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**Comptroller General
of the United States**

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

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Decision

Matter of: Highland Engineering, Inc.

File: B-402634

Date: June 8, 2010

David T. Ralston, Esq., and Frank S. Murray, Esq., Foley & Lardner LLP, for the protester.

Capt. Sean T. Nguyen, Esq., and Robert E. Vollmar II, Esq., Department of the Army, 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. Assertion that agency's price evaluation failed to account for awardee's use of government-owned property in performing contract is denied where awardee certified in its proposal that it did not plan to use government-owned property and protester provided no evidence that awardee had such property in its possession.
 2. Protest that agency failed to consider negative information regarding awardee's past performance is denied where solicitation specifically provided for evaluation of experience, but not past performance.
 3. Protest that "best value" analysis was erroneous based on agency's failure to consider fact that protester's proposal was rated higher than awardee's under one subfactor is denied where record shows source selection official determined that proposals were essentially equal despite protester's higher subfactor rating.
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DECISION

Highland Engineering, Inc. (HEI), of Howell, Michigan, protests the award of a contract to Mechanical Equipment Company, Inc. (MECO), of Covington, Louisiana, under request for proposals (RFP) No. W56HZV-09-R-0012, issued by the Department of the Army for lightweight water purifiers. HEI principally challenges the evaluation of MECO's proposal.

We deny the protest.

BACKGROUND

In 1998, following a procurement that was conducted on the basis of full and open competition, MECO was awarded a contract to design and develop water purifiers and to deliver three prototypes; in 2002, MECO was awarded a follow-on production contract on a sole-source basis. The current RFP for water purifiers, issued on the basis of full and open competition, provided for award on a “best value” basis considering experience (comprised of four subfactors: fabricating reverse osmosis; fabricating in accordance with a government technical data package (TDP); welding titanium components; and working with programmable logic controllers) and price. RFP at 123-24. Following the submission and evaluation of proposals, the technical evaluation panel (TEP) rated HEI’s proposal very low risk for each experience subfactor, and MECO’s low risk for TDP and very low risk for the remaining three subfactors. Source Selection Document (SSDD). HEI’s price was \$18,075,156 and MECO’s \$17,479,772. *Id.* at 2. The source selection official (SSO) reviewed the evaluation results, determined that MECO’s and Highland’s proposals were essentially equal with respect to experience, and selected MECO for award based on its lower proposed price. This protest followed.

DISCUSSION

HEI challenges the evaluation of MECO’s proposal and the best value determination. In reviewing a protest against an agency’s evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. *Philips Med. Sys. N. Am. Co.*, B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have considered HEI’s arguments and, as discussed below, find that they are without merit.

Government-Owned Property

The solicitation required offerors to certify whether they planned to use government-owned property in performing the contract so that a rental factor could be added for price evaluation purposes. RFP at 105-06. HEI asserts that the agency failed to consider in its price evaluation MECO’s intent to use government-owned property in performing the contract. In this regard, HEI reasons that MECO must have obtained some relevant equipment under its prior development contract and that, since that contract was awarded on a cost-reimbursement basis, the equipment is government-owned property.

This argument is without merit. In response to the RFP’s certification requirement, MECO certified in its proposal that it would not use government-owned property. MECO Proposal at 105-06. The agency explains that, while it was aware of MECO’s development contract, it accepted MECO’s certification because contractors generally do not obtain the types of tools and equipment to which HEI refers when performing such development contracts. Contracting Officer’s Statement (COS) at 7. The agency also notes that MECO did not have any government-owned equipment at

the end of its production contract. Id. at 8. While HEI believes MECO possesses and intends to use government-owned property, it has presented no evidence supporting this speculation or showing that the agency's rationale for accepting MECO's certification was erroneous. Under these circumstances, there is no basis for us to question the agency's acceptance of MECO's certification.¹

MECO's Experience

HEI asserts that the agency's evaluation of MECO's experience as overall very low risk failed to take into account performance issues under MECO's sole-source production contract. However, this allegation concerns MECO's past performance, not its experience. As the agency notes, the solicitation specifically provided that the agency would evaluate "proposal risk but not performance risk. . . ." RFP at 122. In this regard, the solicitation explained that, while "Proposal risk . . . is integrated into the rating of the Experience Factor, . . . Performance Risks are those risks associated with the probability that an offeror will successfully perform . . . as indicated by [its] record of past performance." Id. Thus, under the express terms of the RFP, there was no basis for the agency to consider MECO's past performance in the evaluation.²

HEI complains that its and MECO's proposals improperly were assigned the same very low risk rating under the TDP subfactor, since HEI was found to have twice as many highly relevant contracts as MECO in that area. We note, however, that HEI's and MECO's proposals also received the same very low risk rating under the welding titanium components subfactor, even though MECO had twice as many highly relevant contracts as HEI in that area. SSDD at 6. Thus, even if we agreed that the evaluation in this regard was unreasonable, there is no reason to believe that HEI was prejudiced by the agency's actions. Eomax Corp., B-311391, June 23, 2008, 2008 CPD ¶ 130 at 4 (protester was not competitively prejudiced where agency evaluated all proposals on the same allegedly flawed basis).

¹ HEI requests that the agency provide it with property accountability documents related to MECO's development contract. As discussed above, however, HEI's argument is based on speculation; HEI may not use the protest process to obtain information that will give rise to, or otherwise perfect a basis of protest. Quimba Software, B-299000, Jan. 18, 2007, 2007 CPD ¶ 14 at 3.

² HEI asserts that the agency did consider MECO's positive past performance, as indicated by a statement in the SSDD that MECO successfully produced systems that are identical to the purifier being purchased. SSDD at 3,4,5,9. However, we read this statement as referring to MECO's experience producing the item to be purchased. See Matthews Mfg., Inc., B-299518, B-299518.3, June 11, 2007, 2007 CPD ¶ 110 at 3.

Best Value

HEI maintains that the agency's best value determination improperly failed to take into account the fact that HEI's proposal received a lower risk rating (very low risk) than MECO's (low risk) under one of the experience subfactors. According to HEI, this provided its proposal with an advantage sufficient to overcome MECO's lower price.

The record shows that, in making the best value decision, the SSO reviewed the evaluation results provided by the TEP and was fully aware of the differences in the various contractors' experience. SSDD at 2-8. The SSA first determined that, while there were some differences in HEI's and MECO's experience, the two proposals were essentially equal under each of the experience subfactors, including the subfactor in question. *Id.* The SSA then ultimately concluded that HEI did not have any advantage with respect to experience that justified the cost premium associated with its proposal. *Id.* at 9. HEI disagrees with the SSO's conclusions; however, such disagreement does not demonstrate that the conclusions were unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4. Further, we note that ratings provided by agency evaluators are not binding on the SSA; they are merely guides for intelligent decision making. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. We conclude that the best value determination was reasonable.

The protest is denied.

Lynn H. Gibson
Acting General Counsel