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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

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Decision

Matter of: RQ Construction, LLC

File: B-413258

Date: September 7, 2016

David S. Demian, Esq., and Christopher R. Sillari, Esq., Finch, Thornton & Baird, LLP, for the protester.

Richard J. Pinto, Esq., Robert J. Marks, APC, for Straub Construction, Inc., the intervenor.

Deana Jaeger, Esq., and Paul Clay, Esq., Department of the Navy, for the agency. Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably found proposal unacceptable under the experience factor is denied where the agency reasonably concluded the protester did not satisfy the minimum requirements to demonstrate relevant experience under the terms of the solicitation.

DECISION

RQ Construction, LLC, of Carlsbad, California, protests the award of a contract to Straub Construction, Inc., of Fallbrook, California, under request for proposals (RFP) No. N62473-16-R-4602, issued by the Department of the Navy, Naval Facilities Engineering Command, for modernization and construction of an addition to an existing hangar for the F-35C Fleet Replacement Squadron at the Naval Air Station Lemoore in Kings County, California. The protester contends that the agency improperly evaluated its proposal as unacceptable under the experience factor.

We deny the protest.

BACKGROUND

The solicitation, issued on January 31, 2016, provided for award to the lowest-priced, technically acceptable offer. RFP at 10. The RFP further provided that, to be considered for award, an offeror's proposal was required to be rated acceptable

under each of the following three factors: experience, safety, and past performance. Id. at 11. A rating of unacceptable under any of these factors would result in an overall rating of unacceptable. Id.

As relevant here, the RFP required offerors to identify their experience using a Construction Experience Project Data Sheet (project data sheet) and to provide a minimum of three and a maximum of five relevant construction projects demonstrating experience as a prime contractor on projects similar in size, scope, and complexity to the requirement. RFP at 12; see also RFP, Exhibit A. As initially issued, the RFP defined relevant projects “as [n]ew construction/renovation of aircraft maintenance hangars, airport buildings..., and high bay industrial type facilities with a construction cost of \$25,000,000 or greater.” Id. at 13. Projects were required to be 100 percent complete no more than five years before issuance of the RFP. Id. Among other things, block 3 of the project data sheet required offerors to provide the following:

Award Amount: \$ _____

Final Price: \$ _____

This is the: total project subcontract price

RFP, Exh. A, at 1. Regarding this project data sheet, the solicitation further stated:

The attached Construction & Design Experience Project Data Sheet (Exhibit ‘A’) is MANDATORY and SHALL be used to submit project information. Except as specifically requested, the Government will not consider information submitted in addition to this form. Individual blocks on this form may be expanded; however, total length for each project data sheet shall not exceed one (1) double-sided page (or two (2) single-sided pages).

RFP at 13.

The agency later amended the experience factor requirements by reducing the minimum number of relevant projects required to be identified to two; revising the definition of relevant projects to those with construction costs of at least \$20,000,000; and requiring the projects to be 100 percent complete no more than ten years before issuance of the RFP. RFP, Amendment 0002, at 2-3. The agency subsequently revised the definition of relevant projects to require that the projects be “located adjacent to an active runway and [] directly related to aircraft operations.” Id., Amendment 0006, at 2. In addition, this amendment stated that the project data sheet “must clearly address how the project meets” the solicitation’s experience requirements. Id.

RQ Construction timely submitted its proposal, including five project data sheets. Agency Report (AR), Tab 6, RQ Construction Proposal. In its submission, RQ

amended block 3 of the RFP's project data sheet for one of its projects (project 4) to add additional information. Specifically, RQ added a new line to the block, as set forth below:

Award Amount: \$16,331,000
Final Price: \$19,315,331
(Cost Escalation: Approximate Price of \$20,800,000).
This is the: x total project subcontract price

Id. at 21 (emphasis added). None of RQ's other project data sheets contained an entry similar to the one provided here. See id. at 3, 9, 15 and 31.

On June 2, the agency notified RQ that the contract had been awarded to Straub for \$46,324,000. AR, Tab 8, Notification of Non-Selection, at 1. At its debriefing, the agency advised RQ that it had been evaluated as unacceptable under the experience factor because only one of its projects (project 1) qualified as relevant under the solicitation. AR, Tab 10, Memorandum of Debrief, at 2. Specifically, RQ was advised that the fourth project it identified did not satisfy the relevancy requirements because the project had a value less than \$20,000,000. Id. The agency further advised that projects 2, 3, and 5 were found not relevant because they were not "directly related to aircraft operations." Id. RQ then filed this protest with our Office.

DISCUSSION

RQ argues that the agency unreasonably concluded that its proposal was unacceptable under the experience factor because its project 4 had "a value of \$20,800,000," rather than \$19,315,331, and therefore RQ argues that it should have been evaluated as meeting the solicitation's experience requirements.¹

¹ RQ also argued that the agency created an unfair competitive advantage for Straub by amending the RFP only two business days prior to the proposal due date to require offerors to show experience adjacent to an active runway. Protest at 6; see also Response to Agency Request for Dismissal, July 1, 2016, at 2-3. The agency explained that the amendment did not materially change the RFP requirement, no offeror requested an extension of time to submit its proposal, and any protest challenging the amendment should have been filed before the closing time for the RFP. Combined Contracting Officer Statement of Facts and Memorandum of Law (COSF/MOL) at 10-12; see also Agency Request for Dismissal, June 20, 2016, at 4-5. Rather than respond to, rebut, or otherwise substantively address the agency's response in its comments, RQ instead argued that it was unreasonable for the agency to conclude that RQ's project 2 was not relevant. Comments at 2-4. Since RQ was advised in its June 8 debriefing that the agency had determined that project 2 was not relevant, and could have raised this
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Protest at 6; Comments at 2. According to RQ, since the RFP permitted offerors to expand the project data sheet, the agency should have recognized that its entry explained “the difference between the construction cost and the final price for Project 4,” and concluded that its fourth project also met the \$20,000,000 requirement for projects to be viewed as relevant. Comments at 2; see also Response to Agency Request for Dismissal, July 1, 2016, at 1-2. RQ further argues that had the agency properly considered this information, RQ would have been the lowest-priced technically acceptable offeror. Protest at 1; see also Response to Agency Request for Dismissal, July 1, 2016 at 2.

The agency responds that it reasonably concluded that the final price of RQ’s fourth project fell short of the \$20,000,000 minimum to establish relevancy. COSF/MOL at 8-9. The agency also contends that RQ’s entry of the words “Cost Escalation: Approximate Price of \$20,800,000” to its project data sheet for project 4 was contrary to the instructions in the RFP and the project data sheet, and did not provide sufficient explanation for the agency to discern the meaning of the entry. Agency Request for Dismissal, June 20, 2016, at 3.

In reviewing an agency’s evaluation, we will not reevaluate proposals; instead, we will examine the evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and with procurement statutes and regulations. Technology Mgmt. Co., Inc., B-409976, Sept. 26, 2014, 2014 CPD ¶ 294 at 4. An offeror’s disagreement with the agency’s evaluation is not sufficient to render the evaluation unreasonable. Id.

As an initial matter, during the course of this protest, the agency and the protester argued over whether the protester could properly modify the project data sheet to provide the entry at issue here. In our view, this issue need not be resolved to answer this protest. Even adopting the protester’s view that it was permitted to add another category of information to the project data sheet, the entry itself--provided with no explanation about its meaning, or any explanation of why it should be used to determine the project’s value rather than the final price of the project--was unclear and unpersuasive.²

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challenge in its initial filing (see AR, Tab 10, Memorandum of Debrief, at 2), this protest allegation is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2); see Watts-Obayashi Joint Venture; Black Constr. Corp., B-409391 et al., Apr. 4, 2014, 2014 CPD ¶ 122 at 13 n.17. RQ’s failure to comment on the agency’s response to its initial grounds relating to unfair competitive advantage render these arguments abandoned and we dismiss them. SRM Grp., Inc., B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 8 n.5.

² In addition, RQ provided with its proposal the performance evaluation for its fourth project. This document, on its face, indicates that the contractor was paid

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Specifically, the project data sheet had two lines for the construction cost--award amount and final price. RFP, Exh. A, at 1. RQ provided entries for these lines indicating that the award amount was \$16,331,000 and the final price was \$19,315,331, which is below the required \$20,000,000. AR, Tab 6, RQ Construction Proposal. RQ's proposal provided no explanation of the company's decision to add an unexplained entry only for project 4, but not any of its other projects.³ While RQ argues that this entry should have been used to determine that the value of its prior project met the required minimum value for a project to be deemed relevant, it provides no basis for our Office to conclude that the agency acted improperly for not doing so.

We also note that for all of its other projects, the final price provided by RQ in its project data sheets corresponds to the "net amount paid contractor" or the final "contract price" in the past performance data forms submitted for these projects. AR, Tab 6, RQ Construction Proposal at 3 and 5; 9 and 11; 15 and 17; and 31 and 33. For project 4, while both the project data sheet and the past performance evaluation form show that the value of the project was \$19,315,331 (see id. at 21 and 25), RQ now explains that the agency should not have relied on the final price of a project to determine the project's value, but should have used a terse entry--found nowhere else in the proposal--to reach a different conclusion. We disagree. For the reasons set forth above, we find that the agency reasonably concluded that RQ's project 4 did not satisfy the relevancy requirements of the RFP.

The protest is denied.

Susan A. Poling
General Counsel

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\$19,315,331 for this work. If RQ expected the agency to use a different number to determine the value of its prior project, it should have explained its rationale.

³ RQ also argues that the project data sheet "did not provide a specific field for 'construction cost,' instead seeking only the award amount and final price." Comments at 2. To the extent that RQ is arguing that the agency should have included a "Cost Escalation: Approximate Price" category in the project data sheet, such an argument constitutes an untimely challenge to the terms of the RFP. 4 C.F.R. § 21.2(a)(1).