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Decision

Matter of: Omega Apparel, Inc.

File: B-409715

Date: July 22, 2014

Marc Lamer, Esq., Kostos and Lamer, PC, for the protester.
Joseph Weidenburner, Esq., Defense Logistics Agency, for the agency.
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DIGEST

Protest challenging an agency's selection decision is denied where the record shows that the evaluation and selection decision were reasonable and in accordance with the evaluation criteria.

DECISION

Omega Apparel, Inc., of Smithville, Tennessee, protests the award of a contract to Califashions, of San Francisco, California, under request for proposals (RFP) No. SPM1C1-13-R-0091 issued by the Defense Logistics Agency (DLA) to manufacture Navy women's slacks. The protester challenges the agency's evaluation of proposals and the resulting source selection decision.

We deny the protest.

BACKGROUND

Issued on June 27, 2013, the solicitation provided for the award of an indefinite-delivery/indefinite-quantity (ID/IQ) fixed-price contract with a base year and four 1-year options. The solicitation called for the manufacture of a guaranteed annual minimum quantity of 19,380 pairs of slacks, with an annual estimated quantity of 48,432, and an annual maximum quantity of 60,540. RFP at 8.

The RFP provided for award on a best-value basis, considering three factors: (1) product demonstration model (PDM); (2) past performance-performance confidence assessment; and (3) price. The PDM factor included three equally-weighted subfactors: (1) manufacturing operations; (2) visual requirements;

and (3) dimensional requirements of the specification/commercial item description. The past performance factor had two subfactors: (1) relevancy of prior contracts; and (2) quality of past performance. Id. at 42.

The RFP stated that the agency would evaluate each PDM under the three subfactors using adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. Definitions were provided in the solicitation for each rating. Id. at 46. As relevant here, the definition for the adjectival rating of good stated that the PDM “contains a weakness or weaknesses that are not significant and are very easily correctable during production.” Id. The definition for the adjectival rating of acceptable stated that the PDM “contains a weakness or weaknesses that require preventative corrective action in production.” Id.

Under the past performance factor, the RFP directed offerors to submit relevant past performance references for work currently ongoing or completed within two years of the solicitation closing date. Id. at 40. Past performance would include an assessment of both the relevancy and the quality of the offeror’s past performance;¹ then, based on the quality of the recent and relevant performance, the agency would assign performance confidence ratings of substantial confidence (high expectation of success), satisfactory confidence (reasonable expectation of success), limited confidence (low expectation of success), no confidence, or unknown confidence (neutral). Id. at 47.

For purposes of award, the PDM factor was stated to be most important, the past performance factor was next in importance, and the non-price factors, combined, were stated to be significantly more important than price. Id.

Four offerors submitted proposals by the July 29 2013 closing date, including Califashions and Omega (the prior incumbent).² The agency’s evaluation team evaluated proposals, identified strengths and weaknesses, assigned initial proposal ratings, and identified various issues for discussions. AR exh. 3, Pre-Negotiation Memorandum at 7-14 and 19-20 (Jan. 17, 2014).

¹ The evaluation of relevance would be assigned ratings of very relevant (essentially the same scope/magnitude/complexity as the RFP), relevant (similar scope/magnitude/complexity), somewhat relevant (some scope/magnitude/complexity), or not relevant. The quality of an offeror’s past performance would be evaluated using adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. RFP at 47.

² Omega’s initial proposal included a July 25, 2013 letter in which the firm provided an explanation for the “waistband width and fly measurement” variation from the RFP’s specifications. Agency Report (AR) exh. 17, Omega’s Initial Proposal at 3rd unnumbered page.

On January 17, 2014, the agency sent discussion questions to all four offerors regarding specific deficiencies in their proposals. Omega's discussion letter identified areas of concern under each evaluation factor and subfactor. AR exh. 13, Omega Discussions Letter (Jan. 17, 2014). Of relevance here, the agency identified the following deficiencies under the [DELETED] subfactor:³

[DELETED]

Id. at 1; AR exh. 5, Omega PDM Evaluation Report at 2 (Sept. 12, 2013).

In response, Omega stated that [DELETED] and that [DELETED]. Omega then requested an opportunity to see the PDM in order to "validate this deficiency." AR exh. 13, Omega Discussions Response at 2 (Jan. 17, 2014). As to the agency's concern that the [DELETED], the protester stated that its [DELETED] and again requested an opportunity to see the PDM to "validate this deficiency." Regarding the finding that the [DELETED] Omega challenged this finding, stating that its [DELETED]. Id.

At the conclusion of the initial round of discussions, on January 28, the agency requested final proposal revisions (FPRs). As relevant here, DLA alerted Omega that the agency had "re-evaluated" the deficiencies previously identified in the initial discussions letter "in accordance with [Omega's] response" and "there [was] no change to the deficiencies as noted." AR exh. 15, Agency Request for FPR (Jan. 28, 2014).

Omega submitted its FPR by the January 30 deadline.⁴ In response to the deficiencies in its PDM, Omega provided a letter of explanation for the waistband and fly measurements previously furnished with its initial proposal. The protester then requested that its "PDM rating be updated to reflect this submission [letter of

³ The additional deficiencies in Omega's PDM were not considered "significant" and were, in the evaluators' judgment, "very easily correctable during production." AR exh. 3, Pre-Negotiation Memorandum at 9. For example, [DELETED] as required by the solicitation. Id.; AR exh. 13, Omega Discussions Letter at 1.

⁴ The FPR from Offeror A was submitted late; therefore, its proposal submitted in response to the initial round of discussions was the only one considered. AR exh. 4, Price Negotiation Memorandum at 22 (March 28, 2014).

explanation]" and that [DELETED]. AR exh. 16, Omega's FPR at 2 (Jan. 30, 2014).⁵

The final proposal ratings and evaluated pricing were as follows:

	Califashions	Offeror A	Omega	Offeror B
PDM	Good	Good	Acceptable	Good
Manufacturing	Good	Good	Acceptable	Good
Visual	Outstanding	Outstanding	Good	Outstanding
Dimensional	Outstanding	Outstanding	Outstanding	Outstanding
PAST PERFORMANCE	Substantial Confidence	Substantial Confidence	Substantial Confidence	Satisfactory Confidence
Relevancy	Very Relevant	Very Relevant	Very Relevant	Very Relevant
Quality	Outstanding	Outstanding	Outstanding	Good
TOTAL PRICE	\$4,510,230	\$4,631,310	\$5,085,965	\$6,151,469.40

AR exh. 4, Price Negotiation Memorandum at 24 (March 28, 2014).

On the basis of the evaluation results, the source selection authority (SSA) undertook a comparative assessment of the competing proposals, documenting his assessment in a source selection decision document (SSDD). The SSA determined that Califashions' proposal represented the best value to the government, where it was the highest-rated and lowest-priced offeror. Specifically, as compared to Omega, the SSA noted as follows:

Califashions' total offered price is \$4,510,230.00 which is \$575,735.40 or 11.32% lower than Omega's total offered price of \$5,085,965.40. Even though Omega has a slightly superior relevancy of prior contract rating, Califashions has a superior PDM and both Califashions and Omega are equal for Past Performance Confidence Assessment, I find it is not worth paying a high premium for a slightly superior relevancy of prior contracts. With Califashions's good PDM, very relevant experience in producing the same and similar kind and complexity as solicited items and their outstanding ahead of schedule delivery, I have a superior confidence in Califashions's successful performance of the required effort. Therefore, Califashions' proposal represents the best value to the Government.

⁵ The enclosed letter, cited elsewhere in this decision, stated:

[DELETED]

AR exh. 17, Omega's Initial Proposal at 3rd unnumbered page.

AR exh. 6, SSDD at 13. After being advised of the agency's selection decision and requesting and receiving a debriefing, Omega filed this protest.

DISCUSSION

Omega argues that the evaluation and selection decision were unreasonable because the agency ignored obvious discriminators between its own proposal and the one submitted by Califashions.

We have long held that where a protester challenges the agency's evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2; Integrated Science Solutions, Inc., B-406987, B-406987.2, Oct. 10, 2012, 2012 CPD ¶ 290 at 9. A protester's disagreement with the agency's evaluation conclusions does not provide a basis for our Office to object to the evaluation. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 6.

Evaluation of PDM

Omega asserts that its PDM should have received a rating of good, rather than acceptable, arguing that the deficiencies identified by the agency "were not actually deficiencies." Protest at 11-12. In any event, the protester alleges that these deficiencies were easily correctable during production. Id. We disagree.

The contemporaneous evaluation record here supports the reasonableness of the agency's conclusion that Omega's PDM warranted a rating of acceptable rather than good. Specifically, the deficiencies which contributed to the acceptable rating assigned to Omega's proposal, were based on the manufacturing defects associated with the [DELETED], as described above. According to the agency, these deficiencies would require preventative corrective action in production; thus, the adjectival rating of acceptable (PDM contains a weakness or weaknesses that require preventative corrective action in production) was justified. While Omega disagrees with the agency's judgment, the protester has not shown that the evaluation was unreasonable. OPTIMUS Corp., supra.

Moreover, the record shows that Omega was afforded an opportunity to clarify and/or revise its initial proposal to address these deficiencies during two rounds of discussions. However, Omega's response was to express disagreement with the evaluators' judgments and, in its FPR, to urge that these deficiencies be excused by

the agency.⁶ In making this request, the protester essentially conceded that the manufacturing deficiencies identified by the agency, at least in part, were reasonably based. On this record, we have no basis to object to the agency's evaluation of proposals for the reasons advanced by the protester.

Evaluation of Past Performance

Omega also objects to the evaluation of Califashions' past performance. Specifically, the protester argues that Califashions' past performance was "over-rated" given that its rating was based on one contract where the total number of items manufactured by Califashions under nine delivery orders was "less than the annual minimum" quantities of 19,380 pairs of Navy women's slacks specified in this solicitation. Accordingly, the protester asserts that Califashions' prior contract was clearly not of the same scope and magnitude of effort as required here. Protest at 12; Protester's Comments at 7.

The evaluation of an offeror's past performance is a matter of agency discretion which we will not find improper unless unreasonable or inconsistent with the solicitation's evaluation factors. Ashland Sales & Serv. Co., B-408010.6, B-408010.7, Mar. 28, 2014, 2014 CPD ¶ 113 at 9-10; Concepts & Strategies, Inc., B-405930, Jan. 12, 2012, 2012 CPD ¶ 47 at 7.

Here, the record reflects that the agency rated Califashions' past performance as meriting substantial confidence based on its performance of a Marine Corps contract for 17,380 pairs of women's slacks. AR exh. 12, Califashions' Final Evaluation Ratings at 3 (Mar. 28, 2014). The agency evaluated this contract as very relevant and Califashions' performance was rated outstanding based on its record of delivering all orders ahead of schedule, with no reported quality issues. AR exh. 3, Pre-Negotiation Memorandum at 11-12. To the extent the protester argues that this contract should not have been considered very relevant because the number of pairs of slacks delivered was less than the 19,380 guaranteed minimum quantity under the subject Navy contract, we have no basis to find the agency's evaluation to be unreasonable. The difference in quantity is relatively slight, 17,380 versus 19,380--a rating of very relevant did not require a showing that the contract was for an amount in excess of the stated minimum--and the item

⁶ Insofar as Omega relies on its July 25, 2013 letter of explanation as evidence that it brought the "fly deficiency to the Agency's attention when it submitted its proposal" see, Protester's Comments at 6-7, its reliance is misplaced. Nothing in the record before us indicates that the agency considered this letter of explanation in evaluating Omega's initial proposal. To the extent Omega disagreed with the waistband width and fly measurement specifications, its post-award challenge is untimely and will not be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2014).

manufactured under Califashions' Marine Corps contract was, in the agency's view, of the "same and similar kind and complexity" as that solicited. AR exh. 6, SSDD at 8. While Omega may ultimately disagree with the agency's judgment as to the merits of Califashions' past performance, this does not show that DLA acted unreasonably since, by its very nature, the evaluation of past performance is subjective. We will not substitute our judgment for the agency's reasonably based evaluation judgments. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7; General Dynamics--Ordnance & Tactical Sys., B-295987, B-295987.2, May 20, 2005, 2005 CPD ¶ 114 at 7. We therefore find no merit to this aspect of Omega's protest.

Selection Decision

Omega asserts that the agency failed to perform a reasonable best value tradeoff. The protester alleges that the agency should have recognized its extensive performance history of manufacturing exactly the same items as a significant discriminator between the two competing proposals. Instead, the protester argues, the agency's tradeoff determination was based on a mechanical comparison of ratings assigned to its past performance record and that of Califashions. Protester's Comments at 11.

Where, as here, a solicitation provides for award on a best value basis, it is the function of the source selection authority to perform (if necessary) price/technical tradeoffs, that is, to determine whether one proposal's technical superiority is worth the higher price, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. SoBran, Inc., B-408420, B-408420.2, Sept. 10, 2013, 2013 CPD ¶ 221 at 4; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13.

In this case, it is clear from the discussion in the SSDD that the SSA made a qualitative assessment of the technical proposals of the competing offerors and concluded that Califashions' higher-rated, lower-priced proposal represented the best value to the government. The record shows that the SSA specifically acknowledged Omega's more extensive performance history and record of quality performance under the past performance factor, the second most important consideration in the agency's source selection decision. However, the SSA concluded that Omega's advantage under this evaluation factor did not merit paying a price premium of approximately 12 percent. Although Omega disagrees with the agency's judgment of the relative merits of the offerors' proposals, this does not demonstrate that the agency's evaluation and selection decision were

unreasonable. See Team BOS/Naples--Gemmo S.p.A./DelJen, B-298865.3, Dec. 28, 2007, 2008 CPD ¶ 11 at 8; Clean Harbors Env'tl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3.

The protest is denied.

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General Counsel