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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: SoBran, Inc.

File: B-408420; B-408420.2

Date: September 10, 2013

Scott A. Ford, Esq., for the protester.
Cynthia Malyszek, Esq., Malyszek & Malyszek, for Financial & Realty Services, LLC, an intervenor.
Lucinda E. Davis, Esq., and Daniel Hutman, Esq., Social Security Administration, for the agency.
Pedro E. Briones, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of an agency's past performance evaluation and source selection decision is denied where the agency reasonably evaluated protester's quotation consistent with solicitation's evaluation criteria.

DECISION

SoBran, Inc., of Fairfax, Virginia, protests the issuance of a task order to Financial & Realty Services, LLC, (FRS) of Silver Spring, Maryland, under request for quotations (RFQ) No. SSA-RFQ-13-0096, issued by the Social Security Administration for warehouse support services. SoBran challenges the agency's past performance evaluation and selection decision.

We deny the protest.

BACKGROUND

The RFQ was issued to eight vendors holding Federal Supply Schedule (FSS) contracts under Federal Acquisition Regulation (FAR) subpart 8.4, and provided for the issuance of a fixed-price task order (for a base and 4 option years) on a best value basis considering past performance and price, which were approximately equal in importance. Agency Report (AR) at 2; RFQ at 4.

With regard to past performance, the solicitation stated that the agency would conduct a qualitative assessment of vendors' demonstrated success performing previous or ongoing contracts of similar size, scope, and complexity to the requirement. Id. at 58. To make this assessment, the RFQ advised that the agency would consult past performance databases (i.e., the contractor performance assessment reporting (CPAR) system) and, if information in the databases was insufficient, the agency would contact references provided by the vendor. Id. at 59. In this regard, each vendor was to identify references for up to five contracts, current or completed within the 3 last years. Id. at 54.

The Social Security Administration received quotations from three vendors, including SoBran (the incumbent) and FRS, which were evaluated by the agency's contracting officer as follows:

| | FRS | Vendor B | SoBran |
|-------------------------|--------------------|--------------------|--------------------|
| Past Performance | Neutral | Very Good | Very Good |
| Price | \$5,275,354 | \$5,532,935 | \$5,699,865 |

AR at 3-4; see Tab 8, Evaluation & Award Memorandum, at 6, 11-12.

As pertinent here, the contracting officer evaluated SoBran's past performance based on four CPAR reports of task orders that she found relevant to the requirement. AR, Tab 8, Evaluation & Award Memorandum, at 10-11. Three of the reports were for SoBran's performance of the incumbent task order over three different time periods; the CPAR ratings were either exceptional or excellent, and the agency found this work to be "extremely relevant." Id. The fourth CPAR report was for SoBran's performance of a \$392,000 Secret Service task order for the period September 2009 to January 2010; the rating for this work was satisfactory. Id. The contracting officer averaged the ratings from the four CPAR reports and assigned an overall past performance rating of very good to SoBran's quotation. Id.

With respect to FRS, the agency did not find CPAR reports or past performance information in available databases. Id. at 6. Of the identified references in FRS's quotation, the agency found only one to be relevant, but the reference did not respond to multiple requests for its evaluation of FRS's performance. Id. at 7-8. As a result, the agency rated FRS's quotation neutral for past performance. Id.

The contracting officer then performed a comparison of SoBran's higher-rated, higher-priced quotation with FRS's lower-rated, lower-priced quotation. Id. at 11-14. She specifically acknowledged SoBran's "exceptional" performance as the incumbent, but found that its performance record was not worth the "several hundred thousand dollars" of additional costs. Id. at 14. She also found that the risk of issuing the order to FRS was extremely low, and the transition from SoBran would

be almost seamless, because most of the incumbent's employees would likely continue on with FRS as a result of the RFQ's non-displacement of qualified workers clause.¹ Id. As a result, the contracting officer determined that FRS's quotation provided the best value and the agency issued the task order to FRS. This protest followed.

DISCUSSION

SoBran challenges the agency's evaluation of its past performance and the best value determination.² Essentially, the protester complains that its overall past performance rating of very good was too low and argues that the agency failed to properly consider SoBran's superior performance in the best value tradeoff. The protester also complains that the agency failed to adequately document or explain its evaluation.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

The record shows that the agency considered SoBran's past performance record consistent with the RFQ's evaluation methodology, which required a qualitative assessment of past performance. RFQ at 58. Despite the protester's focus on the evaluation ratings, the record actually shows that the contracting officer considered the CPAR evaluators' narrative assessments, not simply the adjectival ratings. For example, the contracting officer acknowledged that the CPAR evaluators found that SoBran provides timely, high quality reports, that it exceeds contract requirements, that it ships warehouse items with over 99 percent accuracy, and that it is proactive and efficient, among other things. AR, Tab 8, Evaluation & Award Memorandum, at 10-11. The contracting officer also considered the Secret Service evaluator's

¹ The RFQ incorporated FAR clause § 52.222-17, Nondisplacement of Qualified Workers, which provides that a successor contractor must offer a right of first refusal of employment to qualified service employees whose employment with the predecessor contractor will be terminated as a result of the award. RFQ at 26; FAR § 52.222-17(b). In its comments on the agency's supplemental report in this case, the protester for the first time argues that the contracting officer misapplied this FAR clause. This protest argument is untimely, as it was raised more than 10 days after receipt of the agency report, which identified that the agency considered FAR clause § 52.222-17 in the best value determination. See 4 C.F.R. § 21.2(a)(2).

² The protester does not challenge the evaluation of FRS's past performance.

positive assessment that it would issue a new contract to SoBran given the opportunity.³ Id. at 11. In other words, the agency complied with the RFQ by qualitatively evaluating the protester's past performance.

The contracting officer then determined that the protester's superior performance was not worth the \$425,000 price differential. Where, as here, a procurement conducted pursuant to FAR subpart 8.4 provides for award on a "best value" basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to determine whether a quotation's technical superiority is worth its higher price. InnovaTech, Inc., B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 6; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. Although SoBran disagrees with the agency's best value determination, we do not see, and the protester has not persuasively demonstrated, that it was unreasonable, under a FSS best value procurement, for a federal agency to determine that it was not worth paying nearly half a million dollars more for warehousing services based on the protester's superior past performance.

In sum, the record here shows that the agency conducted a reasonable past performance evaluation and cost/technical tradeoff.

The protest is denied.

Susan A. Poling
General Counsel

³ The protester makes multiple, disjointed arguments concerning the Secret Service CPAR. On the one hand, the protester contends that the CPAR should not have been considered, because it was for a lower dollar value than the required effort and covered a time period more than 3 years ago; on the other hand, SoBran argues that the agency should have assessed the Secret Service work as very good rather than satisfactory, because of the existence of a more recent and more favorable CPAR report for this work that the contracting officer overlooked. As noted above, the agency considered SoBran's work for the Secret Service positively and this was considered in the best value determination. We fail to see how any minor adjustment in rating for this work would have impacted the overall evaluation result.