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**Comptroller General  
of the United States**

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

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## **Decision**

**Matter of:** SOS International, Ltd.

**File:** B-402558.3; B-402558.9

**Date:** June 3, 2010

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Alison L. Doyle, Esq., Virginia M. Gomez, Esq., and Susan Corts Hill, Esq., McKenna Long & Aldridge LLP, for the protester.

David S. Cohen Esq., John J. O'Brien, Esq., and William J. Bainbridge, Esq., Cohen Mohr, LLP, for McNeil Technologies, an intervenor.

Tina M. Pixler, Esq., and Leslie A. Nepper, Esq., Department of the Army, Army Materiel Command, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that agency misevaluated awardee's proposal is denied where record shows that agency evaluated proposals consistent with solicitation and applicable statutes and regulations.

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### **DECISION**

SOS International, Ltd., of Reston, Virginia, protests the award of a contract to McNeil Technologies, of Springfield, Virginia, under Department of the Army, Army Material Command (AMC) request for proposals (RFP) No. W52P1J-09-R-0079, for advisory, atmospheric and analysis support services for U.S. forces in Iraq. SOS asserts that the agency misevaluated McNeil's proposal.

We deny the protest.

### **BACKGROUND**

The solicitation sought proposals for an indefinite-delivery/indefinite-quantity contract for a 6-month base period, with three 6-month option periods. Award was to be made on a "best value" basis; technical proposals initially were to be evaluated on a "go/no-go" basis and those rated "go" would then be evaluated for past performance and price, with past performance being deemed significantly more important than price. RFP at 53-55. Regarding the past performance evaluation, risk ratings were to be assigned based on past performance questionnaire (PPQ)

responses received by the agency. The risk ratings were to be correlated to the PPQ responses and would be based on the following ranges: 3.7-4 points, very low risk; 3.0-3.6, low risk; 2.0-2.9, moderate risk; and 0.0-1.9, high risk. *Id.* Past performance was to be rated in the areas of program management, resource management, quality management/performance, cost performance, and other relevant areas. Offerors were to submit PPQs for no more than three recent, relevant contracts. RFP at 48.

The agency received several proposals, including those from SOS and McNeil (the only proposals relevant here). Both firms' proposals were rated "go" under the technical evaluation factor, and both then received overall past performance ratings of very low risk. Agency Report (AR), exh. 66, at 15; exh. 67, at 8, 10. McNeil's evaluated price (unit prices for each line item for all periods of performance) was \$16,302.92 (low among "go" proposals), and SOS's was \$19,780.39.<sup>1</sup> AR, exh. 66, at 16. The agency determined that McNeil's proposal offered the best value and thus made award to that firm. AR, exh. 66.

## DISCUSSION

SOS asserts that the agency misevaluated McNeil's proposal in several respects, and concludes that it would have been in line for award had the evaluation been performed properly. In considering protests challenging an agency's evaluation of proposals, we will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a/ DRS Fermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 3-4. We have considered all of SOS's arguments and find that they are without merit. We discuss SOS's principal arguments below.

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<sup>1</sup> The RFP provided for the agency to calculate evaluated prices based on the simple addition of unit prices, without multiplying those prices by the RFP's estimated quantities. We note that these evaluated prices bear no relationship to the extended prices submitted by the offerors, or the anticipated actual cost of the contract (for example, the extended price for McNeil was \$87,431,648, and the extended price for SOS was \$110,566,132). AR, exhs. 50, 53, price tables. Nonetheless, no firm timely challenged the agency's price evaluation method, even though it appears to be inconsistent with the fundamental requirement for agencies to consider cost or price to the government in making the award of a contract. 10 U.S.C. § 2305 (a)(3)(A)(ii) (2006); General Dynamics Info. Tech., B-299873, Sept. 19, 2007, 2007 CPD ¶ 194 at 10-11.

## Consideration of PPQ

SOS asserts that the agency misevaluated McNeil's proposal in the area of past performance. In this connection, the record shows that the agency received three PPQs in connection with McNeil's proposal, but that the agency only considered two of the three. The third PPQ was for a contract performed by Global Linguist Solutions, LLC (GLS), a joint venture comprised of McNeil and [deleted]. AR, exh. 59. The agency decided not to consider this PPQ because it determined from McNeil's proposal that it did not intend to use GLS or any GLS subcontractors in performing the contract. AR, exh. 67, at 8.<sup>2</sup> SOS maintains that McNeil proposed the use of sufficient GLS assets to warrant the agency's considering the third PPQ.

This argument is without merit. First, we note that, while the RFP permitted the agency to consider past performance information relating to predecessor companies, key personnel, other corporate entities, or subcontractors where it determined that such information was relevant, it did not require the agency to do so. RFP at 55. In any case, where, as here, the resources of an affiliate—its workforce, management, facilities or other resources—will not be meaningfully used in connection with performance, an agency is not required to attribute the past performance of the affiliate to the offeror for evaluation purposes. Bering Straits Tech. Servs., B-401560.3, B-401560.4, Oct. 7, 2009, 2009 CPD ¶ 201 at 4.

McNeil's proposal described the McNeil "team" as being comprised of McNeil and several other subcontractors, not including GLS, and did not propose to meaningfully use GLS assets in performing the contract. AR, exh. 51, at ES-3. The protester cites as evidence of McNeil's intent to use GLS assets its proposal of an employee exchange program that includes GLS employees. However, this program, created for use among all of McNeil's contract vehicles, was described as follows:

[deleted]

AR, exh. 51, at 5 (emphasis supplied). We think it is clear from this description that, rather than provide for McNeil to use GLS assets, this exchange program is an

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<sup>2</sup> During the acquisition, the agency and McNeil exchanged e-mails regarding this PPQ. In response to a direct question from the agency, McNeil stated that it did not intend to use GLS or any of the GLS subcontractors in performing the current requirement. AR, exh. 64, at 1, 2; exh. 65. SOS alleges that this interchange constituted discussions between the agency and McNeil. We disagree. McNeil's proposal did not offer use of GLS or any of the GLS subcontractors, and McNeil was not provided an opportunity to change its proposal by virtue of its response to the agency's inquiry. Thus, this interchange constituted a clarification, not discussions. Career Training Concepts, Inc.—Advisory Opinion, B-311429, B-311429.2, June 27, 2008, 2009 CPD ¶ 97 at 6.

employee-focused program that merely provides opportunities for employees to work under different contracts being performed by McNeil and GLS. It does not evidence an intent by McNeil to systematically perform the requirement using GLS employees.

McNeil's proposal also refers to a set of standard operating procedure and policy directive documents that were developed by GLS, but states that McNeil will use only a subset of these documents in performing the requirement, and will tailor the procedures and policies to this requirement. AR, exh. 51 at 23. Given the limited proposed use of these documents--only as a starting point for developing similar materials for use by McNeil in performing this requirement--there is no basis for us to find that this constitutes meaningful use of GLS assets.<sup>3</sup> It follows that there is no basis for us to object to the agency's decision not to consider the third PPQ in evaluating McNeil's past performance.<sup>4</sup>

#### Past Performance Score Calculation

SOS asserts that, in calculating past performance score averages, the agency unreasonably failed to account for those instances where no answer or a "not applicable" answer was given for a particular question on the PPQs. However, the record shows that the agency calculated the average scores for all offerors in the same manner, and SOS has not shown--and it is not evident from the record--how it was competitively prejudiced by the agency's methodology. Absent such a showing, we have no basis to object to the agency's calculations.<sup>5</sup> Armorworks Enter's., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3.

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<sup>3</sup> McNeil's proposal also includes resumes for two employees that the protester maintains are GLS employees. The record shows that one of these employees worked for a period of approximately 7 months on the GLS contract, and the other employee worked on that contract from 2005-2008, but subsequently was used by McNeil on another contract after that time. AR, exh. 51 at R-1-R-7. The use of these two individuals, one of whom is currently working for McNeil on a different contract than the GLS contract, does not, in our view, constitute a meaningful use of GLS assets for this contract, given that McNeil proposed a total of 741 full time equivalents for performance in the base year of the contract. AR, exh. 53 at 14.

<sup>4</sup> We point out that the other joint venture member, [deleted], also competed for this requirement and had a PPQ submitted for the GLS contract. Consistent with its evaluation of McNeil's proposal, the agency also did not consider the GLS PPQ in its evaluation of [deleted] past performance, finding no indication that [deleted] intended to use GLS or its assets to perform. AR, exh. 67, at 5-6.

<sup>5</sup> SOS also asserts that the evaluation record includes several clerical errors. For example, SOS points out that the agency used different scores in computing the average score for SOS than were reported in the PPQ--in one instance, the agency

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## Consideration of Additional Past Performance Information

SOS asserts that the agency improperly failed to consider negative information concerning a McNeil contract with the Drug Enforcement Agency (DEA). The information at issue, AR, exhs. 61, 62 and 63, was discovered by the agency through a search of the past performance information retrieval system, which it conducted in preparing its response to another protest filed by another of the firm's competing for the requirement (Calnet, Inc.) alleging that the agency had failed to consider cure notices issued to McNeil under three prior contracts. During the acquisition, the agency did not discover information relating to these three contracts. During the new search performed in connection with the other protest, it discovered past performance reviews relating to one of the three contracts, but no information relating to the alleged cure notices. SOS claims that these past performance reviews should have been considered in the evaluation.

This argument is without merit. The RFP did not require the agency to consider information beyond that included in the PPQs; it advised only that the agency could use information obtained from other sources. RFP at 55. Thus, the agency's failure to discover or consider the information during the evaluation does not constitute an evaluation impropriety and, since this information did not come to light until well after award, there is no basis for considering it now.

## Evaluation Record

Noting that the source selection decision document contains only conclusory statements regarding the technical proposals, SOS asserts that the record lacks adequate information to support the agency's evaluation conclusions.

This argument is without merit. As noted, the RFP contemplated a technical evaluation that was on a "go/no go" basis. Thus, the relative merits of the proposals were irrelevant, and once the agency determined that a proposal met the standard necessary to be deemed "go," it is not clear what further documentation was necessary from the standpoint of the source selection official. We note that, on the other hand, where a proposal was assigned a "no go" rating, the evaluators did

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used a score of 3 in its calculation where a score of 4 had been assigned; in a second instance, the agency used a score of 4 where a score of 3 had been assigned. However, SOS has not demonstrated that these minor clerical errors had any material effect on McNeil's or its own overall past performance scores, or on the overall evaluation results.

provide supporting information for their conclusions. Id. at 6-8. SOS has neither alleged nor demonstrated that the agency's assignment of a "go" rating to the awardee's (or any other) proposal was unreasonable or improper.<sup>6</sup>

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>6</sup> SOS asserts that McNeil's prices are unbalanced, as evidenced by a comparison of certain of McNeil's line item prices to SOS's prices. (The RFP provided for an evaluation of contract line item prices to ensure that they were balanced. RFP at 55.) However, a comparison of the awardee's prices to the protester's, without more, is insufficient to show that the awardee's prices are unbalanced. General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 5.