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Decision

Matter of: TPMC-EnergySolutions Environmental Services, LLC

File: B-406183

Date: March 2, 2012

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Brad R. Wright, Esq., Griff, Larson, Laiche & Wright, for Portage, Inc., the intervenor.
Young H. Cho, Esq., Charmaine A. Howson, Esq., and Paul L. Whalen, Esq.,
Department of Energy, for the agency.
Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the protester's and the awardee's proposals is denied where the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

TPMC-EnergySolutions Environmental Services, LLC (TES), of Exton, Pennsylvania, protests the Department of Energy's (DOE) issuance of a task order to Portage, Inc., of Idaho Falls, Idaho, under request for task order proposals (RTP) No. DE-SOL-0001300 for environmental remediation, including excavation and transportation of residual radioactive material (RRM), at DOE's Moab project site in Utah.

We deny the protest.

BACKGROUND

On December 17, 2010, DOE issued the RTP under its multiple award, small business, environmental management nationwide indefinite-delivery/indefinite-quantity (ID/IQ) contract to all contract holders. The RTP sought offerors to conduct remediation of RRM at DOE's Moab site, which includes work related to RRM excavation, conditioning, and filling of containers at the Moab site; transporting RRM

from the Moab site to a site 30 miles away in Crescent Junction, Utah; disposal of RRM in a disposal cell at the Crescent Junction site and interim and final cover placement of the disposal cell; and reclaiming the Moab site to appropriate standards. RTP at C-3.

As relevant here, the RTP's performance work statement provided a description of the project performance requirements for the excavation and handling of RRM at Moab, and the transportation of RRM from the Moab site to the Crescent Junction site. RTP at C-5-10. These sections detailed the agency's requirements that offerors provide safe, efficient, and cost effective debris handling plans for the transfer of RRM, and transportation plans, which contemplated that most of the material would be transported by railroad, but provided for the shipment of oversized materials and/or debris to the Crescent Junction site by truck. Id.

The RTP provided for the award of a single cost-plus-award-fee task order for the environmental remediation portion of the work, with a fixed-price component associated with the disposal of RRM at the Crescent Junction site. Award would be made to the offeror whose proposal represented the best value considering the evaluation of three equally rated technical evaluation criteria--technical approach, key personnel and organization, and past performance--and cost/price (which would be evaluated for reasonableness and realism). RTP at M-1. In determining best value, the combined weight of the non-cost criteria was significantly more important than cost/price. Id.

The RTP instructions for the preparation of proposals under the technical approach factor required offerors to describe their technical approach for all major performance work statement activities; identify the risks and impacts of their proposed approach; provide rationale for the identified risks and impacts; and explain their approach to eliminate, avoid, or mitigate the identified risks. RTP at L-10. Offerors were also to provide as part of their technical approaches a detailed integrated schedule, including a critical path schedule. RTP at L-10-11.

The evaluation of the technical approach factor was based upon the depth, quality, completeness, effectiveness, and reasonableness of the contractor's technical approach for the major performance work statement activities--transition, facility/ground maintenance, excavation and handling at Moab, transportation, Crescent Junction operations, and project support--to meet the purposes and objectives of the RTP within the existing funding and regulatory framework. The evaluation would consider the identification of risks and impacts of the offeror's proposed approach; the rationale for the identified risks and impacts; and the offeror's approach to eliminate, avoid, or mitigate risks. RTP at M-2. The realism of an offeror's detailed integrated schedule, including the critical path schedule, would also be evaluated.

The RTP instructions for the preparation of proposals for the past performance factor required offerors to submit past performance information for itself and its major subcontractors that identified a total of three contracts or projects that are similar in size, scope, and complexity to the performance work statement and are currently being performed or have been performed within the past 3 years. RTP at L-11-12. The agency's evaluation of past performance would encompass the relevant past performance information provided by the offerors as well as any information that was readily available to the agency, including government databases, government and commercial references, and past performance questionnaires. RTP at M-3. More relevant past performance would be weighted more heavily in the evaluation than less relevant past performance. Id.

In response to the RTP, six small business ID/IQ contract holders submitted proposals, including TES and Portage. TES proposed a year-round schedule of operation for all performance work statement activities. Portage, on the other hand, proposed a [REDACTED]-month excavation and movement schedule with a [REDACTED]-month curtailment during the winter. Portage Proposal, vol. II, Technical Approach, at 7. During its work curtailment period, Portage proposed retaining a staff of [REDACTED] employees to provide the year-round solicitation requirements of security, maintenance, and site support. Id. Portage's proposal recognized the project risk associated with retention of the work force at Moab due to the [REDACTED]-month curtailment, but stated that it was "highly confident that we can avoid and/or mitigate what we believed would be the primary risk associated with the [REDACTED]-month option (i.e., our ability to re-hire the craft workforce after the winter curtailment)." Id. at 4. Portage proposed to retain the workforce after curtailment through moving the workers to its subcontractors,¹ which offered several options to retain staff in their operations, and through a 401k benefit plan with a [REDACTED] by Portage that would allow [REDACTED] for employees [REDACTED]. Id. at 3.

The proposals of TES and Portage were evaluated by the technical evaluation team (TET), which resulted in the following technical ratings and total evaluated price for TES's and Portage's proposals:

¹ For example, Portage's major subcontractor, Nielson Construction, offered several options for retention of staff (e.g., moving craft staff to local pit development and crushing activities), and Portage's subcontractor, DeNuke Contracting Services, Inc., indicated that it was highly confident they can place staff on temporary assignments on existing contracts. Portage Proposal, vol. II, Technical Approach, at 3.

Technical Factor	TES	Portage
Technical Approach	Good	Outstanding
Key Personnel & Organization	Outstanding	Outstanding
Past Performance	Outstanding	Good
Total Evaluated Price	\$125,351,701	\$123,826,620

Agency Report (AR), Tab 2, Task Order Evaluation Report, at 8.²

The TET identified four strengths and two weaknesses in its evaluation of TES’s technical approach. Id. at 34-37. TES’s two weaknesses concerned its approach to debris handling in transporting RRM by truck, and its approach to RRM handling with regard to railcar container stockpiles. Id. at 36. The TET’s evaluation of Portage’s technical approach identified two significant strengths, three strengths, and one weakness. Id. at 27-30. The two significant strengths in Portage’s technical approach concerned its scheduling and workforce retention activities during its winter operations, and its detailed description of RRM excavation. Id. at 28.

The source selection authority (SSA) concluded that Portage’s proposal provided the best value to the government based on his comparison of the proposals’ strengths and weaknesses, and relative merits.³ The SSA specifically found that Portage’s proposal was superior to TES’s proposal under the non-cost evaluation factors. In this regard, the SSA found that Portage’s technical approach, with two evaluated significant strengths, represented a major discriminator between the proposals. The SSA also found that Portage’s “exceptional approaches for its RRM tailing and debris excavation strategies, shipping campaign (including debris handling and transportation), and workforce retention alone provide a significant advantage over all contractors, including TES, who was ranked a level below Portage.” AR, Tab 3, Source Selection Statement, at 13. The SSA also found the offerors’ “outstanding” key personnel and organization were not a discriminator. The SSA did recognize that there were qualitative differences between TES’s and Portage’s past performance, but found that this did not represent a significant discriminator because the differences in past performance were considered “minimal” and all offerors would

² Possible adjectival ratings for the technical approach factor were outstanding, good, adequate, inadequate, and unsatisfactory. The possible adjectival ratings for the past performance factor were outstanding, good, satisfactory, marginal, and unacceptable. AR, Tab 2, Task Order Evaluation Report, at 14.

³ In making the best value decision, the SSA reviewed the offerors’ proposals and the TET’s evaluation report, received a briefing from the TET chairperson and contracting officer, and conferred with TET members. AR, Tab 3, Source Selection Statement, at 6.

be able to meet contract expectations. Thus, the SSA selected Portage's proposal for award over TET's proposal based on Portage's technical superiority and lower evaluated cost. Id. at 13-14.

The award was made to Portage on November 4, 2011. After receiving a debriefing, TES filed this protest with our Office on November 23.

DISCUSSION

TES protests the agency's evaluation of both TES's and Portage's proposals. In considering protests challenging an agency's evaluation of proposals, we will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. James Constr., B-402429, Apr. 21, 2010, 2010 CPD ¶ 98 at 3. A protester's mere disagreement with a procuring agency's judgment is insufficient to establish that the agency acted unreasonably. Id.

Here, we conclude that the evaluation of the offerors' proposals was reasonable and consistent with the solicitation. Although our decision does not specifically address all of TES's arguments, we have fully considered each of them. As illustrated by the following examples, we find that none of these arguments provide a basis to sustain the protest.⁴

Evaluation of TES's Proposal

TES challenges the two weaknesses assigned its technical approach, and maintains that they were unreasonably assigned and were inconsistent with the solicitation's evaluation scheme.

TES's Debris Handling

The first weakness concerned TES's debris handling in transporting RRM by truck:

⁴ For example, TES's contentions of disparate treatment and bias provide no basis to sustain the protest. In this regard, government officials are presumed to act in good faith and a protester's claim that an agency official was motivated by bias or bad faith must be supported by convincing proof. Brian X. Scott, B-310970, B-310970.2, Mar. 26, 2008, 2008 CPD ¶ 59 at 4. Our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Id. In addition, TES did not rebut the explanations provided by the agency in its report with regard to several of the issues raised in TES's initial protest.

Debris Handling – Transportation – TES did not provide sufficient detail regarding its approach for debris transportation . . . TES proposed to load debris directly into haul trucks within the [contamination area] and survey the trucks for transportation without adequately describing the process and methodology. The strategy to survey and release trucks from the [contamination area] can be a time consuming and labor intensive process, potentially resulting in schedule delays. TES did not identify the size or type of the haul trucks or number of round trips required. TES proposed to transport debris from [REDACTED] which is peak tourist season for the Moab area. For the quantity of debris identified in the RTP, the number of truck[] trips required during the scheduled [REDACTED] days could be an impact to the local community and traffic patterns. Additionally, the risk of not completing this activity before the end of the task order period is increased as the potential for equipment failure or unplanned work stoppages exists and there is minimal contingency or schedule float. TES' incomplete, unreasonable and ineffective approach to debris handling transportation is a flaw that increases the risk of unsuccessful task order performance.

AR, Tab 2, Task Order Evaluation Report, at 36.

TES argues that the agency failed to follow its solicitation criteria with regard to debris handling and truck transportation because the RTP specifically permitted the use of trucks for the shipment of oversized materials. TES claims that this weakness has been overstated by the agency because RRM transported by truck is less than 1 percent of the RRM to be transported under the contract and because the experience of TES's teaming partner under the predecessor contract did not evidence the problems in transporting RRM that were referenced in the TET's evaluation. TES also contends that its proposal provided more detail than was recognized by the agency. For example, TES maintains that the information regarding the size and number of dump trucks, as well as the number of round trips proposed, could be found in TES's cost proposal, which the agency should have assertedly considered instead of assigning a weakness.

We first note that contrary to TES's contention, the agency did not assign a weakness to TES for its use of trucks to transport the oversized material and debris. Instead, the agency assigned the weakness because it determined that TES's debris handling approach failed to provide sufficient details and information regarding truck transportation.

It is an offeror's responsibility to submit an adequately written proposal that establishes its capability and the merits of its proposed technical approach in accordance with the evaluation terms of the solicitation. Carolina Satellite Networks, LLC; Nexagen Networks, Inc., B-405558, et al., Nov. 22, 2011, 2011 CPD ¶ 257

at 4. Based on our review, we cannot find that the agency's conclusion that TES's proposal lacked the necessary details was unreasonable. Contrary to TES's contentions, we do not find that the weakness was overstated by the agency, considering the special sensitivity expressed by local stakeholders related to the transportation of RRM by truck. Indeed, offerors were specifically advised of the strong stakeholder desire that RRM be moved by rail rather than truck and that only oversized materials should be transported by truck. RTP at C-9, M-2. TES's arguments represent no more than mere disagreement with the agency's conclusions, which do not show the agency's evaluation was unreasonable. Moreover, to the extent the protester references the past performance and experience of its team partner under the predecessor contract in support of its protest, it cannot rely upon the experience of the incumbent contractor in lieu of an adequately written proposal. See SPAAN Tech, Inc., B-400406, B-400406.2, Oct. 28, 2008, 2009 CPD ¶ 46 at 7.

As to truck sizes and types, and the number of round trips between Moab and Crescent Junction, we agree with the protester that this information was contained within the basis of estimate portion of TES's cost proposal. However, the agency properly did not consider the information contained within TES's cost proposal in evaluating TES's technical approach, particularly given the admonition in the RTP instructions, which stated that "[n]o cost information shall be included in the Technical and Management Proposal." RTP at L-10.

TES's Stockpiling of RRM in Containers

TES also challenges the agency's assignment of the weakness relating to its approach of stockpiling RRM in containers for rail transportation to the Crescent Junction site. The TET report describes this weakness as follows:

RRM Handling – Container Stockpile – TES proposed loading containers and shipping to [Crescent Junction] on alternating [REDACTED] shipments per week within [REDACTED] shifts . . . which is an approach that could cause material conditioning, unloading and/or placement issues. Due to the schedule proposed by TES for shipments, containers [] loaded with RRM may be sitting for periods of up to [REDACTED] days and during winter months, the contents may be altered (e.g., frozen) and the contents could not easily be unloaded and/or placed at Crescent Junction without additional conditioning or manipulation. These activities demonstrate a lack of completeness [and] effectiveness in the area of full container storage. TES'[s] incomplete and ineffective approach to stockpiling containers described above is a flaw that increases the risk of unsuccessful task order performance.

AR, Tab 2, Task Order Evaluation Report, at 36.

TES contends that the agency's assignment of this weakness was unreasonable and inconsistent with the solicitation, which specifically permitted the staging of containers containing RRM. Additionally, TES asserts that its teaming partner faced and resolved this challenge in the first winter of working on the predecessor contract by working staggered shifts, which resulted in no missed shipments. TES claims that its proposal adequately addressed the staging methodology and how it would overcome the problems identified by the agency.

Contrary to TES's arguments, this weakness is not based on the fact that TES proposed to stockpile and stage filled containers; rather, it was TES's lack of detail and information included in the proposal that caused the agency to find its approach to stockpiling containers increased the risk of unsuccessful task order performance.⁵ AR at 15. For example, TES's proposal did not address the possible number of days a container may be staged before transport, the impact on the contents of the containers if staged during the winter months, and how the material would be handled and placed if the contents became frozen. Even though TES's proposal did identify the "high probability" risk of working during the extended cold weather months and proposed a strategy to not lose shipments due to weather, TES failed to explain the methods it would use to mitigate, avoid, or reduce RRM contents becoming frozen while staged, or the methods to recondition RRM prior to placement if frozen. Id. While TES asserts that this level of detail was not required by the solicitation, the RTP expressly required offerors to identify risks, such as the one identified here, and explain how their approach eliminated, avoided, or mitigated the risks. RTP at L-10. Based on our review, we cannot find the agency's assignment of this weakness was unreasonable.

Evaluation of Portage's Proposal

TES also contends that the agency failed to reasonably evaluate Portage's technical approach.

Portage's Winter Curtailment Schedule

TES asserts that Portage's technical approach was unacceptable because it was based upon a reduced contract period of [REDACTED] months, rather than the 12-month period required by the RTP, and that the agency failed to consider the risks inherent in Portage's approach.

⁵ As noted above, TES could not simply rely upon the experience of its teaming partner under the predecessor contract in lieu of an adequately written proposal. See SPAAN Tech, Inc., supra.

As an initial matter, we disagree with TES that the RTP required a 12-month period for contract operations. The RTP specified in its performance work statement that security, project support, and facility/ground maintenance activities are on an ongoing, yearly basis. RTP at C-5, C-11, C-12. However, with regard to excavation and movement operations, which were explained in a separate section of the performance work statement, the RTP did not prohibit offerors from proposing to perform these activities in less than 12 months.⁶ See RTP at C-5-9. Furthermore, as set out above, Portage did not propose a [REDACTED]-month contract period, as asserted by TES. Rather, Portage proposed a 12-month contract period with a [REDACTED]-month full production/[REDACTED]-month curtailed schedule for its excavation and movement activities during the winter months.⁷

We also disagree with TES's allegation that the agency failed to adequately consider the risk involved with Portage's proposed schedule. The TET report for Portage's schedule provided:

Scheduling Activities – Winter Operations – Portage proposed a detailed, seasonal; [REDACTED]-month operating approach where work activities would cease during a winter curtailment. . . . Portage's proposed schedule activities and its discussion on how to retain its skilled/trained workforce year after year is reasonable for workforce continuity. Portage proposed to offer affected workers the ability to work at other locations and provides significant details regarding the remaining staff responsibilities and activities. Portage, along with its named major/critical subcontractors, offered to move operators/laborers to their local quarry where stone mining and crushing activities are staffed up in the winter to develop aggregate

⁶ This was confirmed during the question and answer period, where an offeror asked, "[a]re bidders required to maintain excavation and emplacement operations for 12 months out of the year, or can an alternative work schedule be proposed assuming the 650,000 tons per year requirement is still met." The agency responded, "DOE will evaluate the contractor's technical approach. The RTP identifies the amounts of RRM to be excavated, transported and placed each fiscal year." AR, Tab 1C, RTP Questions and Answers, Question 206, at 34.

⁷ Similarly, we find that TES's assertions based upon the assumption that Portage submitted a [REDACTED]-month contract period cost/price proposal are misplaced and therefore without merit. We have reviewed the agency's price/cost evaluation of Portage's proposal and find that contrary to TES's claims, the agency reasonably determined, with the assistance of the Defense Contract Audit Agency, that Portage's price/cost proposal was reasonable and realistic, and encompassed the entire contract term.

stockpiles (currently being completed at the site by Nielson). Key equipment operators could be transitioned to coal haul operations, gas and oil field operations, and pipeline work where winter activities are ongoing. Moab staff could also be placed on temporary assignment on existing task orders with other DOE and commercial clients. Retaining project personnel with the current contractors will ensure a stable safety culture. Project-related winter curtailment activities include site support to DOE and the [technical assistance contractor], site inspections after significant weather events, long lead maintenance of heavy equipment, stakeholder interactions, training, updates to plans and reports, and preparations for resumption of activities in March. Portage offered a 401K plan allowing employees [REDACTED]. Portage's proposed schedule of work activities will ensure the retention of safe operating capabilities, knowledge base, efficiency, and DOE safety culture due to skilled/trained workforce re-hire. Portage's in-depth, complete, and reasonable scheduling activities described above for excavation, handling and placement are attributes that appreciably increase the probability of successful task order performance.

AR, Tab 2, Task Order Evaluation Report, at 28. Thus, we find that the record shows that the agency reasonably considered the risks associated with Portage's proposed winter schedule and determined that Portage's proposal provided sufficient detail to mitigate any concerns with this approach. While TES disagrees, it has not shown that the agency's evaluation was unreasonable.⁸

Portage's Past Performance Evaluation

TES also claims that DOE's evaluation of Portage's past performance was unreasonable. TES references specific projects in which it contends Portage performed poorly and argues that the agency's past performance evaluation overlooked or unreasonably discounted this negative performance information in arriving at Portage's good past performance rating. TES asserts that Portage's past performance rating would have been lower had this information been reasonably considered.

⁸ For example, while TES alleges that Portage has no substantiation for its "claim[] that 95% of these employees will respond to a recall," Protester's Comments at 9, we note that this is a mischaracterization of Portage's proposal. Portage's proposal did not promise a 95-percent retention rate but instead reported that its subcontractor, Nielson, had a history of providing similar work to retain workers from its winter construction work cessation, which resulted in a 95-percent return rate after the winter furlough. Portage Proposal, vol. II, Technical Approach, at 3.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. The McConnell Group, Inc., B-405377, Oct. 21, 2011, 2011 CPD ¶ 225 at 4; New Orleans Support Servs. LLC, B-404914, June 21, 2011, 2011 CPD ¶ 146 at 4.

In completing its past performance evaluation of Portage, the agency evaluated three past performance references provided by Portage, as well as three references provided for each of its three major subcontractors. Based on this information, the agency determined that on average, Portage received mostly excellent ratings on somewhat relevant contracts and good ratings on relevant contracts on questionnaires, and no unfavorable ratings in the government's past performance information retrieval system (PPIRS) database. AR, Tab 2, Task Order Evaluation Report, at 76. Based on its review of the past performance of Portage and its major subcontractors, the agency assigned Portage a good rating. Id.

Based on our review of the record, we find that the agency's evaluation of Portage's past performance was reasonable. With regard to TES's challenges to specific prior contracts in which it alleges Portage had negative past performance, the agency considered each of these contracts and reasonably identified them as only somewhat relevant to the work to be performed under the task order, and determined that the past performance information received was on the whole far more favorable than unfavorable. For example, while TES claims the agency disregarded Portage's adverse performance on the Paducah Remediation Project, the agency reviewed the PPIRS system and found that Portage had received marginal to very good ratings over the period of the last 3 years. The agency determined that this contract was somewhat relevant to the work to be performed under the task order because, although the description of work indicated that there was some soil excavation, most of the work was associated with decontamination and decommissioning activities with no on-site disposal cell placement. AR at 20; Tab 8, Portage's PPIRS, at 1, 5, 9. One of TES's allegations of poor performance was directly contradicted by the reference received by the agency for the prior contract; with regard to the Los Alamos National Laboratories project, where TES relied upon a 2010 news article criticizing Portage's contract performance, Portage received extremely favorable ratings. AR at 20-22. Indeed, the past performance reference indicated that Portage would be selected again. On balance, we find that the agency, in its evaluation, fully considered the available information concerning Portage's past performance and reasonably assessed it as good.

The protest is denied.

Lynn H. Gibson
General Counsel