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Decision

Matter of: Mike Coates Construction Company, Inc.

File: B-421618

Date: July 20, 2023

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Anthony Giannopoulos, Esq., General Services Administration, for the agency.

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DIGEST

Protest of an agency's technical evaluation and best-value tradeoff determination is denied where the record shows that the evaluation and best-value tradeoff determination were reasonable and consistent with the stated evaluation criteria.

DECISION

Mike Coates Construction Company, Inc. (Coates), a small business of Niles, Ohio, protests the award of a contract to Burchick Construction Company, Inc., a small business of Pittsburgh, Pennsylvania, under request for proposals (RFP) No. 47PD0122R0044, issued by the General Services Administration (GSA) for construction work at the Joseph F. Weis, Jr. United States Bankruptcy Court (USBC) backfill project in Pittsburgh, Pennsylvania. The protester challenges the agency's evaluation of Coates's prior experience and past performance, and asserts that the agency's tradeoff analysis and best-value determination were arbitrary and unreasonable.

We deny the protest.

BACKGROUND

On July 29, 2022, the agency issued the solicitation for construction work in the Joseph F. Weis, Jr. U.S. Courthouse in Pittsburgh, PA, as a set-aside for small business concerns, in accordance with Federal Acquisition Regulation (FAR) part 19. The Weis USBC backfill project consists generally of demolition, renovation, and associated infrastructure work, including mechanical, electrical, plumbing, fire protection, and

limited structural work. Contracting Officer's Statement (COS) at 1.¹ This FAR part 15 negotiated procurement was conducted using a two-phased process. Agency Report (AR), exh. 1, RFP at 7, 15. GSA solicited technical proposals in phase 1 and price proposals in phase 2.² RFP at 7. The solicitation provided that technical proposals would be evaluated under three factors, and established the factors' relative weights, as follows:

Project Management Plan and Approach – 30%;

Prior Experience on Relevant Projects – 40%;

Past Performance on Relevant Projects – 30%.

RFP at 10.³ The RFP stated the agency would utilize the project information submitted under the prior experience factor to assess the *relevance* and quality of work under the past performance factor.⁴ *Id* at 14 (emphasis added). Prior experience on relevant projects, would be “evaluated based upon the written response to the RFP by the [o]fferor and the prior experience demonstrated on the presented projects.” RFP at 13. The solicitation defined “relevant projects” as projects that had a similar size and complexity that entailed renovations of facilities with similar characteristics to those described below:

- Total dollar value of the contract (awarded price and final contract price) of approximately \$10 million.
- Renovation of an office building, of approximately 20,000 [square feet].
- Renovation of a courtroom and chambers.
- Federal clientele.
- Phased construction in an occupied building.
- A scope of work that includes architectural build-out, mechanical work, electrical work, audio-visual and informational technology systems, security systems, and work on fire protection systems.

¹ All citations are to the Adobe PDF page numbers of the documents referenced in this decision, unless otherwise paginated.

² Coates was ranked third after phase 1 proposals, and second, after receipt of prices in phase 2. COS at 4.

³ The agency assigned adjectival ratings for each of the three technical factors. AR, exh. 6, Source Selection Evaluation Board Technical Report (SSEB) at 4. The possible ratings were: excellent, good, acceptable, marginally acceptable, or unacceptable, and, for past performance only, neutral. SSEB at 4-5.

⁴ As part of the submittal requirements, the solicitation asked for “[a] narrative explaining how the characteristics of the submitted project relate to the characteristics of the project described in this solicitation.” RFP at 13.

- Reached substantial completion within the last 10 years.

The RFP indicated that projects with similar characteristics to those listed above would be rated more highly when considering the firm's performance capabilities under the past performance factor. Offerors were instructed that only the first three projects submitted would serve as the basis for the agency's technical evaluation, while additional projects submitted "may be given additional favorable consideration."⁵ RFP at 12.

Price was evaluated separately, prior to the agency's trade-off analysis. The non-price factors, when combined, were described as being significantly more important than price. *Id* at 27.

The agency received several technical proposals by the closing date of phase 1, including proposals from the protester and the awardee. Following the submission of phase 2 price proposals, Coates was deemed to have offered the lowest price, of approximately \$16.7 million. AR, exh. 8, Source Selection Decision Document (SSDD) at 15. The next lowest offeror, Burchick, submitted a proposal priced at approximately \$17.7 million. *Id*.

Coates identified seven projects in total. The first three submitted projects were identified as the Wells, Youngstown, and YWCA projects.⁶ The YWCA project was described in Coates's proposal as "the conversion of a 5-level historical structure, formerly a YWCA fitness building, into apartment units and common space for use by women in need of a shelter."⁷ Technical Proposal at 34.

The SSEB evaluated the Wells and Youngstown projects as "somewhat relevant" and evaluated the YWCA project as "not relevant." The SSEB determined that the YWCA project met only two relevance characteristics: scope of work and substantial completion within the last 10 years. The SSEB determined that Coates's YWCA project

⁵ The RFP provided that additional favorable consideration might be given for: the quantity of projects of similar scope and complexity; projects located in the Pittsburgh metropolitan area; projects that are the same as those listed under the resumes for proposed key personnel; and GSA projects. RFP at 13.

⁶ Coates identified four additional projects, including the Crawford County Courthouse, of relevance, a renovation of a state courthouse with a total dollar value of approximately \$5.3 million. AR, exh. 4, Technical Proposal at 39.

⁷ Coates's technical proposal indicated, by inserting "YES" in a table, that the YWCA project met several relevance characteristics including a total dollar value of the contract of approximately \$10 million, renovation of an office building of approximately 20,000 [square feet], and phased construction in an occupied building. Technical Proposal at 34-35. The proposal did not include any narrative explaining how the characteristics of the YWCA project related to the characteristics of the project described in this solicitation. See RFP at 13.

did not meet the five remaining characteristics, including: total dollar value of the contract of approximately \$10 million, renovation of an office building of approximately 20,000 [square feet],⁸ renovation of a courtroom and chambers, federal clientele, and phased construction in an occupied building.⁹ The SSEB's relevance determinations were central to its subsequent "acceptable" ratings of Coates's past experience and past performance. SSEB at 16-17. The source selection authority (SSA) in the SSDD agreed with the SSEB's evaluation of the relevance of the submitted projects for the prior performance and prior experience factors. In regards to the first factor, "project management plan and approach," the SSA changed the SSEB's rating from "acceptable" to "good."

While the price of Coates's proposal was lower, Burchick's proposal received more favorable technical ratings, as shown below:

Contractor	Project Management	Prior Experience	Past Performance	Overall
Burchick	Excellent	Excellent	Excellent	Excellent
Coates	Good	Acceptable	Acceptable	Acceptable

In conducting a tradeoff analysis, the SSA determined that Burchick's proposal offered the best value. SSDD at 14-16. Accordingly, the agency awarded the contract to Burchick, and on April 5, 2023, the contracting officer notified Coates of the award to Burchick. See Protest at 9. The agency provided a written debriefing letter, informing Coates that its proposal had received a technical rating of "acceptable" for the prior experience and past performance on relevant projects factors, while Burchick's proposal received ratings of "excellent" in both factors. AR, exh. 9, Notification Letter & Evaluation Statement (NLES) at 3.

After requesting a debriefing, Coates timely submitted this protest on April 14, 2023.

DISCUSSION

Coates challenges the technical evaluation of its proposal, alleging the agency failed to adequately consider Coates's experience as relevant, while also miscalculating the awardee's proposal, thereby rendering the agency's best value tradeoff determination

⁸ Although the SSEB indicated in its evaluation table that Coates met the approximate square footage requirement, it specified in the notes section that the project was apartment work and "not like this project," and that the YWCA project therefore was not relevant. SSEB at 16.

⁹ The SSEB noted that this project also met the third "[a]dditional [c]onsideration" characteristic that asked if key personnel had completed the project. SSEB at 16. In addition, the SSEB noted the county courthouse project submission as being "very relevant," which "compensated a little for the [YWCA] work." *Id.*

“arbitrary and capricious.” Protest at 9. As discussed below, we deny Coates’s assertion that the agency unreasonably evaluated its proposal and dismiss Coates’s remaining challenges.

GSA’s Evaluation of Relevance

Coates primarily challenges GSA’s determination that the YWCA project was “not relevant.” Protest at 3-4; Comments at 1-2. Specifically, Coates contests the agency’s relevance determinations in regard to the characteristics of: total dollar value of the contract of approximately \$10 million, renovation of an office building of approximately 20,000 [square feet], and phased construction in an occupied building.¹⁰

The agency contests Coates’s protest grounds, arguing that it evaluated Coates’s proposal reasonably and in accordance with the solicitation criteria. Memorandum of Law (MOL) at 3-4. Based on the identified lack of relevance, the agency argues that assigning Coates an “acceptable” rating was within the agency’s discretion. MOL at 5.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. *Cherokee Nation Tech. Solutions, LLC*, B-411140, May 22, 2015, 2015 CPD ¶ 170 at 5. An agency has broad discretion, when evaluating offerors’ experience and past performance, to determine whether a particular contract is relevant to an evaluation of experience. *L & J Building Maintenance, LLC*, B-411827, Oct. 27, 2015, 2015 CPD ¶ 344 at 3; *FFLPro, LLC*, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 8; *Silverback7, Inc.*, B-408053.2, B-408053.3, Aug. 26, 2013, 2013 CPD ¶ 216 at 9. In reviewing an agency’s evaluation, we will not reevaluate technical proposals; instead, we will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and procurement statutes and regulations. *Burchick Construction Company, Inc.*, B-417310.3, Jan. 27, 2020, 2020 CPD ¶ 60 at 7; *Raytheon Co.*, B-413981, Jan. 17, 2017, 2017 CPD ¶ 40 at 6. The evaluation of experience and past performance is, by its very nature, subjective, and an offeror’s disagreement with an agency’s evaluation judgments does not demonstrate that those judgments are unreasonable. *K-MAR Indus., Inc.*, B-411262, B-411262.2, June 23, 2015, 2015 CPD ¶ 189 at 4.

¹⁰ Coates does not contest the agency’s relevance determinations regarding the characteristics “renovation of a courtroom and chambers” and “federal clientele.” However, Coates does argue that the characteristic “key personnel,” for which “[a]dditional favorable consideration may be given” should have been applicable to the YWCA project. Comments at 5. Although the agency contests this issue, both the SSEB and SSDD clearly assigned an additional strength for all of Coates’s projects, based on this characteristic. COS at 7; SSEB at 16; SSDD at 7. As this additional characteristic was noted as a strength in the decision documents, we conclude that the agency did in fact assign as a strength the “key personnel” characteristic, for which additional consideration could be given.

Here, we find that the agency reasonably concluded that Coates's YWCA project was not relevant with regard to past experience and past performance because it did not meet the relevance characteristics outlined in the solicitation. Consistent with the RFP's terms, the agency found that the YWCA project met only two of the seven relevance characteristics.

Coates's first argument, that the \$6.4 million dollar value of the YWCA contract should have been considered to be approximately \$10 million, is without merit. As discussed above, agencies are afforded wide discretion in making their evaluation judgments. While the protester may disagree with where the agency drew its line, we cannot conclude that a dollar value that is only 64 percent of the stated dollar-amount standard for relevance does not meet that standard. The agency's determination that the \$6.4 million dollar value of the YWCA contract was not approximately \$10 million was not inherently unreasonable or otherwise inconsistent with the terms of the solicitation, and the protester's disagreement with the agency's judgment, by itself, does not provide a basis to sustain its challenge. *Cherokee Nation Tech. Solutions, LLC*, B-411140, May 22, 2015, 2015 CPD ¶170 at 5-6.

Next, Coates asserts that the YWCA should have been considered an "office building" project. Protest at 4; Comments at 4-5. Coates acknowledges that it did not describe the project as an "office" project in its technical proposal, but asserts that its reference to "common spaces," was sufficient to alert GSA to the project containing office construction or to alert GSA to inquire into the "nature of the common spaces." Comments at 5.

We find that the agency's determination that the YWCA project was not an office building renovation project was reasonable. As stated above, Coates described the YWCA project as "the conversion of a 5-level historical structure, formerly a YWCA fitness building, into apartment units and common space for use by women in need of a shelter." Technical Proposal at 34. Nothing in Coates's description of the project indicated to the agency that the project was an office renovation.¹¹

Offerors are responsible for submitting a well-written proposal with adequately detailed information that allows for a meaningful review by the procuring agency. *WAI-Stoller Servs., LLC; Portage, Inc.*, B-408248.13 *et al.*, May 29, 2015, 2015 CPD ¶ 201 at 12; *iGov et al.*, B-408128.24 *et al.*, Oct. 31, 2014, 2014 CPD ¶ 329 at 31; *Henry Schein, Inc.*, B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 7. A contractor's technical evaluation is entirely dependent on the documentation included in its proposal. *Computerized Project Management Plus*, B-247063, April 28, 1992, 92-1 CPD ¶ 401 at 3. Coates's omission of a description that would allow the agency to determine that the project was

¹¹ Coates asserts that if the agency had questions regarding the nature of the common spaces, "it could have easily directed such questions to Coates" and received an explanation. Comments at 5. However, the agency explicitly expressed its intention to award the contract without discussion with offerors. RFP at 10. Accordingly, the agency had no responsibility to direct questions to Coates for further explanation.

an office renovation was to its own detriment. Therefore, the record affirms that the agency's evaluation was not unreasonable.

In addition, the protester contends that the YWCA should have been considered a phased construction project because Coates marked it as such in its technical proposal.¹² Comments at 5; Technical Proposal at 35. In its ultimate filing, Coates describes the YWCA project as including working with staff in the building to move their offices while these spaces underwent renovations. Resp. to GSA Add. Comments at 1. Thus, Coates argues that the YWCA project, "should have been rated at least 'Somewhat Relevant' if not higher[,]" which in turn, would have led to a higher overall rating than "acceptable" for the prior experience factor.¹³ Comments at 5. Coates's disagreement with the agency's determination that the YWCA project did not meet, "[p]hased construction in an occupied building," does not render it unreasonable. Beyond checking the box, Coates's description of the project in no way demonstrated a phased construction project. While Coates's description in the subsequent protest filings may be the type of information that could have allowed the agency to determine otherwise, because this information did not appear in Coates's proposal, it cannot provide a basis to question the reasonableness of the agency's evaluation. Resp. to GSA's Add. Comments at 1. On this record, the agency's relevance determination is unobjectionable.

Coates also challenges the "acceptable" rating it received for the past performance on relevant projects factor, arguing that the rating was "[i]ncorrect and [a]rbitrary." Protest at 7. Coates claims that "[t]he only reasonable interpretation of [the past performance factor] is that it was designed to assess the quality of the bidders' past performances[,]" with the relevance of the projects separately evaluated under the experience factor. Comments at 7. According to the protester, "[a]ny other interpretation would render Factor 3 [past performance on relevant projects] superfluous." *Id.* However, this assertion misconstrues the plain language of the solicitation. RFP at 14. The solicitation does not seek past performance evaluations in a vacuum, but rather seeks

¹² The contracting officer misstates in the COS that Coates met the phased construction requirement; the agency later corrected its misstatement. COS at 6; Resp. to Comments at 2.

¹³ Coates also argues that the agency failed to consider the four additional projects it submitted and their relevance, including the Crawford County Courthouse Judicial Building. Protest at 5-7; Comments at 6. However, Coates's claim is contravened by the fact the SSEB and SSDD took into consideration the Crawford County Courthouse, among others the agency permissively took into consideration. SSEB at 16; SSDD at 14; NLES at 5. The SSEB specifically noted the four additional projects and determined that the courthouse project was the most relevant among them. SSEB at 16. The SSDD ultimately determined that the courthouse's inclusion was insufficient to merit an overall higher final rating than "acceptable" for the prior experience factor. Therefore, we will not further discuss this allegation.

past performance evaluations on *relevant* projects.¹⁴ *Id.* Specifically, the solicitation notes that it will “utilize the project information submitted under Factor [No.] 2 – Prior Experience on Relevant Projects above in addition to other available sources to assess the quality of work performed on relevant projects.” *Id.* The solicitation explicitly informed offerors that “GSA will review and rate presented projects, however projects that exhibit similar characteristics to those described below will be rated higher when considering the firm’s performance capabilities.” Consistent with the terms of the solicitation, the agency considered the relevance of the Coates’s past projects when evaluating its past performance. Given that consideration, we have no basis to conclude that Coates’s rating of “acceptable” was unreasonable.

In sum, we conclude that the agency reasonably exercised its broad discretion in assessing the relevance of Coates’s past experience and past performance, consistent with the solicitation’s stated evaluation criteria. Coates’s disagreement with the agency’s evaluation judgments does not demonstrate that those judgments are unreasonable.

GSA’s Best-Value Tradeoff Determination

Coates argues that the combination of the agency’s “arbitrary” evaluation of its technical factors and, generally, its evaluation of Burchick’s proposal renders its award decision “arbitrary and capricious.” Protest at 9. We dismiss these allegations because they fail to set forth valid bases for protest.

As discussed above, we reject Coates’s assertions regarding the agency’s technical evaluation. Accordingly, we will not further discuss Coates’s challenge to the best-value tradeoff decision stemming from alleged errors that have no merit. See, e.g., *Computer World Servs.*, B-417356, May 16, 2019, 2019 CPD ¶ 185 at 5 n.4.

What remains is Coates’s contention that “GSA’s decision to award the contract to Burchick--and its ratings on the three technical [f]actors--arose not from Burchick’s relevant experience or price proposal, but rather from the fact that Burchick has done work for the GSA office at issue in the past.” Protest at 9. Coates asserts that “Burchick does not possess as much relevant experience as Coates.” Protest at 1. The agency responds that Coates’s claims regarding the evaluation of Burchick’s proposal are nothing more than unsupported speculation.

With regard to the suggestion that the agency favored Burchick unfairly, government officials are presumed to act in good faith, and a protester’s contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Independent Sys., Inc.*, B-413246, Sept. 15, 2016, 2016 CPD

¹⁴ Coates acknowledges that “seventy percent of the technical evaluation pertained to the [offeror’s] experience with, and performance on, prior Relevant Projects.” Protest at 2.

¶ 260 at 7 n.14. Our Bid Protest Regulations require protesters to present protest grounds that are factually and legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f); *see also System Dynamics Int'l, Inc.--Recon.*, B-253957.4, Apr. 12, 1994, 94-1 CPD ¶ 251 at 4. More specifically, we will not give further consideration to alleged improprieties when based on unsupported allegations or speculation. *See Computers Universal, Inc.*, B-296501, Aug. 18, 2005, 2005 CPD ¶ 161 at 2 n.3; *CAMRIS International, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 3. In this regard, our bid protest procedures do not permit a protester to embark on a fishing expedition for protest grounds merely because it is dissatisfied with the agency's source selection decision. *See, e.g., Alascom, Inc.--Second Recon.*, B-250407.4, May 26, 1993, 93-1 CPD ¶ 411 at 4.

To the extent that Coates is alleging bad faith on the agency's part, it does not provide factual support for its allegations that the agency acted improperly in its evaluation of Burchick's proposal, but instead alleges generally that the agency relied on unstated evaluation criteria to give Burchick unwarranted credit that was not consistent with the terms of the solicitation. Unsupported "information and belief" is insufficient to embark upon further review or to conclude that the agency failed to conduct a proper best-value tradeoff determination by considering unstated criteria. Protest at 9. We therefore dismiss the remaining protest arguments.¹⁵

The protest is denied.

Edda Emmanuelli Perez
General Counsel

¹⁵ Coates makes additional allegations of improprieties in the agency's evaluation of the competing technical proposals. While we do not discuss each argument, we have reviewed all the remaining allegations in the context of the record and find that none provides a basis to sustain the protest.