



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: NAPA Supply of Grand Forks, Inc.

File: B-280996.2

Date: May 13, 1999

Orlin W. Backes, Esq., and Jon W. Backes, Esq., McGee, Hankla, Backes & Dobrovolny, for the protester.

Joel S. Rubinstein, Esq., and Andrew N. Cook, Esq., Bell, Boyd & Lloyd, for Jay Automotive Specialties, Inc., an intervenor.

John E. Lariccia, Esq., Lt. Col. Gregory B. Porter, and Douglas P. Goetz, Esq., Department of the Air Force, 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 solicitation provided that past performance was significantly more important than price, but that the award would not necessarily be made to the offeror whose proposal received the highest past performance rating, agency reasonably selected a lower priced, lower rated proposal for award after determining that the price premium associated with the protester's higher rated proposal was not justified in light of the awardee's minimal risk of nonperformance.

DECISION

NAPA Supply of Grand Forks, Inc. protests the award of a contract to Jay Automotive Specialties, Inc. under request for proposals (RFP) No. F32604-98-R0004, issued by the Department of the Air Force for the furnishing of commercial vehicle and equipment-related parts, automotive chemicals, corrosion control materials, upholstery material, and accessories for the vehicle fleet and miscellaneous equipment at Minot Air Force Base, North Dakota. NAPA challenges the evaluation of Jay's past performance and the agency's past performance/price tradeoff resulting in the award to an offeror whose proposal was lower rated and lower priced.

We deny the protest.

An amended RFP was issued on an unrestricted basis on December 4, 1998.¹ RFP amend. 2 (hereinafter “RFP”), at cover sheet. The RFP provided that the award would be made to the responsible offeror whose proposal was most advantageous to the government, past performance and price considered. RFP at 56. The RFP included the following two past performance subfactors: (1) current/similar previous jobs (quality of service, timeliness of performance, cost control, and customer satisfaction) and (2) business relations (source of supply references and financial references). *Id.* at 56-58. The basis for the agency’s past performance evaluations would be customer satisfaction, supplier, and financial reference surveys completed for each offeror. *Id.* at 57-58. Color/adjectival ratings, which had corresponding narrative descriptions, would be assigned to the past performance subfactors (e.g., blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable), and an overall past performance color/adjectival rating would be assigned to an offeror’s proposal. *Id.* In determining the most advantageous proposal, the RFP stated that past performance would be considered significantly more important than price. *Id.* at 60. Finally, the RFP advised that the offeror with the lowest priced proposal or the offeror whose proposal received the highest past performance rating would not necessarily be awarded the contract. *Id.* at 59.

Five offerors, including NAPA (the incumbent contractor) and Jay, submitted proposals by the December 21 closing time. As relevant here, the past performance ratings for the proposals of NAPA and Jay were as follows:

	NAPA	Jay
Current/Similar Previous Jobs	Blue/Exceptional	Green/Acceptable
Business Relations	Green/Acceptable	Blue/Exceptional
OVERALL	Blue/Exceptional	Green/Acceptable

NAPA’s total price was approximately 2.4 percent higher than Jay’s total price. Agency Report, Tab 10, Final Proposal Analysis Report, at 3rd-5th unnumbered pages.

The past performance ratings were supported by narratives of an offeror’s strengths and weaknesses based on information reported in customer satisfaction, supplier, and financial reference surveys. Regarding NAPA, the survey results reflected no

¹ The amended solicitation package was issued as part of corrective action taken by the agency in response to an earlier protest filed by NAPA. To the extent NAPA believes that in taking corrective action the agency did not adequately amend the RFP’s evaluation scheme, this matter, constituting an alleged solicitation impropriety raised after award, instead of prior to the closing time for receipt of proposals under the amended RFP, is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1998).

weaknesses for the past performance subfactor of current/similar previous jobs. For this subfactor, the customer satisfaction surveys noted specific strengths for NAPA, including that the firm was knowledgeable, professional, and courteous, and that the quality of NAPA's service exceeded expectations; that NAPA timely performed in an outstanding manner, including delivery of ordered parts and maintenance of a backordered parts log; that NAPA exceeded all expectations in the area of cost control; and that NAPA performed in an overall outstanding manner. For the past performance subfactor of business relations, the supplier and financial references reported that NAPA pays within 30 days of required payment dates; that NAPA has a history of longtime good standing relationships with its suppliers; and that NAPA is an excellent, very professional bank customer. The supplier references did not indicate that NAPA took advantage of early payment discounts. Id. at 7th unnumbered page.

Regarding Jay, for the past performance subfactor of current/similar previous jobs, the customer satisfaction surveys reflected that the firm continually strove to improve its quality of service; that its performance, with minor quality problems not affecting the achievement of contract requirements, met or exceeded all cost control expectations; and that the firm never failed to meet or exceed contract terms and conditions. For this subfactor, one reference noted that Jay had a warranty documentation problem and an overcharge/undercharge problem for parts under \$100.00; however, the reference reported that both problems were corrected. Another reference reported that while Jay did not meet estimated delivery dates, the firm continued to make improvements in this area. For the past performance subfactor of business relations, the supplier and financial references reported no weaknesses for Jay. The supplier references reported that Jay takes advantage of discounts and pays within 30 days of required payments dates, and the financial reference reported that the firm handles its bank account in a professional manner. Id. at 6th unnumbered page.

The source selection authority (SSA) determined that the lower rated, lower priced proposal submitted by Jay was most advantageous to the government, considering past performance and price. The SSA noted that Jay's proposal was acceptable in terms of past performance based on the firm's depth of experience, its cost control measures, and its business relationships with suppliers. The SSA pointed out that Jay had an acceptable performance record on jobs of the same magnitude as contemplated by this RFP. The SSA noted that Jay was rated acceptable (not exceptional) for quality of service and timeliness of performance because of the firm's problems with warranty documentation and with meeting estimated delivery dates; however, the SSA viewed these problems as minor, pointing out that these items were corrected by Jay and that Jay continues to make improvements in these areas. The SSA believed Jay's management demonstrated its ability to identify and correct problems, thereby lowering the performance risk to the government if Jay were awarded the contract. Agency Report, Tab 12, Source Selection Decision Document. In making his past performance/price tradeoff, the SSA recognized the price differential between Jay's lower rated, lower priced proposal and NAPA's higher

rated, higher priced proposal. The SSA determined that the approximate 2.4 percent price premium associated with NAPA's higher rated proposal was not justified in light of Jay's minimal risk of nonperformance. Id.

NAPA challenges the evaluation of Jay's past performance for the business relations subfactor, for which Jay's proposal received a blue/exceptional rating. NAPA contends that in order to have reasonably evaluated Jay's proposal for this subfactor, the agency should have requested a Dun & Bradstreet (D&B) report for Jay, which NAPA believes would have independently reflected various credit and financial difficulties experienced by Jay.

In reviewing protests against the propriety of an agency's evaluation of proposals, we will examine an agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. Dayron, B-265875.2, Jan. 11, 1996, 96-1 CPD ¶ 10 at 3.

The short answer to NAPA's complaint concerning the evaluation of Jay's past performance under the business relations subfactor is that the RFP did not require the agency to request a D&B report for purposes of evaluating any aspect of an offeror's past performance.² While the agency was aware, based on NAPA's original protest, that NAPA had alleged that Jay experienced credit and financial difficulties in the past,³ in evaluating Jay's past performance, the agency reasonably focused on the fact that Jay has been successfully performing contracts of the type contemplated by this RFP. In accordance with the terms of the RFP, the agency's past performance evaluations were based on customer satisfaction, supplier, and financial reference surveys completed for each offeror. Except for one customer satisfaction survey, in which a contracting official declined, for reasons of fairness, to complete the survey because of having had "serious problems" with Jay in the past, Agency Report, Tab 6, Past Performance Survey, at 12th unnumbered page, all of the other customer satisfaction, supplier, and financial reference surveys, as described above, reported favorably on Jay's past performance. NAPA neither acknowledges nor challenges the

² Under the terms of the RFP, an offeror was required to provide a number assigned to it by D&B, to be used by the agency to verify that the offeror was registered in a Department of Defense contractor database; the failure of the offeror to be registered would make the firm ineligible for award. RFP at 46. There was no requirement that the agency obtain a D&B report for purposes of evaluating an offeror's past performance.

³ For example, NAPA points to two payroll-type liens against Jay. However, the amounts involved appear to be de minimis and, in any event, were promptly paid when the firm became aware of them. Intervenor Comments at 2. NAPA also alleges that Jay previously miscertified its size status. The alleged miscertification occurred 10 years ago, id. at 3, and has no effect on this unrestricted procurement.

information reported in these surveys. On this record, we conclude that the agency reasonably evaluated Jay's proposal for past performance.⁴

NAPA also challenges the SSA's past performance/price tradeoff which resulted in an award to Jay, an offeror with a lower rated, lower priced proposal. NAPA contends that the approximate 2.4 percent price premium associated with its proposal is justified in light of the overall blue/exceptional rating assigned to its proposal for past performance.

Source selection officials in a negotiated procurement have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Creative Apparel Assocs., B-275139, Jan. 24, 1997, 97-1 CPD ¶ 65 at 6. Even where price is the least important evaluation factor, an agency may award to an offeror with a lower priced, lower scored proposal if it determines that the price premium involved in awarding to an offeror with a higher rated, higher priced proposal is not justified. Id.

Here, in this acquisition for commercial vehicle and equipment-related parts and other items, the RFP stated that in determining the proposal most advantageous to the government, past performance would be considered significantly more important than price. However, the RFP also advised that the offeror whose proposal received the highest past performance rating would not necessarily be awarded the contract. The SSA determined that the lower rated, lower priced proposal submitted by Jay was most advantageous to the government, considering both past performance and price. In making his tradeoff decision, the SSA recognized the price differential between Jay's proposal and NAPA's higher rated, higher priced proposal. The SSA determined that the price premium associated with NAPA's higher rated proposal was not justified in light of Jay's minimal risk of nonperformance. More specifically, considering the results of the past performance evaluations, which were based on customer satisfaction, supplier, and financial reference surveys, the SSA concluded that Jay had acceptable past performance based on the firm's experience and performance in jobs of the same magnitude as contemplated by this RFP, its cost control measures, and its business relationships with suppliers. The SSA viewed as minor Jay's prior problems in the areas of warranty documentation and failure to

⁴ NAPA complains that its proposal received a green/acceptable rating for the past performance subfactor of business relations because its supplier references did not mention in their completed surveys that NAPA took advantage of early payment discounts. However, even if its proposal should have received a blue/exceptional rating for this subfactor, NAPA was not prejudiced because its overall rating for past performance would have remained blue/exceptional.

meet estimated delivery dates because Jay continues to make improvements in these areas, thereby demonstrating the firm's ability to identify and correct problems. For all of these reasons, the SSA believed the risk of nonperformance to the government if the contract were awarded to Jay was minimal. Accordingly, on this record, which NAPA does not meaningfully challenge, and consistent with the terms of the RFP, we have no basis to question the reasonableness of the SSA's selection of Jay's proposal as most advantageous to the government.

The protest is denied.

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of the United States