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Decision

Matter of: Turner-Southland- Dean, JV

File: B-407998

Date: May 20, 2013

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DIGEST

Protest challenging an agency's evaluation and selection decision is denied where the record shows that the evaluation and selection decision were reasonable and in accordance with the evaluation criteria.

DECISION

Turner-Southland-Dean Joint Venture, of Washington, D.C., protests the award of a contract to Clark-McCarthy Healthcare Partners II, JV, of Dallas, Texas, under request for proposals (RFP) No. W9126G-12-R-0054, issued by the Department of the Army, Corps of Engineers, for the design and construction of a hospital and related buildings at Fort Bliss in El Paso, Texas.¹ Turner challenges the agency's evaluation of its proposal and selection decision.

We deny the protest.

¹ Turner-Southland-Dean is a joint venture of Turner Construction Company, Southland Industries, and M.C. Dean, Inc. Agency Report (AR), Tab 28, Turner's Initial Proposal, Joint Venture Agreement, at 745.

BACKGROUND

The RFP provided for the award of a fixed-price contract for the design and construction of a new hospital and related buildings at Fort Bliss. Detailed design and performance specifications were provided, and offerors were informed that award would be made on a best-value basis, considering the following evaluation factors: past performance; prime contractor's key personnel; organization and technical approach; proposed schedule; small business participation; and price. Past performance was stated to be the most important factor. The prime contractor's key personnel and the organization and technical approach evaluation factors were stated to be of equal importance and, when combined, were equal to the past performance factor. The proposed schedule factor was more important than the small business participation factor, and both factors were less important than the other non-price factors. The non-price factors, combined, were stated to be significantly more important than price. RFP at 432.²

The RFP provided that technical proposals would be adjectivally rated by the agency's source selection evaluation board (SSEB). With respect to the past performance factor, offerors were informed that the SSEB would adjectivally rate the relevance and quality of the offeror's past performance.³ With respect to the remaining non-price factors, offerors were informed that proposals would be evaluated as outstanding, good, acceptable, marginal, or unacceptable.⁴ Id. at 448-49.

As relevant here, under the key personnel factor, offerors were instructed to provide resumes for six key construction personnel that would be assigned to the contract.⁵

² The agency stamped each page of its report, including the RFP, with a Bates number.

³ Past performance was to be assessed as very relevant, relevant, somewhat relevant or not relevant based upon the similarity of the past projects' scope, magnitude, and complexity to the work procured here. RFP at 433-34, 449-50. Past performance would also receive an adjectival confidence rating of substantial, satisfactory, limited, none, or unknown (neutral). Id. at 435-36, 450.

⁴ As relevant here, an outstanding rating reflected an exceptional approach and understanding of the requirements with strengths that far outweighed any weaknesses. A good rating reflected a thorough approach and understanding of the requirements with strengths that outweighed any weaknesses. An acceptable rating reflected an adequate approach and understanding of the requirements with strengths and weaknesses that were offsetting or would have little or no impact on contract performance. RFP at 449.

⁵ The RFP required offerors to provide the following key personnel: the project manager, construction project superintendent, contractor quality control system
(continued...)

For each, the offerors were to list the key person's past duties and responsibilities that demonstrate relevant experience for the position.⁶ Id. at 436-38. With respect to the project manager position, which the RFP described as being "responsible for all aspects of the project," this key person was required to have a minimum of 10 years of experience as an overall project manager in the construction industry, and a degree in architecture, engineering, or construction management. Id. at 436. Offerors were instructed to identify for their project managers at least two representative projects completed (or substantially completed) within the last 10 years that were of similar size, scope and complexity. Id.

The Corps received proposals from five firms, including Turner and Clark-McCarthy, which were evaluated by the SSEB. The SSEB initially found that all of the offers were unacceptable under the key personnel and proposed schedule factors. AR, Tab 15, Competitive Range Determination, at 599-600. The agency decided to conduct discussions and established a competitive range that included the proposals of all five offerors. Id. at 600.

Evaluation notices were sent to each offeror for which the SSEB had identified evaluated deficiencies, weaknesses, and/or uncertainties in the offerors' respective proposals. Turner was informed of deficiencies and weaknesses in its proposal under the key personnel, proposed schedule, and small business participation factors. AR, Tab 16, Turner Evaluation Notice, at 603-04. As relevant here, Turner was informed that its proposal failed to show that the individuals it proposed for the project manager and construction project superintendent positions had a required Certified Healthcare Constructor certificate. Turner was also told that the resume submitted for its project manager did not clearly demonstrate his role on the projects that he identified for his experience. Similarly, Turner was advised that the resume submitted for its construction project superintendent was vague with respect to this person's duties on a project identified for his experience, and that his past duties may not be of a similar magnitude as those required here. Id. at 603. Turner was also advised of two weaknesses assessed in its proposal under the small business participation plan factor. Somewhat cryptically, the agency informed Turner that "[t]here was no extent of commitments cited within the proposal," and that Turner failed to "identify Historically Black Colleges and Universities/Minority Institutions." Id. at 604.

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manager, site safety and health officer, LEED project manager, and designated scheduler. RFP at 436-38.

⁶ The RFP also required that offerors "clearly show the job title, time in position submitted, and the company history of employment" for each key person. RFP at 438.

In response to discussions, Turner switched the individuals it proposed for the positions of project manager and construction project superintendent; that is, the individual it proposed for the project manager position was now proposed for the construction project superintendent position, and vice-versa. Compare AR, Tab 28, Turner's Initial Proposal, at 824-29 with Tab 31, Turner's Revised Proposal, at 1,267-72. Turner also submitted revised resumes and Certified Healthcare Constructor certificates for both of these proposed personnel.

Turner's and Clark-McCarthy's revised proposals were evaluated as follows:

| | | Turner | Clark-McCarthy | |
|--------------------------------------------|------------------------------------------|---------------|----------------|---------------|
| Past Performance | | | | |
| | Relevance | Very Relevant | Very Relevant | |
| | Confidence | Substantial | Substantial | |
| Key Personnel | | Acceptable | Outstanding | |
| Organization and Technical Approach | | | | |
| | Management, Technical, and Risk Approach | | Good | Outstanding |
| | Key Subcontractors' Past Performance | Relevance | Very Relevant | Very Relevant |
| | | Confidence | Satisfactory | Substantial |
| Proposed Schedule | | Good | Acceptable | |
| Small Business Participation Plan | | Acceptable | Outstanding | |
| Price | | \$628,888,670 | \$648,930,000 | |

AR, Tab 18, SSEB Evaluation Report, at 617-28, 651-61; Tab 19, SSEB Comparative Analysis, at 682. The SSEB recommended that award be made to Clark-McCarthy. In this regard, the SSEB noted the superiority of Clark-McCarthy's proposal under the past performance,⁷ key personnel, and organization and technical approach factors. AR, Tab 19, SSEB Comparative Analysis, at 680-81. The SSEB also noted that Clark-McCarthy's price was only 3.1 percent higher than Turner's. The SSEB's evaluation and recommendation was reviewed by the source selection evaluation council (SSAC), which agreed with the SSEB's findings and award recommendation. AR, Tab 20, SSAC Report, at 694.

⁷ Although Turner's and Clark-McCarthy's proposals received the same adjectival ratings under the past performance factor, the SSEB and SSAC found that Clark-McCarthy's proposal was superior under this factor. See AR, Tab 19, SSEB Comparative Evaluation, at 680; Tab 20 SSAC Report, at 693.

Following a briefing from the SSEB and SSAC, the source selection authority (SSA) selected Clark-McCarthy's higher-rated, higher-priced proposal as the proposal that offered the best value to the government. AR, Tab 22, Source Selection Decision, at 702. Award was made to Clark-McCarthy, and this protest followed a debriefing.

DISCUSSION

Turner challenges the agency's evaluation of its proposal and selection decision, arguing that its proposal should have been selected for award. In this regard, Turner contends that its proposal should have received higher ratings under each of the factors where Clark-McCarthy's proposal received higher ratings than Turner's. We have considered all of Turner's numerous arguments, although we only address its primary ones, and find that none afford a basis to question the agency's evaluation and selection decision.

Key Personnel Factor

Turner first complains that its proposal should have received a higher rating under the prime contractor key personnel factor, under which its proposal was rated as acceptable.

The record shows that, although the SSEB and SSAC found that Turner had addressed the concerns identified by the agency in discussions with respect to its proposed project manager, the protester's revised proposal failed to clearly show the role that its new project manager played in the projects identified in his resume. The evaluators considered this to raise an uncertainty in Turner's proposal, but did not label this issue a proposal weakness.⁸ See AR, Tab 18, SSEB Evaluation Report, at 656; Tab 20, SSAC Comparative Analysis, at 688. Other than this one evaluated uncertainty, the SSEB identified no other strengths or weaknesses in Turner's proposal under the key personnel factor, and considered Turner's proposal to be only acceptable. SSEB Evaluation Report, at 655.

Turner disagrees with the Corps that the resume of its project manager does not demonstrate this individual's experience in the role of project manager. In this regard, Turner contends that the resume states that he has 14 years experience as a project manager, which exceeds the experience requirements of the RFP. Protester's Comments at 21. Turner also argues that, although the representative projects identified for this individual do not explicitly state that he was the project manager for these projects, the resume otherwise indicates that he had been "responsible for the day-to-day operations" and "responsible the for day-to-day

⁸ The RFP defines a weakness to be a flaw in the proposal that increases the risk of unsuccessful contract performance; it defines an uncertainty as any aspect of the proposal for which the intent of the offeror is unclear. RFP at 448.

construction operations” for these projects, which Turner argues should have been found to be tantamount to performance by a project manager. Protester’s Comments at 21.

The agency responds that the resume for Turner’s proposed project manager states that the individual has served as a project manager, a project executive, and an operations manager, but does not state in what capacity the individual performed with respect to the two representative projects identified for him. See Contracting Officer’s Statement at 18-19. Because Turner’s proposal was not clear in this respect, this was identified as an uncertainty in Turner’s proposal. The agency also notes that no strengths were identified in any of Turner’s proposed key personnel and on this basis the agency found the proposal merely acceptable under this factor. Id. at 19.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest against an agency’s evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. By itself, a protester’s disagreement with the agency’s judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

We find that the record supports the Army’s judgment that Turner’s revised proposal was unclear with respect to the experience of the firm’s proposed project manager. Offerors were instructed to “clearly show the job title, time in position submitted, and the company history of employment” for each of the proposed key personnel, and cautioned that an offeror’s rating for this factor might be reduced if the requirements were not clearly listed. See RFP at 438. During discussions, the Corps specifically informed Turner that its initial proposal failed to clearly identify the relevant experience of its proposed project manager and construction project superintendent. In response, Turner switched the individuals proposed for its project manager and construction project superintendent. In its revised proposal, Turner identified the same two representative projects for the individual previously proposed as the project superintendent in the initial proposal--who was now being proposed as the project manager--but did not clearly explain what this individual’s roles and responsibilities were for these projects.

Turner also complains that its proposal should have been evaluated as having a number of strengths under the key personnel factor, because Turner identified a medical center expansion project in its revised proposal that Turner states is similar to the construction work sought here and for which its proposed project manager

was ultimately responsible. Protester's Comments at 21-22. Turner also argues that the experience of its proposed key personnel should have been higher valued where the agency found that Turner's past performance was very relevant. Id. at 23.

There is no merit to these arguments. Although the medical center expansion project was identified in Turner's revised proposal, this project was not identified as one of the two required representative projects for its project manager, and Turner's revised proposal did not clearly describe his role on this project. With respect to the relevance of Turner's past performance, the record shows that the evaluators were unable to ascertain the role played by several of Turner's proposed key personnel in these contracts.

The responsibility for submitting a well-written proposal--with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency--lies first and foremost with the offeror. Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. Turner's disagreement with the agency's judgment that its proposal was merely acceptable under the key personnel factor does not demonstrate that the agency's judgment was unreasonable.

Organization and Technical Approach Factor

Turner also complains that its proposal should have received a higher rating under the organization and technical approach factor. This factor consists of two subfactors: (1) management, technical and risk approach; and (2) key subcontractors. RFP at 439.

Turner's proposal received a good rating under the management, technical and risk approach subfactor, based upon the SSEB's assessment of a strength for a well-prepared [deleted] and no weaknesses.⁹ AR, Tab 18, SSEB Report, at 657. Turner argues that its proposal should have received an outstanding rating, based upon its one evaluated strength and no weaknesses, and because Turner offered the Corps [deleted] "no-cost betterments" that the agency failed to credit. Protest at 26-27.

We disagree. Although Turner's proposal was evaluated as having no weaknesses under this subfactor, Turner does not show that it was unreasonable for the Corps to conclude that the firm's proposal showed a thorough, rather than exceptional, approach and understanding. With respect to Turner's complaint that the agency should have given the firm credit under this subfactor for the proposal's offer to

⁹ Because no weaknesses or deficiencies were identified in Turner's proposal under this subfactor, this aspect of Turner's proposal was not raised during discussions.

provide no-cost betterments, Turner's proposal does not identify or include any description of such betterments under the section of its proposal addressing this subfactor. Similarly, while Turner's cover letter to its technical proposal mentions that it is proposing no-cost betterments, these betterments are described in the firm's price proposal. See AR, Tab 32, Turner's Revised Price Proposal, at 1,481-82. The SSEB did not, however, have access to, or review, price proposals during its technical evaluation. As a result, we see nothing unreasonable about the technical evaluators' failure to consider Turner's proposed betterments.

Turner's proposal received a satisfactory confidence rating under the key subcontractors' past performance subfactor. The RFP informed offerors that the past performance of its key mechanical, plumbing, electrical, and structural installations subcontractors would be evaluated under this subfactor. RFP at 440. Turner complains that it identified the past performance of three firms--W&W Steel, LLC, M.C. Dean, and Southland Industries--for this work but that the Corps only credited Turner for the past performance of W&W Steel.

Here, the record shows that the Corps did not credit Turner for the past performance of M.C. Dean and Southland Industries under this subfactor because these firms were joint venture partners, and their past performance was considered under the past performance factor instead. See AR, Tab 18, SSEB Evaluation Report, at 653-54, 658. We find no merit to the protester's contention that the RFP required the Corps to credit Turner for its joint venture partners' past performance under both the past performance factor and the key subcontractors' past performance subfactor. Rather, we find that the RFP reasonably informed joint venture offerors that the past performance of the joint venture partners would be considered, as was done here, under the past performance factor. See RFP at 433 ("If the Offeror is a joint venture, each firm shall provide [past performance information] demonstrating experience relevant to their role")

Small Business Participation Factor

Turner also complains that its proposal should have received a higher rating under the small business participation factor. In this regard, Turner states that it proposed to exceed the RFP's 25 percent small business participation goal to a greater extent than Clark-McCarthy ([deleted] percent as compared to the awardee's [deleted] percent), but that Clark-McCarthy's proposal received an outstanding rating under this factor.

The record does not support Turner's contention that the Corps misevaluated its proposal under this factor. Offerors were informed that their small business participation plans would be evaluated for the extent of small business participation. RFP at 443-44. In this regard, offerors were directed to identify, among other things, the extent to which various categories of small businesses and Historically Black Colleges/Universities or minority institutions would be used in the

performance of the contract, and to describe the extent of these commitments.¹⁰ Id. at 444-45. The SSEB cited Turner's participation rate as a strength, but found that this strength was outweighed by two weaknesses. AR, Tab 18, SSEB Evaluation Report at 661. Specifically, the SSEB found that Turner identified no commitments to small businesses and failed to identify any Historically Black Colleges/Universities or minority institutions. Id. Both of these weaknesses were identified during discussions, but Turner did not revise its small business participation plan in response to these concerns.¹¹

Turner also argues that it was prevented from revising its small business participation plan to address the concerns raised during discussions. Specifically, Turner argues that it believed that it could submit its small business participation plan revisions 48 hours after November 28, 2012, the date established by the agency for proposal revisions in response to discussions, because the RFP had allowed up to 48 hours of additional time for the submission of small business participation plans after submission of initial proposals.¹² See Protester's Comments at 43, citing RFP at 331. Turner contends that it intended to revise its small business participation plan within 48 hours after the date established for proposal revisions in response to discussions, but that on November 28, after receipt of the firms' discussion response, the Corps requested final proposal revisions that were limited to price.

¹⁰ The RFP provided that greater consideration would be given for enforceable commitments. RFP at 445.

¹¹ In its revised proposal, Turner acknowledged that "[a]t this time there are no firm commitments in place with Small Business Enterprises." AR, Tab 31, Turner's Revised Technical Proposal, at 1,181.

¹² Turner also contends that the agency permitted the awardee to revise its small business subcontracting plan after submission of final proposal revisions, without affording Turner the same opportunity. Protest at 34; Protester's Comments at 2. Turner, however, has confused the small business participation plan with the awardee's small business subcontracting plan. The two plans are different. The agency evaluated all of the offerors' proposed small business participation plans in accordance with the RFP's technical evaluation scheme. In contrast, Clark-McCarthy's small business subcontracting plan was the only one reviewed by the Corps in accordance with the Federal Acquisition Regulation, which provides that the small business subcontracting plan of the apparently successful offeror is to be reviewed prior to award. See FAR § 19.702(a)(1). The acceptability of the apparent successful offeror's small business subcontracting plan is a matter of responsibility, unless the RFP otherwise provides for a qualitative and comparative evaluation of that plan. See MANCON, B-405663, Feb. 9, 2012, 2012 CPD ¶ 68 at 4. There was nothing improper about allowing Clark-McCarthy, after its selection for award, to revise its small business subcontracting plan.

In our view, there is no merit to this contention. Turner was unambiguously informed that responses to the agency's discussions were required to be submitted by 2:00 p.m. (central time), November 28. See AR Tab 16, Turner's Evaluation Notice, at 602. There was no mention of any subsequent ability to submit more information, as had been permitted with initial proposals.

Best Value Decision

Turner also challenges the agency's source selection decision, arguing that it should have received the award on the basis of its lower price.

Selection officials have considerable discretion in making price/technical tradeoff decisions. American Material Handling, Inc., B-297536, Jan. 30, 2006, 2006 CPD ¶ 28 at 4. The propriety of the cost/price-technical tradeoff decision does not turn on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's evaluation scheme. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

As discussed above, we have found no merit to Turner's objections to the agency's technical evaluation. Thus, there is no basis to question the agency's reliance upon those evaluation judgments in making its source selection decision. We also find that the agency reasonably considered the merits of the firms' proposals based upon the firms' respective evaluated strengths and weaknesses. In this regard, the agency reasonably exercised its discretion to conclude that Turner's slight price advantage was outweighed by the technical superiority of Clark-McCarthy's proposal. This judgment was consistent with the RFP's evaluation scheme that provided that the non-price factors, combined, were significantly more important than price.

The protest is denied.

Susan A. Poling
General Counsel