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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Global Engineering & Construction, LLC

File: B-290288.3; B-290288.4

Date: April 3, 2003

Donald E. Barnhill, Esq., Barnhill & Associates, for the protester.
Robert J. Symon, Esq., Douglas L. Patin, Esq., and Christyne K. Brennan, Esq.,
Spriggs & Hollingsworth, for John J. Kirlin, Inc., an intervenor.
Larry E. Beall, Esq., U.S. Army Corps of Engineers, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's determination that awardee's higher-priced, higher-rated proposal represented the best value to the government is denied where the solicitation established price as significantly less important than the technical and management factors in the evaluation of proposals for award, and the record shows that the agency reasonably concluded that the awardee's technical superiority outweighed the protester's lower price.

DECISION

Global Engineering & Construction, LLC protests the award of a contract to John J. Kirlin, Inc. under request for proposals (RFP) No. DACA01-02-R-0003, issued by the U.S. Army Corps of Engineers for renovation, repair, and minor construction services for Army medical and support facilities.¹ Global contends that the agency's award to Kirlin based on the awardee's higher-rated, higher-priced proposal was unreasonable. Global challenges the agency's evaluation of the proposals, alleges that discussions were unequal and not meaningful, and contends that the agency

¹ The RFP's statement of work described the contract objective as providing "quick response to renovation/repair and minor construction requests relating, but not limited to, the architectural, mechanical, electrical, instrumentation, security and safety areas of Government medical facilities in a cost effective manner." RFP at C-1.

unreasonably determined that Kirlin's proposal presented the best value to the agency.

We deny the protest.

The RFP, issued on October 26, 2001, sought proposals for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a base year and 4 option years.² Offerors were advised to submit proposals detailing their intent, capabilities, facilities, and experience. RFP at L-12. Each offeror was to submit a technical proposal including: a demonstration of the offeror's experience performing similar work during the last 5 years; a list of subcontractors used and a percentage of the work to be subcontracted; a demonstration of the offeror's capability, discussing the offeror's ability to self-perform the portion of work not subcontracted; a showing of relevant past performance; and a detailed discussion of the firm's proposed technical approach, including a demonstration of the offeror's understanding of the required work processes. Additionally, each proposal was to describe the firm's proposed safe environment, quality control, and rapid response to task orders, including proposed timing for site survey reports and work plans for the three levels of effort anticipated under the contract—small projects (estimated at \$500,000 or less), medium projects (estimated at \$500,000 to \$3 million), and large projects (estimated at \$3 million or more). *Id.* at L-14, 15.

The offeror's management proposal was to include information about the firm's corporate experience; subcontractor experience was to be considered if written subcontractor commitment was provided in the proposal. Information as to personnel qualifications, proposal preparation plan (including the management of proposal preparation to respond rapidly to task orders), cost control, and past performance on utilization of small business concerns also was to be provided. Price proposals were to provide support for intended labor rates, subcontractor intent and handling fee, financial statements, and information about the offeror's current work commitments. Subcontracting plans were also required. *Id.* at 15-17.

The RFP provided for the agency's use of technical/management evaluation, price analysis, and cost/technical tradeoff analysis to determine the most advantageous offer, and award was to be made to the offeror that submitted the proposal found to offer the best value to the government. The RFP's technical factors included the following: experience, capability, past performance, and technical approach. The

² The total dollar amount of task orders to be issued under the contract was not to exceed \$75 million over the 5-year contract term. The guaranteed task order minimum for the base year was \$300,000; the base year maximum was \$15 million. For each option year, the maximum was to be set between \$7.5 and \$15 million; option year minimums were to be set at 1 percent of that year's maximum dollar amount. RFP at H-11.

management factor's subfactors included: corporate experience, personnel qualifications, proposal preparation plan, cost control, and past performance on utilization of small business concerns. The technical and management factors were to be significantly more important than price in the evaluation for award, and offerors were advised that award could be made to other than the lowest-priced offeror. Price was not to be rated; rather, prices were to be reviewed for reasonableness, realism, and completeness through line item review of prices and price analysis; the RFP also provided that an offeror's technical approach was to be considered as a basis of cost in the evaluation of its price proposal. The RFP provided that as the differences in ratings and relative advantages or disadvantages among the proposals became less distinct, differences in prices would become more important in making the best value determination for award; conversely, as the differences in technical merit became more meaningful, the differences in prices were to become less important to the source selection decision. Id. at §§ M.3 and M.7.

The three proposals received by the scheduled closing time were included in the competitive range for discussions. Kirlin's higher-priced revised proposal was rated technically superior to Global's revised proposal.³ The third offeror's revised proposal offered the highest price and was rated lowest technically. The agency's price analysis, which compared each proposal's line item prices to those of the other offerors and government estimates, noted instances where proposed line item prices appeared noticeably higher or lower than the government estimates. For example, the evaluation of Kirlin's price proposal noted many more "higher" markings than were noted for the protester's prices [deleted], yet Kirlin's proposal also had more "low" line item price notations than Global's did. Overall, the proposals' item pricing was considered acceptable, complete, and realistic.

The agency then confirmed the price reasonableness of each proposal through a comparative exercise in which each offeror's prices were considered relative to three sample projects, each project approximating one of the three levels of effort (ranging from small to large projects) contemplated under the RFP. The exercise

³ Prior to discussions and the evaluation of proposal revisions, Global's initial proposal had been rated higher than Kirlin's. Individual evaluator workbooks containing the evaluators' notes about that initial evaluation have already been destroyed by the agency. However, Global provides no support for its suggestion that the destruction of these initial notes was intentional in order to favor Kirlin in some way. Rather, since the documents concerned only the earliest round of proposal evaluation--and a consensus report of the initial evaluation was prepared by the same evaluators and remains in the record--and, as discussed further in this decision, the evaluation record of the revised proposals fully supports the award determination, the destruction of the preliminary evaluator notes here provides no basis to question the award.

was based on randomly selected task orders recently issued by the agency for work determined to be typical of that to be ordered under the current contract.⁴ The agency's price evaluation determined that Kirlin's and Global's offered prices were reasonable, with only a [deleted] percent price difference between Kirlin's higher-priced and Global's lower-priced proposals.⁵

Global's initial technical proposal was rated higher than Kirlin's; however, after discussions and the submission of proposal revisions, Kirlin's proposal was rated substantially higher than Global's proposal.⁶ While Global and Kirlin received mostly

⁴ The reasonableness of Global's prices was reviewed in terms of the offeror's proposal to self-perform the requirements; Global's self-performance of the work was evaluated under the sample tasks at a price approximately [deleted] percent lower than the price evaluated for Kirlin under Kirlin's proposal to subcontract the work. Since agency personnel were familiar with Global's history of subcontracting some of the work under similar contracts, the firm's proposal was also evaluated on the basis of subcontracting some work under the sample tasks; under that analysis, the Global price was evaluated as approximately [deleted] percent lower than Kirlin's price.

⁵ Global fails to support its generally stated challenges to the agency's use of this sample task exercise (namely, that the agency failed to adequately justify its choice of sample tasks or utilize appropriate government estimates). We find the agency's price review to be consistent with the RFP and otherwise unobjectionable in that it compared offerors' competitive prices for types of tasks reasonably expected under the scope of the current contract. See Federal Acquisition Regulation § 15.404-1(a)(b). The protester's contentions that work under the contract will instead involve larger tasks for which Global's lower overhead rates will be even more beneficial to the agency than was shown by the task analysis here, or that the government's estimates are somehow otherwise improper, are not supported by the record, which instead shows that the three sample tasks reasonably approximate the three levels of effort set out in the RFP and concern work which fits squarely within the RFP's requirements. Moreover, neither the RFP's guaranteed maximums nor Global's proposal's description of work performed under its interim contract for these services supports Global's contention that larger projects would be more representative of the work to be ordered under the current contract.

⁶ Global argues that the agency's discussions with the firms must have been improper in light of the fact that Kirlin's proposal revisions caused that firm's proposal to be rated higher than the protester's. Specifically, Global contends that the discussions were unequal, favoring Kirlin or, alternatively, that discussions with Global were not meaningful. Our review of the record, however, provides no evidence to support the protester's general claims of impropriety in the challenged discussions. The record shows that more items were raised in discussions with Global than Kirlin, and that Global was told of the areas in which the evaluators had significant concern (e.g.,
(continued...)

“good” ratings, Global’s proposal received lower ratings (“satisfactory”) under the technical approach and proposal preparation plan subfactors. These lower ratings were based on the agency’s concerns that the otherwise acceptable presentations in these proposal areas lacked sufficient support for Global’s claims of rapid responses to agency requirements under the contract.

Under the experience and past performance subfactors, Global, a new business entity, was given full credit for its two principals’ experience; largely because of the individuals’ experience gained at other firms, the firm’s proposal received the highest possible adjectival ratings under these subfactors, as well as the corporate experience and personnel qualifications subfactors. A performance risk was noted, however, since, as a new entity, the firm had little documented experience of its own self-performance of substantially similar overall requirements. [deleted]. Further, although acceptable, Global’s [deleted] workforce, and its proposed reliance on the use of union workers on an as-needed basis, were also noted as related concerns about the firm’s ability to self-perform at a consistently high level of quality. In addition, although the Global proposal had generally claimed that Global was a new organization and that it should not be considered responsible for the [deleted]. Lastly, some concern arose as to Global’s failure to propose any [deleted] to its rates over the course of the 5-year contract. The firm’s failure to provide for [deleted], without sufficient explanation of such a proposed approach, raised concern about the firm’s ability to hire and retain quality personnel.

The source selection authority (SSA) reviewed the evaluators’ reports and documented his concerns about the noted weaknesses and related performance risks associated with the Global proposal. The SSA concluded that Global failed to persuasively demonstrate its ability to self-perform the effort without risk to the consistent quality of performance. In this regard, the SSA noted that the proposed use of untested workers, and the temporary nature of an “as-needed” union

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[deleted]. As to Global’s contention that all of the agency’s concerns about self-performance of the contract by Global, including the firm’s proposed reliance on union workers on an as-needed basis, were not adequately discussed, the record shows that the proposal was fully acceptable in this area; thus, there was no requirement for the agency to raise the concern in discussions. See MCR Fed., Inc., B-280969, Dec. 14, 1998, 99-1 CPD ¶ 8 at 11 (agency need not discuss acceptable areas of proposals which failed to receive highest evaluation rating). An agency need not discuss perceived relatively minor weaknesses in acceptable areas of proposals, even if those weakness ultimately becomes determinative in terms of the source selection decision. See Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 11.

workforce, where workers may lack company loyalty and proven past performance of similar projects, may jeopardize the quality of performance. The SSA also noted that, if Global were to subcontract some of the work, some concern as to performance risk also exists, since despite having the opportunity to improve its proposal after discussions, the firm did not adequately explain its actions to rectify [deleted]. The SSA, who also noted concern about the firm's failure to demonstrate a stronger rapid response to agency needs for surveys, work plans, and the monitoring of proposal preparation efforts, further noted that Global did not persuasively defend its failure to provide [deleted] over the 5-year contract, which, the SSA reasoned, might have an adverse effect on the retention of skilled personnel.

Conversely, the SSA noted a list of technical strengths associated with the Kirlin proposal, such as: Kirlin's strong experience in its proposed method of performance, involving the coordination and capability of its proven high quality subcontractors; the firm's strong overall past performance history; its minimal performance risk; its minimal adverse impact on customer relations; its strong technical approach with favorable demonstrated response times; its strong proposal preparation plan; and its [deleted]. The SSA then considered the [deleted] percent price difference between the Global and Kirlin proposals. Global's lower price was noted to be related, in part, to factors of concern raised by the evaluators, such as the failure to provide for [deleted], which were included in the Kirlin proposal and the government estimates. The SSA subsequently concluded that the additional cost associated with the Kirlin proposal was minimal and that the technical superiority of the Kirlin proposal outweighed Global's lower price. Following the agency's determination that Kirlin's proposal offered the best value to the agency, an award was made to the firm. Global filed this protest after receiving a debriefing.

Global generally protests the technical evaluation of its proposal, contending, for instance, that the evaluators failed to credit the firm with the experience of its principals; [deleted]; unreasonably found performance risk in its proposal to self-perform with union hires on an as-needed basis; and improperly concluded that the firm's proposal failed to demonstrate [deleted].

Where an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Rome Research Corp., B-291162, Nov. 20, 2002, 2002 CPD ¶ 209 at 4. The fact that the protester disagrees with the agency and generally believes its proposal should have been rated higher than it was does not render the evaluation unreasonable. Id. We have reviewed all of Global's challenges and find each to be without merit. Global has not provided, nor does our review of the record reveal, support for its disagreement with the agency's evaluation.

As discussed above, the evaluation record does not support Global's contention that the evaluators failed to credit the firm with the experience of its key

personnel/principals. On the contrary, our review of the record shows that the evaluators credited the firm with the experience of the individuals—the protester’s proposal, in fact, received the highest possible rating under all experience/past performance subfactors on the basis of these individuals’ experience.

We also have no basis to question the agency’s perception of some performance risk in the Global proposal due to the fact that the majority of experience credited to the firm’s proposal related to work performed by other businesses, including [deleted]. The RFP emphasized the importance of experience and qualifications of the offeror, while providing that the experience of personnel and subcontractors could be considered, and provided separate evaluation criteria for the review of personnel qualifications, experience, and corporate experience. Accordingly, it was reasonable and consistent with the RFP for the agency to consider Global’s own limited corporate experience as a new entity as a valid point of concern.

As to the protester’s disagreement with the perceived performance risk associated with the use of union trade workers when needed, the record provides no reason to question the agency’s findings. Global proposed only minimal staffing in terms of available Global personnel. The firm instead relied on the substantial use of teams of trade workers of unproven experience for the performance of the critical medical facility work required here. Global’s response to the agency’s concern—namely, that the use of these types of union hires is typical in the construction industry—does not render unreasonable the agency’s judgment that, although Global submitted an acceptable proposal in this area, it did not persuasively demonstrate its capability to perform these critical services without some performance risk.⁷

Global’s protest of the reasonableness and sufficiency of the SSA’s cost/technical tradeoff analysis and source selection also provides no basis to question the award to Kirlin. Where a solicitation provides for a best value procurement and, as here, emphasizes the significantly greater importance of technical factors over price, an

⁷ Global only generally challenges the evaluation of Kirlin’s proposal and suggests that the agency was more critical of the Global proposal. Global fails, however, to support its general contentions in this regard. To the extent Global for the first time in its comments on the supplemental report suggests that the agency should have reviewed additional available information about Kirlin’s alleged past performance problems on other contracts, the allegations are vague and untimely. A protester has the duty to diligently pursue all information that may give rise to a protest issue. Here, Global knew of the award to Kirlin, yet did not pursue such alleged past performance problems prior to filing its post-debriefing protest. Rather, the firm waited almost 2 months to present a minimal identification of prior contracts of the awardee that Global “believes” may have had performance problems. This piecemeal presentation of information and allegations will not be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2003).

agency has considerable discretion to award to an offeror with a higher technical rating and higher price. WPI, B-288998.4, B-288998.5, Mar. 22, 2002, 2002 CPD ¶ 70 at 10. Source selection officials, who are not bound by the recommendations or methodologies of evaluators, have discretion, subject to the tests of rationality and consistency with the established evaluation factors, to make cost/technical tradeoffs in deciding between competing proposals. We will review the reasonableness of the SSA's judgment concerning the significance of the proposal differences and whether the selection is justified in light of the RFP evaluation scheme. See Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 11-12; Environmental Chem. Corp., B-275819, Apr. 1, 1997, 97-1 CPD ¶ 154 at 5.

Our review confirms the reasonableness of the SSA's tradeoff determination. As stated above, technical/management factors were significantly more important than price under the RFP, and as technical differences became more distinct, price was to become less of a consideration. The SSA reasonably concluded that the technical differences between the Global and Kirlin proposals were distinct, meaningful, and legitimate. Given the relatively slight differences in their overall pricing, the record makes clear that these technical differences became determinative. Our review of the record shows that Kirlin's technically superior proposal, in terms of its proven method of performance and low performance risk, strong technical approach and [deleted], was reasonably found to outweigh the slightly lower price of Global's technically inferior proposal. Given the reasonableness of the evaluators' and the SSA's thorough and comprehensive evaluation of the firms' proposals, consistent with the stated evaluation scheme for award, we have no reason to question the propriety of the agency's determination that Kirlin's higher-rated, higher priced proposal offered the best value to the agency.

The protest is denied.

Anthony H. Gamboa
General Counsel