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Decision

Matter of: Construction Services Group, Inc.

File: B-412343.3

Date: February 27, 2017

Eric B. Laquiere, Esq., Laquiere Law Firm, LLC, for the protester.
Alan W. Bardell, Esq., Robert L. Magrini, Esq., Hayes Magrini & Gatewood, for Atkinson/Trend Joint Venture, the intervenor.
Connie L. Baran, Esq., John E. Ballard, Esq., Department of the Army, Corps of Engineers, for the agency.
Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the agency's technical evaluation is denied where the evaluation was reasonable and consistent with the stated evaluation criteria.

DECISION

Construction Services Group, Inc. (CSG), of Charleston, South Carolina, protests the award of a contract to Atkinson/Trend Joint Venture (A/T), of Fayetteville, North Carolina, by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W912HN-14-R-0026, a service-disabled veteran-owned small business (SDVOSB) set-aside for general construction services. CSG alleges that the agency's evaluation of proposals was inconsistent with the RFP and unreasonable, and that the agency's award decision was flawed.

We deny the protest.

BACKGROUND

The Army issued the RFP on October 31, 2014, as a two-phase procurement for design-build and design-bid-build general construction services, primarily for projects at lakes and dams locations in the Corps of Engineers' Savannah District area of responsibility. The RFP contemplated the award of single task order contract for a 2-year base period and three 1-year option periods, with a maximum total value of \$45 million. The RFP established that the award would be made on a

best-value basis considering three technical factors and price. The technical factors consisted of past performance, design approach, and technical approach. The RFP provided that among the technical factors, past performance and technical approach were of equal importance, and were more important than design approach. Agency Report (AR), Tab 8, RFP at 55. Price was less important than the technical factors. Id.

As relevant here, the technical approach factor did not require a substantial technical narrative. Rather, the technical approach factor required submission of a general pricing schedule and a sample task order pricing response concerning the removal and replacement of switchyard aggregate material at the Richard B. Russel Dam power plant, in Elbert County, Georgia. The pricing response involved submission of “a quantitative proposal for the sample project utilizing R.S. Means Cost Works,” requiring the correct application of R.S. Means pricing coefficients to the sample task construction services. Id. at 54. The technical approach factor evaluation criteria provided that:

Offerors will be evaluated on their technical approach in determining their price proposal utilizing the applicable Construction Specification Institute (CSI) numbers and appropriate quantities. Offerors will also be evaluated on how well they understand the required application of their proposed coefficient and mark-ups.

Id. Also as relevant, the RFP evaluation criteria addressed exceptions to the requirements, and provided generally that “[e]xceptions to the contractual terms and conditions of the solicitation . . . may result in a determination to reject a proposal.” Id. at 55.

Phase one of the procurement was completed in April 2015 with the issuance of the phase two RFP to five of the phase one competitors. The agency then established a phase two source selection evaluation board (SSEB), which conducted an initial evaluation of phase two proposals, and engaged in discussions with the remaining competitors. The SSEB evaluated revised proposals and issued a phase two evaluation report to the source selection authority (SSA) on September 9, 2015. The SSA conducted a best-value tradeoff analysis and selected Agile Infrastructure Services for award on September 19. CSG and A/T each filed a protest of that award with our Office. In response to the protests, the agency elected to take corrective action and our Office dismissed the protests on November 6. Construction Services Group, Inc., B-412343, Nov. 6, 2015 (unpublished decision); Atkinson/Trend, B-412343.2, Nov. 6, 2015 (unpublished decision).

Subsequent to taking corrective action, the agency issued amendment 0008 to the RFP and allowed all offerors to submit new revised phase two proposals. In order to evaluate the revised proposals, the agency constituted a new SSEB composed of

all new SSEB members. This new SSEB evaluated the revised proposals, conducted an additional round of discussions, and thereafter issued a new evaluation report to the SSA on June 6, 2016. As set forth in the source selection decision document (SSDD), between A/T and CSG the final evaluation results were as follows:

	A/T	CSG
Past Performance	Satisfactory Confidence	Substantial Confidence
Design Approach	Good	Outstanding
Technical Approach	Outstanding	Acceptable
Price	\$31,981,500	\$33,285,000

AR, Tab 7, SSDD at 11-12.

The SSA identified A/T as the best value to the government. In the SSDD, the SSA reasoned that A/T's advantage under the technical approach factor was more significant than CSG's advantage under the equally-weighted past performance factor, and that A/T's technical approach advantage also outweighed CSG's advantage under the less important design approach factor. Accordingly, the SSA concluded that between CSG and A/T, A/T was both the highest-rated and lowest-priced proposal, and represented the best value.

The unsuccessful offerors were notified of the selection decision on September 9. After the notification, a size status protest against A/T was filed with the Small Business Administration, which confirmed that A/T was an eligible SDVOSB concern. The agency then made the award to A/T on November 2. CSG requested a debriefing, which was provided on November 14. This protest followed.

DISCUSSION

CSG alleges that the agency's evaluation of its proposal was arbitrary and unreasonable because two significant strengths recognized by the original 2015 SSEB report were not recognized in the subsequent 2016 SSEB report. CSG also asserts that the agency unreasonably assessed three weaknesses against its proposal, and applied unequal evaluation standards concerning sample task order schedule compliance.¹

¹ CSG also alleged, generally, that the agency's evaluation ratings were "inflated" for A/T, but provided no specific information to support its allegation. In its agency report, the Army requested that our Office dismiss this basis of protest as speculative and insufficient. We agree with the agency that this allegation fails to state a valid basis of protest and dismiss the allegation. Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed
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The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing an agency's evaluation, our Office will not reevaluate proposals; instead, we will examine the record to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13; Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. We see no errors in the agency's evaluation.

Concerning CSG's allegation that the 2016 SSEB evaluation was unreasonable where it failed to recognize two significant strengths which had been assessed by the 2015 SSEB, there is nothing per se unreasonable about a new technical evaluation panel, convened for a reevaluation pursuant to corrective action, reaching different conclusions from the prior evaluation panel. Corps Solutions, LLC, B-409298.2, Aug. 21, 2014, 2014 CPD ¶ 244 at 7-8. Our Office has long recognized that different evaluation panels may reasonably reach different conclusions regarding the quality of an offeror's proposal given the subjective judgment necessarily exercised by evaluators. Constellation NewEnergy, Inc., B-409353.2, B-409353.3, July 21, 2014, 2014 CPD ¶ 219 at 9.

In this case, the record shows that the 2015 panel identified two significant strengths in its evaluation of CSG's proposal, one relating to CSG's damage mitigation approach and a second relating to its placement of safety training on its schedule. The 2016 SSEB recognized CSG's damage mitigation approach, but concluded that because the contractor was responsible for all site damage and was required to repair damage under the RFP, CSG's approach represented compliance with the requirements of RFP and did not constitute a strength. With respect to safety training, the 2016 SSEB assigned CSG a strength, as opposed to a significant strength, on the basis that "[t]he Technical Approach as a whole was well organized with identification of major tasks to be performed and recognition of safety concerns for the project," which encompassed CSG's safety training schedule. AR, Tab 6b, 2016 SSEB Report, at 22. We see nothing unreasonable with the SSEB's conclusions here. CSG's disagreement with the SSEB's

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statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

conclusions does not provide a basis for our Office to conclude that the evaluation was unreasonable. Mil-Mar Century Corp., B-407644, B-407644.2 et. al., Jan. 17, 2013, 2013 CPD ¶ 39 at 6.

Next, we see no errors in the SSEB's assessment of three weaknesses against CSG's proposal under the technical approach factor. The first challenged weakness concerns a disagreement between CSG and the agency with respect to sample task compaction requirements and CSG's failure to account for compaction in its pricing response. CSG asserts that the specific aggregate materials specified in the task order cannot be compacted--which CSG contends it explained to the 2016 SSEB during the final round of discussions. However, the SSEB relied on the existence of multiple compaction requirements for aggregate placement set forth in the RFP's statement of work (SOW) to conclude that CSG's technical approach should have recognized the compaction requirements, and accounted for some compaction of aggregate in its pricing response. AR, Tab 8, RFP at 30. Where the SSEB's assessment of a weakness is based on an apparent inconsistency between CSG's proposal and the SOW, we cannot conclude that the weakness is unreasonable.²

The remaining challenged weaknesses concern the SSEB's evaluation of apparent exceptions to the schedule requirements for the sample task in CSG's proposal. Specifically, the SOW for the sample task provided that the performance period of the task order was 90 days, with "60 calendar days for Submittals & Government Review and 30 calendar days for construction." AR, Tab 8, RFP at 16. The sample task SOW also included a matrix of required submittals during task order performance including, as relevant, a construction schedule in "bar chart" form. Id. at 18. Although required during performance, the schedule submittals were not required submissions as a part of the sample task response. AR, Tab 8, RFP at 54.

Nonetheless, CSG's sample task response included a detailed construction schedule in bar chart form. Upon reviewing the schedule submitted by CSG, the SSEB identified two exceptions to the RFP requirements--one relating to the absence of anticipated bad weather days as specified, for each month of the year, in the SOW, and a second on the basis that CSG's construction schedule showed 35 calendar days from the start of work to project completion--exceeding the 30 calendar day construction period set forth in the SOW. The SSEB concluded that

² Moreover, to the extent the protester believed the compaction requirements set forth in the SOW were erroneous, CSG should have raised the matter with the agency prior to the solicitation closing date. Having failed to do so, it may not now challenge the agency's evaluation on the basis that the solicitation requirements were essentially defective and should have been disregarded. See 4 C.F.R. § 21.2(a)(1) ("[p]rotests based upon alleged improprieties in a solicitation . . . shall be filed prior to bid opening or the time set for the receipt of initial proposals").

these discrepancies presented a concern “that the contractor will not complete the construction within the 30 days required by the solicitation,” and assessed the challenged weaknesses. AR, Tab 6b, 2016 SSEB Report, at 23.

CSG contends that the SSEB’s assessment of the first weakness was unreasonable because the sample task did not indicate in which month the sample task was to be performed, such that it was impossible for the contractors to anticipate or determine the number of weather days to incorporate. CSG also asserts that its proposal included a narrative addressing weather days, which indicated that CSG considered weather delays “too large a variable,” and that CSG would handle weather related delays “under the administration of the contract.” AR, Tab 4d, CSG Discussions Response, at 90. These arguments are unpersuasive, however, where CSG’s own detailed schedule showed a construction period of March 11 to April 15--providing an exact basis on which to calculate the required weather days, which, as noted above, were set forth in the SOW, by month. Having submitted a detailed construction schedule without accounting for the weather days expressly provided by the solicitation, we have no basis to question the reasonableness of the weakness assessed by the agency.

With respect to the second weakness, CSG contends that its schedule was compliant with the 30-day construction period required by the SOW since the additional days represented government inspections, not construction. First, we see nothing unreasonable in the SSEB’s interpretation of the construction phase of the work as inclusive of required inspections. Second, on its face CSG’s construction schedule shows the start of aggregate removal on March 11, and construction demobilization and clean up on April 14, more than 30 calendar days later. AR, Tab 4d, CSG Discussions Response, at 12. Where the total duration of construction activities exceeded the specified 30 calendar day period, we have no basis to question the reasonableness of the agency’s evaluation of a weakness in this regard.

Finally, CSG asserts that the evaluation was unequal and disparate where it was assigned weaknesses due to issues with its construction schedule, but A/T was not assigned any weaknesses despite that firm’s failure to submit a construction schedule for evaluation. As explained above, the construction schedule bar chart was a required submittal associated with the performance terms of the sample task; it was not required as a part of the sample task submission under the technical approach factor of this RFP. Accordingly, the SSEB did not err in its evaluation of A/T’s sample task order response where A/T’s response took no exception to the schedule requirements. In contrast, where CSG submitted a detailed construction schedule that demonstrated two exceptions to the terms of the sample task SOW,

we also have no objection to the SSEB's review of that document, and its assessment of weaknesses in CSG's technical approach in those areas.³

The protest is denied.

Susan A. Poling
General Counsel

³ CSG also asserts that the agency overstated the risks associated with the weaknesses assessed against its proposal and that, even if the weaknesses were correctly assessed, its proposal did not represent moderate risk and should have been rated higher than "acceptable" for the technical approach factor. We disagree. Whether the risk associated with CSG's weaknesses was moderate or less than moderate, the risk was "no worse than moderate," which is consistent with the definition of an "acceptable" rating as set forth in the RFP. AR, Tab 8, RFP at 54. On this record, our Office has no basis to question the acceptable rating assigned to CSG's proposal for factor 3.