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**Comptroller General
of the United States**

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

Decision

Matter of: ACME Industrial, Inc.

File: B-414023

Date: January 13, 2017

Joesph Mariucci, ACME Industrial, Inc., for the protester.
Ashley S. Amano, Esq., and Janis P. Rodriguez, Esq., Department of
Transportation, Maritime Administration, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation of awardee's proposal and price-technical tradeoff decision is denied where the record shows that both were reasonable and consistent with the solicitation's stated evaluation criteria.

DECISION

ACME Industrial, Inc., of Staten Island, New York, protests the award of a contract to Federated Maritime, LLC, of Fort Lauderdale, Florida, under request for proposals (RFP) No. DTMA91R1600045, issued by the Department of Transportation, Maritime Administration, for an Oily Water Separator System. ACME argues that the agency improperly evaluated the awardee's proposal and failed to make a reasonable price-technical tradeoff decision.¹

We deny the protest.

BACKGROUND

The RFP, issued on August 30, 2016, as a small business set-aside, anticipated the award of a fixed-price contract for the procurement and custom installation of an

¹ Because a protective order was not issued in connection with this protest, our discussion is necessarily general. Our Office was provided a complete copy of the agency report (AR) for our in-camera review.

Oily Water Separator (OWS) System in the Engineering Laboratory at the U.S. Merchant Marine Academy in Kings Point, New York. RFP at 4. The purpose of the system is to train engineering midshipmen in the function, operation, and maintenance of a typical flocculent type OWS system commonly found on large merchant vessels.² Id.

Award was to be made, without conducting discussions, to the firm whose offer was determined to be the best overall value considering price and two non-price evaluation factors, technical approach and past performance. Id. at 24. The technical approach factor was significantly more important than past performance and price; the past performance factor was more important than price; and both non-price factors, when combined, were significantly more important than price. Id. at 27.

Under the past performance factor, the only one at issue here,³ the agency was to evaluate the offeror's recent relevant experience to determine whether its experience in OWS purchase and installation contracts was similar in size, scope, complexity to the work at issue here. Proposals were to be assigned relevancy ratings and confidence ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 25-26.

The agency evaluated three of the proposals it received as technically acceptable:

	Technical Approach	Past Performance	Price
Offeror A	Acceptable	Not Relevant No Confidence	\$310,757
Federated	Excellent	Somewhat Relevant Satisfactory Confidence	\$347,326
ACME	Marginal	Somewhat Relevant Satisfactory Confidence	\$218,785

AR, exh. 5, Source Selection Decision, at 1.

² The training is required by the Coast Guard to obtain a Third Assistant Engineers license; obtaining this license is required to graduate from the Academy. Id.

³ ACME was provided a written debriefing that included all of the detailed evaluation findings with respect to its proposal. AR, exh. 6, Debriefing Letter. ACME has not challenged any of these findings.

In her source selection decision, the contracting officer recounted the detailed evaluation findings for each proposal under each non-price factor. Federated's excellent technical approach rating was based, in part, upon its well-defined work plan and contingencies; extensive details for testing and training; the experience, certification, and availability of its project manager; and its detailed work breakdown structure (WBS). Id. at 2-3. The firm's detailed and complete proposal gave the contracting officer confidence that Federated had the knowledge, experience and ability to complete the installation with minimal risk. Id. ACME's marginal rating was based, in part, upon its limited details for system design or installation, utilities, testing or training; its failure to show the experience, certification, or availability of its project manager; and its failure to include a WBS of events or completion date. Id. at 3. The contracting officer stated that, although ACME was experienced in ship repair, nothing in its proposal indicated knowledge or experience in OWS system design or installation, and its proposal lacked details for the agency to fully understand its intentions. Id.

With respect to past performance, Federated's satisfactory rating was based on four recent references. The agency found that the work performed was somewhat relevant to the scope of work here as it involved flocculent OWS systems, but that the dollar value for most was slightly lower than what is involved here. Id. at 4. ACME's satisfactory rating was based on four recent references that were somewhat relevant because they showed that the firm performed OWS repair work, but the requirement here is for custom installation of OWS. In terms of dollar value, two references were significantly higher than the dollar value of the work at issue here and two were lower. Id.

The contracting officer found that all three offerors submitted prices that were fair and reasonable. She stated that, although Federated's price was the highest, it was still relatively close in range to the independent government cost estimate and the firm was able to complete the work in a shorter period of time. Id. at 4-5. Considering the features of the proposals identified elsewhere in her source selection decision, the contracting officer determined that Federated's proposal represented the best value to the government. Id. at 5.

DISCUSSION

ACME primarily argues that Federated's proposal should have received a lower past performance rating because it has only been in business for a short time and has limited revenues. The firm also contends that, given the price difference between Federated's proposal and its own, the agency failed to conduct a reasonable price-technical tradeoff in making its source selection decision.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are

unreasonable or inconsistent with the solicitation's evaluation criteria. Davis Strategic Innovations, Inc., B-413305, Sept. 26, 2016, 2016 CPD ¶ 267 at 3. Absent solicitation language to the contrary, an agency properly may consider the relevant experience and past performance of key individuals; such experience and past performance may be useful in predicting success in future contract performance. Id. For the same reason, and under the same constraints, it is well-established that in evaluating the past performance of a new business such as Federated, an agency may consider the experience of the firm's proposed subcontractors. McGoldrick Construction Servs. Corp., B-310340.3, B-310340.4, May 16, 2008, 2008 CPD ¶ 120 at 4.

The record shows that Federated included past performance information in its proposal for its key personnel and subcontractors. AR, exh. 3, Federated Technical Proposal at 20-22. As discussed above, the record also shows that the agency reviewed this information as part of its past performance evaluation. AR, exh. 5, Source Selection Decision, at 4. Our review of the record provides us no basis to question the evaluation results or the conclusion that Federated's proposal provided the government a reasonable expectation that Federated would successfully perform the effort--the definition of a satisfactory confidence rating. RFP at 26.

ACME next argues that Federated may violate the RFP's limitation on subcontracting clause. An agency's judgment as to whether a small business offeror can comply with such a provision is generally a matter of responsibility. Ashridge, Inc., B-408469, Sept. 27, 2013, 2013 CPD ¶ 250 at 6. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with the subcontracting limitation, the matter is one of the proposal's acceptability. EcoAnalysts, Inc., B-406233, Mar. 19, 2012, 2012 CPD ¶ 169 at 3. The agency asserts that nothing on the face of Federated's proposal led it to conclude that the firm was not going to comply with the solicitation's subcontracting limitations; our review of the proposal gives us no basis to question the agency's judgment.

ACME finally contends that, by focusing on Federated's technical superiority and not the price savings offered by its own proposal, the agency failed to conduct a reasonable price-technical tradeoff decision.⁴

Where, as here, a solicitation contemplates award on a best-value basis and provides that the non-price considerations are more important than price, agencies

⁴ ACME also contends that the agency should have conducted discussions. The solicitation, however, expressly advised that the agency contemplated making award without discussions. RFP at 24. An agency is not required to provide an opportunity for discussions or clarifications under such circumstances. See Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3.

have discretion to make award to a concern that has submitted a higher-priced, technically superior offer. Addvetco, Inc., B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 9. An agency's decision is governed only by the test of rationality and consistency with the solicitation's stated evaluation criteria. Id. Source selection decisions must be documented, and must include the rationale for any business judgments and tradeoffs made or relied upon by the source selection authority, but there is no need for extensive documentation of every consideration factored into a tradeoff decision. Navistar Defense, LLC; AM General, LLC, B-407975.2 et al., Dec. 19, 2013, 2014 CPD ¶ 287 at 12. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Id.; Worldwide Information Network Sys., Inc., B-408548, Nov. 1, 2013, 2013 CPD ¶ 254 at 6.

The solicitation expressly provided that the technical approach factor was "significantly more important" than price, and that the non-price factors, when combined were "significantly more important" than price. RFP at 27. In making her source selection decision, the contracting officer considered all of the features of both proposals; she was "very confident" that Federated could complete the installation with minimal risk but found that ACME had provided insufficient detail for the agency to fully understand how it would perform. AR, exh. 5, Source Selection Decision at 3.

While the contracting officer did not expressly state that Federated's technical superiority warranted the price premium, she clearly recognized its higher price in finding that the proposal represented the best value to the government. Id. at 5. Implicit in her tradeoff was the determination that Federated's excellent technical approach was worth the difference in price. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 11. On this record, we see no basis to conclude that the contracting officer failed to analyze the qualitative differences between the proposals, failed to adequately document the record, or unreasonably concluded that the higher-rated, higher-priced proposal offered the best value to the government.

The protest is denied.

Susan A. Poling
General Counsel