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United States General Accounting Office
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**Comptroller General
of the United States**

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Decision

Matter of: CETROM, Inc.

File: B-291106

Date: October 31, 2002

Matthew Pavlides, Esq., Miles & Stockbridge PC, for the protester.
Michael Colvin, Department of Health and Human Services, for the agency.
Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging contracting agency's evaluation of protester's proposal and exclusion of proposal from competitive range is denied where agency's evaluation and competitive range determination were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

CETROM, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) number 292-01-P(CL)-0316, issued by the National Institutes of Health (NIH) for minor construction, alteration, and rehabilitation of various NIH facilities in the Washington/Baltimore area. CETROM contends that NIH improperly evaluated its proposal.

We deny the protest.

The RFP, limited to 8(a) contractors, provided for award of multiple task-order contracts for construction services under a fixed-price, indefinite-delivery indefinite-quantity (ID/IQ) contract for a base year with 4 option years. The RFP contemplated that NIH would issue separate task orders for the work, ranging from \$25,001 to \$100,000 per task order, with a maximum dollar amount of \$150 million over the life of the contract. RFP § C.1.a.

Contract awards were to be made to the responsible offerors that provided the “most advantageous or best value” to the government, considering the following evaluation criteria:

- past performance
- technical/management factors
- price

RFP § M.2.a. Of these evaluation factors, past performance was equal in importance to the technical/management factors, and the two combined were “significantly more important” than price. The four technical/management factors—relevant project experience, management plan, subcontracting management capabilities, and financial/bonding capability—were of equal importance.

Both the past performance and relevant project experience factors specified that evaluators would consider the “extent to which the offeror has successfully completed similar type projects (including Federal, state, local and private)” Offerors were informed that they “shall be responsible” for ensuring that their past performance references completed past performance questionnaires and submitted these questionnaires to NIH for consideration. The RFP also stated that NIH “will consider” not only the information provided in the questionnaires, but also information obtained from other sources. Additionally, the RFP provided that the evaluation of past performance would be a “subjective assessment based on a consideration of all relevant facts and circumstances. . . . This is a matter of judgment.” RFP § M.3.

In response to the RFP, NIH received 25 proposals, including CETROM’s. A technical review committee examined the proposals with respect to the past performance and technical/management factors; the contracting officer reviewed the proposals with respect to the price factors. Agency Report (AR), Tab 4a, Evaluation Documents, at 1. Four proposals were rated as excellent from a technical/management/past performance standpoint, and 10 proposals were rated excellent from a price standpoint.¹ *Id.* at 3-7. CETROM was rated acceptable in both categories. *Id.* at 3. Based upon these ratings, the contracting officer made a competitive range decision, placing the four proposals with excellent technical ratings in the competitive range. *Id.* at 1. (Two of those proposals were rated excellent for price and two were rated acceptable for price. *Id.* at 4, 6, 7.) All other

¹ The prices requested were cost coefficients to be applied to the direct costs and indirect costs in determining the prices of task orders under the contracts. The offerors were also requested to respond applying these coefficients to various pricing exercises. RFP § B. In rating the price factor, various elements were considered, the most important of which was the proposed coefficients—the lower the coefficient, the higher the rating.

proposals, including CETROM's, were excluded from the competitive range. CETROM thereafter timely filed this protest.

CETROM objects to the exclusion of its proposal from the competitive range, arguing that its past performance and relevant project experience were misevaluated. Specifically, CETROM contends that NIH disregarded relevant performance information, letters of reference demonstrating its "exemplary" experience in performing similar contracts, and proposal information citing projects of a similar type. It also contends that NIH gave undue deference to the comments of a telephone reference not listed by CETROM concerning an ongoing construction project for NIH where CETROM alleges it has a claim pending.

In reviewing protests of allegedly improper evaluations, we will not reevaluate proposals, but instead will examine the record to determine whether the evaluators' judgments were reasonable and in accord with the stated evaluation criteria. GEC Avionics, Inc., B-250957, B-250957.2, Feb. 25, 1993, 93-2 CPD ¶ 24 at 5. Where a proposal was reasonably evaluated, the determination of whether to include it in the competitive range is principally a matter within the discretion of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. Our Office will review an agency's evaluation of proposals and determination to exclude a proposal from the competitive range for reasonableness and consistency with the evaluation criteria and language of the solicitation and applicable statutes and regulations. Novavax, Inc., B-286167, B-286167.2, Dec. 4, 2000, 2000 CPD ¶ 202 at 13. Here, we conclude that the evaluation of CETROM's proposal was reasonable and consistent with the solicitation, and that it was reasonably eliminated from the competitive range.²

The record shows that NIH conducted a thorough and reasoned review of both the past performance and relevant project experience factors. Consistent with the solicitation, NIH considered each of the four past performance questionnaires submitted and each of the six relevant projects identified by CETROM. It also considered outside references, as was contemplated by the RFP. NIH identified a number of strengths, a few weaknesses, and no deficiencies in CETROM's proposal for both the past performance and relevant experience evaluation factors, which contributed to an overall rating of acceptable. AR, Tab 4, Technical Analysis of Proposals, at 12.

With respect to past performance, NIH noted that each of the past performance references rated CETROM as excellent, but that the four listed projects did not involve laboratory, hospital, or animal facility work, the type of work required under

² Because the proposal was reasonably eliminated from the competitive range, no discussions were required. Federal Acquisition Regulation § 15.306; SOS Interpreting, Ltd., B-287505, June 12, 2001, 2001 CPD ¶ 104 at 12.

this RFP. Instead, CETROM's past performance references involved a design-build project for an Army conference center, a repair project of solar screens for NIH, and two office renovations involving private firms. Id. NIH also obtained a telephone evaluation from the project officer of an ongoing relevant contract that CETROM was performing at NIH. AR, Tab 4, Telephone Interview with Project Officer. This individual provided some criticisms of CETROM's performance (and rated it only [deleted] on a 10-point scale), but NIH noted this only as a weakness and not a deficiency in CETROM's past performance. AR, Tab 4, Technical Analysis of Proposals, at 12. NIH also considered CETROM's Construction Contractor Appraisal Support System (CCASS) ratings, which were "average." Id.

Based upon the record, NIH's evaluation of CETROM's past performance as acceptable was reasonable. The RFP highlighted the importance of similar laboratory, hospital, and animal experience, and cautioned offerors that NIH would consider outside sources of past performance information. The record does not support the contention that NIH gave undue deference to the telephone reference not listed by CETROM with which CETROM has a dispute.³ Even if this reference were not considered in the evaluation, the record would still, in our view, support an acceptable rating for the past performance factor.

With respect to relevant project experience, NIH noted CETROM's strength as a construction manager/project manager in hospital environments. However, NIH also

³ CETROM argues that this telephone source was biased against CETROM due to animosity in connection with cost claims on the contract. CETROM further contends that the information the source provided was inaccurate because the source was not forthcoming as to the nature of the ongoing dispute. Specifically, CETROM contends that the source dishonestly answered a question concerning whether litigation existed by stating only that a "potential claim" exists, and CETROM further contends that this allegedly false statement somehow "improperly altered" the evaluation of its past performance. There is no evidence in the record of misrepresentation or bias or, for that matter, that this statement had any impact on the evaluation. Nor is there any evidence that the statement is false, since the record before our Office does not establish the status of the claim (or potential claim). CETROM further alleges that a conflict of interest exists among the evaluators because this telephone source and two of the evaluators report to the same supervisor (who was not part of the evaluation team), and that this, too, tainted the evaluation of past performance. These allegations of bias and conflict of interest, however, do not rise above mere supposition and inference. Our Office will not attribute unfair or prejudicial motive to procurement officials on the basis of inference and supposition. Abt Assocs., Inc., B-253220.2, Oct. 6, 1993, 93-2 CPD ¶ 269 at 9. Absent strong evidence of bias, which does exist here, our Office will not sustain the protest on this ground. DSDJ, Inc., B-288438 et al., Oct. 24, 2001, 2002 CPD ¶ 50 at 9.

noted that CETROM appeared to have only minimal experience with ID/IQ contracts (such as that being competed here) or contracts of similar scope. AR, Tab 4, Technical Analysis of Proposals, at 12. Of the six projects that CETROM identified under this evaluation factor, only one was for a fixed-price contract; the rest were for time-and-material or cost-plus type contracts. Only one project involved laboratory settings; the other five involved renovations of office areas and public spaces.⁴ In four of the projects (including the only contract for laboratory renovations), CETROM subcontracted out the vast majority of the work (between 65 and 87 percent). Contracting Officer's Statement at 2-3; AR, Tab 2, CETROM's Technical Proposal, Relevant Project Experience. While CETROM provided letters of references for some of these jobs that did reflect (as CETROM contends) its "exemplary" performance on these projects, NIH nevertheless reasonably determined that CETROM's experience was not as relevant as other offerors' experience and that CETROM merited an overall technical rating of acceptable for this factor.⁵ AR, Tab 4, Technical Analysis of Proposals, at 12.

Based upon the record before us, we conclude that NIH's evaluation ratings and determination to exclude CETROM from the competitive range are reasonable and supported by the record. CETROM's recited examples of what it believes demonstrate relevant performance reflect nothing more than CETROM's disagreement with NIH's evaluation, which does not render it unreasonable. D S Inc., B-289676, Mar. 12, 2002, 2002 CPD ¶ 58 at 6.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ In its protest, CETROM references another project (an animal facilities project) that it did not list in the relevant project experience or past performance sections of its proposal, but mentioned elsewhere in its proposal. Under the circumstances, we do not believe that NIH was required to evaluate this project under these evaluation factors. RFP §§ L.14, M.3, M.4.

⁵ CETROM repeatedly argues that it should have been rated higher because its proposal "fully meets" the requirements of the RFP. However, by definition, an offeror's proposal that meets the requirements of the RFP is entitled to an "acceptable" rating and nothing more. AR, Tab 4a, Adjectival Ratings Definitions. That is the rating that CETROM received.