



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Ecompex, Inc.

File: B-292865.4; B-292865.5; B-292865.6

Date: June 18, 2004

J. Patrick McMahon, Esq., and William Welch, Esq., Barton, Baker, McMahon, Hildebrant & Tolle, for the protester.

Seth Binstock, Esq., and Catherine G. Powers, Esq., Social Security Administration, for the agency.

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

DIGEST

1. Allegation that agency unreasonably determined that protester lacked experience sufficiently similar to the work under the solicitation to qualify for award is denied where contract sought file maintenance services for a facility containing more than 4 million folders, and largest facility protester had maintained contained 125,000 folders; fact that proposed subcontractors possessed additional experience did not render agency's determination unreasonable, since solicitation required that offeror have sufficient experience of its own.

2. Agency reasonably attributed experience of affiliated companies to awardee where proposal demonstrated a significant nexus to the affiliates, including the proposed use of affiliates' experienced employees as key personnel, and statement that parent company would fully support the contract and that its financial resources would be available to awardee.

3. Allegation that agency improperly concluded that awardee would comply with solicitation's limitation on subcontracting is denied where awardee's proposal did not take express exception to the limitation, and firm assured agency that it understood and would comply with requirement.

DECISION

Ecompex, Inc. protests the award of a contract to Ahtna Enterprises Corporation (AEC) under request for proposals (RFP) No. SSA-RFP-03-0523, issued as a section 8(a) set-aside by the Social Security Administration (SSA) for clerical

support services at a file storage facility in Baltimore, Maryland. Ecomplex challenges the evaluation of the proposals.

We deny the protest.

The solicitation, issued on May 22, 2003, provided for award of a requirements contract for a 1-year base period, with 4 option years, for all tasks necessary to operate the agency's 4.7-million folder "Megasite" storage facility. Services to be performed under the contract included folder retrieval, refiling, validation, sequencing, and various other clerical and file management services. Award was to be made to the offeror whose proposal was determined to be the "best value" based on an evaluation under four factors: technical, experience, past performance, and price.

Under the experience factor, relevant here, offerors were to submit a narrative description of at least two prior contracts that demonstrated experience in performing work of similar complexity and size. Similar work was defined as including such things as management and operation of a centralized record storage facility for a major federal, state or commercial organization housing 3-5 million folders; management and operation of a major file storage facility requiring a staff of at least 150 people; and management and operation of a file storage area that requires a high volume of folder transfers offsite. RFP at 50.¹ Similarity would be rated as extremely similar, similar, or not similar. RFP at 51. The solicitation stated that experience of both the prime and any subcontractors would be considered, id., but also required that the offeror have "sufficient experience and resources of its own and is not relying solely on the subcontractor to provide the expertise and/or resources." RFP at 47. The technical factor was equal in importance to experience, while past performance and price were of lesser, but equal, weight.

Thirteen proposals were received by the July 1, 2003 closing date, and the technical evaluation committee determined that four of the proposals, including the protester's and AEC's, were technically acceptable, subject to further clarification.² Thereafter, one of the four remaining offerors was determined not to be a qualified 8(a) firm, and two others, including Ecomplex, were determined (after the agency sought further information) to have insufficient experience to qualify for award. Since the agency concluded that only one firm, AEC, had the required experience, it made

¹ The parties use the terms "file" and "folder" interchangeably in their submissions. For consistency, we use the term folder in this decision.

² One of the firms found to be technically unacceptable protested its technical evaluation to our Office. We denied the protest. Career Quest, Inc., B-292865, B-292865.2, Dec. 10, 2003, 2004 CPD ¶ 4.

award to that firm. Upon learning that its proposal had been rejected for lack of sufficient experience, Ecomplex filed this protest in our Office.

EVALUATION OF ECOMPLEX'S EXPERIENCE

Ecomplex principally argues that the agency unreasonably determined that it did not have sufficient experience of its own to qualify for award.

In reviewing a protest of an agency's proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Career Quest, Inc., *supra*, at 2; Atlantic Research Mktg. Sys., Inc., B-292743, Dec. 1, 2003, 2003 CPD ¶ 218 at 4-5.

The evaluation of Ecomplex's experience was unobjectionable. In its initial proposal, Ecomplex submitted information about two Department of Housing and Urban Development (HUD) contracts—one for management of all Ginnie Mae vital records and one for management of 45,000 folders of documents from the Office of Lender Activities—to demonstrate its similar experience (it also submitted information on three contracts performed by its proposed subcontractor). The agency determined that this experience appeared somewhat similar to the experience required for the Megasite facility and, consequently, included Ecomplex in the competitive range. Thereafter, by letter dated September 10, the agency sought further information, including “additional explanation of how the described work is comparable” to the work sought in the RFP. The letter also asked for the number of folders and staffing levels for the two HUD contracts. Agency Report, Tab 11, at 2. Ecomplex responded on September 16 with more detailed information about its HUD contracts and its subcontractor's contracts, and also provided information about a new contract Ecomplex began performing on July 9, for file management services at the Department of Interior. The more detailed information explained that, under its HUD/Ginnie Mae contract, Ecomplex had managed 2,500 boxes containing 125,000 folders with a staff that increased from [DELETED] to [DELETED] people in the first year; under its HUD/Office of Lender Activities contract, Ecomplex had managed 40,000 folders and had a staff that varied from [DELETED] to [DELETED] people; and under its newly awarded Interior contract Ecomplex was required to manage 60,000 boxes containing 2.5 million folders, with a staff of [DELETED] that was expected to grow to more than [DELETED]. Agency Report, Tab 13, at 3-5.

The agency reasonably determined that Ecomplex's experience was not sufficient because its HUD contracts were not similar in size, scope, or complexity to the current requirement. These contracts required file management services for only 125,000 and 40,000 folders, compared to the 3-5 million folders under the contract here, and required staffs of only [DELETED] people, compared to the 150 employees called for here. The dramatically greater number of folders to be managed under the contract to be awarded, as well as the substantially greater number of employees

needed to perform the contract, are sufficient, we think, to support the agency's finding that the HUD contracts were not similar to the one here, and thus did not constitute sufficient experience.³

Ecompex asserts that the agency should have considered its newly awarded Interior contract in determining the sufficiency of its experience. We find that the agency reasonably excluded this contract from the evaluation. First, performance of the contract began after the July 1 closing date, and was referenced by Ecompex for the first time in its response to the agency's clarification request concerning the HUD contracts; the new information could arguably be viewed as a proposal revision that is not permitted in response to a clarification request. See AHNTECH, Inc., B-293582, Apr. 13, 2004, 2004 CPD ¶ __ at 3; All Diesel Power, Inc., B-224453, Oct. 2, 1986, 86-2 CPD ¶ 386 at 2-3. In any case, given that the Interior contract still fell significantly short of the numerical measures of similar experience in the RFP--2.5 versus 3-5 million folders and [DELETED] versus 150 employees--the agency reasonably could accord this contract little or no weight in the evaluation, particularly given that the protester had been performing the contract for only a short time.

Ecompex maintains that, in assessing the firm's experience, the agency failed to accord due weight to the experience of its proposed subcontractors. The protester points out in this regard that RFP § I stated that "when evaluating contractor experience under this solicitation, the Government **will** consider the experience of both the prime and any proposed subcontractors." RFP at 51 (emphasis in original). However, notwithstanding this provision, as discussed, the agency determined that Ecompex failed to meet the separate requirement that it have sufficient experience of its own; the experience of Ecompex's proposed subcontractors was irrelevant to this determination.

EVALUATION OF AEC'S EXPERIENCE

Ecompex asserts that AEC has no experience in file management, and that the agency improperly attributed the experience of affiliated companies to AEC.

³ Ecompex argues that the agency improperly eliminated it from the competition based on a lack of "similar" experience, while the solicitation only required that the prime contractor have "sufficient" experience of its own. Ecompex contends that these are two different standards. We disagree. As discussed, the RFP's evaluation section provided for evaluating offerors' experience based on the degree of similarity to the current requirement. The RFP set forth no different standard for determining whether the prime contractor's own experience is sufficient, and there is no basis for assuming that the agency intended to focus on something other than similarity in making this determination.

An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. Id. at 5.

The evaluation of AEC's experience was unobjectionable. AEC's proposal showed that AEC is one of six subsidiaries that make up Ahtna, Inc. AEC Proposal, Vol. I, § 12. AEC proposed as key personnel experienced employees, familiar with large file management contracts, from two Ahtna, Inc. subsidiaries, Ahtna Development Corporation (ADC) and Ahtna Government Services Corporation (AGSC), both of which have managed large file storage facilities. AEC's proposal also included a letter from Ahtna, Inc. stating that it "fully backs" AEC's efforts to obtain the Megasite Clerical Support contract, id. at Vol. II, § 9.0, and also specifically stated that the financial resources of Ahtna, Inc., including lines of credit, operating capital, and performance bonding, would be used to complete the contract. Id. at Vol. I, § 2.1. Based on the affiliation of AEC with Ahtna, Inc. and its other subsidiaries, the subsidiaries' commitment of experienced personnel to perform this contract, and Ahtna, Inc.'s commitment of financial resources, the agency had a reasonable basis for attributing the experience of the affiliated companies to AEC in evaluating AEC's experience.

LIMITATION ON SUBCONTRACTING

Ecompex notes that an SSA auditor questioned whether AEC would comply with the Limitation on Subcontracting provision in the RFP (requiring that the prime contractor perform at least 51 percent of the work), RFP at 29, and asserts that it was unreasonable for the agency to rely on the awardee's assurance that it would comply with the limitation.

As a general matter, an agency's judgment as to whether a small business offeror will comply with the subcontracting limitation is a matter of responsibility, and the contractor's actual compliance with the provision is a matter of contract administration. Coffman Specialties, Inc., B-284546, B-284546.2, May 10, 2000, 2000 CPD ¶ 77 at 5. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror could not and would not comply with the subcontracting limitation, we have considered this to be a matter of the proposal's technical acceptability; a proposal that fails to conform to a material term and condition of the solicitation such as the subcontracting limitation, is unacceptable and may not form the basis for an award. Id.

There is nothing on the face of AEC's proposal indicating that the firm cannot and will not perform at least 51 percent of the work. After the SSA auditor expressed his concern that AEC could be performing less than 50 percent of the work, Agency Report, Auditor's Report, Tab 26, at 5, AEC assured the agency that it was aware of the subcontracting provision, that it intended to comply with the requirements, and that it would provide copies of its monitoring and tracking reports demonstrating that it will perform more than 51 percent of the work under the contract. Agency Report, Response to SSA Auditor's Questions, Tab 25, at 2. While the auditor advised the contracting officer that she could not confirm that AEC would perform at least 51 percent of the work, Agency Report, Auditor Report, Tab 30, at 2, the agency ultimately found these responses sufficient to establish that AEC understood the requirement and intended to comply with it. Given the absence from AEC's proposal of any express exception to the subcontracting limitation and the absence of any affirmative finding that AEC could or would not meet the requirement, we find no basis to question the agency's reliance on AEC's assurances in concluding that AEC agreed to perform as required.

The protest is denied.

Anthony H. Gamboa
General Counsel