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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Aegis Defence Services Limited

File: B-400093.4; B-400093.5

Date: October 16, 2008

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., Mary Pat Gregory, Esq., Matthew Lloyd Haws, Esq., and Richard C. Johnson, Esq., Smith Pachter McWhorter PLC, for the protester.

David S. Black, Esq., Megan M. Mocho, Esq., and Jessica M. Madon, Esq., Holland & Knight LLP, for Global Strategies Group (Integrated Security), Inc., an intervenor.

Roderick McCracken, Esq., Robert J. McKenney, Esq., and Derek B. Santos, Esq., Department of the Army, Corps of Engineers, for the agency.

Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated awardee and protester under experience and past performance factors by downgrading protester based on its limited experience in Afghanistan, and by giving awardee credit for experience of its subcontractors, including contracts performed in Afghanistan, is denied where agency judgments were reasonable and consistent with terms of solicitation.
 2. Protest that agency improperly disregarded risk posed by awardee's low price is denied where record demonstrated that agency had compared individual fixed price line items to government estimate and to prices offered by competitors, identified those where there were significant differences, and documented the agency's basis for concluding that the awardee's prices were reasonable.
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DECISION

Aegis Defence Services Limited protests the award of a contract to Global Strategies Group (Integrated Security), Inc. (GSG-IS) by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W917PM-08-R-0030 for reconstruction security support services (RSSS) in Afghanistan. Aegis raises several objections to the evaluation, and alleges that GSG-IS is ineligible for award under the security clearance requirements of the RFP.

We deny the protest.

BACKGROUND

The Corps of Engineers issued the RFP on February 17, 2008, seeking proposals to provide “comprehensive security, operations and intelligence service to secure and account for AED [Afghanistan Engineer District] personnel and provide construction quality assurance activities,” including intelligence gathering and analysis, convoy transportation and security, site security, community liaison activities, local atmospherics, supply and maintenance of armored vehicles, establishment of a visual map-based satellite tracking system, establishment of a nationwide voice and text communication network, possible vetting of third-party employees, and “other items as required.”¹ RFP at 1, 13. The RFP also provided that the contractor would establish a national operations center to coordinate activities of the contractor’s security liaison teams (SLT)² countrywide. RFP at 16. The RFP contemplated award of a single indefinite-delivery indefinite-quantity (IDIQ) contract for a base year and two option years.³ RFP at 2. The evaluation was to be based on three equally-weighted factors: concept of support,⁴ experience, and past performance. The award would be made based on a tradeoff in which the non-price factors together were significantly more important than price. RFP amend. 1 at 86; RFP amend. 3 at 10.

Offerors were instructed to provide individual line item prices for SLTs and specific labor categories, in addition to a price for staffing and operating the national operations center. Offerors were also instructed to provide prices for individual shooters (who could be assigned to accompany SLTs), fixed-site security supervisors, fixed-site security guards, armored vehicles, and both fixed- and rotary-wing aircraft. Separate sub-lines requested each item or service be priced on a daily, weekly, and monthly basis. The RFP provided that the Corps would also evaluate the reasonableness of the prices offered. RFP at 93.

¹ The RFP stated that “the Government will negotiate non-prepriced items on a task order by task order basis.” RFP at 12. The RFP also provided for the costs of Defense Base Act insurance, and contractor manpower reporting to be unpriced and negotiated for each task order. RFP amend. 4 at 6, 9.

² Each SLT was a six-person team consisting of “one ex-patri[ate] team leader, one engineer, one medic, and three bi-lingual local nationals.” RFP at 4.

³ However, the RFP also stated that the “[o]ption periods can be exercised early to contract [for] large orders resulting in an overall contract period of less than three years.” RFP at 12.

⁴ The concept of support factor was further divided into five subfactors: technical approach, key personnel, daily operations, management methodology, and communications plan.

For purposes of the price evaluation, offerors were also required to calculate pricing for “Task Order 1,” which was intended to obtain services for the first year of performance. Task Order 1 provided for staffing the national operations center, and the services of eight SLTs, 32 shooters, 32 armored vehicles, 450 hours rotary aircraft service, satellite tracking for 35 vehicles, Defense Base Act insurance, annual contractor manpower reporting, and contractor travel within Afghanistan. RFP at 10-11.

Offerors were also required to provide information for up to ten contracts for evaluation under the experience and past performance factors. RFP amend. 1 at 33-34. The RFP provided for the Army to consider “relevancy” of those contracts thus:

Relevancy is determined by geographic location (proximity to AED’s [Afghanistan Engineer District] AO [Area of Operations]), managing multiple security-type tasks at once (NOC/intelligence, vehicles, mobile security, community liaising, QA [quality assurance] services, aircraft, static security, etc.), dollar value (\$15 million or more per year), work with the Government (showing understanding of federal contracting procedures). . . .

RFP at 92-93 (§§ M.6.2 (experience), M.6.3 (past performance)).

The RFP also indicated that a facilities security clearance was required. Specifically, the initial RFP referred offerors to an attached copy of DD Form 254, the standard form contract security classification specification. RFP at 36, 65, 95-96 (DD Form 254). In response to questions from offerors, the Corps provided inconsistent answers about the facility clearance requirement, but finally stated that “The contractor and any appropriate subcontractor(s) must hold a SECRET facility clearance . . . for the performance of this contract. Please note that [answers provided in earlier amendments] answered this question incorrectly.” RFP Amendment 3 at 14 (emphasis in original).

The Corps received 11 proposals. After evaluating the proposals, nine offerors’ proposals, including those of GSG-IS and Aegis, were included in the competitive range. The Corps conducted discussions, after which seven offerors submitted revised proposals. After a further round of discussions, the Corps requested and received final proposal revisions (FPR) from the seven remaining offerors.

In its proposal, GSG-IS proposed several subcontractors, including two companies with which it has corporate affiliations: [DELETED]⁵, and [DELETED]. The

⁵ The corporate designation “FZE” indicates an entity organized as a “free zone establishment” under the corporate law of Dubai, United Arab Emirates.

proposal explained that GSG-IS and [DELETED] possessed valid facility security clearances. GSG-IS Proposal, Apr. 11, 2008, vol. I at 3 (GSG-IS); GSG-IS Proposal, Mar. 18, 2008, vol. II at 2 ([DELETED]). However, as a Dubai-based entity, there is no dispute on this record that [DELETED] is unable to obtain a facility security clearance.

GSG-IS acknowledged in its proposal that it had been incorporated less than 1 year, and therefore, could not provide any past performance or experience references for itself; instead, it explained that it would rely on the experience and past performance of its affiliates and subcontractors. Therefore, it provided five experience and past performance references for [DELETED], two for [DELETED], two for its engineering consultant, and one for its aviation services subcontractor. Agency Report at 7; GSG-IS Proposal, Mar. 18, 2008, vol. II at 7. None of the references was for GSG-IS itself, however. The references provided by GSG-IS showed experience in the performance of security services in Afghanistan, and included narratives and supporting documentation.

The evaluators noted the relevance of the references submitted by GSG-IS, including the fact that the references related to recent contracts performed in Afghanistan for similar services. They also noted that GSG-IS had submitted 21 letters of appreciation or certificates of commendation for its subcontractors, attesting to the quality of their performance. SSEB Report, June 8, 2008, at 14. As a result, the Corps rated the GSG-IS proposal “excellent” under the past performance and experience evaluation factors. *Id.* at 13-14.

For its part, Aegis provided seven references for evaluation under the past performance and experience factors: five contracts that Aegis itself had performed, and two performed by its air support subcontractor. Of the five Aegis references, four stated that they had been performed in Iraq (including two contracts for RSSS for the Corps in Iraq), and one in “Iraq/Middle East.” The two contract references for its air support subcontractor showed that one had been performed in Pakistan, and one in Afghanistan. Aegis Proposal, Mar. 18, 2008, vol. II at 1-2; vol. III at i.

In response to two discussion questions about its limited experience in Afghanistan, Aegis asserted that it had provided various services in Afghanistan since 2002, and claimed that its senior consultant had extensive personal experience in Afghanistan as a former foreign service officer. Aegis explained, however, that it had “focused on large[-]scale, relevant contracts” in selecting its experience and past performance references. Aegis Discussions Response, Apr. 24, 2008, at 10-11. While it described work that it had performed in Afghanistan, Aegis did not provide contract information or references for that work.

In the final evaluation under the experience factor, the evaluators identified three weaknesses associated with Aegis’s reliance on experience outside of Afghanistan:

- Similar contracts are for services provide[d] in Iraq, not Afghanistan. (MW)
- Afghanistan experience limited to air carrier support contractor. (MW)
- Offeror did not provide contract details in Afghanistan as requested in the Discussion Questions. (New Weakness)

Source Selection Evaluation Board (SSEB) Report, June 8, 2008, at 5. As a result, the evaluators assigned Aegis a rating of “good” under the experience factor.

In evaluating prices, the Corps compared the prices initially proposed by GSG-IS to the government estimate, and raised concerns about several items in discussions. Government Price Analysis Memo, Mar. 22, 2008, at 51; GSG-IS Discussion Letter, Apr. 8, 2008, at 4; GSG-IS Reopened Discussion Letter, Apr. 17, 2008, at 3. The source selection decision reflects a review of the pricing in the final proposal revision from each offeror, including GSG-IS, and explains—for each of the contract lines where GSG-IS proposed prices that departed significantly from the government estimate or competing proposals—why the agency concluded that GSG-IS’s prices were nevertheless reasonable. Source Selection Decision Document (SSDD), May 24, 2008, at 4-5.

Specifically, the SSDD explains the range of prices that had been offered for each line item where GSG-IS’s prices were significantly different, compares GSG-IS to the average price for that item among the highest-rated offerors and, where appropriate, considered whether GSG-IS had experience in providing similar services. For example, GSG-IS offered the lowest price—a price significantly lower (approximately half) than the average of the three other highly-rated offerors—to run the national operations center. The Corps noted the difference, but also gave “consideration . . . to the spread of the proposed prices and Global’s experience in providing similar type services” to support its conclusion that GSG-IS’s price was reasonable.

The evaluation reflected the following evaluation ratings and prices:

	GSG-IS	Aegis
Technical	Excellent	Excellent
- Technical Approach	Excellent	Excellent
- Key Personnel	Excellent	Excellent
- Daily Operations	Excellent	Good
- Management Methodology	Excellent	Excellent
- Communications Plan	Excellent	Excellent
Past Experience	Excellent	Good
Past Performance	Excellent	Excellent
Task Order 1 Price	\$16,952,194	\$31,843,581

SSDD, May 24, 2008, at 2.

On the basis of the evaluation, the Corps awarded the contract to GSG-IS on May 26, 2008. Aegis protested that award to our Office. Upon reviewing the allegations of Aegis's protest, the Corps agreed to take corrective action including a reevaluation of the proposals. As a result, our Office dismissed that protest. Aegis Defence Servs. Ltd., B-400093.2, B-400093.3, June 6, 2008.

In the course of taking corrective action in response to that initial protest, the Corps conducted a reevaluation of FPRs, which resulted in some changes to the SSEB narrative. The overall ratings of both offerors remained the same, however. SSEB Report, June 8, 2008, at 1-5, 12-14. After considering the results of the reevaluation, the Corps again selected GSG-IS, and confirmed the award of the contract. This protest followed.

DISCUSSION

Aegis raises a number of issues in its protest, and while we will not address every issue, we will address the main themes⁶--i.e., that Aegis was unreasonably rated "good" under the experience factor because its experience was largely in Iraq, while GSG-IS was unreasonably rated "excellent" based on the experience and past performance of its affiliates in Afghanistan; that GSG-IS offered unreasonable pricing; and that one of the GSG-IS affiliates, [DELETED], cannot obtain a facility security clearance, and therefore will not be able to perform as GSG-IS offered in its proposal. As a result, Aegis argues that the selection of GSG-IS as the offeror providing the best value was unreasonable. As explained below, we think the record supports the Corps's judgments.

First, Aegis complains that it was downgraded by the Corps under the experience factor simply because its references were for contracts in Iraq, rather than Afghanistan. Aegis argues that the experience that it identified in Iraq is very similar to the services required under this contract, and that the Corps has made an unreasonable distinction between experience in Iraq and experience in Afghanistan.

The Corps responds that its evaluators concluded that the differences in the security situation between Iraq and Afghanistan are sufficiently different that it was reasonable to distinguish between them in evaluating experience and past performance.⁷ The Corps explains that Iraq is outside the Afghanistan Engineer District, the two countries have different geography, and the people have different cultural practices, and different causes of unrest. Therefore, the Corps explained that even though Aegis had high-rated past performance in performing similar

⁶ We have, however, considered each of Aegis's arguments and find none has merit.

⁷ The Corps also notes that this contract requires the contractor to provide support by fixed- and rotary-wing aircraft, unlike Aegis's RSSS contracts in Iraq.

services in Iraq, given the different conditions in Afghanistan, the Corps had a reasonable basis to give Aegis a rating of “good,” rather than a rating of “excellent,” under the experience factor because the experience in Iraq was less relevant.

As relevant here, the RFP reasonably informed offerors that the Corps would consider the geographic location of experience in determining its relevance, and it follows that contracts performed in Afghanistan would be more relevant than contracts performed elsewhere. In our view, the Corps could treat contracts performed in areas outside the Afghanistan Engineer District (including Iraq) as slightly less relevant based on the Corps’s understanding of the differences in the operational environment in Afghanistan. Given offerors with similar experience, we also think the Corps could reasonably value more highly experience in Afghanistan than experience in Iraq. In short, we see nothing unreasonable about the Corps’s decision to rate Aegis as “good” under the experience factor.

Next, with respect to the evaluation of the awardee’s experience and past performance, Aegis complains that the Corps misevaluated GSG-IS by allowing it to substitute the experience and past performance of GSG-IS’s subcontractors, because GSG-IS itself is a recently-formed entity and therefore had neither past performance nor experience. Aegis also argues that GSG-IS should not have received credit for the experience and past performance of [DELETED] in analyzing intelligence and running a national operations center.⁸ Aegis argues that since [DELETED] cannot obtain a facility security clearance, it cannot have any role in performing intelligence or national operations center functions, and thus its experience and past performance in those areas should have been excluded as irrelevant.

The Corps argues that where, as here, an offeror’s performance relies significantly on a team member or subcontractor, an agency may consider that firm’s experience and past performance. Since GSG-IS’s team members, including [DELETED], will perform significant shares of the contract, the Corps argues that it was proper to consider the experience and past performance references of those firms. The Corps disputes the foundation of Aegis’s argument—that an offeror’s experience and past performance are only relevant if the offeror itself is performing the corresponding services under the pending contract.

Our Office affords agencies discretion in the evaluation of past performance. Family Entm’t Servs., Inc., B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. The record here reflects that the Corps considered the experience and past performance cited by

⁸ Aegis notes that GSG-IS provided a matrix in its proposal, which shows that [DELETED] was the contractor on five of the ten experience and past performance references, and that none of the remaining references (for the other team members) showed any experience running a national operations center, and showed limited experience in intelligence.

GSG-IS to show that it was familiar with providing similar services in Afghanistan, and that it had shown an excellent record of performance. Although Aegis argues that the experience of [DELETED] cannot be considered relevant since that firm lacks a security clearance, we believe the Corps had discretion to rely on that experience and past performance in evaluating GSG-IS, since [DELETED] is providing material services under the contract. In particular, GSG-IS described [DELETED]'s role as providing "security, logistics, and operations support." GSG-IS Proposal, Mar. 18, 2008, vol. I at 1. In our view the agency reasonably rated GSG-IS excellent under the experience and past performance factors.

Aegis makes two more related arguments. First, Aegis argues that the Corps disregarded a "grave risk" posed by low prices offered by GSG-IS, which Aegis argues were based on using [DELETED] to provide services that it is precluded from offering because, as an entity organized in Dubai, [DELETED] cannot obtain a facilities security clearance.⁹ Second, in a supplemental protest filed with its comments, Aegis argues that the GSG-IS proposal should have been rejected as unacceptable because staff requiring security clearances were to be furnished by [DELETED]. Protester's Comments at 13-14.

The Corps confirms that under the terms of this RFP, staff requiring security clearances can only be employed by a firm that holds a facility security clearance. Nevertheless, both the Corps and GSG-IS contend that Aegis's argument is based on a misreading of the GSG-IS proposal. The Corps argues that issues regarding the management of employees holding security clearances are matters of contract administration. GSG-IS quotes its proposal, stating that GSG-IS itself will "provide cleared personnel and overall program management," which it explains was correctly understood by the Corps to be all personnel requiring security clearances.¹⁰ GSG-IS Supplemental Comments at 5 (quoting GSG-IS Proposal, Mar. 18, 2008, vol. I, at 2). The Corps states that it will ensure that GSG-IS does not allow personnel requiring a security clearance to be employed by [DELETED].

⁹ In its initial protest, Aegis had asserted that GSG-IS had achieved its lower prices by improperly using locals for positions that the RFP specified had to be filled by expatriates. Protest at 19. In its comments, Aegis abandons that theory, and presents only a brief argument on the point which focuses simply on the low price offered by GSG-IS generally, and suggests that it was instead related to the lack of a facilities clearance. Aegis Comments at 14.

¹⁰ In response to a request by our Office for additional briefing on this issue, GSG-IS submitted a declaration from its corporate president, explaining—with citations to corresponding pages in its proposal—how its proposed staffing approach was designed to respond to the personal and facility security clearance requirements of the RFP. Declaration of GSG-IS President, Oct. 2, 2008, at 4-8.

In our view, given the explanations provided by GSG-IS and the Corps, any remaining questions raised by Aegis regarding which firm may employ personnel to handle classified information under the terms of the RFP are matters of contract administration, which we will not review. 4 C.F.R. § 21.5(a) (2008); see also Catapult Tech., Ltd., B-294936, B-294936.2, Jan. 13, 2005, 2005 CPD ¶ 14 at 7 n.7 (issue of whether awardee ultimately obtains security clearances is a matter of contract administration, which our Office does not review).

Finally, although Aegis also challenges the prices offered by GSG-IS as being unreasonable, the record shows that the Corps considered each line item where GSG-IS proposed a price that differed significantly from the government estimate and competing prices. In each case, the Corps documented its reasoning for concluding that GSG-IS had proposed reasonable pricing. Aegis has provided no basis for our Office to question the Corps's judgments.

The protest is denied.

Gary L. Kepplinger
General Counsel