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Decision

Matter of: Nangwik Services, LLC

File: B-410444

Date: December 23, 2014

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Debra J. Talley, Esq., U.S. Army Materiel Command, for the agency.
Gary R. Allen, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of technical proposals, and its source selection decision, is denied where the record shows that the evaluation and source selection were reasonable and consistent with the solicitation.

DECISION

Nangwik Services, LLC, of Lorton, Virginia, protests the issuance of a task order to Technica, LLC, of Charleston, South Carolina, under task order request for proposals (RFP) W52P1J-12-R-0116, issued by the Department of the Army for logistics support services at Fort Irwin, California as part of the Enhanced Army Global Logistics Enterprise (EAGLE) Program. Nangwik challenges the Army's evaluation of technical and past performance factors, and its source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued as an 8(a) small business set-aside, sought proposals from EAGLE Basic Ordering Agreement (BOA) holders for maintenance, supply, and transportation services at Ft. Irwin, California. RFP at 2.¹ The RFP anticipated the

¹ According to the Army, EAGLE requirements are fulfilled by utilizing a multi-step process which was followed here. In this procurement, during step one, the CO

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issuance of a cost-plus fixed-fee task order with a fixed-fee transition task order for a transition period of 30 days. Id. In addition to the transition period, the RFP contemplated an 11-month base performance period, and four one-year option periods. Id. The estimated total value of the task order, including the transition period, base period, and option years, is \$49,100,000. Contracting Officer's (CO) Statement (COS) at 2. Award was to be made to the responsible offeror whose proposal was evaluated as the best value to the government, based on an integrated assessment of the non-price and price factors. RFP at 2.

The RFP provided that proposals would be evaluated using a three-phase approach considering technical factors, past performance and price. RFP, amend. 1, at 17, 18. In phase one, the CO would verify whether an offeror and its teammates, subcontractors, and/or managing partner (if identified) possessed Secret facility clearances by the proposal closing date. Id. at 18. Failure of the offeror and the other specified entities to have the required clearances by the proposal closing date would render the offeror ineligible for award. Id.

In phase two, each offeror's technical proposal would be evaluated on an acceptable/unacceptable basis, using a two-step process. Id. For step one, the agency would evaluate an offeror's staffing levels to determine whether they met the minimum productive hours for each area. The technical proposals of those offerors who met the minimum productive hours threshold would be further evaluated. Id. In step two of phase two, if discussions were to be conducted (as they were here), the agency would make a competitive range determination, including "highly-rated proposals," which, the RFP explained, would "include all proposals rated Technically Acceptable" and might "also include Technically Unacceptable proposals that do not require a major revision and/or do not possess significant informational deficiencies." Id. These proposals would proceed to phase three. Id.

In phase three, successful phase-two proposals would be evaluated with respect to past performance and price. RFP, amend. 1, at 18. Past performance was to be evaluated using confidence ratings, and price was to be evaluated for price reasonableness and realism. Id. Past performance was considered to be

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published a pre-solicitation notice that outlined the projected EAGLE requirements and the Army's intent to execute multiple BOAs. COS at 1. In step two, the CO issued a BOA request for proposals, which resulted in proposals that were evaluated on an acceptable/unacceptable basis with consideration given to technical and past performance factors. Id. The step two process resulted in over 100 contractors becoming EAGLE BOA holders. Id. In step three, here, the CO issued the RFP for the issuance of a task order for the specific requirements at Ft. Irwin. Id.

significantly more important than price, and all of the non-price factors when combined were also significantly more important than price. Id.

The agency received 11 proposals that possessed the necessary clearances to pass the phase one evaluation, including Nangwik's proposal. COS at 4. All 11 proposals also met the minimum productive hours threshold required to pass the phase two, step one evaluation. Id.

With regard to evaluating the technical proposals, the agency's source selection evaluation board (SSEB) first conducted an initial technical evaluation of each of the 11 proposals, documenting the ratings given under each technical subcategory. See, e.g., Agency Report (AR), Tab 30b, Nangwik Initial Tech. Eval., at 1-8; Tab 30c, Technica Initial Tech Eval., at 1-3. After these initial evaluations, all 11 offerors were included in the competitive range. AR, Tab 31a, Initial Competitive Range Determination.

As relevant here, in the phase two, step two initial evaluation, the SSEB reviewed both Nangwik's and Technica's technical proposals and found deficiencies. The SSEB determined that Nangwik's proposal contained deficiencies in each subfactor area, for a total of nine deficiencies, and found Technica's proposal contained four deficiencies under the staffing subfactor. Agency Report, Tab 30a, Nangwik Initial Tech. Eval., at 6-8; Tab 30b, Technica Initial Tech. Eval., at 6-7.

The agency conducted two rounds of discussions with all of the offerors concerning their technical proposals, providing each with detailed evaluation notices (ENs) describing their respective deficiencies. Each offeror responded to the ENs and submitted revised (interim) proposals, which were evaluated. See, e.g., AR, Tab 32f, Nangwik ENs; Tab 33f, Technica ENs; Tab 30d, Nangwik Interim Tech. Eval.; Tab 30c, Technica Interim Tech. Eval. Both the protester's and the awardee's revised technical proposals were found to be technically acceptable. Although permitted to do so, neither Nangwik nor Technica submitted second revised interim technical proposals. Id.

Following a second round of discussions, the agency again evaluated the technical proposals, made an interim competitive range determination, and excluded one offeror. AR, Tab 31c, Interim Competitive Range Determination. The agency then evaluated the remaining 10 competitive range offerors' past performance and price proposals. COS at 5. The agency did not send any ENs to Nangwik or Technica regarding past performance, but did so concerning their price proposals. Id.

Nangwik and Technica submitted final proposal revisions (FPRs) on August 7, 2014. COS at 5. Based on their FPRs, both Nangwik and Technica were determined to be technically acceptable. Id.

With respect to past performance, the agency evaluated each offeror's past performance information for recency and relevance, and provided a narrative addressing these issues for each offeror. See, e.g., AR, Tab 34b, Nangwik Past Performance Eval., at 1-10; Tab 34c, Technica Past Performance Eval., at 1-20. Both Nangwik and Technica received a substantial confidence assessment. The agency then analyzed prices in accordance with the RFP. COS at 7. Technica's proposal of \$49,156,342.59 provided the lowest price, and Nangwik was second lowest at \$49,740,837.53. AR, Tab 36, Source Selection Decision Document (SSDD), at 6.

The SSEB prepared an evaluation report (SSEB Report) and briefed the source selection authority (SSA) about the technical, past performance, and price evaluations. AR, Tab 35a, SSEB Report and Tab 35b, SSEB Briefing. The SSA prepared a SSDD that adopted the SSEB's findings, including its determination that Technica's and Nangwik's proposals were essentially equal under all of the non-cost factors. In this regard, the SSA found no meaningful discriminators between the two proposals, and so concluded there was no benefit in Nangwik's higher-priced proposal that would justify paying a premium of 1.9 percent. AR, Tab 36, SSDD at 7.

The agency issued the task order to Technica on September 11, 2014. After a debriefing, Nangwik filed this protest.²

DISCUSSION

Nangwik challenges the sufficiency of the agency's technical and past performance evaluations of both its and Technica's proposal. Protest at 7-8. The protester contends that the agency did not consider, and make qualitative comparisons of, the strengths and weaknesses associated with the specific content of the technical proposals.³ Protester's Comments at 4-7. In this regard, Nangwik contends that the Army was required to "discern discriminators between the two technical proposals since the costs were virtually equal." Protester's Comments at 4.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's

² The task order is valued in excess of \$10 million, and therefore falls within our jurisdiction to hear protests related to the issuance of task orders under 10 U.S.C. § 2304c(e)(1)(B).

³ The protest originally also contended that the agency did not engage in a comparative analysis of the offerors' past performance information. Protest at 7. After receiving the agency report, the protester conceded that the agency had made such an analysis, and abandoned this protest ground. Protester's Comments at 2.

evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶131 at 2. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

Here, the RFP expressly provided for evaluation of technical proposals "on an Acceptable/Unacceptable basis," RFP, amend. 1, at 18, and established no comparative or qualitative rating system. While the RFP, in Section M (Evaluation Factors for Award), referred to forming a competitive range of "the most highly rated proposals," which by itself could be read as suggesting a qualitative review, it also stated that "[h]ighly rated proposals . . . will include all proposals rated Technically Acceptable." Id. In this circumstance, the protester's insistence that the agency was required to identify strengths and weaknesses in competing proposals, and "make discriminating comparisons of the advantages and disadvantages of the competing proposals," is inconsistent with the plain terms of the RFP. Protester's Comments at 2.

Similarly, while Nangwick argues that "cost was not a discriminating factor" because the price difference between its offer and Technica's was small, this argument is factually incorrect. Here, the two proposals were rated identically under all of the non-price factors, and one proposal was priced lower than the other; price was the only discriminator. In a negotiated procurement with a best-value source selection methodology, where selection officials reasonably regard proposals as being essentially technically equal, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than the technical factors. Synergetics, Inc., B-299904, Sept. 14, 2007, 2007 CPD ¶ 168 at 7.

Although the agency refers to its selection decision as a tradeoff, no price/technical tradeoff was required here, since the proposals were reasonably determined to be technically equal and award was made to the offeror that submitted the lowest-priced proposal. The fact that Nangwik disagrees with the agency's judgment does not establish that the evaluation was unreasonable. Entz Aerodyne, Inc., *supra*. Nangwik has provided no basis to question the reasonableness of the SSA's decision to make award to Technica.

The protest is denied.

Susan A. Poling
General Counsel