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**Comptroller General
of the United States**

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

Decision

Matter of: Computer Cite

File: B-400830

Date: February 3, 2009

Cammy C. Ticknor for the protester.

Jon M. DeVore, Esq., Birch, Horton, Bittner and Cherot, PC, for SIKU Construction, LLC, the intervenor.

LTC Won K. Lee, Department of the Air Force, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that award is improper because awardee's parent company is not registered in the Central Contractor Registration (CCR) database is denied since there is no requirement in the Federal Acquisition Regulation that a potential contractor's parent company be registered in the CCR.
 2. Protest that the agency improperly used an unstated evaluation criterion is denied where the statement that gave rise to this protest ground was made by a different contracting officer, in connection with a different procurement than the one at issue in the protest.
 3. Protest that agency improperly evaluated protester's proposal for performance confidence is denied where the record shows that, even if the protester's proposal had received the highest possible rating for performance confidence, the proposal would still have been rated no higher than another lower-priced proposal, and therefore there was no competitive prejudice to the protester.
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DECISION

Computer Cite (CCITE), of San Ramon, California, protests the award of a contract to SIKU Construction, LLC, of Anchorage, Alaska, by the Department of the Air Force under request for proposals (RFP) No. FA8773-08-R-0084 for operations and maintenance (O&M) services at Travis Air Force Base (AFB), California. CCITE asserts that SIKU is ineligible for award because SIKU's parent company is not properly registered in the Central Contractor Registration (CCR) database, that the

Air Force employed an unstated evaluation criterion by limiting eligibility for award to firms that have previously performed the types of services called for under the RFP, and that the Air Force improperly gave the protester's proposal a performance risk rating of "unknown confidence."

We deny the protest.

The Air Force issued the RFP for O&M services in support of the base telecommunications system and the medical center telecommunications center at Travis AFB on June 13, 2008, with a proposal due date of July 14. The RFP, issued as a section 8(a) small business set-aside, included three evaluation criteria: technical, past performance, and price. Those offers found technically acceptable would receive a performance risk assessment rating based on the offeror's past performance data; this rating was to represent the government's confidence level that the offeror would accomplish the proposed effort. The possible ratings were substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. The agency would select the technically acceptable offer representing the best value to the government based on a trade-off between the past performance rating and price. RFP at 73.

The agency received three proposals, including those from the protester and the intervenor. The offerors' proposals, all of which were found to be technically acceptable, were rated as follows:

Offeror	Technical	Price	Performance Confidence
Offeror A	Acceptable	\$1,864,899.71	Limited Confidence
SIKU	Acceptable	\$1,979,127.72	Substantial Confidence
CCITE	Acceptable	\$2,058,655.67	Unknown Confidence

In conducting the source selection decision, the agency decided that the better performance confidence rating of SIKU's higher-priced proposal warranted the premium over offeror A's proposal, Agency Report, Tab 12, Source Selection Decision Document at 11, and award was made to SIKU.

CCITE asserts that SIKU is ineligible to do business with the government because its parent company, Harpoon Construction Group, is not registered in the CCR database. The requirements for registering in the CCR database are set out in Federal Acquisition Regulation (FAR) subpart 4.11. Nowhere in that subpart does the FAR require that a prospective contractor's parent company be registered.

Rather, the regulations pertain to the offeror itself. See FAR § 4.1102(a) (“Prospective contractors must be registered in the CCR database.”); FAR § 4.1103(a)(1) (the contracting officer is to verify that the prospective contractor is registered). As the protester recognizes, the record here shows that SIKU is registered in the CCR. While CCITE argues that the registration requirement should be held to apply to SIKU’s parent company, Harpoon, because SIKU is a wholly-owned subsidiary of Harpoon, there is no support in the applicable regulations for this position.

CCITE argues that the Air Force employed an unstated evaluation criterion because it limited eligibility for award to those firms that have previously performed the types of services called for under the RFP. The protester cites the following statement, made by a different contracting officer in connection with a different procurement, as the basis of its claim: “The nature, complexity, and criticality of our requirements mandate that we only hire companies who have performed this service for us (or other [Department of Defense] components) previously.” Air Force Memorandum of Law, Attach. 11, Agency Memorandum to Small Business Administration, Oct. 11, 2008, at 12. The record shows that this statement was made in the course of a challenge by CCITE to the Air Force’s use of a particular North American Industry Classification System code in a solicitation that is not the subject of this protest; nevertheless, CCITE argues that the statement has wider applicability and “mandate[s] how offerors are to be evaluated when submitting proposals to the Air Force.” Protest at 2. We disagree. There is nothing in the agency’s memorandum on which CCITE relies to suggest that the contracting officer there was referring to anything other than the Air Force’s procurement strategy for that specific, contested solicitation. Any speculation to the contrary does not form a valid basis of protest. All Phase Servs., Inc., B-294640, B-294640.2, Dec. 1, 2004, 2005 CPD ¶ 129 at 7.

The protester also challenges the agency’s performance confidence rating of the protester’s proposal as “unknown confidence.” We need not resolve this issue because the record shows that there was no prejudice to CCITE arising from any alleged evaluation error in this area. Even if the protester prevailed on this protest ground and received the highest possible performance confidence rating, its price would still be higher than the awardee’s and its rating would be the same. From the record, we see no reasonable possibility that the contracting officer would have selected CCITE’s higher-priced proposal instead of SIKU’s equally-rated, lower-priced proposal. See American Cybernetic Corp., B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 3. Prejudice is an essential element of every viable protest, and where, as here, none is shown or is otherwise evident, we will not sustain the protest. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7.

The protest is denied.

Gary L. Kepplinger
General Counsel