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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Genco Infrastructure Solutions, Inc.

**File:** B-403771.2

**Date:** February 10, 2011

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Wayne A. Keup, Esq., for the protester.

William K. Walker, Esq., Walker Reausaw, for Olgoonik Environmental Services, an intervenor.

Timothy J. Ryan, Esq., Department of Defense, for the agency.

Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Procuring agency may base past performance evaluation of offeror on the past performance of a subcontractor that will be performing a substantial portion of the contract.
  2. Protest that awardee's lack of experience should have resulted in a rating of less than acceptable under management capability factor is denied where solicitation provided for evaluation under that factor of offeror's proposed approach to performance rather than its prior experience.
  3. Protest that agency improperly considered HubZone evaluation preference is untimely where solicitation provided for preference and protest was not filed until after the initial closing date for the receipt of proposals.
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### **DECISION**

Genco Infrastructure Solutions, Inc., of Pittsburgh, Pennsylvania, protests the award of a contract to Olgoonik Environmental Services (OES), of Wainwright, Alaska, under solicitation No. SP3300-09-R-0035, issued by the Department of Defense, Defense Logistics Agency, for warehouse and distribution support services. Genco challenges the evaluation of proposals.

We deny the protest.

The solicitation provided for award to the offeror whose proposal was most advantageous based on price and the following six non-price factors (in descending

order of importance): management capability (with subfactors for distribution management, resourcing, and plans), mission capability (with subfactors for operations and equipment), past performance, utilization of small business concerns, DLA Mentoring Business Agreement, and AbilityOne program. RFP at 93. Each technical factor and subfactor was to be assigned a rating of exceptional, highly acceptable, acceptable, susceptible to being made acceptable, or unacceptable; past performance was to be assigned a rating of highly acceptable, acceptable, unacceptable, or neutral. The solicitation also incorporated Federal Acquisition Regulation (FAR) § 52.219-4, "Notice of Price Evaluation Preference for HUBZone Small Business Concerns," which notified potential offerors that if an offer was received from a HUBZone concern, an evaluation factor of 10 percent would be added to the price of other proposals received from other than small business concerns. RFP at 32.

Five proposals were received, three of which (including GENCO's and OES's) were included in the competitive range. Following discussions, the agency requested the submission of final proposal revisions (FPR). DLA determined OES's FPR to be more advantageous than Genco's. OES's FPR was rated highly acceptable for management capability (the most important non-price factor) and utilization of small business concerns, and acceptable for the remaining technical factors. In contrast, Genco's FPR was rated only acceptable for management capability, as well as acceptable for mission capability and past performance, highly acceptable for utilization of small business concerns (the fourth most important non-price factor), and exceptional for DLA mentoring and AbilityOne program merit (the least important factors). In addition, OES's price (\$41,141,850) was lower than GENCO's proposed price (\$41,197,546) and its price (\$45,317,300) as adjusted upward from application of OES's HubZone preference. *Id.* Upon learning of the resulting award to OES, and after receiving a debriefing, Genco filed this protest.

Genco raises numerous challenges to the evaluation of the technical proposals and past performance. Our Office reviews challenges to an agency's technical evaluation to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Integrate, Inc.*, B-296526, Aug. 4, 2005, 2005 CPD ¶ 154 at 3. Here, we have reviewed the record and find that none of Genco's arguments furnish a basis for questioning the award to OES. We discuss several of those arguments below.

#### Past Performance

Genco asserts that it was unreasonable to assign OES a rating of satisfactory for past performance because OES lacks relevant past performance. The agency agrees that OES itself has no relevant past performance. The agency explains, however, that OES proposed as a major subcontractor EG&G, which has substantial past performance on warehousing and distribution contracts. Genco does not dispute that EG&G has substantial relevant past performance, but argues that the agency

nevertheless could not base the rating of OES on the past performance of its major subcontractor.

We disagree. GAO has previously held that in evaluating an offeror's past performance, an agency may limit the use of the past performance of a subcontractor if the agency has a legitimate basis for doing so. See Innovative Tech. Sys., Inc., B-260074, May 24, 1995, 95-1 CPD ¶ 258 at 7, 8. An agency, however, is not required to do so. Rather, where, as here, an offeror's performance relies significantly on a team member or subcontractor, an agency may base the past performance evaluation on the subcontractor's past performance. Aegis Defence Servs. Ltd., B-400093.4, 400093.5, Oct. 16, 2008, 2008 CPD ¶ 205 at 4-5. This is true even where the prime contractor is a newly formed entity without its own past performance. Id. Here, since EG&G will perform almost 50 percent of the contract, it was appropriate for the agency to consider EG&G's past performance in rating OES's past performance.

#### Management Capability--OES

Genco asserts that it was unreasonable for the agency to assign OES a rating of acceptable under the management capability factor because OES has no logistics experience, and no experience as a prime contractor with ultimate responsibility for the satisfactory completion of an entire contract of this type or magnitude. However, the solicitation provided for the evaluation of management capability to be based on an offeror's proposed management approach, not the offeror's experience. For example, the solicitation provides under the management capability subfactor distribution that "the offeror's proposal will be evaluated on how well the proposed technical approach achieves total management of the operation inclusive of an effective method for Resourcing Workload fluctuation and interfacing with Corporate Level Management and Dependencies." RFP at 94. Since Genco has not shown that the agency failed to evaluate OES's proposal in accordance with the solicitation, we have no basis to conclude that the evaluation was unreasonable in this regard.

#### Mission Suitability--Genco

Genco asserts that the agency unreasonably assigned its proposal a rating of only acceptable under the mission suitability factor. Specifically, Genco asserts that a higher rating was warranted based on a number of features in its proposal which it believes should have been identified as strengths. These features include, for example, [DELETED].

The agency responds that it did not consider these items strengths because they were either not adequately explained ([DELETED]); they were already requirements of the contract ([DELETED]); or they would not directly benefit the government ([DELETED]). For example, with respect to GENCO's proposal of a [DELETED],

the agency reports that GENCO failed to explain its approach and how it would result in [DELETED] in implementation and performance. Similarly, the agency explains that while GENCO indicated in its proposal that [DELETED], the protester failed to explain how its approach differed from [DELETED] already imposed by the solicitation in these areas. Supplemental Source Selection Decision at 2. As for GENCO's proposal to use [DELETED], the agency determined that this was of insufficient tangible benefit to the government to warrant a strength because [DELETED]. Since Genco has made no showing that the agency unreasonably failed to credit it with additional strengths so as to warrant a higher rating under the mission suitability factor, we deny the protest in this regard. Advanced Tech. Sys., Inc., B-296493.5, Sept. 26, 2006, 2006 CPD ¶ 147 at 7, 17.

#### HubZone Evaluation Preference

Genco asserts that the agency improperly included the HubZone evaluation preference in this solicitation. This basis of protest is untimely. Under Our Bid Protest Regulations, a protest that involves an issue that is apparent from the face of the solicitation must be filed prior to the closing date for the receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2010). Here, the solicitation clearly provided that the HubZone evaluation preference would be applied. Accordingly, Genco's protest on this basis, filed after award, is untimely and will not be considered.

The protest is denied.

Lynn H. Gibson  
General Counsel