



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Marianas Management Corporation

File: B-411593

Date: September 3, 2015

William J. Ohle, Esq., Schwabe, Williamson & Wyatt, for the protester.
Marilyn M. Paik, Esq., General Services Administration, for the agency.
Paula J. Haurilesko, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency improperly accepted a proposed site for a federal courthouse that was located within the tsunami inundation zone and failed to meet the solicitation's elevation requirements for buildings in the zone is denied, where the site did not lie within the tsunami inundation zone as defined by the solicitation.
 2. Protest that the agency improperly credited the awardee for proposing a site where eating facilities were located more than ½ mile away is denied, where the solicitation provided the contracting officer with the discretion to accept sites that are located more than ½ mile from eating facilities.
-

DECISION

Marianas Management Corporation (MMC), of Saipan, Northern Mariana Islands, protests the General Services Administration's (GSA) award of a lease to EFC Services Corporation, also of Saipan, under request for lease proposals (RLP) No. 1MP2006, for the lease of a new building for the United States District Court and other federal agencies.

We deny the protest.

BACKGROUND

The RLP sought offers for the lease of a new building for the United States District Court, U.S. Probation Office, U.S. Marshals Service, and the U.S. Attorney's Office in Saipan, in the Northern Mariana Islands. RLP at 4. The RLP provided that award would be made on a best value basis considering price and the following

technical factors: (1) development team and key personnel experience, (2) development team and key personnel past performance, (3) facility design, (4) site layout and design, and (5) site/location. The technical factors were weighted equally, and when combined, the technical factors were less important than price. Id. at 22.

The RLP identified several requirements that offerors must meet. In this regard, the RLP stated that an offered site shall not be within the “tsunami inundation zones” as defined in the solicitation, and that adequate eating facilities shall be located “within the immediate vicinity of the Building, but generally not exceeding a walkable ½ mile, as determined by the [Lease Contracting Officer].” RLP at 5. In addition, under the development team and key personnel experience factor, the RLP identified five individuals as required key personnel: principal in charge for the developer, project manager for the developer, lead designer, project architect, and project manager for the general contractor. RLP at 22. As relevant here, the RLP required that the project manager for the developer: have at least 10 years of experience in commercial office development; be personally responsible for the overall project delivery activities of two similar projects; and be available and able to commit to the project up to 70 percent of a typical 40-hour work week in the period between lease award and construction completion. Id. at 24.

The RLP further required under the development team and key personnel past performance factor that offerors ensure that references associated with two of the four projects required to be submitted under the experience factor complete a past performance reference form and submit the form directly to GSA. The RLP advised that GSA would evaluate past performance for: (1) quality of building and services, (2) cost control, (3) timeliness of performance, and (4) business relations. The RLP also advised offerors that the agency may obtain past performance information from sources other than those provided by the offeror. RLP at 25.

Under the facility design factor, the RLP identified for evaluation 11 aspects of the design for the office building and secure parking garage, and 18 aspects specific to the office building. The aspects to be evaluated included, among other things, overall design impression of the building, finished ceiling height, exterior building materials, and blast resistance. Id. at 26.

GSA received proposals from four offerors. Agency Report (AR), Tab 5, Initial Source Selection Evaluation Board (SSEB) Report, at 1. The SSEB evaluated proposals and assigned numerical ratings under each of the technical evaluation factors. After several rounds of discussions, only MMC and EFC submitted revised proposals, which the SSEB scored as follows:

	EFC	MMC
Development team and key personnel experience	9.0	7.0
Development team and key personnel past performance	9.0	6.0
Facility design	8.5	4.0
Site layout and design	9.0	5.0
Site/location	8.0	7.0
Overall	8.7	5.8
Price (Present value per square foot)	\$32.06	\$30.55

See AR, Tab 12, Final SSEB Report; Tab 15, Source Selection Decision Document (SSDD), at 1.

While the SSEB identified numerous strengths, and no deficiencies or weaknesses, in EFC's proposal, AR, Tab 12, Final SSEB Report, at 3-5, the SSEB identified some strengths, but also a number of weaknesses and one deficiency in MMC's proposal. For example, under the development team and key personnel experience factor, the SSEB assigned MMC's proposal a weakness because the proposed project manager did not have experience with projects of similar size and scope.

Under the past performance factor, the SSEB assigned MMC's proposal weaknesses because GSA received only 1 of 4 references required for the general contractor, 1 of 4 references required for the project management, and only 2 of 4 references required for the general contractor's project manager. In addition, the SSEB received a reference for MMC's proposed architect that raised concerns, despite its overall rating of 8 out of 10. MMC's architect was rated 6 out of 10 in response to the following questions:

For the building, how satisfied were you with workmanship, quality of materials used and overall appearance?

* * *

For the person named above, how satisfied were you with his or her time commitment to the project?

Protest, Exh. 17, MMC Architect's Past Performance Reference, at 2.

Under the facility design factor, the SSEB assigned MMC a deficiency for failing to provide information concerning blast resistance and failing to identify a blast engineer, as well as numerous weaknesses. For example, the SSEB assigned weaknesses to MMC's proposal under the facility design factor for failing to provide sufficient information concerning such subfactors as finished ceiling heights, ease of access for data and telecommunications distribution, and the effectiveness and aesthetics of security provisions. Under the site layout and design factor, the SSEB assigned MMC's proposal six weaknesses, including a failure to provide information concerning the location of utility equipment/services, receiving dock, cooling tower/equipment, generator, transformers, fuel tank, and refueling port. Id. at 6-7.

In the source selection decision, the source selection authority (SSA) concurred with the assessments and ratings of the SSEB, and specifically discussed the relative merits of MMC's and EFC's proposals under each evaluation factor. For example, under the development team and key personnel experience factor, the SSA noted that EFC significantly exceeded the evaluation standard by providing information on non-key personnel, such as personnel for specialty trades, in addition to key personnel. The SSA also noted that the principal for EFC has successfully performed lease contracts for GSA and has committed 100 percent of his time to the project. In contrast, the SSA noted that while MMC was rated as very good under the development team and key personnel experience factor, it only finalized its team later in the competition and was unable to provide a project manager with experience similar in size and scope to the proposed project. AR, Tab 15, SSDD, at 1.

Under the development team and key personnel past performance factor, the SSA noted that EFC's past performance was the most highly rated by previous customers, and that EFC arranged for past performance references to be delivered for specialty trades in addition to key personnel. With respect to MMC's past performance, the SSA noted that, while all customers stated that they would do business with MMC again, the SSA had concerns about the marginal scores on some references and the small number of references provided for key personnel. Id. at 2. The SSA concluded that EFC's proposal was stronger than MMC's under each evaluation factor. In making her selection decision, the SSA recognized that price was more important than all of the technical factors combined, but concluded that MMC's 4.7 percent lower price (\$30.55 per square foot for an annual rent of \$1,750,185, compared to EFC's price of \$32.06 per square foot for an annual rent of \$1,836,614.79) did not offset the significant risks posed by MMC's technical proposal. Accordingly, the SSA selected EFC for award. Id. at 4.

After a debriefing, MMC filed an agency-level protest, and upon denial of that protest, filed this protest with our Office.

DISCUSSION

MMC argues that GSA misevaluated both EFC's and MMC's proposals. 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 instead examine the record to determine whether the agency's judgment was reasonable and in accord with the RLP evaluation criteria. William J. Brant, Jr. & Assocs., B-406908, Sept. 26, 2012, 2012 CPD ¶ 264 at 3. The protester bears the burden of proving that an evaluation was unreasonable, and mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Wash., Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11. Here, we have considered all of MMC's arguments, and find no basis to sustain MMC's protest. We discuss some of MMC's most significant arguments below.

Acceptability of EFC's Proposal

As an initial matter, MMC asserts that EFC's proposed site lies within the tsunami inundation zone identified in the RLP. In this regard, the RLP defined the tsunami zone in relevant part as follows:

¼ mile inland from the shoreline (high-water mark) from Puntan Susupe, north to Micro Beach/Puntan Muchot, unless sited at minimum 30 feet elevation above sea level.

RLP at 5.

MMC asserts that, because the shoreline around Puntan Muchot curves southward, EFC's site lies south of Puntan Muchot and less than ¼ mile inland, and therefore lies within the tsunami inundation zone. According to the protester, because EFC's proposed site allegedly lies within the zone, and since it does not meet the RLP requirement for a proposed site within the tsunami inundation zone to be at least 30 feet above sea level, EFC's site, and thus its proposal, was unacceptable. Protest at 3-4; Comments at 2. GSA maintains that, although the shoreline wraps east and south from Puntan Muchot, EFC's proposed site lies outside the tsunami inundation zone as defined in the RLP and therefore is not subject to the elevation requirement. AR at 7.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alliance Technical Servs., Inc., B-410307, B-410307.3, Dec. 1, 2014, 2014 CPD ¶ 345 at 3.

Our review of the record leads us to conclude that the agency's reading of the solicitation is reasonable. The RLP's description of the tsunami inundation zone provides in relevant part that the zone is "¼ mile inland from the shoreline (high-water mark) from Puntan Susupe, north to Micro Beach/Puntan Muchot." RLP at 5. The relevant section of the island's shoreline runs from Puntan Susupe northeast to Puntan Muchot, where Puntan Muchot forms a cape. EFC's site lies east of Puntan Muchot, but because of the curvature of the shoreline formed by the cape, the site also lies south of Puntan Muchot. While MMC is correct in pointing out that EFC's site is south of Puntan Muchot and less than ¼ mile inland from the shoreline, EFC's site does not lie on the continuous shoreline between Puntan Susupe and Puntan Muchot. Therefore, we conclude that GSA reasonably concluded that EFC's proposed site does not lie within the tsunami inundation zone.¹

MMC also argues that EFC's site was not located within ½ mile of eating facilities, as required by the RLP. MMC states that GSA's distance measurements are incorrect, and that EFC's proposal admits that eating facilities are ¾ mile away from its proposed site. MMC also argues that the eating facilities that are within ½ mile of EFC's proposed site--a barbecue stand with no seating and a take-out establishment with only six tables--do not meet the RLP requirements for adequate eating facilities. Comments at 3.

GSA states that the RLP affords the agency flexibility in determining whether adequate eating facilities were sufficiently close to the proposed site. In this regard, the contracting officer determined that an eating facility that was 0.6 miles from the proposed site met the solicitation definition of "generally not exceeding a walkable ½ mile." RLP at 5. GSA also states that the contracting officer verified distances using an automobile odometer and an internet map. AR at 9.

Here, we agree with the agency that the RLP granted the contracting officer considerable discretion in the method for calculating distances and the acceptance of proposed sites more than ½ mile from eating facilities. The RLP provided that "adequate eating facilities shall be located within the immediate vicinity of the Building, but generally not exceeding a walkable ½ mile, as determined by the [Lease Contracting Officer]." RLP at 5 (emphasis added). The contracting officer concluded, based on the use of his car's odometer, that three eating facilities were within a ½ mile of EFC's proposed site and another one was 0.6 miles from the site. AR, Tab 27, Amenities Map for EFC; Tab 22, Contracting Officer Decl., at 2. While MMC disagrees with the adequacy of the take-out facility and the distances of some of other eating facilities, MMC has not shown that the contracting officer improperly exercised the discretion afforded by the RLP.

¹ Because we find that EFC's site does not lie within the tsunami inundation zone, we need not address MMC's contention that the site does not meet the elevation requirements within the inundation zone.

Evaluation of MMC's Proposal

MMC raised numerous challenges to the evaluation of its own proposal but substantively addressed few of them in its comments. For example, in its initial protest, MMC challenged each of the weaknesses the SSEB assessed its proposal, but does not address with specificity the agency's response to most of these arguments in its comments on the agency report. Instead, MMC generally argues that the RLP did not require the level of detail for which GSA downgraded MMC's proposal. Comments at 4-5. The record demonstrates otherwise. For example, under the facility design factor, the RLP established subfactors as follows:

Aspects of the designs including, but not limited to, the following items will be evaluated:

* * *

6. Finished ceiling height.

RLP at 26. In its initial round of discussions, GSA advised MMC that it needed additional information on finished ceiling heights, and other subfactors. AR, Tab 7, Initial Discussion Letter, May 16, 2014, at 3. After oral presentations, GSA again advised MMC that it had assigned weaknesses for failing to provide sufficient information concerning various subfactors, including finished ceiling heights. In this regard, GSA specifically requested slab-to-slab and finished heights. AR, Tab 10, Post-Oral Presentation Discussion Letter, Sept. 22, 2014, at 3. In response, the protester provided elevation drawings that indicated floor-to-floor dimensions, but did not indicate ceiling heights. Protest at 6; Exh. 2, MMC Exterior Building Elevations. Since MMC's proposal did not satisfy the solicitation requirement to discuss "Finished ceiling height," RLP at 26, even after discussions, the agency reasonably downgraded the proposal on this regard.

MMC also argues that GSA improperly assigned it a weakness under the development team and key personnel experience factor for proposing a project manager that lacked experience with overall project responsibilities on two projects of similar size and scope. In this regard, MMC does not dispute that its proposed project manager lacked that experience. Rather, MMC contends that GSA failed to give it appropriate credit for proposing Mr. R as a consultant to address the weaknesses in MMC's project manager's experience. Protest at 5; Comments at 4.

GSA states that the project manager was identified as a key person and designated as the primary contact with the government. GSA states that it did not consider Mr. R's credentials with respect to the project manager requirements because MMC identified him as a consultant to assist the project manager, and did not propose

Mr. R as the project manager. GSA further states that MMC did not provide any information concerning Mr. R's role or level of commitment to the project. AR at 15.

MMC has not shown that GSA's assessment of a weakness with respect to the project manager was in error. The RLP identified the project manager as one of five key personnel, and in addition to having at least 10 years of experience, the project manager was required to demonstrate that he/she was personally responsible for overall project delivery activities for two similar projects, and must be available for up to 70 percent of a typical 40-hour workweek. RLP at 24. The individual that MMC identified as the project manager did not meet the RLP's requirement of experience with overall project delivery activities for two similar projects. While MMC proposed Mr. R as a consultant to offset the project manager's lack of experience, the fact remains that MMC did not propose Mr. R as the project manager. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Enterprise Solutions Realized, Inc., B-405203, Sep. 22, 2011, 2011 CPD ¶ 196 at 8. MMC's failure to furnish a project manager compliant with the solicitation requirements warranted downgrading MMC's proposal.

MMC also argues that GSA unreasonably scored its proposal as 6 out of 10 under the development team and key personnel past performance factor based on one negative past performance rating. MMC notes in this regard that one reference indicated an average score of 8 out of 10, and only two past performance categories were rated 6 out of 10. MMC also states that the referenced contract was a tenant improvement project that was not relevant. Protest at 5; Comments at 4.

GSA explains that the low score resulted from the marginal reference for MMC's proposed architect--a key position and a critical member of the MMC's team--in conjunction with MMC's refusal to explain or rebut the reference. GSA explained that the architect received 6 out of 10 points on two questions relating to satisfaction with workmanship and quality of materials, and with the company's time commitment to the project. GSA argues that an adverse reference on a smaller project can cause concern about an offeror's ability to perform on a larger project. AR at 16.

Here the agency reasonably considered the specific responses in the past performance reference and the implications that middling performance by the architect on a smaller project may have on a larger one. Moreover, the record indicates that of the 10 evaluation areas for the past performance reference, MMC received a 10 for only two responses, which concerned the handling and pricing of change orders and working relationships between project team members. Protest, Exh. 17, MMC Architect's Past Performance Reference, at 2-3. In these circumstances, we find the evaluation in this area to be reasonable.

Cost/Technical Tradeoff

Finally, MMC asserts that GSA provided “no calculation or reasoning” to explain why MMC’s lower price did not outweigh EFC’s higher technical scores. Protest at 5; Comments at 4.

MMC’s argument is without merit. First, there is no requirement that the source selection official quantify the value to the agency of the technical superiority of an awardee’s proposal. Booz Allen Hamilton, Inc.; Leidos Inc., B-410032.4 et al., Mar. 16, 2015, 2015 CPD ¶ 108 at 7. Moreover, the record demonstrates that the SSA considered the relative merits of the two proposals in detail and reasonably reached a source selection decision. In this regard, the SSA discussed the relative merits of MMC’s and EFC’s proposals under each evaluation factor and concluded that EFC’s proposal was superior under each factor. For example, under the development team and key personnel experience factor, the SSA noted the superiority of the information EFC provided on both key and non-key personnel, including personnel for specialty trades, as well as EFC’s successful performance on prior GSA lease contracts. AR, Tab 15, SSDD, at 1. The SSA also noted that, while MMC was found to be acceptable and rated as very good overall, MMC failed to provide an experienced project manager and its proposal was assessed one deficiency and numerous weaknesses. Accordingly, the SSA found that EFC represented the best value, and concluded that the price differential was not sufficient to overcome the difference in the technical proposals. Id. at 4. In sum, MMC has not demonstrated that GSA erred in its evaluation of proposals or selection of EFC for award of the lease.

The protest is denied.

Susan A. Poling
General Counsel