



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: YKK (U.S.A.), Inc.

File: B-280447

Date: August 28, 1998

David M. Goodman for the protester.

Katherine A. Day, Esq., Federal Bureau of Prisons, for the agency.

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DIGEST

1. Protester's contention that the agency improperly evaluated awardee's past performance is denied where the record shows that the agency evaluated in accordance with the criteria announced in the solicitation, and the record reasonably supports the ratings assigned the awardee's proposal.
2. Whether an offeror can or will supply domestic products in accordance with the terms of a solicitation concerns a matter of responsibility which General Accounting Office generally will not review absent a showing of possible bad faith, or that definitive responsibility criteria may not have been met.

DECISION

YKK (U.S.A.), Inc. protests the award of a contract to Pacific Contract Management (PCM) under request for proposals (RFP) No. 1PI-R-1005-98, issued by the Department of Justice, Federal Prison Industries (UNICOR), for various quantities of zippers. YKK contends that the agency improperly failed to evaluate PCM's proposal in accordance with the evaluation criteria announced in the RFP. YKK also argues that PCM intends to furnish a non-domestic item in violation of the solicitation.

We deny the protest.

The RFP was issued on March 19, 1998 to 13 potential offerors and contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity requirements contract for a base year and up to two 1-year option periods. Section B of the RFP listed 36 contract line item numbers (CLIN) describing the various zipper requirements and estimated quantities for each CLIN for the base (CLINs 0001-0012) and option periods (CLINs 0013-0036). For the base period, the zippers identified by CLINs 0001-0009 were to be delivered to Fort Dix, New Jersey, and those identified by CLINs 0010-0012 were to be delivered to UNICOR Federal Prison

Camp in Alderson, West Virginia. RFP § B. Offerors were required to submit unit and extended prices for each CLIN for the base and option periods. The RFP listed past performance (worth 50 points) and the offeror's reputation for compliance with specification requirements and adherence to the statement of work (25 points) as evaluation criteria. RFP Amendment No. 0003 at 3. The RFP instructed offerors to provide information on "recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information)" to permit the agency to evaluate the offerors' past performance. RFP § 52.212-1.

As for price, the lowest-priced proposal was to receive the maximum number of points available (25) and higher-priced proposals were to receive proportionately lower scores. RFP Amendment No. 0003 at 2, 3. Award was to be made to the offeror whose proposal represented the "best overall expected value" and was deemed most advantageous to the government based on the evaluation criteria specified in the solicitation. *Id.* at 2. The RFP also permitted the agency to make multiple awards if that would result in the lowest aggregate cost to the government. RFP Amendment No. 0002 at 2.

The agency received initial proposals from three firms, including YKK and PCM, conducted written discussions, and requested final revised proposals from all three. The contracting officer evaluated proposals and eliminated one as unacceptable, leaving YKK's and PCM's proposals in the competition. The contracting officer evaluated YKK's and PCM's past performance by contacting three references for each offeror. Based on the responses received, he assigned both firms' proposals overall ratings of 40 points under this evaluation factor. The contracting officer also assigned both firms the maximum number of points under the second factor relating to the offeror's reputation for compliance with specifications factor. Thus, both firms' proposals received identical ratings (65 points) in the technical area.

As for price, the contracting officer determined that, including the base and option periods, as provided in the RFP, PCM offered the lowest overall price and assigned that firm's proposal the maximum number of points available (25); YKK's slightly higher overall price earned 24.8 points. Upon closer evaluation, however, the contracting officer determined that PCM offered the lowest total price for CLINs 0001-0009 (Fort Dix), while YKK offered the lowest total price for CLINs 0010-0012 (Alderson). Accordingly, the contracting officer determined that it was in the best interest of the government to award a contract to PCM for CLINs 0001-0009, and a contract to YKK for CLINs 0010-0012. This protest by YKK followed a debriefing by the agency.

YKK protests that the agency's evaluation of PCM's proposal under the past performance and compliance with specifications factors was unreasonable. The protester's main contention is that PCM does not have an established performance record as a zipper supplier. Thus, according to the protester, there was no basis for

a favorable evaluation of PCM's past performance or its reputation for compliance with specifications.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

The evaluation record for each offer consists of a "Bidder Evaluation" sheet, which lists the evaluation criteria (past performance, compliance with specifications, and price) and shows the numerical ratings assigned under each. Attached to this sheet are the contracting officer's hand-written notes reflecting the responses he received from the three references contacted for each offeror. For PCM, two of the references contacted were for a contract for zippers PCM provided to UNICOR and one was for a contract for medallions.¹ The contracting officer's contemporaneous notations show that one of the UNICOR references rated PCM's performance as "good," with no delivery problems, and indicated that the contractor "was able to work out any problem areas." The other UNICOR reference for the same contract also rated PCM's performance as "good" and indicated that no "show cause" or "cure notices" had been issued to the firm. The third reference contacted, regarding the medallions contract, also rated PCM's performance as "good" and stated that the company had fulfilled its contract obligations satisfactorily. Based on the overall favorable responses received, the contracting officer assigned PCM's proposal a rating of 40 points/good under the past performance area. In addition, in view of

¹The RFP required offerors to provide information on "recent and relevant contracts for the same or similar items." PCM listed five contracts in its proposal, including two for zippers, one for "pot of gold awards" and two for "medallions." The evaluation record shows that the contracting officer disregarded PCM's past performance on the "pot of gold awards" contract, but did consider PCM's past performance on one each of the zipper and medallions contracts. YKK argues that the contracting officer should not have considered PCM's past performance on the medallions contract because medallions are not "the same or similar" items as zippers. However, even if the response the contracting officer received on the medallions contract were discounted from the evaluation, there is no reason to conclude that PCM's technical ratings would be negatively affected, since the contracting officer received favorable responses from the respondents on the zipper contracts.

the positive comments regarding satisfactory performance, including timely delivery, the contracting officer proceeded under the assumption that PCM had complied with the specifications in performing its contracts, and assigned the maximum number of points available to PCM's proposal in the compliance with specifications factor.² Based on this record, we have no basis to object to the evaluation of PCM's proposal.³

YKK also argues that PCM intends to furnish non-domestic zippers in violation of a clause entitled "PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (MAY 1994)" contained in the solicitation. RFP at 27. YKK further claims that the zippers PCM will supply under the contract will not comply with various specification requirements.

Whether an offeror can or will supply domestic products in accordance with the terms of a solicitation concerns a matter of responsibility which generally we will not review absent a showing of possible bad faith, or that definitive responsibility criteria may not have been met. See Bid Protest Regulations, 4 C.F.R. § 21.5(c) (1998); Oliver Prods. Co., B-245762.2, Apr. 28, 1992, 92-1 CPD ¶ 501 at 3. Further, an allegation that a contractor is not meeting its obligations is a matter of contract administration, which is not for resolution under our bid protest function. 4 C.F.R. § 21.5(a). Our Office will review such matters only where it appears from the protester's submission that the successful bidder or offeror might not furnish domestic products and the contracting officer should have been aware of that

²While the past performance questionnaire that the contracting officer used during his evaluation does not distinguish between an offeror's past performance and its reputation for compliance with specifications, we think that the contracting officer could reasonably conclude based on the favorable comments he received from the respondents that PCM had complied with specifications in the past. Presumably, if PCM had failed to comply with specifications or failed to timely deliver under any of its referenced contracts, the respondents' overall comments would have reflected such non-compliance.

³It appears from the record that the references PCM listed in its proposal were for contracts performed by a predecessor firm to PCM. YKK argues that the contracting officer improperly evaluated PCM's proposal by crediting the company for the favorable past performance of a predecessor firm to PCM. An agency may properly consider the experience of a predecessor firm. See, e.g., Laidlaw Envtl. Servs. (GS), Inc., B-271903, Aug. 6, 1996, 96-2 CPD ¶ 75 at 5 n.1; Oklahoma County Newspapers, Inc., B-270849, B-270849.2, May 6, 1996, 96-1 CPD ¶ 213 at 4. Except for its statement that PCM's past performance rating should have been based solely on contracts awarded to that firm, YKK does not explain why the contracting officer should ignore the predecessor firm's past performance on similar contracts.

possibility.⁴ See Autospin, Inc., B-233778, Feb. 23, 1989, 89-1 CPD ¶ 197 at 2-3; Designware, Inc., B-221423, Feb. 20, 1986, 86-1 CPD ¶ 181 at 2-3. These circumstances are not alleged or evident here.

The protest is denied.

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⁴The agency explains that, after questions were raised by YKK, the contracting officer contacted PCM regarding the RFP's domestic commodities requirement. In response, PCM submitted a letter to the contracting officer confirming its understanding of the requirement and the firm's intent to comply with that provision. PCM's letter further explained that, in response to a recent protest by YKK challenging its compliance with the domestic commodities provision under a different zipper contract, a Department of Justice official recently inspected and approved its manufacturing plant. Thus, the contracting officer had information that PCM understood and intended to comply with the RFP's domestic commodities requirement. Under these circumstances, we believe that the contracting officer did all that was reasonably necessary to ensure that PCM would in fact deliver a product that complies with the solicitation's domestic item requirement and acted reasonably in accepting PCM's offer. To the extent that YKK argues that PCM will provide zippers of foreign components, we note that PCM did not take exception to the RFP's domestic commodities provision in its proposal, and the firm confirmed its understanding and intent to comply with that provision. Thus, acceptance of PCM's offer obligates the firm to furnish zippers that comply with the RFP's domestic commodities provision.