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**Comptroller General
of the United States**

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

Decision

Matter of: Morgan-Keller, Inc.

File: B-298076.2

Date: August 1, 2006

Michael M. Mock for the protester.

Gary R. Allen, Esq., and Monica A. Ceruti, Esq., Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of offerors' experience and past performance and the resulting award determination are unobjectionable where the evaluation and the award determination were reasonable and consistent with the solicitation's stated evaluation criteria.

DECISION

Morgan-Keller, Inc. (MKI) protests the award of a contract to Nelson Refrigeration, Inc. under request for proposals (RFP) No. FA3002-05-R-0006, issued by the Department of the Air Force for the construction of a new commissary facility at Fort Detrick, Maryland for the Defense Commissary Agency. The protester maintains that the agency improperly evaluated the awardee's proposal and, thus, made a flawed source selection decision.

We deny the protest.

The RFP contemplated the award of a fixed-price contract on the basis of the proposal which offered the best value to the government. Under the RFP, the past performance evaluation factor was considered significantly more important than price. The past performance evaluation factor consisted of the following five subfactors listed in order of importance: quality control, timely performance, management effectiveness, compliance with labor standards, and compliance with safety standards. The RFP provided that the agency would evaluate an offeror's present/past performance using descriptive adjectives (satisfactory, good, very good, and exceptional) that most accurately defined the offeror's performance for each

identified subfactor. The RFP also stated that the evaluation would look at the extent of successfully completed commissary and/or commercial supermarket construction experience.

The RFP included detailed instructions for the preparation of proposals. Offerors were required to forward a copy of a questionnaire contained in the RFP to a minimum of three, but not more than five, references for whom the offeror performed “similar” construction/services within the past 3 years. The RFP provided that more relevant projects would receive greater consideration during the evaluation. The RFP further provided that relevance would be based on the similarity, complexity, and size of the projects being evaluated and stated that the most relevant performance would consist of experience in the construction of new commissaries or commercial grocery stores which included extensive product refrigeration equipment. Projects for construction, expansion, and renovation of government facilities and commercial retail or office space would be considered relevant, especially when the contractor had implemented plans to minimize disruption of daily business operations. Other types of construction projects would be evaluated as only slightly relevant.

The agency received seven proposals, including proposals from MKI and Nelson. MKI submitted the lowest price, but was not as highly rated as Nelson under the past performance evaluation factor. Award was made to Nelson on August 15, 2005. After a protest was filed with our Office by another offeror, the agency decided to terminate the original award and to hold discussions with all offerors. After receipt and evaluation of revised proposals, award was made again to Nelson on February 21, 2006. MKI and another offeror then filed protests with our Office. The agency subsequently decided to take corrective action based on the appearance of a potential conflict of interest. The agency then selected a new evaluation team and source selection authority (SSA) and reevaluated the previously submitted proposals. The SSA’s tradeoff decision focused primarily on the proposals of Nelson and another offeror. On April 24, the agency again awarded a contract to Nelson. The SSA specifically concluded that Nelson’s exceptional past performance justified the payment of a price premium to Nelson compared to firms with lower rated, lower priced proposals. Following a debriefing, MKI filed this protest with our Office.

MKI, which received a satisfactory rating for past performance and proposed a lower price than Nelson, challenges the exceptional past performance rating assigned to Nelson’s proposal, asserting that Nelson lacks experience as a general contractor. MKI also argues that its low priced proposal should have received greater consideration in determining which proposal represented the best value to the government.¹

¹ In its protest, MKI also argued that the solicitation and evaluation improperly placed heavy emphasis on past experience in product refrigeration and

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In reviewing a protest of an agency's proposal evaluation, our review is confined to a determination of whether the agency acted reasonably and consistent with the terms of the solicitation and applicable statutes and regulations, as it is not our role to reevaluate proposals. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4.

The agency maintains, and the record confirms, that Nelson was selected based on a detailed best-value analysis in accordance with the solicitation's stated evaluation criteria. The record shows that Nelson has 5 years of experience as a general contractor and has refrigeration expertise. Contracting Officer's (CO) Statement at 5 and Nelson's Proposal Attachment 6. Based on three relevant project surveys, all involving commissary work, Nelson demonstrated extensive refrigeration equipment experience and experience at commissaries. Source Selection Decision at 42. Nelson was rated exceptional overall for past performance based on the fact that it received two exceptional ratings and one very good rating on the three most recent and relevant commissary renovation projects that involved extensive refrigeration equipment and planning. On all three projects, Nelson was praised for its timely performance and quality control. In fact, the record shows that two of the projects were finished 90 days and 60 days ahead of schedule. Based on the record, we think Nelson's exceptional past performance rating was reasonable.

MKI provided three references involving new construction and renovation of a large hospital, renovation of a commercial grocery store, and construction of a correctional institution. The record shows that two of the references rated MKI as satisfactory because of project management and schedule concerns. The reference for a third project, while rating MKI very good, nevertheless expressed concerns about MKI's performance on the project. For example, the reference noted delays in resolving warranty issues. The record shows that the protester had some performance issues involving the three most important evaluation subfactors, specifically, timely performance, management effectiveness, and quality control. Id. at 8. For past performance, the agency rated the protester as satisfactory overall because the agency had some doubt that MKI could successfully perform the

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commissary/grocery store construction. Here, the terms of the RFP specifically stated that the most relevant past performance involved construction of new commissaries or commercial grocery stores which include extensive product refrigeration equipment. A protest based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of proposals must be filed prior to the initial closing time set for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2006). MKI's protest of the terms of the RFP is untimely and will not be considered.

requirement. Id. at 37.² The agency's rating of satisfactory for MKI under the past performance evaluation factor is supported by the evaluation of MKI's proposal and references.

The protester also argues that its low priced proposal should have been given more consideration in the source selection decision. In best value procurements, price is not necessarily controlling; rather, the best-value determination is made based upon the evaluation factors in the RFP. In this regard, price/performance tradeoffs are permitted when they are reasonable and consistent with the solicitation. Nomura Enter., Inc., B-277768, Nov. 19, 1997, 97-2 CPD ¶ 148 at 4.

Here, the RFP specifically provided that past performance was significantly more important than price. While the protester submitted the lowest priced proposal, as discussed above, the protester reasonably received a satisfactory rating for past performance and did not demonstrate significant commissary or grocery store construction experience. In contrast, Nelson was evaluated as exceptional under the past performance evaluation factor and demonstrated relevant commissary construction experience. Under these circumstances, consistent with the best-value award criteria that emphasized the past performance factor as significantly more important than the price factor, the agency reasonably concluded that Nelson's higher rated, higher priced proposal, as compared to MKI's lower rated, lower priced proposal, offered the best value to the government.

The protest is denied.

Gary L. Kepplinger
General Counsel

² The protester also argues that the agency failed to recognize that significant commercial-grade refrigeration work was involved in its correctional institution project. The agency reports that the extent of the refrigeration work was not apparent from the protester's proposal. CO Statement at 7. In any event, we agree with the agency that the protester was not prejudiced by any oversight in this regard since the protester's performance on this project reflected a low level of satisfaction on the part of the customer.