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Decision

Matter of: Omega Apparel, Inc.

File: B-411266

Date: June 26, 2015

Marc Lamer, Esq., Kostos and Lamer, PC, for the protester.
Joseph R. Weidenburner, Esq., Defense Logistics Agency, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

1. Protest of an agency's performance confidence assessment evaluation and source selection decision is denied where the evaluation and award were reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest that an agency's best value tradeoff decision was mere pretext for a lowest-priced, technically-acceptable award is denied where the record shows that the best value tradeoff decision was reasonable, documented in the record, and that the source selection authority exercised his independent judgment in making the decision.
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DECISION

Omega Apparel, Inc., of Smithville, Tennessee, protests the award of a contract to Bremen-Bowdon Investment Co., of Bowdon, Georgia, by the Defense Logistics Agency (DLA), Troop Support, under solicitation SPM1C1-14-R-0080 (RFP) for the supply of Army men's dress trousers with braid. Omega challenges the agency's evaluation of its proposal under the technical and past performance factors, as well as the agency's best value tradeoff decision.

We deny the protest.

BACKGROUND

DLA issued the RFP on August 18, 2014, with a closing date of September 18. The agency issued a number of amendments to the RFP, ultimately closing the solicitation on October 10.

The RFP sought to award an indefinite-delivery, indefinite-quantity contract, with fixed unit prices, for a 1-year base period and four 1-year options, for the production of Army men's dress trousers with braid. The solicitation established a best value selection process, considering the following factors in descending order of importance: technical, past performance, and price. RFP at 47-51. For purposes of award, the RFP stated: "[a]ll evaluation factors other than cost or price, when combined, are significantly more important than cost or price," but also advised that "[a]s other evaluation factors become more equal, the evaluated cost or price becomes more important." Id. at 47.

The RFP stated that the agency would evaluate a proposal's technical factor according to submitted product demonstration models (PDMs). Id. at 48-49. The agency would evaluate the PDMs based on three equally-weighted subfactors: manufacturing operations, visual requirements, and dimensional requirements. Id. The contracting officer would then combine these subfactors and rate the PDM either outstanding, good, acceptable, marginal, or unacceptable. Id. at 49-50.

The agency would evaluate the second most important factor, past performance, according to two equally-weighted subfactors: relevancy of prior contracts and quality of past performance. RFP at 50. The contracting officer would consider these subfactors together to create an overall past performance rating. Id. at 50-51. Relevancy of prior contracts would be rated either very relevant, relevant, somewhat relevant, or not relevant. Id. at 50. Quality of past performance would be rated either outstanding, good, acceptable, marginal, or unacceptable. Id. at 50. Considered together, the contracting officer would assign the offeror an overall past performance rating of either substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). Id. at 50-51.

DLA received four proposals in response to the solicitation. Agency Report (AR), Tab 3, Pre-Negotiation Briefing Memorandum, at 1. After an initial review of technical factors, the competitive range was narrowed to Omega and Bremen. Id. at 21. DLA's source selection authority (SSA) then compared the two remaining proposals and issued a source selection decision document (SSDD). Under the first and most important factor, the contracting officer assigned Omega's proposal a PDM rating of outstanding and Bremen's proposal a PDM rating of good. AR, Tab 5, Source Selection Decision Document, at 6-7. When comparing the contracting officer's reports concerning the offerors' PDMs, the SSA acknowledged that Omega's two PDMs had no defects and that Bremen's two PDMs had two manufacturing defects each. Id. However, while the SSA noted that Bremen's submissions each had "[s]ilicone creases . . . applied unevenly and belt loops . . . not stitched correctly," it found that "[b]oth of Bremen's PDMs indicate[d] a thorough approach and understanding of the requirements and contain weaknesses that are not significant and are very easily correctable in production." Id. The SSA concluded that Omega's PDMs were "slightly superior" to Bremen's. Id.

Under the second most important factor, past performance, both Omega's and Bremen's proposals received an overall rating of substantial confidence. Id. at 8. This "indicates that the Government has a high expectation that [the offeror] will successfully perform the required effort." Id. The SSA assigned this overall rating based on the two past performance subfactors: relevancy of past performance and quality of past performance. AR, Tab 5, Source Selection Decision Document, at 7-8.

When evaluating the relevancy subfactor, the SSA concluded that Omega's proposal was "slightly superior" to Bremen's, since Omega had previously produced the exact same Army trouser with braid. Id. at 7. However, the SSA also found that Bremen's previous production of the Army trouser without braid was experience with items of "a similar kind and complexity" that "involve[d] a similar scope and magnitude of effort and complexities as the subject solicitation requires." Id.

For the quality of past performance subfactor, the SSA concluded that Omega's proposal was "slightly superior" to Bremen's, since it had a higher percentage of on-time or ahead of schedule deliveries. Id. at 7-8. The SSA also found that neither offeror had past quality issues. Id. at 8. Specifically, the SSA found that Omega had five out of 74 delivery orders in the past two years ship inexcusably late and Bremen had six out of 55 delivery orders in the past two years ship inexcusably late. AR, Tab 5, at 7-8. Otherwise put, Omega delivered 93 percent of its past delivery orders either on-time, ahead of schedule, or excusably late, and Bremen delivered 89.1 percent of its past delivery orders either on-time, ahead of schedule, or excusably late. Id.

Under the relevance of prior contracts subfactor both offerors received a rating of very relevant. AR, Tab 4, Price Negotiation Memorandum, at 7-11. Under the quality of past performance subfactor Omega's proposal received a rating of outstanding and Bremen's received a rating of good. Id. Overall, the SSA found Omega to be "slightly superior" to Bremen for both past performance relevancy and for quality of past performance. AR, Tab 5, Selection Decision, at 9. The SSA concluded that Omega's proposal was "slightly superior" to Bremen's under the past performance factor overall. Id.

After two rounds of negotiations, Omega submitted a final price of \$10,389,960 and Bremen submitted a final price of \$8,637,552. AR, Tab 5, Source Selection Decision Document, at 8. Following these negotiations, Omega's and Bremen's proposals were rated as follows:

	Omega	Bremen
Overall PDM	Outstanding	Good
Past Performance	Substantial Confidence	Substantial Confidence
Relevance	Very Relevant	Very Relevant
Quality	Outstanding	Good
Cost	\$10,389,960	\$8,637,552

AR, Tab 4, Price Negotiation Memorandum, at 6-13, 19-21.

In the final SSDD, the SSA found Omega’s proposal slightly superior to Bremen’s. AR, Tab 5, at 8-9. However, the SSA ultimately concluded that Bremen’s proposal represented the best value to the government. Id. In reaching this conclusion the SSA compared Omega’s and Bremen’s proposals under all of the solicitation’s factors. Id. When comparing the most important factor, PDMs, the SSA acknowledged that Omega’s proposal contained no technical errors, and that Bremen’s contained four. Id. However, the SSA found that “all of [Bremen’s proposal’s] deficiencies are considered very easily correctable, [and] thus there is not a substantial difference in this factor.” Id. at 8. The SSA also recognized that Omega had a 3.9 percent higher on-time delivery rate than Bremen and had experience manufacturing the exact same item. Id. at 8-9. But, the SSA concluded that these “slight[] superior[ities]” did not warrant “paying a very significant [16.9 percent] price premium . . .” to Omega. AR, Tab 5, at 9. Specifically, the SSA found that since Omega’s and Bremen’s proposals were technically substantively similar, the evaluated cost or price became comparatively more important, as stated in the solicitation. Id. at 8-9; RFP at 47. Consequently, DLA awarded the contract to Bremen on March 9, 2015. Omega was debriefed by the agency on March 17, and this protest followed.

DISCUSSION

Omega challenges DLA’s overall past performance rating for Bremen’s proposal and the agency’s ultimate selection decision. Omega argues that its proposal should not have received the same past performance rating as Bremen’s, since Omega’s proposal was found by the agency to be superior to Bremen’s. Omega also argues that DLA has essentially converted the best value competition set forth in the solicitation to a lowest-priced, technically-acceptable competition in order to award the contract to Bremen. As discussed below, our Office finds that Omega’s complaints are without merit.

Past Performance Confidence Assessment Ratings

Omega argues that DLA erred in assigning Bremen’s proposal the same overall past performance rating as Omega’s. Protest at 10. Omega bases its arguments on the fact that the contracting officer found that Omega’s proposal had “few minor problems” with past performance compared to Bremen’s proposal having “some

minor problems.” Protester’s Comments (May 4, 2015) at 6 (emphasis in original). Omega also argues that the agency improperly assigned Bremen’s proposal the same overall past performance rating, since Omega’s proposal received an outstanding rating under the quality of past performance subfactor, compared to Bremen’s proposal’s good rating.¹ Id.

It is well established that in reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Joint Logistics Managers, Inc., B-410465.2, B-410465.3, May 5, 2015, 2015 CPD ¶ 152 at 5. The evaluation of technical proposals is a matter within an agency’s discretion since an agency is responsible for defining its needs and for identifying the best methods for accommodating those needs. QinetiQ N. Am., Inc., B-405008, B-405008.2, July 27, 2011, 2011 CPD ¶ 154 at 10. We will review the record only to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Joint Logistics Managers, Inc., *supra*.

Here, the SSA reasonably compared the data from the proposals and found that “Bremen’s proposal indicates a high expectation of successful contract performance.” AR, Tab 5, at 9. This is in line with the solicitation’s criteria for an overall past performance rating of substantial confidence, requiring “a high expectation that the offeror will successfully perform the required effort.” RFP at 50. As discussed below, the agency further distinguished the offerors’ past performance, finding the protester’s past quality and performance factors to be “slightly superior” to the awardee’s. AR, Tab 5, at 7-8. Since the contracting officer’s conclusions were reasonable and consistent with the solicitation, our Office will not substitute our judgment for the agency’s, and the protest is denied.

Best Value Selection Criteria

Omega also protests that DLA essentially converted the best value source selection criteria in the solicitation to a lowest-priced, technically-acceptable basis for award. Protest at 10-11. Specifically, Omega contends that DLA’s description of Omega’s proposal as “slightly superior” under the non-price evaluation factors was merely pretext to downplay Omega’s proposal’s distinct superiority under these factors. Protester’s Comments (May 4, 2015) at 8. We find no merit to this argument.

¹ Omega also originally appeared to argue that the agency erred in assigning both Omega’s and Bremen’s proposals a very relevant rating under the past performance, relevancy of prior contracts subfactor. Protest at 10. However, Omega did not further discuss these contentions in its comments responding to the agency report, and we therefore deem these issues abandoned. See ERIMAX, Inc., B-410682, Jan. 22, 2015, 2015 CPD ¶ 92 at 6 n.7.

Selection officials have considerable discretion in making price/technical tradeoff decisions. DGC, Int'l, B-410364.3, Apr. 22, 2015, 2015 CPD ¶ 136 at 5. The propriety of a price/technical tradeoff decision does not turn on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was rational and consistent in light of the RFP's evaluation scheme. Id. Indeed, point scores and adjectival ratings are merely guides for intelligent decision making. Information Ventures, Inc., B-407478.4, July 17, 2013, 2013 CPD ¶ 176 at 6. However, while an agency has broad discretion in making a tradeoff between price and non-price factors, an award decision in favor of a lower-rated, lower-priced proposal must acknowledge and document any significant advantages of the higher-priced, higher-rated quotation, and explain why they are not worth the price premium. Joint Logistics Managers, Inc., supra. Our Office has found that when SSAs have performed this analysis, it is within their discretion to choose a lower-rated, lower-priced proposal in a best value procurement. See CVB Co., B-278478.4, Sept. 21, 1998, 98-2 CPD ¶ 109; MD Helicopters, Inc.; AgustaWestland, Inc., B-298502 et al., Oct. 23, 2006, 2006 CPD ¶ 164.

Here, as discussed above, the SSA thoroughly documented his rationale for selecting Bremen's proposal as the best value to the government. See AR, Tab 5, at 8-9. The SSA specifically acknowledged that Omega's proposal was superior to Bremen's under several technical categories. Id. Specifically, the SSA found that the four total manufacturing defects were "very easily correctable," and thus did not constitute "a substantial difference in this factor." Id. The SSA also found that Omega's 3.9 percent higher on-time or ahead of schedule delivery history and experience producing the exact same item were not significant enough to warrant the 16.9 percent price premium. Id. Despite these documented advantages, the SSA concluded that Bremen's proposal offered the best value to the government. Id. at 9.

We conclude that the SSA's reasoning was rational and consistent with the RFP's evaluation scheme and that the SSA adequately documented the basis for his decision. The SSA was well within his discretion to decide--after considering all the facts--that Bremen's proposal represented the best value to the government. Our Office will not substitute our judgment for the agency's.

The protest is denied.

Susan A. Poling
General Counsel