



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

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Matter of: Garco Construction, Inc.; Triton Marine Constructon Corporation

File: B-282231; B-282231.2

Date: June 15, 1999

Thomas D. Cochran, Esq., Witherspoon, Kelley, Davenport & Toole, for Garco Construction, Inc., and John P. Ahlers, Esq., Barokas, Martin, Ahlers & Tomlinson for Triton Marine Construction Corporation, the protesters.
Kevin C. Brennan, Esq., and Carol L. O'Riordan, Esq., O'Riordan & Associates, for Nova Group, Inc., an intervenor.
Ronald S. Marsh, Esq., U.S. Army Corps of Engineers, for the agency.
Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of relevant experience at less than excellent rating is denied where for such rating solicitation required successfully completed construction and start-up of two similar pressurized aircraft hydrant fueling systems and protester's subcontractor had completed construction and start-up of only one such system; agency reasonably did not credit second similar fueling system where protester's subcontractor only finished construction begun by another firm.

DECISION

Garco Construction, Inc. and Triton Marine Construction Corporation protest the award of a contract to Nova Group, Inc. under request for proposals (RFP) No. DACA67-99-R-0015, issued by the U.S. Army Corps of Engineers, Seattle District, for construction of a pressurized hydrant fuel system for C-17 aircraft at McChord Air Force Base, Washington.

We deny the protests.

The RFP, as amended, provided for the award of a fixed-price contract on the basis of the best value to the government. It provided for the evaluation of proposals under the following technical evaluation factors (with possible points out of a total of 3,400): (1) relevant experience (1,000 points), (2) qualifications (1,000 points), (3) past performance (1,000) points, and (4) extent of small, small disadvantaged,

and women-owned small business participation (400 points). RFP amend. 0004, § 2.1, at 00100-INTRO-1. The solicitation contained detailed descriptions of the experience, qualifications and past performance necessary to achieve the rating levels of excellent, very good, and acceptable. Price was not scored, but was to be of equal importance to the technical factors.

The Corps received eight proposals in response to the RFP. After evaluating initial proposals, the agency held written discussions with offerors in the competitive range, including the protesters and the awardee, after which it requested and evaluated final proposal revisions. In making its best value determination, the agency considered the final consensus technical scores, proposed prices, percentage difference between the proposed prices and government estimate (GE) (\$13,808,480), and cost per quality point (proposed price divided by technical score), as follows:

Offeror	Final Score	Final Proposed Price	Final % Diff GE	Cost Per Quality Point
Nova	3,400	\$13,677,000	+0.95%	\$4,022.65
Triton	2,900	\$12,498,450	-9.48%	\$4,309.81
Garco	2,900	\$13,597,474	-1.5%	\$4,688.78
Offeror X	2,500	\$14,883,433	+7.8%	\$5,953.37

Source Selection Memorandum (SSM) at 4, 10.

Based on the determination that Nova’s higher-scored, higher-priced proposal provided the best value to the government, the Corps made award to Nova on February 26, 1999. Garco’s and Triton’s protests followed.

EXPERIENCE

Triton asserts that the Corps improperly downgraded the firm’s proposal under the relevant experience criterion, with a rating of 750 points instead of the full 1,000 available points, by failing to credit the firm with a completed similar project. Triton’s Protest at 3-4. According to the protester, its proposed mechanical subcontractor successfully completed two similar fuel systems at Altus and Tinker Air Force Bases (AFB) and performed significant modifications on a third similar project. Triton concludes that its subcontractor surpassed the RFP requirement for a rating of good/750 points (“successfully completed construction and start-up of 1 military or civilian pressurized aircraft fueling system . . . and in addition, provided significant construction modifications to existing aircraft fueling systems”), and instead was entitled to a rating of excellent/1,000 points (“successfully completed construction and start-up of 2 military or civilian Type III pressurized aircraft hydrant fueling systems”) RFP amend. 0004, § 4.3.1, at 00100-INTRO-2. According to Triton, based on a corrected technical evaluation in this area, its low cost offer would present the best value to the government.

Triton's position is without merit. The Corps found that Triton's offer indicated that its subcontractor completed construction and start-up of only one similar project, the Altus AFB project. The Corps explains that Triton was not credited for the project at Tinker AFB because Triton did not start the project--it finished a project begun by another firm. SSM at 5; Agency Report at 24. Specifically, the agency explains that, while Triton's proposal indicated that its subcontractor made the final installation of pumps and modified piping in the pump house; performed the flushing, cleaning, and testing of the entire system; and performed the start-up and performance testing of the Tinker AFB fueling system, there was no indication that the subcontractor successfully completed construction of a minimum of six hydrant control pits, the main pump house, and two storage tanks on the Tinker project, as specifically required by the RFP for an excellent rating. RFP amend. 0004, § 4.3.1, at 00100-INTRO-2.

Triton does not rebut the Corps's finding that its subcontractor had not completed construction of the entire Tinker AFB project. Instead, the protester argues that it should not be penalized on the basis of comments raised in the agency's narrative report that the firm "offered no relevant experience of its own" and it had not "worked together as a team" with its proposed subcontractor. Agency Report at 16; Triton's Comments at 3. However, while the agency's report does include these comments, it is clear from the record that Triton's proposal was not entitled to an excellent rating since its proposed subcontractor's relevant experience did not meet the RFP requirement for an excellent rating. The evaluation in this area therefore was unobjectionable.¹

ABANDONED ISSUES

Garco alleges that its proposal, which received 2,900 out of 3,400 possible technical points, was downgraded improperly, despite its outstanding performance review on a similar construction project. Garco further asserts that the agency's best value determination improperly was unduly weighted to favor the offeror receiving the maximum technical points, which amounted to application of an unannounced evaluation criterion. Garco's Protest at 2. In its report, the agency addressed these issues, stating that (1) although Garco received 1000 points for past performance, it did not receive the maximum available relevant experience and qualification points

¹Triton also argues, Triton's Protest at 4, without any further elaboration, that the agency overrated Nova's past performance. Such a general allegation of an improper evaluation, without an explanation of how the evaluation was flawed, fails to satisfy the requirement that a protester provide a detailed statement of legal and factual grounds. 4 C.F.R. §§ 21.1(f), 21.5(f) (1999). Therefore, the allegation is insufficient to support a bid protest and we have no basis to consider it. Global Eng'g & Constr. Joint Venture, B-275999.3, Feb. 19, 1997, 97-1 CPD ¶ 77 at 4.

because its proposal failed to list sufficient relevant experience and qualifications, and (2) there was no evidence in the record of any impropriety in the factor weightings on the best value determination. Agency Report at 20. In its comments on the agency report, Garco failed to rebut the agency's response in these areas. Consequently, we deem these issues to be abandoned by Garco and will not consider them. Litton Sys., Inc., Data Sys. Div., B-262099, Oct. 11, 1995, 95-2 CPD ¶ 215 at 3 n.2.

SUPPLEMENTAL PROTESTS

In their comments on the agency report, Garco and Triton raise additional arguments (and state that they amend and supplement, respectively, their protests). Garco's Comments at 7-10; Triton Comments at 4-13. Both protesters argue that the agency improperly used an unannounced cost-per-quality-point analysis in its best value determination. Additionally, Triton argues that the agency improperly evaluated the firm's past performance, failed to appropriately consider its low price in the best value determination, improperly compared the firm's offered price to the government estimate in the best value determination, and failed to document its selection of a higher-priced, higher-rated offeror with a specific determination that the technical superiority of the higher-priced offer was worth the additional cost. All of these objections by Garco and Triton are untimely.

Our Bid Protest Regulations require that protests based on other than alleged solicitation improprieties be filed within 10 calendar days after the basis of protest is known or should have been known. 4 C.F. R. § 21.2(a)(2). When a protester supplements a timely protest with new and independent allegations, the later raised issues must independently satisfy our timeliness requirements. QualMed, Inc., B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94 at 12-13. Garco and Triton were provided with the SSM dated February 25, 1999--which both protesters acknowledge formed the basis of their additional arguments--no later than March 30 (which was 10 days prior to the agency's April 9 filing of its report).² Consequently, Garco's and Triton's supplemental arguments raised, respectively, 16 and 20 days later, on April 15 and 19, are untimely and will not be considered. Garco's Comments, supra; Triton's Comments, supra. We note that the fact that the SSM was part of an early document release (i.e., furnished to the protesters prior to the filing of the agency report) did

²Triton states that it received the SSM on March 30. Garco does not specify when it received the SSM; however, the agency states that it confirmed receipt of the early release documents, which included the SSM, with Garco on March 26, which Garco does not dispute.

not suspend application of our timeliness rules. Protests based on the early release documents must be filed within 10 days after their receipt. Consolidated Eng'g Servs., Inc., B-279565, Mar. 19, 1999, 99-1 CPD ¶ ___ at 9 n.4.³

Finally, Triton requests that we reconsider our denial of its supplemental document request for the bidding history on the Corps's Seattle District construction solicitations for the past 24 months, showing comparisons between the low prices offered and the government estimates. Triton contends that the requested information is relevant to its allegation that the agency improperly compared the firm's offered price to the government estimate in the best value determination. As discussed above, Triton's protest questioning the use of the government estimate in the price evaluation and/or best value determination is untimely and will not be considered. It thus remains our view that the requested documents are not relevant to the outcome of the protest.

The protests are denied.

Comptroller General
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³Triton contends that its supplemental protest arguments merely expand upon its original protest, and therefore are timely. See Dual, Inc., B-279295, June 1, 1998, 98-1 CPD ¶ 146 at 6-7. We disagree. We think it is clear that Triton's later-raised arguments--on the evaluation of the firm's past performance; the evaluation of price, including the use of a cost-per-quality point analysis, in the best value determination; and the documentation of the best value determination--provide no support for and are distinct from its original protest basis that its proposal was improperly downgraded under the relevant experience criterion, and that the best value determination thereby was invalidated.