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Decision

Matter of: Quality Services International, LLC

File: B-410156; B-410156.2; B-410156.3

Date: November 3, 2014

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DIGEST

Protest that agency misevaluated proposals and made an unreasonable source selection decision is sustained where record shows that agency's evaluation of awardee's proposal under the solicitation's experience factor was inconsistent with the terms of the solicitation.

DECISION

Quality Services International, LLC (QSI), of San Antonio, Texas, protests the award of a contract to SDS JV, of Washington, Utah, by the General Services Administration (GSA), Public Buildings Service, under request for proposals (RFP) No. GS-07P-13-JU-D-0070 for custodial and maintenance services for specific buildings in San Antonio, Pearsall, Austin, and Waco, Texas. QSI argues that the GSA misevaluated proposals, improperly engaged in discussions with SDS, and improperly awarded the contract to SDS because the firm was ineligible for award.

We sustain the protest in part and deny it in part.

BACKGROUND

GSA issued the RFP on January 6, 2014, seeking proposals from service-disabled, veteran-owned small businesses (SDVOSB) to provide custodial and maintenance services at 9 buildings in South Central Texas for a 5-month base period, one

7-month option period, and four 1-year option periods under a single-award indefinite-quantity contract. RFP, amend. 2, at 5-6; RFP at 359.

The RFP provided that award would be made to the offeror submitting the proposal deemed to offer the best value to the government, considering several technical factors and price. RFP at 374. The RFP identified four technical factors: management plan, past performance, quality control plan, and experience. The first two factors (management plan and past performance) were deemed equal to each other in importance, and more important than the third and fourth factors (quality control plan and experience), which also were deemed equal to each other. When combined, the technical factors were significantly more important than price. Id.

For price evaluation purposes, the RFP advised that the agency would add the prices offered for the base period and all option periods to arrive at a total evaluated price. RFP at 375. The RFP advised that prices would be evaluated for fairness, reasonableness, realism and balance. Id. at 375-76.

GSA received proposals from nine offerors, including QSI and SDS. Agency Report (AR), exh 14, Source Selection Evaluation Board (SSEB) Report, at 3. The agency evaluators determined that three proposals were technically unacceptable. Id. at 4-5. Of the six remaining proposals, the evaluators found that two were unacceptable because they were from joint ventures that had not provided copies of their respective joint venture agreements and, accordingly, the evaluators could not determine whether the concerns qualified as SDVOSB firms. Id. at 19, 33. The evaluation ratings for the four remaining proposals were as follows:

	Offeror A	Offeror B	QSI	SDS
Management Plan	Marginal	Marginal	Good	Good
Past Performance	Satisfactory Confidence	Satisfactory Confidence	Satisfactory Confidence	Substantial Confidence
Quality Control Plan	Good	Good	Good	Acceptable
Experience	Marginal	Good/Exceptional	Good	Good
Evaluated Price (millions)	\$19.4	\$16.8	\$23.4	\$19.0

AR, exh. 16, Source Selection Decision Document, at 9.

The source selection authority (SSA) found that QSI's and SDS's proposals were tied as the two most highly-rated of the four remaining proposals. Id. at 11. The SSA concluded that SDS's significantly lower price made its proposal the best value. Id. Accordingly, the SSA selected SDS for award. Id. at 12-13.

On May 27, pursuant to Federal Acquisition Regulation (FAR) § 15.503(a)(2), GSA provided QSI with notice of the agency's intent to award the contract to SDS. AR, exh. 17, Letter from Contracting Officer to QSI (May 27, 2014), at 1. QSI then filed a size protest challenging SDS's size, as well as a protest challenging its status as an

eligible SDVOSB. On July 2, the Small Business Administration (SBA) issued a decision finding that SDS was a small business. AR, exh. 20, SBA Size Protest Determination for SDS, at 1. On July 18, the SBA concluded that SDS was an SDVOSB. AR at 5. On July 21, QSI requested a debriefing, which the GSA refused. QSI filed this protest on July 28.¹

PROTEST

QSI has raised a number of arguments challenging the agency's evaluation of proposals and source selection decision.² We have carefully reviewed all of QSI's allegations and find them without merit, except that we sustain QSI's protest on one ground that we discuss in detail below. We note at the outset that, in reviewing

¹ SDS sought dismissal on the basis that QSI is not an interested party because the protester is allegedly affiliated with a large business, making the protester other-than small, and thus, ineligible for award under the set-aside here. QSI certified itself as a small business. Small business size protests, including alleged improper affiliation as here, are reserved for determination by SBA under its protest process. Our Office lacks jurisdiction to consider SDS's argument. 4 C.F.R. § 21.5(b)(1) (2014).

² QSI also challenged the agency's award to SDS on grounds that the firm failed properly to certify its status as an SDVOSB. The protester argued that SDS's failure to certify its status at the time of initial proposals rendered it ineligible for award, and that GSA engaged in discussions with SDS when, after receipt of initial proposals, the agency sought clarification of SDS's status as an SDVOSB. In this connection, the RFP provided that offerors' representations would be evaluated for acceptability, including a determination of whether the offeror met the applicable size standard, was eligible as an SDVOSB, and had a complete and accurate registration in the online System for Award Management. RFP, amend. 2, at 12.

We find no merit to this aspect of QSI's protest. First, SDS's proposal included a variety of information to demonstrate that it was an eligible SDVOSB, including, for example, copies of its joint venture agreement and a copy of a letter from the Department of Veterans Affairs (VA) demonstrating that the majority joint venturer was verified as an SDVOSB by the VA at the time of proposal submission. AR, exh. 7, SDS's Proposal Excerpt. These materials were adequate to constitute a "deemed certification" (essentially a prima facie showing) of SDS's status as an SDVOSB within the meaning of the applicable SBA Regulations. See 13 C.F.R. § 125.29(b)(1) (2014). Second, the agency clarified SDS's status as an SDVOSB. The agency's clarification of this information with SDS did not constitute discussions that would obligate the agency to engage in discussions with all offerors. Kuhana-Spectrum Joint Venture, LLC, B-400803, B-400803.2, Jan. 29, 2009, 2009 CPD ¶ 36 at 9-10. Finally, the record shows that, ultimately, the SBA determined that the firm was an SDVOSB eligible for contract award. AR, exh. 23, SBA's Determination of SDS's status as an SDVOSB. We therefore deny this aspect of QSI's protest.

protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. For the reasons discussed below, we conclude that the agency miscalculated the awardee's proposal under the solicitation's experience factor.

As noted, one of the RFP's evaluation factors required offerors to demonstrate their experience in performing services of a similar nature to those being solicited. RFP at 375. The evaluation factor specifically required offerors to demonstrate their prior experience in performing one or more prior contracts for a minimum of one year as either a prime contractor, or as a joint venture, and precluded consideration of an offeror's prior experience if that experience had been gained as a subcontractor, or had been gained by the offeror's proposed key personnel. Id. The RFP's instructions to offerors provided as follows:

The Offeror must demonstrate experience as either a **PRIME CONTRACTOR OR JOINT VENTURE** within the last **5 years from the date of this solicitation** providing contract services that are similar to the scope of **Operations and Maintenance, custodial, and grounds maintenance** services being required by this solicitation. **Experience as a SUBCONTRACTOR or KEY PERSONNEL will not be considered**

RFP at 367 (emphasis in original).

The record shows that SDS submitted five examples of its experience. AR, exh. 8, SDS Proposal Excerpt. In evaluating the SDS proposal, the evaluators concluded that four of SDS's experience examples could not be considered because they were for less than the 1-year duration specified in the RFP for experience examples. AR, exh. 14, SSEB Report, at 28. The evaluators did consider SDS's remaining experience example and concluded that it was very relevant, and for work very similar to the solicited requirement; based on these conclusions, the evaluators assigned the SDS proposal a good rating for the experience factor. Id. at 28-29. The record shows that this experience example was performed by a joint venture known as DL JV; the agency credited SDS with this experience because one of its joint venturers, Dae Sung, was one of the DL JV joint venturers. AR, exh. 12, SDS Experience Evaluation, at 2.

QSI argues that the RFP only permitted consideration of the experience of the offeror itself and, since SDS has no experience as a joint venture, its proposal

should have been found unacceptable under the experience factor.³ QSI argues that the agency improperly evaluated SDS's experience by considering the experience of DL JV, even though SDS did not perform the contract either as a prime contractor in its own right, or as a joint venture comprised of the two concerns that make up SDS, Dae Sung, LLC, and Siege Enterprises, LLC.

We agree with the protester that the agency improperly credited SDS with the experience of DL JV. As noted above, the RFP expressly limited the offerors' experience examples to those where "the offeror" was either the "prime contractor" or "joint venture" performing the experience example. RFP at 367. Here, the contract considered by the agency in evaluating SDS was one performed not by "the offeror," SDS, but by an entirely different entity, DL JV. While it is true that one of SDS's joint venturers also was a member of DL JV, that fact does not meet RFP criteria for consideration; that is, the actual offeror here, SDS, was not the joint venture that had performed the experience example.

We point out that, in contrast to the evaluation of SDS, the agency apparently used a strict interpretation of the RFP in its evaluation of QSI. The record shows that three of QSI's experience examples had been performed by QSI's major subcontractor, [DELETED]. AR, exh. 9, QSI Proposal Excerpt. GSA apparently concluded that it was required to exclude consideration of these experience examples--even though [DELETED] had been the prime contractor performing them--because it determined that [DELETED] was not the "prime contractor" or a "joint venture" proposing to perform the solicited requirement. AR, exh. 13, QSI's Experience Evaluation, at 5-7.

RECOMMENDATION

In view of the foregoing, we sustain QSI's protest for the reason discussed above. We recommend that GSA reevaluate proposals in a manner consistent with this decision and the terms of the RFP, and make a new source selection based on that reevaluation. Alternatively, we recommend that GSA amend the RFP to provide for the evaluation of offerors' experience on a broader basis than that currently contemplated under its terms. Should the agency elect to amend the RFP, we further recommend that it solicit, obtain and evaluate revised proposals, and make a new source selection decision. We also recommend that QSI be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees, but only to the extent that those expenses were incurred in connection with the experience evaluation issue discussed above. 4 C.F.R. § 21.8(d)(1) (2014). The protesters' certified claims for costs, detailing the time expended and costs incurred,

³ The record shows that the agency rated offerors with no creditable experience examples unacceptable under the experience evaluation factor. AR, exh. 14, SSEB Report, at 7-8.

must be submitted to the agency within 60 days after receipt of this decision.
4 C.F.R. § 21.8(f).

The protest is sustained in part and denied in part.

Susan A. Poling
General Counsel