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Decision

Matter of: Randy Kinder Excavating, Inc.

File: B-423394

Date: June 25, 2025

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DIGEST

1. Protest challenging agency's evaluation of protester's proposal under solicitation's construction execution approach technical factor is denied where the agency reasonably determined the protester's proposal did not adequately address material solicitation requirements and was therefore not among the most highly rated proposals eligible to participate in phase two of the procurement.
 2. Protester's remaining protest grounds are dismissed where the protester cannot demonstrate any alleged agency error resulted in competitive prejudice.
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DECISION

Randy Kinder Excavating, Inc. (RKE), a small business of Dexter, Missouri, protests its elimination from the competition under request for proposals (RFP) No. W912EQ24R0001, issued by the Department of the Army, Army Corps of Engineers, for miscellaneous design-build civil works construction projects throughout the Memphis District area of responsibility.¹ The protester contends that the agency's evaluation of its proposal was unreasonable and not in accordance with the criteria established in the solicitation.

We deny the protest in part and dismiss it in part.

¹ The Memphis District encompasses six states: Arkansas, Illinois, Kentucky, Mississippi, Missouri, and Tennessee. RFP at 110.

BACKGROUND

The agency issued the RFP on May 9, 2024, using Federal Acquisition Regulation (FAR) part 15 procedures, with the competition set aside for small businesses. Contracting Officer Statement (COS) at 1. The RFP contemplated the award of one or more indefinite-delivery, indefinite-quantity (IDIQ) contracts² with fixed-price task orders and a period of performance consisting of a 12-month based period and four additional 12-month ordering periods. RFP at 19, 22.³ The RFP stated that the procurement would be conducted in two phases, and up to 10 of the most highly qualified offerors would be invited to submit phase two proposals following the phase one evaluation. *Id.* at 23.

The RFP stated that phase one proposals would be evaluated under the following three technical factors, listed in descending order of importance: past performance; construction execution approach; and organization management team. *Id.* at 24. Past performance was to be evaluated to assess the recency, relevancy, and quality of the performance and assigned one of the following confidence ratings: substantial, satisfactory, neutral, limited, or no confidence.⁴ *Id.* at 34-35. The remaining technical factors would be evaluated and assigned one of the following adjectival ratings: outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 35. The RFP stated:

Any proposal that receives less than an “Acceptable” rating in a technical factor or less than a “Satisfactory Confidence” past performance rating will be ineligible for award and will not participate in Phase Two of the solicitation. Based upon the ratings, the Government will select the most highly rated Offerors to participate in Phase Two of the solicitation.

Id. at 34.

The agency evaluated 21 phase one proposals received in response to the solicitation, including a proposal from RKE. AR, Tab 13, Down-Select Decision Document at 4-5. RKE received a past performance rating of satisfactory confidence with a relevancy rating of somewhat relevant. *Id.* at 5. RKE was rated as marginal under the construction execution approach factor, and acceptable under the organization

² Elsewhere, the RFP identified “a target of up to [five IDIQ contracts] awarded to Small Businesses.” Agency Report (AR), Tab 4, RFP at 23.

³ The RFP was amended four times. Citations to the RFP in this decision are to the final conformed RFP provided by the agency as tab 4. Additionally, all page citations in this decision are to Adobe Acrobat PDF page numbers.

⁴ The RFP defined recent as “completed, or currently in progress with at least 50 [percent] construction completed, within the past ten (10) years as of the date the solicitation was issued.” RFP at 29. Additionally, relevancy would be assessed for scope, magnitude of effort, and complexity, and assigned the following ratings: very relevant, relevant, somewhat relevant, or not relevant. *Id.* at 34.

management team factor. *Id.* The source selection authority (SSA) concurred with all the evaluation findings. Because of its marginal rating under the construction execution factor, RKE's proposal was not included amongst the ten most highly qualified proposals invited to phase two. *Id.* at 5, 17.

On March 10, 2025, RKE received a debriefing that explained the agency's rationale for the elimination of its proposal from phase two of the procurement. AR, Tab 14, RKE Debriefing. This protest followed.

DISCUSSION

The protester argues that the agency unreasonably and irrationally eliminated RKE from phase two of the competition. According to the protester, the ratings assigned by the agency are unreasonable given RKE's capabilities and the information provided in its proposal. Protest at 1. The protester challenges its evaluation under each of the phase one evaluation factors, including the ratings assigned and all weaknesses, significant weaknesses, and a deficiency identified by the evaluators. *Id.* at 10-33.

At the outset, we note that in reviewing protests challenging the evaluation of an offeror's proposal, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable, and in accordance with applicable procurement statutes and regulations. *Patriot Def. Grp., LLC*, B-418720.3, Aug. 5, 2020, 2020 CPD ¶ 265 at 7. A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. *A-P-T Research, Inc.*, B-414825, B-414825.2, Sept. 27, 2017, 2017 CPD ¶ 337 at 4.

For the reasons explained below, we find no basis on which to sustain the protest. We find that the agency reasonably assigned a rating of marginal to the protester's proposal under the construction execution approach factor and that, as a result, the protester cannot demonstrate competitive prejudice with regard to its remaining challenges. While our decision does not address every variation of every argument raised by the protester, our Office has considered them all and find none afford a basis on which to sustain the protest.

Evaluation of RKE's Construction Execution Approach

The protester argues that its proposal addressed all the minimum requirements to be rated acceptable rather than marginal under the construction execution approach factor, and the agency applied unstated evaluation criteria. Protest at 15-16. Specifically, the protester challenges a deficiency, three significant weaknesses, and four weaknesses identified by the agency, arguing the evaluation findings were flawed because the RFP did not require the level of detail the agency evaluated as missing from RKE's proposal. Alternatively, the protester argues that the agency failed to fully consider the information that RKE provided in its proposal. *Id.* at 15-27.

The agency argues that its evaluation was reasonable and consistent with the evaluation criteria, and that it properly rated RKE's proposal as marginal and deemed it ineligible for award. Memorandum of Law (MOL) at 3-4. In particular, the agency argues that the RFP emphasized the importance of experience performing preconstruction services, which RKE's proposal failed to address, and that all the challenged findings validly stemmed from a common issue--a severe lack of detail in RKE's proposal. *Id.* at 4-10. We agree with the agency.

As relevant to the protester's arguments, regarding construction execution approach, section 6.1.1 of the RFP required that offerors provide a narrative approach to address the following eight challenges:

- a) Understanding of the process to adequately address and anticipate both the benefits and risks associated with Design-Build projects for U.S. Army Corps of Engineers or other [Department of Defense] component.
- b) Discussion on the utilization of alternative delivery methods and preconstruction services as identified in paragraph 5.2.2 to include a comparison of differences between the public and private sector constraints.^[5]
- c) Sourcing and management of major materials (e.g., borrow material, steel, concrete, etc.) and mitigation of major supply chain issues.
- d) Obtaining access to work locations.
- e) Coordination with local property owners and stakeholders.
- f) Compliance with contractual, administrative, and other requirements.
- g) Hiring qualified laborers and maintaining a qualified workforce.
- h) Coordination with multiple contractors on site.

RFP at 30-31. The RFP limited narrative responses to 10 pages. *Id.* Section 6.1.2 of the RFP stated the agency would evaluate the narrative response provided in the proposal as follows:

- a) Offerors who address each of the submission requirements as stated above will be considered acceptable.

⁵ Paragraph 5.2.2 of the RFP referred to a number of different preconstruction services, including cost estimation, evaluation of design documents for constructability, recommendations on construction feasibility, and value engineering services, among other things. RFP at 29.

b) Evidence of understanding and mitigating the construction execution challenges specific to Civil Works Program through traditional Design-Bid-Build and Design-Build processes may be considered a strength.

c) Offerors should demonstrate understanding and experience in the execution of preconstruction services. An acceptable discussion would identify experience performing preconstruction services, how preconstruction services influenced project success, and how preconstruction services mitigated relevant risks and benefited the owner and/or stakeholders.

d) Approaches that provided innovative means and/or methods for operating in unforeseen conditions including, but not limited to, emergencies, qualified labor and resource shortages, real estate coordination, restricted access, supply chain demands, on site coordination, environmental compliance issues, and long lead item procurement process may be considered a strength.

Id. at 31. The RFP stated that the narratives should substantiate the offeror's construction approach by relating technical solutions and project execution challenges, and that the government would evaluate "the offeror's technical approach on the basis of its breadth, its depth, and its relevance to the work" required by the RFP. *Id.*

The evaluators identified the following deficiency in RKE's proposal under the construction execution approach factor: "Instead of listing how the work would be achieved, the Offeror repeated what was in the RFP as a response to Section 6.1.1. The SSEB [Source Selection Evaluation Board] noted that the offeror's proposal occasionally reiterates or promises to accomplish the requirements of the solicitation and does not provide adequate details to demonstrate understanding of the requirements." AR, Tab 11, Consensus Evaluation Worksheet at 2. This deficiency was in addition to three significant weaknesses and four weaknesses, each of which to varying degrees identify RKE's failure to discuss or adequately detail its approach to various aspects of the requirement. For example, one significant weakness stated: "The importance and usage of preconstruction services (as specified in Section 6.1.2.C) is not discussed within this proposal." *Id.*

The evaluators provided the following rationale for assigning a marginal rating:

Overall, the construction execution approach proposed by [RKE] does not demonstrate an adequate approach and understanding of the requirements, and risk of unsuccessful performance is high. . . . [RKE] does not demonstrate that they have a thorough approach to construction execution. The information provided does not provide sufficient detail when describing their experience or knowledge of design-build and the important elements necessary for success as listed in this solicitation. [RFP] Section 6.1.2.C states that the offeror should demonstrate

understanding and experience in execution of preconstruction services. The application of preconstruction services is one of the main benefits of the Design-Build process and the proposal “has not demonstrated an adequate understanding of the requirements” by leaving out preconstruction services. . . . The proposal indicates a marginal approach and understanding of the requirements of the solicitation such that the SSEB is confident that the risk of unsuccessful performance is high.

Id. The agency argues that the evaluators reasonably assigned a rating of marginal to RKE’s construction execution approach, and in accordance with the RFP its proposal was properly deemed ineligible for award. MOL at 3-4. The agency explains that the protester’s proposal did not include an adequate discussion of preconstruction services, including cost estimating, evaluation of design documents for constructability, identification of construction related problems or errors in design, recommendations on construction feasibility, and value engineering services, among other things required by the solicitation. *Id.* at 5.

In a negotiated procurement, it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Probity, Inc.*, B-420210, Dec. 21, 2021, 2023 CPD ¶ 38 at 3. If a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. See *Diversified Servs. Grp., Inc.*, B-418375.2, May 28, 2020, 2020 CPD ¶ 207 at 4.

On this record, we find that the protester has not demonstrated that the agency’s evaluation was flawed. The protester argues that its proposal did indeed address preconstruction services, along with the utilization of alternate delivery methods, as required by the RFP. Protest at 21-22 (citing AR, Tab 9, RKE Proposal at 69-70). In support of its position, RKE points to the following paragraph of its proposal under the heading “Construction Manager as Constructor (CMC) and Construction Manager at Risk (CMAR),” which states as follows:

A defining characteristic of a Construction Manager [as Constructor] (CMC) contract (of any type) is the timing of their involvement in the project. In the traditional Design-Bid-Build delivery method, the construction entity is not involved until the “Bid” portion of the project. Design occurs without the involvement of a construction entity. When a construction manager is involved by contract, they are involved in **“preconstruction”** activities. Therefore, during design, they can be contracted to offer schedule, budget, and constructability input or feedback to the owner. This early involvement can be beneficial if the owner and/or design firm do not have strong construction experience to draw upon internally.

AR, Tab 9, RKE Proposal at 69 (emphasis added).

The paragraph quoted above, however, is the only place with any mention of preconstruction, and the protester has not cited to any other portion of its proposal to demonstrate that it provided “[a]n acceptable discussion [identifying] experience performing preconstruction services, how preconstruction services influenced project success, and how preconstruction services mitigated relevant risks and benefited the owner and/or stakeholders,” as required by the RFP. See RFP at 31. Instead, the remaining three paragraphs in this section of the proposal provide a general discussion of the relationships under a CMC and CMAR approach but fail to provide specific experience with a project in which RKE performed preconstruction services, their influence on the success of the project, or how the services mitigated risks and provided benefits to owners of and stakeholders of the project. See *generally* AR, Tab 9, RKE Proposal at 69-70. We also note RKE’s proposal provided less than four full pages of narrative response, less than half of the 10 pages the RFP permitted for offerors to explain their construction execution approach. *Id.* at 68-71.

After review of the agency report, RKE cites to additional sections of its proposal and argues that in addition to addressing preconstruction services generally, its proposal also addressed the preconstruction services of cost estimating, constructability, identification of construction-related problems, and value engineering.⁶ See Comments at 3-6. The protester argues that “[a]t best, [the agency] can suggest that that portion of the proposal focused too heavily on alternative delivery methods to the detriment of preconstruction services . . . and fails to understand the relationship between alternative delivery methods and preconstruction services.” *Id.* at 4. However, as noted above, while the RFP required offerors to address their utilization of alternative delivery methods and preconstruction services, the evaluation criteria emphasized that offerors should “demonstrate understanding and experience in the execution of preconstruction services.” RFP at 31. RKE failed to heed this directive at the risk of an unfavorable evaluation. *Diversified Servs. Grp., Inc., supra*. Moreover, the language from RKE’s proposal that it cites as examples of where it addressed preconstruction services provides limited detail and instead often simply restates solicitation requirements, which is why the agency assessed the deficiency under this factor.

To the extent the protester now seeks to more clearly articulate the information provided in its proposal to address preconstruction services, our review is limited to RKE’s proposal as submitted. In this regard, contracting agencies are not responsible for evaluating information that is not included in a quotation or proposal. *Patriot Def. Grp., LLC, supra* at 9. It was incumbent upon RKE to submit a clear and adequate proposal for evaluation and its explanation in comments filed in a post-award protest provides no

⁶ For example, the protester contends its proposal discussed cost estimating where it stated that it produces reports that “at a minimum *produce the basis for future design, site concepts, and well thought out construction cost estimates*,” and addressed value engineering where it stated that having the principal contractor engaged early “allows the contractor to have an *input in the design of the scheme and suggest value engineering changes*.” Comments at 4.

basis to question the agency's contemporaneous evaluation of the proposal as submitted.

The protester also argues that the lack of detail the agency claims was absent in its proposal is an unstated evaluation criterion and otherwise insufficient to support a rating of marginal. Protest at 15-18. The crux of RKE's argument is that "according to the RFP, merely addressing the eight challenges would result in an Acceptable rating. There was no minimum detail threshold specified to achieve such." *Id.* at 16; *see also* Comments at 7 ("[T]his supposed issue with details was unsupported by the RFP criteria when the RFP merely said that offerors must 'address' each of the eight challenges.").

Here, the RFP defined a rating of marginal as a proposal that "has not demonstrated an adequate approach and understanding of the requirements, and/or risk of unsuccessful performance is high." RFP at 35. As noted, the marginal rating assigned to RKE was the result of a deficiency, three significant weaknesses, and four weaknesses identified by the evaluators, all of which stemmed from the lack of information provided in RKE's proposal. AR, Tab 11, RKE Consensus Evaluation Worksheet at 2. For example, the four weaknesses stated:

The offeror identifies the necessity for coordination efforts for access to work locations but *gives very little detail* as to what that looks like.

The offeror *does not include any details* about coordination with owners or stakeholders and simply states they will coordinate when necessary.

The offeror describes how they will comply with contractual, administrative, and regulatory requirements by simply referencing their success in past performance and *they do not include any details* of how this success is accomplished.

The offeror *does not address specifics* on how to mitigate problems when dealing with emergencies, qualified labor and resource shortages, restricted access, supply chain demands, or on-site coordination.

Id. (emphasis added). The RFP defined a weakness as a flaw in the proposal that increases the risk of unsuccessful performance. RFP at 35. The RFP further defined a deficiency as "a material failure of a proposal to meet a government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." *Id.*

To the extent the protester's argument is that mere mention of each of the eight challenges was enough to earn a rating of acceptable, we do not agree. Although the RFP stated that "offerors who address each of the submission requirements as stated above will be considered acceptable," the RFP also stated that the agency would evaluate construction execution approach "on the basis of its breadth, its depth, and its

relevance to the work that will be required in the Solicitation.” RFP at 31. The RFP also cautioned offerors that to evaluate proposals effectively and equitably, the agency had to receive “information containing sufficient detail to allow review and evaluation by the [g]overnment.” *Id.* at 22. Despite its claims that the agency ignored information in its proposal, the protester has not cited anything in its proposal to demonstrate that any of the weaknesses, significant weaknesses, and deficiency identified by the agency are unreasonable. Given the terms of the solicitation, which expressly contemplated evaluating the breadth, depth, and detail of information provided by an offeror, we find no basis to conclude that the rating of marginal is unreasonable, where the protester’s proposal did not discuss certain RFP requirements like preconstruction services, and therefore did not demonstrate an “adequate approach and understanding of the requirements.” Accordingly, we deny these allegations.

Prejudice

Based on our resolution of the protest grounds above, we find that RKE cannot demonstrate competitive prejudice with respect to any of its remaining protest grounds. Competitive prejudice is an essential element of a viable protest. We will sustain a protest only where the protester demonstrates that but for the agency’s error, it would have had a substantial chance of receiving the award. *E.g., Technica LLC*, B-417177 *et al.*, Mar. 21, 2019, 2019 CPD ¶ 125 at 5-7. Where the record establishes no possibility of competitive prejudice, we will not sustain the protest even if a defect in the procurement is found. *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

Here, RKE cannot demonstrate competitive prejudice with respect to any of its remaining protest grounds. This includes the protester’s challenges to its evaluation under the past performance and organization management team factors. Under the express terms of the RFP, a proposal that received less than an acceptable rating under a technical factor was ineligible to participate in phase two of the solicitation. RFP at 34. As explained above, the agency reasonably assigned RKE’s proposal a rating of marginal under the construction execution approach factor, thus making RKE’s proposal ineligible for phase two of the competition and award even if it should have received higher ratings under the other factors. Because RKE cannot demonstrate competitive prejudice with respect to its remaining protest grounds, they are dismissed. *See The Mission Essential Grp., LLC*, B-423053, B-423053.2, Jan. 15, 2025, 2025 CPD ¶ 39 at 21-22 (dismissing protester’s remaining protest grounds where the protester could not demonstrate competitive prejudice after our Office found an agency reasonably determined the protester’s proposal was unacceptable).

The protest is denied in part and dismissed in part.

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General Counsel