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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Al Hamra Kuwait Company

File: B-288970

Date: December 26, 2001

Adel Aziz, for the protester.
Randall E. McGinnis, Echota Technologies, an intervenor.
Kerri A. Cox, Esq., Gregory H. Petkoff, Esq., and Maj. Mark C. Garney, Department of the Air Force, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly evaluated the corporate experience of a new business by considering the experience of a predecessor firm where, although the predecessor firm still existed as a legal entity, the offeror had acquired all of the predecessor firm's accounts payable, accounts receivable, equipment, machinery and personnel (including key personnel, technical staff and other employees), such that the experience evaluated reasonably could be considered predictive of the offeror's performance under the contemplated contract.

DECISION

Al Hamra Kuwait Company protests the Department of the Air Force's award of a contract to Al Musairie National General Trading and Contracting, under request for proposals (RFP) No. F38604-01-R-0001, for the simplified acquisition of base engineering requirements (SABER) at Al Jaber Air Base and Ali Al Salem Air Base in Kuwait. Al Hamra asserts that Al Musairie was ineligible for award, and challenges the evaluation of past performance.

We deny the protest.

The RFP provided for award of an indefinite-delivery, indefinite-quantity contract for a base year, with 4 option years, to furnish the personnel, tools, and materials necessary for the design, management, and completion of maintenance, repair, alteration and/or new construction at Al Jaber Air Base and Ali Al Salem Air Base. The procurement was "[r]estricted to Kuwaiti firms, or firms, or partnerships with firms approved by the Kuwait Ministry of Defense/Military Engineering Projects (MOD/MEP), Central Tenders Committee." RFP, Standard Form (SF) 1422, Block 10. Award was to be made to the offeror "who submits a technically acceptable . . . proposal that represents the best value to the government." RFP § M-2(a)(1). The RFP listed three evaluation factors: technical, price, and past performance. The solicitation provided that the "[t]echnical proposal will be rated on an acceptable/unacceptable basis." RFP §§ M-2(a)(3), M-2(b). The RFP further provided that "[a]fter . . . technically acceptable proposals have been identified, price and past performance will be evaluated to determine the combination that represents the best value to the Government." RFP § M-2(a)(4). In this regard, price and past performance were of "approximately equal importance and will bear a significant impact on the final award." Id.

Fourteen proposals were received by the June 4, 2001 closing time. Final proposal revisions were received on July 9. Only five proposals, including Al Musairie's and Al Hamra's, were evaluated as technically acceptable (the agency also identified several strengths in Al Musairie's proposal, including an exceptional quality program and processes, highly skilled and qualified personnel, and the capability to provide any equipment required to accomplish the array of possible projects under the contemplated contract). Since these two proposals also received exceptional past performance ratings, and Al Musairie's price was low, the Air Force determined that it represented the best overall value to the government. Proposal Analysis Report at 11. Upon learning of the resulting September 16 award to Al Musairie, and after being debriefed by the agency, Al Hamra filed this protest challenging the award on a number of grounds.

In reviewing an agency's evaluation of proposals and source selection decision, our review is confined to a determination of whether the agency acted reasonably and consistent with the stated evaluation factors and applicable procurement statutes and regulations. Main Bldg. Maint., Inc., B-260945.4, Sept. 29, 1995, 95-2 CPD ¶ 214 at 4. Based on our review of the record, we find that the evaluation and the award to Al Musairie were reasonable. We discuss Al Hamra's principal arguments below.

ELIGIBILITY FOR AWARD

Al Hamra asserts that the awardee was ineligible for award because it did not exist at the time of initial proposal submission and was not on the MOD/MEP list, as required by the RFP. In this regard, Al Hamra notes that the September 29 written debriefing letter it received included an excerpt from the agency's evaluation in which the successful firm was identified as "Al Musairie National General Trading & Contracting CO. W.L.L.," that is, as a company with limited liability. Air Force Letter, Sept. 29, 2001, at 3. In contrast, notes Al Hamra, the Kuwaiti MOD/MEP list includes a listing for "Al-Musairie National General Trading & Contracting." Al Hamra Comments, Nov. 13, 2001, attach. MOD/MEP List, July 2000 (updated), at 4. According to the protester, "[i]n Kuwait, if the word 'company' is not included in your name, you are by default an establishment and a sole proprietorship." Al Hamra Comments, Dec. 3, 2001, at 12. The protester concludes that the firm on the MOD/MEP list could not be the Al Musairie General Trading & Contracting CO. W.L.L. identified in the debriefing letter.

The name of an offeror need not be exactly the same in all of the offer documents, although the offer documents or other information available must show that differently-identified offering entities are in fact the same legal entity. See S^3 LTD, B-288195 et al., Sept. 10, 2001, 2001 CPD ¶ 164 at 11; Trandes Corp., B-271662, Aug. 2, 1996, 96-2 CPD ¶ 57 at 2.

We find that, notwithstanding the variations in the identification of the awardee in the proposal, debriefing letter and evaluation excerpts, the entries in the proposal itself support the agency's determination that the awardee was the firm on the MOD/MEP list. As noted by the agency, in Block 14 of the SF 1422 in the awardee's July 9 final proposal, the awardee identified itself, not as Al Musairie National General Trading & Contracting CO. W.L.L., the name the protester saw in the evaluation excerpt in the debriefing letter, but as Al Musairie National Gen. Trdg. & Cont. Est. Further, although shortened forms of the awardee's name as entered by it in Block 14 were used elsewhere in the relevant documents--the awardee used "Al Musairie National Gen. Trdg. & Cont." for its remittance address and in the corporate certification of its authorized representative, Proposal at 13 and 37; the entry on the Kuwaiti MOD/MEP list was for "Al-Musairie National General Trading & Contracting," MOD/MEP List at 4; and the agency entered "Al Musairie National General Trading" in Block 14 of the signed SF 1422 contract document--according to the protester's own position, these shortened forms, like the reference in Block 14, identified the awardee as an establishment (rather than as a firm with limited liability).[1] Since this was consistent with the name on the MOD/MEP list, the agency reasonably determined that Al Musairie was eligible for the award.

PAST PERFORMANCE EVALUATION

The solicitation required offerors to furnish "a list of at least three (3) but not more than five (5) most recent and relevant contracts, exceeding [Kuwaiti Dinars] 461,475 ($1,500,000 @ .30765) annually for each recent and relevant contract that has occurred, or is occurring, (basic or option period) during the period 1 Oct[ober] 1997 through 30 Jun[e] 2001." RFP, Proposal Preparation Instructions, Past Performance. Likewise, the RFP provided that in the past performance evaluation, "[m]ore recent performance will have a greater impact on the evaluation than less recent performance." RFP § M-2(b)(2)(b).

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[1] Likewise, in the solicitation clause for taxpayer identification, Al Musairie certified itself a sole proprietorship.

In its proposal, Al Musairie cited performance of three contract efforts, including: (1) contract number 95G071/CPK/SBC/082, for earthwork at Oil Gathering Center 27 and erection of a steel structure at Oil Gathering Center 28 in Kuwait; (2) contract number 11550, for construction of the main substation and a new control room at Oil Gathering Center 25 in Kuwait; and (3) contract number 6970-SC-05, for civil and building works, earthwork, concrete foundations and reinforced concrete works in joint operations between Kuwait and Saudi Arabia. Al Musairie's performance on these efforts was rated as exceptional or very good by its references.

Al Hamra challenges the exceptional past performance rating received by Al Musairie on the basis that the cited prior contracts should not have been attributed to the offeror. Specifically, Al Hamra asserts that the work at Oil Gathering Center 25 in fact was undertaken by a different entity than Al Musairie; Al Hamra has furnished copies of two subcontracts (No. 11550-4080-706 dated September 26/27, 1998, and No. 11550-4080-704-1 dated August 22, 1998) entered into by Daelim Engineering Company Ltd. as the contractor and Baddah & Musairie General Trading Contracting Co. as the subcontractor for this work. Al Hamra Comments, Nov. 13, 2001, attachs.

In reviewing an agency's evaluation of past performance, our Office considers whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria and applicable statutes and regulations. Universal Fabric Structures, Inc., B-284032, Feb. 10, 2000, 2000 CPD ¶ 37 at 3. In this regard, an agency may properly evaluate the corporate experience of a new business by considering the experience of a predecessor firm, see J.D. Miles & Sons, Inc., B-251533, Apr. 7, 1993, 93-1 CPD ¶ 300 at 3, or a subcontractor, Cleveland Telecomms. Corp., B-257294, Sept. 19, 1994, 94-2 CPD ¶ 105 at 5, including experience gained by employees while working for the predecessor firm. Oklahoma County Newspapers, Inc., B-270849, B-270849.2, May 6, 1996, 96-1 CPD ¶ 213 at 4. The key consideration is whether the experience evaluated reasonably can be considered predictive of the offeror's performance under the contemplated contract. Id.

The evaluation of Al Musairie's experience was reasonable. The Air Force reports that Al Musairie is effectively the successor firm to Baddah & Musairie General Trading & Contracting, in that it was formed by one of the partners in that firm, and acquired all of that firm's accounts payable, accounts receivable, equipment, machinery and personnel (including key personnel, technical staff and other employees). The agency has furnished in this regard both contemporaneous legal documentation of Al Musairie's acquisition of Baddah & Musairie's assets and a consistent statement from Al Musairie. Air Force Comments, Nov. 27, 2001, at 5, attachs. Al Hamra argues that Al Musairie cannot be a successor to Baddah & Musairie because that firm still exists as a legal entity. However, as noted, the key consideration in this area is whether the experience evaluated reasonably can be considered predictive of the offeror's performance under the contract. Since

Al Musairie has acquired the resources Baddah & Musairie used in performing the cited contracts, thus affording some additional confidence in the likelihood of successful performance by Al Musairie under the contemplated contract, we see nothing unreasonable in the agency's considering Baddah & Musairie's experience in the evaluation, whether or not Baddah & Musairie remains in existence.

Al Hamra also argues that the dollar values of the Oil Gathering Center 25 subcontracts improperly were aggregated in order to meet the minimum annual contract value of $1.5 million. Al Hamra has furnished documentation indicating that, depending upon whether the contract performance period is measured from the contract date or the commencement of performance, the value of the larger of the two subcontracts was only approximately $1.44 or $1.48 million annually. (The smaller of the two subcontracts apparently amounted to as much as approximately $739 thousand annually.) The protester concludes that this contract did not satisfy the dollar value relevance requirement and therefore should not have been considered. Al Hamra Comments, Dec. 3, 2001, at 9-10; Al Hamra Comments, Nov. 13, 2001, at 16-17; Air Force Comments, Nov. 27, 2001, at 4.

This argument is without merit. While it does appear that neither subcontract's value independently amounted to $1.5 million annually, we see no reason to view the contracts so restrictively. Since the contracts apparently were for related work, at the same location, during the same general period of time, for the same prime contractor, and under the same overall job number (11550), we think the agency could reasonably view the work as a single contract effort for purposes of determining their relevance in the past performance evaluation. In any case, viewed in light of the purpose of the past performance evaluation--to predict the quality of the offeror's performance under the contract--the dollar value discrepancy is de minimis and therefore immaterial; there is no basis for concluding that performance on a contract with an annual value of $1.44 or $1.48 million was materially less predictive of future performance than performance on one with a value of $1.5 million.

Al Hamra further argues that giving exceptional past performance ratings to both Al Hamra and Al Musairie indicates that the Air Force failed to take into account the fact that Al Hamra has more recent experience than Al Musairie, and thus improperly failed to give effect to the solicitation statement that more recent performance would have a greater impact on the evaluation than less recent performance.
Al Hamra's argument is without merit. As an initial matter, the record indicates that Al Musairie was properly credited with recent experience. While Al Hamra cited in its proposal five contract efforts, including two that ended in 1999, one in December 2000, and two that were ongoing at the time of award, Al Musairie cited three contract efforts, including one that ended in January 2000, one in August 2000, and one in May 2001. Moreover, Al Hamra's challenge to Al Musairie's exceptional past performance rating does not account for the more favorable ratings received from Al Musairie's references. The record includes only two returned ratings questionnaires for Al Hamra; one amounted to little more than a very good rating

(with nine very good rating categories and only one exceptional category), while the other did not uniformly consist of exceptional ratings (with six exceptional categories and four very good categories). In contrast, the record includes three returned ratings questionnaires attributable to Al Musairie; two were overwhelming exceptional ratings (with either nine exceptional categories and one very good category, or eight exceptional categories and two very good categories) and one was evenly split between exceptional and very good (with five exceptional categories and five very good categories). On this record, we find no basis to question the agency's determination that an exceptional past performance rating was warranted for Al Musairie as well as for Al Hamra.[2]

The protest is denied.

Anthony H. Gamboa
General Counsel

[2] Al Hamra challenges the adequacy of the agency's notice of award and of the debriefings furnished by the agency. However, the adequacy of the notice of award or a debriefing are procedural matters concerning agency actions after award which are unrelated to the validity of the award; we generally will not review such matters. Acquest Development LLC, B-287439, June 6, 2001, 2001 CPD ¶ 101 at 2 n.1; American President Lines, Ltd., B-236834.8, B-236834.9, et al., May 15, 1991, 91-1 CPD ¶ 470 at 6.