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Decision

Matter of: General Atomics

File: B-287348; B-287348.2

Date: June 11, 2001

Nancy O. Dix, Esq., and Matthew C. Bernstein, Esq., Gray Cary, for the protester.
Richard B. Oliver, Esq., McKenna & Cuneo, for Engineering & Software System Solutions, an intervenor.

John M. Hewins, Esq., and Thedlus L. Thompson, Esq., General Services Administration, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of evaluation of protester's proposal as equal, rather than superior, to awardee's for past performance is denied where (1) protester's proposal was reasonably downgraded for failure to include past performance information required by solicitation amendment, and (2) since awardee was a new company, agency could reasonably consider awardee's key personnel's experience in evaluating awardee's past performance.

DECISION

General Atomics (GA) protests the General Services Administration's (GSA) issuance of a task order to Engineering & Software System Solutions (ES3) under request for proposals (RFP) No. 01RT0447, for upgrades and enhancements to the Spare Parts Production and Reprocurement Support system (SPARES) at Hill Air Force Base (Hill AFB), Utah. GA challenges the evaluation of past performance and cost.

We deny the protest.

BACKGROUND

SPARES provides an integrated computer-based information management system that supports the acquisition of military aircraft replacement parts through digitizing of data which currently exists in paper format, implementing a computer-managed

workflow environment, and improving access to technical data, from both legacy and new data bases. See GA Technical Proposal at E-1; <<http://www.ga.com/atg/html/infosys.html>>. The contract for the original SPARES prototype was awarded to GA in 1990; in 1997, another contract was awarded to GA for further enhancements to the system (SPARES II). In June 2000, GSA issued a request for quotations (RFQ) for additional enhancements to SPARES (SPARES III); however, the task order subsequently issued to ES3 under its Federal Supply Schedule (FSS) Multiple Award Schedule contract was canceled in August 2000 when it was determined (after a protest by GA) that inclusion of hardware under the RFQ was beyond the scope of the FSS schedule that had been used. (Two subsequent RFPs for the same requirement also were canceled, the second after a protest from GA.) The current RFP, for SPARES III, was issued on January 12, 2001 to five FSS, Schedule 70, Information Technology (IT) Services, contract holders, and also was posted on GSA's IT Solutions Shop Internet web site.

The RFP contemplated issuance of a time-and-materials (level-of-effort) task order for a base year, with 2 option years, for the application of existing, proven information system technology for weapon system support and part procurement through the integrated management of the part technical data and activities which review, modify, and manage the technical data. The RFP included a detailed statement of work (SOW) describing: (1) tasks to be accomplished, including upgrades to the SPARES repository system and new repository applications, evaluation of alternatives to the current SPARES work flow, upgrading the work flow and implementation of specified new work flow applications, implementation of database improvements, integration of SPARES into the agency's new D203 procurement system software, and system maintenance and support; (2) the required approach to software development, upgrade and modification; and (3) the overall required knowledge and skills of contractor personnel.

The RFP specified the estimated number of hours for total contract performance as "within a range of 47,000 and 51,000 hours per year" (but did not list specific technical labor categories), and estimated the cost as "within the range of \$4,650,000 to \$4,950,000 per year" (not including the cost of software upgrades/maintenance and travel). RFP at 2. As amended (through amendment No. 02), the solicitation generally requested offerors to "[s]ubmit proposals in accordance with your GSA FSS IT Schedule"; it also specifically requested submission of "a technical proposal detailing your approach to this [SOW], identification of specific skills for each task to be accomplished in the SOW and a cost proposal that identifies the skill levels proposed, as contained in the Offeror's GSA [FSS]." Id. at 1. Offerors were further instructed--in amendment No. 03, dated January 31 but reportedly posted on the IT Solutions Shop web site on January 30--to submit certain past performance information. RFP amend. No. 03. The solicitation provided that award was to be made "in accordance with 'Best Value' criteria ([Federal Acquisition Regulation (FAR) subpart 8.4])," and specifically listed as evaluation criteria technical (to be evaluated on a go/no-go basis), past performance, and proposed cost. RFP at 1.

Four offerors submitted proposals by the February 15 closing time, three of which—including GA's and ES3's—were found technically acceptable and were rated acceptable for past performance. ES3's proposal was evaluated as offering the lowest cost to the government based on its proposal of [DELETED] labor hours at an average blended hourly rate of \$[DELETED], for a total evaluated cost of \$8,833,515 (including an assumed common cost of \$750,000 for other direct costs and travel). GA's proposal was evaluated as offering the highest cost to the government based on its proposal of [DELETED] labor hours at an average rate of \$[DELETED], for a total evaluated cost of \$[DELETED]. (The third proposal was second low, based on [DELETED] labor hours at an average rate of \$[DELETED], for a total of \$[DELETED].) Given its determination that the three proposals were equal with respect to the technical and past performance criteria, GSA concluded that ES3's low cost made its proposal the best value. Upon learning of the resulting award to ES3, GA filed this protest with our Office.

PAST PERFORMANCE

GA disputes the determination that its past performance was equal, rather than superior, to ES3's. According to the protester, the evaluation failed to account for its performance as the contractor for SPARES and SPARES II and the fact that ES3 had only recently been organized (in February 2000).

As noted above, amendment No. 03 required offerors to submit certain past performance information. This included the following: "a brief summary of their experience in performing similar work, to include the name of the project, point of contact (project manager, contracting officer), and telephone and facsimile number. In addition, include the name of your FSS contracting officer and telephone/facsimile number." In its proposal, ES3 furnished the name and contact information of its FSS IT Schedule contracting officer. In addition, although ES3 was founded only in February 2000, it listed six contracts, including: (1) an approximately \$[DELETED] contract to develop computer software to model the effects of large structural deformations from blasts, strikes and explosions; (2) an approximately \$[DELETED] contract to develop purchasing support software; (3) and (4) two contracts, totaling \$[DELETED], for educational testing software; (5) a \$[DELETED] contract for web page development; and (6) 8 days of performance under the previously awarded, but terminated (because the delivery order exceeded the scope of the contract) SPARES III order. GSA did not contact any of ES3's references, other than its FSS IT Schedule contracting officer, prior to award. It rated ES3 acceptable for past performance based on that contracting officer's statement that he was unaware of any negative past performance on the part of ES3, and his affirmative response to the question "Have they performed in a satisfactory manner, as far as you know?" Agency Report (AR), Tab 19, Documentation of Past Performance; Contracting Officer's Supplemental Statement (COSS), Apr. 30, 2001, at 3-8.

As for GA, its proposal discussed various aspects of the work GA performed under its SPARES and SPARES II contract efforts, referenced in staff resumes other projects the staff had worked on, and generally indicated that GA had “performed approximately 1,000 Government contracts.” GA Technical Proposal at E-2. However, GA’s proposal did not include a past performance section or describe and list the contact information required by amendment No. 03 for any additional contracts it considered relevant, and also did not include the required specific contact information for its prior SPARES performance or the name of its FSS IT Schedule contracting officer. The contracting officer reports that, due to the absence of this information, he was unable to verify GA’s performance under its FSS IT Schedule contract or the firm’s performance on SPARES prior to the time (July 2000) GSA assumed responsibility for the SPARES II contract. (The SPARES and SPARES II contract effort previously had been administered by personnel at Hill AFB.) He nevertheless rated GA’s past performance acceptable based on both the fact that GA had performed under the SPARES contracts for 8 years and his personal knowledge of GA’s recent performance on the SPARES II contract. In this regard, the contracting officer states that GSA became responsible for GA’s SPARES II contract effort in July 2000, and that he was aware of GA’s SPARES II performance for the period September 1, 2000 through January 15, 2001. According to the contracting officer, during that period he discussed GA’s performance with technical personnel at Hill AFB, and he was aware that, with the exception of a staffing problem during the Christmas season, remedied through the reassignment and hiring of additional staff, GA had been performing satisfactorily. At the same time, however, the contracting officer reports that he was unaware of any superior or outstanding performance on the part of GA which would merit a rating beyond acceptable. AR, Tab 19, Documentation of Past Performance; COSS, Apr. 30, 2001, at 5-7.

Evaluation of an offeror’s past performance is a matter within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. Green Valley Transp., Inc., B-285283, Aug. 9, 2000, 2000 CPD ¶ 133 at 4.

The past performance evaluation here was reasonable. Again, although GA referred in its proposal to its performance of the SPARES and SPARES II contract efforts and other contracts, it is undisputed that GA did not include the specific contact information required by amendment No. 03 with respect to performance on the SPARES contracts prior to GSA’s assumption of responsibility for SPARES II in July 2000 or with respect to performing any other contracts for work similar to that contemplated here. In this regard, where an offeror chooses not to provide the detailed past performance information required for a more favorable evaluation, its proposal reasonably may be downgraded because of it. See Infrared Techs. Corp., B-282912, Sept. 2, 1999, 99-2 CPD ¶ 41 at 5.

GA asserts that it was unaware of amendment No. 03 and the requirement imposed by that amendment to furnish past performance information. In this regard, GSA

reports that electronic solicitations and amendments such as used here are posted on GSA's IT Solutions Shop Internet web site; potential offerors registering for copies of the solicitation, as did GA, are automatically notified by e-mail when an amendment or additional information regarding a procurement is posted on the web site. According to GSA, amendment No. 03 was properly posted on the web site, as shown by GSA's records and the fact that the two other acceptable offerors referenced the amendment in their proposals. COSS, Apr. 30, 2001, at 2. GA maintains that it never received an e-mail announcing the amendment, and did not find the amendment when it checked the GSA web site after the date of the amendment.

While there is no definitive evidence of the protester's receipt of the amendment, we find the agency's position that the amendment was available to GA persuasive in light of the fact that the two other successful offerors referenced it in their proposals; it is not apparent how else these offerors would have learned of the amendment if not from the web site. Moreover, even if GA was unaware that amendment No. 03 requested past performance information, since the RFP provided that past performance would be evaluated, we do not think it was unreasonable for the agency to expect offerors to provide the contact information necessary to verify their past performance. In any case, GA has not shown that, had it been aware of the amendment, it would have furnished additional information establishing that it was entitled to a higher past performance rating. In this regard, GA's view that it was entitled to a higher rating is based on its 8-year status as the SPARES and SPARES II contractor. As noted above, however, the contracting officer reports that the information known to him concerning GA's performance after GSA assumed responsibility for the SPARES II contract in July 2000 indicated generally satisfactory performance, but not superior or outstanding performance such as would merit a rating beyond acceptable. COSS, Apr. 30, 2001, at 5-7. GA has furnished no information showing that its performance on the SPARES and SPARES II contracts in fact was superior or outstanding.

GA's argument also fails to account for the information furnished in ES3's proposal. In this regard, although ES3 was a relatively new company, as noted during the contemporaneous technical evaluation, ES3's proposed staff included individuals who had worked on the SPARES project since 1990, and whose experience in information technology services was directly relevant to the contemplated SPARES III effort. *Id.* at 8; AR, Tab 17, Technical Evaluation of Proposals for Client Order 01RT0447. For example, ES3 proposed as currently employed key personnel who would provide project management: (1) the prior contractor's program manager for SPARES from its inception in 1990 to May 2000 ([DELETED]) and (2) the prior contractor's program manager for SPARES from May to July 2000 (who also had worked on the SPARES program as a lead technical coordinator beginning in 1991). ES3 also proposed as lead software developer a current employee who had served as lead software developer for the SPARES II contract, and proposed as its system manager a current employee who had served as the senior SPARES system administrator for GA. (ES3 also proposed other staff and subcontractors with

experience performing on the SPARES contracts.) In addition, ES3's chief financial officer ([DELETED]) was the GA contract administrator for the SPARES contracts for 4 years (1996-2000). ES3 Technical Proposal at 104-118; ES3 Comments, Apr. 30, 2001, at 3, Declaration of ES3 [DELETED], and Declaration of ES3 Chief Financial Officer. An agency properly may consider the experience of supervisory personnel in evaluating the experience of a new business. See Technical Resources, Inc., B-253506, Sept. 15, 1993, 93-2 CPD ¶ 176 at 5; see also FAR § 15.305(a)(2)(iii) (past performance evaluation should take into account information regarding key personnel who have relevant experience when such information is relevant to the acquisition).¹ We conclude that there is no basis to object to the agency's determination not to rate GA as superior with respect to past performance.

COST/PRICE EVALUATION

GA challenges the agency's cost/price evaluation. In this regard, each of the offerors proposed a different mix and total number of labor hours. While ES3's total labor hours ([DELETED]) were within the RFP estimate (141,000 to 153,000 hours), and the third acceptable offeror's hours ([DELETED]) were only slightly below the estimate, GA's hours ([DELETED]) were substantially in excess of the estimate. GSA accepted each offeror's proposed price, based upon their particular proposed total labor hours and labor mix, for purposes of the source selection decision, AR, Tab 20, Best Value Evaluation Report for GSA Project No. 01RT0447, recognizing that it would have been improper not to "recognize the unique approach which includes specific skills for each task to be accomplished and the total number of labor hours required to accomplish the Statement of Work as envisioned by each offeror and as required by the RFP." Agency Comments, May 3, 2001, at 5.

GA asserts that GSA should not have accepted ES3's proposed labor rates because, according to the protester, those rates were lower than ES3's FSS schedule rates, and were below cost. GA further asserts that, instead of basing its evaluation on each offeror's proposed labor mix and number of hours, the agency should have "[multiplied] each offeror's proposed fixed hourly labor rates for all labor categories

¹ Further, although GSA did not contact the references listed by ES3 in its proposal prior to award, the record indicates that, had the agency done so, it would have received a favorable evaluation of ES3's performance. In this regard, when the agency contacted the representatives after award, the four references from whom it obtained an evaluation furnished very favorable responses. For example, with respect to the ES3's largest contract, for software modeling of structural deformations, the reference reported that they were "extremely happy" with ES3's performance, and that the firm had been "very responsive," providing "tremendous support" and performing "on time and on budget." COSS, Apr. 30, 2001, at 4, attach. D. With respect to the second largest contract, for developing purchasing support software, the reference reported that ES3 was a "good company" that had performed "excellent work," and had been "on time" and "within budget." Id.

by the agency's estimate of the required hours necessary to perform the contract." GA Comments, Apr. 30, 2001, at 2. According to GA, using 141,000 total hours (the low end of the solicitation estimate), this calculation yields a total evaluated cost (not including \$750,000 in assumed other direct costs and travel costs specified by the solicitation) of \$[DELETED] for GA and \$[DELETED] for ES3. Id. at 3.

GA's arguments do not provide a basis for questioning the evaluation or award. GA has pointed to no applicable procurement statute or regulation that requires the agency to reject a firm's rates because they were below the firm's FSS rates or even below cost. Further, where, as here, a solicitation provides for the award of a time-and-materials contract with fixed-price burdened labor rates, there is no requirement that the agency assess the cost realism of the proposed rates in the absence of a solicitation provision requiring such analysis. See Enmax Corp., B-281965, May 12, 1999, 99-1 CPD ¶ 102 at 9; Research Analysis and Maintenance, Inc., B-272261, B-272261.2, Sept. 18, 1996, 96-2 CPD ¶ 131 at 10; SYS, B-258700, Jan. 31, 1995, 95-1 CPD ¶ 57 at 5. Here, the solicitation did not provide for evaluating the realism of the proposed labor rates to ensure that they were not below the cost of furnishing qualified staff, and GSA thus was not required to undertake such an analysis. As for GA's argument that the agency should have used a normalized number of hours for all firms, the argument is without merit for two reasons. First, it ignores the potential for differing numbers of hours based on the firms' different technical approaches. Second, even if a normalized number of hours were used, ES3's proposal would remain low, because GA's proposed labor rates were significantly higher than ES3's. This being the case, since the agency determined that the proposals were technically equal, ES3 would remain in line for the award.²

The protest is denied.

Anthony H. Gamboa
General Counsel

² GA asserts that ES3's contract lacked a ceiling price, as required where, as here, a time-and-materials contract is to be awarded. See FAR § 16.601(c). The RFP specifically provided, however, that "[t]he Government will not be obligated to reimburse the contractor in excess of the amount allotted to the contract," and that "[a]dditional allotments of funds will become available only by modifications to this task order." RFP, SOW § 4.31. We agree with the agency that this language, together with the fact that the delivery order issued to ES3 specified a base year price that corresponded to ES3's evaluated price, effectively established a ceiling price.