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Decision

Matter of: West Pacific Electric Company Corporation

File: B-421606; B-421606.2; B-421606.3

Date: July 6, 2023

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DIGEST

Protest that agency unreasonably evaluated protester's proposal as unacceptable under the solicitation's experience factor is denied where the evaluation was reasonable and consistent with the solicitation.

DECISION

West Pacific Electric Company Corporation (West Pacific), of Pismo Beach, California, protests its exclusion from the competition under request for proposals (RFP) No. N6247321R1216, issued by the Department of the Navy, Naval Facilities Engineering Command, for projects involving construction and repair of dry utilities at government installations located in six western states. The protester argues that the agency improperly rated its proposal as unacceptable under the experience factor.

We deny the protest.

BACKGROUND

On November 4, 2021, the Navy issued the solicitation as a small business set-aside under the two-phase design-build procedures of Federal Acquisition Regulation (FAR) subpart 36.3 and the negotiated procurement procedures of FAR part 15. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 6; Agency Report (AR),

Exh. 1, RFP at 38.¹ The solicitation contemplated the award of three or more indefinite-delivery, indefinite-quantity (IDIQ) contracts to the offerors whose proposals were determined to represent the overall best value to the government, using a tradeoff process. COS/MOL at 5-6. The agency would issue fixed-price task orders under the IDIQ contracts for projects involving new construction, renovation, and repair of dry utilities construction projects at government installations located in California, Arizona, Nevada, Utah, Colorado, and New Mexico. *Id.* at 5.

For phase one of the competition, the solicitation required offerors to submit proposals addressing the following evaluation factors: technical approach, experience, past performance, and safety. RFP at 48.² As relevant here, the experience factor encompassed two types of experience: construction experience and design experience. *Id.* at 49-52. For design experience, the solicitation required offerors to identify a maximum of five relevant design projects performed by the offeror's proposed design team using a design experience project datasheet, which was an exhibit to the solicitation. *Id.* at 52. The solicitation required the proposed design team to demonstrate experience with each of the following types of work:

- Design of underground electrical power distribution systems, with a minimum system voltage of 15 [kilovolt (kV)]; nominal voltage may vary (*e.g.*, 12kV would qualify; 4160 [volts (V)] would not qualify).
- Design of overhead electrical power distribution systems, with a minimum system voltage of 15kV; nominal voltage may vary (*e.g.*, 12kV would qualify; 4160V would not qualify).
- Design of electrical substations (including transformers, switchgear, and control systems).
- Preparation of required time-current data, one-line diagram, and coordination curves, as described in [Unified Facilities Criteria] 3-501-01, Electrical Engineering, paragraph 3-2.5.

*Id.*³ The solicitation stated that the description provided on the project datasheets should clearly describe the scope of work performed and the relevancy of the project to the solicitation requirements. *Id.* at 53. The solicitation stated that unless specifically requested, the agency would not consider information submitted in addition to the project datasheet. *Id.* at 52. The agency would assign each proposal an adjectival

¹ The agency used a Bates numbering system to provide page numbers for the exhibits it submitted with the agency report; citations to these exhibits refer to the Bates numbers assigned by the agency.

² The solicitation stated that the experience and safety factors were of equal importance, and when combined, were of equal importance to the past performance factor. RFP at 48.

³ A single project could satisfy more than one of the minimum requirements. RFP at 52.

rating of outstanding, good, acceptable, marginal, or unacceptable under the experience factor. AR, Exh. 2, Source Selection Plan at 22-23.

The Navy received 20 proposals, including West Pacific's, by the deadline for receipt of phase one proposals. COS/MOL at 7. The technical evaluation team (TET) evaluated the proposals under the phase one factors. *Id.* As relevant here, the agency assessed a deficiency to West Pacific's proposal under the experience factor after concluding that the protester did not submit at least one project that demonstrated experience designing overhead electrical power distribution systems. *Id.* at 8; AR, Exh. 4, TET Report at 496. The TET rated the protester's proposal as unacceptable under the experience factor and concluded that the proposal was unawardable. AR, Exh. 4, TET Report at 495.

On March 8, 2023, the Navy notified West Pacific that it was not one of the most highly qualified offerors, and it was not selected to proceed to phase two of the competition. Protest, exh. B, Navy Letter to West Pacific. After receiving a debriefing, West Pacific filed this protest.

DISCUSSION

The protester challenges the Navy's evaluation of its proposal under the experience factor and argues that it was unreasonable for the agency to eliminate its proposal from the competition. The agency responds that its evaluation of the protester's proposal under the experience factor was reasonable and consistent with the terms of the solicitation. Based on our review of the record and as explained below, we conclude there is no basis to sustain the protest.

West Pacific contends that the agency's evaluation was unreasonable because the agency failed to consider a project included in West Pacific's proposal that, in the protester's view, demonstrated experience designing an overhead electrical power distribution system.⁴ Supp. Protest at 4. The protester points to the following statement

⁴ The parties dispute whether the protester's argument is timely. The Navy asserts that during its oral debriefing of West Pacific, it disclosed that the protester's proposal received a deficiency and was rated as unacceptable under the experience factor because West Pacific's proposal did not demonstrate experience designing overhead electrical power distribution systems. Supp. MOL at 4. The Navy argues that the protester's allegation, raised for the first time after receiving the agency's 5-day letter specifying documents it intended to provide in response to the initial protest, is untimely. *Id.* The agency asserts the protester should have raised the allegation in West Pacific's initial protest. *Id.*

The protester contends that during the debriefing, the Navy indicated that the evaluators assessed a deficiency because West Pacific did not demonstrate experience designing a 15kV electrical system, and the protester challenged that finding in its initial protest. West Pacific asserts that it did not know that the agency assessed the deficiency based on the lack of overhead electrical power distribution system design experience until it

from West Pacific's project datasheet for a project at McConnell Air Force Base, asserting that it demonstrates experience designing overhead electrical power distribution systems: "Construction of 12.47kV electrical power distribution system and underground power distribution system – ductbanks." *Id.* (quoting AR, Exh. 3, West Pacific Proposal at 277). Relying on this language, the protester asserts that the description indicated there were two phases to the project, "One is clearly 'underground power distribution system,' thus indicating and necessitating that the other work under that project was not underground, but overhead." Comments & 2nd Supp. Protest at 4. West Pacific argues that the agency unreasonably ignored the "plain language" in its proposal when it assessed the deficiency for failing to demonstrate experience with designing overhead electrical power distribution systems.⁵ *Id.*

We reject the protester's argument that the plain language in its proposal demonstrated experience designing overhead electrical power distribution systems. An offeror bears the burden of submitting an adequately written proposal and runs the risk of an unfavorable evaluation when it fails to do so. *Immersion Consulting, LLC*, B-420638, B-420638.2, June 30, 2022, 2022 CPD ¶ 171 at 4. The project datasheet for the McConnell Air Force Base project does not include the word "overhead" or any similar language. AR, Exh. 3, West Pacific Proposal at 276. Rather, as the Navy points out, the title of the project was "[DELETED]," and the description on the project datasheet referred to digging trenches; laying cable, pipe, and conduit; and de-energizing manholes. Supp. MOL at 9-10 (quoting AR, Exh. 3, West Pacific Proposal at 276-77). The solicitation stated that the description provided on the project datasheet should clearly describe the scope of work performed and the relevancy of the project to the solicitation requirements. RFP at 53. Demonstrating experience with designing overhead electrical power distribution systems was a minimum requirement in the

received the 5-day letter. Supp. Comments at 3. The agency and the protester each submitted declarations from representatives who attended the debriefing to support their respective positions.

In light of the fact that the debriefing was conducted orally and was not recorded; the differing recollections as to specifically what, if anything, regarding experience designing overhead electrical power distribution systems was mentioned at the debriefing; and our longstanding practice of resolving doubts regarding timeliness in favor of the protester, we find the protester's challenge to the propriety of the agency's determination that West Pacific's proposal failed to demonstrate experience with overhead electrical design to be timely. See *Grunley Constr. Co.*, B-407900, Apr. 3, 2013, 2013 CPD ¶ 182 at 5 n.5; *Fort Mojave/Hummel, a Joint Venture*, B-296961, Oct. 18, 2005, 2005 CPD ¶ 181 at 6 n.7.

⁵ Additionally, the protester contends that the statement of work and drawing for the McConnell Air Force Base project showed that the project involved an overhead electrical power distribution system. Supp. Protest at 4. This argument is unavailing because the information the protester relies on was not in its proposal, and the solicitation stated that unless specifically requested, the agency would not consider information outside of the project datasheet. RFP at 51.

solicitation. *Id.* West Pacific's proposal did not clearly describe the project as involving the design of an overhead electrical power distribution system, and we have no basis to question this aspect of the Navy's evaluation.

West Pacific raised other arguments that are in addition to, or variations of, those specifically discussed in this decision. We need not address the merits of these additional arguments because the protester is not an interested party to maintain them, given our conclusion, discussed above, that its proposal was reasonably found unacceptable because West Pacific did not demonstrate experience designing overhead electrical power distribution systems. As a result, even if we found that the protester's remaining allegations had merit, West Pacific's proposal would still be unacceptable under the experience factor, and we would have no basis to disagree with the agency's decision to eliminate the protester's proposal from the competition. 4 C.F.R. § 21.0(a); *Benaka Inc.*, B-418639, July 9, 2020, 2020 CPD ¶ 371 at 5.

The protest is denied.

Edda Emmanuelli Perez
General Counsel