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Decision

Matter of: Coastal Environmental Group, Inc.

File: B-420390.2; B-420390.3

Date: July 27, 2022

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DIGEST

1. Protest challenging agency's evaluation of the protester's proposal is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest alleging that the solicitation contained a latent ambiguity is denied where the protester's interpretation of the relevant solicitation language is not reasonable.
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DECISION

Coastal Environmental Group, Inc., a small business of Patchogue, New York, protests its non-selection for award of an indefinite-delivery, indefinite-quantity (IDIQ) contract under request for proposals (RFP) No. W912DQ-21-R-3004, issued by the Department of the Army, U.S. Army Corps of Engineers (USACE), for environmental remediation services. The protester challenges the agency's evaluation of its proposal and contends the solicitation was ambiguous concerning how USACE would evaluate past performance.

We deny the protest.

BACKGROUND

The agency issued the solicitation on January 29, 2021, pursuant to the procedures in Federal Acquisition Regulation part 15, as a small business set-aside, anticipating the

award of multiple IDIQ contracts. Agency Report (AR), Tab 4, RFP at 3.¹ The multiple award task order contracts (MATOCs) include a 3-year base period and a single, 2-year option period, and orders will be issued on fixed-price and cost-reimbursable bases. *Id.* at 3, 6. The solicitation sought environmental remediation services at hazardous and radiological waste sites. *Id.* at 10. Specifically, the contractor will provide removal and remedial actions, to include: the excavation, transportation, and disposal of hazardous, toxic, or radiological waste; the construction and operation of groundwater treatment plants and extraction systems; the decommissioning of existing facilities; and the installation and operation of *in situ* treatment technologies. *Id.*

The RFP explained that USACE intended to award ten MATOCs, but reserved the right to make more or fewer awards. RFP at 75. The solicitation provided for award on a best-value tradeoff basis, considering three evaluation factors, which the RFP listed in descending order of importance: (1) company experience; (2) performance confidence; and (3) cost. *Id.* The non-cost evaluation factors, when combined, were significantly more important than cost. *Id.*

Under the company experience factor, offerors were to provide no more than seven projects that demonstrate experience performing work relevant to the RFP's requirements. *Id.* at 67. The solicitation allowed for the submission of projects that occurred within 10 years of the proposal due date. *Id.* The RFP provided criteria that the agency deemed "most important in evaluating an offeror's capability to successfully execute the type of work that the government has determined as most likely to be performed under this contract." *Id.* 76. As relevant to this protest, one of the identified criteria USACE would use to assess relevant demonstrated experience was "Construction of Groundwater Treatment Plants and extraction well systems requiring long term operation[.]" *Id.* The agency would assign a color/adjectival rating under the corporate experience factor, with the following possible combinations: Blue/Outstanding; Purple/Good; Green/Acceptable; Yellow/Marginal; and Red/Unacceptable. *Id.* at 76-77.

Under the second evaluation factor, performance confidence, the solicitation provided that "[f]or each of the projects submitted under Factor 1, Company Experience, the offeror should provide existing documentation of the owner's opinion of the offeror's performance by including a [past performance questionnaire (PPQ)]." *Id.* at 68. The RFP also advised that offerors should provide the commercial and government entity (CAGE) codes and data universal numbering system (DUNS) numbers--both of which are business identification numbers--for themselves and their proposed team members, as "[t]his information will be used by the Government to access past performance information in the Contractor Performance Assessment Reports System (CPARS)." *Id.* at 69. The agency would evaluate performance confidence based on a review of submitted PPQs and available CPARS information, considering recency, relevancy, and quality. *Id.* at 77-78. USACE would then assign one of the following performance confidence ratings: substantial confidence; satisfactory confidence; neutral confidence;

¹ Our citations to the record correspond to the Adobe PDF document page numbers.

limited confidence; and no confidence. *Id.* at 78. Proposed costs would be evaluated for realism and reasonableness. *Id.*

The agency received multiple proposals by the March 15 closing date. Contracting Officer's Statement (COS) at 3. USACE made award to 12 firms on October 28, but did not award a contract to Coastal. *Id.* On December 3, Coastal filed a protest with our Office, arguing that the agency's failure to consider the firm's proposal was unreasonable. In response, USACE contended that Coastal's proposal was not timely received in accordance with the solicitation's submission instructions. On February 8, 2022, the GAO attorney assigned to the protest held an outcome prediction alternative dispute resolution teleconference call. The GAO attorney advised that the protest would likely be denied, as the record did not demonstrate that Coastal's proposal was received by the agency by the solicitation's closing date. Coastal withdrew its protest filed with GAO on February 11. On February 14, Coastal filed a protest with the Court of Federal Claims. The Court dismissed Coastal's protest as academic on March 2, in response to USACE's intention to take corrective action, which included evaluating Coastal's proposal. COS at 4.

The agency evaluated Coastal's proposal as follows:

	Coastal
Company Experience	Acceptable
Performance Confidence	Satisfactory Confidence
Cost	\$33,677,375

AR, Tab 26, Source Selection Decision Document at 23.

The source selection authority (SSA) conducted an independent review of the source selection evaluation board's (SSEB) conclusions and adopted those findings. *Id.* at 23. The SSA determined that Coastal's proposal did not represent the best value for the agency. The SSA noted that the 12 firms receiving awards "hold significant advantages over" Coastal's proposal under the company experience factor. None of the awardees received any weaknesses under that factor, but USACE assigned two weaknesses to Coastal's proposal. *Id.* at 189. While Coastal's proposal was "on par" with several other offerors in terms of performance confidence, most of the awardees demonstrated greater performance confidence than the protester. *Id.* Coastal's proposed costs were the third highest among all offerors. *Id.* Overall, Coastal's proposal was ranked last among all offerors under the agency's tradeoff analysis. *Id.* at 193. Following a debriefing, Coastal filed this protest on May 4.

DISCUSSION

Coastal advances two principal challenges. First, the protester argues the agency unreasonably assigned its proposal with a weakness under the company experience factor for failing to demonstrate relevant experience with construction of groundwater treatment plants and extraction well systems that require long-term operation. Protest

at 17-21; Comments and Supp. Protest at 17-18. Second, the protester contends the solicitation was latently ambiguous as to how the agency would evaluate performance confidence, specifically, concerning what information USACE was required to retrieve in CPARS. Comments and Supp. Protest at 2-12; Supp. Comments at 1-14. For the following reasons, we find no basis on which to sustain the protest.²

Experience Evaluation

As noted above, offerors were asked to provide up to seven projects that demonstrated an ability to perform the work relevant to the solicitation. RFP at 67. Those projects would be evaluated against six enumerated attributes the agency considered most important for determining an offeror's capability to perform the instant requirements, one of which was whether a submitted project demonstrated "Construction of Groundwater Treatment Plants and extraction well systems requiring long term operation[.]" *Id.* at 76. Coastal submitted seven projects to demonstrate its experience. AR, Tab 22, Coastal's Experience Proposal at 12-18. However, following its evaluation of those submitted projects, USACE determined that "[n]one of the 7 projects submitted included construction of Groundwater Treatment Plants and extraction well systems requiring long term operation." AR, Tab 25, SSEB Report at 27. The SSEB assigned Coastal's proposal a weakness as a result. *Id.*

The protester contends the agency's assignment of a weakness was unreasonable because USACE "too narrowly construes" the evaluation criteria. Comments and Supp. Protest at 18. In this regard, Coastal avers that while its submitted projects do not demonstrate "construction" of groundwater treatment plants and extraction well systems, its proposal does reflect "elements of experience [that] are necessarily relevant" to construction. *Id.* For example, the protester points to its performance on a groundwater remedial action project at the former Antigo Air Force Station as satisfying the RFP's requirement for demonstrated experience in construction because the project involved the collection and analysis of groundwater samples at monitoring wells. AR, Tab 22, Coastal's Experience Proposal at 15. Similarly, for its prior performance at ConEdison of New York, Coastal argues that its installation of a barrier wall and polyvinyl chloride wells contained relevant elements to the solicitation's requirements concerning construction. *Id.* at 16.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Gulf Coast Petroleum Reserve Operations, LLC, B-409004.2 et al.*, Jan. 24, 2014, 2014 CPD ¶ 41 at 8. The evaluation of proposals is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and identifying the best method for accommodating

² Coastal raises other collateral allegations. Although our decision does not specifically address them all, we have considered each argument and find that none provides a basis on which to sustain the protest.

them. *International Preparedness Assocs. Inc.*, B-415416.3, Dec. 27, 2017, 2017 CPD ¶ 391 at 4. A protester's disagreement with the agency's judgments, without more, is not sufficient to render the evaluation unreasonable. *Armedia, LLC*, B-415525 *et al.*, Jan. 10, 2018, 2018 CPD ¶ 26 at 4.

Here, we find the agency's evaluation conclusions--specifically the assignment of a weakness because none of the protester's projects included construction of groundwater treatment plants and extraction well systems--to be reasonable and consistent with the terms of the solicitation. The plain language of the solicitation delineated six relevant experience criteria, to include the construction of groundwater treatment plants and extraction well systems. See RFP at 76. Coastal's proposal--by its own concession--does not include projects involving the construction of groundwater treatment plants and extraction well systems. See Comments and Supp. Protest at 18 ("While Coastal does not dispute that these projects are not projects for the standalone 'construction' of groundwater treatments plants and extraction well systems . . ."). While the protester may believe that it performed projects that include some tangentially-related elements necessarily relevant to construction of such systems, such a showing is not equivalent to demonstrating experience in construction of such systems. Here, the RFP expressed a clear intent to evaluate whether offerors demonstrated experience in construction of groundwater treatment plants and extraction well systems, experience that the protester has not established that it possesses. Because Coastal's proposal failed to demonstrate that experience, its challenge of the resulting weakness is without a basis.

Latent Ambiguity

Coastal also argues the solicitation contained a latent ambiguity concerning what information USACE would use to conduct its past performance confidence assessment. Comments and Supp. Protest at 2-12; Supp. Comments at 1-14. In submitting its proposal, Coastal assumed that USACE would examine relevant past performance information retrieved from CPARS for all projects the firm submitted as part of its corporate experience proposal that were performed within 10 years of the submission due date. However, because CPARS only retains performance evaluations for three years (or six years in the case of architecture-engineering contracts), and none of Coastal's submitted projects were performed within that window, USACE did not find any relevant CPARS performance information for Coastal's cited corporate experience projects. It was only after the firm filed its protest, Coastal argues, that this ambiguity became apparent. Had Coastal known that the agency would not review CPARS information for its submitted projects, it contends that it would have altered its proposal. In response, the agency argues that the scope of its use of CPARS was unambiguously evident based on a plain reading of the solicitation.

Our decisions provide that an ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Red Heritage Medical, Inc.*, B-418934, Oct. 19, 2020, 2020 CPD ¶ 348 at 2; *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5; *Colt Def., LLC*, B-406696, July 24,

2012, 2012 CPD ¶ 302 at 8. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Id.* Where there is a latent ambiguity, both parties' interpretation of the provision may be reasonable. *Id.*; see also *SunGard Data Sys., Inc.*, B-410025, Oct. 10, 2014, 2014 CPD ¶ 304 at 6. A solicitation requirement is only considered ambiguous when it is susceptible to two or more reasonable interpretations. *Plum Run*, B-256869, July 21, 1994, 94-2 CPD ¶ 38 at 4. The mere allegation that a solicitation is ambiguous or restrictive does not make it so. *Skyline Indus., Inc.*, B-257340, Sept. 22, 1994, 94-2 CPD ¶ 111 at 4.

Under the company experience factor, offerors were to submit up to seven projects that occurred within ten years of the RFP's submission deadline. RFP at 67. The solicitation advised that for each project submitted under the experience factor an "offeror should provide existing documentation of the owner's opinion of the offeror's performance by including a PPQ." *Id.* at 68. USACE would evaluate submitted PPQs for the company experience projects. *Id.* at 77. Additionally, as noted above, offerors were asked to provide CAGE codes and DUNS numbers, which the agency would use to access past performance information in CPARS. *Id.* at 69. The solicitation explained, "[i]n addition to the PPQs, the Government will review past performance information retrieved through CPARS, using all DUNS numbers of team members [. . .] identified in the offeror's proposal whose experience is being relied on for [the company experience factor]." *Id.* at 77. The RFP went on to provide that USACE would "consider only the first 20 most recent and relevant CPARS evaluations." *Id.* All CPARS, and all PPQs covering work performed within the past 10 years would be considered recent. *Id.* Prior to the submission of proposals, an offeror asked, "Will the Government accept CPARS in lieu of PPQs?" AR, Tab 6, Offeror Inquiries at 2. The agency responded that "[t]he contractor should not provide CPARS in lieu of PPQs. [...] The Contractor providing CPARS as well could result in a duplication of CPARS evaluated." *Id.*

As noted above, Coastal submitted seven project references to demonstrate its experience. In accordance with the stated terms of the solicitation, USACE also retrieved CPARS evaluations based on a search of the CAGE codes and DUNS numbers submitted by Coastal. See AR, Tab 34, Coastal's CPARS Reports. While USACE's search yielded four CPARS reports, none were for the seven project references submitted by Coastal and none were considered relevant. *Id.*; AR, Tab 25, SSEB Report at 111; see also Supp. COS at 7 (explaining that the retrieved CPARS reports either did not concern environmental remediation work or describe the work Coastal performed). Overall, based on the PPQs submitted by Coastal, USACE assigned a satisfactory confidence rating under the performance confidence factor. *Id.*

The crux of Coastal's protest allegation is that the RFP contains a latent ambiguity because the pertinent solicitation provisions, when read together, are reasonably understood to mean that USACE was required to retrieve CPARS information for every submitted corporate experience project within the ten-year window, so long as those references were among the 20 most recent and relevant CPARS evaluations. Comments and Supp. Protest at 8; Supp. Comments at 3. However, the protester's

assertion of a solicitation ambiguity here fails because Coastal's interpretation is unreasonable and not in accordance with stated terms of the RFP.

The plain language of the solicitation did not require USACE to obtain CPARS information for the experience references submitted by an offeror. Instead, the agency, using CAGE codes and DUNS numbers provided by an offeror, would retrieve the 20 most recent and relevant CPARS evaluations for an offeror's team members. See RFP at 77. While it is possible that there could have been some overlap between the projects submitted by an offeror and what the agency retrieved from CPARS, nowhere in the solicitation did the agency express an intention to retrieve CPARS information for any and all projects submitted by an offeror in its proposal. In our view, if anything, the solicitation expresses a preference for PPQs for the projects included in a proposal. *Compare* RFP at 68 (noting that offerors should provide PPQs for projects submitted with its company experience proposal) *with* RFP at 69 (seeking CAGE codes and DUNS numbers for an offeror's proposed team, rather than for specific projects). At bottom, the protester's ambiguity argument, in our view, actually rests on its lack of understanding that the CPARS system only retained evaluations for a limited duration (between three and six years, depending on the type of contract). See Comments and Supp. Protest, exh. 1, Declaration of Coastal's President at 2 ("I am not currently aware of any limitation of how long CPARS stay in the CPARS system."). However, the mere fact that an offeror was unaware of the retention time for CPARS does not give rise to a solicitation ambiguity. Accordingly, we conclude there is no reasonable basis for the protester's argument that the solicitation contained a latent ambiguity.

The protest is denied.

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General Counsel