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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Gracon Corporation

File: B-293009; B-293009.2; B-293009.3

Date: January 14, 2004

Daniel M. Gross, Esq., Oviatt, Clark & Gross, for the protester.
John E. Jensen, Esq., Devon E. Hewitt, Esq., and Daniel S. Herzfeld, Esq., Shaw Pittman, for All Cities Enterprises, an intervenor.
Lt. Col. Daniel Poling, Department of the Army, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency was not required to hold discussions regarding areas of protester's proposal that were weak, but acceptable, and that did not prevent the protester from having a reasonable opportunity for award.
 2. Agency properly utilized adjectival rating system to provide guidance to source selection authority (SSA) in evaluating proposals; since record shows that SSA was aware of the relative merits of the proposals when making his "best value" determination, there is no basis to question the evaluation.
 3. Procuring agency reasonably determined, based on explanation of pricing methodology in awardee's proposal, that awardee's low fixed price did not indicate a failure to understand the requirements of the solicitation.
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DECISION

Gracon Corporation protests the award of a contract to All Cities Enterprises (ACE) under request for proposals (RFP) No. DAKF19-02-R-0003, issued by the Department of the Army for a contractor to perform real property maintenance/repair and minor construction projects at Fort Riley, Kansas and nearby areas. Gracon challenges the award on several grounds.

We deny the protest.

The solicitation, for a job order contract (JOC) for a 1-year base period, with nine 1-year option periods, provided for a "best value" award based on an evaluation

under three factors—quality (with subfactors for management control plan, quality control plan, work execution, and experience), past performance, and price. Quality was more important than past performance, and quality and past performance combined were significantly more important than price. Written proposals consisted of slides that would be used in an oral presentation, and a packet containing past performance information for the past 3 years. With respect to price (price proposals were submitted only by offerors included in the competitive range), offerors were required to propose a coefficient (a percentage factor required to cover all contractor costs) for each of 18 line items. The coefficient was based on the Unit Price Book (UPB), published by the U.S. Army Corps of Engineers, which contains prices for various types of work that can be ordered under the contract. Agency Report (AR) at 3.¹

Following submission of initial proposals (the oral presentations and past performance packets), which were evaluated by a source selection evaluation board (SSEB) and assigned adjectival ratings for the quality and past performance factors,² four offerors, including Gracon and ACE, were included in the competitive range and invited to submit price proposals. The Army held price discussions and requested revised price proposals. ACE offered the lowest price coefficient (between 1.02 and 1.05) and its proposal was rated green under the quality and past performance factors. Gracon submitted the next lowest coefficient (1.144 to 1.411), and its proposal was rated green under the quality factor and yellow under the past performance factor. The source selection authority (SSA) concluded from these results that ACE's proposal represented the best value, and thus made award to ACE.

Gracon challenges the award decision on several grounds. We have reviewed all of Gracon's arguments and find them to be without merit. We discuss Gracon's principal arguments below.

¹ The prices in the UPB are based on direct costs (labor, material and equipment), but do not include indirect costs or profit. If an offeror proposed a coefficient of 1, it would be proposing to perform for the same price as the UPB. A coefficient less than or greater than 1 reflected an offer to perform for a corresponding percentage less than or greater than the price in the UPB.

² The ratings for the quality and past performance factors were as follows: blue (excellent, no doubt of success); green (high quality, little doubt of success); yellow (adequate quality, some doubt of success); pink (overall quality cannot be determined, substantial doubt of success); red (unacceptable, extreme doubt of success); and white (neutral for no past performance).

DISCUSSIONS

Gracon asserts that the contracting officer identified seven significant proposal weaknesses or deficiencies during Gracon's debriefing that were not raised with Gracon during the discussions process, and that this evidences an improper failure by the agency to provide it with meaningful discussions.

Although discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely matters of the contracting officer's judgment. An agency is not required to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score, and is not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. We review the discussions provided only to determine whether the agency pointed out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Northrop Grumman Info. Tech., Inc., B-290080 et al., June 10, 2002, 2002 CPD ¶ 136 at 6.

Discussions here were adequate. While the seven weaknesses in Gracon's proposal were identified--after award--as significant weaknesses or deficiencies, the agency reports, and the record confirms, that, prior to award, these weaknesses in fact were not significant, but were merely areas where Gracon's proposal could have been improved. AR at 22-25. In this regard, the Army explains that, after the debriefing, Gracon submitted a list of questions to the agency, the first of which asked that any "significant" proposal weaknesses or deficiencies be identified. In responding with a list of weaknesses, the contracting officer restated the question--including the term "significant"--making it appear that the weaknesses were considered significant. AR at 22. The record supports the contracting officer's explanation that the weaknesses were not considered significant; the evaluation documents show that, of the seven weaknesses, three are noted as areas where the proposal met the requirements, and four are listed only as weaknesses, not as significant weaknesses. AR at 23. Moreover, Gracon's proposal was not rated deficient based on these weaknesses; rather, it was rated green (high quality) under each quality subfactor and under the quality factor overall. Consensus Evaluation. We conclude that the weaknesses were not significant in the sense that they prevented Gracon from having a reasonable chance for award, and that they therefore did not have to be raised in discussions. See Development Alternatives, Inc., B-279920, Aug. 6, 1998, 98-2 CPD ¶ 54 at 7.³

³ Gracon also argues that the agency improperly failed to provide it with an opportunity to address negative past performance information in the form of marginal ratings assigned by references to its performance under prior contracts. Gracon was rated yellow for past performance based on these marginal ratings, and
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ADJECTIVAL RATING SCHEME

Gracon argues that the color-coded adjectival rating system used by the Army—blue, green, yellow, pink or red—resulted in an unreasonable evaluation because the rating categories were too broad to allow the agency to meaningfully evaluate quality differences between its and ACE’s proposals. However, there is nothing improper in an agency’s using an adjectival rating system in a best-value procurement to provide the SSA with guidance in judging the relative merits of the proposals. See generally Harris Corp.; PRC Inc., B-247440.5, B-247440.6, Aug. 13, 1992, 92-2 CPD ¶ 171 at 8. The key consideration is whether the evaluation record reflects knowledge of the proposals’ relative merits, and provides reasonable support for the agency’s conclusion as to which proposal provides the best value. See Astro Pak Corp., B-256345, June 6, 1994, 94-1 CPD ¶ 352 at 4. Here, the SSA was aware of the differences in the merits of the Gracon and ACE proposals under the various factors and subfactors, as reflected in the price negotiation memorandum. Under these circumstances, the fact that he ultimately agreed with the adjectival ratings developed by the SSEB for the two proposals does not provide a basis for questioning the evaluation.

EVALUATORS’ DISAGREEMENT

Gracon challenges the evaluation on the basis that certain of the evaluators filed minority reports that did not agree with the consensus evaluation. However, disparate scoring among evaluators, by itself, does not establish an improper evaluation, General Sec. Servs. Corp., B-280388, B-280388.2, Sept. 25, 1998, 99-1 CPD ¶ 49 at 6, as it is not unusual for individual evaluators to have different judgments

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suggests that it was entitled to a green rating instead. We will not sustain a protest unless the protester demonstrates that it was prejudiced by the agency’s improper actions; that, but for the agency’s actions, it would have had a substantial chance of receiving the award. West Coast Unlimited, B-281070.2, Aug. 18, 1999, 99-2 CPD ¶ 40 at 4. Here, because two evaluators believed that Gracon should have received a consensus rating of green for past performance, the contracting officer specifically considered (in her best value determination) the effect of assigning Gracon a green rating. She concluded that the higher rating would not change the outcome because ACE then would have the same green rating as Gracon for the past performance and quality factors, but a lower price. PNM at 18. Accordingly, even assuming, arguendo, that discussions in this area were required, Gracon was not prejudiced by the agency’s failure to provide them.

that may lead to reasonable differences of opinion. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75 at 6. This argument thus does not provide a basis for questioning the award decision.

UNREALISTIC PRICE

The solicitation provided that an unrealistic coefficient would be equated with a failure to understand the requirements of the solicitation. RFP at 153. Gracon maintains that ACE's coefficient for line item AE (the Army estimated that approximately 89 percent of the contract work would be performed under this line item)--[DELETED], versus 1.144 for Gracon--should have been found unrealistically low, and that the agency therefore should have concluded that ACE did not understand the RFP requirements.

Price realism is not ordinarily a consideration in fixed-price contracts, since the risk of performing the contract at the proposed price is borne by the contractor. However, as was the case here, an agency may decide to use price realism in the competition for a fixed-price contract, not to evaluate price, but to assess the risk of poor performance in an offeror's approach or to measure an offeror's understanding of the solicitation's technical requirements. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. The nature and extent of an agency's price realism analysis are matters within the agency's discretion, and our review of an agency's price realism evaluation is limited to determining whether it was reasonable and consistent with the solicitation's evaluation criteria. Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 4.

The realism analysis was reasonable. Gracon's protest is primarily based on the fact that the analyst who evaluated ACE's price expressed concern that a coefficient based on discounting the UPB by [DELETED] might be unrealistic. Protester's Comments, Dec. 16, 2003, at 4-5. However, the contracting officer determined that this was not a concern, given the pricing methodology ACE detailed in its proposal. AR at 30; Supplemental AR at 14-15. In this regard, ACE's proposal included a detailed explanation of its pricing methodology, along with schedules and spreadsheets showing various cost estimates and data concerning overhead and other expenses. In further support of its pricing, ACE (1) noted that its 12 years of experience with JOC and similar contracts allowed it to use comprehensive modeling projections to determine the required staffing level; (2) explained that it compared the UPB to other JOC/Saber contracts that it managed to determine the true value of the UPB; and (3) noted that it had surveyed area subcontractors for actual prices to compare to the line items in the UPB. Based on this information, the contracting officer discounted the price analyst's concern, and determined that ACE's low coefficient did not indicate a lack of understanding of the requirement. Gracon has not established, and we therefore find no basis to conclude, that this determination was unreasonable.

ORAL PRESENTATION

The solicitation limited the presenters attending the oral presentation to current employees of the offeror. Gracon asserts that ACE should have been found ineligible for the award because certain individuals who presented for ACE allegedly were not ACE employees. Gracon asserts that this is not a minor informality because the obvious purpose of the requirement was to ensure that it was the offeror's own capabilities that were being presented.

This argument is without merit. The Army states, and the record shows, that all of the individuals who conducted the oral presentation for ACE represented that they were ACE employees on the sign-in sheet. Specifically, they signed in as the president, director of operations/teaming partner, head of business development, and corporate project manager for ACE. AR at 33-35; Supplemental AR at 18-19. Although Gracon disputes that any of the individuals (except the president) are ACE employees—it claims that they own, operate, or work for other companies—the agency had no reason to question the individuals' representations. The agency also notes that the fact that the individuals were associated with other companies would not establish that they were not also employed by ACE for purposes of this contract. In this regard, after the protest was filed, the agency obtained business cards from two of the individuals, which indicated that they were ACE employees. In any case, notwithstanding Gracon's assertion that a violation of this requirement would not be a minor informality, Gracon has not shown, and there is no reason to believe, that it was competitively prejudiced, that is, that it would have had a greater chance of receiving the award had it been aware that the agency would waive this requirement. See West Coast Unlimited, *supra*.⁴

Gracon also complains that, during the oral presentation, ACE referred to the contract being performed by the ACE/Sanders team, but did not identify or fully disclose its arrangement with Sanders in its proposal package or during its oral presentation. This basis of protest is without merit. In its oral presentation slides, ACE specifically noted that Sanders was the prime subcontractor to ACE for this procurement. While Gracon asserts that the Army was required to investigate the nature of the relationship, and determine if Sanders was in fact a subcontractor to ACE, Gracon has pointed to no information that should have indicated to the agency

⁴ In comments submitted on November 24 in response to the agency report, Gracon raised a number of new protest grounds, including challenges to the agency's evaluation of its and ACE's proposals under the past performance and quality factors, and the best value determination. These arguments are based on documents contained in the agency report that Gracon received on November 11 and thus, to be timely, had to be raised no later than 10 days later, that is, by November 21. Since Gracon did not raise these arguments until November 24, they are untimely and will not be considered. 4 C.F.R. § 21.2(a)(2) (2003).

that such an investigation was necessary. There thus was no requirement that the agency further examine ACE's arrangement with Sanders.⁵

ACE'S EXPERIENCE/PAST PERFORMANCE

With respect to experience and past performance, the solicitation required offerors to list projects they had performed during the past 3 years, and to submit past performance questionnaires to references for those contracts. Gracon asserts that ACE failed to list all contracts that it performed during the past 3 years; Gracon specifically cites three Bureau of Prisons (BOP) projects that it claims ACE omitted.

While the record supports Gracon's claim that ACE failed to list all contracts under the experience portion of its proposal, we find that this discrepancy was immaterial. The Army states that, with respect to experience, during the oral presentation ACE listed five JOC/Saber contracts that it had performed with the Army and the Air Force, and discussed a composite of the task orders it performed under those contracts. With respect to past performance, ACE submitted questionnaires for the five contracts it discussed during the oral presentation, and for seven additional JOC/Saber contracts. Thus, while ACE did not list all of the JOC/Saber contracts in the experience portion of its proposal, the Army was aware of them from the past performance submissions. Further, while ACE did not list the BOP contracts, the Army has obtained (in the course of the protest) ACE's performance evaluations for those contracts, and notes that ACE was rated satisfactory for one of the contracts and outstanding for the other two. This being the case, there is no basis to conclude that ACE's omission of those contracts had any effect on the award decision.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ In a supplemental protest (B-293009.2), Gracon argued that ACE misrepresented who would perform the contract, as well as its capabilities. The agency responded to these issues in its report, and Gracon did not reply to the agency's response in its comments. Instead, Gracon filed a second supplemental protest (B-293009.3), in which it raised its arguments regarding ACE's arrangement with Sanders, addressed above. As Gracon did not rebut the Army's response to its first supplemental protest, we consider those issues abandoned. O. Ames Co., B-283943, Jan. 27, 2000, 2000 CPD ¶ 20 at 7.