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# Decision

**Matter of:** Consorzio WMC

**File:** B-419205.2

**Date:** December 28, 2020

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## DIGEST

Protest challenging the agency's rejection of the protester's prior experience references, which were completed by individual entities comprising the protester's company and not the company itself, is denied where the solicitation required such experience to have been gained only by the company submitting a proposal, and the agency's evaluation was reasonable and consistent with the solicitation.

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## DECISION

Consorzio WMC, of Venice, Italy, protests the award of indefinite-delivery, indefinite-quantity (IDIQ) construction contracts to four other firms under request for proposals (RFP) No. FA5682-19-R-A001, issued by the Department of the Air Force for construction, design-build, and design-bid-build services at Aviano Air Base and other air bases in Italy. Consorzio challenges the agency's evaluation of its technical proposal relating to prior experience.

We deny the protest.

## BACKGROUND

The Air Force issued the RFP on August 28, 2019, seeking proposals to provide construction, design-build, and design-bid-build services at Aviano and other air bases in Italy. Agency Report (AR), Tab 6, RFP at 1; AR, Tab 9, Statement of Work at 3. The RFP anticipated the award of approximately six fixed-price multiple-award IDIQ

construction contracts, each for a base year and four 1-year option periods. AR, Tab 8, RFP § M at 1.

The solicitation advised that the agency would evaluate proposals considering the following factors: technical acceptability, past performance, and price. *Id.* at 2. The technical acceptability factor was to be evaluated on an acceptable/unacceptable basis. *Id.* at 1. Award was to be made amongst technically acceptable offerors, based on a tradeoff between price and past performance, using the procedures of Federal Acquisition Regulation (FAR) part 15. *Id.*

The technical acceptability factor included three subfactors, only one of which--prior experience--is germane to the protest. *Id.* With respect to prior experience, the RFP instructed offerors to submit a minimum of four recent and relevant past construction projects, "similar in scope, complexity, and magnitude," completed in Europe within the last five years from the issue date of this solicitation; two out of four projects must have been completed within Italy. AR, Tab 7, RFP § L at 6; AR, Tab 8, RFP § M at 3.

Of particular importance here, the RFP required that all submitted past projects have been completed by the offeror, as follows:

L.4.3.1(c). All prior experience references must be only of contractors or joint ventures submitting the proposal. Prior experience projects completed by subcontractors, joint venture partners or teaming arrangement partners shall not be accepted.

AR, Tab 7, RFP § L at 6.

The Air Force further clarified the prior experience requirement by responding to multiple questions received from offerors prior to the closing date for proposals. Contracting Officer's Statement (COS) at 5. Relevant to this protest, one of the companies that comprises Consorzio WMC, Clea S.C., asked the agency:<sup>1</sup>

For JVs [joint ventures], is it possible to use projects of its members, where the solicitation states "prime" or "offeror", in lieu of "prime" or "offeror" that is the JV?

AR, Tab 4, Email from Clea at 1. The agency responded:

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<sup>1</sup> In its protest, Consorzio WMC describes itself as "a stand-alone, separate and permanent legal entity," registered in Italy, which has two shareholders: Wolff & Müller SrL and Clea S.C. Protest at 14. In its proposal, however, Consorzio characterizes Wolff & Müller SrL as a member of Consorzio, or an Italian subsidiary of Wolff & Müller Government Services GmbH and CO KG (WMGS). AR, Tab 29, Consorzio's Proposal Volume I at 5, 7. According to the information identified in beta.sam.gov, Consorzio WMC was created on July 26, 2018. Memorandum of Law (MOL) at 16 n.4.

No, it is not. Joint Venture will be able to submit only projects performed as a Joint Ventures. Verbiage referring to prime offeror will be removed from the RFP.

AR, Tab 5, June 28, 2019, Draft RFP Questions and Answers at 2.

Additionally, in another round of questions, an offeror:

request[ed] the Government to reconsider . . . and edit the text in L.4.3.1 Subfactor 1--Prior Experience, (c) to allow partners of a JV (who is submitting as the Prime Offeror) to submit projects for experience . . . that each JV partner possesses . . . The stringent requirement that "Joint Ventures will be able to submit only projects performed as Joint Ventures" hinders Offerors ability to demonstrate their broad spectrum of capabilities  
. . . .

AR, Tab 22, Oct. 1, 2019, Questions and Answers at 3-4. In response, the agency stated that "[s]ection L.4.3.1 remains as it is." *Id.* at 4.

A potential offeror also inquired if "[i]n the case of a proposed Teaming Arrangement, can the proposed Key Subcontractor's prior experience be used for the fulfillment of the minimum five (5) past performance project requirements?" AR, Tab 5, June 28, 2019, Draft RFP Questions and Answers at 7. Another potential offeror sought to clarify if "in the case of a Joint Venture already established, but without a past performance relevant to satisfy the requirements, such lack can be bypassed by the past performance of the individual companies that make up the joint venture." *Id.* at 9.

The agency answered both questions in the negative, as follows: "[i]n accordance with revised L.4.3.1.(c), [p]rior [e]xperience projects completed by subcontractors, joint venture partners or teaming arrangement partners shall not be accepted." *Id.* The agency also denied a request to "consider . . . amend[ing] this requirement to allow a JV to submit no more than one project . . . from one of its members," reiterating that "prior experience and past performance references requirements remain as they are." AR, Tab 24, Oct. 16, 2019, Questions and Answers at 1.

The RFP specified that the evaluation process would be conducted as a series of steps; proposals had to meet the requirements of each step in order to advance to the next step in the evaluation process. AR, Tab 8, RFP § M at 2. The evaluation steps included: (1) responsiveness; (2) technical acceptability; (3) price; (4) past performance; and (5) integrated assessment (best-value determination weighing price and past performance ratings). *Id.*

The Air Force received twelve proposals by the November 22, 2019, solicitation deadline. COS at 7. After evaluating proposals for responsiveness in step 1, the agency excluded two offerors, while the remaining ten offerors, including Consorzio, advanced to step 2 in the evaluation process, technical acceptability. *Id.* at 8.

The technical evaluation team (TET) reviewed Consorzio's prior experience proposal and concluded that it did not meet the RFP's criteria. AR, Tab 32, Technical Evaluation Report at 26-27. Specifically, while the TET found the protester's past projects relevant in terms of scope and complexity, it concluded that each failed to meet the requirement of "being completed by the offeror, as specified in [section] L.4.3.1.(c)." *Id.* at 27. The TET noted that each of the five past projects submitted by Consorzio "was under contract and worked by only one of the members of the Consorzio, in violation of paragraphs L.4.3.1 and M.2.3.1.1.," and none of the projects "started after the establishment of the Consorzio" in July 2018. *Id.* Accordingly, the TET assessed Consorzio's prior experience five deficiencies, and deemed its technical proposal unacceptable; subsequently, the protester was excluded from further consideration. *Id.* at 28, 30.

The source selection evaluation board (SSEB) adopted the TET's findings and presented its recommendations to the source selection authority (SSA). AR, Tab 34, SSEB Report at 12. Ultimately, the SSA accepted the SSEB's recommendations and directed that contract awards be made to the following four firms: Battistella SPA; Eiffage Infraestructuras SA; Ganter Interior GmbH; and JV SKE Italy. AR, Tab 35, Source Selection Decision Document at 1, 11.

On September 11, 2020, the Air Force notified Consorzio that its proposal was evaluated as technically unacceptable. AR, Tab 36, Notice of Unsuccessful Proposal at 1. After requesting and receiving a debriefing, this protest followed.

## DISCUSSION

Consorzio challenges its exclusion from the competition. Specifically, the protester contends that the agency's evaluation of its prior experience was unreasonable and violated the terms of the RFP. While our decision does not specifically address every argument presented by the protester, we have considered them all and find that none provides a basis upon which to sustain the protest.<sup>2</sup> Below, we discuss Consorzio's principal contentions.

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<sup>2</sup> For example, the protester argues that the agency's evaluation here was inconsistent with its acceptance of Consorzio's prior experience on a recent procurement that contained a similar requirement, where the Air Force concluded that a past project completed by one of the protester's shareholders could be attributed to Consorzio WMC. Protest at 22. As our Office has noted consistently, each procurement stands on its own; an agency's evaluation ratings under another solicitation are not probative of the alleged unreasonableness of the evaluation ratings under the solicitation here. See, e.g., *Sayres & Assocs. Corp.*, B-418374, Mar. 30, 2020, 2020 CPD ¶ 115 at 5-6 n.9; *Parmatic Filter Corp.*, B-285288, B-285288.2, Aug. 14, 2000, 2000 CPD ¶ 185 at 7. Therefore, we find that the protester's contention fails to provide a basis to sustain a challenge to the instant procurement.

## Evaluation of Prior Experience

The protester argues that the agency unreasonably concluded that the past projects included in its proposal failed to comply with the solicitation's requirements. The protester explains that Consorzio is an independent entity, not a teaming arrangement, and "neither a partnership nor a joint venture," hence, "section L.4.3.1(c)" of the RFP, described above, does not apply to the protester. Protest at 17-18. In addition, the protester contends that its proposal explained that a "consorzio," a legal entity organized "under Italian law, is composed of shareholders from whom the entity itself derives its prior experience and qualifications."<sup>3</sup> *Id.* at 18. Accordingly, Consorzio alleges the RFP's restrictions regarding past projects are "part of a FAR-defined 'team arrangement'" and fail to capture the "unique business structure that exists in Italy and is common in [European] public procurements." *Id.* at 19.

The agency responds that Consorzio's proposal did not comply with the solicitation's requirement because the prior experience projects submitted by the protester were not completed by the entity submitting a proposal, *i.e.*, Consorzio. MOL at 14. In the agency's view, Consorzio cannot attribute the experience of its shareholders to itself because--regardless of the RFP's specific language listing only "subcontractors, joint venture partners or teaming arrangement partners," and not mentioning the protester's unique legal structure--"Consorzio did not exist at the time" when these past projects were performed. *Id.* at 16. In this regard, the agency points out that "[a]ll five projects began before Consorzio was established as an independent legal entity" in July 2018, and "three of the five projects were completed prior to this date"; therefore, the cited projects could not have been performed by the offeror who submitted a proposal here, in violation of the RFP. *Id.*; COS at 16.

The evaluation of proposals is a matter within the discretion of the contracting agency. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4; *Serco Inc.*, B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. *MicroTechnologies, LLC, supra*; *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7. A protester's disagreement with the agency's judgment, by itself, does not establish that an evaluation was unreasonable. *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. Based upon our review of the record,

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<sup>3</sup> The protester maintains that "[t]here are no subcontracts, joint venture or teaming agreement relationships in place between the shareholders of Consorzio WMC, with reference to the requirements in the Solicitation at L. 4.3.1 (c)." Protest at 14. Instead, a legal opinion from an Italian counsel representing the protester describes a consorzio as an independent entity where "several undertakings set up a common organization to regulate or carry out certain phases of their respective enterprises." Protest, exh. C, Italian Counsel Legal Opinion at 1.

we conclude that the agency's evaluation of Consorzio's prior experience was reasonable and consistent with the solicitation.

Here, section L.4.3.1(c) of the RFP specified that all prior experience references must have been completed by offerors--*i.e.*, "contractors or joint ventures"--submitting proposals. AR, Tab 7, RFP § L at 6. Also, the solicitation specifically disallowed past experience references completed by only one or part of the entities that formed potential offerors, stating that "[p]rior experience projects completed by subcontractors, joint venture partners or teaming arrangement partners shall not be accepted." *Id.* This requirement was further clarified and restated by the agency in responses to multiple questions submitted by offerors in this regard. For example, the agency denied specific requests to reconsider this solicitation requirement, and allow offerors to submit projects completed by individual joint venture partners, reiterating that such individual experience would not be considered. AR, Tab 5, June 28, 2019, Draft RFP Questions and Answers at 7, 9. As a result, we find that the solicitation clearly established that offerors could not derive their prior experience from their members or partners.

Additionally, we reject the protester's contention that the solicitation requirement in question did not apply to its proposal. In this regard, we find it irrelevant that the solicitation did not specifically mention the term "consorzio" in its list of potentially excluded offerors, *i.e.*, offerors who could not impute past experience of individual members or partners comprising an offeror submitting the proposal to the entity as a whole. The RFP's requirement that "[a]ll prior experience references must be only of contractors . . . submitting the proposal" sufficiently described the requirement as applicable to all types of legal entities responding to the solicitation, regardless of any country's unique laws under which the offeror was organized. AR, Tab 7, RFP § L at 6. Indeed, the record shows that the Air Force, on multiple occasions, denied requests regarding any possibility of imputing past experience of individual entities comprising an offeror submitting the proposal to the entity as a whole.

As such, we find that the evaluation of Consorzio's past projects, each of which was performed by only one of Consorzio's shareholders, and the agency's conclusion that the protester's prior experience did not meet the RFP's requirements to be reasonable and in accordance with the solicitation. Consorzio's disagreement with the agency's judgment, by itself, does not establish that an evaluation was unreasonable. *DEI Consulting, supra*. Accordingly, we find no basis to sustain the protest on this ground.

The protest is denied.

Thomas H. Armstrong  
General Counsel