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**Comptroller General
of the United States**

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

Decision

Matter of: Erica Lane Enterprises, Inc.

File: B-295068

Date: January 19, 2005

Lyn R. Knox for the protester.

Gil Bakshi for AMES Corporation; William H. Venema, Esq., Holland & Knight, for The Ginn Group; Kurt D. Ferstl, Esq., Reed Smith, for JWK International; Donald E. Barnhill, Esq., Barnhill & Associates for Quality Services International, LLC; and Robert D. Vincent for VW International, Inc., intervenors.

Steven W. Feldman, Esq., U.S. Army Corps of Engineers, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's evaluation and source selection decision were flawed is denied where the record shows that the agency's evaluation and source selection decision were reasonable and consistent with the solicitation's evaluation factors.

DECISION

Erica Lane Enterprises, Inc. (ELE) protests the award of contracts to AMES Corporation, The Ginn Group, JWK International, Quality Services International, LLC (QSI), and VW International, Inc. (VWI) under request for proposals (RFP) No. DACA87-03-R-0009, issued by the United States Army Engineering and Support Center in Huntsville, Alabama, for operation and maintenance services at government medical facilities in the continental United States, Alaska, Hawaii and various overseas locations. ELE primarily objects to the agency's evaluation of proposals and the agency's source selection decision.

We deny the protest.

The RFP, issued on December 8, 2003, contemplated the award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base year and four 1-year option periods. The RFP called for two competitions. One competition was set aside for small business concerns, 8(a) concerns, and HUBZone concerns. RFP § B, ¶ 12.b. Under the restricted competition, the solicitation provided for a total of five

awards. The solicitation contemplated two awards under the unrestricted competition (not at issue in this protest). The RFP encouraged offerors to enter into teaming arrangements and joint ventures if it was necessary to provide the full depth and breadth of experience and capability required. The RFP also identified subcontracting as a valid teaming approach for this procurement.

The RFP provided that the awards would be made on a “best value” basis considering the factors of technical, management, past performance, small business participation, and price. The RFP stated that the technical and management factors were equal in importance and that each was more important than the past performance factor. The past performance factor was significantly more important than the small business participation factor. The RFP stated that price was approximately equal in importance to the past performance factor.

Under the technical evaluation factor, offerors were to be evaluated based on their experience in the operation and maintenance of medical facilities and were required to provide a list of contracts for the last 5 years that were directly related to the required operation and maintenance experience. RFP amend. 2, ¶ L.3.2. Under the past performance factor, offerors were to be evaluated on their performance under existing and prior contracts/subcontracts for services similar in scope, magnitude, and complexity to this requirement. RFP § M, ¶ 2.4. Offerors were to include past performance information concerning the projects that they included in their technical proposals under experience. RFP amend. 2, ¶ L.5.3. The RFP also specifically called for past performance information for significant subcontractors proposed by offerors. However, the RFP also stated that the past performance evaluation of the prime contractor would carry more weight in the evaluation. Id.

The agency received numerous proposals in response to the RFP. After the initial evaluation, the contracting officer included nine offerors’ proposals in the competitive range for the restricted competition. Discussions were conducted and revised proposals were requested and received. The evaluators’ final consensus ratings were provided to the source selection authority (SSA), who reviewed the results and made certain revisions to the evaluation of the proposals of some of the offerors. Specifically, the SSA found that for ELE’s proposal, a rating of high satisfactory under the technical factor was too low based on the evaluators’ comments. Agency Report (AR), Tab 4, Source Selection Decision, at 2. Consequently, the SSA revised ELE’s consensus rating and increased it to a medium good overall under the technical factor. The relevant offerors’ final ratings for the restricted competition with the proposed prices were as follows:

| | TECHNICAL | MANAGEMENT | PAST PERFORMANCE | SMALL BUSINESS | PRICE |
|------|------------------|-------------------|-------------------------|-----------------------|--------------|
| ELE | Medium Good | High Satisfactory | Low Risk | High Excellent | \$14.1 M |
| AMES | Medium Good | Low Good | Low Risk | High Excellent | \$12.4 M |
| Ginn | High Good | Medium Good | Low Risk | High Excellent | \$13.8 M |
| JWK | High Good | High Satisfactory | Low Risk | High Excellent | \$13.6 M |
| QSI | Low Excellent | High Good | Low Risk | High Excellent | \$13.7 M |
| VWI | Low Excellent | Low Excellent | Low Risk | High Excellent | \$12.7 M |

Id.

The record shows that although the SSA recognized that ELE received high ratings in the past performance and small business participation factors, “it was higher priced and received lower or equal Technical and Management Factor ratings when compared to the ratings and costs of those offerors who were selected for award for the Restricted Competition.” Post-Award Debriefing Letter from Agency to ELE (Oct. 6, 2004). Based on the SSA’s determination that ELE’s standing in the competition was below that of the five eventual awardees, ELE’s proposal was not considered in any of the tradeoffs conducted by the SSA. The SSA concluded that in the restricted competition, the proposals of AMES, Ginn, JWK, QSI, and VWI provided the best value to the government. AR, Tab 4, Source Selection Decision, at 4. The agency subsequently awarded contracts to these five offerors. Following a debriefing, ELE filed this protest with our Office.

ELE first challenges the agency’s evaluation of the proposals of the awardees on the ground that the agency erroneously concluded that the awardees have the requisite experience with medical facility operation and maintenance as specified in the RFP.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int’l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency’s evaluation, we will not reevaluate technical proposals; instead we will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria. MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror’s mere disagreement with the agency’s evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

ELE's protest that the agency erroneously evaluated the awardees' experience is based primarily on its belief that none of the awardees has the required relevant experience to justify their receiving a rating equal to or greater than ELE's rating. However, the record shows that AMES, JWK, and VVI all have significant experience providing operation and maintenance services at medical facilities, both as prime contractors and subcontractors. AR, Tab 3, Source Selection Evaluation Board Report, at 25, 82 and 106. While the protester is correct that Ginn and QSI have limited operation and maintenance experience as prime contractors, the record shows that both of these offerors proposed a team member with highly relevant experience with medical facilities. For example, the SSA specifically recognized that Ginn's primary weakness in medical operation and maintenance experience was offset by its proposal to team with an experienced subcontractor with highly relevant medical operation and maintenance experience. AR, Tab 4, Source Selection Decision, at 5. Similarly, while QSI had limited direct experience with medical operation and maintenance services, the record shows that QSI included in its proposal evidence of a formal DoD/SBA Mentor-Protégé Program agreement with an experienced contractor, and the SSA determined that this teaming arrangement "significantly enhanced" QSI's ratings. *Id.* at 6.

ELE asserts that the agency's consideration of proposed subcontractor experience for Ginn and QSI was improper. Here, as described above, the RFP clearly placed offerors on notice that they could propose subcontractors and that at least with respect to past performance, the RFP specifically stated that a subcontractor's prior projects would be evaluated. RFP § B, ¶ 14. In this connection, an agency may consider an offeror's subcontractor's capabilities and experience under relevant evaluation factors where, as here, the RFP allows for the use of subcontractors and does not prohibit the consideration of a subcontractor's experience in the evaluation of proposals. *FMC Corp.*, B-252941, July 29, 1993, 93-2 CPD ¶71 at 2. Thus, in our view, the agency's evaluation of the offerors' subcontractors was not objectionable under the RFP.

ELE also protests the agency's evaluation of its own proposal arguing that as an incumbent, its proposal demonstrated that it was better qualified to perform this requirement than any of the awardees under the restricted competition.

The record shows that under the technical evaluation factor, the agency specifically recognized that ELE demonstrated relevant, current experience on two medical facility operation and maintenance projects as a prime contractor, and ELE received a rating of medium good. The agency additionally recognized as strong points that ELE proposed good approaches for safety and health, quality control, and facility operation and maintenance. The agency also recognized that ELE performed concurrent task orders at multiple sites. ELE was rated high satisfactory under the management factor and was recognized for its management organization, its key personnel with significant medical operation and maintenance experience, its detailed approach to cost control, and its successful Joint Commission on

Accreditation of Health Care accreditation of two medical facilities. While ELE disagrees with the agency's evaluation of its proposal, we have no basis to question the reasonableness of the agency's evaluation and ratings.

The record here shows that while ELE's proposal was rated relatively high overall, it was not selected for award because, compared to the ultimate awardees' proposals, ELE proposed a higher price and its proposal was rated either lower than, or equal to, the awardees' proposals. Based on our review of the record, the agency's decision to award to firms with lower priced proposals that were either rated technically equal to, or higher than, ELE's proposal was reasonable and in accordance with the terms of the solicitation.

The protest is denied.¹

Anthony H. Gamboa
General Counsel

¹ In its comments on the agency report, ELE raised a number of additional allegations with respect to the agency's consideration of subcontractor experience. These allegations essentially state differently the protester's primary concern that, as an incumbent contractor, it was improper for the agency to evaluate offerors without similar prime contract experience equal to or higher than ELE's incumbent experience. As discussed above, we conclude that the agency's evaluation was reasonable and consistent with the evaluation criteria.

ELE also argued that the agency failed to evaluate the awardees' ability to comply with the RFP's limitation on subcontracting clause, which requires that the small business offeror itself incur at least 50 percent of the personnel costs of contract performance. Federal Acquisition Regulation § 52.219-14. As a general rule, an agency's judgment as to whether a small business offeror will comply with the subcontracting limitation is a matter of responsibility, and the contractor's actual compliance with the provision is a matter of contract administration. Orincon Corp., B-276704, July 18, 1997, 97-2 CPD ¶ 26 at 4. The agency reports that none of the small business awardees in their proposals deviated from the 50-percent requirement and, therefore, the agency had no reason to question the awardees' intent to comply with the subcontracting limitation.