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Decision

Matter of: Aero Simulation, Inc.

File: B-411373; B-411373.2

Date: July 2, 2015

James S. Ganther, Esq., Ganther Law Offices, for the protester.
John R. Tolle, Esq., Barton, Baker, Thomas & Tolle, LLP, for the intervenor.
Duncan Butts, Esq., Department of the Navy, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's technical evaluation is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Aero Simulation, Inc., (ASI) of Tampa, Florida, protests the Department of the Navy's issuance of a delivery order to Veraxx Engineering Corporation, of Chantilly, Virginia, under request for proposals (RFP) No. N61340-15-R-0059, for the CH-53E Super Stallion Helicopter Trainer Technology Upgrade Program. ASI challenges the Navy's evaluation of its proposal and its source selection decision.

We deny the protest in part and dismiss it in part.

BACKGROUND

The CH-53E Super Stallion, the largest and heaviest helicopter in the U.S. military, provides critical combat support. Agency Legal Memorandum at 2-4. Under this technology upgrade program, the contractor will modify two types of CH-53E helicopter trainers, including the Weapons System Trainer (WST). RFP Statement of Work ¶ 1. The modified trainers will give CH-53E pilots the skills necessary to maintain a high state of proficiency in operating the aircraft and its subsystems, and executing normal and mission procedures in a realistic tactical environment. Agency Report (AR), exh. 29, CH-53E Performance Specification ¶ 1.1.

The solicitation was issued¹ on November 10, 2014, as a delivery order competition among multiple indefinite delivery/indefinite quantity (IDIQ) contract holders pursuant to Federal Acquisition Regulation (FAR) § 16.505.² The RFP, set aside for small business, anticipated the award of a fixed-price contract to the firm whose proposal was most advantageous to the government based upon an integrated assessment of the solicitation's technical factor and price. RFP § M.1.0

The technical factor, which was more important than price, was comprised of four elements, one of which was visual system modification approach. RFP § M.5.0. The source selection official was to perform a tradeoff between offerors' prices and their evaluated strengths, weaknesses, and deficiencies; the solicitation reserved the right to select a higher-priced offer if its technical superiority was worth the price premium. Id.

The Navy received proposals from five firms by the January 13, 2015, closing date. After the initial evaluation, the contracting officer decided to conduct discussions with ASI and Veraxx. Both firms received written evaluation notices (EN), and both provided responses. After the responses were evaluated, the Navy requested and received final proposal revisions. The final evaluation report, documenting the proposals' evaluated strengths and weaknesses, rated both proposals "good." Veraxx's proposed price of \$19,327,193 was slightly higher than ASI's proposed price of \$19,186,982. AR, exh. 18, Final Proposal Evaluation Report, at 3.

In her source selection decision, the contracting officer described the strengths of both proposals, as well as a significant weakness in ASI's proposal concerning the visual system modification approach element. AR, exh. 19, Source Selection Decision, at 2-4. In this regard, the evaluators found that ASI's proposed approach provided a small margin of error which resulted in a high degree of risk in meeting the solicitation's WST visual display resolution requirements, which could negatively impact the quality of training. Id. at 3. She also discussed ASI's proposed early delivery schedule, which the evaluators characterized as a strength. She did not deem this feature a discriminator because, among other things, the RFP provided adequate time for production and delivery. Id. at 4. In the final analysis, she concluded that Veraxx's less risky technical approach was worth the approximately 0.7 percent (\$140,211) price premium. Id. at 5. Award was made to Veraxx and this protest followed.

¹ All solicitation references are to the conformed solicitation as amended by amendment No. 0003.

² As the value of the delivery order exceeds \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task or delivery orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

DISCUSSION

ASI challenges the evaluated significant weakness concerning the resolution of its WST visual display, and contends that the Navy improperly failed to evaluate all of its proposal's major enhancements. ASI also argues that the contracting officer improperly failed to consider its early delivery schedule as a discriminator.

Technical Evaluation - Resolution

ASI argues that the Navy improperly evaluated its proposal as having a significant weakness in connection with the resolution of its WST visual display system. The firm contends that the Navy did not understand its approach, and that the evaluation applied a factor already incorporated in its approach, leading to inaccurate findings.

The evaluation of proposals in a task or delivery order competition is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6. Our Office will review evaluation challenges to task or delivery order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. Logis-Tech, Inc., B-407687, Jan. 24, 2013, 2013 CPD ¶ 41 at 5.

Offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. Hallmark Capital Grp., B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9. To quote just two of this RFP's admonitions, "[T]he offeror has the burden to submit a proposal that contains the detail necessary to permit government evaluators to effectively evaluate and substantiate the validity of any assertions set forth in the offeror's proposal," RFP § L.1.0., and proposals were to "clearly and convincingly reveal" the offerors' proposed designs and "demonstrate that the offeror has an accurate understanding of the requirements and associated risks." RFP § M.2.0. With respect to the resolution requirements, the RFP stated that offerors "shall provide the assumptions and analysis that demonstrate the offeror's proposed approach will fulfill or exceed the resolution, contrast, and luminance requirements." RFP § L.1.0.1.c.ii. The Navy was to "base its evaluation on the information presented in the offeror's proposal." RFP § L.1.0.

To address the resolution requirements, ASI's proposal contained three sentences and a graph. The proposal stated that the surface resolution of its visual display system was "[DELETED]." AR, exh. 26, ASI Initial Proposal at 32. The proposal next stated that the predicted resolution [DELETED]. Id. The proposal concluded by stating that the graph included in the proposal shows that the design of its visual

system will “easily meet the 4.0 arc-min/OLP average resolution requirement.”³ Id. The referenced graph referred to was an [DELETED] resolution plot. Id.; AR, exh. 14, EN No. A01 at 2.

The Navy evaluated ASI’s proposal as having a deficiency because the proposal (and its resolution plot) did not provide enough information to determine that the offered system would comply with the resolution requirements per channel. The Navy explained that this was important because lack of resolution affects target and feature detection, recognition, and identification, and might affect visual cues needed for low level flight. AR, exh. 14, EN No. A01 at 2. In the EN for this deficiency, ASI was told of these concerns and asked to “[P]rovide additional information such as per channel resolution, assumptions, projector and screen degradations and calculations.” Id.

In its response, ASI did not question the Navy’s concerns but merely replaced the existing resolution plot with a table. AR, exh. 16, ASI’s EN Responses at 3-4 and Revised Proposal at 1-32, 1-33. The firm explained that it updated its proposal to include a “[DELETED]” and set forth a specific factor it used to determine resolution. Id. ASI stated that its new table showed “a compliant average channel resolution of better than [DELETED] was derived for each of the [DELETED] channels proposed” for its WST system. Id. The new table included numerical predictions but no supporting analysis.

In the final evaluation, the Navy found that its resolution calculations agreed with ASI’s estimates, resolving the deficiency, but that ASI’s EN response introduced a new significant weakness in that it overlooked reductions in static resolution associated with the use of projector panels. AR, exh. 18, Final Evaluation Report, EN No. A01 at 2.

In this regard, Navy explained that the trainer contains a number of mounted projectors that project images on a large curved dome surface. Agency Legal Memorandum at 12-15. ASI proposed to use [DELETED] projectors,⁴ each of which is [DELETED], and each projector is to [DELETED]. AR, exh. 27, Declaration of Navy Evaluator, at 1. Off-axis positioning of the projectors (positioning them at

³ The specifications stated that the “average static spatial resolution shall be no greater than 4 arc-minutes per optical line pair (OLP) per channel. AR, exh. 29, Performance Specification, Appendix A, at ¶ A.3.2.4.5.

⁴ ASI distorts the evaluator’s statement when it asserts that the Navy treated the offerors unequally because it found its “[DELETED]-projector solution” a high risk but did not find the Veraxx approach, which ASI “presumes” involved eight projectors, a higher risk. Supplemental Protest at 3. The statement clearly associates the risk of ASI’s approach with its failure to provide sufficient information, not the number of its projectors.

angles away from the screen) can, in combination with the curved dome surface, generate distortions that degrade resolution. Id. at 2. The Navy found that ASI's approach did not discuss off-axis positioning of the projectors, and its table of numerical predictions had no supporting analysis. The evaluator's application of a pixel utilization factor in evaluating ASI's proposed approach indicated that a reduced number of pixels and field of view would have a high probability and high risk of not complying with the resolution requirements. Id.; AR, exh. 18, Final Evaluation Report, EN No. A01 at 2.

ASI's protest argues that its derivation of resolution was performed in conjunction with the designer and manufacturer of its proposed projectors and lenses using the manufacturer's analysis tools. Protest at 4. The firm asserted that this analysis included factors which contribute to derate--or lower the capability of--surface resolution. Id. The firm stated that the derating caused by warp (the image distortion needed on the projector panel to compensate for the off-axis projection on a curved surface) causes diminished panel utilization efficiency and, therefore, a percentage of panel inefficiency must be applied to derate the predicted surface resolution. Id. ASI explained that this derating could be applied in two alternate ways, and described the method it used in its analysis. Id. at 4-5. ASI asserted that the Navy did not understand the actions taken by ASI and the manufacturer to optimize its design, and the derating factor the Navy used in the evaluation was redundant because such a factor was already included in ASI's approach. Id. at 5.

The record shows that none of this explanation, or the explanations proffered in the firm's comments on the agency report, was in ASI's proposal. As the contracting officer states, ASI is correct that the government did not understand the actions taken by ASI and the manufacturer to optimize its design because ASI did not explain its approach in its proposal or in the EN response. Contracting Officer's Statement at 5. The EN expressly asked ASI to provide additional information including "assumptions, projector and screen degradations and calculations." AR, exh. 14, EN No. A01 at 2. ASI's arguments that it complied with this request by providing a table is unpersuasive. As the Navy evaluator notes, the table only included numerical predictions with no underlying calculations or assumptions, and its revised proposal did not discuss off-axis positioning of the projectors. AR, exh. 27, Navy Evaluator's Declaration, at 2.

Because it is an offeror's burden to submit an adequately written proposal that contains all of the information required under the solicitation, we find the agency's evaluation unobjectionable. Battelle Memorial Inst., B-299533, May 14, 2007, 2007 CPD ¶ 94 at 3; Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 7-8 (where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation). ASI takes issue with the Navy's use of a "redundant" factor to evaluate its proposed approach, but any failure here lies with ASI's decision not to fully explain the analysis and assumptions underlying its approach.

ASI also contends that the Navy's evaluator participated in meetings under ASI's current CH-53E program when it presented the same method of calculating resolution and thus should have understood its response. ASI argues that this information was "too close at hand" for the evaluator to ignore during the evaluation here.

This argument is unavailing. When evaluating past performance, we have held that evaluators cannot ignore information of which they are personally aware (i.e., information that is "too close at hand") even if that information is not included in the offeror's proposal. See, e.g., Firestorm Wildland Fire Suppression, Inc., B-310136, Nov. 26, 2007, 2007 CPD ¶ 218 at 4. This principle does not apply here because the information at issue does not consider ASI's past performance but rather relates to an RFP technical requirement. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 9. An offeror's technical evaluation is dependent on the information furnished, and an offeror that fails to submit an adequately written proposal runs the risk of having its proposal downgraded. Id.

Technical Evaluation – Proposed Enhancements

ASI's initial protest also argued that the Navy improperly failed to evaluate all of its proposal's major enhancements as set forth in Table 2-1 of its proposal. Protest at 3. The firm argued that a "proper evaluation of all of the major enhancements ASI offered should have resulted in award" to the firm. Id.

In its request that our Office dismiss this allegation as untimely, the Navy explained that the solicitation as amended, vendor question and answer (Q&A) exchanges, and the discussions letter sent to ASI, clearly put the firm on notice that the Navy would only evaluate information expressly set forth in sections L and M of the RFP. See, e.g., AR, exh. 12, Q&A Logs at 7; exh. 14, ASI Discussions Letter, at 1. The record confirms the Navy's position.

Notwithstanding the language of its protest quoted above, ASI counters that it did not protest the agency's failure to evaluate all of its proposed enhancements but, rather, its failure to evaluate the enhancements within the scope of the evaluation criteria. ASI Reponse to Dismissal Request at 3. ASI's protest lacks a valid basis.

Our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4), (f), and 21.5(f), require that a protest include a sufficiently detailed statement of the grounds supporting the protest allegations. That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester's allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11.

ASI's protest does not meet this standard. Even though the Navy provided the firm its full technical evaluation document prior to its debriefing, the firm's April 19 protest did not identify which, if any, of its enhancements the Navy improperly failed to evaluate. As a result, the protest did not include sufficient information to establish the likelihood that the Navy violated applicable procurement laws or regulations. ASI did not provide any factual support for its allegation until its May 1 response to the Navy's dismissal request. However, the piecemeal presentation of issues is not permitted by our timeliness rules. 4 C.F.R. § 21.2(a)(2) (protests of other than alleged solicitation improprieties must be filed within 10 days of when the protester knew or should have known its bases for protest); Lynxnet LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 10 at n.4. Accordingly, this basis of protest is dismissed.

Source Selection Decision

In making her source selection decision, the contracting officer considered whether ASI's early delivery schedule should be considered a discriminator. She declined to view ASI's early delivery schedule as a discriminating benefit because, among other things, the government did not have a need for early delivery; the RFP provided adequate time for production and delivery; and it was unclear whether the government could support early deliveries from a personnel and facility resources perspective. AR, exh. 19, Source Selection Decision, at 4.

On May 1, ASI received the agency report, including the source selection decision. The firm subsequently filed a supplemental protest in which it argued that the decision not to consider its accelerated delivery schedule a discriminator "defies all logic," and was unreasonable as demonstrated by the fact that the procurement was conducted under the authority of FAR § 16.505. Supplemental Protest at 2.

ASI's allegation lacks any factual basis. Even though it knew all of the contracting officer's reasons for not considering this feature a discriminator, the protest did not mention, much less take issue with, any of them.⁵ Id. The allegation also lacks a

legal basis. That mere fact that the procurement was conducted under FAR § 16.505, which is more streamlined than some other acquisition methods, did not

⁵ In its May 22 response to the supplemental agency report, ASI, for the first time, challenged the reasons set forth in the source selection decision. As noted above, however, our Regulations do not envision a piecemeal presentation of evidence, information, or analysis. Staples Contract & Commercial, Inc., B-409528.34, B-409528.37, Dec. 3, 2014, 2014 CPD ¶ 361 at 11 n.6.

require the contracting officer to consider ASI's early delivery a discriminator. As a result, this contention is dismissed as well.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel