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

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Decision

Matter of: New Orleans Support Services LLC

File: B-404914

Date: June 21, 2011

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DIGEST

The agency's selection of a slightly lower-rated, lower-priced proposal for award of a contract for base operations support services is unobjectionable where the evaluation and source selection were consistent with the terms of the solicitation and reasonably based.

DECISION

New Orleans Support Services LLC (NOSS), of San Antonio, Texas, protests the award of a contract to Facilities Services Management, Inc. (FSI), of Clarksburg, Tennessee, under request for proposals (RFP) No. N69450-11-R-0758, issued by the Department of the Navy, for base operations support (BOS) services.

We deny the protest.

The solicitation provided for the award of a fixed-price, indefinite-delivery/ indefinite-quantity (ID/IQ) contract, for a base period of 1 year with four 1-year option periods. The successful contractor will be required to provide, among other things, all labor, supervision, management, tools, materials, equipment, facilities and transportation necessary to perform BOS services at certain Department of the Navy facilities in the New Orleans, Louisiana, area.

The solicitation specified that award would be made to the offeror whose proposal was determined to represent the best value to the government, considering the following evaluation factors: offeror experience/capability of key personnel, past

performance, management, technical approach, safety, and price. RFP at 242-43. The RFP advised offerors that in determining which proposals represented the best value to the government, the agency would consider the evaluation results under each of the non-price factors equal in importance, and that the evaluation results under the non-price factors combined would be considered equal in importance to price. RFP at 242.

The agency received three proposals in response to the solicitation, and all were included in the competitive range. The agency conducted discussions with the competitive range offerors, and requested, received, and evaluated final revised proposals. The proposals of NOSS and FSI were evaluated as follows¹:

	NOSS	FSI
Offeror Experience/ Capability of Key Personnel	Good	Satisfactory
Past Performance	Excellent	Excellent
Management	Good	Good
Technical Approach	Good	Satisfactory
Safety	Good	Excellent
Overall Rating	Good	Good
Evaluated Price	\$25,688,557	\$22,458,034

AR, Tab D-2, Post-Award Business Clearance Memorandum (BCM), at 5, 8. The source selection authority (SSA) determined that FSI’s proposal represented the best value, and a contract was awarded to that firm. After requesting and receiving a debriefing, NOSS (the incumbent contractor) filed this protest.

The protester complains that FSI’s proposed price was unrealistically low, and challenges the agency’s evaluation of proposals under every non-price factor, contending that NOSS’s proposal should have received a higher rating, that FSI’s should have received a lower rating, or both. The protester also challenges the composition of the agency evaluation panels, and argues that the source selection determination was inadequate.

We have reviewed all of the protester’s numerous arguments regarding the propriety of the agency’s evaluation of the protester’s and awardee’s proposals and source selection, as well as the composition of the evaluation panel. We find that the agency’s evaluation of proposals and source selection were reasonable and

¹ The source selection plan provided that proposals would be evaluated under each non-price factor, and overall, as “excellent,” “good,” “satisfactory,” “marginal,” “poor,” or “no rating” (applicable to the past performance factor only). Agency Report (AR), Tab D.1, Source Selection Plan, at 18.

consistent with the RFP, and we see no basis to object to the composition of the evaluation panel. We discuss some examples below.

The protester argues at length that FSI “submitted an unrealistic price . . . demonstrating FSI’s lack of understanding of the [agency’s] current BOS requirements,” and that because of this, FSI’s “proposal should have been materially downgraded or excluded from further consideration altogether, leaving NOSS and no other offeror in line for award.” Protest at 10; see Protest at 9-12; Protester’s Comments at 8-12.

The protester’s arguments reflect a misunderstanding of the solicitation. Price realism is ordinarily not considered in the evaluation of fixed-price contracts, because these contracts place the risk of loss upon the contractor. Health Net Fed. Servs., B-401652.3; B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 19. Although a solicitation may expressly provide that a price realism analysis will be applied in order to measure the offerors’ understanding of the requirements and/or to assess the risks inherent in proposals, the solicitation here did not do so. Rather, the solicitation provided that the agency would evaluate each offeror’s proposed price to “ensure a fair and reasonable price.” RFP at 244. The purpose of such an analysis, commonly referred to as a “price reasonableness” analysis, is to determine whether the prices proposed are too high, as opposed to too low. SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. As such, because the solicitation did not provide for a price realism analysis, the protester’s argument that the agency erred in not performing such an analysis need not be considered further.

The protester also argues that the assessment of its proposal under the offeror experience/capability of key personnel evaluation factor was unreasonable. The protester contends here that its proposal should have received a rating of “excellent” under this factor, rather than “good,” because of its experience as the incumbent contractor. Protest at 12; Protester’s Comments at 12.

The evaluation of proposals, including the determination of the relative merits of proposals, is primarily a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Federal Env’tl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing an agency’s evaluation, we will not reevaluate the proposals or make a new selection, but rather will examine the record of the evaluation and source selection to ensure that they were reasonable and consistent with the stated evaluation criteria as well as with procurement law and regulation. Id. A protester’s mere disagreement with a procuring agency’s judgment is insufficient to establish that the agency acted unreasonably. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

The solicitation requested that an offeror’s proposal include “Corporate Experience Narratives for a minimum of one to a maximum of five projects that the offeror

completed and served as the prime contractor that best demonstrate recent experience (completed within the last seven years) on relevant projects.” RFP at 244. The RFP provided that the offeror’s corporate experience narratives would be evaluated under the offeror experience section of the offeror experience/capability of key personnel evaluation factor to “determine the offeror’s relevant experience in providing management and delivery of the same work as described in the statement of work/specifications of the RFP.” RFP at 246.

The record reflects that the agency considered each of the five corporate experience narratives submitted by NOSS, and found that only the one narrative pertaining to NOSS’s performance as the incumbent contractor was relevant for the purposes of this evaluation.² The agency ultimately evaluated NOSS’s proposal as “good” under the offeror experience/capability of key personnel factor based upon this one relevant corporate experience narrative, and the agency’s assessment of a “strength” under the capability of key personnel portion of this factor. Although NOSS complains that it should have received a rating of “excellent” under this factor, we cannot find the agency’s evaluation unreasonable given the circumstances here, which include the agency’s unchallenged determination that NOSS’s experience as the incumbent contractor was the only corporate experience of that firm that was relevant to the performance of this contract. See LIS, Inc., B-400646.4, Jan. 4, 2010, 2010 CPD ¶ 18 at 8-9 (agency’s evaluation of awardee’s relevant experience as “good” and equivalent to the protester’s experience was reasonable where the awardee’s experience was “narrow” in that it consisted only of its performance as the incumbent contractor).

The protester argues that the agency’s evaluation of FSI as “excellent” under the past performance factor was unreasonable. Our Office will examine an agency’s evaluation of an offeror’s past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror’s past performance is primarily a matter within the contracting agency’s discretion. TRW, Inc., B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 12 at 3.

The RFP informed offerors that the past performance factor “focuses on how well the offeror performed on relevant projects.” RFP at 247. The solicitation included relatively detailed proposal preparation instructions, and provided that for evaluation purposes proposals should include “awards, customer letters of commendation, or customer performance evaluations” for the same projects described in the offeror’s corporate experience narratives. RFP at 246. Offerors were further informed that the

² The protester does not challenge the agency’s conclusion that the other four projects described by the protester in its corporate experience narratives were not relevant to the work required here, and thus could not be considered in accordance with the terms of the offeror experience/capability of key personnel factor.

agency “may review other sources of information for evaluating past performance,” including “past performance information retrieved through the Past Performance Information Retrieval System (PPIRS).” RFP at 247.

In evaluating FSI under the past performance factor as “excellent,” the agency noted that FSI had received ratings of “excellent” under two relevant base maintenance projects. AR, Tab D.3, Technical Evaluation Board (TEB) Report, at 10. The agency also noted correspondence characterizing FSI’s work as, among other things, “outstanding,” and commending FSI for certain other work. Id. at 11; AR, Tab C, FSI Proposal, Past Performance, at 42-44. The record further reflects that the agency was unable to find any PPIRS information regarding these projects.

The protester does not challenge the reasonableness of the agency’s conclusion that FSI’s past performance, as reflected in FSI’s proposal, merited a rating of “excellent.” Rather, the protester contends that FSI’s overall rating on one of the contracts discussed by the agency in its past performance evaluation was only “satisfactory.” The protester argues that had the agency “conducted a ‘Google’ search,” or contacted the relevant contracting officer, the agency would have become aware of the satisfactory rating, and FSI’s proposal would have received a rating lower than “excellent” under the past performance factor.³ Protester’s Comments at 7.

While agencies generally need not evaluate all past performance references or those not reflected in the proposals, our Office has recognized that in certain limited circumstances an agency evaluating an offeror’s past performance has an obligation (as opposed to the discretion) to consider “outside information” bearing on the offeror’s past performance. TRW, Inc., supra, at 4-5. Where we have charged an agency with responsibility for considering such outside information, the record has demonstrated that the information in question was “simply too close at hand to require offerors to shoulder the inequities that spring from an agency’s failure to obtain, and consider, the information.” International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 115 at 5; see GTS Duratek, Inc., B-280511.2, B-280511.3, Oct. 19, 1998, 98-2 CPD ¶ 130 at 14 (agency should have considered offeror’s performance of a prior contract where the contract was discussed in the offeror’s past performance proposal, the contract was so similar that it served as the basis for the government estimate for the work here, and the contracting officer’s technical representative for the contract was a member of the technical evaluation team for the subject solicitation); G. Marine Diesel, B-232619.3, Aug. 3, 1989, 89-2 CPD ¶ 101 at 4-6 (contracting officer who was personally aware of the awardee’s continuing

³ We note that the protester appears to have misunderstood the information it cited in support of its position, given that it appears that FSI received a better rating than “satisfactory” on the particular contract. See Protester’s Comments at 7 (citing Facility Servs. Mgmt., Inc., B-402757.6, B-402757.7, Feb. 10, 2011, 2011 CPD ¶ 62 at 5-7).

difficulties in performing a contract for services related to the subject solicitation, and who considered the performance difficulties in deciding not to exercise the remaining options, erred in not considering the awardee's performance difficulties when determining whether the contract under the subject solicitation had been properly awarded); G. Marine Diesel; Phillyship, B-232619, B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90 at 4-5 (agency should have considered awardee's prior experience under a directly relevant contract where the contract was referenced in the awardee's proposal and agency personnel were familiar with the awardee's performance). However, the "close at hand" information in these cases generally concerned contracts for the same services with the same procuring activity, or at least information personally known to the evaluators. TRW, Inc., supra.

Here, the information the protester argues was improperly not considered was not for the same services with the same agency, and was not personally known to the evaluators. Additionally, we are unaware of any requirement that an agency "conduct[] a 'Google' search" or contact "the cognizant [agency] contracting officer" for the projects listed in the past performance section of a proposal, as asserted by the protester. See Protester's Comments at 7. As such, the record does not demonstrate that outside information was so "close at hand" regarding FSI's prior performance that the agency either improperly ignored or erroneously failed to obtain the information.

The protester next argues that the agency's evaluation of its proposal under the safety factor as "good" was unreasonable. The solicitation stated that under the safety factor the agency was "seeking to determine whether the Offeror has consistently demonstrated a commitment to safety and plans to properly manage and implement subcontractor safety on the upcoming project." RFP at 250. The solicitation provided that for evaluation purposes the agency would consider a "safety narrative" prepared by the offeror and included in the proposal, as well as information from certain Occupational Safety and Health Administration (OSHA) forms and reports bearing on the offeror's safety record and also which were to be included by the offeror in its proposal. Id.

The protester did not include the requisite OSHA forms and reports in its initial proposal, but did furnish the forms and reports in its revised proposal. The agency evaluated NOSS's revised proposal under the safety factor as presenting a number of "significant strengths," in that information contained in certain of the OSHA forms and reports equated to a "very low risk" rating as defined by the RFP. However, the agency also noted as a "significant weakness" that, for 2008, NOSS had an OSHA Total Recordable Cases Incidence Rate (TCIR), which equated to an "extremely high risk rating" under the terms of the solicitation. AR, Tab D.3., TEB Report, at 26; RFP at 250; see AR, Tab B.2, NOSS Revised Proposal, Factor 5 Deficiencies, at 1. The record reflects that in considering the impact of this "extremely high risk rating" on the evaluation of NOSS's proposal under the safety factor, the agency noted that the extremely high risk rating was due to "a small number of workers and having two

recordable injuries.” AR, Tab D.3., TEB Report, at 26. The agency further noted here that “[n]either of the recordable injuries resulted in days away from work.” Id. The protester argues that the agency “knew full well” that NOSS’s 2008 OSHA TCIR “was an anomaly in NOSS’s otherwise splendid record,” and involved “trivial injuries.” Protester’s Comments at 14. The protester continues by pointing to the other aspects of its proposal assessed by the agency as evidencing “strengths” under the safety factor, and concludes that the agency’s evaluation of its proposal under the safety factor as “good,” rather than “excellent,” was unreasonable. Id. at 15.

As the record reflects, NOSS did indeed have an OSHA TCIR in 2008 that equated to a rating of “extremely high risk” under the terms of the RFP. Additionally, and as discussed above, the agency weighed and considered this “extremely high risk” rating and the facts underlying the rating in evaluating NOSS’s proposal as “good” under the safety factor. The protester’s arguments evidence, at best, its disagreement with the agency, and provide no basis on which to find the agency’s evaluation objectionable.

The protester argues that the agency acted improperly by “not including local Navy personnel as part of the evaluation process.” Protester’s Comments at 16. The selection of individuals to serve as proposal evaluators is a matter within the discretion of the agency; accordingly, we will not review allegations concerning the qualifications of evaluators or the composition of evaluation panels, absent a showing of possible fraud, conflict of interest, or actual bias on the part of evaluation officials, none of which have been shown here. Glatz Aeronautical Corp., B-293968.2, Aug. 10, 2004, 2004 CPD ¶ 160 at 3 n.1.

The protester argues that the source selection decision is inadequate, in that it fails to properly articulate why FSI’s proposal represents a better value to the agency than the proposal submitted by NOSS. Protester’s Comments at 2-4.

Section 15.308 of the Federal Acquisition Regulations (FAR) requires, in the context of a negotiated procurement, that a source selection decision be based on a comparative assessment of proposals against all of the solicitation’s source selection criteria. The FAR further requires that while the SSA “may use reports and analyses prepared by others, the source selection decision shall represent the SSA’s independent judgment.” Source selection decisions must be documented, and include the rationale and any business judgments and tradeoffs made or relied upon by the SSA. FAR § 15.308. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision, nor is there a requirement to quantify the specific cost or price value difference when selecting a lower- or higher-priced proposal for award. Id.; General Dynamics--Ordinance & Tactical Sys., B-401658; B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8; Advanced Fed. Servs. Corp., B-298662, Nov. 15, 2006, 2006 CPD ¶ 174 at 5. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. General Dynamics--Ordinance & Tactical Sys., supra; ViroMed Labs., Inc., B-310747.4,

Jan. 22, 2009, 2009 CPD ¶ 32 at 6. In reviewing an agency's source selection decision, our Office examines the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Johnson Controls World Servs., Inc., B-289942; B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

The SSA states in his source selection statement that he was briefed by the source selection board (SSB) regarding the SSB's findings and recommendation that FSI receive the award. AR, Tab D.2, Post-Award BCM, at 23. The SSA adds that he "reviewed the SSB Report," and "validated the SSB's selection recommendation," and made his "independent decision" to award the contract to FSI. Id. The SSA states that he based his decision "upon [his] comparative assessment of all strengths, weaknesses, deficiencies, discussion items, and price, as described in the SSB Report." Id. at 24. The source selection statement provides that the SSA recognized that although the proposal of NOSS and FSI received overall ratings of "good," NOSS's proposal was superior as evaluated under the non-price factors. Id. As indicated above, the SSA found in selecting FSI's proposal for award that "[t]he few extra strengths contained in [NOSS's] proposal do not warrant paying a price premium of \$3,230,521." Id.

Under the circumstances here, we see nothing improper in this source selection decision. That is, as set forth above, the statement reflects that in choosing FSI for award, the SSA was aware of and considered the strengths and weaknesses of the competing proposals, the proposals' ratings under the RFP's evaluation factors and overall, and the proposals' evaluated prices. To the extent that the protester is arguing that the source selection decision should have evidenced a more precise determination or quantification as to whether the particular technical advantages associated with NOSS's proposal warranted the payment of requisite \$3.2 million price premium, we note that such a degree of precision or quantification is not required. See Highmark Medicare Servs., Inc.; Cahaba Gov't Benefit Admins., LLC; Nat'l Gov't Servs., Inc., B-401062.5 et al., Oct. 29, 2010 CPD ¶ 285 at 22.

The protest is denied.

Lynn H. Gibson
General Counsel