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Decision

Matter of: West Construction, Inc.

File: B-406511

Date: June 15, 2012

William L. Bruckner, Esq., Bruckner & Walker, LLP, for the protester.
Douglas L. Patin, Esq., and Aron C. Beezley, Esq., Bradley Arant Boult Cummings LLP, for Carter Concrete Structures, Inc., the intervenor.
Joylyn A. Winter, Esq., Department of Veterans Affairs, for the agency.
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's technical evaluation and selection of the lower-rated, lower-priced proposal for award is denied, where the record shows that the agency's evaluation and selection decision was reasonable and consistent with the terms of the solicitation.

DECISION

West Construction, Inc., of Lake Worth, Florida, protests the award of a contract to Carter Concrete Structures, Inc., of Stone Mountain, Georgia, under request for proposals (RFP) No. VA-101-11-RP-0132, issued by the Department of Veterans Affairs for construction services. West challenges the agency's evaluation of proposals and source selection.

We deny the protest.

BACKGROUND

The RFP, issued as a small business set-aside, provided for the award of a fixed-priced contract to design and build a parking structure at the VA Caribbean Healthcare System in San Juan, Puerto Rico. Offerors were informed that award would be made on a best value basis, considering price and the following weighted technical evaluation factors: past performance (50 points); construction

management (35 points);¹ and proposed schedule (15 points). The technical evaluation factors were stated to be, when combined, significantly more important than price. RFP § 00 11 21, at 3.

Under the past performance factor, offerors were instructed to demonstrate experience with at least 3 design-build projects, 2 parking garage projects, and 2 projects completed in the geographical region. The RFP stated that a better score would be achieved by satisfying all three experience areas requirements. See id. at 6. Under the construction management approach factor, offerors were instructed to describe the relevant experience of key personnel (including a project manager, a superintendent, and a quality assurance/quality control (QA/QC) manager), and provide a QA/QC plan along with a project organizational chart/narrative. Id. at 7-8.

VA received 11 proposals, including West’s and Carter’s, that were evaluated by the agency’s source selection evaluation team (SSET). Both West and Carter proposed to subcontract some of the work to other firms. In this regard, West proposed to subcontract, among other things, the structural concrete work to Frama Construction Company, Inc. Carter proposed to subcontract the architectural/engineering aspects of the contract.

West’s and Carter’s proposals were evaluated as follows:

	West	Carter
Past performance	42.0	41.8
Construction management	28.3	26.0
Proposed schedule	13.5	10.0
TOTAL	83.8	77.8
Price	\$32,357,760	\$26,884,000

Agency Report (AR), Tab 6, Technical Evaluation Narrative, at 5, 7.

In addition to assigning point scores, the SSET identified each offerors’ respective strengths and weaknesses under each evaluation factor. Under the past performance factor, the agency found that both Carter and West had a number of strengths and weaknesses. West’s evaluated strengths included its plan to team with a Puerto-Rican firm that had extensive design-build parking garage experience, and that West itself had experience in Puerto Rico. Id. at 3. West’s weaknesses under this factor included not having experience with design-build projects and no experience in building parking garages. Id.

¹ The construction management factor included two subfactors: personnel experience and technical/management approach. RFP § 00 11 21, at 7-8.

Carter's evaluated strengths under the past performance factor included extensive design-build parking garage experience (including experience with the VA), and that Carter had teamed with a Puerto-Rican architect/engineering (A/E) firm, which had experience with designing and building parking garages. Id. at 5. Carter's weaknesses under this factor included the firm not having been the lead design-build firm on relevant projects and not having experience in the geographic region. Id. at 5-6.

Under the construction management factor, the agency found that both firms' proposals had strengths and weaknesses. Among the numerous strengths identified in West's proposal was that West proposed experienced key personnel and that its QA/QC plan was organized and detailed. West's weaknesses included that its proposed superintendent did not have certain important certifications (such as an Occupational Safety and Health Administration (OSHA) 30-hour training certification), that its proposed QA/QC manager did not demonstrate experience for "post tensioned parking garages projects," and that the relationship between West and its concrete subcontractor (Frama) was not clear. Id. at 6.

The VA also assessed numerous strengths in Carter's proposal under the construction management factor for its proposed key personnel (including, for example, that its proposed project manager had excellent experience with parking garage projects), and for a well-written QA/QC plan. Id. at 7. Carter's weaknesses under this factor included that it had not identified a QA/QC manager and that it failed to include the names of its proposed key personnel in its organizational charts. Id.

Under the schedule factor, the agency assessed as a strength the outstanding detail of West's schedule, but noted as a weakness that the firm had not provided a short narrative supporting its schedule. Id. at 5. With respect to Carter's proposal, the agency assessed as a strength the "logic" of Carter's bar chart construction schedule, but noted as weaknesses the chart's lack of detail and the failure to include a short narrative. Id. at 7.

The contracting officer (CO), who was the source selection authority, reviewed the SSET's evaluation report, comparing the respective strengths and weaknesses of the two firms' technical proposals under each of the evaluation criteria. AR, Tab 5, Selection Decision, at 11. Specifically, the CO examined the basis for West's higher technical score compared to Carter's. For example, under the past performance factor, the CO found that West's higher score was due to West having experience in Puerto Rico and to its excellent letters of recommendation. Id. at 7. In comparison, the CO found that Carter's slightly lower score reflected the firm's lack of experience in Puerto Rico. The CO found, however, that Carter's weakness in this regard was mitigated by the fact that it had teamed with a local A/E company which had parking garage design-build experience, and that Carter had excellent client satisfaction

surveys. Id. The CO concluded that many of West's strengths were offset by strengths in Carter's proposal, and that West's few advantages over Carter's proposal (such as naming a QA/QC manager with good experience) did not justify West's significantly higher price. Id. at 11.

Award was made to Carter. Following a debriefing, West protested to our Office.

DISCUSSION

West challenges every one of the weaknesses that the VA identified in the firm's proposal.² For example, West objects to the agency's assessment under the past performance factor that West did not have design-build project experience. West contends this assessment was unreasonable because its proposed team members had such experience. As another example, West challenges the agency's assessment of weaknesses under the construction management evaluation factor with respect to its proposed superintendent not having a 30-hour OSHA training certification and to its proposed QA/QC manager lacking parking garage construction experience. West contends that the RFP did not require offerors to provide personnel with such qualifications or experience.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4.

In response to the protest, the agency explained the basis of the evaluated weaknesses in West's proposal, specifically responding to each of the protester's objections.³ For example, with respect to the weakness assessed for West's lack of design-build experience, the agency states that its concern was that West, as the

² West raises numerous objections to the agency's evaluation of its and Carter's technical proposals and to the selection decision. We have considered all of the protester's arguments--although we specifically address only the principal ones--and find that they provide no basis to sustain the protest.

³ With respect to the weakness assessed for West's failure to provide a narrative summary of its construction schedule, West contends that the firm provided a 4-page narrative in its proposal. In response, the agency asserts that its copies of the protester's proposal contained no such narrative, and the agency provides declarations from the contracting officer and contracting specialist stating that West's proposal contained no such narrative. We have no basis to question this assertion, given West's failure to provide any proof that its proposal in fact included this information.

prime contractor, lacked such experience. Similarly, the agency explains that the weakness assessed with respect to West's superintendent lacking an OSHA certification was appropriate because the RFP required that an OSHA certified person be present at the worksite, and the VA's guidelines require that this person to be the superintendent. The agency explained that it was reasonable to expect that a proposed QA/QC manager would have some experience with the type of structure being constructed. Agency Legal Memorandum, Apr. 13, 2012, at 13-14; CO's Statement at 4-5.

West has not meaningfully replied to the agency's statements and explanations. Rather, the protester in its comments merely repeats its initial protest grounds. See Protester's Comments, Apr. 23, 2012, at 7-8. Although this demonstrates West's continued disagreement with the agency's evaluation of its proposal, the failure to address the agency's explanations does not show that the agency's evaluation was unreasonable. A protester's mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

West also challenges the agency's evaluation of Carter's technical proposal. Specifically, West contends that Carter failed to provide certain information in its proposal that should have resulted in the elimination of Carter's proposal from the competition. For example, West states that Carter did not demonstrate corporate experience in the region; failed to provide letters of recommendation for its design-build projects and parking garage projects; failed to provide certain information regarding various key personnel; failed to provide certain information regarding its QA/QC plan; and failed to provide required schedule information. See Protester's Comments, Apr. 23, 2012, at 2-7.

In response, the agency contends that West's arguments are without merit and explains the basis of its evaluation. For example, the VA states that Carter proposed team members with corporate experience in the region and disagrees that the RFP required offers to submit letters of recommendation for its design-build projects. The agency also notes that some of West's concerns with Carter's proposal were noted by the agency in its evaluation, where the agency assessed these concerns as weaknesses. See Agency Supp. Legal Memo, May 3, 2012, at 5-6. Although it was given an opportunity to reply to the agency's arguments and explanations in this regard, West did not contest or otherwise challenge the agency's explanations. Again, West's mere disagreement with the agency's evaluation does not demonstrate that the agency's judgment was unreasonable.

West also challenges the agency's selection of Carter's lower-rated, lower-priced proposal for award. West contends that this was not consistent with the the RFP's evaluation scheme that provided that the technical factors, combined, were significantly more important than price.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; price/technical trade-offs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. World Airways, Inc., B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12. Even where, as here, technical merit is significantly more important than cost, an agency may properly select a lower-cost, lower-rated proposal if it reasonably decides that the cost premium involved in selecting a higher-rated, higher-cost proposal is not justified. Hogar Crea, Inc., B-311265, May 27, 2008, 2008 CPD ¶ 107 at 8.

The record here does not support West's contention that the agency's selection decision was inconsistent with the solicitation's best value award scheme and failed to adequately consider the technical merit of the protester's proposal. The CO recognized that the technical superiority was substantially more important than low price in the solicitation's selection criteria and that West's proposal had been found technically superior to Carter's. Nevertheless, the CO concluded that Carter's lower price outweighed West's technical advantage. West has not shown that the CO's judgment in this regard was unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel