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Decision

Matter of: DePonte Investments, Inc.

File: B-401802

Date: November 23, 2009

Robert J. Moss, Esq., Dickstein Shapiro LLP, for the protester.
Helen Y. Kearns, Esq., General Services Administration, for the agency.
Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In procurement of leased space for detention facility, agency reasonably assigned weakness to protester's technical proposal with regard to experience where solicitation provided that "primary consideration" in evaluation was to be "given to similar projects completed within the past 5 years," and protester's developer's resume did not reference any detention facility project meeting that standard.
 2. Agency reasonably assigned weakness to protester's technical proposal with regard to experience based on finding that proposed architect lacked LEED (Leadership in Energy and Environmental Design) experience, where protester's architects' resumes included only one project, which was not fully operational and had not achieved certification at required LEED level.
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DECISION

DePonte Investments, Inc., of Albuquerque, New Mexico, protests the exclusion of its proposal from the competitive range under solicitation for offers (SFO) No. 8NM219, issued by the General Services Administration (GSA) for construction of a detention facility for use by the Department of Homeland Security, Immigration and Customs Enforcement. DePonte challenges the evaluation of its technical proposal.

We deny the protest.

The SFO was issued on May 22, 2009 as a "competitive negotiated acquisition" for the design-build-lease of consolidated office space, including a detention facility, in Albuquerque, New Mexico. Agency Report (AR) at 2. The SFO provided for

evaluation of proposals under three technical factors (in descending order of importance): (1) experience of the offeror/developer's team (weighted at 50%), (2) capability to perform (40%), and (3) past performance (10%). SFO at 9, § 2.1. Offerors were required to submit a standard form 330 for each team member (developer, general contractor, architect-engineer) to show previous projects, relevant experience, reference contact information, and other information to demonstrate each team member's ability to carry out its role. SFO at 9.

Proposals were received from 17 offerors, including DePonte, by the June 29 closing time. AR at 3; Contracting Officer's Statement (COS) at 3. The source selection evaluation board (SSEB) evaluated the proposals and assigned consensus scores. AR, exh. 16, SSEB Report, at 2; COS at 3-4. DePonte's proposal was ranked 11th out of the 17 proposals. Among the evaluated weaknesses in DePonte's proposal were weaknesses under the experience factor. The five highest-scored proposals were included in the competitive range, and DePonte was notified on August 6 that its proposal had been excluded from the competitive range. AR exh. 17. A written debriefing was provided on August 17. AR exh. 19. DePonte challenges two aspects of GSA's evaluation of its proposal with regard to experience.¹

In considering protests challenging the evaluation of proposals, we will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a/ DRS Fermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2007 CPD ¶ 4 at 3-4. The evaluation of DePonte's proposal under the experience factor was unobjectionable.

Section 2.1 of the SFO provides, in part, as follows with regard to experience of the offeror/developer's team:

This factor considers past experience of the offeror's individual team members (developer, general contractor, architect-engineer) in delivering projects of a similar nature. While the Government may consider past experience in delivery and management of any size or type of space, primary consideration will be given to similar projects completed within the past 5 years. Similar projects are defined as multi-story office buildings of 70,000 gross square feet or larger, using the same basic building materials and systems, in similar climatic conditions, and designed for the same general use as this procurement.

¹ DePonte's protest as filed included seven grounds, all of which GSA addressed in its report. In its response to the report, DePonte rebutted the agency's arguments only with regard to two of the grounds. Consequently, we consider the remaining grounds abandoned. CM Mfg., Inc., B-293370, Mar. 2, 2004, 2004 CPD ¶ 69 at 3.

SFO at 9. The SSEB found that DePonte had certain strengths with regard to experience, including that its team had worked together on other projects, its team had some experience with similar projects, the developer and general contractor had experience in detention facilities, and the general contractor had experience in Leadership in Energy and Environmental Design (LEED). SSEB Report at 2. However, the SSEB also found several weaknesses in DePonte's proposal with regard to experience, including, most pertinent here, that DePonte's experience as a detention facility developer was "10 years old and [on a] much smaller project," and that its proposed architect had "not completed a LEED project." Id. at 3. The record indicates that the project to which the SSEB report refers is an Immigration and Naturalization Service "combination office-holding area" building at Casa Grande, Arizona, on which DePonte was the project manager and owner. See AR exh. 14, DePonte Proposal, SF 330 Part 1E, Resumes of Key Personnel (Resume of Brent DePonte); SF 330 Part 1F, Example Projects, at 4.

DePonte asserts that the SSEB's determination that its experience in constructing a detention facility was not recent, and therefore constituted a weakness, was unreasonable. Protest at 3. DePonte concedes that its developer's detention facility experience was "a bit older" than the specified 5 years, but asserts that, instead of a weakness, GSA should have considered this experience a significant strength because it "was so highly relevant to the current project" in that it was "the very same type of facility in the same geographic region." Id.

The evaluation in this area was reasonable. DePonte's listed experience for a detention facility project involving its developer consisted of a single project that had been performed 9 years ago, rather than the specified 5 years, and that was substantially smaller in size--only 20,000 square feet--than the 70,000 square feet specified in the definition of "similar project." While DePonte asserts, essentially, that the size and age considerations should have been outweighed by the fact that the project involved the same type of facility in the same geographic region, there is nothing in the SFO that compelled such a conclusion. Rather, since all of these considerations were set forth as prerequisites for primary consideration, we think it was reasonable for the agency to conclude that this single project did not warrant such consideration. Under the SFO, the agency could give consideration to the older, smaller project in the evaluation; we think the agency also reasonably could conclude that DePonte's listed experience did not warrant a higher rating.

DePonte also asserts that the SSEB unreasonably assigned its proposal a weakness with regard to experience on the basis that its proposed architect lacked LEED experience. Protest at 4; SSEB Report at 3. In this regard, DePonte points out that its proposal stated that, "[deleted] [DePonte's proposed architectural firm] has designed numerous LEED buildings including the first LEED Gold NC 2.2 Certified and the first LEED Silver NC 21 in New Mexico." Protest at 4; DePonte Proposal, SF 330 Part 1H, Factor 2, at 3. DePonte also points to a resume included in its proposal--that of a civil engineer at [deleted], DePonte's engineering firm--indicating

that this individual is an “LEED Accredited Professional.” Protester’s Comments at 6; DePonte Proposal, SF 330 Part 1E, Resumes of Key Personnel, at 13. The protester asserts that, although this individual is not an architect, he is a member of DePonte’s “architect-engineer team,” which, under section 2.1 of the SFO (which refers to an offeror’s “individual team members” as “developer, general contractor, architect-engineer”) was to be evaluated as a unit.

The evaluation in this area was reasonable. LEED experience was significant because the SFO required the building here to meet specific LEED requirements. SFO at 5, § 1.2(F). While DePonte’s proposal stated that Studio Southwest had various LEED experience, the SF 330s submitted by the architects included only one project featuring design at the required LEED level and indicated that this project was not fully operational and, accordingly, had not achieved LEED certification. AR at 4, 5. Further, the resume cited by DePonte identified the individual’s function as civil engineer, not architect, so the agency determined that this did not establish LEED experience for the proposed architect. We do not agree with the protester that, essentially, the agency was required to evaluate architect and engineer experience in tandem. Notwithstanding the reference in section 2.1 to the proposed architect-engineer as an “individual team member[],” nothing in the language of that section precluded the agency from separately considering the LEED experience of the two entities comprising the architect-engineer team member. Indeed, DePonte’s interpretation of the SFO in this regard is inconsistent with its own proposal, which treated its architectural firm and its engineering firm as separate entities, DePonte Proposal, SF 330 Part 1D, Organizational Chart, and included no resumes describing any employee’s role as a member of the “architect-engineer” team. DePonte Proposal, SF 330 Part 1E, Resumes of Key Personnel, at 1-17. We conclude that there is no basis for objecting to this aspect of the evaluation.

The protest is denied.

Lynn H. Gibson
Acting General Counsel