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**Comptroller General
of the United States**

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

Decision

Matter of: Menendez-Donnell & Associates

File: B-286599

Date: January 16, 2001

Carlos R. Menendez for the protester.

James L. Ferracci, Esq., General Services Administration, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably found protester's proposal technically unacceptable under experience and past performance evaluation criterion, where record shows that protester failed to submit required detailed information showing that its proposed key subcontractors had previously performed contracts similar to the solicited effort; offerors have an affirmative duty to prepare an adequately written proposal.

DECISION

Menendez-Donnell & Associates (MDA) protests the rejection of its proposal under request for proposals (RFP) No. GS-07P-00-HHD-0081, issued by the General Services Administration (GSA) for heavy road construction and paving services in the state of New Mexico. MDA asserts that the agency misevaluated its proposal and improperly found its proposal to be technically unacceptable.

We deny the protest.

The RFP, a small business set-aside, called for technical and price proposals to perform heavy road construction and paving throughout the state of New Mexico for a base period of 5 years, with two additional 5-year option periods. The agency contemplated awarding one or more indefinite-delivery/indefinite-quantity contracts on a best-value basis, with technical considerations deemed significantly more important than price. Proposals were to be evaluated on the basis of two technical considerations--experience and past performance of the prime contractor and key subcontractors on similar projects (the more important factor), and qualifications and past experience of key personnel.

Regarding the experience and past performance of the prime and subcontractors criterion, offerors were advised that a key subcontractor was one that would contribute 20 percent or more to project completion. In order to demonstrate experience and past performance, offerors were required to provide information on three prior similar contracts for the prime and each key subcontractor. Similarly, under the qualifications and past experience of key personnel criterion, offerors were required to provide information on three similar projects for each key employee to show that they were qualified to perform the requirement. The agency reserved the right to evaluate proposals and make award on the basis of initial offers, without conducting discussions.

The agency received numerous proposals, including the protester's. After evaluating the proposals, the agency decided to proceed with award on the basis of initial offers, without discussions. Three contracts were awarded to firms whose proposals were technically acceptable with competitive pricing. The agency concluded that MDA's proposal was technically unacceptable because of a lack of information relating to the experience and past performance of either MDA or its proposed subcontractors, and because MDA's proposed key personnel lacked relevant experience in road construction. See Consensus Evaluation Worksheet for MDA. In this regard, the record shows that MDA submitted information on three prior contracts it had performed, which the agency determined were not similar to the solicited requirement (the contracts were for construction management and inspection services and quality control services, as opposed to the actual performance of heavy road construction). Id.; MDA Proposal at Tab 2. As for its key subcontractors, MDA submitted no information whatsoever relating to their prior contracts. See Consensus Evaluation Worksheet for MDA. Finally, the agency determined that MDA's proposed key personnel, for the most part, did not have experience in performing the type of heavy road construction contemplated by the RFP. See MDA Proposal at Tab 2.

MDA asserts that it was improper for the agency to reject its proposal as unacceptable without first seeking to clarify its experience and past performance information, either by soliciting additional information from it, or by consulting the agency's own records which, the protester maintains, contain information relating to its prior contracts. In this regard, MDA notes that the Commerce Business Daily announcement for this requirement stated that the agency was not limited to reviewing only information presented in the proposal relating to prior contracts. MDA further asserts that, even without such additional information, it was improper for the agency to rate its proposal unacceptable; it maintains that the agency was required to assign a neutral rating in the absence of past performance information.

Finally, MDA contends that the agency improperly failed to consider its price before declining to make award to the firm.¹

The evaluation of technical proposals is a matter primarily within the discretion of the contracting agency; in reviewing challenges to an agency's evaluation, our Office does not reevaluate technical proposals but, instead, considers whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria. Dual, Inc., B-279295, June 1, 1998, 98-1 CPD ¶ 146 at 3. Since an agency's evaluation is dependent upon the information furnished in a proposal, it is the offeror's burden to submit an adequately written proposal for the agency to evaluate, especially where, as here, the offeror is specifically on notice that the agency intends to make award based on initial proposals without discussions. Id. at 5. An agency reasonably may reject a proposal for informational deficiencies that prevent the agency from fully evaluating the proposal. Phantom Prods., Inc., B-283882, Dec. 30, 1999, 2000 CPD ¶ 7 at 4.

We note initially that, since the record confirms that the prior contracts MDA listed to establish its past performance were not similar to the current requirement, MDA Proposal, Tab 2, at 1-3, the agency reasonably determined that MDA's prior contracts did not provide a basis for assessing the firm's past performance. However, it appears this aspect of MDA's past performance warranted a neutral, rather than an unacceptable, rating; under FAR § 15.305(a)(2)(iv), where an offeror does not have a record of relevant past performance, the offeror may not be evaluated either favorably or unfavorably. On the other hand, even if this is the case, and even if we also agreed with MDA that the agency should have clarified its experience or obtained additional information from its own records, as discussed below, GSA reasonably rated the proposal unacceptable based on MDA's failure to establish adequate experience and past performance for its subcontractors and key employees.

MDA's proposal generally refers to contracts which appear to be relevant and which were performed by MDA with its proposed subcontractors. However, detailed information necessary to assess the nature and relevance of those contracts was not included in the proposal. For example, with respect to the two primary asphalt subcontractors MDA proposed to use (one for work in the northern and one for work in the southern part of the state), the proposal states that MDA has ongoing

¹ MDA asserts in the alternative that GSA should have referred its technical unacceptability to the Small Business Administration (SBA) for review under that agency's certificate of competency program, citing Federal Acquisition Regulation (FAR) § 15.101-2(b)(1). However, the reasons the agency found MDA's proposal unacceptable concerned only MDA's failure to submit information establishing its and its subcontractors' experience and past performance, and did not constitute a finding that MDA is not a responsible prospective contractor.

projects with each contractor which are similar to the solicited requirement. MDA Proposal at Tab 3. However, the proposal omitted detailed information--such as, for example, the contract number, a contact point, and a description of the project--despite the express RFP requirement that such information be provided. RFP, Standard Form 1442, at 4.

The protester states in its comments on the agency report that it did not provide information relating to the prior contracts of its proposed subcontractors because it did not want to make irrevocable commitments to any of its subcontractors in advance (planning instead to obtain proposed pricing from an appropriate subcontractor at the time when actual requirements were presented in the form of delivery orders), and consequently did not want to rely on their past experience in its proposal. This purported approach is nowhere described in MDA's proposal and, in fact, is inconsistent with the explicit terms of the proposal, which affirmatively states that MDA will subcontract with one of its identified subcontractors based on the geographic location of the work. MDA Proposal at Tab 3. We conclude that the agency reasonably found that MDA's proposal failed to provide the information required by the RFP to enable it to evaluate MDA's key subcontractors.

To the extent MDA contends that GSA was required to assign a neutral rating to its proposal based on the absence of information relating to its key subcontractors, we disagree. Although FAR §15.305(a)(2)(iv) requires an agency to assign a neutral rating where past performance information is not "available," here, the protester's proposal represented that its proposed subcontractors are engaged in projects that would illustrate their performance capability. The information thus was available, but MDA chose not to present the information in its proposal, in direct contravention of the terms of the RFP. In our view, an offeror cannot simply choose to withhold past performance information--and thereby obtain a neutral rating--where the solicitation expressly requires that the information be furnished, and where the information is readily available to the offeror.

In any case, notwithstanding the evaluation under the experience and past performance factor, as noted, the agency also rated MDA's proposal unacceptable based on its determination that MDA's proposed key personnel lacked experience on projects similar to the solicited effort. MDA does not dispute the agency's conclusion, and we find nothing in the record that calls the evaluation in this regard into question.

Finally, MDA's assertion that the agency improperly failed to consider its price in connection with the award decisions is without merit. Because MDA's proposal was properly found technically unacceptable, and a technically unacceptable offer

cannot properly form the basis for award, the agency was not required to further consider price or the other terms of the offer. Plasma-Therm, Inc., B-280664.2, Dec. 28, 1998, 98-2 CPD ¶ 160 at 3.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel