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**Comptroller General  
of the United States**

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

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## Decision

**Matter of:** Herve Cody Contractor, Inc.

**File:** B-404336

**Date:** January 26, 2011

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Curtis L. Brown, Esq., and Robert A. Crabill, Esq., Wright, Fulford, Moorhead & Brown, P.A., for the protester.

Brian P. Nutter, Esq., Department of the Army, for the agency.

Ashley G. Alley, Esq., Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

An agency reasonably evaluated the protester's corporate experience as unacceptable where the solicitation required three projects of similar scope to the solicited work and only two of the protester's projects were found to be of similar scope.

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### DECISION

Herve Cody Contractor, Inc., of Robbinsville, North Carolina, protests the award of a contract to Ashridge, Inc., of Louisville, Kentucky, under request for proposals (RFP) No. W912HN-10-R-0041, issued by the Department of the Army, U.S. Army Corps of Engineers, to replace spillways on the Atlantic Intracoastal Waterway. The protester challenges the agency's evaluation of its corporate experience.

We deny the protest.

### BACKGROUND

The RFP, issued on July 27, 2010, sought proposals for the replacement of 24 spillway systems and appurtenant items, including the excavation and backfill of existing dikes, on a section of the Atlantic Intracoastal Waterway in Charlestown County, South Carolina. See RFP, Statement of Work (SOW), at 6. Offerors were informed that a fixed-price contract would be awarded to the offeror with the lowest-priced, technically acceptable proposal. Id. at 9. In addition to price, the RFP identified the following two evaluation factors: past performance and corporate relevant specialized experience. Id. at 8.

With regard to the corporate experience factor, offerors were instructed to provide at least three examples of projects completed, or substantially completed, within the past 5 years that were as similar as possible to the RFP's project type and scope.<sup>1</sup> See id. The RFP stated that each example should indicate the general character, scope, location, cost, and the project completion date and, in this respect, offerors were encouraged to provide a description of why the project examples met the criteria for relevant corporate experience. The RFP provided that the agency would review the projects to evaluate and rate an offeror's recent experience with similar projects.

The agency received six proposals, including Herve Cody's, which were evaluated by the agency's source selection evaluation board (SSEB). Contracting Officer's (CO) Statement at 1. Herve Cody's proposal provided information regarding two completed and one on-going project that the firm had with the Corps. Protester's Proposal, vol. 2, at 3-13. For each of the completed projects, Herve Cody provided a record from the Department of Defense's Construction Contractor Appraisal Support System (CCASS) that included, among other things, detailed descriptions of the type of work involved, performance evaluations, and agency evaluators' remarks.<sup>2</sup> With regard to the on-going project, the repair of the St. Lucie spillway in Florida, Herve Cody provided a contract number, project location, agency contact, as well as total costs, and the description of the project as "electrical and mechanical spillway rehab." See id. at 13. Herve Cody's proposal did not explain how this project was similar in type or scope to the RFP work.

Because Herve Cody did not submit supporting documentation for the St. Lucie Spillway repair project, the SSEB contacted the agency's engineer for that project. See CO's Statement at 2; AR, Tab E, Source Selection Decision, at 2. The engineer informed the SSEB that this project was for repair of the St. Lucie spillway and that Herve Cody was only providing electrical and mechanical work on the St. Lucie project. CO's Statement at 2; see AR, Tab F, Project Description, St. Lucie Spillway Repair Statement of Work. According to the SSEB, replacing the spillways here, as opposed to the repair of the St. Lucie spillway, requires, among other things, excavation, dewatering dredged materials, and constructing dikes in remote, coastal marshes that are inaccessible by land and greatly impacted by tides. AR, Tab D, Source Selection Evaluation Report, at 7. The SSEB concluded that Herve Cody's work on the St. Lucie Spillway repair project, which was limited to electrical and

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<sup>1</sup> With regard to the past performance factor, offerors were also instructed to submit information for at least three relevant contracts or subcontracts completed within the past 5 years that were similar in project size, scope, and complexity. RFP at 7.

<sup>2</sup> According to the CCASS records, the work included, among other things, construction of channels, levees, culverts, and a steel weir, or dam. See, e.g., Protester's Proposal, vol. 2, at 4, 9.

mechanical work, was not relevant. Accordingly, the SSEB found that only two of the project examples submitted by Herve Cody indicated similar and relevant experience. As a result, the SSEB evaluated Herve Cody's proposal as unacceptable under the corporate experience factor and overall.

The CO, who was the source selection authority for the procurement, agreed with the SSEB's evaluation and findings. AR, Tab E, Source Selection Decision, at 2. Award was made to Ashridge and, after a debriefing, Herve Cody filed this protest.

## DISCUSSION

Herve Cody argues that the firm's experience on the St. Lucie spillway repair project is relevant to the spillway replacements solicited here. *See* Protest at 2-4; Comments at 7. According to the protester, the SOW requires proficiency in all aspects of replacing spillway systems, which the protester contends includes both earthworks and metalworking. *See* Comments at 2. The protester maintains that replacing the spillways requires construction of new steel spillway boxes and, in this respect, the St. Lucie project is relevant because it demonstrates Herve Cody's ability to perform metal work and steel fabrication. The protester states that the other two projects demonstrate Herve Cody's ability to perform earthworks and suggests that, cumulatively, the three examples submitted demonstrate its ability to perform all aspects of spillway replacement, that is, earthworks and metalworking. *See id.* at 3 n.1. The protester complains that, in evaluating the St. Lucie project, the agency focused only on the earthwork component and ignored the metalworking component of the SOW's requirements.

The agency disputes that the St. Lucie project is relevant. In this regard, the agency states that the evaluators found substantive differences between the St. Lucie repair project and the spillway replacements solicited here. The agency also notes that the protester failed to submit any description of the work it performed for the St. Lucie project showing why it should be viewed as relevant. Thus, the Corps contends that it reasonably concluded that the protester did not submit the minimum number of relevant and similar project examples required by the RFP. *See* AR, Tab 1, at 5; CO's Statement at 2.

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. *See* JVSCC, B-311303.2, May 13, 2009, 2009 CPD ¶ 138 at 5. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. MFM Lamey Group, LLC, B-402337, Mar. 25, 2010, 2010 CPD ¶ 81 at 10.

Here, the record shows that the Corps reasonably found that Herve Cody failed to provide three relevant projects to demonstrate its corporate experience. As noted above, the RFP required offerors to identify at least three projects that were as

similar as possible to the solicited work, which involves replacement of spillways, and includes excavation and backfill of dikes. The Corps found the St. Lucie Spillway repair project was not similar to the scope of the work solicited. That, is the SSEB noted that Herve Cody's work on the St. Lucie project did not show experience with, among other things, excavation and construction of dikes, fabrication and/or installation of spillway systems, and drainage. AR, Tab D, Source Selection Evaluation Report, at 8.

Herve Cody does not contend that its work on the St. Lucie project includes excavation and backfill of dikes.<sup>3</sup> Rather, the protester argues that the agency should have considered that the firm's cumulative experience was relevant (regardless of the scope and type of each individual project) because, considered together, its projects demonstrate that Herve Cody has experience performing all relevant tasks. This, however, would be inconsistent with the RFP's unambiguous requirement to identify a minimum of three projects of similar scope.

In sum, we find that Herve Cody has not shown that the agency's evaluation of the firm's corporate experience was unreasonable or was inconsistent with the RFP's evaluation criteria.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>3</sup> Herve Cody argues that its St. Lucie project work involves more than simply performing electrical and mechanical work, as reported by the project engineer. Herve Cody's proposal, however, described its work under this project as only including electrical and mechanical work. In any event, the protester has not provided, in response to the agency's statement that the firm had performed only electrical and mechanical work on the St. Lucie project, evidence of the work it actually performed on this spillway repair project.