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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Sayed Hamid Behbehani & Sons, WLL

File: B-288818.6

Date: September 9, 2002

Nidal Z. Zayed, Esq., for the protester.

Sam Z. Gdanski, Esq., for Al Ghanim Combined Group, an intervenor.

Nancy J. Williams, Esq., and Michael K. Millard, Esq., U.S. Army Corps of Engineers, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Technical evaluation was reasonable where agency followed solicitation's evaluation criteria and record supports agency's finding that protester's technical proposal contained weaknesses attributable to lack of adequate detail.

DECISION

Sayed Hamid Behbehani & Sons, WLL (SHBS) protests the award of a contract to Al Ghanim Combined Group under request for proposals (RFP) No. DACA78-01-R-0006, issued by the U.S. Army Corps of Engineers for design and construction services on projects in Kuwait. SHBS challenges the agency's evaluation of its proposal and the source selection decision.

We deny the protest.

The RFP sought proposals for a job order contract (JOC) to provide rapid response for minor construction, renovation/rehabilitation, maintenance, and repair of existing buildings and structures, as well as construction of new facilities and/or additions to existing facilities at various sites in Kuwait. The successful contractor was expected to have the ability to manage various trades and engineering disciplines to perform multiple projects at multiple locations at the same time. The RFP anticipated the award of an indefinite-delivery/indefinite-quantity contract, based on the issuance of task orders, for a base year with 4 option years.

Proposals were to be evaluated on the basis of two factors, technical and price. The technical factor was divided into various subfactors and associated elements:

management capability (organization, subcontracting, and key personnel); technical capability (engineering/design, quality control, and safety); experience documentation; and past performance documentation. The technical subfactors were of equal weight and the technical factor was more important than price. Award was to be made to the offeror whose proposal represented the best overall value.

Twenty-two offerors, including SHBS and Al Ghanim, submitted proposals and, after an initial evaluation by a technical evaluation team, the agency awarded the contract, without discussions, to Al Ghanim. SHBS and two other offerors protested this award and the agency took corrective action, including the appointment of a Source Selection Authority (SSA) to conduct and document both an independent evaluation of all 22 proposals, and a comparative analysis to determine which of the offers represents the best value to the government. Contracting Officer's Statement (COS) at 1. Based on the proposed corrective action, we dismissed the protest as academic. Al Hamra Kuwait Co., et al., B-288818 et al., Oct. 9, 2001 (unpublished).

In conducting the reevaluation, the SSA did not rely on the initial technical evaluation and did not conduct discussions with the offerors. Instead, the contracting officer, as SSA, had a single engineer evaluator review the technical proposals and provide her with an independent assessment of all 22 offerors' technical ability. Based on the engineer's evaluation and her own review of each proposal and comparative analysis, the SSA found four proposals, including SHBS's, marginally acceptable, and two, including Al Ghanim's, acceptable as submitted. In this regard, under the technical factor, the RFP provided for an assessment of the degree to which the proposal met the various requirements of each element and sub-element of the four subfactors. The SSA concluded as follows regarding SHBS's technical proposal:

This offeror has submitted some good information on past performance, however, they fall short on the management and technical submission. The technical proposal is marginally acceptable. They failed to submit the requested information on management and technical sub-factors. I don't have the feeling they have a good understanding of the JOC concept. The data submitted was not specific as requested in the solicitation. The overall technical proposal is marginal as far as meeting the criteria to be submitted. They did not explain how rapid response designs will be accomplished and explain if they have adequate staffing for a multiple task order contract. Their pricing proposal is reasonable, complete and indicates minimal risk. When combining the pricing and technical proposals, I could not award to this firm without holding discussions on the technical proposal and requesting a revision.

Agency Report (AR), SSA Decision, exh. 5, at 4. Although SHBS's proposal was priced lower than either of the acceptable proposals, the SSA found that the

deficiencies in the protester's proposal would require discussions to resolve. Because Al Ghanim's proposal was rated overall excellent and was the lower-priced of the two acceptable proposals, the SSA made award to Al Ghanim. After receiving notice of the award and a debriefing, SHBS filed this protest.

SHBS asserts that the agency's evaluation of its technical proposal was flawed, specifically, that the identified weaknesses were not valid. SHBS concludes that its proposal should have been rated higher than marginally acceptable.¹

In reviewing a protest against an agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. National Toxicology Labs., Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3. An offeror is responsible for submitting an adequate proposal and runs the risk that its proposal will be evaluated unfavorably where it fails to do so. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3. Based on our consideration of all SHBS's arguments, we conclude that none of those arguments has merit, and we find that the agency reasonably determined that its proposal failed to provide sufficient detail to warrant a higher rating. We discuss some of the more important of SHBS's arguments below.

SHBS challenges the agency's finding that its proposal failed to provide sufficient information on its ability to perform engineering designs/analysis in conducting rapid response design work. The engineering/design element of the technical capability subfactor included an evaluation of the "degree to which the offeror demonstrates [the] ability to perform engineering design involved in engineering analysis of task orders" with regard to rapid response to the government's needs. Among other things, offerors were to "submit personnel qualifications of those who will accomplish the work." RFP § 00100.V.B.1. SHBS asserts that the RFP required only limited design work and that its proposal adequately addressed this area because it contained a discussion of its extensive engineering design capability and expertise.

¹ As a preliminary matter, SHBS asserts that the evaluation was flawed because, contrary to the RFP's provisions (RFP at 12), the agency did not assign adjectival ratings for all subfactors. This argument is without merit. While the evaluator did not assign the proposals an adjectival rating for each of the four technical subfactors, he did provide a detailed narrative for each proposal that included the proposals' major strengths and weaknesses. Since evaluation ratings are merely guides for the SSA, Research Triangle Inst., B-278254, Jan. 12, 1998, 98-1 CPD ¶ 22 at 6, and the information developed by the evaluator provided the SSA with the necessary guidance, his failure to reduce his evaluation to a single adjective for each evaluation subfactor was unobjectionable. In any event, since the agency evaluated all proposals on the same basis, we do not believe that the protester could have been prejudiced, even if that failure were objectionable. Sociometrics, Inc., B-261367.2, B-261367.3, Nov. 1, 1995, 95-2 CPD ¶ 201 at 4.

This argument is without merit. First, while the RFP's definition for "rapid response to government needs" states that the contractor is "required to provide the majority of technical support of a non-design nature," it also outlines requirements for "Projects that require actual design." RFP § 00800.1.f (1), (2). SHBS's proposal's references to its design capabilities indicate that SHBS understood the requirement for actual design work. Thus, it was proper for the agency to evaluate SHBS's ability to perform these tasks, including staffing.

Further, although SHBS's proposal identifies more than 20 architects and engineers and includes their resumes and professional certificates, it fails to specify which of these personnel will be used to perform the rapid response design work. The proposal does contain a "typical project team," but states that project teams for specific tasks will be selected based on the work required by the task orders. SHBS Proposal at B-9. The contracting officer explains that the "engineering/design requirement is very important since the Government is not providing detailed drawings to the JOC contractor . . . [and] [i]f, as here, the proposal fails to identify the personnel qualifications of those who will accomplish the engineering/design work, and to provide information to show their disciplines, registration and experience, the Government cannot determine if the offeror is capable of performing the rapid response . . . work . . . especially for multiple task orders at multiple sites." COS at 6. Based on SHBS's failure to indicate which of its professional personnel would perform the design work, the agency reasonably concluded that its proposal was weak under the technical capability subfactor.

SHBS also challenges the agency's assessment that its proposal was "weakened by [its] failure to provide sufficient information about [its] ability to provide a quality staff in a timely manner to perform multiple task orders." Debriefing Letter, Feb. 21, 2002, at 2; Protest at 18. The subcontracting element under the management capabilities subfactor included an evaluation of the "degree to which the Offeror proposes a quantity and mix of subcontractors and trades sufficient to demonstrate the ability to support multiple, simultaneous projects under construction at various locations with quality and timely work." RFP § 00100.V.A.2.a. SHBS argues that its proposal adequately addressed this area by providing information demonstrating its ability to handle task order requirements in-house, and explaining its intention to use subcontractors only for "unique areas of specialized work." Protest at 21. Specifically, SHBS's proposal included an "exemplar list" of subcontractors it had used on a Department of State project in Kuwait; assured the agency that it would obtain the agency's approval prior to the start of any subcontracted work; and represented that any subcontractors would be held to the same quality control and implementation standards followed by SHBS. Id.

The evaluation in this area was reasonable. The subcontracting element called on offerors to "describe the services to be performed by each proposed subcontractor and provide resumes of key subcontracting personnel." RFP § 00100.V.A.2.a. SHBS concedes that it did not provide such a listing or resumes; its "exemplar list" merely

identified the various trades of the subcontractors, without identifying any of the firms involved. While SHBS maintains that it is capable of performing most of the task order work itself, it concedes that it cannot perform all of the work. Indeed, SHBS's proposal listed some 11 on-going projects, 7 of which ranged from 0 to 30 percent complete, and the evaluator specifically noted SHBS's "considerable on-going work," which he found could "cause difficulties . . . in the management of available labor resources." SHBS Proposal at G.5; AR, exh. 4, at 15. It was incumbent on the protester to provide adequate information, beyond mere promises to hire qualified subcontractors when the need arises, to permit the agency to evaluate the firm's capability under this element. See DynCorp Int'l LLC, B-289863, B-289863.2, May 13, 2002, 2002 CPD ¶ 83 at 9. Given SHBS's failure to provide the required information, the agency reasonably concluded that its proposal was weak in this area.²

SHBS also asserts that the agency failed to conduct a proper price/technical tradeoff, maintaining that, given the \$67 million "not to exceed" value of this contract, its proposed price coefficient could save the agency approximately \$5.7 million. This argument is without merit. We have found that the agency had legitimate concerns regarding SHBS's proposal, which led the agency to conclude that the proposal could not be accepted for award without discussions, notwithstanding its lower price. The SSA properly conducted a price/technical tradeoff between the only two fully acceptable proposals, and selected Al Ghanim for award based on its excellent overall rating and lower price coefficient. SSA Decision at 6.

The protest is denied.

Anthony H. Gamboa
General Counsel

² Our conclusions are not changed by SHBS's observation that the contracting officer's statement contains some evaluation rationales that were not included in her source selection memo, and its assertion that this information therefore should be accorded little or no weight in our review. SHBS Comments at 1-2. These additional rationales are credible and consistent with the underlying evaluation and simply represent an expanded explanation of her assessment regarding SHBS's failure to submit adequate information on the management and technical subfactors. Where, as here, a post-protest explanation simply fills in previously unrecorded details of contemporaneous conclusions, we will consider it in our review of the rationality of selection decision so long as the explanation is credible and consistent with the contemporaneous record, which is the case here. NWT, Inc.; PharmaChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.