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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Impregilo Edilizia S.p.A.

File: B-292468.4

Date: November 25, 2003

Livio Calanca for the protester.
William A. Roberts, III, Esq., Phillip H. Harrington, Esq., and Jonathan L. Kang, Esq., Wiley Rein & Fielding, for La Termica S.r.l., an intervenor.
Richard G. Welsh, Esq., Naval Facilities Engineering Command, for the agency.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that agency improperly downgraded its past performance rating after a reevaluation of proposals in connection with the agency's implementation of corrective action is denied where agency reasonably determined that protester's past performance projects materially differed from the projects contemplated by the solicitation.

DECISION

Impregilo Edilizia S.p.A. protests the award of a contract to La Termica S.r.l. under request for proposals (RFP) No. N33191-03-R-0214, issued by the Naval Facilities Engineering Command (NAVFAC) for miscellaneous design, construction, alterations, repair, and/or improvements to real property in southern Italy. Impregilo principally alleges that the agency's evaluation of its technical proposal was improper.

We deny the protest.

The RFP, issued on March 10, 2003, provided for award of an indefinite-delivery, indefinite-quantity task order construction contract for a base period of 1 year, with total orders not to exceed the euro equivalent of $2 million, and up to four 1-year options, with a total contract amount not to exceed the euro equivalent of $10 million. Task orders issued under the contract would be for "all labor, supervision, transportation, materials, tools, and equipment to provide miscellaneous design, construction, alteration, repair, and/or improvements to real

property" at locations in "Naples, Gaeta, and other possible Southern Italy areas." RFP § 01110, at 1. An individual task order could not be for an amount more than the euro equivalent of $450,000.

Award was to be made to the firm submitting the proposal that provided the best value to the government, considering technical merit and price. In connection with the agency's technical evaluation of the proposals, the RFP set forth four technical evaluation factors: (1) past performance; (2) organizational structure and capabilities; (3) design capabilities; and (4) quality control. These four factors were of equal importance to each other and, when combined, were approximately equal to price.[1]

Regarding the past performance factor, the RFP provided in relevant part that offerors "must have performed at least satisfactorily on recent (completed in the past three years) similar projects with regard to construction features, dollar value, and complexity." RFP § 00202, at 4. Under the second factor, organizational structure and capabilities, the RFP required offerors to demonstrate their "ability to provide adequate staff/organizational structure, and resources to successfully accomplish the requirements of this RFP. Demonstrate relevant corporate experience and resources that indicate the ability to successfully manage and complete a variety of projects." RFP § 00202, at 5. The third factor, design capabilities, required offerors to demonstrate their "ability to provide adequate project design experience and a knowledge and familiarity with Italian and U.S. building codes and design criteria." Id. The "standard of acceptability" under this factor is defined as follows: "The extent to which the contractor provides experienced personnel with project design experience which demonstrates a high potential for success." Id.

The agency received seven proposals, including a proposal from Impregilo. Upon receipt of the proposals, pursuant to the source selection plan, the agency convened a technical evaluation board (TEB) to evaluate the offerors' technical proposals and a price evaluation board (PEB) to evaluate their prices. The TEB rated the proposals under each of the four technical evaluation factors using the following adjectival rating scale: poor, marginal, satisfactory, good, or excellent. Based on these scores, the TEB gave each proposal an overall technical rating using the same adjectival scale.[2] The RFP further provided that the ratings could be assigned "rating factors of

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[1] Offerors were required to submit unit prices for various labor categories, as well as indirect costs and design costs. The offerors were then to apply their unit prices for the base period and all option periods to a sample task order provided in the solicitation.

[2] The RFP provided that if a proposal received a marginal rating for any one of the four factors, the proposal would receive an overall technical rating of marginal as well.

+/- to differentiate various level of ability within each factor and between proposals as a whole." RFP § 00202, at 2.

Based on its evaluation, the TEB assigned Impregilo's proposal an overall technical score of good. With respect to Impregilo's past performance, the TEB identified several strengths and no weaknesses, and specifically stated that all the projects submitted by Impregilo "were similar and/or exceeded the size, scope, and complexity to that contemplated by the RFP. On each of these projects [Impregilo] received comments indicating that they had 'Outstanding' performance and that they consistently met and/or exceeded all contractual requirements for schedule, quality and safety." Agency Report (AR), Tab 11, TEB Report, May 13, 2003, at 17.

Under the second factor, organizational structure and capability, the TEB noted various strengths, stating that "Impregilo has demonstrated an excellent capability to manage a variety of projects simultaneously"and that "Impregilo presents a MILCON level staff, far beyond the requirements listed in the solicitation, that has demonstrated exceptional experience with the U.S. Navy and indicates a clear understanding of the RFP and a strong capability of success in the execution of this [contract]." Id. at 18. One of the other strengths identified by the TEB was that Impregilo's safety supervisor exceeded the RFP's requirements. The TEB, however, raised a concern regarding the use of subcontractors, which it noted as a "minor weakness" with Impregilo's proposal.[3] However, the TEB further stated in its report that it did not feel this to be a weakness, "only a point of concern that needs to be clarified before award." Id. Impregilo received the highest score of any of the offerors for this factor.

Under factor 3, design capability, the TEB questioned whether Impregilo's proposed architect/engineer would be "able to devote attention to the size of projects contemplated by the RFP" but further stated that this concern "was not considered by the TEB to appreciably increase the risk of non-performance, so they are considered to represent a high probability of success with little risk of failure." Id. As a consequence, the TEB considered this issue to be a "minor weakness."

The TEB assigned Impregilo's proposal an overall technical score of good, the highest technical rating received by any of the offerors and forwarded its report to the source selection board (SSB) indicating that award could be made without discussions to either Impregilo or La Termica. The SSB reviewed the TEB report, as

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[3] The protester here proceeded pro se and thus did not have access to certain information in the record subject to protection from disclosure other than to counsel pursuant to the terms of a protective order. Accordingly, our discussion in some areas is necessarily general in nature in order to avoid reference to protected information (such as the agency's evaluation of specific aspects of Impregilo's proposal). Our conclusions, however, are based on our review of the entire record.

well as a report by the PEB, finding both Impregilo's and La Termica's prices to be reasonable, and submitted its own report to the source selection authority (SSA) recommending award to La Termica. The SSA reviewed the reports from the TEB, PEB, and the SSB and selected La Termica's proposal as the best value. The contract was then awarded to La Termica.

After the agency provided Impregilo with a debriefing, Impregilo filed a protest with our Office. Upon review of the protest, the agency indicated that it had "discovered defects in the protested source selection decision documentation" and therefore intended to reevaluate proposals and reach a new source selection decision. AR, Tab 21. Our Office dismissed the protest as academic.

During the agency's reevaluation the TEB and the SSB reviewed all of the proposals. While the TEB found its initial report to be substantiated, the SSB "disagreed with some of the TEB findings." AR, Tab 24, Revised SSB Report, Sept. 3, 2003, at 1. In its report on the reevaluation, the SSB noted that the SSB and the TEB "had divergent philosophies regarding assessment of Past Performance." Id. at 5. According to the SSB, the TEB gave credit to firms submitting past performance on projects that exceeded or greatly exceeded the size, scope, and complexity of the RFP's requirements. The SSB maintained that past performance of this sort "may not necessarily meet the needs of the solicitation." Id.

As it relates to this case, the SSB lowered Impregilo's past performance score and also modified some of the narrative comments in connection with the other evaluation factors, although the SSB did not change Impregilo's original ratings for any of the other factors. In lowering Impregilo's past performance score, the SSB concluded that the size and variety of the projects submitted by Impregilo differed from the solicitation's requirements. The SSB highlighted the fact that Impregilo's projects ranged from $1.7 million to $112 million, which greatly exceeded the size of the task orders contemplated by the solicitation (noting that, historically, projects had ranged from $1,000 to $460,000 with the average cost of a project being $92,000). The SSB also noted that the work under the projects listed by Impregilo was limited to a single or a few locations. Thus, according to the SSB, Impregilo's experience with managing a few large dollar value projects differed from the solicitation's requirement for administering numerous, smaller dollar value projects, at various locations.

Under the second factor, organizational structure and capability, the SSB agreed with the TEB's rating but questioned several of the strengths noted by the TEB.[4] Specifically, the SSB disagreed with the TEB's conclusion that Impregilo proposed "an excellent organization to manage a variety of projects simultaneously." AR,

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[4] After the reevaluation, Impregilo's score for this factor remained the highest received by any of the offerors.

Tab 24, supra, at 9. The SSB found that the projects submitted by Impregilo were limited in terms of "variety" because there were no smaller valued projects and the extent to which Impregilo had managed projects "simultaneously" was unclear. Id. The SSB also disagreed with the TEB's conclusion that Impregilo's safety supervisor exceeded the RFP's requirements. Regarding the TEB's concern over a subcontracting issue in connection with Impregilo's proposal, which the TEB had noted as a "minor weakness," the SSB clarified that the concern was not considered a weakness or a strength.

As to the third factor, design capability, the SSB indicated that the TEB's initial narrative was in error where it stated that the size of Impregilo's architect/engineer firm "was not considered by the TEB to appreciably increase the risk of non-performance, so they [Impregilo] are considered to represent a high probability of success with little risk of failure." AR, Tab 24, supra, at 10. According to the SSB report, the TEB report should have stated that Impregilo was "considered to represent a reasonable probability of success" and that Impregilo "met the requirements of the [solicitation] without exceeding them." Id. Impregilo's overall score for this factor, however, did not change upon reevaluation.

Overall, Impregilo's technical rating of good remained unchanged after the reevaluation. The SSB forwarded its reevaluation report to the SSA, recommending award to La Termica. The SSA agreed with the SSB's recommendation and concluded that La Termica's proposal again represented the best value. After receiving notice of the agency's decision and a debriefing, Impregilo filed this protest.

In its protest, Impregilo essentially contends that the Navy's reevaluation of its proposal was flawed.[5] Impregilo maintains that the agency should not have reduced its past performance rating in the course of the reevaluation and also incorporated by reference the argument from its previous protest that its technical ratings for factors two and three should have been higher.[6] Impregilo suggests in its comments

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[5] Impregilo also notes that the agency's reevaluation resulted in La Termica's overall technical rating being increased from "satisfactory+" to good. While Impregilo may have disagreed with this change, its mere disagreement, absent any factual or legal basis indicating why La Termica's rating was improper, does not present an adequate basis for protest. See 4 C.F.R. § 21.5(f) (2003); Garco Constr., Inc.; Triton Marine, Constr. Corp., B-282231, B-282231.2, June 15, 1999, 99-2 CPD ¶ 8 at 3 n.1. Consequently, our Office limited the agency report to those issues concerning the reevaluation of Impregilo's proposal.

[6] In its protest challenging the agency's initial evaluation and award decision, Impregilo argued that it should have received higher ratings under factor 2, organizational structure and capability, and under factor 3, design capability.

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on the agency report that the agency manipulated these reevaluation ratings in order to justify the agency's prior award decision in favor of La Termica. Impregilo also argues in its comments that the reevaluation was contrary to the agency's source selection plan because the SSB and the SSA prepared the technical ratings, rather than the TEB.

Because the evaluation of proposals is a matter within the discretion of the contracting agency, we will not reevaluate proposals, but will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and applicable statutes and regulations. Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96 at 6. In this regard, an offeror's mere disagreement with the agency's assessment of its proposal does not render the evaluation unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

As an initial matter we note that Impregilo's comments on the agency report did not provide a substantive reply to the agency's detailed responses in answer to the challenges raised concerning the reevaluation of Impregilo's technical proposal. Instead, Impregilo merely suggested that the agency manipulated the reevaluation and argued that the reevaluation was improper, as a general matter, because it was conducted by the SSB and the SSA, not the TEB. The record, however, does not support these allegations concerning the agency's failure to conduct a proper reevaluation from a procedural standpoint nor does it support Impregilo's suspicions regarding improper motives by the agency.

Contrary to Impregilo's assertions, the TEB reviewed all the proposals and confirmed the findings of its initial report in its reevaluation. AR, Tab 24, Revised SSB Report, at 1; AR, Tab 25, Revised Pre/Post Negotiation Business Clearance Memorandum, at 2. Regarding Impregilo's suggestion that the agency manipulated the reevaluation, procurement officials are presumed to act in good faith. As a consequence, our Office will not attribute unfair or prejudicial motives on the basis of inference or suppositions; a protester alleging bias or bad faith must provide convincing proof of the officials' improper motives. ACC Constr. Co., Inc., B-289167, Jan. 15, 2002, 2002 CPD ¶ 21 at 4. Here, Impregilo has not provided any support for its allegation that the agency improperly manipulated the reevaluation.

Having failed to demonstrate that the reevaluation process was inherently flawed, and given Impregilo's lack of substantive comment regarding the agency's determinations in connection with the reevaluation, we have no basis to question the reasonableness of the agency's reevaluation of Impregilo's proposal based on our

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Because the reevaluation did not alter Impregilo's ratings under these two factors, Impregilo incorporated these arguments by reference in the current protest.

review of the record. For example, as a consequence of the agency's reevaluation, the SSB reduced Impregilo's past performance score. As noted above, the RFP required offerors to submit past performance references for "similar projects with regard to construction features, dollar value, and complexity." RFP § 00202, at 4. The SSB downgraded Impregilo's past performance rating from that awarded by the TEB, because, according to the SSB, the TEB failed to consider that Impregilo's reference projects were materially different from those contemplated by the RFP. The RFP's projects, as noted by the SSB, required the administration of numerous, small dollar value projects at various locations in Italy. Impregilo's reference projects, however, greatly exceeded the size and complexity of those contemplated by the solicitation and involved a few large dollar value projects at one location. The SSB concluded that the skills required to administer the types of projects envisioned by the solicitation were not the same as those needed to administer the types of projects submitted by Impregilo. Absent any argument to the contrary from Impregilo, we have no basis to conclude that the agency's position in this regard is unreasonable.

Similarly, we have no basis to conclude that the agency unreasonably evaluated Impregilo's proposal under factor 2, organizational structure and capability, or under factor 3, design criteria. Specifically, Impregilo argued that its rating for factor 2 should have been higher given the various strengths identified in the agency's evaluation and because the "minor weakness" identified by the agency under this factor should not have been considered a weakness. The agency indicates, however, that it did not consider Impregilo's proposal to have a weakness under this factor upon reevaluation. Because Impregilo did not address this issue, we have no basis from our review of the record to question the agency's reevaluation of Impregilo's proposal under this factor.

As to factor 3, design capability, Impregilo argued that it should have received a higher rating, again highlighting the various strengths identified in the agency's evaluation and arguing that the weakness noted by the agency, concerning the large size of its architect/engineer firm, was unfounded. In its reevaluation, however, the SSB concluded that the size of Impregilo's architect/engineer firm "was not considered by the TEB to appreciably increase the risk of non-performance" and also stated, changing the TEB's report in this regard, that Impregilo represented "a reasonable probability of success" and met the requirements "without exceeding them." As with the other factors, Impregilo does not address this issue. Based on our review of the record, we have no reason to conclude that the agency improperly evaluated Impregilo's proposal in this regard.

The protest is denied.

Anthony H. Gamboa
General Counsel