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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Hensel Phelps Construction Company

File: B-407998.3

Date: May 28, 2013

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DIGEST

Protest challenging an agency's evaluation and selection decision is denied where the record shows that the evaluation and selection decision were reasonable and in accordance with the evaluation criteria.

DECISION

Hensel Phelps Construction Company, of Austin, Texas, protests the award of a contract to Clark-McCarthy Healthcare Partners II, JV, of Dallas, Texas, under request for proposals (RFP) No. W9126G-12-R-0054, issued by the Department of the Army, Corps of Engineers, for the design and construction of a hospital and related buildings at Fort Bliss in El Paso, Texas. Hensel challenges the agency's evaluation of its proposal, and the selection decision.

We deny the protest.

BACKGROUND

The RFP provided for the award of a fixed-price contract for the design and construction of a new hospital and related buildings at Fort Bliss. Detailed design and performance specifications were provided, and offerors were informed that award would be made on a best-value basis, considering the following evaluation factors: past performance; prime contractor's key personnel; organization and technical approach; proposed schedule; small business participation; and price. Past performance was stated to be the most important factor. The prime contractor's key personnel and the organization and technical approach evaluation factors were stated to be of equal importance and when combined, were equal to the past performance factor. The proposed schedule factor was more important than the small business participation factor, and both factors were less important than the other non-price factors. The non-price factors, combined, were stated to be significantly more important than price. RFP amend. 5, § 4.1.

The RFP provided that technical proposals would be rated adjectivally by the agency's source selection evaluation board (SSEB). With respect to the past performance factor, offerors were informed that the SSEB would adjectivally rate the relevance and quality of the offeror's past performance.[1] The RFP stated that projects would be considered relevant to this procurement if they were of similar complexity considering type, scope, and magnitude. Id. § 5.2. The RFP identified relevant projects as those involving construction of inpatient hospitals or medical centers with inpatient, outpatient, administrative, surgical, intensive care, pharmaceutical, nuclear medicine, specialty care, and radiological services. Id. § 5.2.1. Offerors were informed, however, that the projects need not satisfy all criteria, but that projects meeting all of the criteria could be viewed as more relevant. Id. § 5.2.

With respect to the organization and technical approach factor, offerors were instructed to address two subfactors: (1) management, technical, and risk approach; and (2) key subcontractors' past performance. Under the management, technical, and risk approach subfactor, offerors were instructed to describe their approach to risk identification, prioritization, analysis, mitigation, and tracking. Id. § 7.2.1(a). Under the key subcontractors' past performance subfactor, offerors were instructed to identify and provide past performance information for key subcontractors that would perform mechanical, plumbing, electrical, and structural installations. Id. § 7.2.

With respect to the proposed schedule factor, the RFP instructed offerors to propose a contract duration of no more than 1,277 calendar days from the agency's

[1] Past performance was to be assessed as very relevant, relevant, somewhat relevant or not relevant, based upon the similarity of the past projects' scope, magnitude, and complexity to the work procured here. RFP amend. 5, §§ 5.7, 12.4.3. Past performance would also receive an adjectival confidence rating of substantial, satisfactory, limited, none, or unknown (neutral). Id. § 12.4.4. As relevant here, a substantial confidence past performance rating reflected the agency's judgment that there was a high expectation that the offeror will successfully perform. A satisfactory confidence rating reflected a reasonable expectation of satisfactory performance. Id. § 12.4.4.

notice to proceed and to provide a summary construction schedule based upon a critical path methodology. The RFP provided that the agency would evaluate the reasonableness of the offeror's proposed contract duration, taking into account whether the summary schedule supported the proposed duration, as well as other information, such as "independent judgment concerning logic, constraints, and typical construction durations." See id. §§ 8.1.2, 8.1.3(g).

The Corps received proposals from five firms, including Hensel and Clark-McCarthy, which were evaluated by the agency's source selection evaluation board (SSEB). The SSEB initially found that all of the offers were unacceptable under the prime contractor key personnel and proposed schedule factors. AR, Tab 21, Competitive Range Determination, at 4-5. The agency decided to conduct discussions and established a competitive range that included the proposals of all five offerors. Id. at 5. Evaluation notices were sent to each offeror for which the SSEB had identified deficiencies, weaknesses, and any uncertainties found in the offerors' respective proposals.

Revised proposals were received and evaluated. Hensel's and Clark's revised proposals were evaluated as follows:

			Hensel	**Clark-McCarthy**
Past Performance				
	Relevance		Relevant	Very Relevant
	Confidence		Substantial	Substantial
Key Personnel			Good	Outstanding
Organization and Technical Approach				
	Management, Technical, and Risk Approach		Acceptable	Outstanding
	Key Subcontractors' Past Performance	Relevance	Relevant	Very Relevant
		Confidence	Satisfactory	Substantial
Proposed Schedule			Good	Acceptable
Small Business Participation Plan			Outstanding	Outstanding
Price			$629,988,000	$648,930,000

AR, Tab 24, SSEB Evaluation Report, at 7; Tab 26, SSEB Comparative Analysis, at 8.

The SSEB recommended that award be made to Clark-McCarthy. In this regard, the SSEB noted the superiority of Clark-McCarthy's proposal under the evaluation factors of past performance, key personnel, and organization and technical approach. Id. at 4-5. The SSEB also recognized that Hensel proposed a more favorable project schedule, which was [deleted] days shorter than Clark-McCarthy's, that the firms' small business participation plans were considered equivalent, and that Hensel's price was lower than Clark-McCarthy's. Id. at 5. The SSEB's evaluation and recommendation was reviewed by the source selection evaluation council (SSAC), which agreed with the SSEB's findings and award recommendation. AR, Tab 27, SSAC Report, at 10-11.

Following a briefing from the SSEB and SSAC, the source selection authority (SSA) selected Clark-McCarthy's higher-rated, higher-priced proposal as the proposal that offered the best value to the government. AR, Tab 29, Source Selection Decision, at 1. Award was made to Clark-McCarthy, and Hensel's protest followed a debriefing.

DISCUSSION

Hensel challenges the agency's evaluation of its proposal and selection decision, arguing that its proposal should have received higher ratings and been selected for award. We have considered all of Hensel's numerous arguments, although we only address its primary ones, and find that none afford a basis to question the agency's evaluation and selection decision.

Past Performance Factor

Hensel first complains that its proposal should have received a higher rating under the past performance factor, under which its proposal received relevant and substantial confidence ratings, as compared to Clark-McCarthy's very relevant and substantial confidence ratings.

The record shows that Hensel identified five projects it had performed as the prime contractor. The SSEB found that two of Hensel's projects included all the clinical functions identified in the RFP. The SSEB also found, however, that the other three projects did not include inpatient facilities and did not have other characteristics, such as multiple stakeholders or LEED certifications that would show that the projects were of the same scope or complexity as the work here. See AR, Tab 24, SSEB Evaluation Report, at 23. For this reason, the SSEB assigned Hensel's past performance a rating of relevant, rather than very relevant.[2]

Hensel contends that its past performance should have been considered very relevant because its projects satisfied the RFP's minimum requirements for square footage and monetary value, and met one or more of the relevance criteria. Hensel states that its five projects combined satisfied all of the solicitation's relevance

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[2] Very relevant past performance was defined by the RFP as effort that involved essentially the same scope, magnitude, and complexity as the RFP work. Relevant past performance was defined as effort that involved similar scope, magnitude, and complexity. RFP amend. 5, § 12.4.3.

criteria. Protest at 18. In this regard, Hensel complains that the Corps improperly downgraded Hensel's past performance because the RFP advised offerors at section 5.2 that their individual projects did not have to satisfy all of the criteria of relevance set out in the RFP. We disagree.

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. 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. By itself, a protester's 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.

Here, the record supports the reasonableness of the agency's assessment that Hensel's past performance should be rated relevant, but not very relevant. The SSEB found, and Hensel does not dispute, that three of the protester's projects satisfied only some of the relevance criteria. Although this was permitted by the RFP, offerors were also informed that projects satisfying all of the criteria could be viewed as more relevant. See RFP amend. 5, § 5.2. Thus, the agency found that Hensel's projects, which did not satisfy all relevance criteria, were relevant (that is, similar in scope, magnitude, and complexity), not very relevant (that is, essentially the same scope, magnitude, and complexity). The agency did not downgrade Hensel's past performance, as Hensel argues, but simply distinguished between past performance that was relevant and very relevant.[3] Hensel's disagreement with the agency's judgment in this regard does not show it to be unreasonable.

Organization and Technical Approach Factor

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[3] Hensel also contends that the SSEB "ignored" information in Hensel's proposal, because the evaluation did not expressly acknowledge a matrix in the proposal that purported to show that all five projects included multiple stakeholders and unique end-user requirements. The agency responds that it reviewed the matrix, but found that the matrix was not supported in the proposal's narrative descriptions of the projects. We find from our review of the record no basis to question the agency's judgment in this regard. Hensel argues, however, that to the extent that its narrative discussion in its proposal failed to adequately support its past performance matrix, this should have been identified to Hensel during discussions. The record shows, however, that this was not found to be a proposal deficiency or weakness that was required to be raised in discussions.

Hensel also complains that its proposal should have received a higher rating under the evaluation factor of organization and technical approach, and under its two subfactors: management, technical, and risk approach; and key subcontractors.

The contemporaneous record shows that Hensel's proposal received an acceptable rating under the management, technical and risk approach subfactor, based upon the SSEB's assessment of a weakness for Hensel's risk management plan. In addition, Hensel was advised during discussions that the agency viewed its risk management plan as "minimal," and noted that the identified risks seemed generic. AR, Tab 22, Hensel Evaluation Notice, at 4. Although Hensel revised this portion of its proposal, the agency continued to consider the risk management plan to be a weakness in the proposal; for example, the agency noted that the plan did not provide examples of probable risks and their consequences that demonstrated Hensel's understanding of the scope, location, and complexity of this particular project, as required by the RFP.[4] See AR, Tab 24, SSEB Evaluation Report, at 21.

Hensel disagrees with the agency's assessment that its proposal was only acceptable under this subfactor, arguing that the agency has not sufficiently documented its judgment that Hensel's risk management plan was weak. Hensel contends that it addressed the weaknesses noted in discussions, but that the agency ignored the examples Hensel provided in its revised proposal.

The record does not support Hensel's arguments. The Corps acknowledges that Hensel's revised risk management plan addressed the RFP requirements, but also noted that the plan failed to show that Hensel understood the scope, location, or complexity of the project, as the RFP required. See Supp. AR at 7. Specifically, the Corps found that the risk examples that Hensel provided "could have applied to just about any other construction project." Id. at 8. Based on our review of the record, including the proposals and the agency's evaluation materials, Hensel has not shown that the agency's judgment in this regard is unreasonable.

Hensel also disagrees with the agency's rating of its proposal under the key subcontractors' past performance subfactor, under which Hensel's proposal received a very relevant, satisfactory confidence rating. The RFP informed offerors that the past performance of key mechanical, plumbing, electrical, and structural installations subcontractors would be evaluated under this subfactor, and required offerors to identify no more than three projects for each key subcontractor. RFP amend. 5, § 7.4. Hensel identified [deleted] projects for [deleted] key

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[4] The RFP instructed offerors to identify and address such things as "probable internal and external risks in the areas of design, construction, material and equipment, labor, subcontracting, and project coordination," and to include examples that demonstrated the offeror's understanding of the project scope, location, and complexity." RFP amend. 5, § 7.2.1(b).

subcontractors. The SSEB found that these projects were relevant (as opposed to very relevant) where, among other things, a number of the projects did not satisfy all of the relevance criteria and where only one of the projects was LEED certified. AR, Tab 24, SSEB Evaluation Report, at 28. The SSEB also recognized that Hensel's key subcontractors had received past performance ratings of very good to excellent.

With respect to the agency's judgment that the projects identified for Hensel's key subcontractors were relevant, the agency found, as set forth above, that some of these projects did not satisfy all of the relevance criteria and only one project was LEED certified. Hensel does not contend that the agency was wrong about the facts, or reached erroneous conclusions. Instead, Hensel simply disagrees with its rating, and argues that it should have received a very relevant rating. We see no basis to second-guess the agency's exercise of discretion in this area.[5]

Hensel also contends that it should have received a high confidence rating because its subcontractors received very good and excellent past performance ratings. The agency responds that, of the [deleted] projects listed for subcontractors in Hensel's proposal, half received very good ratings and half had exceptional ratings. AR at 18-19. Because a satisfactory confidence rating reflects a proposal for which the agency has a reasonable expectation that the offeror will successfully perform the required effort, whereas the highest rating, substantial confidence, is reserved for proposals for which the agency has a high expectation of successful performance, we find the agency's rating reasonable and consistent with the RFP. In contrast, the majority of the Clark-McCarthy's subcontractors' projects received excellent ratings and on this basis, the awardee's proposal received a substantial confidence rating. Although Hensel disagrees with the judgment, it does not show it to be unreasonable.

[5] Hensel also argues that Clark-McCarthy must have proposed most, if not all, of the same subcontractors as Hensel, but received a substantial confidence rating. Protest at 24. The agency responds that, although the two firms proposed some of the same subcontractors, the proposals were not identical.

Proposed Schedule Factor

Hensel also complains that its proposal should have received an outstanding, rather than good, rating under proposed schedule factor. Specifically, Hensel argues that the agency did not credit it for proposing a shorter schedule than Clark-McCarthy (and [deleted] days shorter than the RFP's maximum schedule) with no weaknesses, deficiencies, or uncertainties. This argument is not supported by the record. The agency specifically recognized Hensel's shorter schedule, which was noted to be a strength; in fact, Hensel's rating under this factor was the highest given to any offeror, including Clark-McCarthy. AR, Tab 24, SSEB Evaluation Report, at 30; Tab 27, SSAC Report, at 5. We have no basis to conclude, as a legal matter, that Hensel's rating of good under this factor should have been excellent.

Best Value Determination

Finally, Hensel objects to the agency's selection decision, arguing that the SSA failed to adequately document his best value decision. Protest at 26. Again, we disagree.

Where a protester challenges the agency's evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. <u>See</u>, <u>e.g.</u>, <u>Integrated Science Solutions, Inc.</u>, B-406987, B-406987.2, Oct. 10, 2012, 2012 CPD ¶ 290 at 9.

Here, the SSA relied upon the advice of the SSAC and the SSEB in concluding that Clark-McCarthy's higher-rated, higher-priced proposal reflected the best value to the agency. The SSAC's comparative analysis was appended to the selection decision and explains the basis for selection of Clark-McCarthy's proposal. In this regard, the SSAC recognized that the non-price factors, combined, were significantly more important than price. The record shows that the agency reasonably considered the merits of the firms' proposals based upon the firms' respective evaluated strengths and weaknesses, and found Hensel's slight price advantage was outweighed by the technical superiority of Clark-McCarthy's proposal.

The protest is denied.

Susan A. Poling
General Counsel