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## Decision

**Matter of:** CJW Construction, Inc.

**File:** B-418774; B-418774.2

**Date:** August 17, 2020

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### DIGEST

Protest challenging agency's technical evaluation of protester's proposal is denied where evaluation was reasonable and in accordance with the terms of the solicitation.

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### DECISION

CJW Construction, Inc., a small business of Santa Ana, California, protests the evaluation of its proposal under request for proposals (RFP) No. N6247319R2434, issued by Department of the Navy, Naval Facilities Engineering Command Southwest, for the construction, renovation, and repair of waterfront facilities at various government installations located in California, Arizona, Nevada, Utah, Colorado, and New Mexico. The protester argues that the agency unreasonably ignored information in its proposal, or alternatively, applied unstated evaluation criteria. In its supplemental protest, the protester argues that the agency inadequately documented the basis for its evaluation.

We deny the protest.

### BACKGROUND

On October 16, 2019, the agency issued the RFP in accordance with Federal Acquisition Regulation (FAR) parts 15 and 36. Agency Report (AR), Tab 1, RFP

at 36-37.<sup>1</sup> The RFP contemplated a two-phase evaluation, resulting in the award of three to five indefinite-delivery, indefinite-quantity construction contracts.<sup>2</sup> *Id.* at 109. The RFP provided that phase one would result in a determination of the most highly qualified offerors whom the agency would then invite to submit proposals for phase two. *Id.* at 36-37. Under phase two, the agency would evaluate proposals on a best-value tradeoff basis, considering price and other non-price related factors. *Id.* Proposals for phase one were due no later than 2:00 p.m. on November 19, 2019. *Id.* at 1.

The solicitation listed three factors to be evaluated under phase one: technical approach; experience; past performance. *Id.* at 39. The RFP provided that the agency would assign proposals a rating of acceptable or unacceptable for the technical approach factor. *Id.* The RFP also provided that experience and past performance were of equal importance.<sup>3</sup> *Id.*

Regarding experience, the RFP required offerors to provide up to five relevant construction projects that demonstrate the offeror's "self-performed [] experience" on projects similar in size, scope, and complexity to the work sought under the current RFP. RFP at 40. In providing five relevant projects, the RFP also required offerors to satisfy a list of "[a]dditional minimum submission requirements." *Id.* As relevant here, one of these additional submission requirements requested that offerors identify "[a]t least one (1) relevant self-performed project that demonstrates the Offeror's experience in new construction of or repairs to a concrete pier or wharf." *Id.*

CJW timely submitted its proposal. AR, Memorandum of Law (MOL) at 5. The Technical Evaluation Team (TET), which convened on November 20, 2019, evaluated CJW's proposal as follows:

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<sup>1</sup> All citations to the record are to the consecutive numbering of the pages in the Adobe PDF format of the documents provided by the agency.

<sup>2</sup> The estimated maximum dollar value, including the base year and all options, for all contracts combined is \$750,000,000. RFP at 110.

<sup>3</sup> While the RFP did not explain the ratings that would be assigned proposals under the experience and past performance factors, the Source Selection Plan (SSP) provided that proposals would be rated for the experience factor (and for the overall technical proposal) as outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 2, SSP at 4-5. As relevant to this protest, a rating of unacceptable was defined as: "[p]roposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable." *Id.* at 5.

	<b>CJW Construction, Inc.</b>
<b>Overall Technical Rating</b>	Unacceptable
<b>Technical Approach</b>	Acceptable
<b>Experience</b>	Unacceptable
<b>Past Performance</b>	Substantial Confidence

AR, Tab 3, TET Report at 2. As discussed in greater detail below, the TET rated the protester's proposal as unacceptable under the experience factor based on its finding that the proposal did not demonstrate the required experience in new construction of or repairs to a concrete pier or wharf.

On May 7, the contracting officer notified CJW that it was not selected to proceed to phase two of the competition. AR, Tab 7, Notice of Non-Selection at 1. CJW requested a debriefing the next day. AR, Tab 8, Debrief Request at 1. A pre-award debriefing was held via teleconference on May 18. MOL at 7. CJW filed this protest with our Office on May 26. Protest at 1.

## DISCUSSION

CJW challenges the agency's rating of its proposal as unacceptable. Specifically, CJW alleges that the agency unreasonably ignored information in its proposal, or alternatively, applied unstated evaluation criteria during the evaluation. CJW further contends that the agency inadequately documented its evaluation. For the reasons discussed below, we deny the protest.<sup>4</sup>

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *See SDS Int'l, Inc.*, B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 5. We review the record to determine only whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria as well as applicable procurement statutes and regulations. *MVM, Inc.*, B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.* at 5-6.

As noted above, the solicitation required each offeror to identify "[a]t least one (1) relevant self-performed project that demonstrates the Offeror's experience in new construction of or repairs to a concrete pier or wharf." RFP at 40. According to the

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<sup>4</sup> Although we do not specifically address each of the protester's arguments, we have considered them all and find none provide a basis to sustain this protest.

agency, CJW failed to satisfy this additional submission requirement, and thus, the TET properly assigned its proposal a deficiency.<sup>5</sup> MOL at 9; TET Report at 6.

CJW, however, argues the first of the five projects that it identified with its proposal satisfied this requirement. In describing this project (hereinafter referred to as Project One), CJW's proposal provided that a "deteriorated sewer discharge force main pipe serving [two piers] required repairs and replacement." AR, Tab 10, CJW's Proposal at 1. CJW claims that the agency should have found that this project satisfies the abovementioned additional requirement because CJW was required to drill "into the underside of the *concrete pier*," and after adding a new pipe, "return[] it to a usable state using large-scale marine grade concrete construction techniques." Supp. Comments at 1-2 (emphasis in original).

Our Office has no basis to find the agency's evaluation unreasonable or contrary to the terms of the solicitation. As stated above, the RFP required offerors to demonstrate their experience repairing a concrete pier. RFP at 40. In describing Project One, CJW's proposal provided that "[t]his project was to repair existing sewer utilities on both piers." CJW's Proposal at 2. Although its proposal also provided that the project required CJW to drill into the underside of the concrete pier and to repair the drywell and quay wall penetrations with marine grade concrete, *id.*, the TET determined the project did not qualify as a repair to a pier because the work did not modify the pier facility.<sup>6</sup> TET Report at 6. In its evaluation, the TET expressly described this determination and concluded that Project One failed to meet the additional requirement of the RFP. *Id.* CJW's argument that the agency ignored pertinent information, as well as CJW's claim that the evaluation was inadequately documented, are thus without merit.

CJW also contends that the agency applied unstated evaluation criteria during its evaluation of CJW's proposal. Protest at 4. According to CJW, an agency representative stated during its debriefing that CJW may have received a deficiency because the "primary purpose" of Project One did not involve the repair of a concrete pier. Protest at 6. CJW contends that this "primary purpose" standard is not incorporated into the RFP, and therefore, the agency must have evaluated its proposal based on unstated evaluation criteria. *Id.*

As an initial matter, our Office does not consider the agency's statements during a debriefing as controlling. *Earth Resources Tech., Inc.*, B-406659, B-406659.2, July 30, 2012, 2012 CPD ¶ 226 at 3. Instead, we review the evaluation record to assure that the

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<sup>5</sup> The RFP defines a deficiency as "[a] material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." RFP at 37.

<sup>6</sup> The RFP defines "repair" as "projects where the work modifies existing facilities." RFP at 38.

agency's evaluation was reasonable and consistent with the stated evaluation factors. *Id.* Here, the TET stated in its evaluation report that drilling into a concrete pier did not qualify as a repair because it did not modify the pier facility. TET Report at 6. The record indicates that the agency made this decision in accordance with the definitions listed in the RFP. RFP at 38. CJW's argument to the contrary is without merit.

Finally, CJW argues that even if Project One did not satisfy the additional requirement of the RFP, the agency should have assigned CJW's proposal a weakness instead of a deficiency. Protest at 5. As noted previously, the RFP defines a deficiency as "[a] material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." RFP at 37. As stated above, the agency reasonably found that CJW failed to identify a self-performed project that demonstrated CJW's experience in new construction of, or repairs to, a concrete pier or wharf. CJW thus materially failed to meet a requirement of the RFP. Our Office has no basis to find unreasonable the agency's assignment of a deficiency to CJW's proposal.

The protest is denied.

Thomas H. Armstrong  
General Counsel