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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:** JVSCC

**File:** B-311303.2

**Date:** May 13, 2009

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T. Wayne Gray, Esq., Joseph P. Hornyak, Esq., and Megan M. Mocho, Esq., Holland & Knight LLP, for the protester.

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Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging agency's evaluation of protester's technical proposal is denied, where the evaluation was consistent with the solicitation evaluation criteria.

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### DECISION

SEB. CO. Costruzioni S.a.s. / CO. PEL. S.a.s. / C.D.M. S.r.l., a Joint Venture, (JVSCC) protests the award of a contract to La Termica S.r.l. under request for proposals (RFP) No. N33191-07-R-1001, issued by the Department of the Navy for construction services in Italy.

We deny the protest.

The RFP provided for the award of an indefinite-delivery, indefinite-quantity (ID/IQ) construction contract for a base year with four 1-year options for the design, construction, alteration, repair and/or improvement of existing Navy facilities in southern Italy. Offerors were informed that award would be made on a best-value basis, considering the following five evaluation factors: organizational and team experience; organizational past performance; management approach; safety; and price. The RFP provided proposal preparation instructions for each of the evaluation factors and stated that the individual non-price factors were equal to each other in importance and, when combined, were approximately equal in importance to price. RFP amend. 1, at 32-33, 34-39. Offerors were also informed that technical proposals were limited to 20 pages in length, RFP amend. 1, at 30, but that the page

limitation did not include “Project Information Sheets (Section 00202 Attachment A), Past Performance evaluations, coversheets, or divider pages.” RFP amend. 2, at 1.

The “organizational and team experience” evaluation factor was described to be a measure of the degree to which an offeror had completed relevant construction and/or design-build projects that were similar in scope, construction features, monetary value and complexity to the requirement described in the solicitation. The RFP required offerors to provide a maximum of four construction projects and two design and/or design-build projects for which the offeror was the prime contractor/designer. Id. at 35. Offerors were informed that the “[p]rimary focus” under this factor would be on IDIQ-type contracts with simultaneous performance of multiple projects similar in value to the work that would be ordered under the contract to be awarded here. With respect to relevancy, the RFP identified the following elements, which were stated to be of equal importance, “as defining relevant prior projects”: similar in facility usage; similar in complexity; work on-going or completed within the past 3 years; and total project value of “€ [euros] 100,000 - 2,000,000.” RFP amend. 1, at 34-35.

For offerors that were joint ventures, the RFP required that the joint venture offers include at least one project for each joint venture partner, “where each partner performed by itself or as part of a joint venture group,” and cautioned that “[i]f the Joint Venture offeror fail[ed] to comply with the requirement in this paragraph, then the Joint Venture offeror [could] not be assigned a rating of satisfactory or better for this factor.”<sup>1</sup> Id. at 35.

The “organizational past performance” evaluation factor was described to be a measure of the degree to which an offeror had satisfied its customers in the past and complied with applicable laws and regulations. Offerors were informed that evaluation of this factor would be based on the extent to which the offeror demonstrated, and its reference checks confirmed, that the offeror had managed the relevant projects evaluated under the “organizational and team experience” factor. In this regard, offerors were required to provide a point of contact and an alternative point of contact for each project identified in their proposals. The RFP cautioned that “[f]ailure of references to be able to respond to past performance inquiries [might] preclude the evaluator’s ability to assign a past performance rating of satisfactory or higher.” Id. at 36.

Offerors were informed that the agency would evaluate under the “management approach” factor the offeror’s ability to successfully and simultaneously manage

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<sup>1</sup> The RFP provided that technical proposals could receive adjectival ratings of excellent, good, satisfactory, marginal, or poor. In addition, proposals could receive a neutral rating under the past performance factor, where an offeror had no relevant past performance to assess. RFP amend. 1, at 32-33.

multiple projects in different locations, considering the following subfactors: construction process management, key personnel management team, organizational structure, and quality control. Id. at 36-37.

Under the “safety” factor, the offeror’s proposed safety approach and methods would be evaluated. Offerors were instructed to submit a description of their procedures to ensure compliance with local and Italian, environmental, safety and security laws and requirements, and to submit the offeror’s “lost work day incident” and “recordable incidence” rates for the past 5 years. Id. at 37-38.

Six proposals, including JVSCC’s and La Termica’s, were received by the RFP’s closing date for receipt of proposals. Following the evaluation of proposals, the Navy awarded a contract to La Termica, and JVSCC protested the award to our Office (B-311303). Prior to submitting its report, the Navy informed our Office that it would take corrective action by terminating La Termica’s contract and re-evaluating all of the proposals. We dismissed JVSCC’s protest as academic, based upon the agency’s corrective action.

The Navy established a new technical evaluation board (TEB), price evaluation board (PEB), and source selection board (SSB) to reevaluate the proposals. In this regard, the Navy did not conduct discussions or allow offerors to revise their proposals, although offerors were allowed to extend their proposals. The six proposals were evaluated and ranked, as follows:

	<b>Overall Technical Rating</b>	<b>Price (in euros)</b>
<b>La Termica</b>	<b>Excellent</b>	<b>581,432</b>
Offeror	Good	1,383,425
Offeror	Good	1,143,599
Offeror	Satisfactory	1,393,392
<b>JVSCC</b>	<b>Marginal</b>	<b>520,288</b>
Offeror	Marginal	1,260,040

Agency Report (AR), Tab 6, TEB Report, at 4; AR, Tab 7, PEB Report, at 5; Tab 8,

SSB Report, at 3.<sup>2</sup> La Termica’s technically superior rating reflected the TEB’s judgment that La Termica (the offeror submitting the second lowest evaluated price) had clearly demonstrated superior overall technical abilities and qualities, and that the firm had demonstrated “a clear understanding of the requirements defined in the RFP and present[ed] a high probability of success with no apparent risk to the U.S. Government in the performance of this contract.” AR, Tab 6, TEB Report, at 4, 5-13. On the other hand, the overall marginal rating of JVSCC’s proposal (the proposal with the lowest evaluated price) reflected the TEB’s lack of confidence in the ability of the joint venture to successfully perform the contract; in summary, the TEB found with respect to JVSCC’s proposal that:

[t]he offeror has demonstrated a marginal understanding of the overall requirements defined in the RFP. The proposal offers no strengths, or if there are strengths, these strengths are offset by weaknesses. The proposal represents a low probability of success with an overall high degree of risk to the Government in the implementation of the requirements under this proposed contract. The overall proposal with its lack of relevant past performance record and lack of demonstration of relevant team management performance as a Joint Venture leads to an expectation that successful performance might be difficult to achieve or that it can occur only with increased levels of Government management and oversight.

Id. at 42.

The agency’s SSB reviewed the TEB’s and PEB’s evaluation reports and recommended that the source selection authority (SSA) select La Termica’s proposal as reflecting the best value to the government. AR, Tab 8, SSB Report, at 8. The SSA agreed, concluding with respect to JVSCC’s lower-priced proposal that La Termica’s evaluated technical superiority, combined with the risks associated with JVSCC’s marginal overall rating, justified paying the associated price premium of approximately € 61,000. Award was again made to La Termica, and this protest followed.

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<sup>2</sup> La Termica’s and JVSCC’s proposals received the following factor ratings:

	<b>Organizational/Team Experience</b>	<b>Organizational Past Performance</b>	<b>Management Approach</b>	<b>Safety</b>
La Termica	Excellent	Excellent	Excellent	Good
JVSCC	Marginal	Satisfactory	Marginal	Satisfactory

AR, Tab 6, TEB Report, at 5.

JVSCC challenges the Navy's evaluation of its technical proposal under each of the RFP's evaluation factors, complaining, among other things, that the evaluators applied unstated evaluation criteria and that the agency's evaluation under the first factor, "organizational and team experience," unfairly affected the rest of the agency's technical evaluation.

Our Office examines an agency's evaluation of experience and past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. Kay & Assocs., Inc., B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4. In this regard, our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id. Moreover, a protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

With respect to the Navy's evaluation of JVSCC's proposal under the organizational and team experience factor, JVSCC's marginal rating reflected the TEB's judgment that four of the six contracts that the protester identified in its proposal were not relevant, and therefore were not considered in assessing JVCC's experience. AR, Tab 6, TEB Report, at 36. The Navy explains that, in evaluating the degree to which an offeror had completed relevant projects, it used the four relevance elements identified in the RFP, under which a project would not be considered relevant where an offeror failed to satisfy any two of the elements for that project. Supplemental AR, at 1-2. JVCC argues, however, that because the RFP did not specify that projects had to meet any minimum number of relevance elements to be considered relevant, the agency's evaluation methodology was arbitrary and inconsistent with the terms of the RFP. Moreover, the protester contends that the agency's relevance evaluation was inaccurate and unreasonable.

We find from our review of the record no basis to object to the agency's assignment of an overall marginal rating to JVSCC's proposal under the organizational and team experience factor. As described above, the RFP required that each of the six projects identified by the offeror in its proposal must have been performed by the offeror as a "prime contractor," and that, where, as here, the offeror was a joint venture, each joint venture partner must have performed at least one of the projects as a prime contractor or as part of a joint venture that was the prime contractor. See RFP amend. 1, at 35. One of the projects identified by JVSCC in its proposal--the only one identified as being performed by one of the JVSCC joint venture partners, CDM--was for the "construction of electrical services" for another firm, "Mirabella S.p.a.," for the construction of a "bowling centre" at a Navy support site. See JVSCC Technical Proposal at 2, 4. The Navy concluded that this project could not be considered relevant because CDM performed this work as a subcontractor to Mirabella and not as a prime contractor.

JVSCC argues, however, that because Mirabella is the property owner and the Navy only uses the facility, CDM actually performed the electrical work as a prime contractor. The Navy responds that because CDM did not bear overall responsibility for the job of building the bowling center, but instead performed only the electrical work, CDM cannot be considered the prime contractor for the project.<sup>3</sup> Supplemental AR, at 3.

We find, from our review of the record, no basis to disagree with the Navy's judgment that CDM performed the work on this project as a subcontractor. The record shows that JVSCC's proposal simply stated that CDM performed the electrical work for another firm, Mirabella, for a bowling center being built for the Navy, which reasonably indicated that CDM's work on this project was performed as a subcontractor. 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. See CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Moreover, JVSCC's arguments, here, do not demonstrate that the Navy's conclusions regarding CDM's performance of this project were unreasonable. In sum, the Navy reasonably found that CDM's work on this project (the only project provided for this joint venture partner) was not done as a prime contractor and therefore the Navy's marginal rating of JVSCC's proposal under this factor was consistent with the RFP.

JVSCC also objects to the Navy's evaluation of its proposal under the second factor, "organizational past performance," arguing that the agency's "arbitrary evaluation methodology from Factor 1 had the highly prejudicial effect of precluding consideration of two thirds of JVSCC's past performance surveys." Protester's Comments on Supplemental AR, at 7. Specifically, JVSCC complains that the Navy

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<sup>3</sup> In support of its position, the Navy has submitted a statement by the facility operations specialist who was responsible for maintaining and operating all the facilities at the Navy support site where the bowling center was constructed, stating as follows:

I know that the Bowling Center was constructed by Mirabella as prime contractor, using subcontractors for specialty work such as mechanical installation, electrical installation, architectural finishings and the like. I know this because I was working in the same position during the construction of this facility and any field changes necessary were negotiated between the Navy and Mirabella as prime contractor/lessor for this facility.

Id., exh. A.

should have considered the protester's performance under a number of the projects that the Navy concluded were not relevant.

The Navy found that only two of JVSCC's six identified projects were relevant; of those two projects, only one of the provided references responded to the Navy, despite the agency's repeated attempts to contact the other reference.<sup>4</sup> That one reference from which the Navy received feedback informed the Navy that JVSCC's performance of the project had been good. The Navy concluded, given the lack of past performance information and that no strengths were identified in JVSCC's past performance, that JVSCC's proposal merited a satisfactory rating.

On this record, even if we accept JVSCC's arguments that the Navy should have considered the protester's performance under a number of the projects that the Navy had found not relevant, we find that JVSCC has not shown a reasonable possibility that it was prejudiced by the Navy's assessment of the firm's past performance as satisfactory.<sup>5</sup> Although JVSCC identified two projects out of the six it had proposed (other than CDM's subcontract project) that were considered to be not relevant by the Navy and for which JVSCC claims that it had excellent past performance,<sup>6</sup> there is no showing that this could reasonably result in a higher past performance rating for JVSCC, given that the firm failed to provide past performance information for all its joint venture partners as contemplated by the RFP. In addition, JVSCC has not shown that a higher rating under the past performance factor would have improved JVSCC's overall competitive position, given that, as noted above, the protester had significantly lower evaluation ratings than the awardee under all of the non-price evaluation factors.

JVSCC also challenges the Navy's evaluation of its proposal under the "management approach" factor, for which JVSCC's proposal was also rated as marginal. The Navy

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<sup>4</sup> The RFP warned offerors that it was their responsibility to provide accurate contact information for references and that the "[f]ailure of references to be able to respond to past performance inquiries may preclude the evaluator's ability to assign a past performance rating of satisfactory or higher." RFP amend. 1, at 36.

<sup>5</sup> Prejudice is an element of every viable protest, and our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that but for the agency's actions, it would have had a reasonable possibility of receiving award. Cogent Sys., Inc., B-295990.4, B-295990.5, Oct. 6, 2005, 2005 CPD ¶ 179, at 10.

<sup>6</sup> JVSCC also argues that CDM's performance of the electrical subcontractor work for Mirabella warranted an excellent/good past performance rating. However, as noted above, the Navy reasonably found that this work was not performed by CDM as a prime contractor and was, under the terms of the RFP, not considered relevant. RFP amend. 1, at 36.

found under this factor that the protester's proposal was "marginally written," failed to explain its processes or plans, failed to include key personnel resumes that adequately demonstrated the experience and qualifications of its proposed personnel, failed to clearly show its organizational structure, and failed to provide sufficient detail to explain the firm's quality control program. AR, Tab 6, TEB Report, at 39-40.

Although JVSCC contends that its proposal adequately addressed each of this factor's subfactors and should have received a higher rating, our review of the record provides no basis to disagree with the agency's judgment that JVSCC's proposal only generally responded to the management approach subfactors. For example, under the "Construction Process Management" subfactor, the evaluators found that JVSCC's "process management approach proposal was marginally written and did not clearly explain its proposed process management for the Joint Venture's plan in executing the proposed requirements under this . . . contract." We agree. As the evaluation report pointed out, the protester's proposal reiterated the experience of the three separate companies in the implementation of IDIQ or job-order-contract type construction projects by two of the joint venture partners, without making clear what role the third partner would have in the organization and process management for construction implementation. AR, Tab 6, TEB Report, at 39; AR, Tab 4, JVSCC's technical proposal, at 8. In addition, the evaluators found that JVSCC's process management explanation was "very elementary and marginally adequate." AR, Tab 6, TEB Report, at 39. JVSCC has not shown that judgment to be unreasonable. While JVSCC disagrees with the Navy's evaluation judgments, its disagreement is not sufficient to establish that the agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

JVSCC also disagrees with the Navy's assignment of a satisfactory rating to the firm's proposal under the "safety" factor. The Navy found that, although the firm's proposal generally addressed the safety plan elements and other requirements, it did not provide "good detail" of the safety-related duties of all on-site personnel. In this regard, the Navy concluded that the protester's safety plan/accident prevention plan was "more or less" a narrative summary of excerpts of the U.S. Army Corps of Engineers Health and Safety Regulations Manual. The Navy also expressed concern that JVSCC reported no lost workdays or recordable incidents over a 5-year period. AR, Tab 6, TEB Report, at 41. JVSCC objects to the agency's concern with JVSCC's reported Lost Workday Incident Rate and Recordable Incident Rate but does not dispute the agency's assessment that the firm had failed to provide a detailed safety plan and that it had merely summarized the Corps of Engineers manual. Under the circumstances, although the Navy provided little support for its documented concern that the joint venture partners had not reported any lost workdays or recordable incidents over a 5-year period, we find no basis to conclude that JVSCC's proposal would merit a higher than satisfactory rating where the protester does not dispute the Navy's other documented concerns with the firm's discussion of its safety plan.



JVSCC also challenges the Navy's evaluation of La Termica's technical proposal in a number of regards. For example, JVSCC contends that La Termica's technical proposal exceeded the RFP's page limitation with respect to past performance information. The RFP, as amended, however, informed offerors that past performance evaluations would not be included in the page limitation. Supplemental AR at 4; RFP, amend. 2, at 1. JVSCC also raises a number of other fairly minor objections to the Navy's evaluation of La Termica's technical proposal, such as generally arguing that the evaluators were biased in favor of the awardee and that three of the construction projects La Termica cited in its technical proposal included no design work. We have reviewed each of these challenges and find no basis to object to the Navy's evaluation of the awardee's proposal.

The protest is denied.

Daniel I. Gordon  
Acting General Counsel