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

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Decision

Matter of: Frontline Healthcare Workers Safety Foundation, Ltd.

File: B-402380

Date: March 22, 2010

Charles F. Chester, Esq., for the protester.

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DIGEST

The agency's selection of a higher-rated, lower-priced proposal for award was reasonable, where the solicitation contemplated a best-value award, the agency reasonably determined that the protester's proposal deserved a poor rating under the technical factor and a neutral rating under the past performance factor, and the protester's argument challenging the evaluation of its price is untimely.

DECISION

Frontline Healthcare Workers Safety Foundation, Ltd., of Frederick, Maryland, protests the award of a contract to the American Society of Engineering Education (ASEE) of Washington, DC, under request for proposals (RFP) No. DACS09P2121, issued by the National Science Foundation (NSF) for administrative services in support of the Graduate Research Fellowship Program.

We deny the protest.

BACKGROUND

The NSF annually awards fellowships for graduate study through the Graduate Research Fellowship Program. These fellowships lead to research-based masters or doctorate degrees in the fields of science, technology, engineering, and mathematics relevant to the science mission of the NSF. Contracting Officer's Statement at 1. In order to carry out the program, the RFP seeks administrative support for the annual fellowship award competition. This support includes, among other things, assistance with soliciting applications from students seeking the fellowships, through evaluation of more than 12,000 applications by approximately 800 NSF-invited experts in various fields, and the final award notification to the

applicants. The primary tasks to be performed by the contractor consist of: (1) developing program materials; (2) conducting program publicity, outreach, and answering inquiries; (3) receiving and processing application materials; (4) arranging for and conducting evaluations of the applications; and (5) performing related administrative services. RFP at 7; Contracting Officer's Statement at 1.

The RFP, issued on June 5, 2009, contemplated the award of a cost-plus-fixed-fee contract for a base period of 3 years and 2 option years. RFP at 17. The RFP stated that award would be made on a best-value basis, considering the following evaluation factors (listed in descending order of importance): technical,¹ past performance, cost or price, and the extent of participation of small disadvantaged business concerns. The solicitation stated that all of the evaluation factors other than cost or price, when combined, were significantly more important than cost or price. Id. at 45-47. The solicitation also provided that proposals "shall be clear, concise, and include sufficient detail on their approach to the Statement of Work . . . to understand and evaluate the nature of the approach," and the RFP cautioned that the government would "consider the degree of substantiation of the proposed approaches" in the evaluation. Id. at 41.

Six offerors responded to the RFP by the proposal due date, including Frontline and ASEE, and all six proposals were evaluated. Ratings of excellent, very good, good, fair, or poor were assigned to proposals for the technical and past performance factors, with neutral being an additional rating available for the evaluation of past performance where the offeror is found to have no relevant experience. The extent of participation of small disadvantaged business concerns was evaluated on a pass/fail basis. Agency Report (AR), Tab 1, Acquisition Plan, attach. 3, at 8-10. Cost or price was not assigned an adjectival rating, but was evaluated for reasonableness and realism. RFP at 46.

With regard to Frontline's proposal, the agency assigned it a rating of poor under the technical factor. In support of this rating, the agency identified numerous weaknesses, including that:

The offeror demonstrates a lack of the basic technical expertise with managing fellowship programs to carry out the [Graduate Research Fellowship Program statement of work] operations. Overall, the

¹ The technical factor included equally-weighted subfactors of technical approach and management approach. RFP at 45-46. The technical approach subfactor contemplated the evaluation of each "offeror's understanding of the programs' overall mission, objectives and requirements." The management approach subfactor contemplated the evaluation of each offeror's management plan "as it relates to being able to meet the project objectives and accomplish the requirements of the [statement of work]." Id.

proposal lacks a clear understanding of the nature of the business of running a fellowship program. . . .

The current proposal does not provide sufficient evidence that the offeror could deliver requested services.

AR, Tab 9, Source Selection Decision, at 6. As evidence of Frontline's lack of expertise and understanding, the agency noted that Frontline did not demonstrate an understanding of the review panel competition process, did not show an understanding of outreach tactics, and did not address certain tasks or issues in its proposal. The agency also stated that nobody on the Frontline team had run a large fellowship competition or had any comparable or relevant experience. Id.

In contrast, the agency assigned ASEE's proposal a rating of excellent under the technical factor, stating, among other things, that:²

ASEE's technical approach was extremely detailed and specific to the requirements of the [statement of work]. The proposal submitted by ASEE was very responsive to the [statement of work] and highly rated for its resourcefulness in meeting NSF's changing needs. ASEE's technical . . . proposal was well organized. The technical proposal addressed all evaluation criteria without any major weaknesses and no deficiencies.

Id. at 11. ASEE also received very good ratings for past performance, based on positive evaluations for relevant past performance, whereas Frontline's past performance was rated neutral because it was found to be not relevant. Id. at 4, 7.

² The source selection decision, at page 10, characterized the technical rating of ASEE's proposal as very good. The contracting officer explains that the rating of very good was in error and that she considered the rating to be excellent in the evaluation. Contracting Officer's Statement at 3 n.3.

In summary, the proposal ratings, along with each proposal's evaluated cost, were as follows:

OFFEROR	TECHNICAL	PAST PERFORMANCE	TOTAL EVALUATED COST AND FEE
ASEE	Excellent	Very Good	\$ 9,420,944
Offeror A	Poor	Neutral	\$12,260,800
Frontline	Poor	Neutral	\$13,544,581
Offeror B	Fair	Very Good	\$14,415,912
Offeror C	Good	Very Good	\$10,838,247
Offeror D	Good	Neutral	\$7,790, 885

Id. at 3, 10.³

The agency made award to ASEE on December 3, based on the agency's determination that the firm provided the highest-rated proposal under each of the evaluation factors and was the second lowest in price.⁴ The agency found that the only lower-priced proposal submitted was also lower rated under the non-price factors and, thus, ASEE's proposal provided the best value to the government. Id. at 10-12.

Frontline was notified of the award to ASEE and requested and received a timely written debriefing. In Frontline's written debriefing, which it received on December 15, the agency disclosed to the firm its proposal ratings under each of the evaluation factors and explained in detail the rationale for those ratings. Following the debriefing, Frontline protested to our Office on December 18.

DISCUSSION

Frontline first contends that the agency's rating of its proposal as poor under the technical factor was unreasonable. The protester argues that the weaknesses assigned to its proposal in support of the poor rating are unreasonable or inconsistent with the RFP.

³ All of the firms with the exception of Offeror A, were determined to have met the requirements for the extent of participation of small disadvantaged business concerns factor. Id. at 10.

⁴ The agency made award based on initial proposals without holding discussions.

The evaluation of an offeror's proposal is a matter largely within the agency's discretion. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest that challenges an agency's evaluation of proposals, our Office will not reevaluate the proposals but, rather, 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. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror has the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., *supra*.

Based on our review of the record here, as discussed below, we find reasonable the agency's conclusion that Frontline's proposal was deserving of a poor rating under the technical factor. Although we do not discuss each of the protester's numerous arguments challenging the poor rating, we have considered them all and address a few of the more significant arguments below.

For example, Frontline challenges the agency conclusion that "[o]verall, the proposal lacks a clear understanding of the nature of the business of running a fellowship program." AR, Tab 9, Source Selection Decision, at 6. Frontline argues that its experience with the current National Institute of Health's National Biosafety and Biocontainment Training Program (NBBTP) Fellowship competition would greatly assist it in performing the present work for the Graduate Research Fellowship Program. Frontline asserts that "lessons learned" in the NBBTP fellowship competition could be applied to the fellowship program here. Comments at 4.

The agency, however, concluded that the programs are dissimilar. According to the agency, the NBBTP fellowship program is a training program for non-student biosafety and biocontainment professionals to meet the needs of the biomedical, emerging disease, and civilian biodefense research communities. In contrast, the agency noted that the Graduate Research Fellowship Program focuses on academic preparation and research, and is a much broader and more inclusive program, affecting graduate students in the disciplines of science, technology, engineering and mathematics.⁵ Supp. AR at 3; Declaration of TEP Chair at 3-4.

⁵ The Graduate Research Fellowship Program receives and processes thousands of applications and provides fellowships to approximately 1,000 students annually. The number of awards is expected to increase to 3,000 annually by 2012. Declaration of Technical Evaluation Panel Chair at 4.

The agency also noted that while Frontline's proposal referenced the NBBTP fellowship competition numerous times, the proposal failed to include information regarding the NBBTP fellowship competition, such as the size of the NBBTP program, the numbers of applications processed, the numbers of fellows selected annually, and details about the applicant review process. Declaration of Technical Evaluation Panel Chair at 3. Although Frontline's proposal referenced the NBBTP website for more information, the agency's review of this website confirmed its view that the programs were different in mission, size and scope. *Id.* at 3-4. Based on this record, we cannot find the agency's conclusions unreasonable.

The protester also contests the weakness that was assigned to its proposal for not demonstrating an understanding of the review panel competition process and, more specifically, for failing to explain how review panelists would be selected and assigned. Comments at 6; AR, Tab 9, Source Selection Decision, at 6. According to Frontline, this criterion--how review panelists would be selected and assigned--is in "direct conflict" with the RFP, which specifies that the NSF will supply the contractor with lists of actual reviewers in each of the last 5 years of fellowship competitions, as well as the current Graduate Research Fellowship Program database, at the time of award. RFP at 11; amend. 1 at 4-5. While it is true that the database and lists containing names of past panelists will be provided to the awardee at the time of award, as the agency correctly notes, it was for the offeror to explain in its proposal how it would design and manage the composition of the panels to meet the NSF requirements for the review of applications. Supp. AR at 6; RFP at 11. Frontline failed to provide this information in its proposal. Thus, the agency reasonably assessed the proposal a weakness.

In sum, based on our review of the entire record and considering all of the arguments raised by the protester challenging its rating under the technical factor, including the examples discussed above, we find no basis to question the agency's evaluation of Frontline's proposal. Frontline's complaints constitute mere disagreement with the agency's evaluation and, as such, do not provide a basis for sustaining the protest. VT Griffin Servs., Inc., supra.

Frontline also complains that its proposal deserved a rating higher than neutral under the past performance factor, based on existing positive past performance. Comments at 11. However, based on our review of the record, the agency reasonably concluded that the submitted references were not relevant to the procurement here because they did not relate to similar operations for managing a fellowship program like the Graduate Research Fellowship Program. In this regard, the references received pertained to biosafety and biocontainment training for the Biodefense Analysis and Countermeasures Center, the National Institutes of Allergy and Infectious Disease, and the Centers for Disease Control and Prevention. Declaration of Technical Evaluation Panel Chair at 12-13. Frontline has not shown how these contracts were sufficiently similar to the one here to warrant a past performance rating other than neutral.

Frontline also challenges the evaluation of its proposed cost as too high under the cost or price factor. However, Frontlines raised this protest ground, for the first time, in its comments in response to the agency report and, for the reasons described below, the protest is untimely.

Protests based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2009). Here, the protester was informed in the written debriefing, prior to its protest, that:

The hours proposed by the contractor were determined to be excessive. The business proposal is determined not to be reasonable.

Agency Report, Tab 12, Frontline's Post-Award Debriefing, at 3. From Frontline's own statements describing a phone call that took place on December 10 (8 days prior to the protest), the protester was aware of the cost differential between the awardee's and Frontline's proposals, and the protester expressed concern to the agency orally about the agency's assessment of "reasonable and realistic" pricing. Declaration of Frontline Associate Director (Feb. 1, 2010) at 1-2. This debriefing and the information known to the protester in December provided the firm with sufficient information to challenge the award and evaluation of its proposal under the cost or price factor in the initial protest, but the protester did not raise this challenge until it filed its comments, 40 days after the initial protest. The protest ground is untimely. 4 C.F.R. § 21.2(a)(2); Sealift, Inc., B-298588, Oct. 13, 2006, 2006 CPD ¶ 162 at 2-3 n.1.

In sum, the record supports the agency's rating of Frontline's proposal as poor under the technical factor and neutral under the past performance factor. Since the RFP provided for award based on best value and Frontline's proposal was lower rated and higher in price than the awardee's proposal, we find the source selection decision of the agency to be reasonable. Capitol Drywall Supply, Inc., B-400721, B-400722, Jan. 12, 2009, 2009 CPD ¶ 17 at 5.

The protest is denied.

Lynn H. Gibson
Acting General Counsel