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## Decision

**Matter of:** Burchick Construction Company, Inc.

**File:** B-417310.3

**Date:** January 27, 2020

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Nancy M. Camardo, Esq., Camardo Law Firm, PC, for the protester.  
Tracy Reibling, C&C Contractors, LLC, for the intervenor.  
Ashley Lawson Williams, Esq., Department of Veterans Affairs, for the agency.  
Andrew J. Smith, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the agency's past performance and technical evaluation of its proposal is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

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### DECISION

Burchick Construction Company, Inc., a small business of Pittsburgh, Pennsylvania, protests the award of a contract to C&C Contractors, LLC, a service-disabled veteran-owned small business of Notasulga, Alabama, by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. 36C10F18R0651, for construction services to expand the National Cemetery of the Alleghenies. The protester challenges the agency's evaluation of its proposal and award decision.

We deny the protest.

### BACKGROUND

On August 31, 2018, the VA issued the RFP as a small business set-aside conducted pursuant to Federal Acquisition Regulation (FAR) part 15. Agency Report (AR), Tab 4, RFP, at 1. The RFP sought proposals to provide construction services to expand the National Cemetery of the Alleghenies located in Bridgeville, Pennsylvania to provide an additional 10 years of continued burial service. Id. at 1, 9.

The RFP contemplated the award of a fixed-price construction contract on a best-value tradeoff basis considering price and the following equally weighted factors: past performance, relevant experience, technical approach, construction/project management, and veteran involvement. Id. at 10-11. As relevant here, the relevant experience factor was comprised of two equally weighted subfactors: relevant team experience and key personnel. Id. The construction/project management factor contained the following five subfactors, of equal importance: project organizational chart and narrative; capacity to perform the work; quality control plan; safety plan; and schedule. Id. The non-price factors and subfactors, when combined, were significantly more important than price. Id. at 11.

The agency received proposals from Burchick and C&C by the October 25 due date. AR, Tab 1, Contracting Officer's Statement (COS) at 2; Tab 5, RFP amend. 0002, at 1. The agency evaluated proposals, and on January 30, 2019, awarded the contract to C&C in the amount of \$24,201,000. Id. at 3.

On February 12, Burchick filed a protest with our Office challenging the agency's evaluation of its proposal and the best-value tradeoff decision. The agency notified our Office of its intent to take corrective action by reevaluating proposals and making a new award decision. As a result of the agency's decision to take corrective action, we dismissed the protest as academic. Burchick Construction Co., Inc., B-417310, Mar. 20, 2019 (unpublished decision). In July 2019, after reevaluating proposals, the agency again awarded the contract to C&C. Burchick again protested to our Office, challenging the award decision and the agency's evaluation of its proposal. The agency again notified our Office that it intended to take corrective action by assigning a new contracting officer to the procurement, establishing a new Technical Evaluation Board (TEB) to reevaluate Burchick's proposal, and making a new best-value award decision. As a result, we dismissed the protest as academic. Burchick Construction Co., Inc., B-417310.2, Sept. 3, 2019 (unpublished decision).

The agency's corrective action resulted in the following ratings:

	<b>Burchick</b>	<b>C&amp;C</b>
<b>Past Performance</b>	High Risk	Very Low Risk
<b>Relevant Experience</b>	Marginal	Very Good
<b>Relevant Team Experience</b>	Marginal	Very Good
<b>Key Personnel</b>	Marginal	Very Good
<b>Technical Approach</b>	Marginal	Very Good
<b>Construction/Project Management</b>	Marginal	Very Good
<b>Project Organizational Chart and Narrative</b>	Satisfactory	Very Good
<b>Capacity to Perform the Work</b>	Marginal	Satisfactory
<b>Quality Control Plan</b>	Marginal	Very Good
<b>Safety Plan</b>	Marginal	Very Good
<b>Schedule</b>	Marginal	Very Good
<b>Veteran Involvement</b>	Marginal	Exceptional
<b>Price</b>	\$21,600,000	\$24,201,000

AR, Tab 14, TEB Report, at 3; Tab 15, Source Selection Decision (SSD), at 35.

On October 8, the source selection authority (SSA) again determined that C&C's proposal represented the best value to the government and selected it for award. AR, Tab 15, SSD, at 44. On October 8, the agency notified Burchick that the reevaluation was complete and that C&C was awarded the contract. AR, Tab 16, Notification of Award, at 1. Burchick requested a debriefing, which the agency provided on October 16. COS at 3. This protest followed.

## DISCUSSION

Burchick challenges the agency's evaluation of its proposal and the best-value tradeoff decision. Specifically, Burchick alleges that the agency unreasonably evaluated its proposal under the past performance factor by rating it as high risk. Protest at 5-7. Burchick also protests the agency's evaluation of its proposal under the relevant experience and construction/project management factors. Protest at 7-9. Finally, Burchick claims that the alleged errors in the evaluation improperly affected the agency's best-value determination, which caused the agency to award the contract to C&C for a significant price premium. Protest at 9-10. While we do not address each protest ground and argument raised by the protester below, we have reviewed them all and find that none provides a basis to sustain the protest.<sup>1</sup>

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<sup>1</sup> For example, Burchick alleges that the agency was required to conduct discussions to allow it to address its marginal ratings. Protest at 9. We find no merit to the protester's argument. Here, the RFP incorporated FAR provision 52.215-1, Instructions to Offerors--Competitive Acquisition, which provided that the agency intended to evaluate proposals and award a contract without discussions. RFP at 26. Where, as here, a solicitation advises offerors that the agency intends to make award based on initial

## Past Performance

Burchick first challenges the agency's evaluation of its proposal under the past performance factor arguing that the agency unreasonably determined that its six submitted projects were only somewhat relevant. Burchick also contends that the agency improperly failed to evaluate the underlying quality of its past performance and only considered relevancy in rating it as high risk. Protest at 5-6; Comments at 3.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. Knowlogy Corp., B-416208.3, Dec. 20, 2018, 2019 CPD ¶ 47 at 5. An agency is required to consider, determine, and document the similarity and relevance of an offeror's past performance information as part of its past performance evaluation. MVM, Inc., B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 7; see FAR § 15.305(a)(2). The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. Knowlogy Corp., supra.

As part of the past performance evaluation, the RFP stated that the agency would evaluate construction projects completed within the past five years of a similar complexity and size. RFP at 16. Projects similar in size were defined as those exceeding \$20 million. Id. The RFP stated that each proposal would receive one overall risk assessment under the past performance factor, which would include an assessment of the relevance of the submitted projects. Id. at 12-13, 17. The RFP defined a high risk past performance rating, among other things, as one in which the evaluated projects were somewhat relevant to not relevant. RFP at 13.

Burchick provided six projects, which included previous work on the National Cemetery of the Alleghenies and five construction projects that did not involve cemetery work. AR, Tab 10, Burchick Proposal, at 3-7. The agency concluded that three of Burchick's six submitted projects, including Burchick's previous work on the National Cemetery of the Alleghenies, did not meet the RFP's relevancy threshold because the projects did not exceed \$20 million. AR, Tab 15, SSD, at 14. Additionally, the agency found that the protester's previous cemetery work was not completed within the past five years, as required by the RFP. Id. at 15. Regarding the remaining three projects, the TEB found and the SSA concurred that the projects were somewhat relevant to the solicitation's scope of work and technical competency requirements primarily because the projects were facility projects rather than cemetery projects. AR, Tab 15, SSD, at 14-15, 40.

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proposals, the agency is not required to engage in discussions in order to afford a protester the opportunity to cure one or more deficiencies in its proposal; rather, it is the protester's affirmative obligation to demonstrate the merits of its proposal. See Korea Resources Environment Co., Ltd., B-409996, Oct. 3, 2014, 2014 CPD ¶ 298 at 3-4.

The SSA concluded that while the submitted facility projects involved demolition, concrete work, and interior finishes, the projects involved limited site work and no cemetery-specific work, which were the types of construction directly relevant to the work to be performed under the solicitation. Id.

Burchick argues that the agency unreasonably failed to recognize that its previous cemetery project involved developing approximately 80 acres, which it alleges is approximately twice as large as the subject project, and that the “present value” of the project would be \$18.6 million. Protest at 6. The protester also maintains that the agency failed to reasonably evaluate the details of its other projects, which Burchick argues demonstrate expertise in areas that are highly relevant to the current procurement. Comments at 4.

The agency responds, and we agree, that it reasonably determined that all six projects Burchick submitted under the past performance factor were somewhat relevant and that the resulting high risk rating was consistent with the terms of the RFP. COS at 5-6; Memorandum of Law at 5. In this regard, the record demonstrates that the agency reasonably determined that Burchick’s proposal identified general construction experience, but that these projects were not similar to this project, were not completed within the time frame required, or did not meet the requirements regarding project size. AR, Tab 15, SSD, at 41. Furthermore, the SSA considered Burchick’s previous cemetery project as part of his source selection decision, even though it did not meet the relevancy threshold, and reasonably concluded that the project did not reduce the risk to the government because it was not current by the terms of the solicitation and that only one member of Burchick’s proposed site team still possessed the relevant cemetery construction experience. Id. While the protester contends that the agency should have considered these projects as more relevant, the contracting agency has discretion to determine the relevance and scope of the performance history to be considered, and our Office will not question the agency’s judgment when it is otherwise reasonable and consistent with the terms of the solicitation. See EMTA Insaat Taahhut Ve Ticaret, A.S., B-416391, B-416391.4, Aug. 13, 2018, 2018 CPD ¶ 280 at 7.

Finally, to the extent that the agency did not adequately evaluate or document the quality of Burchick’s somewhat relevant projects, the protester has not shown that it was prejudiced by this lack of documentation.<sup>2</sup> Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. Crowder Constr. Co., B-411928, Oct. 8, 2015, 2015 CPD ¶ 313 at 7.

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<sup>2</sup> The record indicates that the agency reviewed past performance questionnaires and considered Contractor Performance Assessment Reporting System reports for Burchick’s previous contracts as part of its past performance evaluation. AR, Tab 12, TEB Report, at 2-3. However, the record did not specifically document the agency’s findings regarding the underlying quality of Burchick’s past performance.

As discussed above, the agency reasonably evaluated all of Burchick's past performance as somewhat relevant, and under the terms of the RFP, a high risk proposal was one in which all of the projects were somewhat relevant to not relevant. RFP at 13. In light of this, the SSA reasonably concluded that the protester's lack of "current specialized experience" with features typical of a national cemetery constituted a high risk to the government. AR, Tab 15, SSD, at 41. As the SSA's high risk assessment is reasonably based on Burchick's lack of relevant experience, the protester has not demonstrated that it was competitively prejudiced by any failure of the agency to evaluate or document the underlying quality of its somewhat relevant projects.

### Relevant Experience

Burchick next challenges the agency's evaluation of its proposal under the relevant experience factor. The protester claims that the agency unreasonably assigned two weaknesses to its proposal under the relevant team experience subfactor. In this regard, Burchick maintains that the RFP did not specifically require offerors to identify the subcontractors' roles or the percentage of work that it would perform.<sup>3</sup> Protest at 7. Burchick further explains that most of the subcontractor's roles in its previous projects were self-explanatory. Id.

Under the relevant team experience subfactor, offerors were required to provide summaries of up to ten relevant projects and to describe the project team composition, to include the construction firms involved, and the projects' relevance to the National Cemetery of the Alleghenies project. RFP at 17-18. Relevant projects were defined as construction contracts ongoing or completed within the last five years with comparable levels of size and complexity of the current National Cemetery of Alleghenies project. Id. The RFP stated that relevant projects would have a construction value of over \$20 million and a size exceeding 15 acres. Id. Offerors without projects meeting the dollar or size thresholds were instructed to "submit the requested information for the most relevant projects regardless of value or size." Id. at 18. The RFP defined a weakness as a "flaw in the proposal that increases the risk of unsuccessful contract performance." RFP at 15.

The RFP stated that the agency would "holistically" evaluate "the [o]fferor, core team members, and major sub-contractors' relevant project experience." RFP at 17. The RFP required offerors to demonstrate that they had the "right team of major sub-contractors on board to successfully deliver the project on-time and within budget." Id. Evaluation would focus on "specialized experience of the team and their specific

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<sup>3</sup> Under the technical approach factor, for which its proposal was assigned a marginal rating, the protester stated that it will "develop a list of priority subcontract awards" upon award and that it may self-perform "between 20% and 50% of the project with its own labor forces." AR, Tab 10, Burchick Proposal, at 30-31.

experience constructing major features typical of a national cemetery” such as pre-placed crypts, columbarium niches, and committal shelters. Id.

The TEB assigned two weaknesses to the protester’s proposal under this subfactor. First, the agency assigned a weakness to Burchick’s proposal for referencing subcontractors in its proposal but not identifying their specific roles. The second weakness was assigned because Burchick’s proposal failed to identify the percentage of work Burchick intends to perform. AR, Tab 12, TEB Report, at 4.

In reviewing an agency’s evaluation, we will not reevaluate technical proposals; instead, we will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and procurement statutes and regulations. Raytheon Co., B-413981, Jan. 17, 2017, 2017 CPD ¶ 40 at 6. An agency’s evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them. Affolter Contracting Co., Inc., B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 5. In evaluating a proposal, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. Glock, Inc., B-414401, June 5, 2017, 2017 CPD ¶ 180 at 16.

While the RFP did not specifically require the offeror to identify the specific roles of its subcontractors or state the percentage of the work it intended to perform, it did require an offeror to demonstrate that it had the “right team of major sub-contractors on board” and to describe the project team composition. RFP at 17-18. Here, the agency’s conclusion that the protester’s proposal did not detail the roles of its subcontractors and failed to identify the percentage of work it intended to perform were reasonably encompassed by the RFP’s requirement for offerors to demonstrate that they had the right team of major subcontractors to successfully deliver the project. See Glock, Inc., supra. The agency reasonably required the protester to adequately describe its team, to include its major subcontractors and their proposed roles in the construction. By not identifying the roles of its major subcontractors in its submitted projects, Burchick’s proposal did not allow the agency to meaningfully evaluate its subcontractors’ experience regarding the specialized construction requirements in the RFP. Furthermore, it was reasonable for the agency to require the protester to identify the percentage of work it intended to perform in order to determine whether the protester had the right team in place to successfully construct the specialized features required in the national cemetery project. Id. In this regard, we have no basis to object to the agency’s determination that the lack of detail in protester’s proposal raised weaknesses that increased the risk of unsuccessful contract performance. RFP at 15.

Regarding Burchick’s argument that some of the subcontractor roles were self-evident, we find no basis to question the agency’s determination in this regard, as Burchick’s argument tacitly concedes that some of the subcontractors’ roles were not self-

explanatory.<sup>4</sup> It is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Gonzales Consulting Servs., Inc., B-416676, B-416676.2, Nov. 20, 2018, 2018 CPD ¶ 396 at 7-8.

## Construction/Project Management

Burchick also challenges the agency's evaluation of its proposal under multiple subfactors of the construction/project management factor. Burchick primarily complains that the agency unreasonably assigned weaknesses or deficiencies to its proposal that were inconsistent with the terms of the RFP. Protest at 7-9. We have considered all of Burchick's arguments and find that none provide a basis to sustain its protest.<sup>5</sup> We address one representative example below.

### Schedule Subfactor

Burchick contends that the agency unreasonably assigned several weaknesses to its proposal under the schedule subfactor as a result of the agency misreading its proposed schedule. Protest at 8. The protester primarily argues that the agency erred in assigning the weaknesses regarding the time frames for specific activities in its schedule because the TEB misconstrued its schedule as based on calendar days when the schedule was actually based on a 5-day work week. Id.

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<sup>4</sup> For example, in its first submitted project, Burchick identified "H.R. Leuenberger" and "Bryan/SSM Industries" as two of its major subcontractors. The roles of these two subcontractors are not apparent based simply on their names. AR, Tab 10, Burchick Proposal, at 10.

<sup>5</sup> For example, Burchick also claims that the agency evaluation reflects unequal treatment because C&C's proposal received a strength under the safety plan subfactor for identifying all its staff as Occupational Safety and Health Administration (OSHA) trained, while Burchick's proposal did not receive a similar strength for having its superintendents and foremen OSHA certified. Comments at 8. We find no merit in the protester's argument. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. The Red Gate Group, Ltd., B-410466.8, May 12, 2017, 2017 CPD ¶ 169 at 6. Here, the agency assigned C&C's proposal strengths for identifying a full-time Health and Safety Officer, with no additional duties, and for having all identified staff OSHA trained. AR, Tab 15, SSD, at 26. The agency concluded that Burchick's proposal did not identify the name or qualifications of its proposed Health and Safety Officer, even though the RFP identified that position as a key person, and did not indicate that all identified staff would be OSHA trained. RFP at 18; AR, Tab 15, SSD, at 17. Therefore, the protester has not shown that the difference in the evaluation did not stem from difference in the proposals and the allegation is denied.

Under the construction/project management factor, the RFP required offerors to demonstrate their ability to manage a project of this magnitude and complexity and to describe its management capabilities to design and build a national cemetery. RFP at 19. Under the schedule subfactor, the RFP required offerors to submit a schedule in the format of a Gantt chart, broken down by phase and major divisions of work.<sup>6</sup> RFP at 20. The schedule was required to depict the start and completion dates from notice to proceed (NTP) through early turn over (ETO) to final acceptance, with ETO occurring 300 calendar days from NTP and project completion within 1004 calendar days from NTP. RFP at 1, 20. Offerors were further required to specify allowances for “bad weather, days of the week and hours of operation, and the . . . contract completion achieved at the end of each month of the contract period.” Id.

The agency assigned multiple weaknesses to Burchick’s proposed schedule. For example, the agency assigned a weakness because Burchick’s schedule indicated that ETO would be completed in 214 days, but did not specify durations for “ETO submittals, rain or weather days, and key milestone activities such as inspections, punch list, training, commissioning, and acceptance.” AR, Tab 12, TEB Report, at 7-8. While the protester maintains that the agency misread its schedule and that its proposal discussed ETO submittals, it does not allege that it accounted for bad weather or the other activities. Protest at 8. It is an offeror’s responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Gonzales Consulting Servs., Inc., supra. Here, the protester has provided our Office with no basis to question the agency’s conclusion that Burchick’s failure to account for required delays and other activities represented a weakness in its proposal.

Finally, the protester challenges the propriety of the best-value tradeoff decision, arguing that it was based on a flawed evaluation. As discussed above, we have no basis to conclude that the agency’s evaluation was unreasonable or otherwise flawed. We therefore have no basis to conclude there is any related error in the best-value tradeoff. Leidos, Inc., B-414773, B-414773.2, Sept. 12, 2017, 2017 CPD ¶ 303 at 11-12.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>6</sup> A Gantt chart is a horizontal bar chart that provides a graphical illustration of a schedule and helps plan, coordinate, and track individual tasks and subtasks within a project. Affolter Contracting Co., Inc., supra, at 2 n.1.