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Decision

Matter of: McGoldrick Construction Services Corporation

File: B-310340.3; B-310340.4

Date: May 16, 2008

Douglas L. Patin, Esq., and Jeremy Becker-Welts, Esq., Bradley Arant, for the protester.

Phillipa L. Anderson, Esq., Stacey North Willis, Esq., and Charlna Quarles, Esq., Department of Veterans Affairs, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation of proposals and award decision is denied where the record shows they were reasonable and consistent with the terms of the solicitation and applicable procurement rules.

DECISION

McGoldrick Construction Services Corporation protests the award of a contract to Strategic Perspectives Development, LLC (SPD) under request for proposals (RFP) No. VA-101-07-RP-0030, issued by the Department of Veterans Affairs (VA) for construction services at the VA Medical Center in San Antonio, Texas. McGoldrick contends that the evaluation of SPD's proposal and the agency's selection of that firm for award were unreasonable and inconsistent with the solicitation's terms.

We deny the protest.

The RFP, issued as a service-disabled veteran-owned small business set-aside, sought proposals for the award of a fixed-price contract for construction services, including architectural, mechanical, electrical, utility, fire alarm, and fire protection systems work, and asbestos and lead abatement services. RFP at 1. Offerors were advised that the evaluation and award selection would be "made on the basis of both cost and technical considerations most advantageous to the Government," that the technical evaluation factors combined (construction management, past performance, and schedule, listed in descending order of importance) were "approximately equal in importance to cost or price," and that "if the technical proposals are essentially

equal, the award will be made on the basis of lowest cost.” Id. at 2-3. Cost/price was to be evaluated “on the basis of its realism and acceptability to the Government.” Id.

For the construction management evaluation factor, offerors were to describe project personnel experience and technical/management approach (including a list of all proposed major subcontractors). Id. at 5-6. The past performance evaluation factor included a subfactor for corporate project experience (regarding recent projects of similar size and scope) and a less important subfactor for client satisfaction; for the evaluation of corporate project experience, offerors were to describe their “experience as a prime contractor, subcontractor or other,” with prime contractor experience being most important. Id. at 3, 6-7. For the final technical evaluation factor, schedule, the offeror’s proposed schedule was to be evaluated for realism and reasonableness. Id. at 3.

Following a successful size status protest, the agency terminated an initial award it had made under the RFP and reevaluated the three remaining technically acceptable proposals to make a new source selection. SPD submitted the lowest-priced proposal (at \$2,958,092); the firm’s technical proposal received an evaluation score of 58.3 points (out of a possible 100 points). McGoldrick submitted the highest-priced proposal (at \$3,917,000); its technical proposal received a score of 78 points. A third offeror’s proposal was rated higher for technical merit than SPD’s proposal, but lower than McGoldrick’s; that firm proposed a price higher than SPD’s and lower than McGoldrick’s.¹ Having determined that the payment of the price premiums involved in an award to either of the two higher-rated proposals was not warranted in light of the acceptable level of technical competence offered by SPD’s substantially lower-priced proposal, the agency concluded that SPD’s proposal presented the best value to the agency and made an award to the firm. This protest followed.

The protester challenges the evaluation of the awardee’s proposal under the corporate project experience subfactor of the past performance factor, arguing that, as a new business, SPD could not have shown corporate experience performing similar work.² The protester also challenges the propriety of the agency’s

¹ A separate protest of the award filed by the third firm was resolved by a separate decision. See Angel Menendez Envtl. Servs., Inc., B-310340.2, Apr. 11, 2008, 2008 CPD ¶ 73.

² In its supplemental protest, McGoldrick raised additional challenges that lack sufficient support to constitute valid bases of protest, see Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4, and fail to show a reasonable possibility of competitive prejudice to the firm, see McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996), and thus are not appropriate for further review. For instance, while the protester generally questioned certain handwritten

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determination that the price premium associated with McGoldrick's higher-priced, higher-rated proposal was not warranted in light of the technical capability demonstrated by Strategic's substantially lower-priced proposal.

In response to the protester's challenge to the evaluation of SPD's past performance, the agency reports that SPD's proposal was credited under the past performance factor's subfactor for corporate project experience for the relevant experience of its major subcontractor that recently successfully performed substantially similar work at another VA medical facility. Additionally, in response to McGoldrick's challenge to the award having been made to a firm that submitted a lower-rated, lower-priced proposal, the agency reports that the three technically acceptable proposals had varying strengths, with limited, if any, weaknesses, and demonstrated the capability to successfully perform the work required here. The agency further reports that in finding no significant advantages in McGoldrick's higher-rated proposal that would warrant payment of the protester's substantially higher price, the agency made award to SPD as the overall best value offeror.

In reviewing a protest against an agency's evaluation of proposals and award, including a tradeoff determination, we examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation's evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. Generally, in a negotiated procurement, an agency may properly select a lower-rated, lower-priced proposal where it reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. Bella Vista Landscaping, Inc., B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4. A protester's mere disagreement with the agency's determinations does not establish that the evaluation or source selection

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adjustments made to the point scores, the agency reported that they were merely mathematical adjustments to correct the weight assigned to several evaluation subfactors and did not change the substance of the underlying evaluation. McGoldrick provides no persuasive rebuttal to the agency's explanation of this essentially administrative task and fails to show that it has been prejudiced in any way by the adjustment. Similarly, McGoldrick argued that assigning the maximum 100 points to the lowest-priced proposal placed too much emphasis on the price factor for award (since only 78, not 100, points were given to the highest-rated (McGoldrick's) technical proposal). The protester has failed to show any resulting prejudice, however, since even if its technical proposal had received 100 points, that would require a proportionate rise in point scores for the other highly-rated but lower-priced proposals, including SPD's. It is clear that the differential among the three proposals' overall (technical and price) point scores would remain virtually unchanged, providing no reasonable basis to question the award selection.

was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4. Our review of the record here confirms the reasonableness of the agency's evaluation of the proposals and its tradeoff determination.

While McGoldrick contends that the VA unreasonably considered SPD's subcontractor's experience, it is well-established that in evaluating the past performance of a new business, an agency may consider the experience of the firm's proposed subcontractors, unless it is prohibited from doing so by the terms of the solicitation, since such experience could be reasonably predictive of the offeror's performance under the contract. See Cleveland Telecomms. Corp., B-257294, Sept. 19, 1994, 94-2 CPD ¶ 105; Commercial Bldg. Serv., Inc., B-237865.2, B-237865.3, May 16, 1990, 90-1 CPD ¶ 473 at 4. To the extent the protester contends that the agency failed to confirm the subcontractor's role in performance of the work and whether that firm's experience is relevant to the RFP's requirements, the agency reports, and our review of the record confirms, that the awardee's major subcontractor is an experienced construction firm with relevant and recent successful performance of substantially similar renovation work at another VA medical facility and will have substantial responsibility for the performance of the work here. Under these circumstances, the agency reasonably considered the subcontractor's experience in evaluating the awardee's past performance.³

To the extent McGoldrick argues that the agency's award to SPD on the basis of its lower-rated, lower-priced proposal violates the RFP's terms, which McGoldrick interprets as permitting award on that basis only if the proposals were essentially equal in technical merit, the protester's position is based on an unreasonable interpretation of the RFP, since, as stated above, the RFP clearly permitted a tradeoff between equally weighted technical and price factors. See Angel Menendez Env'tl. Servs., Inc., *supra*, at 3-4. The agency reports, and our review of the record confirms, that the contracting officer, as the source selection authority, considered

³ To the extent McGoldrick objects to the agency's assertion that "SPD did not receive an advantage over other offerors even though it had no corporate experience of its own," Comments, Mar. 24, 2008, at 5, the record shows that the agency in fact did give higher scores where the corporate experience pertained to the offeror itself (as in McGoldrick's case), rather than its proposed subcontractors (as in SPD's case). Moreover, in light of the highly favorable past performance information considered for both offerors, we see no support in the record for McGoldrick's speculation that its past performance was, or should have been, considered, to be of higher quality than SPD's; in this regard, McGoldrick itself has neither identified any aspect of its own past performance for which it believes it did not receive appropriate evaluation credit, nor provided any basis to question the favorable past performance information available for SPD's major subcontractor (as well as SPD's key personnel's relevant past experience) for which SPD earned a favorable past performance score.

the evaluation narratives and worksheets and found no significant advantages or disadvantages between the proposals to justify the payment of the price premium associated with McGoldrick's proposal (\$1 million), given the level of technical competence available at SPD's substantially lower price. McGoldrick simply has not provided any persuasive basis to question the reasonableness of the agency's award to SPD on the basis of its lower-rated, substantially lower-priced proposal.

The protest is denied.

Gary L. Kepplinger
General Counsel