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Decision

Matter of: DPR-RQ Construction, LLC

File: B-422081.2

Date: January 23, 2025

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Reginald M. Jones, Esq., Nicholas T. Solosky, Esq., Robert D. Pratt, Esq., and Jung Hyoun Han, Esq., Fox Rothschild LLP, for StructSure Projects, Inc., the intervenor.
Cristy Park, Esq., Department of the Army, for the agency.
Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation under the technical concept, schedule, and price factors is denied where the record reflects that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

DPR-RQ Construction, LLC, of Carlsbad, California, protests the issuance of a task order to StructSure Projects, Inc., of Kansas City, Missouri, under request for proposals (RFP) No. W9127S23R6045, issued by the Department of the Army, U.S. Army Corps of Engineers (Corps) for renovations to medical facilities. The protester challenges the agency's evaluation of proposals and best-value tradeoff decision.

We deny the protest.

BACKGROUND

The agency issued the RFP on June 14, 2023, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to holders of the Corps's Design-Build Initial Outfitting (DBIO) multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts. Contracting Officer's Statement (COS) at 1; Agency Report (AR), Tab 3, RFP at 1.¹

¹ Citations to the record are to the sequential Adobe PDF pagination. Unless noted otherwise, references are to the RFP provided at AR, Tab 3.

The solicitation sought proposals for renovations to the Womack Army Medical Center Surgical Suite Expansion and Blood Donor Center at Fort Liberty, North Carolina. COS at 1.

The solicitation contemplated the issuance of a single fixed-price task order with a maximum period of performance of 1440 days. AR, Tab 4e, RFP Instructions to Offerors; AR, Tab 4, RFP amend. 1 at 2. The RFQ established that award would be made on a best-value tradeoff basis considering the following evaluation factors, listed in descending order of importance: functional concept, schedule, past performance, and price. AR, Tab 4e, RFP Instructions to Offerors at 8-10. All non-price factors, when combined, were significantly more important than price. *Id.* at 8.

The functional concept and schedule factors would be evaluated using adjectival ratings (outstanding, good, acceptable, marginal, and unacceptable). *Id.* at 10. Past performance would be evaluated and assessed confidence ratings (substantial, satisfactory, limited, no, and neutral). *Id.* at 8. Price was to be evaluated for completeness and reasonableness. *Id.* at 7.

The agency received three proposals by the August 10, deadline for receipt of submissions. COS at 2. On September 20, the Corps issued the order to StructSure. *Id.* at 3. Following notification of the award decision, DPR-RQ filed a protest with our Office challenging the agency's evaluation of proposals and best-value decision. *DPR-RQ Constr., LLC*, B-422081, Oct. 26, 2023 (unpublished decision). In response, the agency advised our Office that it intended to take corrective action; specifically, the agency stated it would reevaluate proposals and issue a new source selection decision. *Id.* We dismissed the protest as academic on October 26. *Id.*

After conducting discussions with offerors and completing an evaluation of final proposal revisions, the agency summarized the results as follows:

	DPR-RQ	StructSure
Functional concept	Acceptable	Outstanding
Schedule	Marginal	Good
Past performance	Substantial Confidence	Substantial Confidence
Price	\$88,290,000	\$104,995,154

AR, Tab 48, Source Selection Decision Document (SSDD) at 14. The contracting officer, who was the source selection authority (SSA), concluded that StructSure's proposal represented the best value. *Id.* at 15. The SSA found StructSure's proposal to be superior under the functional concept and schedule factors while assessing that DPR-RQ's proposal presented increased "risk of unacceptable performance" because, among other things, DPR-RQ's proposed operating room solution was "not user friendly and [did] not demonstrate a well-thought-out design." *Id.* The SSA determined that StructSure's proposal therefore merited its higher price. *Id.* On September 12, 2024, the Corps again selected StructSure for issuance of the order. *Id.*

This protest followed.²

DISCUSSION

The protester challenges the evaluation of its proposal under the functional concept and schedule evaluation factors, as well as the evaluation of the awardee's price, and the resulting award decision. Although we do not specifically address all of the protester's arguments, we have fully considered them and conclude that none furnishes a basis to sustain the protest.

Functional Concept Evaluation

The protester challenges the weaknesses the agency assessed to its proposal under the functional concept factor. Comments at 5-7. The agency maintains that it "reasonably evaluated the proposal's functional concept consistent with the solicitation's evaluation criteria." Memorandum of Law ("MOL") at 4. We agree with the agency.

When reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Cognosante MVH, LLC; Pro Sphere-Tek, Inc.*, B-421150 *et al.*, Jan. 10, 2023, 2023 CPD ¶ 18 at 11. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria and with applicable procurement statutes and regulations. *American Sys. Corp.*, B-420132 *et al.*, Dec. 13, 2021, 2021 CPD ¶ 387 at 5. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Id.*

The solicitation required offerors to "[s]ubmit a functional concept that illustrates and describes how [offerors] will approach the design" outlined in the statement of work (SOW). AR, Tab 4e, RFP Instructions to Offerors at 4 (emphasis omitted). Broadly speaking, the SOW required, among other things, designing and building larger operating rooms (ORs), expanded and modernized recovery areas, updated patient rooms, proper sterile processing, and expanded infrastructure and space for the blood donor center. AR, Tab 9b, SOW at 10-13. The agency would evaluate proposals under this factor to determine the offeror's understanding of the SOW, including whether the

² The awarded value of the task order at issue exceeds \$25 million. Accordingly, at the time this protest was filed on October 15, 2024, this procurement was within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts that were awarded under the authority of title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B); see National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159, ____ Stat. ____ § 885 (2024) (amending jurisdictional threshold to \$35 million for protests of orders placed under IDIQ contracts awarded under authority of title 10, effective December 23, 2024); *Technatomy Corp.*, B-405130, June 14, 2011, 2011 CPD ¶ 107 at 5-6 (changes to jurisdiction will not be given retroactive effect, absent specific statutory direction).

functional concept illustrated solutions to the operating problems and understanding of functional design requirements. AR, Tab 4e, RFP Instructions to Offerors at 5.

The record shows that the evaluators assessed five strengths and four weaknesses to DPR-RQ's functional concept proposal, assigning it a rating of acceptable. AR, Tab 34, Task Order Evaluation Board Report (TOEBR) at 3-5. The four weaknesses were related to the following: (1) location of a temporary facility; (2) the sterile processing department; (3) a corridor in the surgical suite; and (4) an OR design. *Id.* DPR-RQ does not challenge the first weakness.

Weaknesses (2) and (3)

The protester challenges two of the weaknesses as internally inconsistent with strengths assessed by the Corps for the same parts of the facilities. Comments at 5-6. First, the record reflects that the agency assigned a strength to the protester's functional concepts diagram for the sterile processing department, and a weakness to the protester's proposal because DPR-RQ represented that the design of the sterile processing department's layout would remain similar to the existing layout, "due to locations of the [DELETED]." AR, Tab 34, TOEBR at 4. In the agency's view, this was a weakness because "the Contractor should determine the best functional design and adjust size of spaces accordingly to accommodate Users' specific requirements without having the locations of the [DELETED] dictate the design." *Id.* Second, the Corps credited DPR-RQ with a strength for a surgical suite corridor upgrade to "acquire additional space to accommodate critical adjacencies and new operating rooms and supporting functions"--*i.e.*, meet all programmed requirements--but still assessed a weakness for the protester's proposed addition of "a swing space Control Desk . . . which was not programmed" or budgeted for this effort. *Id.* at 3-4.

DPR-RQ argues that the agency's assessment of strengths and weaknesses in the firm's proposal for the same features--the sterile processing department and corridor upgrade--were internally inconsistent and, thus, unreasonable. Comments at 5-6. The agency responds that the evaluators reasonably assessed strengths and weaknesses for different aspects of DPR-RQ's approach to the same features. MOL at 5-6.

Based on our review of the record, we find no merit to the protester's arguments that the evaluation was inconsistent. The agency's assessment of a strength based, in part, on a clear diagram of the sterile processing department's renovation did not preclude the evaluators from also identifying a weakness in DPR-RQ's approach because the renovation was focused on preserving existing conditions rather than optimizing operations. *See, e.g., Sevatec, Inc.*, B-416617, B-416617.2, Nov. 1, 2018, 2018 CPD ¶ 379 at 8 (denying challenge that agency inconsistently identified a strength and a weakness in different aspects of the protester's approach to automation); *Leidos Innovations Corp.*, B-415514 *et al.*, Jan. 18, 2018, 2018 CPD ¶ 88 at 15 (rejecting argument that evaluators were precluded from also identifying weaknesses related to specific aspects of proposal approaches that were found to be strengths). Nor do we find the evaluators' assessment of a strength for a corridor upgrade--that met the

programmed requirements with additional space--preclude the agency from also identifying a concern associated with an aspect not in compliance with the program for design. These protest arguments are therefore denied.

Weakness (4)

For the final weakness under this factor, the evaluators criticized the protester's functional concepts diagram for the oral maxillofacial surgery OR showing offset ancillary spaces and an "[DELETED] OR, which is not user friendly," reflecting "not a very well thought out design." AR, Tab 34, TOEBR at 5. The protester alleges that this weakness reflects disparate treatment, because the awardee's "design was the same [as the protester's], but StructSure was not assessed a Weakness." Comments at 7.

In conducting procurements, agencies may not engage in conduct that amounts to unfair or disparate treatment of competing offerors. *UltiSat, Inc.*, B-416809 *et al.*, Dec. 18, 2018, 2019 CPD ¶ 6 at 9. To prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably assessed a weakness for an aspect of its proposal that was substantively indistinguishable from, or nearly identical to, that contained in another proposal. *Cognosante MVH, LLC*, B-418986 *et al.*, Nov. 13, 2020, 2021 CPD ¶ 3 at 5.

Here, the record shows that the agency's evaluation findings were based on the offeror's designs, which reflect fundamentally different approaches. While the protester views its design approach to be similar to the awardee, our review of the record finds otherwise. For example, an element of the weakness assigned to DPR-RQ's proposal was for the shape of the OR--[DELETED], "which is not user friendly." AR, Tab 34, TOEBR at 5. The protester's argument relies on "depictions of StructSure's and DPR-RQ's proposed designs" excerpted from the proposals that show that DPR-RQ's is [DELETED], as the agency found, and StructSure's OR is [DELETED]. Comments at 7. As such, because the shapes of each offeror's proposed ORs are different, (an [DELETED] versus a [DELETED]) the protester fails to establish that its proposal was substantively indistinguishable from the awardee's. Accordingly, we find no basis to sustain the protester's challenge that the agency's evaluation of OR design was unfair or disparate. *IPKeys Techs., LLC*, B-414890, B-414890.2, Oct. 4, 2017, 2017 CPD ¶ 311 at 9.

Schedule Evaluation

The protester also challenges the two weaknesses the agency assessed to its proposal under the schedule factor. Comments at 7-10. In response, the agency maintains that DPR-RQ's schedule "did not meet the requirements of the solicitation, and the agency reasonably assessed a 'Marginal' rating" based on two weaknesses. MOL at 8-11.

Relevant here, the solicitation provided a maximum period of performance of 1,440 days from the notice to proceed (NTP). RFP at 1; AR, Tab 4, RFP amend. 1 at 2. For the schedule factor, the RFP required "a proposed Project Schedule," from notice to

proceed to the end, warning that the “durations for each project phase and overall Period of Performance (PoP) as proposed in the Offeror’s schedule is contractually binding.” AR, Tab 4e, RFP Instructions to Offerors at 5-6 (emphasis omitted). The agency would evaluate the schedule for, among other things, “reasonable sequencing, durations, risks, and total period of performance and consider[ation of] key schedule and operational constraints.” *Id.* at 7 (emphasis omitted).

First, the Corps evaluated a weakness in DPR-RQ’s proposal based on concerns about the firm’s understanding of the period of performance. AR, Tab 34, TOEBR at 6. The protester’s initial proposal represented that the “proposed integrated design and construction schedule is 1,395 calendar (45 days) from NTP and has an overall TO [task order] duration of 1,440 calendar days.” AR, Tab 32a, DPR-RQ Revised Technical Proposal at 17. During discussions, the agency raised a concern that this did “not demonstrate an understanding that the NTP,” rather than the date of award, was “the start time for the Task Order” schedule. *Id.* at 3. In response, DPR-RQ revised its proposal to read that the “proposed integrated design and construction schedule is 1,440 calendar (45 days) from NTP and has an overall TO duration of 1,485 calendar days.” *Id.* at 17. This did not assuage the agency’s concerns, because the protester still appeared to draw a distinction between the schedule and the task order duration. AR, Tab 34, TOEBR at 6 (“Offeror evidently does not understand . . . and has now proposed 1485 calendar days for the Task Order even though the Design/Construction portion of the schedule is identified as 1440 calendar days.”)

The protester argues that this weakness was unreasonable because, ultimately, DPR-RQ’s proposal reflected 1,440 days between NTP and completion. Comments at 8-9. The agency defends its evaluation, explaining that “[i]t was unclear to the Government if the offeror was proposing 1,485 days or 1,440 days” from NTP until completion. See COS at 9. The agency found that the protester’s initial confusion about the period of performance for the task order was not mitigated by the protester’s unclear changes to its revised proposal--that is, the proposal still referred to different schedule lengths that were inconsistent “from one mention to the next.” *Id.*

Offerors are responsible for submitting well-written proposals with adequately detailed information that allow for a meaningful review by the procuring agency; and an offeror risks having its offer evaluated unfavorably where it fails to submit an adequately written proposal. *PEAKE*, B-417744, Oct. 11, 2019, 2019 CPD ¶ 359 at 4. Based on the record here, we find no basis to question the agency’s judgment that DPR-RQ’s proposal was unclear as to the length of DPR-RQ’s proposed schedule and raised

questions about the firm's understanding of the period of performance.³ See, e.g., *SNAP, Inc.*, B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 8 (denying allegation where agency's assessment of a significant weakness was reasonably supported by inconsistent language in protester's proposal); *HydroGeoLogic, Inc.*, B-311263, B-311263.2, May 27, 2008, 2008 CPD ¶ 218 at 6.

Second, the Corps criticized the protester's proposed schedule because it featured multiple design reviews for three different design packages, and "the submittals are not synchronized and will require almost continuous reviews" during a period of over 5 months. AR, Tab 34, TOEBR at 6-7. According to DPR-RQ, this weakness was unreasonably assessed because, as part of the post-award debriefing, the agency stated that this issue did not increase the risk of unsuccessful contract performance. Comments at 9.

The evaluation record, not the agency's alleged statements during a debriefing, is the basis for our review. We are concerned with the manner in which the evaluation was conducted. In this regard, a debriefing is only an explanation of the agency's evaluation and source selection decision, not the evaluation or decision itself. *Del-Jen Int'l Corp.*, B-297960, May 5, 2006, 2006 CPD ¶ 81 at 4. Accordingly, even assuming that the agency disclaimed the importance of this issue during the debriefing, that does not provide a basis for us to upset the agency's documented evaluation. *Id.*

The protester also alleges that these "non-concurrent submittal reviews" cannot reasonably be the basis of a weakness because, during discussions, the agency expressed concerns about overlapping review periods for submittals. Comments at 9-10. The record, however, reflects that the agency's concern--in DPR-RQ's initial proposal--was with a "lack of coordination" and "synchroniz[ation]" that would mean a serious burden for agency personnel. AR, Tab 34, TOEBR at 7 ("The lack of coordination for the design package submittals will be a tremendous inconvenience to the Government Subject Matter Experts (SMEs) and Users to track and ensure reviews are completed in the allotted timeframe."). In reviewing the protester's proposal revisions after discussions, the Corps still had a concern, explaining that even though the revised schedule was improved, "the submittals are not synchronized and will require almost continuous reviews." *Id.* The protester's argument, here, neither addresses the agency's stated basis for assessment of the weakness, nor much less

³ The protester also argues that this weakness was unreasonably disparate. That is, the agency did not assess a weakness to the awardee even though, upon examination of the detailed schedule graphic, "StructSure's proposal reflects 1,440 days between contract award (not NTP) and project completion" with 1,411 days between NTP and project completion. Comments at 8-9. According to the protester, this should have led the agency to have the same concerns about StructSure. *Id.* We find no merit to this argument, however, because, unlike DPR-RQ, the only statement in the narrative of StructSure's proposal was an unequivocal commitment to "the RFP-required performance period of 1,440 days." See AR, Tab 33b, StructSure Revised Technical Proposal at 18.

explains how the agency's evaluation was inconsistent with the solicitation or regulation. Accordingly, we find no basis to sustain this allegation. *MicroTechnologies, LLC*, B-420196.3, B-420196.4, Jan. 6, 2023, 2023 CPD ¶ 17 at 5-6 ("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.").

Price Evaluation

Turning to the awardee's proposal, the protester raises two challenges to the agency's evaluation under the price factor. The RFP provided price proposals would be evaluated for completeness and reasonableness. AR, Tab 4e, RFP Instructions to Offerors at 7.

Balance

First, DPR-RQ asserts that StructSure's price was materially unbalanced, and the agency failed to perform an unbalanced pricing analysis. Comments at 1-3. The agency defends that it performed a price analysis in accordance with the terms of the solicitation. MOL at 2.

Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line item numbers (CLIN) is significantly overstated or understated. FAR 15.404-1(g)(1). The RFP specified price proposals would be evaluated for completeness and reasonableness. AR, Tab 4e, RFP Instructions to Offerors at 7. The solicitation did not provide for the evaluation of proposed prices for balance--a requirement that ordinarily pertains only to an agency's award of negotiated contracts under FAR part 15. In this respect, the RFP explicitly advised:

This acquisition is being conducted in accordance with the "fair opportunity" requirements of FAR Part 16, subpart 16.505 -- Ordering. Offerors are hereby notified that, regardless of any language that may be used in this solicitation, the policies in FAR 15, Subpart 15.3 -- do not apply to the ordering process.

AR, Tab 4e, RFP Instructions to Offerors at 8 (alteration in original). Here, because the RFP did not call for evaluating prices for balance, the agency was not required to conduct such an analysis. See *Sierra7, Inc.*, B-421299.2, Oct. 11, 2023, 2023 CPD ¶ 239 at 6 (explaining that evaluation of prices for balance was not required in FAR part 16 procurement). Because the agency was not required to evaluate proposed prices for balance, we dismiss this allegation for failing to state a valid basis of protest. *Desbuild Inc.; Framaco-Bozdemir Joint Venture, LLC*, B-421742 *et al.*, Sept. 19, 2023, 2023 CPD ¶ 218 at 8-9 (dismissing protest alleging unbalanced pricing where protester did not establish that the solicitation or the FAR required the challenged price items to be evaluated for balance).

Reasonableness

Second, the protester challenges the agency's price reasonableness analysis. Specifically, the protester asserts that the agency failed to meaningfully compare StructSure's price with DPR-RQ's price, and instead "exclusively compared StructSure's price with the" independent government estimate (IGE). Comments at 3-4. The agency responds that it performed a price analysis in accordance with the terms of the solicitation, including comparing the proposed prices of the offerors. MOL at 2-4.

Here, the record demonstrates that the agency evaluated offerors' proposed prices for reasonableness by comparing overall prices--as well as on a CLIN-by-CLIN basis--to not only the IGE but also to competing proposals. AR, Tab 47, Price Review at 1-11. For example, in evaluating proposed prices for the first CLIN (BASE: Design), the agency compared all the offerors' prices, noting that the IGE was "similar to one of the contractors' bids," and that there was "a large spread of pricing for this CLIN among the bidders." *Id.* at 1-2. The Corps did this with all the CLINS. *Id.* at 1-9. Ultimately, the agency determined that both StructSure's and DPR-RQ's proposed prices were fair and reasonable. *Id.* at 9-10.

DPR-RQ's contention regarding the agency's alleged failure to evaluate proposals for reasonableness by comparing proposed prices to other offerors is contradicted by the record. We find neither factual support nor merit to this allegation, and we deny it accordingly. See, e.g., *USIS Worldwide, Inc.*, B-404671, B-404671.3, Apr. 6, 2011, 2011 CPD ¶ 92 at 5-6 (denying allegation that awardee should have been found technically unacceptable where argument was based on inaccurate facts); *Lifecare Mgmt. Partners*, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 8.

Best-Value Tradeoff

As a final matter, the protester alleges that the agency made an unreasonable best-value tradeoff source selection decision because it relied on flawed underlying evaluations.⁴ Comments at 10-11. Because we find no basis to object to the agency's evaluation, we have no basis to sustain this allegation regarding the award decision. *Merrill Aviation & Def.*, B-416837, B-416837.2, Dec. 11, 2018, 2018 CPD ¶ 421 at 10 (dismissing challenge to source selection decision that was based on denied challenges to the agency's technical evaluation).

⁴ DPR-RQ initially argued that the agency failed to explain why StructSure's proposal merited its higher price. Protest at 9. The agency provided a substantive response to this protest allegation, but DPR-RQ did not respond to the agency's arguments in its comments. MOL at 11-12; see *generally* Comments. Where, as here, an agency provides a detailed response to a protester's assertion and the protester fails to rebut the agency's arguments in its comments, the protester fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable. 4 C.F.R. 21.3(i)(3); *Medical Staffing Sols. USA*, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3. We consider this allegation to be abandoned and do not discuss it further. *Medical Staffing Sols. USA, supra.*

The protest is denied.

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General Counsel