



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: ECG, Inc.

File: B-277738

Date: October 20, 1997

Robert E. Gregg, Esq., Hazel & Thomas, for the protester.

Gena E. Cadieux, Esq., and Joel P. Fuerstenberg, Esq., Department of Energy, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated technical proposals is denied where the record shows that the evaluation was reasonable and consistent with the stated evaluation factors.

DECISION

ECG, Inc. protests the award of a contract to Global Technologies, Inc. under request for proposals (RFP) No. DE-RP02-97EW40465, issued by the Department of Energy (DOE) for advisory services for the evaluation of environmental restoration activities. ECG challenges the propriety of the agency's evaluation of ECG's proposal and asserts that DOE failed to determine whether Global's proposed personnel were current employees as required by the solicitation.

We deny the protest.

The solicitation, issued February 13, 1997, stated that the government anticipated making multiple awards with at least one award going to a small business concern under the Small Business Administration's (SBA) section 8(a) Program.¹ The RFP contemplated the award of cost reimbursement, level-of-effort, task order contracts (with performance-based award fees) for a 1-year base period with four 1-year options. DOE anticipated that, in total, 133,920 labor-hours of effort (more than 70 full-time employees) would be required per year for all awards made. The successful offerors are to provide advisory support services requiring highly

¹The RFP provided that this small business concern must qualify under Standard Industrial Code (SIC) 8742, with average revenues of less than \$5,000,000 per year over the immediate past 3 years.

technical, scientific and professional personnel in science, engineering, program and budget analysis, cost estimation and validation, regulatory analysis, computer science and technical writing/editing.

The RFP provided for award to the offerors whose conforming proposals were determined to be most advantageous to the government and advised that DOE intended to award on the basis of initial offers without discussions. The RFP identified the following evaluation factors and subfactors, in descending order of importance:

1. Technical Capability
 - a. Personnel
 1. Project Manager
 2. Other Personnel
 - b. Past Performance
 - c. Corporate Experience
 - d. Technical Approach
 - e. Project Management
2. Business Management Capability
 - a. Compensation System
 - b. Transition Plan
3. Price

Offerors were advised that technical capability would be point scored and that business management capability would be adjectivally rated. Price proposals would be evaluated as to reasonableness and realism.

Seventeen written proposals, including those of ECG and Global, were received by the April 14, 1997, closing date. Each offeror submitted written capability information concerning its proposed project manager, other personnel, corporate experience, and past performance. Additionally, as required by the RFP, oral presentations concerning offerors' technical approach, project management approach, and business management capability took place between May 5 and May 20. The proposals were evaluated by a source evaluation panel, comprised of a technical evaluation team (TET), which reviewed the written capability statements and the business evaluation team (BET), which reviewed the financial capability information. The evaluation teams followed a detailed rating plan in reviewing and evaluating the proposals. Because DOE anticipated awarding at least one contract to an 8(a) concern, offers submitted by 8(a) concerns were rated separately from offers submitted by non-8(a) concerns. However, all evaluations were performed using the same evaluation criteria set forth in the solicitation.

Evaluators documented and discussed the strengths and weaknesses of each proposal and, in internal discussions, reached a consensus regarding final evaluation ratings. Based on the consensus, the evaluators rated each technical capability factor and subfactor using adjectival ratings and corresponding point values on a scale of 1 to 10 (10 for outstanding, 8 for above average, 5 for satisfactory, 3 for below average, and 1 for marginal). The numerical ratings were multiplied by the weight for the factors and the scores for each factor were totaled.² A proposal that received all outstanding ratings could receive a maximum point score of 1,000. Business management capability was adjectivally rated using the ratings of outstanding (O), satisfactory (S), and marginal (M). The agency also performed a cost review and analysis.

The source selection official determined that two non-8(a) concerns, Booz-Allen & Hamilton and Systematic Management Services, Inc. and one 8(a) concern, Global, represented the best value to the government. While ECG received a higher composite technical score than Global, the agency determined that this higher composite score reflected insignificant differences in technical capabilities and, therefore, award to ECG was not worth the associated significantly higher price.³ The technical ratings for the awardees' and protester's proposals were as follows:

8(a) Concerns

| | Project Manager | Other Pers. | Corp. Exper. | Past Perform. | Technical Approach | Project Mgmt. |
|--------|-----------------|-------------|--------------|---------------|--------------------|---------------|
| ECG | S ⁴ | AA | BA | S | S | AA |
| Global | BA | O | M | S | S | O |

²Personnel was weighted 30 percent of the technical capability evaluation. Within personnel, project manager and other personnel were each weighted 15 percent. Past performance and corporate experience were each weighted 25 percent and technical approach and project management were each weighted 10 percent.

³ECG's proposed price was 23 percent higher than Global's price.

⁴In the tables, "O" represents "outstanding," "AA" represents "above average," "S" represents "satisfactory," "BA" represents "below average," and "M" represents "marginal."

Non-8(a) Concerns

| | | | | | | |
|------------|----|---|----|----|----|---|
| Booz-Allen | AA | O | S | AA | AA | O |
| Systematic | S | O | BA | AA | S | O |

The composite technical scores, business management ratings and prices for the awardees' and the protester's proposals were as follows:

8(a) Concerns

| | Technical Score | Business Mgmt. Rating | Price |
|--------|-----------------|-----------------------|--------------|
| ECG | 547.75 | S | \$36,871,260 |
| Global | 523.25 | S | \$28,252,819 |

Non-8(a) Concerns

| | | | |
|------------|--------|---|--------------|
| Booz-Allen | 808.25 | S | \$37,555,624 |
| Systematic | 719.00 | O | \$29,519,661 |

On July 16, DOE notified ECG that it had not been selected for award and, after a debriefing, ECG protested to our Office.

ECG protests the agency's evaluation of its program manager, other personnel, corporate experience, and past performance⁵ and asserts that the agency failed to ascertain that Global proposed personnel who were currently employed by the firm, as required by the RFP, or to ascertain that Global could perform 50 percent of the work under the contract, as required by the SBA.

PROGRAM MANAGER

The RFP instructed offerors to submit detailed information concerning their proposed project managers. The RFP stated that the project manager would be evaluated on the basis of education, professional background, and work experience similar to the mission and activities of DOE's Office of Environmental Management as described in the scope of work (SOW). The project manager would also be evaluated on his/her commitment and availability to the project.

⁵While ECG states that it is protesting the awards to Booz-Allen, Systematic, and Global, the protester does not challenge any specific technical or managerial aspects of these proposals or the agency's evaluation of them.

As noted above, DOE prepared a rating plan (not included in the RFP) which established detailed objective standards for the evaluation of offers. For project managers, the rating plan set forth levels of experience and education necessary to obtain a "satisfactory" rating and an "outstanding" rating. To obtain an "outstanding" rating, a candidate had to (1) possess an advanced degree or multiple degrees; (2) have 8 or more years experience on multiple projects averaging \$8 million in expenditures per year; (3) have experience directly related to the mission and activities of DOE's Office of Environmental Management; (4) have experience managing the majority of tasks similar to those set forth in the SOW; and (5) have experience managing a technical/scientific staff of 70 or more individuals.

In its evaluation, the agency rated ECG's proposed project manager as "satisfactory," because he possessed a B.S. degree, had managed more than 100 staff with a multiplicity of skills/experience, and had managed a budget averaging \$40 million per year. DOE also found that the proposed project manager had experience managing projects similar to those in the SOW, which provided the candidate with relevant experience in budget analysis, environmental regulatory support, and engineering/scientific support. The agency summarized the candidate as possessing an adequate education and professional background with work experience on projects similar to the one at issue. The agency found no major weaknesses. At the debriefing, ECG states that it was told that its proposed project manager could not be rated "outstanding" because he did not have an advanced degree or directly related experience.

ECG argues that the agency miscalculated its proposed project manager and applied unstated evaluation criteria. Specifically, ECG contends that the solicitation gave no exact requirement for education or years of experience and that "[w]ork experience clearly can be as, or even more, valuable as an advanced degree." ECG argues that DOE's position that no amount of experience can substitute for an advanced or additional degree is irrational. ECG contends that because its proposed project manager had more than 35 years of experience, he should have been rated "outstanding." ECG also argues that it is irrational and inconsistent with the RFP for the agency to require that a proposed project manager meet all of the criteria listed for "maximum credit" to obtain an outstanding rating. Finally, the protester claims that its proposed project manager, contrary to the agency's assessment, has directly related experience and that this experience, coupled with the length of that experience, should have resulted in an "outstanding" or, at least, an "above average" rating.

The evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the evaluation to ensure that it was

reasonable and in accordance with stated evaluation criteria, and not in violation of procurement laws and regulations. Id.

The record does not indicate that the agency improperly evaluated ECG's proposed project manager or applied unstated evaluation criteria. As noted above, an agency has wide discretion in how it will structure its evaluation and our Office will not question an agency's evaluation so long as it is reasonable and follows the criteria outlined in the RFP. Pathology Assocs., Inc., 69 Comp. Gen. 269, 271 (1990), 90-1 CPD ¶ 292 at 3. Here, the RFP set forth the factors that it would use in evaluating an offeror's proposed project manager, including, as noted above, education, professional background and work experience. The agency rating plan merely set out specifics for the evaluators to use in assessing the strengths and weaknesses of each candidate relative to the stated factors by setting out educational levels and experience needed to obtain satisfactory or outstanding ratings. While the protester believes it is irrational to require candidates to meet all the criteria listed in order to obtain the highest rating and objects that the agency should have accepted years of experience in lieu of an advanced degree, nothing in the rating plan conflicts with the evaluation factors listed in the RFP and we do not find the agency's position irrational. Therefore, notwithstanding ECG's disagreement, we see no reason to object to the agency's methodology in this regard. ECG's assertion that its proposed project manager should have been rated outstanding is therefore without merit since he possessed neither an advanced degree nor multiple degrees.⁶

OTHER PERSONNEL

ECG next argues that DOE misevaluated its proposed other personnel. The RFP required that offerors provide, for each labor category identified in the RFP, the number and names of individuals the offeror's team currently employs, the educational degree possessed by each individual and the availability of these personnel during the first year of contract performance. The RFP advised that other personnel would be evaluated on the "overall depth of experience, balance of skills, and availability of the offeror's current staff" The rating plan established objective criteria for the various ratings and provided that to receive an "outstanding" rating, a proposal must not contain any weaknesses. A proposal with a minor weakness could receive a rating no higher than "above average."

⁶The agency has provided no explanation for its finding that ECG's proposed project manager's experience is only similar (rather than directly related) to that listed in the SOW. Our review of the candidate's experience suggests that the agency may have improperly downgraded ECG on this subfactor. However, we need not resolve this matter, since the assessment of this one position did not have a prejudicial impact on ECG. Even if ECG received an "above average" rating for its proposed project manager, the highest ECG's candidate can achieve, as discussed above, the additional 30 technical points would be inconsequential under the circumstances.

The TET's consensus evaluation stated that, while ECG employed a large, generally well-balanced technical/scientific staff, only 44 of the individuals proposed were available 100 percent of their time, 38 were available 50 percent of their time, and 52 were identified as being available on an "as needed" basis. DOE determined that the designation "as needed" was vague and did not adequately address the individual's availability over the first year of the contract and downgraded the protester's proposal on this factor. Because of this weakness, which the agency characterized as minor, ECG's proposal was rated "above average" on the other personnel subfactor.

ECG complains that there is nothing ambiguous about its use of the phrase "as needed." The protester states that it meant exactly what the phrase says--that these personnel will be available to work on the contract as a need arises, and argues that its proposal should not have been downgraded on this subfactor.

An offeror is responsible for submitting an adequately written proposal, and an offeror's mere disagreement with the agency's judgment concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. SC&A, Inc., B-270160.2, Apr. 10, 1996, 96-1 CPD ¶ 197 at 5. Here, the agency reasonably concluded that the protester's use of the term "as needed" lacked clarity and, therefore, ECG's proposal was properly downgraded. The RFP clearly stated that the offerors were to state the availability for each individual proposed, which does not envision, as the protester suggests, a vague general commitment, such as "as needed." In our view, the agency could reasonably have concern that such an imprecise commitment did not inform the agency of the availability or level of commitment of personnel so designated. We therefore find that DOE reasonably concluded that ECG had failed to provide all the information needed to receive the maximum score under this factor.

CORPORATE EXPERIENCE AND PAST PERFORMANCE

ECG protests that the agency's evaluation of corporate experience and past performance is inconsistent with the terms of the solicitation and, therefore, that the agency's best value determination is flawed.

The RFP specified that offerors would be evaluated on their work experience since January 1993, under existing and prior contracts of size, scope, and complexity similar to that described in the solicitation. The RFP also advised that offerors would be evaluated on programs or projects which demonstrated experience similar to the range of activities and mission of DOE's Office of Environmental Management, as outlined in the SOW.

Under the terms of the rating plan, an offeror would receive a "satisfactory" rating on corporate experience if it had performed one technical support project similar to the one at issue involving a technical/scientific staff of 30 individuals with

\$4 million in expenditures per year and had included such tasks as budget analysis, environmental regulatory support and scientific/engineering support. To be rated "outstanding," the firm had to have, among other things, experience managing a project with a staff of more than 70 individuals and average annual expenditures of \$8 million. Offerors lacking relevant performance history (i.e., offerors which had not performed on contracts similar in size, scope, or complexity) would be given a "neutral" rating and would receive one-half of the available points on the past performance criterion.

The agency determined that, although ECG had similar experience on one project, the project averaged only \$720,000 in annual expenditures and involved only 10 employees. Thus, ECG's experience was not judged similar in size, scope, or complexity to that described in the RFP. As to the protester's subcontractors, the agency determined that two of them did not have corporate experience on projects similar in size, scope, and complexity to that described in the RFP and one was determined to have above average corporate experience on a project that was similar in terms of size, scope, and complexity. Therefore, ECG's overall rating under past performance was judged to be "satisfactory."

The protester generally argues that the agency's evaluation of corporate experience and past performance was flawed. Specifically, the protester argues that, although DOE sought proposals from 8(a) firms with average annual revenues of only \$5 million over the immediate past 3 years, DOE penalized offerors that did not possess corporate experience on projects involving a technical/scientific staff of 30 and averaging \$4 million in annual expenditures. The protester claims that no 8(a) firm that satisfies the size standard could have more than one such contract. Moreover, based on the rating plan, an 8(a) firm could never obtain an "outstanding" rating. The protester contends that, because of the evaluation terms, an 8(a) firm would be awarded a contract only if there were multiple awards and, thus, an 8(a) firm would never be expected to perform the entire scope of the contract. Therefore, ECG argues that evaluating 8(a) firms on the basis of comparable prior experience "makes no sense." The protester complains that because offerors which were judged to have no relevant corporate experience, based on the size, scope, and complexity of prior contracts, would receive a "neutral" rating in past performance, the agency was, in effect, not evaluating the small business offerors on these factors.

As noted above, the agency is responsible for defining its needs and the best method of accommodating them. Loral Sys. Co., supra. Here, nothing in the records supports ECG's contention that the agency's evaluation was improper or inconsistent with the terms of the RFP. The rating plan merely provided objective guidelines for evaluators to use in evaluating the proposals and follows the RFP's evaluation criteria, which advised offerors that past performance would be evaluated on existing and prior contracts similar in size, scope, and complexity to the work outlined in the SOW. To the extent that ECG is asserting that 8(a) firms

should not have been evaluated under the same terms as non-8(a) firms, as provided for in the RFP, ECG's protest is untimely. Under our Bid Protest Regulations, a protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals must be filed prior to bid opening or the time set for receipt of initial proposals.⁷ Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1997).

In any event, as noted above, while the RFP stated that multiple awards were anticipated, there was no guarantee that more than one contract would be awarded under the solicitation. As a consequence, the agency determined to ensure that an offeror could perform the entire scope of work in the event that only one offeror was selected for award. Therefore, the agency established one set of evaluation standards designed to ensure that any awardee would possess a level of corporate experience sufficient to ensure effective performance of the entire scope of work.

This evaluation process reflects a reasonable concern that competing proposals be evaluated in light of the entire scope of the contract, while facilitating the participation of 8(a) concerns in the competition. Indeed, the standards adopted by DOE were not strict or restrictive. For example, while the offerors were advised that they would be evaluated on their past performance relative to the tasks outlined in the SOW, an offeror with experience in just three key tasks (budget analysis, environmental regulatory support, and scientific/engineering support) could be rated "satisfactory." Similarly, an offeror with experience on a single project with 40 individuals, far fewer than the agency's estimated requirement for the

⁷The protester argues that its protest of the agency's use of one set of evaluation criteria for both 8(a) and non-8(a) concerns is not untimely because it is the evaluation criteria specified in the rating plan rather than anything in the RFP that is improper. We find this argument unpersuasive. While it is true that the protester was not aware of all of the objective guidelines set forth in the rating plan until its debriefing, it knew or should have known from the RFP the anticipated size, scope, and complexity of the contract at issue (from, among other things, the size of the labor force needed and specified in the RFP and the 25 tasks listed in the SOW), and it knew, or should have known, that its past performance and corporate experience would be evaluated relative to these factors. The protester also knew that the procurement was not a set-aside, that it would be competing against non-8(a) concerns and, as noted above, that the RFP specified a single set of evaluation criteria for all offers. Thus, the RFP language placed the protester on notice of how the agency intended to evaluate past performance and corporate experience and, if the protester objected, it was required to do so prior to the closing time set for receipt of proposals.

contract at issue, could receive a "satisfactory" rating. Thus, we find nothing improper in the evaluation scheme employed by DOE.⁸

COMPLIANCE WITH THE 8(a) PROGRAM

ECG also argues that the RFP required DOE to determine if the employees listed by Global were current employees and if Global, as the prime contractor, could perform 50 percent of the work with its own employees, as required by the 8(a) program. The protester argues that Global did not indicate in its proposal which of the individuals listed were its employees and which were employees of its subcontractors. The protester also claims that Global cannot perform 50 percent of the work without hiring new personnel.

The protester is correct that Global did not indicate firm affiliation for each individual listed in its proposal; however, the RFP did not require such information. As noted above, the RFP required only that each offeror identify the individuals on its team, their educational degrees, and their availability during the first contract period. Global's proposal complied with this requirement. Moreover, there is nothing on the face of the Global proposal which suggests that it cannot or will not comply with the 8(a) requirement that its employees must perform 50 percent of the work under the contract. ECG's mere speculation that Global will not comply with such a requirement is unsupported and insufficient to form a valid basis for protest. Hornet Joint Venture, B-258430.3, B-258430.4, Feb. 22, 1995, 95-1 CPD ¶ 110 at 4.

Further, whether Global can comply with the limitations of subcontracting is a matter of responsibility which we will not review absent a showing of possible fraud, bad faith, or misapplication of definitive responsibility criteria on the part of

⁸The protester also alleges that DOE improperly failed to select non-8(a) firms from among all competing offerors. The agency responds that it did perform a best value determination among all offerors. The record is not clear about the mechanics of the comparison, but does clearly show that six non-8(a) firms were determined to have higher technical scores and comparable prices to the highest-ranked 8(a) concern. Consequently, no 8(a) concern was prejudiced by the evaluation that was employed. Since competitive prejudice is an essential element of every viable protest, and since the record establishes no reasonable possibility of prejudice, we deny this grounds of protest. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

contracting officials. 4 C.F.R. § 21.5(c); Corvac, Inc., B-254757, Jan. 11, 1994, 94-1 CPD ¶ 14 at 4-5. Whether Global in fact complies with subcontracting limitations when performing the contract is a matter of contract administration also not reviewable under our bid protest function. 4 C.F.R. § 21.5(a); Corvac, Inc., supra.

The protest is denied.

Comptroller General
of the United States