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

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## **Decision**

**Matter of:** K & S Associates, Inc.

**File:** B-402604

**Date:** June 14, 2010

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Matthew D. Menghini, Esq., McCarthy, Leonard & Kaemmerer, LC, for the protester. David F. Innis, Esq., Department of the Army, Corps of Engineers, for the agency. Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest challenging evaluation of protester's proposal is denied where record shows that evaluation was reasonable and consistent with solicitation.

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### **DECISION**

K & S Associates, Inc. of St. Louis, Missouri, protests the rejection of its proposal and the award of a contract to S. M. Wilson & Co., also of St. Louis, Missouri, under request for proposals (RFP) No. W912DQ-10-R-4005, issued by the Department of the Army, Corps of Engineers for construction of a digital training facility at Fort Leonard Wood, Missouri. The protester objects to the evaluation of its proposal and to the agency's best value trade-off determination.

We deny the protest.

The RFP provided for award to the offeror whose proposal represented the best value to the government. Technical evaluation factors were, in descending order of importance, past performance, corporate experience, staffing, contract duration/summary schedule, and utilization of small businesses for subcontracts. The solicitation provided that the technical factors, when combined, would be significantly more important than price in the determination of best value.

The agency received ten proposals by the December 3, 2009 closing date. A team of evaluators reviewed the proposals and assigned the following ratings to the protester's and awardee's proposals:

<b>Technical Factor</b>	<b>K &amp; S</b>	<b>Wilson</b>
Past Performance	Good	Excellent
Corporate Experience	Acceptable	Excellent
Staffing	Acceptable	Acceptable
Contract Duration/Schedule	Good	Acceptable
Utilization of Small Business	Unacceptable	Acceptable
<b>Overall Technical Rating</b>	<b>Acceptable</b>	<b>Excellent</b>

Source Selection Decision at 2-3. The protester's and Wilson's proposed prices were \$10,667,000 and \$11,599,000, respectively. The Source Selection Authority (SSA) determined that Wilson's proposal, which was the only proposal to receive an overall technical rating of excellent and which was fifth-lowest in price, represented the best value to the government. On February 22, 2010, the agency awarded a contract to Wilson. After requesting and receiving a debriefing, K & S protested to our Office on March 12.

As a preliminary matter, the agency argues that K & S's protest should be dismissed because K & S is ineligible for award and therefore not an interested party to maintain the protest. Specifically, the agency asserts that K & S failed to submit an acceptable small business subcontracting plan as required by the RFP, an omission which constitutes a deficiency in K & S's proposal.<sup>1</sup> Given that the RFP stated that award would not be made to a firm whose proposal contained a deficiency, RFP amend. 0003, ¶ 2, at 12, the agency argues, the protester is ineligible for award. We are not persuaded by the agency's argument. The record shows that the technical evaluators found the protester's proposal to be technically acceptable overall despite the protester's failure to furnish an acceptable plan for small business subcontracting. Likewise, the SSA did not exclude the protester's proposal from consideration for award as technically unacceptable; rather, he selected Wilson's proposal over the protester's on the basis that the technical advantages of the former outweighed the price advantage of the latter. In sum, the record fails to demonstrate that the agency source selection personnel considered the protester's failure to furnish small business subcontracting goals to be a deficiency that precluded award to the protester.

K & S argues that the agency's evaluation of its proposal was unreasonable and that the agency has not justified its selection of a higher-priced proposal. In reviewing a

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<sup>1</sup> The RFP stated that, to be acceptable, an offeror's subcontracting plan had to propose to meet or exceed specified goals for different categories of small businesses, for example, 70% for small businesses, 7% for women-owned small businesses, and 3% for veteran-owned small businesses. RFP amend. 0003, ¶ 8.2.1, at 9. The record shows, and the protester does not dispute, that its subcontracting plan contained no specific subcontracting goals.

protest objecting to an agency's evaluation, we will not evaluate the proposals anew or substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria and with applicable procurement statutes and regulations. Colson Servs. Corp., B-310971 et al., Mar. 21, 2008, 2008 CPD ¶ 85 at 5. As explained below, based on our review of the record here, we find the agency's evaluation to be reasonable.

First, K & S argues that it was unreasonable for the evaluators to assign its proposal a rating of good under the past performance factor, while assigning Wilson's proposal a rating of excellent, given that the ratings furnished by the two offerors' references were, on the whole, equally favorable. In response, the agency explains that the difference in ratings is attributable in large part to the greater degree of relevance of Wilson's previous projects. In this connection, the agency notes that the projects cited by the protester as examples of its past performance were [deleted], whereas the projects cited by Wilson included [deleted]. In our view, the record supports the agency's conclusion that Wilson's previous projects had a greater degree of relevance to the project called for under the RFP here. As a result, we think it was reasonable for the evaluators to distinguish between the two proposals under the past performance factor, even assuming (as K & S argues) that the quality of the two offerors' experience was comparable.<sup>2</sup> See Federal Acquisition Regulation § 15.305(a)(2)(i) (agency should consider relevance of past performance in evaluation of offeror's past performance).

Next, K & S challenges the evaluation of its proposal under the corporate experience factor, arguing that it deserved a rating higher than acceptable.

In their technical evaluation report, the evaluators explained that they had assigned the protester's proposal a rating of acceptable under the corporate experience factor because K & S had "good experience in horizontal and vertical construction," but was "lacking experience on large complex projects like the [digital training facility]."

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<sup>2</sup> In its initial protest, K & S also argued that the evaluators had unreasonably failed to consider the past performance of the offerors' key subcontractors in their evaluation. In response, the agency pointed out that the RFP did not provide for the evaluation of subcontractor past performance or ask offerors to identify their subcontractors, and that, as a result, neither the protester nor the awardee had furnished information that would have allowed the agency to evaluate subcontractor past performance. To the extent that the protester is arguing that the solicitation should have requested offerors to identify their subcontractors and to furnish information regarding their past performance, this is essentially an objection to the terms of the solicitation, which, to be timely, would have needed to be filed prior to the closing date for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2010).

SSEB Evaluation Report, Dec. 17, 2009, at 3. The protester argues that it does have experience with projects similar in complexity to the digital training facility; as examples, K & S cites its construction of schools with classrooms incorporating state-of-the-art digital technology and its construction of a [deleted]. In our view, while the examples cited by the protester demonstrate that it has experience with projects that are similar to the project here in terms of dollar value, complexity, or incorporation of state-of-the-art digital technology, they do not demonstrate that it has experience on projects that are similar overall—that is, large-value, complex projects for facilities incorporating state-of-the-art technology. Given that the protester failed to demonstrate highly similar experience, we are not persuaded that the agency lacked a reasonable basis for giving its proposal a rating of acceptable under the corporate experience factor.

The protester further argues that it was arbitrary for the solicitation to have requested performance information about projects in the \$15 million to \$30 million range as examples of offerors' experience when the value of the project here is only about a third to a half that amount. This is an objection to the terms of the solicitation, which, to be timely, should have been filed prior to the closing date for receipt of proposals. See 4 C.F.R. § 21.2(a)(1). In any event, while the RFP did define "similar work" as projects in the \$15 million to \$30 million range, it also stated that offerors could submit information on projects exceeding \$5 million in value. RFP amend. 0003, ¶ 5.1.1, at 5. The agency points out that the protester submitted information on prior projects valued over \$5 million but under \$15 million, and that, while the evaluators considered those projects in their evaluation of the protester's corporate experience, they concluded that the projects were not sufficiently similar to the project called for under the RFP here. The record shows that the evaluators based their conclusion not on the dollar value of the projects, but on their level of complexity and other characteristics. Under these circumstances, we see no basis to question the protester's rating of acceptable under the corporate experience factor.

The protester also argues that its proposal should have received a rating of higher than acceptable under the staffing factor. K & S contends that the evaluators unfairly downgraded its rating under the factor based on their findings that K & S's "[t]eam members have not worked together on projects," and that its "[p]roposal was not clear on the roles of staff on previous projects." SSEB Evaluation Report, supra at 3. The protester contends that the solicitation did not provide for the evaluation of proposals on the basis of the foregoing factors. K & S also argues that its proposal did, in fact, furnish information on staff members who had worked together on previous projects and on roles in which the staff members had served on previous projects.

In response, the Corps points out that an agency may apply evaluation considerations that are not expressly outlined in the RFP where those considerations are reasonably and logically encompassed within the stated evaluation criteria. Consolidated Eng'g Servs., Inc., B-311313, June 10, 2008, 2008

CPD ¶ 146 at 8. Under the RFP here, the agency argues, consideration of whether team members had worked together previously was logically encompassed within the criterion providing for evaluation of

how well the Offeror demonstrates that it has the necessary structure and experienced, qualified personnel within its organization to effectively manage, control, administer and execute the integrated construction operations, quality control program and subcontracts.

RFP, amend. 0003, ¶ 6.2.1, at 7. The agency further argues that offerors were placed on notice that the evaluators would consider the roles of staff on previous projects by the solicitation instruction to “[i]ndicate whether each individual [proposed for a key position] has had a significant role in any of the cited project examples.” *Id.*, ¶ 6.1, at 7. The agency also explains that while the protester showed that various subgroups of its proposed key personnel had worked together on previous projects, it did not demonstrate that all four of the proposed key individuals had previously worked together on a project as a team. Along the same lines, while K & S furnished information regarding prior roles served by some of the proposed key individuals, it did not furnish such information for others.

In our view, there is a clear nexus between consideration of K & S’s proposed team members’ experience and the staffing evaluation criterion set out in the RFP. Further, we think that the record here demonstrates a reasonable basis for the agency’s findings of weakness—and, thus, an overall rating of acceptable for K & S’s proposal—under the staffing factor.

K & S also takes issue with the evaluation of its proposal under the contract duration and schedule factor. In assigning a rating of good for the factor, the evaluators noted the following strengths and weaknesses in the protester’s proposal:

Schedule duration proposed of 590 days is significantly less than the 730 days required by the RFP. The schedule provided was detailed, identified constraints in narrative and how to avoid project slow down. Proposal didn’t identify turnover or as-builts as an activity. Some risk to the government exists in that the contractor lacks experience on [a project] this complex . . . .

SSEB Evaluation Report, *supra* at 3. The protester argues that the solicitation did not provide for the evaluation of an offeror’s experience under the schedule factor. We find this argument unpersuasive.

As the agency points out, the RFP required offerors to “demonstrate the capability . . . to plan and schedule the complete project to meet the proposed contract completion period,” RFP, amend. 0003, ¶ 7.1.2(5), at 8, and provided that the agency would evaluate the offeror’s “capability to schedule the complete project within the

proposed contract duration and the realism of the schedule.” *Id.*, ¶ 7.2.2, at 8. In addition, the RFP stated that the agency would consider whether the proposed duration is “realistic” and “achievable,” or creates a “risk of contract or performance failure.” *Id.*, ¶ 7.2.1, at 8. In light of this language, we see no basis to object to the evaluators’ consideration of K & S’s prior experience in scheduling a project of comparable complexity in assessing K & S’s capability of meeting its proposed schedule here.

Finally, K & S asserts that the SSA failed to offer a meaningful rationale for why it was worth paying a premium for Wilson’s proposal. There is no support in the record for this allegation. On the contrary, in his source selection decision, the SSA fully considered the evaluators’ findings, recognizing both the numerous strengths identified in Wilson’s proposal as well as the weakness regarding Wilson’s proposed schedule, and furnished a detailed, reasonable explanation as to why he considered the superiority of Wilson’s proposal under the past performance and corporate experience factors to justify the payment of a price premium.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel