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**Comptroller General
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Decision

Matter of: Brewbaker White Sands JV

File: B-295582.4

Date: October 5, 2005

F. Randolph Burroughs, Esq., Burroughs & Rhodes, for the protester.
Maj. Lawrence M. Anderson and Eric Beckstrom, Esq., Department of the Air Force, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of award to offeror that submitted slightly lower-rated, lower-priced proposal in a best value procurement is proper where record shows source selection authority performed a rational integrated assessment of proposals and reasonably determined that (1) both offerors' past performance proposals were essentially equal in terms of performance risk, and (2) despite protester's higher adjectival rating for past performance, price premium involved in an award to the protester on the basis of its slightly higher-rated, higher-priced proposal was not warranted given the acceptable level of technical competence available at the awardee's lower price.

DECISION

Brewbaker White Sands JV protests the award of a contract to NASCENT Group JV under request for proposals (RFP) No. FA801-04-R-0004, issued by the Department of the Air Force for Simplified Acquisition of Base Engineering Requirements (SABER) services at Holloman Air Force Base, New Mexico. The protester contends that the agency failed to follow the RFP's evaluation terms, since past performance was the most important evaluation factor, and the protester's proposal received a higher adjectival rating for past performance, but the award was made to NASCENT on the basis of its slightly lower-rated, lower-priced proposal.

We deny the protest.

The RFP, issued on May 10, 2004, contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a base year and 4 option years for

a broad range of maintenance, repair, minor construction/alteration and renovation work.¹ RFP at 139. The following evaluation factors were provided: technical, past performance, and price. Offers found to be technically acceptable were to be evaluated for past performance and price, with past performance more important than price. RFP at 142. Offerors were advised that

[t]he government will consider awarding to an Offeror with higher qualitative merit and/or experience and past performance, provided the difference in price is commensurate with added value. Conversely, the Government will consider making award to an Offeror whose offer has lower qualitative merit and/or relevant experience and past performance if the price differential between this Offeror's proposal and other proposals warrant[s] doing so.

Id. Both the protester's and NASCENT's technical proposals were evaluated as acceptable.

Brewbaker White Sands received favorable ratings of very good to exceptional from its past performance references, and was rated exceptional for past performance by the evaluators, although the evaluators noted that no past performance information was referenced for the joint venture separate from its individual members, and that only limited government contract experience was identified for the joint venture's members. The evaluators also noted that several of the protester's references could not be reached for comments to support their unexplained high ratings.

NASCENT's past performance reference ratings were also favorable, predominantly in the very good to exceptional range; NASCENT's past performance was given an overall rating of very good. While two reference questionnaires were incomplete and discounted, and a third, less favorable one, was also discounted after the awardee explained that it pertained to a different entity, the evaluators noted that the offeror's other past performance reviews were favorable and demonstrated relevant experience, including two other SABER contracts.

Price proposals containing proposed price coefficients (multipliers to be applied to standard unit prices at estimated quantities provided in the RFP, and reflecting the

¹ We note, as a matter of background, that Brewbaker White Sands originally protested a December 9, 2004 award to NASCENT under this RFP; that protest was dismissed as academic after the agency agreed to reevaluate the proposals. The protester then challenged the agency's subsequent selection of NASCENT for award; that protest was dismissed as academic when the agency agreed to provide a new source selection authority for a final award decision. The current protest relates to the new source selection authority's selection of NASCENT for award.

offeror's profit, general and administrative expenses, overhead, and mobilization costs) were to be evaluated for reasonableness. Offerors were also required to provide for evaluation prices for design task line items related to the different levels of SABER tasks anticipated by the agency.

NASCENT's pricing coefficients were lower than those proposed by the protester, resulting in an evaluated price of \$109,502,000 for the firm. The Brewbaker White Sands proposal was evaluated at \$115,410,050. Both firm's evaluated prices were considered reasonable. For the design task, the protester's price was evaluated at \$91,800 for the sum of the design line items and NASCENT's price was evaluated at \$5,625; NASCENT had proposed a price of "\$0.00" for several of the design line items, explaining to the agency that under its SABER contracts, it considers the type of design work it priced at zero dollars to be inherent to the overall SABER services to be provided by the firm.

The SSA in her source selection decision document (SSDD) compared the past performance strengths, weaknesses, and adjectival evaluation ratings noted for each of the offerors' proposals, and considered whether the higher evaluation rating and associated past performance strengths warranted the payment of the price premium associated with an award to the protester. For instance, the SSA noted that while the protester's past performance proposal was credited for one of its members' (White Sands) incumbent contract for the services, and that favorable past performance ratings had been given for a variety of work by each of the joint venture's individual members, no past performance information was available to assess the performance capability of the joint venture offeror itself. The SSA also pointed out a lack of any support from several references for the protester for favorable ratings it received, lessening the usefulness of those ratings. There was also a concern that only limited information about Brewbaker's individual past performance was provided, and that, other than the White Sands incumbent contract for the services, the record did not demonstrate government contract experience for the protester. Accordingly, the SSA concluded that the protester's past performance rating was "barely Exceptional." SSDD at 5.

As for NASCENT's past performance, the record shows that the majority of past performance reference ratings were all very good to exceptional, and that several of the references rated work performed by the same joint venture (rather than its individual members) pursuing the current award including two similar SABER contracts. The SSA also recognized favorably that one of the awardee's joint venture members "has a proven track record for taking over failing ventures and developing successful joint ventures." *Id.* at 4. Based on these considerations, the SSA concluded that NASCENT's past performance deserved a "strong overall 'Very Good' rating." *Id.* Given their comparative strengths, the SSA reasoned that both offerors

are essentially equal in their ability to provide the required service to the government . . . [b]oth offerors have demonstrated ability to

perform to the required task magnitude . . . and there is little difference in the risk posed to the government, leaving price as the factor with primacy when determining best value to the government.

Id. at 5.

Noting that the RFP provides for award to an offeror with a lower past performance rating if the price differential associated with a higher-rated proposal warrants doing so, the SSA determined that, in light of the offerors' essentially equal ability to successfully perform the work, the price premium associated with the protester's proposal was not warranted; the SSA concluded that the NASCENT proposal offered the best overall value to the government. The agency awarded a contract to NASCENT on June 27, 2005. This protest followed.

Brewbaker White Sands contends that the agency failed to evaluate the proposals for award in accordance with the RFP, since the RFP's evaluation scheme provided that past performance was more important than price. In this regard, the protester contends that, despite its higher price, it should have been awarded the contract since it received a higher adjectival rating for past performance.

In reviewing a protest against an agency's evaluation of proposals and award, including tradeoff determinations, we examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation's evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. An agency may properly select a lower-rated, lower-priced proposal where it reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. Bella Vista Landscaping, Inc., B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4. A protester's mere disagreement with the agency's determinations as to the relative merit of competing proposals and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4. Our review of the record here supports the reasonableness of the agency's comparative review of the merits of the proposals, its price/past performance tradeoff, and the award decision.²

² We also note that to the extent the protester alleges that the procurement was tainted by bias by the SSA, the protester has not provided any support for the contention; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. ACC Constr. Co., Inc., B-289167, Jan. 15, 2002, 2002 CPD ¶ 21 at 4. We point out that while the protester questions certain similarities in the final and previous SSDDs, the agency has explained that the similarities, which appear in the SSDD's procurement history provisions, stem

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In its comments on the agency report, which included the full evaluation record and source selection decision documentation, the protester does not persuasively refute the noted strengths in the evaluation record of the awardee's past performance, the reasonableness of the SSA's consideration of the two past performance proposals as being essentially equal, or the SSA's concerns about the protester's limited joint venture and government contract experience (and the limited supporting commentary for high past performance ratings). Rather, the firm generally alleges that because the RFP provided that past performance is the most important factor for award, and because it received a higher past performance adjectival rating, it should have been selected for award. We disagree.

It is well-established that adjectival ratings are merely guides to intelligent decisionmaking; they do not mandate automatic selection of a particular proposal. See Calspan Corp., B-255268, Feb. 22, 1994, 94-1 CPD ¶ 136 at 10. Rather, selection officials must decide whether the different ratings show technical superiority and what that difference may mean in terms of contract performance in determining whether a price premium associated with that superiority is warranted. See Computer Tech. Servs., Inc., B-271435, June 20, 1996, 96-1 CPD ¶ 283. Here, as discussed above, the SSA performed a comprehensive integrated assessment of the proposals and concluded that in terms of performance risk, based on a comparative review of the offerors' past performance, the proposals were essentially equal, making price the determinative factor for award. Neither the protester, nor our review of the record, provides a basis to question the reasonableness of that determination.

As set forth above, while the protester's past performance had noted strengths, the SSA also noted its related weaknesses and the agency's concerns about the offeror's limited relevant experience as a joint venture and government contractor. Conversely, while the awardee's past performance was rated as very good, rather than exceptional, the SSA noted the strengths of the firm's past performance and its direct relevance to the current SABER contract. Moreover, the protester provides no basis to challenge the reasonableness of the SSA's determination that, given NASCENT's lower price, and the acceptable level of technical competence and the high probability of successful performance by this experienced SABER contractor, any technical superiority that might be associated with the slightly higher adjectival rating received by the protester does not justify the payment of the price premium

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from the use by both SSAs of a standard form for that purpose. The agency reports, however, that each SSA's review of the proposals and evaluation record for technical merit and price, and the analysis supporting the award decision, are not based on any standard provisions, but rather reflect each SSA's independent review and consideration of the procurement record.

associated with an award to that offeror. Therefore, whether the SSA viewed the proposals as essentially technically equal, making price the proper basis of selection, or concluded that the adjectival ratings of the proposals did not warrant paying the price premium associated with the Brewbaker White Sands proposal, we find nothing improper in the SSA's selection decision.³ Id.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ To the extent that the protester generally challenges the adequacy of the price evaluation, our review of the record shows no valid basis of protest. For instance, although the protester alleges that the awardee's price proposal should have been rejected for submitting an offer of "\$0.00" for several design line items, there is nothing improper in an offeror electing not to charge for certain items or services; where, as here, an offeror indicates a commitment to furnish the item in question by inserting "\$0.00" in its proposal, its proposal is compliant. GTSI Corp., B-286979, Mar. 22, 2001, 2001 CPD ¶ 55 at 6. Further, it is insufficient for a protester to challenge the propriety of a fixed-price contract award on the ground that the awardee submitted a below-cost proposal; fixed-price contracts generally are not subject to adjustment during performance, and NASCENT, not the agency, will bear the financial risk, if any, including a low profit margin. SatoTravel, B-287655, July 5, 2001, 2001 CPD ¶ 111 at 4-5 n.3. The protester also provides no support for its contention that the awardee's pricing is unbalanced; there has been, for instance, no showing of any overstatement of prices. See RFP at 139; Federal Acquisition Regulation § 15.404-1(g). Lastly, the protester gives no support for, or showing of prejudice related to, its contention that it was unreasonable for the agency to use a pricing formula for evaluation purposes that resulted in evaluated prices in excess of the contract's maximum price.