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

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Decision

Matter of: Ahtna Support and Training Services, LLC

File: B-400947.2

Date: May 15, 2009

Max D. Garner, Esq., and Thomas F. Klinkner, Esq., Birch, Horton, Bittner and Cherot, for the protester.

Antonio R. Franco, Esq., Jonathan T. Williams, Esq., and Kelly E. Buroker, Esq., Piliero Mazza PLLC, for Goldbelt Falcon, LLC, an intervenor.

Maj. Walter R. Dukes, and Alex Lopez, Esq., Department of the Army, Army Materiel Command, for the agency.

Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where the agency evaluated the awardee and the protester unequally by crediting the awardee with the experience of its subcontractor, but not similarly crediting the protester with the experience of its subcontractor, even though the agency viewed both subcontractors as having relevant experience.

DECISION

Ahtna Support and Training Services, LLC, of Anchorage, Alaska, a small business, protests the award of a contract to Goldbelt Falcon, LLC, of Newport News, Virginia, by the Department of the Army, under request for proposals (RFP)

No. W912NW-08-R-0013 for motor pool/support equipment operations services at Corpus Christi Army Depot, in Corpus Christi, Texas. Ahtna argues that the agency miscalculated past performance, and treated the protester and the awardee unequally in evaluating their experience operating a government motor pool.

We sustain the protest.

BACKGROUND

The Army issued the RFP on May 27, 2008, seeking proposals to operate the motor pool at Corpus Christi Army Depot (CCAD), which controls over 390 vehicles (including mobile equipment, such as forklifts and pallet stackers). The Performance Work Statement described several core duties, which included

dispatching vehicles and equipment; training, testing, and licensing vehicle operators;¹ managing a parts store; and removing airfield debris. RFP at 24. The solicitation was set aside for participants in the Small Business Administration's section 8(a) program.² The resulting contract was to have a base term of 1 year, and four annual option periods.

The RFP provided for award to be made based on an evaluation of three factors, listed in descending order of importance: technical capability, past performance, and price. The past performance factor was divided into three subfactors, also listed in descending order of importance: relative experience in motor pool management and operation,³ quality of services, and customer satisfaction. RFP at 227-28. Thus, the past performance factor addressed both the offerors' experience and their past performance.

The RFP instructed each offeror to submit past performance information on its five most relevant prior contracts, including contracts performed by the offeror, its subcontractors, or its mentor/protégé partners. For each identified contract, the offeror was also instructed to explain the relevance of the past performance to the CCAD contract. RFP at 223.

The Army received initial proposals from five firms, including Goldbelt and Ahtna.

In its proposal, Goldbelt provided information on three contracts it had performed, and on two contracts performed by its subcontractor, ICI Services, LLC. Agency Report (AR), Tab E, Goldbelt Proposal, vol. II, at 11. Goldbelt also prepared and included a matrix showing which firm had experience in performing each of the 25 separate tasks that Goldbelt had identified under this solicitation.

Goldbelt's proposal first identified its experience performing a contract for supply services operations for the Navy at Dahlgren, Virginia (the "Dahlgren contract"). Goldbelt advised that its performance involved supplying 8.5 out of 16.5 full-time equivalent workers, who

¹ As discussed below, our Office held a hearing at which we received testimony from the chair of the evaluation panel, who also serves as the contracting officer's representative for the motor pool contract. Among other issues, he explained that the solicitation's requirements for training and licensing involve between 2,000 and 3,000 operators. Hearing Transcript (Tr.) at 23, 88.

² Both the protester and the awardee have explained that they are 8(a) program participants, and are subsidiaries of Alaska Native Corporations.

³ For the remainder of this decision, we will refer to this subfactor as the "motor pool experience" subfactor.

manage[d] the complete supply operations in the functional areas of receiving and delivery, material storage and warehousing, receipt control, domestic and international shipping, packing and crating, disposal of excess property, reutilization, handling of hazardous materials and management.

AR, Tab E, Goldbelt Proposal, vol. II, at 15-16. Goldbelt further advised that the Dahlgren contract required dispatching its own vehicles to deliver incoming supplies, and coordinating the maintenance for those vehicles. AR, Tab E, Goldbelt Proposal, vol. II, at 16.

Goldbelt also identified two other prior contracts--a contract for maintenance and repair of research laboratory equipment, and a subcontract for a variety of shipping, warehousing, and equipment maintenance-related services. AR, Tab E, Goldbelt Proposal, vol. II, at 19, 24. To establish ICI's experience, the proposal identified ICI's performance as the incumbent prime contractor for motor pool services at CCAD, as well as ICI's performance of a warehouse services contract. AR, Tab E, Goldbelt Proposal, vol. II, at 28, 34.

In its proposal, Ahtna provided information on four contracts it had performed, and identified one contract for its proposed subcontractor, All Star Technical Services. AR, Tab F, Ahtna Proposal, vol. II, at 22. Ahtna provided a narrative explanation of the relevance of each of these contracts to the CCAD contract requirements.

Ahtna's proposal first identified its experience providing training and device support, and repair and warehousing services, at Fort Richardson and Fort Wainwright, Alaska. Ahtna explained that the work included improvements to the operation of warehouses at the two Army bases, and automating the property accounting process. AR, Tab F, Ahtna Proposal, at 27. Ahtna identified three other prior contracts--one for training services; one for engineering services and equipment maintenance; and one for services in support of Army simulation, training, and instrumentation. AR, Tab F, Ahtna Proposal, vol. II, at 29, 30, 34. To establish All Star's experience, the proposal identified All Star's performance as the incumbent subcontractor for motor pool services at CCAD. The proposal narrative stated that All Star was responsible for vehicle maintenance, operation of the parts store, fueling, and hazardous material management at CCAD. AR, Tab F, Ahtna Proposal, vol. II, at 36.

In evaluating Goldbelt's past performance under the motor pool experience subfactor, the Army identified no weaknesses and three strengths, set forth below:

- Both Goldbelt and ICI displayed excellent past performance on exact and relevant Motor Pool government contracts.
- Both Goldbelt and ICI have partnered on multiple types of government contracts i.e.... FFP, Time & Material, and Cost Plus Award Fee.

- Both Goldbelt and ICI demonstrated remarkable similar experience in operating contracts involving all services required by this solicitation.

AR, Tab D, Summary Proposal Evaluation Worksheet for Goldbelt, at 1. At the conclusion of the evaluation, Goldbelt received 20 of 20 available points under the motor pool experience subfactor. Id.

In contrast, the Army identified two strengths for Ahtna—both for All Star’s performance as an incumbent on the motor pool contract at CCAD—but the evaluators explicitly limited those strengths to All Star. At the same time, the Army evaluators concluded that Ahtna’s prior experience was not relevant to the operation of the CCAD motor pool, and assigned a weakness to the proposal. AR, Tab D, Summary Proposal Evaluation Worksheet for Ahtna, at 1. Thus, Ahtna received only 10 of 20 available points under the motor pool experience subfactor.

After the initial evaluation, the overall scores and evaluated prices of the protester and the awardee were as follows:

| Offeror | Technical (Max Points-60) | Past Perf. (Max Points-40) | Total (Max Points-100) | Total Price |
|----------|------------------------------|-------------------------------|---------------------------|----------------|
| Goldbelt | 59 | 39 | 98 | \$6,548,064 |
| Ahtna | 54 | 29 | 83 | \$5,673,348 |

AR, Tab D, Source Selection Decision (SSD), at 2.

The Army established a competitive range of three firms, and held discussions with Goldbelt, Ahtna, and the third firm. Both Goldbelt and Ahtna submitted timely revised proposals.⁴ The Army’s evaluation of the final proposal revisions resulted in no changes to the evaluation, and only slight downward adjustments to the evaluated prices for both firms: Goldbelt to \$6,445,500; Ahtna to \$5,506,566.

The contracting officer (CO), acting as the source selection authority, reviewed the final evaluations and noted that Goldbelt’s technical and past performance scores were “nearly perfect.” She observed that Ahtna was evaluated as having a weakness in its staffing, and having past performance that was significantly inferior due to Ahtna’s lack of motor pool experience. The CO ultimately selected Goldbelt for award on the basis that Goldbelt’s advantage under the technical capability and past

⁴ The third firm did not submit a timely revised proposal, and it was eliminated from consideration. Also, although the Army reports one additional round of proposal revisions, the record does not reflect that either offeror made any changes to its past performance information.

performance evaluation factors outweighed Ahtna's evaluated price advantage. AR, Tab D, SSD, at 3.

Following a debriefing, Ahtna protested to our Office.

DISCUSSION

Initially, Ahtna argued that the Army improperly downgraded its proposal for its lack of experience, even though it had proposed one of the incumbent CCAD motor pool operators as a subcontractor. After receiving the agency report, Ahtna refined its position to argue that while neither firm had relevant prime contract experience operating a government motor pool--and both had relied on subcontractors with motor pool experience--Ahtna was downgraded for its lack of prime contract experience, but Goldbelt was not. Thus, the protester contends that the agency treated the offerors unequally by crediting Goldbelt with the experience of its subcontractor, but not similarly crediting Ahtna.

The evaluation of proposals is a matter within the discretion of the contracting agency. Our Office will question the agency's evaluation only where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. SC&A, Inc., B-270160.2, Apr. 10, 1996, 96-1 CPD ¶ 197 at 7. The record must reasonably support the evaluation of the proposals. Intown Properties, Inc., B-262236.2, B-262237.2, Jan. 18, 1996, 96-1 CPD ¶ 89 at 5. It is also fundamental that the contracting agency must treat all offerors equally, and therefore it must evaluate offers evenhandedly against common requirements and evaluation criteria. Tidewater Homes Realty, Inc., B-274689, Dec. 26, 1996, 96-2 CPD ¶ 241 at 3.

In its initial agency report answering this protest, the Army argued that its evaluation of past performance was reasonable and consistent with the stated evaluation criteria. The Army also contended that it was not required to credit Ahtna fully for the experience of its subcontractor. AR at 5. Since the initial agency report did not address the argument of unequal treatment, we asked for a supplemental report. The Army responded that Goldbelt's proposal, unlike Ahtna's, showed experience in performing work "closely related" to motor pool services, particularly Goldbelt's experience in dispatching its own vehicles to provide supplies for its Dahlgren contract. Therefore, the Army argued, Goldbelt's proposal provided a valid basis for the Army's evaluation of Goldbelt as superior to Ahtna. Supplemental AR at 2-3.

Ahtna countered that the record did not support the claim that Goldbelt had experience in motor pool operation, and noted that Goldbelt's proposal matrix acknowledged that its subcontractor, ICI, provided the requisite experience for several of the required tasks. Additionally, Ahtna argued that Goldbelt's Dahlgren contract could not reasonably be considered relevant to the complex operation of the CCAD motor pool.

Since, in our view, the record lacked sufficient information to reach a conclusion about this issue, our Office convened a hearing to understand better how the agency had assessed the experience of each offeror and its subcontractors. During the hearing, the Army's evaluation panel chair testified about the criticality of the motor pool services to CCAD's mission, and the complexity of keeping the motor pool equipment in operation. Tr. at 23-24, 91-92. The panel chair also testified that both of the incumbents being proposed as subcontractors here, ICI and All Star, were considered to be equally outstanding and experienced in the evaluation. Tr. at 22.

With respect to Goldbelt's evaluation, the panel chair explained that the three evaluated strengths attributed to "[b]oth [Goldbelt] and ICI," were intended to reflect the strengths of the two firms together, as a team. Tr. at 41-42. When cross-examined on whether each of the three strengths was equally valid if applied to Goldbelt alone (exclusive of ICI), he acknowledged that Goldbelt's experience did not include operation of a motor pool as a prime contractor. Tr. at 42. Nonetheless, the evaluation panel chair maintained that Goldbelt's Dahlgren contract for supply services operations was "remarkably similar" to the operation of the CCAD motor pool. Tr. at 61. He explained that this conclusion was based on Goldbelt's representations, in its proposal, that it was required to dispatch and maintain its own vehicles, and that the Dahlgren contract also involved licensing forklift operators. Tr. at 23-24. Although Goldbelt's proposal did not describe how many vehicles or forklift operators were managed at Dahlgren, the chair of the evaluation panel acknowledged that the evaluators had not sought more information from either Goldbelt or the Navy—the agency for whom Goldbelt performed the Dahlgren contract. Tr. at 63, 68-69, 88.

With respect to Ahtna's evaluation, the panel chair testified that he had viewed Ahtna separately from its subcontractor, All Star. Tr. at 50. When asked to characterize the meaning of the weakness assessed to Ahtna, he testified that Ahtna's lack of experience in operating a motor pool was "extremely significant" to the evaluation because "[i]f the prime contractor doesn't have that experience, that is a significant risk." Tr. at 93.

During the hearing we also heard the testimony of the CO, who explained that the difference in Goldbelt's and Ahtna's evaluation under the motor pool experience subfactor was a significant factor in her award decision. Tr. at 148. She also testified that she concurred in the evaluators' judgment that Goldbelt's experience on its Dahlgren contract was relevant to the CCAD scope of work. Tr. at 149-50. In addition, the CO testified that all three of Goldbelt's past performance contracts—including those for maintenance and repair of research laboratory equipment, and for shipping and related services—were "very relevant" to the services here. Tr. at 151-52. In contrast, she testified that, in her view, Ahtna's four prior contracts were "not very relevant." Tr. at 152-54, 160-61.

In assessing the evaluation here, we note first that the Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii) directs agencies to take into account past

performance information regarding subcontractors that will perform major or critical aspects of the requirement. On the other hand, the significance of, and the weight to be assigned to, a subcontractor's past performance is a matter of contracting agency discretion. See Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5; see also Strategic Res., Inc., B-287398, B-287398.2, June 18, 2001, 2001 CPD ¶ 131 at 5-6. The weight to be assigned a prime contractor's past performance—or lack thereof—is also a matter of contracting agency discretion. Alpha Data Corp., B-291423, Dec. 20, 2002, 2003 CPD ¶ 18 at 4-5.

Nevertheless, while an agency may reasonably emphasize one firm's lack of a particular type of relevant experience, it cannot then ignore another firm's similar lack of experience. E.g., U.S. Prop. Mgmt. Serv. Corp., B-278727, Mar. 6, 1998, 98-1 CPD ¶ 88 at 6 (protest sustained where agency emphasized protester's lack of corporate experience, but disregarded similar lack of experience for the awardee by substituting experience of the awardee's key personnel).

In our view, the record here demonstrates that the Army did not treat these offerors equally under the motor pool experience subfactor within the past performance evaluation factor. Rather, the agency combined the experience of Goldbelt and its subcontractor, ICI, for purposes of that evaluation, and, in certain respects, assessed strengths for both companies that are based on the subcontractor's (ICI's) experience.⁵ In contrast, when the Army evaluated Ahtna, the agency focused separately on Ahtna's lack of motor pool experience, without similarly considering its subcontractor, All Star (the incumbent subcontractor for the CCAD motor pool), even though the record shows that the evaluators viewed the experience of ICI and All Star as essentially equal. Tr. at 21-22, 30, 46-48. There is no reasonable basis for this disparate treatment in the record.

To the extent that the agency's evaluation was based on its conclusion that Goldbelt's Dahlgren contract was "remarkably similar," Tr. at 61, to the operation of the CCAD motor pool, we find that conclusion lacked significant support in the record. Instead, the record indicates that Goldbelt's Dahlgren contract involved—according to the description in Goldbelt's proposal—providing 8.5 of 16.5 full time equivalent workers, primarily for managing supply operations, not for providing motor pool services to the Navy. AR, Tab E, Goldbelt Proposal, vol. II, at 16. There appears to be a significant difference in the apparent scope of the effort at Dahlgren and the work here, which, as described above, involves over 390 vehicles, and numerous other activities, including training and licensing 2,000 to 3,000 vehicle operators. RFP at 24; Tr. at 23, 88.

⁵ For example, as quoted above, the evaluators concluded that "[b]oth [Goldbelt] and ICI displayed excellent past performance on exact and relevant Motor Pool government contracts." AR, Tab D, Summary Proposal Evaluation Worksheet for Goldbelt, at 1 (emphasis added).

Prejudice

While we conclude above that the evaluation of past performance here was unreasonable, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; 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; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Throughout this protest, both the Army and Goldbelt have argued that since Goldbelt's technical proposal was evaluated as superior to Ahtna's under the technical capability factor, and since that factor was more important than either the past performance factor or the price factor, any error in the evaluation of past performance did not result in competitive prejudice. We disagree. Both the contemporaneous documentation and the hearing testimony show that the evaluation of past performance played a significant role in the agency's decision to select the Goldbelt proposal, despite its higher evaluated price. Given that the difference between these proposals under the technical capability evaluation factor is not great, we think that, but for the unequal evaluation of past performance, Ahtna's lower-priced proposal would have had a substantial chance of receiving the award. Accordingly, we conclude that Ahtna has established the requisite competitive prejudice to prevail in a bid protest.

RECOMMENDATION

We recommend that the Army reevaluate both proposals under the past performance factor, consistent with this decision. We also think such a reevaluation should include, at a minimum, an independent assessment of the relevance of each offeror's past performance information, rather than simply reviewing each proposal's claims of relevance, as the chair of the evaluation panel testified was done here. Tr. at 99-100. After the reevaluation, we recommend that the Army prepare a new selection decision; if that decision results in the selection of Ahtna, we also recommend that the Army terminate for convenience its contract with Goldbelt. We further recommend that the agency reimburse the protester the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2009). The protester's certified claim for costs, detailing the time spent and the cost incurred, must be submitted to the agency within 60 days after receiving this decision.

The protest is sustained.

Daniel I. Gordon
Acting General Counsel