



**United States Government Accountability Office
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Decision

Matter of: Call Henry, Inc.

File: B-409217; B-409217.2

Date: February 10, 2014

Neil H. O'Donnell, Esq., Dennis J. Callahan, Esq., and Katherine L. Pohl, Esq., Rogers Joseph O'Donnell, for the protester.
William A. Roberts III, Esq., Richard B. O'Keeffe, Esq., and Tracy Winfrey Howard, Esq., Wiley Rein LLP, for Wolf Creek Federal Services, Inc., an intervenor.
Karen M. Reilley, Esq. and Callista Puchmeyer, Esq., National Aeronautics and Space Administration, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee's proposed safety manager did not meet solicitation experience requirements does not furnish basis for questioning the award where record demonstrates that the protester was not prejudiced by the evaluation since, even had the awardee received a weakness under the relevant evaluation factor, as did the protester for its non-compliant safety manager, the protester would not have had a substantial chance of receiving the award.

DECISION

Call Henry, Inc., of Titusville, Florida, protests the National Aeronautics and Space Administration's (NASA) award of a contract to Wolf Creek Federal Services, Inc., of Anchorage, Alaska, under request for proposals (RFP) No. NNC13ZFD017J, for facilities operations, repair and maintenance (FORM-II) at the John H. Glenn Research Center in Brook Park, Ohio. The protester challenges the evaluation of proposals.

We deny the protest.

BACKGROUND

The John H. Glenn Research Center researches, designs, develops, and tests innovative technology for aeronautics and spaceflight. The RFP, issued on May 7,

2013, provided for award of a contract, for a base period with four options, to furnish such necessary services as preventative maintenance; reliability-centered maintenance (RCM); trouble calls/repair; operation of the centralized steam plant; operations and maintenance of the high voltage electrical distribution systems; maintenance of fire, security, and safety alarms and systems; maintenance of heating, ventilation, and air conditioning (HVAC) systems and equipment; structural maintenance; and repairs and minor modifications. Contracting Officer's (CO) Statement (COS), at 1; Agency Report (AR), Tab 5, Statement of Work (SOW), at 00203 et seq.¹

Award was to be made to the offeror whose proposal represented the "best value" to the government, considering three evaluation factors: mission suitability, price, and relevant experience/past performance. The mission suitability factor was to be numerically scored with a maximum of 1000 points divided among four subfactors: management approach (275 points), including elements for organizational structure, management summary, key personnel, phase-in plan, and union negotiations; approach to reliability-centered maintenance (275 points); safety, health, environmental and sustainability functions (175 points); and understanding the requirements (275 points). Price was more important than mission suitability, which was approximately equal to relevant experience/past performance; mission suitability and relevant experience/past performance, combined, were approximately equal to price. RFP § M.1, at 00192-202.

Eight proposals were received, including proposals from Call Henry (the incumbent contractor) and Wolf Creek. The agency did not conduct discussions, but instead made award on the basis of initial proposals. In this regard, a source evaluation board (SEB) evaluated the proposals as follows:

	Mission Suitability (1000 points)	Relative Experience/ Past Performance	Price
Call Henry, Inc.	577	Very High	\$55,181,848
Wolf Creek Federal Services, Inc.	750	Very High	\$55,257,898

¹ Citations to documents in the agency report are to the Bates numbers added by the agency; the parties' submissions have their own pagination.

AR, Tab 14, Mission Suitability Findings Summary (subfactor ratings and points); SEB Report at 00955, 01044; AR, Tab 22, Source Selection Statement (SSS), at 01052, 01057.

The source selection authority (SSA) considered Wolf Creek and Call Henry to be “essentially equal” under the price and relevant experience/past performance factors, but found Wolf Creek’s proposal to be “a qualitatively and quantitatively superior proposal,” superior to all other offerors under the mission suitability factor. SSS at 18. The SSA determined that, given Wolf Creek’s superiority under the mission suitability factor, Wolf Creek’s proposal represented the “best value” to the government. Id. Upon learning of the resulting award to Wolf Creek, Call Henry filed this protest with our Office.

DISCUSSION

Call Henry challenges several aspects of NASA’s evaluation of proposals. In reviewing an agency’s evaluation of proposals and source selection decision, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Trofholz Techs., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 3. A protester’s disagreement with the agency’s evaluation judgments, or with the agency’s determination as to the relative merits of competing proposals, does not establish that the evaluation or the source selection decision was unreasonable. Smiths Detection, Inc.; Am. Sci. and Eng’g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7. We have considered all of Call Henry’s arguments and find that none furnishes a basis for questioning the selection of Wolf Creek for award. We address several of Call Henry’s arguments below.

Business Management and Site Safety Office Staffing

The SOW described various business functions under § C.8.4 (e.g., financial management, professional cost estimating, procurement services, and government-furnished and contractor-owned equipment and materials inventory management), as well as safety and health functions under § C.8.7, which the contractor will be required to perform. RFP, attach. J-1, Statement of Work (SOW) § C.8.4 (Business Function) at 00235, C.8.7 (Safety and Health) at 00237. Call Henry proposed one work year equivalent (WYE), designated as the “manager,” for its Business Management and Site Safety Office (BMSSO), which would perform key business, safety and health functions required under the SOW. AR, Tab 6, Call Henry Mission Suitability Proposal, at 00353, 00355, 00376. The evaluators found Call Henry’s approach in this regard to be a weakness under the organizational structure element of the management approach subfactor, in that the proposal:

[I]acked a discussion to explain how 1.0 WYE would be capable of handling the duties of accounting, invoicing, contracting management (changes & amendments), subcontract management, and overall contract safety and health. The above duties are considered to exceed the staffing level proposed by the Offeror.

SEB Report at 00893. According to the evaluators, Call Henry's

proposed staffing levels for Business and Safety & Health Functions increases [sic] the risk of accounting error, invoicing delays, and poor safety & health performance, which increased the risk of overall unsuccessful contract performance.

Id. Likewise, the SSA indicated in her decision that

I was also concerned that [Call Henry] received a weakness for proposing an organizational structure that places the duties of accounting, invoicing, contract management, subcontract management, and overall safety and health on a single WYE.

SSS at 01064-65.

Call Henry challenges its evaluated weakness, asserting that the evaluators failed to consider its "method of business management," and that it "never intended nor proposed that one WYE [would] perform accounting, invoicing, contracting management and [the] safety and health function." Protest at 9. According to the protester, its proposed business and safety manager "serves as a manager and central point for interfacing with NASA;" other proposed contract staff, as well as corporate employees included in general and administrative (G&A) staff, will perform the necessary tasks. Id. at 9-10.

We find Call Henry's position unpersuasive. While Call Henry is correct that its proposal did not indicate that the manager of the BMSSO would be responsible for all business, and safety and health operations, it left unclear what work would be done by other offices and staff. The agency, accordingly, reasonably concluded that Call Henry's proposal created a risk that the single WYE proposed for the BMSSO would be unable to effectively perform the proposed duties of that office. COS at 8. In this regard, the organizational chart included in Call Henry's proposal assigned the BMSSO office three broad "functional responsibilities" under the SOW: "C.8.4 (Business Function)," "C.8.4a (Finance/Contracts)," and "C.8.4.7 (Safety and Health)." Call Henry Mission Suitability Proposal at 00353. This same organizational chart, however, also indicated that other offices proposed by Call Henry would be delegated certain functions under SOW subpart C.8.4. For example, Call Henry's [deleted] is responsible for [deleted], [deleted], and [deleted].

Call Henry Mission Sustainability Proposal at 00353. In addition, its [deleted] is responsible for [deleted] and [deleted]. Id.

Although Call Henry argues that the overlap in assigned responsibilities between the offices as indicated in the organizational chart suggested that the BMSSO staff of one WYE would not be expected to perform all of the responsibilities assigned the BMSSO office, the company's proposal did not make clear the specific distribution of effort and responsibilities with regard to its BMSSO office. Nor did Call Henry's proposal explain the specific distribution of effort and responsibilities between the BMSSO office and its corporate G&A staff. This general failure to furnish supporting detail as to the staffing and division of responsibilities with respect to the business and safety and health functions was inconsistent with the solicitation directions, which provided with regard to the mission suitability factor that: "When preparing a response to this section, the Offeror shall not assume that proposal evaluators are aware of any company capabilities, resources, plans, organizations or other information that is relevant to the accomplishment of the SOW." RFP § L.16, at 00177.

Furthermore, as noted by the agency, there were significant responsibilities expressly assigned to the BMSSO manager by Call Henry's proposal. Among the responsibilities personally assigned to the BMSSO manager was the following: "[BMSSO manager] receives and processes all contract modifications updating current contract value and our management budget tracker capabilities to reflect the impact of the modification." Call Henry Mission Suitability Proposal at 00355. The agency reports in this regard that it anticipated numerous contract modifications such that requiring the BMSSO manager to process all of the modifications contributed to the agency's concern with the staffing of the BMSSO office. Supp. COS at 2. Likewise, Call Henry's proposal also indicated that the "[BMSSO manager] reviews [deleted], [deleted], and [deleted] for any [deleted] issues and develops and processes all [deleted] for IDIQ work." Call Henry Mission Suitability Proposal at 00355. The agency reports that the evaluators were concerned that placing these responsibilities on the BMSSO manager did not account for the magnitude of the safety and health workload and the importance of that work to the successful performance of the contract. Supp. COS at 2. In these circumstances, we conclude that the agency reasonably downgraded Call Henry's proposal based on the concern that having a single manager without full-time staff "handling" management of an office responsible for substantial, significant aspects of the SOW would create a risk to contract performance.

Qualifications of Call Henry's Safety and Health Specialist

The SOW required the contractor as part of the safety and health function discussed above to have an on-site safety and health professional. SOW § C.8(7)(a), at 00237. Under the SOW, a qualified safety and health professional is defined as an individual having at least one of the following industry-recognized safety certifications:

- (i) Certified Safety Professional (CSP)
- (ii) Certified Industrial Hygienist (CIH)
- (iii) Bachelor's or Associate's degree in safety, industrial hygiene, engineering, or in a related field with at least ten (10) years of full-time safety and health experience.

Id.

Call Henry's proposal included a resume for its proposed safety and health professional which indicated that he was a "Certified Safety Professional" (CSP). Call Henry Mission Suitability Proposal at 00376. The CO advises that, as part of the evaluation process, the evaluators checked the credential holder directory of the Board of Certified Safety Professionals (BCSP) for each offeror that proposed a CSP, but that Call Henry's proposed candidate was not in the online directory, and the BCSP verbally confirmed that the employee in fact was "not a Certified Safety Professional." COS at 8-9; see SEB Report at 00895. The evaluators found this failure to meet the required qualifications to be a weakness under the key personnel element, and found that this failure "could result in a deficient Safety & Health Program, thereby increasing the risk of unsuccessful performance." SEB Report at 00895. Likewise, the SSA, in making her source selection decision, advised that this weakness "severely outweighed [Call Henry's] strength" and increased her "lack of confidence that [Call Henry] could perform FORM-II requirements without increased risk to the Government." SSS at 01064-65.

Call Henry concedes that its candidate "does not have a CSP certification," but asserts that he does have an associate's degree satisfying SOW § C.8(7)(a)(iii) above, as well as additional health and safety certifications. Protest at 12; Comments at 6-7. In response, while the agency acknowledges that the candidate has an associate's degree, it notes that the candidate does not meet the additional requirement for "ten years of full time safety and health experience." COS at 9, citing SOW § C.8(7)(a), at 00237 (emphasis added).

In our view, the evaluation was reasonable. The resume for Call Henry's safety and health candidate indicated that since 2007 he has been leading and implementing "[Call Henry's] Safety and Health Program at NASA Glenn Research Center." Call

Henry Mission Suitability Proposal at 00376. As noted by the agency, however, COS at 9, the only other potentially relevant experience identified was four years at Republic Technologies International, described as follows: “Managed 800 person steel production organization; responsible for budget; human resources; work scheduling; technical performance, safety, quality and environmental compliance.” Call Henry Mission Suitability Proposal at 00376. While the protester asserts that its proposed candidate “never relinquished his responsibility for safety compliance, even when he was simultaneously performing in other capacities” at Republic Technologies, Comments at 7, the candidate’s resume, on its face, indicated that his experience at Republic Technologies was extremely varied and included numerous simultaneous responsibilities in addition to safety and health. In these circumstances, we find reasonable the agency’s conclusion that this experience was not “full-time” with regard to safety and health issues, within the meaning of the SOW. See COS at 9. We also find reasonable the evaluators’ assessment of a weakness for failure to meet the safety and health key personnel qualifications requirements.

Qualifications of Wolf Creek’s Safety Manager

Call Henry next argues that Wolf Creek’s proposed safety manager also did not meet the SOW requirements. Supp. Protest at 7-9. In this regard, the resume furnished by Wolf Creek for its candidate generally indicated that he had a bachelor’s degree in industrial management and more than “15 years experience in a safety and environmental health management role.” AR, Tab 8, Wolf Creek Mission Suitability Proposal, at 00630. Despite this general claim, the resume identified specific, relevant work experience covering only five years. Id.

We agree with the protester that Wolf Creek’s proposal did not demonstrate compliance with the SOW safety and health key personnel qualifications requirements. The agency acknowledges that its conclusion relied on the general statement in Wolf Creek’s proposal that its safety manager had “[m]ore than 15 years’ experience in a safety and environmental health management role, including experience in multi-facility industrial and research and development EH&S programs as well as production and global manufacturing operations.” Supp. AR at 4; Supp. COS at 2; see Wolf Creek Mission Suitability Proposal at 00630. The RFP, however, required offerors to “describe the qualifications, roles, and responsibilities of all proposed key personnel,” and to “clearly address the relevant skills, certifications, and experience of each proposed individual.” RFP § L.16, at 00179. In our view, a general reference to 15 years of experience, supported by information that identifies only 5 years of specific experience--some of which appears more general (e.g., “Manager of Workplace Solutions”) than the required “full-time” health and safety experience--did not establish that Wolf Creek’s proposed safety manager met the RFP requirement to “clearly address” relevant skills,

certifications, and experience.² Id.; see Wolf Creek Mission Suitability Proposal at 00630.

NASA, however, asserts that the protester was not prejudiced by any failure of Wolf Creek's safety manager to satisfy the RFP's qualifications requirements. Supp. AR at 4-5. In this regard, prejudice is an essential element of every viable protest and, where it is not demonstrated or otherwise evident, we will not sustain a protest allegation, even where the record shows that the agency's actions arguably were improper. GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 7-8. Here, NASA maintains that, even if Wolf Creek had received a weakness under the management approach subfactor due to its proposed safety manager's lack of experience, this weakness would not have been determinative in the source selection decision, since Wolf Creek's proposal would still have been rated "very good" for this subfactor and Wolf Creek "still would have been rated technically superior to [Call Henry]." Supp. AR at 5.

We agree with the agency that the record does not demonstrate prejudice from the agency's failure to recognize that Wolf Creek's proposal did not clearly establish that Wolf Creek's proposed safety manager satisfied the SOW's experience qualifications. In this regard, we think that Wolf Creek cannot show that, but for the agency's actions, it would have had a substantial chance of receiving the award. See Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3.

Here, even if Wolf Creek had received a weakness under the management approach subfactor based on the reported qualifications of its proposed safety manager, as did Call Henry, it is not clear how this issue alone would have significantly diminished Wolf Creek's nearly 200 point advantage under the mission suitability evaluation factor.³ This is especially significant since the SSA found Wolf Creek and Call Henry to be essentially equal under the price (0.14% difference⁴) and

² Indeed, Wolf Creek's proposal was marked by the evaluators for further scrutiny with regard to this issue. Wolf Creek Evaluation, July 24, 2013 ("May need to validate Safety Manager's 15 yrs. of experience in Safety & Health Management"). Nevertheless, it does not appear that the issue of Wolf Creek's safety and health professional's qualifications was addressed further in the evaluation or brought to the attention of the SSA.

³ During the course of this protest, the agency calculated that assessing a weakness for Wolf Creek's proposal under this subfactor would, under a "worst case scenario," have only a minimal effect on the relative point scores, reducing Wolf Creek's score from 750 to 736 points, still significantly higher than Call Henry's score of 577 points. Supp. AR at 5; Supp. COS at 3.

⁴ Call Henry asserts that Wolf Creek was able to propose low prices only by reducing fixed quantity-of-work assumptions contained in the agency's pricing forms, thereby
(continued...)

relevant experience/past performance factors, essentially making the mission suitability factor determinative. SSS at 18. Moreover, the SSA found that Wolf Creek's mission suitability proposal was "clearly technically, quantitatively and qualitatively superior to all of the other offerors." SSS at 15. According to the SSA,

In a direct comparison of Wolf Creek and the other offerors regarding the Mission Suitability factor, I consider Wolf Creek to have submitted a superior proposal, particularly for its management of IDIQ workloads, its [reliability-centered maintenance] Implementation Plan, which would be of beneficial value to the government, and its demonstrated technical ability in responding to the sample tasks.

SSS at 16. Thus, while Wolf Creek's proposal received three significant strengths (including one for comprehensive, detailed, and innovative processes for meeting contract requirements that exceeded the RFP requirements), four strengths, and no weaknesses or significant weaknesses, Call Henry's proposal received no significant strengths, four strengths, and two weaknesses. SEB Report at 00854, 00858; Mission Suitability Findings Summary. In these circumstances, there simply is no basis for concluding that assessing a weakness against Wolf Creek's proposal because its safety manager did not clearly establish that he met the SOW's experience requirements would have altered the best value determination.

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

taking exception to "RFP pricing rules." Comments at 19-24. We find Call Henry's analysis in this regard unpersuasive since Call Henry cites no part of Wolf Creek's proposal where Wolf Creek proposed to deviate from the quantity-of-work assumptions in the RFP.