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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: System Integration and Development, Inc.

File: B-408865.2; B-408865.3

Date: July 10, 2014

Donald J. Walsh, Esq., Offit Kurman, for the protester.
David R. Koepfel, Esq., and Savannah L. Wilson, Esq., Department of Labor, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency acted improperly in considering the past performance of the joint venture partners, rather than limiting the evaluation to only the joint venture itself, is denied; solicitation prohibition on considering past performance of subcontractors did not apply to joint venture partners, and there is nothing improper in an agency considering the past performance of the entities that make up a joint venture in the absence of a solicitation provision that prohibits the agency from doing so.

DECISION

System Integration and Development, Inc. (SID), of Rockville, Maryland, protests the Department of Labor's award of a contract to Advanced Quality Alliance (AQA), of Sterling, Virginia, under request for proposals (RFP) No. DOL131RP21686, for information technology systems operation and maintenance for the agency's wage and hour division. SID asserts that the agency unreasonably evaluated AQA's proposal.

We deny the protest.

BACKGROUND

The solicitation, issued as a small business set-aside, sought a single contractor to support both the Wage and Hour Division's wage determination system (WDS) and its strategic enforcement systems (WHISARD). Currently, SID is the incumbent contractor for the WDS, and ECS Federal (which along with Strongbridge

Corporation comprises the joint venture AQA) is the current contractor for the WHISARD.

The solicitation provided for award on a best-value basis considering the following evaluation factors: technical approach; key personnel; corporate experience; past performance; and price. RFP at 7-8. The non-price factors were assigned an adjectival rating of outstanding, good, acceptable, or unacceptable. Technical Evaluation Team Report (TETR) at 1-2. With respect to past performance, offerors were required to submit up to 5 references for contracts performed within the last 3 years. Past performance was rated exceptional, very good, satisfactory, neutral, or unsatisfactory. With respect to price, offerors were to submit prices to perform at both a contractor and a government site. Price was evaluated for realism and reasonableness.

Eleven offerors responded to the solicitation. The proposals of AQA and SID were rated overall outstanding, with ratings for both of outstanding for technical approach, key personnel, and corporate experience. TETR at 3. For past performance, SID was rated very good and AQA satisfactory. SSD at 10. With respect to price, SID proposed a price of \$34,475,904 for a government site and \$36,451,334 for a contractor site, while AQA proposed \$21,688,134 for a government site and \$25,212,816 for a contractor site. Id. at 13. The agency conducted a best value analysis and selected AQA for award based upon its significantly lower prices. SID protests that decision.

DISCUSSION

AQA's Eligibility for Award

As a threshold matter, SID argues that AQA is not a qualified SDB joint venture for this procurement because its program manager is an employee of ECS, not Strongbridge. As noted, AQA is a joint venture comprised of Strongbridge Corporation, a small, disadvantaged business (SDB), and its mentor ECS Federal, Inc. SID notes that under 13 CFR § 124.1002(f)(4), "Joint Ventures are permitted for SDB procurement mechanisms," provided that a number of requirements are satisfied, including that "[a]n SDB must be the managing venturer of the joint venture, and an employee of the managing venturer must be the project manager responsible for performance of the contract."

SID is challenging the status of AQA as an SDB eligible to receive award. This solicitation, however, was set-aside for small business concerns, not SDBs. Accordingly, AQA's status as an SDB was not relevant to its eligibility for award. In any case, the Small Business Administration (SBA), and not our Office, has

jurisdiction to determine whether AQA is an eligible SDB. Hurricane Consulting, Inc., B-404619 et al., Mar. 17, 2011, 2011 CPD ¶ 70 at 5.¹

Past Performance Evaluation

SID asserts that the agency improperly rated AQA satisfactory, instead of neutral, for past performance. As noted above, AQA is a joint venture comprised of Strongbridge Corporation and ECS Federal. In evaluating the joint venture's (AQA) past performance, the agency considered references from the joint venture's two component companies (Strongbridge and ECS). SID notes that the solicitation provided that, "DOL will evaluate . . . past performance for the prime offeror only . . . past performance for any proposed subcontractor will not be evaluated." RFP § E-1. Thus, according to SID, in evaluating AQA's past performance the agency was required to consider only the past performance of AQA, and was precluded from considering the past performance of Strongbridge and ECS.

We disagree. ECS and Strongbridge are not subcontractors to the joint venture AQA. Rather, ECS and Strongbridge together are the joint venture partners comprising AQA, the offeror. There is nothing improper in an agency considering the past performance of the entities that make up a joint venture in the absence of a solicitation provision that prohibits the agency from doing so. Wolf Creek Federal Servs., Inc., B-409187 et al., Feb. 6, 2014, 2014 CPD ¶ 61 at 8; JACO & MCC Joint Venture, LLP, B-293354.2, May 18, 2004, 2004 CPD ¶ 122 at 7. Here, since the solicitation did not preclude the agency from considering the past performance of the component companies of a joint venture, the agency could properly consider the past performance of Strongbridge and ECS in evaluating the past performance of the joint venture AQA.

Evaluation of Staffing

SID challenges the agency's evaluation of staffing under the technical approach factor, under which both AQA and SID were rated overall outstanding. SID essentially asserts that the technical evaluation team failed to evaluate whether AQA could realistically perform with its proposed staff (25 personnel) when the current staffing was around 40 (39 as of time of award) and SID proposed a staff of 46. In this regard, SID acknowledges that, as issued, the solicitation provided a required

¹ In its comments on the agency report, SID asserts that the SDB regulations it referenced in its protest are "substantially similar as those for considering a joint venture to be a Small Business as required for this procurement." SID, however, does not provide a citation to such a regulation. In any case, to the extent that SID is attempting to challenge AQA's status as a small business concern, again, AQA's size status is an issue for the SBA, not our Office. 4 C.F.R. § 21.5(b) (2013).

labor mix of 27 personnel in 13 labor categories (which was consistent with the internal government estimate). However, SID explains that when the minimum number of required personnel was deleted in a later solicitation amendment, this led SID to believe that the agency realized that the contract could not be performed with so few personnel.

The agency reports that the WHD and WHISARD systems, with a combined total staff of 39, have achieved a steady state status, and are being maintained, but not upgraded. The agency issued the current solicitation to combine the contracts for the two systems with the goal of reducing redundancies and inefficiencies, while keeping the systems maintained until all applications are replaced over the next 5 years. AR at 4. The agency further explains that while the solicitation was initially issued with a required labor mix of 27 personnel, the quantity was not deleted because of an agency view that 27 personnel were insufficient to perform the contract. Rather, according to the agency, the solicitation requirement for 27 personnel was removed because offerors requested the opportunity to develop their own solutions. Id. at 8. The agency further notes that the TET found AQA's approach to be outstanding and specifically confirmed that AQA could perform with the 25 personnel it proposed. Reynosa Declaration ¶ 12.

The evaluation in this regard was unobjectionable. Under technical approach, offerors were required to demonstrate that they understood the requirements of the statement of work, and had a logical program to ensure successful contract performance. Among other things, offerors were required to provide a narrative description of the contractor's proposed solutions, plans for performance, technical approach, and any problem areas. RFP § F. Further, the solicitation advised offerors that:

DOL will evaluate Technical Proposals to determine the contractor has an understanding of the requirement, the necessary resources (personnel and facilities) for successful implementation, and sufficient resources to meet and complete all technical requirements for performing and meeting DOL's requirements.

Id. In addition, in their price proposal, offerors were required to complete a chart that indicated the number of proposed staff in various labor categories. Id. at 3, 10.

In its technical proposal, AQA explained its approach to contract performance, including indicating what labor categories would perform specific functions. For example, AQA indicated that the project manager, technical writer, and subject matter experts would develop briefings and documents. AQA Technical Proposal at 21. In its price proposal, AQA provided the number of personnel it would use in each labor category. The agency reviewed the technical proposal and found that AQA "provides extensive details, processes, procedures and methodologies on how they would meet the government's objectives." TET at 11. Further, in response to a

request during the price realism analysis, the TET specifically confirmed that AQA proposed a staff that was consistent with its technical approach and that AQA could perform the contract with the number of staff it proposed.

While SID asserts that a staff of 26 is not sufficient to perform the contract, it has not explained why, given AQA's specific technical approach, it will be unable to perform with a staff of 26. In this regard, SID has not pointed to any specific statement of work requirement for which AQA's proposed staffing was not sufficient. Further, we note that of the 11 offerors who responded to the RFP, 10 proposed a staff of between 14 and 28 personnel; only SID proposed more staffing. AR at 18. A protester's mere disagreement with the agency's conclusions does not demonstrate that an evaluation is unreasonable. Visual Connections, LLC, B-407625, Dec. 31, 2012, 2013 CPD ¶ 18 at 4 n.4. Here, SID's protest furnishes no basis to question the agency's determination that AQA can perform the solicitation requirements with a staff of 25.

The protest is denied.

Susan A. Poling
General Counsel