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**Comptroller General  
of the United States**

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

## **Decision**

**Matter of:** DEI Consulting

**File:** B-401258

**Date:** July 13, 2009

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Amir Malek for the protester.

Daniel J. Kraftson, Esq., Kraftson Caudle, LLC, for Enviro-Management & Research, Inc., the intervenor.

Prentis Cook, Jr., Esq., Department of Energy, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protestor's challenge to agency's technical evaluation of its quotation in response to solicitation for technical support services is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

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### **DECISION**

DEI Consulting of Falls Church, Virginia, protests the rejection of its quotation by the Department of Energy (DOE) under request for quotations (RFQ) No. DE-SOL-0000032, for technical support services for federal energy efficiency programs. The procurement was conducted using the procedures in Federal Acquisition Regulation (FAR) Subpart 8.4, Federal Supply Schedules (FSS).

We deny the protest.

### **BACKGROUND**

In June 2008, the agency invited four small business contractors listed on the Energy Management Support and Services Solutions FSS schedule to participate in a pre-proposal conference on June 26. The RFQ was issued on June 27. The RFQ provided for a "best value" source selection and set forth four evaluation factors; technical proposal, key personnel and staffing plan, past performance, and price. The RFQ stated that the three non-price factors, cumulatively, were more important than price. DEI and one other contractor submitted quotations by the July 10 closing date.

On March 31, 2009, DEI received notice that its quotation had not been selected, and that a task order had been issued to the other competing firm, whose quotation received a higher technical rating than DEI's and which offered a higher price than DEI. DEI requested a debriefing on April 1, and on April 2 the contracting officer provided a brief explanation of the basis for the award decision as directed by FAR § 8.404-2(d). This explanation included DEI's technical evaluation results, which revealed that DEI's quotation was evaluated by the agency's technical evaluation committee (TEC) as technically acceptable, but as having no strengths or significant strengths and six significant weaknesses. Shortly after receiving the evaluation results, DEI filed this protest challenging the agency's evaluation with regard to each significant weakness.<sup>1</sup>

## ANALYSIS

The FSS program gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. FAR § 8.402(a). Where, as here, an agency issues an RFQ under FAR Subpart 8.4 and conducts a competition, see FAR § 8.405-2, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. See RVJ Int'l, Inc., B-292161, B-292161.2, July 2, 2003, 2003 CPD ¶ 124 at 5. In a competitive FSS procurement, it is the vendor's burden to submit a quotation that is adequately written and establishes the merits of the quotation. Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 4; Godwin Corp., B-290291, June 17, 2002, 2002 CPD ¶ 103 at 4. In reviewing an agency's technical evaluation of vendor submissions under an RFQ, we will not reevaluate the quotations; we will only consider whether the agency's evaluation was reasonable and in accord with the evaluation criteria listed in the solicitation and applicable procurement statutes and regulations. American Recycling Sys., Inc., B-292500, Aug. 18, 2003, 2003 CPD ¶ 143 at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4. Based on our review of the record here, we conclude that DEI's challenges to the agency's evaluation of its quotation amount to little more than disagreement with the agency's judgment and fail to establish that the evaluation was unreasonable.

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<sup>1</sup> To the extent that DEI also alleges that the agency was motivated by bias or otherwise acted in bad faith, there is no evidence in the record to support such a claim. Government officials are presumed to act in good faith, and where a protester contends that procurement officials are motivated by bias or bad faith, our Office requires convincing proof of that allegation; we will not sustain a protest asserting bad faith based (as in this case) on inferences or supposition. Superior Landscaping Co., Inc., B-310617, Jan. 15, 2008, 2008 CPD ¶ 33 at 4.

Of the six significant weaknesses assessed against DEI's quotation, two related to the technical proposal evaluation factor, three to the key personnel and staffing plan evaluation factor, and one to the past performance evaluation factor. We address DEI's arguments disputing the significant weaknesses assessed under each evaluation factor, in turn.

### Technical Proposal Evaluation Factor

As set forth in the RFQ, each quotation was to provide a brief narrative technical proposal outlining the offeror's planned approach to the 10 task areas (5.1-5.10) identified in the statement of work (SOW). Offerors<sup>2</sup> were to use the technical proposal to demonstrate their knowledge, background, and experience relative to the task areas. RFQ at 3. The technical proposal was also to demonstrate the proposed organizational structure, commitment to provide necessary resources, approach to planning and staffing, and schedule and cost controls. *Id.* Offerors were advised that each "proposal will be evaluated based on the offeror's demonstrated understanding of the depth and complexity of the work to be performed. When demonstrating their technical approach to performing . . . offerors should clearly delineate the uniqueness that would separate their technical approach from another offeror's technical proposal." *Id.* at 4 (emphasis in original).

The TEC evaluated DEI's quotation as having two significant weaknesses under the technical proposal evaluation factor. The first significant weakness was that DEI's quotation failed to demonstrate understanding of tasks 5.1-5.8 and 5.10, and merely reiterated or slightly rephrased the task areas as described in the SOW. TEC Evaluation at 5. The second significant weakness was that, with regard to task area 5.9, "commissioning," DEI stated that it had a unique approach, but failed to further describe its approach or to demonstrate an understanding of the depth and complexity of the work. *Id.*

DEI attempts to generally rebut the TEC's assessment of significant weaknesses under the technical proposal evaluation factor by stating that it is an "approved DOE contractor and is on the nationwide list of approved DOE contractors for this type of work . . . and has been approved by the General Services Administration (GSA) as an authorized service provider for this type of work." Protest at 1-2. However, this argument does not address the agency's determination that DEI's quotation merely repeated the SOW with regard to nine of the 10 identified task areas, and represents mere disagreement with the agency's evaluation. Notwithstanding DEI's status as an "approved contractor" or claimed ability to perform the requirements of the SOW, in a competitive FSS procurement it is the quoting firm's responsibility to submit an

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<sup>2</sup> Because the RFQ refers to the vendors as "offerors," we likewise refer to them as offerors throughout this decision.

adequately written quotation that establishes the quotation's merits. Verizon Fed., Inc., supra.

Consistent with the agency's findings, our review of the record shows that DEI's technical approach to tasks 5.1-5.8 and 5.10 was largely a restatement of task descriptions in the SOW. SOW task 5.4, for example, stated:

5.4 Energy Data Information System Development. The contractor will provide support services to DOE and other agencies in the development of automated energy data collection and analysis systems, that can be used for energy reporting and analysis purposes throughout the organization.

5.4.1 Deliverable: the contractor will develop site surveys, perform a feasibility assessment, and provide technical support services as required . . . during the development of the system.

SOW, at 3. DEI's technical approach to SOW task 5.4 stated, in relevant part:

Under these task orders DEI will provide the necessary technical support services towards development of automated energy data collection and analysis. Our work will typically entail a site survey along with a feasibility study assessing the required data gathering and evaluation techniques that can later be used for energy reporting and analysis purposes throughout the organization.

DEI Quotation at 6.

Similarly, with regard to task area 5.9, commissioning, our review of DEI's quotation supports the agency's view that DEI's approach to the task area consisted largely of a non-specific list of steps involved in the commissioning process, and failed to demonstrate the level of understanding contemplated by the RFQ. Moreover, while DEI stated that its "unique commissioning approach ensures that buildings meet the design intent, and operate as was designed and specified in the construction documents," *id.* at 5, it provided no further information to demonstrate that its commissioning approach was unique.

Based on DEI's failure to present more than mere disagreement in its challenges to the agency's evaluation of its quotation under the technical proposal factor, as well as our review of the record, we see nothing unreasonable about the agency's assessment under this evaluation factor.

#### Key Personnel and Staffing Plan

The RFQ identified two key personnel for this requirement, a project manager and a senior engineer, and stated that each offeror was to provide resumes for all proposed

key personnel showing that they meet or exceed the stated qualifications for the position. RFQ at 3. The project manager position required a bachelor's degree with a minimum of 10 years of engineering or scientific project management experience. RFQ, Attachment 4, at 1. The proposed project manager was to be "experienced in problem solving, with experience in developing and administering government multi-year, task oriented support projects." Id. The proposed project manager also was expected to have "knowledge of and experience with DOE policies, functional requirements, regulatory compliance support; and capabilities as related to briefing and presentation support, document review and evaluation, program planning and evaluation support, document preparation support, and meeting support." Id. Additionally, offerors were required to "submit a staffing plan, which will demonstrate: approach to staffing the contract with a quality and stable workforce employed under the contract; ability to recruit, retain, and provide highly skilled qualified personnel, both key and non-key, who meet or exceed all requirements; how it will assure that the required number of qualified personnel will be available at start-up." RFQ at 3.

The TEC evaluated DEI's quotation as having three significant weaknesses under this evaluation factor. The first significant weakness was that DEI failed to designate an individual for the senior engineer key personnel position, the second was that DEI's proposed project manager's resume did not demonstrate that he met all required position qualifications, and the third was that DEI failed to submit a staffing plan as required by the RFQ. TEC Evaluation at 7-8.

DEI argues that the first significant weakness is totally unsupported, as DEI's quotation clearly indicates that it proposed six registered professional engineers who, by all industry standards, are considered to be senior engineers. The record, however, shows that while DEI did provide brief resumes for six proposed engineers, it failed to indicate which of those engineers it was proposing to fill the senior engineer position. Given that DEI's quotation did not designate any particular individual for that key personnel position, as required by the RFQ, we see no basis to object to the agency's assessment of a significant weakness in this area.

With regard to the second significant weakness, DEI argues that the TEC evaluation is unreasonable because DEI's proposed project manager served as key personnel and as the engineer of record on the previous contract for this requirement and was associated with the incumbent firm until March 2006. As with DEI's challenges to the agency's evaluation under the technical proposal evaluation factor, this argument fails to address the basis for the TEC's assessment of the significant weakness: that the proposed project manager's resume failed to demonstrate that he met the key position's qualification requirements. The resume of DEI's proposed project manager consisted of a half-page narrative statement of the project manager's years of experience, recent projects, and industry certifications. DEI Quotation, Attachment 2, at 1. Although this narrative stated that the proposed project manager had been a "key member" under the previous contract, and had served as a project manager and lead engineer on other commissioning and energy projects, it failed to

specifically address the position qualification requirements set forth in the RFQ, and we thus see no basis to find the TEC's assessment of a significant weakness unreasonable.

DEI asserts that the third significant weakness, that it failed to submit a staffing plan, is also unsupported and that its quotation clearly included a staffing plan that addressed recruitment. Our review of the record, however, supports the agency's determination. While DEI's quotation included a three-paragraph section entitled "staffing plan," that section failed to address the specific requirements of the staffing plan as identified in the RFQ, and instead made blanket assertions that DEI's key personnel are ready to devote a significant percentage of their time to the project and will be available throughout the contract period. *Id.* at 12. The organizational chart included in DEI's quotation similarly failed to provide the information required by the RFQ; it merely indicated the names of the staff proposed for engineering positions, and provided no detail regarding the portion of the chart labeled "Technical and Administrative Support Staff," which, as set out in the RFQ, included four categories of non-key, non-engineer personnel. *Id.* at 11.

Given that the record supports the agency's findings regarding DEI's quotation under the key personnel and staffing plan factor, we see no basis to object to the agency's evaluation under that factor.

#### Past Performance

The RFQ stated that "[o]fferors will provide a minimum of three references for similar type(s) of work performed for U.S. government clients within the last three (3) years." RFQ at 3 (emphasis added). The TEC assessed one significant weakness against DEI's proposal under this evaluation factor, on the basis that all of DEI's past performance references related to commissioning, which was just one of the 10 tasks identified in the SOW. TEC Evaluation at 10.

DEI challenges this assessment by essentially repeating its contention that DEI is on the national list of DOE's approved energy service companies and is a GSA schedule holder for energy services, demonstrating that DEI is qualified to perform as required under the SOW. As before, this argument fails to respond to the specific basis for the significant weakness assessed by the TEC. In this regard, the record demonstrates that DEI supplied six past performance references in its quotation, each of which related to DEI's work as a commissioning authority, and none of which demonstrates past performance related to any of the other nine task areas described in the SOW. Accordingly, we have no basis to object to the agency's evaluation under the past performance factor.

## CONCLUSION

In view of DEI's failure to rebut the specific findings underlying the significant weaknesses assessed against its quotation, and based on our review of the record, we see no basis to conclude that the agency's evaluation was unreasonable.

The protest is denied.

Daniel I. Gordon  
Acting General Counsel