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Decision

Matter of: Beautify Professional Services Corporation

File: B-291954.3

Date: October 6, 2003

Janice Davis, Esq., Davis & Steele, for the protester.

Donald E. Barnhill, Esq., Law Offices of Barnhill & Associates, for Southway Services, an intervenor.

Maj. Lawrence M. Anderson, Department of the Air Force, for the agency.

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

DIGEST

Protest of the award to a firm with a higher past performance rating and a higher price is sustained where the source selection authority ignored the protester's significantly lower price and, as a result, failed to justify the payment of a substantial price premium.

DECISION

Beautify Professional Services Corporation protests the award of a contract to Southway Services under request for proposals (RFP) No. F05611-02-R-0027, issued by the Department of the Air Force for custodial services for the academic area at the United States Air Force Academy in Colorado Springs, Colorado. Beautify challenges the agency's decision to award a contract to an offeror submitting a higher-priced proposal.

We sustain the protest.

BACKGROUND

The RFP was issued on July 19, 2002, as a total small business set-aside, commercial item acquisition conducted in accordance with Federal Acquisition Regulation (FAR) Parts 12 and 15. The RFP contemplated the award of a fixed-price contract for the base period and four 1-year option periods. The RFP, which included the clause at FAR § 52.212-2, captioned "Evaluation--Commercial Items," stated that the agency would award a contract to the responsible offeror whose proposal, conforming to the RFP, was determined most advantageous to the government, with past

performance being of significantly greater importance than price. (The RFP did not include any technical evaluation factors.)

With respect to past performance, the RFP required an offeror to provide reference information identifying similar contracts performed by the firm in its capacity as a prime contractor over the past 3 years; these contracts were required to exceed an annual total (per contract) of \$2.2 million. Under the RFP, the agency would contact an offeror's references and request that these references complete a written past performance survey for the firm. This survey, a sample of which was included in the RFP, contained 21 questions focusing on specific aspects of the firm's past performance (e.g., abilities of the management team; staffing; quality control; and timeliness of contract performance); for each question, the reference could assign one of the following past performance/performance risk ratings: unsatisfactory/no confidence; marginal/little confidence; neutral/unknown confidence; satisfactory/confidence; very good/significant confidence; and exceptional/high confidence. As relevant here, the RFP defined a very good/significant confidence rating as "little doubt exists that the offeror will successfully perform the required effort," and the RFP defined an exceptional/high confidence rating as "essentially no doubt exists that the offeror will successfully perform the required effort." RFP at 44. The final additional question--whether the reference would award another contract to the firm--required the reference to check either "yes" or "no" and to provide a narrative explanation of the reference's answer.

Thirty-seven small business concerns, including Beautify and Southway (the incumbent contractor), submitted proposals by the initial closing time. Southway's proposal received an exceptional/high confidence past performance rating; Beautify's proposal received a very good/significant confidence rating. Southway's price (\$12,962,825.00) was approximately 25 percent higher than Beautify's price (\$10,353,610.00). Out of the 37 proposals received, Beautify's proposal contained the lowest price.

In her source selection decision, the chief of infrastructure contracting (hereinafter referred to as the source selection authority) explained that "[b]ased on the nature of the requirement, the [Air Force] Academy does not consider custodial services to be a highly technical/complex effort and believes either category of past performance ('High Confidence' and 'Significant Confidence') poses a risk level which is awardable for these services." Agency Report (AR), Tab 16, Original Source Selection Decision, Jan. 27, 2003, at 3. The source selection authority continued by stating, in relevant part, that "[a]lthough Southway's performance record indicates 'Exceptional/High Confidence' past performance, the Government cannot justify a trade-off decision that would increase the contract price by \$2,609,215.00--7 percent above the Government estimate, and 25 percent difference from the lowest priced 'Very Good/Significant Confidence' rating. Therefore, Southway's significantly higher price for its less significantly higher rating, is not considered to be of additional value above the rating at the price offered by Beautify." *Id.* Accordingly,

the source selection authority determined that Beautify's lower-priced proposal represented the best value to the government.

On January 31, 2003, the agency awarded a contract to Beautify. On February 10, Southway filed a protest with our Office challenging the agency's evaluation of proposals and the decision to award to Beautify. On February 20, the agency advised our Office, as well as Beautify and Southway, of its decision to take corrective action in response to Southway's protest. More specifically, by letters dated February 24 to all offerors, including Beautify and Southway, the source selection authority explained that corrective action would entail a "re-performance of the past performance evaluations using only the data already received and originally evaluated. The Government does not . . . intend to request any additional past performance data from the offerors, unless required during the course of re-evaluation. The Government does not intend to open discussions or [to] request a final proposal revision. Upon the close of the re-evaluation period a new award decision will be announced." AR, Tab 11, Corrective Action Letters, Feb. 24, 2003. On February 26, our Office dismissed Southway's protest as academic in light of the agency's decision to take corrective action.

In February, the agency reevaluated each offeror's past performance. With respect to Southway and Beautify, the agency considered one past performance survey for each firm.¹ Southway retained its exceptional/high confidence past performance rating (*i.e.*, essentially no doubt that Southway could perform) and Beautify retained its very good/significant confidence rating (*i.e.*, little doubt that Beautify could perform).

More specifically, with respect to Southway, the agency evaluated its performance as the incumbent contractor. In the past performance survey completed for Southway, the reference (the chief of contract services at the Air Force Academy) assigned 17 exceptional/high confidence past performance ratings, 2 very good/significant confidence ratings, and 2 "not applicable" ratings. AR, Tab 8, Southway's Past Performance Evaluation, at 3-4. For the last question, the reference stated that he would award another contract to Southway, commenting, among other things, that this firm is "the best custodial contractor" the Air Force Academy has ever had; noting that Southway is "very customer oriented" and that the firm's management is "very pro-active in identifying and solving problems"; and concluding that "[t]his is a

¹ For each of these firms, four past performance surveys were submitted; however, the agency determined that only one survey for each firm was relevant. In this regard, the agency did not evaluate past performance surveys covering contracts less than \$1.9 million (the RFP requirement of \$2.2 million less 10 percent) and surveys corresponding to contracts under which these firms were subcontractors, not prime contractors.

very demanding contract and [Southway] ha[s] met the challenge.” AR, Tab 19, Air Force Academy Past Performance Survey for Southway, at 3-4.

With respect to Beautify, the agency evaluated its performance of janitorial and related services at the Tobyhanna Army Depot in Pennsylvania. The depot’s contract administrator provided past performance information for Beautify, but did not do so using the past performance survey contained in the RFP and sent to her for completion. In this regard, on the facsimile cover sheet transmitting her past performance assessment for Beautify, the depot’s contract administrator wrote that she was submitting the “Performance Assessment Report completed in accordance with [an Army regulation], at [internet website], which is the Army’s central repository for past performance information for Service and Information Technology contracts”; she concluded by stating that she “hope[s] it [i.e., the referenced Performance Assessment Report, as opposed to the 22-question survey contained in the RFP] will be sufficient for [the Air Force’s] needs.” AR, Tab 20, Tobyhanna Past Performance Survey for Beautify, at 2. In this performance assessment report, Beautify was rated in five categories, receiving two “exceptional” ratings for management of key personnel and miscellaneous services and receiving three “very good” ratings for quality of product/service, schedule, and business relations.² In the two areas where Beautify received exceptional ratings, the depot’s contract administrator commented, among other things, that Beautify has “maintained a good team of managers who are well trained in the contract requirements, cooperative, and responsive”; that Beautify’s “work is well monitored and performed in a timely manner with customer complaints addressed and/or corrected quickly”; and that Beautify’s performance of “additional and emergency services are performed on short notice and within rigid time frames.” Id. at 6. In the three areas where Beautify received very good ratings, the depot’s contract administrator commented, for example, that Beautify’s performance “meets all [of] the contractual requirements”; that Beautify “follows the schedule of cleaning required by the contract in a timely and efficient manner”; and that Beautify “maintains an effective quality control system and record keeping[;] [p]roblems and corrective actions are identified and resolved in a timely manner[; and] [c]ustomer satisfaction is high [as] demonstrated by letters of commendation and appreciation.” Id.

In her revised source selection decision, the source selection authority explained that in accordance with the terms of the RFP, which provided that past performance was of significantly greater importance than price, she determined that Southway’s proposal represented the best value to the government. In this respect, the source selection authority noted that Southway and one other firm received exceptional/high confidence past performance ratings, and that within this rating category, because Southway submitted the lower price, Southway was selected for

² There was a sixth category—cost control—which is not relevant to the discussion here.

award. The source selection authority continued that “[b]ased on the nature of the requirement and the evaluation criteria, the [Air Force] Academy has determined that the category of ‘Exceptional/High Confidence’ is the appropriate risk level which is awardable for these services. Due to the high visibility and standards that the . . . Academy has set, as the ‘show case’ for the [Air Force], the [selection of Southway] is justified.” AR, Tab 8, Revised Source Selection Decision, Apr. 8, 2003, at 3. In her source selection decision, the source selection authority did not make any reference to the fact that Beautify’s price was significantly less than Southway’s price or that Beautify submitted the overall lowest-priced proposal. On June 17, a contract was awarded to Southway. Following its debriefing, Beautify filed this protest.

ISSUE AND ANALYSIS

Beautify challenges the source selection authority’s revised past performance/price tradeoff that resulted in the award to Southway at a substantial price premium. Protester’s Comments, Aug. 1, 2003, at 11-24.³

An agency must consider cost or price to the government in evaluating competitive proposals and in making its source selection decision. 10 U.S.C. § 2305(a)(3)(A)(ii) (2000); FAR § 15.101-1(c). In a best value procurement, it is the function of the source selection authority to perform a price/non-price factor tradeoff, that is, to determine whether one proposal’s superiority under the non-price factor is worth a higher price. This tradeoff process allows an agency to accept other than the lowest-priced proposal. In this respect, the perceived benefit of the higher-priced proposal must merit the additional price and the rationale for the tradeoff must be documented in the file. FAR § 15.101-1(c). Where, as here, the RFP identifies past performance and price as evaluation factors, it is the role of the source selection authority to determine whether a proposal submitted by an offeror with a better past performance rating is worth a higher price. We will review the selection decision to ensure that it was reasonable and consistent with the evaluation scheme set forth in the solicitation. CSE Constr., B-291268.2, Dec. 16, 2002, 2002 CPD ¶ 207 at 5-6; A. G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 4. In this case, while the RFP provided that past performance was of significantly greater importance than price, we conclude that the source selection authority’s decision to award to Southway at a 25-percent price premium, as opposed to Beautify, a firm which

³ By facsimile notice dated August 4, 2003, GAO requested that the agency respond by August 11 to Beautify’s supplemental protest (which involved a challenge to the evaluation of the firm’s past performance, to be discussed below) and to Beautify’s comments, which contained the challenge to the revised tradeoff, as stated above. In its August 11 submission, the agency responded to the supplemental protest, but not to the arguments made by Beautify in its comments regarding the revised tradeoff.

submitted the overall lowest-priced proposal and which received a very good/significant confidence past performance rating, is materially flawed.

The record shows that in making her revised source selection decision, the source selection authority limited her consideration to the two firms—one of which was Southway—that received exceptional/high confidence past performance ratings. As between these two firms, since Southway submitted the lower price, the source selection authority selected Southway for award. This was the extent of the source selection authority's consideration of price, which we find improper.

More specifically, in making her revised past performance/price tradeoff, the record shows that the source selection authority ignored, contrary to statute and regulation, as cited above, Beautify's significantly lower price vis-à-vis Southway's higher past performance rating, as well as the fact that Beautify, which received a very good/significant confidence rating, submitted the lowest price among all competitors. There is nothing in the source selection document that suggests that the source selection authority believed that Beautify's significantly lower price in this fixed-price, commercial item acquisition reflected any lack of understanding by Beautify of the RFP requirements or that Beautify was otherwise incapable of performing the requirements.⁴ On this record, we conclude that the source selection authority's revised tradeoff decision was materially flawed because she inexplicably gave no consideration to Beautify's low price in relation to Southway's higher past performance rating (which was only one rating category higher than Beautify's rating) and, as a result, she failed to document why it was worth paying a 25-percent price premium to Southway.⁵

⁴ In her statement included in the administrative report responding to the protest, the contracting officer states that Beautify did not have experience in athletic field, swimming pool, and stadium cleaning. Contracting Officer's Statement, July 8, 2003, at 5. However, we note that Beautify's alleged lack of experience in these areas is not discussed by the source selection authority in her source selection document.

⁵ We think it is significant to point out that in the original source selection decision, where Beautify's low-priced proposal was selected for award, the source selection authority concluded that there was no meaningful difference in terms of performance risk between a firm which received an exceptional/high confidence rating versus a firm which received a very good/significant confidence rating. In this context, the source selection authority has provided no meaningful explanation as to why she now believes that only a firm receiving an exceptional/high confidence rating could perform these commercially available custodial services.

On this record, we sustain the protest. We recommend that the agency perform another past performance/price tradeoff, considering Beautify's low price in light of this decision.⁶ If a firm other than Southway is selected for award, Southway's contract should be terminated and award made to that other firm. We also recommend that Beautify be reimbursed the reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2003). Beautify's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days of receiving this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel

⁶ In its supplemental protest, Beautify argued that its past performance was not reasonably evaluated by the Air Force because the contract administrator at the Tobyhanna Army Depot did not complete the RFP's 22-question past performance survey. Beautify argues that had its past performance been evaluated in 22 specific areas, as opposed to just a handful of more general areas, as described above, the firm would have received an exceptional/high confidence past performance rating, as opposed to a very good/significant confidence rating and, considering its low price, Beautify maintains that it would have received the award. Beautify has raised a legitimate concern and, in light of our recommendation for corrective action, we think the Air Force should request that the depot's contract administrator (the only reference considered for Beautify) complete the RFP's 22-question past performance survey and that the Air Force use this survey to reevaluate Beautify's past performance prior to making a new past performance/price tradeoff in this procurement.