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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: CMI Management, Inc.

File: B-402172; B-402172.2

Date: January 26, 2010

Patricia H. Wittie, Esq., Karla J. Letsche, Esq., and Kathryn E. Swisher, Esq., Oldaker Belair & Wittie LLP, for the protester.

Thomas P. Humphrey, Esq., John E. McCarthy Jr., Esq., Richard W. Arnholt, Esq., and Adelia R. Cliffe, Esq., for Perot Systems Government Services, an intervenor.

Barbara Walthers, Esq., Department of Homeland Security, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency did not perform adequate realism analysis of awardee's proposal is denied where agency recognized potential risk in awardee's offering to perform with fewer hours than provided for in government estimate, asked awardee to address risk, and had a reasonable basis for finding that awardee adequately justified its proposed hours.
2. Protest that agency unreasonably rated awardee's proposal outstanding under past performance evaluation factor is denied where record supports agency's finding that awardee's proposal listed relevant past performance.
3. Protest that agency unreasonably assigned awardee's proposal superior rating under experience evaluation factor is denied where protester's argument focuses on awardee's experience performing one particular contract, but evaluation was based on experience of both awardee and its major subcontractors on a number of contracts.
4. Assertion that protester's proposal should have received a higher rating under particular subfactor is without merit where assertion constitutes, essentially, disagreement with agency's conclusion that identified strengths did not significantly exceed performance standards, the basis for a higher rating.

DECISION

CMI Management, Inc., of Alexandria, Virginia, protests the award of a contract to Perot Systems Government Services, of Fairfax, Virginia, under request for proposals (RFP) No. HSSCCG-09-R-00001, issued by the Department of Homeland Security (DHS) for administrative support services. CMI asserts that the agency unreasonably evaluated Perot's technical, past performance, and price proposals, and CMI's own technical proposal.

We deny the protest.

The solicitation provided for the award of a contract on a "best value" basis, with consideration of the following evaluation factors (and subfactors), in descending order of importance: technical capability (program and quality management, organizational structure, operations, relevant experience, and risk management), past performance, small business participation, and price. CMI's and Perot's proposals were included in the competitive range and, following discussions and the submission and evaluation of final proposal revisions (FPR), received the same ratings: both were rated good under the technical capability factor--with ratings of superior for program and quality management and relevant experience, and good for organizational structure, operations, and risk management--outstanding for past performance, and good for small business participation.¹ CMI's price was \$127,804,040, and Perot's \$120,175,413.77. Source Selection Decision (SSD) at 2, 3. The agency determined that Perot's proposal represented the best value, and made award to that firm.

CMI challenges the evaluation of its and Perot's proposals on numerous grounds. In reviewing a protest against a procuring agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. National Toxicology Labs., Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3. We have reviewed all of CMI's arguments and find them to be without merit. We discuss several of those arguments below.

REALISM

The RFP contemplated the award of a fixed-labor-rate, time-and-materials, incentive-type contract to provide services at up to 81 sites. Offerors were required to propose labor categories, fixed labor rates, and the hours necessary to perform each task at each location. The RFP included an estimated number of hours the agency believed would be needed to perform each task at each location, but noted that this was an estimate only and that offerors were encouraged to propose

¹ Proposals were rated superior, good, satisfactory, marginal, or unsatisfactory for the technical understanding factor and subfactors. Past performance was rated outstanding, good, acceptable, unsatisfactory or neutral.

efficiencies that would allow them to perform with fewer than the estimated hours. RFP at IV-5. The RFP provided that cost/price would be evaluated for reasonableness, realism and completeness; to be found realistic, prices were required to be realistic for the work to be performed, reflect a clear understanding of contract requirements, and be consistent with the technical proposal. RFP at V-6.

CMI maintains that the agency unreasonably found Perot's proposed price to be realistic because it did not adequately consider the fact that Perot proposed fewer hours than the government estimated. More specifically, CMI asserts that the agency did not analyze the distribution of lower hours among labor categories, and did not compare Perot's proposed hours to the government estimate by line item.

Agencies are not required to conduct an in-depth analysis or verify each and every item in conducting a realism analysis. Id.; Innovative Techs. Corp., B-401689 et al., Nov. 9, 2009, 2009 CPD ¶ 235. Our review of an agency's realism evaluation is limited to determining whether it was reasonable and consistent with the solicitation. Teledyne-Commodore, LLC, B-278408.5, B-278408.6, Mar. 8, 1999, 99-1 CPD ¶ 60 at 14.

In evaluating Perot's price, the business evaluation team (BET) was concerned that Perot's proposed hours were lower than the government estimate. Initial Business Evaluation Report, attach. 1, item 8. During discussions, the agency asked Perot to explain why the reduced hours did not put the government at risk. Id. In response, Perot, an incumbent subcontractor currently providing services at approximately 50% of the sites, outlined its methodology in developing its proposed labor hours [DELETED] Id. Perot provided details explaining how it reached its conclusions. For example, [DELETED] The BEC reviewed Perot's explanation and found it acceptable. The BEC then provided Perot's proposed labor hours to the technical evaluation committee (TEC), which determined that Perot's staffing was adequate to perform given its proposed approach. Id.

The realism evaluation was unobjectionable. The agency was fully aware that Perot proposed fewer labor hours than provided for in the government estimate, and requested that Perot address its resulting concern. Perot fully explained its approach, detailing how its performance history as an incumbent subcontractor demonstrated how labor hour efficiencies were possible and the strategies it planned to utilize to ensure that it would meet its proposed efficiencies. While the protester may disagree with the agency's ultimate judgment that Perot's explanation was sufficient to support its proposal, nothing on the face of Perot's explanation appears unreasonable, and CMI has not shown that the agency's conclusions regarding Perot's labor hours were incorrect or unreasonable. In this regard, the agency's failure to analyze labor hours across labor categories and line items--as CMI asserts it should have done--is not a basis for objecting to the evaluation; again, there is no requirement that an agency follow a particular approach in its analysis, only that the approach followed be reasonable. Innovative Techs. Corp., supra. We conclude that

the agency reasonably determined that Perot's low proposed labor hours did not render its price unrealistic.

CMI also maintains that the agency did not take into account Perot's proposal [DELETED], and that this increases the risk of unsatisfactory performance. We find that this argument, too, is without merit. Again, the agency was aware that Perot [DELETED] and asked the firm during discussions to clarify its intention with respect [DELETED]. Initial Business Evaluation Report, attach. 1, item 10. In response, Perot explained that [DELETED] Id. Perot further explained that [DELETED] Id. The agency determined that this response was sufficient to address its concern and, although CMI disagrees with the agency--continuing to argue that Perot's approach is risky because [DELETED]--we find nothing in the record that provides a basis for us to conclude that this determination was unreasonable.

We thus find that the realism evaluation was reasonable.

PAST PERFORMANCE EVALUATION

The past performance evaluation was to take into consideration whether the offeror's and major subcontractors' past performance was relevant and showed consistency, timeliness, and quality. RFP at V-4. The solicitation provided as follows regarding the evaluation of past performance:

Offeror's proposal will be evaluated to the extent to which their performance demonstrates the likelihood of successful performance in providing requirements similar in size, scope, complexity and technical difficulty of this solicitation.

Id. Offerors were required to submit references demonstrating relevant past performance for three to five prior contracts for itself and each major subcontractor. Id. The solicitation also reserved the right for the agency to use information from the government's past performance information retrieval system to evaluate past performance. Id.

The agency rated Perot outstanding for past performance based on its finding that Perot's prior contract references demonstrated the ability to process a large volume of actions and handle large dollar value contracts requiring performance at multiple sites. Final TEC Evaluation at 19. The contracts relied upon included Perot's incumbent subcontract (covering approximately 50% of the RFP sites); a 21-year, \$1 billion contract, which the agency found showed Perot's ability to process a large number of actions; and a contract performed at 5 sites, which the agency found further showed Perot's ability to manage performance at multiple sites. Id. The agency also considered the fact that the references and information it obtained from the government's past performance information retrieval system indicated that Perot

should be rated outstanding for pattern of consistency, good for timeliness, and outstanding for quality. Id.

CMI maintains that Perot's past performance did not warrant an outstanding rating, claiming that, rather than view the prior contracts as a whole, the agency was required to consider whether each prior contract separately satisfied all of the relevance criteria. According to CMI, based on this approach, Perot's incumbent subcontract was its only relevant contract, and its rating should have been lower.

This argument is without merit. There is nothing in the RFP language, quoted above, that reasonably indicates that only contracts satisfying all four criteria—similarity in size, scope, and technical difficulty—would be deemed relevant and considered in the evaluation. Rather, this provision only broadly states that prior contracts will be reviewed for purposes of predicting successful performance. This being the case, the agency reasonably considered all of Perot's contracts to determine the extent to which their different aspects, in the aggregate, demonstrated relevant performance for purposes of assessing the likelihood of successful performance of the current requirement.

CMI also questions the validity of the reference for Perot's incumbent subcontract, since Perot performs at 44 sites and the reference was a contracting officer's technical representative (COTR) at only a single site. CMI further asserts that the agency ignored the input from a contract administrator at the same site who gave Perot mostly good ratings, and one acceptable rating. These arguments do not provide a basis for objecting to the evaluation. The RFP did not establish qualifications for contract references, and the agency did not apply such a criterion in evaluating CMI's or other offerors' prior contracts. Thus, there was nothing unreasonable in the agency's considering the COTR's evaluation of Perot's performance. Further, while it is unclear whether the agency specifically considered the information provided by the other reference for the site, the record shows the agency was fully aware that Perot had received both outstanding and good ratings from its references in ultimately determining that its ratings equated to outstanding for pattern of consistency, good for timeliness, and outstanding for quality. Final TEC Evaluation at 19. There thus is no reason to believe that this reference's good ratings would have resulted in a different evaluation conclusion.

To the extent that CMI views the agency as having applied a relaxed standard in evaluating Perot's past performance, it is clear that it applied a similar standard to CMI. In this regard, while CMI provided five references in response to the requirement for three to five references from different contracts, two of these references were found not to be relevant, and the remaining three were for the same contract. Final TEC Report at 13. Notwithstanding the absence of references for three different relevant contracts, the agency rated CMI outstanding for past

performance. We conclude that the past performance evaluation was unobjectionable.

EXPERIENCE--PEROT

The RFP required each offeror to describe its own and its critical subcontractors' relevant experience in managing and performing an effort of similar magnitude, complexity, and scope. RFP at V-3. The RFP further provided, "The proposal must demonstrate...experience in managing operations over multiple sites, especially in the management of surges and spikes, [and] describe any processes developed in the past that demonstrate significant improvement over the course of an effort that would apply to Field Office Support." Id.

CMI argues that Perot improperly was rated superior under the relevant experience subfactor (under the technical factor). According to CMI, Perot's work on its incumbent subcontract did not involve managing and performing an effort of similar magnitude, complexity, and scope. In this regard, CMI asserts that Perot provided fewer than 49% of the contract positions and that, while Perot's managers ran its own operations, Perot did not have overall management responsibility for the contract. CMI also asserts that the agency incorrectly determined during the evaluation that Perot performed on four of the seven largest sites under its subcontract.

The agency's evaluation of Perot's experience was reasonable. First, while under its subcontract Perot did not have responsibility for managing the entire contract, as CMI acknowledges, Perot did have responsibility for 44 sites and was responsible for managing its own performance at those sites. Comments (Dec. 3, 2009) at 26, 28. The agency thus reasonably viewed Perot's performance as demonstrating experience managing multiple sites. Second, even if CMI is correct that the agency incorrectly determined that Perot was performing at four of the seven largest sites, CMI's own analysis shows that Perot was responsible for four of the nine largest sites based on the number of employees involved. Id. at 21. CMI has not established that there is a meaningful distinction in this discrepancy.

Finally, while CMI's challenge is limited to the evaluation of Perot's experience under its incumbent subcontract, the RFP did not provide that the experience evaluation would be based only on experience performing a single contract. The record shows the agency found that Perot's proposal demonstrated experience in the public and private sectors performing other contracts of similar magnitude, complexity and scope; CMI does not challenge the evaluation of these contracts. The agency also specifically found that Perot's two major subcontractors showed experience managing operations--including surges and spikes--over multiple locations, and in developing processes that demonstrate significant improvement over the course of an effort that would apply to Field Office support. Final TEC Report at 17. CMI does not challenge the evaluation of these contracts. We conclude that CMI's challenge to the evaluation of Perot's incumbent subcontract

does not provide a basis for questioning the agency's evaluation of the totality of Perot's experience as superior.

ORGANIZATIONAL STRUCTURE--CMI

CMI asserts that the agency unreasonably evaluated its proposal as only good under the organizational structure subfactor (under the technical capability factor). Specifically, CMI asserts that, although the agency found that its proposal met all RFP requirements and noted two strengths--a training program and a 4-week transition plan that would benefit the government--the agency then unreasonably concluded that the proposed approach did not significantly exceed performance or capability standards, and that a higher rating was not warranted. CMI also lists other strengths in its proposal that it believes exceeded performance requirements.

The evaluation was reasonable. The agency assigned a superior rating to proposals that demonstrated an excellent understanding of the requirements, an approach that significantly exceeded performance or capability standards, and exceptional strengths that will significantly benefit the government. Final TEC Report at 5. While CMI is correct that the agency recognized its training program and transition time as strengths, the agency did not view them as exceptional or find that they significantly exceeded performance or capability standards. *Id.* at 16. CMI disagrees with this conclusion, but cites nothing in the RFP that dictated a different conclusion, or that reasonably required the agency to identify other features of its proposal as strengths, such that a higher rating would have been warranted. Disagreement with evaluation conclusions is not sufficient to show that the conclusions were unreasonable. *Fedcar Co. Ltd., B-310980 et al.*, Mar. 25, 2008, 2008 CPD ¶ 70 at 3. We thus find no basis for questioning the evaluation of CMI's proposal.

The protest is denied.

Lynn H. Gibson
Acting General Counsel