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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Interstate General Government Contractors, Inc.

File: B-290137.2

Date: June 21, 2002

Mallie Seckinger for the protester.

Robert E. Little, Jr., Esq., Naval Facilities Engineering Command, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation of proposals is unobjectionable where record establishes that evaluation was reasonable and consistent with stated evaluation scheme; protester's mere disagreement with agency's conclusions does not render evaluation unreasonable.

DECISION

Interstate General Government Contractors, Inc. (IGGC) protests the award of a contract to Lake Moultrie Water Company under request for proposals (RFP) No. N62467-01-9153, issued by the Department of the Navy for wastewater facility headworks and related construction work at the Marine Corps Air Station, Beaufort, South Carolina. IGGC contends that the agency's evaluation of the proposals and the resulting source selection decision are unreasonable, and that they demonstrate agency bias in favor of the awardee and against IGGC.

We deny the protest.

The RFP, issued on August 13, 2001, anticipated the award of a fixed-price contract for the demolition of an existing headworks structure, construction of new headworks, bypass piping for lift stations, coating of lift station and aerobic digester interiors, and related work. The RFP provided for award to the responsible offeror that submitted the proposal determined to be most advantageous to the government. The following evaluation factors for award were listed in the solicitation: past performance, technical qualifications, construction schedule, and price. The first three factors, equal in importance, were to have a cumulative weight equal to price. Proposals were to set forth accurate, complete information demonstrating the

offeror's experience and capability to successfully perform the work. Offerors were advised to include their best pricing and technical terms in their initial proposals, since discussions were not anticipated. The RFP provided that the agency's "best value" determination would be based on the solicitation's stated technical and price factors, and that award could be made to other than the lowest-priced offeror.

In their past performance proposals, offerors were to provide information demonstrating a history of performance within the last 3 years on contracts similar in scope, complexity and size to the current procurement. In particular, offerors were to demonstrate a history of relevant experience in wastewater treatment plant construction work. Offerors were specifically instructed to include in their past performance proposals a demonstration of prior experience in complex concrete form and concrete structure work. Offerors were advised that the failure to provide the requested proposal information could result in a lower past performance rating.

Proposals were submitted by three offerors, including IGGC and Lake Moultrie. IGGC's proposal was priced lower (at \$786,604) than Lake Moultrie's (which offered a price of \$878,000). The Lake Moultrie proposal was rated higher overall than the IGGC proposal, mainly due to the difference in ratings assigned to each proposal under the past performance criterion. IGGC's proposal received a rating of marginal for past performance; Lake Moultrie's proposal was rated exceptional under the criterion. Both proposals were rated as acceptable under the remaining factors of technical qualifications and construction scheduling. IGGC's overall proposal was rated as marginal, and Lake Moultrie's proposal received an overall rating of acceptable. Lake Moultrie's proposed price was considered reasonable; the price analysis performed showed that the firm's price was lower than the government estimate for the work and that it was in line with the other offerors' prices.¹ Citing advantages in the Lake Moultrie proposal, such as its detailed demonstration of successful performance on several similar projects, as well as its detailed, favorable construction schedule, the agency determined that the firm's was the most advantageous offer under the technical and price factors of the RFP. The agency subsequently awarded a contract under the RFP to the firm. Following a debriefing, IGGC filed this protest.

IGGC primarily challenges the agency's past performance evaluation.² The protester generally challenges its marginal rating under the past performance factor by

¹ The third offeror, whose overall rating was marginal, offered a price higher than both the government estimate and IGGC's and Lake Moultrie's prices.

² IGGC also raises several challenges to the procurement that fail to constitute valid bases of protest. First, IGGC points out, and the agency recognizes, that, during the debriefing, the contracting officer identified a company other than Lake Moultrie as the awardee. This misstatement, however, simply provides no basis to conclude that the evaluation or award decision were improper. Next, IGGC asserts, and the agency
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asserting that its past performance is "beyond reproach" because IGGC recently performed a larger contract at the same facility providing substantially similar services. The protester argues that the evaluators improperly failed to contact references IGGC listed in its proposal for past performance information. In particular, IGGC argues that the evaluators should have contacted the point of contact it listed for the firm's recent contract performance at the same facility; in this regard, IGGC suggests that such communication would have bolstered its past performance rating. Additionally, based on its belief that Lake Moultrie has not performed work similar to that required under the RFP, IGGC protests the awardee's higher past performance rating. In particular, the protester contends that it was improper for the agency to credit the Lake Moultrie proposal with the individual experience of that company's principal (Lake Moultrie's president). IGGC contends that the principal's alleged experience relates to contracts awarded to another company, of which he is a vice president. IGGC concedes, however, that the other company has had extensive experience in wastewater treatment plant construction work similar to that required under the RFP.

The evaluation of technical proposals, including the determination of the relative merits of proposals, is primarily a matter of the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing the agency's technical evaluation, we will not reevaluate the proposals, but will examine the record of the evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria as well as with procurement law. Id. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. In evaluating past performance information in an offeror's proposal to assess the firm's ability to perform the prospective contract successfully, an agency may properly take into account performance information regarding key personnel who have relevant experience, as well as relevant subcontract experience of the firm, since that

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concedes, that the agency initially planned to have two individuals conduct the price evaluation of proposals. The price evaluation ultimately was handled by only one of those two individuals; the second individual was reassigned to handle other pressing work duties. While IGGC asserts that this change was "by design," again there simply is no basis to conclude that the agency's action demonstrates an impropriety in the selection process. Finally, while, as IGGC points out, the technical evaluators were not made aware of the offerors' proposed prices, IGGC is incorrect in its assumption that price was not considered in the source selection decision. As discussed later in this decision, the award determination here was appropriately based on a tradeoff analysis by the source selection official (*i.e.*, not the technical evaluators) between the technical merit of the proposals and price, as contemplated by the RFP.

experience may be useful in predicting success in future contract performance. See Federal Acquisition Regulation § 15.305(a)(2)(iii); SDS Int'l, B-285822, B-285822.2, Sept. 29, 2000, 2000 CPD ¶ 167 at 4; Philips Nat'l, Inc., B-253875, Nov. 1, 1993, 93-2 CPD ¶ 252 at 6. As explained below, the record provides no basis to object to the evaluation of the offerors' past performance proposals.

First, our review of the record here confirms the reasonableness of the agency's conclusion that Lake Moultrie's principal has had substantial experience and responsibility directing and managing the performance of wastewater treatment facility contracts of similar scope, complexity and size. Even though the principal's experience relates to performance of another firm's contracts, it is clear that the nature and success of the management work he performed under those contracts is directly relevant to his performance in a similar capacity as project manager under the Lake Moultrie proposal. Second, the firm's proposal also identifies work performed by Lake Moultrie under joint ventures and subcontracts for similar services, as well as some prime contract experience. Third, as the evaluators noted, the proposal also includes commendations from a previous customer recognizing the strength of management personnel on a contract managed by Lake Moultrie's president. Fourth, as required by the RFP, the awardee's past performance proposal contained a detailed demonstration of the firm's experience working with complex concrete forms and structures. Our review of the record thus confirms that, despite IGGC's contentions otherwise, Lake Moultrie's demonstrated corporate and key personnel experience is highly relevant to the current requirement, where the same principal will assume contract management responsibilities similar to those he has successfully performed a number of times in prior contracts. Accordingly, we find no reason in the record to question the agency's consideration of the noted experience, as a legitimate basis to predict success in the management and performance of the current similar contract, or the high past performance rating assigned to the firm after such consideration.

As to the agency's evaluation of IGGC's past performance, the record shows that the evaluators did credit the firm for performance of its recent contract for similar work at the same facility. Additionally, contrary to the protester's allegations, the agency reports that the evaluators did contact the reference IGGC had listed in its proposal for information as to the quality of the firm's performance of that contract; in fact, the agency reports, several individuals familiar with the contract were contacted. The firm's performance of the contract, however, did not receive the highly favorable commendation that IGGC apparently expected. One evaluator familiar with the contract, for instance, noted that frequent correspondence between the firm and the contracting agency indicated that the firm's performance required additional agency intervention and supervision, and that individuals contacted as references for the work considered performance under the contract to have been marginal. The firm's proposal rating of marginal under the past performance factor was also due to IGGC's omission of material information that could have supported a higher rating. For example, the evaluators noted that the proposal failed to demonstrate IGGC's successful performance of the contracts it listed, failed to demonstrate that the

referenced contracts were of similar scope, complexity and size, and failed to describe the work actually performed under the contracts, hampering the agency's review of the relevance of the work performed. The proposal was also downgraded under the past performance factor due to IGGC's failure to demonstrate any experience with complex concrete form work, as required by the RFP.

It is an offeror's responsibility to submit a proposal with adequately detailed information to allow a meaningful review by the agency. See Intown Properties, Inc., B-250392, Jan. 28, 1993, 93-1 CPD ¶ 73 at 5. Here, the RFP required a demonstration by the offeror in its proposal of its relevant experience. In an exercise of its own business judgment, IGGC submitted a proposal without completing the comments portion of the past performance sheets included in the RFP for offerors to describe the type of work performed and demonstrate the work's relevance to the current requirement. As the evaluation record notes, and our review of the firm's proposal confirms, there is no discussion of the success in performance of its prior contracts--the majority of which were smaller in scope or size--and there was no discussion of whether IGGC or its subcontractors possessed the complex concrete work experience also needed to warrant a higher evaluation rating for award. All offerors were advised by the RFP that it was their responsibility to include in their proposals accurate, complete information demonstrating experience and capability to successfully perform the work, and they were specifically warned that the failure to provide all requested proposal information could result in a lower past performance rating. Accordingly, despite IGGC's contentions that the evaluators could have contacted additional references listed by IGGC to supplement the firm's limited past performance submission, the agency was under no obligation to do so--it was the protester's responsibility to provide sufficient narrative in its proposal to establish the relevance of its experience to demonstrate the likelihood of successful performance under the current RFP. See Logicon RDA, B-261714.2, Dec. 22, 1995, 95-2 CPD ¶ 286 at 7. Based on the record before us, we see no basis to question the reasonableness of the marginal rating; IGGC's mere disagreement with the evaluation of proposals does not render the evaluation unreasonable.

IGGC next protests the agency decision to award the contract to Lake Moultrie despite IGGC's lower proposed price. IGGC contends that the agency failed to follow the solicitation's stated evaluation scheme, which provided that price was to be equal to the combined technical factors; IGGC argues that its lower-priced proposal should be considered the best value to the agency.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. See Marathon Constr. Corp., B-284816, May 22, 2000, 2000 CPD ¶ 94 at 5. A procuring agency retains the discretion to select a higher-priced, technically higher-rated proposal if doing so is reasonably shown to be in the government's best interest and is consistent with the solicitation's stated source selection scheme. See University of Kansas Med. Ctr., B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6. As such, even where technical and price factors are to be weighted

equally, equal weight need not be given to the differential between technical ratings and the differential between proposed prices. See IBP, Inc., B-289296, Feb. 7, 2002, 2002 CPD ¶ 39 at 5-6. Rather, the source selection official must exercise reasonable business judgment regarding the significance of the differences and what the technical differences between competing proposals might mean to contract performance. Id.

Here, the RFP advised all offerors that award would be made to the firm whose proposal was determined to offer the best value to the agency, price and technical factors considered.³ Offerors were specifically notified that award could be made to other than the low-priced offeror. Here, the record shows that the source selection official considered the technical evaluation report prepared by the technical evaluation team, as well as the separately prepared price analysis of the proposals, and determined that, despite its higher price, Lake Moultrie's proposal offered the best value to the government. The source selection official cited significant advantages in that firm's proposal, such as the degree of relevant experience shown, the successful performance of substantially similar projects, and the firm's detailed, favorable construction schedule. The proposal was consequently evaluated as offering a low risk of performance, demonstrating the offeror's substantial knowledge of the work to be performed, while also demonstrating strong quality control and a keen understanding of the customer's needs. Considering the technical advantages associated with Lake Moultrie's proposal, and the resulting benefits it would provide to the agency in terms of contract performance, the source selection official determined that the awardee's higher-rated proposal offered the best overall value to the agency despite the cost premium involved. The propriety of this reasoned agency tradeoff analysis is supported by our review of the source selection record, including the offerors' proposals and the evaluation and selection documentation, showing the best value determination to be reasonably based and

³ IGGC argues that its lower price alone deserves at least half of any evaluation points available under the RFP, and that any technical merit in its proposal would then put it in line for award. We disagree. The RFP here did not provide for the assignment of evaluation points to proposals. Rather, by stating that price and technical merit were to be considered equal, the RFP essentially provided that neither of the two criteria was more important than the other. Instead, any differential in technical merit would have to be subjectively weighed against any price differential; as stated above, the resulting best value determination must be reasonably based in terms of the agency's needs and the evaluation scheme stated in the RFP.

consistent with the evaluation terms of this negotiated procurement; IGGC simply has not shown otherwise.⁴

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ As to IGGC's allegations of agency bias, we note that, since government officials are presumed to act in good faith, we cannot attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. IGGC has not produced persuasive evidence of bias in the award selection here; rather, as discussed above, the reasonableness of the award is supported by the record. Although IGGC generally opines that contractor favoritism exists at this facility, and that IGGC is being deprived of contracting opportunities, the protester's general inferences and allegations of impropriety in other procurements simply do not show that the source selection under the current RFP was improper in any way.