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Decision

Matter of: Hi-Tec Systems, Inc.

File: B-402590; B-402590.2

Date: June 7, 2010

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DIGEST

Protest that agency improperly evaluated protester's technical proposal is denied where record shows that evaluation was reasonable and consistent with solicitation's stated evaluation criteria.

DECISION

Hi-Tec Systems, Inc. of Egg Harbor Township, New Jersey, protests the exclusion of its proposal from the competitive range under Department of Homeland Security, Transportation Security Agency (TSA) request for proposals (RFP) No. HSTS04-09-R-CT4005, for test and evaluation services. The protester asserts that the evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The RFP, issued on June 9, 2009, contemplated the award of two or more indefinite-delivery indefinite-quantity Test and Evaluation Support Services (TESS) contracts, and issuance of the first task order under one of those contracts. RFP at 00071. Services required under the RFP include developmental testing and evaluation (DT&E), operational testing and evaluation (OT&E), acceptance testing, and other testing-related services, at various government and private locations.

Contracting Officer's (CO) Statement at 2-3. A contractor could be required to perform work at up to 30 sites, simultaneously, within the U.S. and its territories. Id. at 3.

Offerors were to submit a four-volume proposal, including a technical proposal (consisting of the offeror's technical approach and management approach), a technical proposal for task order 00001, a past performance/subcontracting plan, and a cost proposal. RFP at 00135. Award was to be on a "best value" basis considering the following factors: technical approach, management approach, past performance, and price. Id. at 00143. Technical approach, relevant here, was to be "evaluated to determine the extent to which it clearly demonstrates the offerors' technical understanding and a proposed solution and methodology to successfully perform," and was required to "demonstrate a thorough understanding of the complexity and magnitude of the base requirement for all modes of transportation security." Id. at 00144. The first three factors combined were significantly more important than price. Id.

The agency received three proposals. After the initial evaluation, TSA notified Hi-Tec that the technical evaluation team (TET) had determined that its proposal was outside the competitive range due to a rating of technically unacceptable for its technical approach. Protest at 6; Agency Report (AR), Tab 18. The TET's unacceptable rating was based on six weaknesses, one significant weakness, and two deficiencies in Hi-Tec's technical approach. AR, Tab 12, Consensus Technical Evaluation Report (TET), at 00586-00591.

DISCUSSION

Hi-Tec challenges the elimination of its proposal from the competitive range. The determination of whether a proposal is in the competitive range is principally a matter within the judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. We will review that judgment--and the evaluation judgments on which it was based--only to ensure that it was reasonable and in accord with the solicitation and applicable statutes and regulations. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4. We have reviewed all of the protester's arguments and find that the agency's actions here were reasonable. We discuss Hi-Tec's principal arguments below.

Evaluation

Hi-Tec maintains that its technical approach unreasonably was downgraded with regard to four of the issues identified by the TET, asserting that the evaluation was based on the agency's "inattention to critical aspects of the company's proposal." Protest at 12. Hi-Tec asserts that the required information was included in its technical approach and, moreover, that the agency should have looked to other parts of its proposal, where it would have found information supporting a rating of at least good for its technical approach. Protest at 22.

This argument is without merit. First, offerors bear the burden of submitting an adequately written proposal and contracting agencies evaluating one section of a proposal are not required to go in search of additional information that an offeror has omitted or failed to adequately present. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 5; Keystone Sealift Servs., Inc., B-401526.3, Apr. 13, 2010, 2010 CPD ¶ 95. As noted, the RFP here required that proposals be submitted in four volumes, only one of which was to include the offeror's technical approach. In light of this clear delineation, we do not think the agency was required to search the other volumes of Hi-Tec's proposal for information bearing on the identified weaknesses.

In any case, we find the additional information cited by Hi-Tec—both within and outside of its technical approach proposal—to be unconvincing. For example, the TET questioned Hi-Tec's ability to accomplish “special studies to address TSA mission requirements,” noting that Hi-Tec's proposal “simply states that ‘the Offeror Team performs special studies routinely at the TSL’ and that a teammate provides unique studies and analysis not available elsewhere in the science market.” TET at 00589; see Proposal at 00417. The TET went on to conclude that “This complete lack of detail is assessed as not displaying an understanding of the SOW requirement for special studies,” and “increases the risk of unsuccessful performance against SOW [statement of work] requirements.” TET at 00589.

Hi-Tec challenges the TET's assessment, pointing to both the corporate experience section of its management approach (part of its technical proposal), which included a list of its prior contracts under which special studies were performed, Protest at 20-21; Proposal at 00441, and its past performance proposal, which listed a previous contract with TSA that included [deleted]. Protest at 23; Proposal at 00469. Hi-Tec asserts that this information “specifically demonstrates that it has extensive experience performing special studies for TSA.” Protest at 23. The agency responds that the TET actually did consider this information, even though it was not included in Hi-Tec's technical approach proposal. It concluded, however, that, despite the fact that the SOW “goes into some detail” regarding special studies, TET at 00589; RFP at 00095, the information in Hi-Tec's proposal amounted to no more than a restatement of the requirements and a claim that they can be accomplished. AR at 21-22. The agency's conclusion was reasonable; the unamplified experience and past performance excerpts proffered by the protester do not cure the lack of detail in its technical approach regarding its approach to special studies.

As another example, the TET found that Hi-Tec's technical approach proposal was “nonresponsive” with regard to specific requirements in the RFP to “successfully perform [SOW] requirements for aspects of transportation to include aviation, cargo, and surface,” and to “demonstrate a thorough understanding of the complexity and magnitude of the base requirement for all modes of transportation security.” TET at 00590; RFP at 00137, 00144; see generally CO's Statement at 9. The protester challenges this finding and points to information in its technical approach proposal

and in the “key personnel” and “corporate experience” sections of its management approach proposal describing Hi-Tec’s experience in general terms, such as [deleted] and [deleted]. Protest at 18-20; Proposal at 00416, 00425, and 00441. The agency responds that “Simply stating that certain tasks have or will be accomplished [deleted] does not demonstrate knowledge or capabilities in these areas.” AR at 16. We agree with the agency. The statements cited by the protester merely generally assert the firm’s experience in the area of transportation. The agency could reasonably conclude that such generalities were not responsive to the specific RFP requirement that offerors demonstrate an ability to perform in areas of transportation including aviation, cargo, and surface transportation.

Discussions

Hi-Tec asserts that, to the extent TSA’s evaluation found problems with its proposal, the problems should have been addressed through discussions or clarifications. Protest at 31-35. However, where, as here, a proposal is found to be technically unacceptable, and therefore outside the competitive range, agencies have no duty to hold discussions with the offeror. See Zuni Cultural Resource Enter., B-208824, Jan. 17, 1983, 83-1 CPD ¶ 45; see Federal Acquisition Regulation (FAR) § 15.306(c)(1). Further, agencies have broad discretion as to whether to seek clarifications from offerors; there is no requirement that offerors be permitted to clarify their proposals. A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6. In any event, since clarifications—unlike discussions—do not envision material proposal revisions, clarifications would not have allowed Hi-Tec to revise its proposal to make it acceptable. FAR § 15.306(a)(2); A.G. Cullen, *supra*, at 5-6.

Consensus Evaluation

Hi-Tec asserts that TSA improperly excluded its proposal from the competitive range based on the assessment of a single evaluator. Comments at 4-5. In this regard, of the three evaluators on the TET, two found Hi-Tec’s technical approach to be acceptable in their individual evaluations, AR, Tab 10, at 00555-00558, 00559-00574, and only the third found it unacceptable. *Id.* at 00548-00554. Hi-Tec asserts that the third evaluator, who had been a contracting officer’s technical representative on a prior TSA contract and previously had praised Hi-Tec’s performance, “nevertheless ignored his own knowledge and information contained in Hi-Tec’s proposal and irrationally found Hi-Tec’s proposal unresponsive to these same requirements.” Comments at 5.¹ The protester also asserts that the deficiencies found in the

¹ Hi-Tec appears to assert that the third evaluator was biased since, at a meeting prior to release of the RFP, the evaluator answered a question from a Hi-Tec representative and indicated that Hi-Tec, a small business, “should instead consider subcontracting” with another offeror “because large businesses would have a better chance for award.” Supp. Comments at 5 n.1. These allegations are plainly untimely. 4 C.F.R. § 21.2(a)(2) (2010). In any case, we will not attribute unfair or prejudicial

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consensus evaluation “essentially mirror” the third evaluator’s evaluation and that the agency improperly decided “to allow one evaluator’s irrational views to trump the views of the rest of the TET.” Id.

This argument is without merit. It is not unusual for individual evaluator ratings to differ significantly from one another, or from the consensus ratings eventually assigned; indeed, the reconciling of such differences among evaluators’ viewpoints is the ultimate purpose of a consensus evaluation. James Constr., B-402429, Apr. 21, 2010, 2010 CPD ¶ 98. Our concern is not whether the final ratings were consistent with a particular individual evaluator’s ratings, but whether they reasonably reflect the relative merits of the proposals. Bering Straits Tech. Servs., LLC, B-401560.3, B-401560.4, Oct. 7, 2009, 2009 CPD ¶ 201 at 3. As indicated above, we find that TSA’s evaluation of Hi-Tec’s proposal was reasonable; the evaluation reasonably reflects the merits of Hi-Tec’s proposal. Thus, the fact that the consensus evaluation may ultimately reflect a view initially attributable primarily to a certain evaluator is not a valid basis for challenging the evaluation conclusions. Rather, again, this is one of the outcomes that reasonably can be anticipated from the developing of a consensus evaluation.

We conclude that there is no basis for objecting to the evaluation, and that the resulting elimination of Hi-Tec’s proposal from the competitive range was reasonable.

The protest is denied.

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motives to procurement officials on the basis of inference or supposition. Such allegations must be supported by convincing proof. Midwest Metals, B-299805, July 17, 2007, 2007 CPD ¶ 131 at 3 n.2. Hi-Tec has not met this standard, since it does not explain how this alleged bias affected the procurement or the award decision.