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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: AMEL Technologies, Inc.

File: B-412587.2

Date: June 20, 2016

Melek Yalcintas, Ph.D., for the protester.

Andrea S. Maglasang-Miller, Esq., and Ron Ashlock, Esq., Department of the Navy, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation of architect-engineer qualification statements, as part of a corrective action, is denied where the record shows that the agency reasonably performed its evaluation in accordance with the stated selection criteria.

DECISION

AMEL Technologies, Inc., an economically disadvantaged woman-owned small business concern, of Honolulu, Hawaii, protests the evaluation of its qualification statement under solicitation No. N62478-15-R-5023, which was issued by the Department of the Navy, for architect-engineer services (A/E). AMEL argues that the agency's evaluation of its qualification statement was flawed.

We deny the protest.¹

BACKGROUND

This procurement was conducted pursuant to the Brooks Act, 40 U.S.C. §§ 1101-1104 and its implementing regulations, Federal Acquisition Regulation subpart 36.6 for A/E services. Issued on May 4, 2015, as a total small business set-aside, the solicitation invited qualified firms to submit a completed Standard

¹ Because a protective order was not issued in connection with this protest, our discussion is necessarily general.

Form 330, A/E Qualifications Statement. The solicitation contemplated the award of an indefinite-quantity A/E contract for a base year with four option years to provide design and engineering services for various design-build mechanical and fire protection projects. Solicitation at 1. The solicitation indicated that the majority of these projects will be associated with the mechanical discipline and may involve new construction, alteration, repair, and installation of mechanical and fire protection facilities and systems. Id.

According to the solicitation, qualification statements would be evaluated based on eight selection criteria listed in order of importance: (1) professional qualifications of firm and staff; (2) specialized recent experience and technical competence of firm or particular staff members; (3) past performance; (4) capacity to accomplish the work in the required time; (5) knowledge and demonstrated experience; (6) firm's quality control program experience; (7) location of the firm in the general geographical area; and (8) volume of work previously awarded to the firm. Id. at 1-3. The solicitation included detailed submission requirements for each selection criterion, and required A/E firms to demonstrate their qualifications for each criterion for all services.

As is relevant here, under the most important selection criterion, professional qualifications of firm and staff, the solicitation established that the agency would assess a firm's qualifications to prepare design build contract documents including, "mechanical air-conditioning systems and controls, compressed air systems, industrial exhaust and ventilation systems, water heating systems, plumbing systems." Id. at 2. The solicitation also established that the agency would assess a firm's qualifications to, among other things, provide "the design of fire protection systems and controls, fire protection studies and surveys, fire protection investigative reports, [and] fire hazard analysis." Id. Regarding the second most important selection criterion, specialized recent experience and technical competence, the solicitation instructed firms to identify ten completed relevant projects. Based on these projects, the agency was to assess each firm's experience and technical competence to perform the solicited A/E services. Id.

On or before June 4, 2015, the agency received qualification statements from five firms, including AMEL, which were evaluated by a four-member selection board.² The selection board evaluated AMEL's qualification statement as not met under three selection criteria: professional qualifications (criterion 1); specialized recent experience and technical competence (criterion 2); and capacity to accomplish work in the required time (criterion 4). Contracting Officer Statement at 2.

² For each criterion, the selection board rated qualification statements on a "meet" or "does not meet" basis (i.e., pass/fail). Contracting Officer Statement at 2.

On December 15, the Navy notified AMEL that it was not one of the three most highly qualified firms with which the agency would negotiate fair and reasonable pricing. Following a debriefing, on December 28, AMEL filed an initial protest with our Office, challenging the evaluation of its qualification statement. In response, the agency informed our Office that it intended to take corrective action by reconvening the selection board to reevaluate all qualification statements. Based on the agency's proposed corrective action, we dismissed the protest as academic. AMEL Techs., Inc., B-412587, Jan. 21, 2016 (unpublished decision).

The selection board's reevaluation of qualification statements resulted in the same ratings for AMEL's qualification statement under each selection criterion as the selection board's prior initial evaluation. Agency Report (AR) exh. 5, Selection Board Revised Memorandum at 21-24. For the second time, the selection board determined that AMEL was not one of the three most highly qualified firms with which the agency would negotiate fair and reasonable pricing. Id. at 2-24. After receiving a debriefing, AMEL filed this current protest.

DISCUSSION

AMEL challenges the evaluation of its qualification statement, arguing that the evaluation was flawed and inconsistent with the stated selection criteria. Although we specifically address only the primary allegations necessary to resolve this protest, we have considered all of the protester's arguments and conclude that they do not provide a basis to sustain the protest.³

In reviewing protests against allegedly improper evaluations of firms' qualifications statements for A/E services, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the stated selection criteria and applicable procurement laws and we will not substitute our judgment for that of the agency evaluators. AMEL Techs., Inc., B-412611, Apr. 1, 2016, 2016 CPD ¶ 103 at 5; OLBN Architectural Serv., Inc., B-402444.4, B-402444.5, Oct. 4,

³ For instance, AMEL also takes issue with the agency's evaluation under selection criterion 4, capacity to accomplish the work in required time, for which AMEL's qualification statement received a rating of not met. Competitive prejudice is an essential element of a viable protest and we will not sustain the protest unless the protester establishes a reasonable possibility that it has been prejudiced by the agency's actions. Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10. Because we find no merit to the protester's challenges to the agency's evaluation under the two most important selection criteria, we see no reasonable possibility that the protester suffered any prejudice as a consequence of any alleged evaluation errors under selection criterion 4. Nonetheless, we have reviewed the protester's contentions in this regard and find them to be without merit.

2010, 2011 CPD ¶ 55 at 3. A protester's disagreement with the agency's evaluation, without more, does not show that it is unreasonable. Design Eng'g, Inc., B-408336.3, May 6, 2014, 2014 CPD ¶ 144 at 3.

Here, with regard to the most important criterion, professional qualifications of firm and staff, the selection board found that AMEL had proposed only two professionally licensed and experienced mechanical engineers. Although the protester's organizational chart listed three licensed mechanical engineers, the evaluators noted that the accompanying resumes showed that only two of these three individuals were professionally licensed mechanical engineers with the needed experience to perform the solicited mechanical services. The three other members of AMEL's mechanical staff were found to possess 1, 2, and 3 years of experience, respectively, and that "their relevant experience only includes retro-commissioning and energy modeling/assessment surveys" and not preparation of design bid build construction documents. AR ex. 5, Selection Board Revised Memorandum at 21. Because the resulting contract would involve various types of specialized engineering requirements, the evaluators considered the use of only two professionally licensed mechanical engineers with the requisite experience to be inadequate.

Next, the evaluators found that none of the protester's key personnel possessed "specialized experience in design of industrial type of systems such as industrial exhaust and ventilation systems, compressed air systems, water pumping systems, hydraulic systems, gas piping systems, and petroleum/oils/lubricant (POL) systems" as would be required under this A/E contract. Id. Finally, the evaluators found that AMEL's key personnel did not have any specialized experience in the design of fire protection systems, i.e., fire suppression and fire alarm, but noted that AMEL's subcontractor did have experience in fire protection engineering. Id. As a result of these evaluative findings, the selection board assigned AMEL's qualification statement a not met rating under this selection criterion.

AMEL asserts that the selection board's evaluation of its qualification statement under the professional qualifications criterion was based on the improper consideration of unstated selection criteria. In this regard, the protester argues that the solicitation failed to disclose that the agency would evaluate the years of experience of its key personnel. A solicitation, however, need not identify every possible consideration under each stated evaluation criteria, provided the matters the agency considers are reasonably related to, or encompassed by, the stated criteria. See Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229 at 4.

Here, the solicitation required firms to demonstrate their qualifications to provide A/E design and other required services, and to establish the professional qualifications of their personnel. The requirement to demonstrate the professional qualifications of their personnel placed firms on notice that the experience of their personnel would be assessed. In this regard, it is apparent from AMEL's

qualification statement that AMEL submitted the education and years of experience of the six mechanical engineers it identified as key personnel, which the agency considered and ultimately found to be inadequate. AR exh. 4, AMEL's Qualification Statement Part 1, §§§ D, H, and I. Given the terms of the solicitation, we have no basis to conclude that the agency's identified concerns regarding the lack of experience of AMEL's mechanical engineers were unreasonable or otherwise improper.

Similarly, while conceding that it did not have a licensed fire protection engineer, see Protester's Comments at 12, the protester complains that it was improperly downgraded in this regard. According to the protester, the solicitation did not require the prime A/E firm to have a fire protection engineer on its staff; therefore, the protester relied on the experience of its subcontractor. The record reflects that the agency noted AMEL's reliance on the subcontractor for this experience, but found the lack of AMEL's experience, as the prime contractor, in this important area, to be a concern. As noted above, the solicitation established that the agency would assess the experience of a firm's personnel pertaining to, among other things, "the design of fire protection systems and controls, fire protection studies and surveys, fire protection investigative reports, [and] fire hazard analysis." Solicitation at 2. 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 or team members, are matters of contracting agency discretion. See MIRACORP, Inc., B-410413.2, Feb. 23, 2015, 2015 CPD ¶ 98 at 5; Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5. Accordingly, we have no basis to find the selection board's concerns regarding AMEL's lack of requisite experience in fire protection to be unreasonable or otherwise improper.

Regarding selection criterion 2, the second most important criterion, specialized recent experience and technical competence, the selection board reviewed the ten projects submitted by AMEL and concluded that the firm did not have sufficient experience relevant to the type of specialized industrial mechanical systems as would be required under the solicitation. For example, the selection board reviewed three projects where AMEL was a mechanical sub-consultant on a multi-discipline A/E team. The evaluators found that the scope of these projects "was mainly to provide small packaged HVAC systems and to provide commissioning services." AR exh. 5, Selection Board Revised Memorandum at 22. In sum, the agency found that AMEL's experience did not include any projects involving multiple disciplines where it was the lead consultant, as would be required by the contemplated contract. Although the protester disagrees with the selection board's analysis and continues to argue that it has extensive and relevant experience, it has not shown that the selection board's evaluative conclusions, which were based on the solicitation's selection criterion, were unreasonable. On this basis, we view the protester's arguments as reflecting nothing more than disagreement with the agency's assessments of its qualification statement. Design Eng'g, Inc., supra.

Finally, AMEL alleges that the agency's reevaluation of its qualification statement reflected bias against the firm because it is woman-owned. In this regard, AMEL submitted a number of reports and academic papers to support its arguments that women are discriminated in scientific fields such as architecture and engineering.⁴ As further support, AMEL cites an alleged discrepancy on a previous contractor performance assessment report system report for a NAVFAC contract that AMEL performed in 2012. AMEL claims that the contracting officer assigned significantly lower past performance ratings than the project manager, and that this allegedly proves the "agency's [prejudicial] evaluation and discrimination against AMEL." Protest at 9.

By decision dated April 1, 2016, we denied a protest filed by AMEL against another Navy procurement for A/E services with similar qualification requirements. We rejected the protester's arguments regarding gender bias, finding no evidence of wrongdoing or bias on the part of the agency. We found that the Navy's evaluation of AMEL's qualification statement was reasonable and consistent with the stated selection criteria. AMEL Techs., Inc., supra at 7-8. As explained in our prior decision, government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition; where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the successful firm, but must also show that this bias translated into action that unfairly affected the protester's competitive position. See McKissack-URS Partners, JV, B-406489.7, Jan. 9, 2013, 2013 CPD ¶ 25 at 7; IDG Architects, B-235487, B-235487.2, Sept. 18, 1989, 89-2 CPD ¶ 236 at 3 (GAO will not attribute bias in the evaluation of qualifications statement for A/E contract on the basis of inference or supposition about the ethnic composition of the evaluation panel). Like the record in the prior case, there is no evidence here of wrongdoing or bad faith by the agency.

The protest is denied.

Susan A. Poling
General Counsel

⁴ See, Protest at 7, citing, inter alia, Corinne A. Moss-Racusin et al., Science Faculty's Subtle Gender Biases Favor Male Students, 109 Proc. Nat'l Acad. of Sci. 41, 16474-79 (2012), available at www.pnas.org/cgi/doi/10.1073/pnas.1211286109 (last visited June 14, 2016).