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Decision

Matter of: GM-Bulltrack, JV

File: B-414591.6; B-414591.7

Date: October 30, 2018

Peter B. Ford, Esq., Michelle E. Litteken, Esq., Meghan F. Leemon, Esq. and Julia Di Vito, Esq., Piliero Mazza PLLC, for the protester.
John V.R. Aguon, Esq., and Christopher Odoca, Esq., Department of the Navy, for the agency.
Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the agency improperly evaluated an awardee's past performance and experience is denied, where the awardee's proposal demonstrated its access to the assets acquired from an affiliate and the relevance of the affiliate's experience and past performance in accordance with the solicitation's terms.
 2. Protest challenging the agency's best-value tradeoff decision is denied, where the agency reasonably determined that higher rating of protester's proposal under the solicitation's non-price evaluation factors did not outweigh the benefits of awardees' proposals.
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DECISION

GM-Bulltrack, Joint Venture, LLC (GM-Bulltrack), a small business joint venture of Clakamas, Oregon, protests the awards made under request for proposals (RFP) No. N40192-16-R-2800, which was issued by the Department of the Navy, Naval Facilities Engineering Command Marianas, for design/build construction, renovation, repair, and maintenance projects at various locations on the U.S. territory of Guam. The protester contends that the agency conducted a flawed best-value tradeoff analysis and improperly included an affiliate's past performance and experience in evaluating an awardee.

We deny the protest.

BACKGROUND

The RFP, which was set aside for small businesses, was issued by the Navy on March 29, 2016, under the two-phase design-build provisions of Federal Acquisition Regulation (FAR) subpart 36.3. RFP at 14-15.¹ The agency intended to award up to five indefinite-delivery, indefinite-quantity contracts, with 5-year terms, to the offerors whose proposals offered the best value to the Navy, considering price and non-price factors. Id. at 8, 15, 31. The maximum value of the procurement was \$240 million, with task orders to be issued on a fixed-price basis with a value between \$1 million and \$20 million. Id. at 14, 64.

The phase one evaluation consisted of four factors: technical approach, experience, past performance, and safety. Id. at 32. Under the technical approach factor, proposals would be evaluated as acceptable or unacceptable, and unacceptable proposals would not be considered for inclusion in the phase two evaluation. Id. The phase two evaluation consisted of three factors: technical solution, energy and sustainable design, and price. Id. Under the price factor, offerors were asked to propose a price for the repair and modernization of the bachelor enlisted quarters at Naval Base Guam, as a demonstration project. RFP, exh. C. In the selection of the proposals offering the best value, all phase one and phase two evaluation factors would be considered, except for the technical approach factor under which all proposals would have previously been rated acceptable. Id. The remaining technical factors, when combined, were of equal importance to the past performance factor, and the non-price factors, considered together, were approximately equal to price. Id.

The Navy received 29 phase one proposals by the deadline of May 5, 2016, including a proposal from GM-Bulltrack. Contracting Officer's Statement at 2. After evaluating offerors under the phase one factors, the agency selected 11 offerors to proceed to the phase two evaluation. Id. at 5-6. The Navy released the phase two solicitation on September 7, 2017. AR, Tab 11, RFP amend. 0005. After discussions, the Navy received 10 final phase two proposals by the deadline of April 11, 2018. AR, Tab 19, Source Selection Board (SSEB) Report, at 1. The agency evaluated these proposals as follows:

¹ Citations herein are to the conformed copy of the RFP included at Tab 27 of the agency report (AR).

Offeror	Combined Tech. Rating	Past Perf. - Confidence	Non-Price Rank	Price	Price Rank	Overall Rank
Fargo	Outstanding	Substantial	4	\$4,356,812	3	1
Serrano	Outstanding	Satisfactory	7	\$3,429,205	1	2
Modern	Good	Satisfactory	9	\$4,326,649	2	3
Reliable	Acceptable	Substantial	8	\$4,498,000	4	4
Pacific Rim	Outstanding	Substantial	3	\$5,570,736	5	5
Offeror A	Good	Substantial	5	\$6,115,384	6	6
Offeror B	Good	Satisfactory	10	\$6,444,860	7	7
GM-Bulltrack	Outstanding	Substantial	2	\$8,068,516	8	8
Offeror C	Outstanding	Substantial	1	\$8,357,719	10	9
Offeror D	Good	Substantial	6	\$8,333,901	9	10

AR, Tab 20, Source Selection Advisory Council (SSAC) Report, at 2-3, 6.

The source selection authority (SSA) reviewed the SSEB and SSAC reports, concurred with their findings and recommendation, and performed a best-value tradeoff analysis, making award to the first five offerors above. AR, Tab 22, Source Selection Decision (SSD), at 3. In deciding not to select GM-Bulltrack for award, the SSA concluded that “GM-Bulltrack is more advantageous in non-price factors, but [the] additional strengths offered in GM-Bulltrack’s proposal do not warrant the additional costs of approximately \$3.71 [million] over Fargo, \$4.64 [million] over Serrano, \$3.74 [million] over Modern, \$3.57 [million] over Reliable, and \$2.5 [million] over Pacific Rim.” AR, Tab 22, SSD at 3.

On July 19, the agency provided GM-Bulltrack with a debriefing. AR, Tab 25, Post-Award Debriefing. This protest followed.

DISCUSSION

GM-Bulltrack argues that the agency improperly evaluated the experience and past performance of an awardee. The protester also raises several challenges to the Navy’s best-value tradeoff decision. For the reasons below, we deny the protest.²

² Although we do not discuss all of the protester’s arguments here, we have considered them and find that none provides a basis to sustain the protest. For example, the protester asserts that Navy failed to investigate the responsibility of the awardees whose demonstration projects were priced below the independent government cost estimate (IGCE) of \$5,676,863. Protest at 10-12; AR, Tab 13, IGCE, at 1. Where the record shows that the contracting officer was aware of the facts or allegations identified by the protester, we will generally not review an allegation that the contracting officer should have found the awardee nonresponsible based on those facts or allegations. DynCorp Int’l LLC, B-411126.4 et al., Dec. 20, 2016, 2017 CPD ¶ 333 at 25. Because
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Challenge to Pacific Rim Award

GM-Bulltrack raises several specific challenges to the Navy's evaluation of one of the five awardees, Pacific Rim Constructors, Inc. (Pacific Rim) of Tamuning, Guam. Pacific Rim included in its proposal projects performed by a subsidiary, Pacific Rim Land Development (PRLD), in order to demonstrate its past performance and experience. AR, Tab 7, Pacific Rim Proposal, at 115, 117, 141. The Navy considered the experience and past performance of PRLD in evaluating Pacific Rim. See, e.g., AR, Tab 8, Phase One SSEB Report, at 175-179. The protester maintains that it was unreasonable for the Navy to attribute PRLD's experience to Pacific Rim or to credit Pacific Rim for the past experience of its subsidiary. Comments & Supp. Protest at 12. The Navy contends that, because Pacific Rim's proposal showed that the awardee had acquired PRLD's assets in full, the agency properly concluded that Pacific Rim could be credited for the past performance and experience of its subsidiary.

In reviewing a protest challenging an agency's past performance and technical evaluation, 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. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4; Williams Bldg. Co., Inc., B-413262.2, B-413262.3, Nov. 15, 2016, 2017 CPD ¶ 103 at 5. An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. See FAR § 15.305(a)(2)(iii); Ecompex, Inc., B-292865.4 et al., June 18, 2004, 2004 CPD ¶ 149 at 5. The relevant consideration is whether the resources of an affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. West Sound Servs. Grp., LLC, B-406583.4, B-406583.5, July 9, 2014, 2014 CPD ¶ 208 at 14. Where a proposal shows a significant nexus between the parent or affiliate concern's resources and the contracting entity, there is nothing objectionable in attributing the experience or past performance of the related entities to the business entity entering into the contract. IAP-

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the record here shows that the agency was aware of the difference between the IGCE and the proposed prices, we find no basis to sustain the protest. Id. Furthermore, arguments that the agency did not perform an appropriate analysis to determine whether prices are too low, such that there may be a risk of poor performance, concern price realism, which an agency is not required to consider unless the solicitation provides for such an analysis. Indtai Inc., B-298432.3, Jan. 17, 2007, 2007 CPD ¶ 13 at 4. The RFP here did not contain an express provision for a price realism analysis, nor did it advise offerors that their proposals could be rejected on the basis of low prices. Accordingly, a price realism analysis was neither required nor permitted and we find no basis to sustain this protest ground. i4 Now Sols., Inc., B-412369, Jan. 27, 2016, 2016 CPD ¶ 47 at 10.

Hill, LLC, B-406289 et al., Apr. 4, 2012, 2012 CPD ¶ 151 at 3-4; see also Serco, Inc., B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 6.

The solicitation provides that:

Offerors who submit past performance and experience information of a parent, sister, predecessor or other affiliated company must describe what involvement such company will have on the instant acquisition. The proposal should clearly indicate how the resources of the parent, sister, predecessor or other affiliate company – its workforce, management, facilities, or other resources – will be provided or relied upon for contract performance.

RFP at 31.

Pacific Rim's proposal provides that the same individual who formed PRLD in 2012 also formed Pacific Rim in 2015. AR, Tab 7, Pacific Rim Proposal, at 57. Importantly, Pacific Rim represents that, in 2016, it "acquired 100% ownership of [PRLD] and assumed its construction team and resources." Pacific Rim's proposal provides that Pacific Rim was previously doing business as PRLD. Id. at 115.

The Navy concedes that it "was not aware that PRLD continued to maintain a separate corporate identity after its acquisition by Pacific Rim," but argues that Pacific Rim's proposal provided a reasonable basis for the agency to conclude that the two companies shared the same construction team and resources, all of which would be used in performance of the contract. Supp. Memorandum of Law (MOL) at 4. The record shows that the Navy treated the two companies as one in terms of resources, experience, and past performance. AR, Tab 8, Phase One SSEB Report, at 175-179.

GM-Bulltrack asserts that Pacific Rim did not explain how it would access the assets of PRLD. Comments & Supp. Protest at 13, citing Alutiig Pac., LLC, B-409584, B-409584.2, June 18, 2014, 2014 CPD ¶ 196 (protest sustained where awardee provided insufficient information about affiliates' intended performance, despite RFP requirement); see also Supp. Comments at 6. However, an agency properly may consider the experience or past performance of an offeror's affiliated companies where the firm's proposal demonstrates that the resources of the affiliated company will affect the performance of the offeror." Bethel-Webcor JV, B-410772, Feb. 12, 2015, 2015 CPD ¶ 96 at 5. In contrast to Alutiig, where "the proposal [did] not clearly detail or explain how the affiliated concerns [would] contribute meaningfully to contract performance, as required by the solicitation," Pacific Rim's proposal explained that it "assumed [PRLD's] construction team and resources" and thus demonstrates that it acquired the relevant human and physical capital from PRLD. Alutiig, supra, at 1; AR, Tab 7, Pacific Rim Proposal, at 57.

Pacific Rim's proposal also provided that Pacific Rim had previously been doing business as PRLD. Id. at 115, 117. Thus, in contrast to Alutiig, the record here provides a reasonable basis for the agency to attribute the experience and past

performance of PRLD to Pacific Rim. Al Hamra Kuwait Co., B-288970, Dec. 26, 2001, 2001 CPD ¶ 208 at 4-5 (where offeror acquired all assets of prior firm and assumed all debts of prior firm, agency reasonably concluded that offeror was “effectively the successor firm” for past performance, despite continuance of prior firm as a legal entity); Harbor Servs., Inc., B-408325, Aug. 23, 2013, 2013 CPD ¶ 214 at 4 (agency reasonably credited awardee for experience of predecessor firm, where record showed key personnel and assets were transferred or otherwise available to awardee). Accordingly, this protest ground is denied.

Best-Value Tradeoff Decision

Next, GM-Bulltrack contends that the Navy’s best-value tradeoff decision was flawed. The protester maintains that, by ranking the proposals, the agency converted the best-value award scheme into one selecting the lowest-priced, technically acceptable proposals. Comments & Supp. Protest at 1-2. The protester also asserts the agency did not properly consider whether, despite its substantial price premium, the protester’s alleged technical “superiority” nevertheless merited award. Protest at 12-14. In addition, the protester claims that the agency’s evaluation and tradeoff analysis were inadequately documented. Comments & Supp. Protest at 3.

The Navy contends that the rankings were simply an organizational tool, because the agency in fact performed a detailed, head-to-head tradeoff analysis between all offerors, including GM-Bulltrack and each other offeror. Supp. MOL at 2 citing AR, Tab 20, SSAC Report. The agency further asserts that its use of “the ratings inherently involved the examination of strengths and weaknesses” and that specific strengths “were explicitly called out in the Agency’s reports.” Id. at 3 citing AR, Tab 20, SSAC Report.

In a best-value procurement, such as this one, it is the function of the SSA to perform a price/technical tradeoff to determine whether one proposal’s technical superiority is worth a higher price. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8. Where a solicitation provides for a tradeoff between the price and non-price factors, an agency properly may select a lower-priced, lower-rated proposal if the agency reasonably concludes that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified in light of the acceptable level of technical competence available at a lower price. i4 Now Sols., Inc., supra, at 15. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. General Dynamics-Ordnance & Tactical Sys., supra. Thus, a protester’s disagreement with an agency’s determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, do not establish that the evaluation or source selection was unreasonable. Id.

Here, although the offerors were ranked by price, non-price factors, and overall merit, we agree with the agency that these rankings merely reflected the merit described in the technical evaluation. In this regard, although the protester alleges that the agency failed to compare the merit of technical proposals and perform a reasonable tradeoff, the

record shows that the agency meaningfully considered the relative strengths and weaknesses of the proposals and documented this analysis. AR, Tab 8, Phase One SSEB Report; Tab 9, Phase One SSAC Report; Tab 19, SSEB Report; Tab 20, SSAC Report. The evaluation documents include comparisons of each set of proposals in which evaluated strengths of each proposal are described. See generally AR, Tab 20, SSAC Report. The SSD reflects the SSA's consideration of the SSEB and SSAC reports. AR, Tab 22, SSD. The record reflects that the SSA determined that the lower-priced proposals were most advantageous to the government, considering both price and non-price factors. Id. at 1-3. In making these tradeoff decisions, the SSA recognized GM-Bulltrack's superior technical evaluation, but concluded that, notwithstanding GM-Bulltrack's technical merits, those advantages did not outweigh the awardees' substantial price advantages. Id. This decision represents a reasonable exercise of the SSA's judgment, and we find no basis in the record to question the SSA's decision not to select GM-Bulltrack's proposal as one of the five proposals most advantageous to the agency.

We also find that the agency's source selection decision is adequately documented. For example, the head-to-head comparisons provide detailed technical evaluations. AR, Tab 20, SSAC Report. Further, given the specific price/technical merit tradeoffs described in the SSAC report, we see no indication in the record that the agency, in making its source selections, placed undue emphasis on price or made award on a lowest-priced, technically acceptable basis. MVM, Inc., B-403912.3, May 26, 2011, 2012 CPD ¶ 129 at 12.

The protest is denied.

Thomas H. Armstrong
General Counsel