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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: J.C.N. Construction Company, Inc.

File: B-293063

Date: January 9, 2004

Robert J. Symon, Esq., and Christyne K. Brennan, Esq., Spriggs & Hollingsworth, for the protester.

Charles R. Lucy, Esq., Holland & Hart, for MCC Construction, Inc.; Lewis R. Lear, Esq., City, Hayes & Dissette, for Patel Construction Company, Inc.; and Jeffrey E. Zachau for Zachau Construction, Inc., intervenors.

Richard G. Welsh, Esq., and Kenneth M. Homick, Esq., Naval Facilities Engineering Command, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Adjectival rating of protester's proposal as acceptable rather than very good under relevant past performance subfactor was unobjectionable, notwithstanding protester's favorable past performance record, where past record was not the sole basis for the evaluation, and agency reasonably identified weaknesses in other areas under the subfactor.

DECISION

J.C.N. Construction Company, Inc. protests the award of construction contracts to five other offerors under request for proposals (RFP) No. N62472-03-R-0041, issued by the Department of the Navy for construction services.¹ J.C.N. challenges the evaluation of its technical proposal.

We deny the protest.

¹ The five awardees were Diversified Technology Consultants (DTC), Haskell Company, MCC Construction Corporation, Patel Construction Company, Inc., and Zachau Construction, Inc.

The RFP sought proposals to provide new construction, alterations, renovations, maintenance, repairs, demolition, and design/build projects at federal installations in Maine, Vermont, and New Hampshire, plus a “seed project” consisting of construction of a military working dog kennel at Naval Air Station Brunswick. The RFP contemplated the award of up to five indefinite-delivery, indefinite-quantity construction contracts for a period of 5 years. Subsequent task orders were to be competed among the awardees. A significant number of projects were to include design/build tasks. Projects were anticipated to have an estimated cost of between \$25,000 and \$1.7 million, with a maximum of \$30 million for all projects ordered during the contract performance period.

Proposals were to be evaluated as exceptional (Except.), very good (VG), acceptable (Accept.) deficient but correctable, or unacceptable under four equally-weighted technical subfactors--relevant past performance, management approach, safety record, and commitment to small businesses--and price.² The combined technical subfactors were of equal importance to price. Award was to be made to the offerors whose proposals were most advantageous to the government. (Award of the seed project, not in issue here, was to be made to the firm among the awardees submitting the lowest price.)

Seventeen offerors, including J.C.N., submitted timely proposals, which were evaluated by a technical evaluation team (TET). After the initial evaluation round, J.C.N.’s proposal was ranked seventh of the nine included in the competitive range. The agency conducted discussions with the offerors, including J.C.N., and obtained revised proposals and final proposal revisions. The final evaluation results for all proposals, in order of technical merit, were as follows:

	Past Perf	Management	Safety	Small Bus.	Overall	Price
MCC	VG	Except.	VG	Except.	Except.	\$512,285
Haskell	VG	VG	Except.	Except.	Except.	\$558,200
Offeror 3	Except.	VG	Accept. +	Except.	Except.	[deleted]
Offeror 4	VG	VG	Except.	Accept.	VG	[deleted]
DTC	VG	Accept.	Accept. +	Except.	VG	\$543,217
Zachau	VG	Accept.	Except.	Accept.	VG	\$521,300
J.C.N.	Accept.	Accept.	VG	Accept.	Accept.	\$545,700
Offeror 1	VG	Accept.	Accept. -	Accept.	Accept.	[deleted]
Patel	Accept.	Accept.	Accept. -	Except.	Accept.	\$345,775

After review of the TET’s report and recommendations, the source selection board (SSB) recommended award to: Patel (proposal technically acceptable and lowest price), MCC (proposal ranked first technically and offered the second lowest price),

² Because future task orders would be competed on a technical and price basis, the only price submitted by offerors was for performing the seed project.

Zachau (sixth technically and third lowest price), DTC (fifth technically and fourth lowest price), and Haskell. Regarding Haskell, the agency reasoned that its proposal's technical superiority over J.C.N.'s (second versus seventh)—was worth Haskell's higher price. The source selection authority adopted the SSB's recommendation and awarded the five contracts. After receiving a debriefing, J.C.N. filed this protest challenging the evaluation of its own proposal.

J.C.N. asserts that the agency improperly evaluated its proposal under the relevant past performance subfactor, and that, had it been evaluated properly, J.C.N. would have been in line for one of the awards. According to J.C.N., its proposal rating of acceptable is inconsistent with its favorable past performance record, which included projects under which its performance was rated by references as exceptional (4 projects), very good (7), acceptable (4), satisfactory (1), and fair (1). In J.C.N.'s view, its proposal should have been rated very good.³

In reviewing a protest of an agency's proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2.

The evaluation here was unobjectionable. The record shows that J.C.N.'s favorable past performance record was considered by the TET, evaluated as very good, and noted as J.C.N.'s sole strength. Agency Report (AR), Tab 6, at 33. The TET further commented on J.C.N.'s extensive experience with government contracts in the New England area. Id. However, J.C.N.'s past performance record was not the sole basis for the evaluation under the past performance subfactor. The TET also evaluated each proposal on the basis of 19 other questions concerning each offeror's relevant past performance; J.C.N.'s proposal was evaluated as acceptable or not applicable under these questions.⁴ Id. at 33-34.

³ For the first time in its comments on the agency report, J.C.N. challenges its proposal rating under the management approach subfactor, and the agency's best value determination. These separate and independent allegations are untimely because they were raised more than 10 days after J.C.N. received the information on which they are based (in the agency report). 4 C.F.R. § 21.2(a)(2) (2003). In this regard, J.C.N. was granted an extension of time in which to file its comments and, as a result, the comments were received in our Office more than 10 days after J.C.N. received the report; such an extension does not suspend the requirement that new protest grounds based on the agency report be raised within 10 days after the report is received. Litton Sys., Inc., Data Sys. Div., B-262099, Nov. 17, 1995, 95-2 CPD ¶ 261 at 4 n.4.

⁴ By contrast, four of the awardees' proposals, all rated very good under this subfactor, received multiple ratings of exceptional and very good for the various
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J.C.N. asserts that the considerations under the additional questions should not have diminished the favorable rating for its past performance record. We find that the evaluation is supported by the record. For example, J.C.N.'s proposal was rated as acceptable under question 1, concerning the similarity of its past projects in magnitude and complexity to the seed project, and under question 10, regarding whether the past projects demonstrated the offeror's ability to successfully perform the RFP-identified projects, which range in value from \$25,000 to \$1.7 million. As to both questions, the TET observed that most of J.C.N.'s projects ranged from \$500,000 to well over \$1 million, and that few were valued at under \$500,000; on this basis, it rated the proposal as only acceptable under these questions. AR, Tab 6, at 33. J.C.N. asserts that any downgrading of its proposal on the basis of a lack of experience performing smaller projects is "nonsensical" (Comments at 6). However, performance of the solicited requirement involves the management of multiple projects ranging in value from \$25,000 to \$1.7 million dollars, and the RFP specifically advised offerors that their proposals would be evaluated based on performance of contracts within this range. RFP § 00160, IV(A). This being the case, there was nothing unreasonable in the agency's rating J.C.N. only acceptable for these questions based on the firm's limited small project experience. See C Constr. Co., Inc., B-291792 et al., Mar. 17, 2003, 2003 CPD ¶ 73 at 5 (where RFP provided for evaluation of ability to manage projects ranging from small to large, lower evaluation rating based on limited experience with small projects was reasonable).

J.C.N. similarly challenges its acceptable rating for question 5, under which offerors could obtain a "preference" for providing an example of completed design/build projects. RFP § 00160, IV(A). J.C.N.'s proposal was rated as acceptable under question 5, with the evaluators noting that J.C.N. had only submitted one design/build example. J.C.N. asserts that, since the RFP only called for one example, it was improper to rate its proposal only acceptable for including only one example. This argument is without merit. While the RFP provided a preference for firms that submitted a single example, the RFP's evaluation plan also provided for proposals meeting minimum requirements to be rated as acceptable and those exceeding the requirements to be rated very good or exceptional. RFP at 21. The agency rated the proposals of three of the contract awardees as exceptional or very good for question 5 based on multiple design/build examples. The proposals of [deleted], which, as did J.C.N., only submitted a single design/build example, were rated as acceptable. This evaluation was consistent with the evaluation plan. See KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447 at 9 (agency reasonably rated one proposal higher than another where evaluation plan provided for assigning proposals greater credit based on extent to which they exceeded

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questions. Patel, while rated acceptable under this subfactor, was rated as exceptional under another subfactor, and offered the lowest price. AR, Tab 9, at 9.

minimum requirements, and first proposal was superior to the other by this measure).

The protest is denied.

Anthony H. Gamboa
General Counsel