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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delany, Siegel, Zorn & Associates

File: B-224578.2

Date: February 10, 1987

DIGEST

Offeror's lack of experience in investigating discrimination complaints under regulations specific to the contracting agency, although not separately set out in the request for proposals (RFP) as a technical evaluation criterion, was not improperly considered as an undisclosed criterion where RFP indicated that investigators' knowledge of agency's regulations was important and agency-specific experience was reasonably related to more general corporate experience and personnel qualifications evaluation criteria contained in RFP. In addition, record indicates that other deficiencies, and not lack of agency-specific experience alone, contributed to downgrading of protester's proposal.

DECISION

Delany, Siegel, Zorn & Associates, Inc. (DSZ), protests the award of a contract to A&L Associates under request for proposals (RFP) No. N00189-85-R-0525 issued by the Department of the Navy. The RFP contemplated an indefinite quantity, firm-fixed-price contract for investigating and reporting on Equal Employment Opportunity (EEO) complaints of discrimination. DSZ contends that its proposal was not properly evaluated in that the Navy applied to it a technical evaluation criterion which was not contained in the RFP.

We deny the protest.

The RFP was issued on September 30, 1985, and 22 proposals were received by the November 13 closing date for receipt of proposals. Under the RFP, proposals were to be evaluated and point-scored based on the following factors:

1. Corporate Experience 8 percent
2. Demonstrated Under-standing of the Problem 8 percent
3. Personnel Qualifications 48 percent

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| 4. Project Management | 16 percent |
| 5. Cost | 20 percent |

Technical factors, therefore, accounted for 80 percent of the total score and price the remaining 20 percent. When the technical factors were separated from price, considered as a whole consisting of 100 percent, and expressed as points--rather than as percentages--for use by the Technical Evaluation Committee (TEC), the maximum point values of the four technical evaluation criteria were as follows:

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| 1. Corporate Experience | 10 points |
| 2. Demonstrated Understanding of the Problem | 10 points |
| 3. Personnel Qualifications | 60 points |
| 4. Project Management | <u>20 points</u> |
| Total | 100 points |

Whether expressed as percentages, as in the RFP, or as points, as on the evaluation scoresheets, the relative importance of these criteria among themselves, and in relation to price, remained the same.

The raw technical scores were weighted by dividing each offeror's technical score by the highest technical score and multiplying the quotient by 80. Prices were subject to a two-step weighting process. Prices for the six categories of investigations first were weighted, for each offeror, based on a formula in the RFP intended to reflect the anticipated workload in each category. Then the lowest weighted price was divided by each offeror's weighted price and the quotient multiplied by 20 to arrive at a weighted price score for each offeror. Each offeror's weighted technical score and weighted price score were then added to obtain a total score for evaluation purposes.

Proposals were evaluated by the TEC and, after the initial evaluation, nine proposals--including that submitted by DSZ--were found to be in the competitive range.

The TEC gave the protester's initial technical proposal a raw score of 31.15 out of 100 possible points and the proposal was ranked 5th. After advising offerors of the weaknesses

and deficiencies in their proposals and providing an opportunity for submission of revised proposals, the agency submitted the revised technical proposals to the TEC for reevaluation. DSZ's revised proposal received a raw technical score of 47 and was ranked 4th. Its price proposal ranked 8th. Its weighted, combined technical and price score ranked 4th. The contracting officer reviewed the results of the technical and price evaluation and selected A&L, the highest-ranked offeror, for award. At DSZ's request, the Navy debriefed it by telephone concerning the areas of its proposal which were judged to be weak or deficient and this protest followed.

In its protest to our Office, DSZ asserted that "the likely reason" it was not awarded this contract was that "30 points out of a possible 80 points in technical score" were deducted because it lacked investigative experience specific to the Navy. Prior Navy experience was not listed in the RFP as one of the criteria for the evaluation of proposals, the protester states, and the Navy's undue and undisclosed emphasis on it unfairly penalized offerors with comparable experience in other federal agencies. The protester argues that if its score was recalculated with these improperly deducted points restored, its ranking would be significantly higher and "would likely eliminate any differences in scoring" between the protester and the awardee.

At the outset, we should point out that the protest reflects some misunderstanding of the scoring of proposals, perhaps because this was not accurately explained by the Navy in the telephonic debriefing, or was misunderstood by the protester, or was not known to it as a result of the Navy's refusal to release certain information. These misunderstandings concern (1) the percentage weights given the evaluation criteria in the RFP versus the points weights used by the evaluators and (2) the protester's mistaken apparent conclusion that if the points allegedly deducted from its evaluation in error were restored, it would be in line for award of the contract. While these misunderstandings do not affect the outcome of this protest, we think it incumbent on us to clarify them.

First, the protester states it received the maximum possible score of 8 points under the criterion "Understanding of the Problem," which it asserts is inconsistent with the downgrading of its proposal in other areas. The protester was not awarded the maximum possible points under this criterion, which had an 8 percent weight but a point value of 10; the

protester received 8 out of 10 points under it. The protester also received 13 points out of 20 under the "Project Management" criterion (not out of 16 as the protester asserts), a deduction it has not challenged. The significance of this is that the protester believes it "lost" only 3 points for reasons unrelated to the allegedly improper criterion used by the evaluators; in fact, 9 points were deducted under criteria the protester has not challenged.

Second, the protester states that 2 out of "8 points" were deducted under the "Corporate Experience" criterion and 28 out of "48 points" were deducted under the "Personnel Qualifications" criterion, a total deduction of 30 points, allegedly as a result of the agency's improper use of an undisclosed "Navy experience" criterion. The "8" and "48," however, refer to the percentage values of these criteria as stated in the RFP, not their point values which were, respectively, 10 and 60 and under which the protester scored 6 and 20.

To recapitulate the evaluators' point scoring of the protester's proposal:

<u>Criterion</u>	<u>Protester's Score</u>
1. Corporate Experience	6 out of 10
2. Understanding of the Problem	8 out of 10
3. Personnel Qualifications	20 out of 60
4. Project Management	<u>13 out of 20</u>
Total	47 out of 100

The importance of this is that if, as the protester asserts, all the points "lost" under criteria 1. and 3. should be attributed to the improper use of an undisclosed criterion and therefore restored to its score, one would add not 30 points but 44, for a total raw technical score of 91.

Third, the protester appears to assume that if the points allegedly improperly deducted from its technical score were restored, it would become the highest-scored offeror and in line for the award of this contract. Our calculations show this is incorrect.

Were the protester to be assigned, for purposes of discussion, a raw technical score of 91, it would then have the highest technical score, which when weighted would equal 80, i.e., the maximum of 80 percent. The awardee's previously high raw technical score of 86.2 (a figure not released by the Navy to DSZ) would, when recalculated in light of its changed standing, be weighted at 75.78. The prices would remain unchanged, however, and the protester's 8th-high price would be weighted at 8 in contrast to A&L's much lower price, weighted at 14. The protester's high price places it at a competitive disadvantage, a fact not acknowledged by it in its protest. The total scores--technical plus price--would become 88 for the protester (80 plus 8) versus 89.78 for A&L (75.78 plus 14). Therefore, even if one were to restore to DSZ's score all the 44 points whose deduction under criteria 1. and 3. it contests, it would not achieve the highest total score.

The Navy's report on the protest states that the technical evaluation was performed in accordance with the criteria set forth in the solicitation, and that DSZ's initial and revised proposals were fairly evaluated. The Navy explains that although any relevant work in the public or private sector was regarded as valuable, Navy experience was considered particularly significant because of special standards the Navy has for such investigations, which standards were expressly referred to in the RFP. The agency states that Navy experience, although an "asset" to any offeror, was only one aspect of the relevant experience evaluated.

The evaluation of proposals is the function of the contracting agency, and our review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. See Ira T. Finley Investments, B-222432, July 28, 1986, 86-2 C.P.D. ¶ 112 at 3. Moreover, the protester has the burden of affirmatively proving its case, and mere disagreement with a technical evaluation does not satisfy this requirement. Id.

We find that the technical evaluation of DSZ's proposal was reasonable. We have examined the entire record of the technical evaluation for all offerors and find that the evaluation was performed in accordance with the evaluation criteria set forth in the RFP. The record does not support the conclusion that all the points whose deduction the protester contests were attributable to the improper application of an undisclosed "Navy experience" criterion or

that it was unreasonable for the agency to have given Navy experience some consideration in the evaluation of proposals.

With regard to the first evaluation criterion, "Corporate Experience," DSZ was credited with 6 out of a maximum of 10 points in recognition of the firm's background in federal-sector discrimination investigations performed for other agencies. A higher score was not given, according to the evaluators' narrative, because the firm lacked "experience under the DON [Department of the Navy] system which requires a more complex analysis under applicable Title VII case law."

As for the third criterion, "Personnel Qualifications," the RFP instructed offerors to provide resumes for each investigator the contractor intended to use to perform the contract services. The resumes should include, among other things, a minimum of 3 years of relevant experience and appropriate training and clearly demonstrate an understanding of the technical requirements of Title VII and Naval Civilian Personnel Instruction (NCPI) 713 and Naval Civilian Personnel Command (NCPC) Instruction 12713. The Navy found the resumes submitted with the protester's initial proposal not adequately detailed; consequently, in requesting additional information from the protester prior to best and final, the contracting officer identified, among other things, weaknesses in DSZ's personnel qualifications. Specifically, the Navy requested DSZ to submit resumes containing greater detail in the following areas:

"(a) Knowledge of and experience in Federal discrimination complaint system (Title VII) and complaint adjudication.

(b) Knowledge of and experience in investigative and reporting techniques.

(c) Knowledge of Federal personnel practices and procedures, program management processes, and organization structures and operations.

(d) Knowledge of and experience in investigations which shows a significant number of acceptable cases of good quality have been completed.

(e) Length and quality of relevant experience."

In addition, DSZ was required to submit sample reports written by its proposed investigators.

After evaluating DSZ's revised proposal, the evaluators increased DSZ's raw score from 9.65 to 20 under the "Personnel Qualifications" criterion. The evaluators did attribute DSZ's score in part to a "lack of any experience with the [Navy] complaint process which requires a Title VII case law analysis." The record also shows, however, that the TEC was concerned that only half of DSZ's proposed investigators (the 16 individuals described as "Senior Investigators") satisfied the experience criteria identified in the contracting officer's request for additional information. The evaluators noted that seven of the remaining staff were described as "trainees" without documented experience indicating a knowledge of federal personnel practices or procedures, and that while their resumes indicated that they had "potential" and should be able to "learn the job" no writing samples were provided which would demonstrate their ability to prepare the kind of Report of Investigation required. The TEC was also concerned that the nine individuals labeled as "investigators" had only limited experience and required more supervision than the firm's "senior" investigators.

In short, while DSZ did improve its score under the "Personnel Qualifications" criterion with its revised proposal, the deficiencies noted above had a significant impact on the additional points assigned.

We find that DSZ has not demonstrated that the agency's conclusions regarding its personnel qualifications were unreasonable. Although DSZ attributes the downgrading of its proposal under this criterion to the fact that the firm does not possess prior Navy experience, which it states it did not know would be a factor in the evaluation of proposals, it is clear from the record that DSZ's proposal was reasonably found to be deficient in this area for a number of reasons including lack of prior Navy experience.

It does appear, therefore, that 4 points were deducted from DSZ's score under "Corporate Experience" because it had not previously performed this type of work within the Navy system. Some portion, but not all, of the points deducted under "Personnel Qualifications" can be traced to the same reason although it should be pointed out the evaluators' narrative commentary placed more emphasis on the proposed investigators' more general federal-sector experience and

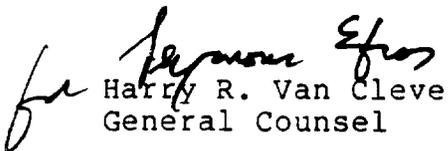
their report-writing ability. We think it fair to conclude, therefore, that some but by no means all of the deductions made under criteria 1. and 3. were attributable to DSZ's lack of prior Navy experience. In addition, as we have mentioned, 9 points not the focus of this protest were deducted under criteria 2. and 4.

We also are of the opinion, despite DSZ's arguments to the contrary, that under the terms of the RFP it was proper for the Navy to downgrade DSZ because of its lack of prior Navy experience. The RFP's specifications required the successful offeror to conduct discrimination investigations in accordance with current regulations and in particular, "Naval Civilian Personnel Command Instruction 12713" and stated that an investigator's knowledge of NCPI 713 was "essential." That section of the RFP dealing with the submission of proposals instructed offerors, in part, with regard to the "Personnel Qualifications" criterion that:

"Resumes shall show clearly an understanding of the technical requirements of EEO Investigations (Title VII and NCPI 713 and NCPC Instruction 12713). . . ."

In our view, these references in the RFP reasonably put offerors on notice that they would be required to demonstrate that their qualifications included any prior Navy experience. It would not be reasonable under the circumstances herein to prohibit the agency from considering in its evaluation under the "Personnel Qualifications" criterion whether an offeror's qualifications included that experience.

The protest is denied.


for Harry R. Van Cleve
General Counsel