



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: W.G. Yates & Sons Construction Company

File: B-400753.3

Date: March 25, 2009

James F. Nagle, Esq., and Jonathan A. DeMella, Esq., Oles Morrison Rinker & Baker LLP, for the protester.

Kenneth B. Weckstein, Esq., Michael D. Maloney, Esq., and Pamela A. Reynolds, Esq., Brown Rudnick LLP, for Walton Construction Company, LLC, an intervenor.

Charles L. Webster III, Esq., Corps of Engineers, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging contracting agency's evaluation of protester's proposal is denied where agency's evaluation was reasonable and in accordance with the solicitation evaluation criteria.

2. Price/technical tradeoff was reasonable where source selection official identified technical distinctions between competing proposals and specifically determined that higher technically rated proposal represented best value despite higher price.

DECISION

W.G. Yates & Sons Construction Company, of Oxford, Mississippi, protests the award of a contract to Walton Construction Company, LLC, of Harahan, Louisiana, under request for proposals (RFP) No. W9162G-08-R-0192, issued by the Corps of Engineers, Department of the Army, for the design and construction of military barracks and central energy plants at Fort Polk, Louisiana. Yates argues that the agency's evaluation of its proposal and subsequent source selection decision were improper.

We deny the protest.

BACKGROUND

The RFP, issued on June 26, 2008, contemplated the award of a fixed-price contract for the design and construction (renovation) of sixteen military barracks buildings and four central energy plants for the Fort Polk military installation. The solicitation established four evaluation factors: design technical; performance capability; proposed contract duration and summary schedule (contract duration); and price. The RFP established that the nonprice factors, when combined, were significantly more important than price. Award was to be made to the responsible offeror whose proposal was determined to be the best value to the government, all factors considered. RFP amend. 0004, at 19-22.

Yates and Walton submitted proposals by the August 22 closing date. An agency source selection evaluation board (SSEB) evaluated offerors' initial proposals. The agency held both written and oral discussions with the offerors. Both Yates and Walton submitted final proposal revisions (FPR) by the September 23 closing date. The SSEB completed its evaluation of offerors' FPRs, with the final ratings as follows:

Factor	Yates	Walton
Design Technical	Acceptable	Good
Performance Capability	Acceptable/Moderate Risk	Good/Low Risk
Contract Duration	Acceptable	Good
Overall	Acceptable/Moderate Risk	Good/Low Risk
Price	\$209,980,000	\$230,660,600

Agency Report (AR), Tab 25, Final SSEB Report, at 4, 10.

On September 30, the source selection authority (SSA) determined that Walton's higher technically rated, higher-priced proposal represented the best value to the agency. *Id.*, Tab 26, Source Selection Decision, at 4-5.

On October 15, Yates filed a protest with our Office asserting that the agency's evaluation of offerors' proposals was unreasonable and the best value tradeoff determination improper. After developing the record, the GAO attorney responsible for the protest conducted an "outcome prediction" alternative dispute resolution (ADR) telephone conference,¹ and indicated that certain of the protest issues likely

¹ In an "outcome prediction" ADR, the GAO attorney handling the case convenes all of the participating parties, usually by teleconference, and advises them of what he or she believes the likely outcome will be and the reasons for that belief.

would be sustained while the remaining issues likely would be denied.² Based on the GAO attorney's assessment of the issues, the Corps of Engineers decided to take corrective action, and our Office dismissed the protest as academic on January 9, 2009.

On January 16, the Corps of Engineers announced that Walton's proposal again had been determined to be the best value to the government: the SSA again concluded that Walton's technical superiority outweighed Yates' lower price. On January 26, Yates filed this protest.³

DISCUSSION

Yates' protest essentially raises two issues. First, the protester argues that the Corps of Engineers' evaluation of its proposal as to the design technical factor was unreasonable. Second, Yates contends that the agency's best value tradeoff determination was improper. Although we do not specifically address all of Yates' issues and arguments, we have fully considered all of them and find they provide no basis on which to sustain the protest.⁴

Evaluation of Yates' Design Technical Proposal

Yates first protests the agency's evaluation of its design technical proposal. Specifically, the protester claims that the three weaknesses assigned by the SSEB to its proposal under this evaluation factor were improper. Yates also argues that the

² Further, during the development of the protest, GAO dismissed various issues as factually and legally insufficient (e.g., Yates' challenge that the agency's evaluation failed to follow the procedures set forth in its internal source selection plan) or untimely. GAO also considered other issues initially raised by Yates to have been abandoned because they were not addressed in the protester's comments to the agency report on these issues (e.g., Yates' challenge to the agency's evaluation of its proposal under the performance capability and contract duration factors). GAO Email to Parties, Dec. 23, 2008.

³ We granted the Corps of Engineers' request to handle this protest under the express option provisions of our Bid Protest Regulations, 4 C.F.R. § 21.10 (2008), which the agency stated will allow it to meet its goal of alleviating the shortage of available housing for soldiers returning from overseas.

⁴ On March 19, after developing the record, the GAO attorney responsible for the protest again conducted an outcome prediction ADR conference and provided the parties with full detail regarding the merits of the issues raised by Yates as well as the protest's likely outcome. Notwithstanding the predicted outcome, the protester elected not to withdraw its protest.

agency's determination that it did not fully understand the "progressive collapse" option line items was unreasonable.⁵ The protester maintains that had the Corps of Engineers properly evaluated its proposal, it would have received a higher rating equal to that received by Walton.

The RFP instructed offerors generally to ensure that their proposals contained, among other things, full and complete information. RFP amend. 0004, at 13. Further, with regard to the design technical factor, the solicitation stated:

The design-technical factor consists of conceptual level presentation drawings, technical approach narratives and information regarding material and system quality. [An offeror's proposal] must clearly define the proposed scope and quality levels that the design-build team is offering to the Government in enough detail for the Government and the Offeror to mutually understand whether or not the proposal meets or exceeds the minimum solicitation requirements.

Statement of Work (SOW) § 5.1.

The SSEB found three strengths and three weaknesses in Yates' FPR as to the design technical factor, thereby resulting in the assigned adjectival rating of "acceptable." Specifically, the evaluators found that: (1) the drawing details provided for the wall section and exterior insulation and finish systems (EIFS) did not provide adequate information to determine compliance with the RFP requirements; (2) the Leadership in Energy and Environmental Design (LEED) green building rating system worksheets did not provide project-specific information to support the points required to achieve the required LEED "silver" rating;⁶ and (3) the proposed use of

⁵ Progressive collapse refers to a situation where the failure of a building's primary structural element results in the failure of adjoining structural elements. The RFP required that when a building's renovation cost totaled more than 50 percent of its replacement cost, the contractor was required to perform various measures to strengthen the building's structure against progressive collapse. The additional costs associated with the structural strengthening of a building were to be priced under the solicitation's progressive collapse option line items.

⁶ According to the U.S. Green Building Council, the LEED green building rating system is a set of certification standards established by specialized criteria for particular types of projects, such as commercial interiors ("LEED-CI"), and new construction ("LEED-NC"). Current LEED certification "rating levels" range from "certified" through "silver," "gold," and "platinum," based on a point-scoring system. U.S. Green Building Council, "What is LEED?", <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=222> (visited Mar. 23, 2009). Relevant to the protest here, a LEED "silver" rating required a total of 33-38 points.

concrete whitetopping as an alternate design for parking lot repairs was not a desirable process and would not provide the desired results.⁷ AR, Tab 25, Final SSEB Report, at 7. The SSA, in his source selection decision, included additional details for the weaknesses found in Yates' design technical proposal. Id., Tab 33, Revised Source Selection Decision, at 4-5.

In reviewing an agency's evaluation, we will not reevaluate offerors' proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation reasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. Again, although we do not here specifically address all of Yates' arguments, we have fully considered each of them and find that they provide no basis on which to sustain the protest.

For example, Yates contests the agency's determination that its proposal did not provide sufficient information to demonstrate achievement of the required LEED "silver" rating. The RFP required offerors' proposals to acknowledge the LEED "silver" rating requirement and to demonstrate how the requirement would be achieved for each of the three barracks types using a LEED-NC version 2.2 project checklist. SOW § 5.6.1. Yates' original proposal was not barracks-type specific, and also did not indicate achievement of a LEED "silver" rating. AR, Tab 15, Yates' Initial Proposal, Vol. I, § E at 14.

As a result of discussions, Yates' submitted LEED-NC project checklists that were barracks-type specific and which indicated achievement of the required "silver" rating (i.e., 34 points for two barracks types, and 33 points for the third barracks type). Id., Tab 21, Yates' Discussion Responses, at 4-13. On each of the LEED project checklists submitted, Yates claimed 2 points for the category "Innovation in Design: Provide Specific Title." It is these 2 points that determine whether Yates achieves the required LEED "silver" rating (i.e., at least 33 points). Further, while most of the categories of the LEED checklist are detailed and require no further information, the "innovation in design" category requires the offeror to identify those specific design innovation aspects that qualify it for the points claimed.

Yates' proposal, however, did not state what "innovation in design" qualified it for the points claimed. Specifically, none of the offeror's LEED project checklists provided any specific information in support of the claimed "innovation in design" points; instead, Yates left the instructional language on the project checklist

⁷ The SSEB also concluded that Yates' extremely low prices for the progressive collapse line item options indicated some lack of technical understanding of the RFP requirements. AR, Tab 25, Final SSEB Report, at 1-3, 9-10.

(“provide specific title”) unchanged. Additionally, nowhere else in its proposal did Yates explain why it was entitled to the claimed “innovation in design” LEED points. Yates’ original proposal asserted it had been the company’s experience that the points claimed were “readily achievable” without providing any additional detail as to how. Id., Tab 15, Yates’ Initial Proposal, Vol. 1, § E, at 14. Similarly, Yates’ discussion responses also did not explain what innovation in design supported the LEED points claimed. Id., Tab 21, Yates’ Discussion Responses, at 4, 19.

The agency found that one of Yates’ design technical weaknesses was that the offeror’s LEED project worksheets did not provide project specific information to support the points required to achieve the required LEED “silver” rating. The SSA found, for example, that for each barracks type Yates claimed 2 points for “innovation in design” but failed to provide any description for the points claimed. Id., Tab 33, Revised Source Selection Decision, at 5.

We find the agency’s evaluation of Yates’ proposal here to be reasonable. It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows for a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Here, as detailed above, Yates failed to provide sufficient information to demonstrate that its design qualified for the required LEED “silver” rating. Yates essentially left blank the area of the LEED project checklist that required the offeror to provide detail in support of the points claimed for “innovation in design,” and no other part of the offeror’s proposal remedied this deficiency. Given the lack of information provided by Yates in support of the claimed LEED “silver” rating, we find the agency’s determination to be reasonable.

Yates also challenges the agency’s assignment of a weakness to its proposed use of concrete whitetopping for parking lot repairs.⁸ The protester maintains that because whitetopping was only its alternate design, and the agency had no concerns with the primary method proposed, no weakness should have been assessed. We disagree.

The RFP required offerors to provide, among other things, a technical approach narrative for each identified task, including “Milling/Overlaying/Asphaltic Surface Treatment of Existing Parking Lots.” SOW § 5.5.1.1. Yates’ initial proposal described how it would generally accomplish the specified task by milling existing asphalt parking lots and applying an asphalt overlay. Yates’ proposal also stated:

⁸ Whitetopping refers to a process whereby an existing asphalt surface is resurfaced with a concrete overlay instead of asphalt. The thickness of the concrete whitetopping overlay varies depending on the amount and type of vehicle traffic.

The design-build team will also consider using concrete whitetopping (concrete overlay) or ultra-thin whitetopping as an alternate design for asphalt overlay. Concrete whitetopping will only be considered if existing site conditions support a sustainable design and installation and if whitetopping installation does not add additional costs to the project.

AR, Tab 15, Yates' Proposal, Vol. 1, § D, at 13. The agency found Yates' proposed whitetopping as an alternate design was not a desirable process, concluding that it would not provide the desired results. *Id.*, Tab 33, Revised Source Selection Decision, at 5; Tab 25, Final SSEB Report, at 7.

When an offeror proposes two alternate designs for the accomplishment of a solicitation requirement, and leaves the choice of methods that it actually employs to its sole discretion, we think that the agency may properly evaluate the merits of both designs proposed. Here it is clear that Yates proposed to accomplish the parking lot repair requirement by applying an asphalt overlay, but also proposed the use of concrete whitetopping as an alternate design. Further, the proposal indicated that the overlay method actually employed (asphalt or concrete) was solely the offeror's choice—the determination of whether “existing site conditions support a sustainable design and installation and if whitetopping installation does not add additional costs” was to be made by Yates' design-build team.

We find the agency's evaluation here to be reasonable. The record reflects that the agency was aware that Yates' proposed use of whitetopping was an alternate design approach when evaluating the offeror's proposal. The agency reasonably considered the strengths and weaknesses of the various methods which Yates proposed to use. An offeror cannot expect to “have it both ways” when it proposes alternative methods to accomplishing a performance requirement—receiving credit if the agency determines an alternative design to be advantageous but not being penalized if the agency determines an alternative design to be disadvantageous. To the extent that Yates elected to propose an alternate design, and did not make its primary method of milling and asphalt overlay one that it would guarantee to use in all instances, the agency reasonably considered the merits of the alternate design and found it to be a weakness.

In sum, based on the strengths and weaknesses found in the offeror's proposal, we find the agency's evaluation of Yates' proposal as to the design technical factor to be reasonable.

Best Value Tradeoff Determination

Yates also protests the Corps of Engineers' best-value tradeoff determination. Specifically, the protester argues that the agency's decision was improper because it failed to properly consider Walton's higher price and because it failed to sufficiently

document the rationale for the tradeoff determination. The Corps of Engineers asserts that its source selection decision adequately supports the agency's tradeoff determination. We agree.

Where solicitations provide for award on a "best value" or "most advantageous to the government" basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher price, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 15; Chenega Technical Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 8. Where a price/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with the additional costs. Federal Acquisition Regulation §§ 15.101-1(c), 15.308; All Star-Cabaco Enter., Joint Venture, B-290133, B-290133.2, June 25, 2002, 2002 CPD ¶ 127 at 8-9.

In conducting the tradeoff here, the SSA first premised his determination upon review of the relative importance of the RFP's evaluation criteria, including that all nonprice factors, when combined, were significantly more important than price. AR, Tab 33, Revised Source Selection Decision, at 1, 6. The SSA then reviewed the evaluation findings and ratings of the two offerors' proposals under all stated evaluation factors and subfactors. Id. at 3-4. The SSA then performed a head-to-head comparison of the Walton and Yates technical proposals, finding that Walton's technical advantages included:

- superior designs for both the barracks atriums and roofs
- a detailed approach to concrete masonry unit (CMU) wall evaluation and removal
- an advanced regenerative desiccant which would be invaluable in the removal of moisture
- a contract schedule that was well-grounded, plausible, and which reduced project duration by [DELETED] days (the resulting early barracks occupancy was estimated to have a direct cost savings of approximately \$[DELETED] as well as a tremendous improvement on the quality of life for the affected soldiers).

After recognizing the \$20.68 million cost difference between the offerors' proposals, the SSA concluded as follows:

In summary, [Walton] presented better value for the Government in terms of design through the submission of superior products and design, demonstrated a proven positive record of past performance and specialized experience, offered a significant savings in terms of contract duration, and demonstrated a comprehensive, unconditional

grasp of the scope of work. For the above reasons it is my determination that the added value of Walton's technical proposal, which is significantly more important than price, outweighs the lower price offered by Yates, whose proposal offers little or no discernible value to the Government.

Id. at 8.

Contrary to Yates' assertions, we find that the source selection decision adequately documented the agency's rationale for the tradeoff made, including the benefits associated with the higher price. The propriety of such a price/technical tradeoff decision turns not on the difference in the technical scores or ratings per se, but on whether the source selection official's judgment concerning the significance of the difference was reasonable in light of the RFP's evaluation scheme. Remington Arms Co., Inc., supra, at 16-17; Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. Here, the SSA properly looked behind the evaluation ratings and considered the underlying qualitative merits that distinguished the offerors' proposals, including the awardee's better and more detailed design approach and a contract duration that was [DELETED] days less than both the RFP requirement and that proposed by Yates. Consistent with the RFP's provision that nonprice factors when combined were significantly more important than price, the SSA reasonably concluded that the \$20.68 million price premium associated with Walton's proposal was justified by its greater technical merit. As the SSA stated, Walton's superior design, past performance, specialized experience, and contract schedule warranted the associated price premium. Under these circumstances, we see no basis to question the agency's decision to make award to Walton.

The protest is denied.

Gary L. Kepplinger
General Counsel