



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Seair Transport Services, Inc.

File: B-252266

Date: June 14, 1993

Philip C. Sevilla for the protester,
Donald E. Barnhill, Esq., East & Barnhill, for Phoenix
Management, Inc., an interested party,
Maj. Bobby G. Henry, Jr., Department of the Army, for the
agency,
Jacqueline Maeder, Esq., and Guy R. Pietrovito, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

In a total small business set-aside negotiated procurement, the procuring agency properly considered the experience of both the prime contractor and its large business subcontractor under the relevant evaluation factors where the solicitation did not prohibit the use of subcontractors to perform the contract or prohibit the consideration of a subcontractor's experience in the evaluation of proposals.

DECISION

Seair Transport Services, Inc. protests the award of a contract to Phoenix Management, Inc. under request for proposals (RFP) No. DABT63-92-R-0023, issued by the Department of the Army for maintenance of aircraft and aircraft ground support equipment at Fort Huachuca, Arizona. Seair contends that the agency's technical evaluation was unreasonable.

We deny the protest.¹

The RFP, issued as a total small business set-aside on August 28, 1992, contemplated the award of a firm,

¹Our decision is based upon confidential and source selection sensitive information and is necessarily general.

fixed-priced contract with cost reimbursable items for a base year and four option years. The work encompassed in the RFP includes virtually all tasks related to the maintenance, repair and rebuilding of aircraft and aircraft ground support services at Fort Huachuca.

The RFP provided that award would be made to the offeror whose offer, conforming to the solicitation, was determined to be most advantageous to the government. The following evaluation factors and subfactors were listed in descending order of importance:

1. Management Approach
 - (a) General management principles and applications
 - (b) Related management experience
 - (c) Phase-in
2. Technical Approach
 - (a) Related technical experience
 - (b) Technical approach in performing functions
 - (c) Technical management
3. Past Performance
4. Price

Offerors were informed that price would not be scored but would be considered in the source selection decision.² Price was stated to be slightly less important than the management, technical and past performance evaluation factors. Offerors were also informed that offerors' past performance would not be scored by the evaluation board but would be considered in the source selection decision, and that the government would inquire into each offeror's past performance by soliciting information from contracting officers, contract administrators and contracting office representatives, as appropriate. In this regard, the RFP proposal instructions provided that the:

"Past [p]erformance section shall include the offeror's personnel, technical experience, personnel and functional operations during the last 5 years in performing services similar in size, type and complexity to those required by the [statement of work]. Offerors are required to submit the contract numbers, and the names, addresses and telephone numbers of responsible technical and contracting personnel for every [g]overnment contract performed by the contractor during the past five years."

²The RFP provided that price would be evaluated by adding the total price for all options to the total price for the basic requirement.

Offerors were encouraged to submit their best offer in their initial proposals because the RFP provided for award without discussions.

Five firms, including Seair and Phoenix, submitted proposals by the October 9 closing date. Two firms' proposals were determined to be incomplete and technically unacceptable. The remaining proposals, including Phoenix's and Seair's, were evaluated by the source selection evaluation board under the management, technical and past performance factors. Phoenix's proposal was higher rated than Seair's under both the management and technical evaluation factors, and both offerors were determined to be satisfactory under the past performance factor. Regarding the past performance factor, the agency found Phoenix and Seair to be satisfactory based only upon their proposal submissions. Phoenix was determined to be the highest-rated, low-priced offeror.

Prior to the agency's source selection, Seair complained to the Army that Phoenix and its proposed subcontractor, which was the incumbent contractor for the services and is a large business concern, were a joint venture, and thus ineligible for award as other than a small business. The Army forwarded Seair's size protest to the Small Business Administration (SBA) which determined on January 28, 1993, that the teaming agreement between Phoenix and its large business subcontractor did not constitute an improper joint venture and that Phoenix was a small business concern for the purpose of this procurement. Specifically, the SBA found that Phoenix had "chased the contract" by initiating the contact with its subcontractor concerning the teaming agreement, would manage the contract, and had the requisite background and expertise to carry out the contract. The SBA found that while Phoenix's subcontractor had superior skills in aircraft maintenance, Phoenix would perform a significant amount of complex work.

Based upon SBA's determination that Phoenix was an eligible small business concern for this procurement and its own evaluations, the Army awarded a contract without discussions on January 29 to Phoenix as the highest-rated, low-priced offeror. This protest followed.

The crux of Seair's protest is that the Army's favorable evaluation of Phoenix's experience under the related

management experience subfactor and related technical experience subfactor is unreasonable because it relies upon the experience of Phoenix's large business subcontractor. Specifically, Seair complains that Phoenix was "incorporated . . . the same month the solicitation went out" and lacks the required experience to perform the work and is "overly dependent on [an] 'ostensible subcontractor' as joint venturer. . . ." Seair argues that the Army ignored the true relationship between Phoenix and its subcontractor to unfairly credit Phoenix's proposal with the subcontractor's experience. The protester contends that the agency "has looked past a prime contractor who lacks experience, and has really awarded the contract to the proposed subcontractor" contrary to the RFP's provision for award to a small business concern.

The evaluation of proposals is primarily a matter within the contracting agency's discretion, since it is responsible for defining its needs and for deciding on the best methods for accommodating them. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Thus, we question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the RFP's evaluation criteria. Microwave Solutions, Inc., B-245963, Feb. 10, 1992, 92-1 CPD ¶ 169. A protester's mere disagreement with the agency does not in itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

Phoenix's proposal offered both Phoenix's experience and that of its subcontractor, as evidence of its technical and management skill and prior performance experience, and explained in detail how the experience of both firms would benefit the Army and meet the RFP requirements.³ The record shows that the Army's technical evaluation of Phoenix's proposal relied upon the experience of Phoenix's principals (its president and its corporate executive officer) as well as the experience of its subcontractor. Specifically, the Army determined that Phoenix's principals offered excellent government services contract experience over a number of years and that Phoenix's subcontractor (the prior incumbent) offered excellent program support experience. Thus, we find no support for Seair's contention that the agency relied only upon the experience of Phoenix's subcontractor in favorably evaluating the awardee's proposal.

There is also no evidence that the agency placed too great an emphasis on the subcontractor's experience, although it

³Seair similarly proposed to use a large business subcontractor and relied upon both its experience and that of its subcontractor in its proposal.

is true that Phoenix's superior technical evaluation rating was due in large part to the evaluated, excellent expertise and experience of its subcontractor. The experience of a proposed subcontractor properly may be considered under relevant evaluation factors where the RFP, as here, allowed for the use of subcontractors to perform the contract and did not prohibit the consideration of subcontractor's experience in the evaluation of proposals.⁴ See Premier Cleaning Sys., Inc., B-249179.2, Nov. 2, 1992, 92-2 CPD ¶ 298; Commercial Bldg. Serv., Inc., B-237865.2; B-237865.3, May 16, 1990, 90-1 CPD ¶ 473 (experience of a large business subcontractor was properly considered in evaluation of offeror's proposal submitted in response to solicitation set-aside for small business concerns).

The protester's complaint that Phoenix is "overly dependent" on its subcontractor and its subcontractor's experience basically relates to the awardee's eligibility for award as a small-business concern. The SBA, not our Office, has the conclusive authority to review small business size protests for federal procurements. See 15 U.S.C. § 637(b)(6) (1988); Isidor Stern Enters. Corp., B-243265, July 17, 1991, 91-2 CPD ¶ 65. In any case, as noted above, the SBA previously addressed this issue and found that Phoenix and its subcontractor were an eligible small business concern for the purpose of this procurement.

Seair argues that Phoenix's president lacks the "related" technical and managerial experience required to perform the contract. Specifically, Seair questions the president's prior employment with another firm 20 years ago, suggesting that her experience was clerical rather than managerial or technical, and also questions her more recent past experience as a vice-president with a different government contracts firm. In support of these contentions, Seair provided two statements that question the president's past employment experience based upon the declarers' purported knowledge and upon hearsay.⁵

⁴The RFP provided for the evaluation of the contractor and "its team members."

⁵One statement, which is unsworn, is from a former employee of the company for which Phoenix's president served as vice-president, and states that to the best of his knowledge Phoenix's president was not "involved in the technical operation or management of said company." The other statement is made under penalty of perjury but is based upon hearsay (rather than any personal knowledge) and questions Phoenix's president's business acumen.

The agency responds that it took the offerors' representations at face value and that there was no reason to question the factual accuracy of the representations. Generally, an agency may accept an offeror's representation of its experience, unless there is reason to believe that the representations are inaccurate. See, e.g., Medical Care Dev., B-235299, Aug. 17, 1989, 89-2 CPD ¶ 149 (representation of physician-sponsored organization); Roy F. Weston, Inc., B-197866; B-197949, May 14, 1980, 80-1 CPD ¶ 340 (no duty to contact an offeror's listed references). We do not find any basis in this record to conclude that the agency's evaluation of Phoenix's president's experience was unreasonable. First, we do not find Seair's proffered statements to be persuasive. One statement is based upon hearsay, which has been repudiated by one of the persons quoted, and the other statement, Phoenix argues, is from an employee who was not employed at the company during the time that Phoenix's president was employed as the vice-president. Next, Phoenix submitted four statements, in rebuttal, that attest to the knowledge and managerial experience of its president, based upon the declarers' personal knowledge. Finally, to the extent Seair's challenges the president's technical expertise in aviation maintenance, the record shows that the president will perform contract oversight/administration, rather than the technical program work.

Seair also protests that the agency's evaluation of its proposal was unreasonable, because its proposal was scored lower than Phoenix's proposal despite Seair's and its subcontractor's allegedly greater technical and management experience. The protester contends that the Army discounted as irrelevant its refueling contracts while crediting Phoenix for similar contracts and failed to give proper weight to the "tremendous advantage" Seair's subcontractor has over Phoenix's subcontractor.

The record does not support Seair's allegation that it was downgraded under the past performance factor for a "refueling" contract that Seair listed as related experience while Phoenix received credit for similar related contracts. The fact is that both firms were viewed as having limited related past experience and received identical satisfactory evaluation scores under this evaluation factor.⁶ Likewise,

⁶While Phoenix was only incorporated in 1992, Seair has only been involved in aviation maintenance since 1991. In this regard, Seair only identified two contracts in its proposal for its related experience.

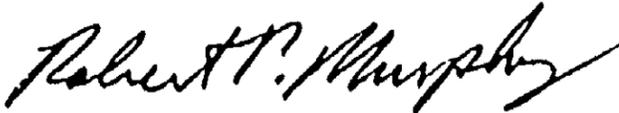
both firms received substantial credit under the past performance factor for the experience of their proposed large business subcontractors. Seair's contention that it should have received a higher rating than Phoenix under the past performance factor because Seair's subcontractor has been in business longer than Phoenix's is no more than a mere disagreement with the agency's evaluation, which does not show the evaluation to be unreasonable. Litton Sys, Inc., supra.

Finally, Seair protests that the agency did not follow the stated evaluation scheme that provided that the agency would inquire into the past performance of each offeror. The agency only inquired into the past performance of Phoenix; inquiries concerning the past performance of the other offerors were only made after Seair's protest was filed and, because of the timing, Seair alleges they were made in an "adversarial manner" to disprove Seair's case rather than as an "impartial quest for information with which to evaluate offerors. . . ." Seair contends that it was prejudiced by the contracting officer's knowledge of Phoenix's subcontractor's performance (as incumbent) "without making the requisite inquiries as to Seair's and its subcontractor's past performance."

We fail to see how Seair was prejudiced by the agency's failure to conduct its own inquiries concerning the offerors' past performance, even accepting Seair's view as to what the RFP required. During the evaluation of proposals, the agency made no inquiries regarding any of the offerors' past performance. The record shows that while Seair's size protest was being considered by the SBA, the agency verified Phoenix's past performance; we view this as being part of the agency's responsibility determination since the agency had already selected Phoenix's proposal as the most advantageous to the government and Phoenix's past performance technical rating did not change as the result of the agency's inquiries. After the protest was filed, the agency did contact Seair's contract references, as Seair alleges, and determined that Seair's past performance rating remained satisfactory while Phoenix's rating was satisfactory to good. Given the agency's equal treatment of the offerors, and the fact that Seair's evaluation rating

for past performance would not have improved even if the agency checked Seair's references, we see no basis to question the agency's evaluation in this regard.'

The protest is denied.⁸


for James F. Hinchman
General Counsel

⁷To the extent Seair is protesting that Phoenix had an unfair competitive advantage because the contracting officer was familiar with Phoenix's subcontractor's performance under the prior contract, a competitive advantage gained by virtue of a firm's incumbency is not generally an unfair advantage the procuring agency must eliminate. Delta Oaktree Prods., B-248903, Oct. 7, 1992, 92-2 CPD ¶ 230; Rolm Corp., B-214052, Sept. 11, 1984, 84-2 CPD ¶ 280.

⁸Seair also protested that the agency refused to consider its unsolicited price revision to its initial proposal, which Seair submitted to the agency on January 24 (after the date of Seair's pre-award size protest). We find that the protester abandoned this issue because the agency responded to this issue in detail in its report, and Seair did not respond to the agency's arguments in its comments. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. In any event, the agency could not properly consider Seair's late price revision, even where it arguably would have made Seair's proposal more favorable, because Seair was not in line for award prior to the submission of the late offer. See International Corporate Sec., B-249562, Nov. 25, 1992, 92-2 CPD ¶ 382.