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

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Decision

Matter of: MELE Associates, Inc.

File: B-299229.4

Date: July 25, 2007

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H. Jack Shearer, Esq., Young H. Cho, Esq., and Ida Hernandez Sedillo, Esq., Department of Energy, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably evaluated proposal under technical approach factor is denied where, although proposal offered to comply with solicitation requirements, it did not explain how protester would do so, and agency otherwise reasonably determined that proposal evidenced lack of understanding of requirements.

2. Protest that agency unreasonably evaluated proposal under corporate experience factor is denied where agency reasonably determined that proposal did not demonstrate that protester had experience performing solicitation tasks.

DECISION

MELE Associates, Inc. protests the rejection of its proposal in response to request for proposals (RFP) No. DE-PR52-05NA26986, issued by the Department of Energy (DOE) for services to enhance and accelerate programs for the location, removal, and protection of nuclear and radiological materials stored at foreign or domestic facilities and at risk for theft or misuse. MELE argues that DOE improperly evaluated its proposal under the technical and corporate experience factors.

We deny the protest.

The RFP anticipated the award of multiple contracts under which firms would be able to compete for future task orders--which may be fixed-price, cost-plus-fixed-fee,

or cost-plus-incentive-fee in nature—in four areas listed in the performance work statement (PWS). The RFP provided for award on a “best value” basis considering technical approach to two sample task orders, corporate experience, past performance, and cost; the non-cost factors combined were significantly more important than cost. RFP § M, at 1. Seven proposals were received and were evaluated by a source selection evaluation board (SSEB). The SSEB assigned proposals an adjectival rating (excellent, good, satisfactory, marginal, or unsatisfactory) under each non-cost factor based on the proposals’ evaluated strengths and weaknesses. Agency Report (AR) at 5-6. MELE’s proposal was rated unsatisfactory for technical approach, marginal for experience, and excellent for past performance, and offered the lowest cost. AR at 7. DOE ultimately made three awards. MELE was not awarded a contract.

MELE maintains that DOE improperly evaluated its proposal under the technical approach and corporate experience factors. In reviewing a protest against an agency’s proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Phillips Med. Sys. Of N. Am., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have reviewed the record and find that MELE’s arguments are without merit. We discuss several of those arguments below.

TECHNICAL APPROACH TO SAMPLE TASK ORDER 1

Disposal

Under Sample Task Order 1 (STO1), offerors were instructed to develop a plan to prepare, transport, and dispose of devices containing cesium-137 and cobalt-60 sources found in California, Washington State, and New Jersey. STO1 at 2. The devices were to be disposed of as radioactive waste at the Nevada Test Site (NTS) disposal facility. Id. The plan was to provide for completing recovery and shipping of the New Jersey and Washington devices within 180 days, and of the California device within 30 days, after “award” of the task order. Id.

DOE assigned MELE’s proposal a significant weakness under the technical approach factor on the basis that MELE’s plan did not demonstrate that the waste from the three sites would be disposed of at NTS as required by STO1.¹ Specifically, the

¹ This weakness was also based on MELE’s failure to identify how it would develop a waste profile for the New Jersey irradiator, without which the waste could not be disposed of at NTS. In its protest, MELE argued that it did not need to explain how it would obtain the profile because it had been approved to dispose of waste at NTS. In its report DOE disagreed, and in the comments MELE submitted in response to the agency report, MELE no longer challenged DOE’s evaluation on this basis.

(continued...)

agency's concern was that MELE did not provide a definite time frame for disposal at NTS, leading it to conclude that MELE had not fully addressed the performance objective of the PWS.² AR at 9; Supplemental Agency Report (SAR) at 1. In this regard, MELE's plan did not propose transporting the waste from the three sites directly to NTS for disposal but, rather, proposed to recover the waste and hold it in interim storage for consolidation with waste recovered from other sites and at other times. When a sufficient amount of waste was accumulated, MELE then would transport the waste to NTS for disposal. AR at 9-10. The agency's concern arose because the PWS specifically excludes long-term storage from the definition of disposition, PWS at 5, and MELE's plan failed to indicate from where the other waste might be coming, how long the waste would be held in interim storage, and when the waste ultimately would be shipped to NTS for disposal. Agency Response to Question, June 29, 2007 (ARQ, June 29) at 3, 4, 5.

MELE asserts that its plan did in fact include a definite time frame for disposition of the waste at NTS, noting that its proposal indicated that disposal of the Washington and New Jersey waste would be completed within 180 days of the task order award, as required, and that disposal of the California waste would be completed within 30 days of award, as required. We think the agency reasonably determined otherwise. As DOE notes, the information MELE cites was part of the proposal heading for each of the three locations--rather than substantive information--which merely repeated the requirements of STO1. Similarly, while MELE's plan included timelines for each of the locations showing disposal by a specific date following the start date, the agency found that these timelines were extremely vague; for example, they did not indicate when the devices would be placed in interim storage and when they would be removed from interim storage. MELE Proposal, Vol. II, § B 9, at 11, 15. Further, as discussed above, MELE's proposal narrative did not provide any information discussing how and when it planned to dispose of the devices at NTS within the stated 180 days. Thus, we think the agency reasonably could read the proposal headings and timelines as no more than blanket statements of compliance with the solicitation requirements, and as not providing information as part of its required plan from which it could conclude that MELE would dispose of the waste at NTS

(...continued)

Accordingly, we consider this basis of protest abandoned. See Symlicity Corp., B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 5 n.6.

² Throughout its protest submissions, MELE characterizes DOE's initial concerns with its proposal as based on MELE's failure to propose disposing of the recovered waste at NTS, and instead only proposing to hold it in interim storage and consolidate it with other recovered waste. This is not the case. In identifying the significant weakness in MELE's proposal, the SSEB noted that MELE proposed disposal at NTS, and then expressed concern that, due to the proposed interim storage and consolidation, the disposal did not satisfy STO1. AR at 9.

within the framework of STO1. See National Shower Express, Inc., Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 6; Trimble Navigation Ltd., B-258672, Jan. 30, 1995, 95-1 CPD ¶ 138 at 8.

NTS Waste Acceptance Criteria

In responding to STO1, offerors were required to comply with the requirements for radioactive waste disposal contained in the NTS Waste Acceptance Criteria (WAC). STO1 at 2. Offerors' sample plans were to include a description of how the work would be accomplished, including which regulatory requirements applied and how the offeror planned to meet them. STO1 at 3.

The SSEB assigned MELE's proposal a significant weakness for failure to demonstrate an understanding of the WAC. DOE's concern arose from the fact that MELE's proposal included an agreement to comply with all applicable regulations, but did not indicate what those regulations were, or discuss how MELE would ensure compliance with them.³ DOE therefore questioned whether MELE was aware of which regulations it was mandated to follow and the purpose of those regulations. AR at 14. MELE maintains that its proposal did in fact both identify the regulations applicable to the recovery and disposal of the waste, and discuss how it would comply with them. MELE points to portions of its proposal that discuss requirements that appear to be based on some regulation. The proposal states, for example that, "[b]ased on the calculated activity level of the shipboard irradiator... shipment in a Type B package is required." MELE Proposal, Vol. II, § B at 4. However, as the agency found, the cited areas of the proposal do not identify the referenced regulation, describe what the regulation requires, or explain how MELE was proposing to comply with the regulation. The agency further points out that, as part of their plan, offerors were required to analyze the source materials that were to be disposed of in order to determine whether they contained other hazardous materials, such as lead. AR at 14-15. The agency found that, while MELE's proposal recognized this requirement, it did not identify or discuss the steps in the process, that is, sampling and analysis, which must be performed by an NTS-certified laboratory. AR at 12. In light of the shortcomings identified by the agency, we conclude that there is no basis to question this aspect of the evaluation.

³ The agency also was concerned because MELE's proposal stated that the WAC did not address all regulatory requirements regarding the handling and disposal of waste--such as those promulgated by the Occupational Safety and Health Administration, the Department of Transportation, and the Nuclear Regulatory Agency--MELE Proposal, Vol. II, § B at 8-9--when, in fact, the WAC requires compliance with all applicable regulations.

Interim Storage and Security at Domestic Facilities

The agency assigned two weaknesses to MELE's proposal concerning whether MELE understood the NTS acceptance criteria and the parameters of the RFP. First, in discussing waste disposal at NTS, MELE stated that, if it became necessary before it had approval to dispose of waste at NTS, it would negotiate with NTS to hold the waste in interim storage. AR at 18-19. The agency concluded that MELE did not understand the process at NTS because NTS only accepts waste for immediate disposal when the waste has an approved profile, and does not permit interim storage at its facility. MELE acknowledges that its proposal in this regard was incorrect, but asserts that this should not have been rated a proposal weakness because this was only an alternative strategy in case its other source of interim storage failed. However, whether termed a mistake or a secondary strategy, we think the agency reasonably could find that MELE's failure to recognize that NTS does not permit interim storage indicated that MELE did not fully understand the NTS procedures, and that this represented a weakness in the proposal.⁴

The agency also assessed a weakness against MELE's proposal because MELE proposed to perform a facility security assessment as part of each domestic radioactive sealed source recovery project. DOE concluded that MELE did not understand the parameters of the RFP, which requires security assessments only for foreign facilities. AR at 15. The agency also was concerned that performing such an assessment would result in added cost and schedule delays. MELE asserts that it was unreasonable for DOE to assess a weakness based on its proposal to perform additional security assessments, noting that, even with its proposed additional security, its cost was significantly lower than the other offerors' costs. MELE's argument is without merit. We think it is reasonable for an agency to downgrade a proposal where it offers something that is not required, without indicating that the offeror understands the precise requirements. Since the solicitation here required a security assessment only for foreign facilities, DOE reasonably determined that MELE's offer to perform assessments at domestic facilities indicated a possible lack

⁴ MELE states that it learned on June 25 that NTS does in fact permit interim storage if the material to be stored is classified as source material rather than waste. This information presumably was available at the time MELE filed its original protest on April 30. Thus, this argument should have been raised in the original protest; because it was not, it is untimely. Our Regulations do not contemplate the piecemeal development of protest issues. See Braswell Servs. Group, Inc., B-276694, July 15, 1997, 97-2 CPD ¶ 18 at 6-7. In any case, even if MELE's information is correct, MELE's proposal did not discuss the difference between source material in the context of interim storage at NTS; in fact, in discussing interim storage, the proposal refers to the material as waste. Thus, DOE would have no reason to read the proposal as proposing interim storage for other than waste material, which, MELE acknowledges, is not permitted.

of understanding of the actual requirements. The fact that MELE's proposed cost was low even with the cost of these additional assessments did not preclude the agency from downgrading the proposal for lack of understanding.

CORPORATE EXPERIENCE

The RFP instructed offerors to describe their experience (as well as the experience of team members) related to the four task areas of the PWS, explain the relevance of the experience, and describe the depth of their role in the management and execution of the contract cited for the experience. RFP, § L, at 6. MELE was rated marginal for corporate experience based on the SSEB's conclusion that its proposal did not demonstrate that MELE or its team members had more than minimal experience in the PWS task areas.

Task Area 4.1.1

The PWS informed offerors that the scope of the contract was to enhance and accelerate programs to locate, remove and protect nuclear and radiological materials at domestic and foreign facilities and locations. Task area 4.1.1 of the RFP provided that, "[t]he contractor shall conduct vulnerability assessments and make recommendations for security upgrades to address any identified vulnerabilities. These assessments may include analysis of the following areas: location, facility condition, facility security attributes, security response force, and nuclear and/or radiological material characteristics."

In its proposal, to demonstrate experience under task area 4.1.1, MELE listed a contract it performed at the airport in Vilnius, Lithuania, where it conducted a vulnerability assessment, recommended security enhancements, and designed, developed, installed, and tested an integrated nuclear and radiological detection system. DOE found that the Vilnius contract did not demonstrate relevant experience within the scope of task area 4.1.1. The agency explains, in this regard, that, while the purpose of the Vilnius contract is to prevent illicit trafficking in radiological and nuclear materials by installing radiation and detection monitors to scan cargo containers and other traffic, AR at 33, the current RFP is directed at preventing terrorists from acquiring nuclear and radiological materials at risk for theft or misuse at foreign and domestic storage facilities. This will entail visiting radioactive storage facilities, conducting vulnerability assessments, and providing recommendations as to how to best secure sites against unauthorized access and removal of material.

MELE asserts that the solicitation did not limit relevant experience to experience conducting vulnerability assessments of radioactive storage facilities. MELE also notes that the PWS indicated that vulnerability assessments could include an analysis of the location, facility condition, facility security attributes, and security response force; MELE maintains that the Vilnius contract represents valid

experience because it entailed a detailed analysis of the airport's location, physical condition and current security, as well as the adequacy of the current response force.

The evaluation in this area was reasonable. First, while MELE is correct that the solicitation did not limit experience to vulnerability assessments of storage facilities, it is always reasonable for an agency to consider whether an offeror has specific experience directly relevant to the work to be performed under the solicitation. High Country Contracting, B-278649, Jan. 30, 1998, 98-1 CPD ¶ 39 at 3-4. This is what the agency did here, and we find nothing unreasonable in its making a distinction between the work under the solicitation and MELE's performance on the Vilnius contract, which did not involve a vulnerability assessment of a storage facility containing radioactive or nuclear materials. While MELE would have the agency treat vulnerability assessments for a storage facility and an airport as identical, we think DOE reasonably could view the work as materially different given the different purposes of the assessments and the different recommendations that will result from those assessments. Moreover, to the extent that there are similarities in the two assessments, contrary to the RFP instructions, RFP § L, at 6, MELE's proposal did not describe how the work it performed at the airport was similar to the work to be performed under PWS 4.1.1. For example, in its protest, MELE states that the Vilnius contract involved performance of a detailed analysis of the airport's location; however, MELE's proposal did not describe what this analysis involved or explain how it was relevant to analyzing the location of a storage facility.

Task Area 4.1.2

Under task area 4.1.2, the contractor will be required to prepare a plan for the removal of nuclear and/or radiological materials, which may include consideration of the radiological and chemical characteristics of the material, as well as the handling, processing, and packaging necessary to support removal, transportation, and logistics of the material. PWS at 4. In identifying relevant experience in this area, MELE's proposal stated that the firm "currently supports the Office of Global Threat Reduction, in preparing plans for the removal, storage and final disposition of nuclear and radiological materials." MELE Proposal, Vol. II, § C, at 5. DOE found that it could not determine from this statement that this contract demonstrated experience under task area 4.1.2, since the proposal did not include an explanation of why this contract effort was relevant to the current requirement, or describe MELE's role in performing the contract. AR at 34. MELE argues that additional information was unnecessary because its proposal statement indicated that performance entailed the exact tasks listed in the PWS.

MELE's position is without merit. As noted above, the RFP instructed offerors to describe and explain the relevance of their experience, and to describe the depth of their role in the management and execution of the contract cited for the experience. RFP § L, at 6. MELE's mere parroting of the general tasks encompassed by the PWS

did not provide the agency with the requested detailed information. In the absence of this detailed information, we think DOE reasonably could conclude that MELE's proposal did not demonstrate experience relevant to PWS 4.1.2. See A.G. Crook Co., B-255260, Feb. 16, 1994, 94-1 CPD ¶ 118 at 5 n.5.

Task Area 4.2.1

Under task area 4.2.1, the contractor will be required to install physical security upgrades at locations with at-risk nuclear and/or radiological materials, which may include installation of security equipment and facility modification or construction. PWS at 4. In its proposal, MELE again listed the Vilnius airport contract to demonstrate its experience, stating that, “[a]s a prime contractor, MELE managed a domestic and international team in designing and installing physical security upgrades at the main airport in Vilnius. ...” DOE found that this experience was not relevant because it entailed installation of a radiation detection system in different areas of the airport to enable officials to determine whether illicit materials were passing through the airport. The contract did not involve installation of a physical security system aimed at preventing unauthorized access to a facility that contains radiological and nuclear materials. AR at 35. MELE disagrees, arguing that the required surveillance systems are the same.

The evaluation in this area was reasonable. The PWS defines a physical security system as “a compilation of protective forces, alarm systems and barriers managed together to preclude or inhibit unauthorized access to a facility or location.” PWS at 5. MELE's airport contract did not involve installation of a physical security system that fit within this definition; rather, again, it involved installation of a detection system. Given this difference, DOE reasonably concluded that MELE's experience did not encompass the work contemplated under task order 4.2.1.

Task Area 4.2.2

PWS task area 4.2.2 requires the contractor to develop curriculum and conduct training, which may include modules on physical security or the location, handling, and management of orphan sources of radioactive material.⁵ PWS at 4. In identifying its relevant experience in this area, MELE indicated in its proposal that, the Vilnius airport contract included the training of airport and border guards on the proper operation and maintenance of the newly installed detection system, development of training modules related to portal operation and identification of radiological and nuclear materials with the alarm system, and development of final draft standard operating procedures for airport personnel in management of the installed system.

⁵ Orphaned material is radioactive material outside of regulatory control and unaccounted for. Orphaned material is not associated with any license, or authorization to possess or use. PWS at 5.

DOE found that this experience was not relevant under task area 4.2.2. Again, MELE disagrees. However, as the agency points out, hand held radiation detection equipment would be used to detect orphan material under this task area, and training on such equipment includes the proper manner for holding and moving the equipment. In contrast, MELE's Vilnius airport experience involved training personnel on how to use a stationary detection system to identify radiological materials and how to manage the system. SAR at 12. This difference is sufficient, we think, to support the agency's conclusion that MELE's listed experience was not relevant to task area 4.2.2. MELE asserts in its protest that it trained personnel in how to manage and handle nuclear and radiological materials and in the use of handheld detection equipment. However, this information was not included in MELE's proposal.

In sum, we have no basis to object to the evaluation. Accordingly, the protest is denied.

Gary L. Kepplinger
General Counsel