Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Venture Productions

File: B-280872.2; B-280872.3

Date: December 9, 1998

Andrew J. Mohr, Esq., and John J. O'Brien, Esq., Cohen Mohr, for the protester.
Jed. L. Babbin, Esq., and Sharon L. Babbin, Esq., Tighe, Patton, Tabackman & Babbin, for Film House, Inc., an intervenor.
Mary E. Clark, Esq., Defense Logistics Agency, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency assessment of past performance is denied where the record shows that the evaluators performed a reasonable assessment of proposals in accordance with the solicitation's evaluation scheme, and did not deviate from the solicitation's scheme by using a past performance rating plan different from the rating plan used for the other evaluation factors.

DECISION

Venture Productions protests the award of a contract to Film House, Inc. by the Television-Audio Support Activity, Defense Logistics Agency, pursuant to request for proposals (RFP) No. MDA113-97-R-0018, issued to purchase creative development, scripting, and production services associated with brief informational radio and television segments, known as "spot announcements," for use by the Armed Forces Radio and Television Service (AFRTS). Venture argues that the agency's evaluation of past performance was unreasonable.

We deny the protest.

The RFP, issued on February 5, 1998, anticipates award of a 1-year indefinite-delivery, indefinite-quantity contract with four 1-year option periods, to the offeror whose proposal represents the best value to the government. The RFP sets forth five evaluation factors: (1) organizational experience; (2) organizational past performance; (3) ability as demonstrated by samples of recent spot announcements; (4) ability as demonstrated by a creative proposal for two mock spot announcements; and (5) price proposal for the mock spot announcements. RFP, amend. 0001, § M.2.

The first four factors are approximately equal in importance, and collectively are significantly more important than the price factor. Id. at § M.3. For each year of the contract, the RFP anticipates ordering a minimum of $3.5 million and a maximum of $5 million of spot announcements. RFP § B.

In evaluating proposals, the agency used a source selection plan that assigned 200 points to each of the four non-price evaluation factors. Although the total number of points assigned to each factor was the same, the agency used two different assessment schemes for assigning the points.

For all of the evaluation factors except organizational past performance (including the price proposal factor), the 200 available points were allocated equally to the two subfactors under each factor.[1] Under each subfactor, the evaluators assigned adjectival ratings and point scores in five-point increments as set forth below:

Rating	Point Range
Excellent	85/90/95/100 points
Very Good	65/70/75/80 points
Good	45/50/55/60 points
Fair	25/30/35/40 points
Poor	0/5/10/15/20 points

For the organizational past performance factor, however, no subfactors were evaluated, and the 200 available points were allocated as follows:

Rating	Points
Excellent	200 points
Good	150 points
Inconclusive	100 points
Marginal	50 points
Poor	0 points

Evaluation Plan at 5-7.

At the conclusion of the evaluation, the proposals of Venture and Film House were the most highly rated. The results of their evaluations[2] are shown below:

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[1]The evaluation subfactors are not set forth here as they are not relevant to this decision.

[2]The information here is compiled from the Contracting Officer's Report, undated, at 7-8, where it was presented in a slightly different format.

EVALUATION FACTOR	VENTURE	FILM HOUSE
Organizational Experience	Excellent 200 points	Excellent 197.5 points
Organizational Past Performance	Good 150 points	Excellent 200 points
Ability as Demonstrated by Samples of Recent Spot Announcements	Excellent 171.25 points	Excellent 176.25 points
Ability as Demonstrated by Two Mock Spot Announcements	Excellent 178.75 points	Excellent 173.75 points
Price Proposal for Mock Spot Announcements	Excellent 200 points	Excellent 185 points
TOTAL SCORE	**Excellent 900 points**	**Excellent 932.5 points**

Based on these results, the agency awarded to Film House after concluding that its proposal offered the best value to the government. This protest followed.

Venture's challenge to the evaluation here focuses entirely on the agency's assessment of past performance[3]--the only area where Venture, the incumbent for these services, did not receive a rating of excellent. Venture argues that the rating plan used to rate past performance deviated from the evaluation scheme by scoring this factor differently from the other evaluation factors; that the evaluation wrongly elevated criticisms of its past performance as the incumbent by various AFRTS users over the more favorable comments of its other past performance references; and that the agency improperly allowed only one member of the evaluation team to prepare the past performance rating until immediately prior to award, when the remaining evaluators were asked to review and verify the earlier rating.

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[3]Initially, and in two supplemental protests, Venture raised other issues which were subsequently withdrawn or effectively abandoned--i.e., Venture expressly withdrew its allegations of evaluator bias, and elected not to reply in its comments to the agency's detailed response to Venture's claims that the agency held discussions with only one offeror, and violated government-wide guidance promulgated by the Office of Federal Procurement Policy. Accordingly, Venture has provided our Office with no basis to reject the agency's explanations of its actions in these areas. Appalachian Council, Inc., B-256179, May 20, 1994, 94-1 CPD ¶ 319 at 8 n.8.

Venture's contention that the source selection plan used here violated the evaluation scheme ignores the distinction between an evaluation scheme included in the RFP, and a source selection plan provided to evaluators as a guideline. As between these two documents, it is the RFP--and the evaluation scheme set forth therein--that forms the compact between the agency and the offerors about how proposals will be evaluated. Loral Aeronutronic, B-259857.2, B-259858.2, July 5, 1995, 95-2 CPD ¶ 213 at 9. Source selection plans are internal agency instructions and do not give rights to outside parties. Id. at 9-10. Instead, when a protester challenges an evaluation of its past performance and experience, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and with applicable statutes and regulations. IGIT, Inc., B-275299.2, June 23, 1997, 97-2 CPD ¶ 7 at 5; ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7.

The RFP here advised offerors that each of the five evaluation factors would be approximately equal in importance. The record shows that the organizational past performance evaluation factor, like each of the other evaluation factors, was worth 200 points. Despite the protester's arguments to the contrary, there is no evidence that this factor was weighted more heavily than any other factor.

The protester also argues that the stated evaluation scheme was violated by the agency's decision to use a separate rating scale for the organizational past performance factor than was used for the other evaluation factors. The protester argues that since there are fewer degrees of gradation in the rating scale for this factor, slight variations in an offeror's past performance were translated into large point differences; however, the protester offers no precedent to support its view that this kind of evaluation approach is improper, or results in an unreasonable result. In fact, we have upheld an agency's use of a different scheme for assessing past performance than was used for assessing other evaluation factors. See Pan Am World Servs., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ 283 at 3-4 (complaint that agency failed to assign a color rating to the past performance evaluation, as it did in other areas of the evaluation, was denied where the agency used a different method for assessing past performance but the method nonetheless reached a rational result). As set forth below, our review finds nothing unreasonable or irrational about the agency's rating of Venture's proposal in the area of past performance.

The record here--and in particular, the past performance survey sheets completed by Venture's references, including AFRTS users--shows that, other than AFRTS, all of Venture's references gave very favorable reviews of Venture's past performance. However, our review of the four past performance survey sheets completed by AFRTS users of Venture's services under the prior contract reveal significant concerns about Venture's past performance as the incumbent here. Specifically, the evaluation summary report explains that the AFRTS respondents identified [deleted]. Evaluation Summary, June 12, 1998, at 2. These responses do not

support Venture's claim that it should have received an "excellent" rating in the area of past performance.[4]

While Venture argues that the agency wrongly treated the past performance assessments prepared by several AFRTS users as separate references, even though the evaluation panel was directed not to do so by the contracting officer, we need not reach the issue of whether the AFRTS assessments were considered collectively or separately. Regardless of whether the agency considered these assessments collectively as the response of one reference--AFRTS--or whether the agency considered each of the AFRTS users as a separate reference and balanced their assessments against those of Venture's other references, we conclude that the rating was reasonable. In fact, it is hard to imagine information more germane to the agency's assessment of Venture's past performance than Venture's problems performing these same services as the incumbent; based on our review of the record, we find the rating of "good" consistent with the overall feedback received and consistent with the stated evaluation scheme. IGIT, Inc., supra, at 6.

Finally, we turn to Venture's complaint that only one member of the evaluation panel prepared the past performance rating, and the entire evaluation panel only verified the assessment immediately prior to award. While the facts of Venture's allegation are correct, we fail to see how this approach was improper, or how Venture was harmed in this regard. All of the evaluation team members were eventually given an opportunity to verify the assessment, and to make any changes they thought appropriate, and eventually, all of the evaluation panel members signed a memorandum agreeing to the past performance rating awarded earlier. Memorandum from the Evaluation Panel to the Contracting Office (Aug. 17, 1998). We see nothing unreasonable or improper about the agency's method of preparing this assessment.

The protest is denied.

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[4]While Venture also contends that the AFRTS responses were unreasonable and should be discounted, we disagree. These responses are consistent with concerns set forth in contemporaneous materials discussed with Venture in Management Review Conferences in both 1996 and 1997. Venture was advised of these concerns at the time, and was permitted to respond. These materials are set forth in the Agency Report at Tab 11, and include Department of Defense Letters to Venture dated Sept. 3, 1997, and June 6, 1996, and Venture's responses thereto. These materials lead us to conclude that the AFRTS assessments reasonably relate to the agency's documented experience with Venture.