



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: EMTA Insaat Taahhut Ve Ticaret, A.S.

File: B-416391; B-416391.4

Date: August 13, 2018

John M. Manfredonia, Esq., Manfredonia Law Offices, LLC, for the protester.
Paul D. Reinsdorf, Esq., Paul D. Reinsdorf Attorney at Law, for Aytekin-Serol Insaat Muhendislik Taahhut, A.S., the intervenor.
Nancy van Noortwijk, Esq., Department of the Army, for the agency.
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest allegations that the agency unreasonably evaluated the protester's and the awardee's proposals are denied where the record shows that the evaluation was consistent with solicitation criteria and applicable procurement statutes and regulations; with respect to allegations concerning the awardee's experience and past performance, the record shows that even if the protester is correct it has not established competitive prejudice.

DECISION

EMTA Insaat Taahhut Ve Ticaret, A.S. (EMTA), of Ankara, Turkey, protests the award of a contract to Aytekin-Serol Insaat Muhendislik Taahhut, A.S. (Aytekin), of Adana, Turkey, under request for proposals (RFP) No. W912GB17R0045, issued by the Department of the Army, Corps of Engineers (Corps), for the design and construction of an airfield fire and crash rescue station. The protester alleges that the agency unreasonably evaluated proposals and improperly made its source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on November 9, 2017, contemplated the award of a fixed-price contract for the design and construction of a new fire and crash rescue station at Incirlik Air Base in Adana, Turkey. Agency Report (AR), Tab 5, RFP at 284-285, 346.¹ Design and construction services contemplated included demolishing the existing airfield fire and crash rescue station, providing temporary facilities, and constructing a new facility. Id. at 346. Proposals were to be evaluated on a best-value tradeoff basis using price and three non-price factors, listed in descending order of importance: design and construction experience, past performance, and management approach. Id. at 294. When combined, the non-price factors were more important than price. Id.

The Corps received proposals from seven offerors, including EMTA and Aytekin. Contracting Officer's Statement of Facts (COSF) at ¶ 4. The agency's evaluation produced the following results:

	EMTA	Aytekin
Design and Construction Experience	Marginal	Good
Past Performance	Somewhat Relevant Limited Confidence	Relevant Satisfactory Confidence
Management Approach	Marginal	Good
Price	\$8,990,103	\$10,199,661

AR, Tab 10, Source Selection Decision Document (SSDD) at 999. In making her source selection, the source selection authority (SSA) compared EMTA's and Aytekin's proposals. Id. at 1003. The SSA found that Aytekin demonstrated good experience in completing relevant projects and had a history of doing so with high customer satisfaction, id. at 999, whereas EMTA demonstrated marginal experience in completing somewhat relevant projects with a history of just above average customer satisfaction. Id. at 1003. In addition, Aytekin had a good management approach showing a clear understanding of the project specifications and a sufficient source to staff the project, id. at 999, whereas EMTA had a marginal management approach that did not demonstrate an adequate approach or a clear understanding of the solicitation requirements. Id. at 1003. Based on her consideration of all features of the proposals, the SSA selected Aytekin for award as the best value. After EMTA received its written debriefing, it filed the instant protest.

¹ The Corps used a Bates numbering system in preparing its report. This decision uses the Bates numbers assigned for all citations to the report.

DISCUSSION

EMTA raises various challenges to the agency's evaluation and source selection decision. We have considered all of the allegations raised and find no basis to sustain the protest for any of the reasons advanced by the protester. We discuss EMTA's principal allegations below, but note, at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. SaxmanOne, LLC, B-414748, B-414748.3, Aug. 22, 2017, 2017 CPD ¶ 264 at 3.

Design and Construction Experience

When submitting their design and construction experience information, offerors were instructed to provide a list of no more than five projects for review. AR, Tab 5, RFP amend. 2 at 410-411. Any offeror submitting fewer than three projects would be considered ineligible for award. Id. at 411. The experience of eligible offerors would be evaluated under two criteria. Id. at 415-416.

Under the first criterion, the agency would evaluate the depth and relevancy of offerors' projects by assessing their experience against four standards. AR, Tab 5, RFP amend. 2 at 415. The agency would examine whether offerors' projects demonstrated design and construction in Turkey or using American standards, whether the project demonstrated experience working with proposed key subcontractors or joint venture members, whether offerors had performed the minimum of three projects, and whether the experience included projects with total costs ranging from \$5 to \$15 million. Id.

The second criterion specified that projects would be considered relevant when they were completed within the last six years or at least 50 percent complete, performed in Turkey, and between \$5 and \$15 million in cost. AR, Tab 5, RFP at 415. Offerors were further advised that to be considered relevant, experience must include the following trades:

- (a) New Construction with associated utility and communication improvements and connections;
- (b) Design/Build construction projects;
- (c) Temporary buildings with associated utility and communication improvements and connections;
- (d) Environmental, to include permitting, hazardous waste removal and disposal, i.e., asbestos;
- (e) Demolition and site restoration; and
- (f) Concrete and/or asphalt roads, pavements, airfield runway work.

Id. at 415-416. A project demonstrating experience in multiple trades would be considered more relevant. Id. at 416. A project older than six years, not performed in Turkey, or valued outside the listed range would be considered less relevant. Id.

The agency assigned EMTA's design and construction experience a marginal rating with no strengths and two weaknesses. AR, Tab 10, SSDD at 961. The first weakness was that EMTA did not demonstrate experience working with proposed key subcontractors and/or joint venture partners, and did not demonstrate experience with temporary facility construction or environmental work. Id.

EMTA asserts that the agency unreasonably assigned the weakness because the solicitation did not require offerors to demonstrate prior experience working with key subcontractors, but rather the experience of working with a subcontractor would only be evaluated if that subcontractor's experience was submitted for evaluation purposes. Protester's Comments at 12-13. Alternatively, EMTA asserts that its proposal did not include any key subcontractors. Protester's Supp. Comments at 16. EMTA also asserts that, as a certified asbestos abatement company, it has extensive experience conducting environmental work. Protester's Comments at 13.

The record does not support EMTA's position. EMTA proposed to subcontract with an unidentified architectural and engineering firm during the design phase of the project. Tab 7, EMTA Proposal at 868. Further, EMTA stated that it would submit the selected architectural and engineering firm to the agency for approval as a key subcontractor. Id. Thus, because the terms of the solicitation required the agency to consider whether EMTA demonstrated experience working with proposed key subcontractors, it was incumbent upon the firm to include examples of such projects.

Likewise, the record does not show that EMTA has experience conducting environmental work because its proposal did not include any projects demonstrating asbestos abatement or other environmental work. AR, Tab 7, EMTA Proposal at 834-844. While EMTA asserts that the agency should have credited it based on its reputation, an offeror has a responsibility to submit a well-written proposal with adequately detailed information that demonstrates compliance with all solicitation criteria and allows for meaningful review by the agency. DLT Solutions, Inc., B-412237 et al., Jan. 11, 2016, 2016 CPD ¶ 19 at 7. Thus, there is no basis to question the agency's judgment because the agency could not review information that EMTA failed to include in its proposal.²

² While EMTA asserts that it is the single certified asbestos abatement company in Turkey and had conducted all asbestos related work for the agency, it did not support its assertion with any documentation substantiating its allegation or show that the agency officials were particularly familiar with its asbestos abatement work.

The agency assigned a second weakness to the firm's design and construction experience because it determined that only one of the firm's projects was relevant, and the other four projects were less relevant in scope, location, and magnitude. AR, Tab 10, SSDD at 961. The firm argues that the agency unreasonably assigned that weakness because all of its submitted projects should have been considered relevant. We have considered all of the firm's allegations in this regard and find that none have merit. We discuss a few examples for illustrative purposes.

The firm alleges that the agency unreasonably evaluated "Project No. 3" and "Project No. 5" as less relevant. Protester's Comments at 14-15. In its proposal, the firm described "Project No. 3" as a renovation project involving 336 housing units. Tab 7, EMTA Proposal at 838. The firm listed the final cost of the project as \$42,079,066, but explained that the contract was divided into four phases and that each phase had a separate contract line-item number. Id. The firm described "Project No. 5" as a design, construction, and renovation project involving a chancery compound and a housing compound. Id. at 842. The firm listed the final cost of this project \$20,285,603. Id. The agency evaluated both of these projects as less relevant because they were outside the RFP dollar range. AR, Tab 10, SSDD at 959-960.

Based on the record, we have no basis to sustain this allegation. The solicitation provided that projects outside the \$5 to \$15 million cost range would be considered less relevant. AR, Tab 5, RFP amend. 2 at 415. Regarding projects with values exceeding the cost range, offerors were advised that they could submit these projects, so long as there was a measurable performance period and monetary value within these larger projects that was relevant to the instant procurement. Id. Offerors were further advised to describe specifically the part of the project that they wanted considered. Id.

Here, the firm's proposal did not identify any narrower performance period within the projects that it wanted considered. For "Project No. 3," the firm did not specifically identify the values of the separate phases, the duties under the separate phases, or, most importantly, indicate which phase it wanted considered. While we acknowledge that the agency may have been familiar with the overall contract, it did not have a duty to clarify which phase should have been considered. Similarly, the firm did not identify whether it wanted the chancery compound or housing compound considered as its experience under "Project No. 5." Thus, the record shows that the agency reasonably evaluated these projects as less relevant because the firm did not identify any particular periods of performance that should have been evaluated.

EMTA also asserts that the agency unreasonably evaluated "Project No. 2" as less relevant. The firm described "Project No. 2" as the construction of a presidential information and coordination center in Kabul, Afghanistan. Tab 7, EMTA Proposal at 836. The agency evaluated this project as less relevant because it was unclear whether project was constructed in accordance with American standards. COSF at ¶ 48.

The record does not support the firm's position. The solicitation provided that a project must be constructed in Turkey, or in accordance with American standards, in order to be considered relevant. AR, Tab 5, RFP amend. 2 at 415. The proposal shows that the project was completed outside of Turkey, and it does not affirmatively state that it was constructed in accordance with American standards. AR, Tab 7, EMTA Proposal at 836. While EMTA asserts that the Corps should have recognized that it was constructed in accordance with American standards because it was a U.S. government contract, the onus is on the offeror to submit a well-written proposal affirmatively demonstrating compliance with all solicitation criteria. See DLT Solutions, Inc., supra, at 7. Accordingly, we do not find that the agency unreasonably assigned this weakness.³

Past Performance

Offerors were instructed to provide past performance questionnaires (PPQ) or contractor performance assessment reports (CPAR) for each project submitted. AR, Tab 5, RFP amend. 2 at 411-412. Past performance would be evaluated for relevancy based on the definition of relevancy as presented under the design and construction experience factor. Id. at 417. The agency would formulate a confidence assessment based on the quality and timeliness of performance, customer satisfaction, labor practices, financial management of the contract, and whether the offeror maintained a safe working environment. Id. The agency would consider the relevancy of each reference, the recentness of each reference, trends in an offeror's performance, customer evaluations, and any positive or negative comments regarding performance. Id. at 418-419.

When evaluating EMTA's past performance, the agency assigned "somewhat relevant" and "limited confidence" ratings. AR, Tab 10, SSDD at 961. The agency assigned EMTA's proposal no strengths and two weaknesses, noting that the past performance references did not include enough detail to determine relevancy and that the evaluators' comments included mixed reviews. Id. at 962-963.

In challenging the agency's evaluation, EMTA alleges that the agency concentrated on negative comments and ignored positive comments. Protester's Supp. Comments

³ EMTA also alleges that the Corps evaluated "Project No. 2" unequally, arguing that it assumed all projects completed in Turkey were constructed in accordance with Turkish standards but did not make a similar assumption that projects completed for the U.S. government were constructed in accordance with American standards. Protester's Supp. Comments at 18. That allegation fails to state a valid basis because the agency did not evaluate projects for relevancy based on whether they were constructed in accordance with Turkish standards under the terms of the solicitation. 4 C.F.R. § 21.1(c)(4), (f) (a protest allegation must include sufficiently supported grounds).

at 22. We find no merit to this aspect of EMTA's protest. 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. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Id.

Here, the record shows that the agency gave detailed consideration to both the negative and positive aspects of EMTA's past performance, and concluded that, on balance, its negative past performance outweighed its positive past performance. COSF at ¶¶ 58, 60, 61; AR, Tab 10, SSDD at 962 (noting that although the CPARs ratings were overall positive, the government evaluator comments were mixed). Furthermore, our examination of the record confirms that, while the firm received satisfactory-to-positive overall ratings, the reviews also contain some [DELETED] comments regarding the firm's past performance. See e.g., Tab 7, EMTA Proposal at 846 (noting that [DELETED]). The record also shows that the agency concluded that most of EMTA's references were less relevant and therefore the overall ratings were less significant. AR, Tab 10, SSDD at 963. Although EMTA disagrees that the negative comments outweighed its overall satisfactory-to-positive past performance ratings, such disagreement, without more, does not provide our basis to object to the agency's evaluation in this area.⁴ We therefore deny this aspect of EMTA's protest. Cf. Savannah River Tech. & Remediation, LLC; Fluor Westinghouse Liquid Waste Servs., LLC, B-415637 et al., Feb. 8, 2018, 2018 CPD ¶ 70 at 13 (agency reasonably evaluated awardee's past performance where agency determined that, on balance, the positive aspects of the awardee's past performance outweighed the negative aspects).

⁴ With regard to EMTA's third past performance reference, the record shows that the agency considered an intermediate CPAR and did not consider the final CPAR. COSF at ¶ 60. The final CPAR included a revised final evaluation recommending EMTA for future awards, but also included negative comments stating that [DELETED]. AR, Tab 8, Final CPARs and Addenda EMTA at 896. While we agree the agency should have considered the final CPAR, we do not think the error resulted in prejudice. R4 Integration, Inc., B-414592, June 30, 2017, 2017 CPD ¶ 211 at 7 (competitive prejudice is an essential element of every protest). Even if this allegation were sustained, EMTA has not demonstrated that its overall rating would have changed because the final CPAR contained negative comments about the firm's performance and was for a less relevant contract. Cf. Swets Information Servs., B-410078, Oct. 20, 2014, 2014 CPD ¶ 311 at 14 (allegation did not demonstrate competitive prejudice where the agency's failure to attribute two past performance references would not have changed the overall evaluation).

Management Approach

Offerors were instructed to submit an organization chart, organization narrative, and management narrative as part of their proposals. AR, Tab 5, RFP amend. 2 at 412. In their organization charts, offerors were advised to provide a chart including all offices involved with managing the contract and showing the lines of authority for each position, including those of the program manager. Id. at 419. When submitting their organization narratives, offerors were advised to describe the comprehensive duties, roles, major responsibilities, and authorities for its managers. Id. The solicitation also advised that each offeror's management narrative would be evaluated based on:

The extent to which the proposal describes a reasonable and logical plan of managing the design; assuring design and materials meet US and Host Nation requirements; resolving differences in US and Host Nation standards and specifications; roles, responsibilities and process in securing design, materials and permit approvals; managing the interaction between designers and construction personnel during the lifecycle of the project; managing the construction and demolition Host Nation approvals, sequencing and schedule; providing a satisfactory fire crash rescue station facility turnover to include operation and maintenance manuals, warranties, and training; and managing communication with [the agency].

Id.

The agency assigned EMTA's management approach a "marginal" rating, and identified one strength and two weaknesses. AR, Tab 10, SSDD at 964. The agency assigned the one strength because EMTA demonstrated knowledge of the Corps' construction processes. Id. The agency assigned the weaknesses because it determined that the firm's proposal did not define roles and responsibilities for the program manager, and did not provide adequate information regarding how it would resolve differences between American and Turkish standards, explain how it would assure design and materials meet American and Turkish requirements, describe how it would complete turnover of the facility, or address project scheduling and sequencing. Id.

With regard to the first weakness, EMTA alleges that the agency unreasonably evaluated its proposal because its organization chart identified a "managing director" with the same roles and responsibilities as a program manager. Protest at 18. However, the RFP required offerors to identify a program manager on their organization charts, and EMTA's failure to do so demonstrates that it failed to submit a well-written proposal complying with all solicitation criteria. Tab 7, EMTA Proposal at 861.

With regard to the second weakness, EMTA alleges that its proposal explained how it would resolve differences between American and Turkish standards. Protest at 19. Our review of EMTA's proposal shows that it did not discuss how it would resolve differences between American and Turkish building standards; rather, it only stated that its selected subcontractor would be proficient in designing projects according to

American standards and that the ultimate design would be done in accordance with the terms of the contract.⁵ AR, Tab 7, EMTA Proposal at 868. Merely describing that the subcontractor understood American standards and that it would perform in accordance with the contract does nothing to explain what would happen in the event that the contract contemplated the application of competing provisions of the American and Turkish codes. Accordingly, we deny EMTA's allegation because the record does not show that EMTA's proposal contained a plan to resolve differences between American and Turkish standards.

EMTA also alleges that the agency evaluated its and Aytekin's proposals unequally. It asserts that the agency did not assign a weakness to Aytekin's proposal, even though Aytekin failed to provide a facility turnover plan.⁶ Protester's Comments at 31-32. We deny this protest allegation because we do not find that it resulted in competitive prejudice. Competitive prejudice is an essential element of every viable protest, and we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. CWTSatoTravel, B-404479.3, B-404479.4, Sept. 24, 2012, 2012 CPD ¶ 281 at 9-10. Here, had the agency recognized that Aytekin's proposal did not include a facility turnover plan, it only would have served as additional support for the already assigned weakness. As noted above, the record shows that EMTA received one weakness predicated on multiple omissions, including its failure to provide a facility turnover plan and failure to provide a plan for resolving differences between American and Turkish standards. Thus, had the agency recognized its error, we think the agency simply would have supported the already assigned weakness with an additional reason, as it did for EMTA. In this way, we find it unlikely that one additional reason supporting an assigned weakness would have had any impact on the awardee's overall rating for this factor and therefore the agency's

⁵ To the extent EMTA alleges that the Corps unreasonably assigned the weakness because the solicitation did not require a facility turnover plan, we dismiss this argument as abandoned. Where an agency provides a detailed response to a protester's argument and the protest fails to rebut or respond to the agency's argument in its comments, the protester fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable. IntegriGuard, LLC d/b/a HMS Federal--Protest and Recon., B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5. Here, the Corps substantiated its evaluation by explaining that EMTA's proposal did not include a facility turnover plan as required by the solicitation. Memorandum of Law at 24-25. EMTA abandoned this argument because it did not respond to the agency's position in its comments.

⁶ EMTA also alleged that the Corps evaluated its proposal unequally because it received a weakness for failing to include a plan to resolve differences between American and Turkish standards, but Aytekin did not receive a weakness even though it also failed to include such a plan. We deny this allegation because the record shows that the Corps did assign a weakness to Aytekin's proposal for this reason. AR, Tab 10, SSDD at 958.

alleged error did not prejudice the protester. Accordingly, we deny this protest allegation.

Aytekin's Evaluation

EMTA also challenges various aspects of Aytekin's evaluation as unreasonable. The firm first alleges that the agency applied unstated evaluation criteria when assessing three strengths to Aytekin's proposal under the management approach factor. One strength was assigned because Aytekin specified a particular company to serve as its sustainability and commissioning agent. AR, Tab 10, SSDD at 958. EMTA asserts that this strength was unreasonable because the solicitation's terms did not require offerors to propose sustainability or commissioning agents. Protester's Comments at 31.

When reviewing whether an agency applied unstated evaluation criteria, our decisions explain that an agency is required to evaluate quotations based solely on the factors identified in the solicitation. IBM Global Business Serv.--U.S. Federal, B-409029, B-409029.2, Jan. 27, 2014, 2014 CPD ¶ 43 at 4. While an agency may apply evaluation considerations that are not expressly outlined in the solicitation if those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated and unstated criteria. Id.

On this record, we find that the agency did not apply unstated evaluation criteria. The solicitation advised that quotations would be evaluated based on whether offerors provided a reasonable and logical plan for managing the contract. AR, Tab 5, RFP amend. 2 at 419. The solicitation further specified that offerors would be expected to provide commissioning services, which included a commissioning agent, and also registration with the U.S. Green Building Council or the Green Building Initiative. Id. at 371-372. Here, the awardee's proposal identified a particular company as its sustainability and commissioning agent. AR, Tab 6, Aytekin Proposal at 668-670. The awardee's proposal described how the sustainability and commissioning agent would perform those duties in accordance with the contract (e.g., the proposal states that the agent would perform all sustainability studies in order to register with the U.S. Green Building Council or the Green Building Initiative). Id. In our view, the agency's evaluation is unobjectionable because the identification of a particular sustainability and commissioning agent, while not required, ultimately demonstrated a lower risk of unsuccessful performance managing the sustainability and commissioning duties outlined in the solicitation. Cf. Preferred Sys. Solutions, B-291750, Feb. 24, 2003, 2003 CPD ¶ 56 at 3 (although not required by the solicitation, agency reasonably considered résumés and transition plan because the availability of personnel was directly related to the risk of managing the contract).

EMTA also alleges that the agency unreasonably evaluated Aytekin's proposal as demonstrating experience constructing temporary facilities under the design and construction experience factor. Protester's Supp. Comments at 13-15. Based on this record, we have no basis to object to the agency's evaluation. Although the terms of the solicitation contemplated temporary facilities for firefighters and firefighting

equipment, the evaluation criteria did not specify that only experience constructing temporary fire stations would qualify as temporary building experience. AR, Tab 5, RFP amend. 2 at 415 (a past project would be evaluated as relevant when it, in part, demonstrated experience involving five trades, including temporary buildings with associated utility and communication improvements and connections). In this regard, the record shows that Aytekin's temporary building experience (i.e., assembling pre-fabricated buildings, providing office space, and connecting utilities) was consistent with some of the duties to be performed when constructing the temporary facilities. AR, Tab 6, Aytekin Proposal at 483-509; AR, Tab 5, RFP at 382-384. While EMTA may assert that Aytekin's experience is not relevant because it did not sufficiently demonstrate ability to erect a temporary fire station (e.g., construct a temporary garage for firetrucks), mere disagreement does not demonstrate that the agency's evaluation was unreasonable.

EMTA also asserts that the agency improperly considered Aytekin's PPQs for "Project Nos. 1 and 2" because the PPQs were not signed by agency personnel. Protester's Supp. Comments at 7-10. In our view, this allegation does not demonstrate that the agency unreasonably considered the PPQs. The RFP instructed offerors to submit PPQs signed by the client. AR, Tab 5, RFP amend. 2 at 411. The record shows that Aytekin's PPQs for "Project Nos. 1 and 2" were not signed by agency officials, but rather were signed by third-party inspectors employed by the agency to provide technical oversight and quality control functions. Supp. COSF at ¶¶ 22, 23. The agency considered these past performance references because the inspectors were in the best position to review the awardee's performance on these contracts. Id. The record also shows that the inspectors did not have contractual relationships with the awardee, and the protester has not alleged that the PPQs were unreliable. Id. Furthermore, the protester failed to demonstrate that the term "client" as used in the solicitation does not reasonably encompass a third-party representative authorized by the agency (i.e., the client) to inspect performance. See Protester's Supp. Comments at 8 n.2 (arguing only that "[t]he term 'client' should be given its plain meaning, which clearly does not include a third-party inspector employed by the owner"). Accordingly, we deny this protest allegation because the PPQs provided credible information about the awardee's performance and, even though they were not signed by agency officials, they were signed by inspectors authorized by the agency to perform oversight of those contracts.

EMTA finally asserts that the agency unreasonably evaluated the awardee's "Project Nos. 1 and 3" under the design and construction experience and past performance factors. EMTA argues that "Project No. 1" was improperly evaluated because Aytekin represented that it performed the contract as the prime contractor in the experience section of its proposal and that it performed as a subcontractor in another section. Protester's Supp. Comments at 11-12. EMTA also argues that Aytekin's "Project No. 3" should have been evaluated as "less relevant" because it was completed more than six years ago. Id. at 2-7.

On this record, we do not find that the protester has established that it suffered competitive prejudice. When conducting its tradeoff, the record shows that the agency

considered Aytekin's projects demonstrating experience in each of the trades as determinative when distinguishing the proposals under the design and construction experience factor. AR, Tab 10, SSDD at 1003-1004. Further, as already noted, the agency considered Aytekin's record of high customer satisfaction as superior to EMTA's record of above average customer satisfaction, and considered Aytekin's management approach as demonstrating a clear understanding of solicitation requirements while EMTA's management approach did not demonstrate an adequate understanding of the solicitation's requirements. Id. at 999, 1003. Thus, even if the agency had considered Aytekin's projects as less relevant, the record shows that this would have had a negligible effect on the agency's best-value determination because the proposals still would have contained the relative features that the agency identified as determinative (i.e., finding that Aytekin had less relevant contracts would not have changed the fact that Aytekin demonstrated experience in each of the trades, had better past performance ratings, and a superior management approach). See Janus Global Operations, B-414569.8, Nov. 21, 2017, 2017 CPD ¶ 367 at 7 (stating "we have consistently found it reasonable for an agency's best-value determination to look beyond adjectival ratings and compare the relative features and advantages of competing proposals"). Accordingly, we deny this protest allegation.

Source Selection Decision

Finally, EMTA alleges that the agency improperly conducted its best-value tradeoff analysis. The protester argues that the analysis was flawed because it was based on miscalculations of the protester's and awardee's proposals. Protester's Comments at 32-33. This allegation is derivative of the challenges to the agency's evaluation. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest. Technology and Telecomms. Consultants, Inc., B-415029, Oct. 16, 2017, 2017 CPD ¶ 320 at 6.

We deny the protest.

Thomas H. Armstrong
General Counsel