The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: S.C. Jones Services, Inc.

File: B-223155

Date: August 5, 1986

DIGEST

1. Protest that RFP is overly restrictive, improperly allocates score points among the evaluation factors, and fails to specify normalization factors for areas of cost variance, is based on alleged improprieties apparent on the face of the solicitation and must be filed in General Accounting Office before closing date for receipt of initial proposals.

2. Protest that proposed awardee, a newly formed corporation, could not receive acceptable score under "organizational experience and past performance" evaluation criterion is denied where the agency based its evaluation on the performance of the predecessor to the proposed awardee, since the operations of the predecessor firm were the same and included the same key personnel.

3. Protest alleging that protester's technical proposal should have received a higher score than the proposed awardee's technical proposal is denied where agency's evaluation of proposals had a reasonable basis and was consistent with evaluation factors set forth in the solicitation.

DECISION

S.C. Jones Services, Inc. (S.C. Jones) protests the proposed award by the National Aeronautics and Space Administration (NASA) of a contract for groundskeeping and pest control services at Langley Research Center to MLB Enterprises under request for proposals (RFP) No. 1-17-5772.0137. The solicitation was issued as a total small business set-aside and contemplated the award of a 1-year contract with 4 additional option years. S.C. Jones alleges that the RFP is overly restrictive, that the evaluation criteria overemphasize the importance of the contract manager, and that its own proposal demonstrated higher qualifications than the proposed awardee's offer.

We dismiss the protest in part and deny it in part.

S.C. Jones protests that the RFP was overly restrictive because it required the contract manager to have a 2-year associate degree (community college level) and alleges that this is not common industry

036045

practice. The protester also contends that the allocation of 40 percent of the total proposal evaluation points to the contract manager is excessive and unbalanced and alleges that the requirement "appears to have been tailored to the incumbent contractor and its manager."

Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation that are apparent prior to the closing date for receipt of initial proposals must be filed prior to that closing date. 4 C.F.R. § 21.2(a)(1) (1986). Consequently, S.C. Jones' protest against allegedly restrictive (or otherwise improper) specifications and unbalanced evaluation criteria, filed after the January 6, 1986, closing date for submission of initial proposals, is untimely and will not be considered further.

In its comments on NASA's report on its protest, S.C. Jones objects to the evaluation basis for cost proposals, arguing that "no normalizing labor escalation factor was specified in the RFP" and that labor costs, as well as costs for certain special services, are areas of variance that should have been normalized for evaluation purposes. Although this basis of protest is presented as a challenge to the evaluation method, the protester objects that no normalizing factors were specified in the RFP, and presumes on that basis that none was applied. The basis of the protest, in our view, is the alleged impropriety present in the solicitation as it was issued. We therefore find that it should have been raised before the closing date for receipt of initial proposals and dismiss it as untimely. 4 C.F.R. § 21.2(a)(1).

In its initial protest letter, S.C. Jones also alleged generally that it is "significantly and measurably more capable and better qualified to perform the solicited services" than the proposed awardee and questioned whether the evaluation of proposals was performed and MLB selected in accordance with the RFP terms. This general allegation was then expressed in the protester's comments on the agency report as a number of more specific complaints.

Our decisions recognize that the procuring agency is responsible for evaluating the data supplied by an offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror. Rowe Industries, B-215881, Oct. 24, 1984, 84-2 CPD ¶ 464. We will not disturb the technical determination by the agency unless it is shown to be unreasonable. However, we will examine the record to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. See Deuel and Associates, Inc., B-212962, Apr. 25, 1984, 84-1 CPD ¶ 477.

S.C. Jones alleges that MLB is "a newly formed corporation without a proven track record to show its organizational experience and past performance." The protester points out that the "Evaluation Factors" section of the RFP states that the organization itself will be evaluated for its capabilities, rather than the experience and performance of

individuals who are proposed to be involved in the required work. The protester concludes that a newly formed corporation, with no past performance, could not receive a positive evaluation in this area.

The agency advises that MLB is a newly formed company consisting of assets and personnel from Webb's Full Service Company (Webb), the incumbent contractor at Langley Research Center. NASA based its evaluation of MLB's experience and past performance on Webb's experience. The agency report states that, in addition to the current contract, Webb's has prior government contracting experience relevant here.

Our Office has long recognized that an evaluation of corporate experience need not be limited to the time from which the corporation began its legal existence. For example, in 36 Comp. Gen. 673 (1957), we determined that, in evaluating the experience of a corporation, an agency could properly consider the experience of a predecessor firm or of the corporation's principal officers which was obtained prior to the incorporation date. We also found, in a case where experience was stated as a definitive responsibility criterion, and where a company changed ownership and corporate name but the operations of the predecessor firm continued at the same location and under the guidance of the same personnel, that the experience of the predecessor firm properly could be considered in evaluating the experience of the successor firm. Harry Kahn Associates, Inc., B-185046, July 19, 1976, 76-2 CPD ¶ 51.

Here, the record indicates that NASA was familiar with Webb's work as the incumbent contractor, and MLB proposed to use the same personnel which were performing for Webb on the present NASA contract. Furthermore, the incumbent contract manager is now a partner in MLB and would serve as the contract manager if awarded the contract. Accordingly, we find that NASA's evaluation properly imputed Webb's experience to the new company, MLB. We therefore find no merit to the protester's contention that MLB could not possibly fulfill the corporate experience criterion.

S.C. Jones also contends that NASA selection officials did not clearly articulate or identify to S.C. Jones the weaknesses they perceived in its proposal and cited in the evaluation summary.

The record shows that all three offerors whose proposals were within the competitive range were given questions for clarification of certain areas of their proposals. Among other things, S.C. Jones was asked to provide details of its plan for maintenance and upkeep of installation-provided and contractor-furnished equipment. The details S.C. Jones provided were considered inadequate by the evaluators only concerning maintenance of equipment, because it was not clear who would provide the maintenance service. Although S.C. Jones provided general information outlining maintenance procedures in its response, it first stated that equipment operators would perform certain preventive maintenance steps, but then

stated that "inspection and preventive maintenance responsibilities will be determined [in coordination with the TRCO and Klate Holt Company maintenance facility]."

We do not find the agency's conclusion--that it was unclear who would be responsible for maintenance service under the contract--to be unreasonable. We are mindful, in this connection, also that the agency's criticism on this one point did not render S.C. Jones' proposal unacceptable; rather, the point was identified as one of two weaknesses (along with pest control qualifications of the key person which is discussed below) in the area of Mission Suitability.

The record indicates that in the final ranking, the evaluators scored MLB's technical proposal highest of the three firms in the competitive range, with an adjectival rating of "Good+." Another firm, Sal Esparza, Inc., was second with a rating of "Good/Good+," and S.C. Jones was lowest in score, rated "GOOD-." In addition, MLB's price (both as proposed and as evaluated) was considered to be significantly lower than S.C. Jones' price. There is nothing in the record to indicate that the evaluators' award decision would have been different even if S.C. Jones had not been evaluated as weak in the area of maintenance.

Lastly, concerning the evaluation, S.C. Jones also argues that its own proposed Contract Manager should have received a higher evaluation score than MLB's Contract Manager, based on his level of experience. The report indicates, however, that the RFP specifications, section 2.2 ("Pest Control"), required that the contractor be "certified by the Virginia State Department of Agriculture." Since the contract manager under this solicitation is the key person, the agency weighed this certification under the Contract Manager subfactor of Mission Suitability. S.C. Jones' failure to provide such certification resulted in a lower score for the firm's contract manager. In our view, it was reasonable for NASA to conclude that the protester's noncompliance with this specific requirement merited a lower score. Moreover, in view of the fact that MLB's proposed contract manager is the contract manager on the present contract and is certified by the Virginia Department of Argriculture as a "Private Pesticide Applicator" and for "Ornamental and Turf Pest Control," the evaluators determined that he had "superior pest control knowledge" and evaluated his qualifications as excellent. On the other hand, the evaluators determined that S.C. Jones' proposed contract manager "lacked the required pest control qualifications." Experience with all phases of pest control operations was a requirement of the solicitation, and the evaluation scoring in this regard was reasonable. Furthermore, S.C. Jones has not demonstrated that, for purposes of this procurement, its own proposed manager's experience of 12 years represented a significant advantage over MLB manager's 6 years' experience as the incumbent and therefore deserved a higher score.

Since the solicitation specified that the award selection would be based upon "Mission Suitability, Cost, Organizational Experience and Past Performance and Other Factors," we find that NASA's evaluation was consistent with the RFP evaluation scheme and that it was reasonably based. Accordingly, S.C. Jones' charge that the evaluation was not in accord with the stated evaluation criteria and that its proposal should have been selected for award is denied.

The protester also alleges that MLB was permitted, in discussions with the agency, to provide information that it had omitted from its initial proposal, and contends that it was improper for NASA to accept additional information or to allow correction of cost proposals in the best and final offers. Specifically, S.C. Jones contends that NASA improperly asked MLB to provide assurance that the incumbent's personnel would be available to work on the follow-on contract, and, in response, MLB provided signed letters of intent from such personnel. However, the Federal Acquisition Regulation (FAR) 48 C.F.R. § 15.610(a) (1985), requires the agency, after reviewing proposals for technical merit and establishing the competitive range, to conduct discussions by advising offerors of the deficiencies perceived by the evaluators and by affording the offerors the opportunity to correct those deficiencies by submitting revised proposals. See Norfolk Ship Systems, Inc., B-219404, Sept. 13, 1985, 85-2 CPD ¶ 309. Here, the protester has not demonstrated that MLB was given any unfair advantage, but only that it was afforded the opportunity provided under the FAR. We therefore deny this basis of the protest.

Finally, S.C. Jones notes that this solicitation was issued as a total small business set-aside and challenges whether MLB meets the set-aside's $3,500,000 size standard. However, the Small Business Administration has conclusive statutory authority to determine matters of small business size statuts for federal procurement purposes and, therefore, our Office does not consider size status protests. 15 U.S.C. § 637(b)(6) (1982); Hayes International Assocs., B-220471, Jan. 3, 1986, 86-1 CPD ¶ 8.

The protest is denied in part and dismissed in part.

for Seymour Efros
Harry R. Van Cleve
General Counsel