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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: C Construction Co., Inc.

File: B-291792; B-291792.2; B-291792.3

Date: March 17, 2003

Thomas E. Abernathy, IV, Esq., Smith Currie & Hancock, for the protester.
Robert E. Little, Jr., Esq., Naval Facilities Engineering Command, for the agency.
Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Technical evaluation of protester's proposal resulting in less than highest ratings under the past performance, management, and small business factors was unobjectionable where record establishes that agency followed stated evaluation criteria and ratings have a reasonable basis.
2. Protest that agency improperly evaluated awardees' bonding capability is denied where evaluation scheme did not call for the same level of information as a bid bond evaluation in sealed bid procurement, and awardees' proposals included sufficient information for agency reasonably to conclude that the offerors possessed the requisite capability.

DECISION

C Construction Co., Inc. (CCI) protests the award of construction contracts to eight firms¹ under request for proposals (RFP) No. N62470-02-R-3495, issued by the Department of the Navy for construction services at various military installations in North Carolina. CCI challenges the technical evaluation of its and four other firms' proposals.

We deny the protest.

¹ Contracts were awarded to C.L. Price & Associates, Joyce & Associates, Pro Construction, Inc., TJC Engineering, Inc., Tesoro Corporation, Virtexco Corporation, Futron Contracting, and ITZ Construction, Inc.

The RFP sought proposals for general construction, including demolition, renovation, and associated work, at Camp Lejeune and other military installations/sites in North Carolina, plus a “seed project” consisting of renovation of a particular building at Camp Lejeune. Projects were anticipated to have an estimated cost of between \$50,000 and \$2 million, with each contract having an annual value not to exceed \$10 million. The RFP contemplated the award of up to six indefinite-delivery/ indefinite-quantity construction contracts for a base year, with 3 option years. Subsequent task orders were to be competed among the awardees.

Proposals were to be evaluated (as excellent, good, satisfactory, marginal, or poor) under three equally weighted technical factors--past performance, management and organization, and support for small businesses--and price.² Technical factors were of greater importance than price, and award was to be made to the offerors whose proposals were most advantageous to the government. Award of the seed project was to be made to the firm among the awardees submitting the lowest price.

Eighteen offerors, including CCI, submitted timely proposals, which were evaluated by a technical evaluation board (TEB). The TEB found that all were technically acceptable with overall ratings ranging from marginal-plus to good-plus. The final evaluation results for all proposals, in order of technical merit, were as follows:

	Past Perf	Mgmt/Org	Small Bus.	Overall	Price
C.L. Price	Good	Good +	Exc -	Good +	\$502,100
Joyce	Good +	Good	Exc -	Good +	\$541,341
Pro Constr.	Good	Satis	Exc	Good	\$471,993
TJC Eng'g	Good +	Satis +	Good	Good -	\$814,640
Tesoro	Good +	Satis +	Good	Good -	\$539,000
Virtexco	Good	Good +	Marg -	Satis +	\$472,623
Futron	Good +	Satis	Satis -	Satis +	\$619,244
ITZ	Good	Satis -	Good	Satis +	\$428,434
Offeror 9	Good -	Satis -	Good -	Satis	\$506,676
Offeror 10	Satis -	Satis	Good	Satis	\$673,054
Offeror 11	Good	Satis	Satis -	Satis	\$549,100
Offeror 12	Satis -	Satis -	Good	Satis	\$393,800
Offeror 13	Good	Satis	Marg	Satis -	\$507,696
Offeror 14	Good	Satis	Marg -	Satis -	\$720,000
Offeror 15	Good +	Satis -	Marg	Satis -	\$551,300
CCI	Good	Marg +	Marg	Satis -	\$484,800
Offeror 17	Satis +	Satis -	Marg	Satis -	\$630,000
Offeror 18	Good -	Marg	Marg	Marg +	\$622,877

² Because future task orders would be competed on a technical and price basis, the only price submitted by offerors was for performing the seed project.

After review of the TEB's report and recommendations, the source selection board (SSB) noted that five proposals were rated good-minus to good-plus and that an additional three proposals were rated satisfactory-plus. All other proposals were rated satisfactory to marginal-plus. In order to capture all eight of the top-rated proposals, the SSB recommended that the source selection authority (SSA) expand the number of awards from the six called for in the RFP. The SSB determined that the government's projected workload and funding would support eight awards, and that additional awards offered advantages to the government, including being able to award the seed project to ITZ, whose proposal was rated satisfactory-plus, and whose price was lower than Pro Construction's (the lowest of the top five offerors). The SSA approved the SSB's recommendation and awarded eight contracts. After receiving a debriefing, CCI filed this protest challenging the evaluation of its own proposal and four of the awardees' proposals.

TECHNICAL EVALUATION OF CCI'S PROPOSAL

CCI asserts that the agency improperly evaluated its proposal under all three technical factors. According to CCI, had the agency properly applied the evaluation criteria, its proposal would have been rated higher.

In reviewing a protest of an agency's proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2.

Past Performance Factor

CCI notes that it submitted evidence of three completed contracts at Camp Lejeune, and that its performance was rated outstanding for one of the contracts and above average for two. CCI asserts that, since these contracts were performed at the same facility where some of the contracts at issue here will be performed, these three ratings reasonably should have translated into a past performance evaluation rating higher than the good rating CCI received.

This argument is without merit. The RFP advised offerors that the agency would review data submitted both by the offerors and from other sources, including the Construction Contractor Appraisal Support System (CCASS). RFP at 89. Consistent with this provision, the Navy reviewed the seven projects submitted by the protester, including the three on which it relies in its protest, and obtained six additional responses from reference checks, three excellent ratings and three good. The agency considered an additional 16 projects from CCASS, which included

4 outstanding, 4 above average, and 8 satisfactory ratings.³ Based on these ratings, the TEB concluded that CCI's past performance warranted a rating of good, the second highest level on the evaluation scale.

We find nothing unreasonable in the agency's conclusion. Of the 22 projects considered by the TEB, only 7 received the highest rating (outstanding/excellent), while 8 received the third highest, and 7 the second highest rating. Based on these numbers, CCI's past performance record fell squarely in the second highest rating level, not the highest. This being the case, the agency reasonably assigned CCI an overall rating of good. While CCI asserts that its highly rated past performance at Camp Lejeune warranted a higher score, we note that the ratings for those contracts were evenly divided between the highest and second highest levels, and that CCI does not address the impact of the ratings for the other 16 projects reviewed by the TEB. CCI's mere disagreement with the agency's judgment does not establish that the evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

Management And Organization Factor

CCI asserts that the agency applied the wrong project size criterion in evaluating its proposal under the corporate experience subfactor (under the management and organization factor). In this regard, although CCI's proposal contained information on five projects in the range specified in the RFP--\$250,000 to \$5 million per project--the agency determined that only one of the projects was relevant in size and type of construction. The agency's debriefing memorandum, in discussing this determination, incorrectly refers to the range as \$50,000 to \$2 million. CCI concludes that the agency applied the wrong criterion in finding its other projects not relevant and, as a result, improperly rated its proposal poor under this subfactor.

This allegation is without merit. According to the contracting officer, who conducted the debriefing, the TEB in fact used the correct size criterion--\$250,000 to \$5 million--in evaluating CCI's proposal; he states that the debriefing declaration erroneously included the wrong size range. Amended Declaration, Feb. 7, 2003. CCI does not dispute that the declaration contained a typographical error, the record contains no other evidence that the evaluation was based on application of the wrong price range, and we find no other basis for questioning the contracting officer's declaration.

The agency explains that the relevance determination was based on similarity of past projects to the current project in both size and type of construction. CCI received a poor rating under this subfactor because only one of its projects met both criteria.

³ The agency did not consider an additional two projects, rated marginal and unsatisfactory, because the TEB did not consider them relevant.

The RFP specifically provided in this regard that the agency would evaluate the offeror's ability to manage multiple projects in the designated range. RFP at 89. The agency found that CCI's submitted projects demonstrated experience in single, larger new construction projects, not in the simultaneous management of multiple, smaller projects. CCI does not explain how the agency erred in this aspect of the evaluation; accordingly, we have no basis to find the agency's judgment unreasonable.⁴

Small Business Factor

The small business factor was comprised of two equally weighted subfactors: past performance in using various small businesses in previous contracts and the proposed participation of small business in the performance of this contract. CCI asserts that the agency ignored information in its small business plan that warranted assigning its proposal higher than the poor rating it received under the first subfactor, and that its satisfactory rating under the small business participation subfactor also would have been higher had the agency given it appropriate credit for proposing to meet the minimum small business subcontracting goals.

These arguments are without merit. With regard to the past performance subfactor, the RFP advised offerors to provide four categories of information: "awards you received within the past three years for outstanding support to HUBZone [historically underutilized business zone], SB [small business], SDB [small disadvantaged business], WOSB [woman owned small business], VOSB [veteran owned small business] firms, JWOD [Javits Wagner O'Day] program, and if applicable, HBCU/MI [historically black college, university, or minority institution]"; "a list of three most recently completed contracts . . . [i]nclud[ing] the total dollar value and the dollar value percentage of work (of total contract value) subcontracted to LB [large business], HUBZone, SB, SDB, WOSB, VOSB firms, and if applicable, HBCU/MI for each. If subcontracting was not used on submitted contracts, provide an explanation as to why"; "information on existing or pending mentor-protégé agreements"; and "information, if available, on the use of Community Rehabilitation Programs certified under [JWOD] program" RFP at 92. CCI's proposal was rated poor under this subfactor because its proposal did not include any of the requested information.

CCI notes that its proposal included the methods it uses to ensure subcontracting opportunities for SB and SDB concerns; a description of how it reviewed the scope of work to identify subcontracting opportunities; how it makes contracts with small

⁴ In a related argument, CCI asserts that the agency did not properly apply the size criteria to one of the awardees, Virtexco, because it considered all of its projects relevant even though one of them exceeded \$5 million. The project in question was valued only slightly (\$5,450) above the \$5 million range, and we see nothing unreasonable in the agency's considering this project as relevant.

business entities; and the efforts it had made to ensure that SB, SDB, WOSB, VOSB, SDVOSB, and HBCU/MI firms would be able to compete for subcontracts. While this information may well indicate that the protester is dedicated to small business utilization in subcontracts, its proposal did not include any of the prior contract information that the RFP specifically stated would form the basis for the evaluation under this subfactor. CCI also states in its comments on the agency report that it had a mentor-protégé agreement, but it concedes that it did not include this information in its proposal (because the firm it was to mentor had graduated from the 8(a) program). Since CCI did not provide the information specifically requested under the RFP for purposes of evaluating proposals under this subfactor, there is no basis to question this aspect of the evaluation.

We reach the same conclusion with regard to the agency's evaluation of CCI's proposal under the small business participation subfactor. While CCI correctly points out that it proposed to meet the goals set for four types of small business participants, it only proposed to exceed one of those goals (by ½ percent) for the second and third option years. We see nothing unreasonable in an agency's rating a proposal satisfactory where it offers only to meet minimum stated goals.

BONDING CAPABILITY EVALUATION

CCI challenges the agency's evaluation of four awardees' proposals—Futron's, ITZ's, TJC Engineering's, and Tesoro's—under the bonding capability subfactor of the management and organization factor. According to CCI, all four proposals should have been downgraded for lack of the required bonding capability, because the number and size of their current projects were too large for them to obtain adequate bonding for this project, and they did not include original powers of attorney from their sureties. In addition, the agency allegedly ignored defects in the bonding submissions of Futron and ITZ.

We have reviewed each of the allegations raised by the protester regarding bonding capability and find that they either lack merit or otherwise did not prejudice CCI.

Challenges To All Four Offerors

CCI confuses the RFP's requirement to provide specified information to establish "bonding capability" (the least important of the four subfactors under the management and organization factor) with a sealed bid requirement for a bid bond. A bid bond requirement is a material condition of a sealed bid procurement with which there must be compliance at the time of bid opening; if the agency cannot determine definitely from the documents submitted with the bid that the surety would be bound, the bid is nonresponsive and must be rejected. Schrepfer Indus., Inc., B-286825, Feb. 12, 2001, 2001 CPD ¶ 23 at 2. There was no such stringent requirement here. In particular, a bid bond was not required to establish bonding capability; rather, the RFP required only that offerors "[p]rovide Bonding Capability

for projects of size and nature envisioned [in the RFP] on surety's letterhead in amount of not less than \$10,000,000.00. Bonding capability shall be accompanied by a document authenticating the agent's authority to sign bonds for the surety company pursuant to FAC5252.228-9305 in Section I."⁵ RFP at 91. The agency explains that these submissions were considered representations as to the offerors' capability to obtain appropriate bonds, and were not intended to obligate the bonding companies.⁶ Supplemental Agency Report at 2. Here, all offerors, including the four challenged by CCI, provided the requisite information on their surety's letterhead, indicating a bonding capability of the \$10 million minimum. Since the agency's position--that this aspect of the evaluation was intended only to assess offerors' prospective ability to obtain bonding--is borne out by the language of the RFP, and the offerors in question provided the requested information, we find nothing unreasonable in the agency's determination that the information furnished by the offerors met this requirement.

CCI asserts that the powers of attorney submitted to authenticate the sureties' authority to sign bonds were not acceptable evidence of bonding capability because they were copies, not original documents. However, nothing in the RFP required that the authenticating document be an original power of attorney, and the Navy therefore was not required to downgrade the proposals on this basis. Likewise, while CCI has submitted information raising questions as to the challenged firms' ability to obtain bonding at the required levels, this additional information was not required by the RFP and the agency thus did not consider it in the evaluation. In this regard, the RFP did not provide that the agency would independently investigate bonding capability, and there is no indication that the agency had reason to question the information submitted by the firms in question. See American Native Med. Transp., L.L.C., B-276873, Aug. 5, 1997, 97-2 CPD ¶ 73 at 6 (agency is not required to conduct an independent investigation of proposal information where it reasonably could find that the proposal commits the offeror to meet the RFP requirements).

Challenges To Specific Offerors

CCI asserts that the agency ignored various discrepancies in the documentation submitted by ITZ and Futron that would render the evidence of their bonding capability unacceptable. We need not determine whether the discrepancies would have resulted in the downgrading or elimination of the challenged proposals because, even if we agreed with CCI, it was not prejudiced by the agency's

⁵ This section of the RFP set out the performance and payment bond requirements.

⁶ This is consistent with the procurement's structure of awarding task orders for future projects on a competitive basis, at which time actual bonds would be required. Until the time of these competitions, the agency needed only to ascertain that the contractors were then likely able to obtain necessary bonds.

evaluation of the bonding capability of either of the challenged firms. In this regard, Our Office will not sustain a protest absent a showing of a reasonable possibility that the protester was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

CCI would not have a substantial chance of receiving an award if the Futron and ITZ proposals were eliminated. First, since the RFP only provided for up to six awards, the agency would not be required to replace them with two new awards. Further, there is no reason to believe that the agency would do so, since it made the final three awards (including Futron's and ITZ's) only because the three proposals selected were relatively highly rated (satisfactory-plus), SSA Decision at 6-7; the proposals not selected for award, including CCI's, were rated no higher than satisfactory. The agency's rationale for making the additional awards thus would not apply if Futron's and ITZ's contracts were invalidated. Moreover, even if the agency decided to replace the ITZ and Futron awards, there is nothing to indicate that CCI would be considered for a replacement award. In this regard, the next proposals in line would be the four ranked ninth to twelfth, all of which were rated satisfactory technically, and thus superior to CCI's (satisfactory-minus); Offeror 12 would be in line for the seed project award, since its price was the lowest received. We conclude that CCI was not prejudiced by any errors in the bonding capability evaluation.

The protest is denied.

Anthony H. Gamboa
General Counsel