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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Foundation Engineering Sciences, Inc.

File: B-292834; B-292834.2

Date: December 12, 2003

Robert E. Korroch, Esq., Williams Mullen, for the protester.
Paul R. Smith, Esq., and Robert E. Little, Esq., Naval Facilities Engineering Command, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency should have selected the protester, the fourth-ranked firm, as the most highly qualified firm with which to negotiate an architect-engineer contract is denied where the record shows that the agency reasonably evaluated the protester's and the awardee's qualifications consistent with the evaluation factors and applicable procurement rules, and reasonably determined that, due to its relatively limited equipment availability, protester was not the most highly qualified of the firms.

DECISION

Foundation Engineering Sciences, Inc. protests the selection by the Department of the Navy of GeoEnvironmental Resources, Inc. as the firm with which to negotiate an architect-engineer (A-E) contract for geotechnical engineering services at various activities within the geographical area of the Atlantic Division, Naval Facilities Engineering Command. Foundation argues that it was improper for the agency to credit GeoEnvironmental with the experience and qualifications of that firm's subcontractors and consultants, broadly alleges that it should have been found technically superior to the awardee, and asserts that the agency unreasonably ranked the protester lower than the awardee due to its concerns about the number of drilling rigs the protester proposed.

We deny the protest.

This procurement of A-E services is being conducted pursuant to the procedures set forth in the Brooks Act, as amended, 40 U.S.C. §§ 541 *et seq.* (2000), and its implementing regulations, Federal Acquisition Regulation (FAR) subpart 36.6. In

accordance with those regulations, on March 24, 2003, the Navy synopsisized the requirement; the procurement, set aside for small business concerns, was referenced as solicitation No. N62470-03-R-1133. Firms were invited to submit qualifications statements to be considered for negotiations with the agency for an indefinite-quantity contract for A-E services, including subsurface investigation, field and laboratory material testing and evaluation, geotechnical/foundation analysis, and construction and building material testing.¹ Interested A-E firms were to submit a completed standard form (SF) 254 (A-E and Related Services Questionnaire) and SF 255 (A-E and Related Services for Specific Project Questionnaire) detailing their qualifications. Firms were advised that their qualifications would be evaluated under seven evaluation factors; the first five were equally weighted, and the last two were of lesser importance. The seven evaluation factors were as follows: (1) specialized experience; (2) professional qualifications and technical competence in the type of work required; (3) ability to perform the work (in terms of the firm's permanent staff, projected workload, and performance schedule compliance); (4) past performance; (5) quality control program; (6) firm location and knowledge of the locality of the contract; and (7) volume of work.

Firms were instructed to demonstrate their own and their key consultants' qualifications for evaluation. For example, in terms of demonstrating the ability to perform, firms were instructed to discuss both their own and their consultants' experience, and the working history and relationship between the team members; for this evaluation factor, firms were specifically instructed to demonstrate the ability to complete an emergency work order of \$20,000 or less within 10 days, as well as the ability to complete multiple concurrent projects, such as four work orders issued within a 10-day period.

Fifteen firms submitted their qualifications for evaluation. The agency's evaluation panel reviewed each firm's submissions, chose the five highest-rated firms, and conducted interviews with those firms. At the conclusion of its review, the evaluation board ranked GeoEnvironmental first in line for further negotiations; the protester, Foundation, was ranked fourth of the five firms. An award of a contract for the required services ultimately was made to GeoEnvironmental.

By letter of May 29, the agency notified the protester that it was considered highly qualified, but that the firm which was considered most highly qualified, GeoEnvironmental, was selected for the contract negotiations. Foundation's

¹ Under the regulatory provisions at FAR subpart 36.6, agencies must publicly announce their A-E requirements, listing general and project-specific evaluation criteria, appoint A-E evaluation boards to review qualification statements already on file, as well as those submitted in response to the synopsis, and evaluate and rank at least three firms on a short list for further contract negotiations in order of ranking. See Geographic Res. Solutions, B-260402, June 19, 1995, 95-1 CPD ¶ 278 at 1-2.

debriefing took place on June 18, and, pursuant to the protester's request, the agency confirmed the debriefing information in writing on June 20. The agency explained to Foundation that, although the firm was considered to have excellent qualifications, the evaluation board recommended GeoEnvironmental over Foundation based upon the substantial, relevant experience of GeoEnvironmental's subcontractors and its significantly larger fleet of drilling rigs (eight) compared to the two owned by Foundation. The additional drilling rigs were considered by the evaluators as important to best meeting the multiple tasking and emergency work requirements, as they more strongly demonstrated the ability to perform four drilling work orders within a 10-day period; this determination became a material discriminator in the selection.

Foundation filed an agency-level protest of the evaluation and selection on June 25, challenging the agency's consideration of the qualifications of GeoEnvironmental's subcontractors, and the agency's downgrade of Foundation in terms of the firm's limited drilling rig availability. That protest was denied on August 27. This protest, incorporating the same protest grounds, followed.²

In reviewing an agency's selection of a contractor for A-E services, our function is not to make our own determination of the relative merits of the submissions, or to substitute our judgment for that of the procuring agency by conducting an independent examination. See Pickering Firm Inc., B-277396, Oct. 9, 1997, 97-2 CPD ¶ 99 at 4. Rather, our review is limited to examining whether the agency's selection was reasonable, and consistent with the evaluation factors and applicable procurement statutes and regulations. Id. A protester's mere disagreement with the agency's evaluation does not make it unreasonable or improper. See CH2m Hill, Ltd., B-259511 et al., Apr. 6, 1995, 95-1 CPD ¶ 203 at 4. The protester's contentions here provide no basis to question the propriety of the agency's evaluation of the firm's qualifications or the selection of GeoEnvironmental.

Initially, the protester argues that it was improper to select GeoEnvironmental because that firm plans to subcontract required drilling and laboratory work, and,

² Foundation also raises several issues in its protest to our Office that were not raised in its agency-level protest. By waiting to raise these issues for the first time in its protest to our Office, Foundation failed to assert them within 10 days of when the bases of protest were known (or should have been known), so that they are untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2003). For example, in its September 8 protest to our Office, Foundation argues, for the first time, that it believes GeoEnvironmental will exceed applicable subcontracting limitations, and that the agency failed to hold adequate discussions with Foundation, despite acknowledging that it became aware of these bases of protest upon learning of the selection and receiving its debriefing. It is clear that the protester could have raised the same contentions in its agency-level protest, but did not.

according to Foundation, the solicitation's evaluation scheme required the prime contractor to be evaluated on its own experience, separate from any experience of its proposed subcontractors and consultants. Our review of the synopsis and evaluation terms shows, however, that the protester's interpretation of the evaluation scheme is unreasonable. First, as a general matter, the experience of proposed subcontractors properly may be considered in determining whether a firm meets experience and qualification requirements in a solicitation where it is not expressly prohibited by the solicitation's terms. See Rolf Jensen & Assocs., Inc., B-289475.2, B-289475.3, July 1, 2002, 2002 CPD ¶ 110 at 6. Second, here, the solicitation not only did not restrict the consideration of proposed subcontractors' experience and qualifications, it specifically requested the submission of such information for evaluation. As early as in the published synopsis, and as late as in the written invitation issued to the firms for their interviews, firms were expressly instructed to provide consultant experience and qualification information under each evaluation factor. Foundation's contention that the agency was precluded from considering the awardee's subcontractors' strong qualifications in addition to its own relevant experience is unsupported, and thus fails to present any basis to question the agency's consideration of the information.³

Next, Foundation alleges that it was unreasonable for the the agency to have concerns about the protester's limited number of drilling rigs as they related to the ability to complete multiple concurrent projects as contemplated by the solicitation. The agency, while finding Foundation highly qualified, concluded that the two drilling rigs Foundation owns did not provide as persuasive a demonstration of that firm's ability to perform concurrent drilling orders as had been shown by the awardee's proposal of eight drilling rigs to meet the same needs.

³ We note that although Foundation generally challenges the acceptability of the awardee's laboratory subcontractor, alleging that the offered laboratory is not accredited, there is, as the agency points out, no laboratory accreditation requirement in the solicitation. As to GeoEnvironmental's drilling subcontractor, Foundation generally argues only that, despite the larger number of drilling rigs proposed by the awardee through its subcontractor, greater risk exists in using a subcontractor rather than the in-house drilling operation Foundation can provide. Given that the solicitation did not preclude, and, in fact, contemplated the use of subcontractors and key consultants for the work, and since GeoEnvironmental's drilling subcontractor is the incumbent for these services for the agency, the record does not support the protester's suggestion that there is additional risk in the selection of GeoEnvironmental or that the evaluation was otherwise unreasonable. The protester's argument in this regard also is undermined by the fact that, as discussed later in this decision, Foundation itself had argued that it was prepared to subcontract for additional drilling rigs and sought credit in the evaluation for doing so.

Our review of the record confirms the reasonableness of the agency's view. First, it is clear that the awardee offered four times as many drilling rigs for the same work requirements; in our opinion, the comparative numbers of rigs themselves support the agency's view regarding the benefits of the awardee's proposal in this area. Second, although Foundation generally contends that the agency should have known from the firm's interview that the protester was prepared to subcontract for additional rigs, if necessary, neither the protester nor the record provides any particular drilling subcontractor information for evaluation on Foundation's behalf.⁴ Third, our review of the record shows that Foundation currently holds eight other annual contracts. Although Foundation generally asserted in its qualifications statement that the intermittent needs arising under those contracts would not interfere with its performance here, it appears that the agency had a reasonable basis for concern that Foundation's limited number of drilling rigs might be unavailable to the agency if they are in use on any of those contracts. There plainly is risk involved when a contractor simply offers to interrupt its other work in order to use its limited equipment for the agency's needs, or offers to subcontract for additional rigs on an as-needed basis from unidentified sources. While the protester generally asserts that it has a good record of meeting its performance schedules, and that it plans to do so here, we cannot find unreasonable the agency's concern that the protester may not be as readily able to supply a sufficient number of drilling rigs in a timely fashion to meet the agency's needs.

In sum, the record shows that the agency's comparison of the five, similarly rated highly qualified firms ultimately rested upon a single area of the evaluation scheme—the demonstrated ability to perform multiple work orders under tight deadlines and the conclusion that a limited number of drilling rigs may affect a firm's ability to perform. We agree with the agency that the availability of drilling rigs to complete work is directly relevant to the firms' ability to perform. The protester's disagreement with the evaluation simply does not show that it was unreasonable.

⁴ In its agency-level protest, Foundation also stated that it had told the agency during its interview that it would be able to obtain additional drilling rigs through subcontracts, if necessary. However, in a supplemental submission to our Office, filed several months later, Foundation asserted that the matter was not discussed in its interview. Protester's Supplemental Comments, Nov. 12, 2003, at 4. Foundation offers no explanation of this apparent inconsistency in its position. In any event, while Foundation generally suggests that the agency should have credited the firm for the ability to obtain additional rigs if necessary, it remains the firm's obligation to submit an adequately supported technical submission to serve as the basis of the agency's evaluation of the firm's purported ability to perform. See Educational Computer Corp., B-227285.3, Sept. 18, 1987, 87-2 CPD ¶ 274 at 3. Foundation did not do so as to this subcontracting issue.

In its comments on the agency report, Foundation raises several supplemental arguments. For instance, Foundation generally argues that the agency improperly failed to conduct a qualitative review of the firms' technical qualifications and instead evaluated only whether the firms "met" requirements. The agency explains that whether a firm met the evaluation requirements was an initial assessment performed by the agency to differentiate the highly qualified firms from those that were not considered to be highly qualified. As the agency points out, a qualitative narrative was provided for each firm during the evaluation, including brief notes as to the merits of each submission under the evaluation factors. The qualitative comments noted by the evaluators were used to prepare short evaluation summaries illustrating strengths for the firms. For instance, beyond having met the stated requirements, GeoEnvironmental was found to have submitted a favorable, detailed management approach, shown a wide variety of experience in the locality, and demonstrated repeat business with clients; these are just some examples of the qualitative strengths noted for the firm. Similarly, Foundation was noted to have extensive experience, registered and qualified personnel, and cost-savings efforts. The summary for Foundation also discusses the distinguishing factor, its limited number of drilling rigs compared to other firms. The agency reports, and our review of the record confirms, that the full evaluation record (including the qualitative narrative comments) had accompanied the evaluation board's ranking of firms and selection recommendation forwarded to the source selection official for review.⁵ Accordingly, based on the documented qualitative review in the record, we cannot agree with the protester's general contention that the evaluators improperly limited their review of the qualifications submissions to a determination of technical acceptability.

In its comments, Foundation generally alleges that the agency failed to evaluate each firm under every evaluation factor and subfactor. Foundation, however, fails to identify any evaluation factor or subfactor for which it believes an evaluation is missing from the record. Foundation also broadly argues without any specificity that if the evaluation had included all factors and subfactors, it would have been found technically superior to GeoEnvironmental. It was not until its response to the agency's supplemental report that Foundation offered the type of details required to state a valid basis for protest. This detailed submission purporting to support Foundation's earlier broad allegations, however, was not filed until approximately 1 month after the protester had received the evaluation documents it relies on. The arguments raised in this latter response are untimely. Under our Bid Protest Regulations, protests based on other than solicitation improprieties must be filed

⁵ We note that while the protester suggests that the source selection official acted improperly in approving the evaluation board's recommendations, rather than generating a separate evaluation report, Foundation fails to provide any persuasive legal basis to support its contention, and, thus, we see no need to discuss the issue further.

within 10 days of when the protester knew or should have known their bases. 4 C.F.R. § 21.2(a)(2). Our timeliness rules do not contemplate the piecemeal presentation or development of protest issues. Where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these latter more specific arguments and issues cannot be considered unless they independently satisfy the timeliness requirements under our Bid Protest Regulations. See Biospherics, Inc., B-285065, July 13, 2000, 2000 CPD ¶ 118 at 12-13. Since Foundation failed to provide these latter detailed contentions within 10 days of its receipt of the evaluation record upon which they are based, they are untimely and will not be reviewed further. Id.

The protest is denied.

Anthony H. Gamboa
General Counsel