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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: Blue Rock Structures, Inc.

File: B-287960.2; B-287960.3

Date: October 10, 2001

Hubert J. Bell, Jr., Esq., and Sarah E. Carson, Esq., Smith, Currie & Hancock, for the protester.

Neil S. Lowenstein, Esq., James R. Harvey III, Esq., and William E. Franczek, Esq., Vandeventer Black, for Chianelli Building Corporation, the intervenor.

Vicki E. O'Keefe, Esq., Department of the Navy, Naval Facilities Engineering Command, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation of protester's proposal and award determination is denied where the record demonstrates that the evaluation and source selection were reasonable and consistent with the solicitation's evaluation factors for award.

DECISION

Blue Rock Structures, Inc. protests the award of a contract to Chianelli Building Corporation, Inc. under request for proposals (RFP) No. N62470-99-R-9152, issued by the Department of the Navy, Naval Facilities Engineering Command, for the construction of an Amphibious Operations Maintenance/Storage Complex at the Marine Corps Base, Camp Lejeune, North Carolina. Blue Rock challenges the agency's reevaluation of its proposal and the agency's affirmation of the award to Chianelli.¹ The protester, a newly-formed firm, challenges the agency's failure to credit the firm's proposal under the past performance and corporate experience evaluation factors for the experience of its principals while employed by other firms.

¹ By letter of June 1, 2001, Blue Rock filed an earlier protest (B-287960) with our Office against the award to Chianelli. In response to that protest, the agency agreed to reevaluate the protester's proposal; consequently, the protester withdrew that protest. Blue Rock's current protest concerns the agency's reevaluation of the firm's proposal.

We deny the protest.

The RFP, issued on March 9, 2001, contemplated the award of a fixed-price contract for the construction of four buildings; the contractor was to provide, among other things, all labor, materials, and equipment to perform the work. RFP at 7. The RFP listed the following equally-weighted technical evaluation factors which, combined, were equal in importance to price: past performance of the prime contractor; corporate experience of the prime contractor; small business subcontracting effort; quality control and key personnel of the prime contractor (where the key personnel subfactor was to be given less weight than the quality control subfactor of this combined factor); and proposed schedule. Id. at 63-66. Offerors were advised that the award determination would be based upon the proposal offering the best value to the government, and that the offeror submitting the lowest price would not necessarily receive the award. Id. at 63.

For evaluation of past performance, offerors were to provide narratives for five construction projects valued over \$5 million. Offerors were advised that, separate from any responsibility determination, the agency intended to evaluate the offeror's technical proposal for past performance experience to assess the firm's relative capability to successfully meet the requirements of the RFP; more weight was to be given to past performance on similar projects. Id. at 64. For evaluation under the corporate experience factor, each offeror was instructed to provide a list of relevant construction projects valued over \$5 million and performed "by your firm" within the past 5 years. Id. at 65.

Eight proposals were received by the amended May 7 closing date. The protester's proposal offered the lowest price (at \$8,292,768) and was rated sixth for technical merit; the awardee's proposal offered the second lowest price (at \$8,561,100) and was rated third technically.² Blue Rock's proposal remained sixth in line for technical merit after the agency's reevaluation of that proposal. Considering the 3-percent price differential between the Blue Rock proposal—which the agency considered to present substantial performance risk because Blue Rock is a newly-formed firm with no corporate experience or past performance history—and the higher-rated, lower-risk Chianelli proposal, the agency decided that the slight cost premium involved in an award to Chianelli was warranted. This protest followed.

Blue Rock first protests the evaluation of its proposal under the corporate experience factor. Since the protester's proposal contained no actual experience

² An earlier price/technical analysis had been performed by the agency between another firm's highest-rated, higher-priced proposal and Chianelli's lower-priced proposal; Chianelli's proposal was found to offer the best overall value to the agency between those proposals.

information about Blue Rock as a corporate entity, and instead offered only limited relevant experience gained by an individual principal of the firm while he was employed by another firm, the agency evaluated the Blue Rock proposal as unacceptable under the corporate experience factor. The firm alleges that the agency should have attributed the project management experience of its individual principals, albeit gained while working on contracts performed by other companies, to Blue Rock to bolster its corporate experience evaluation rating.

In reviewing an agency's evaluation of proposals, our Office will question the evaluation only where it violates a procurement statute or regulation or if it lacks a reasonable basis or is inconsistent with the stated evaluation criteria for award. B. Diaz Sanitation, Inc., B-283827, B-283828, Dec. 27, 1999, 2000 CPD ¶ 4 at 6. A protester's mere disagreement with the agency over its technical evaluation does not make the evaluation unreasonable. Id.; Cubic Applications, Inc., B-274768 et al., Jan. 2, 1997, 97-1 CPD ¶ 98 at 3. Our review of the record confirms the propriety of the agency's evaluation of Blue Rock's proposal.

The solicitation here specifically provided for evaluation of the experience of key personnel separate from the evaluation of the firm's corporate experience. For the evaluation of the firm's corporate experience, the RFP expressly instructed each offeror to provide corporate experience information regarding construction work accomplished "by your firm." RFP at 65. As the agency points out, although an agency properly may, in appropriate circumstances, consider the experience of supervisory personnel in evaluating the experience of a new business, there is no legal requirement for an agency to attribute employee experience to the contractor as an entity. See The Project Management Group, Inc., B-284455, Apr. 14, 2000, 2000 CPD ¶ 66 at 4; Hard Bodies, Inc., B-279543, June 23, 1998, 98-1 CPD ¶ 172 at 4. The agency reports that, although not required to do so, it did review the firm's principals' experience while evaluating the firm's proposal under the corporate experience factor. That experience, however, did not provide sufficient confidence in Blue Rock's performance capabilities as a separate corporate entity. [Deleted] projects listed in the proposal were found to have met the RFP's project scope, value, and performance period requirements. Those projects, however, reflect only the experience gained by one of the protester's principals while working as a project manager for a prior employer; no actual experience for Blue Rock as a corporate entity was cited by the firm in its proposal.

The agency found that the lack of any actual corporate experience of the new firm failed to show that the firm was capable of performing the required work successfully and thus was found to present substantial risk to the agency.³ The

³ Blue Rock argues that the agency's consideration of risk associated with the firm's lack of corporate experience was improper because performance risk was not a stated evaluation factor for award. However, even where risk is not specifically

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agency reasoned that although one of the firm's principals had some relevant experience, an individual's successful project management in an established firm does not demonstrate good corporate management in a newly-formed firm. Special Selection Evaluation Board Report at 4. The protester's proposal was thus downgraded under the corporate experience factor for a lack of corporate experience.

We have no basis to question the reasonableness of the agency's conclusion that one principal's prior project management experience gained while working under the control of a different and established firm, standing alone, does not demonstrate the ability of that principal's newly-formed corporation to perform similar work successfully. See York Sys. Corp., B-237364, Feb. 9, 1990, 90-1 CPD ¶ 172 at 3-4. Further, as stated above, the RFP here specifically differentiated between the evaluation of a firm's corporate experience, and its key personnel's experience (in fact, key personnel experience was to be given less weight than the firm's corporate experience), and the protester's proposal was, in fact, given full credit for the principals' experience under that key personnel subfactor. The record thus provides no reason to question the reasonableness of the evaluation of corporate experience, which was consistent with the RFP's evaluation terms.⁴

The protester also challenges the agency's assignment of "no rating" to the protester's proposal under the past performance evaluation factor. The agency reports that the "no rating" designation resulted from the fact that no past performance information was available for Blue Rock, a newly-formed corporation.

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listed in a solicitation as an evaluation factor, it is appropriate for an agency to consider risk arising from an offeror's approach or lack of experience where performance risk is reasonably related to the stated evaluation scheme--as here, where the RFP specifically called for an assessment of the offeror's capability to perform based on its prior performance history and experience. See Champion Serv. Corp., B-284116, Feb. 22, 2000, 2000 CPD ¶ 28 at 4-5.

⁴ Blue Rock contends that the evaluation of its proposal was inconsistent with that of the awardee's proposal in that Blue Rock was evaluated as a new corporation, but Chianelli, which recently changed its business name, was credited for business conducted prior to the name change. Blue Rock contends that the name change reflects a change in Chianelli's corporate structure because [deleted]. The record does not support Blue Rock's argument. On the contrary, the record shows that [deleted], but that the company has continued as the same business entity in its operations, including unchanged business obligations. The record also shows that the agency reasonably investigated the name change and adequately supported its determination that the name change was merely an administrative matter that should not in any way preclude consideration of that firm's corporate experience.

Blue Rock contends that Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii) suggests that the individual work experiences of Blue Rock's principals should have been considered in evaluating the new firm's proposal under the RFP's past performance criterion. Although the cited regulation generally provides that agencies should take key personnel's experience into account when assessing a new firm's past performance where such information is relevant to an acquisition, an agency may reasonably determine that such personnel experience is not relevant to its assessment of the corporate entity's performance history and that it is not necessarily indicative of the entity's future performance. See Olympus Bldg. Servs., Inc., B-282887, Aug. 31, 1999, 99-2 CPD ¶ 49 at 3-4. In this regard, we believe the agency here reasonably concluded that an individual's experience, gained while employed by another firm, does not adequately demonstrate or ensure the newly-formed Blue Rock firm's capability to function as a corporate entity or to successfully perform the current project. Our review of the record shows that, in accordance with FAR §15.305(a)(2)(iv), the agency evaluated the new firm's lack of past performance information in a neutral fashion, neither favorably nor unfavorably; the protester's proposal was not downgraded in any way due to the lack of relevant performance history for the firm. Our review thus provides no reason to question the propriety of the "no rating" designation.⁵

The protester continues to assert that the agency should have awarded the contract to Blue Rock because of its lower price. However, where a solicitation, as here, provides for award on the basis of the best value offer, a determination to award to a higher-priced offeror with a good past performance record over a lower-priced offeror with a neutral past performance rating is not precluded. Such a determination is consistent with making a price/technical tradeoff to determine if one proposal's technical superiority is worth the higher cost associated with that proposal. See Eng'g and Computation, Inc., B-275180.2, Jan. 29, 1997, 97-1 CPD ¶ 47 at 4-5; Excalibur Sys., Inc., B-272017, July 12, 1996, 96-2 CPD ¶ 13 at 3. Here, the RFP stated that technical evaluation factors and price were of equal importance in determining which offeror's proposal was most advantageous to the government. The agency determined that it was worth paying a slight cost premium (3 percent) to select Chianelli, an established firm with demonstrated successful past performance and corporate experience on similar projects. Special Selection Evaluation Board

⁵ To the extent Blue Rock protests that the solicitation's evaluation terms limit competition and are restrictive to newly-formed firms, the allegation is untimely. Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (2001); Envirodyne Sys., Inc., B-279551, B-279551.2, June 29, 1998, 98-1 CPD ¶ 174 at 3.

Report at 5. Blue Rock simply has not presented any basis to question the reasonableness of the source selection.⁶

The protest is denied.

Anthony H. Gamboa
General Counsel

⁶ In its supplemental protest, Blue Rock also challenges the agency's reevaluation of its proposed schedule. The protester contends that the agency wrongfully downgraded the firm's proposed schedule regarding performance of certain [deleted]. Our review of the record shows that the challenge lacks merit. In short, the protester's schedule [deleted]. Moreover, as the agency points out, since Chianelli's schedule was [deleted], it reasonably was rated more favorably than Blue Rock's proposed schedule. The protester's contentions regarding the evaluation of its proposed schedule thus provide no basis to question the award.