



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Allen Engineering Contractor, Inc.

File: B-405594.4

Date: March 15, 2013

William L. Bruckner, Esq., and Branden Timboe, Esq., Bruckner & Walker, LLP, for the protester.

William A. Roberts, III, Esq., and Richard B. O’Keeffe, Jr., Esq., Wiley Rein LLP, and Ronald R. Stuff, Esq., Fluor Corporation, for Del-Jen, Inc., the intervenor.

Christian M. Butler, Esq., Department of Homeland Security, 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 an agency’s evaluation and source selection decision is denied where the protester has not demonstrated that the evaluation was unreasonable or inconsistent with the solicitation.

DECISION

Allen Engineering Contractor, Inc., of San Bernadino, California, protests the award of a contract to Del-Jen, Inc., of Clarksville, Tennessee, under request for proposals (RFP) No. HSBP1209R2483, issued by the Department of Homeland Security, United States Customs & Border Protection (CBP), for comprehensive tactical infrastructure maintenance and repair services. Allen challenges the agency’s evaluation of proposals and selection decision.

We deny the protest.

BACKGROUND

Pursuant to the Secure Fence Act of 2006, CBP is constructing and maintaining a physical infrastructure (fences, gates, roads, bridges, and lights) along the southwest border with Mexico. The RFP provided for the award of cost-plus-fixed-fee contract for maintenance and repair services of this physical infrastructure for two sections, areas 2 (stretching from Yuma, California to Tucson, Arizona) and area 3 (stretching from El Paso, New Mexico to Marfa, Texas). See RFP § B;

append. A, Work Plan Area Maps, at 116-17.¹ The RFP provided for separate awards for each area. RFP § B.1. This protest concerns the award for area 3.

Offerors were informed that award would be made on a best value basis, considering the following factors, listed in descending order of importance: management approach; technical capabilities; past performance; small business utilization; and cost.² RFP § M.3. The non-cost factors, when combined, were stated to be significantly more important than cost.

Following the receipt and evaluation of initial proposals, CBP excluded Del-Jen's and another firm's proposals from the competitive range. The competitive range exclusions were protested to our Office. In response, CBP decided to include these proposals in the competitive range, conduct discussions, obtain revised proposals, and make new selection decisions for both areas. See Del-Jen, Inc.; Granite Constr. Co., B-405594 et al., Sept. 13, 2011.

CBP established a new technical evaluation team (TET), which evaluated the firms' revised technical proposals for the area 3 procurement. The offerors' cost proposals were evaluated by the agency's cost evaluation team (CET) for cost realism and reasonableness. In conducting its realism analysis, the CET consulted with the TET with respect to each offeror's proposed technical solution. Agency Report (AR) at 5; Tab F.1, Summary Cost Report.

The three highest-rated proposals were evaluated as follows:

	Del-Jen	Granite	Allen
Management Approach	Superior	Good	Satisfactory
Technical	Good	Superior	Good
Past Performance	Superior	Superior	Satisfactory
Sm. Business Utilization	Good	Good	Good
Most Probable Cost	\$21,057,596	\$23,702,822	\$24,778,791

AR, Tab H, Source Selection Decision, at 3. The TET's adjectival ratings were supported by narrative discussions that identified strengths and weaknesses in the

¹ The solicitation was amended a number of times. Our RFP citations are to the solicitation as finally amended.

² The RFP identified a number of subfactors under each of the evaluation factors.

respective proposals.³ See Agency Report (AR), Tab F.1, TET Consensus Summary Evaluation Report; Tab F.2, TET Consensus Evaluation Report for Allen; and Tab F.3, TET Consensus Evaluation Report for Del-Jen.

With respect to Allen's satisfactory rating under the management approach factor, the TET found that Allen had demonstrated an acceptable management approach with few strengths. AR, Tab F.2, TET Consensus Evaluation Report for Allen, at 1-5. Allen's satisfactory past performance reflected the TET's judgment that, although Allen had some relevant past performance, it did not demonstrate experience with all facets of the contract work. Accordingly, the evaluators found that some doubt remained with the firm's ability to successfully perform all aspects of the contract work. Id. at 9-10; AR, Tab J, Statement of TET Lead Evaluator, at 2.

With respect to Del-Jen's superior rating under the management approach factor, the TET found that Del-Jen's management approach presented a number of exceptional strengths that would benefit the government. See AR, Tab F.3, TET Consensus Evaluation Report for Del-Jen, at 1-9. Del-Jen's superior past performance rating reflected the TET's judgment that Del-Jen had demonstrated significantly relevant and comprehensive past performance that left no doubt that the firm could successfully perform the requirements. Id. at 15; AR, Tab J, Statement of TET Lead Evaluator, at 2.

The technical and cost evaluation reports were provided to the Source Selection Authority (SSA), who adopted the evaluators' ratings and assignment of strengths and weaknesses. AR, Tab H, Source Selection Decision, at 1. The SSA noted that Del-Jen's and Granite's proposals were technically superior to, and lower in cost than, Allen's proposal, and limited his cost/technical tradeoff analysis to a

³ Proposals were evaluated under the management approach and technical factors as superior, good, satisfactory, marginal, or unsatisfactory, and under the past performance factor as superior, satisfactory, unsatisfactory, or neutral. AR, Tab C.2, Source Selection Plan at 33. As relevant here, a superior rating under the management approach or technical factors reflected a proposal demonstrating an excellent understanding of requirements and an approach that significantly exceeds performance or capability standards, and that had exceptional strengths offering a significant benefit. A satisfactory rating reflected a proposal demonstrating good understanding of requirements and an approach that met performance or capability standards, and that had few or no strengths. A superior rating under the past performance factor reflected a past performance record that established no doubt that the offeror would successfully perform the required effort. A satisfactory past performance rating reflected a record that established that some doubt existed that the offeror could successfully perform. Id. The source selection plan also included various standards that should be met under each of the adjectival ratings. See id. at 27-35.

comparison of Del-Jen's and Granite's proposals. See id. at 5. The SSA found that Del-Jen's highest-rated and lowest-cost proposal reflected the best value. Id. at 13.

Award was made to Del-Jen, and this protest followed a debriefing.

DISCUSSION

Allen complains that its technical proposal should have been rated higher than satisfactory under the management approach and past performance factors.⁴ Supp. Protest and Comments at 13-15. Specifically, with respect to the management approach factor, the protester contends that its proposal satisfied all of the standards identified in the source selection plan and therefore should have received a superior rating.

In reviewing protests of allegedly improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. A protester's disagreement with an agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

The record does not support Allen's contention that its proposal was entitled to a higher rating under the management approach factor. Although Allen argues that its proposal satisfies the standards identified in the source selection plan for the level of information that a superior proposal should have, Allen otherwise ignores the remainder of the source selection plan, which defined the adjectival ratings. A superior rating under the management approach factor was reserved for proposals that significantly exceeded performance requirements and had exceptional, beneficial strengths. AR, Tab C.2, Updated Source Selection Plan, at 33. A satisfactory rating, on the other hand, reflected an acceptable approach meeting the performance requirements with few or no strengths. Id. Allen does not argue, in this regard, that its proposal offered any particular strengths that were not considered. Nor does Allen assert that its proposal should have been found technically superior to Del-Jen's or Granite's proposals under this factor. Although

⁴ In its initial protest, Allen raised a number of other challenges to the evaluation of its proposal, including that its proposal was entitled to superior ratings under every evaluation factor simply because the agency had not identified any proposal weaknesses. Allen also argued that the agency had failed to conduct a cost realism analysis. Because the agency addressed these arguments in its agency report and the protester did not further address these matters in its subsequent filings, we deem them abandoned.

Allen disagrees with the adjectival rating assigned to its proposal under the management approach factor, this does not demonstrate that the agency's judgment was unreasonable or inconsistent with the RFP.

With respect to the past performance factor, Allen contends that the contemporaneous evaluation record does not document why the TET believed that there was some doubt that Allen would successfully perform the required work. Supp. Protest and Comments at 15. Allen argues that its proposal should have been rated as superior under this factor.

In response to the protest, CBP provided the statement of the TET lead evaluator to explain the basis of the evaluators' rating in this regard. The lead evaluator explains, for example, that the project that the TET considered the most representative of Allen's relevant past performance involved only two of five specific technical work categories required here; other past performance references were less directly related to the requirements; others reflected performance of design and build or installation work, rather than maintenance and repair activities; and that although the agency had asked Allen for additional details during discussions to determine the relevance of certain projects, it did not find that this was adequately addressed in Allen's final revised proposal. See AR, Tab J, Statement of TET Lead Evaluator, at 2.

Allen contends that we should not consider the lead evaluator's "post hoc rationalization." Supp. Comments at 5-8. The crux of Allen's argument is that the contemporaneous evaluation record does not detail the TET's consideration of Allen's past performance questionnaires, and therefore we should not now allow the agency to explain the basis of its evaluation conclusion. We disagree.

Our Office does not limit its review to contemporaneous evidence, but considers all the information provided, including a party's arguments and explanations. See Serco, Inc., B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 7. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a more detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review as long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. The agency's explanation here meets this standard.

The record, including the agency's explanation of its evaluation, does not support Allen's argument that its proposal was entitled to a higher past performance rating. In this regard, Allen does not show that its proposal demonstrated past performance for all facets of the contract work. Rather, Allen disagrees with the agency's assessment that its past performance was merely satisfactory and presented some

doubt as to its ability to perform. This disagreement, however, does not show that the agency's evaluation judgment was unreasonable.

Allen also challenges the agency's evaluation of Del-Jen's proposal and selection of that firm's proposal for award. Allen, however, is not an interested party to maintain a protest on these bases, given our conclusion that the agency's evaluation of Allen's own proposal was reasonable, and because Allen failed to challenge the evaluation of an intervening offer that was both higher-rated and lower cost. Under our Bid Protest Regulations, we will only consider a protest by an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (2012). Because Granite's higher-rated and lower cost proposal would be next in line for award were we to sustain Allen's challenge to the agency's evaluation of Del-Jen's proposal, Allen lacks the direct economic interest necessary to be an interested party with respect to the evaluation and selection of Del-Jen's proposal. See Steinhoff & Sadler, Inc. d/b/a SSI, B-246604, B-246604.3, Mar. 20, 1992, 92-1 CPD ¶ 299 at 8. Accordingly, we dismiss this aspect of Allen's protest.

The protest is denied.

Susan A. Poling
General Counsel