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Decision

Matter of: Global Pacific Design Builders, LLC

File: B-422211

Date: February 1, 2024

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GAO, participated in the preparation of the decision.

DIGEST

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

DECISION

Global Pacific Design Builders, LLC (Global), a small business of Tamuning, Guam, protests its non-selection for award under request for proposals (RFP) No. N40192-21-R-2800, issued by the Department of the Navy, for design-build construction services. The protester contends the agency's evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The agency issued the solicitation as a small business set-aside on May 11, 2021, pursuant to the two-phase design-build procedures of Federal Acquisition Regulation (FAR) subpart 36.3. Agency Report (AR), Tab 3, RFP at 10.¹ The RFP contemplated the award of indefinite-delivery, indefinite-quantity (IDIQ) multiple-award task order contracts (MATOC), with a 5-year base period of performance, and three, 1-year option periods, with orders to be issued on a fixed-price basis. *Id.* at 72, 78. Through the

¹ All citations to the agency's report are to the corresponding Adobe PDF document page numbers.

RFP, the Navy sought construction, renovation, modernization, and routine repair and maintenance services at various federal and military facilities on Guam. *Id.* at 5.

The competition would be conducted in two phases. During the first phase, the Navy would evaluate proposals considering four factors: technical approach; experience; safety; and past performance.² *Id.* at 11. The Navy would then select a maximum of 16 of the most highly qualified offerors for phase two consideration. *Id.* at 24; AR, Tab 9, Amendment 03 to the RFP at 2. Those offerors continuing to phase two would submit proposals and would be evaluated against two factors: technical solution to the seed project; and price.³ RFP at 26.

The solicitation provided for award on a best-value tradeoff basis, considering all factors other than the pass/fail technical approach factor. *Id.* The solicitation stated that the technical factors were of equal importance, and when combined, were equal to past performance. *Id.* The non-price factors, when combined, were approximately equal to price. *Id.* The solicitation advised that the “importance of price will increase if the Offerors’ non-price proposals are considered essentially equal in terms of overall quality, or if price is so high as to significantly diminish the value of a non-price proposal’s superiority to the Government.” *Id.* The RFP explained the Navy intended to award ten contracts but reserved the right to make fewer awards. *Id.* at 10.

Global submitted its phase one proposal by the established due date and advanced to phase two of the competition. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 10. Following submittal of initial phase two proposals, the Navy engaged in discussions with phase two offerors. *Id.* at 12. Global submitted its phase two final revised proposal on August 25, 2023. *Id.* The following is a summary of Global’s final ratings:⁴

² Under the technical approach factor, proposals would be rated as either acceptable or unacceptable; proposals rated as unacceptable would not be considered in phase two. RFP at 26. Global was rated as acceptable under this factor. AR, Tab 6, Phase One Source Selection Evaluation Board (SSEB) Report at 77.

³ The seed project was a warehouse renovation in Barrigada, Guam. See RFP at 92.

⁴ The source selection plan explained the Navy would assign one of five adjectival ratings for the experience, safety, and technical solution factors: outstanding; good; acceptable; marginal; and unacceptable. AR, Tab 4, Source Selection Plan at 20. Using these same adjectival ratings, the Navy would also assign a combined technical rating. *Id.* For past performance, the Navy would assign one of five adjectival confidence ratings: substantial confidence; satisfactory confidence; neutral confidence; limited confidence; and no confidence. *Id.* at 23.

	Global
Technical Approach	Acceptable
Experience	Good
Safety	Good
Past Performance	Satisfactory Confidence
Technical Solution to Seed Project	Good
Price	\$24,127,113 (11 th highest out of 15)

AR, Tab 31, Global's Debriefing at 21, 30.

The source selection advisory council (SSAC) ranked the phase two offerors by comparing the merits of their relative proposals; the Navy ranked Global's proposal as 11th out of 15 phase two proposals. AR, Tab 26, Post-Discussions Phase Two SSAC Report at 12. As an example of the agency's approach, the Navy compared the firm ranked as offering the 10th best proposal to Global. The SSAC explained that while Global was "considered more beneficial in non-price factors than [the 10th best offeror] based on [Global's] higher rating in Technical Solution and additional strengths[.]" the "additional strengths noted in [Global's] proposal do not warrant the additional price over [the 10th best offeror] since [the 10th best offeror] also offers many of the same non-price benefits as [Global]." *Id* at 46. The SSAC concluded that the strengths offered in Global's approach did not warrant paying the associated price premium, and the Navy did not consider Global's proposal as representing the best value to the agency (ranking outside the top 10 offerors). See *id.* at 54 (comparing Global's proposal to other offerors' proposals in making the agency's best-value determination). The source selection authority agreed with the SSAC's recommendations. AR, Tab 28, Phase Two Source Selection Decision Document (SSDD) at 1-2.

The agency notified Global it was not selected for award on September 21. COS/MOL at 16; AR, Tab 30, Pre-award Notice at 1. The agency provided Global with a debriefing on September 29. AR, Tab 31, Global's Debriefing at 1. Global filed an agency-level protest on October 6, challenging the agency's award decision and the Navy's evaluation of Global's proposal. Protest, exh. 7. The agency denied Global's protest on November 9. Protest, exh. 10. Global filed the instant protest with our Office on November 20.

DISCUSSION

Global presents two principal grounds of protest.⁵ First, the protester contends the Navy's assignment of a significant weakness under the safety evaluation factor was

⁵ In response to the agency's request, our Office dismissed two of Global's protest allegations prior to the production of the Navy's report. GAO Notice of Resp. to Agency's Req. for Dismissal, Dec. 12, 2023. As we explained, our Office dismissed Global's challenge to the agency's assignment of weaknesses under the technical
(continued...)

unreasonable, where the evaluators overlooked relevant aspects of Global's proposal. Protest at 8; Comments at 4; Supp. Comments at 2. Second, the protester challenges the agency's assignment of a weakness under the technical solution factor, arguing its proposal sufficiently met the evaluation criteria outlined in the RFP. Protest at 9; Comments at 5-6; Supp. Comments at 3-5. The protester contends that but for these errors, its proposal would have been more favorably evaluated under the non-price factors and would have been in line for award of a contract. For the reasons that follow, we find no basis to sustain the protest.⁶

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Gulf Coast Petroleum Reserve Operations, LLC*, B-409004.2 *et al.*, Jan. 24, 2014, 2014 CPD ¶ 41 at 8. The evaluation of proposals is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and identifying the best method for accommodating them. *International Preparedness Assocs. Inc.*, B-415416.3, Dec. 27, 2017, 2017 CPD ¶ 391 at 4. A protester's disagreement with the agency's judgments, without more, is not sufficient to render the evaluation unreasonable. *Armedia, LLC*, B-415525 *et al.*, Jan. 10, 2018, 2018 CPD ¶ 26 at 4.

First, the protester argues the agency's assignment of a significant weakness to its proposal under the safety evaluation factor--for the firm's failure to address safety performance in the evaluation and selection of subcontractors--was in error because Global would "be self-performing its task order requirements if awarded a contract, so there would be no reason to assess non-existent subcontractors." Protest at 7. Global explains that but for the agency's error, it would have received the highest rating under

approach factor because the protester could not demonstrate competitive prejudice where its proposal was otherwise rated as acceptable for the factor, and the weaknesses were not otherwise considered in the best-value tradeoff. *Id.* at 1-2; see *Orbit Research, LLC*, B-417462, Jul. 17, 2019, 2019 CPD ¶ 258 at 7 (explaining that competitive prejudice is an essential element of a viable protest and where a protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest.). We also dismissed Global's protest alleging that the Navy failed to comply with FAR section 33.103(d)(4), when the agency failed to notify the protester that another offeror had previously filed an agency-level protest in connection with the procurement. We concluded that Global's allegation was legally insufficient, where Global failed to identify any legal authority directing an agency to provide such notice, and any such failure to provide notice had no bearing on the agency's underlying evaluation and award decisions. *Id.* at 2.

⁶ Global raises other collateral allegations. Although our decision does not specifically address them all, we have considered each argument and find that none provides a basis on which to sustain the protest.

the safety factor. Comments at 4. In response, the agency argues its assignment of a significant weakness was reasonable, given the material presented in Global's proposal. COS/MOL at 3; Supp. MOL at 1-4.

The solicitation explained the Navy would evaluate proposals under the safety factor to "determine that the Offeror has consistently demonstrated a commitment to safety and that the Offeror plans to properly manage and implement safety procedures for itself and its subcontractors." RFP at 31. Broadly, the agency would examine three categories within an offereor's safety proposal: (1) days away from work, restricted duty, or job transfer (DART) rate;⁷ (2) total case rate (TCR);⁸ and (3) technical approach for safety narrative. *Id.* at 31-32. As relevant to this protest, the Navy would evaluate a proposed technical approach safety narrative to "determine the degree to which" an offeror "[d]escribes a methodical process of evaluating subcontractor's safety performance in their selection process" and "[d]escribes a logical management plan to hold themselves and their subcontractors accountable for adhering to the safety requirements of the contract." *Id.* at 32.

The agency assigned the protester's proposal a significant weakness under the safety factor for Global's failure to address safety performance in the firm's evaluation and selection of its subcontractors. AR, Tab 6, Phase One SSEB Report at 83. The SSAC also noted the assigned significant weakness, explaining that Global's failure "may potentially cause degradation of performance[.]" but that "[s]pecial contractor emphasis and close Government monitoring will likely be able to overcome any difficulties in their design-build construction and safety performance." AR, Tab 7, Phase One SSAC Report at 13. The SSAC also noted that the "strengths noted in [Global's] demonstrated design-build experience, safety record, and technical approach to safety will be advantageous to the Government during contract performance[.]" and "[t]herefore, risk of unsuccessful performance is low to moderate." *Id.* The Navy assigned Global's proposal an overall rating of good under the safety factor. *Id.*

Global argues that this significant weakness is unreasonable because Global proposed to self-perform all work, and, therefore, it was unreasonable for the agency to assess a weakness for not addressing the protester's approach to evaluating subcontractor

⁷ The DART rate is a safety metric computed by dividing the total number of DART incidents, multiplied by 200,000, by the number of employee labor hours worked. RFP at 30. The RFP provided risk ranges based on the DART rate. For example, a DART rate less than 1.0 was considered "Very Low Risk". *Id.* at 32.

⁸ A TCR incident included "injuries or illnesses resulting in death, days away from work, restricted work or transfer to another job days beyond the day of injury/illness, medical treatment beyond first aid, or loss of consciousness." RFP at 30. The TCR was determined by dividing the total number of TCR incidents, multiplied by 200,000, by the number of employee labor hours worked. *Id.* at 31. Again, like the DART rate, the solicitation provided risk ranges based on the TCR. For example, a TCR less than 2.49 was considered "Very Low Risk". *Id.* at 32.

safety qualifications. Based on our review of the record, however, we find no basis to sustain Global's protest allegation. In this regard, Global's argument that it will self-perform is belied by its own proposal. First, as the Navy points out, Global's proposal substantively discusses its subcontractors in multiple parts of the proposal. See Supp. MOL at 3 (noting that Global identifies, across 30 pages of its proposal, various subcontractors performing in this effort). Thus, even if, as the protester asserts, Global, alone, would self-perform the requirements of this contract, that information is nowhere presented in Global's proposal. Second, also as the Navy notes, while Global's proposal does provide information concerning how the firm will ensure its subcontractors meet safety and quality standards (see AR, Tab 5, Global's Phase One Proposal at 207), absent from its safety narrative regarding subcontractors is, as was required by the terms of the RFP, a discussion of the methodology for how Global would evaluate subcontractor's safety performance when selecting those subcontractors. See RFP at 32. It is an offeror's responsibility to submit a well-written proposal with adequately detailed information that allows for a meaningful review by the procuring agency. *Patriot Def. Grp., LLC*, B-418720.3, Aug. 5, 2020, 2020 CPD ¶ 265 at 9. Accordingly, this protest allegation is denied.⁹

Second, the protester challenges the Navy's assignment of a weakness under the technical solution to seed project factor. The RFP required offerors to provide a technical solution narrative, and a design and construction schedule, addressing the seed project (which was a warehouse renovation project in Barrigada, Guam). RFP at 34-35. As relevant here, for an offeror's design and construction schedule, a proposal was to: (a) include no more than 100 construction line item activities; (b) demonstrate a timeline that identified "critical path activities, milestones, duration[,] and other important activities and clearly show the logic and sequence of events necessary to support ongoing stakeholder operations in the construction area and successful execution of the project[;]" and (c) have a performance period not to exceed 540 calendar days. *Id.* at 35; AR, Tab 14, Amendment 09 to RFP at 2. Relevant to this protest, offerors would be evaluated, among other things, as to whether offerors "demonstrate a realistic, comprehensive, efficient, and executable approach to successfully accomplish key project milestones within the project schedule constraints prescribed in the RFP." *Id.* at 35.

⁹ Global argues, for the first time in its supplemental comments, that the RFP "did not clearly define how important or relevant" this aspect of the agency's safety evaluation would be. Supp. Comments at 2. This argument constitutes an improper piecemeal presentation of issues; the timeliness requirements of our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. See *Battelle Memorial Institute*, B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 24 n.32; 4 C.F.R. § 21.2(a)(1). Here, Global reasonably should have known of this basis of protest based on the terms of the solicitation and the agency's evaluation of its proposal at the time it filed its initial protest. Accordingly, at this juncture, the allegation is untimely and will not be considered.

In evaluating Global's final phase two proposal, the Navy, while assigning Global an overall rating of good, nevertheless assigned a weakness under the technical solution factor based on Global's offered design and construction schedule. AR, Tab 25, Phase Two SSEB Report at 23. The SSEB explained that Global's "[c]ritical path activities within the 100 construction line item limit on the schedule are not connected by arrows to represent the dependencies between them, which does not clearly show the logic and sequence of events." *Id.*

The protester argues the assigned weakness was unreasonable. Protest at 8; Comments at 5-6; Supp. Comments at 2-4. Global contends that its use of the critical plan method (CPM), over a precedence diagramming method (PDM) project planning technique (which, Global argues, was the Navy's preferred method), was acceptable. To the extent the Navy required the use of PDM for its construction scheduling, such a mandate constituted an unstated evaluation criterion. *Id.*

On this record, we find no basis to object to the agency's assignment of this weakness. Contrary to the protester's assertion, neither the RFP nor the underlying evaluation manifests a requirement to use a specific scheduling methodology or process. Indeed, the Navy's evaluation did not fault Global for using CPM over PDM, but, rather, that Global's offered schedule did not show the dependencies of scheduled events and did not clearly and logically show the sequence of events. See AR, Tab 25, Phase Two SSEB Report at 23. Global offers no challenge to the underlying basis for the agency's conclusion regarding the offeror's failure to provide its scheduling information in a logical and sequential manner. To the contrary, the protester concedes that its proposal could have been clearer. Protest at 8 ("While [Global] admits [connecting by arrows the dependencies between critical path activities] would have helped the source selection committee in understanding more fully the critical path analyses of the proposed schedule . . ."). As noted above, it is an offeror's responsibility to submit a well-written proposal with adequately detailed information that allows for a meaningful review by the procuring agency. *Patriot Def. Grp., LLC, supra* at 9. Based on the record before us, we find no basis to sustain this protest allegation.

The protest is denied.

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