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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: ProActive, LLC

File: B-403545

Date: November 18, 2010

Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.
Johnathan M. Bailey, Esq., and Christopher G. Burwell, Esq., Bailey & Bailey, P.C.,
for Alcazar Trades, Inc., an intervenor.
Ruth Kowarski Cooke, Esq., and Mark J. Maxin, Esq., Nuclear Regulatory
Commission, for the agency.
Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency reasonably assigned weaknesses to the protester's proposal based on information required by the solicitation that the protester did not provide, and reached a reasonable source selection decision finding the awardee's and protester's proposals technically equal and selecting the awardee's proposal on the basis of its lower price.

DECISION

ProActive, LLC, of Waldorf, Maryland, a small business, protests the award of a contract to Alcazar Trades, Inc. (ATI), of San Antonio, Texas, by the Nuclear Regulatory Commission (NRC) under request for proposals (RFP) No. 10-10-373 for custodial, waste removal, and pest control services at NRC buildings in Rockville, Maryland. ProActive argues that the NRC misevaluated the firm's proposal, and therefore the decision to award the contract to ATI was unreasonable.

We deny the protest.

BACKGROUND

The NRC issued the RFP in February 2010 as a set-aside for service-disabled veteran owned small business concerns (SDVOSBC). RFP at I-1. The RFP requested

proposals for the required services for a base period and 4 option years.¹ RFP at B-1 to B-3, G-1. The RFP described the expected award as a fixed price contract.²

The RFP instructed each offeror to submit a technical proposal demonstrating an understanding of the requirement, showing relevant past performance and corporate experience, and presenting the qualifications of its key personnel. As relevant to the protest issues, the RFP required that the offeror and each proposed subcontractor provide past performance questionnaires from at least three references on a specific past performance questionnaire form. With respect to corporate experience, the RFP requested identification of similar work performed by the firm, along with both the estimated annual value of the contract, the identification of which services the offeror had obtained from subcontractors, and the estimated value of the subcontracted services.³ RFP at L-9.

With respect to key personnel, the RFP specified that the offeror identify as key personnel a contract manager and an alternate. RFP at C-20. Those individuals, and their “back-ups,” were required to have a minimum of 5 years of similar successful experience, and the proposal was required to provide a detailed description of their work history for 7 years. RFP at C-20 to C-21. The instructions for proposal preparation also required submission of resumes for all key personnel, which were to include a list of all formal education and training. RFP at L-9.

¹ The base period in the RFP was to be 1 year, but it was shortened to a transition period of 30 days followed by a 6 month base period at the time of award. AR, Tab 16, Memorandum Summary of Negotiation/Determination of Cost Reasonableness, at 12.

² The RFP also provided for the contractor to perform additional reimbursable services, valued at an estimated \$50,000 annually. RFP at C-14, B-1 to B-3. In addition, although the contracting officer states that the RFP “followed FAR [Federal Acquisition Regulation] Part 12 [commercial item] procedures for combined synopsis/solicitation,” it appears that the RFP incorporated FAR Part 15 (negotiated procurement) clauses and provisions. Compare Contracting Officer’s Statement at 1 with RFP at A-1, I-3.

³ The NRC explains that this information would help the agency take into account the extent to which the firm had direct experience performing similar services, or had instead subcontracted the work. Agency Report (AR) at 7.

The RFP specified four non-price factors, and the maximum possible score for each, as follows:

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| 1. Understanding of Government Requirement | 40 points |
| 2. Past Performance | 30 points |
| 3. Corporate Experience | 20 points |
| 4. Key Personnel Qualifications | 10 points |

RFP at M-2.

The RFP stated that the award would be made to the firm offering the best value, and noted that the price would be “a substantial factor, but is less important than the combined [non-]price factors.” Id.

The NRC received proposals from 15 offerors, of which 2 were disqualified and excluded from the competition because they were not certified as SDVOSBCs. AR, Tab 16, Memorandum Summary of Negotiation/Determination of Cost Reasonableness, at 4. After evaluating the remaining 13 initial proposals, the NRC established a competitive range of 4 offerors, which included both ATI and ProActive. AR, Tab 14, Evaluation Panel Report, at 4. The NRC then held discussions with the offerors in the competitive range.

ProActive’s proposal described its approach as a teaming relationship of ProActive and Olympus Building Services, Inc. AR, Tab 8, ProActive Initial Proposal, at 20. Accordingly, the proposal contained past performance surveys for both ProActive and Olympus. One of the references for Olympus criticized the firm’s quality control efforts and recurring problems with its recycle program, and so the NRC advised ProActive of that issue during discussions. AR, Tab 10, E-mail from NRC to ProActive, Apr. 14, 2010, at 2. In responding to that discussions issue, ProActive substituted a different past performance questionnaire for Olympus, which had been prepared for a different federal agency, on that agency’s form, and therefore it addressed different issues than those in the questionnaire specified in the RFP. AR, Tab 12, ProActive Discussions Response, at 30. The evaluators concluded that ProActive should be downgraded half a point under the past performance factor because its response did not fully satisfy the NRC’s concern. AR, Tab 14, Evaluation Panel Report, at 15.

With respect to the corporate experience information in ProActive’s proposal, the firm identified contracts under which it and its team member Olympus had demonstrated similar work, but it did not identify the value of the work that had been performed by subcontractors for each reference. E.g., AR, Tab 8, ProActive Initial Proposal, at 55-65. The lack of this information (which, as noted above, the RFP requested so that the NRC could consider whether the offeror itself had the experience, or had instead subcontracted some or all of the work) caused the

evaluators to downgrade ProActive’s proposal one point under the corporate experience factor. AR, Tab 14, Evaluation Panel Report, at 16.

For its key personnel, in its initial proposal, ProActive listed its president and vice president, and as on-site personnel, a contract manager, and a supervisor. AR, Tab 8, ProActive Initial Proposal, at 76-77. In its final proposal, under the heading of “KEY PERSONNEL (Factor 4),” ProActive submitted a new resume for a person described as the back-up to its contract manager. AR, Tab 11, ProActive Final Proposal, at 25. However, that resume did not state the individual’s formal education and training. Id. at 26. The evaluators determined that the lack of this information for someone identified as key personnel justified downgrading ProActive’s final proposal half a point under the key personnel factor. AR, Tab 14, Evaluation Panel Report, at 17.

The NRC evaluators summarized the point score results of the evaluation, along with the offered prices, as follows:

	ATI	ProActive
Understanding (40 pts)	38	40
Past Performance (30 pts)	30	29.5
Corporate Experience (20 pts)	20	19
Key Personnel (10 pts)	10	9.5
Total (100 pts)	98	98
Price (millions)⁴	\$6.89	\$7.29

AR, Tab 14, Evaluation Panel Report, at 7.⁵

In the narrative supporting the evaluation, the NRC identified multiple strengths for ATI’s proposal under each evaluation factor, and identified one weakness: under the understanding of requirement factor, ATI had identified only one female employee to perform day porter service in one building. Id. at 8-11. For ProActive’s proposal, the evaluators identified multiple strengths and as noted above, three weaknesses. Id. at 14-17.

After reviewing the evaluation results, the contracting officer performed a tradeoff between ATI’s proposal and the proposals of each of the other offerors remaining in

⁴ The independent government estimate was \$[DELETED] million. AR, Tab 14, Evaluation Panel Report, at 7.

⁵ The evaluation panel report contains a typographic error for ATI’s score in this table under factor 3 (corporate experience) and for ProActive’s score under factor 4 (key personnel). The table above reflects the correct scores for both proposals, as confirmed elsewhere in the report. See id. at 9, 16; AR at 9.

the competitive range.⁶ Specifically with respect to ProActive, the contracting officer observed that ProActive's and ATI's proposals received equal technical scores, but that ATI had offered a lower price. Based on the technical evaluation and the significance of the lower price offered by ATI, the contracting officer determined that paying ProActive's higher price would not be justified, and therefore the contracting officer selected ATI for award. AR, Tab 15, Recommendation for Award, at 2.

After receiving notice of the award and a debriefing, ProActive filed this protest.

DISCUSSION

ProActive argues that its proposal should not have been downgraded, should have received a perfect score, and therefore should have merited a tradeoff in favor of paying its higher price. ProActive also challenges each of the weaknesses that caused its proposal to be downgraded.

The NRC responds that the record demonstrates that the evaluation and resulting decision to select ATI's proposal at a lower price were both reasonable and consistent with the evaluation criteria.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's mere disagreement with the evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

As explained further below, the record supports the NRC's argument that its evaluation, and the resulting selection of ATI, were reasonable and consistent with the RFP. We address each of ProActive's arguments individually.

First, with respect to the past performance evaluation, ProActive challenges the agency's criticism that the offeror failed to adequately address an adverse past performance report concerning its team member by substituting another performance questionnaire in a form not permitted by the RFP. ProActive contends that the agency should not have considered the initial adverse reference, and the

⁶ The proposals of the two other offerors in the competitive range were higher in price than both ATI's and ProActive's proposals, and received point scores of 98 and 99.5 respectively. The NRC determined that the higher prices were not worth the additional price as compared to ATI's proposal. AR, Tab 15, Recommendation for Award, at 2.

agency's concern about the form of the substituted reference elevates "form over substance." Protester's Comments at 4-5.

However, the record confirms that the NRC had a reasonable basis for its concern over the adverse performance. As noted above, one reference reported unfavorable ratings for Olympus's quality control and recycle program. When the agency raised this issue during discussions, ProActive's response did not address the adverse past performance. In addition, its substitution of a new past performance questionnaire did not allay the agency's concerns or provide comparable information, which the form specified in the RFP was designed to obtain. Accordingly, based on our review of the record, we find that the NRC's evaluation of a weakness under the past performance factor, which was then reflected in the lower point score, was reasonable.

Second, with respect to the corporate experience factor, ProActive challenges the agency's criticism that the offeror failed to identify the value of the work that had been performed by subcontractors. ProActive asserts that pricing information was required only in the price proposal (not the technical proposal) and, in any event was only required for subcontractors and not team members, such as Olympus. Protester's Comments at 5-6.

Again, we find that the NRC reasonably assigned a weakness to ProActive's proposal because the corporate experience information in its proposal did not identify the value of the subcontracted work. As noted above, the RFP specifically required offerors to identify, in their technical proposals, the estimated value of the subcontracted services for each corporate reference provided by the prime contractor and its subcontractors. RFP at L-9. Since ProActive provided corporate references for its team member Olympus, to demonstrate experience of the prime contractor, those references should have presented the information required by the RFP. An offeror has the responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Based on our review of the record, the NRC reasonably treated as a weakness ProActive's failure to make clear the extent of subcontracting (or lack thereof) in its corporate experience.

Third, with respect to the evaluation of key personnel, ProActive challenges the agency's assessment that the resume for the back-up contract manager did not identify the individual's education and training. ProActive argues that it was not required to submit information about its back-up contract manager because that person was not designated as a key person. ProActive argues that the RFP required only that the contract manager and alternate contract manager be designated as key personnel. Protester's Supp. Comments at 3.

Regardless of whether the RFP required the submission of a back-up contract manager, ProActive submitted a resume for a back-up contract manager, and it specifically identified the submission as part of its key personnel response. The RFP required a resume for all proposed key personnel, identifying all formal education and training. RFP at L-9. Given that ProActive submitted this resume as part of its key personnel response, we find that the NRC reasonably considered the absence of that information for the back-up contract manager as a proposal weakness.

Taken together, the record here demonstrates that the NRC reasonably downgraded ProActive's proposal for weaknesses under three of the four evaluation criteria. Based on that evaluation, the contracting officer conducted a trade-off between ATI and ProActive. Considering the one weakness for ATI under the most important factor, and three weaknesses for ProActive under each of the less important factors, the contracting officer considered the offerors to be equal. That conclusion is supported by the evaluation which resulted in equal technical scores. Since the remaining difference between ATI and ProActive was their prices, the contracting officer determined that ATI provided the best value. Each of these judgments was reasonable; they are supported by the record and are consistent with the RFP. Accordingly, our Office will not question the agency's judgment, notwithstanding the protester's disagreement with the result.

The protest is denied.

Lynn H. Gibson
Acting General Counsel