



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Obayashi-JPS JV

File: B-407792

Date: January 29, 2013

Koho Kawanami, Obayashi-JPS JV, for the protester.
Thomas Warren, 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 challenging agency's evaluation of the awardee's experience is denied where the record reflects that the agency's evaluation was consistent with the terms of the solicitation, reasonable, and supported by the record.

DECISION

Obayashi-JPS JV, of Tokyo, Japan, protests the award of a contract to Tokyu Construction Co., Ltd., of Tokyo, Japan, by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W912HV-12-R-0005, for the construction of a hydrant fuel system at Misawa Air Base, Japan. Obayashi challenges the agency's evaluation of Tokyu's proposal.

We deny the protest.

The Army issued the RFP on May 15, 2012, providing for the award of a fixed-price contract to the offeror submitting the lowest-priced technically-acceptable proposal. RFP at 33. The RFP contained four non-price factors to be evaluated on an acceptable/unacceptable basis: (1) past experience; (2) key personnel; (3) qualifications of subcontractors; and (4) past performance. *Id.* at 33-37. As relevant, under the past experience factor the RFP advised as follows:

The Government will evaluate whether the Offeror has completed at least one (1) construction project with all of the following characteristics (combined).

- Value greater than ¥1,500,000,000,
- Completed within ten (10) years from the date this solicitation was issued.
- Offeror was the prime contractor or was a subcontractor which completed a large percentage (50% or more) of the work,
- Work consisted of construction of a military or civilian Hydrant Fueling System, or Petroleum, Oil, and Lubricants (POL) Facilities.

Id. at 33.

Three offerors, including Obayashi and Tokyu, submitted proposals prior to the RFP closing date. Following an initial evaluation, all three offerors were considered technically unacceptable. The agency then conducted discussions with the offerors, and obtained revised proposals. On evaluation of the revised proposals, the agency determined that Obayashi's and Tokyu's proposals were technically acceptable, while the third offeror's proposal remained technically unacceptable. Turning to the price proposals, the agency found that Obayashi's price was ¥3,080,000,000, while Tokyu's price was ¥2,590,000,000. Contracting Officer Statement at 7.

On September 22, 2012, the agency made award to Tokyu--the technically acceptable offeror with the lowest price. Upon learning of the award decision, Obayashi filed a timely agency-level protest. The agency denied the protest on November 9. Obayashi then filed its protest with our Office on November 16.

Obayashi alleges that Tokyu's proposal should have been found unacceptable under the past experience factor. According to Obayashi, the agency improperly gave Tokyu credit for its referenced experience relating to the "P-998 Wharf Upgrade" project. Obayashi explains that it was a prospective bidder for the P-998 Wharf Upgrade, and based on its familiarity with the project, argues that the project included construction of only a part of a POL facility and was far smaller than the scope and magnitude of the construction of the hydrant fuel system required by the RFP here. The agency, however, argues that the information provided by Tokyu's revised proposal, as well as additional information obtained by the agency confirming the scope of Tokyu's experience, established that Tokyu met the minimum experience requirements. We agree with the agency.

The evaluation of an offeror's experience, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

In this case, the record reflects that Tokyu submitted the P-998 Wharf Upgrade project to demonstrate its relevant experience, as alleged by Obayashi. The record also reflects that the agency initially rated Tokyu's experience as unacceptable, finding that the majority of the P-998 Wharf Upgrade work related to the wharf, and that "only a component of the refueling system was replaced."¹ Agency Report (AR), Tab 6, Initial Evaluation Report, at 15. During discussions, the agency advised Tokyu of its view that the P-998 Wharf Upgrade project did not meet the RFP's minimum experience criteria. Tokyu, however, provided supplemental information concerning the project in its revised proposal. Specifically, Tokyu informed the agency that the P-998 Wharf Upgrade work included the construction of a POL fueling system at berth 13 to include an underground fuel tank with Class I, Division I electrical work. AR, Tab 8, Revised Past Experience Proposal, at 1.

Following receipt of Tokyu's revised proposal, the agency determined to further verify the scope and extent of POL work completed on the P-998 Wharf Upgrade project. Accordingly, the agency conferred with its contracting division chief--an advisor to the evaluation board on this procurement, and the contracting officer on the P-998 Wharf Upgrade project--who confirmed that the P-998 Wharf Upgrade project included the construction of a complete POL facility at Yokosuka Naval Base. In addition, the agency contacted the Yokosuka Resident Office (YRO), which was the branch of the agency's Japan Engineer District charged with contract oversight of the P-998 Wharf Upgrade project. The YRO also confirmed that the work completed by Tokyu under the project "included construction of a complete POL facility integrated into the wharf complex." Contracting Officer Statement at 6.

On the basis of the supplemental project information contained in Tokyu's revised proposals, and the confirmation of the contracting division chief and the YRO, the evaluation board concluded that the P-998 Wharf Upgrade project met the minimum past experience standards set forth in the RFP. Accordingly, the evaluation board unanimously agreed that Tokyu's proposal was acceptable under the past experience evaluation factor.

Based on this record, we conclude that the agency reasonably evaluated Tokyu's proposal as acceptable under the experience factor. Where Tokyu's proposal was

¹ The agency found the P-998 Wharf Upgrade project acceptable concerning the other elements of the experience factor. Tokyu was the prime contractor for the project, which had a value of ¥3,860,000,000, and was completed in 2008.

acceptable under all evaluation factors, and had the lowest price, we see no error in the agency's award decision.

We deny the protest.

Susan A. Poling
General Counsel