

Matter of: Corvac, Inc.
File: B-254757
Date: January 11, 1994

Victor Hays for the protester.
Matthew Pausch, Esq., Defense Logistics Agency, for the agency.
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DIGEST

1. Contracting agency reasonably evaluated protester's past performance as merely acceptable based on protester's prior performance of only one similar contract. Agency properly did not consider protester's references for work performed in Mexico since that work was not relevant to this solicitation because it involved environmental consulting, not hazardous waste removal.
2. Agency properly awarded contract to higher-priced offeror which had a better rated past performance record where the price/past performance tradeoff was reasonable and consistent with solicitation's evaluation scheme.
3. Whether a potential contractor can comply with limitations on subcontracting provision in solicitation issued as a small business set-aside is a matter of responsibility not reviewable by the General Accounting Office absent a showing of possible fraud, bad faith, or misapplication of definitive responsibility criteria on the part of contracting officials; whether the contractor in fact complies is a matter of contract administration, also not reviewable under the bid protest function.

DECISION

Corvac, Inc. protests the award of a contract to Moheat, Inc. under request for proposals (RFP) No. DLA200-93-R-0002, a small business set-aside issued by the Defense

Logistics Agency, Defense Reutilization and Marketing Service (DRMS), for the removal and disposal of miscellaneous hazardous items located at the Anniston Army Depot, Anniston, Alabama. Corvac protests the agency's evaluation of its past performance history and the agency's decision to award to a higher-priced offeror.

We deny the protest.

The solicitation, issued March 30, 1993, provided for the award of a firm, fixed-price requirements contract. The RFP explained that proposals would be evaluated for technical acceptability and that award would be made to the offeror whose proposal represented the "best value" to the government on the basis of price and past performance, with price being the more important factor. With respect to past performance, the RFP stated that the government would evaluate the quality of each offeror's past performance as a means of evaluating the relative capability of the offerors. The RFP further advised offerors that, in investigating an offeror's past performance, the government would consider information in the offeror's proposal and information obtained from other sources, including past and present customers and their employees and other government agencies. The RFP cautioned that failure by the offeror to provide evidence of performance on contracts of a similar nature in terms of waste quantities, variety of pick-up locations and waste streams, and disposal time frames, would be considered in the offeror's past performance evaluation.

In its proposal, Corvac essentially provided only one reference, a contract awarded to it by DRMS on April 5, 1990, which involved the removal and disposal of hazardous waste generated by the United States military facilities in and around Corpus Christi, Texas. After best and final offers were received, Corvac was evaluated as the low offeror with a realistic price of \$1,093,400. While the contracting officer rated Corvac acceptable for past performance, he noted that Corvac had consistent performance problems on the only DRMS contract it had performed. The contracting officer also determined that Corvac's reference to work with Systech, Inc. was not relevant to this RFP, since Systech operated a disposal facility and had no knowledge of how Corvac had performed on hazardous waste removal and disposal contracts. The contracting officer

¹Corvac, in its initial proposal, also submitted a draft contract (in Spanish) for past environmental consulting work in Mexico and referred to work the firm had performed for Systech, Inc.

also determined that Corvac's reference to work in Mexico with Corporation EPAC, S.A., Mexico City, was of little use in evaluating Corvac's past performance as this work only involved environmental consulting--no hazardous waste removal or disposal work had been done.

Moheat was the second low offeror, with a realistic price of \$1,183,090. Initially, Moheat was rated acceptable in past performance, but after further assessment of Moheat's references the contracting officer raised that assessment to good.²

The contracting officer concluded that Moheat's offer represented the best value to the government because Moheat, which was only 8 percent higher priced than Corvac, had satisfactorily performed considerably more comparable contracts than had Corvac and therefore had a good probability of success in contract performance. Corvac's probability of success was viewed as fair and, because Corvac did not have extensive experience in hazardous waste removal and disposal, as presenting the maximum risk for contract performance. Accordingly, award was made to Moheat.

Corvac contends that DRMS did not perform a fair and proper evaluation of Corvac's past performance because it failed to consider the work Corvac had performed in Mexico. We find no merit to this contention.

In its BAFO, Corvac stated that it had an exclusive agreement with EPAC to provide consulting services in waste management and transportation within Mexico and under that agreement had done the following: developed tank cleaning project for removal and recovery of hydrocarbon residual sludge for tank farms located in Mexico; provided on a consulting basis industrial house-keeping and management

²In its comments on the agency report, for the first time, Corvac briefly and in passing "questions the appropriateness" of the agency's changing the initial rating of Moheat's past performance from acceptable to good. Corvac, however, does not dispute that Moheat has performed considerably more contracts than it has; Corvac has also failed to identify what aspect of Moheat's past experience did not warrant a good rating except for a brief allegation that Moheat lacks experience in "this specific bulk waste." The record shows that while Moheat has recently requested rescission of a contract awarded by the agency, the problems encountered there did not relate to performance or experience; otherwise, the record clearly supports the agency's findings that Moheat had extensive past experience of greater scope and nature than the protester's experience.

practices recommendations through plant tours and inspections of certain Mexican companies; and participated as principal associate in the development of a pilot secondary fuels and solvent recovery project.

The solicitation provided that an offeror's performance on contracts of a similar nature in terms of waste quantities, variety of pick-up locations and waste streams, and disposal time frames would be considered. What Corvac described was environmental consulting work, not hazardous waste removal or disposal work. Since the EPAC contract did not concern work similar to that required by the solicitation, the agency was not required to consider it in the past performance evaluation of Corvac.

To the extent that Corvac is challenging the agency's price/past performance tradeoff, we point out that such tradeoffs are permitted provided they are rational and consistent with the stated evaluation criteria. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Here, although the protester and Moheat were initially both rated technically acceptable, the contracting officer determined that Moheat's better record of past performance outweighed its higher price and therefore presented the best value to the government. We see nothing unreasonable about the determination, and it is consistent with the evaluation criteria, which specifically provided for this type of trade-off.

Corvac also argues that Moheat will fail to comply with applicable limitations on subcontracting, including the clause at Federal Acquisition Regulation (FAR) § 52.219-14, "Limitations on Subcontracting." This matter is not for review by our Office. Whether Moheat can comply with the limitations on subcontracting is a matter of responsibility, see Little Susitna, Inc., B-244228, July 1, 1991, 91-2 CPD ¶ 6; Truetech, Inc.--Recon., B-232407.2, Nov. 16, 1988, 88-2 CPD ¶ 483; we will not review an affirmative determination of responsibility absent a showing of possible fraud, bad faith, or misapplication of definitive responsibility criteria on the part of contracting officials. 4 C.F.R. § 21.3(m)(5) (1993). Definitive criteria are not in issue, and the record provides no basis to conclude that the contracting officer's determination in this regard was motivated by bias or bad faith. Furthermore, whether Moheat in fact complies with subcontracting limitations when performing the contract is a matter of contract administration also not reviewable under our bid protest

function, 4 C.F.R. § 21.3(m)(1); Little Susitna, Inc.,
supra; Diversified Computer Consultants, B-230313;
B-230313.2, July 5, 1988, 88-2 CPD ¶ 5.

The protest is denied.

Robert P. Murphy
Acting General Counsel