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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: SDS International, Inc.

File: B-291183.4; B-291183.5

Date: April 28, 2003

Barbara S. Kinosky, Esq., and James S. Phillips, Esq., The Centre Law Group, for the protester.

Michael A. Gordon, Esq., Holmes, Schwartz & Gordon, for CBD Training, Inc., an intervenor.

John D. Inazu, Esq., Robert L. Allen, Esq., and Clarence D. Long, III, Esq., Department of the Air Force, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably exercised discretion in implementing recommendation made in GAO decision, which sustained a protest on the basis that the agency misevaluated one of the three evaluation subfactors of the mission capability factor included in the solicitation, when it decided to not reopen discussions, to not reevaluate past performance (because GAO denied the protest of this evaluation), and to evaluate all subfactors of the mission capability factor.

2. Agency reasonably determined that the strengths in the awardee's proposal that were found to be a significant benefit to the agency were sufficient to offset the price advantage of the protester's proposal, which did not offer comparable strengths.

DECISION

SDS International, Inc. protests the award of a contract to CBD Training, Inc. under request for proposals (RFP) No. F44650-02-R-0009, issued by the Department of the Air Force, Air Combat Command Contracting Squadron, Langley Air Force Base Virginia, for aircrew training and courseware development.

We deny the protests.

The RFP, a small business set-aside issued on April 3, 2002, is for aircrew training and courseware development at the 57th Wing United States Air Force Weapons

School (USAFWS), Nellis Air Force Base, Nevada, under a fixed-price contract for a 30-day phase-in period and a base year with 4 option years.

The RFP provided for award on a “best value” basis considering as evaluation factors past performance, mission capability, risk, and price. Past performance and mission capability were of equal importance in the evaluation scheme, followed by risk, with price being of least importance. Under the mission capability factor, the RFP listed three subfactors in descending order of importance: (1) training and workload management, (2) courseware development approach and instructional systems development management plan, and (3) phase-in. With regard to the first subfactor, training and workload management, the RFP stated:

This subfactor will be evaluated to insure the offeror is employing personnel with qualifications commensurate with the requirements of the SOW and is managing these personnel effectively. This subfactor examines the contractor’s proposed manning levels, personnel qualifications, personnel mix, and the duties and responsibilities of the site manager. All manning positions must be fully supported by the contractor’s workload analysis.

RFP at 48.

A number of proposals were submitted. After discussions were conducted and final proposal revisions submitted, the source selection evaluation team (SSET) determined the proposals of SDS (the incumbent contractor) and CBD were the highest rated of those submitted, receiving the following ratings¹:

	Past Performance	Mission Capability/Risk			Price
		Subfactor No. 1	Subfactor No. 2	Subfactor No. 3	
SDS	Very Good/Significant Confidence	Blue	Green	Blue	\$15,964,852
		Low	Low	Low	
CBD	Exceptional/High Confidence	Blue	Green	Green	\$17,916,218
		Low	Low	Low	

¹ The possible past performance ratings were exceptional/high confidence, very good/significant confidence, marginal/little confidence, and unsatisfactory/no confidence. The possible color ratings for the mission capability factor were blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable. The RFP defined blue/exceptional as when the proposal “exceeds specified minimum performance or capability requirements in a way beneficial to the Air Force.” The possible risk ratings were high, moderate, and low. RFP at 47, 49.

Initial Agency Report, Tab 14, Source Selection Decision, at 2.

The source selection authority (SSA), after discussions with the SSET Chair, contracting officer, and other source selection advisors, decided to increase CBD's rating to blue under the second subfactor of the mission capability factor on the basis that CBD's proposal--[DELETED]--exceeded the stated requirements in a beneficial way. The SSA referenced these strengths (and others) in CBD's proposal in justifying selecting CBD's higher-priced proposal.

In protesting the award, SDS argued that the source selection was irrational because the SSA unjustifiably increased CBD's rating under the second subfactor of the mission capability factor. We sustained the protests in SDS Int'l, Inc., B-291183, B-291183.2, Dec. 2, 2002, 2003 CPD ¶ ____, finding:

[T]he SSA's discussion of the [DELETED] strength does not comport to the contents of CBD's proposal. This is important here because of the three strengths discussed by the SSA to justify raising CBD's rating to blue under this subfactor, the [DELETED] strength was the only one that was "viewed to be of significant value." Thus, CBD's blue rating for this subfactor and the source selection decision identifying this as a "visionary approach" in justifying the award are not, on this record, reasonably based.

Id. at 5. On the other hand, we denied SDS's protest challenging the Air Force's ratings of CBD's past performance as exceptional and SDS's as very good. We recommended that:

the Air Force reevaluate the proposals, reopen discussions and obtain revised final proposals, if appropriate, and make a new source selection. If CBD is not the successful offeror, its contract should be terminated and a new award made.

Id. at 10.

To implement our recommendation, the Air Force reconvened the SSET and replaced two of the four members.² Since we did not reject the reasonableness of the Air Force's past performance evaluation, the Air Force chose not to reevaluate this aspect of SDS's and CBD's proposals. On the other hand, the Air Force decided to have the reconstituted SSET reevaluate the prior final proposals of CBD and SDS under all of the mission capability subfactors, even though our decision found error

² The Air Force attributed the staffing changes to scheduling conflicts encountered by the prior members.

only with the agency’s evaluation of CBD’s proposal under the second subfactor. Discussions were not reopened, nor were revised proposals solicited or obtained.

The SSET’s reevaluation resulted in the following ratings under the mission capability factor:

		Mission Capability/Risk		
		Subfactor No. 1	Subfactor No. 2	Subfactor No. 3
SDS		Green	Green	Green
		Low	Low	Low
CBD		Blue	Green	Green
		Low	Low	Low

Agency Report, Tab 28, Source Selection Decision, at 13.

Under the first subfactor, training and workload management, the SSET reduced SDS’s proposal’s rating to green from the blue rating it had received under the initial evaluation.³ The SSET found two strengths and no weaknesses in SDS’s proposal under this subfactor. One strength was SDS’s [DELETED] that ensured that each training division would have [DELETED]. The other strength was SDS’s proposal to provide an [DELETED] that went “beyond” the SOW requirements. See Agency Report, Tab 26, SSET’s Worksheets.

In contrast, CBD’s proposal retained its blue rating under this subfactor.⁴ The SSET found four strengths in CBD’s proposal under this subfactor. One strength was CBD’s proposal of an [DELETED]. A second strength was CBD’s proposal to provide [DELETED]. The third strength was CBD’s proposal to provide an [DELETED]. The final strength was CBD’s proposal of a “[DELETED]. Id.

Under the second subfactor, courseware development approach and instructional systems development management plan, SDS’s proposal received a green rating with two strengths. One strength was SDS’s [DELETED], which standardized [DELETED]. The other strength was SDS’s use of [DELETED]. The SSET also assigned CBD’s proposal a green rating under this subfactor with two strengths.

³ The SSET found that SDS’s staffing plan consisted of [DELETED] base personnel with [DELETED] Instructor/Subject Matter Experts (I/SME), and [DELETED] personnel, including [DELETED] I/SMEs, after exercise of all contract options. Agency Report, Tab 26, SSET’s Worksheets.

⁴ The SSET found that CBD proposed [DELETED] core personnel with [DELETED] I/SMEs, with [DELETED] core personnel with [DELETED] I/SMEs after all options were exercised. Agency Report, Tab 26, SSET’s Worksheets.

The strengths were CBD's proposed [DELETED], and CBD's proposal of a [DELETED]. Id.

Under the third subfactor, phase-in, the SSET also reduced SDS's rating from blue to green, although it identified a strength in SDS's proposal. This strength was SDS's proposal of a [DELETED]. CBD's proposal also was rated green under this subfactor with one strength. This strength related to CBD's plan to provide a [DELETED] as part of its contractor-furnished equipment. Id.

Based upon a comparative assessment of the proposals, the SSA concluded that CBD's superior past performance and technical features were worth the higher price. In particular, the SSA noted that CBD's proposal to provide [DELETED] [and] [t]his added benefit is expected to save over 3,000 Air Force Weapons School Instructor hours every year." Further, the SSA found that CBD's proposed [DELETED] was an "innovative approach," which will enable CBD's [DELETED]. The SSA also viewed CBD's plan of using an [DELETED] as an innovative and beneficial approach. Agency Report, Tab 29, Source Selection Decision, at 4-5.

On the other hand, the SSA noted that, even though SDS's proposal reflected strengths involving their [DELETED], the proposal was "without any enhancements comparable to those in the CBD proposal." The SSA found that SDS's staffing approach did "little more than maintain the status quo in terms of the overall training approach." Id. at 5.

The SSA concluded that the additional costs to obtain the superior training program proposed by CBD over the program proposed by SDS were worth the added benefit. The SSA also found that [DELETED], and the agency's confidence in CBD's ability to perform in an exceptional way, made the difference in price "well worth our investment." Id. at 6. The award to CBD was affirmed on January 6, 2003. These protests followed.

SDS contends that the Air Force acted unreasonably by deciding to reevaluate the previously submitted proposals of CBD and SDS, as opposed to reopening discussions and obtaining revised proposals, and by limiting the reevaluation to only the mission capability factor. SDS argues that rather than reevaluating proposals, the Air Force merely downgraded its proposal in the areas where it previously had obtained blue ratings, and that its proposal should have retained those blue ratings since it had strengths that exceeded the minimum requirements. SDS complains that in contrast the agency did not fairly or equally rate CBD's proposal where it retained its blue ratings. SDS contends that the Air Force's actions reflect bias, and unequal treatment towards SDS, and maintains the agency only reevaluated those areas where SDS's scores could be lowered.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the

agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. See U.S. Def. Sys., Inc., B-245563, Nov. 3, 1992, 92-2 CPD ¶ 317 at 4. A protester's mere disagreement with the agency's judgment in its determination of the relative merits of competing proposals does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4. Based on our review of the record, including the written proposals, the pleadings, and hearing testimony, we find no basis to overturn the award.⁵

Here, the SSA, after consulting with the contracting officer and Air Force legal counsel, made the decisions to (1) not conduct further discussions and obtain revised proposals, (2) not reevaluate past performance, and (3) evaluate all subfactors of the mission capability factor. The SSA explained that he chose not to conduct discussions because the agency found no weaknesses or deficiencies in the proposals, nor did it need to ask any questions about the technical proposals. Hearing Transcript (Tr.) at 286-87. With regard to his decision not to reevaluate past performance, he relied on the facts that our decision did not take issue with the agency's prior past performance evaluation of the proposals, that the past performance records were clear, and that both offerors received very high ratings. See Tr. at 242, 299-300, 302-03, 307-09, 312. He also testified that all subfactors, not just the second subfactor, of the mission capability factor were reevaluated because he sought to have a "fresh" look taken of the proposals in light of our decision, particularly since he believed the prior evaluation of the mission capability factor did not adequately reflect the agency's view that CBD's proposal was in fact superior overall to SDS's (even discounting the flaws in the evaluation found in our prior decision), and because he viewed the mission capability factor as an integrated whole, such that he did not believe that the second subfactor could alone be the subject of a reasonable assessment by an SSET with members not familiar with the prior evaluation. See Tr. 249-50, 279-82, 290-93, 350, 362-63.

The details of implementing our recommendations for corrective action are within the sound discretion and judgment of the contracting agency, and we will not question an agency's ultimate manner of compliance, so long as it remedies the procurement impropriety that was the basis for the decision's recommendation. ST Aerospace Engines Pte, Ltd., B-275725.3, Oct. 17, 1997, 97-2 CPD ¶ 106 at 5. On the record before us, we find no basis to question the agency's actions.

⁵ At the hearing conducted by our Office, the SSA, chairman of the SSET, and one of the voting SSET members responsible for reevaluating the proposals provided detailed explanations for the scope of the agency's reevaluation, the reasons for the changes in only SDS's scores from blue to green under the first and third subfactors, and the bases for the blue rating for CBD's proposal under the first subfactor.

While, as the protester suggests, a more comprehensive method of implementing our recommendation could have been chosen by the Air Force, including reopening discussions and obtaining revised proposals and reevaluating past performance, the agency has stated a reasonable basis for not performing these actions. Specifically, the record does not show any weaknesses or deficiencies in SDS's proposal that required discussions.⁶ Moreover, SDS has offered no new evidence, not considered in our prior decision, that would indicate that the past performance ratings of SDS and CBD were not reasonable. Finally, it was within the discretion of the agency to consider the mission capability factor as a whole, since our prior decision did not preclude this evaluation and it has offered a reasonable explanation (set forth above) as to why it was necessary.

As noted, SDS contends that the lowering of its ratings under the first and third subfactors of the mission capability factor from blue to green was unreasonable and reflected bias on the part of the evaluators to improperly justify the agency's prior award decision.

The agency's witnesses testified that these changes in the ratings were made based on their closer consideration of whether awarded strengths in the proposals were beneficial to the Air Force in some material way, and that they determined that some strengths under a subfactor that may exceed requirements were not significant enough to justify a blue rating. Tr. at 36, 79-80. In performing this evaluation, the evaluators referenced the RFP's definition of blue: "exceeds specified minimum performance or capability requirements in a way beneficial to the Air Force." RFP at 47. In deciding whether strengths were sufficiently beneficial to the government to support a blue rating under a subfactor, the agency drew a distinction between those strengths that were beneficial to the contractor, in that they primarily related to the contractor's reduction of its risk of not successfully performing the contract, versus those strengths that provided significant tangible benefits to the Air Force beyond the SOW requirements. The evaluators felt that strengths under a subfactor primarily for the benefit of the contractor related more to the risk evaluation factor and were not sufficient to justify a blue rating for that subfactor, whereas strengths under a subfactor with significant tangible benefits to the Air Force may warrant a blue rating. See Tr. at 35-37, 61-63, 79-80, 85-86, 163-67, 172-73.

For example, the SSET found that the strengths under the first subfactor found for the [DELETED] proposed by SDS did not present material significant benefits to the

⁶ While SDS references certain comments in the reevaluation documentation that SDS was not proposing to furnish a [DELETED] as evidence that discussions were required, the record indicates that these comments did not reflect a weakness in SDS's proposal, but were simply a contrast to CBD's proposal, which received a strength for offering these items.

Air Force, but primarily reduced the contractor's risk, because the [DELETED],⁷ and SDS's [DELETED]. Tr. at 137-39, 163-67, 172-73, 177-78. Similarly, the strength awarded SDS under the third subfactor relating to its "[DELETED]" was considered to be a proposal feature that tended more to reduce SDS's risk of successfully performing the contract, such as [DELETED], rather than adding a significant benefit to the USAFWS program, and thus the SSET felt that a blue rating was not appropriate for this subfactor. Tr. at 37, 61-63, 216-19.

In contrast, the SSET found that CBD's proposal warranted a blue rating under the first subfactor primarily because CBD proposed to provide [DELETED], which the SSET believed would be beneficial to the USAFWS and its students. See Tr. at 22-25, 37-40.

SDS maintains that the Air Force unreasonably rated CBD's proposal blue under the first subfactor. For example, SDS argues that, in contrast to SDS's proposal, CBD's proposal failed to identify personnel by name and qualification, or to provide a detailed site organizational chart, but the proposal was based upon hiring the incumbent's workforce. See Agency Report, Tab 17, CBD's Proposal at II-2-19.

However, the Air Force's representatives explained that this lack of specificity was not a major concern because CBD proposed to hire SDS's incumbent personnel, who already met the contract's qualification requirements. The SSA explained that he thus viewed the proposals as essentially equal in this respect since they both relied upon the same personnel, and that the agency was satisfied with CBD's statements that it would comply with the SOW requirements because CBD received the highest rating under past performance, which evidences CBD's ability to field a qualified workforce. See Tr. at 135, 341. We find this explanation to be reasonable under the circumstances.

SDS also argues that the Air Force unreasonably evaluated CBD's proposal [DELETED], contending that no reasonable analysis was made of CBD's staffing levels to ascertain the realism and achievability of these promises. The protester complains that very little detail was provided in CBD's proposal regarding specific tasks, and that it is unlikely that CBD can satisfy the minimum SOW requirements and also provide [DELETED], given the hours reflected in its staffing model, especially since CBD's staffing allegedly reflects half the hours proposed by SDS for similar tasks.

⁷ The SSET member testified that the reason that the [DELETED] was not considered a greater benefit to the Air Force was because this individual was not dedicated to the contract, since his primary duties related to other SDS work, and he was available for the USAFWS contract only in the event of shortfalls. See Tr. at 137-39.

However, the record evidences that the Air Force specifically considered CBD's staffing in light of its proposal to provide [DELETED]. CBD's proposal states that "[DELETED]." Agency Report, Tab 10, CBD Evaluation Notice Response (CBD-4), at 3-4; Tab 17, CBD's Proposal at II-2-11, II-2-15.

An SSET member testified that the Air Force, through various calculations, was able to determine that CBD's estimate of staff-hours contained sufficient flexibility to cover the hours needed to meet these terms in its proposal. See Tr. at 125-26, 186-97, 202-09. In this regard, CBD's proposal was based on the premise that the [DELETED], and on [DELETED]. See Agency Report, Tab 17, II-2-13 to II-2-19. Thus, the fact that CBD's proposal reflects fewer I/SME hours than SDS's for certain tasks does not necessarily indicate that CBD cannot meet its proposal promises. In this regard, the [DELETED] proposed by CBD will perform [DELETED] that would otherwise have to be performed by the [DELETED], as SDS apparently contemplated in its approach.

While the risk of poor performance when a contractor is forced to provide services at little or no profit under a fixed-priced contract is a legitimate concern that should be considered by the agency, the record here shows that the agency could reasonably conclude that the efficiencies inherent in CBD's approach would allow it to satisfy the SOW requirements, the promised [DELETED] support to Air Force instructors, and the [DELETED].⁸ See Burnside-Ott Aviation Training Ctr., Inc.; Reflectone Training Sys., Inc., B-233113, B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158 at 11. Based on this record, we cannot say the blue rating awarded CBD's proposal under the first subfactor was unreasonable.

As indicated, SDS largely objects to the evaluation on the grounds that it should have received higher color ratings for the strengths proposed in its proposal. However, color-coded ratings, adjectival ratings, and point scores are no more than guidelines for intelligent decision making to assist source selection officials in evaluating proposals; they do not mandate automatic selection of a particular proposal. The question ultimately is whether the record supports the agency's conclusions regarding the relative merits of proposals. See Research for Better School, Inc., B-270774.3, June 17, 1996, 96-2 CPD ¶ 41 at 8-9.

Here, the SSA explained that he did not rely solely on the color ratings, but he was "far more interested" in the written information underlying the support for the ratings, in which the benefits to the Air Force of each proposal were described, which the SSA characterized as "word pictures." See Tr. at 254-55, 270. Here, the record indicates that the SSA reasonably found that the number and nature of the strengths associated with CBD's proposal provided it with a clear technical

⁸ CBD is clearly obligated to satisfy the promises made in its fixed-price proposal. The issue here is whether the agency reasonably evaluated those promises.

advantage over SDS's proposal. In doing so, the SSA concluded that CBD's technical approach of [DELETED] was an innovative approach, beyond the "status quo" nature of SDS's technical approach, worth the additional cost premium. Based on our review, we cannot find the agency's judgment to be unreasonable.

While protester argues that the lowering of SDS's ratings, but not CBD's, from blue to green is indicative of bias on the part of the agency, the agency representatives testified that the differences in the color ratings of SDS's proposal between the two evaluations were not of particular concern to the agency because in the second evaluation the SSET focused exclusively on evaluating SDS's and CBD's proposals, unlike the prior evaluation when other offerors were also being considered, and because the new SSET team made a "fresh assessment" of the proposals with closer attention paid to the definitions in the color-coded ratings. See Tr. at 15, 36, 63, 77, 163-64, 174-75, 216-17, 219-20, 311. Since we find the agency has reasonably justified the award to CBD, there is no basis to challenge the award based on allegations of bias.

The protests are denied.

Anthony H. Gamboa
General Counsel