



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: AMEL Technologies, Inc.

File: B-412611

Date: April 1, 2016

Melek Yalcintas, Ph.D., AMEL Technologies, Inc., for the protester.
N. Harry Herrick, Esq., Department of the Navy, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

In a procurement for architect-engineering services, protest of the agency's evaluation of the protester's qualification statement is denied where the record demonstrates that the agency reasonably evaluated the protester's experience and technical competence consistent with the solicitation's selection criteria and the record does not support the protester's allegation of gender bias.

DECISION

AMEL Technologies, Inc., of Honolulu, Hawaii, protests the agency's evaluation of its qualification statement under synopsis No. N6274215R0002, issued by the Department of the Navy for architect-engineering (A/E) services. AMEL, which is an economically disadvantaged women-owned small business (EDWOSB), challenges the evaluation of its experience and technical competence, and alleges that the evaluation reflected gender bias against women architects and engineers.

We deny the protest.

BACKGROUND

The procurement, which was set aside for small businesses, was conducted pursuant to the Brooks Act, 40 U.S.C. §§ 1102-1104, and Federal Acquisition Regulation (FAR) subpart 36.6 for A/E services for geotechnical projects in various locations under the area of responsibility (AOR) of the Naval Facilities Engineering Command, Pacific (NAVFAC Pacific). Synopsis at 1, 4, 6. The synopsis provided for the award of an indefinite-delivery, indefinite-quantity contract for a base year

and two option years, and stated that fixed-price task orders would be issued for projects on an as-needed basis. Id. at 4; amend. 1 at 1.

Qualified firms were invited to submit Standard Form (SF) 330, A/E Qualifications Statements, which would be evaluated based on seven selection criteria, in descending order of importance: (1) professional qualifications; (2) specialized recent experience and technical competence of the prime firm and key personnel (hereinafter, experience and technical competence); (3) past performance; (4) capacity to accomplish the work in the required time; (5) quality control program; (6) location of the firm; and (7) volume of work previously awarded to the firm by the Department of Defense. Synopsis at 1-6; see FAR § 53.301-330, Architect-Engineer Qualifications. The synopsis included detailed submission requirements for each selection criterion, and stated that the A/E firm must demonstrate its qualifications for each criterion for all services. Synopsis at 1-6. Offerors were informed that the most highly-qualified firm would be selected for award. Id.

With regard to the experience and technical competence selection criterion (no. 2), relevant here, firms were to submit a maximum of five relevant projects completed within the past five years, and provide detailed descriptions of the A/E support services rendered for each project. Id. at 2. A/E firms and their proposed key personnel were to demonstrate specialized experience and technical competence conducting geotechnical investigations and consulting work related to earthwork, pavement, and foundation design, in support of a number of multi-discipline A/E services (discussed below) for projects in Hawaii, Guam, and tropical areas within the NAVFAC Pacific AOR. Id. at 2.

The Navy received four SF 330s, including from AMEL, which were evaluated by a slate/selection board (SSB). Agency Report (AR), Tab 10, SSB Mem., at 1-2. As relevant here, AMEL's SF 330 identified five experience and technical competence projects variously involving construction inspection services, geotechnical investigation for pavements and foundations, and hazardous waste disposal and handling. Id., Encl. 2, Slating Rationale, at 7; see AR, Tab 4, AMEL SF 330, Part 1, § F, Example Projects, at 34-48.

The SSB conducted an initial evaluation of SF 330s and rated them on a "meet" or "does not meet" (i.e., pass/fail) basis under each selection criteria. AR, Tab 10, SSB Mem., at 2-3. With regard to AMEL, its SF 330 was found to meet all but the experience and technical competence selection criterion. Id., Encl. 2, Slating Rationale, at 1. The SSB found that three of AMEL's projects (nos. 1, 3, and 5) involved only construction inspection services and were not relevant. See id. at 7-8. The board also found that AMEL presented a high risk to the government, because AMEL submitted only two relevant projects. Id. at 1.

Following the initial evaluation, the SSB identified the three most highly qualified firms to interview, to discuss their qualifications, including, again, AMEL. AR,

Tab 10, SSB Mem., at 3. During its interview, AMEL was advised that its projects and most of AMEL's proposed key personnel did not indicate much experience conducting geotechnical investigations and consulting work related to earthwork, pavement, and foundation design for any projects in Hawaii, Guam, and tropical areas within the NAVFAC Pacific AOR. See id., Encl. 3, Interview Questions, at 1. AMEL was asked to address this lack of experience during its interview. Id.

After conducting interviews, the SSB reevaluated the firms and ranked their SF 330s under each selection criteria and overall.¹ See AR, Tab 10, SSB Mem., at 3-6. AMEL was ranked third based, once again, on the SSB's finding that three of AMEL's projects involved construction inspection services that were not relevant and did not meet the experience and technical competence requirements under that selection criterion. AR, Tab 10, SSB Mem., at 5; Encl. 4, Selection & Ranking Rationale, at 3. The SSB also found that one of AMEL's two relevant projects (project no. 4, for hazardous waste handling and disposal) only involved supporting, i.e., secondary, work elements. See AR, Tab 10, SSB Mem., Encl. 4, Selection & Ranking Rationale, at 3. The board further found that during the interview, AMEL did not provide more project information indicating relevant experience conducting geotechnical investigations and consulting work. Id. The SSB concluded that AMEL had the least amount of relevant projects among the three firms, and recommended that the highest-ranked firm be invited to submit a fee proposal and begin negotiations with the agency.² Id.; AR, Tab 10, SSB Mem., at 6.

The Navy informed AMEL that it was not selected as the most qualified A/E firm to begin negotiations with the agency. AR, Tab 11, Non-Selection Letter. Following an oral debriefing, AMEL protested its non-selection to our Office.³

¹ AMEL was not represented by counsel who could obtain access to non-public information (such as the Navy's Selection Board Report) pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

² The SSB also ranked AMEL third under selection criteria no.1 (professional qualifications), because the board found that AMEL had the lowest number of licensed and geotechnical staff, and because AMEL did not provide more project information in that regard during its interview. See AR, Tab 10, SSB Mem., at 5; Encl. 4, Selection & Ranking Rationale, at 2.

³ AMEL does not protest the Navy's evaluation of the SF 330s submitted by the other two A/E firms.

DISCUSSION

AMEL challenges the evaluation of its specialized experience and technical competence, and alleges that the evaluation reflected gender bias against women architects and engineers. While our decision here does not specifically discuss every argument raised, we have considered all of AMEL's assertions and find that none furnishes a basis for sustaining the protest.

Specialized Experience & Technical Competence

AMEL argues that its SF 330 was not evaluated according to the solicitation's selection criteria and disputes the Navy's finding that three of AMEL's projects were not relevant to the experience and technical competence criterion. In this respect, AMEL cites other sections of its SF 330, such as its past performance surveys, and provides additional documentation that, according to the protester, shows that AMEL has relevant geotechnical and design experience.⁴ AMEL also insists that construction inspection services are required for any A/E project, and therefore the three disputed projects are in fact relevant. Regardless, AMEL argues that the synopsis did not require firms to submit a minimum number of projects to demonstrate experience and technical competence, and that AMEL should have been selected for negotiations and award, even if the agency only found two of AMEL's projects relevant.

The Navy asserts that it reasonably evaluated AMEL's experience and technical competence projects consistent with the selection criteria. According to the agency, the disputed projects involved construction inspection services that are not specified under the experience and technical competence criterion. To the extent the protester complains that the SSB did not consider information from other sections of AMEL's SF 330 in evaluating the relevance of those projects, the Navy points out that the solicitation required firms to provide detailed descriptions of the A/E services rendered for each project. The agency contends that, except for design-bid-build (DBB) experience under its project no. 2, AMEL did not demonstrate relevant experience with any other multi-discipline A/E service. In that regard,

⁴ For example, AMEL complains that the SSB did not consider a corresponding past performance survey for project no.1, which AMEL points out commented positively and highly rated AMEL's performance of various A/E services during the design phase of that project. Comments at 5, citing AR, Tab 4, AMEL SF 330, Part 1, § F, Example Projects, No.1, Past Performance Survey, at 36-37. AMEL also purports to provide "overwhelming evidence" (including a design drawing and a contemporaneous letter from AMEL's chief geotechnical engineer on that project recommending design changes) to dispute the Navy's assertion that project no. 1 only involved construction inspection services. Comments at 6.

the Navy argues that it reasonably concluded that AMEL's lack of specialized experienced presented a high risk.

In reviewing a protest of an agency's selection of a contractor for A/E services, our Office will not substitute its judgment for that of the agency evaluators. OLBN Architectural Serv., Inc., B-402444.4, B-402444.5, Oct. 4, 2010, 2011 CPD ¶ 55 at 3. Rather, the evaluation of offerors' qualifications statements is within the discretion of the agency, and our review examines whether the agency's selection was reasonable and in accordance with the published criteria. ARTEL, Inc., B-248478, Aug. 21, 1992, 92-2 CPD ¶ 120; James W. Hudson & Assocs., B-243277, July 5, 1991, 91-2 CPD ¶ 29; Ward/Hall Assocs. AIA, B-226714, June 17, 1987, 87-1 CPD ¶ 605. A protester's disagreement with the agency's evaluation, without more, does not show that it is unreasonable. Design Eng'g, Inc., B-408336.3, May 6, 2014, 2014 CPD ¶ 144 at 3.

The synopsis, as described above, stated that A/E firms must demonstrate their qualifications with respect to the seven selection criteria for all services. Synopsis at 1. The solicitation required firms to provide detailed descriptions of the A/E support services rendered for each project under the experience and technical competence selection criterion, which included:

conducting geotechnical investigations and consulting work relating to earthwork, pavement, and foundation design in support of multi-discipline architect-engineering services that include Military Construction project documentation (DD Form 1391), Functional Analysis and Concept Development (FACD), Design Charrette, and Request for Proposal (RFP) Design-Build (DB) and [DBB] solicitation documents for projects in the Hawaii, Guam, and tropical areas within the NAVFAC Pacific AOR. [S]upporting elements of work [include] environmental investigations; hazardous waste handling and disposal; and solid waste handling and disposal.

Id. at 2. The solicitation stated that projects located within the NAVFAC Pacific AOR would be evaluated more favorably, and that for DB RFP projects, familiarity with the NAVFAC 6-part DB RFP format, would be evaluated more favorably. Id.

We find, based on our review of the record, that the Navy evaluated AMEL's SF 330 consistent with these solicitation provisions. The contemporaneous record shows that in evaluating projects under the second selection criterion, the SSB considered an offeror's experience and technical competence with the various multi-discipline A/E services cited above. In our view, the SSB reasonably determined that AMEL's three disputed projects involved services that did not reflect the types of multi-discipline A/E services required to demonstrate an offeror's relevant experience and technical competence. Although AMEL disagrees with the SSB's evaluation findings, AMEL has not identified where, in its SF 330's descriptions of those

projects, services such as Military Construction project documentation, FACD, Design Charrette, or DB/DBB solicitation documents are included. In this regard, AMEL has not persuaded us that the SSB unreasonably determined that AMEL presented a high risk because it submitted only two relevant projects.

Moreover, we agree with the Navy that, contrary to the solicitation's instructions, AMEL did not provide detailed descriptions of the A/E services that it rendered for those projects. An A/E firm has the responsibility to submit a well-written qualifications statement, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency, and that contains all the information that was requested or necessary to demonstrate its capabilities in response to the solicitation. Electronic Interiors, Inc., B-405576, Nov. 18, 2011, 2011 CPD ¶ 267 at 3. In this regard, an offeror must affirmatively demonstrate the merits of its qualifications statement and risks the rejection of its SF 330 if it fails to do so. Id. Agencies are not required to infer information from an inadequately detailed proposal or information that the protester elected not to provide. See, e.g., Optimization Consulting, Inc., B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17.

For example, with regard to project no. 1, AMEL's SF 330 explicitly states that AMEL provided geotechnical engineering inspection services and testing, and describes the relevance of that project as follows: "RELEVANCY: AMEL can provide soil sampling, field tests, geotechnical laboratory testing, analysis, reports and related work[.]" AR, Tab 4, AMEL SF 330, Part 1, § F, Example Projects, No.1, at 35 (emphasis in original). The SF 330 highlights AMEL's provision of construction inspection, laboratory services, and field testing for that project, but identifies neither the design and engineering services that the protester now asserts it provided during that project (supra n.4), nor the multi-discipline A/E services cited above. Insofar as AMEL maintains that the Navy should have considered a past performance survey for that project in order to evaluate all of the services that AMEL provided, as the agency correctly points out, it was AMEL's responsibility to provide a detailed description that properly identified the services that AMEL wanted the agency to consider.⁵

Similarly, AMEL's SF 330 is at best ambiguous regarding the services it provided on project no. 5. Instead of providing a detailed description of the services rendered, as required by the solicitation, AMEL simply provided a list of five bullet

⁵ To the extent that AMEL submitted additional documentation during the course of its protest to demonstrate the types of services that AMEL provided for the disputed projects, those documents do not appear in the evaluation record and, significantly, AMEL fails to explain why its SF 330 did not describe those services in detail, as required by the solicitation.

points for project no. 5 that listed AMEL as the geotechnical engineer and conducting integrity testing, among other things. AR, Tab 4, AMEL SF 330, Part 1, § F, Example Projects, No. 5, at 47. The description (i.e., the list of bullet points) referenced an attached support letter from the project's prime contractor, who explicitly stated that AMEL was hired to provide construction inspection services. Id. at 47-48. Neither AMEL's bullet points, nor the prime contractor's letter, describe any of the multi-discipline A/E services above. See id.

Quite simply, the contemporaneous record here supports the Navy's conclusion that AMEL's limited experience and technical competence presented a high risk. Moreover, we find that the agency equally evaluated the submissions and reasonably found that AMEL had the least amount of relevant projects among the three A/E firms interviewed. For example, the record demonstrates, and AMEL does not dispute, that its projects did not demonstrate experience outside of Hawaii. By contrast, the other two firms demonstrated experience in Hawaii, as well as in Guam, which the SSB considered more favorably consistent with the solicitation terms cited above. AR, Tab 10, SSB Mem., Encl. 4, Selection & Ranking Rationale, at 2-3. Similarly, unlike AMEL, one of the higher ranked A/E firms demonstrated experience and competence with military construction project documentation and familiarity with NAVFAC 6-part DB RFP format, which the SSB also considered more favorably. Id. Accordingly, the protester has provided no basis on which to sustain the protest.

Gender Bias

AMEL alleges that its evaluation reflected bias against the firm because it is woman-owned. In that regard, AMEL submitted a number of reports and academic papers supporting the protester's arguments that women are discriminated in scientific fields such as architecture and engineering. See Protest at 3, citing, inter alia, Corinne A. Moss-Racusin et al., Science Faculty's Subtle Gender Biases Favor Male Students, 109 Proc. Nat'l Acad. of Sci. 41, 16474-79 (2012), available at www.pnas.org/content/109/41/16474 (last visited Mar. 31, 2016). AMEL also cites an alleged discrepancy on a previous Contractor Performance Assessment Report System report for a contract that AMEL performed for NAVFAC in 2011. AMEL claims that the discrepancy--between the project manager's higher evaluation ratings and the contracting officer's lower evaluation ratings--"proves beyond doubt" the agency's prejudicial evaluations and discrimination against AMEL. Comments at 16-17. AMEL also alleges that the agency was biased in favor of the awardee.

The Navy disputes that it is biased against AMEL and contends that the agency evaluated AMEL's qualification statement in good faith. In this respect, the Navy points out that AMEL was afforded the opportunity to clarify its project experience during its interview.

Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition; where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the successful firm, but must also show that this bias translated into action that unfairly affected the protester's competitive position. See McKissack-URS Partners, JV, B-406489.7, Jan. 9, 2013, 2013 CPD ¶ 25 at 7; IDG Architects, B-235487, B-235487.2, Sept. 18, 1989, 89-2 CPD ¶ 236 at 3 (GAO will not attribute bias in the evaluation of qualifications statement for A/E contract on the basis of inference or supposition about the ethnic composition of the evaluation panel). While we have no basis to dispute AMEL's assertion that women may be discriminated in the fields of architecture and engineering, the record here contains no evidence of wrongdoing or bad faith, and the mere assertion of bias by a disappointed A/E firm does not establish bias. Geographic Resource Solutions, B-260402, June 19, 1995, 95-1 CPD ¶ 278 at 4.

As described above, the Navy's evaluation of AMEL's SF 330 was fair and consistent with the solicitation's selection criteria. See, e.g., Information Network Sys., B-208009, Mar. 17, 1983, 83-1 CPD ¶ 272 at 17-18 (where the record shows that the evaluation of the protester's proposal was reasonable, we do not view the protester's examples of alleged past mistreatment against women-owned concerns as evidence of discrimination in the instant procurement). AMEL's arguments to the contrary reflect nothing more than the protester's disagreement with the Navy's evaluation judgments, which does not show that the evaluation was unreasonable or provide a basis to sustain its protest.⁶ Design Eng'g, Inc., supra.

The protest is denied.

Susan A. Poling
General Counsel

⁶ We dismiss AMEL's complaints concerning the debriefing it was provided by the Navy, including AMEL's allegation that the agency failed to inform AMEL that its qualification statement was evaluated as a high risk. See Protest at 2-3; see, e.g., Healthcare Tech. Solutions Int'l, B-299781, July 19, 2007, 2007 CPD ¶ 132 at 5 (GAO will not consider protest challenging agency debriefing because adequacy and conduct of debriefing is a procedural matter that does not involve the validity of contract award).