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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: Prudent Technologies, Inc.

File: B-297425

Date: January 5, 2006

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

Jud E. McNatt, Esq., Department of Housing and Urban Development, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the agency unreasonably found its proposal technically unacceptable is denied where the record shows that the proposal did not provide information requested by the solicitation, and that the evaluation was reasonable and consistent with the solicitation's stated evaluation scheme.

DECISION

Prudent Technologies, Inc. protests the award of a contract to Tidewater, Inc. by the Department of Housing and Urban Development (HUD) pursuant to request for proposals (RFP) No. R-ATL-01810, issued to procure lead evaluation services for single-family properties owned by HUD and located within specified geographic regions; the award at issue here is for lead evaluation services within HUD's Denver region. Prudent argues that HUD unreasonably concluded that Prudent's proposal was technically unacceptable.

We deny the protest.

BACKGROUND

The RFP was issued on July 27, 2005, and anticipated the award of up to four contracts for lead evaluation services, one for each of the four areas comprising the jurisdictions of HUD's Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana. The competition was limited to firms participating in the Small Business Administration's 8(a) program.

The RFP anticipated that four awards would be made—one for each geographic area—to the offerors submitting the lowest-priced, technically acceptable proposals for each area. RFP at M-2.¹ Offerors could propose to perform in one, or any combination, of the four areas. The RFP identified three evaluation factors: (1) certification; (2) experience and past performance; and (3) management plan. RFP at M-2; RFP amend. 2, at M-4. The evaluation scheme advised potential offerors that proposals must be rated acceptable under all three evaluation factors to be eligible for award. RFP at M-2.

Of relevance in this protest is the RFP's evaluation scheme under the experience and past performance factor. Under this factor, the RFP identified several requirements and requested that offerors provide specific information. For example, the RFP required that either the offeror, its proposed key personnel, or its proposed subcontractors “must have performed the same or similar services as required by the solicitation over approximately the last three years.” RFP at M-2. If an offeror wanted to meet this experience requirement with individuals not currently employed, or with other corporate entities with which it would subcontract, the RFP required the submission of commitment letters with the proposal. The RFP also required that offerors “identify all contracts, either ongoing or completed within the last three years, which demonstrate performance relevant to the solicitation requirements.” *Id.* Offerors with more than five relevant contracts were required to identify only the five most recent contracts where they performed these services. For each of these contracts, the RFP advised that

the Offeror must describe the type and quantity of service provided, the value of those services, the contract award date, the contract completion date, and the name and title, address, telephone number, fax number, and email address (if available) of a person familiar with the offeror's performance.

RFP at M-3.

Each of the three evaluation factors also identified a question, or questions, which the solicitation indicated had “to be answered in the affirmative, during proposal evaluation phase, in order for the offeror to be deemed acceptable for this factor.” See RFP at M-2 (for the question under the certification factor); RFP at M-3 (for the three questions under the experience and past performance factor); and RFP amend. 2, at M-4 (for the question under the management plan factor). Under the past performance and experience factor at issue here, the three questions identified were:

¹ The RFP here numbers pages serially within each section, and starts each section with page 1 (e.g., L-1, L-2...M-1, M-2); it also numbers paragraphs within each section (M.1, M.2...). The RFP citations in this decision are to the page numbers.

Has the offeror and/or its proposed key personnel and/or its proposed subcontractors (if applicable) provided the same or similar services required by the solicitation over approximately the last three years?

If the experience requirement is met by the experience of individuals or corporate entities not currently employed by or a part of the offeror, has the offeror submitted commitment letters for these individuals and/or corporate entities?

Did the reference checks clearly indicate that the offeror and/or its proposed key personnel and/or its proposed subcontractors (if applicable) have a successful record of providing quality customer service and timely performance?

RFP at M-3.

By the August 26 closing date, HUD received 29 proposals. A technical evaluation panel (TEP) reviewed and rated each of the proposals, and determined that 17 of the proposals, including the proposal submitted by Prudent, were technically unacceptable. The remaining 12 acceptable proposals were ranked by price in the area, or areas, for which the firm that submitted the proposal was seeking award. After the offerors submitting the lowest-priced acceptable proposal within each area were determined to be responsible, awards were made without clarifications or discussions. The firm receiving the award for the area covered by the Denver Homeownership Center was Tidewater, with a total evaluated price of \$17.4 million. Prudent's price for these services was \$10.6 million.

On October 5, HUD notified Prudent that its proposal had been found technically unacceptable, and that the agency intended to make award to Tidewater. On October 7, Prudent requested a debriefing, and on October 12, the agency provided the requested debriefing. This protest followed, on October 14.

DISCUSSION

Prudent argues that the agency conducted an unreasonable evaluation of its proposal, and improperly determined that the proposal was unacceptable. Among other things, Prudent contends that the evaluation team failed to recognize that Prudent met the requirements identified under the experience and past performance evaluation factor, despite the fact that its proposal did not present the information in the format required by the RFP.

HUD answers that Prudent's proposal was rated unacceptable under the experience and past performance factor because the evaluators concluded that neither the proposal narrative, nor the resumes of Prudent's key personnel, established that the company met the experience requirement of the RFP. Since neither the proposal nor

the key personnel resumes established the requisite experience, the evaluators did not contact the references identified in the proposal to determine how well Prudent performed on those contracts. HUD also concluded that the proposal did not show an understanding of the timeline, as required by the third evaluation factor, management plan. As a result of these deficiencies, the agency concluded that Prudent's proposal was unacceptable. We agree.

Our Office examines an agency's evaluation of experience and past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' past performance records are primarily matters within the contracting agency's discretion. Kay & Assocs., Inc., B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4. In this regard, our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

The record here shows that Prudent failed to follow the detailed instructions set forth in section M of the RFP requesting experience information and explaining how that information would be reviewed. As set forth above, the RFP required offerors to provide sufficient information to establish that the offeror (or its key personnel, or its subcontractors) had relevant ("same or similar") experience within the past 3 years; to make this showing, offerors were asked to identify up to five contracts for review by the agency. For these five contracts, offerors were to describe "the type and quantity of service provided, the value of those services, the contract award date, the contract completion date, and the name and title, address, telephone number, fax number, and email address (if available) of a person familiar with the offeror's performance." RFP at M-3.

Although Prudent's proposal broadly claims to meet the RFP's experience requirements in a brief two-paragraph discussion titled "Experience and Past Performance," Agency Report (AR), Tab 7, at 15, there is no place in its proposal where it provides the information requested by the RFP so that HUD evaluators could verify for themselves whether the company meets the experience requirement. Specifically, there is also no place in the proposal where Prudent identifies five contracts for review by the agency; there is no description of any kind about the work performed; and there is no indication of when the relevant work might have occurred. At best, the proposal identifies seven entities as references--two for Prudent, and five others, one for each of five subcontractors--and provides for each a point of contact, mailing address, and telephone number. AR, Tab 7, at 18-19. In our view, given the detailed instructions in section M of the solicitation about the information the agency needed to make its assessment, these omissions alone provide a reasonable basis for the agency to conclude that the proposal was unacceptable. See, e.g., Interstate Gen. Gov't Contractors, Inc., B-290137.2, June 21, 2002, 2002 CPD ¶ 105 at 5 (it is the responsibility of the offeror to provide sufficient

information about the projects in its proposal to ensure they will be assessed as relevant).

In its comments, Prudent argues, in essence, that the agency should have looked beyond the omission of information in its proposal narrative to other information located in numerous employee resumes to find that the company met the experience requirement. In this regard, Prudent complains that the agency unreasonably limited its review to the two individuals identified in the proposal as key personnel, rather than all of the personnel it proposed to use in performing this effort. (In fact, Prudent even contends that there was no requirement to identify key personnel in this procurement. See Protester's Comments at 9.) Ultimately, Prudent points to information spread across 15 different resumes that, in its view, establish its experience performing services similar to those being procured here. Protester's Comments at 9-11.

Prudent's arguments ignore--and in some instances misstate--the plain language of the RFP. As discussed above, the RFP allowed offerors to meet the experience requirement with their own experience, or with the experience of key personnel or subcontractors. RFP at M-2. After finding nothing in the proposal narrative to establish Prudent's experience, the evaluators assessed the experience of Prudent's key personnel, but did not review the experience of other Prudent personnel. Given the RFP's clear indication of how offerors would be permitted to meet the experience requirement here, we see nothing unreasonable about the agency's review of only the resumes of Prudent's key personnel, but not the other employees. Our review also finds nothing unreasonable about the evaluators' determination that the resumes of Prudent's key personnel did not establish that the company met the requirement that offerors demonstrate experience providing the same or similar services over the past 3 years.² In short, given the information not provided in Prudent's proposal--as well as the information that was provided, but did not establish that the company met the RFP's experience requirement--there is nothing in this record that suggests that the three questions identified in the solicitation for determining acceptability under the experience and past performance factor could properly have been answered in the affirmative for Prudent.

Finally, since we conclude that the agency reasonably found Prudent's proposal deficient under the experience and past performance evaluation factor, and since the RFP here advised that proposals must be rated acceptable under all three evaluation

² For the record, we find inexplicable Prudent's argument in its comments that there was no requirement in this RFP to identify key personnel. In fact: (1) the RFP required identification of key personnel at section I.8, on page I-5; (2) Prudent's proposal identified two key individuals, see AR, Tab 7, Part Two (Business Proposal) at I-5; and (3) the RFP permitted offerors to meet the experience requirement in section M with the experienced of committed key personnel. RFP at M-2.

factors to be eligible for award, RFP at M-2, we need not consider Prudent's challenges to HUD's conclusion that the proposal was also deficient under the management plan factor. James J. Flanagan Shipping Corp., B-286129, Nov. 27, 2000, 2001 CPD ¶ 156 at 4 n.2.

The protest is denied.

Anthony H. Gamboa
General Counsel