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Decision

Matter of: Carothers Construction, Inc.

File: B-403382

Date: October 28, 2010

Thomas E. Abernathy IV, Esq., and Doug P. Hibshman, Esq., Smith Currie & Hancock LLP, for the protester.

Heather M. Self, Esq., Department of Agriculture, for the agency.

Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for Hoar Construction, LLC, an intervenor.

Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to reasonably evaluate the protester's proposal under experience, staffing plan, and schedule subfactors, and under the small disadvantaged business participation program factor, is denied where the agency's evaluation judgments are consistent with the terms of the solicitation, supported by the record, and reasonable.

DECISION

Carothers Construction, Inc., of Taylor, Mississippi, protests the award of a contract to Hoar Construction, LLC, of Birmingham, Alabama, under request for proposals (RFP) No. AG-3K15-S-10-0008, issued by the Department of Agriculture, Agricultural Research Service, for renovation of the Jamie Whitten Delta States Research Center (JWDSRC) building in Stoneville, Mississippi. Carothers asserts that the agency improperly evaluated the relevant project experience, staffing plan, schedule, and small disadvantaged business (SDB) participation program elements of the firm's proposal.

We deny the protest.

BACKGROUND

The JWDSRC conducts research to address agricultural problems of the mid-south region of the United States. Agency Report (AR), Tab 17, Memorandum of Award, at 1. The JWDSRC consists of nine research units with scientists conducting basic

and applied research in areas such as biology, genetics, chemistry, ecology, entomology, biochemistry, botany, agronomy, aquaculture, soil science, and plant pathology. Id. The JWDSRC building itself is five stories, 100,000 gross square feet, and has laboratories on all floors. Id.

The solicitation, issued on February 23, 2010, contemplated the award of a fixed-price contract for a major renovation of the JWDSRC, and described the scope of the project as follows:

The project includes repair or replacement of the mechanical, electrical, plumbing, heating, ventilation and air conditioning (HVAC) systems, concrete work and deteriorated building envelope. In addition, roofing, drywall, metal studs, insulation, sheet metal, painting, tile work, sediment and erosion control, site work and swing space will be required. There will be standard laboratory casework, fume hood and exhaust requirements.

RFP § B.1.

The solicitation informed offerors that award would be made to the responsible offeror “whose proposal offers the ‘best value’ to the Government, which may not necessarily be the proposal offering the lowest price nor the highest technically scored.” Id. § M.3. The solicitation included the following list of evaluation factors and subfactors, each worth the stated number of points:

EVALUATION FACTOR	POINTS
Relevant Project Experience and Past Performance	
Experience	20
Past Performance	20
Key Personnel	
Staffing Plan	10
Personnel Qualifications	10
Contract Administration	
Administrative Approach	5
Quality Control/Commissioning Plan	5
Subcontractor	5
Schedule and Resources	
Schedule	5
Work Plan Approach	5
Resources	5
Manufacturers	5
SDB Participation Program	5
Total Points	100

RFP § M.2; Contracting Officer's Statement ¶ 5. The maximum number of points that a proposal could receive was 100. Id. The solicitation stated that all evaluation factors, other than cost or price, when combined, were approximately equal to cost or price. RFP § M.2.

With regard to the experience subfactor of the relevant project experience and past performance factor, offerors were required to submit a list of five projects performed within the last five years of similar size, scope, function, and complexity to the JWDSRC renovation. RFP § L.13(b)(1)(A). The solicitation instructed that the five projects "should demonstrate experience in new construction and renovation of general construction with [an] emphasis on research laboratory type projects." Id. For each project, the solicitation required the offerors to provide seventeen items of information, including a "[d]escription of work involving the relocation and installation of sophisticated scientific equipment." RFP § L.13(b)(1)(A)(16).

With regard to the staffing plan subfactor of the key personnel factor, offerors were required to identify "key construction and management personnel proposed for this project and their level of authority and relationship" to the offeror. Id. § L.13(b)(2)(A). For the personnel qualifications subfactor, offerors were required to state whether each key personnel "will be located on site for this project" and "whether each person will be full time or part time for this project." Id. § L.13(b)(2)(B)(6), (7).

With regard to the schedule subfactor of the schedule and resources factor, the solicitation required that offerors' proposals include a schedule identifying significant segments of work, items on the critical path during the pre-construction and construction phases, and material and equipment purchases. Id. § L.13(b)(4)(A). The solicitation also established that the project duration was not to exceed 1,582 days for the base items, with a total duration (including options) of 2,506 days. Id. §§ F.1, F.6.

With regard to the SDB program participation factor, the solicitation required that offerors identify both their proposed targets for SDB subcontracting participation (in terms of dollars and percentages of total prime contract value), the specific SDB firms with which they would subcontract, and the amount and type of work that each SDB would perform. Id. § L.13(b)(5).

In response to the solicitation, the agency received four proposals, including proposals from the protester and the awardee, by April 14, the deadline for receipt of proposals. AR, Tab 16, TEP Report, at 2; RFP amend. 4. After receipt of the proposals, the members of a technical evaluation panel (TEP) individually evaluated the proposals and assigned numerical scores for each factor and subfactor. AR, Tab 17, Memorandum of Award, at 4; Contracting Officer's Statement ¶ 10. The TEP then collectively discussed the strengths and weaknesses of each proposal and

established final TEP member individual scores and final consensus scores for each proposal.¹ Contracting Officer's Statement ¶ 10.

As is relevant here, the TEP assigned Carothers' proposal a weakness under the experience subfactor of the relevant project experience and past performance factor on the basis that Carothers' proposal did not demonstrate "significant laboratory renovation or new construction" experience or "laboratory HVAC/mechanical systems experience." AR, Tab 16, TEP Report, at 5. Carothers also received a weakness under the staffing plan subfactor of the key personnel factor on the basis that the firm's project manager would not be located on-site, would not be dedicated to the project, but would nonetheless have complete authority over on-site personnel. Id. The TEP expressed concern that this arrangement could delay timely responses to on-site issues. Id.

After considering the strengths and weaknesses under each of the evaluation factors and subfactors, the TEP assigned Carothers' proposal a final consensus score of 67, with scores for the individual factors and subfactors as follows:

¹ The TEP consisted of two engineering project managers, an area office engineer, and a representative of the architect-engineering firm that prepared the design for the project. Contracting Officer's Statement ¶ 10. The representative of the architect-engineering firm participated in the TEP as a "non-voting advisor," meaning that he evaluated the proposals, but he did not assign numerical scores or participate in the meeting to establish the final consensus ratings. AR, Tab 17, Memorandum of Award, at 4; Contracting Officer's Statement ¶ 10.

EVALUATION FACTOR	POINTS AVAILABLE	CAROTHERS' CONSENSUS
Relevant Project Experience and Past Performance		
Experience	20	11
Past Performance	20	16
Key Personnel		
Staffing Plan	10	5
Personnel Qualifications	10	5
Contract Administration		
Administrative Approach	5	2
Quality Control/Commissioning Plan	5	4
Subcontractor	5	3
Schedule and Resources		
Schedule	5	4
Work Plan Approach	5	4
Resources	5	5
Manufacturers	5	4
SDB Participation Program	5	4
Total Points	100	67 ^[2]

Id. at 11. In contrast, the TEP assigned Hoar's proposal a final consensus score of 81. Id. at 11.

Hoar's technical score of 81 points was the highest among all four proposals received, while Carothers' score of 67 points was second-highest. Id.; Memorandum of Law at 4. Hoar's total evaluated price of \$37,902,726 also was higher than Carothers' total evaluated price of \$35,710,521. AR, Tab 17, Memorandum of Award, at 14. The contracting officer performed a price/technical tradeoff analysis and selected Hoar's proposal for award over Carothers' proposal on the basis that the technical difference between the proposals was "significant" in comparison to the difference in price. Id. at 14. In support of this conclusion, the contracting officer noted that Hoar's proposal received substantially higher scores than any other offerors' proposals under the experience, staffing plan, and personnel qualifications subfactors. Id. at 14-15. The contracting officer also noted that because Hoar's proposal listed five medical research facility projects of similar scope and cost, the

² The agency states that due a clerical error, Carothers' consensus score for the past performance subfactor should have been 15 points rather than 16 points and, therefore, Carothers' total consensus score should have been 66 points. Contracting Officer's Statement ¶ 13.

risk to the government for this project would be far less than with other firms. Id. at 14. Considering the “significant” technical advantages of Hoar’s proposal, the agency determined that it offered the best value to the government. Id. at 15.

On June 30, the agency awarded the contract to Hoar. Memorandum of Law at 4. On July 22, Carothers received a debriefing. Id. This protest followed.

DISCUSSION

In its protest, Carothers challenged virtually every weakness that the agency identified in its proposal, contending that the agency overlooked relevant information contained in the proposal and that the agency evaluated the proposal according to criteria that were not specified in the solicitation. Protest at 4-14; Comments at 1-2. Carothers also challenged the adequacy of the firm’s debriefing, Protest at 14-15, and the reasonableness of the agency’s best value tradeoff analysis, Comments at 10-11. Although the agency report addressed each particular challenge, the protester’s comments rebutted the agency report only with respect to four specific evaluation weaknesses and the agency’s tradeoff analysis. We therefore regard the un-rebutted protest grounds as abandoned. See, e.g., Washington-Harris Group, B-401794, B-401794.2, Nov. 16, 2009, 2009 CPD ¶ 230 at 5 n.3. The protester’s remaining contentions are discussed below.

Evaluation of the Protester’s Experience

Carothers challenges the agency’s evaluation of its proposal under the experience subfactor of the relevant project experience and past performance factor. As a general matter, the evaluation of an offeror’s experience and past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based evaluation ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a protester challenges the evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations, and to ensure that the agency’s rationale is adequately documented. LIS, Inc., B-400646.4, Jan. 4, 2010; JVSCC, B-311303.2, May 13, 2009, 2009 CPD ¶ 138 at 5; S4, Inc., B-299817, B-299817.2, Aug. 23, 2007, 2007 CPD ¶ 164 at 9. The evaluation of experience and past performance, by its very nature, is subjective; an offeror’s mere disagreement with the agency’s evaluation judgments does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

Carothers argues that the solicitation included only limited emphasis on laboratory experience, and, therefore, the weakness that Carothers’ proposal received under the experience subfactor for failing to demonstrate significant laboratory renovation or new construction experience, as well as laboratory HVAC and mechanical systems experience, was unwarranted. Comments at 5. We disagree.

With regard to relevant project experience, the solicitation instructed offerors to demonstrate experience with projects of similar size, scope, function, and complexity, with an “emphasis on research laboratory type projects.” RFP § L.13(b)(1)(A). The solicitation also instructed offerors to describe experience with “work involving the relocation and installation of sophisticated scientific equipment.” Id. § L.13(b)(1)(A)(16). The solicitation’s scope of work summary expressly included “laboratory casework, fume hood and exhaust requirements,” id. § B.1, and the solicitation’s statement of work included five stand-alone laboratory equipment and infrastructure specifications, id. § C, Div. 11 53 01 (laboratory equipment), 11 53 13 (laboratory fume hoods), 11 53 43 (laboratory fittings and fixtures), 12 35 53 (laboratory casework and work surfaces), and 22 66 53 (laboratory chemical waste and vent piping). Finally, at base, the procurement was for the major renovation of a scientific research facility. Id. § B.1. Given the nature of this procurement and the language of the RFP, which informed the protester that the agency’s evaluation of offerors’ experience would include specific consideration of laboratory construction and renovation experience, we find no merit to the protester’s argument that the agency gave too much consideration to laboratory experience in the evaluation of offerors’ experience.

Carothers further argues that the agency ignored, or failed to evaluate as a whole, the following laboratory construction-related experience listed in the firm’s proposal: (1) relocation of an animal testing laboratory and remodeling and relocation of an allergen immunity laboratory in connection with a seismic strengthening project at a Veterans Administration hospital; (2) construction of a medical clinic and relocation and installation of medical equipment in connection with construction of an immigration processing center; (3) installation and testing of two linear accelerators in connection with construction of a radiation oncology clinic; and (4) a border patrol station construction project. Comments at 6.

The agency responds that these four projects collectively fail to demonstrate that Carothers has adequate experience with specialized laboratory construction work of the magnitude contemplated in the JWDSRC renovation. With regard to the Veterans Administration hospital project, the agency points out that although the hospital is over 363,000 square feet in size, the protester’s proposal stated that the renovation work—as opposed to structural strengthening work—involved only 20,000 square feet of administrative offices and a gift shop. Contracting Officer’s Statement ¶21.c; see also AR, Tab 9, Carothers’ Proposal, at 1. The agency acknowledges the statement in Carothers’ proposal that the project involved relocation of an animal laboratory and an allergen immunity laboratory, but asserts that the proposal failed to indicate the size of those two laboratories. Contracting Officer’s Statement ¶21.c. In sum, in the agency’s view, the hospital project consisted almost wholly of structural seismic strengthening work, which the agency found not relevant to the interior renovation of a research laboratory such as the JWDSRC. Id. This is a judgment well within the discretion of the evaluators, and one that our Office will not second-guess. See Lear

Siegler Servs, Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 12-13. Moreover, given that the JWDSRC is a facility of 100,000 square feet with laboratories on all five floors, we find reasonable the agency's determination that, based the information provided in the protester's proposal, the Veterans Administration hospital project was not a significant laboratory renovation for purposes of the evaluation in this procurement.

We find the agency's evaluation of the other projects that Carothers cites to be similarly reasonable. With regard to the immigration processing center project, the record confirms that the work consisted primarily of the construction of a detention facility and administration building, with only a small portion of work involving the medical area of the building; *i.e.*, the bulk of the project was standard construction work that is not relevant to the type of specialized construction practices required for renovation of a research laboratory facility. Contracting Officer's Statement ¶21.b; AR, Tab 9, Carothers' Proposal, at 3-4. With regard to the radiation oncology clinic project, Carothers' proposal did not indicate how much of the project was laboratory space versus administrative or clinic space, and the agency reasonably determined that, even if the entire project was laboratory space, its size would have been only fifteen percent of the size of the JWDSRC. AR, Tab 9, Carothers' Proposal, at 7-8; Contracting Officer's Statement ¶21.b. With regard to the border patrol station project, the project description in the protester's proposal does not reference any laboratory work and expressly states that the project did not involve the relocation of any sophisticated scientific equipment. AR, Tab 9, Carothers' Proposal, at 5. Accordingly, based upon our review of the record, we find reasonable the agency's determination that while some of Carothers' projects may have contained some relevant, specialized construction work, Carothers' proposal did not demonstrate significant laboratory renovation or new construction experience.

Evaluation of the Protester's Staffing Plan

The agency assigned Carothers' proposal a weakness under the staffing plan subfactor of the key personnel factor on the basis that the firm's senior project manager, who had authority over all on-site personnel, would be located off-site. AR, Tab 16, TEP Report, at 5. This weakness arose from concern that such an arrangement could delay responses to on-site issues. Id.

Carothers argues that the agency assigned this weakness according to an unspecified solicitation criterion because the solicitation did not indicate that proposals would be downgraded if a member of the project management team was located off-site, and it did not indicate that authority over the project management team must be vested in an individual located on-site. Comments at 8. However, the solicitation expressly instructed offerors to identify the authority level of proposed key personnel and to state whether those key personnel would be located on- or off-site. RFP §§ L.13(b)(2)(A), L.13(b)(2)(B)(6). Accordingly, we think that the solicitation adequately apprised offerors of the agency's intent to consider the proposed location

and authority of key personnel as a measure of staffing plan strength, and that such consideration by the agency here was reasonable.

Carothers further argues that the agency's concern regarding the authority of the firm's senior project manager over on-site personnel was unreasonable because the firm's staffing plan stated that the project superintendent, who would be located on-site, would be both "[r]esponsible for construction of the project" and "[o]versees all construction activities." Comments at 8; AR, Tab 9, Carothers' Proposal, at 15.

It is an offeror's obligation to submit a clear and unambiguous proposal, and the offeror bears the consequences where its proposal does not reflect its intended approach. Nu-Way, Inc., B-296435.5, B-296435.10, Sept. 28, 2005, 2005 CPD ¶ 195 at 5; FR Countermeasures, Inc., B-295375, 2005 CPD ¶ 52 at 6. In addition to the proposal statements cited by the protester regarding the project superintendent's responsibilities, Carothers' proposal also stated that the project superintendent "reports to the senior project manager," the latter of who was to be located off-site. AR, Tab 9, Carothers' Proposal, at 15. The proposal further stated that the senior project manager, who, again, would be located off-site, would have full authority to stop work and to negotiate changes, but the proposal was silent as to whether any of the on-site key personnel would have such authority. Id. Here, we find the agency reasonably read the protester's staffing plan to mean that the on-site project superintendent did not have full authority over the project and that such an arrangement could create unwanted delays. Accordingly, we find no basis to sustain the protest on this ground.

Evaluation of the Protester's Schedule

The agency assigned Carothers' proposal a weakness under the schedule subfactor, finding that the 4-year project duration that Carothers proposed was too aggressive. AR, Tab 16, TEP Report, at 6. Carothers argues that this amounts to the application of an unspecified solicitation criterion because the solicitation provided for a maximum project duration of 2,506 days (i.e., nearly 7 years) and did not indicate that proposals would be downgraded if an offeror proposed a shorter project duration. Comments at 8-9. Without elaborating, Carothers asserts that its proposed project duration was "absolutely achievable." Id. at 9.

Our review of an agency's evaluation considers whether the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. G4S Gov't Servs., B-401694, B-401694.2, Nov. 4, 2009, 2009 CPD ¶ 236 at 7. While an agency is required to identify the significant evaluation factors and subfactors, it is not required to identify the various aspects of each factor which it might take into account, provided that such aspects are reasonably related to or encompassed by the solicitation's stated criteria. Eloret Corp., B-402696, B-402696.2, July 16, 2010, 2010 CPD ¶ 182 at 8 n.5; Digital Solutions Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 10.

Here, the solicitation expressly apprised offerors that the agency would evaluate project schedules and instructed offerors to include detailed information about their proposed schedules. RFP §§ M.2, L.13(b)(4)(A). Carothers proposed a schedule that was approximately 3 years shorter than the government's announced estimated schedule. Compare RFP §§ F.1, F.6 (2,506 days) with AR, Tab 9, Carothers' Proposal, Schedule Sheet 1, at 37 (1,460 days). The agency explains that the TEP, through consultation with the non-voting member advisor who was an architect/engineer with the firm that prepared the design for the solicitation, concluded that the protester's proposed schedule allowed no time for unforeseen conditions and allowed only four and a half months to complete each floor. Contracting Officer's Statement ¶¶ 10, 28.a. The TEP viewed this as a risk because of the extent of work to be performed on each floor, including hazardous material removal, demolition, temporary utility connection, partition build-back, ventilation system work, casework, fume hood work, commissioning, retro-commissioning, inspection, and clean-up. Id. ¶ 28.a. In our view, given that the solicitation included a schedule subfactor, the agency reasonably included consideration of schedule risk in its evaluation of the protester's proposed schedule. Further, the protester has advanced no specific reason why the agency's findings regarding the schedule risk identified in its proposal were unfounded or irrational. Accordingly, we find the agency's evaluation of the protester's proposal under the schedule subfactor unobjectionable.

Evaluation of the Protester's SDB Participation Program Targets

Carothers asserts that the agency's determination to assign Carothers' proposal four points, instead of the maximum possible five points, under the SDB participation program factor was unreasonable. Carothers asserts that the sole basis for the less than perfect score under this factor was that the firm's SDB participation target was less than 100 percent of the total subcontracts that Carothers planned to award in connection with the project. Comments at 10. Carothers maintains that this amounts to the application of an unstated solicitation criterion.

With respect to the SDB program participation factor, the solicitation required offerors to identify, among other things, their targets for the award of subcontracts to SDB concerns both in terms of dollars and percentage of the prime contract value. RFP §L.13(b)(5). The agency acknowledges that the only way that an offeror could have received the full five points under this factor was to have committed to subcontract to SDB concerns 100 percent of the work that the offeror planned to subcontract. Contracting Officer's Statement ¶ 32. We view the agency's consideration of the degree to which an offeror proposed to subcontract work to SDB concerns to be reasonably encompassed in the solicitation's SDB participation program factor. See Ocean Ships, Inc., B-401526.4, Apr. 21, 2010, 2010 CPD ¶ 106 at 6 (socioeconomic utilization program factor encompassed more than small business status).

In any event, the agency explains that if the evaluation methodology for the SDB participation program factor were adjusted to permit a maximum score where an offeror proposed to award less than 100 percent of its subcontracts to SDB concerns, then each offeror's proposal score under this factor would have increased a similar amount, resulting in no prejudice to Carothers. Contracting Officer's Statement ¶ 32. Since prejudice is an essential element of every viable protest, we will not sustain Carothers' protest on this ground. See Armorworks Enter's, LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3.

Best Value Tradeoff Analysis

Carothers challenges the agency's best value tradeoff analysis on the basis that, had the agency not committed the evaluation errors complained of in Carothers' other protest grounds, then Carothers' proposal would have received higher scores under the non-price factors, which, coupled with the proposal's lower price, would have justified an award to Carothers. As explained above, we deem Carothers' protests regarding the agency's evaluation to be without merit. Accordingly, there is no basis to the protester's challenge of the agency's tradeoff analysis.

The protest is denied.

Lynn H. Gibson
Acting General Counsel