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Decision

Matter of: SWR, Inc.

File: B-294835; B-294835.2

Date: December 20, 2004

Benjamin M. Bowden, Esq., Albrittons, Clifton, Alverson, Moody & Bowden, for the protester.

Edward E. Duryea for John Demosthenes Company, LLC, an intervenor.

J.R. Cohn, Esq., and Julius Rothlein, Esq., U.S. Marine Corps, for the agency.

Peter D. Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of protester's proposal is denied where record shows that agency evaluated proposal consistent with solicitation's evaluation scheme.

DECISION

SWR, Inc. protests the award of a contract to John Demosthenes Company, LLC under U.S. Marine Corps request for proposals (RFP) No. M00263-04-R-0001, issued as a small business set-aside for uniform alterations. SWR argues that the Corps improperly evaluated its proposal.

We deny the protest.

The RFP contemplated the award of a fixed-price requirements contract for a base period of 1 year, with 4 option years, to alter military uniforms for new recruits and training personnel at Parris Island, South Carolina. The solicitation provided for a "best value" evaluation of the technical proposal (most important), past performance (second in importance), and price. There were three technical evaluation factors: understanding the scope of work and ability to perform (most important, two subfactors); understanding the managerial effort required and ability to meet that effort (second in importance, three subfactors); and personnel planning (equal to the previous factor, no subfactors). There were two past performance factors: a review of Department of Defense contracts with a value greater than \$500,000, and review of uniform alteration contracts within the past 10 years that demonstrate corporate experience similar in nature and magnitude to the solicitation effort.

Three proposals were submitted, including SWR's and Demosthenes's. The agency rated Demosthenes's proposal excellent under the technical and past performance factors, and rated SWR's proposal average. Since SWR offered the lowest proposed price—\$8,248,277, compared to Demosthenes's price of \$9,592,221—the agency conducted a cost-technical tradeoff between the proposals. Agency Report (AR), Tab 12. The agency determined that Demosthenes's superior technical and past performance ratings warranted paying its higher price, and thus made award to that firm on the basis that its proposal represented the best value.

In its initial protest, SWR challenged the agency's evaluation findings that it lacked experience altering uniforms under a contract of this size, and that its proposal failed to provide a method to implement the tasks proposed, and included an unrealistic plan to recruit the current work force and lacked a contingency plan if it failed to do so. The agency responded to each of these arguments in its administrative report, explaining why it believed the evaluation was reasonable. In its comments on the report, the protester responded by merely stating that it stands by its original submission. Where a protester makes no further mention of an argument, or merely references it without substantively replying to the agency's detailed position, we deem the argument abandoned. Career Quest, a division of Syllan Careers, Inc., B-293435.2, B-293435.3, Aug. 2, 2004, 2004 CPD ¶ 152 at 6 n.6. Consequently, we will not consider these issues.

SWR raised additional arguments in its comments based on information it received in the agency report. We have reviewed these arguments and find all to be without merit. We discuss the SWR's principal arguments below.

SWR alleges that the agency applied the evaluation factors in such a manner as to eliminate every firm from award consideration except the incumbent. In this regard, SWR points to various comments in the record that relate to SWR's lack of the experience, resources and personnel necessary to perform. Supplemental Protest at 2-4. SWR concludes from these comments that "a potential offeror would need to have a facility at or near Parris Island, already equipped, with a work-force in place, and have corporate experience in United States Marine Corps recruit uniform alterations" in order to successfully compete for this contract. Supplemental Protest at 2.

In considering a protest of an agency's evaluation of proposals and source selection decision, our review is limited to determining whether the agency acted reasonably and consistent with the stated evaluation factors and applicable procurement statutes and regulations. Al Hamra Kuwait Co., B-288970, Dec. 26, 2001, 2001 CPD ¶ 208 at 2.

The evaluation here was unobjectionable. As the Corps points out, the concerns noted by SWR directly relate to the RFP evaluation factors. The RFP instructed offerors to demonstrate in their proposals the resources needed to perform the

contract (including equipment on hand and equipment to be acquired), the personnel proposed to perform the contract, and the firm's experience with similar contracts. RFP at 14-15. All of these considerations were reflected in the technical and past performance evaluation factors. Id. In applying the evaluation factors, the agency did not find that its concerns rendered SWR's proposal unacceptable, or conclude that only the incumbent's proposal was acceptable; rather, it lowered SWR's rating, noting in particular that SWR lacked corporate experience in performing uniform alteration contracts (the firm identified only one smaller contract in this area), and lacked qualified personnel to perform the contract. In doing so, the agency acted consistently with the evaluation scheme set forth in the RFP, and since SWR has made no showing that the agency's conclusions do not reflect the contents of the proposals, we have no basis to object to the evaluation. While Demosthenes, as the incumbent contractor, may have been better situated to score more highly under the identified evaluation factors, the government has no obligation to ignore a competitive advantage that an offeror may enjoy as a result of a prior government contract, unless the advantage resulted from unfair motives or actions by the contracting agency, which was not the case here. Bironas, Inc., B-249428, Nov. 23, 1992, 92-2 CPD ¶ 365 at 3.

SWR alleges that the agency improperly failed to take into consideration one of its key personnel—who has experience with uniform alterations at Parris Island—when evaluating the firm's experience. However, it generally is improper for an agency to consider personnel experience under a corporate experience factor where there are separate evaluation factors for each. Technical Resources, Inc., B-253506, Sept. 16, 1993, 93-2 CPD ¶ 176 at 5. Here, the RFP provided that past performance would be evaluated based on contracts performed by the offeror, RFP at 15, and that experience and qualifications of proposed staff would be considered in evaluating the technical proposal. RFP at 14-15. The evaluation was consistent with this scheme.¹

SWR asserts that the agency improperly failed to take into account the relative weights of the evaluation factors in scoring the proposals. The agency concedes that it arrived at total evaluation scores for the proposals by averaging the factor and subfactor scores without taking into account the weights of the factors and subfactors. However, there is no basis for finding that correctly weighted scoring would have had any significant impact on the award decision. For example, the

¹ SWR alleges that the agency improperly penalized SWR for its lack of experience in “marine recruit uniform alteration,” since the RFP only referred to “uniform alteration” experience. However, an agency properly may take into consideration specific, albeit not expressly identified, experience in making qualitative distinctions between competing proposals, so long as the specific experience is logically encompassed by or related to the RFP's requirements and stated basis for evaluation. Omniplex World Servs. Corp., B-290996.2, Jan. 27, 2003, 2003 CPD ¶ 7 at 4 n.10.

agency demonstrates in its report that under one reasonable weighting scheme the protester's total score would have increased from 77 to 78.2 points, while the awardee's total score would have increased from 94 to 94.6. AR, Tab 23, at 1-2. SWR questions the weighting scheme the agency uses, but does not identify any other scheme that would significantly change the scoring to SWR's advantage. Indeed, since Demosthenes's proposal was scored significantly higher than SWR's under every individual evaluation factor and subfactor, it is reasonable to conclude that its rating would remain significantly higher than the protester's under any rational scheme. We conclude that SWR has failed to show that it was competitively prejudiced by the agency's error; our Office will not sustain a protest absent a showing of such prejudice. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

The protest is denied.

Anthony H. Gamboa
General Counsel