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United States General Accounting Office
Washington, DC 20548

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Decision

Matter of: Strategic Resources, Inc.

File: B-287398; B-287398.2

Date: June 18, 2001

Janice Davis, Esq., Davis & Steele, for the protester.
Robert E. Gregg, Esq., and Karen R. Harbaugh, Esq., Squire, Sanders & Dempsey, for Manufacturing Engineering Systems, Inc., an intervenor.
Robert J. McMullen, Esq., Department of the Navy, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency reasonably determined that protester's performance under predecessor contract was entitled to greatest weight in its past performance evaluation and that performance of protester's proposed subcontractor on related contracts was entitled to little weight where subcontractor was to perform only approximately 20 percent of the solicited effort.

2. Contracting agency reasonably attributed past performance of subcontractor's subsidiary to the subcontractor where subsidiary and subcontractor share key management personnel.

3. Contracting agency reasonably viewed awardee's proposal as stronger than protester's under management approach factor where awardee furnished more detailed information regarding risk mitigation and staff recruitment procedures in its proposal.

DECISION

Strategic Resources, Inc. (SRI) protests the award of a contract to Manufacturing Engineering Systems, Inc. (MESI) under request for proposals (RFP) No. N00140-00-R-4046, issued by the Department of the Navy, Fleet and Industrial Supply Center, for academic services in support of the Navy College Program in the western U.S. and the Pacific. SRI contends that the agency misevaluated both MESI's proposal and its own.

We deny the protest.

The Navy College Program seeks to assist sailors in earning a college degree during their active duty Navy careers, by building, to the maximum extent possible, on the academic credit they earn for Navy training and on-the-job experience. The solicitation here sought services in support of 18 different Navy College Offices located in the western U.S. and Japan. The services include educational counseling, test administration, tuition assistance, computer lab facilitation, education planning, program management, and administrative/clerical assistance.

The RFP, which was issued on September 25, 2000 as a competitive set-aside for small disadvantaged businesses under the Small Business Administration's 8(a) program,[1] contemplated the award of a fixed-price contract to the offeror whose proposal was determined to be most advantageous to the government, price and other factors considered. The solicitation defined "other" factors as past performance and management approach, and provided that they would be of equal importance in the evaluation. The RFP further provided that in the evaluation of proposals, the risk associated with an offeror's technical proposal would be considered more important than price.

Four proposals were received by the November 1 closing date. Agency evaluators rated the technical proposals as follows:

Offeror	Past Performance	Mgmt. Approach	Overall Rating
MESI	Acceptable (LR)	Acceptable (HE)	Acceptable (MR)[2]
SRI	Acceptable (LR)	Acceptable (MR)	Acceptable (LR)
Offeror A	Acceptable (LR)	Acceptable (MR)	Acceptable (LR)
Offeror B	Acceptable (LR)	Acceptable (MR)	Acceptable (LR)

The evaluators ranked MESI's technical proposal first, citing its "strong" management approach section. SRI's technical proposal was ranked second, ahead of offeror A's and offeror B's, "because [SRI is] currently providing services to the Navy under a similar contract." Technical Evaluation Report at 1.

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[1] Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

[2] LR stands for low-range; HE stands for high-end, and MR stands for mid-range.

Offerors' prices, which were not revealed to the technical evaluators, were as follows:

MESI	$13,025,729.28
SRI	$14,271,309.35
Offeror A	$18,676,505.39
Offeror B	$23,169,632.49

The source selection authority (SSA) selected MESI's proposal as most advantageous to the government, noting that all four offerors had been rated "essentially the same with mild differentiation within the acceptable range," and, thus, that the best value determination hinged on price. PCO Source Selection Decision Memorandum at 4. The SSA further noted that MESI's management plan was stronger than SRI's, which more than offset any advantage that SRI might have in the area of past performance. Id. On February 27, 2001, the Navy awarded MESI a contract.

SRI takes issue with the agency's evaluation of technical proposals, arguing that its proposal should have been rated higher than MESI's under both the past performance and management approach factors.

The evaluation of technical proposals is a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Hago-Cantu Joint Venture, B-279637.2, July 20, 1998, 98-2 CPD ¶ 99 at 11. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the evaluation to ensure that it was reasonable and in accordance with stated evaluation criteria and not in violation of procurement laws and regulations. Id.

The protester argues that it should have received a higher past performance rating than MESI because it has far more recent, relevant experience than the awardee. In addition, SRI contends that the evaluators unfairly failed to attribute to it the past performance of its proposed subcontractor, while crediting MESI with its subcontractor's performance. SRI further argues that the evaluators conducted their reference check in a manner designed to downgrade SRI in order to move MESI ahead, and that, in conducting their evaluation, the evaluators improperly ignored pertinent information of which they were aware.

The RFP instructed offerors to identify in their proposals contracts performed within the last 5 years that were similar in scope, magnitude, and complexity to the effort here. In its proposal, SRI listed six contracts that it had performed itself and one

that its proposed subcontractor, [deleted], had performed.[3] The evaluators determined that two of SRI's own contracts, the predecessor contract to the one here and a contract in support of the Army Continuing Education Service, were similar in scope, magnitude, and complexity to the contract to be awarded here, but that the remaining four were not.[4] Technical Evaluation Report at 6. The evaluators contacted references for the two SRI contracts deemed relevant, and both references rated SRI's performance as satisfactory. Id. at 6-7.

The evaluator responsible for checking SRI's references did not contact the reference for the [deleted] contract. She explains that she did not do so because she had already determined, based on a prior conversation with the reference in connection with another procurement, that the contract was for family advocacy services, which were not very relevant to the educational services sought here. Evaluator's Declaration, May 9, 2001, at 1; Agency Supplemental Report, May 11, 2001, at 5-6.

SRI disputes the evaluator's account of her conversation with the point of contact (POC) for [deleted] Marine Corps contract, maintaining that the POC did not inform her that the contract was for family advocacy services. SRI further argues that, even assuming that as a result of miscommunication, the evaluator understood the reference to be imparting that information, she was subsequently notified by [deleted] president that his company had provided educational services, as well as family advocacy services, under the contract.[5] Moreover, the protester asserts, the

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[3] SRI listed the [deleted] contract, [deleted], twice in its proposal, apparently because the contract involved the provision of services to both the Navy and the Marine Corps.

[4] The protester has not challenged the agency determination that these contracts were not similar to the effort here.

[5] [Deleted] president states that he was contacted in December 2000 by the evaluator, who inquired about his company's performance under contract [deleted]. He states that he explained to the evaluator that the contract was a Marine Corps delivery order contract involving five performance areas, one of which was voluntary education/lifelong learning and another of which was family advocacy services. The president further states that he told the evaluator that his company had provided educational specialists and Lifelong Learning Program analysts at Marine Corps Headquarters and provided test control examiners at 18 Marine Corps installations worldwide. He states that he also explained to the evaluator that the Navy "piggybacked" on the voluntary education/lifelong learning delivery order sometime in 1998, and under that arrangement, his company provided educational specialists and administrative support to the Navy College Program. Affidavit of [deleted] President, Apr. 23, 2001. The Navy has not disputed the statements in that affidavit.

evaluator, [deleted], was already aware that [deleted] was providing educational services to the Navy College Program under contract [deleted]. SRI asserts that not only did the reference for contract [deleted] indicate that [deleted] had furnished educational services under the contract, but further that he stated that he was absolutely satisfied with [deleted] performance.[6] SRI argues that the evaluators should have attributed this very positive reference regarding [deleted] performance to SRI, which would have raised its past performance rating.

We need not resolve the dispute over whether the evaluator had been informed, or was otherwise aware, that [deleted] had been furnishing educational services under contract [deleted] because the SSA, who was ultimately responsible for the award decision, was aware at the time he made the source selection decision that [deleted] had been furnishing educational services to the Navy College Program. The record shows that the SSA, in his capacity as a contracting officer, awarded a separate contract for such services to [deleted] in October 1999, and that he was aware that the contracting officer's representative on that contract was generally happy with [deleted] performance. SSA's Declaration, May 29, 2001 at 1. The SSA explains that in evaluating offerors' past performance, he gave the greatest weight to the past performance that he considered most relevant to the instant RFP, which in SRI's case was its performance on the predecessor contract. The SSA further explains that he found [deleted] performance on other contracts to be a less valid predictor than SRI's performance on the incumbent contract because SRI had proposed [deleted] to perform only approximately 20 percent of the solicited effort. Because the reference for SRI's incumbent contract had rated SRI's performance as satisfactory, the SSA assigned SRI a past performance rating of acceptable. Id.

We think that the SSA's decision to rely principally on SRI's performance under the predecessor contract in rating its past performance was reasonable. Although an agency may properly consider the past performance of a proposed subcontractor, see Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii),[7] the key consideration

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[6] Despite SRI's assertions that, if called upon to testify, the reference would state that he confirmed to the evaluator that [deleted] was furnishing educational services under contract [deleted] and that he was absolutely satisfied with [deleted] performance, the reference did not so attest in the declaration that he filed with our Office. Instead, the reference stated that he spoke with the evaluator in general about [deleted] performance under various efforts in which educational services were performed and informed her that he was absolutely satisfied with [deleted] performance under those contracts. According to the reference, he did not discuss specific contract numbers with the evaluator, other than at the end of the conversation, when the evaluator mentioned contract [deleted] and said it was for family services, to which he responded "yes."

[7] This subsection provides that "[t]he evaluation should take into account past performance information regarding predecessor companies, key personnel who have

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is whether the experience is reasonably predictive of the offeror's performance under the contract. Oceanometrics, Inc., B-278647.2, June 9, 1998, 98-1 CPD ¶ 159 at 5. We see no reason that the SSA could not reasonably conclude that the performance of SRI on its predecessor contract was a much stronger predictor of performance under the solicited effort than any performance by [deleted], and on that basis determine that [deleted] performance on contract [deleted] was entitled to little weight in his evaluation.

SRI further argues that the evaluators conducted their reference check in a manner designed to downgrade SRI in order to move MESI ahead.[8] Specifically, the protester asserts that notes taken by the agency evaluator who interviewed the POC for SRI's contract No. DASW01-98-C-0066, in support of the Army Continuing Education Service, reveal that, while the POC initially stated that SRI's performance was "good," the evaluator then asked whether he considered SRI's performance to be "satisfactory," to which the POC replied in the affirmative. According to SRI, the wording of the follow-up question permitted the reviewer to lower the rating from good to satisfactory.

The protester's argument that the rating of its performance on the above contract was lowered from good to satisfactory as a result of the evaluator's leading question is not supported by the record. The notes that the protester cites do not in fact pertain to contract No. DASW01-98-C-0066; they pertain to a separate contract of far lesser value cited by SRI in its proposal, No. DATB23-00-P-0008. This contract was one of the four cited by SRI that were determined by the technical evaluators not to be similar in magnitude and complexity to the solicited effort, and thus not considered in the past performance evaluation. Accordingly, the evaluators did not assign the protester's performance on it a rating and did not consider it in their past performance evaluation.

(...continued)
relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition."

[8] While the protester denies that it intended the above argument to be interpreted as an allegation of bad faith, we do not see how an allegation that the evaluators conducted their reference check "in a manner designed to downgrade SRI in order to move MESI ahead" can be otherwise construed. To show bad faith, a protester must submit convincing proof that the procuring agency directed its actions with the malicious and specific intent to injure the protester. Molly Maguires, B-278056, Dec. 22, 1997, 97-2 CPD ¶ 169 at 5. As discussed infra, SRI has not shown that the evaluators in fact lowered SRI's rating on any contract as a result of their follow-up questioning; thus, not only has the protester failed to demonstrate that the evaluators intentionally harmed it, but further, it has failed to demonstrate that it was harmed at all.

The protester also argues that the evaluators failed to consider relevant information in rating its performance under the predecessor contract. In particular, SRI notes that its proposal referred to "Monthly Customer Satisfaction Surveys" that it conducted under the predecessor contract, on which it received an overall service rating of 4.75 out of 5.00 from Navy College Program Directors.

The Navy responds that because the protester's proposal indicated that its program manager, a contractor employee, had conducted the Monthly Customer Satisfaction Surveys referred to above, the SSA concluded that they were internal SRI ratings and, as such, were not entitled to the same weight as the assessments provided by the POCs for SRI's relevant contracts, who were the government personnel responsible for monitoring SRI's performance. Agency Report, Apr. 11, 2001, at 25-26. We think that the SSA's decision not to give much weight to the questionnaires was reasonable given that they were contractor-generated documents and that they focused on customer satisfaction with the performance of individual employees rather than on overall contractor performance.

In addition to challenging the agency's evaluation of its own past performance, SRI takes issue with the agency's evaluation of MESI's past performance. Specifically, the protester argues that the agency improperly attributed to MESI the performance of a subsidiary of its proposed subcontractor, despite the fact that there was no indication in MESI's proposal that the subsidiary would be involved in performance.

In the past performance section of its proposal, MESI listed three contracts that it had performed itself. In addition, it identified one contract performed by its proposed subcontractor, [deleted], and two performed by a subsidiary of [deleted]. The evaluators determined that none of MESI's own experience was related, but that the experience of [deleted] was; when contacted, one of the [deleted] references stated that she was "extremely happy" with the contractor's support; another stated that he was "absolutely satisfied;" and the third stated that he was "pretty happy" with the support. Agency Report, Tab F, Evaluators' Handwritten Notes. Based on these comments, the evaluators rated MESI as acceptable (low range) under past performance; the SSA agreed with the rating of acceptable, noting that [deleted] past performance was relevant because it would be furnishing [deleted] percent of the required personnel. PCO Source Selection Decision Memorandum at 2.

In determining whether one company's performance should be attributed to another, the agency must consider not simply whether the two companies are affiliated, but the nature and extent of the relationship between the two--in particular, whether the workforce, management, facilities, or other resources of one may affect contract performance by the other. ST Aerospace Engines Pte. Ltd., B-275725, Mar. 19, 1997, 97-1 CPD ¶ 161 at 3. In this regard, it is appropriate to consider an affiliate's performance record where it will be involved in the contract effort, Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 12, or where it shares

management with the offeror. Morris Knudsen Corp., B-280261, Sept. 9, 1998, 98-2 CPD ¶ 63 at 4-5.

Here, the record establishes that [deleted] is a wholly-owned subsidiary of [deleted] and that the two companies share the following key management personnel: president, chief financial officer, controller, human resources director, and director, military division. Declaration of President of [deleted], May 4, 2001. Given that [deleted] and [deleted] share key management personnel, we think that the evaluators and the SSA reasonably could have attributed [deleted] performance to [deleted]. In turn, given that [deleted] will be performing a significant portion of the contract work, we think that the agency reasonably attributed [deleted] past performance to MESI. See FAR § 15.305(a)(2)(iii).

The protester also argues that the notes taken by the evaluator who conducted the interview of the reference for [deleted] contract indicate that the contract did not involve related services; accordingly, the protester asserts, the contract should not have been considered in rating MESI's past performance. In support of its argument, the protester notes that the interviewer crossed out the word "provide" before the words "academic advisement;"[9] the protester argues that this should be interpreted as evidence that [deleted] did not provide that sort of service under the contract. Accordingly, SRI concludes, the contract should not have been considered in rating MESI's past performance. Protester's Comments, Apr. 23, 2001, at 10.

The evaluator who conducted the interview and made the notes in question states that, as reflected in his notes, the reference informed him that [deleted] had rendered the following services under the effort in question: academic advisement, student assessment eligibility, guidance counseling, study materials, and appropriate college-level testing. The evaluator further states that while he apparently crossed out the word "provide" in his notes, he does not recall why he did so and does not attach any significance to that word being crossed out. According to the evaluator, the crossing out was "certainly not intended as an indication that the above cited services were not provided by [deleted]." Evaluator's Declaration, May 9, 2001, at 1. Accordingly, the record does not support the protester's argument that [deleted] did not furnish related services under this effort.

Regarding the protester's complaint that it was inequitable for the agency to give MESI credit for [deleted] past performance while failing to give the protester credit for [deleted], we think that--for the reasons previously discussed--the agency had a reasonable basis for treating the two offerors differently. As noted, we think that the SSA reasonably concluded that SRI's performance on the predecessor contract was a much stronger predictor of performance on this effort than any performance by

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[9] The quoted phrase is found in a portion of the handwritten notes that appears to list the types of services performed under the contract.

[deleted]. In MESI's case, in contrast to SRI's, there was no particular contract of overarching significance as a predictor of performance; thus, the evaluators reasonably considered other contracts as indicators. In addition, MESI intended to rely on its subcontractor far more heavily in the performance of the contract work than did SRI.

SRI further argues that the evaluators and the SSA unreasonably regarded MESI's management approach as stronger than its own.

The RFP instructed offerors to address the following areas in describing their management approach: plan for staffing the requirement; management of personnel and contingency plan for replacement of personnel; procedures for training staff; and procedures for monitoring attendance and performance. In addition, each offeror was instructed to address the risk associated with its management plan and the steps that it would take to mitigate this risk, and to explain whether it had successfully used the techniques and methods identified for risk mitigation.

The agency reports that while the proposals of both SRI and MESI adequately addressed the above areas, MESI's proposal addressed more thoroughly the areas of risk mitigation and staffing. The agency notes that in the area of risk mitigation, MESI provided specific examples of how its risk mitigation procedures had been successfully employed under previous contracts, while SRI's proposal did not provide such examples. Agency Report, Apr. 11, 2001, at 15. The agency further notes, with regard to staffing, that MESI presented a comprehensive plan for the hiring and retention of new employees, while SRI was less detailed in its staffing approach. Id. at 15-16.

The protester takes issue with the agency's explanation. With regard to risk mitigation, SRI insists that it did provide examples of instances in which its risk mitigation procedures had been employed under prior contracts. The protester notes, for example, that in its proposal it cited "the loss of a valued staff member" as a problem that it had encountered in performing its incumbent contract in support of the Navy College Program. According to the protester, its proposal further stated that it had immediately implemented its staffing plan to target qualified replacement staff in a more aggressive manner, which was one of its risk mitigation procedures. As a second example, SRI notes that it mentioned in its proposal that under another previous contract, it had received a complaint concerning one of its educational specialists and had, in response, immediately implemented its customer complaint process.

The examples that the protester cites were not in fact presented in its proposal as examples of instances where its risk mitigation procedures had been employed; the information was presented in the past performance section of SRI's proposal as examples of instances in which performance problems were encountered and corrective action taken. Further, the protester did not explain in its proposal how it

had successfully mitigated the risk associated with the loss of a valued staff member (which, we assume, would be that it would be unable to locate a qualified replacement promptly) through implementation of its staffing plan, or explain what sort of risk it had mitigated through its prompt implementation of its customer complaint process.

Regarding staffing, SRI provided a time line for filling positions not occupied by incumbent employees, but furnished little detail about how it would recruit employees for these positions. In this regard, SRI's proposal noted only that [deleted]. SRI Proposal at 22. MESI, in contrast, furnished a great deal of detail regarding its approach to recruiting, noting that [deleted].

Based on the more detailed information furnished by MESI in its proposal regarding risk mitigation and staff recruitment procedures, we think that the agency reasonably viewed its proposal as stronger than SRI's under the management approach evaluation factor.

Next, SRI contends that in evaluating MESI's technical proposal, the agency should have considered the risk that MESI, which offered [deleted], would not be able to staff the positions adequately.

The record shows that the SSA, who was also the contracting officer, considered MESI's proposed labor rates in his analysis. In his presentation to the contract review board, the SSA noted that MESI had proposed to pay its employees [deleted] at each location than SRI had proposed, and that the MESI rates represented [deleted]. The SSA further noted, however, that [deleted]. Contract Review Board Presentation at 8. While the SSA did not conclude his analysis with a statement to the effect that the rates did not pose a risk to performance, we think that such a conclusion is implicit in the fact that having discussed the rates, he did not conclude that they did pose a risk to performance.

Finally, SRI argued in its initial protest that the agency had evaluated proposals and made its award decision based on an evaluation process that sought to select the lowest-priced technically acceptable proposal despite the fact that the RFP provided for award on a best-value basis. The agency responded to this argument in its report, explaining that while it did select for award the lowest-priced proposal, the award decision was based on a proper best-value analysis. In support of its position, the agency points out that even where technical merit carries greater weight than price in the evaluation of proposals, price necessarily assumes greater importance as technical proposals become more equal, as was the case here. In commenting on the agency report, the protester has neither taken issue with nor attempted to rebut the

agency argument; accordingly, we consider it to have abandoned this basis of protest. O. Ames Co., B-283943, Jan. 27, 2000, 2000 CPD ¶ 20 at 7.

The protest is denied.

Anthony H. Gamboa
General Counsel