



## Decision

**Matter of:** SDV Solutions, Inc.

**File:** B-402309

**Date:** February 1, 2010

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Robert E. Korroch, Esq., and Francis E. Purcell, Jr., Esq. Williams Mullen, for the protester.

Christopher E. Roberts, for Kelco Computing Solutions, an intervenor.

Antonio Robinson, Esq., Department of Agriculture, for the agency.

Nora K. Adkins, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that agency improperly evaluated awardee's proposal under past performance factor is denied, where the agency reasonably considered the past performance of the awardee's and its subcontractor's government contracts to be relevant in accordance with the solicitation and reasonably determined that both the protester's proposal and awardee's proposal were deserving of "green," or acceptable, ratings under the past performance factor.

2. Protest that awardee's price is unreasonably low is denied, where the solicitation provided for award of a fixed-price contract and did not require a realism analysis, and the agency verified that the protester's lower-priced proposal was not an error.

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### DECISION

SDV Solutions, Inc., of Toano, Virginia, protests the award of a contract to Kelco Computing Solutions, of San Francisco, California, issued by the United States Department of Agriculture (USDA), International Technology Services (ITS), under request for proposals (RFP) No. AG-3144-S-10-0002 for Hewlett Packard (HP) hardware maintenance. SDV challenges the agency's evaluation of past performance and price.

We deny the protest.

On October 21, 2009, the USDA issued the RFP on behalf of ITS, seeking a contractor to provide HP maintenance and support services to specific ITS locations. RFP at 3.

The solicitation was issued as a total set-aside for service-disabled, veteran-owned small businesses, and contemplated the award of a fixed-price contract for a base year with four 1-year options. Id. at 4. The evaluation was to be conducted using Federal Acquisition Regulation (FAR) Part 12 for commercial items. Id. at 5. The RFP stated that award would be made to the “responsible, qualified offeror who provides the best value to the Government,” considering the equally-weighted evaluation factors of past performance, price, and technical/management approach. Id. at 9.

With regard to the past performance factor, the RFP stated that offerors “must insure that at least three” past performance questionnaires be submitted to the agency by prior customers, and that offerors “should focus on prior Government customers, for same/similar services.” Id. at 7. The purpose of the agency’s past performance evaluation, the RFP explained, was “to determine the extent of performance risk associated with an offeror’s likelihood of actually achieving current contract performance objectives.” Id. at 9. With regard to the price factor, the RFP provided that the agency would evaluate each offeror’s proposed total price, including option year prices, and that offerors’ prices would be evaluated for “reasonableness.”<sup>1</sup> The RFP further advised that offerors “should propose a percentage increase to pricing for the [o]ption years.” Id. at 10.

The USDA received three proposals in response to the RFP, which were evaluated by the contracting officer. As relevant here, both Kelco’s and SDV’s proposals received “green,” or acceptable, ratings for the past performance and technical/management approach factors.<sup>2</sup> Kelco submitted the lowest price of \$35,766.00 per month for the base year and each option year, and SDV submitted the second lowest price. The contracting officer announced the award to Kelco on November 20. After requesting and receiving a debriefing, SDV filed the current protest with our office on November 30.

In its protest, SDV first alleges that the USDA improperly evaluated Kelco’s past performance.

Where a solicitation calls for the evaluation of past performance, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations. Divakar

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<sup>1</sup> With regard to the technical/management approach factor, the evaluation of which was not challenged here, the RFP provided that the government would evaluate the offeror’s “approach to providing the services, workforce and work management for the entire requirement.” RFP at 10.

<sup>2</sup> The possible ratings were blue (exceptional), green (acceptable), yellow (marginal), or red (unacceptable). Agency Report (AR), Tab 11, Source Selection Decision, at 3.

Techs., Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. The evaluation of past performance, by its very nature, is subjective; an offeror's mere disagreement with the agency's evaluation judgments does not demonstrate that those judgments are unreasonable. SDV Telecomms., B-279919, July 29, 1998, 98-2 CPD ¶ 34 at 2.

Here, Kelco provided three past performance questionnaires, all of which involved county or state government contracts that were performed by Kelco or its subcontractor. The contracts all involved support services for computer equipment and servers, including HP, Dell, and SUN. The contracting officer determined that each of these contracts involved the same or similar work to the requirements here, and noted that reference ratings ranged from "very good" to "excellent." Although SDV also received "very good" and "excellent" reference ratings and was found to have past performance (including SDV's incumbent contract) that was the same or similar to the requirements here, the contracting officer noted that SDV provided only two past performance references, which was one short of the three references required by the solicitation. AR, Tab 11, Source Selection Decision, at 8. As a result, the contracting officer rated both proposals "green" for past performance.

SDV complains that Kelco's proposal should have received a lower past performance rating than SDV's proposal because Kelco lacks relevant experience as a prime contractor performing federal government contracts, whereas SDV is the incumbent contractor for this work and has experience as a prime contractor performing federal government contracts. SDV also contends that Kelco's proposal is "overly reliant" on the performance history of its subcontractor. Comments at 7. However, as the agency points out, the RFP did not require experience with federal government contracts, only that offerors' "focus on prior Government customers, for same/similar services," and Kelco cited three relevant contracts with county or state governments. RFP at 7. The RFP also did not expressly prohibit the consideration of subcontractor performance and thus the agency could properly consider such performance here. See Roca Mgmt. Educ. & Training, Inc., B-293067, Jan. 15, 2004, 2004 CPD ¶ 28 at 5; The Paintworks, Inc., B-292982, B-292982.2, Dec. 23, 2003, 2003 CPD ¶ 234 at 3.

Contrary to SDV's contention, the record does not show that SDV's past performance should be rated superior to Kelco's. In this regard, as noted above, the agency found that both offerors had performed hardware maintenance work similar to that required here and received positive references. Although the agency credited SDV for its incumbent contract work, as well as for work on another relevant contract, the agency reasonably determined that SDV was undeserving of a higher "blue" rating, given that the firm did not provide the number of references required (three) by the solicitation.<sup>3</sup> Although SDV disagrees with the agency's assessment of both its

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<sup>3</sup> The agency may have even properly evaluated SDV's past performance, which lacked the three required references, as neutral. See Chicataw Constr. Inc.,

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and Kelco's past performance, the protester has not shown that the agency's evaluation was unreasonable.

SDV also protests the agency's price evaluation, complaining that Kelco's price was "unreasonably low and did not include any increase for the option years, [which] indicates a lack of understanding of the requirements and introduces performance risk." Comments at 11. SDV contends that it provided a more reasonable and realistic price based on its incumbent experience. Protest at 5; Comments at 10-11.

SDV's arguments reflect a misunderstanding of the solicitation, which required only a price reasonableness and not a price realism analysis. The purpose of a price reasonableness review in a competition for award of a fixed-price contract is to determine whether the prices offered are too high, as opposed to too low. Deco Sec. Servs., B-401024, Apr. 22, 2009, 2009 CPD ¶ 104 at 3-4. Arguments, such as those raised by SDV here, that an agency did not perform an appropriate analysis to determine whether prices are too low such that there may be a risk of poor performance concern price realism; a price realism evaluation is not required here, where the solicitation provides for the award of a fixed-price contract and does not include a requirement for price realism.<sup>4</sup> Id.

Nonetheless, the contracting officer notes that the RFP suggested (by the use of the word "should"), but did not require, that offerors propose increases for the option years, and that two of the three offers submitted did not include option-year increases. The contracting officer asked Kelco to verify its price for a possible mistake because the price was "considerably lower than the previous year[']s costs for [the] service and also lower than the other two offers received"<sup>5</sup>; Kelco responded that its price was correct and that "part of their value added [proposal] as submitted was no escalation fees in the out year performance periods." AR, Tab 11, Source Selection Decision, at 5. Based on all of the available information and given

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B-289592, B-289592.2, Mar. 20, 2002, 2002 CPD ¶ 62 at 7; Thomas Brand Siding Co., Inc., B-286914.3, Mar. 12, 2001, 2001 CPD ¶ 53 at 4.

<sup>4</sup> To the extent that SDV contends that the RFP imports a realism requirement by requiring an assessment of the offeror's "understand[ing of] the requirements of the solicitation in accordance with the following descriptions of each evaluation factor," RFP at 9; Comments at 8, the description of the price factor makes clear that only a reasonableness analysis will be performed.

<sup>5</sup> As SDV points out, Kelco's proposed price was 57 percent less than SDV had charged under its incumbent contract. Protest at 5. However, after award, the third offeror in the competition informed the agency of an error in its price, which resulted in that proposal being lower in price than Kelco's.

that Kelco confirmed its price, the contracting officer concluded that there was “no basis” to question Kelco’s low price.

Finally, SDV challenges the agency’s best value decision, contending that the award decision was based on a flawed past performance and price evaluation, and accorded too much weight to the Kelco’s low price. However, as discussed above, the record supports the reasonableness of the agency’s evaluation and demonstrates that this evaluation was consistent with the solicitation’s evaluation criteria. Given that both SDV’s and Kelco’s proposal were equally-rated under the non-price factors, we find reasonable the agency’s selection of the lowest-priced proposal for award.<sup>6</sup>

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>6</sup> SDV also claimed that the agency failed to ensure that Kelco is a “bona fide” service-disabled veteran-owned small business concern. Comments at 2. However, our Office does not have jurisdiction over this issue, as this is a matter reserved for the Small Business Administration. 4 C.F.R. § 21.5(b) (2009).