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Decision

Matter of: Eastern Colorado Builders, Inc.

File: B-291332

Date: December 19, 2002

Judith Ward Mattox, Esq., for the protester.

Clarence D. Long, III, Esq., Department of the Air Force, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of present/past performance is unobjectionable where the record establishes that the evaluation was reasonable and consistent with the stated evaluation factors; protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable.

DECISION

Eastern Colorado Builders, Inc. (ECBI) protests the award of a contract to Active Endeavors, Inc. (AEI) under request for proposals (RFP) No. FA22550-02-R-0005, issued by the Department of the Air Force for flooring, furniture, and protective coating services at Schriever Air Force Base, Colorado. ECBI challenges the agency's evaluation of its and AEI's present/past performance.

We deny the protest.

The RFP, issued May 1, 2002 as a small business set-aside, contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a base year, with 4 option years. The solicitation sought proposals for three functional areas--design, procurement, and installation of all types of office furniture; storage, inventory, installation and repair of different types of flooring; and protective coating maintenance services. Section M of the RFP listed three evaluation factors--price, technical proposal and present/past performance--and provided for award based on a performance/price tradeoff among technically acceptable proposals, with present/past performance being significantly more important than price. The present/past performance evaluation was to include an assessment of relevance of offerors' prior contracts; in making this assessment, the agency could consider an offeror's contracts in the aggregate. Offerors' present/past performance could be

very relevant (contract involved the magnitude of effort and complexities required under the RFP), relevant (less magnitude of effort and complexities, including most of what RFP required), semi-relevant (much less magnitude of effort and complexities, including some of what the RFP required), or not relevant. Additionally, as part of the present/past performance rating, proposals were to be assigned an overall confidence assessment focusing on three key performance parameters—quality of the service or product, contract compliance, and resource management.

Four proposals, including AEI's and ECBI's, were received by the June 10 closing time. Both firms' proposals were rated technically acceptable, and thus were also rated for present/past performance. AEI received an exceptional/high confidence present/past performance rating, while ECBI was rated only satisfactory/confidence. AEI's offered price was second low at \$9,558,756, and ECBI's was third low at \$10,128,919. One of the other two proposals was rated technically acceptable and very good/significant confidence for present/past performance, and was the lowest-priced, at \$9,417,739. The agency determined that AEI's higher present/past performance rating offset the low offeror's price advantage, and awarded the contract to AEI on September 5. Agency Report (AR), Tab 18, Proposal Evaluation Report, at 11-12, and Tab 34, Notice of Award, at 1.

ECBI alleges that the agency misevaluated the relevance of its prior contracts and that, as a result, its present/past performance rating was too low. Specifically, the protester notes that it provided present/past performance questionnaires concerning a painting contract (relevant to protective coatings), a flooring tile contract (relevant to flooring), and a renovation contract (relevant to rehab/retrofit work). Protester's Comments at 3. The protester concedes that it lacked direct experience concerning the furniture portion of this contract, but notes that its proposed subcontractor had this type of experience. Id. at 4.

The evaluation of 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. KRA Corp., B-278904, B-278904.5, Apr. 2, 1998, 98-1 CPD ¶ 147 at 7. Thus, in reviewing an agency's evaluation, we will not reevaluate proposals, but will examine the record to ensure that the evaluation was reasonable and in accordance with the stated evaluation criteria and applicable procurement laws and regulations. Id.

The evaluation here was unobjectionable. The agency rated each prior contract for relevance under seven different areas—furniture installation, carpet installation, painting, program management, storage and inventory, recency of the work (within 1 year) and dollar value (less or greater than \$1 million)—and then determined the overall relevance of each contract. ECBI submitted 4 present/past performance questionnaires covering its own performance, and 11 questionnaires covering its proposed subcontractor's (Office Scapes) performance. The agency determined that

two of ECBI's present/past contracts were very relevant, but that two were only semi-relevant. For the protester's subcontractor, the agency determined that one contract was very relevant, two were relevant, and the remaining eight were not relevant. Agency Report, Present/Past Performance Questionnaires and Consolidated Relevance Grid, Tab 17, at 108-112. In contrast, AEI submitted 13 present/past performance questionnaires; nine of these contracts were rated very relevant and four were rated relevant.¹ AR, Present/Past Performance Questionnaires and Consolidated Relevancy Grid, Tab 16, at 76-77. Based on ECBI's (and its subcontractor's) low number of relevant and very relevant prior contracts, the agency determined that only some of the protester's present/past performance related to the work to be performed, and that its present/past performance overall therefore was only semi-relevant. As a result, although ECBI and its subcontractor received primarily very good and exceptional ratings for the quality of their past performance, the agency assigned ECBI a present/past performance evaluation rating of satisfactory/confidence. Since AEI's relevance rating was high and its quality ratings also were high, it received a present/past performance evaluation rating of exceptional/high confidence.

We have examined the questionnaires and the agency's summary of its determinations and find that ECBI's evaluation is supported by the record. Specifically, the relevance rating forms show that the agency indeed found that ECBI and its proposed subcontractor lacked substantial past performance under most of the contracts rated for the two firms. We note that, while ECBI points to experience in painting, flooring tile, rehabilitation/retrofit and furniture work, the agency's relevance determination methodology took into account, not only those areas, but also program management, storage and inventory, recency of the work and dollar value. ECBI simply was found to have relatively few present/past contracts that involved work in the evaluated areas, and while the protester argues generally that the agency misevaluated the relevance of its past contracts, it does not point to any specific contract relevance rating that it believes is incorrect. Under these circumstances, we have no reason to object to the agency's determination that only some of the protester's present/past performance was relevant, and warranted a semi-relevant rating. This being the case, although ECBI and its subcontractor received very good and exceptional ratings for the quality of their past performance,

¹ Although we refer to only one relevant rating for each offeror, the record actually contains two relevance evaluation grids for both ECBI's subcontractor and AEI, presumably prepared by two different evaluators. In addition to the above results, on a second grid two of Office Scapes' contracts were rated relevant, four were rated semi-relevant and the others were rated not relevant. AR, Present/Past Performance Questionnaires and Consolidated Relevancy Grid, Tab 17, at 105-106 and 111-112. On AEI's second grid, 12 of its contracts were rated very relevant and one relevant. AR, Present/Past Performance Questionnaires and Consolidated Relevancy Grid, Tab 16, at 76-77 and 79-81.

we find nothing unreasonable in the agency's rating ECBI only satisfactory/confidence for present/past performance, to reflect its limited relevant experience.

The protester argues that the agency improperly evaluated AEI's present/past performance because the awardee "has not performed services on contracts of similar dollar magnitude," and because the agency ignored a default termination against AEI at Peterson Air Force Base. Protester's Supplemental Comments, Nov. 11, 2002, at 2.

In order to have standing to protest a federal procurement, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of, or the failure to award, a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2002). A protester is not an interested party where it would not be in line for contract award if its protest were sustained. Durocher Dock & Dredge/Black & Veatch, A Joint Venture, B-280853, Nov. 24, 1998, 98-2 CPD ¶ 149 at 8. As noted above, a third offeror received a higher present/past performance rating than ECBI and offered a lower price, and ECBI does not challenge this intervening offeror's evaluation. Thus, that offeror, not ECBI, would be in line for award if we found that the award to AEI were improper. Accordingly, ECBI is not an interested party to challenge AEI's evaluation. Id. at 8-9.

The protest is denied.

Anthony H. Gamboa
General Counsel