



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SRS Technologies

File: B-258170.3

Date: February 21, 1995

Frederic M. Levy, Esq., and Patrick K. O'Keefe, Esq., McKenna & Cuneo, for the protester.
Merritt Lee Murry, Esq., Slocum, Boddie & Murry, for Hernandez Engineering, Inc., an interested party.
Deidre A. Lee, National Aeronautics and Space Administration, for the agency.
Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Proposed awardee's request for substitution of a manager proposed in its best and final offer does not by itself establish that the proposed awardee engaged in improper "bait and switch" tactics; there is no basis to conclude that such tactics were used where the record contains no evidence which suggests that the offeror proposed the individual knowing that he would not be available for contract performance.
2. Protest against improper technical evaluation of proposals is denied where agency had reasonable basis for its conclusions.
3. Protest that proposed awardee should have been disqualified from competing for a contract because it could be placed in a position of evaluating its own performance under other contracts is denied where agency reasonably determined that there are adequate safeguards in place to prevent the contractor from evaluating its own performance.

DECISION

SRS Technologies protests the proposed award of a contract to Hernandez Engineering, Inc. under request for proposals (RFP) No. 8-1-3-CR-00100, issued by the National Aeronautics and Space Administration (NASA) for mission services in support of the George C. Marshall Space Flight Center's safety and mission assurance office. SRS raises numerous challenges to the evaluation of its own and Hernandez's

proposal and contends that the selection decision reflects unequal treatment and bias in favor of Hernandez and against SRS.

We deny the protest.

BACKGROUND

The RFP contemplated the award of a cost-plus-award-fee contract for a base year with 4 option years. The procurement was set aside exclusively for small disadvantaged businesses. Proposals were to be evaluated based on the following four factors: (1) mission suitability; (2) cost; (3) relevant experience and past performance; and (4) other considerations. The RFP provided that mission suitability was the most important factor, and the other considerations factor was the least important. The cost factor and the experience and past performance factor were equal in importance and each was somewhat less important than mission suitability and slightly more important than other considerations. The mission suitability factor was divided into the following four subfactors: implementation plan; staffing plan; key personnel; and organization.

NASA received eight proposals by the closing date; four proposals, including SRS's and Hernandez's, were included in the competitive range. After conducting discussions, the agency requested and received best and final offers (BAFO).

Both the protester's and Hernandez's proposals were rated "excellent" under the mission suitability factor. NASA determined that \$21.2 million would be the probable cost to the government of an award based on Hernandez's proposal, while the probable cost associated with SRS's proposal was approximately \$24.5 million. Hernandez's proposal was rated excellent under the relevant experience and past performance factor; SRS's was rated very good under this factor. Both proposals were rated excellent under other considerations. Based on its proposals's superior relevant experience and past performance rating and its lower probable cost, the source selection official (SSO) selected Hernandez for award.

PROTEST ALLEGATIONS AND ANALYSIS

Key Personnel

SRS contends that NASA's technical evaluations under the key personnel subfactor of the mission suitability factor were flawed because NASA: (1) improperly downgraded SRS's proposed quality assurance manager, while not sufficiently downgrading Hernandez's proposed reliability and

maintainability (R&M) technical manager; (2) failed to evaluate the firmness of commitment of Hernandez's proposed key personnel; and (3) failed to evaluate a post-BAFO change in personnel requested by Hernandez.

It is not the function of this Office to evaluate technical proposals de novo; rather, in reviewing protests against allegedly improper evaluations, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the evaluation criteria listed in the solicitation. Rome Research Corp., B-245797.4, Sept. 22, 1992, 92-2 CPD ¶ 194. A protester's disagreement with the agency's judgment is itself not sufficient to establish that the agency's evaluation was unreasonable. PHH Homequity, B-244683, Oct. 7, 1991, 91-2 CPD ¶ 316.

The agency considered the key personnel proposed by both the protester and Hernandez to be "excellent"--for each firm, three of the four proposed key personnel were considered "major strengths" of the respective proposals, while the fourth was considered acceptable. In Hernandez's case, NASA found that the proposed R&M manager had limited management experience, while in SRS's case, the proposed quality assurance manager lacked information resources management experience.

The record provides no basis to question the agency's judgments in evaluating these proposed personnel. Concerning Hernandez's proposed R&M manager, the agency recognized that this individual had limited management experience but determined that he also offered strengths and ultimately would be able to perform adequately in the proposed management position. In this regard, there was no requirement that the key personnel have a certain amount of managerial experience. This individual's lack of managerial experience clearly was assessed as a weakness by the agency; while the protester contends that it should have been given greater weight, we see nothing unreasonable about the agency's evaluation.

With respect to the quality assurance manager proposed by SRS, the firm challenges the agency's rating of this individual's qualifications as adequate based on a lack of information resources management experience. Specifically, SRS contends that the agency overlooked statements in its proposal that this individual had experience developing and operating information systems. The protester concludes that had it been given credit for this experience, its proposal would have been considered superior to Hernandez's under the key personnel subfactor and the mission suitability factor.

In our view, the agency's specific criticism of this individual is reasonable. The agency points out that the

information resources management tasks will be the "major element of work for the position" for which this individual was proposed. While NASA recognized that this individual had significant experience as a developer of information management systems, the agency found that his role in such development was as a user, specifying particular requirements, specifically quality assurance applications. This individual's lack of experience as a systems analyst or programmer, and lack of experience directing or managing these types of professionals, served as the basis for the agency's concern about information resource management experience and, in our view, reasonably led to the rating of adequate. We thus find nothing unreasonable or unfair about NASA's assessment of the qualifications of the key personnel proposed by either SRS or Hernandez.

SRS also contends that NASA did not evaluate the commitment of Hernandez's four proposed key personnel and argues that the agency failed to evaluate a post-BAFO change of one of Hernandez's managers proposed as a key person under the contract. These arguments are without merit. Concerning the commitment of the proposed key personnel, the agency found that each was fully committed to this contract for 100 percent of his time. In this regard, the record shows that three of them were employed by Hernandez or its proposed subcontractor and therefore were not required under the RFP to submit further evidence of commitment. The fourth individual submitted a letter of intent to work for Hernandez if it received the contract. We therefore conclude that the agency properly evaluated the commitment of the proposed key personnel.

With respect to the one key person who will be unavailable for performance, the record shows that this individual, an employee of the proposed subcontractor, resigned from that firm after submission of the BAFO. Hernandez states that his availability had been reconfirmed at the time it submitted its BAFO. Since there is no indication that Hernandez intentionally proposed this individual knowing that he would not be available for performance, the fact that the offeror will provide a substitute for this individual does not make the award improper or require the agency to reopen the competition. See Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577.¹

¹In its protest, SRS also alleged that: (1) the participation of a former employee of Hernandez's proposed subcontractor on the evaluation committee created a conflict of interest; (2) the fact that Hernandez offered a former employee of SRS's proposed subcontractor in its BAFO constituted an apparent conflict of interest; and (3) the

(continued...)

The protester also contends that Hernandez proposed inadequate compensation for its professional employees. NASA responds that Hernandez's compensation plan was considered "very comparable" to that of the incumbent contractor, SRS's proposed subcontractor. The agency states, therefore, that no cost adjustment or evaluation penalty was necessary. We have no basis to object to this conclusion.

Organization

The protester also questions NASA's evaluation of its proposal under the organization subfactor of the mission suitability factor. Specifically, it states that its proposal was assigned a "major weakness" for planning to "centralize authority in [the] project manager" and at the same time was assigned a major strength based on NASA's finding that SRS's project manager has full local autonomy. SRS maintains that these findings are inconsistent.

NASA explains that local autonomy and centralized authority of the project manager are not "essentially the same" as claimed by the protester. Local autonomy concerns the degree to which the proposed staff will be dependent on other nonlocal company offices to aid in business management operations, including the extent to which the offeror's headquarters or other offices empower the project manager to make decisions without obtaining prior approval. Centralization of authority, according to NASA, refers to the supervisory hierarchy flowing from the project manager down to his or her subordinate employees.

NASA criticized SRS's centralization of authority in the project manager because, in its view, centralizing authority on this contract, as opposed to delegating authority on certain matters, would impede organizational responsiveness to task fulfillment. While the project manager may make decisions without the approval of nonlocal company officials, the project manager has not delegated tasks to subordinate employees to the extent NASA believed appropriate. In this respect, NASA maintains that the large and varied number of deliverables that will be required under the contract justify the delegation of authority on technical matters to subordinate employees if a timely

¹(...continued)

agency improperly adjusted SRS's most probable "other direct costs." The agency responded to these allegations in its administrative report, and the protester has not rebutted the agency's position, hence we deem these issues abandoned. See Essex Electro Eng'rs, Inc., B-252288.2, July 23, 1993, 93-2 CPD ¶ 47.

response is to be achieved. The protester is correct that the strength and weakness both involve the project manager's responsibilities; nevertheless, the agency's evaluation reasonably reflects distinct aspects of SRS's proposed organization of its personnel under the contract. The protester's argument that the evaluation is internally inconsistent is without merit, and we have no basis to question the agency's particular assessments.

SRS also complains that, given NASA's acknowledgment of the project manager's local autonomy as a strength, it was inconsistent for NASA to assign its proposal a minor weakness based on the agency's concern that SRS's project manager "is separated from the CEO [chief executive officer] by two intermediate levels of management." NASA responds that "it was the consensus of the [evaluation] committee, that a project manager needs direct access to the CEO for advice and discussion of corporate issues, including resource augmentation from corporate assets, regardless of the degree of local autonomy granted to that project manager." The protester has not rebutted the agency's position, which appears reasonably based.

Finally, the protester argues that it was inconsistent for the agency to find weaknesses in SRS's proposal under the organization subfactor while also assigning a strength to SRS because its "organization and management system promotes efficient execution of the statement of work." In our view, this statement simply reflects the fact that the agency found the protester's organization to be very good overall. Such a finding does not preclude criticism of the proposal. In short, we see nothing inherently inconsistent with praising the efficiency of its organization and management system and also finding weaknesses.

Relevant Experience and Past Performance

SRS next challenges NASA's evaluation of its rating under the relevant experience and past performance factor, contending that agency officials acted improperly by presenting the SSO with information about SRS's past performance and relevant experience in three successive presentations in an effort to find weaknesses. Specifically, it alleges that in the first two presentations, on July 6 and July 11, 1994, the charts presented to the SSO showed no weaknesses in this area for SRS or its proposed subcontractor, PRC. SRS points out further that while weaknesses were mentioned for both SRS and PRC in backup charts prepared for the July 6 presentation (which may or may not have been shown to the SSO), the July 11 backup charts indicated that almost all of these weaknesses had been eliminated. SRS states that in the third presentation, on July 26, the following weaknesses

appeared on charts presented to the SSO: (1) SRS has no experience with award-fee contracts as a prime contractor and very little experience as a CPAF (cost-plus-award-fee) subcontractor; (2) SRS and its proposed subcontractor had a limited history of minor cost overruns; and; (3) SRS and its proposed subcontractor have had limited problems in managing costs and in timely reporting these problems to the contracting officer.

SRS contends that these weaknesses appeared as a result of NASA reevaluating its proposal "for the purpose of finding additional weaknesses." The protester also states that Hernandez's relevant experience and past performance was not reevaluated and asserts that this demonstrates bias against SRS.

NASA responds that SRS was rated "very good" under the relevant experience and past performance criterion and contends that the weaknesses identified in the final presentation were noted early in the evaluation process and were based on responses to questionnaires sent to agency contracting officials familiar with SRS's or PRC's performance under other contracts. SRS and PRC each received unfavorable comments concerning their respective business/cost performance on one contract. These criticisms were raised with SRS during discussions, and most of the concerns were resolved. NASA states that although all negative comments remained in the July 6 backup charts, these charts were in error. The July 11 charts, according to the agency, accurately reflect that most of the concerns for SRS were resolved and that satisfactory responses were received from PRC concerning the criticisms. NASA states that the charts were not intended to indicate that all concerns about PRC's performance had been resolved. The agency explains that in the final July 26 presentation, the concerns which remained for each firm were summarized in the manner set forth above as weaknesses and presented to the SSO.

The record supports the agency's account. The improvement evident in the July 11 presentation appears to have occurred as a result of SRS's responses to discussion questions. Indeed, the July 11 charts show that most of the weaknesses had "been eliminated due to information received during written discussion or best and final offers." Since there was no contact with the offerors between July 6 and July 11, the elimination of the weakness should have been reflected in the July 6 chart.

We also have no basis to question the agency's position that while the chart reflected an elimination of all weaknesses listed in the initial evaluation for PRC, the agency had remaining concerns. The contemporaneous record shows that

when the agency contacted the contract specialist on the PRC contract after discussions, although he was "generally in agreement with [PRC's] responses," the contract specialist advised that he "still had a problem with their lack of details when supplying cost proposals and their timeliness in notifying the Contracting Officer of inaccuracies in their . . . reporting, which caused minor cost overruns." These concerns were reflected in the July 26 presentation.

The protester also takes issue with the substance of the agency's criticism of PRC's performance, noting that PRC received consistently excellent performance reports under the contract. SRS concludes that the concerns noted by the contract specialist therefore are inconsistent and that the agency ignored the performance ratings. We find this argument without merit. First, the agency here was aware of the overall quality of performance of PRC; in fact, the SSO himself had rated PRC superior under the incumbent contract in 1993. Moreover, we find nothing inconsistent between the criticism and the performance reports. The final report, covering March through November 1993, specifically listed significant weaknesses that detracted from PRC's cost control performance, including reporting problems and limited cost overruns. The record provides no basis to dispute the contract specialist's concerns, which the contracting officer verified in June 1994.

We also find no merit to SRS's allegation that the successive presentations to the SSO demonstrate bias against it. NASA states, and the record confirms, that Hernandez's proposal was also reevaluated and in fact downgraded under the staffing plan evaluation factor after the initial presentation to the SSO. Moreover, given the considerable confusion surrounding the information displayed on the charts and backup charts, we find credible the agency's position that the SSO requested additional presentations and reformatting of the information contained in the charts to make them more useful. In short, the record provides no evidence of bias.

Conflict of Interest

SRS alleges that Hernandez should have been disqualified from competing for this contract (the S&MA contract) because it has an organizational conflict of interest as a result of two other NASA contracts it is currently performing, one as a prime contractor and another as a subcontractor. SRS asserts that under the S&MA contract, Hernandez will be required to evaluate its own performance under those contracts. In support of its position, SRS points to the following language in the RFP: "[T]he S&MA Contractor will occupy a highly influential and responsible position and must not be in a position to make decisions favoring its own

capabilities at the prime or major subcontract level," SRS also states that procurement regulations generally prohibit agencies from allowing contractors to review their own performance. Federal Acquisition Regulation (FAR) § 9.505.

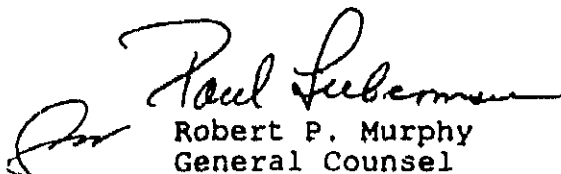
Contracting officials are required to avoid, neutralize, or mitigate potential significant organizational conflicts of interest on the part of prospective contractors so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.501, 9.504, and 9.505; D.K. Shifflet & Assocs., Ltd., B-234251, May 2, 1989, 89-1 CPD ¶ 419. A contractor is not prohibited from evaluating its own work so long as there are proper safeguards to ensure objectivity and to protect the government's interests. FAR § 9.505-3. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. We will not overturn the agency's determination in this regard except where it is shown to be unreasonable. D.K. Shifflet & Assocs., Ltd., supra. Here, we find that NASA reasonably made award to Hernandez despite the fact that the firm is performing under two NASA contracts which could be reviewed under this contract.

The scope of work under the S&MA contract is broadly stated and calls for the contractor to review a number of NASA contracts valued at a total of more than \$2 billion. From this record, it does not appear that the two contracts being performed by Hernandez, with a value of approximately \$150,000 per year for each, are central to the agency's safety, reliability, maintainability and quality assurance policies, requirements and controls which are subject to review under the S&MA contract. According to NASA, if Hernandez were to perform the S&MA evaluation work relating to the two contracts, that work would require less than 1 percent of the Hernandez personnel available for the S&MA contract.

In any event, NASA states that Hernandez will not evaluate its performance under those contracts. In this respect, the RFP provides that the scope of work is stated "in broad terms to achieve maximum required flexibility" and that work will be ordered through written "technical direction" issued by the contracting officer's technical representative. The agency states, therefore, that it can ensure that Hernandez is not directed to evaluate its own performance. Specifically, the agency points out that the contracting officer's technical representative is aware of the Hernandez contracts and can easily ensure that Hernandez is not placed in a position where it could not be objective. NASA states further that government personnel are available to perform

the limited tasks which would create a real or apparent conflict if performed by Hernandez. Given the limited nature of any possible conflict, and the fact that NASA has offered a reasonable approach to protect its interests in ensuring objective performance, the agency was not required to disqualify Hernandez from the competition.

The protest is denied.


Robert P. Murphy
General Counsel