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Decision

Matter of: G4S-SJC, LLC

File: B-409694; B-409694.2

Date: July 14, 2014

Richard J. Webber, Esq., Patrick R. Quigley, Esq., and Christopher Bowen, Esq., Arent Fox LLP, for the protester.

Thomas C. Sterling, Esq., and Jehan' Ad G. Martinez, Esq., Blair Sterling Johnson & Martinez, for the intervenor.

Lori W. L. Chang, Esq., Department of the Navy, for the agency.

Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably failed to consider experience of protester's teaming partner is denied where the solicitation required that offerors submit evidence of joint venture agreements, teaming agreements, and subcontractor agreements before the agency would consider the experience of such parties, and the protester failed to do so.

2. Protest is denied where agency evaluators reasonably determined that the awardee demonstrated the required experience in constructing flexible or rigid pavement roads.

DECISION

G4S-SJC, LLC, of Fort Worth, Texas, protests the award of an indefinite-delivery/indefinite-quantity contract to Black Construction/MACE International, JV (BC/MI), of Barrigada, Guam, under request for proposals (RFP) No. N62742-13-R-1303, issued by the Department of the Navy, Naval Facilities Engineering Command, for design-build and design-bid-build construction on the island of Diego Garcia, British Indian Ocean Territory. G4S challenges the agency's conclusion that its proposal was unacceptable. In addition, G4S asserts that BC/MI's proposal was unacceptable.

We deny the protest.

BACKGROUND

The RFP contemplated the award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract, for a base year and four option years, for general building projects on Diego Garcia, including the new construction, repair, renovation, demolition, and alteration of aviation, marine, barracks, warehouse, training, and administrative facilities. The contract had a maximum value of \$95 million.

Award was to be made to the lowest-priced, technically acceptable offeror, considering the following four technical evaluation factors: project experience, including subfactors for construction contractor's experience and designer's experience; past performance, including subfactors for construction contractor's past performance and designer's past performance; management plan; and safety record. RFP at 43, 45. A rating of unacceptable in any subfactor was to result in a rating of unacceptable for that factor, which would result in an overall technical rating of unacceptable. RFP at 45. Proposals with a technical rating of unacceptable were ineligible for award. Id.

With regard to the designer's experience subfactor, the RFP required that offerors submit a minimum of 2 and a maximum of 5 projects demonstrating recent and relevant designer experience. If the offeror submitted less than two designer projects, or failed to demonstrate designer experience in all of the required areas, the proposal was to be rated unacceptable. RFP at 46. Likewise, with regard to the construction contractor's experience subfactor, the RFP required that offerors submit a minimum of 2 and a maximum of 5 projects demonstrating recent and relevant construction contractor experience. If the offeror submitted less than two construction contractor projects, or failed to demonstrate experience in all of the required areas, the proposal was to be rated unacceptable. Id. As relevant here, one area in which offerors were required to demonstrate their construction contractor's experience was in the construction of "flexible or rigid pavement roads." RFP at 49.

The RFP further stated that, in evaluating experience, the evaluation would "focus on the entities submitting the proposal (single corporation, individual joint venture partners, the LTD, or the LLC)." RFP at 49. Firms proposing to perform the work as a joint venture were required to submit a copy of their joint venture agreement to the contracting officer. RFP at 30. Further, the RFP provided that the agency would consider the experience of a subcontractor only where the offeror's proposal included "evidence of a binding teaming agreement or other contractual agreement which creates legal responsibility on the part of the prime contractor and the subcontractor to enter into a subcontract." RFP at 50.

The agency received proposals from G4S-SJC, LLC (a joint venture between G4S Integrated Systems, Inc., San Juan Construction, Inc., and G4S International Holdings, Inc.), and from a joint venture between Black Construction and MACE

International (BC/MI). After evaluating the proposals, the source selection evaluation board (SSEB) assigned the following ratings:

Factor		G4S-SJC	BC/MI
Project Experience		Unacceptable	Acceptable
	Construction Experience	Acceptable	Acceptable
	Designer Experience	Unacceptable	Acceptable
Past Performance		Acceptable	Acceptable
	Construction Past Performance	Acceptable	Acceptable
	Designer Past Performance	Acceptable	Acceptable
Management Plan		Unacceptable	Acceptable
Safety Record		Acceptable	Acceptable
Overall Technical Rating		Unacceptable	Acceptable

AR, Tab 30, SSEB Report, at 3641.

With regard to the project experience factor, G4S's proposal identified five projects, all performed by an entity other than the joint venture itself, but for all five of the projects, the proposal did not specify whether the entity was a joint venture partner or a subcontractor. Specifically, with regard to the three projects considered to be recent and relevant, two were performed by [DELETED] and one was performed by [DELETED].¹ G4S Proposal at 3659. The proposal did not contain a joint venture agreement or a teaming agreement between G4S and either [DELETED] or [DELETED]. Because the relationship between G4S and [DELETED] was not defined in the proposal, and because an organizational chart in G4S's proposal showed [DELETED] in a subordinate position, *id.* at 2375, the agency deduced that [DELETED] ("[DELETED] Design Partner") was a subcontractor of G4S. Since the RFP provided that the agency would consider the experience of a subcontractor only where the offeror's proposal included evidence of a binding teaming agreement, RFP at 50, the agency concluded that it could not consider the

¹ A fourth project was viewed by the agency not to be recent or relevant because it was performed by Parsons, rather than by G4S's selected designer, [DELETED]. G4S disputes this conclusion, arguing that [DELETED] replaced [DELETED] as the designer of record on the project and, therefore, the project should have been evaluated as being performed by [DELETED]. However, given our analysis below, it is irrelevant which firm performed the work, since G4S did not submit evidence of a teaming agreement or other contractual agreement with [DELETED] or [DELETED].

experience of [DELETED] in evaluating the designer experience subfactor. As a result, G4S was rated unacceptable under the project experience factor for failure to demonstrate the requisite designer experience.

In addition, under the management plan factor, the agency identified two deficiencies and four weaknesses in G4S's proposal, which, together, resulted in a rating of unacceptable under this factor. Because of its unacceptable ratings under the project experience and management plan factors, G4S's proposal was eliminated from the competition and award was made to BC/MI, the only remaining technically acceptable offeror. This protest followed.

DISCUSSION

G4S contends that the agency's evaluation of its proposal was unreasonable. The protester also contends that the awardee's proposal should have been rated unacceptable under the experience and past performance factors for failing to demonstrate experience with constructing flexible or rigid pavement roads.²

The evaluation of an offeror's proposal is a matter largely within the agency's discretion. Frontline Healthcare Workers Safety Found., Ltd., B-402380, Mar. 22, 2010, 2010 CPD ¶ 91 at 5. In reviewing a protest that challenges an agency's evaluation of proposals, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ocean Servs., LLC, B-406087, B-406087.2, Feb. 2, 2012, 2012 CPD ¶ 62 at 5.

G4S Designer Experience

The agency found that G4S failed to demonstrate designer experience because all of the projects submitted under the designer experience subfactor were performed by entities other than G4S and, under the terms of the solicitation, none of these projects could be considered because G4S failed to submit evidence of a binding teaming agreement or other contractual agreement between G4S and its design subcontractor. SSEB Report, at 3659; see RFP at 50.

G4S contends that its designer, [DELETED], was not a subcontractor, and therefore, G4S should not have been required to submit a teaming agreement. In this regard, G4S notes that the solicitation referred separately to the construction

² G4S's protest and supplemental protest raised numerous allegations. While our decision here does not specifically discuss each and every argument and/or variation of the arguments, we have considered all of the protester's assertions and find that none furnish a basis for sustaining the protests.

contractor and the designer, providing for the experience and past performance of the construction contractor and the designer to be evaluated under separate subfactors. Id. G4S asserts that, given this separate treatment of the construction contractor and designer, a designer should not be considered a subcontractor under the terms of the solicitation.

We find the protester's position untenable. As noted by the agency, the design portions of the work here could be performed in-house by the prime contractor, by a joint venture partner, or by a subcontractor. AR at 15. With regard to joint venture partners, however, the RFP required that offerors submit a copy of their joint venture agreements to the contracting officer. RFP at 30. G4S did not identify [DELETED] as a joint venture partner. G4S Proposal at 2787 (listing joint venture partners).

The agency instead concluded after reviewing the proposal that [DELETED] appeared to be a subcontractor. G4S has not shown this conclusion to be unreasonable. In this regard, G4S's proposal portrayed [DELETED] in a role subordinate to the management of G4S. See, e.g., G4S Proposal at 2375 (containing organizational chart depicting [DELETED] as under the direction of G4S's design manager). Further, although the proposal referred to [DELETED] as the "Design Partner," G4S Proposal at 2375, the fact remains that, in the context of this procurement, if [DELETED] was not the offeror or a joint venture partner, it must have been a subcontractor.³ However, with regard to subcontractors, the RFP required that offerors submit evidence of a binding teaming agreement or other contractual agreement. RFP at 50. G4S did not submit such an agreement between itself and [DELETED]. Therefore, we find that the agency reasonably concluded that it could not consider the projects submitted under the designer experience factor because none of the projects were performed by G4S, and the protester failed to submit the requisite contractual agreements to allow the agency to consider projects performed by other entities.⁴

³ Moreover, to the extent that the protester contends that [DELETED] was not a subcontractor, we note that the relationship between G4S and [DELETED] as shown in G4S's proposal was, at best, ambiguous. In this regard, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See, e.g., International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7.

⁴ Because we find that the agency reasonably assigned a rating of unacceptable under the designer experience subfactor, under the terms of the RFP, the proposal was reasonably evaluated as being unacceptable and ineligible for award. Therefore, we need not address the protester's challenge to its other rating of unacceptable under the management plan factor. Even if we were to agree that the management plan factor rating was unreasonable, its unacceptable rating under the
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BC/MI Experience

Next, the protester contends that BC/MI's proposal also should have been rated unacceptable for failing to demonstrate experience in constructing "flexible or rigid pavement roads." See RFP at 49. Specifically, G4S contends that the project considered by the agency to satisfy the requirement for experience with flexible or rigid pavement--BC/MI's construction of an access driveway and reinforced concrete storage pad--did not involve flexible or rigid pavement roads. In this regard, G4S asserts that BC/MI's proposal did not make clear that the access driveway was paved, and that, in any case, constructing a concrete pad is not the same as constructing a road. Because the solicitation provided that failure to demonstrate experience with such projects would result in a rating of unacceptable, the protester argues that the awardee's proposal should have been rated unacceptable and eliminated from the competition.

We find unobjectionable the evaluators' determination that BC/MI's construction of the access driveway and concrete storage pad satisfied the solicitation's requirement to demonstrate experience with constructing flexible or rigid pavement roads. In this regard, the record indicates that a member of the SEB who is a [DELETED] general engineer [DELETED] regularly visited the site of BC/MI's access driveway and concrete storage pad and, as a result, was extremely familiar with the plans, layout and other characteristics of the construction. Declaration of [DELETED] General Engineer at 3795; Second Declaration of SEB Chairperson at 1. According to the engineer, both the access driveway and the concrete storage pad qualified as examples of rigid pavement road construction because both are used by vehicles and equipment to travel from one point to another, the access driveway as well as the pad are concrete, and the design and construction of the driveway and the concrete pad utilized the same construction and design techniques used on rigid pavement roads. Id. The SEB took the engineer's personal knowledge and general descriptions of the projects into account in determining that the driveway and pad constituted rigid pavement roads. In this regard, our Office has previously held that a selection official's personal knowledge

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experience factor would continue to render the proposal ineligible for award. See Teknion LLC, B-407989, B-407989.2, May 8, 2013, 2013 CPD ¶ 209 at 4 n.2 ; Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 11-12.

of an offeror may be properly considered in evaluating experience. Nuclear Production Partners LLC; Integrated Nuclear Production Solutions LLC, B-407948 et al., April 29, 2013, 2013 CPD ¶ 112 at 20 (holding that the SSA properly considered his personal knowledge when evaluating the corporate experience of offerors); see Daylight Tree Service & Equipment, LLC, B-310808, Jan. 29, 2008, 2008 CPD ¶ 23 at 2 (evaluator may consider personal knowledge when evaluating past performance).

Further, in response to this protest, the agency's traffic engineering expert submitted a declaration in which he confirmed that both the access pavement road (the paved driveway) and the open storage pad are suitable for vehicular traffic, and that both are constructed of concrete, which qualifies as "rigid pavement." Declaration of Agency Civil Engineer at 3797. Also, as noted by the agency, the RFP did not provide any minimum dimensional requirements in connection with the requirement to demonstrate experience with constructing a paved road. Second Declaration of SEB Chairperson at 1. In sum, the record supports the agency's determination that BC/MI's cited experience constructing an access driveway and reinforced concrete storage pad satisfied the solicitation requirement for experience in constructing "flexible or rigid pavement roads"; both were constructed of concrete utilizing the same construction and design techniques used on rigid pavement roads, and both were suitable for vehicular traffic.⁵

The protest is denied.

Susan A. Poling
General Counsel

⁵ Much of the protester's argument is based on the fact that BC/MI submitted an "experience project matrix," in which the awardee summarized, using checkmarks, which projects satisfied particular experience requirements, but failed to place a checkmark in the rigid/flexible pavement box for this project. However, this summary chart was not required by the RFP, and the SEB instead considered BC/MI's description of the project in its proposal, along with the personal knowledge of an SEB member, in determining whether the requirement was satisfied. Declaration of SEB Chairman at 3792.