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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: McRae Industries, Inc.

File: B-403335

Date: October 20, 2010

Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.

James J. McCullough, Esq., Steven A. Alerding, Esq., and Brian M. Stanford, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for Wellco Enterprises, Inc., an intervenor.

Lynne Georges, Esq., Defense Logistics Agency, for the agency.

Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation and selection decision is denied where the record shows the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

McRae Industries, Inc., of Mt. Gilead, North Carolina, protests the award of a contract to Wellco Enterprises, Inc., of Morristown, Tennessee, under request for proposals (RFP) No. SPM1C1-08-R-0015, issued by the Defense Logistics Agency for temperate weather boots for men and women. The protester argues that the agency's evaluation and selection decision were not in accordance with the solicitation.

We deny the protest.

BACKGROUND

The RFP was issued on May 6, 2008 and contemplated the award of a fixed-price indefinite-delivery/indefinite-quantity contract for a base year and four 1-year option periods. RFP at 4, 15. The RFP incorporated the provision of Federal Acquisition Regulation (FAR) § 52.219-4, "Notice of Price Evaluation Preference for HUBZone

Small Business Concerns,”¹ which notified potential offerors that an evaluation factor of 10 percent would be added to the price of all proposals except those of small business concerns. Id. at 21. The RFP provided for a best value evaluation on the basis of price and the following non-price factors listed in descending order of importance: product demonstration model (PDM), past performance/experience, and socioeconomic support. Id. at 51. The RFP stated that the non-price factors, when combined, were significantly more important than price.² Id.

With regard to the PDM factor, offerors were to provide multiple pairs of boots to be tested and evaluated against four equally weighted subfactors: manufacturing operations, visual requirements, dimensional requirements, and testing requirements. Id. As is relevant here, one of the testing requirements was a flame resistance test, which required the boots to meet the “Flame Resistance Test Four” requirements of the National Fire Protection Association’s (NFPA) 1971, Standard on Protective Ensemble for Structural Firefighting, 2007 edition. Id. at 45; Agency Report (AR), Tab 6, Purchase Description, at 12. This contemplated that the agency would test multiple areas of the boot; to pass, none of the tested areas could exhibit “burn-through” of the layers of the quarter panel and lining components of the boot. AR, Tab 6, Purchase Description, at 12.

With regard to the past performance/experience factor, the RFP identified three subfactors: experience, quality of items/delivery performance, and compliance with contractual socioeconomic subcontracting goals. The first two subfactors were stated to be of equal importance and more important than the third subfactor. RFP at 51. The RFP stated that the agency would consider the “currency and relevance” of past performance and experience information, including information for the 2 years prior to the solicitation closing date. Id. at 52.

The RFP stated that adjectival ratings would be assigned for the evaluation of the PDM and past performance/experience factors. Adjectival ratings were not assigned in the evaluation of the socioeconomic support factor; instead, proposals were comparatively ranked. As is relevant here, with respect to the PDM evaluation factor, the RFP defined satisfactory, as:

The PDM meets the stated requirements of the acquisition documentation (i.e., specification, commercial item description, purchase description, etc.), but contains a deficiency or deficiencies that require preventative corrective action in production.

¹ HUBZone refers to historically underutilized business zone.

² The RFP provided that the agency would evaluate price realism as it relates to an offeror’s demonstrating that the proposed price provides an adequate reflection of its understanding of the requirements. RFP at 55.

RFP at 54. The RFP further stated that an overall rating of satisfactory for the PDM evaluation factor “indicates an understanding of the technical requirements and an ability to provide an acceptable quality product/service with a reasonable probability of successful contract performance.” Id. A very good rating was defined as the PDM meets the stated requirements, “but contains a deficiency or deficiencies that are not significant and are very easily correctible during production.” RFP at 53 (underline in original).

The agency received seven proposals, including proposals from McRae and Wellco. Wellco submitted two proposals for different style boots--one for boots with injection molded soles, and one for boots with direct molded soles. AR, Tab 8, Pre-Negotiation Briefing Memo, at 3. The agency evaluated proposals and, as relevant here, the ratings were as follows:

Offeror	McRae	Wellco Injection Molded	Wellco Direct Molded
Overall Rating	Satisfactory	Satisfactory	Very Good
PDM	Satisfactory	Satisfactory	Very Good
Manufacturing	Very Good	Very Good	Very Good
Visual	Very Good	Very Good	Very Good
Dimensional	Excellent	Excellent	Excellent
Testing	Satisfactory	Satisfactory	Very Good
Past Performance/ Experience	Very Good	Very Good	Very Good
Experience	Very Good	Excellent	Excellent
Quality/Delivery	Excellent/Very Good	Satisfactory/Very Good	Satisfactory/Very Good
Socioeconomic Compliance	Neutral	Excellent	Excellent
Socioeconomic Support	2nd	3rd	3rd

Id. at 8.

McRae’s initial total price was [DELETED]. Since McRae certified that it was a HUBZone concern, a 10 percent evaluation preference was applied to Wellco’s offers when compared to McRae. Wellco’s adjusted total evaluated price was [DELETED] (price rounded to the nearest dollar) for boots with injection molded soles, and [DELETED] for boots with direct molded soles. Id. at 5, 6.

Notwithstanding receiving very good and excellent ratings for some of the subfactors for the PDM evaluation factor, McRae’s proposal received an overall rating of satisfactory because the contracting officer concluded that visual and dimensional defects, and flame resistance test failures would require preventive corrective action during production. Id. at 15. Likewise, Wellco’s proposal for injection molded boots

received an overall rating of satisfactory because of visual and dimensional defects and flame test failures. Id. at 14. Wellco's proposal for direct molded boots received an overall rating of very good. Id. at 16.

The contracting officer established a competitive range including all offerors and conducted discussions with each of these offerors. By letter dated November 18, 2009, McRae was advised of technical deficiencies, specifically that, during the flame resistance test, failures occurred with the tongue, back, left, and right sides of the upper portion of the boot. McRae was requested to address all deficiencies, explain how they occurred, and describe the remedy proposed. McRae also was required to certify that the deficiencies would not occur in production if the company received award of the contract. AR, Tab 11, Letter from Agency to McRae, Nov. 18, 2009, at 1-2.

In its November 30 response, the protester lowered its price, provided test results from an independent laboratory indicating that its boots had successfully passed flame resistance testing performed by that laboratory, and questioned whether the agency's tests were in error. AR, Tab 12, Letter from McRae to Agency, Nov. 30, 2009, at 2, 4. The protester "assure[d]" the agency that the deficiencies found in testing would not occur during production. Id. at 2. The protester also took exception to the satisfactory rating given to its proposal for the PDM evaluation factor, stating that the identified deficiencies were insignificant and could easily be corrected during production, and the protester requested that the rating be changed to very good. Id. at 3.

The agency received and evaluated revised proposals, which resulted in no changes to the offerors' technical ratings. By letter dated December 14, the contracting officer conducted a second round of discussions. In a letter to the protester, the contracting officer stated that the government had taken the protester's comments into consideration; reviewed the specification, testing procedures, and testing results; and, "[a]fter careful consideration," the agency was "confident the testing and results are correct." AR, Tab 14, Letter from Agency to McRae, Dec. 14, 2009, at 1. McRae was advised that the ratings assigned to its proposal under the PDM factor would not be changed, and that no further PDM submissions were permitted. Id.

In its December 16 response, McRae continued to argue against the overall rating of satisfactory assigned to its proposal for the PDM evaluation factor, and the firm maintained that the tests performed by the agency laboratory were incorrect. AR, Tab 15, Email from McRae, Dec. 16, 2009, at 1.

As a result, the contracting officer held an additional round of discussions with McRae. By letter dated January 6, 2010, the contracting officer provided McRae with pictures of the flame test results for its PDM. The contracting officer further advised McRae that the government had taken McRae's PDM comments into consideration;

reviewed the specification, testing procedures, and testing results; and determined that the testing and results were correct. AR, Tab 16, Letter from Agency to McRae, Jan. 6, 2010, at 1. The protester was again advised that the rating assigned to its proposal for the PDM evaluation factor would not be changed, and that no further PDM submissions were permitted. Id.

On January 11, the protester responded and continued to contest the PDM test results. AR, Tab 17, Letter from McRae to Agency, at 1-2 and attaches. On January 15, the contracting officer requested final proposal revisions from all offerors and, in a letter to McRae, reiterated the agency's position that the testing and results were correct, and that the ratings assigned to McRae's proposal for the PDM evaluation factor would not be changed. AR, Tab 18, Letter from Agency to McRae, Jan. 15, 2010, at 1.

McRae timely submitted its final proposal revision in which it reduced its pricing and made no further comments about the PDM evaluation. AR, Tab 19, McRae Final Proposal Revision. Wellco, in its final proposal revision, withdrew its proposal for boots with direct molded soles and submitted revised pricing for its boots with injection molded soles.

Final revised proposals were evaluated and, as relevant here, the final ratings were as follows:

Offeror	McRae	Wellco Injection Molded
Overall Rating	Satisfactory	Satisfactory
PDM	Satisfactory	Satisfactory
Manufacturing	Very Good	Very Good
Visual	Very Good	Very Good
Dimensional	Excellent	Excellent
Testing	Satisfactory	Satisfactory
Past Performance/ Experience	Very Good	Very Good
Experience	Very Good	Excellent
Quality/Delivery	Excellent/Very Good	Satisfactory/Excellent
Socioeconomic Compliance	Neutral	Excellent
Socioeconomic Support	1st	3rd

AR, Tab 21, Source Selection Decision, at 2.

Wellco's final proposed price of \$74,731,454 was the lowest of all offerors, but with the 10 percent HUBZone price adjustment, Wellco's final evaluated price was \$82,204,599. Id. at 18. McRae's final proposed price was [DELETED] (rounded to

nearest dollar), which was [DELETED] higher than Wellco's final evaluated price. Id.

The source selection authority (SSA) performed a detailed comparison of Wellco's proposal with McRae's proposal.³ With respect to the PDM factor, the SSA noted that both firms' proposals received the same ratings at the factor and subfactor level. However, the SSA considered the proposals to be "essentially equal" only under the manufacturing operations, visual requirements, and dimensional requirements subfactors. Id. at 15. Even though both proposals received the same rating for the testing requirements subfactor, the SSA determined Wellco's proposal to be "slightly superior" to McRae's proposal, due to the fact Wellco's PDMs had only two flame resistance testing failures while McRae's PDMs had four.⁴ AR, Tab 21, Source Selection Decision, at 16.

With respect to the evaluation of past performance/experience, Wellco's proposal was considered superior to McRae's proposal under the experience subfactor because Wellco had produced the exact same item, whereas McRae had only produced similar items.⁵ Id. at 16. Conversely, McRae's proposal was considered superior to Wellco's under the quality of items/delivery performance subfactor. Id. at 17. Under the least important subfactor, compliance with contractual socioeconomic subcontracting goals, the SSA noted that Wellco had "exceptional experience" in complying with these goals. However, since McRae, as a small business concern, did not have to provide socioeconomic subcontracting goals (and, thus, the proposal received a neutral rating), the SSA concluded that a decision as to superiority could not be made for this subfactor. Id.

³ Because Wellco submitted the lowest priced proposal of all the offerors, the SSA compared Wellco's proposal with each of the other offerors' proposals as well. These comparisons are not relevant here.

⁴ As noted above, McRae's PDM failed flame resistance testing on the tongue, back, left, and right sides of the upper portion of the boot. Wellco's PDM failed flame resistance testing on the back and left side of the upper portion of the boot. AR, Tab 21, Source Selection Decision, at 16.

⁵ The SSA noted that Wellco had delivered over 1 million pairs of the exact same boots under two contracts during the past 2 years. AR, Tab 21, Source Selection Decision, at 16, 18. The SSA noted that McRae had provided similar items for the Army and had been approved to manufacture temperate weather boots for the Air Force, but that the firm did not have any "direct experience" in manufacturing the exact item required by the RFP here. Id.

With respect to the evaluation of the socioeconomic support factor, McRae's proposal was determined to be superior to Wellco's proposal because of McRae's status as a small business concern. Id. at 18.

After performing the detailed comparison, the SSA determined that Wellco's proposal was technically superior to McRae's proposal, notwithstanding the similarity in factor ratings, because Wellco's proposal was superior under the PDM factor and some aspects of the past performance/experience factor. The SSA recognized that Wellco's evaluated price (including the HUBZone price preference) was lower than McRae's proposed price, and he concluded that McRae's proposal did not provide any technical advantages that warranted paying the additional amount. Id. at 18.

On July 8, the agency awarded the contract to Wellco. After a debriefing, McRae filed this protest with our Office on July 16.

DISCUSSION

The protester argues that proposals were not reasonably evaluated, and that the agency improperly determined that Wellco's proposal was superior to McRae's. The protester contends that its proposal was superior to Wellco's and should have been selected for award.⁶

In reviewing protests against allegedly improper evaluations, our Office will examine the record to determine whether the agency's determination was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co., B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 3-4. With regard to the assignment of adjectival ratings, these are only a guide to assist agencies in evaluating proposals; proposals with the same or similar adjectival ratings are not necessarily of equal quality, and the agency may properly consider specific advantages that make one proposal of higher quality than another, even where the same adjectival ratings are assigned. Pueblo Env'tl. Solution, LLC, B-291487, B-291487.2, Dec. 16, 2002, 2003 CPD ¶ 14 at 10. An offeror's mere disagreement with agency's assignment of adjectival ratings, or other aspects of the

⁶ In its initial protest, McRae argued that the agency did not adhere to the RFP's evaluation scheme in that it did not treat all subfactors for the PDM evaluation factor as being equal, did not treat the technical evaluation factors in descending order of importance, and improperly elevated a single test result to be of paramount importance in the entire evaluation. The agency addressed these issues in its report. In its comments on the agency report, the protester did not attempt to rebut or otherwise address the agency's response to these issues; accordingly, we consider it to have abandoned these arguments. CM Mfg., Inc., B-293370, Mar. 2, 2004, 2004 CPD ¶ 69 at 3.

evaluation, does not render the evaluation unreasonable. See McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

As stated above, the SSA performed an in-depth analysis of proposals that reasonably took into account the relative strengths and weaknesses of each of the offerors' proposals. In so doing, the SSA reasonably determined that, notwithstanding the similarity in proposal ratings, Wellco's proposal was more advantageous to the agency than McRae's proposal and was also lower in price. Based on our review of the record, as discussed below, we find the selection of Wellco for award to be reasonable.

For example, with regard to the evaluation of PDMs, the protester objects to the SSA's conclusion that Wellco's proposal was superior under the PDM factor because Wellco's boots had only two flame resistance testing failures and McRae's boots had four. McRae argues that Wellco's proposal and McRae's proposal should have been rated equal for this factor because both offerors' PDMs failed the flame resistance test.⁷ Comments at 7.

As noted above, the flame resistance test was one of many tests performed under the testing subfactor of the PDM factor. The RFP explained that, in conducting the flame resistance test, the agency would test multiple areas of the boots provided by the offerors as PDMs. AR, Tab 6, Purchase Description, at 12. Contrary to the protester's argument, although each test was reported on a pass/fail basis, the testing requirements subfactor was not identified in the RFP as being evaluated on a pass/fail basis, but rather was part of a best value analysis. Accordingly, we find the agency's consideration that a fewer number of testing failures reflected a superior product to be consistent with the best value analysis contemplated by the RFP.

The protester also challenges the SSA's evaluation of the past performance/experience factor. In particular, the protester challenges the SSA's conclusion that Wellco's proposal was superior under the experience subfactor because Wellco had experience producing the exact item sought by the RFP. The protester argues that the proposals should have been rated equal for this subfactor because McRae has had significant experience producing similar boots, and it had been certified by the Air Force as a qualified supplier. Comments at 8.

⁷ The protester also argues that the flame resistance testing "may not have been" performed properly by the agency. Comments at 19. As explained above, as a result of the protester's concerns, the agency reviewed its specification, testing procedures, and testing results, and advised the protester on several occasions that it was confident the test results were correct. The agency also provided the protester with photos of the damage to its boots during the flame resistance tests. The protester has not provided any persuasive evidence to question the accuracy of the agency's testing and test results.

The RFP here provided that the agency would consider the relevancy of past performance, RFP at 52, and determinations of relevancy are within the sound discretion of the agency. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. We find that the agency reasonably exercised its discretion here, given that the record supports the agency's conclusion that Wellco had more relevant experience than McRae because Wellco has produced over 1 million pairs of the exact same boots required by the RFP, and McRae has not produced the exact same boots in its prior contracts. Although the protester disagrees with the agency's assessment, it has not shown the evaluation of offerors' past performance and experience to be unreasonable.

The protester also disagrees with the agency's evaluation of the compliance with contractual socioeconomic subcontracting goal subfactor of the past performance/experience factor. In particular, the protester takes issue with a statement made by the SSA in its source selection decision that:

Wellco is considered superior to McRae for Experience/Past Performance based on their superiority in the experience subfactor and their exceptional experience with compliance to socioeconomic goals, which suggests a stronger likelihood of success in meeting socioeconomic goals.

AR, Tab 21, Source Selection Decision at 17. The protester asserts that McRae's proposal should have been found to be superior under the compliance with contractual socioeconomic subcontracting goals, because McRae is a small business and therefore compliance with subcontracting goals is assured. Comments at 9-10.

What the protester omits is that the SSA states, elsewhere in the source selection decision, that "a decision as to superiority [for this subfactor] cannot be made," given that McRae's proposal was rated neutral for this subfactor. AR, Tab 21, Source Selection Decision, at 17. As the SSA recognized, McRae's proposal received a neutral rating because the firm, as a small business, was not required to have small business subcontracting goals in its contracts. McRae's small business status was given credit under the socioeconomic evaluation factor, where McRae's proposal was ranked first and Wellco's proposal was ranked third. Id. at 17-18.

Based on our review of the entire record, it does not appear that compliance with socioeconomic subcontracting goals (the lowest weighted subfactor within the past performance/experience factor) was a major discriminator in the award, or that a higher rating assigned to McRae's proposal under this subfactor would have altered the award decision. Thus, even if the agency erred in evaluating the compliance with socioeconomic subcontracting goals subfactor, we find the protester was not prejudiced as a result. G4S Government Serv., B-401694, B-401694.2, Nov. 4, 2009, 2009 CPD ¶ 236 at 11.

Finally, the protester contends that Wellco may have submitted a “below cost” offer and that the agency did not evaluate whether the Wellco offer was in fact fair and reasonable.⁸ Comments at 16-18.

Here, the agency compared Wellco’s prices with current/recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition. AR, Tab 13, Price Negotiation Memo, at 17. Based upon this analysis, the agency determined that adequate price competition existed for the requirement and found that each offeror’s proposed pricing was fair and reasonable. Id. We have no basis to question this determination. Moreover, an allegation that Wellco submitted an unrealistically low offer provides no basis for protest because there is no prohibition against an agency accepting a below-cost offer on a fixed-price contract. Shel-Ken Properties, Inc.; McSwain and Assocs., Inc., B-261443, B-261443.2, Sept. 18, 1995, 95-2 CPD ¶ 139 at 3.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁸ The protester argues that, contrary to the HUBZone preference clause, the agency’s selection decision was based upon actual prices and not the adjusted prices of the large business offerors. Comments at 14. However, the protester’s argument is belied by the record, which shows that SSA made his final decision based on the Wellco’s adjusted price of \$82,204,599, which was \$34,162 lower than the protester’s total offered price of \$82,238,762. AR, Tab 21, Source Selection Decision, at 18.