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Decision

Matter of: Madison Services, Inc.

File: B-420922

Date: November 7, 2022

Lynn Patton Thompson, Esq., Biggs, Pettis, Ingram & Solop, PLLC, for the protester. Katherine B. Burrows, Esq., Antonio R. Franco, Esq., and Eric A. Valle, Esq., Piliero Mazza PLLC, for Re-Engineered Business Solutions, Inc., the intervenor. Thomas J. Warren, Esq., David Dyer, Esq., and James Pigott, Esq., Department of the Army, for the agency. Kasia Dourney, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's technical evaluation is denied where the protester has not demonstrated that the evaluation was unreasonable or that the agency evaluated proposals unequally.
 2. Protest of agency's best-value tradeoff decision is denied where the agency considered the technical merit and price difference between proposals and made a reasonable determination that the awardee's technical superiority warranted paying the price premium.
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DECISION

Madison Services, Inc., a small business of Madison, Mississippi, protests the award of a contract to Re-Engineered Business Solutions, Inc. (RBS), also a small business of Cocoa, Florida, under request for proposals (RFP) No. W912EE22R0002, issued by the Department of the Army, U.S. Army Corps of Engineers, for a broad range of operations, maintenance, and repair services to flood control facilities in Greenwood, Mississippi. The protester challenges the agency's evaluation of its technical, past performance, and cost proposals, and the best-value tradeoff determination.

We deny the protest.

BACKGROUND

The agency issued the solicitation on April 14, 2022, as a small business set-aside, seeking services related to the operations, maintenance, repair, inspection, reconstruction, and rehabilitation of project facilities, water control structures, and other features managed by the agency's Vicksburg District Greenwood area office. Agency Report (AR), Tab 1, RFP at 14. The RFP provided for award on a best-value tradeoff basis, of a cost-plus-fixed-fee contract with some fixed-price line items, for a base year and four 1-year option periods. Contracting Officer's Statement (COS) at 1.

The solicitation advised offerors that proposals would be evaluated based on the following three factors: (1) technical; (2) past performance; and (3) cost/price. RFP at 135. The technical factor consisted of four equally-weighted subfactors: technical experience; staffing; management plan; and equipment. *Id.* The RFP provided that the technical factor was more important than past performance; and the non-cost/price factors, when combined, were significantly more important than cost/price. *Id.*

The agency received three proposals, including proposals from Madison and RBS, by the May 18 solicitation closing date. COS at 2. After evaluating proposals, the source selection evaluation board (SSEB) identified strengths and weaknesses, and made other narrative findings regarding the offerors' proposals in support of the assigned adjectival ratings. AR, Tab 2, SSEB Report at 11-19. While the SSEB judged Madison's non-cost proposal to be the second highest, bested only by RBS, it noted that the firm's technical proposal failed to demonstrate experience with operating flood control structures, and therefore assigned Madison a rating of marginal for the technical experience subfactor. *Id.* at 10, 14. The SSEB also evaluated the protester's past performance as "limited confidence" based on a consideration of the protester's references--two of which were "primarily related to mowing, grounds maintenance, and limited custodial work" and thus found not relevant. *Id.* at 16.

Subsequently, the SSEB presented its findings to the source selection authority (SSA), who reviewed the SSEB's report and evaluated price proposals for reasonableness and realism. AR, Tab 3, Source Selection Decision Document (SSDD) at 5-10, 11-17. The SSA concluded that there was adequate price competition between the three proposals received in response to the solicitation, and compared the proposed prices to the independent government estimate (IGE). *Id.* at 11-12. The SSA then reviewed and evaluated specific elements of each offeror's proposed cost estimate for realism. *Id.* at 13-16.

During the evaluation, the SSA found Madison's proposed material, supply and maintenance (MSM) costs of \$[DELETED] to be unreasonably low, as compared to the IGE of \$710,000. *Id.* at 15-16. The SSA made the same finding about RBS's MSM costs of \$[DELETED]. *Id.* The SSA then upwardly adjusted MSM costs in both Madison's and RBS's price proposals, to match the IGE estimated by the agency. *Id.* Subsequently, the SSA concluded that both offerors' proposed prices were fair and reasonable, and realistic for the work to be performed. *Id.* at 17.

The agency's final evaluation ratings and evaluated price for the two offerors were as follows:

	Madison	RBS
Technical		
Sub-Factor 1: Technical Experience	Good	Outstanding
Sub-Factor 2: Staffing	Acceptable	Outstanding
Sub-Factor 3: Management Plan	Acceptable	Outstanding
Sub-Factor 4: Equipment	Acceptable	Outstanding
Overall Technical Rating	Acceptable	Outstanding
Past Performance		
Relevancy	Somewhat Relevant	Very Relevant
Confidence	Limited Confidence	Substantial Confidence
Proposed Price	\$17,908,304	\$19,750,651
IGE	\$19,300,232	
Probable/Evaluated Price	\$19,067,813	\$20,242,499

COS at 2.

The SSA then conducted a tradeoff analysis between the proposals. AR, Tab 3, SSDD at 17-19. The SSA first noted that RBS had received the highest rating for the technical factor, with an overall technical rating of outstanding, and also had a substantial confidence rating for its past performance. *Id.* at 18. The SSA then compared those ratings to Madison's, which received an overall rating of acceptable under the technical factor and a limited confidence rating for its past performance. *Id.* at 18-19.¹ The SSA also discussed and detailed the respective strengths and weaknesses of Madison's and RBS's proposals. Although RBS's evaluated price was higher than Madison's, the SSA found that the potential benefits associated with RBS's superior non-cost proposal warranted paying the price premium. *Id.* at 20. Accordingly, the SSA concluded that "RBS's proposal provides the best combination of performance risk (past performance--confidence assessment, technical experience, management plan . . .), and price," representing the best value to the government. *Id.* The agency therefore selected RBS's proposal for award. *Id.*

After requesting and receiving a debriefing, Madison filed this protest with our Office.

¹ The third offeror's overall technical rating was lower than both RBS's and Madison's. AR, Tab 3, SSDD at 18.

DISCUSSION

The protester challenges multiple aspects of the agency's technical, past performance, and cost evaluation, and alleges that the agency's best-value determination was fatally flawed.² We have considered each of the arguments raised by the protester, and although we do not discuss all of them, we find no basis to sustain the protest. Below, we discuss Madison's principal contentions.

Evaluation of Madison's Technical Proposal

The protester contends that the agency's evaluation of Madison's technical proposal did "not give appropriate consideration to the contents of [its] strengths," and "over-emphasize[d its] alleged weaknesses." Protest at 9.

The evaluation of technical proposals, including determinations regarding the magnitude and significance of evaluated strengths and weaknesses, is a matter largely within the agency's discretion, and a protester's disagreement with the agency's judgment, without more, does not establish a basis for our Office to sustain a protest. *Pemco Aeroplex, Inc.*, B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 10. Our Office will not disturb an agency's evaluation of technical proposals unless it is shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *Wilson 5 Serv. Co., Inc.*, B-407047, Oct. 18, 2012, 2012 CPD ¶ 339 at 4.

Based on our review of the record, we conclude that the agency's evaluation of Madison's proposal was reasonable, fair, and in accordance with the terms of the RFP.

Technical Experience

First, the protester argues that the agency unreasonably assessed its technical experience as marginal. Protest at 9. Madison complains that this rating was improper and unequal because Madison "proposed every one of the RBS's current [five] key personnel" on the incumbent requirement and RBS received a rating of good for this subfactor. *Id.* Madison also contends that the agency failed to adequately review Madison's technical experience, including by failing to credit Madison's 35 years of operations and maintenance experience directly relevant to the current requirement. *Id.*

² On August 19, 2022, the agency requested partial dismissal of Madison's protest for failing to state legally sufficient grounds of protest. Req. for Dismissal at 1-3. On August 24, our Office indicated its intention to grant the agency's request for dismissal with respect to Madison's allegations that the agency unreasonably and unequally evaluated the awardee's technical and cost proposals. Specifically, we agreed with the agency that these allegations failed to meet the requirements of our Bid Protest Regulations to include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). Accordingly, these protest grounds are dismissed.

The agency counters that key personnel were not evaluated under the technical experience subfactor, but rather under the staffing plan subfactor. COS at 4-7; Memorandum of Law (MOL) at 2. The agency also maintains that it applied the correct evaluation criteria when assessing Madison's proposal under this subfactor. According to the agency, the protester failed to include sufficient detail regarding certain types of past work to merit a higher score. *Id.* at 2-3.

By way of background, the solicitation instructed offerors to demonstrate their technical experience providing services listed in the performance work statement (PWS) with "a detailed description of the work their firm completed, and their role and length of time spent on the work." RFP at 121. The PWS described a broad range of services sought by the agency, including major mechanical and electrical pumping plant repairs, drainage structure repairs, flood gate repairs, levee slide repairs, channel bank stabilization and other related services "in the Mississippi [d]elta" area.³ *Id.* at 14.

The solicitation provided that offerors would be evaluated based on a description of their significant capabilities and relevant experience in performing services similar to the solicitation requirements. *Id.* at 137. The RFP also stated that proposals that included significant capabilities and relevant experience in providing a wide range of operation and maintenance services would be rated more favorably. *Id.*

The record shows that Madison submitted five experience references for evaluation under this subfactor. AR, Tab 6, Madison's Technical Experience Proposal at 5-6. Upon reviewing these, the agency expressed concern that the protester's experience was "limited to grounds maintenance, janitorial services, and some facilities maintenance involving industrial type electrical repair" and that Madison "failed to provide any contracts/projects demonstrating inspection and/or operations and maintenance on flood control facilities over a large geographical area similar to the requirements." AR, Tab 2, SSEB Report at 14. The SSEB concluded that:

Madison's lack of experience in the operation of flood control facilities similar to those required by the solicitation as well as lack of experience performing large repair, maintenance, and/or construction involving heavy

³ The RFP described the scope of the current requirement as including, but not limited to, major mechanical and electrical pumping plant repairs, drainage structure repairs, flood gate repairs, levee slide repairs, channel bank stabilization, weir repairs, repair of grade control structures, alterations, remodeling, unplanned & unscheduled maintenance, roof repairs, janitorial services, HVAC repair maintenance, security equipment maintenance, mechanical and electrical maintenance repairs and replacements; sheet metal repair, glass and glazing repair, masonry repair, sewer cleaning, septic tank pump-out, mowing, trimming and weeding services; tree trimming and removal due to breaks; erosion and slide repair, breach repair, crown repair, levee raising/flood fighting, levee reconstruction/repair to include sodding, seeding, liming, fertilization. RFP at 14.

equipment demonstrates a high risk of unsuccessful performance relative to the scope of the solicitation.

Id.

Based on our review of the record, we have no reason to question the agency's evaluation. While Madison's technical experience proposal described some services listed in the PWS, the protester did not provide past work references that related to the operation, maintenance and repair of flood control facilities--the crux of the current requirement. The agency, in turn, reasonably assigned a less favorable rating based on Madison's failure to demonstrate experience performing the services primarily sought by the solicitation. Although the protester challenges the agency's assessment of this aspect of Madison's proposal, a protester's disagreement with the agency's judgment, without more, does not establish that the assessment was unreasonable. *Pemco Aeroplex, Inc., supra.*

Additionally, Madison's protest only generally alleges that it has 35 years of directly relevant experience. The protest does not identify what past projects from its proposal the agency failed to consider, or otherwise address how the agency's evaluation violated procurement laws or the terms of the RFP. Only in its comments on the agency report does Madison include examples from its proposal of allegedly relevant experience that the agency overlooked. See Comments at 5-6.

We find that this amounts to the piecemeal presentation of arguments. In this regard, Madison first learned the basis of the agency's technical experience evaluation via its debriefing. See AR, Tab 11, Debriefing Letter at 3; AR, Tab 12, Enhanced Debriefing Letter. Accordingly, the protester was required to raise its arguments, with specificity, within 10 calendar days of that date. See 4 C.F.R. § 21.2(a)(1). Where, as here, a protester provides specific legal arguments that were missing from earlier general allegations of impropriety, and which could have been raised earlier in the protest process, our Office will consider this to be the impermissible, piecemeal presentation of arguments. See *Sealift Inc.*, B-405705, Dec. 8, 2011, 2011 CPD ¶ 271 at 2-3 n.1. Accordingly, we dismiss this aspect of the protest as untimely.

We also disagree with Madison's allegation that by proposing to use incumbent key personnel with the relevant experience, the firm sufficiently demonstrated that it possessed relevant technical experience as the offeror. As the agency correctly points out, the solicitation instructed offerors to describe the past work experience completed by "their firm," not by the individual key personnel, who would instead be evaluated under the staffing plan subfactor. MOL at 2 (emphasis removed). Obtaining contingent commitment of five key personnel for potential future employment, in the event Madison is awarded the contract, does not satisfy the solicitation's requirement in this regard.

In response to the agency's argument that technical experience was limited to that of "the offeror," the protester asserts that the RFP failed to "put offerors on notice that *only* the institutional experience of the offeror, as an entity, would be considered."

Comments at 4. We find this argument unpersuasive. The RFP here sufficiently instructed offerors to describe the past work experience gained by their firms to be evaluated under this subfactor. See, e.g., RFP at 121 (“Offerors should provide a detailed description of the work their firm completed, and their role and length of time spent on the work.”). In addition, the RFP contained a separate subfactor for the evaluation of proposed key personnel. Finally, the protester fails to cite any RFP language that supports its interpretation of the solicitation as requiring the agency to credit offerors, under the technical experience subfactor, for their proposed key personnel hires. We see no merit in the protester’s contention here and deny this protest ground.

Staffing

The protester next challenges its rating of good for its proposed staffing, noting that RBS was evaluated as outstanding under this subfactor. Protest at 9. Madison argues that unless RBS proposed different people than its current key personnel (who, as noted above, Madison also proposed), then the two offerors should not have been evaluated differently under the staffing subfactor. *Id.* The agency responds that while both offerors proposed the same incumbent key personnel, the Army reasonably found that Madison only merited a rating of good based on a weakness identified in its staffing plan for failing to consider fluctuations in seasonal workloads. MOL at 4.

In this regard, the RFP provided the following instructions regarding the annual staffing plan:

It is expected that you may show staff requirements that vary in both numbers of employees and hours worked as the workload varies. Offerors should show the estimated number of hours to be worked, separately, as regular time and overtime (including holiday pay) by each employee and supervisor and show these hours for each period on the forms.

RFP at 122. The solicitation further stated that the evaluation would be based on how well an offeror demonstrates an “effective management plan to accommodate [staffing] shortfalls” and “management of the effort to meet the requirements of the solicitation.” *Id.* at 137.

The record shows that RBS’s proposal included a detailed contingency plan to accommodate staffing shortfalls, in case of labor strikes, work slowdowns, or for other reasons. AR, Tab 9, RBS’s Technical Experience Proposal at 14-15. The awardee’s proposal also provided an annual staffing plan with estimated hours considering adjustments throughout the year for seasonal and anticipated workload changes. *Id.* at 20-21. In contrast, Madison’s annual staffing plan failed to account for workload fluctuations, and only listed the proposed labor categories, number of positions, and type of employment for three of the offices included in this requirement. AR, Tab 6, Madison’s Technical Experience Proposal at 17-18.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 6. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. See, e.g., *Abacus Tech. Corp.; SMS Data Prods. Grp., Inc.*, B-413421 *et al.*, Oct. 28, 2016, 2016 CPD ¶ 317 at 11. To prevail on an allegation of disparate treatment, a protester must show that an agency unreasonably failed to assess strengths for aspects of its submission that were substantively indistinguishable from, or nearly identical to, those contained in other submissions. See *Battelle Memorial Inst.*, B-418047.3 *et al.*, May 18, 2020, 2020 CPD ¶ 176 at 5.

Based on our review the record, we conclude that RBS's proposal provided more detail of its staffing approach than Madison's proposal and also that RBS's staffing approach more specifically addressed the RFP requirements. We find therefore that Madison has not shown that the two proposals were substantively indistinguishable. Accordingly, the agency's decision to assess RBS, but not Madison, a rating of outstanding, was reasonable and does not constitute disparate treatment.⁴ This protest ground is denied.

Evaluation of Madison's Past Performance

Madison further alleges that the agency misevaluated its past performance and unreasonably "rejected" two of its past performance references. Protest at 11. Madison

⁴ The protester also disagreed with the agency's cost realism analysis. Protest at 12. Specifically, as discussed above, the agency found that Madison's MSM cost estimate, instead of capturing the cost of material/supply/maintenance repair, fuel, lubricants, and replacement parts for contractor-furnished equipment, only included the cost of maintenance and repair. AR, Tab 4, Cost Realism Analysis at 7. The cost of fuel, replacement parts, materials, among other items, were not included in that estimate. *Id.* Accordingly, the agency concluded that Madison's proposed MSM cost of \$[DELETED] was unreasonably low, and upwardly adjusted it to match the IGE amount of \$710,000 for that aspect of the proposal. AR, Tab 3, SSDD at 15-16. The protester contended that the agency's upward adjustment of \$[DELETED] was arbitrary and capricious. Protest at 12.

As noted above, however, the agency also upwardly adjusted RBS's MSM costs of \$[DELETED] to \$710,000; hence both offerors were treated equally during the cost evaluation process. The protester largely failed to respond to this point in its comments on the agency report, and we thus consider this protest ground to be abandoned. See *Symlicity Corp.*, B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 5 n.6. Additionally, based on our review of the record, we find nothing objectionable with the agency's evaluation of cost/price proposals.

also argues that the agency improperly failed to consider the past performance of Madison's proposed incumbent key personnel, which are currently employed by RBS. Accordingly, the protester disagrees with its rating of "somewhat relevant experience and limited confidence" under this factor.⁵ *Id.* The agency responds that the protester misconstrues the RFP criteria, and attempts to receive credit for RBS's past performance references. MOL at 9. The agency also argues that it reasonably evaluated all four of Madison's past performance references and found two of them to be not relevant to the current requirement. *Id.* at 10.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *Harmonia Holdings Grp., LLC*, B-417475.3, B-417475.4, Sept. 23, 2019, 2019 CPD ¶ 333 at 17; *American Env'tl. Servs., Inc.*, B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5. On the record before us, we find that the agency's evaluation of Madison's past performance provides no basis to sustain the protest.

Here, under the RFP's past performance factor, the offeror and its proposed subcontractors were instructed to submit their record of relevant and recent past performance information for facility support, operations, and maintenance services,

⁵ Madison argues the RFP provided that the agency would evaluate the past performance of "the team." Protest at 11. Madison contends that since its proposed "team" includes key personnel currently employed by RBS, the agency should have considered the past performance of these key personnel when assessing Madison's past performance. *Id.* We reject the protester's argument because we find that the RFP's use of the word "team" here is a reference to the prior paragraph in the solicitation, which provides for the evaluation of the offeror and its major subcontractors. RFP at 136. There is no indication from this language that the word "team" was intended to encompass key personnel. We note that our decisions have consistently stated that agencies may, but are not required to, consider the past performance of proposed key personnel. See *Olympus Building Servs., Inc.*, B-282887, Aug. 31, 1999, 99-2 CPD ¶ 49 at 4.

In addition, we note that Madison failed to include information on its key personnel in its past performance proposal. Our Office has long found that offerors bear the burden of submitting an adequately written proposal and contracting agencies evaluating one section of a proposal are not required to go in search of additional information that an offeror has omitted or failed to adequately present. *Carolina Satellite Networks, LLC; Nexagen Networks, Inc.*, B-405558 *et al.*, Nov. 22, 2011, 2011 CPD ¶ 257 at 5; *cf. MLU Servs., Inc.*, B-414555.3, B-414555.6, July 17, 2017, 2017 CPD ¶ 225 at 10 (agencies may not rely on the past performance of proposed key personnel where the offeror fails to provide sufficient detail regarding how such key personnel would be involved in the performance of the contract).

similar to the PWS requirements. RFP at 139. The solicitation provided for the evaluation of an offeror's past performance by assessing whether it "displays the depth and breadth of experience necessary to demonstrate an acceptable history of performance relative to the solicitation requirements." *Id.* The record shows that two of Madison's past performance references were primarily related to mowing, grounds maintenance, and limited custodial work, and were considered "trivial in relation to the overall scope of work" on the instant requirement. AR, Tab 7, Madison's Past Performance Proposal at 1-5; COS at 20. Accordingly, the SSEB found "they contained little or none of the scope and magnitude of effort and complexities this solicitation requires."⁶ AR, Tab 2, SSEB Report at 16.

We see no basis to object to the agency's evaluation of these two past performance references and the ultimate conclusion that they were not relevant to the current requirement. Accordingly, we deny this protest ground.

Best-Value Tradeoff Determination

Finally, Madison contends that the agency's tradeoff decision was flawed because it was based on an unreasonable underlying evaluation of offerors' proposals. We find that this allegation is largely derivative of the protester's challenges to the agency's evaluation. We therefore dismiss this protest ground because derivative allegations do

⁶ Even if the protester was correct that it should have been assigned, at a minimum, a neutral past performance confidence rating, Madison would still be unable to demonstrate competitive prejudice. Prejudice is an essential element of every viable protest, and where none is shown or otherwise apparent, we will not sustain a protest, even if the agency's actions may arguably have been improper. *TELESIS Corp.*, B-299804, Aug. 27, 2007, 2007 CPD ¶ 150 at 7. Here, the agency's best-value determination went beyond the adjectival ratings assigned to both offerors' past performance, for example noting that two of Madison's past performance projects were found to be somewhat relevant. See AR, Tab 3, SSDD at 10. In addition, the agency's tradeoff relied on discriminators found under the technical factor, for example Madison's lack of experience in operations and maintenance of flood control facilities, to determine that the benefits associated with RBS's proposal warranted the price premium. *Id.* at 18. This conclusion was consistent with the solicitation's evaluation scheme, under which the technical factor was more important than the past performance factor. RFP at 135. Accordingly, because the protester has not demonstrated a reasonable possibility that it was prejudiced by the evaluation of its past performance, we find no basis to sustain the protest on this ground.

not establish independent bases of protest. *Advanced Alliant Sols. Team, LLC*, B-417334, Apr. 10, 2019, 2019 CPD ¶ 144 at 6.

The protest is denied.

Edda Emmanuelli Perez
General Counsel