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United States General Accounting Office
Washington, DC 20548

Comptroller General
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Decision

Matter of: The Paintworks, Inc.

File: B-292982; B-292982.2

Date: December 23, 2003

James S. DelSordo, Esq., for the protester.

Maj. Lawrence M. Anderson, and Capt. Kenneth L. Hobbs, Department of the Air Force, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of evaluation of proposals is denied where record shows agency's evaluation was reasonable and consistent with the solicitation's evaluation factors and applicable procurement rules.

DECISION

The Paintworks, Inc. protests the award of a contract to Meneses & McFadden/Cartor/VHC Joint Venture (MMF) under request for proposals (RFP) No. F61040-03-R-0008, issued by the Department of the Air Force for a paint booth facility at Lajes Field, Azores, Portugal. Paintworks primarily contends that the agency unreasonably credited MMF with the experience and past performance of its subcontractor, Spray Systems, Inc.

We deny the protest.

The solicitation required installation of a paint booth facility (large enough for oversized vehicles) on a concrete slab. Award was to be made to the firm offering the best value to the agency in terms of technical capability (rated on a pass/fail basis), and a tradeoff between past/present performance and price (where performance and price were of equal importance). For the evaluation of past/present performance, offerors were to provide information about their relevant experience providing paint booths or similar work; either government or private industry references were to be provided for similar services performed within the past 5 years. Adjectival performance ratings were to be assigned, ranging from unsatisfactory to exceptional; firms with limited or no recent performance experience were to be rated as neutral/unknown.

Shortly after the RFP was issued, Paintworks requested information from the agency about local subcontractors to possibly perform some of the work. In response, the agency issued a list of four local general construction contractors (including MMF) that had performed work at Lajes Field; the agency cautioned offerors that it did not endorse any of the firms, and that the list was made available only to assist offerors in locating local firms. Paintworks asked the agency if the listed firms were planning to submit their own proposals under the RFP. The agency responded that it did not know if any of the firms would do so. A site visit was held by the agency for prospective offerors. Paintworks personnel did not attend the site visit, but instead arranged for a representative from one of the local firms (not MMF) to attend on its behalf.

Four proposals were received and evaluated, and clarifications were conducted. Paintworks' proposal, at \$506,338, was rated as very good for past/present performance. MMF's proposal, at \$394,951.03, was also rated as very good for past/present performance. On September 24, an award was made to MMF, the firm deemed to have offered the best value to the agency. This protest followed.

Paintworks argues that MMF has no experience installing paint booths, and thus does not warrant a past/present performance rating of very good. In this regard, the protester acknowledges that MMF's subcontractor, Spray Systems, may have substantial experience manufacturing and installing paint booths. Paintworks argues, however, that the agency unreasonably credited MMF with the experience of its subcontractor, since the solicitation did not expressly provide for consideration of subcontractor experience and, in any event, while Spray Systems is manufacturing the paint booth, MMF plans to install it.¹

¹ In its protest, Paintworks also alleged that MMF has a conflict of interest, and should be disqualified from the competition, because it had submitted a subcontractor quote to Paintworks for concrete work. The agency reports that, upon learning of Paintworks' protest allegation, it investigated MMF's contacts with Paintworks and another offeror, and found no basis to disqualify MMF. Affidavits from MMF personnel attest that while an MMF quote for concrete work was submitted to Paintworks, the individual who prepared that quotation did not assist in the preparation of the MMF proposal or share any information about Paintworks with the individual who did prepare the MMF proposal. Although the protester generally alleges that the agency directed it to work with MMF, the protester provides no support for its contention; as noted above, the record also shows that all offerors were expressly advised that the identified local firms were not endorsed by the agency. Additionally, as the agency reports, Paintworks' proposed price for the concrete work was significantly lower than the amount MMF had quoted to Paintworks for the same work, indicating that the MMF quote apparently was disregarded by Paintworks. Finally, MMF personnel attest that Paintworks was

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In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria and applicable procurement statutes and regulations. See Rolf Jensen & Assocs., Inc., B-289475.2, B-289475.3, July 1, 2002, 2002 CPD ¶ 110 at 5. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Id.

The record here shows that in evaluating MMF's past/present performance, the agency gave MMF credit for Spray Systems' substantial experience in manufacturing and providing paint booths, for which Spray Systems received ratings of very good and exceptional from each of its references.² The experience of a proposed subcontractor properly may be considered in determining whether an offeror meets experience or past performance requirements where the solicitation does not expressly prohibit its consideration. See Federal Acquisition Regulation § 15.305(a)(2)(iii); Rolf Jensen & Assocs., Inc., supra, at 6. Given the absence of any prohibition in the RFP on consideration of a subcontractor's relevant experience, and in view of Spray Systems' positive references, it was reasonable for the agency to favorably consider Spray Systems' experience in evaluating the awardee's ability to perform the RFP's requirements.

As to the planned installation of the paint booth by MMF, the record shows that the agency knew of MMF's abilities to perform the various trade specialties needed to properly install the paint booth, based on MMF's prior work for the agency, which included relevant building, electrical, plumbing and fire suppression work. MMF's past/present performance surveys for the work showed ratings of at least very good for MMF's performance of each contract reviewed. In light of the RFP's provision for the agency's consideration of a firm's similar work in assessing the firm's ability to perform here, the similarities in the trade specialties in MMF's prior work to those required for installation of the paint booth, and the agency's knowledge of MMF's ability to manage and perform relevant work, the record provides no basis to

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informed of MMF's intention to submit its own proposal under the RFP, and the protester fails to refute this position. In short, our review of the record shows no basis to question the agency's consideration of MMF's proposal.

² To the extent Paintworks argues that Spray Systems' references should be discounted simply because they do not relate to government contracts, this argument is without merit, since the solicitation, as stated above, expressly provided for experience and references relating to either government or private industry contracts.

question the reasonableness of the agency's past/present performance rating of very good for MMF.

In sum, in light of MMF's substantially lower price and favorable past/present performance rating, which was equal to the protester's rating, we see no basis to question the agency's determination that MMF offered the best value to the agency.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ In its comments, Paintworks raised two supplemental issues challenging the acceptability of the awardee's proposal. Based on the agency's supplemental report on the issues, and the protester's failure to persuasively rebut the agency's position, we find that the allegations provide no basis to question the award. First, as to the protester's claim that the Spray Systems' exhaust fan will only operate at 50 Hz, the record is clear that during clarifications, MMF submitted an updated specification sheet from Spray Systems which confirms the firm's assurances that its exhaust fan will operate at both 50 and 60 Hz, as required by the RFP. Second, as to the protester's contention that the awardee took exception to the RFP's payment terms, our review of the record fails to support the contention. As the agency points out, MMF's acceptance of the required payment terms is demonstrated by the firm's acknowledgment of amendment No. 1, which incorporated the agency's payment terms (providing for invoicing for payment upon inspection and delivery at Lajes Field).