



Decision

Matter of: Granite Construction Company

File: B-400706

Date: January 14, 2009

Brian Dowd for the protester.

James H. Roberts III, Esq., and Carrol H. Kinsey Jr., Esq., Van Scoyoc Kelly PLLC, for Baldi Brothers, Inc., the intervenor.

Bryan C. Naquin, Esq., and Paul Clay, Esq., Department of the Navy, Naval Facilities Engineering Command, for the agency.

Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of protester's technical proposal as unacceptable is denied where record demonstrates agency reasonably concluded that protester's offered small business subcontracting plan did not meet the solicitation's subcontracting requirements or provide sufficient rationale supporting its lower goals; protester's arguments amount to mere disagreement with agency's conclusions.

DECISION

Granite Construction Company (Granite) of Sacramento, California, protests the award of a contract to Baldi Brothers, Inc., of Beaumont, California, under request for proposals (RFP) No. N62473-08-R-2206, issued by the Department of the Navy, Naval Facilities Engineering Command (NAVFAC) for runway repairs at Travis Air Force Base (AFB) in California. The protester argues that the agency improperly evaluated its proposal as technically unacceptable.¹

¹ The protester was not represented by counsel and, therefore, did not have access to nonpublic information pursuant to the terms of a protective order. Accordingly, our discussion in this decision is necessarily general in nature to avoid reference to nonpublic information. Our conclusions, however, are based on our review of the entire record, including nonpublic information.

We deny the protest.

The RFP, issued on an unrestricted basis, sought proposals for a contractor to furnish all labor, approved materials, equipment, transportation, supervision, and incidental related work to provide runway repairs and the construction of a landing zone at Travis AFB. RFP at 45. The RFP contemplated the award of a fixed-price construction contract to the offeror submitting the lowest-priced, technically acceptable proposal. Proposals were to be evaluated on the basis of five evaluation factors: (1) past performance, (2) experience, (3) safety, (4) small business utilization, and (5) price. Id. at 80-87. Offerors were advised that an unacceptable rating under any non-price factor would render a technical proposal's overall rating unacceptable;² only those technical proposals found acceptable would be evaluated under the price factor. Id. at 89.

Of relevance to this protest, is the RFP's evaluation scheme under the small business utilization factor. Under this factor, offerors were to identify the services to be subcontracted, and to provide the dollar values and percentage goals (expressed in terms of total planned subcontracting dollars) applicable to the contract. Offerors also were required to provide supporting rationale for any proposed subcontracting goals that were less than the solicitation's minimum participation goals. RFP at 85. Proposals were to be evaluated on the levels of small business participation proposed, and on whether those proposed levels met the solicitation's goals. The offeror, whose technically-acceptable proposal was the lowest priced, would "be required to submit an approved [plan] prior to award, which reflects the goals as stated in [its] proposal." Id.

² The solicitation defined an acceptable rating as:

The [proposal] has demonstrated a minimally acceptable approach that is considered to meet the stated requirements. There is little risk that this proposer would fail to meet the quantity, quality, and schedule requirements.

RFP at 89. An unacceptable rating was defined as:

The proposal fails to meet the stated requirements. The submission lacks essential information or is conflicting and unproductive. There is no reasonable likelihood of success, deficiencies are so major or extensive that a major revision or complete rewrite of the proposal would be necessary.

Id.

The goals for participation by small businesses were identified as follows, and were calculated as a percentage of all subcontracted dollars:

All Small Businesses	76.07%
Woman-Owned Small Business (WOSB)	14.37%
Small Disadvantaged Business (SDB)	16.03%
Hub-Zone Small Businesses (HUBZone)	3%
Veteran-Owned Small Business (VOSB)	3%
Service Disabled Veteran Owned Small Business (SDVOSB)	3%

RFP at 88. Offerors also were required to complete a small business subcontracting plan schedule, included in the solicitation as exhibit D, to furnish supporting detail regarding their proposed small business participation in subcontracting. *Id.* at 97-102.

Initial proposals were received from six offerors by the specified closing date. The agency evaluated these proposals and, as relevant here, Granite’s proposal was rated unacceptable because the firm proposed to subcontract 23.43 percent of the total work, of which only 2.52 percent would be subcontracted to small business concerns. Contracting Officer Statement, at 7. The contracting officer established a competitive range comprised of all six proposals and conducted discussions with each offeror. In one of the written discussion questions provided to Granite, concerning its small business subcontracting plan, the agency notified Granite that its proposed subcontracting goals did not meet the minimum small business participation goals required by the solicitation. Agency Report (AR) exh. 9, Discussion Letter, at 3.

Following discussions, final proposal revisions (FPR) were requested, received, and evaluated. The agency found that Granite’s revised subcontracting plan did not meet the total small business subcontracting requirement, noting that the proposed percentages, based on the total subcontracted amount, were still “significantly lower than those identified in the RFP.” AR exh. 10, Post-Negotiation Business Clearance, at 7. The agency further noted that in its FPR, the protester did not provide supporting rationale for its proposed total small business percentage and for the lower HUBZone, WOSB, SDB, VOSB, and SDVOSB percentages. *Id.* As a result, Granite’s FPR was evaluated as technically unacceptable overall and award was made to Baldi as the lowest-priced technically acceptable offeror. AR exh. 10, Post-Negotiation Business Clearance, at 13. Following a debriefing, and prior to a decision on Granite’s agency-level protest, this protest was filed with our Office.

Granite argues that the agency's conclusion that its subcontracting plan warranted an unacceptable rating was improper. Specifically, while acknowledging that its proposed subcontracting goals did not meet the stated solicitation requirements, Granite maintains that its proposal adequately explained its efforts to subcontract with qualified small business subcontractors.³ Protester's Comments at 4-6.

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 *et al.*, Oct. 24, 2005, 2005 CPD ¶ 197 at 6. In response to the protest, the agency provided the detailed record of its evaluation and selection decision and our review confirms that the agency reasonably determined Granite's proposal to be technically unacceptable.

In a nutshell, the dispute between the protester and the agency arises over the method used to calculate an offeror's compliance with the solicitation's small business subcontracting goals. Simply put, the solicitation established goals for various types of small businesses, which were stated in terms of a percentage of total subcontracted dollars. In calculating compliance with the stated goals, Granite first subtracts the value of its major electrical subcontractor, which is a large business, and then calculates its compliance with the solicitation's goals. In contrast, the agency includes the value of this significant subcontract, and calculates the goals using the larger total.

Granite's approach of deducting the value of the work to be provided by its large business electrical subcontractor before calculating its compliance with the RFP goals using the much smaller resulting number, means that Granite erred in two ways. First, its claimed percentages of the amount of total subcontracted dollars going to the various categories of small businesses were significantly overstated because they are not based on the total amount of Granite's subcontracting dollars. In addition, because Granite overstated the resulting percentages, it failed to take the opportunity to explain why it could not meet the solicitation-required minimums. Finally, even if the agency wanted to accept Granite's representation about why it could not meet the solicitation's overall small business subcontracting goal—i.e.,

³ To the extent Granite protests that the solicitation's experience requirements preclude small businesses from performing both electrical and paving work, its post-award protest is untimely and will not be considered. Protester's Comments at 2-3. Our Bid Protest Regulations require that protests based on alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals, must be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2008).

76.07 percent of subcontracted dollars--Granite's FPR says nothing about the other applicable small business goals--i.e., the goals applicable to WOSBs, SDBs, HUBZone small businesses, VOSBs, or SDVOSBs. In short, Granite's proposed approach to subcontracting does not do either of the two things this solicitation required with respect to these other categories of small businesses--i.e., either meet the applicable goals, or explain why the goals could not be met.

To the extent that Granite asserts that its subcontracting plan was a draft plan that could have been revised prior to award if the agency was not satisfied, we disagree. As quoted previously, the RFP clearly indicates that the agency would evaluate an offeror's small business subcontracting plan as part of the non-price evaluation and would then evaluate further only those proposals rated acceptable under each non-price factor. Consistent with that evaluation scheme, the agency would again review and approve the subcontracting plan of the technically acceptable offeror whose proposal was deemed the lowest-priced. This approach does not mean the agency acted improperly when it decided not to accept a proposal that did not address the requirements of the solicitation and give Granite a third opportunity to address the situation (since this matter was clearly raised during discussions) after the selection decision.

Under the circumstances here, we think the agency acted reasonably when it concluded that Granite had not responded adequately to the small business subcontracting requirements set forth in this solicitation.

The protest is denied.

Gary L. Kepplinger
General Counsel