



Decision

Matter of: Battistella S.p.A.

File: B-416597.4

Date: January 24, 2019

Monica Battistella, Battistella S.p.A., for the protester.
Richard B. Oliver, Esq., Glenn Sweatt, Esq., and J. Matthew Carter, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Environmental Chemical Corporation Italy srl, the intervenor.
Major Ronald Herrmann, Department of the Army, for the agency.
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the agency's evaluation and source selection decision were consistent with the terms of the solicitation and applicable procurement statutes and regulations.

DECISION

Battistella S.p.A., of Vincenza, Italy, protests the agency's failure to award the firm a contract under request for proposals (RFP) No. W912PF-18-R-0003, issued by the Department of the Army for a multiple-award task order contract (MATOC) to provide design-build and design-bid-build construction services in Vincenza, Italy. Battistella alleges that the agency unreasonably evaluated its proposal and improperly made its source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on April 5, 2018, contemplated the award of up to five indefinite-delivery, indefinite-quantity (IDIQ) contracts for design-build and design-bid-build construction services to support the U.S. Army Garrison Vincenza mission. Contracting Officer's Statement of Facts (COS) at 1; RFP at 6, 65. The selected contractors would be required to construct a new chiller, cooling tower, and associated pumps. Statement of Work (SOW) at 2. Each contract would be performed

over a 1-year base period and four 1-year option periods. RFP at 7. The MATOC had a ceiling of \$49 million, and any awarded task order contract had a minimum guarantee of \$10,000. Id. Proposals were to be evaluated on a best-value tradeoff basis, considering the following factors, listed in descending order of importance: past experience (i.e., technical), past performance, organization, and price. Id. at 72-75.

Nineteen offerors, including Battistella, submitted proposals prior to the May 15 closing date. Memorandum of Law (MOL) at 10. The agency evaluated Battistella's proposal as having a purple/good rating for the past experience factor, a very relevant/satisfactory confidence rating for the past performance factor, and a purple/good rating for the organization factor.¹ AR, Tab 16, Source Selection Decision Document (SSDD), at 7-17. The source selection authority (SSA) determined that Battistella did not offer the best value to the agency because its lower-level Societa Organismi D'Attestazione (SOA) certifications² indicated a lower performance capability and its organization chart was confusing. Id. at 25. The SSA also noted that Battistella's inability to relate its construction experience to the solicitation requirements was troubling because it suggested that Battistella did not understand the technical requirements. Id. at 22. After the agency notified Battistella that its proposal was not selected for award, Battistella filed the instant protest.

DISCUSSION

Battistella alleges that the agency unreasonably evaluated its proposal under the past experience, past performance, and organization factors. Battistella also alleges that the agency improperly made its source selection decision. We have considered all of the allegations raised and find no basis to sustain the protest. We discuss Battistella's principal allegations below, but note, at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or

¹ For the past experience and organization factors, the agency used a color/adjectival rating scheme with the following rating combinations: blue/outstanding, purple/good, green/acceptable, yellow/marginal, and red/unacceptable. RFP at 76.

² An SOA certification evidences compliance with Italian law regarding the qualifications of companies competing for public contracts. COS at 4. SOA certifies a company to be qualified in particular categories of work (e.g., construction). Id. Each classification level has an associated monetary ceiling, and thus a higher classification level means that a firm is qualified to perform contracts with higher monetary values. Id.

For this protest, the relevant classifications include the Opere Generali (OG) 1, Classification II and the OG 11, Classification I. RFP at 69. The OG 1, Classification II certifies that a firm is qualified to construct civil and industrial buildings up to €516,000. Decreto Presidente della Repubblica (D.P.R.) 5 Ottobre 2010, n. 207, Art. 61, Allegato A. The OG 11, Classification I, certifies that firm is qualified to supply, install, and maintain interconnected building technological systems (e.g., heating, ventilation, and air-conditioning systems, and plumbing systems) up to €258,000. Id.

substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. SaxmanOne, LLC, B-414748, B-414748.3, Aug. 22, 2017, 2017 CPD ¶ 264 at 3.

Past Experience

The past experience factor was comprised of three subfactors: construction experience, design experience, and SOA certification. Battistella argues that the agency unreasonably evaluated its proposal because the agency's concerns regarding its construction experience were unwarranted.³

To assess each offeror's construction experience, the solicitation instructed offerors to submit at least two but not more than five projects detailing their construction experience. RFP at 67. Offerors were advised that the government would evaluate recent and relevant construction experience to assess each offeror's ability to complete task order requirements. Id. at 73. To be considered recent and relevant experience, each construction project must have been performed by the offeror and completed in Italy within the last five years, had a contract value in excess of €1,000,000, and had a similar scope to the SOW. Id.

Battistella submitted five construction projects as part of its proposal. AR, Tab 7, Battistella's Proposal--Construction Experience. The agency found that each project qualified as recent and relevant under the solicitation's criteria, but noted concerns with Battistella's understanding of the technical requirements because the proposal did not explain how the referenced projects were similar to the solicitation's requirements. AR, Tab 15, Source Selection Evaluation Board (SSEB) Report at 5-6. In addition, the agency specifically highlighted one of Battistella's referenced projects as not indicative of an exceptional understanding of the technical requirements because, the project involved the construction of an obstacle course. Id. In its protest, Battistella argues that these concerns were unwarranted, and specifically asserts that the referenced obstacle

³ In its protest, Battistella also challenged its rating under the design experience subfactor, alleging that the agency unreasonably found a referenced project involving storm drainage design as not relevant. Protest at 2. We dismiss this allegation. Where, as here, the agency responds to an allegation in its report but the protester does not rebut the agency's position in its comments, we dismiss the allegation as abandoned because the protester has not provided us with a basis to find the agency's position unreasonable. Medical Staffing Solutions USA, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3. Here, the agency report explained that the referenced project was not considered relevant because it did not involve any of the duties required by the instant solicitation. COS at 6-7. The protester did not respond to the agency's position in its comments. Accordingly, we dismiss this protest allegation as abandoned. We note, as well, that the protester does not challenge its rating under the SOA factor.

course project should have been viewed as a strength since it was deemed relevant under the solicitation criteria. Protester's Comments at 2 (unpaginated).

As an initial matter, we find that the agency was not required to view Battistella's referenced obstacle course contract as a strength simply because it was determined to be relevant under the solicitation criteria. In this regard, the solicitation specifically provided that the agency would evaluate offerors' construction experience based on whether the referenced contracts demonstrated the ability to complete task order requirements. RFP at 73.

Further, in view of the solicitation's terms, we do not find the evaluation objectionable. The referenced projects show that Battistella provided construction services similar to the RFP requirements. See AR, Tab 7, Battistella Proposal--Past Experience, at 4 (building renovation services including electrical, plumbing, and heating, ventilation, and air conditioning (HVAC) replacement), 9 (building renovation), 14 (demolition and concrete construction), 18 (office space conversion) (unpaginated). Indeed, the referenced obstacle course project involved the ground-level construction of physical obstructions and the installation of an electric generator. Id. at 22. Importantly, however, the solicitation calls for the installation of a magnetic bearing centrifugal water-cooled chiller and construction of an induced draft cooling tower. SOW at 18, 19.

Thus, Battistella's proposal does not demonstrate that it has experience performing the precise construction services called for under the solicitation, and therefore, the agency had a reasonable basis to find that the firm's experience did not demonstrate an exceptional understanding of the solicitation's requirements. To the extent Battistella asserts that the construction services it provided are so similar to the solicitation's requirements that they necessarily demonstrate an exceptional understanding, we note that Battistella's proposal never explained how its projects were similar to the solicitation's requirements in any detail; therefore, Battistella ran the risk that the agency would fail to make this connection and evaluate its proposal unfavorably. See T-C Transcription, Inc., B-401470.2, Feb. 16, 2010, 2010 CPD ¶ 50 at 4 (offeror did not explain information in its proposal and therefore ran the risk that the agency would evaluate its proposal unfavorably). Accordingly, we deny this protest allegation as we find that the agency's evaluation was consistent with the record and the solicitation's terms.

Past Performance

Offerors were instructed to submit at least two but no more than five past performance questionnaires for referenced contracts. RFP at 70. The solicitation advised that the agency would first assign a relevancy rating to each offeror's referenced contracts, and then the agency would assess the relevant contracts for quality of performance. RFP at 74-77. In evaluating quality of performance, the agency would assign each offeror a confidence assessment rating. Id. at 77.

Battistella submitted five past performance questionnaires as part of its proposal. AR, Tab 10, Battistella Proposal--Past Performance. As noted above, the agency assigned Battistella's past performance a very relevant rating. AR, Tab 16, SSDD, at 23. The agency assigned a very relevant rating because it determined that two of the referenced contracts were very relevant, two others were considered relevant, and the last referenced contract was considered somewhat relevant. Id. Based on these contracts, the agency concluded that a satisfactory confidence assessment rating was appropriate because Battistella had received a mix of satisfactory, very good, above average, and exceptional ratings. Id.

In challenging the agency's evaluation, Battistella argues that its performance ratings merit a substantial confidence rating and that the agency's evaluation lacked a factual basis. Protester's Comments at 6. We do not find the protester's argument persuasive because it constitutes only a disagreement with the agency's judgment. While the protester may believe that its performance ratings deserved the highest confidence assessment rating, our decisions establish that a protester's disagreement with the agency's judgment does not provide a basis to sustain the protest. See, e.g., Kuhana-Spectrum, B-401270, July 20, 2009, 2009 CPD ¶ 36 at 7 ("The protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably."). Moreover, as to the assertion that the agency's evaluation lacked a factual basis, we find that the evaluation is supported by the protester's past performance information because the ratings are consistent with the agency's evaluation. Accordingly, we deny this protest allegation.

Organization

Offerors were required to provide an organizational chart that clearly identifies the management, design, construction teams, and key personnel that would be utilized on this contract. RFP at 70. Offerors were further instructed that the chart should be arranged by organizational levels and identify where its personnel would be located. Id. Organization charts would be evaluated based on how well they depict the organization, including the lines of authority, and whether they demonstrate an understanding of the organizational structure and relationships required for successful performance of the contract. Id. at 75.

The agency assigned a weakness to Battistella's organization chart because it found the chart confusing. AR, Tab 16, SSDD, at 18. In particular, the agency noted that the organization chart contained a confusing hierarchical structure, did not contain lines of communication between the firm's central office and the worksite, and was ambiguous as to where personnel were located. AR, Tab 16, SSDD at 18-19, 24. Battistella argues that the agency's evaluation was unreasonable because its organization chart was designed in accordance with the solicitation's instructions and evaluation criteria. Protester's Comments at 6-7.

In our view, the agency's evaluation is consistent with the organization chart as presented in Battistella's proposal. Our review of the organization chart confirms that

the hierarchical structure between multiple employees and subcontractors is not clear because the chart contains horizontal lines of authority without any arrows providing direction. AR, Tab 11, Battistella Proposal--Organization at 1. Further, we find that the chart supports the agency's concern that the firm's central office has no direct lines of communication with personnel at the worksite. Id. Finally, we agree that the organization chart is ambiguous as to where particular employees are located because some employees are represented as located at the firm's central office and worksite. Id. Because the evaluation criteria required offerors to clearly depict their organizational structure (i.e., organization hierarchy), essential relationships, and identify where their personnel were located, we find that the agency reasonably assigned a weakness to the protester's proposal.⁴ Accordingly, we deny this protest allegation.

Source Selection Decision

Battistella contends that the agency made an unreasonable source selection decision because it distinguished proposals based on their SOA level. Essentially, Battistella asserts that the solicitation only required firms to have SOA levels of OG 1, Classification II and OG 11 Classification I, and that therefore the agency should not have viewed proposals with higher classifications more favorably. Protester's Comments at 5.

Source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value setting. Alpha-Omega Change Eng'g, Inc., B-413478.3, Nov. 14, 2016, 2016 CPD ¶ 331 at 5. Such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Id.

On this record, we find no merit to the protester's allegation. The RFP stated that the agency would evaluate firms' SOA classifications, and specifically provided that a rating that exceeds the minimum classifications may be evaluated more favorably. RFP at 74. While Battistella may complain that the agency "double-counted" firms' SOA classifications by considering them as strengths during the evaluation and then using the classifications as distinguishing factors during the tradeoff analysis, we note that source selection officials are required to base their award decisions on the evaluation

⁴ The protester alleges that the weakness was unreasonably predicated in part on the agency's concern regarding the proposed hierarchy between the firm's project manager and architect engineer. The protester asserts that the architect engineer was required to supervise the site superintendent under applicable Italian statutes. Protester's Comments at 8. Based on the record, we need not determine whether the agency's concern in this regard was warranted because that particular concern was only one of many associated with the protester's organization chart. Thus, even if we found that the agency unreasonably found that aspect of the firm's organization chart confusing, the record would still support the agency's assignment of a weakness given the agency's remaining concerns.

factors and significant subfactors and use those factors and subfactors to compare the proposals meaningfully. Federal Acquisition Regulation § 15.304(a), (b). Thus, although it may appear that the agency “double-counted” the OG classifications, the record shows that the SSA identified strengths within proposals based on the stated evaluation factor and then used those strengths as a means to compare the proposals; that practice is unobjectionable. Furthermore, we find that the agency’s decision to distinguish proposals on this basis was reasonable since a higher SOA classification allows the agency to rely on an individual contractor for a greater portion of the construction project. Accordingly, we deny the protest allegation because the agency’s evaluation was consistent with applicable procurement statutes and regulations.

The protest is denied.

Thomas H. Armstrong
General Counsel