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Decision

Matter of: Walton Construction - a CORE Company, LLC

File: B-407621; B-407621.2

Date: January 10, 2013

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Kendra M. Laffe, Esq., and Lloyd R. Crosswhite, Esq., Department of the Army, Corps of Engineers, for the agency.

Tania Calhoun, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's best value determination improperly failed to consider the value of various features in protester's proposal because they could not be quantified is denied where the record shows the agency considered the comparative merits of both proposals received, but concluded that the advantages of protester's proposal did not warrant its price premium.

DECISION

Walton Construction – a CORE Company, LLC, of New Orleans, Louisiana, protests the award of a contract to Sauer Inc., of Jacksonville, Florida, under request for proposals (RFP) No. W9126G-12-R-0036, issued by the Department of the Army, Corps of Engineers, for the design/build renovation of Voluntary Army barracks and for site/drainage improvements at Fort Polk, Louisiana. Walton primarily challenges the agency's source selection decision.

We deny the protest.

BACKGROUND

The solicitation, issued June 15, 2012, anticipated the award of a fixed-price contract for the design/build construction (renovation) of ten Voluntary Army (VOLAR) barracks and for site drainage improvements at Fort Polk. RFP Phase 1

Selection Procedures at ¶ 1.1. The purpose of this work is to improve energy efficiency, eliminate mold and mildew, and provide a better living environment for soldiers, for the next 20 years. Id.

The procurement was conducted under two-phase design-build selection procedures, in accordance with Federal Acquisition Regulation (FAR) Subpart 36.3, Two-Phase Design Build Selection Procedures. In phase 1, offerors submitted performance capability proposals demonstrating their capability to successfully execute the design and renovation of the barracks. The solicitation provided that the Corps would select no more than five proposals to compete in phase 2 of the process. RFP Phase 1 Selection Procedures at ¶ 1.1. The selected phase 2 offerors then submitted proposals for evaluation. Award was to be made to the firm whose proposal offered the best overall value to the government, considering price and various non-price factors. RFP Phase 2 Selection Procedures at ¶ 2.0.

The RFP included the following non-price evaluation factors, in descending order of importance: (1) design technical; (2) past performance; (3) organization and technical experience; (4) summary schedule; and (5) small business participation. RFP Phase 2 Selection Procedures at ¶ 3.0. A source selection evaluation board (SSEB) was to identify strengths, weaknesses, or other proposal features and, for the factors at issue here,¹ assign adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. RFP Phase 1 Selection Procedures at ¶ 8.3; RFP Phase 2 Selection Procedures at ¶ 8.0. The solicitation also provided for the evaluation of “betterments” in proposals relative to the RFP’s minimum standards to determine if they offered additional value. RFP Phase 2 Selection Procedures at ¶ 2.0.

Regarding the award decision, the RFP established that all non-price evaluation factors, when combined, were significantly more important than price. Id. To the extent an offeror submitted a conforming proposal, however, the source selection authority (SSA) had to justify the selection of a more expensive proposal based on added value. Id. at ¶ 2.2.

The Corps received nine phase 1 proposals by the July 6 closing date. After the proposals were evaluated, the contracting officer advanced three firms to phase 2 of the competition, including Walton and Sauer. Both firms submitted phase 2 proposals by August 31; the third firm withdrew from the competition.

The SSEB evaluated the phase 2 proposals and conducted discussions with both firms. The SSEB evaluated final proposal revisions and drafted a report for the source selection advisory council (SSAC). The SSAC reviewed the SSEB’s reports,

¹ The past performance and small business participation factors are not at issue here, and Walton has not challenged the Corps’ evaluation of price proposals.

the proposals, and the discussions responses, and found that additional discussions were required. The SSEB reconvened to evaluate the firms' discussions responses; its final report discussed the features of each proposal in detail.

The SSAC reviewed the SSEB's findings, as well as the offerors' responses to the second round of discussions. On September 21, the SSAC briefed the SSA on its findings and recommendation, as documented in its own report. The SSAC's report described the strengths and betterments in each proposal. The SSAC noted that it had identified additional strengths in Sauer's proposal and therefore raised, from "acceptable" to "good," the SSEB ratings for Sauer's proposal under the organizational and technical approach and the small business participation factors. AR, Exh. 31, SSAC Report, at 2-3. Similarly, the SSAC identified additional strengths in Walton's proposal and raised the SSEB's adjectival rating for Walton's proposal under the summary schedule factor from "acceptable" to "good." Id. at 3-4. The final evaluation results were as follows:

	Sauer	Walton
Design Technical	Good	Good
Past Performance	Very Relevant Substantial Confidence	Very Relevant Substantial Confidence
Organizational and Technical Approach	Good	Outstanding
Summary Schedule	Acceptable	Good
Small Business Participation	Good	Acceptable
Price	\$114,026,060	\$123,950,700

Id. at 4.

The SSAC turned to a comparative analysis of the proposals. The SSAC found that the proposals shared a number of similar/same strengths under each factor, and focused on the specific strengths that were unique to each firm and their relative value.

Under the organization and technical approach factor, the SSAC found that Walton was performing under a prior VOLAR barracks renovation contract, which gave it familiarity with the local conditions, labor, and subcontractor availability. Walton also had familiarity with privatized utilities, and proposed to use the same team that was on site for the prior contract. Id. at 5. The SSAC explained, however, that even though Walton had these strengths and Sauer did not, Sauer's ability to self-

perform work was valuable, and mitigated concern about its lack of knowledge of the local conditions, and about labor and subcontractor availability.² Id.

Under the design technical factor, the SSAC stated that Sauer proposed increased energy efficiency through its [DELETED] and [DELETED], but did not quantify the value of these energy savings. Walton proposed an overall [DELETED] percent additional energy savings over the RFP's requirement, which included [DELETED]. The Corps valued Walton's energy savings over 20 years at approximately \$[DELETED] million. Id. at 6. The SSAC also stated that Walton's proposed dedicated outdoor air (DOA) system was known by the SSEB to have reliable performance and ease of maintenance, meriting a strength. The SSAC acknowledged that Sauer did not provide information that demonstrated reliable performance or ease of maintenance for its DOA system. However, the SSAC noted, Sauer's system exceeded the minimum requirements, and the fact that the SSEB was unfamiliar with the system did not mean it was unreliable or hard to maintain. Id.

Under the summary schedule factor, the SSAC identified two unique strengths for Walton, including a phased turnover of buildings. The SSAC stated that this facilitated early occupancy by soldiers, which would be a significant benefit. The SSAC found that Sauer had no unique strengths for this factor. Id.

Turning to price, the SSAC noted that Walton's price was \$9,924,640, or 8 percent, higher than Sauer's price. The SSAC considered that Walton's proposal included additional energy savings, valued at approximately \$[DELETED] million over the life of the buildings. The SSAC also considered that Walton's proposal offered "additional advantages" related to its superior organization and technical approach, including a demonstrated knowledge of the local conditions and labor shortages, phased building turnover, and mitigation plan, all of which added value and reduced risk. Id. at 7. On the other hand, the SSAC stated that the primary advantages of Sauer's proposal were related to energy savings through a [DELETED] and [DELETED], its demonstrated ability to self-perform, and a better small business participation plan. The SSAC explained Sauer's energy savings could not be quantified, but would be provided at an overall lower cost than Walton's. Similarly, the SSAC found that both firms provided a DOA system that exceeded the minimum

² Offerors were required to describe the work they would self-perform, consistent with the requirements of Federal Acquisition Regulation (FAR) § 52.236-1, Performance of Work by Contractor. RFP Phase 1 Selection Procedures at ¶ 6.1.4. The SSEB assigned Sauer's proposal a strength because it demonstrated extensive resources to self-perform work, and because it proposed to perform the [DELETED] and [DELETED] work on the project. Sauer's proposal was also assigned a weakness, however, due to its insufficient discussion of the labor and subcontractor issues at Fort Polk. AR, Exh. 15, Phase I SSEB Report at 10.

coefficient of performance required, but that Sauer would provide it at a lower overall cost. Id.

The SSAC found the proposals technically equal under the two most important factors, design technical and past performance. The SSAC stated that the fact that both firms proposed to [DELETED] resulted in many proposal similarities, and each firm provided a DOA system that exceeded the minimum requirements. The SSAC explained that, while there was added benefit in Walton's proposed energy savings, the benefit did not equal the additional cost of the firm's proposal. Even considering Walton's higher ratings under two factors, "and benefits therein," the SSAC could not support an award to Walton due to its additional cost. Id. The SSAC acknowledged that Walton's phased turnover, schedule mitigation, and knowledge of local conditions were of value, but stated that "they can't be quantified." Id. Since the SSAC found that Sauer offered a proposal that exceeded the minimum requirements of the solicitation at a lower overall cost than Walton, the SSAC recommended award to Sauer as the firm that offered the best value to the government.

In making its recommendation, the SSAC acknowledged that one of its members prepared a minority report recommending Walton for award. The SSAC report included a detailed rebuttal of the minority report, and concluded that the premium associated with Walton's higher rated proposal "simply cannot be overcome, even with the arguments provided by the [minority report]." Id. at 8.

In her source selection decision document (SSDD), the SSA stated that she had reviewed the SSEB evaluation results, the SSAC's report, and the minority report. Based on her integrated assessment and comparison of the features of the proposals, she accepted the SSAC's recommendation and found that Sauer's proposal offered the best value to the government. AR, Exh. 33, SSDD at 1, 4. The SSA stated that Walton's superiority under the organization and technical approach and the summary schedule factors did not justify its higher price, when Sauer's proposal represented a sound technical approach to the project and the lowest proposed price. Referencing the terms of the solicitation, the SSA stated that the additional cost of Walton's more expensive proposal was not justified as there was a lower-priced conforming offer. Id. at 4.

DISCUSSION

Walton argues that the Corps made a flawed best value determination by failing to consider all of the value afforded by its proposal. Walton specifically contends that the Corps' best value determination only looked at cost savings and any quantifiable value of its strengths. Walton also argues that the Corps unequally evaluated the

proposals under the organization and technical approach factor, and improperly calculated the energy savings its proposal offered.³

In reviewing an agency's evaluation of proposals and source selection decision, 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. Trofholz Techs., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 3; Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 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. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7; ITW Military GSE, B-403866.3, Dec. 7, 2010, 2010 CPD ¶ 282 at 5.

In a best value procurement, it is the function of the source selection official to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher price. ITW Military GSE, supra. Ratings, whether numerical, color, or adjectival, are merely guides to assist agencies in evaluating proposals; the qualitative information underlying those ratings is the type of information that source selection officials should consider, in addition to ratings, to enable them to determine whether and to what extent meaningful differences exist between proposals. Pemco Aeroplex, Inc., B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 6. The number of identified strengths is not dispositive. Agencies may reasonably distinguish between the strengths assigned to offerors, and may conclude a single strength is of more value than multiple, lesser strengths. AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 21.

Best Value Determination

Walton primarily argues that, in making its best value determination, the Corps disregarded the value of various features in its proposal and focused only those advantages that could be "quantified" or that had monetary value.

In our view, Walton's argument isolates the SSAC's statement that certain of its strengths could not be "quantified" from the totality of the SSAC's reasoned discussion of the comparative merits of both proposals. As the parties acknowledge, there is no general requirement to quantify or "monetize" the features of competing proposals in a best value determination. The record shows that the

³ Our decision does not address all of Walton's arguments, but we have fully considered each of them and conclude that the remaining arguments do not provide a basis to sustain the protest.

SSAC, and by extension, the SSA, did consider the value of Walton's proposal. Consistent with the solicitation's terms, the agency decided that the advantages of Walton's proposal did not justify paying a price premium given Sauer's lower-priced conforming offer. Recognizing the wide discretion afforded agencies in making their tradeoff decisions, Walton has given us no basis to find the source selection decision unreasonable. We address several of Walton's specific contentions below.

First, under the design approach factor, Walton argues that the Corps failed to consider the value of its proposed use of DOA systems that matched those in use at Fort Polk. The protester contends that this made the units more easily serviceable because no additional training was required to maintain them, spare parts were already kept, and they were a known commodity with a proven history of reliability, operability, and durability on the base.

The SSAC identified a "history of maintainability and reliability in mechanical equipment" as one of the unique strengths in Walton's proposal. AR, Exh. 31, SSAC Report at 5. The SSAC explained that Walton's proposed system was known by the SSEB to have reliable performance and ease of maintenance. Id. at 6. In this regard, the RFP stated that the government was to evaluate the offeror's proposed mechanical equipment to determine the most efficient system used for the conditions at Fort Polk; more emphasis was to be placed on equipment that was easy to maintain and had a history of being durable and reliable. RFP Phase 2 Selection Procedures at ¶ 4.1.2.3.

The SSAC acknowledged that Sauer did not provide information to demonstrate that its DOA system had reliable performance or ease of maintenance. However, the SSAC concluded that the SSEB's lack of familiarity with the system did not support a conclusion that the system would be unreliable or hard to maintain. The SSAC found that both firms proposed systems that exceeded the RFP's minimum requirements, but Sauer did so at an overall lower cost. Id. at 6-7. The SSAC expressly acknowledged the minority's view that Walton's system might reduce the variances in replacement parts and maintenance items. The SSAC agreed that this was an advantage, but noted that it "was not a solicitation requirement." Id. at 8. The SSAC concluded that, even considering the minority's view, the premium associated with Walton's proposal could not be overcome. Id.

Walton reads the SSAC's statement that this advantage "was not a solicitation requirement" as ignoring the value of this feature. We read it as placing that value into context. Again, the RFP stated that if there was a lower-priced, conforming offer, the Corps was required to determine that the added value of a more expensive proposal would justify award to that offeror. RFP Phase 2 Selection Procedures at ¶ 2.2. While Sauer's proposal did not offer the advantage of reducing variances in replacement parts and maintenance items, it was not required to do so. Sauer's proposal conformed to the RFP's requirements--and its proposed DOA system exceeded those requirements--and the SSAC did not consider

Walton's advantage to justify its price premium. Walton has given us no basis to find this conclusion unreasonable.

Second, under the organization and technical approach factor, Walton argues that the Corps' failed to reasonably consider that its proposed key subcontractors have significant VOLAR experience, and that it has familiarity with the local workforce.

The SSAC listed both features as unique strengths in Walton's proposal, and characterized as "additional advantages" Walton's demonstrated knowledge of the local conditions and labor shortages. AR, Exh. 31, SSAC Report at 5, 7. While acknowledging that Walton had these strengths and Sauer did not, the SSAC found that Sauer's demonstrated ability to self-perform work mitigated concern about the firm's lack of knowledge of the local conditions and available labor and subcontractors. AR, Exh. 31, SSAC Report at 5, 7. The SSAC clearly considered the value of Walton's strengths but did not believe they justified the price premium.

In coming to this conclusion, the SSAC fully considered and acknowledged the minority's view concerning the value of Walton's knowledge and experience of working at Fort Polk, which gave it insight into the limited subcontractor and qualified labor pools. Id. at 8, see also AR, Exh. 32, Minority Report at 3. The SSAC expressly concluded that, even considering the minority's view, Walton's price premium could not be overcome. AR, Exh. 31, SSAC Report at 8. Walton has not persuaded us that this conclusion was unreasonable.

Third, under the summary schedule factor, Walton argues that the Corps improperly failed to consider the value of its proposed phased turnover, a feature that would permit soldiers to move in ahead of schedule. The record does not support this contention.

The SSAC listed this feature as one of Walton's unique strengths. In fact, it was one of the strengths the SSAC relied on to raise the SSEB's rating of the proposal from "acceptable" to "good" under this factor. AR, Exh. 31, SSAC Report at 3-4. Citing this strength, the SSAC found that early occupancy would be a "significant benefit," and an "additional advantage" to Walton's proposal. Id. at 6-7. The mere fact that the SSAC included this feature as one that could not be "quantified" does not mean that the Corps did not consider its value. To the contrary, the SSA specifically considered the minority's view on this issue, and determined that the premium associated with Walton's proposal could not be overcome. Id. at 8. Walton has not shown that this conclusion was unreasonable.

Unequal Treatment

Walton argues that the Corps unequally evaluated proposals under the organization and technical approach factor by assigning strengths to Sauer's proposal where

Walton's proposal offered the same features, and by improperly increasing Sauer's adjectival rating from "acceptable" to "good."

Again, the SSAC adjusted the SSEB's findings and ratings under this factor for both proposals. For Sauer, the SSAC identified three additional strengths, including its provision of [DELETED] and its provision of [DELETED], and increased the SSEB's rating from "acceptable" to "good." AR, Exh. 31, SSAC Report at 2.

Walton, which received an overall rating of "outstanding" under this factor, argues that its proposal also offered [DELETED] and [DELETED] but they were not assigned individual strengths. Instead, Walton notes, both features were rolled up with Walton's other proposed betterments into one strength. Thus, Walton asserts that the SSAC skewed the number of strengths in Sauer's proposal and improperly raised its rating under the factor.

As an initial matter, Walton's mathematical counting of strengths and betterments is misplaced. It is an agency's qualitative findings in connection with its evaluation of proposals that govern the reasonableness of an agency's assessment of offerors' proposals. Archer Western Contractors, Ltd., B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 5. Further, whether these features were considered as strengths or betterments, and whether Sauer's proposal was rated "acceptable" or "good," is immaterial provided that the Corps considered the qualitative merits of the proposal features. Here, the Corps clearly considered these features on the merits, and not on their characterization as strengths or betterments.

Walton's Energy Savings

Finally, Walton argues that the Corps improperly calculated the value of Walton's proposed energy savings as approximately \$[DELETED] million. The protester calculates the value as approximately \$[DELETED] million. On this record, after reviewing the parties' respective arguments and calculations, we have no basis to find the Corps' calculation unreasonable.

Offerors were required to design these buildings to reduce their energy consumption to a level at least 30 percent below the consumption of a baseline building. RFP Summary of Work at ¶ 5.2.2. One betterment in Walton's proposal was its offer to exceed the standards by [DELETED] percent, [DELETED] percent more than the requirement. AR, Exh. 16, Walton Proposal at ¶ 4.1.1.4. The firm did not estimate the cost savings of this betterment, but the Corps conducted its own calculation.⁴

⁴ Offerors were to clearly identify all items considered to be betterments. For each betterment, offerors were to explain why the proposed item was considered to be a betterment and "what benefit it provides to the Government." RFP Phase 2

(continued...)

As its baseline, the Corps used a 2010 energy consumption evaluation of the Fiscal Year (FY) 2008 VOLAR Barracks at Fort Polk. The agency chose this baseline because the barracks at issue there were designed and constructed by Walton under a prior contract with components similar to those Walton is proposing here. AR, Exh. 30, Declaration of SSAC Chair at ¶ 4. Using this baseline, which built in the RFP's requirement of a 30 percent energy savings, the Corps began its analysis by considering the energy costs for a 4-pod building that used a specified amount of energy per year. *Id.* at ¶ 5. Since Walton proposed an energy efficiency level [DELETED] percent below the industry standards, or an additional [DELETED] percent, the Corps based its further calculations on an energy reduction of [DELETED] percent in the same 4-pod building to approximate Walton's anticipated cost savings over the solicitation's requirements for the 37 pods required here over the life of the buildings.⁵ AR, Exh. 30, Declaration of SSAC Chair and Attachments.

Walton argues that the Corps' use of the 2010 energy evaluation fails to reflect the current increased costs of energy, and bases its calculations on a 2012 evaluation. As the Corps explains, it chose the 2010 evaluation as a baseline because it approximated Walton's approach here, and would most closely reflect the savings that could be anticipated. Further, both the Corps and the intervenor point out that Walton's more current baseline does not show that energy costs have increased. Walton's baseline is premised on a building that uses more energy than the building in the Corps' baseline and, thus, the resulting calculations show higher energy savings. The Corps notes that the price per energy unit in the Corps' calculation is actually higher than that in Walton's calculation, belying Walton's argument that energy costs have risen. In short, Walton has not shown that the Corps' baseline was unreasonable for the purposes of its calculation, and any error appears to have inured to Walton's benefit.

Walton also argues that the \$[DELETED] million savings calculated by the Corps is understated since the Corps failed to escalate the savings to account for energy cost increases that will occur over the next 20 years. The Corps argues that, if it had done so, the impact would have been limited since it would have also adjusted the projected savings to reflect their present value. Walton does not dispute the

(...continued)

Selection Procedures at ¶ 4.1.1.4. Strictly speaking, offerors were not required to quantify the value of their proposed betterments, and neither offeror did so. It is unclear why the Corps chose to calculate the value of Walton's energy saving betterment but not Sauer's energy saving betterments.

⁵ Walton argues that the Corps used the wrong methodology in calculating the value of its betterment. On this record, it appears that the premise of Walton's argument relies on a misreading of the agency's methodology, which we find reasonable.

Corps' position in this regard, and does not offer any calculation adjusted for net present value. We note that the intervenor's calculations, which use Walton's "best case scenario" and its escalation rate to adjust the projected savings to reflect their present value, approximate the \$[DELETED] million estimated by the Corps. Walton has given us no basis to conclude that the Corps' analysis of cost savings was improperly understated.

The protest is denied.

Susan A. Poling
General Counsel