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Decision

Matter of: FN Manufacturing LLC
File: B-407936; B-407936.2; B-407936.3
Date: April 19, 2013

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Daniel R. Forman, Esq., James G. Peyster, Esq., and Derek R. Mullins, Esq., Crowell & Moring LLP, for Colt Defense LLC, the intervenor.
Capt. George P. Farley and Diane Nelson, Esq., Department of the Army, for the agency.
Kenneth Kilgour, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of protester's proposal under past performance factor is denied where the past performance information the protester claims should have been considered was not provided in the protester's proposal; offerors bear the responsibility to identify relevant past performance information, and an agency is generally not required to investigate and consider matters not referenced in the proposal.

DECISION

FN Manufacturing LLC (FNM), of Columbia, South Carolina, protests the Department of the Army's award of a contract to Colt Defense LLC, of Hartford, Connecticut, under request for proposals (RFP) No. W56HZV-12-R-0182, for replacement barrels (heavy variant) for the M4 small arms weapon (carbine). The protester challenges the agency's evaluation of its proposal under the past performance factor.

We deny the protest.

The solicitation contemplated the award of a 3-year, fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract to furnish up to 150,000 M4 carbine replacement barrels, with a guaranteed minimum of 64,000 barrels. Award was to be made on a best value basis, considering three factors--past performance, price,

and small business participation. Past performance was more important than price, and price was significantly more important than small business participation. RFP § M.1.2.

The RFP required offerors to submit information for up to three recent and relevant contracts or delivery orders. RFP § L.5.1. Information provided by the offeror was to include the quantity of barrels supplied, monthly delivery rate, and maximum monthly delivery rate. RFP § L.5.1.2(d). In addition, the RFP required that for each past performance reference, “and based on identification of your most recent and relevant contracts/delivery orders,” offerors were to provide a past performance questionnaire to the appropriate procuring contracting officers. RFP § L.5.1.3. The agency reserved the right to obtain and use past performance information from other sources. RFP § M.5.2.1.

The RFP provided that past performance efforts would be evaluated for recency and relevancy, comparing past contracts and delivery orders to the scope, complexity, and magnitude of the effort required by this solicitation. RFP § M.5.2.1. With respect to magnitude, the RFP stated that the evaluation “may include” government and/or commercial small arm weapon components supply contracts “with maximum monthly deliveries similar to the Replacement Barrel and Front Sight Assembly, and or Bolt Assembly RFP estimated maximum monthly delivery quantities.” *Id.* Although the RFP requested information on monthly delivery rates, the RFP stated the current requirement only as a maximum of 150,000 barrels over three years, *see* RFP § B, CLIN0001, that is, an average of approximately 4,166 barrels per month. The evaluators, however, assumed in evaluating magnitude that the solicited requirement was 4,000 barrels per month. FNM Proposal Evaluation Worksheet at 2; Proposal Evaluation Worksheet at 2. Under the Source Selection Plan (SSP), offerors’ contract efforts were to be rated either very relevant, relevant, somewhat relevant or not relevant. SSP at 21.

[DELETED] offerors, including FNM and Colt, submitted proposals. Both FNM and Colt submitted references for three past performance efforts in their proposals. FNM cited its performance under three delivery orders (BR01, 0002, 0003) under a single contract (W52H09-09-D-0081) for replacement M16 rifle barrels. Order BR01 was for the production of 4,000 M16 barrels, with delivery of 2,000 in December 2010 and 2,000 in January 2011. Although the agency viewed the complexity of the processes used to build the M16 barrels to be similar to that for M4, the delivery rate of 2,000 barrels per month under BR01 was half the 4,000 barrels per month under the solicited requirement, and the effort was evaluated as relevant to the solicited effort, as opposed to very relevant--the highest rating. Order 0002 was for the production of 21,500 M16 barrels at a delivery rate of 2,000 barrels per month beginning in January 2010 and ending in November 2010. Order 0003 was for the production of 4,000 M16 barrels, with delivery of 2,000 in January 2010 and 2,000 in March 2010. Since Orders 0002 and 0003 overlapped to the extent that at least 4,000 barrels per month were required for two months, the agency evaluated both

of them as highly relevant. See FNM's Proposal, Vol. II, Past Performance at 15-21; FNM Proposal Evaluation Worksheet at 2-5.

In order to ensure that the agency evaluated recent and relevant information regarding FNM's past performance manufacturing M16 rifles, the source selection authority (SSA) directed the contract specialist to obtain additional information about FNM's previous deliveries of M16s. Declaration of SSA at ¶ 4. The contract specialist identified an additional set of delivery orders with required quantities that would have exceeded the evaluated quantity of 4,000 barrels a month. Those delivery orders for replacement barrels, issued under a Defense Logistics Agency (DLA) contract, were not identified in the FNM's proposal, and the specialist did not have personal knowledge of whether the protester had made actual delivery of those units. The contract specialist checked three data bases to which he had access, but they did not contain actual delivery information. Declaration of Contract Specialist at 3. Because he could not verify actual delivery under those additional orders, the agency relied on the above past performance references provided by FNM in assigning an overall past performance rating. FNM Proposal Evaluation Worksheet at 2-3. Based on the outstanding performance under each of the three orders referenced in FNM's proposal, and the fact that two of the orders were rated as very relevant with the other relevant, FNM was assigned an overall outstanding rating under the past performance factor. Id. at 6.

Colt likewise cited three contract efforts in its proposal. One reference, contract W52H09-07-D-0425, was a 3-year contract under which Colt produced 227,134 M4/M4A1 carbines, barrels included, with deliveries averaging 6,309 carbines per month and with peak months as high as 12,000 carbines delivered. This contract was evaluated as very relevant. Under a second reference, delivery order W52H09-11-D-0011/0001, Colt delivered 6,000 replacement M4 barrels (heavy variant) over two months. Under Colt's third reference, delivery order DAAE07-03-D-0191, Colt delivered 2,300 replacement M4 barrels (heavy variant) over three months. Although neither of the latter two referenced efforts included deliveries at the 4,000 barrels per month level under the solicited requirement, both overlapped in performance with Colt's very much larger contract W52H09-07-D-0425, resulting in overall monthly deliveries in excess of 4,000 barrels for both and a determination that both were very relevant. (Considering the overlap with W52H09-07-D-0425, for W52H09-11-D-0011/0001 there were deliveries totaling 5,193 barrels under both contracts in July 2011 and 4,300 barrels in August 2011, and for DAAE07-03-D-0191 there were deliveries totaling 7,008 barrels under both contracts in September 2010, 7,200 barrels in October 2010, and 5,600 barrels in November 2010.) Based on the outstanding performance under each of the three orders referenced in Colt's proposal, and the fact that all three of the efforts were rated as very relevant, Colt was assigned an overall outstanding rating under the past performance factor. Colt Proposal Evaluation Worksheet at 4-6; See Colt's Proposal, Vol. II, Past Performance, at 15-20.

Thus, while both Colt and FNM were rated outstanding for past performance, all three of Colt's referenced efforts were evaluated as very relevant, whereas two of FNM's referenced efforts were evaluated as very relevant and one was evaluated as relevant. The SSA concluded that although both offerors offered a "high expectation of successful performance," Colt's references "were more relevant with regard to the magnitude of deliveries," and Colt therefore was "slightly better than FNM in Past Performance, the most important factor." Source Selection Decision at 7. Colt was also evaluated as proposing "slightly better" goals for small business participation. As a result, while Colt's evaluated price of \$13,981,350 was slightly higher than FNM's evaluated price of [DELETED], the SSA concluded that the "slight savings in FNM's lower priced proposal is not worth the slightly lower confidence represented by FNM's Past Performance and its slightly less advantageous Small Business Participation proposal." *Id.* at 7. The SSA therefore determined that Colt's proposal represented the best value to the government. Award was made to Colt, and this protest followed.

FNM Past Performance Evaluation

FNM challenges the agency's evaluation of its past performance, asserting that the Army unreasonably failed to ascertain delivery information for the additional delivery orders--the DLA orders for replacement M16 barrels--identified by the contract specialist but not referenced in FNM's proposal, and that the SSA unreasonably ignored information regarding the protester's past performance.

Our Office has recognized that, in certain limited circumstances, an agency evaluating an offeror's proposal has an obligation (as opposed to the discretion) to consider "outside information" bearing on the offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. This doctrine, however, is not intended to remedy an offeror's failure to include information in its proposal. Paragon Technology Group, Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 6 n.8. Where an offeror is in control of the past performance information contained in its proposal--and not reliant on third parties to submit that information--it exercises its own judgment as to the information that the agency should consider. Under those circumstances, there is "no inequity" in an agency's decision to base its evaluation on an offeror's proposal as written, instead of supplementing the proposal with the agency's understanding of the offeror's performance under other contracts not cited by the offeror. See L-3 Servs., Inc., B-406292, Apr. 2, 2012, 2012 CPD ¶ 170 at 12 n.10.

Here, the RFP required offerors to furnish up to three past performance references of the offeror's choosing "based on identification of your most recent and relevant contracts/delivery orders." RFP § L.5.1.3. As noted above, the agency, on its own

initiative, undertook a review of other delivery orders and contracts performed by FNM. However, the contracting specialist was unsuccessful in his efforts to ascertain whether other very relevant delivery orders had actually been performed, and as a result, those delivery orders were not considered in the agency's past performance evaluation.

FNM asserts that, "[o]nce the Army evaluator identified [very] relevant past performance information and concluded the verification of the information was appropriate, it was unreasonable for the evaluator to fail to contact the very person in the best position to verify the information." Protester's Comments, Mar. 19, 2013 at 1. We disagree. As noted by the protester, our review looks to see whether an agency proceeded in a reasonable and prudent manner when reviewing the manner and conduct of an agency in contacting or choosing not to contact references listed in offerors' proposals. Acepex Mgmt. Corp., B-279173.5, July 22, 1998, 98-2 CPD ¶ 128 at 8. Here, however, the unavailable delivery information concerned delivery orders that were not identified by FNM in its proposal. We see no basis for concluding that the contracting activity here nevertheless was required to take additional steps, such as contacting officials charged with administering the additional delivery orders identified by the contract specialist, to determine the relevance of such delivery orders that were not included in the protester's proposal.

FNM also asserts that the SSA unreasonably failed to consider knowledge of the protester's past performance on a prior, very relevant contract. In this regard, FNM points to debriefing slides issued by the Army Contracting Command with respect to the competition under solicitation W56HZV-10-R-0593, for M4 carbines, which resulted in an April 20, 2012 award. In that competition, the agency rated the protester's past performance as "very relevant" on contract No. W52H09-08-D-0121, under which FNM was to deliver a minimum of 26,275 M16A3 and M16A4 rifles, with an average monthly shipment of 5,764 rifles. Protest, Exh. A, at 30. The source selection evaluation board (SSEB) chairman for solicitation W56HZV-10-R-0593 was also the source selection authority for this procurement.

Once again, however, FNM asks that we shift responsibility to the agency for finding information about another contract that FNM could have identified in its proposal, but did not. For the reasons above, we see no basis for concluding that the agency was required to search for information that FNM did not refer to in its proposal. Moreover, the facts of this case do not suggest that the SSA ignored "personal knowledge" of the contract referenced in the 2012 debriefing slides. Here, the SSA's role in the prior procurement--that of chairman of the SSEB--ended approximately six months before the challenged evaluation. In that intervening six months, the SSA transferred out of the group which conducted the prior procurement, and following that transfer he was involved primarily in vehicle, not small arms, procurement. Declaration of SSA at ¶ 3. The SSA states, and FNM has not refuted, that "I had no specific knowledge or recollection of FNM's past performance under any other contract." Id. at ¶¶ 4, 7.

In summary, the record here shows that Colt's proposal cited a 3-year contract under which Colt had produced 227,134 M4/M4A1 carbines, with deliveries averaging 6,309 carbines per month and with peak months as high as 12,000 carbines delivered. FNM has failed to cite any relevant experience with such sustained, high delivery rates. In our view, the agency reasonably evaluated Colt's proposed past performance as superior when the agency viewed Colt's proposed past performance references as "more relevant with regard to the magnitude of deliveries" and thus providing slightly greater confidence of successful contract performance. Source Selection Decision at 7.

Best Value Determination

The protester also challenges the agency's best value determination. In this regard, source selection decisions must be documented, and include the rationale and any business judgments and tradeoffs made or relied upon by the SSA. Federal Acquisition Regulation (FAR) § 15.308. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision. Id.; Terex Gov't Programs, B-404946.3, Sept. 7, 2011, 2011 CPD ¶ 176 at 3. To the extent that a protester argues that the source selection decision should have evidenced a more precise determination or quantification as to whether the technical advantages associated with a proposal warranted a certain price premium, we note that such a degree of precision or quantification is not required. See Highmark Medicare Servs., Inc.; Cahaba Gov't Benefit Admins., LLC; Nat'l Gov't Servs., Inc., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 22. Rather, the documentation need only be sufficient to establish that the SSA was aware of and considered the strengths and weaknesses of competing proposals, the proposals' ratings under the RFP's evaluation factors and overall, and the proposals' prices. New Orleans Support Servs., LLC, B-404914, June 21, 2011, 2011 CPD ¶ 146 at 8.

Here, the source selection decision was unobjectionable. In making a trade-off between the proposals, the SSA determined that Colt's "slightly better" past performance, the most important evaluation factor, and "slightly better" small business participation percentages outweighs FNM's slight price advantage of approximately [DELETED] percent. Source Selection Decision at 7. Although FNM disagrees with that judgment, it has not shown it to be inadequately documented or otherwise unreasonable.

The protest is denied.

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General Counsel