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Decision

Matter of: Dawson Enterprises, LLC

File: B-414591.2

Date: July 24, 2017

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DIGEST

In a procurement conducted under a two-phase design-build selection process, protest of an agency's evaluation of the protester's phase 1 proposal and its decision to exclude the protester from phase 2 is denied where the agency's evaluation was reasonable and in accordance with the solicitation's evaluation criteria.

DECISION

Dawson Enterprises, LLC, of Honolulu, Hawaii, protests the Department of the Navy's exclusion of its proposal from phase 2 of a two-phase design-build competition under request for proposals (RFP) No. N40192-16-R-2800, for construction projects on Guam. Dawson argues that the agency improperly evaluated its phase 1 proposal and unreasonably eliminated it from the competition.

We deny the protest.

BACKGROUND

The RFP was issued on March 29, 2016, under the two-phase design-build provisions of Federal Acquisition Regulation (FAR) subpart 36.3 and contemplated the award of indefinite-delivery, indefinite-quantity multiple-award task order contracts for design-build construction projects at various federal or military facilities and installations on Guam. The RFP, which was set aside for small businesses, stated that the agency intended to award five contracts for a base year and four 1-year option periods. RFP at 3-7. The maximum dollar value, including the base period and all options, for all

contracts combined was \$240,000,000. RFP at 6. The RFP also provided that the price range for task orders to be issued under the contract is \$1,000,000 to \$20,000,000. Id.

Under phase 1, the agency was to evaluate proposals using the following four factors: technical approach, experience, past performance, and safety. RFP at 24. The technical approach evaluation factor was to be evaluated on an acceptable/unacceptable basis, while the experience and safety evaluation factors would be evaluated using adjectival ratings (outstanding, good, acceptable, marginal, and unacceptable), and the past performance evaluation factor would be evaluated using confidence levels (substantial, satisfactory, limited, no, or unknown).¹ Agency Report (AR), Tab 7, Phase One Source Selection Evaluation Board (SSEB) Report, at 3-4. The solicitation stated that, in phase 1, the government intends to select the most highly qualified offerors to submit proposals for phase 2 without conducting discussions. Id. at 15, 22.

As it pertains to this protest, the RFP defined relevant as follows:

Relevant means sufficiently similar to the instant acquisition to provide indicators of expected performance. For example, construction similarity and complexity, contract type, and dollar value.

RFP at 23. With regard to the experience evaluation factor, offerors were to provide a minimum of three and a maximum of five relevant construction projects that demonstrate experience with projects that are similar in size, scope, and complexity. Id. at 26. Offerors were also to provide a minimum of three and a maximum of five relevant design projects for the lead design firm that demonstrate experience with projects that are similar in size, scope and complexity. Id. A relevant project was “further defined as new construction, renovation, or repair work with total construction costs of at least \$1 million.” Id. In order to evaluate experience, the RFP explained that the evaluation would be based on the construction and design projects submitted. The RFP further stated that relevant projects where the offeror and the design firm have previously worked together may be considered more favorably than those projects where the firms have not worked together, and relevant projects that demonstrate design-build experience may be considered more favorably than those that do not have design-build experience. Id. at 27.

With regard to the past performance evaluation factor, offerors were to provide applicable Contractor Performance Assessment Reports (CPARS) evaluations, past

¹ The RFP did not include these adjectival ratings for the experience and safety evaluation factors, nor did the RFP include the confidence ratings for the past performance evaluation factor. Rather, the ratings and confidence levels were found in the source selection evaluation board report, which did not provide definitions for these terms.

performance questionnaires (PPQ), performance recognition documents, and information on problems encountered, for the projects submitted under the experience evaluation factor. Id. In order to evaluate past performance, the agency would consider how well the offeror performed on the relevant contracts submitted under the experience factor, and the agency would place more emphasis on the more relevant contracts.² Id. at 28.

The agency received numerous proposals from offerors, including Dawson, by the revised closing date of May 5, 2016. In its proposal, Dawson stated that the firm was a Native Hawaiian Organization (NHO) owned small business. AR, Tab 5, Dawson Phase One Proposal, Tab 1, Technical Approach, at 1. Dawson further explained that it was a wholly owned subsidiary of the Hawaiian Native Corporation (HNC), along with other HNC subsidiaries: Dawson Technical LLC, Dawson Federal Inc., and Dawson Global LLC. Id. Dawson’s proposal stated that the firm would perform as the general contractor, using several subcontractors, including Dawson Technical and Dawson Federal, among others. Id.

Dawson’s proposal provided a teaming agreement between Dawson and Dawson Technical LLC, which stated that the “Parties anticipate the work to be performed by Team Subcontractor [Dawson Technical] [to] include . . . Pre-construction deliverable support [and] Contract administration support.” Id. at 12. The proposal also provided a teaming agreement between Dawson and Dawson Federal Inc., which included a similar agreement stating that the work to be performed by Dawson Federal was to be environmental consulting/remediation and munitions investigations and removal. Id. at 4-20.

The agency’s source selection evaluation board (SSEB) evaluated the offerors’ proposals, and rated Dawson’s proposal as follows:

	Dawson
Technical Approach	Acceptable
Experience	Acceptable
Past Performance	Satisfactory Confidence
Safety	Acceptable

AR, Tab 7, SSEB Report, at 80.

The agency’s ratings for the evaluation factors were supported by narrative explanations, which identified the strengths, weaknesses, significant weaknesses, and deficiencies under each evaluation factor. Id. at 80-87.

² The RFP also provided that the government’s review of past performance information was not limited solely to the projects submitted by offerors, but may include information on other relevant projects as found in other sources. RFP at 23.

As relevant to this protest, the agency found, under the experience evaluation factor, that Dawson had submitted 5 relevant construction projects, and 5 relevant design projects. Of the 5 construction projects, all 5 were for work performed by Dawson's subcontractors: Dawson Technical, LLC and another subcontractor ([DELETED]). Only 1 of the 5 construction projects was for design-build construction. Id. at 82. Similarly, of the 5 design projects submitted, only 1 was for design-build construction. Id. at 83. The agency's evaluation noted that none of the projects demonstrated that Dawson and its lead design firm had previously worked together. The agency's evaluation also found seven strengths, including a strength for Dawson's one design-build construction project, which "demonstrates some design-build experience in construction," and a strength for its one relevant design project, which "demonstrates some design-build experience in design." Id. The agency's evaluation further found a significant weakness since "there is no relevant project experience submitted for Dawson Enterprises, LLC as [it is] the prime contractor on this contract." Id. at 84. The agency concluded that "[t]his significant weakness is offset by the noted strengths." Id. at 83.

Under the past performance evaluation factor, the agency noted that Dawson had submitted CPAR evaluations and PPQs for the projects submitted under the experience evaluation factor. Of the 10 projects, the overall performance ratings were very good or higher. Id. at 84. The agency assigned one strength for the "very good" rating for Dawson's subcontractor, [DELETED], on its design-build project, and another strength for the "very good" rating Dawson's lead design firm received on its design-build project.³ The agency found no CPAR evaluations through the Past Performance Information Retrieval System (PPIRS) for projects submitted by Dawson Enterprises, LLC. The agency also found an additional 12 CPAR evaluations in PPIRS for construction projects performed by Dawson's proposed subcontractors, all with evaluation ratings of satisfactory or better. Id. at 85. Finally, the agency found 11 architect-engineering (A-E) CPAR evaluations in PPIRS for projects performed by the lead design firm, and 22 additional A-E CPAR evaluations for projects performed by the design sub-consultant, all with satisfactory or higher evaluation ratings. The agency concluded that it had a reasonable expectation that Dawson would successfully perform the contract, and assigned a satisfactory confidence rating. Id. at 85.

The agency convened a source selection advisory council (SSAC) to review the SSEB report, conduct a comparative analysis of the proposals, and make an award recommendation. AR, Tab 8, SSAC Report, at 1-116. Based on the ratings and underlying evaluation findings, the SSAC ranked the acceptable offerors from most advantageous to the least beneficial to the government. Id. at 5. Dawson was ranked 18th. Id. The SSAC recommended that the top [DELETED] offerors be selected to submit phase 2 proposals. Id. at 116. The source selection authority concurred with the SSAC. AR, Tab 9, Phase One Selection Decision, at 1-3.

³ The agency assigned a third strength for Dawson's subcontractor's ([DELETED]) receipt of a merit award on one of their projects. Id. at 85.

On March 29, Dawson was notified that its proposal had been eliminated from the competition. Following a debriefing, Dawson filed this protest.

DISCUSSION

Dawson primarily challenges the agency's evaluation of its proposal under the experience and past performance evaluation factors. With regard to the experience evaluation factor, Dawson challenges the agency's assignment of a significant weakness for Dawson's lack of experience, and, with regard to the past performance evaluation factor, Dawson maintains that the agency improperly downgraded its proposal for lack of experience. While we do not specifically discuss each of the protester's arguments, we have considered all of them and find none provides a basis to sustain the protest.

The evaluation of an offeror's proposal is a matter within the agency's discretion. Bryan Constr., Inc., B-409135, Jan. 14, 2014, 2014 CPD ¶ 51 at 5. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. Williams Bldg. Co., B-413262.2, B-413262.3, Nov. 15, 2016, 2017 CPD ¶ 103 at 5. 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 Engineering Design Technologies, Inc., B-408811.2, June 17, 2014, 2014 CPD ¶ 182 at 4. Given the record before us, we have no reason to find the agency's evaluation of Dawson' proposal unreasonable or otherwise improper.

Experience

The protester asserts that it was improper for the agency to assign a significant weakness to Dawson's proposal for the firm's lack of experience because, as a wholly owned subsidiary of an NHO, the firm may rely on the experience of its parent or affiliated companies. In support of its argument, Dawson asserts that decisions of our Office have found that "it is common and unobjectionable for entities owned by . . . [HNOs] . . . to rely upon the experience and/or past performance of parent or affiliated companies where the offeror's proposal clearly shows that such parents or affiliates will contribute meaningfully to performance of the contract." Protest at 11. Dawson maintains that the firm's proposal here provided that it would use the resources of its sister wholly-owned subsidiaries in performing the contract, and thus the agency's assignment of a weakness was improper. We find no basis to sustain the protest.

As an initial matter, the protester provides no support for its contention that the agency may not assign a significant weakness to a proposal where an NHO prime contractor lacks experience but has proposed to perform using NHO affiliates as subcontractors who have relevant experience. While our Office has explained that an agency may

consider the experience or past performance of an offeror's affiliated companies where the firm's proposal demonstrates that resources of the affiliated company will affect the performance of the offeror, see, for example, Alutiq Pacific, LLC, B-409584, B-409584.2, June 18, 2014, 2014 CPD ¶ 196 at 4, the protester points to no statute, regulations, or prior precedent that precludes the agency from considering an HNO prime contractor's lack of experience merely because the prime contractor has proposed to use affiliates with relevant experience. In this regard, our Office has recognized that the weight to be assigned to a prime contractor's experience--or lack thereof--is a matter of contracting agency discretion. See Alpha Data Corp., B-291423, Dec. 20, 2002, 2003 CPD ¶ 18 at 5. Consequently, we find nothing improper about the agency's assignment of a significant weakness for Dawson's lack of experience because the firm proposed to perform the contract using affiliated companies with relevant experience.

To the extent the protester is alleging that the agency's evaluation of the protester's experience was unreasonable, we disagree. Here, the agency's evaluation considered the multiple strengths of Dawson's proposed subcontractors, including one project which demonstrated design-build construction experience and one design project which demonstrated design-build experience, among other strengths. The agency nevertheless found that Dawson's lack of experience constituted a major weakness in the firm's proposal, such that the identified strengths were offset by Dawson's significant weakness. Given this, we find nothing unreasonable about the agency's assignment of an acceptable rating for this evaluation factor.

Past Performance

The protester also challenges the agency's assignment of a "satisfactory confidence" rating for the protester's past performance. The protester points out that its proposal received no weaknesses or deficiencies under this evaluation factor, and its past performance references rated the firm's performance as very good, outstanding or exceptional. The protester further points out that it received the same rating as three other offerors, where those offerors "had a very different mixture of merely 'Satisfactory' past performance ratings and missing past performance questionnaires," and a lower rating than three other offerors "who had nearly identical mixtures of 'Very Good', 'Exceptional' and 'Outstanding' ratings." Protester's Comments at 5.

The agency explains that, consistent with the RFP provision that "[m]ore emphasis will be placed on more relevant projects," the agency's past performance evaluation viewed projects that demonstrated design-build experience to be more relevant, and thus the agency's evaluation placed more emphasis on those projects.⁴ RFP at 28. Here,

⁴ The protester contends the agency's evaluation found all 10 of its projects to be relevant, and, since the past performance evaluation factor did not define a "relevant" contract, the agency's evaluation should have focused on all 10 of its projects rather than the design-build projects. We disagree. Here, the RFP stated that "[r]elevant
(continued...)

Dawson only provided one design-build construction project, for which the evaluation received was “very good,” and the one relevant design-build design project which was also rated “very good,” while the firms that received higher past performance ratings submitted significantly more highly-rated design-build projects. Supp. Agency Report at 2. Similarly, those firms that received the same “satisfactory” past performance rating as Dawson also had fewer design-build projects, for which they received a variety of ratings, including satisfactory, very good, and exceptional. AR, Tab 7, at 142, 148, 215. In sum, we find that the record does not support the protester’s allegation that the agency engaged in an unequal evaluation of the protester’s past performance relative to other offerors, and the protester has not demonstrated that the agency’s evaluation of its past performance was unreasonable.

The protest is denied.

Susan A. Poling
General Counsel

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means sufficiently similar to the instant acquisition to provide indicators of expected performance. For example, construction similarity and complexity, contract type, dollar value.” RFP at 23. Given that the agency was procuring design-build construction projects, we find nothing improper about the agency’s determination that design-build projects were more relevant than other types of design or construction projects.