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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: International Roofing & Building Construction, Inc.

File: B-292833

Date: November 17, 2003

Neal K. Aoki, Esq., Koshiba Agena & Kubota, for the protester.
William A. Alicar, for Allied Pacific Builders, Inc., an intervenor.
Ron R. Ashlock, Esq., and Richard G. Welsh, Esq., Department of the Navy, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably downgraded the protester's lower-priced proposal because it lacked a required plan to identify, list, and sample lead paint, and, to test lead paint surfaces, and thus had a reasonable basis to select higher-priced, lower risk proposals for award of roof repair contracts.

DECISION

International Roofing & Building Construction, Inc. protests the awards of contracts to Allied Pacific Builders, Inc. and D&A Joint Venture by the Department of the Navy pursuant to request for proposals No. N62742-03-R-2230, for roof installation and repairs.

We deny the protest.

The RFP, issued January 10, 2003 as a competitive section 8(a) set-aside, provided for the award of an indefinite-quantity contract or contracts for a 1-year base period with options to extend the term of the contract up to 60 months. The subject contracts are for roof installation and repairs at various locations on Oahu, Hawaii. One provision in the contracts is a specific requirement for identifying, listing and sampling hazardous waste materials, such as lead paint, and the testing of lead paint surfaces.

The RFP advised that the offers would be evaluated for award based on the equally weighted evaluation factors of price and technical. The technical factor was

comprised of two equally weighted subfactors: past performance/experience and technical approach. Amendment No. 9 to the RFP stated the following regarding the technical approach subfactor:

> (a) The Government will evaluate your plan to execute abatement work. Include your process to identify, list, sample and abate the hazardous material.

The agency received ten proposals, including those of International, Allied and D&A, by the March 3 closing date. International, Allied and D&A each received "exceptional" past performance ratings, and International's and D&A's experience was found "substantial," whereas Allied's was found "adequate." All three offerors' past performance/experience risk was considered low. Allied's and D&A's technical approaches were rated "acceptable" with low risk, while International's was rated "marginal" with moderate risk.[1] Agency Report, encl. 10, Business Clearance Memorandum, at 7. The reason that International's technical approach was rated "marginal" was that its "proposal lack[ed] details on the identification, listing, and sampling procedures for hazardous waste materials," which the agency considered to be a "significant weakness." Agency Report, encl. 10, International's Rating Sheet, at 1-2. International's evaluated price was $12,597,800, Allied's $14,045,000, and D&A's $14,062,500.8. Agency Report, encl. 10, Business Clearance Memorandum, at 8. On July 7, the agency determined that the proposals of Allied and D&A offered the best value to the government, and made award to those firms. This protest followed.

International disagrees with the agency's determination that its proposal was deficient because its work plan for removing lead-containing paint lacked identification, listing and sampling procedures for lead paint.

In reviewing a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation's evaluation criteria as well as with procurement statutes and regulations. Symetrics Indus., Inc., B-274246.10, Sept. 17, 1998, 98-2 CPD ¶ 78 at 5. In order for a protester to demonstrate that an evaluation was unreasonable, it is not enough merely to express disagreement with that evaluation. Cubic Applications, Inc., B-274768 et al., Jan. 2, 1997, 97-1 CPD ¶ 98 at 3.

Here, while International contends that its 69-page lead-containing paint removal work plan demonstrates its appreciation and understanding of the hazardous risks associated with the project, our review confirms that it lacked a plan to identify, list

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[1] The definition of a marginal rating was "[p]roposal contains no more than two significant weaknesses that increase the risk of unsuccessful contract performance." RFP amend. 9.

and sample lead paint and to test lead paint surfaces. A procuring agency's technical evaluation is dependent upon the information furnished in the offeror's proposal, Computerized Project Mgmt. Plus, B-247063, Apr. 28,1992, 92-1 CPD ¶ 401 at 3, and all offerors are expected to demonstrate their capabilities and submit required information in their proposals. McAllister & Assocs., Inc., B-277029.3, Feb. 18, 1998, 98-1 CPD ¶ 85 at 4; EOD Tech., Inc., B-266026, Dec. 18, 1995, 95-2 CPD ¶ 273 at 4.

International also contends that because its work plan for removing lead-containing paint was prepared by "certified" personnel, who "presumably" have the "requisite knowledge, training and experience to responsibly deal with hazardous materials," and because International has successfully completed seven contracts during the past 3 years for projects of similar scope involving hazardous materials, including lead-based paint, the agency should have reasonably deduced that there was no risk that International would not successfully perform the work here. Protester's Comments at 3-4. However, the agency was not required to accept International's experience, or that of its "certified" subcontractors who prepared the plan, as a substitute for the firm's providing this required information in its proposal. Neeser Constr., Inc./Allied Builders Sys., A Joint Venture, B-285903, Oct. 25, 2000, 2000 CPD ¶ 207 at 10-11. Accordingly, the agency's technical evaluation and marginal rating for International's technical approach were reasonable.[2]

International's challenge to the price/technical tradeoff is primarily premised on its contention that its technical approach was misevaluated, a contention we have rejected. Here, the agency reasonably determined that the low risk rating that the higher-priced proposals of Allied and D&A received for technical approach gave a greater assurance of high quality work and was therefore worth the associated cost premium.

International finally asserts that Allied does not possess adequate financial resources to obtain the required performance bond for the entire contract price, and that the agency unreasonably determined that Allied was responsible. Because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office will generally not consider a protest challenging an affirmative determination of responsibility except under limited, specified exceptions. 4 C.F.R. § 21.5(c) (2003); Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 3. The exceptions to this rule are protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify serious concerns that a contracting officer in

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[2] International contends that the agency erroneously evaluated Allied's experience as "adequate" with low risk, rather than "little," with moderate or high risk. Based on our review, we find that Allied's more limited experience with similar projects was reflected in the "adequate" rating it received, and we therefore find the agency's evaluation in this area reasonable.

making an affirmative determination of responsibility unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c). International's protest of the determination of Allied's responsibility does not fall under the designated exceptions. First, International's protest does not raise serious concerns that the agency failed to consider relevant information in making her responsibility determination. Also, while International asserts that the requirements in Federal Acquisition Regulation § 9.104-1 constitute definitive responsibility criteria, the requirements contained in that regulation are only intended to be "general standards" of responsibility involving the exercise of subjective business judgments, and are not definitive responsibility criteria, that is, specific and objective standards established by the agency as a pre-condition for award and included in the solicitation. See The Mary Kathleen Collins Trust, B-261019.2, Sept. 29, 1995, 96-1 CPD ¶ 164 at 3.

The protest is denied.

Anthony H. Gamboa
General Counsel