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# Decision

**Matter of:** HCR Construction, Inc.; Southern Aire Contracting, Inc.

**File:** B-418070.4; B-418070.5

**Date:** May 8, 2020

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## DIGEST

Protests challenging the agency's evaluation of awardees' technical proposals are denied where the evaluation was reasonable and consistent with the stated evaluation criteria.

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## DECISION

HCR Construction, Inc., of Norcross, Georgia, and Southern Aire Contracting, Inc. (SAC), of Jacksonville, Florida, protest their nonselection for award of a contract under request for proposals (RFP) No. W911SF-18-R-0022, issued by the Department of the Army for repair and construction services at Fort Benning, Georgia. The protesters contend that the agency's evaluation of proposals and the resulting award decision were improper.

We deny the protests.

## BACKGROUND

The RFP was issued on April 29, 2019, as a small business set-aside, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15. Agency Report (AR)

Tab 4, RFP at 1.<sup>1</sup> The solicitation contemplated the award of five indefinite-delivery, indefinite-quantity (IDIQ) contracts--under which fixed-price task orders would subsequently be placed--for a 5-year ordering period.<sup>2</sup> *Id.* at 1, 40. In general terms, contractors were to provide all necessary labor, equipment, supplies, and supervision to successfully perform task orders for the maintenance, repair, and alteration of facilities located at Fort Benning, Georgia; the Army Ranger School at Camp Frank D. Merrill, Dahlonaga, Georgia, and Camp James E. Rudder, Eglin Air Force Base, Florida; and the Destin Army Recreation Center, Destin, Florida. AR, Tab 5, Statement of Work (SOW) at 1. The RFP established that contract awards would be made on a lowest-price, technically acceptable (LPTA) basis, based on three evaluation factors--technical acceptability, past performance, and price.<sup>3</sup> AR, Tab 8, RFP amend. 3 at 2-3. The technical acceptability factor consisted of five subfactors: construction experience; design/build experience; management approach; seed project response; and bonding capacity. *Id.*

Thirty-three offerors, including HCR and SAC, submitted proposals by the June 27 closing date. The agency evaluated proposals and, on September 16, issued a small business preaward notice to seven offerors, including HCR and SAC, of their apparent selection for award. On September 21, the Army issued a revised preaward notice which, consistent with the terms of the RFP, listed five apparent successful offerors rather than the previously listed seven. HCR and SAC were the two firms from the previous list of successful offerors that was not included in the revised preaward notice.

On September 27, SAC filed a protest with our Office, challenging the agency's evaluation and award determination. On October 29, the Army notified our Office that it would take corrective action by reviewing its evaluation of proposals and making a new award decision. We thereafter dismissed SAC's earlier protest as academic based on the announced corrective action. *Southern Aire Contracting, Inc.*, B-418070, B-418070.2, Nov. 1, 2019 (unpublished decision); see also *Southern Aire Contracting, Inc.--Costs*, B-418070.3, Feb. 21, 2020, 2020 CPD ¶ 73.

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<sup>1</sup> The agency provided separate reports in response to each protest that differed in certain respects, but that also included similarly-numbered exhibits in certain instances. For example, the initial RFP is identified as Tab 4 in both reports. We refer simply to the agency report in those instances where the exhibits are similarly numbered. Where necessary, we distinguish the record by the name of the respective protester.

<sup>2</sup> The RFP was subsequently amended three times. Unless stated otherwise, all citations are to the final version of the solicitation.

<sup>3</sup> In an LPTA source selection process all non-price factors are evaluated for acceptability (e.g., acceptable or unacceptable), and among offerors determined to be technically acceptable in all regards, award is made on the basis of the lowest evaluated price. FAR 15.101-2.

On January 15, 2020, the Army completed its reevaluation, with the final evaluation ratings and prices of the eventual awardees and the protesters as follows:<sup>4</sup>

|                                      | <b>Technical Acceptability</b> | <b>Past Performance</b> | <b>Price</b> |
|--------------------------------------|--------------------------------|-------------------------|--------------|
| <b>Carlisle Services, LLC</b>        | Acceptable                     | Acceptable              | \$1,408,215  |
| <b>Webb Construction Group, Inc.</b> | Acceptable                     | Acceptable              | \$1,562,171  |
| <b>EJS Contracting, Inc.</b>         | Acceptable                     | Acceptable              | \$1,644,850  |
| <b>Don Jones Construction Co.</b>    | Acceptable                     | Acceptable              | \$1,687,317  |
| <b>DOT Construction</b>              | Acceptable                     | Acceptable              | \$1,701,010  |
|                                      |                                |                         |              |
| <b>HCR</b>                           | Acceptable                     | Acceptable              | \$1,791,996  |
| <b>SAC</b>                           | Acceptable                     | Acceptable              | \$1,894,780  |

*Id.*

On January 30, the agency source selection authority determined that the proposals of Carlisle Services, Webb Construction, EJS Contracting, Don Jones Construction, and DOT Construction were the five lowest-priced, technically acceptable offers, and selected these offerors for award. AR, Tab 16, Source Selection Decision Document at 5-7.

On February 18, after the Army provided HCR and SAC, each, with a notice of award and a debriefing, these protests were filed with our Office.

## DISCUSSION

HCR and SAC contend that the agency unreasonably evaluated the proposals of various awardees. The protesters, however, raise no challenges to the evaluation of their own proposals, nor do they challenge the evaluation of each other's proposals. Specifically, both HCR and SAC contend the agency conducted a flawed evaluation of proposals from EJS and DOT with regard to the alleged requirement for a Georgia state general contractor license. The protesters also contend that DOT does not meet the requirement of having an office located within 150 miles of Fort Benning, Georgia.

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<sup>4</sup> The table is sorted from lowest to highest proposed prices, separated between eventual awardees and the protesters. The record reflects that although there were offerors evaluated with proposed prices between the awardees and HCR and SAC (*i.e.*, prices higher than the awardees but lower than the protesters), these intervening offerors were found to be unacceptable under one or both of the non-price factors, and therefore not considered eligible for award. AR, Tab 15, Source Selection Evaluation Board Report at 2.

Although we do not address every argument raised by HCR and SAC, we have reviewed them all and find that none provides a basis to sustain the protest.<sup>5</sup>

## Licensing

HRC and SAC first contend that the agency's evaluation of EJS and DOT was unreasonable, as these awardees failed to possess a current Georgia state general contractor license.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits, as the evaluation of proposals is a matter within the agency's discretion. *Millennium Eng'g and Integration Co.*, B-417359.4, B-417359.5, Dec. 3, 2019, 2019 CPD ¶ 414 at 10; *Del-Jen Educ. & Training Group/Fluor Fed. Sols. LLC*, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, and was adequately documented. *Management Sys. Int'l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5; *Shumaker Trucking & Excavating Contractors, Inc.*, B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's disagreement with the agency's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. *Lanmark Tech., Inc.*, B-408892, Dec. 19, 2013, 2013 CPD ¶ 295 at 5. Additionally, in evaluating proposals, an agency

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<sup>5</sup> For example, SAC also argues that it was improper for the agency not to make more than five contract awards. SAC Protest at 12-14. The Army asserts that SAC failed to state a valid basis of protest (*i.e.*, that SAC did not allege the violation of a procurement statute or regulation) and that any challenge to the terms of the RFP--which expressly stated the agency's intent to make five awards--was untimely. SAC Memorandum of Law (MOL) at 12-13. In its comments, the protester neither refutes the agency's substantive response to SAC's challenge, nor addresses the merits of its protest allegation or the agency's response thereto. Instead, SAC provides a one-sentence response that merely requests "the GAO review this protest ground on the existing record." SAC Comments at 5.

Where an agency provides a detailed response to a protester's assertions, and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper. *Straughan Envtl., Inc.*, B-411650 *et al.*, Sept. 18, 2015, 2015 CPD ¶ 287 at 10. Under the circumstances, we conclude that SAC has abandoned this protest allegation. We therefore dismiss it without considering the merits of its arguments. *Yang Enterprises, Inc.*, B-415923, Mar. 12, 2018, 2018 CPD ¶ 109 at 2-3; 4 C.F.R. § 21.3(i)(3) ("GAO will dismiss any protest allegation or argument where the agency's report responds to the allegation or argument, but the protester's comments fail to address that response.").

may reasonably rely on information provided by an offeror in its proposal as being accurate. *Austal USA, LLC*, B-417593, Aug. 28, 2019, 2019 CPD ¶ 307 at 9 n.7; *Highmark Medicare Servs., Inc., et al.*, B-401062.5 *et al.*, Oct. 29, 2010, 2010 CPD ¶ 285 at 13.

Relevant to the protests here, the SOW stated that “[a]ll applicable codes, laws, and regulatory requirements shall be adhered to while performing work under this contract.” SOW at 1. Additionally the SOW reminded offerors that, “the construction site must be operated and maintained according to contract specifications and is subject to inspection and enforcement according to all federal, state and local codes/regulations.” *Id.* at 4. The RFP also established that, with regard to the construction experience subfactor, “[t]he Government will evaluate the offeror’s construction experience approach and actual methodology it will use to perform all construction activities identified in the SOW. . . . Failure to demonstrate an ability to perform all construction activities identified in the SOW will result in an unacceptable rating for this factor.” RFP amend. 3 at 4.

HCR and SAC argue that an offeror lacking a Georgia general contractor license would be in violation of applicable state law and would not meet the aforementioned SOW requirements. The protesters also contend that had the Army performed a proper evaluation, it would have determined that EJS and DOT currently lack a Georgia general contractor license and should therefore have been found technically unacceptable. HCR Protest at 3-4; SAC Protest at 8-11.

The Army does not dispute that commercial and residential contractors must be licensed under Georgia state law. Rather, the agency argues that the RFP did not impose any specific state or local licensing requirements on offerors as a prerequisite to award. Consequently, the Army asserts that the solicitation neither required offerors to submit, nor the agency to evaluate whether offerors possessed, licenses applicable to contract performance. HCR MOL at 8-11; SAC MOL at 8-12. We agree.

As set forth above, the SOW required the IDIQ contractors to comply with all “applicable codes, laws, and regulatory requirements” while performing work under the contract. SOW at 1. The protesters contend that this provision would presumably include state licensing requirements. HCR Protest at 3; SAC Protest at 9. We have repeatedly found solicitation provisions that require the contractor to obtain all necessary licenses, permits, or certifications needed to perform the work establish performance requirements that must be satisfied by the successful offeror during contract performance; as such, offerors are not required to satisfy such requirements prior to award. *Sky Quest Aviation LLC*, B-415383, Dec. 4, 2017, 2017 CPD ¶ 374 at 3 n.3; *McLaurin Gen. Maint., Inc.*, B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 9; *Pernix-Serka LP*, B-407656, B-407656.2, Jan. 18, 2013, 2013 CPD ¶ 70 at 4. In fact, SAC itself acknowledges that the solicitation required a “successful offeror” (*i.e.*, awardee) to comply with “all federal, state, and local codes and regulations.” SAC Protest at 9. Here, the SOW did not require offerors to demonstrate compliance with applicable codes, law, and regulatory requirements, nor did the RFP require offerors to

submit evidence of licenses as part of their proposals. SOW at 1; AR, Tab 7, RFP amend. 2 at 24-36. We think the plain language of this provision clearly articulated that the agency would not be evaluating contractor licenses at the time of proposal submission.

Lastly, while SAC does not dispute that the SOW required contractors to follow federal, state, and local codes and regulations while performing work under the contract, the protester argues that “the Army’s failure to verify whether each offeror could adhere to all applicable codes, laws, and regulatory requirements while performing under awarded contracts” was unreasonable.” SAC Comments at 4. The ability to perform a contract--including the ability to obtain all necessary licenses--is a matter of general responsibility that our Office does not review, absent exceptions not alleged here. *Sky Quest Aviation, LLC, supra; McLaurin Gen. Maint., Inc., supra*; 4 C.F.R. § 21.5(c). In this regard, SAC does not dispute that the RFP did not expressly require offerors to possess a Georgia general contractor license prior to award or to submit one as part of their proposals. SAC Comments at 4.

In sum, we find no merit to the protesters’ argument that the solicitation required an offeror without a Georgia general contractor license to be rated as technically unacceptable.

#### 150-Mile Office Requirement

HCR also protests that the agency’s evaluation of DOT was improper because this awardee does not have an office location within 150 miles of Fort Benning, Georgia, as required by the RFP.<sup>6</sup> HCR Protest at 3-4. HCR contends that, based on the most

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<sup>6</sup> SAC also challenges the evaluation of DOT with regard to the 150-mile office location requirement. SAC Protest at 12. We conclude, however, that SAC is not an interested party to maintain this aspect of its protest. Under our Bid Protest Regulations, a protester must be an interested party to pursue a protest before our Office, meaning it must have a direct economic interest in the resolution of a protest issue. 4 C.F.R. § 21.0(a); *Panum Telcom, LLC*, B-418202, Jan. 17, 2020, 2020 CPD ¶ 34 at 3. A protester is not an interested party if it would not be next in line for award if its protest were sustained. *Steel Point Sols., LLC*, B-418224, B-418224.2, Jan. 31, 2020, 2020 CPD ¶ 45 at 7.

In this regard, where, as here, there is an intervening offeror who would be in line for the award even if the protester’s challenge was sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester’s interest to be too remote to qualify it as an interested party. *NCS Techs., Inc.*, B-416936, Jan. 11, 2019, 2019 CPD ¶ 56 at 3. As discussed above, the record shows that the agency made five awards in this LPTA procurement, and that HCR was sixth in line for award and SAC seventh in line for award. Even if SAC were correct as to the agency’s evaluation of DOT’s proposal, it is HCR that is next in line for award, and SAC raises no challenge to the evaluation of this intervening offeror. In sum,

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current public information, DOT does not meet this solicitation requirement. HCR Comments at 1-2. As detailed below, we find the agency's evaluation to be reasonable and consistent with the RFP's stated evaluation criteria.

The SOW stated that "[t]he Contractor shall have an office located within [a] 150[-]mile radius to Fort Benning, Georgia." SOW at 1. As part of its proposal, DOT stated that it had a corporate headquarters in Charlotte, North Carolina, and a regional office in Dothan, Alabama. The parties do not dispute that Dothan, Alabama, is within 150 miles of Fort Benning. AR, Tab 23, DOT Proposal, Vol. IV, Business Proposal, at 5, 7, 10. Additionally, DOT's technical proposal evidenced that its Dothan, Alabama, office location was owned by Poly, Inc., the company that DOT proposed to use as its lead design firm; in fact, several Poly employees were also among DOT's proposed key personnel.<sup>7</sup> AR, Tab 19, DOT Construction Proposal, Vol. I, Technical Proposal at 12, 14-15, 20, 23, 28, 31, 49. As part of the agency's evaluation of proposals, the contracting officer considered the information in DOT's proposal as well as the offeror's System for Award Management (SAM) registration, and found that DOT met the RFP office location requirement. HCR Contracting Officer's Statement at 3. The contracting officer also contacted DOT to confirm the offeror's SAM registration was accurate and that DOT did have an office in Dothan, Alabama. *Id.*

We find unobjectionable the agency's conclusion that DOT's proposal satisfied the solicitation's office location requirement. The record reflects that the Army considered the information contained in DOT's proposal, as well as matching information in DOT's SAM registration, regarding a Dothan, Alabama office location. There was also nothing in the record to suggest that it was unreasonable for the Army to rely on the information provided in DOT's proposal, especially as the Dothan, Alabama, address was associated with DOT's proposed subcontractor, Poly. Because an agency may reasonably rely on the information provided in an offeror's proposal as being accurate when performing its evaluation, especially where it has no reason to question that information, we find no basis to find the agency's evaluation unreasonable here. *Austal USA, LLC, supra* at 9 n.7 ("In evaluating proposals, an agency may reasonably rely

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although SAC was an interested party when challenging the evaluation of two awardees, it is not an interested party when challenging the evaluation of one awardee here. We therefore dismiss this aspect of SAC's protest.

<sup>7</sup> We note it was only after the submission of HCR's comments that the Army belatedly provided to our Office a copy of DOT's technical proposal, which demonstrated the awardee's subcontractor arrangement with Poly, the owner of the property which DOT listed as its regional office. The Army also thereafter obtained a copy of DOT's office space lease with Poly. AR, Tab 29, DOT Lease with Poly, June 10, 2019, at 1-10. The provided lease also confirms that DOT did not simply rely on the subcontractor's address in order to meet the office location requirement, but did in fact properly lease office space from Poly in Dothan, Alabama.

upon information provided by an offeror in its proposal as accurate.”). Accordingly, this protest allegation is also denied.

The protests are denied.

Thomas H. Armstrong  
General Counsel