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**Comptroller General
of the United States**

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

Decision

Matter of: Hernandez Consulting LLC

File: B-298810.2

Date: December 21, 2006

Alex Hernandez for the protester.

Richard B. Oliver, Esq., McKenna Long & Aldridge LLP, for C. Martin Company, Inc., an intervenor.

Audrey H. Liebross, Esq., Federal Emergency Management Agency, 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 that agency unreasonably found protester's proposal technically unacceptable due to lack of information is denied where information was necessary for agency to fully evaluate proposal and agency reasonably determined that necessary information was lacking.

DECISION

Hernandez Consulting LLC protests the rejection of its proposal as technically unacceptable under Department of Homeland Security, Federal Emergency Management Agency (FEMA), request for proposals (RFP) No. HSFEHQ-06-R-0043, issued as a service-disabled veteran-owned (SDVO) small business set-aside for integrated operations and maintenance at FEMA-based housing in Louisiana. Hernandez primarily asserts that the agency improperly evaluated its proposal.

We deny the protest.

The RFP, issued on May 26, 2006, contemplated the award of multiple indefinite-delivery/indefinite quantity contracts on the basis of low price and technical acceptability under the following factors: technical approach (with subfactors for phase-in, task order performance plan, quality control plan, and resources and understanding), past performance/corporate experience, and price. Competition was limited to firms that reside or primarily do business in the State of Louisiana, and the solicitation provided guidance—including a non-exclusive list of eight factors, such as the state and date of incorporation, Louisiana state licenses,

and the firm's record of past work in Louisiana--as to what firms the agency may consider to qualify. RFP at 3.¹

The agency received 19 proposals. The agency determined that three proposals, including the protester's, were technically unacceptable, and ultimately awarded contracts to 13 firms. Hernandez, whose proposal was based on a teaming arrangement with another firm, Latter & Blum Property Management, Inc., was informed by letter dated September 2 that its proposal had been rejected as technically unacceptable because (1) the quality control plan lacked detail and specifics, (2) the plan to locate, acquire and transport resources did not clearly demonstrate an ability to fulfill the contract requirements, and (3) the proposal did not express a thorough technical approach and understanding of the contract requirements.

Hernandez filed an agency-level protest challenging the agency's conclusions. The agency sustained this protest and reevaluated the proposal. The reevaluation resulted in another finding that Hernandez's proposal was technically unacceptable. Specifically, the reevaluation found that the proposal lacked (1) supporting documents for the teaming arrangement, (2) specifics for the phase-in plan, (3) specifics for the quality control plan, (4) documentation for subcontracting arrangements, and (5) plans or technical specifications for how the firm would meet the terms and conditions of the contract.

Hernandez challenges each of the reasons for rejection of its proposal. Specifically, it asserts that the RFP did not require supporting documentation for the teaming arrangement, its proposal did include a phase-in plan, quality control plan, and subcontracting plan that responded to the RFP's requirements, and that its proposal generally responded to every aspect of the RFP.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, we will examine the record only to determine whether the agency's evaluation was reasonable and consistent with the RFP evaluation scheme and applicable procurement statutes and regulations. DeLeon Tech. Servs., Inc., B-293783, June 4, 2004, 2004 CPD ¶ 145 at 2. Offerors have the burden of submitting an adequately written proposal, and an offeror's mere disagreement with the agency's judgment concerning the adequacy of the proposal is not sufficient to establish that the agency's evaluation was unreasonable. PEMCO World Air Servs., B284240.3 et al., Mar. 27, 2000, 2000 CPD ¶ 71 at 15.

¹ The other factors included the state in which the firm maintains a permanent office, the percentage of the firm's revenues attributable to work performed in Louisiana, the number of permanent employees in the state, membership in state organizations, and any other evidence submitted by the firm. RFP at 3.

We have reviewed all of Hernandez's challenges to the agency's evaluation and find them to be without merit. We discuss several examples below.

TECHNICAL ACCEPTABILITY

Teaming Arrangement

Hernandez proposed to fulfill the contract requirements using a teaming arrangement under which Hernandez would provide "the project management and servicing for this contract while coordinating with our partnering firm on project execution, as per requirements." Proposal at 1. The teaming arrangement, as noted by the evaluation team, was central to Hernandez's plan to locate, acquire, and transport resources. Agency Report (AR), exh. 10, at 1. Based on this finding, the agency found that "the teaming arrangement was essential to allow the contractor to fulfill the contract requirements." *Id.* At the same time, the agency found that Hernandez's proposal provided no detail or supporting documents regarding the arrangement between the two firms. Hernandez asserts that it was not specifically required by the RFP to provide this information. However, given the firm's reliance on the teaming arrangement to perform the contract, there was nothing unreasonable in the agency's determination that teaming arrangement details were required to evaluate Hernandez's proposal, and that the proposal therefore was inadequate in this regard.

Phase-In Plan

A required aspect of the phase-in plan was the offeror's plan to acquire and manage the resources necessary to perform the contract. Hernandez's proposal was general in nature and did not include specifics in this area; rather, Hernandez promised to provide all equipment and items necessary to accomplish the work, and further promised that, in the event Hernandez or its partner did not have the necessary materials, the firms would purchase them "immediately following contract award." Proposal at 4. The proposal did not provide, for example, any indication of the equipment the firms currently possess or that they might need to acquire. We think the agency reasonably could expect offerors to include this kind of detail in their phase-in plans, and that the agency therefore reasonably determined that Hernandez's plan was inadequate.

Resources Plan

The solicitation required offerors to provide a plan to obtain resources (both skilled labor and materials) to perform the work specified in the performance work statement. In response, Hernandez stated that both it and Latter & Blum "have an organic skilled labor force that can handle all the project management, quality assurance, reporting requirements, preventative maintenance, and a modest level of trouble calls. When we have an overflow of trouble calls that we can't organically support we will rely on our partner firms listed below in Exhibit A."

Proposal at 10. The proposal then listed over 400 companies in Exhibit A, under the heading “Existing Materials and Service Vendors.” The agency found this response lacking, since there was “no documentation or validation provided demonstrating that these firms were willing to support this effort, or have the capability to do so.” AR, exh. 10, at 2. The evaluation in this area was reasonable. Since the proposal simply listed firms’ names, with no explanation of the areas of performance in which each would be involved, or any indication of whether any or all would be available when needed, we think the agency reasonably concluded that Hernandez did not provide sufficient information for the agency to evaluate.

ACCEPTABILITY OF AWARDEES

Hernandez challenges the technical acceptability of 11 of the 13 awardees, asserting primarily that they either failed to satisfy the requirement that the firm reside or do business in Louisiana, or lacked experience in grounds maintenance and property management.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f) (2006), require that a protest include a detailed statement of the legal and factual grounds for protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4.

As noted above, the RFP stated that in determining whether a firm would be eligible to compete as a Louisiana firm, the agency would consider numerous factors, not just those on which Hernandez’s challenges are based, and did not indicate that a firm would be ineligible if it failed to satisfy any particular factor. Thus, a firm would not be precluded from competing just because it was not organized, headquartered, incorporated or domiciled in Louisiana; firms could meet other requirements that show they primarily do business in Louisiana.² It follows that Hernandez’s allegation that some firms did not qualify under particular factors does not necessarily provide a basis to question the firms’ eligibility for award.

With regard to the awardees’ alleged lack of experience, the protester merely states that this is the case, without providing the source of the information on which the allegations are based. Under this solicitation, moreover, joint ventures, subcontractors, and teaming arrangements were permitted. Since the experience of a technically qualified subcontractor (or joint venture or teaming partner) generally may be used to satisfy experience requirements for a prospective prime contractor,

² We note that the information Hernandez furnishes in its protest indicates that all but one of the awardees have addresses in Louisiana.

see Magnum Prods., Inc.; Amidia Indus., Inc., B-277917 et al., Dec. 8, 1997, 97-2 CPD ¶ 160 at 7, the mere fact that certain awardees may lack experience in grounds maintenance and property management does not provide a valid basis for challenging the evaluation or awards.³

The protest is denied.

Gary L. Kepplinger
General Counsel

³ We note that it appears from Hernandez's proposal that its experience in property management and grounds maintenance comes primarily from its teaming partner, Latter & Blum. Hernandez's Proposal, Company Experience, at 16-20.