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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Ben-Mar Enterprises, Inc.

File: B-295781

Date: April 7, 2005

David R. Moffitt, Esq., Saul Ewing, for the protester.
Daniel S. Koch, Esq., and David P. Shapiro, Esq., Paley, Rothman, Goldstein, Rosenberg, Eig & Cooper, for Tech Systems, Inc., an intervenor.
Talbot J. Nicholas II, Esq., Department of Homeland Security, 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

Where proposals were reasonably evaluated as technically equal, agency properly selected for award the proposal of the firm submitting the lower price.

DECISION

Ben-Mar Enterprises, Inc. protests the award of a contract to Tech Systems, Inc. (TSI) under request for proposals (RFP) No. HSCG23-04-R-PUD642, issued by the Department of Homeland Security for fitting, alteration/tailoring, and garment pressing services at the United States Coast Guard Training Center in Cape May, New Jersey. Ben-Mar challenges the evaluation of TSI's substantially lower-priced proposal.

We deny the protest.

The RFP, issued on August 23, 2004, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a base period and four 1-year option periods to the offeror whose proposal represented the best value to the government, considering technical evaluation factors and price. The RFP listed, in descending order of importance, the following technical evaluation factors, as well as the technical evaluation subfactors, which were of equal importance: (1) technical understanding and capability (performance processes and facilities and equipment); (2) relevant past performance (product quality, timelines, cost control, and customer satisfaction); and (3) program management (staffing plan, quality control plan, and loading of "accession" personnel, *i.e.*, Coast Guard trainees

entering military service). With respect to “relevant past performance,” the RFP stated that

Offerors shall provide relevant past performance information to include five references and related information to include (the contract number, type, dollar value, period of performance, description, technical and contracting points of contact, telephone/fax and e-mail contact information, and any other related information). Past performance information that is older than three years after completion of a contract will not be evaluated.

RFP at 41.

The RFP also stated that “[i]f an offeror does not have relevant past performance, the Coast Guard will not evaluate the offeror favorably or unfavorably on this factor.” RFP at 42.

The RFP stated that the technical evaluation factors, when combined, would be considered significantly more important than price.

Ben-Mar, the incumbent contractor for the past 20 years, and TSI, which has a current contract to fit and alter garments for Air Force trainees at Lackland Air Force Base (AFB) in Texas, submitted initial proposals, both of which were included in the competitive range. The consensus evaluation¹ results for initial proposals were as follows:²

¹ After each member of the agency’s technical evaluation team individually evaluated each proposal, the technical evaluation team met in order to reach a consensus in terms of the merits of each proposal for each technical evaluation factor and subfactor.

² While not disclosed in the RFP, the agency’s source selection plan provided that proposals (for the technical understanding and approach and program management evaluation factors) could receive one of the following color/adjectival ratings: blue/superior; green/satisfactory; yellow/marginal; and red/unsatisfactory. As relevant here, a green/satisfactory rating was defined as “[m]eets all requirements; proposal offers no significant benefits beyond the stated requirements, yet [no] significant weaknesses or deficiencies exist” and a yellow/marginal rating was defined as “[f]ails to meet the minimum requirements or has one or more significant weaknesses. Deficiencies and significant weaknesses are correctable without major [proposal] revisions.” Agency Report (AR), Tab 3, Source Selection Plan at 9. For the relevant past performance technical evaluation factor, proposals could receive one of the following color/adjectival ratings: white/neutral; blue/superior; green/satisfactory; yellow/marginal; and red/unsatisfactory. As relevant here, a green/satisfactory rating was defined as “[p]ast performance [meets] requirements.”

(continued...)

	Ben-Mar	TSI
Technical Understanding/Approach	Green/Satisfactory Low Risk	Yellow/Marginal Moderate Risk
Relevant Past Performance	Green/Satisfactory Low Risk	Green/Satisfactory Low Risk
Program Management	Green/Satisfactory Low Risk	Green/Satisfactory Low Risk

With respect to price, Ben-Mar’s price was more than twice TSI’s price and approximately 7 percent higher than the government estimate, which was based on Ben-Mar’s historical prices as the incumbent contractor. TSI’s price was approximately 50 percent of the government estimate. AR, Tab 8, Prenegotiation Memorandum, at 3.

With respect to Ben-Mar, the agency concluded that the firm satisfied all of the RFP’s technical requirements and that there were no areas in Ben-Mar’s initial technical proposal that required discussion. In this regard, the agency concluded that Ben-Mar, the successfully performing incumbent contractor for the past 20 years, clearly demonstrated its technical understanding and capability to perform the Coast Guard requirements. Among other things, the agency noted that Ben-Mar had established a “fitting” procedure that expedites the measuring process to benefit training personnel and that Ben-Mar had established its ownership of the equipment necessary to perform the RFP requirements. Regarding past performance, the agency noted that Ben-Mar, as the successfully performing incumbent contractor, clearly demonstrated its ability to repeatedly deliver quality services on time and under adverse conditions. Regarding program management, the agency noted that Ben-Mar’s proposed general manager, a former Coast Guard warrant officer, has been with the firm for 19 years and was very familiar with the Coast Guard organization and the details and importance of uniform requirements. In addition, the agency noted that Ben-Mar demonstrated a strong quality control inspection

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Id. Finally, for each technical evaluation factor, a risk assessment rating of high, moderate, or low could be assigned. As relevant here, a low risk assessment was defined as the “offeror’s proposal has little potential to cause disruption of schedule, increase in cost, or degradation of performance. Normal contractor effort and normal government monitoring shall probably be able to overcome difficulties” and a moderate risk assessment was defined as the “offeror’s proposal can potentially cause some disruption of schedule, increase in cost, or degradation of performance; however, special contractor emphasis and close government monitoring shall probably be able to overcome difficulties.” Id. at 6. The color/adjectival and risk ratings were supported by narratives addressing the strengths, weaknesses, significant weaknesses, deficiencies, and risks in each offeror’s proposal.

protocol in describing the functions of its employees and that Ben-Mar demonstrated its ability to handle varying size ranges of training personnel, making sure that the required services were accomplished in a timely manner. Id. at 4-5. While the agency determined that there were no areas in Ben-Mar's initial technical proposal requiring discussions, the agency nevertheless decided to advise Ben-Mar during discussions that its price was "slightly higher" than the government estimate. Id. at 7.

With respect to TSI, for the technical understanding and capability evaluation factor, the agency noted that the firm currently performs "similar" work at Lackland AFB, although the Air Force requirements did not appear to be as extensive as the Coast Guard requirements. The agency believed that TSI did not provide sufficient detail in its initial technical proposal to demonstrate its ability to perform complex work, such as work on service dress blue coats which are considered "specialized work," requiring expert and experienced tailoring skills and possibly requiring "re-building an issued coat or building a new coat from the cutting stage to the finished garment" using industry manufacturing techniques. Id. at 5-6. In addition, while TSI proposed to employ a master tailor who has performed work on dress coats, the agency believed that this individual's stated responsibilities appeared to be more administrative in nature, rather than reflecting the skills necessary to perform complex coat fittings and alterations. Moreover, the agency believed that TSI did not provide sufficient detail to clearly explain its manufacturing techniques, particularly with respect to complex alterations. Finally, the agency had some concern with respect to whether TSI understood that the contractor, not the government, was required to furnish all of the alteration equipment necessary to satisfy the RFP requirements.

With respect to past performance, the agency pointed out that TSI has performed other military uniform fitting and alterations work, citing the favorable performance evaluation from Lackland AFB. In this respect, the reference from Lackland AFB described the work performed by TSI as "[1-]day fitting and alteration of Air Force service uniforms for an estimated 35,000 recruits yearly." AR, Tab 7, Past Performance Reference for TSI, Lackland AFB. The reference reported that TSI delivered fittings and alterations on schedule; that the quality of the products delivered by TSI received high praise from the customers; and that no performance problems were encountered with TSI. The reference reported that he would hire TSI again, commenting that TSI "is very responsive to any change or modifications to service requirements," with TSI "[c]ontinually looking for ways to improve the service." Id.

With respect to the program management evaluation factor, the agency noted that TSI clearly demonstrated a good staffing plan layout and described how its employees would be monetarily rewarded for quality performance. In addition, the agency noted that TSI proposed to send a conversion manager from its Lackland AFB operations to the Coast Guard's training center in order to minimize the risks

associated with transitioning to another contractor; that TSI described its plan to review employee job performance and to correct performance deficiencies as they occurred in order to ensure timely and immediate resolution; that TSI described how it would use feedback from Coast Guard trainees; and that TSI described its use of overtime and/or seasonal crews to accommodate surge requirements. AR, Tab 8, Prenegotiation Memorandum, at 7. Based on the evaluation of TSI's initial technical proposal, the agency determined that the areas to be discussed with TSI involved the technical understanding and capability evaluation factor and TSI's "significantly lower" price as compared to the government estimate. Id.

During discussions, Ben-Mar was asked to address its "proposed price [which was] slightly higher than" the government estimate. AR, Tab 10, Discussions with Ben-Mar. TSI was asked to address its "proposed price [which was] significantly lower" than the government estimate, as well as its capabilities regarding the performance of "specialized work," its manufacturing techniques, and the alteration equipment requirements. AR, Tab 11, Discussions with TSI.

In response to discussions, Ben-Mar reduced its price by approximately 3 percent and made no changes to its technical proposal. AR, Tab 12, Ben-Mar's Revised Business Proposal. TSI raised its price by approximately [Deleted] percent, AR, Tab 13, TSI's Revised Price Proposal, and submitted responses to the agency's discussion questions. To demonstrate its ability to perform "specialized work," TSI pointed to, among other things, its work at Lackland AFB, where it is required to fit and alter up to 3,000 garments per day (work that is subject to 100-percent government inspection), explaining that it has reworked garments to account for weight loss or weight gain, and its work with a "non-homogenous class of recruits by size." TSI stated that it "rebuilds all necessary garments to fit every recruit in accordance with the [Air Force requirements] and has done it professionally at a low cost." Id. at 1. For example, TSI explained that in rebuilding garments, it must integrate exact fabric pieces into the garment. TSI also explained that it cross-trains its employees so that they become versatile and can reconstruct "just about anything in the clothing line." Id. at 2.

With respect to its manufacturing techniques, TSI explained that it has a great deal of experience in reconstructing very complex fabric products for the Department of Defense. TSI pointed out that it is the only commercial firm in the United States that repairs and reconstructs personnel and cargo parachutes for the Army and Navy (work that is subject to 100-percent government inspection). TSI further stated that, based on its experience at Lackland AFB, it knows how to timely and professionally build a garment from scratch. (TSI noted that in its experience at Lackland AFB, the need to build a garment from scratch is rare.) TSI explained that most manufactured standard size garments can be altered to appropriately match individual body sizes and that this is preferable to actually manufacturing a garment from raw materials. TSI then explained how it would reconstruct a garment for both a small-sized and a large-sized person and the circumstances under which garment patterns would be

used. TSI also discussed its plan to hire qualified incumbent personnel and TSI's use of tailor/fabric worker position descriptions.

With respect to alteration equipment, TSI acknowledged its obligation to provide all necessary equipment to perform the RFP requirements. TSI explained that it incorporated the cost for new equipment and facilities in its revised price proposal. *Id.* at 4. TSI also explained that it had a line of credit for equipment purchases and the firm identified equipment vendors, stating that “[i]nstallation of new machines . . . is measured in hours not days.” AR, Tab 14, TSI E-mail to Contracting Officer. Finally, TSI provided a detailed, 14-page quality control plan that discussed, among other things, the use of customer feedback and the role of TSI's quality control inspector in assessing performance. TSI's quality control plan also addressed how employees would be monetarily rewarded for meeting and exceeding TSI's performance standards.

In evaluating final revised proposals, Ben-Mar's technical ratings remained the same and the agency believed, as a result of discussions, that Ben-Mar had satisfactorily addressed its still slightly higher price vis-à-vis the government estimate. AR, Tab 16, Competitive Price Negotiation Memorandum, at 2. With respect to TSI, the agency raised the firm's rating for the technical understanding and capability evaluation factor to green/satisfactory and low risk because it was the consensus of the evaluators that as a result of discussions, TSI had clearly demonstrated in its final revised proposal, as described above, its technical understanding of, and capability to perform, the RFP requirements. AR, Tab 15, Final Technical Evaluation Report, at 1-2. The agency noted that although TSI's revised price was still significantly lower than the government estimate, the information in TSI's final revised proposal clearly showed that TSI understood the technical requirements of the RFP and was capable of successfully performing those requirements. AR, Tab 16, Competitive Price Negotiation Memorandum, at 2-3.

Since, as a result of the raising of TSI's rating, the proposals of Ben-Mar and TSI were rated technically equal, price became the determining factor for award. Accordingly, the agency determined that TSI's lower-priced proposal represented the best value to the government. AR, Tab 16, Best Value Determination, at 1-2.

The essence of Ben-Mar's protest is that a “company [i.e., TSI] with no experience in meeting the Coast Guard's strict requirements for fitting and alterations of working and dress uniforms for recruits was selected over an incumbent with a flawless service record over a twenty-year period.” Protester's Comments at 1. Ben-Mar continues that the agency unreasonably failed to distinguish between the past

performance of it and TSI, based on the “relevance and quality of all available past performance information.” Id. at 15.³

In reviewing a protest against an agency’s proposal evaluation, we will consider whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Kira, Inc.; All Star Maint., Inc., B-291507, B-291507.2, Jan. 7, 2003, 2003 CPD ¶ 22 at 5. Mere disagreement with an agency’s evaluation is not sufficient to render the evaluation unreasonable. Bevilacqua Research Corp., B-293051, Jan. 12, 2004, 2004 CPD ¶ 15 at 8 n.8.

Contrary to Ben-Mar’s suggestion, the RFP did not restrict this competition to firms with experience in altering and tailoring Coast Guard uniforms. Rather, the RFP required an offeror to provide “relevant” past performance information for evaluation in the areas of product quality, timelines, cost control, and customer satisfaction. In requiring an offeror to provide “relevant” past performance information, the RFP did not define “relevant” in terms of an offeror having past performance that was identical to the requirements described in the RFP. In other words, the RFP did not require an offeror to have past performance in providing fitting, alteration/tailoring, and garment pressing services for the Coast Guard in order to be eligible to compete in this procurement.

Here, as detailed above, the record shows that the agency recognized Ben-Mar’s successful performance over the past 20 years as the incumbent contractor. The record also shows that the agency considered TSI’s past performance at Lackland AFB, in terms of fitting and altering garments for Air Force trainees, to be “relevant” to the Coast Guard requirements as described in the RFP. To the extent the agency had concerns, based on TSI’s initial technical proposal, with the work the firm did at Lackland AFB, TSI responded to these concerns, as raised by the agency during discussions, in its final revised proposal. Other than disagreeing with the agency’s assessment that TSI’s Lackland AFB past performance was relevant to the Coast Guard requirements, Ben-Mar has provided no meaningful basis for our Office to question the reasonableness of the agency’s assessment that TSI had a record of past performance that was “relevant” to the Coast Guard requirements.

³ There was nothing in the RFP requiring the agency to assign Ben-Mar’s proposal the highest technical ratings simply because of its status as the incumbent contractor. Other than for the fact, which is not disputed, that Ben-Mar had successfully performed the Coast Guard requirements as the incumbent contractor, Ben-Mar does not meaningfully argue, based on the contents of its technical proposal, that it was entitled to higher technical ratings. (We note that Ben-Mar’s technical proposal consisted of approximately four, single-spaced pages where the firm basically addressed each technical evaluation subfactor in a single paragraph. Ben-Mar also included in its technical proposal four letters of commendation from the Coast Guard.)

Moreover, we have no basis to object to the agency's assignment of a green/satisfactory and low risk rating to TSI's proposal for each of the technical evaluation factors. While Ben-Mar contends that TSI failed to "demonstrate," for example, its capability to perform "specialized work" in terms of service dress blue uniforms, the record shows, as described above, that this matter was raised in discussions with TSI and that the agency concluded that TSI satisfactorily explained how it handles these types of requirements under its Lackland AFB contract. TSI also provided details regarding how it makes adjustments to account for small-sized and large-sized individuals under its Lackland AFB contract. Moreover, the cover page of TSI's revised technical proposal has a picture showing recruits at Lackland AFB being fitted into dress uniforms; on another page of TSI's revised technical proposal, there is a picture showing recruits being outfitted with tailored service dress coats; and, finally, in a chart entitled "Lackland AFB Fittings and Alterations," there are four columns for types of alterations involving Air Force "service coats," which the agency states is the equivalent to the Coast Guard's service dress coat. On this record, we have no basis to dispute the reasonableness of the agency's determination that TSI had "demonstrated" its technical understanding of, and capability to perform, the Coast Guard's requirements. AR, Tab 13, TSI's Revised Proposal.

Ben-Mar further argues that TSI's substantially lower price reflects a lack of understanding of the RFP requirements. As discussed above, the agency satisfied itself during discussions that TSI understood these requirements. Moreover, in a fixed-price procurement, such as this one, the fact that a firm, like TSI, in its business judgment, submits a price that is low because it may not include any profit, is below-cost, or may be an attempted buy-in, does not render the firm ineligible for award, since below-cost pricing is not prohibited. The Refinishing Touch, B-293562 et al., Apr. 15, 2004, 2004 CPD ¶ 92 at 2-3. In this case, where the agency was aware of TSI's substantially lower price, the agency determined that TSI's price, based on its proposed approach to performing the work, was fair and reasonable. AR, Tab 16, Best Value Determination, at 2. We have no basis to question the agency's conclusion in this regard.

Finally, Ben-Mar challenges the agency's decision to select TSI at a substantially lower price. However, an agency is vested with broad discretion to determine the manner and extent to which it will make use of evaluation results. PharmChem, Inc., B-291725.3 et al., July 22, 2003, 2003 CPD ¶ 148 at 9. Where, as here, an agency reasonably determines that proposals are essentially technically equal, price becomes the determining factor in making the award, notwithstanding that under the RFP, price was assigned less importance than the combination of technical evaluation factors. Id.

Here, notwithstanding the fact that Ben-Mar had satisfied the agency's requirements for many years, the agency determined that there were several benefits to be derived

from TSI's technical approach. For example, the agency concluded that TSI had the ability to rebuild all necessary garments to accommodate different recruit body features that might exceed normal manufacturer sizes; that TSI would use exact fabric pieces for integration into garments to overcome fitting and alteration problems; and that TSI would cross-train tailors so that they could reconstruct all types of garments. The agency believed that these benefits, as well as TSI's internal quality controls, provided assurance that all Coast Guard uniform requirements would be satisfied and that availability and quality would not be issues in terms of TSI's performance. AR, Tab 16, Best Value Determination, at 1.

In light of the benefits associated with TSI's technical approach, and the fact that there is no basis on this record to question the reasonableness of the agency's assignment of the same technical ratings to the proposals of Ben-Mar and TSI, we conclude that it was reasonable for the agency to determine that TSI's technically equal, lower-priced proposal represented the best value to the government in accordance with the terms of the RFP.

The protest is denied.⁴

Anthony H. Gamboa
General Counsel

⁴ Ben-Mar has raised other collateral issues and arguments, each of which we have considered and find without merit. As discussed above, our review of the record shows that the agency's evaluation was reasonable and in accordance with the terms of the RFP.