



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: MIRACORP, Inc

File: B-410413.2

Date: February 23, 2015

Thomas K. David, Esq., and Kenneth D. Brody, Esq., David, Brody & Dondershine, LLP, for the protester.

Andrew J. Mohr, Esq., John J. O'Brien, Esq., Daniel Strouse, Esq., Gabriel E. Kennon, Esq., and Amy J. Spencer, Esq., Cohen Mohr LLP, for Allegheny Science & Technology Corporation, the intervenor.

Gabriel D. Soll, Esq., James Jurich, Esq., Timothy O'Keefe, Esq., Kimberly J. Graber, Esq., and Adam DeDent, Esq., Department of Energy, for the agency.

Eric M. Ransom, Esq., and Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that the agency unreasonably and disparately evaluated the vendors' quotations and introduced unstated evaluation criteria is denied where the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

MIRACORP, Inc., of Mesa, Arizona, protests the establishment of a blanket purchase agreement (BPA) with Allegheny Science & Technology Corporation, of Bridgeport, West Virginia, under request for quotations (RFQ) No. DE-SOL-0006252, issued by the Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy (EERE), for mission-oriented technical services (MOTS). MIRACORP alleges that DOE unreasonably and disparately evaluated the vendors' quotations, and introduced unstated evaluation criteria in its evaluation of the protester's quotation.

We deny the protest.

BACKGROUND

DOE issued the RFQ on December 27, 2013, as a set-aside for 8(a) small business firms holding a General Services Administration schedule contract under Professional Engineering Services Schedule 871, Mission Oriented Business Integration Services Schedule 874, or Facilities Maintenance and Management Schedule 03FAC. The purpose of the RFQ was to establish a BPA with a 1-year base period and up to two 1-year option periods, with an estimated value of up to \$85 million, to replace DOE's existing contracts for these services.

The RFQ provided for establishment of the BPA with the schedule contractor whose quotation represented the best value to the government, considering two evaluation factors: technical capability and price. The technical capability factor consisted of four equally-weighted subfactors: (1) relevant experience, (2) key personnel, (3) sample BPA calls, and (4) organization structure and staffing. The RFQ also advised that, overall, the technical capability factor was more important than the price factor.

DOE received six quotations in response to the RFQ. After an initial review of quotations, DOE issued an RFQ amendment (to clarify certain required price information, among other issues) and requested revised quotations. Between the agency's initial review and its review of revised quotations, four of the six quotations were rejected for failing to comply with the requirements of the RFQ. As a consequence, only the two remaining quotations, submitted by MIRACORP and Allegheny, were provided to the agency technical evaluation panel (TEP) for consideration.

DOE completed its original evaluation and made award to Allegheny on September 9, 2014. MIRACORP then filed a protest of the award decision with our Office on September 18. Thereafter, on September 26, DOE advised that it intended to take corrective action in response to MIRACORP's protest consisting of reevaluating the proposals and making a new source selection decision (SSD). Accordingly, our Office dismissed MIRACORP's protest on October 1. MIRACORP, Inc., B-410413, Oct. 1, 2014.

The TEP then reconvened and conducted a reevaluation of MIRACORP's and Allegheny's quotations. This evaluation concluded that MIRACORP's quotation warranted a satisfactory rating under the technical capability factor, while Allegheny's quotation warranted a good rating under the technical capability factor. MIRACORP's total price was \$48,390,478.16, while Allegheny's total price was \$52,291,226.50. Agency Report (AR), Tab E.1, TEP Report, at 8.

In the revised SSD, the source selection authority (SSA) reviewed the quotations and the TEP's revised report, and concluded that Allegheny's quotation was superior to MIRACORP's quotation in three of the four technical capability

subfactors. Specifically, the SSA concluded that Allegheny was more likely to successfully perform the relevant experience subfactor and organization structure and staffing subfactor requirements, and much more likely to successfully perform the key personnel subfactor requirements; neither vendor had an advantage under the sample BPA calls subfactor. In the best value trade-off decision, the SSA determined that:

The difference in price between [Allegheny's] and MIRACORP's quotes is approximately \$3.9 million over a three-year lifetime for the MOTS requirement. The comparative advantages of [Allegheny's] experience with similar size and complexity contracts; proposed key personnel (CM) having recent, relevant experience on similar size and complexity contracts; good near term experience in energy research and development; clearly defined organizational structure; and comprehensive recruitment, retention and staffing plan equate to an avoidance of performance risk which contributes value to the Government commensurate with [Allegheny's] relatively small price premium.

AR, Tab F, SSD at 15. Based on these considerations, the SSA concluded that Allegheny represented the best value to the government. On November 10, DOE informed MIRACORP that the decision to establish the BPA with Allegheny was reaffirmed. This protest followed on November 14.

DISCUSSION

MIRACORP alleges that DOE unreasonably or disparately evaluated the quotations under each of the four technical capability subfactors--(1) relevant experience, (2) key personnel, (3) sample BPA calls, and (4) organization structure and staffing. MIRACORP asserts that, had the agency conducted a reasonable analysis, its quotation would have been assigned six fewer weaknesses and would likely have represented the best value to the government.

Where an agency conducts a formal competition for the establishment of a BPA, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. SRA Int'l, Inc., B-409939, Sept. 2, 2014, 2014 CPD ¶ 264 at 4; Athena Scis. Corp., B-409486, B-409486.2, May 14, 2014, 2014 CPD ¶ 154 at 3. Concerning an agency's evaluation of experience and past performance, such evaluations are by their very nature subjective; we will not substitute our judgment for reasonably-based evaluation ratings, and an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

In this case, we conclude that the protester's allegations are largely unfounded, and represent disagreement with the agency's judgments. We discuss several representative examples of the protester's allegations below.

Under the relevant experience subfactor, MIRACORP asserts that the agency unreasonably evaluated the quotations, and introduced unstated evaluation criteria concerning the relevant experience and the management experience of the prime contractor. In this regard, MIRACORP contends that the agency unreasonably assigned its quotation the following weakness:

MIRACORP cited only [DELETED] for which it served as the prime contractor. This example contract (Contract #1, pg. 3) is of short duration (1 year) and does not demonstrate that MIRACORP has the capacity to manage a contract of the size, scope and complexity of the MOTS requirement. There was no indication that this example included any subcontracts, and it included work in only three of the 12 MOTS SOW areas . . . The lack of documented experience as a prime contractor managing subcontracts on multi-million-dollar contracts increases the risk of unsuccessful contract performance.

AR, Tab E.1, TEP Report, at 26.

MIRACORP asserts that in assessing this weakness the agency failed to consider the experience of MIRACORP's entire team as required by the RFQ, and instead focused solely on MIRACORP's own experience. According to MIRACORP, the RFQ permitted the submission of relevant experience projects performed by proposed subcontractors, and did not require the schedule contractor to provide a minimum number of examples of its own relevant experience. AR, Tab A1, RFQ, at 69. MIRACORP further contends that the RFQ's evaluation criteria did not provide for consideration of management experience, and the agency's evaluation therefore imposed an unstated evaluation criterion. We find no error in the agency's evaluation.

In connection with the relevant experience subfactor, the RFQ required vendors to submit "no more than five (5) examples of relevant experience meaning the experience, competency, capability, and/or capacity to complete projects of similar size, scope or complexity to that described in the SOW," and also advised that "[i]nformation submitted for relevant experience may include projects performed by proposed subcontractors." AR, Tab A.1, RFQ, at 69. Under the evaluation criteria, the RFQ explained that the relevant experience subfactor would consider:

The experience, competency, capability, and/or capacity to complete projects of similar size, scope or complexity shall be evaluated based on the submission described in section E.3.2, above. The Evaluation will consider the scope of the experience of the proposed Schedule Contractor and team to ensure that all areas of the PWS are represented with previous work . . . The Evaluation will consider the size of the proposed experience relative to the expected duration and dollar amount of the proposed task to determine how relevant that experience is.

Id. at 73.

Based on the above language, it is apparent that the solicitation anticipated consideration of the experience of both the schedule contractor and proposed team members. The language does not establish, as the protester's arguments tend to suggest, that the agency was barred from independently assessing whether the MIRACORP as the prime contractor possessed relevant experience simply because it proposed a team of subcontractors to participate in performance. Ultimately, the significance of, and the weight to be assigned to, the prime's experience--or lack thereof--and the weight to be assigned to the experience of proposed subcontractors, are matters of contracting agency discretion. Accordingly, since the record reflects that the single example of MIRACORP's own experience paled in comparison to the expected "duration and dollar amount" of the agency's requirement, we have no basis to question the agency's decision to assess a weakness based on the risks associated with MIRACORP's limited relevant experience performing as a prime contractor.¹

We also disagree with MIRACORP's allegations that the agency applied unstated evaluation criteria. First, with regard to MIRACORP's assertion that it was not required to submit any specific minimum number of references for its own prior experience, we see no evidence that the agency imposed such a requirement. The record is clear that MIRACORP was not considered deficient in any way for failure to submit more than one example of its own prior experience. Rather, the agency reasonably concluded that MIRACORP's sole relevant experience example was not

¹ Additionally, the record confirms that the agency's evaluation did consider the relevant experience of the entire MIRACORP team. In fact, the evaluation concluded that the experience of MIRACORP's team, on the whole, was a significant strength of the proposal, because "[t]hree of the four partners provide[d] examples of extensive, directly relevant experience with all 12 of the MOTS [statement of work] areas, demonstrating its staff has the depth of knowledge and experience needed to comprehensively support EERE in all of the required functional areas." AR, Tab E.1, TEP Report, at 25.

comparable to the RFQ's requirements in content, duration, or dollar value, and thus constituted a weakness in its quotation.

Second, we disagree with the allegation that the agency's concern over MIRACORP's lack of demonstrated management experience represented the imposition of an unstated evaluation criterion. Our Office has repeatedly acknowledged that, in evaluating proposals, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4. Here, we conclude that evaluation of a prime contractor's experience in managing multiple subcontractors on a multimillion dollar effort was logically encompassed within the relevant experience evaluation criteria concerning the vendor's "competency, capability, and/or capacity to complete projects of similar size, scope or complexity." AR, Tab A.1, RFQ, at 73.

In another example, MIRACORP alleges that the agency disparately evaluated the vendors' proposed contract managers under the key personnel subfactor.² MIRACORP specifically asserts that the agency disparately assessed Allegheny a significant strength for its key personnel while assigning MIRACORP three weaknesses, despite the fact that the proposed personnel had similar educational backgrounds and years of management experience.³ On our review of the record, however, we conclude that the agency rationally and reasonably considered differing aspects of the proposed personnel, which support the evaluation result.

The record shows that Allegheny received a significant strength under the key personnel subfactor because "[t]he proposed Contract Manager (CM) has direct,

² In its initial protest, MIRACORP alleged that Allegheny had engaged in an improper "bait and switch" concerning its proposed contract manager, who MIRACORP asserted would not be available due to a recent promotion at her current firm, an Allegheny partner. In the agency report, DOE presented the proposed contract manager's unequivocal commitment letter, among other evidence, supporting the proposed contract manager's availability and intention to serve as Allegheny's contract manager on this requirement. In its comments on the agency report, MIRACORP made a blanket statement that it was reasserting each of the grounds of protest set forth in its initial protest. It did not, however, include any further references to its assertion of an improper "bait and switch," or any rebuttal to the agency's evidence and arguments. Accordingly, we deem the protester to have abandoned its "bait and switch" allegation, notwithstanding its blanket language reasserting the initial protest. See Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7.

³ We note that Allegheny's significant strength was also offset by two weaknesses.

relevant contract management experience as the current General Manager (Key Personnel) for the New West-Energetics Joint Venture contract to provide technical support services to EERE.” AR, Tab E.1, TEP Report, at 19. Additionally, the agency explained that the proposed contract manager had “26 years of management experience with EERE” and experience “very similar to the requirements for the MOTS CM position.” Id.

In contrast, while the agency agreed that MIRACORP’s “proposed CM’s experience is lengthy,” it concluded that the experience “has limited relevance to the MOTS contract . . . [and] does not clearly show experience with the management of, or support for, the types of R&D and technology deployment efforts that are the primary work in EERE.” Id. at 27. Instead, the agency considered MIRACORP’s proposed contract manager’s experience to be more administrative in nature, and found that it did not reflect “directly-relevant experience, especially within a technology advancement and market-transformation environment like EERE.” Id.

MIRACORP disagrees with the agency’s evaluation of its proposed contract manager’s experience and contends that the individual’s resume reflects more directly-relevant experience than credited by the agency. However, based on our review of the record, we cannot conclude that the agency’s evaluation was unreasonable, or that the agency disparately evaluated the quotations. Rather, differences between the two proposed candidates are explained in the evaluation documentation, which supports the differing evaluation conclusions reached by the agency.

In addition to the protest allegations discussed above, we have reviewed MIRACORP’s arguments concerning the agency’s evaluation under the relevant experience and key personnel subfactors, and its allegations concerning agency errors under the sample BPA calls and organization structure and staffing subfactors. On the basis of this review, we conclude that none of the arguments are any stronger than those addressed above, and none provide our Office with a basis on which we would sustain the protest.⁴ The SSD in this case highlights

⁴ MIRACORP challenges a weaknesses it received under the organizational structure and staffing subfactor for failing to support the assertion in its quotation that “the majority of companies on MIRACORP’s team have a strong track record of working with one another to further EERE’s mission.” AR, Tab E.1, TEP Report, at 32. According to MIRACORP, the weakness was unreasonable because it reflected criticism of mere puffery presented in MIRACORP’s quotation, rather than a defect concerning a material aspect of MIRACORP’s approach. We, however, see nothing unreasonable in the agency questioning whether MIRACORP’s quotation adequately supported its claimed advantages. In response to MIRACORP’s contention that the agency’s criticism demonstrated only the absence of a strength, rather than a weakness--we see limited importance in the label used

(continued...)

specific aspects of Allegheny's quotation as warranting payment of a modest price premium over MIRACORP's quotation, and MIRACORP's protest fails to demonstrate that the agency's evaluation or source selection was unreasonable or inconsistent with the RFQ.

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

to describe a rationally based criticism where there is no evidence that the SSA misunderstood the criticism, or mechanically counted the weaknesses assessed against MIRACORP's proposal in the SSD. To the contrary, the SSA clearly understood the basis underlying the criticism of MIRACORP's proposal, and explained her view that the lack of evidence to support MIRACORP's claim "diminishes any benefits that may have otherwise been attributed to MIRACORP," in this area. AR, Tab F.1, SSD, at 15. Accordingly, even to the extent that we agreed with the protester that this criticism did not rationally rise to the level of a "weakness," there is no evidence that the SSA misunderstood the content of the criticism and, accordingly, no possibility that MIRACORP could have been prejudiced in this instance. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).