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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: LLH & Associates, LLC

File: B-297804

Date: March 6, 2006

James Ballentine, Esq., for the protester.

Maj. Jeffrey Branstetter and David L. Bell, Esq., Department of the Air Force, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement which provided for award on the basis of a price/past performance tradeoff assessment, protest challenging the selection of the awardee on the basis of that firm's lower proposed priced is denied, where the protester's and awardee's past performance reasonably received equal ratings.

DECISION

LLH & Associates, LLC protests the award of a contract to Alpha-Omega Change Engineering, Inc. under request for proposals (RFP) No. FA4890-05-R-0173, issued by the Department of the Air Force for services supporting the agency's foreign military sales programs.

We deny the protest.

The RFP, issued as a small business set-aside, provided for the award of a fixed-price contract for a base year with 4 option years for services supporting the agency's Air Combat Command, Security Assistance Branch. The RFP's statement of work (SOW) required the contractor to provide the following personnel in performance of the contract: an international fighter program manager, an exercises program manager, and an aircraft ferry support program manager. RFP, amend. 2, SOW, at 3. Required technical skills and qualifications were identified for each of these three managers. Id. at 7-8. The SOW further provided:

4.4.2 Contractor Employee Resume Requirements. Personnel provided under this SOW are critical to the mission of the Air Force

program office. The contractor may not change the personnel performing under this order without prior notification and approval by the Government Contracting Officer. Any replacement personnel proposed must be at least as qualified as the individual they are replacing. A resume shall be submitted for initial cadre of personnel and any proposed replacement personnel at least 10 working days prior to the time the personnel change is expected to occur. There is no limitation on the number of pages for resumes and these do not count against the technical proposal limitation of pages. The Government will review the resume to ensure compliance with this requirement.

Id. at 10.

The RFP identified the following evaluation factors: technical proposal, past performance, and price. The RFP provided that offerors' technical proposals would be evaluated to determine whether the offeror was capable of fully providing the services identified in the SOW. In this regard, offerors were informed that the firms' technical proposals must "identify the management structure (to include quality program plan), technical capability, and appropriate manning and skill mix to fully meet all taskings under the resulting contract."¹ Offerors were also informed that technical proposals would be evaluated as either acceptable, reasonably susceptible of being made acceptable, or unacceptable. Offers that were found technically acceptable would then be qualitatively assessed under the past performance factor. The RFP stated that the source selection authority (SSA) would weigh offerors' evaluated past performance and proposed prices in making the award decision, although it did not state the relative importance of past performance vis-à-vis price.²

Proposals were received from LLH (the incumbent contractor) and Alpha-Omega, and evaluated by the agency's source selection evaluation team (SSET) as follows:

¹ Technical proposals were limited to "no more than 25 pages." RFP, amend. 1, at 24.

² Where a solicitation fails to explicitly state the relative weight of cost in the evaluation scheme, it is presumed that cost and technical considerations will be accorded equal weight and importance in the evaluation. Meridian Corp., B-246330.3, July 19, 1993, 93-2 CPD ¶ 29 at 5.

	Technical Proposal	Past Performance	Price
Alpha-Omega	Acceptable	Significant Confidence ³	\$2,101,416
LLH	Acceptable	Significant Confidence	\$2,190,978

Agency Report (AR), Tab 12, Performance Analysis Report, at 10. The SSET found that each firm’s technical proposal demonstrated an acceptable management structure and technical capability, and were therefore technically acceptable. Id. at 5-6, 10.

The firms’ past performance information was assessed by the agency’s performance confidence assessment group (PCAG). The PCAG found that Alpha-Omega’s identified past performance was relevant and that all four references identified by Alpha-Omega reported “high confidence” in the awardee. Id. at 8-9. The PCAG also found that LLH’s identified past performance was relevant and that LLH’s reference also reported “high confidence” in the protester.⁴ The PCAG determined that “[e]ven though ratings for both offerors were considered ‘high,’ it was the SSET’s decision to assess a more conservative assessment of ‘significant.’” Id. at 10. Accordingly, both firms received an equal “significant confidence” rating for their past performance.

Given the firms’ equal past performance ratings, the SSA concluded that award should be made to Alpha-Omega on the basis of that firm’s lower proposed price. AR, Tab 11, Source Selection Decision, at 2. Award was made to Alpha-Omega, and this protest followed.

LLH first complains that the Air Force did not evaluate resumes as required by the RFP.⁵ In this regard, LLH argues that it submitted resumes and that Alpha-Omega did

³ Past performance was assessed as either (in descending order of quality) high confidence, significant confidence, satisfactory confidence, unknown confidence, little confidence, or no confidence. RFP, amend. 1, at 26.

⁴ LLH’s identified past performance concerning three Federal Supply Schedule task orders; a single reference responded to the agency’s past performance questionnaire with respect to all three task orders.

⁵ LLH also complained that the agency may not have evaluated a complete copy of LLH’s proposal because the agency initially argued in its agency report on the protest that LLH had not submitted resumes. The Air Force later admitted that it had received resumes from LLH and that the agency had erred when it stated in the agency report that the firm had not submitted resumes.

not, and that Alpha-Omega's proposal should have been rejected because the firm failed to conform to the solicitation's requirements.

The Air Force acknowledges that it did not evaluate resumes for proposed personnel. Nevertheless, the record establishes that LLH was not prejudiced, even if the RFP required the evaluation of resumes.⁶ Alpha-Omega proposed incumbent personnel for the three management positions specifically required by the SOW and another individual for an overall program management position. Although Alpha-Omega did not provide a separate resume for these individuals, the firm described each individual's relevant experience, which appears to satisfy the experience requirements stated in the SOW. See AR, Tab 10, Alpha-Omega Technical Proposal, at 3-6. Moreover, apart of the information provided by Alpha-Omega in its technical proposal for these individuals, the record also shows that Alpha-Omega and LLH proposed the same individuals for the international fighter program manager, exercises program manager, and aircraft ferry support program manager positions. Given that LLH provided resumes for these same individuals, the agency had close at hand the information necessary to evaluate the qualifications of these individuals. Both LLH's and Alpha-Omega's technical proposals were found by the agency to be acceptable under the technical proposal factor, under which the resumes would presumably be evaluated. Under these circumstances, where both firms proposed the same personnel for the required management positions, we fail to see any reasonable possibility of prejudice to LLH from the agency's failure to evaluate resumes.⁷ See Consolidated Eng'g Servs., Inc., B-279565.2, B-279565.3, June 26, 1998, 99-1 CPD ¶ 75 at 6 (protester and awardee should have received same experience score for a proposed subcontractor where both proposed the same subcontractor).

LLH also complains that Alpha-Omega has "engaged in illegal or otherwise tortious collusive activities" by seeking to employ LLH's employees, where those employees allegedly have employment terms with LLH that would prohibit employment by Alpha-Omega. Protest at 3-4. LLH also suggests that two of its former employees provided LLH proprietary information to Alpha-Omega, which the Air Force has failed to investigate. Protester's Comments at 1-3.

⁶ It is not clear that the RFP provided for the evaluation of resumes. Although the solicitation indicated that resumes could be submitted with technical proposals, see RFP, amend. 2, SOW, at 10, neither the proposal instructions nor the evaluation criteria refers to the evaluation of resumes or the qualifications or experience of proposed personnel. We do not resolve this matter, given our determination that LLH was not prejudiced by the agency's failure to evaluate resumes.

⁷ For the same reasons, we reject LLH argument the agency's source selection decision was unreasonable because the agency did not weigh the quality of the incumbent employees that LLH offered against Alpha-Omega's lower proposed price.

LLH's unsupported allegations provide us with no basis to object to the agency's selection of Alpha-Omega's proposal for award. To the extent that LLH is complaining that its former employees violated terms of an employment contract between LLH and the employees, this concerns a dispute between private parties, which is not for our review; likewise, LLH's unsupported supposition that Alpha-Omega may have received LLH proprietary data from LLH's former employees also concerns a private dispute between the parties, where there is no credible allegation of government involvement. See Applied Comms. Research, Inc., B-270519, Mar. 11, 1996, 96-1 CPD ¶ 145 at 2-3; Olin Corp.--Recon., B-252154.2, June 3, 1993, 93-1 CPD ¶ 428 at 2-3.

LLH also challenges the agency's evaluation of the firms' past performance, arguing the PCAG improperly reduced LLH's "high confidence" rating to "significant confidence." As noted above, both LLH and Alpha-Omega received only "high confidence" ratings from its references. Although the agency reduced the firms' "high confidence" ratings to "significant confidence," LLH was not prejudiced thereby because Alpha-Omega's rating was reduced for the same reasons. From our review of the record, we find no basis to conclude that the firms' past performance ratings should not be considered essentially equal. That is, the record supports equal ratings for the firms and does not indicate any discriminators in the firms' respective past performance.

In sum, the record supports the agency's selection of Alpha-Omega's proposal on the basis of that firm's lower proposed price, where Alpha-Omega's and LLH's acceptable proposals received equal past performance ratings.⁸

We deny the protest.

Anthony H. Gamboa
General Counsel

⁸ LLH also complains that the Air Force did not fairly consider the protester's agency-level protest. Our bid protest jurisdiction is limited to review of whether an agency's procurement actions complied with procurement statutes and regulations, 31 U.S.C. §§ 3551-3552 (2000); the procedural fairness of an agency's review of an agency-level protest is not a matter within the scope of our bid protest jurisdiction.