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United States Government Accountability Office
Washington, DC 20548

Comptroller General
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Decision

Matter of: SKE International, Inc.

File: B-311383; B-311383.2

Date: June 5, 2008

William F. Savarino, Esq., John J. O'Brien, Esq., and Bryan T. Bunting, Esq., Cohen Mohr LLP, for the protester.

Thomas Janczewski, Esq., and Mitchell W. Quick, Esq., Michael Best & Friedrich LLP, for All Star Services Corporation, an intervenor.

Jana Lynn Strait, Esq., U.S. Army Corps of Engineers, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluation of protester's technical proposal was unobjectionable where agency reasonably found weaknesses associated with firm's timeliness of performance because of minor schedule delays in connection with some prior contracts; corporate experience, based on limited information regarding task orders; and management approach, based on questions regarding organizational structure and limited job order contract experience of key personnel.

2. Agency reasonably evaluated awardee's past performance as very good notwithstanding some poor rating responses in limited areas of two Construction Contractor Appraisal Support System (CCASS) reports, where firm's rating was otherwise based on 5 past performance questionnaires and 11 other CCASS reports, all of which contained a significant majority of excellent, outstanding, and above average ratings.

DECISION

SKE, International Inc. protests the award of a contract to All Star Services Corporation (ASSC) under request for proposals (RFP) No. W912DQ-07-R-0040, issued by the U.S. Army Corps of Engineers for construction services at Fort Leavenworth, Kansas. SKE challenges the agency's technical evaluation.

We deny the protest.

The RFP sought proposals for sustainment, restoration, and modernization projects at Fort Leavenworth including, but not limited to, mechanical, electrical, or fire protection systems, concrete, asphalt, building renovation or demolition, interior remodeling, roofing, siding, windows, and doors, and work on infrastructure systems. The RFP contemplated the award of an indefinite-delivery/indefinite-quantity (ID/IQ) job order contract for a base year (up to a \$6 million ceiling), with four 1 year (up to \$6 million ceiling) options.

Proposals were to be evaluated for “best value” on the basis of four factors (with relevant subfactors)--(1) past performance (quality, customer satisfaction, and timeliness); (2) corporate experience; (3) management approach (organizational structure, plan for responding to/managing simultaneous task orders, and subcontractor management); and (4) price. Factor 1 was most important and its subfactors were of equal importance. Factors 2 and 3 were less important than factor 1, but were equally weighted and each subfactor under factor 3 was of equal importance. The non-price factors were rated on an adjectival basis (excellent, very good, satisfactory, marginal, and unacceptable). Price, which was less important than the technical factors, was determined based on the offerors’ proposed price coefficients.

Five offerors, including SKE and ASSC, submitted proposals. A source selection evaluation board (SSEB) evaluated the proposals (without conducting discussions) and reached the following consensus technical ratings for SKE and ASSC:

	SKE	ASSC
Factor 1: Past Performance		
Quality of Product or Service	Very Good	Very Good
Customer Satisfaction	Very Good	Very Good
Timeliness	Satisfactory	Very Good
Factor 2: Corporate Experience	Very Good	Very Good
Factor 3: Management Approach		
Organizational Structure	Satisfactory	Very Good
Plan for Simultaneous Work	Very Good	Very Good
Subcontractor Management	Very Good	Very Good

In evaluating the offerors’ prices, the agency compared the proposed coefficients to the average market value for the services; lower percentages were considered more advantageous. Using this method, the agency determined that SKE’s coefficient was 87 percent and ASSC’s was 95 percent of the average market value. Although ASSC proposed higher coefficients, the contracting officer, as source selection authority (SSA), found that the technical benefit offered by ASSC’s proposal outweighed any

benefit from SKE's lower prices. After receiving notice of the award and a debriefing, SKE filed this protest.¹

TECHNICAL EVALUATION

SKE's Proposal

SKE asserts that the evaluation was flawed because the agency improperly rated its proposal under each of the evaluation factors. The protester maintains that a proper evaluation would have resulted in its proposal being rated equal to or better than ASSC's, and that its proposal thus represented the best value for award.

In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11.

The evaluation here was unobjectionable. For example, under the timeliness subfactor (under the past performance factor), proposals were evaluated on the basis of responses to three questions on past performance questionnaires (PPQ) completed by each offeror's past performance references. RFP at 67. The only relevant question here was No. 19--"To what extent did the contractor meet the contract schedule?"² RFP at 58. Respondents were given the following options-- "[c]ompleted substantially ahead of schedule"; "[c]ompleted work on schedule with no time delays"; "[c]ompleted work on schedule, with minor delays under extenuating circumstances"; and "[e]xperienced significant delays without justification." Id. Before sending the PPQs to its references, SKE re-typed them, inadvertently changing the wording for the two middle choices to read-- "[c]ompleted work on schedule, with minor delays under" and "[c]ompleted work on schedule with no time delays extenuating circumstances." Protest at 6. Of the eight references for SKE, four responded that the firm had completed its work "substantially ahead of schedule" and four responded that it had completed its work

¹ SKE challenges the agency's award on numerous bases. We have considered them all and find that they have no merit or did not prejudice the protester. This decision addresses SKE's most significant arguments.

² The other questions concerned whether liquidated damages were assessed for work not completed on schedule and general remarks. All of SKE's projects were completed on time, and the only general remark relevant to timeliness was consistent with the reference's response to question No. 19.

“on schedule, with minor delays under.” Based on these responses, the SSEB evaluated SKE’s past performance as satisfactory under the timeliness subfactor.³

SKE asserts that its proposal should have been rated very good under the timeliness subfactor because of its four ahead-of-schedule ratings, the fact that the other four responses were marked in the second highest block on the PPQ, and the positive responses to question No. 17 concerning (in part) customer satisfaction with schedule. Consolidated Comments at 3-9.

SKE’s assertions are without merit. Under the agency’s source selection evaluation standards, to receive an excellent rating, an offeror’s past performance record required a few “ahead of schedule” responses, with the remainder under the “no time delays” category; a very good rating required a majority of responses in the “no time delays” category; and a satisfactory rating required most responses in the “no time delays” and “minor delays” categories. Agency Report (AR), Tab 11. The protester’s PPQs showed four projects completed ahead of schedule, and another four with minor delays. This array of responses did not meet the requirements under the above scheme for an excellent or a very good rating; the responses did meet the requirements for a satisfactory rating. Further, while SKE’s modified PPQ placed the “with minor delays” category in the second highest block—where the “no time delays” category was listed on the original form—there is nothing in the record to suggest that the references who chose this response disregarded the actual language on the form and intended instead to indicate “no time delays.” To the extent that references may have been confused—again, there is no evidence that this was the case—this was due, not to some improper action by the agency, but to the protester’s failure to accurately copy the PPQ. Finally, even though the same references who evaluated SKE as completing its work with minor delays also marked question No. 17 as “highly” or “exceptionally” satisfied with SKE’s schedule, there was no requirement that the agency consider those responses under the timeliness subfactor. In fact, under the terms of the RFP, only responses to question Nos. 19-21 were to be considered for the timeliness subfactor. RFP at 67. Question No. 17 was relevant

³ Because of its difficulty in evaluating the responses to SKE’s modified questionnaires, the SSEB first assigned SKE a neutral rating for this subfactor; since there was a record of SKE’s past performance, it is questionable whether this rating was appropriate. See Federal Acquisition Regulation § 15.305(a)(2)(iv) (a neutral rating is reserved for offerors without a record of relevant past performance or for which past performance information is not available). However, in preparing its consensus rating, the SSEB translated the neutral rating into a satisfactory rating, which was consistent with SKE’s combined timeliness record. Thus, SKE was not prejudiced by the initial neutral rating. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

only to the customer satisfaction subfactor and SKE's proposal received credit for the positive responses in the form of a very good rating for that subfactor. In any event, the references' satisfaction with SKE's completion schedule is not necessarily inconsistent with their recognition that SKE completed those schedules on time, with minor delays. Under these circumstances, there was nothing objectionable in the agency's rating SKE's past performance as satisfactory under the timeliness subfactor.⁴

As a second example, under the corporate experience factor, offerors' experience with constructing multiple vertical construction multi-discipline projects simultaneously was to be evaluated. RFP at 67. Offerors were instructed to provide complete, organized, and detailed information and were advised that those proposals providing additional relevant information that strengthened the overall proposal and added significant value to the government would be rated higher than those that did not. Id. In rating SKE's proposal very good, the SSEB found a strength in the fact that all 10 listed example ID/IQ contracts were job order-type contracts on military installations, which demonstrated extensive experience performing multiple simultaneous projects. However, the SSEB also found a weakness in the lack of detail regarding completion dates and results of the task orders under the project examples.

SKE asserts that this weakness was unwarranted—and that its proposal should have been rated excellent under this factor—because it provided detailed information for each of its 10 projects. We disagree. Since each overall example project submitted by SKE concerned an ID/IQ, job-order type contract, details of the task orders issued under the contracts were reasonably viewed as relevant to the firm's corporate experience; the agency thus could reasonably consider SKE's failure to provide more than a brief project description, order date, and amount, without providing task order results and completion dates, to be a proposal weakness. SKE claims that its failure to provide more detail on individual task orders was due to the agency's response to a presolicitation question. Specifically, the agency answered "yes" in response to a request that the agency confirm the offeror's understanding that the data and descriptions provided should be overall contract data, with each project profile identifying the task orders that fell within the dollar-size parameters in the RFP. Protest at 11. We fail to see how the agency's response was misleading. While the agency confirmed that offerors needed to identify the task orders, its response cannot reasonably be read as mandating a simple listing of task orders or as

⁴ SKE also asserts that the agency should have sought clarification from itself or its references. However, clarifications are not required in the context of an award without discussions. See AIA-Todini-Lotos, B-294337, Oct. 15, 2004, 2004 CPD ¶ 211 at 12. In any event, since the evaluation was consistent with the firm's past performance record, there is no possibility of prejudice from the agency's failure to seek clarifications from either it or its references.

otherwise limiting the information offerors were to provide in their proposals. Since the RFP specifically advised offerors that proposals providing additional detail would be rated higher, the SSEB reasonably assessed a weakness based on SKE's providing more limited information.

As a final example, under the organizational structure subfactor offerors were required to submit an organizational chart clearly identifying the management, design, and construction teams, key positions to be used in executing task orders, and the relationship among teams. RFP at 68. Offerors were also to identify minimum key positions, including a project manager (PM) and quality control manager (QCM), and the minimum educational, licensing, and/or experience requirements and resumes for proposed personnel. *Id.* In this regard, the PM was to have a minimum of 4 years experience supervising construction projects, and the QCM was to have a minimum of 5 years experience on construction similar to this project. RFP at 269, 01451A-4. The SSEB assigned SKE's proposal one strength—for key personnel meeting the RFP requirements and reflecting job order-type work—and two weaknesses—for failure of the organization chart to show to whom the QCM would report at the corporate level, and for failure of key personnel to have a greater amount of job order-type contract experience. SSEB Report at 9-10. SKE's proposal received a consensus rating of satisfactory under this subfactor.

SKE asserts that the assessed weaknesses and subfactor rating were improper because they reflected consideration of undisclosed evaluation factors—the RFP did not require that the QCM report directly to a corporate officer and its key personnel met or exceeded the RFP's requirements. Protest at 13-14.

This argument is without merit. The RFP called for the organizational chart to show the relationship between contract teams and the offeror's larger organization. RFP at 68. SKE's chart showed the QCM reporting to SKE International. However, it did not identify to whom or what office he would report. SKE Proposal at 56. We think the SSEB reasonably could view this as an omission of relevant organizational information and, thus, as a weakness. Likewise, we find nothing unreasonable in the SSEB's assignment of a weakness based on the QCM's limited job order contract experience. The record shows that SKE's proposed PM had more than the required 4 years of experience and had at least 6 years of job order-type contract experience, but the QCM only met the minimum 5-year experience requirement, and was identified as having less than 2 years of job order contract-related experience. SKE Proposal at 69, 74-75. Since the RFP specifically called for the QCM to have experience on "construction similar to this contract" (RFP at 01451A-4), the QCM's experience was a proper consideration under the evaluation scheme. In sum, while SKE met the RFP's requirements, the combination of the two weaknesses under this subfactor reasonably support the overall satisfactory rating under this evaluation subfactor. *See Lear Siegler Servs., Inc.*, B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 12-13.

ASSC's Proposal

SKE asserts that the agency improperly evaluated ASSC's past performance as superior to SKE's. Specifically, the protester maintains that ASSC's very good rating was undeserved, since the awardee's past performance record included some CCASS ratings of satisfactory, fair, and poor, while SKE's record contained no ratings of fair or satisfactory. Supplemental Protest at 19.

The agency's evaluation of ASSC's past performance was unobjectionable. The source selection evaluation standards defined the criteria that had to be met in order for an offeror to receive a rating of very good. Under the quality subfactor, an offeror's PPQ references had to reflect a majority of responses in the above average or excellent category on all questions, with a majority of CCASS ratings of very good and excellent. AR, Tab 11. Under the customer satisfaction subfactor, the majority of PPQ responses had to be highly satisfied or exceptionally satisfied with regard to quality, cost, and schedule, and a majority of the CCASS ratings had to be very good and excellent. Id. Under the timeliness subfactor, the majority of responses had to be in the work completed with no time delays category, and a majority of CCASS ratings had to be very good and excellent. Id. In evaluating ASSC's past performance as very good under each of these subfactors, the SSEB considered the firm's five PPQs and 13 CCASS reports, all of which reflected consistently high ratings, the majority of which were in the outstanding, excellent, and above average categories.

For example, with regard to quality, the PPQs reflected some 18 excellent and above average ratings, and only 1 average rating, while the CCASS ratings reflected more than 90 ratings of outstanding, excellent, and above average (very good) out of some 131 total responses. AR, Tabs 22 and 23. With regard to timeliness of performance, four PPQs rated ASSC as completing projects substantially ahead of schedule, and only one reported completion on schedule with minor delays. AR, Tab 22. Under this same category, the CCASS reports reflected some 52 responses of outstanding, excellent, and above average compared to some 34 responses of good, satisfactory, and fair. AR, Tab 23. While, as the protester notes, ASSC received some poor CCASS ratings, there were only 6 of them out of more than 400 total ratings. Supplemental AR at 3. These appeared in two CCASS reports—one in the area of quality, four in the area of effectiveness of management/business relations, and one in the area of compliance with labor standards. Id. All three past performance subfactors contemplated the presence of a few negative remarks or statements of dissatisfaction under the respective definitions of very good. AR, Tab 11. Thus, SSEB's overall evaluation of ASSC's past performance as very good under all three subfactors was in no way inconsistent with the few unfavorable remarks in the CCASS reports, and we find no basis for objecting to it.

In a related argument, SKE asserts that the evaluation was flawed because the SSA was not specifically apprised of ASSC's negative CCASS ratings. Consolidated

Comments at 21. In the protester's view, had the SSA "looked behind" the very good ratings, he would have concluded that SKE's past performance was superior to ASSC's. Id. This argument is without merit. The record shows that the SSA was clearly aware that ASSC's very good past performance rating was based on some satisfactory, good, and fair CCASS ratings. AR, Tab 15 at 9. While he was not specifically advised of each poor rating, in view of ASSC's otherwise superior PPQ and CCASS ratings, there simply is no reason to believe that awareness of those few isolated ratings (6 out of more than 400 total ratings) would have resulted in a different source selection. In this regard, as discussed above, SKE's proposal was reasonably evaluated as inferior to ASSC's under two subfactors, one of which--timeliness--fell under past performance, the most important of the non-price factors.

The protest is denied.

Gary L. Kepplinger
General Counsel