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Decision

Matter of: C&C Contractors, LLC

File: B-420583; B-420583.2

Date: June 10, 2022

John M. Manfredonia, Esq., Manfredonia Law Offices, LLC, for the protester.
Phillip T. Paradise, Esq., and Allie E. Vandivier, Esq., Department of the Army, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated protester's past performance, which led to the exclusion of its proposal from phase 2 competition for two of three contracts, is denied where the record shows the evaluation was reasonable and consistent with the criteria in the solicitation.

DECISION

C&C Contractors, LLC, of Notasulga, Alabama, a small business, protests the elimination of its proposal from the competition for two of three contracts under request for proposals (RFP) No. W912HN20R4002, issued by the Department of the Army, United States Army Corps of Engineers (Corps), for design-build construction services. C&C argues that the Corps unreasonably evaluated its past performance and excluded its proposal from further consideration.

We deny the protest.

BACKGROUND

The RFP, issued September 9, 2020, instituted a two-phase design-build procurement under which offerors were to submit proposals to provide general construction services for any or all of three separate indefinite-delivery, indefinite-quantity single-award task order contracts. Each contract is related to a different installation: Fort Bragg, North Carolina; Fort Stewart, Georgia; and Fort Gordon, Georgia. The contract for Fort Bragg is set aside for small businesses and has a value of \$49 million. The contracts for Fort Stewart and Fort Gordon are set aside for historically-underutilized business zone

small businesses, and have values of \$30 million and \$49 million, respectively. Contracting Officer's Statement (COS) at 1. While each contract is related to a specific installation, the solicitation provided the same geographic scope for each contract, and any order could be issued under any of the contracts. *Id.*

The two-phase procurement process provided that proposals would be evaluated first under two factors: past performance and design experience. *Id.* at 2; Agency Report (AR) Tab 3c, RFP amend. 2 at 25. As relevant here, RFP paragraph 4.1.2 specified that the past performance evaluation would consider a minimum of three, and a maximum of five, recent relevant projects that had a minimum value of no less than \$2 million each, and that at least three projects should be design-build construction. *Id.* at 20. This section of the RFP identified criteria for relevant projects as follows:

Design-Bid-Build Construction or Design-Build Construction of new or renovated/repared facilities involving architectural exteriors/interiors, electrical, mechanical, plumbing, fire suppression, communication, renewable energy, roofing, anti-terrorism and force protection, and/or structural systems, site work, airfield pavements, transportation systems (*i.e.* roads, highways, bridges, and/or parking), and/or storm water management systems.

Id.

The RFP described the past performance evaluation as involving an assessment of the offeror's performance record and the recency and relevancy of the past performance. *Id.* at 21. For the latter assessment, the evaluation would result in adjectival ratings ranging from very relevant to relevant, somewhat relevant, and not relevant. *Id.* at 21-22. As defined by the solicitation, a very relevant project involved essentially the same scope and magnitude of effort and complexities as the RFP; a relevant project involved a similar scope and magnitude of effort and complexities as the RFP; a somewhat relevant project involved some of the scope and magnitude of effort and complexities as the RFP; and a not relevant project involved little or none of the scope and magnitude of effort and complexities as the RFP. *Id.*

In evaluating past performance overall, the agency would consider the recency of the offeror's performance; its relevance, including the "context of the data"; and the quality of the offeror's performance along with "general trends in performance and source of the information." *Id.* at 22. Those considerations would yield an overall adjectival rating of confidence in the offeror's ability to perform if awarded the contract, which could be rated as no confidence, limited confidence, neutral confidence, satisfactory confidence (reflecting "a reasonable expectation" that the offeror would perform successfully), or substantial confidence ("a high expectation"). *Id.* at 23.

An offeror could propose for multiple locations, but ultimately could be awarded a contract for only one location. *Id.* at 13, 30. Following the phase 1 evaluation, the Corps was to select no more than five offerors to participate in phase 2 for each

contract. An offeror that had proposed for more than one location could be selected to participate in phase 2 for more than one contract. *Id.* at 19; COS at 2.

The Corps received 40 proposals, including a proposal from C&C which sought the contract for any of the three locations. After evaluating the phase 1 proposals, the Corps selected 11 offerors to continue to phase 2: five offerors for Fort Bragg, three for Fort Gordon, and five for Fort Stewart. COS at 2. C&C received a rating of satisfactory confidence for past performance, and a rating of outstanding for design experience. Of the firm's five past performance examples, two were assessed as very relevant, one as relevant, and the remaining two as somewhat relevant. *Id.* C&C's was one of five proposals selected to continue to phase 2 for the Fort Stewart contract, but its proposal was eliminated from phase 2 for the Fort Bragg and Fort Gordon contracts. *Id.* Following a debriefing, C&C filed this protest.

DISCUSSION

C&C argues that the Corps unreasonably evaluated both the relevance and quality of its past performance. The protester argues that the Corps improperly failed to assess all of its projects as very relevant and unreasonably evaluated its overall past performance as satisfactory confidence.

Where a protester challenges the evaluation of past performance, our Office reviews the record to determine whether the evaluation was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Evaluation judgments about the relative merits of a proposal are primarily matters within the contracting agency's discretion, however. *Kay & Assocs., Inc.*, B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4. Our Office will not question those evaluation judgments absent evidence that they are unreasonable or contrary to the stated evaluation criteria. *JSW Maint., Inc.*, B-400581.5, Sept. 8, 2009, 2009 CPD ¶ 182 at 3.

A central contention of C&C's protest is that the description of relevant projects in RFP paragraph 4.1.2 (quoted above) used the term "and/or" to designate three types (or groupings) of tasks: (1) renovation or construction of a facility; (2) structural systems/site work/airfield pavements/transportation systems; and (3) storm water management systems. Protest at 2-3. As a result, C&C contends that each of its references should have been deemed very relevant because each involved the performance of significant elements of the respective type of tasks. *Id.* at 15, 18, 21-22. Instead of following that approach, which C&C contends the RFP required, the protester argues the Corps improperly compared each project to the total scope of tasks described in paragraph 4.1.2. *Id.* at 3. C&C also argues the Corps failed to document the basis for its judgment that its three projects were less relevant because they did not show skill level similar to the RFP requirements. Supp. Protest at 15-17.

C&C's challenges focus on the three past performance projects assessed as either somewhat relevant or relevant. The first project was a dog kennel renovation project, which the Corps evaluated as relevant because the work involved "no structural systems, exterior finishes, roofing, force protection, anti-terrorism, and other similar

work included in [paragraph] 4.1.2.” Protest at 16 (quoting Protest attach. 2, Debriefing at 2). C&C argues that this project involved facilities renovation, and therefore the assessment of its relevance should have considered only whether the work involved the elements in the first set of tasks in paragraph 4.1.2--architectural exteriors/interiors, electrical, mechanical, plumbing, fire suppression, communication, renewable energy, roofing, anti-terrorism and force protection. C&C contends that, in addition to the project having a value over \$2 million, it involved seven of the first set of criteria listed in paragraph 4.1.2, including elements of architectural exteriors/interiors, electrical, mechanical, plumbing, fire suppression, communications, and anti-terrorism/force protection. As a result, C&C contends the project should have been assessed as very relevant. *Id.* at 14-15.

C&C raises similar challenges to the assessment of the two other projects--a chillers repair project and a storm damage repairs project--as somewhat relevant, rather than very relevant. The protester contends that its chillers repair project showed five out of the facilities renovation elements (*i.e.*, what it labels as the first type of relevant work listed) in paragraph 4.1.2, and had a value over \$4 million, and therefore should have been assessed as very relevant. *Id.* at 18-19. C&C argues that the Corps unreasonably assessed the project as somewhat relevant by noting that mechanical work was the project’s main focus, so its scope was limited and less complex than depicted in paragraph 4.1.2. *Id.* at 18 (quoting Protest attach. 2, Debriefing, at 2). For the storm damage repairs project, C&C argues that the work fit the criteria for the third type of tasks, storm water management systems, with a value over \$4 million. Together those should have made the project very relevant in C&C’s reading of RFP paragraph 4.1.2 because storm water management systems were the third type of relevant work.

The Corps responds that its evaluation of C&C’s past performance was reasonable and consistent with the RFP. The agency disputes C&C’s contention that the RFP created three distinct types of tasks that would be individually evaluated for relevance. AR, Memorandum of Law (MOL) at 9. Instead, the Corps argues that it reasonably evaluated whether offerors’ past performance covered essentially the same, was similar to, or merely had some of the scope and magnitude of the work the agency anticipated ordering, which the agency describes as “at least 15 varieties (scopes) of work” that the RFP identified in paragraph 4.1.2. Supp. MOL at 4. Thus, the agency assessed the relevance of past performance against the full range of work described in the RFP, not against smaller subsets as C&C urges.

The Corps also responds to the individual relevance assessments of the three projects at issue. For C&C’s dog kennel project, the agency argues that it reasonably recognized the work was relevant because it included interior renovations--which represented some of the scope and complexity under the RFP--but that the work was neither similar to, nor essentially the same as, the scope and complexity of the work required by the RFP. MOL at 6. In particular, the dog kennel project did not include structural systems, exterior finishes, roofing, force protection, anti-terrorism, or other elements of paragraph 4.1.2. *Id.* As a result, the Corps argues its assessment of

C&C's past performance was both reasonable and consistent with the RFP criteria. *Id.* at 7. Similarly, for C&C's challenges to its chillers repair project, the Corps explains that the project included renovation of mechanical spaces, involving only mechanical trades, and thus the evaluation concluded that the project did not include the same level of complexity required for projects with architectural interior/exterior finishes, electrical and structural work, and significant coordination of multiple trades. *Id.* at 7-8. For the storm damage repairs project, the agency explains that it concluded the project involved site work, minimal repaving, and minor stormwater management, and thus did not show a similar level of complexity as the work required under the RFP, making C&C's project only somewhat relevant. *Id.* at 8. The Corps argues the contemporaneous record shows that each of C&C's projects was reasonably assessed for relevance using the RFP criteria.

Based on our review of the record, the Corps's relevance assessment of C&C's past performance was reasonable and consistent with the criteria in the RFP. The summary of work appended to the RFP contained a lengthy and wide-ranging list of types of work that could be ordered under the contracts. AR, Tab 3a, RFP appx. (Section 01 11 00) at 170-174.¹ Thus, under one of several headings ("horizontal and other construction"), the summary of work described new construction, renovation, [and] repairs and upgrades to pavement, surfaces, transportation facilities, earthwork, landscaping, sitework, and stormwater management systems, at a varied list of worksites, after which the description noted that task order requirements could also include site preparation, earthwork, grading, excavation and filling, clearing and grubbing, surveying, traffic and signalization and traffic studies, storm water management, storm drainage systems, and erosion control. *Id.* at 173.

Consistent with the breadth of the projects exemplified above, RFP paragraph 4.1.2 reasonably informed offerors that past performance that showed a similarly broad range of the listed elements would be the most relevant. In contrast, projects that showed only limited elements of the scope in paragraph 4.1.2 would be recognized as relevant, but would not qualify as very relevant. We do not agree with C&C that the term "and/or" can be reasonably read as dividing the work into three discrete types, or that the language otherwise required the Corps to regard as very relevant an offeror's past performance that showed only limited elements of those tasks listed. The evaluation was thus consistent with the RFP because past performance that showed only limited elements of the RFP relevance criteria was assessed as relevant, or somewhat relevant, but could not reasonably be assessed as very relevant in comparison to the breadth of work anticipated under the contracts.

C&C also argues that the agency unreasonably assessed its overall past performance record as satisfactory confidence, rather than substantial confidence. C&C contends that the Corps erred in this regard not just regarding the relevance of its projects, but also by allegedly ignoring ratings that had characterized its performance as exceptional,

¹ The summary of work document was separately numbered so our citation here uses pagination of the RFP as submitted with the agency report.

and by failing to recognize a trend of improving performance. Protest at 25-26. As examples, C&C notes that when the dog kennel project was 50 percent complete, its performance was characterized as very good, but as exceptional when fully complete. Similarly, the performance on its chillers project was rated as satisfactory when 66 percent complete, but as very good when fully complete. *Id.* at 27. C&C argues that the Corps failed to consider both its exceptional rating and the trend of its performance as supported by narrative comments that described C&C's work positively. *Id.*

The Corps responds that its assessment of past performance reasonably considered the full record of C&C's performance for each project. The agency argues that the evaluation did, in fact, consider C&C's exceptional ratings, but that the record also contained lower ratings of very good and satisfactory, which were expressly mentioned because they affected the agency's overall past performance evaluation. Supp. MOL at 7. The Corps agrees with C&C that the trend of its past performance was favorable, and states that the agency's assignment of a rating of satisfactory confidence accurately reflected that trend. MOL at 17-18. Alternatively, if the trend had not been favorable, a rating of satisfactory confidence would not have been unlikely. MOL at 18 n.5. Overall, the agency argues that it reasonably considered multiple aspects of C&C's performance record, and was not required to document a trend analysis separately from the overall evaluation judgments. Supp. MOL at 7.

Based on our review of the record, we conclude that the Corps's overall assessment of C&C's past performance was reasonable and consistent with the RFP. As indicated previously, our review of a protester's challenge to an agency's evaluation of past performance recognizes that the evaluation is primarily within the contracting agency's discretion. *Kay & Assocs., Inc.*, supra. Here, contrary to C&C's argument, the record adequately documents the basis for the evaluators' judgments about the complexity and skill levels of C&C's projects, when compared to the breadth of the agency's requirement as described in the RFP. The Corps properly considered, for example, that C&C's efforts on its dog kennel project demonstrated similar work in the form of facilities renovation, but did not show the same level of complexity and skill that the RFP would require the contractor to provide, in particular for architectural interior/exterior finishes, for electrical work, or structural elements. *Id.* at 9. Those judgments are consistent with the RFP's depiction of the broad scope of the requirement, and reflect reasonable judgments by the agency's evaluators. Although C&C disagrees with the evaluators' judgments, it has not provided a basis for our Office to find those judgments unreasonable or inadequately documented.

C&C's protest thus provides no basis for our Office to question the Corps's determination not to include its proposal in phase 2 of the competition for the Fort Bragg and Fort Gordon contracts. For both locations, the record shows that the source selection authority reviewed the evaluations of all offerors, including C&C, and concluded that there was a clear division between the five firms selected to continue to phase 2 for Fort Bragg and three firms for Fort Gordon, and the remaining offerors including C&C. AR, Tab 6a, SSA Decision (Fort Bragg) at 7; Tab 6b, SSA

Decision (Fort Gordon) at 6. The record shows that those determinations are consistent with the RFP and reasonable.

The protest is denied.

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