erroneous and misleading information and that its delinquencies were excusable as government-caused, the result of supplier problems, or the result of the technical difficulty and complexity of some of the required items. Kings Point maintains that its past performance is acceptable and that it should have received award as the lowest bidder.

The evaluation of technical proposals is primarily within the discretion of the contracting agency; we will review an evaluation only to assure that it is reasonable and consistent with the evaluation scheme. See Electrolux SARL, B-248742, Sept. 21, 1992, 92-2 CPD ¶ 192; CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454.

Kings Point's past performance was downgraded based on a review of its performance history for the prior 3 years. Of 11 contracts examined, 6 were performed, or being performed, with no fault attributed to Kings Point. In five of the contracts, however, the contracting officer found serious delinquencies, either wholly or partially attributable to Kings Point. These contracts included 2 for rocket fuel handlers coveralls, DLA100-91-C-0389 (being performed in delinquent status at time of the evaluation, subsequently completed 4 months delinquent), and DLA100-90-C-0311 (100 units per month were late throughout a 6-month period with the last 200 units delivered over a 5-month period after the required completion date); 1 for Saudi trousers, DLA100-89-C-0002 (completed 5 months delinquent); 1 for catapult coveralls, DLA100-90-C-0418 (completed 2 months delinquent); and 1 for TAP coveralls, DLA100-88-C-0484 (has been in delinquent state for more than 2 years).

Kings Point does not deny that its performance under the cited contracts has been delinquent. Rather, it offers explanations for the delays. For example, for the first two contracts, Kings Point claims that (1) the delinquencies were due to a quickly resolved laboratory test problem and supplier problems; and (2) the government knew at the time of award that there was only one known supplier and that this was a "problem" contract. Similarly, Kings Point denies responsibility for the delays under the Saudi trouser

contract, blaming the government for approving an incorrect shade of fabric and then discovering its error after 456 pairs were made and all the fabric dyed.

We find nothing improper in the past performance evaluation. Whether or not only a single supplier was available to provide a component under the first two contracts, Kings Point, as the prime contract awardee, undertook the obligation to make timely delivery and to assure timely performance by its suppliers. In this regard, a prime contractor generally is responsible for all of the work performed under its contracts with the government, including that of suppliers. See Marathon Watch Co., Ltd., B-247043, Apr. 23, 1992, 92-1 CPD ¶ 384. Moreover, although Kings Point maintains that the laboratory test failure problems have been resolved, the delays attributable to these problems clearly reflected on Kings Point's own performance capabilities.

As for the Saudi trouser contract, DPSC concedes that it made an error in approving an incorrect shade of fabric, but explains that it paid Kings Point \$15,000 to settle the matter, and that this error was caught early in the contract and had nothing to do with the delay. DPSC maintains that the real cause of the delay was Kings Point's inability to obtain the necessary material. As a result, DPSC adds, the contract not only was late, but ultimately wasn't even completed--Kings Point paid DPSC \$3,800 to consider the contract complete at 10,742 units.

The question of whether the delays under these contracts (and the three we do not discuss here) were legally excusable is outside of our bid protest jurisdiction.¹ As stated above, our review of technical evaluations is limited to considering whether the agency's conclusions were reasonable and consistent with the RFP. Electrolux SARL, supra. While it appears that some of the delinquencies here may have been due in part to government action, and while the protester disputes the agency's conclusions and may believe certain delays should have been disregarded due to extenuating circumstances, the record does not show that Kings Point should be absolved of responsibility for the delays for purposes of the evaluation. Rather, we think the information on the five contracts reasonably established that Kings Point had been responsible for at least some of the delays. As we read the record, DPSC was well aware that Kings Point was not the cause of all the delinquencies, and factored this into its evaluation. Since J.E. Morgan's past

¹Contract performance problems are matters of contract administration, which our Office will not consider. See 4 C.F.R. § 21.3(m) (1) (1992).

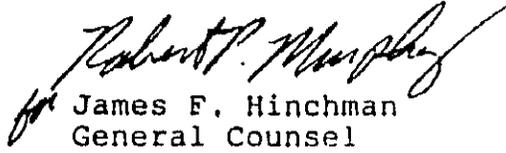
performance record revealed timely or accelerated delivery on all current and completed contracts with no quality problems, the delinquencies attributable to Kings Point were sufficient to warrant downgrading Kings Point's proposal relative to J.E. Morgan's under past performance.

Kings Point claims it is unfair to compare its performance record to J.E. Morgan's, since it has performed both a greater number of contracts and contracts of a higher complexity. We disagree. The RFP clearly stated the basis for the past performance evaluation, and J.E. Morgan's contract history did not warrant rating the firm lower than acceptable. In contrast, even if Kings Point is correct about the relative complexity and number of its contracts, the fact remains that the firm experienced several delinquency problems. Although the contracting officer states that the complexity and number of Kings Point's contracts were in fact taken into consideration, in the final analysis the agency simply was not required to assume that J.E. Morgan would have had the same problems as Kings Point had it performed the same difficult contracts or, conversely, that Kings Point would have experienced no problems performing J.E. Morgan's contracts.

Kings Point also complains that at the same time its proposal was downgraded in the evaluation, deficiencies noted in J.E. Morgan's original proposal evaluation improperly were disregarded as minor. This argument is without merit. Specifically, J.E. Morgan's manufacturing plan was originally rated marginally acceptable because it did not contain a commitment letter from their material supplier. J.E. Morgan was instructed to obtain it, but its rating was increased to acceptable before it did so because the agency determined that the firm currently was producing flyer's aramid undershirts under another contract, which required the identical basic fabric; DPSC determined that this was adequate to demonstrate the firm's ability to obtain the necessary materials. Moreover, J.E. Morgan also submitted the required commitment letter later in

negotiations. We conclude that there is no basis for the protester's argument that offers were not evaluated on an equal basis.²

The protest is denied.


for James F. Hinchman
General Counsel

²Kings Point also asserts that the fact that the agency initially published a notice in the Commerce Business Daily (June 19, 1992) announcing award to Kings Point shows that there was impermissible subjectivity in the award process. The agency explains that the notice was published inadvertently, in error. Given our conclusion that the evaluation was reasonable and consistent with the RFP, the publication of this notice, for whatever reason, has no bearing on the propriety of the award.