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Decision

Matter of: Nova Consulting, Inc.

File: B-419168.3

Date: August 19, 2021

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Adam P. Wallace, Esq., Department of the Army, for the agency.

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DIGEST

Protest challenging the agency's evaluation of the protester's and awardee's statements of qualifications submitted in a procurement for architect-engineering services is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Nova Consulting, Inc., of Doral, Florida, protests the nonselection of its statement of qualifications, and the selection of Dynamic Solutions, LLC, of Knoxville, Tennessee, for negotiation of an architect-engineering services contract, pursuant to synopsis No. W912EP-20-R-0030 issued by the Department of the Army, U.S. Army Corps of Engineers, for water resource engineering services. Nova challenges the agency's evaluation of the protester's and awardee's statements of qualifications.

We deny the protest.

BACKGROUND

The procurement was conducted pursuant to the Brooks Act, 40 U.S.C. §§ 1102-1104, and its implementing regulations, Federal Acquisition Regulation (FAR) subpart 36.6.

Agency Report (AR), Tab B1, Synopsis.¹ The procedures for procurements of architect-engineering requirements under the Brooks Act do not include a price competition. Instead, the agency must select the most highly qualified firm(s), on the basis of demonstrated competence and qualifications, and negotiate contracts with those firms at a fair and reasonable level of compensation. *Photo Sci., Inc.*, B-296391, July 25, 2005, 2005 CPD ¶ 140 at 1-2; see FAR subpart 36.6.

The synopsis, issued on April 24, 2020 and set aside for woman-owned small businesses, requested that firms submit a statement of qualifications using Standard Form (SF) 330, Architect-Engineer Qualifications, for water resources engineering services for civil works projects to support the Jacksonville, Florida district. The selected firm would be responsible for, among other things, “preparation of studies, reports, or portions of reports, pertaining to engineering of water resources engineering and related civil works projects.” Synopsis at 2. The synopsis contemplated the award of a single indefinite-delivery, indefinite-quantity contract for a 1-year base period and four 1-year option periods, with an estimated amount per year of \$2 million and a total maximum limit of \$10 million. *Id.*

The synopsis included the following five primary evaluation factors, in descending order of importance: specialized experience and technical competence; professional qualifications; capacity to accomplish the work; past performance; and knowledge of the locality.² Synopsis at 2. Only the first factor, specialized experience and technical competence, is relevant here. Under this factor, the synopsis provided that “[f]irms must clearly demonstrate specialized experience and expertise in water resources engineering projects with emphasis on” the following 11 subcriteria, in descending order of importance: hydrologic and hydraulic analyses associated with the design and performance of ecosystem restoration; flood control; water delivery; coastal navigation projects; two and three-dimensional surface water and groundwater modeling; water management operational modeling; water quality; groundwater studies; analytical/statistical evaluation of historic data; demonstrate ability to provide expert testimony in court; and ability to perform independent technical review and expert peer review. *Id.*

On or before May 29, the agency received statements of qualifications from six firms, including Nova and Dynamic. The agency conducted an evaluation and selected Nova for negotiation as the most highly qualified firm. Dynamic filed a protest with our Office on September 21 and a supplemental protest on October 8, both of which challenged

¹ All citations are to the Adobe PDF page numbers of the documents provided in the record.

² The synopsis also included two secondary evaluation factors, which would “only be used as ‘tie-breakers’ among firms that are essentially technically equal”: equitable distribution of Department of Defense contracts, and geographic proximity. Synopsis at 2. The agency explains that, because it did not find that any of the firms were technically equal, these secondary evaluation factors were not applied. AR, Tab G, Source Selection Decision at 1.

the agency’s evaluation of responses and selection of a competitor’s response. On October 16, the agency proposed to take corrective action, to include reassessing the submissions in a manner consistent with the solicitation’s requirements, and making a new source selection decision. As a result, we dismissed the protest as academic. *Dynamic Sols., LLC*, B-419168, B-419168.2, Oct. 23, 2020 (unpublished decision).

The agency conducted a reevaluation and made a new selection decision, selecting Dynamic for negotiation as the most highly qualified firm. In addition to receiving excellent ratings under the four primary evaluation factors not at issue here, the submissions from Nova and Dynamic were rated under the specialized experience and technical competence factor as follows:

	Nova	Dynamic
Hydrologic and hydraulic analyses associated with the design and performance of ecosystem restoration	Good	Good
Flood control	Excellent	Excellent
Water delivery	Excellent	Excellent
Coastal and navigation projects	Good	Good
Two and three-dimensional surface water and groundwater modeling	Excellent	Excellent
Water management operational modeling	Good	Good
Water quality	Good	Excellent
Groundwater studies	Good	Excellent
Analytical/statistical evaluation of historic data	Excellent	Excellent
Demonstrate ability to provide expert testimony in court	Good	Excellent
Ability to perform independent technical review and expert peer review	Excellent	Excellent

AR, Tab F, Rationale for Ranking of Most Highly Qualified Firms at 3.

The agency noted that, “[o]verall, Dynamic received ratings equal to or higher than Nova in all of the evaluation criteria.” AR, Tab F, Rationale for Ranking of Most Highly Qualified Firms at 2. The agency also noted that Dynamic’s statement of qualifications contained more strengths than Nova’s, resulting in higher ratings for three of the specialized experience and technical competence factor’s subcriteria, as well as for the past performance factor. *Id.*

The agency notified Nova that it was not selected as the most highly qualified firm. After a debriefing, this protest followed.

DISCUSSION

Nova challenges many aspects of the agency's evaluation of the protester's and awardee's statements of qualifications under the specialized experience and technical competence factor. In its various protest submissions, Nova has raised arguments that are in addition to, or variations of, those specifically discussed below. While we do not specifically address all of Nova's arguments, we have considered all of them and find that they afford no basis on which to sustain the protest.

Evaluation of Nova's Statement of Qualifications

Nova challenges the agency's evaluation of its statement of qualifications under the six subcriteria for which it received "good" ratings, and argues that it should have received "excellent" ratings. Protest at 16-32; Comments at 7-25. The agency responded to each of Nova's multiple arguments, explaining why its evaluation was reasonable and why Nova did not merit higher ratings. Memorandum of Law (MOL) at 4-19. We address two representative examples below.

In reviewing protests against an allegedly improper evaluation of firms' qualifications statements for architect-engineering services, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the stated selection criteria and applicable procurement laws; we will not substitute our judgment for that of the agency evaluators. *AMEL Techs., Inc.*, B-412587.2, June 20, 2016, 2016 CPD ¶ 163 at 3; *OLBN Architectural Serv., Inc.*, B-402444.4, B-402444.5, Oct. 4, 2010, 2011 CPD ¶ 55 at 3. The evaluation of experience, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. See *J.E. McAmis, Inc.*, B-412321, B-412321.2, Jan. 14, 2016, 2016 CPD ¶ 40 at 9.

As one example, Nova argues that the agency misevaluated its submission under the hydrologic and hydraulic analyses associated with the design and performance of ecosystem restoration subcriterion. Protest at 19-25; Comments at 8-12.

The agency argues that it reasonably assigned a "good," instead of an "excellent," rating to Nova under this subcriterion. AR, Tab A, Contracting Officer's Statement (COS) at 8-9; MOL at 8. The record shows that, for this subcriterion, the evaluators considered several project examples included in Nova's statement of qualifications and noted where some of the examples were lacking in details, or did not reflect work that Nova had performed. AR, Tab F, Rationale for Ranking of Most Highly Qualified Firms at 11. In particular, they noted that, while Nova included an example of hydrologic and hydraulic modeling for an ecosystem restoration project, this work "was not done by Nova but by another entity that was engaged on the project." *Id.* The evaluators concluded that, "[s]ince this is a critical component of this category of specialized experience and competency," Nova's submission merited a rating of "good" instead of a rating of "excellent." *Id.*

Nova contends that the evaluators' focus on this project reflected the application of an unstated evaluation criterion by "ignoring Nova's collective and extensive experience on all its projects." Comments at 8. We disagree, and find no basis to object to the agency's position that, as the contracting officer puts it, "it is only fair to give a higher rating to someone who did the work and understands it[s] intricacies as compared to someone who got the modeling information from another firm." COS at 8. Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to, or encompassed by, the established factors. *Northrop Grumman Sys. Corp.*, B-414312 *et al.*, May 1, 2017, 2017 CPD ¶ 128 at 12. Here, the synopsis provided that "[f]irms must clearly demonstrate specialized experience and expertise in water resources engineering projects." Synopsis at 2. Nova's disagreement with the agency's evaluation in this regard does not render it unreasonable.

As another example, Nova objects to its rating of "good" under the ability to provide expert testimony in court subcriterion. Protest at 32; Comments at 24-25. Nova contends that it should have received a higher rating based on its "theoretical ability to support expert testimony" and its inclusion of a team member whose resume includes the line that he "has provided expert witness testimony." Comments at 24, *citing* AR, Tab E1, Nova SF330 Part I at 14, 94, 117. We find no basis to object to the agency's evaluation that Nova's rating of "good" here "is based on capability, but no demonstrated examples of expert testimony in court," and, further, the agency's view that "this one line" from Nova's statement of qualifications "provides no details about the projects underlying [the team member's] expert testimony." AR, Tab F, Rationale for Ranking of Most Highly Qualified Firms at 14; MOL at 18.

In sum, we have considered, and reject, all of Nova's assertions that the agency's evaluation of its statement of qualifications was flawed, and these protest grounds are denied.

Evaluation of Dynamic's Statement of Qualifications

Nova also argues that the agency's evaluation of Dynamic's statement of qualifications, and selection of Dynamic as the most highly qualified firm, reflects disparate treatment. Protest at 32-37. The agency responded to Nova's general contentions, asserting that it "did not treat the firms unequally or evaluate inconsistently with the solicitation." MOL at 19.

As a representative example, Nova contends that Dynamic's rating of excellent under one subcriterion, compared to Nova's rating of good under two other subcriteria, is the result of unequal treatment. Comments at 4. Specifically, Nova compares Dynamic's rating of "excellent" under the water delivery subcriterion, and Nova's ratings of "good" under two separate subcriteria--hydrologic and hydraulic analyses associated with the design and performance of ecosystem restoration, and water management operational

modeling. Nova contends that, while “the agency used the absence of certain experience . . . as grounds to downgrade Nova [under these two subcriteria], the agency did not use the absence of experience in Dynamic’s specific projects to downgrade Dynamic [under the water delivery subcriterion].” Comments at 9.

The agency explains that under the terms of the synopsis, firms were not required to show experience in all 11 subcriteria in any one of their submitted projects, such that “[e]ach firm was able to show [how it met] the 11 subcriteria through a combination of its projects[.]” MOL at 19-20; COS at 13. In this regard, the agency asserts that it did not treat the firms unequally and maintains that its evaluation of each subcriterion at issue here was consistent with the synopsis. COS at 14.

It is a fundamental principle of federal procurement law that a contracting agency must treat all firms equally and evaluate their submissions evenhandedly against the solicitation’s requirements and evaluation criteria. *See Sumaria Sys., Inc.; COLSA Corp.*, B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 10. 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 submissions. *See, e.g., Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably assessed weaknesses or failed to assess strengths for aspects of its submission that were substantively indistinguishable from, or nearly identical to, those contained in other submissions. *See, e.g., Cognosante MVH, LLC*, B-418986 *et al.*, Nov. 13, 2020, 2021 CPD ¶ 3 at 5. Here, Nova has not met this burden. By comparing the firms’ different responses and evaluation results under different subcriteria, the protester has not demonstrated its statement of qualifications was substantively indistinguishable from, or nearly identical to Dynamic’s statement of qualifications such that the agency’s evaluation was unreasonable or reflected disparate treatment.

The protest is denied.

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General Counsel