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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Mack Mechanical, Inc.

File: B-294658.2

Date: April 27, 2005

Amanda Brantley for the protester.

Mark G. Garrett, Esq., United States Department of Agriculture, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's evaluation and source selection decision were flawed is denied where record shows that the agency's evaluation and source selection decision were reasonable and consistent with the solicitation's evaluation factors.

DECISION

Mack Mechanical, Inc. (MMI) protests the award of a contract to Lewis & Associates Construction Co., Inc. under request for proposals (RFP) No. SAZ-01-04-25, issued by the United States Department of Agriculture, Forest Service, for the Open Pond Rehabilitation Project at recreational campsites in the Conecuh National Forest. MMI primarily objects to the agency's evaluation of proposals and the source selection decision.

We deny the protest.

The RFP was originally issued on July 9, 2004 and contemplated the award of a fixed-price contract for the construction of one 6-unit toilet/shower building and a parking lot, and the installation and replacement of electrical and water hookups. On August 23, award was made to Lewis. After its debriefing on August 27, MMI filed a protest with our Office on September 3. Our Office dismissed that protest on October 6, after the agency notified us that it had decided to terminate the award to Lewis and to amend the solicitation to revise the evaluation factors.

On October 4, the award to Lewis was terminated, and on November 22 the agency issued amendment No. 3 to the solicitation, which revised the evaluation factors. Under the amended solicitation, award was to be made to the responsible offeror

whose proposal conformed to the solicitation and was most advantageous to the government, that is, on a “best value” basis. The revised solicitation listed the following evaluation factors in descending order of importance: past performance on similar projects, experience on similar projects, availability and qualifications of skilled work force, and cost/price.¹ The original eight offerors were given until December 7 to submit their revised proposals.

The revised proposals were evaluated by the technical evaluation board (TEB) and, on December 20, final revised proposals were requested and received. The final revised proposals were reviewed for price reasonableness.

Based on the technical evaluation, the Lewis proposal was ranked first and the protester’s proposal was ranked second by the TEB. The TEB considered the Lewis proposal to be superior based on the company’s more than 35 years of experience and excellent past performance record. The TEB found that Lewis’ personnel were more skilled and capable of performing the requirements in the remote areas where this work will be performed. Although the protester’s proposal was ranked second, the TEB noted that the firm was a newly-established company with little experience and a less skilled work force, and that the firm was rated “barely average” for past performance. Agency Report (AR), Tab G, Technical Evaluation Board Results.

After a review of the recommendation by the TEB, the contracting officer decided that, notwithstanding the protester’s lower price, award to Lewis represented the best value because Lewis was an exceptional performer and, based on Lewis’ substantially greater experience in recreational area-type projects and its excellent past performance record, Lewis provided a significant advantage that would allow the firm to successfully plan the work, anticipate problems, and overcome performance obstacles in a more efficient manner. AR, Tab F, Revised Source Selection Decision, at 3. The agency subsequently awarded the contract to Lewis and notified all unsuccessful offerors of the award by letter dated February 4, 2005. Following a debriefing, MMI filed this protest with our Office on March 1.

MMI essentially challenges the agency’s evaluation and rating of the protester’s and the awardee’s past performance. The protester maintains that since both offerors received one adverse past performance reference, the rating of the Lewis proposal as exceptional and the MMI proposal as acceptable under the past performance factor was unreasonable.²

¹ The original RFP stated that the following evaluation factors would be considered, in addition to price: past performance/experience, availability of skilled work force, and woman-owned/minority status.

² In its initial protest, MMI argued that the selection decision was improper because the agency identified a 1 percent price differential between Lewis’ and MMI’s proposals when the actual differential was 5.3 percent. The record shows, however, (continued...)

The evaluation of technical proposals, including past performance, is a matter within the discretion of the contracting agency. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency's evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

The record shows that the protester's proposal was rated acceptable for the past performance evaluation factor. The agency received three past performance references for the protester, with two identified as being for small projects. For these small projects, the protester received ratings of above average and slightly above average. However, the one relevant reference, while rating the protester's overall performance as average, also contained negative comments about the protester's performance. Specifically, this reference expressed concerns about the protester subcontracting the work, its failure to complete the project in a timely manner, and its inability to maintain adequate staffing. On the other hand, the agency received four references for the awardee. The awardee received one excellent rating, two above average ratings, and one average rating. There were no negative comments concerning the awardee's past performance. In sum, we find no basis to question the evaluation of Lewis' proposal as superior to MMI's under the past performance evaluation factor; the agency reasonably rated Lewis higher because it had more relevant contracts, as well as overall better ratings for these contracts and no negative comments.

Moreover, the record shows that the past performance evaluation was not the only determining factor for the source selection decision. As previously stated, Lewis was selected for award not only based on its excellent past performance record, but also based on its 35 years of experience and its highly skilled and qualified work force.³ Consequently, even if we were to agree that the protester should have

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that Lewis' final proposed price was \$670,000 and MMI's was \$663,500. Consequently, Lewis' price was \$6,500, or less than 1 percent, higher than MMI's; thus, the tradeoff was properly based on the actual price difference.

³ In its initial protest, MMI also argued that the solicitation was improperly amended to eliminate an evaluation factor advantageous to MMI, specifically, the factor for woman-owned or minority-owned businesses. The amendment changing the evaluation factors was issued on November 22, 2004. A protest based upon alleged improprieties in a solicitation apparent prior to the time set for receipt of proposals
(continued...)

received a higher rating under the past performance evaluation factor, we have no basis to question the reasonableness of the award to Lewis.

The protest is denied.

Anthony H. Gamboa
General Counsel

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and filed after award, as in this case, is untimely, and will not be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2005).