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United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** OLBN Architectural Service, Inc.

**File:** B-402444.4; B-402444.5

**Date:** October 4, 2010

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Lawrence J. Sklute, Esq., Stephen Belcher, Jr., Esq., and William Selinger, Esq., Sklute & Associates, for the protester.

Jonathan A. Baker, Esq., Department of Health and Human Services, for the agency. Katherine I. Riback, Esq., Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency properly excluded protester from further consideration in procurement of architect-engineering services where agency reasonably downgraded the protester's submission consistent with the solicitation evaluation criteria.

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### DECISION

OLBN Architectural Service, Inc., of Rockville, Maryland, protests the evaluation and subsequent nonselection of its qualification statement for negotiation of an architect/engineering (A/E) services contract, pursuant to solicitation No. NIHOF2009079, issued by the Department of Health and Human Services, National Institutes of Health (NIH), for general A/E services. OLBN alleges numerous evaluation errors.

We deny the protest.

### BACKGROUND

Generally, in acquiring A/E services, a contracting agency must publicly announce its requirements, evaluate the A/E performance data and qualifications statements on file as well as those submitted in response to the announcement, and select at least three firms for discussions without considering price. Negotiations concerning price are then conducted with the highest-ranked firms. See 40 U.S.C. §§ 1101 et seq. (2006); Federal Acquisition Regulation (FAR) Subpart 36.6; EBA Ernest Bland Assocs., B-270496, Mar. 13, 1996, 96-1 CPD ¶ 148 at 1-2.

On July 23, 2009, the agency synopsisized its requirements on the Federal Business Opportunities website, announcing its intent to negotiate and award multiple-award indefinite-delivery/indefinite-quantity contracts for A/E design and other A/E services for construction, renovation, and repair of buildings and infrastructure in Maryland and other facilities throughout the country.<sup>1</sup> Synopsis at 1. The synopsis invited interested firms to submit a completed standard form (SF) 330 (A/E qualifications statement) detailing their qualifications to provide the A/E services.

Firms were advised that their qualifications statements would be evaluated under the following six factors, listed in descending order of importance: (1) professional qualifications and project team organization (25 points); (2) specialized experience and technical competence in the type of work required for both new construction and renovation, including experience in energy conservation, pollution prevention, waste reduction, and the use the recovered materials (25 points); (3) capacity to accomplish the required work in the required time, including capacity to accomplish multiple simultaneous task orders (15 points); (4) past performance (15 points); (5) experience, technical competence, and project team capability in building information modeling (BIM) (12 points); and (6) location in the general geographical area of the project and knowledge of the locality of the project (8 points). Synopsis § M.2.

The synopsis also required offerors to demonstrate in their SF 330 Part I and Part II that they are qualified to provide A/E design and other services in, but not limited to, the five facility categories: (1) office/public space facilities, (2) health care facilities, (3) laboratory facilities, (4) animal care facilities, and (5) mechanical/electrical/plumbing/special utilities/central utilities plant facilities. *Id.* at 4. The six primary factors and the five qualifications for facilities did not contain any additional descriptions or criteria, and constituted the sole stated basis for the evaluation.

The agency received A/E qualifications statements from 36 firms, including OLBN, by the response date of September 15, 2009. The agency found that 3 firms' qualifications statements did not meet the mandatory requirements; these firms were not further considered. Of the remaining 33 qualifications statements evaluated, 6 were determined to be in the initial "competitive range." The qualifications statement of OLBN was ranked ninth-best, and determined to be outside of the "competitive range."

On March 25, 2010, OLBN filed a protest with our Office, challenging the exclusion of its qualifications statement from the competitive range. In response to the protest, the agency stated that it would take corrective action by reevaluating OLBN's

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<sup>1</sup> The synopsis stated that NIH intended to negotiate and award up to four contracts, but also stated that the agency "reserves the right to make greater or fewer awards, one award, or no award under this procurement." Synopsis at 2.

qualifications statement as well as those of each firm whose statement received a higher score than OLBN. Agency Report (AR), Tab 4, Revised TEP Report, at 215-216.<sup>2</sup> Based on the agency's proposed corrective action, we dismissed the protest.

The technical evaluation panel (TEP) re-convened on April 27, to re-evaluate and re-score OLBN's qualifications statement and the qualifications statement of each offeror that was initially more highly rated than OLBN. The TEP re-evaluated the qualifications statements of the nine offerors, and provided a recommendation to the source selection authority (SSA) for the establishment of a new competitive range. The agency selected the four highest-rated firms for further negotiations, based on the following scores:

<b>Firm</b>	<b>Score</b>
Firm A	97.83
Firm B	97.83
Firm C	90.83
Firm D	90.33
Firm E	85.33
Firm F	83.37
Firm G	73.47
OLBN	65.0
Firm H	64.27

AR, Tab 5, Summary Re-Evaluation Report, at 1-2. Upon notification of its exclusion from the competition, OLBN filed this protest.

## DISCUSSION

OLBN protests its exclusion from the list of firms being further considered for awards, arguing that the agency failed to accord its submission appropriate credit and treated the offerors unequally. In reviewing a protest of an agency's selection of a contractor for A/E services, our Office will not substitute its judgment for that of the agency evaluators. Rather, the evaluation of offerors' qualifications statement is within the discretion of the agency, and our review examines whether the agency's selection was reasonable and in accordance with the published criteria. ARTEL, Inc., B-248478, Aug. 21, 1992, 92-2 CPD ¶ 120; James W. Hudson & Assocs., B-243277, July 5, 1991, 91-2 CPD ¶ 29; Ward/Hall Assocs. AIA, B-226714, June 17, 1987, 87-1

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<sup>2</sup> Page numbers cited herein with regard to the AR refer to the agency's pagination of the documents in its report.

CPD ¶ 605. A protester's mere disagreement with the agency's evaluation does not show that it is unreasonable.

OLBN's submissions raise numerous protest arguments, and generally challenge the agency's evaluation under each of the evaluation factors. Although we address only certain of OLBN's arguments below, we have reviewed all of the protester's arguments and find none provides a basis to sustain the protest.

Under the first evaluation factor—professional qualifications and project team organization—OLBN received 17 out of a possible 25 points. In evaluating this factor the agency found a weakness because “[t]he resumes for three of the firm’s prime key persons (staff resources) including the [DELETED], [DELETED], and [DELETED] show no previous work history with OLBN.” AR, Tab 4, Revised TEP Report, at 231. The protester contends that the work history between OLBN and its proposed key personnel had no relevance to this evaluation factor.

In evaluating proposals or qualifications statements, an agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 3. Here, the evaluation factor involved an examination of the qualifications of the project team members (prime and sub-consultants), key personnel, and project team organization. We agree with the agency that consideration of the working relationship between proposed key personnel experience and OLBN, the prime contractor, was logically related to the consideration of “professional qualifications” and “project team organization” and so did not constitute use of an unstated evaluation criterion.

In connection with the same weakness, OLBN also challenges the TEP's assessment of a weakness because OLBN had not shown evidence that the three key personnel who lacked work history with OLBN would be available to work on the contract. AR, Tab 9, Pre-Award Debriefing, at 359. OLBN submitted the resumes of three architects in its SF 330 which indicated that these individuals would assume their roles upon award. AR, Tab 2, OLBN Qualifications Statement, at 119, 122, and 129. The protester contends that even though these three individuals have no relevant work history with OLBN, “the project team has sufficient organization necessary for satisfactory performance of required services.” Protest at 18.

The agency states that its concern was based on the protester's proposed approach of hiring key personnel—none of whom had experience working with OLBN—only in the event that the firm received a contract. AR at 4; Tab 4, Revised TEP Report, at 231. The agency explains that its concerns would have been alleviated if the protester had stated that the contingent hires had previously worked for OLBN; alternatively, the agency states it would have been “reassured” if the protester had proposed key personnel staff that had “at least recently joined OLBN's staff.” AR at 4. In light of the broadly-stated evaluation criterion for experience, we think that

the agency reasonably downgraded OLBN based on the lack of a relevant work history between the employees and the prime contractor.

Under the second evaluation factor--specialized experience and technical competence--OLBN received 17 out of a possible 25 points. Synopsis at 5. OLBN alleges that NIH employed an unstated evaluation criterion in reviewing the Leadership in Energy and Environmental Design (LEED) accreditation of proposed personnel. Specifically, OLBN contends that NIH had erroneously downgraded its qualifications statement due to the fact that its proposed LEED-accredited personnel had not served on the sample projects submitted in OLBN's qualifications statement. In evaluating this factor the agency noted that OLBN itself "did not participate with any of the example LEED project[s] and rel[ies] solely on the knowledge, experience, and expertise of [its] subcontractors to manage and coordinate this major portion of the work." AR, Tab 4, Revised TEP Report, at 254; see also id. at 232; AR at 8.

The agency responds that the sample projects included in OLBN's qualifications statement were supposed to reflect OLBN's specialized experience with regard to, among other things, energy conservation and the LEED accreditation of its proposed personnel. Thus, according to the agency, it was relevant to OLBN's LEED experience to what extent its proposed personnel had participated in the sample projects. AR at 7.

We think the agency reasonably viewed LEED accreditation as within the scope of the stated evaluation criterion of "specialized experience and technical competence" with regard to matters such as "energy conservation, pollution prevention, waste reduction, and the use of recovered materials." Synopsis § M.2. To the extent that the agency had a concern with the protester's lack of experience as a prime contractor with LEED projects--as distinct from the experience of its subcontractor personnel with such projects--we think this judgment was a matter within the agency's discretion and was consistent with the evaluation criteria. Shaw-Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Asst., Joint Venture, B-401679.8 et al., September 8, 2010, 2010 CPD ¶ \_\_ at 7; see also Alpha Data Corp., B-291423, Dec. 20, 2002, 2003 CPD ¶ 18 at 4-5.

Under the third evaluation factor--"capacity to accomplish the work in the required time including capacity to accomplish multiple simultaneous task orders"--OLBN received 7.5 out of a possible 15 points. The agency noted that although OLBN listed four projects performed at [DELETED], the protester "was a subcontractor to the lead/prime construction contractor for three of these projects and only 3 members of the OLBN staff participated on all four of these [DELETED] projects." AR, Tab 4, Revised TEP Report, at 232. We find that the agency reasonably took into account the fact that OLBN performed work at [DELETED] that was similar to be performed here, albeit as a subcontractor, and had a reasonable basis for downgrading OLBN's qualifications statement under this factor.

Next, OLBN contends that NIH treated the protester in a disparate manner as compared to other firms in the competitive range with regard to the assessment of several strengths and weaknesses. For example, the protester contends that two other firms, Firm A and Firm B, were given credit under the specialized experience and technical competence factor for work that they had performed as subcontractors, whereas the protester had not received credit for work it had performed as a subcontractor.

With regard to Firm A, the agency noted that the “prime played a key role with eight of the ten projects as the project manager and/or as the [mechanical engineering and plumbing] engineering firm.” AR, Tab 4, Revised TEP Report, at 235. With respect to Firm B the agency only noted the experience of Firm B as a prime contractor, and did not mention any work as a subcontractor. *Id.* at 238. In comparison, as discussed above, the agency found that OLBN lacked experience with regard to several areas because it had worked on the projects cited in its qualifications statement primarily as a subcontractor, rather than a prime contractor. *Id.* at 231. On this record, we find that that the agency had a reasonable basis for distinguishing between the records of the competitive range offerors and the protester.

Finally, the protester raises a number of allegations concerning the agency’s development of the evaluation ratings and the selection of the four most highly-rated offerors for further negotiation. For example, OLBN contends that the TEP merely averaged the scores of the individual evaluators, as opposed to developing a consensus rating based on the strengths and weaknesses identified by each evaluator.<sup>3</sup> While it is true that the consensus scores here were, in fact averages of the scores assigned by each of the individual evaluators, each of the evaluators signed the consensus report prepared for the contracting officer. Specifically, despite the mathematical nature of arriving of a consensus rating, there is no evidence in the record to suggest that the report reflects anything other than their consensus.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>3</sup> OLBN also contends that the SSA did not rely upon the Revised TEP Report before he made his determination, and therefore the competitive range decision lacks a reasonable basis. Supp. Protest at 21. The agency states that a number of documents, including the Revised TEP Report, were presented to the SSA before he made his determination. Supp. Contracting Officer Statement, Aug. 17, 2010, at 1.