



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Design Engineering, Inc.

File: B-408336.3

Date: May 6, 2014

Michael H. Payne, Esq., Robert G. Ruggieri, Esq., and Maria L. Panichelli, Esq., Cohen Seglias Pallas Greenhall & Furman PC, for the protester. Marguerite K. Kingsmill, Esq., and John V. Nguyen, Esq., Kingsmill Riess, LLC, for Linfield, Hunter & Junius, Inc.; and Howell Roger Riggs, Esq., for The Beta Group, intervenors.

Anne Louise Taylor, Esq., Department of the Army, Corps of Engineers, for the agency.

Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In procurement for construction management/architect-engineer services, protest that agency improperly applied unstated criteria by considering whether proposed key person lacked 4-year degree in construction management or engineering is denied where this consideration was reasonably encompassed by stated evaluation factor for professional qualifications.
 2. In procurement for construction management/architect-engineer services with respect to hydraulic work in New Orleans District, protest that agency improperly applied unstated evaluation criteria by considering whether proposed key personnel were familiar with local construction methods is denied where this consideration was reasonably encompassed by stated evaluation factor for knowledge of locality.
 3. Protester is not an interested party to object to selection of other firms for negotiation of architect-engineering contracts where it would not be in line for award even if the other firms were eliminated from the competition.
-

DECISION

Design Engineering, Inc. (DEI), of Metairie, Louisiana, protests the selection of The Beta Group, of Gretna, Louisiana, and Linfield, Hunter & Junius, Inc., of Metairie, Louisiana, for price negotiations in connection with the Department of the Army,

U.S. Army Corps of Engineers' (USACE) synopsis No. W912P8-13-R-0002, for construction management/architect-engineer (A/E) services. DEI challenges the evaluation of qualifications statements and the selection of firms for negotiation.

We deny the protest.

BACKGROUND

This procurement, a total small business set-aside, was conducted pursuant to the Brooks Act, 40 U.S.C. §§ 1102-1104 (2006) and its implementing regulations, Federal Acquisition Regulation subpart 36.6, for construction management, quality assurance activities, and related services within the limits of the USACE's Mississippi Valley Division, with primary use expected to be within the New Orleans District. Pursuant to these regulations, on October 12, 2012, the agency publicly announced through the Federal Business Opportunities website the subject A/E requirements, and invited capable firms to submit Standard Form (SF) 330, "Architect-Engineer Qualifications" statements. The synopsis contemplated the award of two separate, indefinite-delivery/indefinite-quantity contracts, each valued at \$12.5 million, for a base period with four option years.

Selection of firms for negotiations was to be based on evaluation of five primary factors (listed in order of importance): specialized experience and technical competence; professional qualifications; capacity to accomplish the work; past performance; and knowledge of locality. Three secondary factors were to be used as tie-breakers among otherwise technically equal firms: location of the firm; participation of small businesses in various categories; and work previously awarded by the Department of Defense. All factors with the exception of past performance were to be rated on an adjectival basis as either exceptional, very good, satisfactory, marginal, or unacceptable. Past performance was to be rated as either substantial, satisfactory, limited, no, or unknown confidence.

The agency received 19 SF 330s from interested firms, including proposed teams headed by DEI, Linfield, and Beta. After review of the SF 330s, the source selection board (SSB) identified eight teams for the "short list" of firms to be interviewed, including those headed by DEI, Beta, and Linfield. The SSB conducted telephone interviews with each of the firms using the same questions for each. Based on the responses of the firms and application of the secondary factors, the SSB ranked Beta first, Linfield second, and DEI seventh. The SSB recommended Beta and Linfield for negotiations, with two additional firms ranked third and fourth (Integrated Logistical Support, Inc. (ILSI), and Cooley, Dennis & Denmon Engineering Co., Inc.) recommended for negotiations in the event that negotiations with Beta and Linfield were unsuccessful. After receiving notice that it was not selected for negotiations and receiving a debriefing, DEI filed a protest with our Office.

After the agency submitted its report in response to the protest, DEI filed a supplemental protest. Prior to submitting a supplemental report, however, the agency advised our Office that it intended to take the corrective action of reevaluating the competing firms' SF 330s before making a new source selection decision. We therefore dismissed the protest as academic (B-408336, B-408336.2, July 9, 2013).

As part of the reevaluation, the agency appointed a new SSB. After each member separately evaluated the SF 330s, the SSB reached a consensus ranking of Beta, Linfield, ILSI, and Cooley as the top four qualified teams. Interviews were then held with the top four teams. Based on the application of the secondary factors, the final consensus rankings were as follows:

Offeror (Rank)	Specialized Experience	Professional Qualifications	Capacity	Past Performance	Knowledge of Locality
(1) Beta	Exceptional	Very Good+	Very Good	Substantial	Exceptional
(2) Linfield	Very Good	Very Good	Very Good	Substantial	Exceptional
(3) ILSI	Very Good	Very Good	Very Good	Substantial	Exceptional
(4) Cooley	Very Good	Very Good	Satisfactory	Substantial	Exceptional
(5) Offeror	Very Good	Satisfactory+	Very Good	Substantial	Very Good
(6) Offeror	Very Good	Satisfactory+	Very Good	Substantial	Exceptional
(7) DEI	Very Good	Satisfactory+	Satisfactory	Satisfactory	Very Good

Source Selection Decision (SSD) at 16. The agency then determined to commence negotiations with Beta and Linfield, the top two ranked firms. After receiving notice that it was not selected for negotiations and receiving a debriefing, DEI filed this protest.

DISCUSSION

DEI asserts that the evaluation of offerors' qualifications statements was based on unstated evaluation criteria or was otherwise unreasonable. In reviewing an agency's selection of a contractor (or contractors) for A/E services, our Office will consider whether the agency's selection was reasonable and in accordance with the published criteria. OLBN Architectural Serv., Inc., B-402444.4, B-402444.5, Oct. 4, 2010, 2011 CPD ¶ 55 at 3. Mere disagreement with the agency's evaluation is not sufficient to call an evaluation into question. See Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. Here, we have reviewed all of DEI's allegations and find that none furnishes a basis for questioning the selection of firms for negotiations. We address below several of DEI's more significant arguments.

Construction Manager

The SSB assigned a weakness to DEI under the professional qualifications and capacity to accomplish the work evaluation factors, based on the fact that one of DEI's proposed construction managers did not possess a 4-year engineering or construction management degree. DEI argues that these weaknesses were based on unstated evaluation criteria.

In evaluating proposals, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4. Here, the record shows that the agency did not apply undisclosed criteria in its evaluation under either factor, and reasonably assessed DEI's proposal a weakness under the professional qualifications factor, but did not act reasonably under the capacity factor.

Under the professional qualifications factor, the synopsis indicated that the agency would consider the "[p]rofessional qualifications of the key personnel, including professional registration and certifications in engineering, and construction management available to work on this contract," and specifically listed nine professional disciplines, including project management, various engineering areas, and construction management. Synopsis ¶ 3.b. Thus, firms were on notice from the synopsis that the agency would evaluate whether their key personnel were qualified, that is, had received professional training and independent qualification in the fields of engineering and construction management. In these circumstances, we view consideration of whether a key person has a 4-year degree in engineering or construction management to be encompassed within the professional qualifications evaluation factor.

Further, as explained by the agency, for civil construction projects performed on behalf of the USACE, a construction manager is responsible for the management of engineering, technical, and administrative matters, including duties such as ensuring that methods and related engineering practices and techniques are in accordance with established USACE requirements and policies, and ensuring the compatibility of the design with the site, materials, methods, and techniques. SSB Chair Declaration (Decl.) 1, ¶ 6. According to the agency, to adequately perform such duties, a construction manager should have a degree in engineering or construction management, the same education and professional qualifications possessed by USACE construction managers. Id. ¶ 7; Supplemental Agency Report (SAR) at 4.

DEI has not shown to be unreasonable the agency's position as to the importance of a 4-year engineering or construction management degree to ensuring adequate performance of a construction manager's duties. Here, the submitted resume for one of DEI's construction managers indicated that he has only an associate degree

in civil engineering, not a 4-year degree, and his entry in DEI's key personnel listing contained a blank under the heading of professional registration. DEI Qualifications Statement § H, Exh. 4. Thus, we find that DEI's proposal of a construction manager without the requisite professional education was reasonably evaluated under the professional qualifications factor as a weakness.¹

DEI also asserts that assigning a weakness under the capacity to accomplish the work evaluation factor for proposing a construction manager lacking a 4-year engineering or construction management degree amounted to application of an unstated evaluation criterion under that factor. The synopsis, however, indicated that under the capacity factor, the agency would consider an offeror's ability to furnish "personnel in sufficient numbers" (as well as equipment) who were able "to perform the work in the required time using all of the latest versions of commercial and USACE software packages utilized by the USACE; produce cost estimates; [and] perform soil testing and analysis in accordance with the USACE'[s] geotechnical criteria" *Id.* ¶ 3.c. Thus, firms were on notice from the synopsis that under the capacity factor the agency would consider the numbers of qualified personnel, which for the construction manager position reasonably included consideration of the number of personnel with the requisite professional education.

Nevertheless, we recognize that under the capacity factor, a construction manager's qualifications were relevant only to whether an offeror proposed a sufficient number of qualified personnel to perform. Since the record indicates that the agency was satisfied that DEI had proposed a sufficient number of construction managers, see SAR at 16, assignment of a weakness for one unqualified manager was unreasonable. However, as discussed below, in view of DEI's other evaluated disadvantages under the capacity factor, there appears to be no basis for concluding that DEI was prejudiced by the addition of this single unwarranted

¹ DEI also asserts that the description in the consensus evaluation of this qualifications weakness was misleading. In this regard, the consensus evaluation referred to the weakness as concerning "some" construction managers, but the agency acknowledges that only one of DEI's proposed managers was deemed unqualified. While the agency states that the use of the word "some" was a typographical error, DEI argues that the SSB "believed and evaluated" DEI on the basis of more than one construction manager. DEI Final Comments at 7. The record, however, does not indicate that the SSB was so misled. Specifically, the SSB Chair explains that the evaluators understood that only one of DEI's construction managers lacked a degree, and thus the error did not impact DEI's evaluation or rating. SSB Chair Decl. 2, ¶ 2. In this regard, while one of the evaluators referred to "a couple" of unqualified construction managers in finding a weakness under the capacity factor, that same evaluator's spreadsheet evaluation only identified one construction manager as being "not qualified." *Id.*; DEI Evaluator 2 Spreadsheet, Agency Report (AR) Tab 51.

weakness. See Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7 (prejudice is an element of every viable protest).

Hydraulic Engineer

DEI also challenges the SSB's assignment of a weakness under both the professional qualifications and capacity to accomplish the work evaluation factors based on its proposal of a single hydraulic engineer with limited experience in the areas of revetments, dredging, floodwalls, and pump stations.² SSD at 20. DEI maintains that there was no requirement to propose a hydraulic engineer; that a number of its proposed key personnel nevertheless possess hydraulic engineer experience in the areas identified by the SSB; and that its qualifications statement stated that it offered an additional [deleted] hydraulic engineers. DEI Initial Comments at 10.

The evaluation here was reasonable. In this regard, the synopsis provided that the solicited work may involve projects which include hydraulic structures, such as floodwalls and pumping stations, and hydraulic dredging. Synopsis ¶ 2.d. As noted by the agency, however, DEI chose to propose only a single key person designated as a hydraulic engineer. Further, while the resume of DEI's proposed key hydraulic engineer mentions one project that included pump stations and three projects that reference flooding, for none of these projects was there specific mention of floodwalls, revetments, or dredging, the areas of agency concern identified in the weakness. In addition, although other resumes identified hydraulic engineer experience in these areas, none of these other key personnel were identified as acting as a hydraulic engineer for this contract. Finally, while DEI's qualifications statement generally stated that [deleted] other hydraulic engineers were available, it provided no resumes to establish the extent of their training and experience. In these circumstances, the agency reasonably assessed as a weakness that DEI had not proposed a sufficient number of hydraulic engineers with experience in the areas of revetment, dredging, floodwalls, and pump stations. SSB Chair Decl. 2, ¶ 5; see Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3 (offeror is responsible for the contents of its qualifications statement and ensuring it provides complete information as part of an adequately written proposal).

² Hydraulic engineering is a "branch of civil engineering that deals with the use and control of flowing water." Merriam-Webster Dictionary.

Capacity Factor Rating

DEI also argues that it was “arbitrary and inconsistent” for the agency to rate its proposal as only satisfactory under the capacity factor when, even without the one unqualified construction manager, DEI proposed more such managers than Beta and Linfield, yet Beta’s and Linfield’s qualifications statements were evaluated as very good under the capacity factor. DEI Initial Comments at 10, 12.

Based upon our review of the record, we find no basis to question the agency’s ratings under the capacity factor. As discussed above, the record indicates that the agency was satisfied that DEI had proposed a sufficient number of construction managers, assessing a weakness only because one of the construction managers was unqualified. See SAR at 16. While the assignment of a weakness to DEI under the capacity factor on account of its proposing an unqualified construction manager was unreasonable where the agency recognized that DEI had proposed sufficient construction managers, as noted by the agency, the capacity factor was much broader than consideration only of proposed construction managers. Rather, the capacity factor covered equipment and sufficient, qualified personnel in all required areas. Synopsis ¶ 3.c; SAR at 16; SSB Chair Decl. 2, ¶ 5(b).

In this regard, while the agency noted that DEI’s “project engineers are knowledgeable and experienced,” and DEI’s subcontractor URS has a large number of employees, as discussed above, the agency viewed DEI’s approach with respect to hydraulic engineers to be inadequate. SSD at 20. As noted, the agency considered that, notwithstanding the significant hydraulic-related work expected under the contracts, DEI’s proposal of only a single hydraulic engineer who had limited experience with revetments, dredging, floodwalls and pump stations, represented a weakness. Id. Further, the agency viewed DEI less favorably than the selected firms with respect to the availability of quality assurance representatives (QAR). The record indicates that a QAR will be the principal on-site inspector responsible for ensuring the quality of work performed by contractors; according to the agency, QAR’s are “essential” to cover the high volume work in the New Orleans District. SSB Chair Decl. 1, ¶ 11.B. While the agency did not list as a weakness the number of QARs proposed by DEI, it viewed as strengths the greater number of proposed QARs available to Beta and Linfield.³ SSD at 18, 20, 29; SSB Chair Decl. 2, ¶ 5(d); SSB Chair Decl. 1, ¶ 1.B.

³ As noted by DEI, a number of the QARs proposed by Beta and Linfield will be “shared” because they are employees of the same major subcontractor which was proposed by both offerors. DEI Final Comments at 18. Rather than focusing on the specific personnel proposed, the capacity factor evaluation placed more emphasis on the overall number of proposed QARs available to each firm. Here, the agency was satisfied that all three offerors proposed a sufficient number of QARs, but found that Beta and Linfield had strengths in proposing a greater number of QARs.

The agency also found other distinctions between the proposals. For example, while Linfield received a weakness under the capacity factor for proposing only two construction managers, it received strengths for its proposed project engineers and schedulers. In addition, both Beta and Linfield, but not DEI, received strengths for knowledge and experience with the USACE's Resident Management System (RMS), a construction management/quality assurance information system for field construction personnel. SSD at 18, 20, 29.

Thus, while DEI may have proposed slightly more construction managers than Beta and Linfield, the record reflects that DEI was evaluated as inadequate with respect to hydraulic engineers, and less advantageous than Beta and Linfield with respect to the essential QARs and familiarity with USACE's RMS construction management/quality assurance information system. In these circumstances, we find we find no basis for concluding that the agency was unreasonable in assigning DEI a satisfactory rather than very good rating under the capacity factor.

Knowledge of Locality Factor

DEI challenges the evaluation of its qualifications under the knowledge of locality factor. In this regard, the agency assessed a weakness on the basis that its construction managers have limited revetment experience and its project engineers lack experience in dredging, revetments, and levees. DEI argues first that the evaluation was based on unstated criteria. In this regard, it notes that the synopsis only stated that offerors would be evaluated based on "Knowledge of the Locality," Synopsis ¶ 3.e, and did not specify the additional criteria the agency used-- knowledge of geological features, climatic conditions, and local construction methods that are unusual or unique. DEI Initial Comments at 5.

We agree with the agency, however, that the challenged criteria were logically encompassed by, or reasonably related to, the stated knowledge of locality evaluation factor. See Independence Constr., Inc., supra, at 4. Thus, we find reasonable the agency position that knowledge of locality extends beyond mere geographic proximity to the place where work would take place, and includes consideration of the characteristics of the locality which could be significant for the work to be performed under the contract, including such aspects of the locality as geologic features, climate, and unique construction methods. SAR at 7. In this regard, the synopsis here advised offerors that the work would be performed primarily within the limits of the New Orleans District and would involve various construction projects including hydraulic structures such as locks, floodgates, flood control structures, levees, drainage canals, and pumping stations; marine structures; highway work; and related buildings. Synopsis ¶ 2.d; SAR at 8. In these circumstances, since the synopsis identified a variety of hydraulic work in the New Orleans District, we find that firms were on notice from the synopsis that the agency might evaluate under the knowledge of locality factor whether the proposed

personnel had knowledge of such local hydraulic-related construction methods as dredging, revetments, and levees.

DEI further asserts that, in any case, its qualifications statement indicated the knowledge of the locality the agency considered significant. For example, DEI points out that its qualifications statement stated that DEI's "team members have performed construction management for special designs, based on complex analysis and investigations of unique conditions found only in South Louisiana." DEI Qualifications Statement § H at 43. Likewise, under the title "The DEI Team Knows the Territory," DEI referred to its knowledge of the "geographic and geological features"; its completion of "thousands of geotechnical investigations"; hands-on working knowledge of all relevant flood protection system components, navigation systems, and other related hydraulic and civil structures; and its working knowledge of all applicable engineering codes and related issues. Id.

The evaluation of DEI under the knowledge of locality factor was unobjectionable. In this regard, the record indicates that while the agency considered the location of the firms, the agency emphasized in its evaluation the extent to which the firms proposed key personnel for whom the qualifications statement indicated familiarity with the characteristics of the locality which could be significant for the work to be performed. Thus, according to the record, DEI's very good locality rating was based on the SSB's finding that of the [deleted] proposed key personnel, [deleted] were evaluated as having knowledge of geologic features, climatic conditions, and local construction methods, while an additional [deleted] had knowledge of one or two of the three. Evaluator 3 Spreadsheet, AR, Tab 50. However, the SSB also found that DEI's team did not appear to have experience in all relevant construction methods, in particular dredging and revetments work. SSB Chair Decl. 1, ¶ 11.F. In this regard, of DEI's proposed [deleted] key personnel, only [deleted] were indicated to have experience with revetments and various structures, and only [deleted] were indicated to have experience with dredging and marine structures. DEI Qualifications Statement § H at 31-33. With less than one half of the key personnel having revetment and dredging experience, we conclude that the SSB reasonably determined that DEI's qualifications statement under the knowledge of locality factor, while very good, did not warrant a rating of exceptional.

DEI asserts that it deserved a rating higher than very good under this factor because it was assigned a strength and no weaknesses, while Beta's qualifications statement received a rating of exceptional, despite an assigned weakness. We find this argument unpersuasive. The record indicates that the SSB found that Beta's qualifications statement included numerous personnel who demonstrated a broad knowledge of geological features, climatic conditions, and local structures. SSD at 18. Specifically, of some [deleted] proposed key personnel, the record shows that [deleted] had experience in all three areas, while an additional four had experience in two of the three. Evaluator 3 Spreadsheet, AR Tab 50. Further, Beta's qualifications statement stated that all but one of the proposed firms on the

Beta team are located within the geographical boundaries of the New Orleans District, and each of these firms had extensive hands-on experience in the New Orleans District. Beta Qualifications Statement § H at 26. While the agency identified a weakness based on one of Beta's proposed environmental subcontractors not being local, the agency explains that the SSB did not consider the weakness to be significant because environmental engineering was not considered an important aspect of the work to be ordered. SAR at 9. Based on the significant number of key personnel with experience in all three areas, we find that the agency reasonably evaluated Beta as exceptional under the knowledge of locality factor.

Other Issues

DEI challenges the evaluation and selection of Beta and Linfield on a variety of other bases. Only an interested party, however, may protest a federal procurement. 31 U.S.C. §§ 3551-3556. That is, a protester must be 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)(1) (2013). A protester is not an interested party if it would not be next in line for award if we were to sustain its protest. Resource Title Agency, Inc., B-402484.2, May 18, 2010, 2010 CPD ¶ 118 at 9. Here, the agency ranked the firms, ranking DEI seventh, and considered only the top four firms for negotiations: Beta and Linfield for initial negotiations, with recourse to ILSI and Cooley if negotiations with the first two were unsuccessful. Selection Memorandum ¶ 9. Since we conclude that DEI has failed to show that the evaluation ratings for its own qualifications statement were unreasonable, we have no basis to question the ranking of DEI as seventh. Inasmuch as there are at least four firms ranked higher than DEI, and DEI has not challenged the evaluations of ILSI and Cooley, DEI would not be next in line for award if we sustained its protest against the evaluations of Beta and Linfield. Therefore, DEI is not an interested party to pursue the additional bases of protest.

The protest is denied.

Susan A. Poling
General Counsel