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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Williams Building Company, Inc.

**File:** B-413262.2; B-413262.3

**Date:** November 15, 2016

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John M. Manfredonia, Esq., and Jim Peterson, Esq., Manfredonia Law Offices, LLC, for the protester.

Maureen A. McAndrew, Esq., and Madeline Shay, Esq., Department of the Army, Corps of Engineers, for the agency.

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### DIGEST

In a procurement conducted under the two-phase design-build selection procedures of Federal Acquisition Regulation subpart 36.3, protest of an agency's evaluation of the protester's phase 1 proposal and its decision to exclude the protester from phase 2 is denied where the agency's evaluation was reasonable and in accordance with the solicitation's evaluation criteria.

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### DECISION

Williams Building Company, Inc., a small business, of South Yarmouth, Massachusetts, protests the exclusion of its proposal from phase 2 of a two-phase design-build competition under request for proposals (RFP) No. W912DR-16-R-0001, issued by the Department of the Army, Corps of Engineers, for construction projects. Williams argues that the agency improperly evaluated its phase 1 proposal and unreasonably eliminated it from the competition.

We deny the protest.

### BACKGROUND

The RFP was issued on October 23, 2015, under the two-phase design-build provisions of Federal Acquisition Regulation (FAR), subpart 36.3 and contemplated the award of indefinite-delivery, indefinite-quantity (ID/IQ), multiple-award task order contracts (MATOCs), for design-build (DB) and design/bid/build (DBB) construction projects in support of the Department of Defense and other federal agencies.

The solicitation notified offerors that the agency intended to conduct a full and open competition. RFP amend. 2 § 1.1. The agency stated its intent to award up to five contracts on an unrestricted basis and up to five contracts on a restricted basis<sup>1</sup>, with a base contract duration of five years, and a total estimated contract pooled capacity of \$499,000,000. Id. The solicitation also provided a minimum and maximum task order limitation of \$2,000 and \$100,000,000, respectively. Id.

Relevant to this protest, under phase 1, the agency was to evaluate proposals using the following three factors, in descending order of importance: (1) past performance of construction projects; (2) management approach; and (3) architect-engineer (A-E) team. RFP amend. 2 § 7.9. Offerors were informed that they were “responsible for including sufficient details in their [p]hase 1 proposals, in a concise manner, to permit a complete and accurate evaluation.” Id. § 7.3. Offerors were also cautioned that they “should not assume that they will have an opportunity to clarify or correct anything in their proposal after submitting it in response to [p]hase 1.” Id. The RFP established that the maximum number of proposals chosen to advance to phase 2 would be up to eight in each category. Id. § 7.7.

Regarding past performance, offerors were to identify between three and five projects similar to those contemplated by the RFP that were completed within the past six years. RFP amend. 2 § 5.1. The solicitation provided that similar projects may include construction projects in a variety of sizes and construction disciplines, with a varying degree of technical complexity, for both DB and DBB projects.<sup>2</sup> Id. The RFP stated that similar projects should demonstrate as many of the following project types as possible: projects in excess of \$5 million, DB construction projects, DBB construction projects, renovation/repair construction projects, projects concerning sensitive compartmented information facilities (SCIF), and mechanical, electrical and plumbing systems repair, construction, and/or replacement. Id. The solicitation provided that “[p]rojects that demonstrate[d] multiple experiences [ ] may receive higher relevancy ratings.” Id. For each of the identified projects, the RFP also required offerors to submit performance evaluations. Id.

The agency’s evaluation of an offeror’s past performance would assign each past performance project a relevancy rating, which would be used by the agency in assessing the overall performance confidence of each offeror. RFP amend. 2

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<sup>1</sup> The restricted category included offerors who met the requirements of any federally designated small business category. RFP amend. 2 § 1.1.

<sup>2</sup> While the RFP also permitted the identification of other types of projects, the solicitation required offerors to explain the relevancy of those projects to the work being solicited. RFP amend. 2 § 5.1.

§ 4.2. The more relevant a contract was determined to be, the more weight it would receive in the performance confidence rating of each offeror. Id. § 6.1. The solicitation provided that the agency reserved the right to consult other sources of past performance information outside of the offered projects, such as contractor performance assessment reporting system (CPARS) reports. Id. § 5.1.1. However, the RFP also cautioned that “the burden of providing detailed, current, accurate and complete past performance information rests with the offeror.” Id.

Under the management approach factor, offerors were asked to “[d]escribe in narrative form” how they would manage multiple, concurrent task orders issued under the contract, as well as “describe, in detail,” its approach to DB projects. RFP amend. 2 § 5.2.1. Offerors were also asked to “identify how the overall communication will be managed with the [g]overnment,” and how project teams for multiple task orders, would communicate with each other to achieve results. Id. Offerors were also to provide detailed information about their scheduling capabilities and procedures for the contract and each task order, to include the process of incorporating modifications or delays into the schedule. Id. § 5.2.3. The RFP provided that the agency’s evaluation would assign adjectival ratings to the offeror’s management approach factor. Id. § 6.2. The solicitation stated that an offeror would “achieve an acceptable rating” if the information described above demonstrates a sound approach capable of meeting all requirements and objectives. Id.

For the A-E team factor, the solicitation provided that “[i]n order to assess the team’s ability to handle a variety of DB task orders,” offerors may identify up to three A-E firms as team members and include their relative experience with DB projects. RFP amend. 2 § 5.3. The RFP also permitted offerors to identify up to three projects from each A-E firm presented. Id. The RFP provided that the agency’s evaluation would assign adjectival ratings to the offeror’s A-E team factor. Id. § 6.3. The solicitation stated that an offeror would “achieve an acceptable rating” if the information described above demonstrates the designer of record’s experience in relevant projects and ability to successfully meet all of the requirements related to designing a constructible project for this requirement. Id.

The agency received [DELETED] proposals from offerors, including Williams, in response to the RFP by the revised closing date of December 7, 2015. Contracting Officer Statement (COS) at 7. Williams’ proposal, which was submitted in the restricted category, received an overall “relevant” rating and a “satisfactory confidence” rating for past performance, a “marginal” rating for the management approach factor, and a “good” rating for the A-E team factor.<sup>3</sup> Agency Report (AR),

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<sup>3</sup> The agency assigned each past performance project a relevancy rating of very relevant, relevant, somewhat relevant, and not relevant. RFP amend. 2 § 4.2. The agency then assigned one of the following confidence ratings for past performance, (continued...)

Tab 9, Source Selection Advisory Committee (SSAC) Report, at 3. The agency selected the eight most highly rated firms from the restricted category to proceed to phase 2 of the competition. Id. at 8.

Williams was notified that its proposal was not among the highest rated offerors, and that it would not be included in phase 2 of the competition. AR, Tab 13, Agency Unsuccessful Offeror Letter to Williams (May 16, 2016). Williams requested a debriefing from the agency, and within five days of its debriefing, filed a protest with our Office contesting the agency's decision to exclude it from further participation because it was not one of the most highly rated offerors. AR, Tab 16, Williams Protest, B-413262 (June 13, 2016). In response to the protest, the agency notified our Office that it intended to take corrective action by reopening phase 1 and reevaluating the protester's proposal. AR, Tab 17, Agency Request for Summary Dismissal (June 28, 2016). Our Office dismissed Williams' protest as academic based on the agency's decision to reevaluate the protester's proposal. Williams Building Co, Inc., B-413262, July 11, 2016 (unpublished decision).

The agency reevaluated Williams' phase 1 proposal, and the ratings for Williams remained unchanged.<sup>4</sup> COS at 10; AR, Tab 21, Reevaluation of Williams Proposal. The protester was notified that it would not advance to phase 2 of the procurement. AR, Tab 22, Agency Unsuccessful Offeror Letter to Williams (July 28, 2016). Williams then filed the current protest contesting the agency's reevaluation.

## DISCUSSION

The protester challenges the reevaluation of its phase 1 proposal under each of the three evaluation factors. Williams also challenges the conduct of the agency's reevaluation of its proposal, specifically, that the composition of the technical evaluation committee was not the same as it was when its proposal was initially

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based on the quality of the relevant contracts: substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. Id. For the management approach factor and the A-E team factor, the agency assigned proposals one of the following ratings: outstanding, good, acceptable, marginal, and unacceptable. Id.

<sup>4</sup> The reevaluation was performed by members of the same technical evaluation committee that initially evaluated the proposals, minus three members that were unavailable due to various reasons, such as illness and maternity leave. COS at 10 n.3. The technical evaluation committee, when it re-convened, reevaluated Williams' proposal and the proposals of three other offerors. AR, Tab 20, Final TEC Report, at 1.

evaluated.<sup>5</sup> While we do not specifically discuss each of the protester's arguments, and variations thereof, we have considered all of them and find that none provides a basis to sustain the protest.

The evaluation of an offeror's proposal is a matter within the agency's discretion. Bryan Constr., Inc., B-409135, Jan. 14, 2014, 2014 CPD ¶ 51 at 5. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. Tri-Technic, Inc., B-412037, Dec. 11, 2015, 2016 CPD ¶ 5 at 5. 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. See Engineering Design Technologies, Inc., B-408811.2, June 17, 2014, 2014 CPD ¶ 182 at 4. Given the record before us, we have no reason to find the agency's evaluation of Williams' proposal unreasonable or otherwise improper.

#### Past Performance

Williams challenges the agency's evaluation of its past performance. The protester argues that its four past performance references should have been rated very relevant, and that it should have received an overall rating of substantial confidence. Protest at 11; Comments at 11. Williams further contends that its proposal covered all of the construction disciplines listed in the RFP. In this regard, the protester argues that the agency should have credited it with having SCIF construction experience. The protester maintains that if it had been credited with SCIF construction experience then it would have received a very relevant rating for this factor. Comments at 13.

The agency argues that an overall relevant rating was appropriate for Williams' past performance, as the protester's projects involved "similar scope and magnitude of effort and complexity," to the work contemplated by the solicitation, and did not demonstrate "essentially the same scope and magnitude of effort and complexities" required to receive a very relevant rating. RFP amend. 2, § 4.2.; COS at 13. For example, the agency states that Project 2, for port of entry at Los Ebanos, TX, was a relatively small project ([DELETED]), and that Project 3, a warehouse project at

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<sup>5</sup> The protester also argued that the agency's evaluation of its proposal was unreasonable because it failed to consider price. The agency addressed this issue in the agency report, COS at 24, and the protester did not further address this issue in its comments, therefore we consider this issue abandoned. IntelliDyne, LLC, B-409107 et al., Jan 16, 2014, 2014 CPD ¶ 34 at 3 n.3. In any event, FAR § 36.303-1(a)(2)(iii) prohibits the use of cost or price factors in phase 1 of a two-phase design-build procurement.

Ramstein AB, Germany, was a simple steel building where Williams' portion of the project was [DELETED], well below the \$5 million threshold. AR, Tab 7, Williams Proposal, at 35 and 41-42; Tab 21, TEC Reevaluation of Williams Proposal at 1. The agency also explains that Williams' Project 4, a water infiltration remediation, was not a complex construction project and Williams' explanation regarding the relevancy of this project to the work contemplated here was minimal.<sup>6</sup> AR, Tab 7, Williams Proposal at 48; Tab 21, TEC, Reevaluation of Williams Proposal at 1.

The agency also argues that its evaluation of Williams' SCIF experience was reasonable. For Project 3, Williams claimed that it was the subcontractor responsible for the design and construction of a new SCIF. AR, Tab 7, Williams Proposal at 41. However, the prime contractor completed a past performance questionnaire for the same project and described Williams' work as "[r]enovation of [s]ecure space." AR, Tab 7, Williams Proposal at 44. The agency explains that it did not give Williams credit for SCIF experience, and instead assigned a weakness, because information received from the prime contractor regarding SCIF construction did not agree with the description Williams gave of its responsibilities and output.<sup>7</sup> AR, Tab 21, TEC Reevaluation of Williams Proposal at 2-3.

We find that the protester has not shown that the agency acted unreasonably or inconsistently with the solicitation. Where, as here, a solicitation contemplates the evaluation of past performance, the contracting agency has the discretion to determine the relevance and scope of the performance history to be considered, and our Office will not question the agency's judgment unless it is unreasonable or inconsistent with the terms of the solicitation or applicable procurement statutes and regulations. Bryan Constr., Inc., supra at 7. Here the record shows that the agency reasonably evaluated Williams' proposal. The record demonstrates that the agency found the protester's projects to be lower in dollar value and less complex than the work solicited. Moreover, the agency reasonably determined that the discrepancy between the protester's explanation of its SCIF work and the prime's past performance questionnaire response raised questions regarding whether the protester had SCIF construction experience. Williams' contentions to the contrary amount to no more than disagreement with the agency's evaluation judgements.<sup>8</sup>

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<sup>6</sup> As explained above, such an explanation was required under the RFP, which stated that offerors were allowed to identify "other types of projects," that were not DB or DBB, but that the offeror "must explain the relevancy of those projects to the project that is being solicited in the RFP." RFP amend. 2 § 5.1.

<sup>7</sup> The agency also asserts that even if it were to give Williams credit for SCIF construction experience, "given the ratings for its other projects, it is unlikely that it would have raised its relevancy rating above [r]elevant." COS at 17.

<sup>8</sup> The protester also argues that the agency improperly considered its CPARS for [DELETED] past projects only to assess a confidence rating, and did not separately  
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## Management Approach

The protester challenges the “marginal” rating that it received for the management approach factor, contending that the agency improperly determined that its proposal contained weaknesses relating to its approach to DB projects and failed to explain its construction scheduling capabilities. Williams maintains that it provided sufficient information and explained its construction scheduling, and that it should have received an acceptable rating or higher for this factor. Comments at 18.

As stated above, the agency assigned Williams’ proposal a marginal rating for this factor.<sup>9</sup> The agency concluded that while Williams’ proposal provided the information requested by the solicitation, the proposal did not provide sufficient detail or unique elaboration to convey an understanding of the requirements and demonstrate efficiency and coordination. AR, Tab 21, TEC Reevaluation of Williams Proposal at 3. The agency assigned Williams’ proposal one weakness due to “[m]issing details on [d]esign [m]anagement.” Id. In this regard, the agency found that Williams’ proposal did not explain its management approach for construction and working with the customer during construction, or how it would coordinate the DB effort of the designer of record and the constructor prior to construction. Id. The agency also found that Williams did not sufficiently discuss overall communication strategies with stakeholders. Id.

The protester argues that such detail was not required in the solicitation. Comments at 16. Our review of the record finds otherwise. The solicitation stated that an offeror’s management approach narrative shall “include why your team is uniquely qualified to undertake this contract, its approach to construction and working with the customer during construction” and “describe, in detail, its approach to Design Build projects.” RFP amend. 2 § 5.2.1. Thus, we have no basis to question the agency’s assignment of the weakness here.

With respect to the second weakness, the agency states that it assigned Williams’ proposal the weakness because it determined that the proposal’s schedule

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assess the relevancy of these projects. Comments at 13-14. The agency responds that there was no solicitation requirement that it examine these [DELETED] projects for relevancy, and that the CPARS ratings only “served to confirm the TEC’s rating for this factor.” COS at 19. We find no basis to question the agency’s evaluation in this regard.

<sup>9</sup> A marginal rating was defined as a proposal that “does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.” RFP amend. 2 § 4.3.

discussion was insufficient. Id. The agency acknowledged that Williams' proposal included a generic description of scheduling but noted that Williams did not provide detailed information about the offeror's scheduling capabilities and procedures to be used for the contract and each task order, and that Williams did not discuss schedule updates or incorporating modifications into the schedule. RFP amend. 2 § 5.2.3; AR, Tab 21, TEC Reevaluation of Williams Proposal at 3.

Here, the protester asserts that it provided "sufficient details" concerning its schedule, and that the agency's requirement for "additional detail," amounted to the use of unstated evaluation criteria. Protest at 13-14. Based on our review of the record, we find that the agency's evaluation was consistent with the RFP criteria and reasonable. The record demonstrates that the RFP specifically required offerors to address scheduling capabilities and procedures and stated that offerors should include discussion of schedule updates, and incorporating modifications into the schedule. RFP amend. 2 § 5.2.3. We find reasonable the agency's determination to assign a weakness to Williams' proposal in part for not providing information that was expected by the solicitation, but not specifically required. We note that the RFP advised offerors that they were "responsible for including sufficient details in their [p]hase 1 proposals, in a concise manner, to permit a complete and accurate evaluation." Id. § 7.3. Again, we have no basis to question the agency's assignment of a weakness to Williams' proposal.

Given that the agency reasonably assessed Williams' proposal two weaknesses, based largely on the failure of its proposal to provide sufficient detail regarding the discussion of design management and schedules, and given that these weaknesses were not offset by any strengths, we find unobjectionable the agency's marginal rating under the management approach subfactor.

#### Architect-Engineering Team

Finally, the protester challenges the agency's evaluation of its proposal under the A-E team factor, contending that it should have received a rating of outstanding rather than good. The protester argues that the solicitation required offerors to identify the A-E firms that would be providing design and engineering support services, and contends it complied with this requirement.<sup>10</sup> Comments at 19.

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<sup>10</sup> The solicitation defined an outstanding rating as, "[p]roposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low"; a good rating was defined as, "[p]roposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low." RFP amend. 2 § 4.3.

The agency states that Williams' proposal provided two A-Es, out of the three allowed by the solicitation. AR at 3. The agency notes that the evaluators found that Williams' A-E team presented "strong evaluation[s]" from past customers, and this fact was noted as a strength. AR, Tab 21, TEC Reevaluation of Williams Proposal, at 4. The agency argues however that according to the RFP, a proposal must indicate an exceptional approach to earn an outstanding rating. RFP amend. 2 at 14. The agency maintains that even though Williams provided "sufficient information" in response to the solicitation, "it did not provide exceptional approaches in the presentation of its A-E firms." AR, Tab 21, TEC Reevaluation of Williams Proposal at 4. Therefore, agency asserts that it properly determined that Williams' proposal met the requirements for a good rating under this factor, as it "indicate[d] a thorough approach." RFP amend. 2 § 4.3.

Based on the record here, we see no basis to question the agency's judgment. The solicitation's adjectival rating definitions gave the agency a degree of latitude in assigning ratings. Valor Healthcare, Inc., B-412960, B-412960.2, July 15, 2016, 2016 CPD ¶ 206 at 10. After reviewing the strength assigned to Williams' proposal and the agency's well-documented evaluation of Williams' presentation of its A-E firms, we fail to see how the agency's determination that the proposal warranted a rating of good rather than outstanding, was inconsistent with the solicitation. While Williams disagrees with the agency's determination, its disagreement does not furnish a basis on which to sustain this ground of protest.<sup>11</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>11</sup> Williams further contends that the fact that three of the original members of the technical evaluation committee did not participate in the reevaluation of its proposal meant that its proposal was "treated differently." Comments at 9. We disagree. The composition of a technical evaluation panel is within the discretion of the contracting agency. In the absence of bad faith or actual bias, we have no reason to question the composition of the panel. EBA Eng'g, Inc., B-275818, Mar. 31, 1997, 97-1 CPD ¶ 127 at 4; ELS Inc., B-283236, B-283236.2, Oct. 25, 1999, 99-2 CPD ¶ 92 at 12. Here, the protester did not argue bias nor did we find evidence of bad faith or bias. As explained by the agency, after the protester expressed its concerns in this regard in its protest, the agency attempted to assemble the same technical evaluation committee for the reevaluation. AR at 12. Indeed, if it was not for illnesses and maternity leave, the committee members would have remained the same. COS at 10 n.3.