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Decision

Matter of: MLU Services, Inc.

File: B-414555.3; B-414555.6

Date: July 17, 2017

Joseph C. Staak, Esq., Smith, Currie & Hancock LLP, for the protester. M. Warren Butler, Esq., and Scott D. Stevens, Esq., Starnes Davis Florie LLP, and Brian Chapuran, Esq., and Jon D. Levin, Esq., Maynard, Cooper & Gale, P.C., for Timberline Homes of Louisiana, LLC, an intervenor; and, John T. Andrishok, Esq., Breazeale, Sachse and Wilson, LLP, for Andries and Associates, LLC, an intervenor. Nathaniel Greeson, Esq., and Erin Greten, Esq., Department of Homeland Security, for the agency.

Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's determination under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5150, regarding eligibility of firm selected to receive an award is denied where the agency reasonably concluded that the firm was residing or doing business primarily in the designated set-aside area.

2. Protest challenging agency's evaluation of awardee's company experience and past performance is sustained where the agency's evaluation considered experience of a firm that was not proposed to perform any portion of the work.

DECISION

MLU Services, Inc., a small business located in Athens, Georgia, protests the issuance of a contract to Timberline Homes of Louisiana, LLC (Timberline LLC), a small business located in Lafayette, Louisiana, by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), pursuant to request for proposals (RFP) No. HSFE06-17-R-0003 for the maintenance and deactivation of manufactured housing units (MHUs). The protester alleges that Timberline LLC was not eligible for award because it does not meet the solicitation's Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) set-aside requirement. See 42 U.S.C. §§ 5121-5207. The protester also alleges that the agency's evaluation of Timberline

LLC's company experience and past performance was unreasonable.

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

BACKGROUND

FEMA is authorized to provide disaster assistance to individuals and households for emergencies, major disasters, and incidents of national significance under the Stafford Act. RFP at 18. On August 11, 2016, a major disaster was declared due to storms and floods in Louisiana, which designated individual assistance for the following disaster-affected parishes: East Baton Rouge, Livingston, St. Helena, Tangipahoa, Arcadia, Ascension, East Feliciana, Iberia, Lafayette, Point Coupee, St. Landry, Vermilion, Avoyelles, Evangeline, Iberville, Jefferson Davis, St. Martin, St. Tammany, Washington, West Feliciana, St. James, West Baton Rouge, Assumption, Cameron, St. Charles, and John the Baptist.¹ Id.; Agency Report (AR), Tab L, Source Selection Decision (SSD) at 1. Due to the lack of housing resources as a result of the floods, FEMA implemented direct housing assistance in response to a request from the State of Louisiana for all affected parishes. AR, Tab H, SSD, at 1. FEMA issued a task order to Chicago Bridge & Iron (CB&I) Federal Services under the agency's pre-positioned contracts to provide for the haul/install and maintenance/deactivation of approximately 4,000 MHUs to temporarily house families affected by the flood. Id.

The agency issued the current solicitation for the maintenance and deactivation portion of the task order to transition to contracts for local businesses residing or primarily doing business in the disaster-affected areas in accordance with the Stafford Act. Id.; 42 U.S.C. § 5150. FEMA issued a combined synopsis/solicitation on November 29, 2016, as a commercial item solicitation under the procedures in Federal Acquisition Regulation (FAR) parts 12 and 15, seeking proposals to provide the MHU maintenance and deactivation services. RFP at 19. The RFP was issued as both a Stafford Act set-aside for firms in the disaster-affected parishes, and a set-aside for small businesses. RFP at 9, 11. The solicitation contemplated the award of two fixed-price contracts, and provided that the awards would be made on a best-value basis based on the agency's evaluation of the following four factors: technical approach (phase-in and quality control plan), company experience, past performance, and price. Id. at 18-19. The RFP provided that the non-price factors were of equal importance and when combined were more important than price. Id. at 19. The RFP provided for a 6-month base period with three 6-month option periods. Id. at 3-6.

¹ The initial solicitation included only 20 of these parishes. RFP amendment No. 1 added the parishes of St. James and West Baton Rouge to the solicitation. RFP amend. No. 1 at 41. On December 6, 2016, the agency subsequently issued a modification/amendment notice on the fedbizopps website, which added the parishes of Assumption, Cameron, St. Charles, and John the Baptist. See www.fbo.gov (last visited July 3, 2017).

With respect to company experience, the RFP required offerors to describe their experience on similar and/or relevant projects and endeavors. Id. at 20-21. The solicitation listed specific information for the firm to provide for each reference (contract number, type of contract, size of contract, description of work, etc.), and stated that the information may include the experience of predecessor companies, major subcontractors, or proposed key personnel. Id. at 21. The RFP provided that the agency would evaluate each offeror's experience in providing services of a similar nature to the work to be performed under the requirements (scope, complexity, contract type, and period of performance in relation to the requirements of the solicitation), and would consider the experience of the offeror and subcontractors and/or partners proposed for a major role in performance. Id. The RFP also stated that in addition to considering information provided by the offeror, the agency would also consider information obtained from any other source. Id.

With respect to the past performance factor, the solicitation required the submission of at least three past performance questionnaires (PPQs) supporting the projects listed under the company experience factor and permitted the submission of PPQs for subcontractors. Id. at 20. The RFP provided that the agency would evaluate an offeror's past performance to assess the firm's record of performance on relevant and recent work performed for the government and private sector clients. Id. The solicitation also stated that an offeror's past performance would be evaluated based on a comparison of the PPQs with information obtained through reference checks, the agency's own knowledge/experience, and from other sources. Id.

FEMA received 25 proposals in response to the solicitation, including proposals from MLU and Timberline LLC. AR, Tab L, SSD, at 3. As relevant here, the agency first reviewed the offerors' disaster area representations, pursuant to FAR provision 52.226-3--Disaster and Emergency Area Representation (disaster area representation), as well as the firms' system for award management (SAM.gov) address registrations and local licenses to determine each offerors' eligibility pursuant to the Stafford Act set-aside. AR, Tab K, Contracting Officer Recommendation to Source Selection Authority, at 3-4; see Contracting Officer Statement at 3. Based on its review, the agency concluded that 24 firms provided sufficient evidence of residing or primarily doing business in the disaster-affected parishes. Id. The source selection evaluation board conducted the evaluation of technical and price proposals, which resulted in the following ratings for MLU and Timberline LLC:

	MLU	Timberline LLC
Technical Approach	Good	Good
Past Performance	Pass	Pass
Company Experience	Outstanding	Outstanding
Price	\$20,354,315	\$20,156,550

AR, Tab J, Technical Evaluation Consensus Report, at 8; Tab L, SSD, at 3

Based on the results of the agency's evaluation, the source selection authority determined that the proposals of Timberline LLC and Andries and Associates, LLC represented the best value to the agency.² AR, Tab L, SSD, at 6. The agency issued contracts to both firms. After receiving a debriefing, MLU filed this protest with our Office.

DISCUSSION

MLU challenges FEMA's determination that, for purposes of the Stafford Act set-aside, Timberline LLC was a firm residing or primarily doing business in a disaster-affected parish. Among other things, the protester alleges that Timberline LLC is a subterfuge for the Timberline organization to evade the local area requirement of the solicitation and enable Timberline LLC's teaming partner, Timberline Construction Group, LLC (TCG), a non-local construction/services firm to do the work. MLU contends that had FEMA evaluated Timberline LLC's Stafford Act set-aside eligibility properly, it would have found Timberline LLC ineligible for award. MLU also argues that the agency's evaluation of Timberline LLC's company experience and past performance was unreasonable. Based on our review of the record, we find no basis to object to the agency's Stafford Act eligibility determination; however, we find that the agency failed to reasonably evaluate Timberline LLC's company experience and past performance.³

Stafford Act Set-Aside Eligibility

The Stafford Act authorizes agencies to provide a preference to or set aside disaster relief recovery contracts for individuals or firms either residing or doing business primarily in the designated disaster area. The Stafford Act provides in relevant part:

Use of local firms and individuals

(a) Contracts or agreements with private entities.

(1) In general. In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency.

² MLU's protest did not challenge the agency's evaluation or award with respect to Andries and Associates, LLC.

³ While we do not address each assertion made by MLU in its filings with our Office, we have reviewed them all and find no basis to sustain the protest other than those explained herein.

* * * * *

(3) Specific geographic area. In carrying out this section, a contract or agreement may be set aside for award based on a specific geographic area.

42 U.S.C. § 5150.

Here, the RFP was limited to firms residing or primarily doing business in the disaster-affected parishes. RFP at 11. The solicitation included the following provision:

(a) Set-aside area. The area covered in this contract is: the disaster affected parishes within the state of Louisiana:

* * * * *

(b) Representations. The offeror represents that it [] does [] does not reside or primarily do business in the set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—

(1) The offeror had its main operating office in the area; and

(2) That office generated at least half of the offeror’s gross revenues and employed at least half of the offeror’s permanent employees.

* * * * *

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

FAR § 52.226-3; RFP at 41.

Timberline LLC submitted its proposal in response to the solicitation, which provided that it resides and primarily does business in Lafayette, Louisiana, in Lafayette parish. AR, Tab F, Timberline LLC Proposal, at 3. In this regard, Timberline LLC’s proposal stated that it is “a small business located in the flood-affected set aside parish of Lafayette, LA” and that it was “[l]ocated and primarily doing business in Lafayette parish.” Id. at 3.

The record demonstrates that the contracting officer conducted a compliance review to analyze each offeror’s disaster area representation. With respect to Timberline LLC,

the contracting officer confirmed its address as residing in Lafayette, Louisiana by checking the SAM.gov registration lists. In addition, the contracting officer reviewed Timberline LLC's local license, which identified Timberline LLC as established/registered in 2010 at the same address listed in the SAM.gov registration and in Timberline LLC's proposal. Based on this information, the contracting officer concluded that Timberline LLC met the Stafford Act set-aside requirement of residing or doing business primarily in one of the disaster-affected parishes--Lafayette parish.

MLU challenges the agency's determination of Timberline LLC's Stafford Act set-aside eligibility. Initially, MLU alleged that Timberline LLC did not reside or do business primarily in a disaster-affected parish. In this regard, MLU argued that Timberline LLC has two locations in Louisiana, one of which is not in a disaster-affected parish, and thus, the firm could not represent that its Lafayette office generated at least half of the offeror's gross revenues and employed at least half of the offeror's permanent employees in accordance with FAR provision 52.226-3(c).

In response to MLU's allegations, the agency requested additional information from Timberline LLC regarding its disaster area representation. Based on the information submitted by Timberline LLC, the contracting officer concluded that there was no reason to question Timberline LLC's compliance with the set-aside requirements. Contracting Officer Statement at 10; see Tab O, Timberline LLC Additional Disaster Area Representation. After receiving the agency report, which included the information considered by the contracting officer, MLU conceded that the information provided to the contracting officer demonstrated that Timberline LLC met the requirements of FAR provision 52.226-3(c). MLU Comments at 7. Accordingly, we do not address this argument further.

MLU filed a supplemental protest with our Office challenging the agency's eligibility determination based on Timberline LLC's teaming agreement with TCG. In essence, MLU alleges that the agency was required to conduct its eligibility determination not on Timberline LLC alone, but rather, as if the offeror was Timberline LLC/TCG. In this regard, the protester asserts that the agency's determination of whether Timberline LLC met the requirements of FAR provision 52.226-3 should include the locations, gross receipts, and employees from both firms. We find no basis to require such an analysis.

As stated above, FAR provision 52.226-3 provides that "[a]n offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months: the offeror had its main operating office in the area, and that office generated at least half of the offeror's gross revenues and employed at least half of the offeror's permanent employees." FAR § 52.226-3(c). Timberline LLC's proposal stated that it was teaming with its sister company TCG to perform the requested services. The proposal also listed Timberline LLC as the "[p]rime [c]ontractor," and explained that Timberline LLC would be the "primary lead and contract holder." AR, Tab F, Timberline Proposal, at 3. While the protester argues that the teaming agreement is a subterfuge to permit TCG to complete the work, the protester has not demonstrated that FAR provision 52.226-3 requires the agency's eligibility determination to include the

locations, gross receipts, or employees of TCG.⁴ In this regard, the proposal listed Timberline LLC as the prime contractor and Timberline LLC ultimately received the award of the contract. Thus, we find that the agency properly considered Timberline LLC the prime contractor and offeror, and based its eligibility determination on Timberline LLC's status alone; the agency's eligibility determination is unobjectionable.

Company Experience/Past Performance

MLU also challenges the agency's evaluation of Timberline LLC's company experience and past performance. MLU argues that the agency failed to follow the solicitation criteria in its evaluation of Timberline LLC's company experience, and alleges that the agency improperly evaluated experience of a company that was not proposed for a major role in performance of the contract. MLU contends that the agency improperly evaluated Timberline LLC's past performance because the awardee failed to submit at least three past performance questionnaires in accordance with the solicitation requirements and submitted a reference for a company that was not proposed to perform any portion of contract.

Where a protester challenges an agency's evaluation of experience or past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. See The Emergence Group, B-404844.5, B-404844.6, Sept. 26, 2011, 2012 CPD ¶ 132 at 5; see Divakar Techs, Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. We will not substitute our judgment for reasonably based past performance ratings; however, we will question an agency's evaluation conclusions where they are unreasonable or undocumented. Rotech Healthcare, Inc., B 413024 et al., Aug. 17, 2016, 2016 CPD ¶ 225 at 5. As explained below, we sustain the protester's challenge to the agency's evaluation of Timberline LLC's company experience and past performance.

⁴ MLU also asserts that Timberline LLC's teaming agreement violated the Stafford Act, citing FAR clause 52.219-14--limitation on subcontracting, because Timberline LLC did not demonstrate that it would perform at least 50 percent of the work. We find no support for the protester's allegation because this clause is not applicable to the Stafford Act's geographic set-aside. Rather, this clause relates to an agency's determination of a firm's status for the purposes of a small business set-aside. In addition, our Office has consistently explained that we will review an allegation that an offeror does not intend to comply with a subcontracting limitation only where there is evidence on the face of the proposal that should lead the agency to conclude that the offeror has not agreed to comply with the limitation. Express Med. Trans., Inc., B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 5-6. Otherwise, an agency's judgment as to whether an offeror will comply presents a question of responsibility that is not subject to our review. Id. Here, we find no evidence on the face of Timberline LLC's proposal that should have led the agency to conclude that the firm did not agree to comply with the limitation.

MLU argues that the agency failed to conduct its evaluation of Timberline LLC's company experience in accordance with the solicitation criteria. While the protester acknowledges that the RFP permitted the agency to consider in its evaluation the experience of subcontractors and/or partners proposed for a major role in performance, MLU asserts that the RFP required that FEMA independently assess Timberline LLC's company experience. In response, the agency asserts that its evaluation was reasonable because the RFP did not require the type of evaluation contemplated by the protester.

When a dispute arises as to the actual meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Level 3 Commc'ns LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 7; KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. Id.

Here, the solicitation provided that the agency would evaluate each offeror's experience in providing services of a similar nature to the work to be performed, and would consider the experience of the offeror and of subcontractors and/or partners proposed for a major role in performance. While the protester attempts to narrow the evaluation criteria by parsing the solicitation language, when read as a whole, the RFP clearly did not contemplate a separate evaluation of the offeror's experience alone. In this regard, the solicitation explicitly states that the "experience of the Offeror and of proposed subcontractors and/or partners intended to occupy a major role will be considered in evaluation and selection." RFP at 20. Accordingly, we find no basis to conclude that the solicitation required the agency to evaluate Timberline LLC's company experience separately. Nevertheless, as explained below, we find the agency failed to conduct a reasonable evaluation.

As stated above, Timberline LLC provided that it would team with its sister company TCG to complete the maintenance and deactivation of the MHUs. Timberline LLC's proposal provided seven completed contracts to demonstrate its "proven ability to successfully perform a diverse group of services in response to different kinds of disasters in many different geographical locations." AR, Tab F, Timberline Proposal, at 13. For each reference, the firm provided a contract number, the location of the work, the cost of the contract, the name of the procuring activity, a point of contact, and a description of the work. In each description, the contractor was simply identified as "Timberline," with no indication of the specific Timberline corporate entity involved. For example, the first reference provided that "Timberline acted as the only subcontractor" and "Timberline responded installing over 300 THU's [temporary housing units] in inclement winter weather." Id. at 14.

The agency evaluated each of the seven references, as well as TCG's work as a subcontractor on the CB&I task order,⁵ and concluded that "[t]his offeror's company experience is similar to or the same as the work to be performed under this requirement. The offeror is currently performing monthly Preventative Maintenance Inspections, routine & emergency maintenance[], and deactivation of units on approximately 3,000 units." AR, Tab J, Technical Consensus Report, at 25. Based on these findings, the agency assigned an outstanding rating to Timberline LLC's proposal under the company experience factor.

MLU asserts that the agency's evaluation of Timberline LLC's experience was flawed because none of the seven references provided in the proposal were references for Timberline LLC, or even for TCG, Timberline LLC's teaming partner for this procurement. Instead, MLU alleges that all seven of the references involved work that was performed by another company, Timberline Homes, Inc.

In response, the agency acknowledges that during the evaluation of proposals, it was not aware that the company experience references were not those of Timberline LLC or TCG. However, the agency asserts that during the course of the protest it requested additional information from Timberline LLC, which confirmed that the references involved work that was performed by "key personnel." Supp. Legal Memorandum, at 4-6; see AR, Tab S, Timberline LLC Additional Information, at 1-3. Thus, the agency contends that it properly relied on the references.

We have previously explained that, absent solicitation language to the contrary, an agency properly may consider the relevant experience and past performance of key individuals and predecessor companies; such experience and past performance may be useful in predicting success in future contract performance. See Advant-EDGE Solutions, Inc., B-400367.2, Nov. 12, 2008, 2008 CPD ¶ 210 at 4. The key consideration is whether the experience reasonably can be considered predictive of the offeror's performance under the contemplated contract. See Al Hamra Kuwait Co., B-288970, Dec. 26, 2001, 2001 CPD ¶ 208 at 4-5. Here, we find that the agency's evaluation was unreasonable.

While the solicitation permitted firms to submit information with respect to the experience of predecessor companies, major subcontractors, or proposed key personnel, Timberline LLC's proposal did not list Timberline Homes, Inc. as a predecessor company or a subcontractor, and the proposal did not identify any key personnel whatsoever. Thus, nothing in Timberline LLC's proposal would permit the agency to make a reasonable determination that the experience of Timberline Homes, Inc. was predictive of the performance of Timberline LLC. While the agency asserts

⁵ TCG's work on the CB&I task order was not specifically provided as a company experience reference but was mentioned in Timberline LLC's company experience proposal. AR, Tab F, Timberline LLC Proposal, at 13. We find no basis to conclude that the agency's consideration of this contract was improper.

that it requested additional information from Timberline LLC in response to the protest to demonstrate its relationship with Timberline Homes, Inc., we find that, even if we considered such post-hoc information, the relevant question is whether sufficient information was included within Timberline LLC's proposal to demonstrate that the experience of Timberline Homes, Inc., was predictive of Timberline LLC's performance. See e.g. Choctaw Staffing Solutions, B-413434, Oct. 24, 2016, 2016 CPD ¶ 298 at 6 (agency need not consider the experience of key personnel where the proposal did not include sufficient information in the proposal to determine what role, if any, each key person had in the performance of the prior contracts); see also Divakar Techs, Inc., supra at 5-6 (agency properly considered a firm's key personnel in its experience/past performance evaluation where the evaluators reasonably determined that the experience of the firm's key personnel would be brought to bear in the performance of the contract). Since Timberline LLC's proposal did not provide any details with respect to the name of the contractor performing each of its seven references, propose the use of any key personnel, or propose Timberline Homes, Inc. to perform any portion of the work, we have no basis to conclude that the agency could reasonably rely upon these references. Accordingly, we find that the agency's evaluation of Timberline LLC's company experience was unreasonable and sustain the protest on this basis.

Similarly, we find that the agency's reliance on past performance references involving Timberline Homes, Inc. was also flawed. The RFP provided that the offeror shall submit at least three PPQs supporting the projects listed under the company experience factor. The solicitation also permitted PPQs for subcontractors. Timberline LLC identified four PPQs to support the firm's past performance: two related to work performed by TCG and two related to work performed by Timberline Homes, Inc.⁶ Three of the PPQs were completed and returned to the agency, two of the returned PPQs were references for TCG and one was a reference for Timberline Homes, Inc. The agency's evaluation assigned Timberline LLC's proposal a rating of "pass" under the past performance factor because the "offeror submitted PPQs that were relevant to scope and complexity of [the current effort]." AR, Tab J, Technical Consensus Report, at 25.

On this record, we find that the agency improperly considered the past performance reference for Timberline Homes Inc. because there was nothing in the proposal of Timberline LLC to indicate that Timberline Homes Inc. would perform any of the work--as a subcontractor or with key personnel. While we agree with the agency that it could consider information outside of Timberline LLC's proposal, the information considered had to be reasonably predictive of Timberline LLC's past performance. As explained above, because Timberline LLC's proposal did not indicate that Timberline Homes, Inc. would be involved in the performance of the contract, and did not identify any key

⁶ Timberline LLC's proposal provided that the PPQs were from the work of "Timberline" not Timberline Homes, Inc. or TCG. Based on the information provided by Timberline LLC in response to the contracting officer's request, the record demonstrates that the PPQs were based on work of Timberline Homes, Inc. and TCG.

personnel, the agency could not reasonably rely upon the references. Thus, we sustain the protest on this basis.

Prejudice

With respect to both the company experience and the past performance evaluations, the agency argues that MLU was not prejudiced by any errors in the agency's evaluation because the agency primarily relied upon the experience of TCG in reaching its evaluation conclusions. The protester, on the other hand, contends that had the agency properly evaluated Timberline LLC, the firm would have received a decreased rating under company experience and past performance.

We will not sustain a protest absent a showing of prejudice to the protester; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. Here, we find that there is a sufficient showing of prejudice. Even if we accept the agency's post-hoc argument regarding its reliance on TCG's references, the record demonstrates that the agency's evaluation was also based upon the references of Timberline Homes, Inc. In this regard, we think it is sufficiently clear that a proper evaluation could have affected the award decision. Valor Healthcare, Inc., B-412960, B-412960.2, July 15, 2016, 2016 CPD ¶ 206 at 8 (“[W]e resolve doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest.”).

RECOMMENDATION

For the reasons discussed above, we conclude that FEMA's evaluation of Timberline LLC's company experience and past performance was unreasonable. We further conclude that there was a reasonable possibility that MLU was prejudiced by this evaluation. We recommend that FEMA conduct and document a new company experience and past performance evaluation, consistent with our decision. In the event the agency concludes that the opening of discussions and the submission of revised proposals is required as part of that process, we recommend that it do so. We further recommend that based on the results of the reevaluation, the source selection official make a new source selection decision, and that if an offeror other than Timberline is selected for award, the agency terminate the contract awarded to Timberline and make a new award. We also recommend that the agency reimburse the protester's reasonable costs associated with filing and pursuing its protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Susan A. Poling
General Counsel