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## Decision

**Matter of:** Bryan Construction, Inc.

**File:** B-409135

**Date:** January 14, 2014

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Robert S. Gardner, Esq., Robert S. Gardner Law Office, for the protester.  
Sue Ying Leong, Department of the Army, Corps of Engineers, for the agency.  
K. Nicole Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

In procurement conducted using two-phase design-build selection procedures, protest of agency's decision to eliminate protester's phase I proposal from further competition is denied where the record shows that the agency's evaluation of the proposal was reasonable.

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### DECISION

Bryan Construction, Inc., protests the exclusion of its proposal from the second phase of a two-phase design-build competition under request for proposals (RFP) W912DW-13-R-0014, issued by the Department of the Army, Corps of Engineers, for the design-build construction of a battalion operations complex. Bryan argues that the agency improperly evaluated its proposal and unreasonably eliminated it from further competition.

We deny the protest.

### BACKGROUND

The solicitation, issued on February 1, 2013, contemplated the award of a fixed-price contract to design and build a battalion operations complex for the special operations forces (SOF) at Joint Base Lewis McChord, Washington. RFP at 11. The complex consists of seven building types: (1) SOF battalion headquarters and company operation facility (office building and office warehouse); (2) communications data center (telephone equipment building); (3) tactical equipment maintenance facility (heavy-equipment/vehicle maintenance facility); (4) military working dog kennel (boarding kennel/veterinary clinic); (5) maintenance

facility (carpentry, metal work and tile shops); (6) tactical unmanned aerial vehicle (TUAV) maintenance facility (small aircraft maintenance hangar); and (7) deployment and equipment storage buildings (warehouse). RFP at 46.

The procurement was conducted pursuant to Federal Acquisition Regulation (FAR) subpart 36.3, “Two-Phase Design-Build Selection Procedures.”<sup>1</sup> Under phase I, which is the phase that this protest concerns, the agency was to evaluate proposals using the following three factors: (1) specialized experience, the most important factor; (2) past performance, which was slightly less important than factor 1; and (3) organization and technical approach, which was slightly less important than factor 2. RFP at 45.

For the purpose of evaluating experience, firms were to provide information relating to a maximum of 10 project examples (5 for the prime contractor and 5 for the proposed designer) that were underway or completed within a 5-year period. *Id.* at 46. The evaluation criteria for the specialized experience factor provided that “[t]he offeror must submit the requested information to demonstrate a record of recent related experience in both design and construction, for the facility types... included in this contract, as described [in the RFP].” *Id.* at 47 (emphasis added).

With regard to past performance, the RFP provided that the agency would consider information related to the project examples submitted under the specialized experience factor, as well as past performance information gathered from the Past Performance Information Retrieval System (PPIRS). *Id.* at 48. The RFP explained that the agency would first assign an overall relevance rating based on the projects submitted, and then assign a confidence assessment based on an offeror’s “probability of success” in performing the requirements. RFP at 48.

Under the third factor, organization and technical approach, the RFP established the following sub-factors for evaluation: (1) technical approach for design and construction; (2) collaborative approach for design-build, planning and scheduling, and self-performed work; (3) quality control; and (4) key personnel capabilities and experience. RFP at 49-53. As relevant here, under the collaborative approach sub-factor, the RFP required offerors to address their configuration management system for both the design and construction phase. Specifically, offerors were to:

Describe interactions within the team and with the Corps of Engineers during the design. Discuss how the configuration management system will track and control design evolution and changes during design for quality control and to facilitate quicker government reviews. Describe

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<sup>1</sup> The design-build selection procedures are authorized by 10 U.S.C. § 2305a (2006).

the role of the construction team members during design. Describe the type of Building Information Modeling (BIM) system to be used on the project and how the team intends to develop and use the model. Describe the role and interaction of the design team with the construction team during construction, addressing, as a minimum, maintaining configuration management of the design during construction, including control and approval of revisions to the accepted design; requests for information; shop drawing and submittal reviews and approvals; progress meetings; site visits, if any; contract completion, closeout, as-built and completion documentation.

RFP at 50.

In addition, under the key capabilities and experience sub-factor, offerors were required to submit resumes for several identified key personnel, which demonstrated that the proposed personnel met or exceeded required minimum qualifications. RFP at 51-52. The RFP established the design manager as one of the key personnel positions and required the individual proposed have “at least 5 years of demonstrated non-overlapping design experience or at least 5 years of non-overlapping design and design management experience AS a design manager.” Id. at 52. To the extent alternates were proposed for key positions, the RFP provided that the evaluation rating would be based on “the lesser qualified or experienced person, if there is a difference.” Id. at 53.

As a general matter, the solicitation provided that the SSEB would evaluate the proposals and assign a consensus rating for each factor, based on the content of the proposal. Id. at 53. The solicitation also allowed for the assignment of weaknesses, when appropriate, and defined weakness as “a flaw in the proposal that increases the risk of unsuccessful contract performance.” Id. at 54. Offerors were cautioned to “put forth their best efforts for the phase 1 submission, and to furnish all information clearly to allow the government to determine their performance capability.” RFP at 53. Offerors were further warned that they should not assume that they will have an opportunity to clarify or correct anything in their proposal after submitting it in response to Phase 1. Id. The RFP also stated that “[t]he Contracting Officer, independently exercising prudent business judgment, will select up to [5] of the most highly qualified offerors to short-list for Phase 2.” Id.

Proposals were due on March 6, 2013. Bryan entered into a teaming agreement with DLR Group, as its designer, and timely submitted a response to the solicitation. CO Statement at 2-3. The record reflects that the source selection evaluation board (SSEB) identified various strengths and weaknesses under each evaluation factor, and assigned Bryan overall ratings of “good” for experience, “relevant” and

“satisfactory confidence” for past performance, and “acceptable” for the organization and technical approach factor.<sup>2</sup> SSEB Report at 33.

Specifically, as it relates to the protest, under the experience factor, the agency concluded that Bryan did not demonstrate experience with five of the seven types of facilities required for the subject procurement. Id. at 31. With respect to its past performance, the SSEB concluded that several of the projects, including the indoor range and band training facility projects identified by Bryan, were of low relevance because their scope was not similar to the facilities contemplated by the solicitation. Id. at 32. Regarding the organization and technical approach factor, Bryan received weaknesses because the agency found that: (1) the individual assigned as the design manager/project manager did not have prior experience as a design manager; (2) the proposal was unclear as to how the configuration management system will track and control design evolution and changes during design to ensure quality control and to facilitate quicker government reviews; (3) the proposal failed to address how configuration management of the design during construction will be maintained; and (4) the proposal did not indicate the individual that maintains control and approval of revisions to the accepted design. Id. at 32-33.

Based on the evaluations of the phase I proposals, the source selection authority (SSA) selected the most highly qualified offerors for participation in phase II. Source Selection Decision Document (SSDD) at 54. Bryan construction was not among the offerors selected, and, following a requested debriefing, Bryan filed this protest.

## DISCUSSION

Bryan challenges the agency’s evaluation of its proposal under each of the 3 evaluation factors. Protest at 3. According to Bryan, the agency ignored or overlooked much of its relevant experience, resulting in erroneous evaluations under the specialized experience and past performance factors. Bryan also challenges each of the evaluation weaknesses under the organization and technical approach factor. As discussed below, Bryan’s protest is without merit.<sup>3</sup>

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<sup>2</sup> For factors 1 and 3, the adjectival ratings ranged from “unacceptable” to “outstanding.” The adjectival ratings for factor 2 ranged from “not relevant” to “very relevant” and from “unknown confidence (neutral)” to “substantial confidence.” RFP at 54-55.

<sup>3</sup> We have fully considered all of the protester’s arguments challenging the weaknesses assigned to its proposal, and, although we do not address them all, we find no basis upon which to sustain the protest.

## Specialized Experience

Bryan argues that the agency unreasonably concluded that it did not demonstrate relevant experience with a communication data center, tactical unmanned aerial vehicle (TUAV) facility, maintenance facility and deployment equipment storage building. Additionally, Bryan believes that one of its projects, the 10<sup>th</sup> SOF project was nearly identical to the overall project contemplated by the solicitation and that, it should have received a “highly relevant” experience rating based on this project alone.<sup>4</sup> Protester’s Comments on AR at 4. The agency, however, argues that information in Bryan’s proposal was insufficient to allow the evaluators to conclude that Bryan had experience with all seven of the facility types contemplated by the RFP. AR at 5.

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. A protester’s mere disagreement with the agency’s judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency’s evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

Here, the record reflects that Bryan submitted a total of ten projects, five for itself and five for its designer, as contemplated by the RFP. In its proposal, Bryan identified the “type of facility” that each project represented. For example, one of Bryan’s projects, the Patriot Park Defense Campus project, was identified as a “headquarters facility.” Protester’s Proposal at 40. Considering the information provided by Bryan in its proposal, the agency concluded that several of the projects reflected relevant experience with respect to two of the facility types (battalion

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<sup>4</sup> Contrary to the protester’s assertions regarding the agency’s consideration of the 10<sup>th</sup> SOF Battalion operations complex, it is clear that the SSEB recognized the relevance of that project. The SSEB assigned Bryan’s proposal a strength for the 10<sup>th</sup> SOF Battalion operations complex, deeming it, “very relevant” because it is “identical to this SOF battalion HQ/COF project.” AR, Tab 8, SSEB Report at 30-31. The agency explains, however, that this procurement differs from the 10<sup>th</sup> SOF Battalion operations complex in that it requires six other facility types. AR at 7. Despite the high level of relevance of the 10<sup>th</sup> SOF Battalion project, the protester’s failure to clearly demonstrate experience with all of the required facility types was ultimately reflected in the final rating for this factor.

headquarters/company operations facility (HQ/COF) and tactical equipment maintenance facility (TEMF)), however, as noted above, the agency could not discern relevant experience with the other five.

By way of example, regarding the Patriot Park project, the agency noted that the size, dollar value, and features of the project were similar to the HQ/COF facility type contemplated by the RFP. Bryan, however, argues that project also demonstrated experience with the communications data center facility type.<sup>5</sup> Protester's Comments at 3. Although the description of the project in Bryan's proposal referenced the presence of certain communications components, such as a sensitive compartmented information facility (SCIF), "specialized computer and server rooms" and "voice over data communication network," the agency explains that these features did not demonstrate experience with a communications data center facility because they are required for the HQ/COF facility type and Bryan received credit for this experience. RFP at 291. Additionally, the agency explains that the required communications data center has certain requirements, such as a Non-classified Internet Protocol Router Network, Secret Internet Protocol Router Network and Joint Worldwide Intelligence Communications System, which were never discussed in connection with the Patriot Park project. Contracting Officer's Statement at 10 and RFP at 366.

Similarly, Bryan's proposal included a description for its 10<sup>th</sup> SOF Battalion operations complex project, which it identified as a SOF Battalion Headquarters and Operations Facility. AR, Tab 5, Protester's Proposal at 38. The record reflects that the agency considered the size, dollar value, and scope of the project, and concluded that it was very relevant to the HQ/COF facility type. Again, Bryan argues that it should have received credit for other types of facilities as well since the project description mentioned the presence of a SCIF, a communications security vault, and a fiber optic system. The agency explains, however, that Bryan's proposal did not specifically indicate that the project represented anything other than a headquarters facility, e.g., a communications data center facility as contemplated by the RFP. Id. The agency also notes that the cited features are required of the headquarters and operations facility, and the proposal did not clearly establish that the project reflected the specific requirements of any other type of facility. CO Statement at 10 and RFP at 310. An offeror has the responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency.

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<sup>5</sup> We are not addressing each facility type for which Bryan believes it demonstrated experience in this decision, but are, instead, using examples illustrative of the pervasive shortfall in Bryan's proposal. We have considered all of the facility types cited as weaknesses in Bryan's proposal, and we find no reason to conclude that the agency's evaluation was unreasonable.

ProActive, LLC, B-403545, Nov. 18, 2010, 2011 CPD ¶ 56 at 5. An offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal or risks that its proposal will be evaluated unfavorably where it fails to do so. Johnson Controls, Inc., B-407337, Nov. 20, 2012, 2012 CPD ¶ 323 at 3. Based on the record in this case, we have no basis to question the reasonableness of the agency's evaluation of Bryan's experience.

### Past Performance

Bryan challenges the agency's evaluation of its past performance arguing that the agency ignored or overlooked its relevant past performance projects. Protest at 6. Specifically, Bryan challenges the scope of the projects reviewed by the agency and disagrees with the weakness it received for the submission of two projects deemed of low relevance to the project at hand.<sup>6</sup> Bryan also maintains that it should have received the highest possible past performance relevancy rating and the highest possible confidence assessment, considering its work on the 10<sup>th</sup> SOF project, which it describes as being a "flagship" for the subject procurement. Id.

Where, as here, a solicitation contemplates the evaluation of past performance, the contracting agency has the discretion to determine the relevance and scope of the performance history to be considered, and our Office will not question the agency's judgment unless it is unreasonable or inconsistent with the terms of the solicitation or applicable procurement statutes and regulations. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Id. In this case, the protester disagrees with the agency's evaluation but has failed to show that the agency acted unreasonably or inconsistently with the solicitation.

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<sup>6</sup> Bryan challenges the weakness assigned by the agency based on the fact two of its projects, Bryan's indoor range and DLR's band training facility, were deemed of low relevance. Protest at 5. The SSEB concluded that the scope of the projects was not similar to any of the facility types required by this procurement. SSEB Report at 32. Bryan does not refute the finding that the scope of those projects is not similar to "a battalion [HQ/COF], TEMF, Military Working Dog Kennel, UAV Maintenance Hangar, or Communications Data Center," rather, it simply expresses disagreement with the evaluation. The evaluation of experience and past performance, 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. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10.

As an initial matter, in challenging the agency's past performance evaluation, Bryan alleges that the agency failed to consider information available in PPIRS, for the last five years, as contemplated by the RFP, which indicated that "[I]n accordance with FAR 42.1503 (e), past performance will be evaluated using the [PPIRS]... All performance ratings shall be considered for contracts ongoing or completed within the past five (5) years." Protest at 6 and RFP at 48. This allegation is factually incorrect. The record reflects that the agency did in fact consider available PPIRS information from the last 5 years for Bryan and DLR, however, the agency concluded that much of the information was not relevant. See AR Tab 6, Past Performance Information Pulled from PPIRS; see also AR Tab 7, Evaluation of Past Performance from PPIRS and Customer Satisfaction Surveys. Five of the PPIRS projects had been identified in Bryan's proposal. Id. With the exception of one additional project that was considered to be "somewhat relevant," the agency found that "all of the other projects from PPIRS were not relevant to the requirement or exceeded the 5 year time relevance set forth in the RFP." Id.

Ultimately, the record reflects that the evaluators found one project performed by Bryan, the 10<sup>th</sup> SOF battalion operations facility, to be very relevant to the HQ/COF facility type, and performance on that contract was deemed outstanding. AR Tab 8, SSEB Report at 31. Bryan's Patriot Park project was evaluated as relevant to the HQ/COF facility type, also with outstanding performance. CO Statement at 16. Three other projects were found to be only somewhat relevant, with above average past performance. In this regard, two were found to be somewhat relevant for the tactical equipment maintenance facility type, and whereas the third was somewhat relevant to the tactical unmanned aerial vehicle maintenance facility type. Id. Additionally, four of DLR's projects were found to be relevant with respect to the HQ/COF facility type, with performance ranging from very good to outstanding. Id. at 17.

Overall, as noted above, the agency rated Bryan's past performance as "relevant" and concluded that "there is Satisfactory Confidence that the Offeror can execute the required scope of this project based on the projects provided being relevant in scope and the past performance ratings ranged from above average to outstanding." AR Tab 8, SSEB Report at 32. In explaining why Bryan did not receive higher ratings, the agency indicated that "the breadth of projects submitted by the protester does not cover the gamut of facility types required under this project, which creates a risk in protester's ability to meet schedule and contract performance." AR at 10. Given the record before us, we have no reason to find the agency's past performance evaluation unreasonable or otherwise improper.

#### Organization and Technical Approach

Finally, the protester challenges the four weaknesses identified by the SSEB under the organization and technical approach factor, as well as the overall rating assigned by the agency. For example, one weakness challenged by Bryan concerns the



experience of its proposed design manager. As noted above, the RFP required that the proposed design manager have “at least 5 years of demonstrated non-overlapping design experience or at least 5 years of non-overlapping design and design management experience AS a Design Manager.” RFP at 52.

In its proposal, Bryan identified a “senior design manager/designer of record” as well as a “design manager.” AR Tab 5, Protester’s Proposal at 97. There is no dispute that the senior design manager/designer of record had the requisite 5 years of experience. Additionally, there is no question that the individual proposed as the design manger lacks the requisite experience. The agency interpreted the protester’s proposal as proposing both individuals for the design manager function, and thus, evaluated them as alternates. CO Statement at 19. Since the RFP established that the evaluation of alternate key personnel was to be based on the individual with lesser qualifications, and Bryan’s proposed “design manager” did not maintain the requisite level of experience, the agency assigned Bryan’s proposal a weakness in this regard. RFP at 53.

Bryan contends that the personnel were not in fact alternates, and that the design manager simply reported to the senior design manager, such that the experience of the senior design manager should have been considered. While Bryan’s explanation may be accurate, its proposal does not clearly establish this hierarchical relationship. As noted above, it is an offeror’s responsibility to submit an adequately written proposal with sufficient detail to demonstrate an understanding of, and ability to meet, the solicitation requirements. CEdge Software Consultants LLC, B-408203, July 19, 2013, 2013 CPD ¶ 177 at 3. Based on the requirements in the RFP and the information presented in Bryan’s proposal, we have no reason to conclude that the agency was unreasonable in assigning this weakness.

Also, by way of example, Bryan challenges the agency’s finding that its proposal did not address how the configuration management of design during construction would be maintained. AR Tab 8, SSEB Report at 33. The agency explained that the proposal did not clearly describe Bryan’s configuration management system, and it was not clear how various processes mentioned in Bryan’s proposal would work “together or in part, during construction to maintain the intent of user preferences developed from the original design.” CO Statement at 20. The agency also noted that the proposal did not clearly establish when the government would be consulted for design changes during construction and how the chain of command for decision making on design changes during construction was organized.<sup>7</sup> Id.

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<sup>7</sup> The RFP specifically required offerors to “describe the role and interaction of the design team with the construction team during construction, addressing, as a minimum, maintaining configuration management of the design during construction, including control and approval of revisions to the accepted design....” RFP at 50.

Bryan argues that several statements in its proposal should be sufficient to overcome the weakness, specifically pointing to the section describing DLR's design team's duties during construction. Protester's Response to AR at 7. That section of the proposal includes a list of bullets describing DLR's duties, including a bullet that states that DLR will "observe construction quality, conformance and schedule adherence, advise Bryan construction, and report to corps/user." AR Tab 5, Protester's Proposal at 101. Bryan also points to a bullet indicating that during construction, DLR will "respond to [requests for information] and work with Bryan Construction to minimize change impact and optimize process." *Id.* While the section cited by Bryan describes steps that could be taken as part of the configuration management of design during construction, these steps do not provide a clear picture of Bryan's process, and do not clearly address all of the areas specified in RFP. For example, Bryan's proposal does not explain the process in place for control and approval of revisions to the design. RFP at 50. As previously noted, an offeror has the responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. CEdge Software Consultants LLC, supra. As with the first weakness assigned under this factor, based on the requirements in the RFP and the information presented in Bryan's proposal, we have no reason to conclude that the agency was unreasonable in assigning this weakness.

The protest is denied.

Susan A. Poling  
General Counsel