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Comptroller General
of the United States

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Decision

Matter of: Ostrom Painting & Sandblasting, Inc.

File: B-285244

Date: July 18, 2000

Michael P. Byrne, Esq., Lane & Waterman, for the protester.
Clarence D. Long, III, Esq., and Mark Hanson, Esq., Department of the Air Force, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of protester's past performance information and award to offeror whose proposal, while slightly higher priced, was rated substantially higher than protester's proposal for past performance, is denied where the evaluation was reasonable and consistent with the stated evaluation scheme.

DECISION

Ostrom Painting & Sandblasting, Inc. protests the award of a contract to BMAR & Associates, Inc. by the Department of the Air Force under request for proposals (RFP) No. F32605-99-R0016 for military family housing maintenance services at Grand Forks Air Force Base, North Dakota. Ostrom contends that the agency unreasonably evaluated its proposal under the past performance evaluation factor and improperly awarded the contract to BMAR at a higher price than that proposed by Ostrom.

We deny the protest.

The RFP, issued on December 30, 1999, contemplated the award of a fixed-price, requirements-type contract for a base year and 4 option years. RFP Schedule of Supplies/Services. The RFP's performance requirements include routine and emergency maintenance and repair services (including plumbing, electrical, mechanical, and structural work) for 1,769 military family housing units. Examples of the required range of services under the RFP include: equipment maintenance and repair services involving, for instance, gas furnaces, gas and electric water heaters, and smoke and carbon monoxide detectors; recurring interior maintenance related

to fireplace, chimney, heating, air conditioning and ventilating systems, as well as duct cleaning and other maintenance requirements; recurring exterior maintenance for the housing units, including garages, patios, sidewalks, fences and playground equipment; change of occupancy maintenance to include, for instance, painting, carpeting, and flooring services; and appliance cleaning and maintenance. RFP Statement of Work, ¶¶ 1.1-1.27. Additionally, the contractor, who is also responsible for the electric, telephone, gas, sewer and water lines for each housing unit, must operate a service call program 24 hours a day for emergency, urgent, and routine housing maintenance and repairs. Id. ¶ 1.2.

The two evaluation factors for award, past performance and price, were of approximately equal importance. RFP § 52.212-2. Offerors were instructed that information obtained from their past performance references would be reviewed to

evaluate the quality and extent of [the] offeror's experience deemed relevant to the requirements of this RFP. Relevant contracts include, but are not limited to those providing housing property maintenance services or other types similar in magnitude to those required in this solicitation.

RFP Specific Instructions, ¶ B(3). Each offeror's past performance information was to include "recent and relevant contracts for the same or similar items." RFP § 52.212-1(b)(10). The RFP notified offerors of the agency's intent to award without discussions, RFP § 52.212-1(g), and, accordingly, offerors were advised to submit their best terms in their initial proposals with sufficient information to "enable the evaluator[s] to fully ascertain each offeror's capability to perform all the requirements contemplated by this solicitation." RFP § 52.212-2(a)(6).

Eighteen proposals were received in response to the RFP. Ostrom submitted the lowest-priced proposal at \$[deleted], and BMAR submitted the second lowest-priced proposal at \$8,397,106; BMAR's price is approximately [deleted] percent higher than Ostrom's. Ostrom submitted information regarding six of its prior contracts and identified a reference for each contract. The protester described the work under those contracts as including interior painting, repairs and refinishing of hardwood flooring; exterior painting; lead-based remediation; asbestos removal; repairs of surfaces prior to painting; sheetrock hanging and finishing; pavement marking; and installation of flooring materials including sheet vinyl and floor tile. Letter from Ostrom to Contracting Officer encl. (Jan. 4, 2000). One of those contracts, identified by Ostrom as an Air Force contract to "Paint Exteriors of Facilities," was priced at approximately \$9 million. Id. at 1.

The contracting officer received favorable performance ratings (of "very good" and "exceptional") from Ostrom's references related to the firm's performance of those contracts. The references, however, confirmed the protester's general description of

those contracts as involving mainly painting-related and refinishing services. Contracting Officer's Statement, May 17, 2000, at 4. The evaluators concluded that, although Ostrom had favorable references for its painting-related work under the cited contracts, painting was only a small portion of the current RFP's work requirements. The evaluators decided that [deleted].¹ Memorandum of Law at 6. Consequently, the evaluation team assigned the firm's proposal a neutral rating of "none" under the past performance factor for failure to provide sufficiently relevant past performance information for evaluation of the firm's capability to perform the RFP's overall "complex, multi-skilled" contract requirements. Team Performance Ratings at 1.

Conversely, BMAR's past performance was rated as exceptional based upon the exceptional performance reviews received for the firm from its references for contracts described by both BMAR and its references as involving substantially similar contracts of similar magnitude, with the same type of comprehensive housing maintenance services as those required under the RFP at similar contract prices. Integrated Assessment Best Value Decision at 2. The evaluators determined that the [deleted] percent price premium associated with the BMAR proposal was very slight and was otherwise outweighed by the benefits, in terms of performance assurances and "quality of life implications for military personnel," associated with the firm's exceptional past performance risk rating. Having determined that the BMAR proposal offered the best value to the agency, the contracting officer awarded the contract under the RFP to that firm. Id. This protest followed.

Ostrom does not challenge the high past performance rating assigned to BMAR's proposal, but contends that the agency improperly evaluated the protester's past performance information. Specifically, Ostrom contends that the neutral rating of "none," indicating a lack of relevant past performance information for evaluation of the firm's capability to perform the current requirements, is unreasonable. Ostrom contends that its prior contracts, identified by the firm for evaluation under the past performance factor, included some maintenance work in addition to painting services. Ostrom also argues that all its reference contracts were significant in dollar value (\$670,000 to \$9 million) and points specifically to the \$9 million contract as one similar in magnitude to the contract to be awarded under the RFP.

¹ Ostrom contends that the evaluators failed to give credit to the firm for its past performance on a contract categorized by that contract's issuing agency as a housing maintenance service contract. The title given to a contract, however, does not necessarily convey the full nature of the contract. In fact, our review of the record indicates that the evaluators did review that contract and confirmed with the reference for that contract that it was mostly related to painting and refinishing of housing units and did not involve the full scope of mechanical, electrical, plumbing and other services required under the current RFP.

In reviewing a protest against an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Support Servs., Inc., B-282407, B-282407.2, July 8, 1999, 99-2 CPD ¶ 30 at 3. The protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. Hard Bodies, Inc., B-279543, June 23, 1998, 98-1 CPD ¶ 172 at 3. As discussed below, we find that the evaluation of the protester's past performance information and the agency's price/past performance tradeoff determination were reasonable and consistent with the evaluation criteria.

Ostrom contends that it demonstrated relevant, highly-rated past performance and received high ratings from its past performance references for those contracts. Ostrom also argues that the dollar value of its prior contracts demonstrates that they are similar in magnitude to the contract to be awarded here. Ostrom therefore asserts that it should be rated as exceptional under the past performance factor and that it should be awarded the contract here as the lowest-priced offeror.²

Although Ostrom contends that having performed a contract of approximately the same contract price and others of substantial dollar value shows that it can successfully perform a contract under the RFP, the RFP's past performance evaluation provisions provided for a comparative assessment of the offerors' past performance and experience in terms of "relevant contracts" for "the same or similar items." RFP § 52.212-1(b)(10). We recognize that, in describing relevant contracts, the RFP refers to contracts for "housing property maintenance services or other types similar in magnitude to those required in this solicitation." RFP Specific Instructions, ¶ B(3) (emphasis added). This reference, however, must be read with the purpose of the experience evaluation in mind. That purpose was to evaluate an offeror's capability to perform the requirements of the RFP, which, as described above, called for multiple, distinct services and capabilities. Accordingly, we think it clearly was reasonable and consistent with the RFP for the agency to consider "relevant" only those prior contracts involving services that are the same as or similar to those called for under the RFP.

² Ostrom argues that it would be able to perform as a general contractor coordinating subcontractors' efforts to complete the multi-skilled tasks required under the RFP. In this regard, the RFP provided that past performance information regarding subcontractors that will perform major or critical aspects of the requirement would be rated as highly as past performance information for the principal offeror. RFP Specific Instructions, ¶ B(3). Although Ostrom could have submitted for evaluation purposes past performance information about the subcontractors it now claims it could coordinate in order to get all of the RFP's requirements performed successfully, the firm did not do so.

Our review of the record supports the reasonableness of the evaluators' determination that Ostrom's past performance information, at best, indicated that the firm had successfully performed only a small portion of the current RFP's requirements. None of the protester's past performance information, for example, demonstrated experience providing services in the areas of plumbing, electrical, and mechanical repair services. We therefore find reasonable the evaluators' conclusion that the limited scope of that experience did not demonstrate the firm's capability to perform the full range of services required under the current RFP.

BMAR's past performance information, on the other hand, persuasively demonstrated that firm's substantial experience with very similar military family housing maintenance services; moreover, the majority of its references rated the firm's performance of that highly relevant work as exceptional. Accordingly, since BMAR's prior contract work was significantly broader and substantially more relevant to the agency's current needs, the record provides no basis to question the reasonableness of the agency's determination that the payment of the relatively small price premium associated with BMAR's proposal was warranted to obtain the substantial additional assurance of satisfactory performance.³

The protest is denied.

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³ Ostrom also generally challenges the agency's failure to hold discussions with the firm or request clarifications regarding the relevance of its past performance information. Where, as here, the RFP advised offerors that the agency did not intend to conduct discussions, RFP §§ 52.212-1(g), 52.212-2(a)(6), there generally is no obligation to conduct discussions. Inland Serv. Corp., B-282272, June 21, 1999, 99-1 CPD ¶ 113 at 4. With regard to seeking clarifications on this issue from Ostrom, FAR §15.306(a)(2) provides that when an award is to be made without discussions, an offeror may be given the opportunity to clarify certain aspects of its proposal such as the relevance of its past performance information. Here, we cannot see any basis to conclude that the agency was required to issue clarification requests, given that the past performance information it obtained from the protester regarding the scope of its prior contracts was clear and was confirmed by the firm's references. See A. G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45.