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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: Smith Building Group, Inc.

File: B-402720

Date: June 18, 2010

Andrew J. Kilpatrick Jr., Esq., Gore, Kilpatrick & Dambrino, PLLC, for the protester. Victoria H. Kauffman, Esq., and Michael D. Harbart, Esq., National Aeronautics and Space Administration, for the agency.

Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of awardee's proposal under the past performance factor is denied where the record shows the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Smith Building Group, Inc., of Mobile, Alabama, protests the award of a contract to SDVE, LLC, of Andalusia, Alabama, under request for proposals (RFP) No. NNS10315511R, issued by the National Aeronautics and Space Administration (NASA) for building renovation services at Stennis Space Center in Mississippi. The protester argues that the agency's evaluation of SDVE's proposal under the past performance factor was not in accordance with the solicitation.

We deny the protest.

BACKGROUND

The RFP was issued on November 10, 2009, as a total service-disabled veteran-owned small business set-aside, and contemplated the award of a fixed-price contract for the renovation of the second floor of Building 4995 at the Stennis Space Center. RFP at 1, 3. Under the RFP, proposals were to be evaluated using a two-step process. Under step one, proposals were to be evaluated for acceptability based on a determination of whether offerors provided all required information. RFP at 50. Under step two, all acceptable proposals were to be evaluated for best value on the basis of the following evaluation factors: past performance, relevant experience, and price. RFP at 50-51. The past performance and relevant experience factors were

stated to be of equal importance and when combined were significantly more important than the price factor. RFP at 50. Offerors were advised that award of the contract could be made without discussions. RFP at 51.

With respect to the past performance factor, the evaluation of which is challenged here, the RFP instructed offerors to provide information concerning relevant past contracts performed within the past 3 years, to include contract number, value, agency name, point of contact, and contract status (i.e., current, terminated, or successfully completed). RFP at 49. The RFP specifically required offerors to

include in their proposal, the written consent of its proposed significant subcontractors to allow the Government to discuss the subcontractor's past performance evaluation with the Offeror during the discussion phase of this procurement. This information **must be** provided with your offer, no later than the proposal due date.

RFP at 52 (emphasis in original). The RFP stated that an offeror's past performance on similar projects would be evaluated to determine the quality of work previously provided and to assess the relative capability of the offeror to effectively accomplish the current requirements. RFP at 51. The RFP advised that the evaluation team would assign adjectival ratings of outstanding, above average, neutral, satisfactory, marginal, or unsatisfactory to proposals to reflect the team's assessment of each offeror's past performance.

With respect to the relevant experience factor, the RFP defined relevant experience as the "accomplishment of work that is comparable or related to the technical work required by this solicitation, and is of similar scope, size and complexity." RFP at 54. The RFP further advised that the evaluation team would assign a risk factor of low, moderate, or high risk to proposals to reflect the team's assessment of each offeror's relevant experience. Id. The RFP also stated that price would be evaluated in accordance with Federal Acquisition Regulation (FAR) § 15.404-1(b).

The agency received 19 proposals in response to the RFP, including proposals from Smith and SDVE. For past performance, SDVE identified three references for contracts that it performed, and the agency was able to reach two of the three references. SDVE did not identify any significant subcontractors and consequently did not provide any consent forms. Each of the references contacted by the agency rated SDVE as having outstanding past performance. Contracting Officer's Statement at 4; Agency Report (AR), Tab 13, Past Performance Report, at 283-84.

In contrast, Smith identified one contract that it performed. Smith also identified eight significant subcontractors and provided past performance references for seven of them. References rated Smith performance as above average, and rated its subcontractors' performance as mostly above average, with two outstanding and one

satisfactory reference. Contracting Officer's Statement at 5; AR, Tab 13, Past Performance Report, at 284.

The evaluation team considered the information provided by past performance references, as well as other aspects of offerors' proposals, and reached the following conclusions with respect to the protester's and awardee's proposals:

COMPANY	PAST PERFORMANCE	RELEVANT EXPERIENCE	PRICE
Smith	Above Average	Low Risk	\$1,039,380.00
SDVE	Outstanding	Low Risk	\$1,056,630.25

AR, Tab 9, Abstract of Offers, at 275; Tab 10, Past Performance Report, at 279; Tab 11, Relevant Experience Report, at 290.

As reflected in the source selection decision, both proposals were assigned a low risk rating under the relevant experience factor, because both offerors or their subcontractors possessed experience that was similar in size, scope, and complexity to the project here. AR, Tab 14, Source Selection Decision, at 311-12.

For the past performance factor, the evaluation team assigned SDVE's proposal an outstanding rating, based solely on the evaluation of SDVE's performance. As noted by the agency, the references indicated that "SDVE was an outstanding company" that was, among other things, "extremely conscious of safety issues." The agency noted that the customers were "very happy" with SDVE's performance and that all sources contacted said they would do business with SDVE in the future. AR, Tab 14, Source Selection Decision, at 308.

Smith's proposal received an above average rating under the past performance factor, based on the evaluation of Smith's and its subcontractors' performance. Although the agency recognized that a few references found performance to be "exceptional," the evaluators noted that a majority of the references rated Smith's or its subcontractors' performance as above average. The agency also noted the existence of "minor safety incidents," and that one reference indicated that while one of Smith's subcontractors delivered a quality product, the reference had to "stay on this subcontractor throughout performance" to ensure that the company complied with safety standards. Id.

Based on this analysis, the contracting officer, who was the source selection authority for this procurement, determined that SDVE's proposal represented the best value to the government. The contracting officer specifically noted that SDVE submitted one of the highest-rated proposals and that its proposal was the third lowest in price. The contracting officer recognized that while Smith submitted the lowest-priced offer of all the offerors, its past performance record indicated that at times it "had to be guided and provided with additional information to help the

contractor along in doing their job,” and some minor safety issues were identified. Id. at 12. Furthermore, Smith’s offer was only \$57,438.35 less than SDVE’s higher-rated offer. The contracting officer concluded that there were not “significant savings” to warrant award to Smith and, despite Smith’s lower proposed price, SDVE’s proposal offered the best value to the agency because of the firm’s superior past performance. Id. at 12-13.

The contract was awarded to SDVE on April 10, 2010. After Smith received a debriefing, it protested to our Office.

DISCUSSION

Smith challenges the agency’s evaluation of SDVE’s past performance on the basis that SDVE failed to provide information related to SDVE’s subcontractors, which Smith contends was required by the RFP. Smith contends that the contracting officer should have questioned SDVE regarding SDVE’s failure to list any significant subcontractors, or conducted an investigation into whether SDVE had the capacity to “self perform” the contract. Smith also argues that it was prejudiced because its compliance with the RFP requirement to provide past performance information for any significant subcontractor resulted in it receiving a lower past performance rating.

The evaluation of proposals, including past performance, is a matter within the discretion of the contracting agency. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. In reviewing an agency’s evaluation, we will not reevaluate proposals; instead, we will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and applicable procurement laws and regulations. MAR, Inc., B-246889, Apr. 14, 1992 92-1 CPD ¶ 367 at 4. An offeror’s mere disagreement with the agency’s evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

Based on the record here, we find the evaluation of SDVE’s proposal to be reasonable and consistent with the RFP. As stated above, the RFP only required offerors to provide written consent forms from significant subcontractors; it did not require offerors to use subcontractors or to provide consent forms for subcontractors whose performance was not considered significant by the offeror. Given that the RFP did not require the use of subcontractors and the record shows that SDVE’s references rated SDVE’s past performance as outstanding, we see nothing unreasonable in the contracting officer’s evaluation of SDVE’s proposal.¹

¹ To the extent that Smith contends that there was unequal treatment in the evaluation because it proposed significant subcontractors and SDVE did not, these
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We also find no basis to question the agency's lack of investigation into whether SDVE could or would perform the contract without significant subcontractors. In this regard, the contracting officer states that since SDVE did not include any past performance information for subcontractors, he concluded that SDVE was not utilizing significant subcontractors, and there is no evidence in the record to suggest that the contracting officer's conclusion was in error. For example, there is no evidence in SDVE's proposal that the firm intends to use significant subcontractors. See AR, Tab 8, SDVE's Proposal. Furthermore, to the extent Smith protests that SDVE does not have the ability to perform the requirement without the use of subcontractors, this concerns a matter of responsibility, which our Office does not review except in limited circumstances, none of which apply here.² 4 C.F.R. § 21.5(c) (2010); see Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297 at 3.

We also find reasonable the evaluation of Smith's proposal. As noted above, Smith and its subcontractors received mostly above average ratings with some negative comments and two outstanding ratings, which warranted an overall rating of above average. The protester maintains that because one of its subcontractors was listed as having problems maintaining safety standards, its past performance rating was adversely affected. However, we have reviewed the record and it appears that while the protester was rated above average overall, its reference rated the protester unsatisfactory for its job specific safety plan. AR, Tab 12, Smith's Past Performance Evaluation Form, at 292. Since Smith's own reference contained negative comments concerning safety issues with Smith's past performance, we do not find that concerns over safety were solely attributable to the subcontractor, or that Smith's proposal was unreasonably evaluated as a result.

In sum, the agency's selection of the higher-priced, higher-rated proposal for award was reasonable and consistent with the solicitation.

The protest is denied.

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different approaches were permitted by the RFP and the evaluation of these different approaches does not evidence disparate treatment.

² Furthermore, since SDVE is a small business concern, any conclusion that SDVE is not a responsible offeror must be referred to the Small Business Administration (SBA) pursuant to the certificate of competency (COC) procedures. See 15 U.S.C. § 637(b)(7)(2000). The SBA has the exclusive authority to decide whether or not to issue a COC. FAR § 9.104-3(d)(1).

Lynn H. Gibson
Acting General Counsel