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Decision

Matter of: RORE, Inc.

File: B-410759

Date: February 6, 2015

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DIGEST

Protest challenging the evaluation of protester's experience is denied where the record establishes that the agency's evaluation was reasonable and consistent with the stated evaluation criteria.

DECISION

RORE, Inc., of San Diego, California, protests the Department of the Navy's decision to exclude RORE's proposal from phase 2 of the competition under request for proposals (RFP) No. N62473-14-R-0004, issued by the Naval Facilities Engineering Command (NAVFAC) Southwest, for construction services. The protester contends that the agency's evaluation of RORE's design experience was improperly based on unstated evaluation criteria and failed to consider information contained in RORE's proposal.

We deny the protest.

BACKGROUND

The solicitation, which was issued as an 8(a) small business set-aside, provided for a two-phase procurement under the design/build source selection procedures of Federal Acquisition Regulation (FAR) subpart 36.3. RFP at 4, 10-11. The solicitation sought proposals to provide construction services at various locations within NAVFAC's Southwest area of responsibility. Id. at 4. The types of projects contemplated by the solicitation included new construction, renovation, and repair of office buildings, school buildings, hospitals, auditoriums, fire stations, gymnasiums, hangars, laboratories, and parking lots. Id. at 144. In support of

the design/build projects, the solicitation advised that each offeror shall possess in-house capabilities or employ the services of a lead architect-engineering design firm(s) experienced in the design development and coordination of the types of projects listed above. See id.

Offerors were informed that the Navy would award multiple, fixed-price, indefinite-delivery, indefinite-quantity contracts (for a base year and 4 option years) on a best-value basis. Id. at 10-11, 25, 145. The estimated maximum value for all contracts combined is \$99,000,000. Agency Report (AR), Tab 2, Source Selection Plan, at 6. The RFP stated that under phase 1 of the competition, the agency would evaluate offerors' proposals based on technical approach, past performance, and, as relevant here, experience. RFP at 13-17.

With regard to the phase 1 experience factor, the solicitation provided detailed proposal instructions that required offerors, among other things, to separately demonstrate both relevant construction and relevant design experience. See id. at 11-16. Specifically, the design experience instructions permitted an offeror to rely on the experience of a design subcontractor to demonstrate design experience, and stated that the offeror and any proposed lead design firm(s) would be evaluated as a team.¹ Id. at 15, 144. The solicitation advised that offerors were to submit a maximum of five relevant *design experience* projects (using data sheets included with the RFP) for their proposed design team, that best demonstrate design experience similar in size, scope, and complexity to the requirement.² Id. at 14-15; exh. B, Project Data Sheets. The RFP required that at least two of the design experience projects demonstrate the design team's relevant experience with "design build," which the RFP defined as "combining design and construction in a single contract with one contractor," and requiring "design of the project by a licensed professional (i.e., engineer, architect)."³ RFP at 12, 15. The RFP also required that projects submitted for the design team be "100% complete" (within the past 5 years) which, for design projects (not construction projects) meant, among other things, "100% plans and specifications signed off by an Architect-Engineer[.]" Id.

¹ The RFP defined "lead design firm" as the offeror's primary design consultant firm(s) and any in-house lead designer(s). RFP at 12.

² Offerors were also to submit a maximum of five construction experience projects for the offeror itself (i.e., not for its design team), and the RFP permitted offerors to submit the same projects for both construction experience and design experience, but required the submission of separate project data sheets in that regard. RFP at 12 (offeror and offeror's team defined), 14. RORE does not challenge the agency's evaluation of its construction experience.

³ In contrast, "design-bid-build" was defined as the traditional delivery method where design and construction are sequentially and separately contracted for with two contracts and two contractors. RFP at 12.

The solicitation stated that the agency would evaluate the demonstrated experience, and depth of experience, of an offeror's design team in performing relevant projects, in order to assess the capability of the team to successfully meet the requirements. See id. at 16. Offerors were informed that: (1) relevant projects that demonstrated design-build experience may be considered more favorably than projects without design-build experience; (2) relevant projects that demonstrated experience self-performing relevant features of work may receive a higher rating than those that did not demonstrate self-performance; and (3) relevant projects where the offeror and the proposed design firm had previously worked together may be considered more favorably. Id.

As relevant to this protest, RORE proposed a design team consisting of RORE and two lead design firms. AR, Tab 4, RORE Proposal, Tech. Approach, at 1 ("Team Member" nos. 2 and 3, respectively).⁴ The proposal stated that the two lead design firm subcontractors would be responsible for complete design capability, including architecture. Id. RORE's proposal included five design experience projects, three of which were performed by RORE's proposed subcontractor, team member no. 2, and two of which were performed by RORE's proposed subcontractor, team member no. 3.⁵ Id., Project Data Sheets, at 2-29, 2-37, 2-43, 2-51, 2-57.

The Navy received 46 proposals for phase one of the competition (including a proposal from RORE), which were evaluated by an agency technical evaluation team (TET). AR at 4; Tab 5, TET Phase 1 Evaluation Report, at 1-404. RORE's proposal was rated acceptable under the technical approach factor, substantial confidence under the past performance factor, and, as challenged below, good under the experience factor.⁶ Id. at 3. RORE's good experience rating reflected the evaluators' assessment of several strengths, including that RORE demonstrated a significant depth of design and construction experience with relevant commercial and institutional building projects. Id. at 329. However, the evaluators also

⁴ RORE identifies itself in its proposal as team member no. 1.

⁵ RORE's proposal also included five construction experience projects, three of which identified team member no. 2 as having been RORE's design firm for those construction projects. AR, Tab 4, RORE Proposal, Project Data Sheets, at 2-1, 2-7, 2-13.

⁶ Under the procurement's adjectival evaluation rating scheme, a good rating indicates that the proposal meets requirements, indicates a thorough approach and understanding of the requirements, contains strengths that outweigh any weaknesses, and has a low risk of unsuccessful performance. AR, Tab 2, Source Selection Plan, at 18. The RFP stated that technical approach would be evaluated on a pass/fail (i.e., acceptable/unacceptable) basis. RFP at 13. RORE does not protest its technical approach or past performance evaluations.

assessed three weaknesses because RORE's design team member no. 2 did not demonstrate that it had any architectural design experience; namely, that team member no. 2 had provided only engineering services on each of its three design projects, but had not designed the relevant architectural features. Id. at 331. The TET did not assess any weaknesses against RORE's construction projects. Id.

A source selection evaluation board (SSEB) reviewed and concurred with the TET's evaluation findings. AR, Tab 3, SSEB Report, at 11. The SSEB recommended that the Navy's source selection authority (SSA) select the most highly rated proposals for the second phase of the competition. Id. at 18. The SSA agreed, and RORE, which was not among the most highly rated offerors, was not selected for phase 2. AR, Tab 6, SSA's Phase 2 Selection Mem., at 2. This protest followed.

DISCUSSION

RORE protests the agency's evaluation of its design experience. While our decision here does not specifically discuss each and every argument, we have considered all of the protester's assertions and find none furnish a basis to sustain RORE's protest.

The protester argues that the Navy's assessment of weaknesses in RORE's proposal, as described above, was based on unstated evaluation criteria, because the RFP did not explicitly require an offeror and/or its lead design firm to describe architectural experience, or require that every project include architectural experience. Protest at 6-7; Comments at 5-6. The protester also maintains that the agency ignored information in other parts of RORE's proposal that otherwise demonstrates the relevant architectural experience of the proposed subcontractor at issue. Protest at 7. For example, the protester points out that the same subcontractor was also identified as the design firm on three of RORE's *construction* projects, and argues that, as the "designer-of-record," the subcontractor necessarily provided architectural services for those construction projects.⁷ Comments at 8. RORE suggests that if the Navy had properly evaluated RORE's experience, RORE would have received a higher evaluation rating under the experience factor, and would have been selected for phase 2 of the competition. Id. at 4.

The Navy maintains that it evaluated RORE's experience consistent with the RFP, and reasonably assessed weaknesses in RORE's proposal because it failed to show its proposed subcontractor's architectural design experience. AR at 7-9. In this respect, the agency contends that, regardless of whether the RFP explicitly identified architectural experience as a submission requirement or evaluation factor, the

⁷ While the RFP, as noted above, permitted offerors to submit the same projects for both construction experience and design experience (RFP at 14), RORE submitted 10 distinct projects. AR, Tab 4, RORE Proposal, Project Data Sheets, at 2-1, 2-7, 2-12, 2-19, 2-25, 2-29, 2-37, 2-43, 2-51, 2-57.

solicitation informed offerors that the agency would evaluate their experience with “complete design efforts,” which, according to the agency, necessarily involves the performance of architectural services. See id. at 8. The Navy also disputes that it ignored any aspect of RORE’s proposal, and points out that the RFP explicitly required offerors to submit construction and design projects separately. Id. at 9.

As an initial matter, we do not agree with RORE’s argument that the Navy employed unstated evaluation criteria when it considered the architectural experience of RORE’s proposed subcontractor. In this respect, both parties essentially agree that the evaluation of design experience, as contemplated under the solicitation here, would necessarily entail consideration of architectural experience. For example, as described above, the protester effectively concedes that its subcontractor’s experience as the design firm on three of RORE’s construction projects necessarily “establishes on its face” that the team member “possesses the architectural experience needed.” Protest at 7; Comments at 8 (as lead design firm, team member no. 2 provided architectural design). Similarly, the agency argues that a “complete design effort,” as defined in the solicitation, will necessarily involve the performance of architectural services. AR at 8.

At issue here is whether the agency reasonably assessed a weakness in RORE’s proposal because one of its proposed lead design firms had only provided engineering services on its design projects, rather than architectural services. Our Office examines an agency’s evaluation of experience to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and applicable statutes and regulations. Herve Cody Contractor, Inc., B-404336, Jan. 26, 2011, 2011 CPD ¶ 27 at 3. An agency has broad discretion, when evaluating offerors’ experience, to determine whether a particular contract is relevant to an evaluation of experience. See All Phase Env’tl., Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 3. A protester’s disagreement with the agency’s evaluation judgments about experience ratings does not establish that the evaluation or the source selection decision was unreasonable. See A & D Gen. Contracting, Inc., B-409429, Apr. 17, 2014, 2014 CPD ¶ 130 at 2.

As described above, the RFP stated that the agency would evaluate the demonstrated experience—including the depth of experience—of an offeror’s design team in performing relevant projects. RFP at 16. Offerors were also advised that certain projects would be considered more favorably, for example, projects that demonstrated experience self-performing relevant features, or projects where the offeror and the proposed design firm had previously worked together, may be considered more favorably. Id. Moreover, the RFP provided detailed instructions for offerors to submit separate construction and design experience projects. Id. at 14-15.

We find, based on our review of the contemporaneous record, that the Navy reasonably evaluated RORE’s experience, which properly included an assessment

of the depth of architectural experience of RORE's proposed subcontractors. Consistent with the solicitation provisions above, the record shows that the agency evaluated--and considered as strengths--RORE's self-performance of various functions and RORE's previous experience working with its proposed subcontractor. AR, Tab 5, TET Phase 1 Evaluation Report, at 330. The agency also recognized numerous strengths in RORE's proposal, including its significant depth of design and construction experience. Id. at 329. Nevertheless, the agency concluded that one of RORE's design team members failed to demonstrate architectural design experience and assigned weaknesses in this regard.

Notably, the protester does not dispute (or address) the evaluators' assessments that RORE's proposed subcontractor had not designed the relevant architectural features for the three design experience projects at issue. See generally Protest; Comments. Moreover, in contrast to the first three design projects, RORE's fourth and fifth design projects (which, as noted above, identify a different proposed lead design firm, team member no. 3), explicitly describe that firm's provision of architectural services. AR, Tab 4, Project Data Sheets, at 2-51-52, 2-57-58. Furthermore, assuming, arguendo, that the terms of the solicitation permitted the agency to evaluate *design* experience based on an offeror's *construction* projects--nothing in RORE's construction project submissions "clearly illustrates" (as the protester argues, Protest at 7) the architectural design experience of the proposed subcontractor at issue. For example, with regard to construction project no. 1, the project data sheet states that RORE used in-house resources for architectural disciplines; it does not state or otherwise suggest that the subcontractor provided architectural services. AR, Tab 4, RORE Proposal, Project Data Sheets, at 2-1-2-2. With regard to construction project no. 2, the data sheet is ambiguous with regard to which firm actually provided architectural services. Id. at 2-7-2-8. Finally, with regard to construction project no. 3, the data sheet does not identify any architectural services provided. Id., at 2-13-2-14.

In sum, RORE has not shown that the agency's evaluation of its experience was unreasonable or inconsistent with the RFP, and the protester's disagreement with the agency's judgment does not establish that the agency acted unreasonably. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11. Accordingly, we find reasonable the agency's decision to exclude RORE's proposal from phase 2 of the competition.

The protest is denied.

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General Counsel