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Decision

Matter of: Crowder Construction Company

File: B-411928

Date: October 8, 2015

Stan Barnett, Esq., Smith, Bundy, Bybee & Barnett, P.C., and James J. McCullough, Esq., and Samuel W. Jack, Esq., Fried, Frank, Harris, Shriver & Jacobson, LLP, for the protester.

Richard B. O’Keeffe, Jr., Esq., and Brian G. Walsh, Esq., Wiley Rein LLP, for CDM Constructors, Inc., the intervenor.

John E. Ballard, Esq., Department of the Army, for the agency.

Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency’s evaluation of proposals is denied where the agency’s evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest challenging the agency’s source selection decision selecting a higher-rated, higher-priced proposal is denied where the agency’s best-value tradeoff was reasonable and consistent with the terms of the solicitation.
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DECISION

Crowder Construction Company, of Apex, North Carolina, protests the award of a contract to CDM Constructors, Inc., of Maitland, Florida, under request for proposals (RFP) No. W912HN-13-R-0018, which was issued by the Department of the Army, Army Corps of Engineers, Savannah District, for the construction of a dissolved oxygen injection system as part of the Savannah Harbor Expansion Project. Crowder challenges the Army’s evaluation of proposals and best-value tradeoff.

We deny the protest.¹

¹ The Army requested that our Office process this protest under the express option provisions of our Bid Protest Regulations. 4 C.F.R. § 21.10. While our Office did

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BACKGROUND

The Savannah Harbor Expansion Project consists primarily of deepening the existing deep-draft navigation channel in Savannah Harbor from -42 feet to -47 feet. Agency Report (AR) at 1 n.1. The RFP, which was issued on October 1, 2014, is for a key mitigation feature involving the construction of a dissolved oxygen injection system utilizing Speece cones. According to the Army, Speece cones are devices that pump water from the river, mix it with oxygen pulled from ambient air, and return the oxygen/water mixture back into the river, where it mixes with the water column and is distributed by tidal currents. Id. The system is intended to mitigate any decrease in dissolved oxygen levels in the Savannah River that may occur as a result of harbor deepening activities. Id. The contractor will be responsible for construction and related services at two locations located in Georgia, including system installation, on-site oxygen generation, intake/discharge piping systems, pumps, electrical service, concrete pads, access roads, instrumentation, remote monitoring, security, and perimeter fencing. RFP at 16.²

The RFP contemplated the award of a single fixed-price contract with a period of performance not to exceed 820 calendar days following the Army's issuance of a notice to proceed. Id. at 1; RFP amend. No. 9, at 2. Award was to be made on a best-value basis, considering price and four non-price factors, in descending order of importance: (1) past performance; (2) experience; (3) summary schedule; and (4) small business participation. RFP at 17, 30-31. The four non-price factors, when combined, were to be significantly more important than price. Id. at 30.

Regarding past performance, the RFP instructed offerors to submit no more than five total project examples. Id. at 21. The Army was to evaluate an offeror's demonstrated record of past performance on recent and relevant projects that involved similar scope, magnitude of effort, and complexities as required by the RFP. Id. at 22. For the purpose of evaluating relevancy, the agency was to consider, among other factors, the scope, type of work, complexity, contract type, and degree of subcontracting or teaming. Id. Additionally, the Army was to evaluate whether the projects demonstrated experience with: (1) construction of water or wastewater treatment facilities; (2) installation of multiple large

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not place this protest formally on the express option schedule, in an effort to expedite resolution of the protest, the agency voluntarily accelerated its filings, and our Office agreed to make every effort to accelerate resolution of the protest. As a result, this decision has been issued before the 65-day deadline under our express option procedures. See id.

² References to the RFP herein, unless otherwise specified, are to the version produced in the AR that is conformed through amendment No. 7.

intake/discharge pumps and associated piping; (3) installation of large diffusers; (4) construction of access roads; (5) installation of electrical service, instrumentation, and remote monitoring infrastructure/equipment; and (6) construction of facilities in marine, river, or lake environments. Id. at 22-23. The RFP also provided that the agency could consider past performance information submitted for an offeror's proposed team member if the proposal adequately described the roles the proposed team member performed on the submitted project and would perform on the contract resulting from the RFP. Id. at 24.

Regarding experience, the Army was to evaluate the five projects submitted in response to the past performance factor to evaluate and rate the offeror's recent, relevant experience in performing similar projects involving the six above-identified specific experience areas. Id. at 25-26. An offeror was required to demonstrate that it had successfully performed a minimum of two projects in each of the six specific experience areas. Id. at 26. The RFP provided that the experience requirements could be satisfied by demonstrating that a proposed team member with a significant role in performing the contract requirements has the requisite experience, provided that the proposal: (1) adequately described the role that the team member would perform on this project; and (2) included a signed teaming agreement with the proposed team member. Id.

Regarding summary schedule, the Army was to evaluate an offeror's total proposed performance period from the notice to proceed through turnover of the facility for unrestricted use by the end users. Id. at 27. The RFP provided that an offer which proposed a contract duration less than the 820 day maximum could receive a more favorable rating, provided that the proposed duration was found to be realistic, achievable, and fully supported. Id. at 28. Offerors were also required to provide a detailed summary construction schedule, including providing milestones and information demonstrating the offeror's understanding of how the state permitting process will impact the construction schedule. Id. at 27. The Army was to evaluate the strength of the offeror's understanding of the project scope. Id. at 28.

Regarding small business participation, the Army was to evaluate an offeror's: (1) planned small and small disadvantaged business usage for this procurement; and (2) past history of using small and small disadvantaged businesses on five submitted projects performed during the last 3 years. Id.

The Army received four proposals in response to the RFP, and included all four in the competitive range for the purpose of holding discussions. AR, Tab 16, Source Selection Decision (undated), at 2. As relevant here, after conducting discussions, and obtaining proposal revisions, the agency's final evaluation for Crowder and CDM was as follows:

	Crowder	CDM
Factor 1 – Past Performance	Substantial Confidence	Substantial Confidence
Factor 2 – Experience	Good	Outstanding
Factor 3 – Summary Schedule	Acceptable	Good
Factor 4 – Small Business Participation	Acceptable	Outstanding
Price	\$92,711,078.50	\$99,675,591.00

Id. at 3, 10.

The Source Selection Authority (SSA) conducted a tradeoff analysis that considered the four proposals. Id. at 10-13. After determining that the two lower-rated, higher-priced proposals of the other offerors did not represent the best value to the government, the SSA compared the evaluation results for the CDM and Crowder proposals under each of the five evaluation factors. Based on this comparative analysis, the SSA determined that CDM's proposal had advantages over Crowder's proposal under each of the four non-price factors. Id. at 12. The SSA, noting that the RFP provided that the non-price factors were to be significantly more important than price, found that the advantages in CDM's proposal outweighed Crowder's lower proposed price. Id. at 12. After a debriefing, this timely protest followed.

DISCUSSION

Crowder challenges the Army's evaluation of its proposal and CDM's proposal, and argues that the SSA failed to reasonably consider Crowder's lower proposed price in the best-value tradeoff.³ In reviewing protests of agency evaluations, we review the record to ensure that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. Webco Dental & Med. Supplies, Inc., B-410587, Jan. 8, 2015, 2015 CPD ¶ 32 at 3. A protester's disagreement with the agency's evaluation conclusions, without more, does not provide a basis for our Office to object to the evaluation. Omega Apparel, Inc., B-409715, July 22, 2014, 2015 CPD ¶ 3 at 5. For the reasons that follow, we find no basis to sustain the protest.

³ Crowder raises other collateral issues. While our decision does not specifically address every argument, we have considered all of the protester's arguments and find that none provides a basis on which to sustain the protest.

Evaluation of Non-Price Proposals

Crowder challenges the Army's evaluation of proposals under the experience, summary schedule, and small business participation factors.⁴ The protester alleges that the agency's evaluation was unreasonable and unequal, and contrary to the terms of the RFP. As addressed below, we find no basis to sustain the protest.

Factor 2 – Experience

Crowder challenges the Army's evaluation of the protester's and CDM's respective proposals under the experience factor. Although, as discussed below, the agency concedes that the source selection decision only recognized one of the protester's two projects demonstrating experience with construction in a marine, lake, or river environment, we conclude that this error does not demonstrate a reasonable possibility of prejudice to the protester.

In comparing the competing merits of CDM's and Crowder's proposals, the SSA identified several distinguishing factors that favored the awardee. First, he noted that CDM's formal teaming partner, Ballard Marine, demonstrated experience that was considered to be very similar to its proposed role on this project. AR, Tab 16, Source Selection Decision (undated), at 11-12. He also found that CDM was the only offeror to submit a very relevant project of essentially the same scope, magnitude, and complexity compared to the RFP's requirements, and also submitted two additional projects that were similar in magnitude. Id. at 12. Additionally, the SSA also noted that the awardee had received awards from the Design-Build Institute of America for two of the submitted projects, including the very relevant one. Id. In contrast, the SSA found that although Crowder's five projects were relevant, only one of the projects included experience with construction in a marine, river, or lake environment, and none were similar in terms of magnitude to the RFP's requirements. Id. The SSA found that while neither of the two findings regarding Crowder's experience constituted weaknesses, they added an additional element of risk to the government that was not present in CDM's proposal. Id.

The protester first argues that its proposal should have been rated as outstanding, rather than good, because the proposal was evaluated as including multiple strengths and no weaknesses. This argument fails to provide a basis on which to sustain the protest. Our Office has consistently recognized that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Research & Dev. Solutions, Inc., B-410581, B-410581.2, Jan. 14, 2015, 2015 CPD ¶ 38 at 10 n.9. In this regard, we have held that there is

⁴ Crowder withdrew its challenge to the agency's evaluation under the past performance factor. See Protester's Supp. Comments (Sept. 18, 2015) at 1 n.1.

no requirement that an agency award the highest possible rating, or maximum point score, under an evaluation factor simply because the proposal contains strengths and/or is not evaluated as having weaknesses. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7 n.8. In reviewing the reasonableness of an agency's evaluation, the relevant question is whether the record shows that the agency fully and reasonably considered the actual qualitative differences in vendors' proposals. Strategic Intelligence Grp., LLC, B-410881.3, June 23, 2015, 2015 CPD ¶ 203 at 12. As discussed above, the SSA compared the qualitative differences between the proposals, rather than merely relying on the assigned adjectival ratings. Therefore, the protester's argument provides no basis to question the reasonableness of the agency's evaluation.

Crowder next contends that the Army unreasonably credited CDM for Ballard Marine's experience because the awardee's proposal did not include sufficient detail regarding its teaming partner's proposed role on the project, as required by the RFP. The Army asserts that its evaluation of the CDM team's experience was reasonable and in accordance with the terms of the RFP.

The RFP stated that the Army would recognize the integrity and validity of contractor team arrangements, provided that the arrangements were identified and the company relationships were fully disclosed in the offer. RFP at 17. The RFP required an offeror to identify the major or critical aspects of the requirement to be performed by the proposed teaming partner, and provide a detailed narrative explaining why the submitted information for the teaming partner was relevant to the procurement. Id. at 17-18. CDM identified Ballard Marine as a key subcontractor. AR, Tab 5, CDM Proposal, Vol. II (Feb. 23, 2015), at H-1. The proposal stated that Ballard Marine "will provide support of the in-water portion of the dissolved oxygen injection systems and associated ancillary work on the project," and further added that "[t]his work could include, but is not limited to, installing conveyance piping and associated items, installing Speece cones and diffusers, and conducting associated activities under water (e.g., welding)." Id. The accompanying executed teaming agreement between CDM and Ballard Marine similarly states that "the general scope to be performed by Ballard would be the installation of the in the water portion of the dissolved oxygen injection systems and associated ancillary work of the Project." Id. at H-2. The proposal also included several paragraphs, under a section titled "Reasoning for the Teaming Agreement with Ballard Marine," that discussed a project jointly performed by CDM and Ballard Marine involving the installation of Speece cones in a lake environment. Id. at H-1.

Contrary to Crowder's argument that the proposal's work scope was too indefinite to satisfy the RFP's informational requirements, we do not find unreasonable the Army's determination that the submitted information adequately addressed Ballard Marine's proposed role on the project. Although the intended scope of work for Ballard Marine was not entirely definitized, the proposal and accompanying executed teaming agreement clearly represented that Ballard Marine would play an

important role in the in-water portion of the work to be performed. Additionally, the proposal clearly explained the nexus between Ballard Marine's prior experience and its intended role on this project. On this record, we do not find that the Army unreasonably evaluated CDM's proposal.

Crowder next argues that, assuming the Army reasonably considered Ballard Marine's experience, the agency unreasonably failed to also credit Crowder for the experience of its proposed subcontractor. The agency asserts that it did not disparately treat offerors, but, rather, that the different evaluation results stemmed from Crowder's failure to comply with the RFP's requirements for presenting teaming-related information.

The RFP clearly instructed offerors to address proposed teaming arrangements in Tab H of their respective proposals. RFP at 18. Crowder, however, provided no information in Tab H of its proposal. See AR, Tab 2, Crowder Proposal, Vol. I (Feb. 23, 2015), at Tab H (stating only "No Teaming Agreements Used"); Tab 3, Crowder Proposal, Vol. II (Feb. 23, 2015), at Tab H (same). Rather, the entirety of the protester's discussion of its proposed subcontractor appears in its revised pricing schedule (Tab B), which the protester submitted in response to the Army's discussion questions regarding pricing issues. See AR, Tab 8, Crowder Discussion Response (Apr. 29, 2015), at 1; Tab 9, Crowder Revised Proposal Pricing Schedule (Apr. 29, 2015), at 7-8, 10-11. We have recognized that agencies evaluating one section of a proposal are not required to go in search of additional information that an offeror has omitted or failed to adequately present. Graybar, B-410886, Mar. 4, 2015, 2015 CPD ¶ 102 at 4; Carolina Satellite Networks, LLC; Nexagen Networks, Inc., B-405558 et al., Nov. 22, 2011, 2011 CPD ¶ 257 at 5. Therefore, because the protester did not comply with the RFP's requirements for presenting its proposed teaming arrangement, while the awardee did comply with the same requirements, we find no basis to conclude that the agency unequally treated the two offerors.

Lastly, Crowder alleges that the SSA unreasonably concluded that the protester submitted only one project demonstrating experience with construction in a marine, river, or lake environment, rather than the two projects identified by the Source Selection Evaluation Board (SSEB). The agency concedes that the SSA's discussion was erroneous on this point, but argues that the protester cannot establish that it was competitively prejudiced by the error. We agree with the Army that Crowder has failed to establish that it was competitively prejudiced by the error.

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. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6; Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7. As discussed above, we have determined that the Army's evaluation under

the experience factor was otherwise reasonable and, as addressed further herein, we find that the balance of the agency's evaluation under the other factors was reasonable. Furthermore, as detailed above, the SSA found several discriminators between the Crowder and CDM proposals under this factor, including that CDM had submitted the only very relevant project and two relevant projects, while none of the protester's projects were of a similar magnitude compared to the RFP's requirements. See AR, Tab 16, Source Selection Decision (undated), at 12. Crowder does not challenge these evaluation conclusions or the other discriminators identified by the SSA. Thus, the protester has failed to establish that it was competitively prejudiced by the SSA's single alleged error regarding the evaluation of Crowder's experience with construction in a marine, river, or lake environment. Therefore, we find no basis to sustain Crowder's challenge to the Army's evaluation under the experience factor.

Factor 3 – Summary Schedule

Crowder next challenges the Army's evaluation of its proposal under the summary schedule factor. The protester first contends that the RFP did not put offerors on notice that the agency intended to qualitatively evaluate the summary schedule factor. In this regard, the protester alleges that the RFP required the agency to evaluate proposed schedules on a pass/fail basis. Alternatively, Crowder alleges that its proposed schedule, which was [DELETED] days less than the RFP's maximum acceptable duration, warranted a higher rating than acceptable.

With regard to Crowder's first complaint that the RFP did not reasonably put offerors on notice of the Army's intent to evaluate proposals under this factor on other than a pass/fail basis, we find no merit to this argument. The RFP unequivocally stated that "[a]n offer which proposes a contract duration shorter than the maximum allowed duration may receive a more favorable rating provided the proposed duration is realistic, deemed achievable and is fully supported." RFP at 28 (emphasis added). Based on this provision, we find that the RFP adequately put offerors on notice that the agency would qualitatively assess an offeror's proposed project schedule.⁵

⁵ Crowder similarly challenges the agency's assessment of a strength for CDM based on the purported thoroughness of the awardee's narrative description accompanying its proposed schedule, arguing that such a consideration constituted an unstated evaluation criterion. Here again, however, the protester's argument is inconsistent with the RFP's express terms. In addition to the above provision putting offerors on notice that the agency intended to conduct a qualitative assessment of proposed project schedules, the RFP further directed offerors, among other things, to "[p]rovide descriptions and details indicating understanding [of] permit requirements, long lead items and major equipment approvals," and that the agency would "evaluate the schedule to assess the strength of understanding of
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Crowder's objection to its adjectival rating for this factor fails for similar reasons as the protester's challenge to the agency's evaluation under the experience factor. Even assuming that the protester's proposed [DELETED]-day schedule should have been evaluated as warranting a rating higher than acceptable, CDM's proposed [DELETED]-day schedule, which Crowder does not challenge as unrealistic or unsupported, would still be more advantageous for the agency, especially when coupled with its detailed accompanying narrative demonstrating its strong understanding of the project scope. See AR, Tab 16, Source Selection Decision (undated), at 4, 6, 12. Therefore, we find no basis to sustain Crowder's challenge to the Army's evaluation under the experience factor.

Factor 4 – Small Business Participation

Crowder also challenges the Army's evaluation of its proposal under the small business participation factor. The protester alleges that its proposal should have been evaluated more favorably than acceptable because it proposed to exceed the RFP's small business subcontracting utilization goals.⁶

Crowder's challenge of the Army's evaluation under the small business participation factor suffers from the same issues as its challenges under the experience and summary schedule factors. Even assuming that the protester's proposal should have been assigned a higher adjectival rating than acceptable under the factor, it has failed to demonstrate that its proposal was more advantageous to the government than CDM's proposal under the same factor. Crowder was rated as acceptable based on its proposed small business utilization of [DELETED] percent for this procurement, and its active mentor-protégé relationship with an 8(a) woman-owned business entity. AR, Tab 15, SSEB Report (June 22, 2015), at 34-35. In contrast, CDM received an outstanding rating based on its proposed small business utilization of [DELETED] percent, formal teaming agreement for this procurement with Ballard Marine, a woman-owned small business, and active mentor-protégé relationship with an Alaska Native Corporation. Id. at 24. Additionally, CDM proposed for this procurement higher small business utilization across all small

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the project scope." RFP at 27, 28. Therefore, we find the agency's evaluation in this respect to have been reasonably based on the RFP's express terms.

⁶ Crowder also argues that its proposal warranted a strength for its historical small business utilization. CDM received a strength for its historical small business utilization. See AR, Tab 15, SSEB Report (June 22, 2015), at 26. The Army argues that it reasonably did not identify a strength for Crowder in this regard because the protester's proposal only included the actual small business utilization percentages, and did not address the associated goals for the projects that Crowder now cites in its protest. AR at 11. On this record, we find no merit to the protester's argument.

business categories (e.g., veteran-owned small, service disabled veteran-owned small) than Crowder. Compare AR, Tab 8, Crowder Discussion Response (Apr. 29, 2015), at 34 with AR, Tab 5, CDM Proposal, Vol. II (Feb. 23, 2015), at L-3. Therefore, we find no basis to sustain Crowder's challenge to the Army's evaluation under the small business participation factor.

Best-Value Tradeoff

Finally, Crowder challenges the SSA's best-value tradeoff, which resulted in CDM's higher-rated, higher-priced proposal being selected for award. The protester argues that the agency unreasonably failed to consider Crowder's lower proposed price, and otherwise inflated the purported non-price advantages of CDM's proposal. We find no basis to sustain the protest.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. MVM, Inc., B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 11. In this regard, award may be made to a firm that submitted a higher-rated, higher-priced proposal where the decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offeror outweighs the price difference. Charles Kendall & Partners, Ltd., B-310093, Nov. 26, 2007, 2007 CPD ¶ 210 at 4. Where a cost/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. Federal Acquisition Regulation § 15.308.

We conclude that the SSA adequately documented his comparison of proposals, including the relative merits of the proposals under the non-price and price evaluation factors. The source selection decision includes a detailed discussion comparing the relative merits of the CDM and Crowder proposals under each of the evaluation criteria. See AR, Tab 16, Source Selection Decision (undated), at 11-13. The SSA concluded that CDM's proposal provided specific advantages over Crowder's proposal under each of the four non-price factors, which when combined were significantly more important than price. See id. at 13. For example, as addressed above with regard to the experience factor, the SSA identified several discriminators between CDM's and Crowder's proposals, including that CDM was the only offeror to demonstrate experience on a very relevant project and had received two awards for its work on relevant projects. Id. at 12. Many of the non-price advantages identified by the SSA, including the two preceding examples, are not challenged by the protester. Moreover, to the extent that Crowder disagrees with the subjective business judgments made by the SSA, such disagreement, without more, is insufficient to demonstrate that the judgments were unreasonable.

On this record, we find no basis to sustain Crowder's objection to the SSA's best-value tradeoff decision.

The protest is denied.

Susan A. Poling
General Counsel