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Decision

Matter of: AMI-ACEPEX, Joint Venture

File: B-401560

Date: September 30, 2009

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DIGEST

1. Where past performance and experience evaluations were based in part on relevance—similarity in size, scope, and complexity—agency reasonably established size threshold for relevance at approximately one-half annual value of solicited work, and reasonably rated protester no higher than satisfactory for experience and past performance based on single project above threshold, despite high rating on that project from past performance reference.
 2. Agency reasonably evaluated protester’s proposal as satisfactory under technical approach factor where proposal failed to address a required position and lacked discussion of specific risks, and agency had concerns with performance risk where price proposal indicated lack of available capital funds.
 3. Agency properly considered past performance and experience record of awardee’s parent firm and affiliates where awardee’s proposal demonstrated that resources of those entities would affect performance and solicitation did not prohibit consideration of parent/affiliate information.
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DECISION

AMI-ACEPEX, Joint Venture (AAJV), of Harmon, Guam, protests the award of a contract to Chugach World Services, of Anchorage, Alaska, under request for

proposals (RFP) No. N40192-09-R-9000, issued by the Department of the Navy for housing operations and maintenance services for military facilities at various locations in Guam. AAJV challenges the evaluation of its and Chugach's proposals.

We deny the protest.

The RFP, a section 8(a) set-aside, consolidates the existing housing operations and maintenance (HOM) and change of occupancy maintenance (COOM) services requirements for the Navy and Air Force in Guam. The RFP contemplated award--on a "best value" basis--of a contract with fixed-price and indefinite-quantity line items for a base period of 6 months, with 4 option years. Proposals were to be evaluated under four factors--technical approach, past performance, contractor experience, and price. Non-price factors were weighted equally and, combined, were considered equivalent to price. Proposals were to receive adjectival ratings (excellent, good, satisfactory, marginal, poor, or--for past performance only--neutral).

Eight offerors, including AAJV and Chugach, submitted proposals, which were evaluated by the technical evaluation board (TEB). The TEB's consensus evaluation rated Chugach's proposal excellent under all three non-price factors, for an overall rating of excellent. The TEB rated AAJV's proposal satisfactory overall based on satisfactory ratings under each non-price factor. AAJV's price (\$112.5 million) was the lowest proposed and Chugach's (\$133.9 million) was fourth lowest. The source selection board (SSB) reviewed the evaluations and recommended award, without discussions, to Chugach based on its excellent proposal ratings, significant technical strengths, and other advantages associated with its teaming agreement. The SSB considered AAJV's lower price, but concluded that it was outweighed by its satisfactory proposal ratings and risks associated with significant proposal weaknesses. As relevant here, the source selection authority, based on his own review of the proposals and prior evaluations, concluded that Chugach's proposal, with the highest non-price rating, represented the best value to the government over lower-rated and lower-priced proposals--including AAJV's--and thus made award to Chugach. After a debriefing, AAJV filed this protest challenging the evaluation of its and Chugach's proposals.

AAJV challenges the evaluation on numerous grounds. In AAJV's view, had the agency properly evaluated its proposal under the experience, past performance, and technical factors, its proposal would have been rated higher than satisfactory. Similarly, it claims, under a proper evaluation Chugach's proposal would have been rated lower than excellent under the experience and past performance factors. AAJV concludes that, if these evaluation errors were corrected, its lower-priced proposal would have been in line 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. We have considered all of

AAJV's arguments and find that they provide no basis to object to the evaluation or award. We address AAJV's most significant arguments below.

AAJV EXPERIENCE AND PAST PERFORMANCE EVALUATIONS

Section L of the RFP provided that an offeror's experience would be evaluated based upon its demonstrated housing maintenance experience with recent, relevant projects. RFP § L, at 36. Past performance was to be evaluated based upon client satisfaction on recent, relevant housing maintenance services projects within the last 3 years. *Id.* Relevance was defined as "sufficiently similar" to the RFP's work to provide an indication of expected performance, based on such indicators as construction similarity and complexity, contract type, dollar value, major or critical subcontractors, teaming partners and joint ventures. *Id.* The RFP distinguished experience from past performance as follows: "experience pertains to the types of work and volume of work completed by a contractor that are comparable to the type of work covered by this requirement, in terms of size, scope, and complexity [;] [p]ast performance relates to how well a contractor has performed." RFP § L, at 37. Section M of the RFP provided that the agency would evaluate an offeror's past performance on relevant projects and its experience information based on the degree of relevance—the more relevant an offeror's experience, the greater the degree of significance that would be applied in the evaluation.¹ RFP § M, at 19.

AAJV asserts that the agency failed to follow these evaluation criteria in assigning AAJV a satisfactory rating under the experience and past performance factors, because it introduced an undisclosed limitation of \$5 million in annual value as a threshold for considering projects relevant. Protest at 6, 8. In this regard, AAJV submitted 13 projects and the agency found that 12 were relevant from the standpoint of the scope of services. AR, Tab 4A, attach. 1. However, the agency found that only one of the projects was similar in size (*e.g.*, some 7 of the projects were valued at less than \$2 million per year) or complexity, and thus found them not relevant under both the experience and past performance factors. In the protester's view, instead of considering only its one project above the threshold value to be relevant, the agency also should have accorded some degree of relevance to its projects below the threshold, based on the other relevance considerations.

¹ The RFP's description of the experience and past performance factors varied from section L to section M. For example, in section L experience was described in terms regarding the type of work performed, and past performance was described as how well the offeror performed. In section M, experience was described in terms similar to past performance, while past performance was described in terms of experience. Compare RFP pp. 36-37 with p. 19. However, these inconsistencies had no apparent effect on the evaluation—the factors were weighted equally as contemplated by the RFP, proposals were evaluated under both criteria, and there is no evidence that the offerors were confused in preparing their proposals. Agency Report (AR) at 3 n.3.

This argument is without merit. In evaluating proposals, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4. Size is a proper consideration in determining whether an offeror has experience and a record of past performance under similar contracts. See Molina Eng'g, Ltd./Tri-J Indus., Inc. Joint Venture, B-284895, May 22, 2000, 2000 CPD ¶ 86 at 7; Proteccion Total/Magnum Sec., S.A., B-278129.4, May 12, 1998, 98-1 CPD ¶ 137 at 6. Here, the agency established a minimum relevance value of \$5 million; the estimated contract value of the first option year was expected to be approximately \$11 million, and the agency determined that a contract approximately half that size would be sufficient to be predictive of the quality of performance of the current requirement. Establishing a threshold value in this manner was sufficiently related to the relevance criterion, and we find nothing inherently unreasonable in a threshold of approximately one-half the value of the current requirement. While AAJV believes, essentially, that a lower contract value should not have precluded consideration of its other, lower value projects in the evaluation, there simply was no requirement that the agency give weight to such projects.

Considering the foregoing, there was nothing unreasonable in the agency's evaluation of AAJV's experience and past performance as satisfactory. The agency received two past performance records on behalf of AMI--the majority member of the joint venture--one of which was for maintenance and repair of retail gasoline stations (rated satisfactory) and one of which was for custodial services (rated exceptional), but neither was considered relevant. AR, Tab 10; AAJV Past Performance Proposal. For ACEPEX--the minority member--the agency received past performance information on 8 different projects, with past performance ratings ranging from good to excellent. AR, Tab 10; AAJV Past Performance Proposal. As discussed above, only one of these projects was considered relevant--a contract at the Federal Law Enforcement Training Center (FLETC), which involved both HOM and COOM, was worth \$6.5 million per year, and had an overall past performance rating of good. Despite AAJV's above-satisfactory ratings on the FLETC and other projects, the fact remains that the majority of its projects were significantly smaller and less complex than the contract to be awarded, and that only one project ultimately was determined to be relevant for evaluation purposes. This being the case, we find nothing objectionable in the agency's evaluating AAJV's proposal as satisfactory for experience and past performance. Robinson's Lawn Serv., B-299551.5, June 30, 2008, 2009 CPD ¶ 45 at 7 (where prior contracts were significantly smaller than the contract at issue and the work was less complex, the

agency reasonably rated offeror's experience and past performance as satisfactory, notwithstanding high past performance ratings for those contracts).²

AAJV TECHNICAL APPROACH EVALUATION

AAJV asserts that the agency improperly evaluated its proposal under the technical approach factor by assessing two weaknesses—one, its failure to associate risks with specific requirements, and another, denominated as significant, failure to indicate complete coverage of the military airport desk. In AAJV's view, the agency gave undue weight to these weaknesses and should have rated its proposal higher than satisfactory.

This argument is without merit. The evaluation was consistent with the RFP's requirements. In this regard, the RFP called for offers to identify the risks expected to be encountered under the performance objectives and standards of the RFP, and to explain how the proposed technical approach and contingency plans would mitigate those risks. RFP § L.14. Offerors were warned that failure to identify risks apparent to the evaluators could result in a reduced rating. *Id.* Although AAJV's proposal mentioned risks for all aspects of the work—such as Guam's remote and isolated location, its severe weather conditions, contractor transition, phase-in of the Andersen Air Force Base work, and fluctuating workload—the agency found that AAJV had taken a generalized approach in explaining its risk mitigation strategies, providing little distinction among the identified risks. Contracting Officer's Statement ¶¶ 15-16; AR, Tab 15, AAJV Proposal, at 164-66, 207-09, 244-46, 279-81, 336-37, 358-59. For example, the RFP included 70 pages detailing the specific responsibilities and performance standards for family housing, including Navy and Air Force family and bachelor housing at multiple locations in Guam. Instead of addressing risks and mitigation associated with each area of this work, AAJV included two pages of broadly-identified risks and generalized solutions that were similar to its response to the other aspects of work under the RFP. In this regard, AAJV's response to the risk of a fluctuating workload consisted of three sentences: [deleted]. AAJV Proposal at 244. In view of the RFP's detailed work requirements and request for specific risk identification, the agency could reasonably expect AAJV to specifically address the risks attendant to contract performance; AAJV's simple

² AAJV asserts that the agency improperly applied a "mechanical" evaluation standard, in that an offeror with only a single past performance reference could score no higher than satisfactory, even with a good past performance rating. Protest at 8; AAJV Comments at 7. We do not agree that an agency's subjective judgment as to the types of projects that are necessary to obtain a certain evaluation rating constitutes a prohibited "mechanical" application of an evaluation standard. *See Robinson's Lawn Serv., supra.* In any case, the premise of the protester's argument is erroneous—at least two other offerors were rated good under the past performance factor, despite having single, relevant past performance references.

disagreement with the agency's assigning this as a weakness is not sufficient to establish that the evaluation was unreasonable. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

We reach the same conclusion with regard to the agency's assignment of a significant weakness based on AAJV's failure to account for the airport desk. The Navy Guest Inns and Suites aspect of the performance work schedule specifically required a military airport desk, 7 days per week, to coincide with scheduled commercial flights. RFP, annex 1104000, item 2.2.1. AAJV's proposal priced this requirement, but its technical proposal did not include a description of how the requirement would be addressed. AAJV Proposal at 197. AAJV asserts that the weakness is not significant because it would account for only [deleted] full-time employees. However, the agency notes that the proposal did not explain how many positions would be allocated, and states that it considered the lack of information to indicate risk that this aspect of the requirement would not be performed satisfactorily. Contracting Officer's Statement, ¶ 17; AR, Tab 4A, at 9. Since AAJV failed to address a clear proposal requirement, and the record provides no basis for us to question the agency's judgment, we conclude that the agency reasonably found the weakness to be significant.

AAJV challenges its proposal's satisfactory rating on the basis that Chugach's proposal was rated excellent under the technical factor even though, for example, it was assessed a "similar" weakness for failing to recognize that a single employee could not handle two specified positions. AAJV Comments at 16. However, the situations are distinguishable--Chugach's proposal addressed a requirement in a weak manner, while AAJV ignored a requirement. In addition, the record shows that Chugach's multiple significant strengths--such as its comprehensive quality control program and experienced key personnel--were found to offset its one minor weakness, while AAJV's strengths in key personnel and quality management system were found to be offset by the weaknesses discussed above, a finding that it lacked an understanding of some requirements, and its proposal's focus on meeting RFP standards without identifiable innovations. AR, Tab 4A, at 9, 11. Under these circumstances, there is no basis for questioning the evaluation.

AAJV PERFORMANCE RISK EVALUATION

The agency expressed concerns with AAJV's performance risk based on the firm's level of working capital and a single comment in AMI's past performance questionnaire. Protest at 11. AAJV claims that, based on its submission of financial documentation showing AMI's access to a [deleted] line of credit and ACEPEX's access to a [deleted] line of credit, the agency's concerns were unreasonable.

This argument is without merit. Under the price factor, the RFP provided that proposals would be evaluated to ensure that offerors had the financial capability to perform the contract given the magnitude of the proposed work. RFP § M, at 19. In the evaluation, the agency concluded that AAJV had the financial capability to

perform, but found that the joint venture's combined 2008 working capital would leave a monthly deficit of [deleted] based on AAJV's proposed monthly costs. AR, Tab 4B, at 31. Under its joint venture agreement, AMI was responsible for [deleted] percent of capital contributions and ACEPEX [deleted] percent. AR, Tab 9, at 2. While ACEPEX had access to a [deleted] line of credit for initial cash outlays, the agency noted that the agreement was silent as to how AMI would cover its outlays. In fact, the agreement states in relevant part "AMI will cover its initial cash outlays by [AMI to finish this sentence.]." *Id.* at 3. Similarly, even though AMI had a [deleted] line of credit available, the agency found the potential for additional credit unclear; information from the bank indicated that it was simply "very receptive" to requests for additional financing. *Id.* at 4. In addition, the agency noted that AAJV's price proposal did not adequately consider all elements--such as the purchase of parts and materials--in calculating start-up costs. AR, Tab 4D, at 54. We think the agency reasonably determined that the information provided by AAJV raised concerns as to its financing of the contract, and that this introduced performance risk into the firm's proposal.

CHUGACH PAST PERFORMANCE AND EXPERIENCE EVALUATION

AAJV asserts that Chugach's parent and sister companies are not teamed with or otherwise contractually committed to perform the awarded contract, and that it therefore was improper for the agency to consider those firms' past performance and experience in evaluating Chugach's proposal.

An agency properly may consider the experience or past performance of an offeror's parent or affiliated companies where the firm's proposal demonstrates that the resources of the parent or affiliated company will affect the performance of the offeror. See, e.g., *Perini/Jones, Joint Venture*, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4; Federal Acquisition Regulation 15.305(a)(2)(iii). We find that this was the case here.

Chugach's proposal stated that its parent company's (Chugach Alaska Company (CAC)) and several of its sister companies' resources--including workforce, management, key personnel, facilities and performance strategies--would be provided and relied upon for contract performance. Chugach Proposal at B-1. For example, the proposal stated that Chugach would transition key personnel from the current COOM contract in Guam performed by a sister company; had reach-back capability to tap more than 6,000 CAC and affiliate employees worldwide; and would rely on the expertise of various subject matter experts, including two named personnel--an individual who had been the project manager on an affiliate's base operating systems contract on Wake Island as well as the COOM project manager for the incumbent Guam contract, and Chugach's own president, who had experience with Chugach and two of its affiliates on 21 prior contracts. *Id.* at 2, C-3, C-4. In addition, CAC would provide general and administrative support, including accounting, human resources, legal and risk, compliance and regulatory information technology, project transition, and business development services. *Id.* at C-1. CAC

representatives would also assist with interviewing and hiring employees; meeting security requirements; overseeing safety, quality control, and accounting setup; purchasing or leasing equipment; and bringing utilities on line. Id. The fact that these affiliates and personnel are not contractually bound to perform these services, does not render the agency's consideration of their experience and past performance unreasonable. The RFP did not require any such commitment and, based on Chugach's representations, we think the agency reasonably concluded that Chugach's proposal demonstrated that the resources of the parent and affiliated companies would affect Chugach's performance. Perini/Jones, Joint Venture, supra. Thus, there was nothing improper in the agency's consideration of their respective experience and past performance.

AAJV asserts that, even if it were otherwise permissible for the agency to consider Chugach's parent's and affiliates' experience and past performance, the RFP here effectively precluded their consideration. See Doyon-American Mech., JV; NAJV, LLC, B-310003, B-310003.2, Nov. 15, 2007, 2008 CPD ¶ 50 at 4 (reliance on a third party's experience and past performance is contingent upon the absence of any solicitation provision precluding such consideration).

AAJV's assertion is without merit. In Doyon-American, the RFP clearly restricted past performance and experience information to "[o]nly those projects for which the Offeror or a primary teaming partner was the Prime Contractor." Id., 2008 CPD ¶ 50 at 2-3. In contrast, the RFP here did not provide such direct guidance; instead, with regard to the past performance factor, the RFP provided that the "term 'offeror' typically refers to a single corporation submitting a proposal as a prime contractor," and that, in evaluating past performance and experience, the government's "evaluation will generally focus on the entities submitting the proposal." RFP § L, at 37. While offerors "typically" were single corporations and the government would "generally" focus on those entities, nothing in the RFP prohibited an offeror from submitting—or the agency from evaluating—information relating to corporate parents and affiliates.

The protest is denied.

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