



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** Desbuild Inc.

**File:** B-409009

**Date:** January 6, 2014

---

Douglas L. Patin, Esq., Bradley Arant Boult Cummings LLP, for the protester.  
Robert D. English, Esq., Federal Bureau of Investigation, for the agency.  
Gary R. Allen, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

---

### DIGEST

Protest that an agency disparately evaluated proposals is denied where the record shows that the agency reasonably evaluated proposals consistent with the solicitation.

---

### DECISION

Desbuild Incorporated of Hyattsville, Maryland, protests the award of contracts to Biscayne Contractors, Inc.; Meltech Corporation, Inc.; Montage Inc.; and TMG Construction Corporation under request for proposals (RFP) No. 2151136564, issued by the Department of Justice, Federal Bureau of Investigation (FBI), for repair, renovation, new construction and alterations to facilities and utilities at various FBI facilities, including the FBI Headquarters in Washington, D.C., the FBI Academy in Quantico, Virginia, and the Criminal Justice Information Services Complex in Clarksburg, West Virginia. Desbuild challenges the FBI's evaluation of proposals and selection decision.

We deny the protest.

### BACKGROUND

The RFP, issued as a small business set-aside, provided for award of up to five fixed-price, indefinite-delivery/indefinite-quantity contracts for construction services for a base year and four option years. Offerors were informed that the FBI would use a two-phased evaluation approach. In the first phase, the agency would select up to 10 offerors, considering the following factors: experience, safety plan, management plan, and past performance. RFP at 18. Offerors selected to

compete under phase two were provided with a “seed project” task order to address. The seed project task order consisted of installing 33 to 40 variable frequency drives (VFDs) at the FBI Academy in Quantico, Virginia. RFP at 1.<sup>1</sup>

The RFP provided that awards under phase two would be made on a best-value basis, considering the following factors and subfactors:<sup>2</sup>

<b>Technical Approach</b>	
	Technical: Construction Schedule, Safety Plan, Waste Plan, Work Breakdown by Division [Construction Specification Institute (CSI) format]
	Past Performance
<b>Price</b>	

RFP at 21. Offerors were informed that the technical and past performance subfactors, combined, were equal to price. Id.

With respect to the technical subfactor, offerors were instructed to provide, among other things, a construction schedule in Gantt Chart format showing the duration and dependence of project tasks.<sup>3</sup> The RFP also provided that construction schedules must be broken down by CSI division.<sup>4</sup> Offerors were also instructed to provide a narrative describing the offeror’s general construction plan/solution as it related to the seed project requirements for the planning and construction. Id. The RFP provided that the agency would evaluate the extent to which the offeror’s plans would satisfy the seed project task order requirements. Id.

---

<sup>1</sup> Our citations to the RFP are to the solicitation issued to offerors selected to compete in the second phase of the competition.

<sup>2</sup> The RFP also provided that the seed project task order would be issued to the offeror whose proposal was determined to be the best value. RFP at 18.

<sup>3</sup> A Gantt Chart is a horizontal bar chart developed as a production control tool by Henry L. Gantt. Frequently used in project management, a Gantt chart provides a graphical illustration of a schedule that helps plan, coordinate, and track individual tasks and subtasks within a project. See [www.gantt.com](http://www.gantt.com).

<sup>4</sup> CSI maintains a standardized format by division that categorizes various construction services by type, such as, for example, concrete or electrical work. See [www.csinet.org/mfnumber](http://www.csinet.org/mfnumber).

With regard to past performance, offerors were instructed to submit information for up to three task orders that were relevant to the seed project task order. Id. at 22. The RFP provided that the agency would evaluate whether the offeror's past performance information reflected a trend of satisfactory performance with respect to, among other things, successful completion of tasks, timely delivery of good quality work, and cooperation with government officials at all levels. Id.

In phase one of the procurement, the agency received 36 proposals, of which ten proposals, including Desbuild's, were selected to compete in phase two. Contracting Officer's (CO) Statement at 3. The FBI received nine timely proposals in phase two, which were evaluated by the agency's technical evaluation selection board (TESB). The TEBB assigned adjectival ratings that were supported by narrative discussions identifying strengths and weaknesses in the respective proposals.<sup>5</sup> See Agency Report (AR), Tab 14, TEBB Report, at 1-12. The seven highest technically rated proposals were evaluated as follows:

---

<sup>5</sup> As relevant here, a blue/exceptional rating reflected the evaluators' judgment that there was virtually no doubt that the offeror would successfully perform, that virtually no government intervention would be required in achieving the proposed level of performance, that no clarifications would be needed, and that there were no significant ambiguities in any rated area. A green/acceptable rating reflected the evaluators' judgment that the offeror would successfully perform, that little government intervention would be expected, and that while minor ambiguities might be noted, they could be addressed through reasonable interpretation of the offeror's proposal; a yellow/marginal rating reflected the judgment that substantial doubt exists that the offeror would successfully perform, that substantial government intervention was expected, and that major ambiguities might be noted, but could be addressed through reasonable interpretation of the offeror's proposal. See AR, Tab 12, Source Selection Plan, at 20-21.

	<b>Technical</b>	<b>Past Performance</b>	<b>Overall</b>	<b>Price<sup>6</sup></b>
Montage	Blue	Green	Green	\$518,000
Biscayne	Green	Blue	Green	\$398,000
TMG	Green	Green	Green	\$556,187
Meltech	Green	Yellow	Green	\$376,082
Offeror A	Yellow	Blue	Green	\$830,566
Offeror B	Yellow	Yellow	Yellow	\$702,000
Desbuild	Yellow	Yellow	Yellow	\$404,279

AR, Tab 14, TESB Report, at 7-11; Tab 15, Contract Award Memorandum, at 4. With respect to Desbuild's proposal, the TESB expressed a number of concerns, including, under the technical subfactor, that the protester proposed a shorter time for government review of submittals than provided for by the RFP, did not include a detailed or site-specific safety plan, had not identified demolition routes, and generally submitted a proposal that left the evaluators uncertain as to the soundness of its approach in the phasing of after-hours work, commissioning, and testing. AR, Tab 14, TESB Report, at 9. As regards Desbuild's past performance, the TESB found that Desbuild had not provided sufficient information to establish that its past performance was relevant either in quantity or scope to the seed project task order work. Id.

The CO, the source selection official for this procurement, reviewed the TESB's findings and performed a best-value analysis. The CO noted that the five highest-rated firms (but not Desbuild) received an overall evaluation rating of green/acceptable. Each of these firms' proposals, the CO noted, demonstrated a clear understanding of the requirements for the seed project and presented a high potential for success on future design/build work. AR, Tab 15, Contract Award Memorandum, at 4. The CO concluded that the proposals of Montage, Biscayne, TMG and Meltech reflected the best value to the agency, and selected these firms' proposals for award.<sup>7</sup> Offeror A's proposal was not selected for award, because the CO found that Offeror A's overall green/acceptable rating was outweighed by its substantially higher price. Id. at 7-8. With respect to the protester's proposal, the CO recognized that Desbuild's evaluated price was lower than that of two of the firms selected to receive award, but the CO concluded that Desbuild's yellow/marginal technical proposal was not more advantageous than the higher-rated, higher-priced proposals of Montage, Biscayne, TMG and Meltech. Id. at 5.

<sup>6</sup> The independent government estimate was \$399,645. CO's Statement at 6.

<sup>7</sup> The CO also concluded that Biscayne's proposal offered the most advantageous proposal, and selected that firm for issuance of the seed project task order. AR, Tab 15, Contract Award Memorandum, at 8.

On September 26, 2013, Desbuild received a debriefing, which specifically delineated the weaknesses described above in the TESB Report. See AR, Tab 16, Desbuild Debriefing, at 4. This protest followed the debriefing.

## DISCUSSION

Desbuild challenges the agency's evaluation of its and the awardees' proposals. First with respect to the evaluation of its own proposal under the technical subfactor, Desbuild complains that the FBI unreasonably evaluated its construction schedule inconsistently with the solicitation where the agency downgraded Desbuild's proposal for not providing for the replacement of more than six VFDs after hours and not adequately addressing the firm's plan for commissioning the VFDs.<sup>8</sup> See Protest at 11-13.

The agency responds that, as Desbuild was informed in its debriefing, the protester's yellow/marginal rating under the technical subfactor reflected the agency's judgment that the firm's proposal had numerous weaknesses, most of which the protester failed to challenge in its initial protest. See CO's Statement at 9; see also AR, Tab 14, TESB Report, at 9; Tab 16, Desbuild Debriefing, at 4.

Desbuild, in its comments, did not further address the two concerns that it raised in its initial protest, but instead filed a supplemental protest challenging other evaluated weaknesses identified by the agency in the firm's debriefing, such as the shortening of the government review period and the failure to provide demolition routes. See Comments at 6-12. Desbuild's supplemental protest, however, is untimely. Our Bid Protest Regulations provide that a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2013). Here, although Desbuild knew the basis of these supplemental grounds of protest from its debriefing, the protester did not timely raise these objections in its initial protest. Given Desbuild's failure to timely challenge the numerous weaknesses evaluated in its technical proposal, we have no basis to question the agency's yellow/marginal rating of Desbuild's proposal.

Next, Desbuild complains that the agency disparately evaluated its and the awardee's proposals. Desbuild contends that the awardees' proposals should all have been downgraded under the technical or past performance subfactors. We have considered each of Desbuild's complaints with respect to the evaluation of the awardees' proposals and find that none provide a basis for sustaining the protest. Rather, the record shows that the agency reasonably evaluated the merits of the

---

<sup>8</sup> Commissioning a VFD involves the connection of the device and establishing the operating parameter programming necessary for the VFD to function for a particular application. See Steve Senty, Motor Control Fundamentals, at 192 (1<sup>st</sup> ed. 2012).

awardees' proposals, finding in each instance that the proposals satisfied solicitation requirements.

For example with respect to Montage's proposal, Desbuild complains that the proposal failed to provide a construction schedule broken down by CSI division, as required by the RFP. See RFP at 21. The agency recognized this omission in its evaluation. See AR, Tab 14, TESB Report, at 7. The FBI found, however, that Montage's "detailed project narrative with a complete breakdown of work" "strongly outweighed" the omission of the "CSI numbering and titles." Id. Although Desbuild disagrees with the agency's judgment in this regard, this does not show that the agency's evaluation of Montage's proposal was disparate or unreasonable. See VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4 (A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable).

As another example with respect to Biscayne's proposal, Desbuild complains that both it and Biscayne proposed a [deleted]-week government review period, but that only Desbuild was assessed a weakness for this approach. See Supp. Comments at 3, citing AR, Tab 14, TESB Report, at 9. The record shows, however, that the TESB found Desbuild's proposal ambiguous with respect to its approach for government review, while Biscayne's proposal clearly established the firm's compliance with the minimum period for review.<sup>9</sup> That is, although Desbuild's proposal stated that it provided for a "[deleted] week review period of submittals," its Gantt Chart indicated either [deleted] days or [deleted] days for such review. Compare AR, Tab 4, Desbuild Technical Proposal, at 4 with Tab 5, Desbuild Construction Schedule/Gantt Chart, at 6. In contrast, Biscayne's proposal unambiguously provided for a [deleted]-day period for government review and approval. Thus, the record shows that the agency did not treat the firms disparately in this regard.

Desbuild also complains that its proposal was downgraded for offering a [deleted]-month construction schedule, where Meltech and TMG offered significantly longer construction schedules ([deleted] months and [deleted] months, respectively) but were not downgraded.<sup>10</sup> The record, however, shows that Desbuild's proposal was downgraded because Desbuild did not provide enough detail in its construction schedule/Gantt Chart and proposal narrative to demonstrate the feasibility of its

---

<sup>9</sup> The RFP provides that the minimum number of days for government review of submittals is "10 calendar days." See RFP amend. 3, Question/Answer No. 67, at 15.

<sup>10</sup> The RFP contemplated a six-month construction period, but informed offerors that this period was negotiable. See RFP amend. 3, at 1.

[deleted]-month schedule. Supp. AR, attach., Decl. of TESB Chairperson, at 2.<sup>11</sup> Meltech's and TMG's proposals, on the other hand, were found to provide detailed work breakdowns that allowed the FBI to assess the reasonableness of their respective schedules. Id.; see also, AR Tab 14, TESB Report, at 8. This is not evidence of disparate treatment.

Desbuild also contends that the FBI's evaluation of past performance was unequal. Desbuild states that its past performance was evaluated as yellow/marginal because the TESB found it "[u]nclear if [Desbuild's] [p]ast [p]erformance projects are relevant in quantities and scope." See Comments at 12, quoting AR, Tab 14, TESB Report, at 9. Desbuild complains that, in contrast, TMG's past performance was rated green/acceptable even though the record contains no analysis or commentary with respect to TMG's past performance. Comments at 12. Desbuild also asserts that Meltech's past performance was rated yellow/marginal even though Meltech allegedly did not demonstrate any relevant past performance. Id. at 13.

Desbuild appears to believe that both TMG and Meltech should have been downgraded to reflect their lack of relevant past performance. Even if we accept Desbuild's characterization that TMG and Meltech lacked any past performance record, offerors without relevant past performance may not be evaluated either favorably or unfavorably.<sup>12</sup> See FAR § 15.305(a)(2)(iv). Given TMG's and Meltech's otherwise green/acceptable technical subfactor and overall ratings,

---

<sup>11</sup> Desbuild contends that the TESB Chairperson's declaration is a post hoc explanation of the agency's technical analysis that should be entitled to no weight. 2<sup>nd</sup> Supp. Comments at 1-2. In reviewing an agency's evaluation, we do not limit our review to contemporaneous evidence, but consider all of the information provided, including the parties' arguments and explanations. Science Applications Int'l Corp., Inc., B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 8, n12. Although we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, see Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12. Here, the TESB Chairperson's explanations are credible and consistent with the contemporaneous record.

<sup>12</sup> Desbuild did not protest the evaluation of its past performance as yellow/marginal.

Desbuild's arguments provide no basis to conclude that either firm's proposal should not have been selected for award.

The protest is denied.<sup>13</sup>

Susan A. Poling  
General Counsel

---

<sup>13</sup> Desbuild also objects to the agency's best-value selection decision. This objection is predicated solely upon the protester's contention that the underlying evaluations were unreasonable. Protest at 13; Comments at 14. Because, as explained above, we do not agree with Desbuild that the agency's evaluation of proposals was unreasonable, there is no merit to this objection.