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**United States Government Accountability Office
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Decision

Matter of: Business Management Associates

File: B-403315; B-403315.2

Date: October 19, 2010

John R. Tolle, Esq., and Bryan King, Esq., Barton, Baker, Thomas & Tolle, LLP, for the protester.

Karen R. Harbaugh, Esq., and Robert E. Gregg, Esq., Squire Sanders, for Ideation, Inc., the intervenor.

Audrey H. Liebross, Esq., Federal Emergency Management Agency, for the agency. Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of proposals is denied, where the agency's evaluation was consistent with the terms of the RFP.

DECISION

Business Management Associates, of Alexandria, Virginia, protests the award of a contract to Ideation, Inc., of Herndon, Virginia, under request for proposals (RFP) No. HSFEHQ-10-R-0043, issued by the Federal Emergency Management Agency (FEMA) for hazard mitigation training assistance.

We deny the protest.

BACKGROUND

The RFP, issued as a competitive section 8(a) set-aside, provided for the award of an indefinite-delivery, indefinite-quantity contract for a base year and 4 option years, under which the agency would issue either fixed-price or cost-plus-fixed-fee task orders. RFP at B-2. Offerors were informed that the contractor would provide technical assistance to the agency in the development of training materials and instruction and with respect to modernizing and streamlining its training activities.

In this regard, the following objectives were stated:

1. Training development and maintenance of multi-day courses on a variety of training and non-technical subjects. The contractor will be required to develop an average of [one] 3-day course per contract year.
2. Training Instruction on a variety of technical and non-technical subjects. The contractor will be required to instruct an average of [eight] 3-day courses per year.
3. Development of presentations to effectively communicate technical and non-technical information. The contractor will be required to develop an average of 4 presentations per year.
4. Technical Advisement--provide expert advice, guidance, and recommendations to modernize and streamline training activities.

RFP at C-1--C-2.

The RFP provided that award would be made on a best-value basis, considering the following four equally-weighted technical evaluation factors: technical approach, qualifications of key personnel, past performance, and oral presentation. The technical factors, combined, were significantly more important than price in the source selection decision. RFP at M-1. Offerors were informed that proposals would be evaluated under the first three technical evaluation factors, after which the offeror would have an opportunity to make its oral presentation. The RFP provided the topic for the oral presentation, and stated that each offeror would be responsible for ensuring that any required equipment would be available and working properly. Id. at M-2.

The RFP instructed offerors to provide technical and business (cost/price) proposals. With respect to the business proposal, offerors were instructed to separately show all direct and indirect costs for all resources necessary to perform the fixed-price work and the cost reimbursement requirements. RFP at L-4. In this regard, the agency instructed offerors to propose a fixed price and an estimated cost-plus-fixed-fee, and provide the following information:

Firm Fixed Price (Fully Burdened labor rates). Please show Labor categories, Direct Labor rates, labor hours, [other direct costs] (itemized list) [and]

Cost Plus Fixed Fee. Please show Direct Labor (include labor categories and rates), Other Direct Costs (itemized list), [general and administrative expenses] and Fee.

RFP amend. 4, questions and answers, at 1-2. The RFP provided that all fixed price task orders would be priced based upon the offerors' proposed fully burdened labor rates and that cost-plus-fixed-fee task orders would be "priced" in accordance with Defense Contract Audit Agency approved rates. RFP at B-2--B-3.

FEMA received 10 proposals, including BMA's and Ideation's. Proposals were evaluated by the agency's source evaluation board (SEB), which assigned adjectival ratings and identified underlying strengths, weaknesses, deficiencies, and risks. BMA's and Ideation's technical proposals were evaluated as follows:

	BMA	Ideation
Technical approach	Excellent	Excellent
Key personnel qualifications	Good	Excellent
Past performance	Excellent	Excellent
Oral presentation	Good	Excellent
OVERALL	Good	Excellent

Agency Report (AR), Tab 13, SEB Overall Report, at 11.

BMA's overall good technical rating was supported by a narrative discussion that identified a number of strengths and only a few weaknesses in the protester's proposal. Under the qualifications of key personnel factor, for which BMA was rated good, the SEB noted as a weakness that BMA had not provided information on the experience, education, and certifications of the staff that it would provide for training material and presentation development and for web-based training development. With respect to the oral presentation, for which BMA was also rated good, the SEB noted a number of strengths and that a slow internet connection stalled BMA's presentation, which affected the firm's ability to effectively communicate; the SEB expressed concern about BMA's lack of a backup plan for its oral presentation. *Id.*, Tab 12, SEB Technical Report, at 26, 28.

With respect to Ideation's technical proposal, the SEB found that the awardee's proposal contained many strengths and no weaknesses. *Id.*, Tab 12, SEB Technical Report, at 41-47.

The SEB also evaluated offerors' business proposals "to determine whether the government considers the proposed price to be realistic and if they are compatible with the scope of effort, are not unbalanced, and are neither excessive nor insufficient for the effort to be accomplished." *Id.*, Tab 13, SEB Overall Report, at 13. BMA's business proposal was evaluated as unacceptable, because the SEB noted as a deficiency that BMA had not estimated a level of effort to perform RFP objective four (technical advisement--provide expert advice, guidance, and recommendations to modernize and streamline training activities). The SEB also noted one minor weakness and no strengths. *Id.* Tab 14, Cost Reports, at 7. Ideation's business proposal was rated good, based upon the SEB's finding that the firm's proposal had

no strengths or deficiencies and only three minor weaknesses. Id. at 10. In this regard, FEMA found that Ideation's proposed costs were within the expected costs estimated by the agency and that its estimated hours for performing the four RFP objectives were realistic. Id., Tab 13, SEB Overall Report, at 16.

An unacceptable rating for a business proposal resulted in the SEB reducing that offeror's overall technical score by "one step." Because BMA's business proposal was rated as unacceptable, the SEB reduced BMA's overall good technical rating to an acceptable rating.¹ The SEB did not adjust Ideation's overall technical score, because Ideation's business proposal was rated as good. No proposal was found to be unacceptable because of an unacceptable business proposal rating. Id., Tab 13, SEB Overall Report, at 14, 16.

The SEB recommended award to Ideation based upon that firm's overall excellent technical rating and good business proposal rating. Although Ideation's proposed price/cost was higher than all other offerors, FEMA found that Ideation's proposal reflected the best value to the government, because of the firm's proposed realistic hours and the inclusion of sophisticated features such as a **[deleted]**. Id. at 16.

Following a debriefing, BMA protested to our Office.

DISCUSSION

BMA raises several specific challenges to the agency's evaluation and source selection decision. BMA complains that its proposal should have been rated as excellent (instead of good) under the qualifications of key personnel and oral presentation factors; that its business (cost/price) proposal should not have been rated as unacceptable; and that Ideation's proposal should not have been rated as excellent under the past performance factor, because the awardee's identified projects were smaller than the contract work here.

In reviewing protests of alleged improper evaluations and source selections, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. See ABT Assocs., Inc., B-237060.2, Feb., 26, 1990, 90-1 CPD ¶ 223 at 4. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. In this regard, an offeror must affirmatively demonstrate the merits of its proposal, and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005

¹ BMA did not protest FEMA's methodology for evaluating the offerors' cost/price proposals.

CPD ¶ 8 at 5. A protester's mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

With respect to BMA's challenge to the weakness assessed against its proposal under the qualification of key personnel evaluation factor, the record shows that the agency viewed favorably the people BMA designated as key, but was concerned that, since there were no key personnel identified on the training teams, there was no information on the experience, education, and certifications of team members for the agency to assess. AR, Tab 12, Technical Evaluation Report, at 26. As a result, BMA's proposal did not get the highest possible rating--i.e., it received a rating of good rather than excellent .

We think the agency could reasonably consider under this factor whether an offeror had proposed sufficient key personnel to perform the contract work. Here, the RFP did not specify how many, or which, positions were to be considered key, but expected offerors to make this determination themselves. See RFP amend. 3, at 1. Determining whether an offeror has proposed sufficient key personnel in the right labor categories is reasonably encompassed within a factor that provides for assessing the quality of proposed key personnel. Here, BMA's proposal relied upon a very general description of its "teams" but did not provide the specific qualifications and experience information required for key personnel. In sum, we find no basis to object to FEMA's assignment of a weakness, and a good rating, for BMA's proposal under the qualifications of key personnel factor.

BMA also objects to the SEB's rating of BMA's oral presentation as good, based upon the SEB's finding that BMA's presentation was stalled by a slow internet connection, which the evaluators found diminished the firm's ability to communicate effectively. The evaluators also noted that BMA had no apparent backup plan for this contingency. See AR, Tab 12, SEB Consensus Report, at 28. The protester complains that FEMA did not notify BMA that the location for the oral presentation would have limited internet access, and that the protester should not be penalized for the agency's choice of a location that did not have adequate internet access. See Protester's Comments at 4-5.

We find no merit to this argument. The RFP cautioned offerors that each firm was responsible for ensuring that any equipment required for the oral presentation was available and working properly for their presentation. See RFP at M-1. BMA apparently planned its oral presentation based on the assumption that it would have a fast internet connection available. As the agency notes in its report, the oral presentation was intended to create a mock classroom situation. Since any of the various nationwide locations where the contractor would provide training could also lack a fast internet connection, we think it was reasonable for the agency to consider BMA's performance under these circumstances to represent a weakness, and to rate the firm's proposal accordingly.

BMA also challenges the agency's evaluation of its business proposal as unacceptable, complaining that FEMA unreasonably assessed a deficiency for BMA's failure to estimate a level of effort for the firm's performance of the RFP's fourth objective. BMA contends that it could not propose estimated hours to perform this objective because "BMA does not know the magnitude of any effort that may be taken."² See Protester's Business Proposal at 1. BMA contends that the RFP did not require a price breakdown for individual objectives and that the number of labor hours proposed by offerors was virtually irrelevant because actual work under the contract would be ordered under individual task orders.

The RFP required offerors to separately show all direct and indirect costs for all resources required to accomplish the contract requirements, which would include the four objectives identified by the RFP. See RFP at L-4. In this regard, offerors were required to propose a fixed price that included labor rates, labor hours, and other direct costs. See RFP amend. 4, questions and answers, at 1. BMA apparently recognized the requirement to provide estimated labor hours to perform the contract work, given that its business proposal specifically informed the agency that it was not providing a cost estimate for the objective 4 contract work. See BMA Business Proposal at 1. We find the agency's evaluation of BMA's business proposal as unacceptable to be reasonable.

BMA also protests FEMA's evaluation of Ideation's proposal as excellent under the past performance factor. The protester argues that Ideation's proposal identified projects that were not "similar" to contract work here because they are of a smaller dollar value.³

The RFP informed offerors that the agency would assess under this factor "how well the offeror did on work for the government and private sector clients," and that the evaluation would "include assessments of the offeror's resilience to adversity, resourcefulness, and management determination to see that the organization lived up to commitments and standards." RFP at M-2. In this regard, offerors were instructed

² To the extent that BMA protests that the RFP provided insufficient information to estimate hours to perform the contract work, this concerns an alleged apparent solicitation impropriety that BMA was required to protest prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2010).

³ BMA also complains that the agency credited Ideation for a project performed by a proposed subcontractor. The RFP, however, does not restrict consideration of past performance to only that performed by the prime contractor or otherwise prohibit the consideration of subcontractor performance, and thus the agency could properly consider such performance here. See SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 3.

to provide contact information for three businesses or agencies for which the offeror “performed similar work to the requirements of the RFP.” RFP amend. 2, at 1. The RFP did not define what work would be similar to the contract requirements, nor did the solicitation require that projects identified by an offeror be similar in size, complexity and scope to the contract requirements.

Where a solicitation calls for the evaluation of past performance, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations. Divakar Techs., Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. The evaluation of past performance, by its very nature, is subjective; an offeror’s mere disagreement with the agency’s evaluation judgments does not demonstrate that those judgments are unreasonable. SDV Telecomms., B-279919, July 29, 1998, 98-2 CPD ¶ 34 at 2.

Although it is true that Ideation’s identified projects are relatively smaller than the contract work here, the projects Ideations identified for its past performance appear to involve the same work performed for the same agency. In these circumstances, we think it is within the contracting agency’s discretion to conclude that substantially similar work, performed for the same agency but under smaller contracts, need not be disregarded based on size alone, where the solicitation does not emphasize the importance of magnitude of prior projects in the evaluation of past performance.⁴

In sum, we find that the agency’s evaluation was reasonable and consistent with the evaluation criteria.

The protest is denied.

Lynn H. Gibson
Acting General Counsel
Counsel

⁴ Moreover, the disparity in project size does not appear to be as great as BMA suggests, given that, in addition to the projects listed in the past performance section of Ideation’s proposal, the awardee also described experience with “projects with a prescribed scope and budget between \$450,000 and \$1,000,000, (some slightly above \$1,000,000)” that involved multi-day training design, development, and delivery, and hazard mitigation, most of which was performed for FEMA. See Ideation’s Technical Proposal at 9-11.