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Decision

Matter of: Addx Corporation

File: B-414749; B-414749.2; B-414749.3

Date: August 28, 2017

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Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated both protester's and awardee's proposals under the two most significant evaluation factors is denied where agency's evaluation was reasonable and consistent with solicitation criteria.
 2. Protest that agency misevaluated proposals under less significant factors is denied where protester was not prejudiced by any evaluation errors because more significant factors favored awardee, and the record shows protester's challenges could at most result in protester's and awardee's proposals being deemed equal under less significant factors.
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DECISION

Addx Corporation, of Alexandria, Virginia, a small business, protests the award of a contract to Archetype II, LLC, of Herndon, Virginia, also a small business,¹ by the

¹ Archetype's proposal identified it as a joint venture between a small business, RER Solutions, Inc., of Herndon, Virginia, and the incumbent contractor, Value Recovery Holding, LLC (VRH), of Columbus, Ohio. Agency Report (AR), Tab D.1, Archetype Proposal vol. I, at 127, 129. We note that Addx states that it has protested the validity of Archetype's small business status, and indicates that the protest remains pending

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Department of Energy (DoE) under request for proposals (RFP) No. DE-SOL-0008302.0000 for commercial professional management and analytical support services in six task areas to support the DoE Loan Programs Office (LPO), in Washington, D.C. and other to-be-specified locations. RFP at 8, 62.² In an initial protest and two supplemental protests, Addx argues that DoE misevaluated the offerors' proposals, and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on August 24, 2016, sought proposals from small business offerors to provide commercial services under an indefinite-delivery/indefinite-quantity (IDIQ) contract for a base year and four option years, at a maximum value of \$100 million.³ RFP at 7, 42. The DoE LPO seeks to accelerate the domestic commercial deployment of innovative and advanced clean energy technologies by administering loan programs that primarily involve large-value nonrecourse⁴ project financing and very large corporate loans. RFP at 61-62. The six task areas were origination, technical and project management support, risk management support, portfolio management support, environmental compliance support, and management operations support. RFP at 1 (Standard Form 1449) & RFP Performance Work Statement (PWS) at 64-90. The RFP anticipated the issuance of task orders on both fixed-price and labor-hour bases, and provided for certain "other direct costs" to be reimbursed at their cost plus a "handling rate" that would be calculated as a percentage of the cost. RFP at 6, 8, 41.

Proposals were to be evaluated under six factors, listed in descending order of importance: technical approach, relevant corporate experience, business management approach, staffing plan, past performance, and evaluated price. RFP amend. 2 at 181-83. With respect to the contractor's experience, the RFP noted that the contractor and its team would need to be experienced with large value nonrecourse project finance and very large corporate loans, which the agency specifically

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before the Small Business Administration. We describe Archetype as a small business based on its claim to that status, as our Office expresses no view on its validity.

² In the interest of clarity, citations to the RFP use page numbering applied when the agency record was submitted to our Office, rather than the original page numbering because that numbering was not present on some pages.

³ Although the RFP stated that other direct costs were included in the maximum value, that value appears to exclude certain additional reimbursable costs, such as phase-in/phase-out costs. See RFP at 49.

⁴ Nonrecourse financing involves debt that is secured only with collateral, typically the specific asset being acquired or constructed.

emphasized were significantly different than experience with underwriting and monitoring mortgages, financing of smaller projects, or providing turnkey loan servicing. RFP at 62. DoE was to award a contract “under FAR [Federal Acquisition Regulation Part] 12, while utilizing FAR [Part] 15 procedures” to the offeror whose proposal provided the best value. RFP amend. 2 at 185.

DoE received timely proposals from five offerors, including Addx and Archetype. For each proposal, the evaluators identified significant strengths, strengths, weaknesses, significant weaknesses, and deficiencies, and assigned the following adjectival ratings under the first four non-price factors: outstanding, good, satisfactory, marginal, or unsatisfactory.⁵ AR at 5-7. The final evaluation ratings and prices for Addx and Archetype were as follows:

	Addx	Archetype
Technical Approach	Satisfactory	Outstanding
Relevant Corporate Experience	Marginal	Outstanding
Business Management Approach	Good	Outstanding
Staffing Plan	Satisfactory	Good
Past Performance	Favorable	Favorable
Evaluated Price	\$53.1 million	\$56.9 million

AR at 5, 8. After considering the evaluation results, the source selection official determined that the non-price advantages of Archetype’s proposal justified paying its higher price when compared to Addx’s proposal. In particular, the source selection official identified the firm’s

deep knowledge of [DELETED] as demonstrated by the [DELETED] and their approach used to develop [DELETED] and determining the appropriate level of [DELETED], sizing the [DELETED], determining [DELETED], conducting [DELETED] and setting the [DELETED].

AR, Tab B.2, Source Selection Memorandum, at 18.

Although the source selection official discussed Archetype’s advantages under the corporate experience and business management factors and the contrasting concerns posed by aspects of Addx’s proposal, the official’s judgment was that Archetype’s advantage in technical approach alone would justify incurring Archetype’s higher price. Id. Accordingly, the source selection official selected Archetype’s proposal for award as the best value. Addx requested and received a debriefing, after which it filed this protest.

⁵ The protest does not challenge the evaluation under the fifth factor, past performance, so this decision does not discuss it.

PROTEST

Addx challenges the evaluation of both its and Archetype's proposals on several bases. We address below the most significant challenges and find that the evaluation was reasonable and that Addx was not competitively prejudiced by any flaws in the evaluation regarding the remaining protest challenges.

Technical Approach Evaluation

Addx argues that the DoE evaluation overlooked multiple aspects of the technical approach and assessed weaknesses for failing to adequately address matters that were, it argues, addressed in its proposal. For example, Addx argues that the evaluators unreasonably assigned its proposal a significant weakness because the firm did not adequately explain its approach to conducting due diligence and to monitoring large nonrecourse project finance loans. Addx argues that DoE overlooked statements in its proposal that its monitoring of loans would use a "dynamic capability to constantly assess the potential risks associated with LPO projects and associated mitigation," that it would use "independent technology assessments," and that its efforts would build upon information about risks that had been identified at an earlier phase of the process. Protest at 2 (emphasis supplied).

In response, DoE argues that the assessment of a significant weakness was reasonable because Addx's proposal did not provide an approach suited to the features of large nonrecourse project financing--or even expressly mention nonrecourse lending. AR at 9.⁶ Additionally, contrary to Addx's argument that it was unfair to criticize its proposal for not specifically addressing its understanding of providing services related to large nonrecourse financing, the agency argues that the introductory language to the performance work statement expressly indicated that the ability to provide services for large nonrecourse project financing was central to the agency's requirements. Id.

Where a protester challenges an agency's evaluation of proposals, this Office's role is not to reevaluate proposals; rather, we 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. ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. An offeror is responsible for submitting a well-written proposal with adequately detailed information that allows for meaningful review by the procuring agency. Abacus Tech. Corp.; SMS Data Prods. Group, Inc., B-413421 et al., Oct. 28, 2016, 2016 CPD ¶ 317 at 19.

The RFP stated that the technical approach factor would be used to assess the offeror's "understanding, and organizational capability and capacity to perform each task area," including assessment of the offeror's "detailed techniques and procedures, as well as

⁶ DoE combined its legal memorandum and contracting officer's statement of facts into a single document.

their understanding of regulation compliance, and best practices to accomplish each task area of the PWS.” RFP at 134. In its comments addressing the agency report, however, Addx provides only a general response, arguing briefly that the record generally demonstrated unequal evaluation treatment, and that the agency report had not provided a sufficient factual basis to deny the protest.

Our review of the record supports the reasonableness of DoE’s evaluation. As noted above, Addx’s response to the agency report is general, and based on our review, we conclude that the protester’s challenge lacks merit. The record shows that the DoE evaluators reasonably considered the agency’s need for the contractor to provide services to support large nonrecourse project financing, which was a particular focus of the RFP description of the services here. AR, Tab B.1, Technical Evaluation Report, at 11. Accordingly, when Addx’s proposal provided no details in its technical approach to specifically address nonrecourse financing,⁷ the evaluators considered that, notwithstanding Addx’s vague claim to dynamic and constant monitoring, the proposal actually “show[ed] little understanding of how due diligence is performed and what work needs to be done, what documents need to reviewed and prepared [etc.]” *Id.* The evaluators’ judgment that Addx’s general statement was insufficient and represented an omission should be considered in assessing a significant weakness in Addx’s technical approach was reasonable.

As a second example, Addx argues that the evaluation record reflects unequal treatment when the evaluators also cited as support for the significant weakness that Addx had failed to provide elements of its technical approach addressing advanced technology vehicles manufacturing (ATVM) project support. Addx further argues that it was treated unequally because the evaluators did not note that same absence of detail about ATVM project support in Archetype’s proposal. Second Supplemental Protest at 1-2. In its agency report, DoE disputes the basis for Addx’s claim on the basis that the proposals were not, in fact, equal. Specifically, Addx’s proposal did not specifically address **[DELETED]** projects, while Archetype’s did. AR at 21-22 (quoting AR, Tab D.2, Archetype Proposal vol. II, at 29); cf. AR, Tab D.2, Archetype Technical Proposal, at 24. While DoE acknowledges that the evaluators did not specifically discuss Archetype’s approach to ATVM projects, the agency argues that evaluators are not required to discuss aspects that are deemed merely adequate and that do not merit particular consideration in the source selection decision. In other words, while Addx’s failure concerned the evaluators, Archetype’s approach to ATVM support did not meaningfully exceed the agency’s standards and thus did not merit particular mention in the evaluation.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors’ proposals. Paragon Sys., Inc.; SciTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD

⁷ Our review shows that Addx’s proposal only mentioned nonrecourse financing in its description of the LPO portfolio. AR, Tab C.2, Addx Proposal vol. II, at 18.

¶ 169 at 8-9. Based on our review, we agree with DoE that Addx's proposal did not provide a similar level of detail as Archetype's proposal regarding ATVM project support. Accordingly, Addx has not shown a basis to conclude that the evaluation reflected unequal treatment.

Corporate Experience Evaluation

Addx next challenges the reasonableness of the evaluation under the corporate experience factor, arguing first that DoE failed to reasonably take into account that RER, as the managing joint venturer of Archetype, allegedly lacks relevant experience. Protest at 9-10; First Supplemental Protest at 3-4. Secondly, Addx argues the corporate experience evaluation reveals more unequal treatment because, while DoE credited Archetype for experience that only one of its two joint venture members possessed (and overlooked the lack of experience for the other member), the agency did not similarly credit Addx for experience that one of its subcontractors possessed. First Supplemental Protest at 3-5. Thirdly, Addx argues that the agency unreasonably discounted experience in Addx's proposal as less relevant because it did not involve nonrecourse project financing or very large corporate loans. First Supplemental Protest at 4-5. Consequently, Addx argues that its proposal should have been rated higher, and Archetype's rated lower, under the corporate experience factor.

DoE responds that the evaluation of corporate experience was reasonable and treated the offerors fairly. DoE argues that because Archetype is a joint venture, the corporate experience evaluation properly considered the combined experience of the prime contractor; that is, of both joint venturers, rather than considering each member of the joint venture separately. In contrast, the evaluation of Addx's corporate experience was reasonable and treated the offerors equally by assessing the prime contractor's-- Addx's--corporate experience as distinct from the experience of the firm's subcontractors. Finally, DoE argues that the evaluation also reasonably discounted corporate experience that did not involve nonrecourse project financing or very large corporate loans because those areas are essential to LPO's requirement, which the RFP expressly noted. Accordingly, the DoE argues that Addx's challenges to the corporate experience evaluation should be denied.

The RFP specified that the corporate experience evaluation would assess whether the offeror and any major subcontractors⁸ had

demonstrate[d] their corporate experience to similar contracts in scope and complexity similar in size and scope to all the task areas of the PWS. If the Offeror is a newly formed entity with no experience, DOE will evaluate the experience of the parent organization(s) or the member organizations in a joint venture, LLC, or other similar entity. DOE will

⁸ A major subcontractor was defined as one that would provide over 15 percent of the total hours, or over 10 percent of the total price. RFP at 135.

evaluate each Offeror on the relevancy of the experience in performing in all of the task areas of the PWS.

RFP at 135.

Where a protest challenges the evaluation of an offeror's experience, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. ICF Inc., B-407273.17, B-407273.19, Dec. 19, 2013, 2014 CPD ¶ 10 at 6. A protester's disagreement with the agency's evaluation judgments, or with the agency's determination as to the relative merits of competing proposals, does not establish that the evaluation or the source selection decision was unreasonable. Id.

The record here supports the reasonableness of the corporate experience evaluation. With respect to DoE's treatment of VRH's experience as fully relevant, and therefore not lowering Archetype's rating because of RER's lack of experience, that treatment is consistent with the RFP. As quoted above, the RFP expressly provided for the evaluation of corporate experience of joint venture members as being that of the offeror. On the other hand, since Addx is not a joint venture, and its subcontractor was thus not a "member organization" of Addx, the RFP did not provide for DoE to treat the subcontractor's experience the same as Addx's. Rather, in evaluating corporate experience, the significance of, and the weight to be assigned to, a subcontractor's corporate experience is a matter of contracting agency discretion, and the agency may reasonably conclude that a subcontractor's corporate experience is less valuable. Emax Fin. & Real Estate Advisory Servs., LLC, B-408260, July 25, 2013, 2013 CPD ¶ 180 at 6. As such, the evaluation does not reflect unequal treatment between the assessment of Addx's subcontractor's corporate experience as less significant than the assessment of Archetype's joint venture member. Nor has Addx shown that DoE's emphasis on whether an offeror's corporate experience involved nonrecourse project financing or very large corporate loans was unreasonable. As noted previously, the RFP identified those areas as fundamental to the services required here, so the agency could reasonably consider corporate experience in those areas to be a significant aspect in evaluating the offeror under this factor. As a result, we see no basis to sustain any of Addx's challenges to the corporate experience evaluation.

Business Management Evaluation

Addx argues that DoE's evaluation of Archetype under the business management factor improperly relied on the agency's knowledge of the performance by VRH as the incumbent contractor. Specifically, Addx argues that Archetype's proposal lacked the detailed information required by the RFP about the roles to be performed by Archetype's team members, and did not explain the firm's rationale for selecting the team member charged with leading each task area by identifying the skills or expertise that each would provide. Second Supplemental Protest at 2-3 (citing RFP at 182). Although the absence of this information, in Addx's view, should have resulted in the

assignment of a weakness or significant weakness to Archetype's proposal under the business management factor, Addx argues that the evaluation record shows instead that DoE used its own knowledge of Archetype and its team members to supply the missing information. Id. at 3.

We disagree. An agency's reliance on personal knowledge in an evaluation is not necessarily improper. An agency is not bound by the "four corners" of an offeror's proposal, and may properly use information known by its own evaluators to aid in the evaluation of proposals. Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 6-7 (agency properly used evaluator knowledge of subcontractors' experience and available equipment to evaluate awardee's technical approach); see also Park Tower Mgmt. Ltd., B-295589, B-295589.2, Mar. 22, 2005, 2005 CPD ¶ 77 at 6. Thus, even if Archetype's proposal did not provide sufficient information regarding Archetype's selection of team member roles and its rationale for those selections, and the evaluators then relied on their personal knowledge as Addx argues, that allegation is insufficient to show that the evaluation of Archetype's proposal as outstanding under the business management factor was unreasonable.

Prejudice

Addx challenges several other aspects of DoE's evaluation under the business management and staffing plan factors. For example, Addx argues that DoE arbitrarily identified contradictory strengths and weaknesses in Addx's proposal under the business management factor for essentially the same issues, and that the criticism of Addx's corporate experience improperly influenced the business management factor evaluation. First Supplemental Protest at 5-6. Under the staffing factor, Addx challenges several aspects of the evaluation by arguing, for example, that the assignment of a significant weakness to its proposal because its existing staff lacked relevant experience in task area 4 (portfolio management support) was unreasonable because the firm proposed to retain incumbent staff and make new hires. Further, Addx argues that DoE treated the offerors unequally by assigning a weakness for Addx's failure to identify non-key staff for a subcontractor while failing to identify a weakness for the same alleged failure by Archetype regarding one of its subcontractors. Second Supplemental Protest at 3-4.

DoE argues that even if the record supported Addx's claim of inconsistent evaluation in these respects, the firms would at most have been considered equal under the business management and staffing factors. Thus, DoE argues, there is no reasonable likelihood that the agency would have selected Addx's proposal for award given the significant advantages possessed by Archetype under the more important factors, even considering the price difference.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, the protester would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed.

Cir. 1996). Based on our review of the record, DoE reasonably considered Archetype's advantages under the technical approach and corporate experience factors (which, as discussed above, were reasonable evaluation judgments) to provide a clear advantage to Archetype. In particular, as noted above, the source selection official viewed Archetype's advantage under just the technical approach factor as sufficient to justify incurring its higher price. AR, Tab B.2, Source Selection Memorandum, at 18. Based on our review, this conclusion was reasonable and consistent with the RFP evaluation criteria. We also agree with DoE's argument that Addx's remaining challenges could not have provided it an advantage under either the business management or staffing plan factors, and therefore could not have provided a basis for a reasonable source selection decision in favor of Addx, even considering its lower evaluated price. Accordingly, Addx has not shown that it was prejudiced by any errors based on its remaining challenges to the evaluation.

The protest is denied.

Susan A. Poling
General Counsel