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# Decision

**Matter of:** Benaka Inc.

**File:** B-416836; B-416836.2

**Date:** December 18, 2018

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Donald J. Walsh, Esq., Wright, Constable & Skeen, LLP, for the protester.  
Scott N. Flesch, Esq., Frank A. March, Esq., and Lieutenant Colonel Andrew J. Smith, Department of the Army, for the agency.  
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest that agency misevaluated protester’s proposal as technically unacceptable under requirement for construction schedule that included “a maximum of 30 activities and or milestones” is denied where agency reasonably evaluated protester’s schedule having over 160 activities as noncompliant and thus unacceptable.
2. Protest that agency misevaluated awardee’s proposal as acceptable because its schedule allegedly combined some items, omitted others, and used an impractical scheduling sequence, is dismissed where protester’s proposal was unacceptable and at least one other offeror submitted an acceptable proposal and was thus in line for award.

## DECISION

Benaka Inc., of New Brunswick, New Jersey, a small business, protests the rejection of its proposal and the award of a contract to Ranco Construction Inc., of Southamton, New Jersey, also a small business, by the Department of the Defense, National Guard Bureau, under request for proposals (RFP) No. W912KN-18-R-6000 for construction of a fuel cell/corrosion control facility at the New Jersey Air National Guard (NJANG) 177th Fighter Wing, in Egg Harbor Township, New Jersey. Benaka argues that NJANG misevaluated both firms’ proposals and unreasonably awarded the contract to Ranco at a higher price.

We deny the protest in part and dismiss it in part.

## BACKGROUND

The RFP, issued on June 8, 2018, sought proposals from small businesses to construct a fuel cell/corrosion control facility within a 545-day performance period, including up to seven optional elements of the facility. Agency Report (AR) at 3-7. The RFP specified that proposals would be evaluated under three factors: technical, past/present performance, and price. AR, Tab 6, RFP amend. 1 at 10. Both the technical factor and the past/present performance factor were to be evaluated on an acceptable/unacceptable basis. Id. at 11-12. Any proposal evaluated as unacceptable under either the technical or the past/present performance factor would be eliminated from further consideration for award. Id. The contract would then be awarded to the firm submitting the lowest-priced technically acceptable proposal. Id. at 10.

Under the technical factor, the RFP directed each offeror to include in its proposal a construction schedule, defined as “an integrated and networked multi-layered schedule or program projects/tasks” that included “events, accomplishment, and criteria and the expected dates of each.” RFP amend. 1 at 11 (¶ 2.2.2). The schedule also had to show that “[e]ach major task will be directly traceable to the requirements of the project.” Id. Further, the construction schedule was to be provided “in a Gantt chart that shows the complete project schedule . . . and shall include a maximum of 30 activities and or milestones.” Id. at 11 (¶ 2.2.2.1). The RFP specified that the schedule “shall include the following milestones and activities,” after which 16 bulleted items were listed, the last two of which were “[d]emobilization” and “[f]inal [a]cceptance/[c]ontract [c]ompletion.” Id. at 11-12.

The RFP then explained that a technically acceptable schedule was required to show four elements, described as follows:

- The logical work breakdown structure, realistic activity durations, correct sequencing, and logical task interdependencies.
- Schedule shall have the attributes detailed [in another section] [c]ost-[l]oaded [n]etwork [a]nalysis [s]chedules.
- Offeror shall use 30 September 2018 as the estimated [n]otice to [p]roceed (NTP) date and a project duration of 545 days after NTP.
- The proposal shall include a narrative discussing the scheduling of processes and resource allocation to ensure completion, control of schedule progress from beginning to end of the project.

Id. at 12.

NJANG received proposals from six offerors, including Benaka and Ranco. Upon evaluating Benaka’s proposal under the technical factor, the agency noted that the construction schedule included all of the required items, but listed 163 individual tasks. The evaluators determined that Benaka’s schedule thus exceeded the RFP limitation of “30 milestones and or activities,” and rated it unacceptable on that basis. AR Tab 11d, Evaluator Worksheets for Benaka, at 1, 5; AR Tab 12, Source Selection Decision

Document, at 5. The agency calculated Benaka's price as \$10.3 million,<sup>1</sup> but did not evaluate the proposal under the past/present performance factor because the unacceptable evaluation under the technical factor made it ineligible for award. Id. at 5, 8.

The evaluators determined that Ranco's proposal was acceptable under both the technical and past/present performance factors, and was the lowest-priced proposal at an evaluated price of \$12.0 million. AR Tab 11e, Evaluator Worksheets for Ranco, at 1, 5; AR Tab 12, Source Selection Decision Document, at 2-3, 5.

On September 11, NJANG notified Benaka that the contract had been awarded to Ranco. Benaka requested and received a debriefing, which explained that the firm's proposal had been evaluated as unacceptable because its schedule was inconsistent with the requirements of the RFP. AR Tab 15, Debriefing Letter to Benaka (Sept. 13, 2018), at 1. This protest followed.

## PROTEST

Benaka argues that NJANG misevaluated its proposal as unacceptable under the technical factor with respect to the firm's construction schedule. Specifically, Benaka argues that its schedule was a reasonable interpretation of the RFP requirements for a detailed Gantt chart schedule using critical path methodology and showing integrated and networked multi-layered schedule or program projects/tasks, events, accomplishments, and criteria, and the expected dates of each. Protest at 6-7. Benaka agrees that the schedule listed 163 items, but argues that it included all 16 required bulleted milestones, 7 additional milestones corresponding to the 7 options, and met the requirement for no more than 30 milestones total. Id. at 6. Benaka argues that its schedule thus complied with the RFP, so the evaluation of its proposal as unacceptable on the basis of the proposed schedule was unreasonable. Id. at 8.

NJANG argues that its evaluators found Benaka's detailed schedule contained all required items, and showed completion within 545 days, but they also found it to be confusing, and observed that it listed more than 30 activities, so the evaluators reasonably rated it unacceptable on that basis. AR at 8-9.

Benaka responds that NJANG did not specify that offerors' schedules were limited to 30 items, but instead specified that the limitation was "30 milestones and or activities," while at the same time requiring a depiction of details that would render the agency's interpretation of the RFP language as limiting offerors to a schedule having only 30 schedule items as contradictory. Protester's Comments & Supp. Protest at 4-5. Benaka argues that NJANG's interpretation of the RFP is "unreasonable and absurd," and would have required Benaka to submit a construction schedule without most of the entries needed to describe the work for a project valued over \$10 million. Id.

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<sup>1</sup> Prices have been rounded for purposes of this decision.

In reviewing a protest challenging the evaluation of proposals, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. In this regard, an offeror must affirmatively demonstrate the merits of its proposal, which is at risk of rejection if the offeror fails to do so. Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3.

In our view, NJANG reasonably evaluated Benaka's proposal as unacceptable because its proposed schedule exceeded the limit of "30 milestones and or activities" that the RFP specified. While Benaka argues that the use of "and or" should be construed in what the firm claims is a reasonable manner that would achieve consistency with Benaka's view of the requirement of other RFP provisions, we cannot agree that the RFP was ambiguous in specifying a limit of 30 entries, which could be milestones or activities or a combination of both.<sup>2</sup> NJANG reasonably evaluated Benaka's proposal as unacceptable because it did not comply with this explicit requirement of the RFP. Accordingly, we have no basis to sustain Benaka's protest of the rejection of its proposal.

In addition, Benaka argues that Ranco's schedule was also unacceptable. Even though Benaka concedes that the awardee's proposal contained a schedule with 30 numbered lines, the protester alleges that Ranco's proposal does not have a critical path schedule, and the schedule places activities in an impermissible sequence and includes several items made up of multiple activities on a single schedule line. Protester's Comments & Supp. Protest at 10-12. Benaka also argues that Ranco's schedule omitted demobilization, which was one of the required activities listed in the RFP, but the evaluators unreasonably excused the omission. Id. at 10. As a result, Benaka argues that Ranco's proposal also should have been rejected as unacceptable.

NJANG argues that the evaluation of Ranco's proposal as acceptable was reasonable, and that Benaka is not an interested party to challenge the evaluation of the awardee's proposal in any case. Supp. AR at 7, 13-14. On the second point, NJANG argues that Benaka's proposal was unacceptable, while the record also shows that a third offeror submitted an acceptable proposal. NJANG argues that the third firm, not Benaka, was next in line for award, and therefore only that firm would be an interested party to challenge the evaluation of Ranco's proposal. Id. at 7.

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<sup>2</sup> To the extent that the RFP language could be read as limiting the schedule to 30 milestones, or to 30 activities, or to a combined total of 30 milestones and activities, the resulting ambiguity would be patent. To be timely, any protest challenging the terms of the RFP as defective because of a patent ambiguity must be filed before the closing time for submission of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

We agree with NJANG. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-57, only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party’s status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id. In general, an offeror whose offer was properly rejected is not an interested party eligible to protest an award to another firm where there are other offerors that would be in line for award if the protest were sustained. See Aquila Fitness Consulting Sys., Ltd., B-286488, Jan. 17, 2001, 2001 CPD ¶ 4 at 4. Even in those circumstances, we view a protester as an interested party where the basis for protest is that the protester and the awardee were treated disparately by rejecting the protester’s nonconforming offer while accepting a competitor’s similarly nonconforming offer. Armed Forces Merchandise Outlet, Inc., B-294281, Oct. 12, 2004, 2004 CPD ¶ 218 at 5.

Here, however, Benaka was not the only other offeror, and if its protest were to be sustained, the third offeror would be in line for award, not Benaka. Further, the alleged flaws in Ranco’s schedule are not the same as those in Benaka’s proposal, thus there was no disparate treatment. See Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8. As a result, Benaka is not an interested party to challenge the acceptability of Ranco’s proposal, so we dismiss that ground of protest.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong  
General Counsel