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

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Decision

Matter of: Roca Management Education & Training, Inc.

File: B-293067

Date: January 15, 2004

Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.
Capt. Richard M. Sudder, Department of the Army, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably downgraded proposal that was reasonably found to contain an inadequate number of hours to accomplish the required tasks.
 2. Agency properly considered subcontractor's experience in evaluating an offeror's past performance where solicitation permitted the use of subcontractors and did not prohibit the consideration of relevant subcontractor experience.
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DECISION

Roca Management Education & Training, Inc. protests the award of a contract to Orion Technology, Inc. under request for proposals (RFP) No. DABJ23-03-R-0007, issued by the Department of the Army, for on-site truck driver instructor services. The protester challenges the agency's evaluation of its and the awardee's proposals.

We deny the protest.

The RFP, issued as a Historically Underutilized Business Zone (HUBZone) set-aside, provided for the award of a fixed-price contract for a 1-year period with four 1-year options, to provide on-site truck driver instructor services for motor transport operator and petroleum vehicle operator courses at Fort Leonard Wood, Missouri. The RFP required the contractor to plan and conduct classroom instruction and practical training, evaluate student performance, provide administrative support, and evaluate instructor's performance for quality control purposes. While the RFP stated that the contractor was to determine the number of employees necessary to meet the staffing requirements, it also provided that:

the Contractor shall provide eleven (11) man-year Full Time Equivalencies (FTEs) of instructor support. For purposes of this contract a man-year (FTE) is defined as 1848 hours of work effort (8 hrs. X 231 days).

RFP at 40. The RFP also provided that the project manager could, at the contractor's discretion, be a working instructor or an independent supervisor, but that "supervisory duties must not detract from performance of instructor duties." RFP amend. 1, at 2.

The RFP stated that award would be made to the offeror whose proposal was "most advantageous to the Government, price and other factors considered." Three technical factors were listed, in descending levels of importance: technical capability, quality control, and past performance. Price was said to be approximately equal in importance to the combined weight of the non-price factors. RFP at 9-10. The RFP provided that the agency intended to make award without discussions.

The agency received three proposals, including Orion's and Roca's, in response to the RFP. Orion's proposal included a subcontractor, Eagle Support Service Corporation, which was Orion's business mentor. Roca offered the lowest price of [DELETED]. Orion proposed a price of \$649,506. Roca's proposal received the lowest technical rating of the three proposals submitted.¹

The agency was concerned with Roca's proposal to utilize 1 of its 11 proposed instructors as the project manager, while proposing the exact minimum 20,328 hours of effort to perform the instructor services plus all of the required administrative duties.² The evaluators stated that this approach represented a risk that the agency would get "little or no quality control and administrative contract oversight, or in the alternative [would] not get eleven FTEs of instructor services." In contrast, Orion proposed a separate project/quality manager, who would also serve as a part-time instructor; Orion offered a total [DELETED] hours of effort. Agency Report, Tab N, Source Selection Decision, at 1-2.

The agency also considered Orion's instructor training plan, quality control plan and safety controls to be detailed and comprehensive, and superior to Roca's less specific plans, which the agency found to represent a "significant risk [to the] Government." In addition, the agency felt that Roca "would have a hard time fully

¹ The third proposal was significantly higher priced than Orion's.

² As noted, for the purposes of this contract, an FTE was defined as 1,848 hours of work effort. Roca proposed 11 FTEs. Therefore, the following calculation applies: 11 persons x 1,848 hours=20,328 total hours.

accomplishing the non-instructor tasks [such as quality control and safety controls] without additional staff to perform the non-instructor functions.” Id. at 2.

With regard to past performance, the agency found that Roca’s proposal lists its corporate experience as being in “WEB based” training, and did not indicate corporate experience in “doing hands on vehicle training.” In contrast, Orion’s proposal indicates that it is “currently conducting hand on vehicle training with military students at multiple locations.” Id.

Based on the foregoing, the agency determined that the proposal of Orion offered the best value to the government and made award to that firm. This protest followed.

Roca first contends that the agency improperly evaluated its technical proposal. 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. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. UNICCO Gov’t Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

Roca contends that the agency’s downgrading of its proposal because it proposed to have 1 of its 11 full-time instructors also act as the on-site project manager for the contract was unreasonable, and constituted an unstated evaluation factor, inasmuch as the RFP expressly permitted the project manager to be an instructor. Roca states that its proposed instructor/project manager would work “as many hours as necessary” in order to accomplish both the required instructor duties, as well as the on-site administrative duties. Roca’s Comments at 11.

As noted, Roca proposed 11 full-time instructors at the exact minimum of 20,328 hours of effort for instructor support, yet still had to perform administrative and quality control duties. While the RFP permitted a working instructor to be the project manager, the RFP also stated that, “supervisory duties must not detract from performance of instructor duties.” RFP amend. 1, at 2. The agency states that, even though administrative reports can be written after hours, other tasks, such as instructor observations for quality control purposes, and meetings with government personnel, must necessarily occur during ordinary working hours, when instruction duties may also have to be performed. The agency determined that it was unreasonable to conclude that a full-time instructor could fill in for an absent instructor and perform quality control evaluations and all associated administrative tasks. On this record, we find that the agency reasonably concluded that Roca “would have a hard time fully accomplishing the non-instructor tasks without

additional staff to perform the non-instructor functions.”³ Agency Report, Tab N, Source Selection Decision at 2.

The protester also argues that the agency should have communicated in discussions its unstated requirement that instructor duties be separated from management duties. We disagree. As stated above, there was no requirement, stated or unstated, that the management and instructor duties be separate. Instead, the agency was reasonably concerned that Roca failed to propose an adequate level of effort to cover the required instructor duties, as well as the associated administrative duties. There is generally no obligation that an agency conduct discussions where, as here, a solicitation specifically instructs offerors of the agency’s intent to award on the basis of initial proposals. Techseco, Inc., B-284949, June 19, 2000, 2000 CPD ¶ 105 at 4. Here, Roca has provided no valid basis to question the agency’s decision not to conduct discussions.

The protester next contends that Orion’s quality control plan and safety controls should not have been considered superior to Roca’s because they were prepared by Orion’s subcontractor, Eagle, for another contract. However, the RFP does not require the offeror to write its proposal without outside assistance. Our review confirms that Orion’s quality control plan was far more detailed than Roca’s, and contains many more scheduled and unscheduled quality control evaluations and spot corrections than Roca’s quality control plan. Thus, Orion’s proposal was reasonably determined to be superior to Roca’s.

The protester also complains that the agency misevaluated Orion’s proposal and improperly attributed the experience of Orion’s subcontractor to Orion. In this regard, Orion included no past performance references for itself in its proposal, and instead relied upon Eagle’s references. According to the protester, the RFP was explicit that the experience proffered must be the experience of the actual offeror, not other entities, noting that the proposal preparation instructions request the offerors to “[p]rovide a list of all contracts and subcontracts completed and/or work

³ The protester contends that the agency utilized only one evaluator to evaluate the proposals, and that this evaluator was “forceful” in his view that “a single person could not manage to both act as an instructor and a supervisory person.” Roca’s Protest at 9. The agency responds that two evaluators reviewed the proposals, and the record contains two sets of evaluation documents for each offeror, which reasonably support the evaluation. Agency Report, Tabs G and H, Evaluation Documents for Roca’s and Orion’s Proposals. To the extent that the protester’s argument implies that the particular evaluator was biased, the record provides no basis to support the speculation. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Starlight Corp., B-291520, Jan. 3, 2003, 2003 CPD ¶ 21 at 4 n.1.

experience that you have performed during the past three years.” RFP at 44 (emphasis added).

We see nothing improper in the Army’s approach here. Contrary to the protester’s assertion, an agency may consider an offerors subcontractor’s capabilities and experience under relevant evaluation factors where, as here, the RFP allows for the use of subcontractors and does not prohibit the consideration of a subcontractor’s experience in the evaluation of proposals. The Paintworks, Inc., B-292982, B-292982.2, Dec. 23, 2003, 2003 CPD ¶ __ at 3; Cleveland Telecommunications Corp., B-257294, Sept. 19, 1994, 94-2 CPD ¶ 105 at 5; see Federal Acquisition Regulation § 15.305(a)(2)(iii). In this case, Orion’s proposal documents Eagle’s very relevant, successful past performance and experience. Since Orion’s proposal indicated that it would heavily rely upon Eagle’s expertise, the agency could reasonably consider that Eagle’s past performance would be reasonably predictive of Orion’s performance under the contract. See The Paintworks, Inc., supra; MCS of Tampa, Inc., B-288271.5, Feb. 8, 2002, 2002 CPD ¶ 52 at 6.

Roca also contests its past performance evaluation. While it does not claim that the agency has inaccurately portrayed its proposal as evidencing corporate experience only in “WEB based” training, it asserts that the agency should have considered the “hands on” experience of the firm’s proposed key personnel and proposed instructors. Notwithstanding that FAR § 15.305(a)(2)(iii) permits an agency to consider relevant information based on the experience of proposed key personnel in evaluating an offeror’s past performance, nothing in Roca’s proposal documents any specific recent past performance experience by these individuals that would overcome the agency’s concern, based on Roca’s failure to show corporate experience in “hands on” training; under the circumstances, we have no reason to question the evaluation of Roca’s past performance based on the past performance of Roca’s key personnel. See Blue Rock Structures, Inc., B-287960.2, B-287960.3, Oct. 10, 2001, 2001 CPD ¶ 184 at 4.

Roca also complains that the agency failed to contact Roca’s references in evaluating its past performance. The agency acknowledges that it did not contact Roca’s references, but notes that the protester has failed to explain what relevant information the references could have added beyond the information already provided in its proposal’s past performance summaries. There is no legal requirement that all past performance references be included in a valid review of past performance. Kalman & Co., Inc., B-287442.2, March 21, 2002, 2002 CPD ¶ 63 at 9. For our Office to sustain a protest challenging the failure to obtain a reference’s assessment of past performance, a protester must show unusual factual circumstances that convert the failure to a significant inequity for the protester. MCS of Tampa, Inc., supra, at 5. No such showing has been made here.

The protester also contends that the agency, in evaluating proposals, failed to accord the stated 50 percent weight to price. The agency responds that it did accord price

the proper weight in the evaluation, but that Roca's lower price was "no bargain," because Roca's proposed level of effort was deemed insufficient to adequately cover the hours of instruction required by the RFP, as well as the associated administrative tasks. Agency's Supplemental Report at 3. Based on our review, we find that the agency's consideration of price was in accord with the RFP's evaluation scheme.

Finally, Roca claims that Orion's proposal, because of its reliance on Eagle, may violate the subcontracting limitation included in the RFP, which provides that "at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns." RFP at 21. As a general rule, 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 provisions is a matter of contract administration. 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, it may not form the basis for an award. See KIRA, Inc., B-287573.4, B-287573.5, Aug. 29, 2001, 2001 CPD ¶ 153 at 3. Here, not only did nothing in Orion's proposal evidence that it would not comply with this limitation, but, prior to making award, the agency expressly clarified with Orion its intent to so comply.

Based on our review, we find the agency's evaluation of Orion's proposal to be reasonable, and we find no basis to object to the award.

The protest is denied.

Anthony H. Gamboa
General Counsel