



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Food Services of America

File: B-276860

Date: July 28, 1997

Martin P. Willard, Esq., and Richard W. Oehler, Esq., Perkins Coie, for the protester. Lynne E. Georges, Esq., Defense Logistics Agency, for the agency. Susan McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation's relevant experience/past performance requirement is a definitive responsibility criterion is denied where the requirement was an evaluation factor, not a definitive responsibility criterion.
2. Protest that contracting agency's evaluation of awardee's proposal improperly considered the experience and past performance of the awardee's proposed subcontractors is denied where, given the proposed relationship of the firms, the strength of the experience cited, and the terms of the solicitation (which did not expressly prohibit consideration of the experience), there is no basis to conclude that the agency acted unreasonably in giving awardee credit for the combined experience.

DECISION

Food Services of America (FSA) protests the award of a contract to Sunshine Dairy Inc. under request for proposals (RFP) No. SPO300-96-R-M068, issued by the Defense Logistics Agency (DLA), Defense Personnel Support Center, Philadelphia, Pennsylvania, for the acquisition of full line food distribution services for various delivery sites at five installations in the Spokane, Washington area. The protester contends that the awardee failed to meet a mandatory definitive responsibility criterion of the RFP and that the agency improperly evaluated the awardee's proposal.¹

¹FSA also alleges that the agency's issuance of amendment No. 3, which eliminated various required food items from the solicitation, was an improper relaxation of solicitation requirements for Sunshine. FSA contends that the issuance of the amendment after the receipt of Sunshine's initial proposal (which failed to comply (continued...))

We deny the protest.

The RFP, issued on July 23, 1996, contemplated the award of an indefinite quantity contract to the offeror determined to have submitted the conforming offer most advantageous to the government. The RFP provided that in evaluating offers for award, technical quality was significantly more important than price. The RFP listed, in descending order of importance, the following six technical evaluation factors for award (with all subfactors being of equal importance): distribution/delivery system/location/site visits (for which the RFP provided five subfactors, including product sourcing); corporate experience (which included two subfactors--past performance/experience and organizational support); quality program; socioeconomic considerations; procurement/pricing plan; and DLA Mentoring Business Agreements (MBA) program (however, since no offeror provided an MBA plan, this factor was not applied in the evaluation for award). The RFP advised offerors that each technical proposal "must demonstrate the offeror's ability to meet the government's requirements as set forth in this solicitation." Regarding the technical evaluation factor for corporate experience, the RFP provided:

The Government will assess the offeror's performance record, as a regular dealer/prime vendor, in providing full line food service with similar food dollar/volume as required on this solicitation. This assessment will be applied to any entity performing on this contract, although experience provided that does not directly pertain to the offeror will not receive as much consideration.

The RFP's proposal submission instructions were tailored to each of the evaluation criteria listed in the solicitation and, basically mirroring the solicitation terms for evaluation of corporate experience, provided:

¹(...continued)

with some of those food item requirements) was improper and unfairly benefitted Sunshine's proposal's subsequent evaluation rating. The record shows, however, that these products were reasonably and legitimately eliminated from the RFP for all offerors. The elimination was justified, as the agency explains, since it involved either military-unique (Navy) items not required by any user serviced under the contract or the users' identification of approved alternate products, which alternates included items proposed by the protester and the other offerors in their initial proposals. Accordingly, the record shows that the issuance of the amendment was a proper action by the agency to better define its actual needs and thus provides no basis to challenge the award.

Offeror must show evidence of experience in providing full line food service as a prime vendor/regular dealer for customers with similar food dollar/volume requirements as those of this solicitation. . . . The offeror must also show that they and their parent corporation, partners, subcontractors, and the like who would be performing on the proposed contract have experience in handling the proposed number of customers upon which submitting a proposal. . . . Experience information provided that does not directly pertain to the commercial entity represented in this proposal will not receive as much consideration.

Proposals were received from three offerors--including FSA and Sunshine--and discussions were conducted. Best and final offers were received and evaluated. Sunshine's proposal offered both Sunshine's substantial vendor/dealer experience (in the dairy product market and as a retail grocer) and that of two proposed subcontractors, SuperValu Inc., a large national grocery provider, and Hathaway Meats Inc., a local meat distributor--both with extensive food service experience in the Spokane area. The proposal explained how the joint experience of the firms would benefit the agency and meet the corporate requirements of the RFP. The agency, in its evaluation of Sunshine's proposal, noted that Sunshine did not present evidence of its own full line food service experience, but concluded that together the proposed team possessed an acceptable level of corporate experience, as required by the RFP.

All three offerors' proposals were rated as acceptable overall; of the three proposals, Sunshine's was considered to be the highest rated technically. The third offeror submitted the lowest evaluated price [deleted].² FSA's proposal offered the highest cost [deleted]. In comparison to the awardee's proposal, the FSA proposal received the following [deleted] ratings: [deleted] under the evaluation factor for distribution/delivery/location/site visits (compared to the Sunshine proposal's rating of [deleted]); [deleted] under the evaluation factor for quality program (compared to the Sunshine proposal's rating of [deleted]); and [deleted] under the evaluation factor for procurement/pricing plan/rebates/discounts (compared to the Sunshine proposal's rating of [deleted]). The agency determined that the technically superior Sunshine proposal (at \$2,365,241.18) represented the overall best value to the government and awarded a contract to Sunshine on April 7. Subsequent to a debriefing held with the firm, FSA filed this protest.

²Since the third offeror's proposal is not relevant to FSA's protest contentions, it is not discussed further in this decision.

FSA first protests that the above-quoted RFP proposal submission instruction for each offeror to show evidence of experience in providing full line food service as a prime vendor/regular dealer is a mandatory definitive responsibility criterion which Sunshine cannot meet since Sunshine is primarily a dairy product vendor and has not performed full line food services, and that the firm was therefore ineligible for award. However, where, as here, responsibility-type factors such as experience are set forth as evaluation criteria in a negotiated procurement and are to be used by technical evaluators to make a comparative evaluation of the technical merits of each offer, we do not regard them as definitive responsibility criteria. Commercial Bldg. Serv., Inc., B-237865.2, B-237865.3, May 16, 1990, 90-1 CPD ¶ 473 at 5.³ In such cases, as with any other evaluation factor, an agency's assessment and scoring of experience must be reasonable and in accord with the RFP's evaluation scheme. Id.; Supreme Automation Corp.; Clay Bernard Sys. Int'l, B-224158, B-224158.2, Jan. 23, 1987, 87-1 CPD ¶ 83 at 8.

The protester also contends that the RFP mandated that the offeror itself (i.e., Sunshine) must show full line food service experience, without consideration of any proposed subcontractor's experience, because the proposal submission requirement references the term "offeror" regarding the need for a showing of full line food service experience. We do not read the RFP as restrictively as the protester, however, since the experience of a proposed subcontractor properly may be considered in determining whether an offeror meets an experience requirement in the solicitation where it is not expressly prohibited by the RFP.⁴ AeroVironment, Inc., B-233712, Apr. 3, 1989, 89-1 CPD ¶ 343 at 4. Here, despite the language cited by the protester, the RFP in no way expressly prohibited consideration of proposed

³In order to be a definitive responsibility criterion (a specific and objective standard, qualitative or quantitative, that is established by a contracting agency in a solicitation to measure an offeror's ability to perform a contract), the solicitation provision must reasonably inform offerors that they must demonstrate compliance with the standard as a precondition to receiving award. AT&T Corp., B-260447.4, Mar. 4, 1996, 96-1 CPD ¶ 200 at 5. The RFP did not do so here.

⁴Further, contrary to the protester's contention, a subcontractor's experience may be considered, unless expressly prohibited, even where the nature of the experience required is that of a prime contractor. See, e.g., Tutor-Saliba Corp., Perini Corp., Buckley & Co., Inc., and O&G Indus., Inc., A Joint Venture, B-255756, Mar. 29, 1994, 94-1 CPD ¶ 223 at 5.

subcontractors' experience in the evaluation of proposals. In fact, as quoted above, the RFP advised offerors that such experience may be considered, but that it will be given less weight in the evaluation than would be given to demonstrated experience attained by the commercial entity offeror itself.

FSA also states that it was improper for the agency to consider Sunshine's proposed subcontractors' experience without a firm commitment from those entities. Offerors need not possess written subcontracting agreements for subcontractors identified in their proposals prior to an agency's evaluation of the proposals. Commercial Bldg. Serv., Inc., *supra*, at 6; National Biomedical Research Found., B-208214, Sept. 23, 1983, 83-2 CPD ¶ 363 at 9. Here, the Sunshine proposal described both firms as proposed subcontractors of Sunshine and stated that Sunshine had discussed with each firm (and obtained agreement from each firm regarding) its supplier role in performing the contract, appropriate contact persons were provided for each proposed subcontractor, the firms are represented in the offeror's proposed organizational structure, and business information about these firms was included in the proposal. In our view, although the agency initially questioned the awardee about the terms of the relationship among the proposed firms, given the substantial role of these firms in the proposal, the proposal's showing of informed, substantial involvement by these subcontractors in Sunshine's proposed performance of the contract (confirmed through the agency's site visits), and the subcontractors' substantial food distribution service experience, it was reasonable for the agency to consider their experience as submitted.

FSA next contends that, even if the agency could consider the Sunshine team's combined experience under the RFP's terms, the evaluation was improper because the agency failed to give less weight to experience not attained by the offeror (Sunshine) itself, as required by the RFP's evaluation scheme. The agency evaluated the Sunshine proposal as acceptable for corporate experience (with ratings of acceptable for both subfactors, past performance/experience and organizational support). The evaluation record does not show whether Sunshine's proposal was specifically downgraded or given less weight for its offer of the combined experience of the firm and its subcontractors to show full line food service capabilities. However, as explained below, in evaluating full line food service capability, even giving less weight to the Sunshine suppliers' substantial experience, the rating of acceptable for the overall corporate experience factor is otherwise reasonable and supported by the record.

First, the past performance/experience subfactor in fact included three distinct areas of evaluation: assessing the offeror's experience in providing a full line food service as a prime vendor/regular dealer; the offeror's previous efforts toward prompt resolution of discrepancies and customer complaints; and certain experience/past performance data (such as years as a prime vendor/regular dealer, annual sales, number of customers, fill rates and number of items delivered). The record shows that for the last two of these areas, as stated in the RFP and evaluation plan, the evaluation was to be focused more generally on prime vendor/regular dealer experience (since the evaluation plan did not expressly require full line food service experience under the latter two areas, as was specifically required to be considered under the first of the three past performance/experience subfactor evaluation areas). In this regard, Sunshine's own substantial experience as a large volume regular vendor/dealer of dairy products and as a retail grocer (in conjunction with its subcontractors' substantial qualifications in these areas), is directly relevant and, we believe, otherwise supports the acceptable rating received for the past performance/experience subfactor.

Second, even assuming that the agency improperly failed to downgrade Sunshine's proposal under the subfactor for past performance/experience, the record shows that any such downgrade would have had no (or only a minor) effect on the proposal's overall corporate experience factor rating, given the strong organizational support presentation of the Sunshine proposal, whose evaluation under the other equally weighted subfactor of the corporate experience factor has not been challenged. Thus, the awardee's proposal would still reasonably support the overall rating of acceptable under the corporate experience factor. In sum, given the strength of the experience of each firm represented in the Sunshine proposal, which combined reasonably conveys full line food service capabilities, we find no basis in the record for concluding that the agency acted other than properly in crediting Sunshine's proposal with the experience of SuperValu and Hathaway, or for

concluding that the combined past performance/experience and the strong organizational support shown in the proposal warranted a rating of acceptable under the overall corporate experience evaluation factor.⁵ See Commercial Bldg. Serv., Inc., supra, at 5.

The protest is denied.

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⁵FSA also protests the evaluation of the Sunshine proposal under the product sourcing subfactor of the distribution/delivery system/location/site visits evaluation factor. We agree with the protester that the record appears to show that, in accordance with the criteria set forth in the evaluation plan for the evaluation of proposed product sourcing, the awardee's proposal should have received a rating of acceptable (rather than highly acceptable) for the subfactor, due to the finding that the offeror had failed to provide two of the "top items." Product sourcing, however, was only one of five equally weighted subfactors and the Sunshine proposal received higher ratings (of highly acceptable) than the FSA proposal did (where FSA's proposal was rated acceptable) under two of the remaining subfactors. Therefore, even correcting the apparently erroneous subfactor rating, the awardee's proposal remains technically superior to the FSA proposal under the most important overall technical evaluation factor for award (i.e., distribution/delivery system/location/site visits).