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Decision

Matter of: MIG Construction Partners

File: B-419818.4; B-419818.9

Date: May 24, 2022

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DIGEST

Protest challenging the agency's assessment of a deficiency to the protester's proposal is denied where the record shows the agency's evaluation was reasonable and consistent with the terms of the solicitation; remaining protest challenges are denied where the protester fails to demonstrate competitive prejudice.

DECISION

MIG Construction Partners (MIG Construction), a joint venture and small business of Virginia Beach, Virginia, protests the agency's decision to exclude its proposal from the competitive range under request for proposals (RFP) No. N400-80-19-R-0001, issued by the Department of the Navy, Naval Facilities Engineering Command for construction services. The protester contends that the agency unreasonably evaluated its proposal and improperly eliminated the proposal from the competitive range.

We deny the protest.

BACKGROUND

On March 18, 2021, the Navy issued the solicitation seeking proposals for design-build and design-bid-build construction services in the agency's Washington, D.C. area of

responsibility.¹ AR, Exh. 1, Request for Proposals (RFP) at 1; AR, Exh. 2, Scope of Work (SOW) at 12. The solicitation was set-aside for participants in the Small Business Administration's (SBA) 8(a) program² and contemplated the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts with a base period of 1-year and up to seven 1-year options. RFP at 1, 6-8; SOW at 14.

The RFP established a two-phase procurement and informed offerors that the Navy would use a best-value tradeoff in making an award decision. RFP at 13. The RFP further advised that the agency intended to invite 10 offerors to phase two of the procurement, though the agency reserved the right to change that number if the contracting officer determined it to be in the best interest of the government. *Id.* The agency was to consider four non-cost/price evaluation factors in phase one of the procurement: (1) management approach; (2) experience; (3) safety; and (4) past performance. The agency was to evaluate a fifth non-price evaluation factor, technical solution, in phase two of the procurement.³ *Id.*

The agency was to evaluate the management approach factor on an acceptable/unacceptable basis. *Id.* The RFP provided that the experience, safety, and technical solution factors were equal in weight to each other and, when combined, equal to the past performance factor. *Id.* at 13-14.

The Navy received [DELETED] proposals by the phase one closing date of June 11, 2021. AR, Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. The agency's source selection evaluation board (SSEB) evaluated MIG Construction's proposal as follows:⁴

¹ The RFP was amended 10 times over the course of the procurement. Agency Report (AR), Exh. 2, Amendments 0001-0010. The language relevant to this decision remained unchanged through each amendment.

² Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the SBA to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. See 13 C.F.R. § 124.501(a) (SBA may enter into all types of awards, including contracts and orders). This program is commonly referred to as the 8(a) program.

³ The RFP also informed offerors that the experience, safety, and technical solution factors were to be considered the "technical factors." RFP at 13.

⁴ Due to an apparent transmission error, the Navy initially was unable to evaluate the protester's complete proposal. AR, Exh. 5, SSEB Report at 2. Following the discovery of the error during an oral debrief with the protester on February 2, the agency subsequently evaluated the protester's complete proposal. *Id.* The ratings in this decision reflect the results of that complete evaluation.

Management Approach	Acceptable
Experience	Unacceptable
Safety	Good
Past Performance	Satisfactory Confidence

AR, Exh. 5, SSEB Report at 3; AR, Exh. 7, Source Selection Advisory Council (SSAC) Report at 3. As relevant here, under the experience factor, the solicitation required the submission of previously completed, relevant design-bid-build projects that demonstrated the offerors' construction and design experience. RFP at 14-16. The agency concluded that the protester's proposal failed to include a relevant project demonstrating design experience, and therefore contained a deficiency. AR, Exh. 5, SSEB Report at 8-9. As a result, the SSEB assigned the protester's proposal a rating of unacceptable under the experience factor.⁵ *Id.* at 9.

The source selection authority (SSA) concurred with the evaluation reports from the SSEB and the SSAC, and excluded MIG Construction's proposal from further consideration in phase two of the procurement, due to the rating of unacceptable under the experience factor. AR, Exh. 8, SSDD at 3.

On January 20, 2022, MIG Construction received notice of its exclusion from the competitive range. AR, Exh. 4, Notice of Unsuccessful Offeror at 1. The protester then timely requested a debriefing from the Navy, which the agency provided orally on

⁵ In addition to rating MIG Construction's proposal unacceptable under the experience factor, the agency also initially found the protester's proposal ineligible for award because the protester, a joint venture firm, was not an SBA-certified 8(a) joint venture firm at the time it submitted its phase one proposal. AR, Exh. 8, Source Selection Decision Document (SSDD) at 3. The agency, believing that SBA regulations required 8(a) joint venture firms to be certified by the SBA prior to submission of phase one proposals in competitive procurements, requested dismissal of the protest, arguing that the protester was not an interested party to challenge the agency's evaluation of its proposal. Req. for Dismissal at 2.

Our Office sought input from the SBA regarding the agency's position that SBA regulations required joint ventures to obtain 8(a) certification from the SBA prior to submission of phase one proposals. The SBA advised that, in light of recent amendments to SBA's regulations, the SBA no longer certifies joint ventures formed to receive competitive 8(a) contracts where one of the members of the joint venture is already an active participant in the 8(a) program. SBA Comments at 3-4. Because one of the members of the MIG Construction joint venture, MIG GOV, LLC, is an active 8(a) participant, the SBA recommended our Office deny the agency's request for dismissal. SBA Comments at 4; Electronic Protest Docketing System No. 20. After a review of the record and applicable regulations, we agreed with the SBA and denied the request for dismissal.

February 10.⁶ Protest at 2; COS/MOL at 4. On February 15, the protester filed this protest with our Office.

DISCUSSION

MIG Construction raises various challenges to the Navy's evaluation of its proposal under the experience and past performance evaluation factors. The agency responds that its evaluation of the protester's proposal under these factors was reasonable and consistent with the terms of the solicitation. Based on our review of the record and as explained below, we conclude that none of the protester's challenges afford a basis on which to sustain the protest.⁷

The Agency Reasonably Found the Protester's Proposal Unacceptable

MIG Construction argues that the agency's evaluation under the experience factor was unreasonable and that the agency improperly excluded MIG Construction's proposal from the competitive range. See Protest at 5; Comments at 2-3. Specifically, the protester challenges the agency's rating of unacceptable under this factor for failing to include a multi-disciplinary design-bid-build project demonstrating the protester's design experience. Comments at 2. The protester argues that the assessment lacked a reasonable basis based on the information the protester included in its proposal. Comments at 3.

The Navy responds that its evaluation of MIG Construction's proposal under the experience factor was reasonable and consistent with the terms of the solicitation. COS/MOL at 5. The agency contends that the protester failed to include sufficient details that clearly demonstrated to the agency that the submitted project involved more than one discipline. *Id.* at 6. To that end, the agency states that in describing the project at issue, the protester's proposal "merely provided a list of mechanical systems that were replaced," and lacked sufficient detail to demonstrate that the protester's design-bid-build project met the RFP's requirements. *Id.* at 6-7. Therefore, the agency argues it reasonably assigned a deficiency to the protester's proposal, resulting in a rating of unacceptable. *Id.* at 7.

⁶ The protester and agency dispute the content of this oral debriefing, namely whether the agency informed the protester of an evaluated weakness under the experience factor (in addition to the assessed deficiency, discussed above). For the reasons contained within this decision, resolution of this factual dispute is not necessary, as we need not reach the merits of the protest ground related to this assigned weakness.

⁷ The protester raises collateral arguments related to the agency's evaluation of its proposal. While we do not address every argument raised by the protester, we have considered them all and similarly find that none establish a basis on which to sustain the protest.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not re-evaluate proposals or substitute our judgement for that of the agency. *Kiewit Infrastructure West Co.*, B-415421, B-415421.2, Dec. 28, 2017, 2018 CPD ¶ 55 at 5. The evaluation of proposals is generally a matter within the agency's discretion. *Id.* Our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the evaluation factors set forth in the RFP. *Id.* A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. *REEL COH Inc.*, B-418095, B-418095.2, Jan. 10, 2020, 2020 CPD ¶ 55 at 8.

Furthermore, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements and allows for meaningful review. *Raytheon Co.*, B-416578, B-416578.2, Oct. 22, 2018, 2018 CPD ¶ 376 at 12. Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 16. An offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal or risks that its proposal will be evaluated unfavorably where it fails to do so. *Jacobs Tech., Inc.*, B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 8.

Under the experience factor, the RFP instructed offerors to submit relevant design projects that demonstrated the offerors' experience performing work similar to that proposed in the SOW. RFP at 15. To be considered relevant, a submitted project had to be similar in scope and complexity to the projects contemplated by the RFP, meaning that the submitted project had to involve the design of a construction project that included new building construction or building renovation (interior or exterior) involving two or more disciplines, (*e.g.*, structural, mechanical, and civil). *Id.*

The RFP required offerors to submit at least two relevant design-build projects and one relevant design-bid-build project in order to demonstrate the necessary design experience.⁸ *Id.* at 15-16. The RFP included a construction and design experience project data sheet that offerors had to use to submit the project information. *Id.* at 16. The data sheet contained different sections that the offerors had to populate with information about each project, including a detailed description of the project and relevancy to the RFP's project requirements, as well as the work that the offeror performed on the prior project. See RFP at 16; see, *e.g.*, AR, Exh. 10, Protester's Proposal at 75-76.

The agency evaluated proposals based on the offerors' demonstrated experience performing relevant construction and design projects. RFP at 17. Under the source selection plan (SSP), the agency indicated it would assign adjectival ratings to each of

⁸ The RFP also required offerors to submit previous construction projects involving two or more disciplines to separately demonstrate relevant construction experience. RFP at 15.

the technical evaluation factors (which included the experience factor) through an assessment of the submitted proposals' strengths, weaknesses, significant weaknesses, and deficiencies. AR, Exh. 3, SSP at 21. Relevant here, the agency would assign a deficiency where the proposal contained a material failure to meet a government requirement. *Id.* at 22. The RFP stated that any proposal that had a deficiency would be considered ineligible for award. RFP at 12.

MIG Construction's proposal identified four design-build projects and one design-bid-build project for design experience. AR, Exh. 10, Protester's Proposal at 56; COS/MOL at 6. The protester's single design-bid-build design experience project, referred to as the CAD 483 project, included the following description of work performed:

Mechanical Description—

Major HVAC [Heating, Ventilation, and Air Conditioning] components located in the main mechanical room were [to] be replaced. Two existing water-cooled chillers, associated cooling towers, piping and circulating pumps were replaced with two air-cooled chillers and circulating pumps. Two existing gas-fired steam boilers, associated hot water converters, piping and circulating pumps were replaced with two hot water condensing boilers and circulating pumps. Two air handling units serving the office spaces were replaced with a variable air volume system. The nine air handling units associated with the clean rooms and ECSA rooms were existing to remain, including pneumatic controls, and new hot and chilled water piping will connect to the existing units. Exhaust fans and associated motorized dampers serving the warehouse areas were replaced. Existing louvers remained and were reused. All new equipment was provided with a direct digital control system. All steam and steam condensate piping in the building was demolished. Existing steam humidifiers in ductwork to remain were abandoned in place. Existing unit heaters and piping located in the load line trench area were abandoned in place.

AR, Exh. 10, Protester's Proposal at 76.

In a separate section of the project data sheet describing this project, the proposal indicated that "[m]echanical systems for office spaces, warehouse spaces, and a maintenance shop were demolished and replaced." *Id.* In the same section, the proposal also included the stand-alone statement that the project was a "building renovation (interior) involving multiple disciplines." *Id.*

The agency's SSEB technical team found the CAD 483 project, as described above, not to be a relevant design project, as it did not involve the design of a construction project involving two or more disciplines. AR, Exh. 5, SSEB Report at 7. Specifically, the SSEB found that the CAD 483 project involved mechanical work only and therefore consisted of a single discipline. *Id.* In this regard, the SSEB noted that "[p]er the requirements of the solicitation, construction projects are new building construction or

building renovation involving two or more disciplines which includes architectural and/or engineering efforts.” *Id.* at 8.

Because the protester’s proposal did not identify at least one relevant design-bid-build project demonstrating adequate, multi-disciplinary previous design experience, the agency found the proposal to contain a deficiency for failing to meet the requirements of the solicitation and thus rated the proposal as unacceptable under the experience factor. *Id.* at 8-9; AR, Exh. 7, SSAC Report at 4. The SSA, concurring with the SSEB and the SSAC’s findings and ratings, determined that MIG Construction should not be invited to phase two of the procurement. AR, Exh. 8, SSDD at 3.

Based on our review of the record, we find no basis to question the Navy’s evaluation of MIG Construction’s proposal under the experience factor or its decision to exclude MIG Construction from phase two of the procurement. As explained above, the solicitation required offerors to identify relevant projects demonstrating their multidisciplinary design experience. Here, the agency’s finding that one of the protester’s projects demonstrated work involving only a single discipline, and the subsequent rating of unacceptable, was consistent with the terms of the solicitation.

In its protest, MIG Construction contends that the work involved in the CAD 483 project, an HVAC replacement job, entailed multiple disciplines and that the multi-disciplinary nature of the project “can be inferred” based on the protester’s description of the project. Comments at 3. In this regard, MIG Construction argues that the HVAC work necessarily involved other disciplines such as electrical work and that the multidisciplinary nature of the work was established by the fact that multiple different inspections would be required to approve the project. Protest at 6. The agency maintains that the information in MIG Construction’s proposal was inadequate to demonstrate multidisciplinary work and that it was not required to infer that the work involved more than what was described in the proposal. Supp. COS/MOL at 2. In this regard, the agency notes that the protester titled the description of the project work in its proposal as “mechanical description.” COS/MOL at 6.

As stated above, it is an offeror’s responsibility to submit a well-written proposal and agencies are not required to infer information that the protester elected to omit. *Engility Corp.*, *supra* at 16. Here, the question of whether the Navy’s conclusion regarding MIG Construction’s design experience was reasonable turns on whether the proposal, as written by the protester, adequately demonstrates the requisite multi-disciplinary experience through past, relevant projects. As the agency noted, the protester’s description of the CAD 483 project focused on the mechanical repair work performed by the offeror. While the proposal contained a statement that the work involved multiple disciplines, it did not clearly demonstrate what those other disciplines were.

Therefore, on this record, we find reasonable the Navy’s evaluation and conclusion that MIG Construction’s submitted project involved only a single discipline and thus, that the proposal contained a deficiency. Although the protester may ultimately disagree with the agency’s evaluation conclusions, such disagreement, without more, does not

demonstrate that the agency's evaluation was improper or inconsistent with the terms of the solicitation. *REEL COH Inc.*, *supra* at 8. MIG Construction's challenge to its evaluation under the experience factor is denied.

The Protester Fails to Establish Competitive Prejudice

MIG Construction also challenges the agency's assignment of a weakness to a different aspect of its proposal under the experience factor, in addition to challenging the agency's evaluation of its proposal under the past performance factor.

We need not address the merits of these remaining challenges to the evaluation of MIG Construction's proposal because we conclude that the protester has not demonstrated competitive prejudice. Competitive prejudice is an essential element of every viable protest. Where a protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *See, e.g., JHC Tech., Inc.*, B-417786, Oct. 23, 2019, 2019 CPD ¶ 376 at 6.

Here, as discussed above, the Navy reasonably rated MIG Construction as unacceptable under the experience factor. In response to the protest, the agency argues, and we agree, that the deficiency which led to the unacceptable rating of the protester's proposal rendered the proposal ineligible for award. COS/MOL at 9. In other words, even if the agency erred with respect to the evaluation of other aspects of the protester's proposal, such errors would have no effect on the results of the procurement, because the protester's proposal would remain unawardable.

The protest is denied.

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General Counsel