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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Clark Construction Group, LLC

File: B-407334.2; B-407334.3

Date: December 18, 2012

Richard J. Webber, Esq., William W. Goodrich, Jr., Esq., Judith B. Kassel, Esq., and Patrick R. Quigley, Esq., Arent Fox LLP, for the protester.

Robert J. Symon, Esq., and Aron C. Beezley, Esq., Bradley Arant Boult Cummings LLP, for Carothers Construction Company, Inc.; and James F. Nagle, Esq., and Meredith L. Thielbahr, Esq., Oles Morrison Rinker & Baker LLP, for W.G. Yates & Sons Construction Company, the intervenors.

Stephen L. Sowell, Esq., and Megan O. Jorns, Esq., Department of the Army, for the agency.

Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated proposals and failed to adequately document its source selection decision for multiple-award task order construction contract is denied where evaluation and source selection were reasonable and consistent with solicitation.

DECISION

Clark Construction Group, LLC, of Bethesda, Maryland, protests the award of six indefinite-delivery/indefinite-quantity (ID/IQ) task order contracts¹ under request for proposals (RFP) No. W91278-11-R-0019, issued by the Department of the Army, Corps of Engineers, for construction, design/build, and repair services, primarily in

¹ The awardees are Balfour Beatty Construction, LLC of Fairfax, Virginia; B.L. Harbert International, LLC, of Birmingham, Alabama; Carothers Construction Company, Inc., of Oxford, Mississippi; Hensel Phelps Construction Co., of Orlando, Florida; Sauer Inc., of Jacksonville, Florida; and W.G. Yates & Sons Construction Company, of Biloxi, Mississippi. See generally, Agency Report (AR), Tab 11, Award Notice Letters from Corps to Offerors, Sept. 10, 2012. The first task order was issued to Carothers. Id.

Alabama and Florida. Clark argues that the Corps misevaluated Clark's proposal and made an unreasonable award decision.

We deny the protest.

The Corps issued the RFP on June 29, 2011, seeking proposals to perform "General Construction of Any Facility Type, Design-Build and Design-Bid-Build of New Construction or Renovation Work" under multiple-award ID/IQ task order contracts. RFP, Notice to Bidders/Offerors Checklist, at 2.² The maximum value of all orders to be placed among the selected contractors is \$499 million. Id.

The RFP provided that the Corps intended to award two or more contracts to those offerors whose proposals provided the best value, based on an evaluation of price and three non-price factors: past performance, organization, and small business participation plan. RFP amend. 6, § 00 12 00, at 2-3, 10. The solicitation stated that non-price factors were listed in descending order of importance and that all of the non-price factors were considered significantly more important than price. Id. at 10.

For the past performance evaluation, the RFP directed offerors to submit up to 10 relevant projects for consideration. Id., § 00 11 00, at 3. The RFP stated that the evaluation would include an assessment of both the relevancy and the quality of the offeror's past performance.³ Id., § 00 12 00, at 3. The RFP further stated that each firm's performance would be assessed a rating of substantial confidence (high expectation of success), satisfactory confidence (reasonable expectation of success), limited confidence (low expectation of success), no confidence, or unknown confidence. Id., § 00 12 00, at 6-7.

² The RFP consisted of four volumes, which when added with subsequent amendments total more than 5000 pages, most of which were divided into multiple sections, each independently numbered. To provide clarity, citations in this decision identify the relevant section.

³ The RFP defined relevancy to include projects that had a "logical connection to the work described in the solicitation and [were] similar in terms of scope, size, effort, dollar value, and complexity." RFP amend. 6, § 00 12 00, at 3. The RFP stated that greater consideration would be given for construction work that was self-performed by the prime contractor's own organization; projects that ranged from \$10 million to \$50 million or greater; projects that required Leadership in Energy and Environmental Design (LEED) certification; and projects where the company's specialized experience demonstrated a diversity of construction types. Id. at 3-4. The RFP provided that the evaluation of relevance would assign ratings ranging from very relevant (essentially the same scope/magnitude/complexity as the RFP), to relevant (similar scope/magnitude/complexity), somewhat relevant (some of the RFP scope/magnitude/complexity), or not relevant. Id. at 6.

For the organization factor, the RFP stated that the agency would evaluate the offeror's technical approach narrative; the offeror's qualifications, systems, and plans for responding to task order requirements; the offeror's capability and commitment to self-performing the required percentage of work; the offeror's ability to obtain environmental permits in relevant states; and the offeror's plans and strategies to hire a qualified design firm when needed. Id. at 4. The RFP provided that proposals would be rated outstanding, good, acceptable, marginal, or unacceptable under the organization factor. Id. at 7.

For the small business factor, the RFP stated that the agency would evaluate, on an acceptable/unacceptable basis, the offeror's small business participation plan and its past utilization of small businesses. Id. at 5. For the price factor, the RFP requested both a set of rates and markups applicable to all future task orders and a specific price for the accompanying seed project task order.⁴ The RFP stated that the agency would evaluate proposed prices for fairness and reasonableness, but that the agency would not assign a rating under the price factor. Id. at 1.

The Corps received and evaluated proposals from 33 firms, including the eventual awardees and Clark. The Corps evaluators prepared a technical evaluation report, discussing the strengths and weaknesses of each offeror's proposal under the past performance and organization factors, and assessing whether the proposal was acceptable under the small business factor.

In evaluating the 10 projects submitted by Clark under the past performance factor, the evaluators determined that two of the projects were very relevant and eight projects were relevant. AR, Tab 4, Source Selection Evaluation Board Report, at 31. With respect to the quality evaluation, the evaluators found that one of Clark's very relevant projects had received a rating of above average/very good. Clark's nine other past performance examples were rated exceptional/outstanding, which was the highest possible rating. Based on those ratings, the evaluators assigned Clark a rating of satisfactory confidence for the past performance factor. Id. at 30.

Under the organization factor, the Corps identified five strengths for Clark's proposal: a well-suited home office structure, a thorough process for preparing task order proposals, an experienced employee to handle permit documentation, a good approach to selecting a design subcontractor, and a demonstrated understanding of project delivery for design-build projects. Id. at 32. Based on this, the evaluators rated Clark good under the organization factor. Id. Clark was rated acceptable under the small business factor. Id.

⁴ The seed project was for construction of visiting quarters at MacDill Air Force Base, Florida. See generally, RFP amend. 11, Final Revision to Explanation of Bid Items for Bidding Schedule 2 (Seed Project), at 1.

A cost evaluator reviewed each offeror's seed project price and the associated rates and markups. The evaluator determined that all seed project prices were fair and reasonable. AR, Tab 5, Pricing Report, at 2. The evaluator also identified how many of each offeror's contract line item labor rates (for non-seed project work) were significantly higher or lower than anticipated. AR, Tab 5, Pricing Report, at 4-5.

As relevant to the protest, the final evaluation ratings of the awardees' and Clark's proposals were as follows:

Offeror	Past Performance	Organization	Small Business	Seed Project Price (million)
Balfour Beatty	Substantial	Outstanding	Acceptable	\$47.0
B.L. Harbert	Substantial	Outstanding	Acceptable	\$43.9
Carothers	Substantial	Outstanding	Acceptable	\$42.0
Clark	Satisfactory	Good	Acceptable	\$41.1
Hensel Phelps	Substantial	Outstanding	Acceptable	\$44.6
Sauer	Substantial	Outstanding	Acceptable	\$44.7
W.G. Yates	Substantial	Outstanding	Acceptable	\$46.7

Agency Report (AR), Tab 4, Source Selection Evaluation Board Report, at 7; AR, Tab 5, Price Evaluation Report, at 1-2.

The source selection authority (SSA) then prepared a source selection decision document, which discussed the basis for the proposal ratings for each offeror. For Clark, the SSA noted that the firm had submitted 10 relevant projects, that two of those were very relevant, and that one of the very relevant projects was rated above average/very good, while the other projects were rated exceptional/outstanding. AR, Tab 3, Source Selection Decision Document, at 17-18. The source selection decision also noted that Clark's proposal had five strengths under the organization factor and was rated acceptable under the small business factor. Id.

After similarly reviewing the basis for each of the 33 offerors' non-price evaluations, the SSA found five firms unacceptable, and he rejected two more based on deficiencies. Id. at 42, 44. He then reviewed the price evaluation and prepared a table compiling technical ratings, seed project price, and the analysis of contract line prices for the 26 remaining offerors. Id. at 42-46.

The SSA then undertook a best value comparison of each offeror. For each of the awardees, the SSA explained his reasoning for finding it superior to all of the unsuccessful offerors. For example, for Balfour Beatty, the SSA noted that the firm had performed six very relevant projects, two relevant projects, and one somewhat relevant project. The ratings showed that Balfour Beatty's performance ranged from above average/very good to exceptional/outstanding. Id. at 51. The SSA also noted the six strengths assessed to Balfour Beatty under the organization factor, that its seed project price was close to the government estimate, and that the agency's rate

analysis supported the reasonableness of Balfour Beatty's proposed rates. Id. The SSA then considered whether any of the 20 other competitors provided a better value. When compared to Clark (and similarly-rated firms) the SSA determined that Balfour Beatty's proposal was superior under both the past performance and organization factors, and that even though Clark (and others) had offered a lower price for the seed project task order, Balfour Beatty's non-price advantages outweighed Clark's price advantage. Id. The SSA made a similar assessment comparing each of the other five eventual awardees to the 20 unsuccessful offerors.

On September 10, the Corps notified Clark that it had not received an award, and furnished a written debriefing to the firm. Clark then filed this protest, which it supplemented after its counsel received the agency report and accompanying documents under the protective order issued by our Office.

DISCUSSION

Clark's protest challenges the basis for its lower ratings and the tradeoff decision. Clark particularly questions the comparison of its evaluation and lower price to Balfour Beatty, the awardee whose evaluated seed project task order price was the highest. Clark maintains that the record fails to provide a reasonable basis for the Corps to award a contract to Balfour Beatty at its higher evaluated price, but not to Clark. We consider each of Clark's challenges in turn.

Past Performance Factor Evaluation

Clark challenges the Corps's judgment that only two of its 10 past performance references were very relevant. Clark also argues that its highly-rated performance should have resulted in the highest past performance rating of substantial confidence. Protest at 8-12; Protester's Comments at 8-14.

The evaluation of past performance is a matter of agency discretion which we will not disturb unless the agency's evaluation judgments are unreasonable. Yang Enters., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5. The record here demonstrates a reasonable evaluation.

The RFP defined relevancy to include projects that had a "logical connection to the work described in the solicitation and [were] similar in terms of scope, size, effort, dollar value, and complexity." RFP amend. 6, § 00 12 00, at 3. The RFP further stated that projects with certain characteristics would be given additional consideration, and the agency in fact gave greater consideration when a project included these characteristics. The RFP also contained rating definitions, which included a definition for very relevant ("essentially the same scope and magnitude of effort and complexities this solicitation requires") and relevant ("similar scope and magnitude of effort and complexities this solicitation requires"). Id. at 6.

The Corps distinguished two of Clark's projects, which demonstrated multiple similarities to the scope, magnitude, and complexity of the RFP. Both featured design-build requirements applied to military facilities, were of appropriate size, included sustainable/LEED requirements, and showed self-performance of work by Clark. That is, both projects demonstrated multiple additional consideration characteristics and were therefore rated very relevant. In contrast, the remaining projects demonstrated fewer similarities to the scope of the RFP and fewer of the additional consideration characteristics. Contracting Officer's Statement at 8. Although Clark generally disagrees with this assessment, it has not shown that any of its contracts warranted a higher relevancy assessment under the solicitation.⁵

As to the quality of Clark's past performance, the record reflects that the evaluators accurately understood that Clark had received the highest performance ratings (exceptional/outstanding) on nine of its 10 projects, and an above average/very good rating for the tenth project (which was one of the two very relevant projects). Because the evaluation of past performance included consideration of both relevancy and quality, we find nothing improper about the Corps' assessment of an overall satisfactory confidence rating to Clark's proposal under the past performance factor. Although Clark disagrees with this assessment, it has not shown the agency's judgment to be unreasonable. Accordingly, we deny Clark's protest of the past performance evaluation.

Organization Factor Evaluation

Clark next challenges the agency's evaluation of Clark's proposal as good under the organization factor. Clark argues that since the evaluators identified five strengths in its proposal under that factor, and no weaknesses, a rating of outstanding should have been assigned. Protest at 13. With respect to each of the evaluated criteria (home office management and support, approach to task order responses, self-performance of construction work, environmental permitting, and approach to design services), Clark argues that the evaluators failed to appreciate its proposal's superiority, failed to identify additional strengths, and undervalued the strengths that they did identify. Protest at 13-20; Protester's Comments at 14-18.

⁵ For example, Clark argues that the Corps substituted construction of military facilities in place of the RFP criteria that projects show diverse types of construction in assessing relevance. Protester's Comments at 9. This argument is unfounded because the RFP related project diversity to the objectives of the RFP, which plainly centered on military construction. Thus, consideration of military construction as an aspect of project relevance was reasonable. Moreover, the evaluators expressly credited Clark for "demonstrat[ing] diversity in project types similar to this RFP." AR, Tab 4, Source Selection Evaluation Board Report, at 31.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4.

The record here supports the reasonableness of the Corps's evaluation of Clark's proposal under the organization factor. For each of Clark's complaints, the contracting officer sets forth a direct rebuttal. For example, Clark argues that the evaluators failed to assign strengths for the firm's home office management and support, but the contracting officer notes that the information cited by Clark in support of its protest did not appear in the relevant section of its proposal.⁶ See Supplemental Contracting Officer's Statement at 2-3. Although Clark argues that its proposal should have merited an additional strength for the firm's capability to self-perform work, the contracting officer explains that Clark's proposal was not rated more highly because it focused on preconstruction planning and was vague about the availability of plant and equipment for Clark to actually self-perform significant work under the RFP. Id. at 3. Although Clark argues that its proposal should have received an additional strength for the firm's familiarity with environmental permitting requirements in key states, the contracting officer replies that Clark's proposal did not clearly establish that the firm had been responsible for environmental permits. Id. at 4. Finally, the contracting officer argues that Clark is incorrect to claim that the two strengths assigned for Clark's approach to design requirements were sufficient to oblige the Corps to rate its proposal outstanding under the organization factor. Id. at 5.

We have reviewed the record and agree with the Corps's explanations that Clark did not effectively present the information in the relevant areas of its proposal, or failed to set forth a clear approach and explanation of its capabilities. It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19. Thus, when evaluating a particular section of a proposal, evaluators are not obligated to go to unrelated sections of the proposal in search of missing or inadequately-presented information. Savantage Fin. Servs. Inc., B-299798, B-299798.3, Aug. 22, 2007, 2007 CPD ¶ 214 at 9.

Furthermore, Clark's arguments that it should have received more strengths, or more significant strengths, has been effectively rebutted by the contracting officer's explanations, and thus amount to mere disagreement with the agency's evaluation judgments. We therefore deny Clark's challenges to the evaluation under the organization factor.

⁶ That is, the information was presented in the executive summary of Clark's past performance and in the discussion of Clark's approach to design requirements. Supplemental Contracting Officer's Statement at 2-3.

Best Value Tradeoff

Finally, Clark argues that the agency's source selection reached an unreasonable conclusion in making award to offerors whose seed task order prices were significantly higher than Clark's, and that the tradeoff rationale was inadequately documented. In particular, Clark argues that the Corps cannot reasonably justify awarding a contract to Balfour Beatty at a seed project price difference of \$6 million.

In a best value procurement, it is the function of the SSA to perform a tradeoff between price and non-price factors, to determine whether one proposal's superiority under the non-price factor is worth a higher price. Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost or price to the government in making its source selection decision. e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7. Before an agency can select a higher-priced proposal that has been rated technically superior to a lower-priced but acceptable one, the award decision must be supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and explaining why its technical superiority warrants paying a price premium. J.R. Conkey & Assocs., Inc., B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 9 (protest sustained where agency selected awardees with highest point scores without considering whether protester's lower-priced, lower-rated proposal provided the best value). Nevertheless, there is no requirement that the source selection official quantify the value to the agency of the technical superiority of an awardee's proposal. Structural Pres. Sys., Inc., B-285085, July 14, 2000, 2000 CPD ¶ 131 at 7. A protester's argument that the cost premium is simply too large is not sufficient to establish that the tradeoff was unreasonable. See General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 11 (tradeoff reasonable where agency determined that technical superiority of awardee's proposal was sufficient to offset 125 percent higher cost).

The record here confirms that the SSA considered and documented the evaluated superiority of each of the awardees' proposals under the past performance and organization factors, as well as the reasons supporting each firm's proposal ratings. The SSA also considered seed project task order price and the contract line rates for each of the offerors. The SSA conducted and documented its tradeoff analysis, choosing not to select Clark for award. Based on our review of the record, we find that the SSA's decision to award a contract to Balfour Beatty (and the five other awardees), and not to Clark, is consistent with the RFP emphasis on non-price factors, and is reasonable. Accordingly, we deny Clark's challenges to the source selection decision.

The protest is denied.

Susan A. Poling
General Counsel