



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Sayres & Associates Corporation

File: B-295946; B-295946.2

Date: April 25, 2005

Robert M. Moore, Esq., Kristen A. Bennett, Esq., and Kelly L. Hellmuth, Esq., Moore & Lee, LLP, for the protester.
Brian W. Craver, Esq., Person & Craver LLP, for Navarro Research and Engineering, Inc., an intervenor.
Gena E. Cadieux, Esq., Patricia D. Graham, Esq., and Patricia A. Walters, Esq., Department of Energy, for the agency.
Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly excluded from consideration some of the protester's descriptions of past performance and a late submitted reference, where the descriptions exceeded the page limit set forth in the solicitation and the agency made reasonable efforts to contact the reference but the reference failed to timely respond.

DECISION

Sayres and Associates Corporation protests the award of a contract to Navarro Research and Engineering, Inc., issued by the Department of Energy (DOE) under request for proposals (RFP) No. DE-RP36-04FO94027 for administrative and technical support services. Sayres challenges the evaluation of its past performance and the agency's selection of Navarro for award.

We deny the protest.

The RFP, issued as a section 8(a) set-aside, provided for award of a cost-plus-fixed-fee contract with performance-based incentive fees for a 2-year base period with three 1-year options. The solicitation stated that award would be made on a "best value" basis, considering technical and price criteria, with the technical criteria being "predominant in importance." RFP § M.3. The technical evaluation factors, listed in descending order of importance, included staffing and management approach (50 percent), technical approach (40 percent), and past performance (10 percent). RFP § M.4.

The RFP instructed offerors to “fully address” in their technical proposals the areas identified as technical evaluation factors, and advised them that failure to do so “may result in lower evaluation scores.” Specifically with regard to past performance (the evaluation of which is protested here), offerors were instructed to “fully discuss their performance under existing and prior contracts” for both themselves and any proposed subcontractors, and advised that “[p]articular attention should be given to” five specific subfactors for past performance. RFP § L.16(c).

In addition, offerors were to complete “Reference Information Sheets” for at least three contracts or subcontracts, performed within the last 3 to 5 years, that were similar in size and scope to the work required by the solicitation. These sheets were 1-page forms provided in the RFP that sought general contract information (e.g., contract number, type, period of performance, dollar value, contracting agency, and whether the contract involved on-site support services), a description of the work, a list of subcontractors and the percentage of work they performed, and contact information for the references. The RFP, as amended, provided that technical proposals were limited to 20 pages, “exclusive of resumes and Past Performance Reference Information Sheets.” RFP amend. 1, § L.16.

Thirty-four offerors, including Sayres and Navarro, submitted proposals in response to the RFP. For those proposals that exceeded the page limitation, the agency did not consider the excess pages. In this regard, in addition to its 20-page technical proposal and Reference Information Sheets, Sayres submitted as an attachment to its proposal additional documents, including a descriptive overview of its past performance and detailed descriptions of how each of its identified contracts met the past performance criteria. Agency Report (AR), Tab C.2, Sayres’ Technical Proposal, attach. B. The agency did not consider this additional descriptive information in its evaluation of Sayres’ proposal.

Sayres had also proposed to perform the work with a subcontractor, and provided the agency with a list of past performance references for both itself and its subcontractor, which the agency contacted by e-mail on December 2, 2004. The agency claims that none of Sayres’ references responded; only two references for the subcontractor responded, which the agency considered in its evaluation. The agency made further attempts to contact Sayres’ references, and although one of those references responded by e-mail on January 27, 2005 at 8:42 p.m., the agency determined that this was received too late in the evaluation to be considered.¹

Nonetheless, DOE gave Sayres’ proposal the highest relative technical score (880 out of a possible 1,000 points) and gave Navarro’s proposal the second-highest technical

¹ The source selection statement was dated January 28.

rating (810 points).² The agency determined that the “principal technical differences” between the two proposals were in the proposed project managers (which was considered under the personnel management subfactor of the staffing and management approach factor)³ and in past performance. With regard to past performance, Sayres’ proposal received a score of 8 (good) while Navarro’s proposal received a score of 9 (excellent). The agency found that, although neither proposal warranted weaknesses under this factor, Navarro had provided “more examples of excellent past performance on DOE and other contracts than did Sayres.” AR, Tab B.9, Source Selection Statement, at 4. These assessments were based on the descriptive information offerors provided in the 20 pages of their technical proposals concerning their past performance, questionnaires the agency received from references concerning the offerors’ and their subcontractors’ performance, and contract performance assessment reports that DOE obtained from a National Institute of Health database. AR at 12-13.

The record reflects that Sayres proposed a cost of \$18.8 million, which DOE adjusted to \$18.7 million in its most probable cost (MPC) analysis, and that Navarro proposed a cost of \$16.8 million, which DOE adjusted to \$17.3 million. As recognized by the agency, this translated into a \$1.4 million cost differential based on the MPC analysis.

After considering the relative advantages and disadvantages of both proposals, the source selection authority determined that the technical differences between these two proposals were “minimal,” and that:

no advantage would accrue to the Government by selecting [Sayres’] highest-scored technical proposal at a higher price. [Navarro’s] second highest-scored technical proposal represents the best value to the Government because it offers an acceptable level of technical capability at a significantly more advantageous price, as described

² The technical scores were derived from Sayres’ ratings of 8s and 9s on a 10-point scale for the staffing and management approach factor, 9 for the technical approach factor, and 8 for past performance. Navarro’s proposal received ratings of 8 for the first two technical evaluation factors, and 9 for past performance. AR, Tab B.2, Technical Evaluation, at 1, 5. Under the evaluation scheme, ratings of 9 and 10 were “excellent,” ratings of 6 to 8 were “good,” ratings of 3 to 5 were “satisfactory,” ratings of 1 and 2 were “marginal,” and a rating of 0 was “poor.” AR, Tab A.1, Source Selection Plan, at 9.

³ The agency noted that Sayres had proposed an “exceptionally qualified project manager,” which led to a rating of 9 out of a possible 10 points (excellent) under the personnel management subfactor, but found that Navarro proposed a “very well qualified project manager,” albeit one with less knowledge of relevant programs. Thus, the agency assigned Navarro’s proposal a lower rating of 8 (good) under this subfactor. AR, Source Selection Statement, at 3.

above. I have considered the benefits offered by the highest-scored technical proposal from Sayres in relation to the higher price associated with that proposal and I conclude that those technical advantages are not worth the additional costs.

* * * * *

While the technical differences between the top two highest scored proposals are minimal, the cost differential is significant and warrants selection of Navarro over the higher technically scored proposal from Sayres.

AR, Tab B.9, Source Selection Statement, at 4-5. Award was made to Navarro and this protest followed.

Sayres protests the evaluation of its past performance, complaining that the agency failed to consider the descriptive information it provided as an attachment to its proposal, as well as information submitted by its references.⁴

With regard to the descriptive information not considered by DOE, as noted above, Sayres provided this information as an attachment to its proposal. Because these pages exceeded the proposal page limit established by the RFP, the agency did not consider them. Sayres contends that the RFP contemplated that descriptive information such as this would be excluded from the proposal page limit as it was contemplated by the Reference Information Sheets. Although the Reference Information Sheets did in fact contain a block where offerors were to provide a “description of work,” Sayres completed this block. The pages not considered, about which Sayres complains, were separate from these forms and contained information such as how Sayres’ past performance satisfied the past performance subfactors, which information was required by the RFP to be contained within the 20 pages of the proposal. See RFP §§ L.16(b)(2), (c)(3). Furthermore, in an amendment to the RFP, offerors were advised that past performance descriptions were to be part of the proposal and were subject to the proposal page limit. RFP amend. 1, Q&A 28 (“Are past performance descriptions included in the 20 page limit for Vol. 2? . . . Yes”). Since the agency’s failure to consider this information was consistent with the RFP’s requirement, and consistent with how it treated other offerors whose proposals exceeded the page limit, we find no basis to question DOE’s evaluation in this regard. See Centech Group, Inc., B-278904.4, Apr. 13, 1998, 98-1 CPD ¶ 149 at 5.

⁴ Sayres initially protested the technical evaluation of its proposal, but abandoned this issue when it failed to respond in its comments to the agency’s arguments in the agency report. Planning Sys., Inc., B-292312, July 29, 2003, 2004 CPD ¶ 83 at 6.

Sayres also complains that the agency failed to consider past performance information submitted by its references. In support of its protest, it provided to our Office affidavits from two individuals who claim to have submitted completed questionnaires to the agency in late January 2005, but provided no evidence of transmission such as an e-mail or copy of the questionnaire, and no detail concerning the content of the information assertedly submitted. The agency denies receiving information from these individuals and has provided relevant portions of its “electronic gateway log” to demonstrate that e-mails from these individuals were never received.⁵ The agency acknowledges that a third individual submitted a questionnaire on January 27, 2007 at 8:42 p.m., but, as noted above, this was not considered because it was submitted too late. The agency also explains that, even if considered, it merely confirmed positive performance under the referenced DOE contract, which the agency had already recognized in its evaluation and which contributed to Sayres’ “good” rating for past performance.

Based on the record, we are not persuaded that the agency received past performance information from two of the references as asserted by Sayres, or that DOE improperly failed to consider the questionnaire received from a third. In this regard, the agency made repeated attempts to contact the references, including documented e-mail attempts on December 2, 2004 and on January 26, 2005,⁶ but the references either did not respond or, in the case of the DOE reference, did not respond in a timely fashion. Although Sayres complains that the agency failed to take additional steps between December 2 and January 26 to contact the references, an agency is not required to make multiple attempts to contact past performance references. See OSI Collection Servs., Inc.; C.B. Accounts, Inc., B-286597.3 et al., June 12, 2001, 2001 CPD ¶ 103 at 9 (agency’s single attempt to contact protester’s reference found reasonable). An agency need only make a reasonable effort to contact a reference, and where that effort proves unsuccessful—such as here, where the information either was not received or was received too late in the evaluation to be reasonably considered—it is unobjectionable for the agency to proceed with the evaluation without benefit of that reference’s input.⁷ See Lynwood Mach. & Eng’g, Inc., B-285696, Sept. 18, 2000, 2001 CPD ¶ 113 at 5.

⁵ Although Sayres complains that the log does not cover the relevant period because it ends on January 21, 2005, one of Sayres’ references claims to have sent its response to the agency on January 18, which is within the relevant period but is not reflected on the log as having been received, and the other reference states only that it provided information sometime in “late January” and provides no additional detail concerning the details of transmission.

⁶ DOE’s e-mail on January 26, 2005 requested that the references respond “today if possible.” See e.g., AR, Tab B.8.2, E-mail from DOE to Sayres Reference, at 1.

⁷ Furthermore, even had the agency considered the questionnaire received on January 27, it does not appear that it would have made any difference in the

(continued...)

Finally, Sayres complains that the agency's best value analysis was flawed because the agency gave too much weight to Navarro's lower price, and minimized or disregarded Sayres' higher technical rating. As discussed above, the agency recognized the technical strengths in Sayres' proposal, but did not find those advantages to be worth the \$1.4 million (based on MPC estimates) cost premium associated with Sayres' proposal.⁸ While Sayres asserts that this cost premium is not significant, we find that the agency's conclusion is reasonable; consistent with the best value evaluation scheme, which gave predominant weight to the technical factors; and sufficiently documented in the record. Based on our review, we find that the agency reasonably selected the lower-priced, lower technically rated offer for award.⁹

The protest is denied.

Anthony H. Gamboa
General Counsel

(...continued)

evaluation of Sayres' past performance, and thus Sayres was not prejudiced even if the agency erred.

⁸ Sayres initially protested that Navarro's costs were not reasonable or realistic. However, after the agency completely explained how it evaluated those costs, Sayres did not refute this explanation, but asserted that the agency had not squarely addressed its protest grounds and that cost differences between the proposals were not significant as found by the agency.

⁹ Sayres also complains that DOE failed to comply with portions of its source selection plan that required DOE to evaluate past performance prior to cost. The plan, however, is an internal agency guide that does not give the parties any rights; it is the evaluation scheme in the RFP, not internal agency documents such as source selection plans, to which an agency is required to adhere in evaluating proposals and making the award selection. Islandwide Landscaping, Inc., B-293018, Dec. 24, 2003, 2004 CPD ¶ 9 at 4.