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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: Staff Tech, Inc.

File: B-403035.2; B-403035.3

Date: September 20, 2010

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Jon H. DeVore, Esq., and Max Garner, Esq., Birch, Horton, Bittner and Cherot, PC, for Bearskin Services, an intervenor.

Charmaine A. Howson, Esq., David R. Koepfel, Esq., Joseph Lenhard, Esq., and J. Adam Avellano, Esq., Department of Energy, 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

1. Protest that the agency improperly considered the past performance and corporate/management experience of a company other than the awardee in evaluating the awardee's proposal is denied, where the record shows that both companies have the same address and telephone number, share the same program manager and principals, and the agency was reasonable in concluding that the companies were affiliated.
 2. Protest that source selection official improperly made award on a low price, technically acceptable basis instead of a best value basis is denied, where the record reflects that the source selection official reasonably found the proposals of the awardee and the protester to be essentially equal and selected the lower-priced proposal for award.
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DECISION

Staff Tech, Inc., of Folsom, California, protests the award of a contract to Bearskin Services, of Wyandotta, Oklahoma, under request for proposals (RFP) No. DE-RP65-10WN86895, issued by the Department of Energy (DOE), for information technology and engineering support services for the DOE Western Area Power Administration's Sierra Nevada Region. The protester contends that the DOE improperly evaluated Bearskins' proposal using past performance and experience information for another company. The protester also objects to the agency's determination that the Staff Tech and Bearskin proposals were technically equal, arguing that the agency

improperly awarded the contract solely on the basis of price without adequately considering Staff Tech's allegedly technically superior proposal.

We deny the protest.

BACKGROUND

The solicitation was published on the federal business opportunities (FedBizOpps) internet website on February 8, 2010. Agency Report (AR) at 1. The solicitation, which was set aside for section 8(a) small businesses, contemplated the award of a fixed-price contract for a base year with four 1-year option periods. Under the RFP, proposals were to be evaluated on a best-value basis, considering past performance, price, and the following technical evaluation factors listed in descending order of importance: corporate and management experience, management approach, and phase-in plan. RFP at 45-49. The RFP provided that the technical and past performance factors, combined, were more important than the price factor.¹ Id. at 45.

As is relevant here, the RFP stated that corporate/management experience would be evaluated in terms of the offeror's demonstrated experience on projects that were similar in size and scope to the effort here, with an emphasis on information technology and engineering support services. Id. at 47. With respect to the past performance evaluation factor, the RFP required offerors to provide references for at least three, but no more than five, contracts that were "very relevant, active within the past three years, and which demonstrated the ability of the offeror's current organization to perform the proposed effort." Id. at 45. The RFP provided that the agency could contact references other than those identified by the offeror and use that information in the past performance evaluation. Id. at 48.

The agency received seven proposals by the closing date. Bearskin, in its proposal, indicated that it was a 100-percent, tribally-owned 8(a) company. Bearskin provided past performance information and references for four contracts performed by Bearskin and one contract performed by Wyandotte Net Tel (WNT), which it identified in its proposal as a "[p]redecessor [c]ompany" and "sister company to

¹ The source selection plan provided that the agency would assign adjectival ratings to the technical evaluation factors of exceptional, good, satisfactory, marginal, or unsatisfactory. For the past performance factor, the plan provided that the agency would assign risk assessment ratings of high, moderate, low, or neutral. Agency Report (AR) Tab B.1, Source Selection Plan, at 12-13.

Bearskin Services.”² AR, Tab C.1, Bearskin’s Initial Proposal, at 3 and attach; Tab C.7, Bearskin’s Past Performance Questionnaires.

After the initial evaluation by the source evaluation board (SEB), four offerors, including Staff Tech and Bearskin, were included in the competitive range. Discussions were held with those offerors and final revised proposals were requested. The revised proposals were evaluated by the SEB and, as relevant here, the final ratings were as follows:

Factor	Staff Tech	Bearskin
Corporate/Management Experience	Exceptional	Exceptional
Management Approach	Exceptional	Exceptional
Phase-In-Plan	Exceptional	Exceptional
Past Performance	Low	Low
Price	\$12,597,916	\$11,997,256

AR, Tab B.4, Final SEB Report, at 28 (prices rounded to nearest dollar). Under each of the evaluation factors, both Staff Tech’s and Bearskin’s proposals received numerous strengths, no weaknesses, and no deficiencies, and both proposals received the highest possible ratings. Id. at 24-25. The SEB recommended that the award be made to Bearskin because it offered the lowest evaluated total price. Id. at 28.

The source selection authority (SSA) recognized that the proposals of Staff Tech and Bearskin had the same adjectival ratings. AR, Tab E, Source Selection Decision, at 5. The SSA further recognized that Bearskin’s proposal offered the lowest overall price which was more than \$600,000 lower than Staff Tech’s offered price, and Bearskin proposed one additional staff member to perform the requirements. Id. The SSA noted that Bearskin had demonstrated their corporate and management experience both in the information technology and engineering aspects of the requirement, and the SSA recognized as a strength Bearskin’s proposed program manager. The SSA also favorably recognized Bearskin’s phase-in plan because it would maintain [DELETED] of the current incumbent staff. Id.

² As was explained during the development of the protest (although not stated in the proposal), WNT was an 8(a) contractor that graduated from the 8(a) program in 2009, after which Bearskin took over performance of at least some of WNT’s contracts. The two firms have the same office address, share the same telephone number and principals, and their websites are essentially identical except for the company name and small business certifications. The proposal makes clear that the program manager proposed here simultaneously served as a program manager for both companies. AR, Tab C.1, Bearskin’s Initial Proposal, Program Manager’s Resume, at 1.

Since Bearskin's proposal received the highest possible ratings and was the lowest in price, the SSA selected Bearskin for award. Award was made to Bearskin on June 4, 2010. After a debriefing, Staff Tech filed this protest with our Office on June 16 and a supplemental protest on July 12, both of which are the subject of this decision.

DISCUSSION

In its initial protest, the protester argues that the agency improperly made award on a low price, technically acceptable basis, rather than making a best value tradeoff decision, and that the agency failed to evaluate Bearskin's corporate/management experience and past performance in accordance with the solicitation. In its supplemental protest, the protester contends that the agency improperly credited Bearskin with the experience and past performance of WNT and failed to adequately document its best value analysis.

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria, and applicable procurement statutes and regulations. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

Bearskin's Corporate/Management Experience and Past Performance Evaluation

The protester asserts that the agency, in evaluating Bearskin's proposal under both the corporate/management experience and past performance evaluation factors, improperly credited Bearskin with the experience and past performance of WNT. The protester maintains that there was nothing in Bearskin's proposal to explain why WNT should have been considered a predecessor company, or why WNT's performance or experience should have been attributed to Bearskin. Supplemental Protest at 5. According to the protester, "there is nothing in the record at all that the companies are currently, or have ever been, related." Id. at 6.

The agency responds that it reasonably credited the past performance of WNT to the Bearskin proposal since the proposal stated that WNT was a predecessor company.

We have found that an agency may properly attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that resources of the parent or affiliate will affect the performance of the offeror. Ecompex, Inc., B-292865.4 et al., June 18, 2004, 2004 CPD ¶ 149 at 5; Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities, or other resources--will be provided

or relied upon for contract performance, such that the affiliate will have meaningful involvement in contract performance. Perini/Jones, Joint Venture. Furthermore, under Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii), agencies are instructed to take into account past performance information regarding the past performance of predecessor companies or key personnel who have relevant experience that will perform major or critical aspects of the requirement.

Here, the agency explains that WNT was the prime contractor providing information management support services to the Southwestern Power Administration under the 8(a) program, and that the follow-on contract was awarded to Bearskin when WNT graduated from the 8(a) program. When Bearskin took over the contract, the program manager remained the same, and the individual's resume reflects that he serves as a program manager for both WNT and Bearskin. See AR, Tab C.1, Bearskin's Initial Proposal, Program Manager Resume, at 1. Furthermore, all of the corporate office contacts under the WNT contract and the Bearskin contracts are the same, and both Bearskin and WNT are located at the same address. Contracting Officer's Statement at 11.

The agency further states that all of the publicly available information suggests that the two companies are related. For example, the Central Contractor Registration database shows that the principals for both companies are the same individuals. According to the agency's review of the companies' websites, both companies list the same contracts as past performance on their websites. Id. Our review of the companies' websites further confirms that that the websites are identical in layout and design, identify the same office address and telephone number, reflect performance of essentially the same services and products, and identify the same past performance contract references; the only significant difference in the websites are the company names and small business certifications.

Based on our review of the record, the evaluation team reasonably included the experience and past performance information of WNT in its assessment of Bearskin under the experience and past performance evaluation factors. The sharing of address and telephone number, program manager, and company principals, along with the nearly identical nature of their website content (including available services and past contracts performed) strongly suggests that the two companies are sufficiently related such that the resources of WNT are likely to affect the performance of Bearskin on this contract. Thus, we conclude that the past performance of WNT was appropriately considered in evaluating the Bearskin

proposal.³ See Daylight Tree Serv. & Equipment, LLC, B-310808, Jan. 29, 2008, 2008 CPD ¶ 23 at 3.

Furthermore, the record shows that for the corporate/management experience evaluation factor, Bearskin listed five relevant contracts, only one of which was performed by WNT. The record also shows that Bearskin is currently performing the contract previously performed by WNT, in which it provides similar services to the Southwestern Power Administration, and Bearskin has received outstanding reviews for its performance. AR, Tab C.7, Bearskin Past Performance. Thus, the record shows that Bearskin, on its own, demonstrated that it had recent, relevant experience, and Bearskin provided evidence of its excellent past performance of similar requirements. Accordingly, Staff Tech has not shown that Bearskin's proposal ratings were overly influenced by the evaluators' consideration of the experience and past performance of WNT.

Best Value Decision

The protester argues that the agency improperly made award to the offeror with the lowest-priced proposal, without properly performing the required cost/technical tradeoff, and that the agency failed to adequately document its best value analysis.

However, no price/technical tradeoff was required here, since the proposals were reasonably determined to be technically equal and the agency made award to the offeror submitting the lowest-priced proposal. In this regard, in a negotiated procurement with a best value evaluation methodology, where selection officials reasonably regard proposals as being essentially technically equal, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than the technical factors. Synergetics, Inc., B-299904, Sept. 14, 2007, 2007 CPD ¶ 168 at 7. As the agency reasonably found

³ We do not agree with the protester that it was unreasonable for the agency not to question Bearskin's assertion in its initial proposal that WNT was its predecessor company. As previously stated, the record shows that the SSA was already aware of the relationship between WNT and Bearskin and could properly rely on that knowledge. Here, the agency had no reason to question the validity of the past performance information provided by Bearskin and could rely upon this information without further investigation. See John Blood, B-298841, B-298841.2, Dec. 21, 2006, 2006 CPD ¶ 202 at 4.

Staff Tech's and Bearskin's proposals to be essentially equal,⁴ it was not necessary for the agency to perform a price/technical tradeoff as part of its best value award determination.⁵

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁴ The protester argues that although it and Bearskin received identical adjectival ratings, the contemporaneous documents show that the protester was assessed as having 20 strengths, as opposed to only 13 for Bearskin, and that the agency failed to comparatively evaluate these technical discriminators. Comments at 10. There is nothing improper with Bearskin and Staff Tech receiving similar ratings notwithstanding the fact that Staff Tech's proposal had more strengths as compared to Bearskin's proposal. All Star Maintenance, Inc., B-27119, June 17, 1996, 96-1 CPD ¶ 278 at 4. (holding that agency's evaluation of two offers as essentially equal was not unreasonable notwithstanding the fact the protester had five strengths while the awardee had only two strengths). Absent some basis for concluding that the technical findings underlying the ratings were flawed, which does not exist on the record here, there is no basis for our Office to conclude that the SEB ratings were unreasonable.

⁵ The protester also argues that the agency failed to evaluate offerors equally in that Bearskin was given a strength for having a 401(k) plan that met industry standards and the agency did not give the protester a strength for its plan that also met industry standards. We fail to see any prejudice here. Both offerors were rated exceptional for all evaluation factors and the selection was properly based on low price.