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Decision

Matter of: Military Freefall Solutions, Inc.

File: B-422300

Date: March 19, 2024

James M. White, Esq., Marshall & White, PC, for the protester.
Erin L. Felix, Esq., Polsinelli PC, for Skydive Elsinore, Inc., the intervenor.
Christopher B. Ery, Esq., United States Marine Corps, for the agency.
Uri R. Yoo, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the awardee's technical quotation is denied where the protest allegations are not supported by the record, and the evaluation was reasonable and consistent with the solicitation.

DECISION

Military Freefall Solutions, Inc. (MFS), a small business of Coronado, California, protests the award of a contract to Skydive Elsinore, Inc. (Elsinore), a small business of Lake Elsinore, California, under request for quotations (RFQ) No. M00681-24-Q-0003, issued by the United States Marine Corps for high-altitude, high-opening (HAHO) progression and sustainment training support services. The protester challenges the agency's evaluation of the awardee's technical quotation and the best-value determination.

We deny the protest.

BACKGROUND

On November 7, 2023, the agency issued the solicitation as a small business set-aside using the commercial acquisition procedures of Federal Acquisition Regulation (FAR) part 12, and the simplified acquisition procedures of FAR subpart 13.5. Agency Report (AR), Tab 1, RFQ at 1, 18. The RFQ contemplated the award of a single fixed-price, indefinite-delivery, indefinite-quantity contract with a 5-year ordering period. *Id.* at 18, 42.

The solicitation provided that award would be made to the responsible vendor whose quotation is found to be most advantageous to the government, considering technical approach, price, and past performance. *Id.* at 17. The solicitation further provided that the evaluation would proceed in four steps: (1) responsibility determination; (2) evaluation of technical approach; (3) ranking of technically acceptable quotations by price from the lowest to highest; and (4) evaluation of past performance for the remaining quotations. *Id.* at 19. The solicitation informed vendors that technical approach and past performance would be evaluated as either acceptable or unacceptable, and price would be evaluated for completeness and reasonableness. *Id.* at 18-19.

The solicitation sought a contractor to provide support for advanced training in HAHO- and high-altitude, low-opening (HALO)-configured parachute operations. *Id.* at 6-7. Under the technical approach factor, vendors were directed to detail how the services required in the performance work statement (PWS) would be provided, specifically, “how the contractor will address the requirements in [s]ection[s] 4.1, 4.2, 4.3, 4.4, and the [p]erformance [r]equirements of [s]ection 5.0” of the PWS. *Id.* at 17. To be rated as technically acceptable, a quotation was required to meet the minimum requirements by demonstrating services comparable to those in sections 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, and 4.7 of the PWS. *Id.* at 18. As relevant here, PWS section 4.1 required the contractor to provide an aircraft as follows:

4.1 Aircraft. The contractor shall provide an aircraft capable of HALO configured parachute operations at an altitude of at least 5,500 feet Above Ground Level (AGL) utilizing a rear ramp exit. The contractor shall provide an aircraft capable of HAHO configured parachute operations at an altitude of 14,000 [feet AGL] utilizing a rear ramp exit. This aircraft must be an approved Air Mobility Command aircraft . . . , which is authorized to conduct operations with [Department of Defense] personnel. The aircraft must be capable of supporting nine (9) combat loaded Marines, two (2) Jumpmasters, and two (2) Oxygen Containers simultaneously.

Id. at 7. In addition, sections 4.2 and 4.4 of the PWS required the contractor to provide “the use of their own airfield immediately adjacent to a Zone Availability Reports . . . approved drop zone,” as well as a secure facility of at least 2,000 square feet adjacent to the airfield. *Id.* at 8-9.

The agency received two timely submitted quotations, one from Elsinore and one from MFS. Both quotations were evaluated to be acceptable under the technical approach and past performance factors. AR, Tab 4, Award Decision Document at 1. MFS’s price was \$3,950,720, while Elsinore’s price was \$2,355,625. *Id.* at 2; AR, Tab 5, Brief Explanation at 1. Based on this evaluation, the agency determined that Elsinore’s quotation represented the best value to the government and awarded the contract to Elsinore. AR, Tab 4, Award Decision Document at 2; Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 7. This protest followed.

DISCUSSION

The protester challenges the agency's evaluation of the awardee's quotation under the technical approach and price factors. Primarily, the protester argues that the agency unreasonably found the awardee's technical quotation to be acceptable when the awardee's proposed aircraft cannot meet the solicitation's requirements. Protest at 3-4. The protester also asserts that the source selection decision was flawed because it was based on an unreasonable evaluation. *Id.* at 5. We have reviewed the protester's arguments and conclude that none provides a basis to sustain the protest.¹

As noted above, the agency conducted this procurement using simplified acquisition procedures. RFQ at 18. When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. *Navarre Corp.*, B-419088.4, July 29, 2022, 2022 CPD ¶ 204 at 6. In reviewing a protest challenging an agency's evaluation under simplified acquisition procedures, our Office will not reevaluate quotations, but instead, 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. *ERP Servs., Inc.*, B-419315, Feb. 24, 2021, 2021 CPD ¶ 85 at 3. A protester's disagreement with an agency's judgment, without more, is insufficient to establish that an agency acted unreasonably. *PN&A, Inc.*, B-406368, Apr. 23, 2012, 2012 CPD ¶ 145 at 4.

The solicitation required vendors to describe in their technical approach how they would be "able to provide the services required" in the PWS and, specifically, how they would "address the requirements" of specified PWS sections. RFQ at 17. As relevant here, section 4.1 of the PWS required the contractor to provide an aircraft "capable of supporting nine (9) combat loaded Marines, two (2) Jumpmasters, and two (2) Oxygen

¹ The protester argues that the awardee did not propose a contractor-provided facility as required by the solicitation and that the awardee failed to price its quotation "correctly or completely." Protest at 2-5. The agency requests dismissal of these protest grounds, arguing that they are speculative and lack sufficient factual or legal support. Req. for Dismissal at 3-10. We find that, other than speculation based on an automatically generated award announcement that identified the address of the procuring agency as the place of performance, the protester did not provide any concrete facts supporting its "concern" that the awardee's quotation failed to include an acceptable contractor-provided facility. See Protest at 2-3. Moreover, the protester did not provide any support, other than the awardee's low price, for its objection to the agency's evaluation of the awardee's price. See Protest at 4-5. Accordingly, we dismiss these protest allegations as legally and factually insufficient. See 4 C.F.R. §§ 21.1(c)(4) and (f); *DPRA, Inc.*, B-421592, July 17, 2023, 2023 CPD ¶ 189 at 5 (Where a protester relies on bare assertion, without further supporting details or evidence, our Office will find that the protest ground essentially amounts to no more than speculation and does not meet the standard contemplated by our regulations for a legally sufficient protest.).

Containers simultaneously” for conducting HALO- and HAHO-configured parachute operations. *Id.* at 7. The RFQ advised that quotations would be rated as either technically acceptable or unacceptable, based on whether the quotation has met the minimum requirements for “[s]ervices comparable to those in [specified] section[s]” of the PWS. *Id.* at 18.

The awardee’s quotation stated that Elsinore “intend[s] to use [its] [DELETED]” to perform the requirements under this solicitation. AR, Tab 2, Elsinore Quotation at 51. The agency evaluated the quotation and found that Elsinore’s technical approach met the agency’s requirements. AR, Tab 3, Elsinore’s Technical Evaluation at 2. Concluding that the awardee’s technical quotation “clearly [met] the minimum requirements of the solicitation,” the agency assessed it to be technically acceptable. *Id.*

The protester argues that the agency’s conclusion in this regard was unreasonable due to the weight of the required load under the PWS and the useful load of the awardee’s aircraft. Specifically, the protester asserts that an aircraft meeting the requirements must have the capacity to carry 5,005 pounds, but the weight capacity of the awardee’s aircraft is “approximately 4,000 lbs.” Protest at 4. The protester arrives at the required capacity figure of 5,005 pounds by calculating the following sum: nine combat-loaded marines at 350 pounds each; two jumpmasters at 275 pounds each; one pilot at 200 pounds; two oxygen containers at 100 pounds each; and 150 gallons of fuel at 6.7 pounds per gallon. *Id.* In its initial protest, the protester did not provide any documents or references to support the figures it uses, including the estimated capacity of the awardee’s aircraft.² See *generally*, Protest.

The agency responds that the protester’s unsupported and “clearly inflated” numbers provide no basis to disturb the agency’s reasonable evaluation. COS/MOL at 11. In this regard, the technical evaluator--who wrote the requirements for this solicitation and is currently serving as the contracting officer’s representative on the predecessor contract for the same requirement--explains that the agency “estimate[d] that an aircraft must be able to carry 4,226 lbs. in order to meet the requirement.” Decl. of Technical Evaluator at 4.³ To arrive at this estimate, the evaluator calculated the weight of nine

² As discussed below, the protester later submitted, in a piecemeal fashion, additional documentation in support of the figures used in its calculation. See *generally*, Comments, exhs. 1-4.

³ Although we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, see *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for an agency’s contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered in our review of the rationality of selection decisions, if those explanations are credible and consistent with the contemporaneous record. *McLaurin Gen. Maint., Inc.*, B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 6. In addition, for procurements for commercial items

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combat-loaded marines at 297 pounds each, two jumpmasters at 246 pounds each, one pilot at 200 pounds, two oxygen containers at 100 pounds each, and 670 pounds of fuel for the 1-hour flight window required to perform the training exercise. *Id.* The evaluator explains that the weight of a parachute would be 51 pounds according to the operator and field maintenance manual for the parachute system, and that the applicable standard operating procedure for Marine Corps parachute operations specifies 50 pounds as the maximum weight for equipment. *Id.*; see AR, Tab 8, 1st Reconnaissance Battalion Parachute Operations Standard Operating Procedure at 7; AR, Tab 9, Parachute Equipment Description and Data at 1. The evaluator further explains that, based on his experience, a “typical Marine” without gear weighs about 195 pounds.⁴ *Id.* The evaluator also notes that the agency calculated the fuel weight required for performance at 670 pounds “for a one-hour flight window in the [DELETED],” rather than 1,005 pounds as asserted by the protester. Decl. of Technical Evaluator at 5; see Protest at 4.

The agency also disputes the protester’s unsupported estimate of “approximately 4,000 [pounds]” for the weight capacity of the awardee’s proposed aircraft. COS/MOL at 13; see Protest at 4. The agency explains that the maximum weight that an aircraft can safely carry is called the “useful load” and is calculated by subtracting the basic empty weight of the aircraft from the maximum take-off weight of the aircraft (the maximum weight the aircraft can safely fly at, including the weight of fuel and everything being carried by the aircraft). COS/MOL at 9; Decl. of Technical Evaluator at 5. The evaluator further explains that, based on the [DELETED]’s officially rated maximum design take-off weight of 12,500 pounds minus the certified weight of the awardee’s [DELETED] at 7,670 pounds⁵, the agency calculated the useful load of the awardee’s

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conducted under simplified acquisition procedures, such as this one, limited documentation of the source selection is permissible, as long as the agency provides a sufficient record to show that the source selection was reasonable. FAR 13.303-5(e).

⁴ The agency disputes the protester’s assertion that a combat-loaded marine would weigh 350 pounds by pointing to the “Marine Corps[’s] strict weight standards.” COS/MOL at 12. By that standard, the agency points out that a 350-pound marine would weigh 249 pounds without gear and, under the Marine Corps’s height and weight standards, a male marine of that weight would have to be at least 6 feet 8 inches in height, and a female marine of that weight would have to be at least 6 feet 10 inches in height, which is far from average. *Id.*, citing Req. for Dismissal, exh. 7, Marine Corps Order 6110.3A, Marine Corps Body Composition and Military Appearance Program, encl. 3 at 3-1.

⁵ The agency notes that even though the manual for the [DELETED] lists its basic empty weight at 7,289 lbs., the awardee’s proposed aircraft was weighed and certified as 7,670 lbs., which may account for minor differences caused by owner configuration. Decl. of Technical Evaluator at 5; compare AR, Tab 6, Aircraft Weight and Balance Form, with AR, Tab 7, Excerpt from [DELETED] Manual, Weight and Balance.

proposed aircraft as 4,830 pounds. Decl. of Technical Evaluator at 5; see AR, Tab 6, Aircraft Weight and Balance Form; AR, Tab 7, Excerpt from [DELETED] Manual, Weight and Balance. Based on the 4,830 pounds useful load calculation, the agency concluded that the awardee's proposed aircraft was technically acceptable since it met the performance requirement for 4,226 pounds of load capacity. In addition, the technical evaluator, who had served as the contracting officer's representative under several predecessor contracts, states that the [DELETED] has been previously "used to satisfy" a "nearly identical requirement." Decl. of Technical Evaluator at 6.

On this record, we find no basis to object to the agency's evaluation. First, as noted above, the protester provides no evidence or documents to substantiate the weights it used to calculate the useful load required to perform the requirements or the useful load of the awardee's proposed aircraft. See *generally*, Protest. In this regard, in its comments on the agency report, the protester furnished, for the first time, additional documents purporting to support its calculation figures (e.g., the estimated weight of a combat-loaded marine and the useful load of the awardee's proposed aircraft). See Comments at 2. These additional documents included: a link to the U.S. Transportation Command's defense transportation regulation appendix on aircraft load planning and documentation; the air mobility command operations manual of a private company, WIN Aviation; Army Techniques Publication Number 3-18.11, Special Forces Military Free-Fall Operations; the Federal Aviation Administration (FAA) regulation on fuel requirements for visual flight rule conditions, 14 C.F.R. § 91.151; and a sworn statement of the president of WIN Aviation. See Comments at 2-3; Comments, exhs. 1-4.

The agency argues that these documents, which are not specific to the Marine Corps, are not relevant to the requirements under this solicitation. Resp. to Comments at 6-10. The agency also requests that we dismiss these documents, presented for the first time as part of the protester's comments, as an impermissible piecemeal presentation of evidence. Req. for Ruling on Piecemeal Evidence at 1; Resp. to Comments at 4-6. Although provided with opportunities to do so, the protester did not respond to the agency's request for dismissal of this evidence or to the agency's supplemental briefing provided in response to the protester's comments. See Notice re Dismissal Request and Additional Briefing at 1.

Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues; when a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later issues will not be considered. *XTec, Inc.*, B-418619 *et al.*, July 2, 2020, 2020 CPD ¶ 253 at 24. While our decisions have frequently addressed the piecemeal presentation of arguments, we have also rejected the piecemeal presentation of evidence, information, or analysis. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 4. Indeed, our regulations obligate a protester to set forth all of the known legal and factual grounds supporting its allegations because the piecemeal presentation of evidence unnecessarily delays the procurement

process and our ability to resolve protests within the requisite 100-day period or, as here, within the 65-day period under the express option.⁶ *Id.*

Here, we find to be improper the piecemeal presentation of evidence that the protester now asserts is directly probative of its original allegations. Moreover, we do not find that this evidence was presented to rebut unforeseen agency arguments. We note that all the documents submitted with the protester's comments were available to the protester and obviously relevant to its original protest allegations. With respect to the useful load of the awardee's aircraft, the protester asserts for the first time in its comments that the agency's calculations are erroneous because the certified empty weight of the awardee's aircraft does not account for recent modifications to the aircraft, submitting a sworn statement from the company that purportedly made those modifications. Comments at 3; see Comments, exh. 4, Sworn Statement of WIN Aviation President at 1. Again, this argument and evidence clearly should have been submitted with the initial protest to permit the agency to reasonably respond to the protester's allegations. In sum, we see no reason to permit the protester to introduce, in such a piecemeal fashion, evidence which clearly should have been submitted with its protest.

Moreover, even if we were to consider these untimely submitted documents, they do not show that it was unreasonable for the agency to calculate the required useful load based on rules and procedures specifically applicable to the Marine Corps. In other words, nothing in the record demonstrates that the agency should have instead relied on the evidence later submitted by the protester, which consists of general Department of Defense transportation regulations, an Army technical publication for special forces, general FAA regulations, and a private company's operating manual.

In addition, although the protester implies that it was improper for the agency to "rel[y] on the statement of a single person" (*i.e.*, the technical evaluator discussed above), we find no basis to discredit the agency's evaluation on this basis. Comments at 2. First, as noted above, the agency provides sufficient supporting documents to substantiate the declaration submitted by its technical evaluator. See Decl. of Technical Evaluator at 5; AR, Tab 6, Aircraft Weight and Balance Form; Tab 7, Excerpt from [DELETED] Manual, Weight and Balance; Tab 8, 1st Reconnaissance Battalion Parachute Operations Standard Operating Procedure at 7; Tab 9, Parachute Equipment Description and Data at 1. Moreover, we note that the agency's technical evaluator not only wrote the requirement for this solicitation, but is currently serving as the contracting officer's representative for the predecessor contract. Resp. to Comments at 6-7; Decl. of Technical Evaluator at 2-3. The evaluator also explains that he is a current Marine gunnery sergeant with 18 years of experience, serving the Marine Corps

⁶ The Marine Corps requested that our Office process this protest under the express option provisions of our Bid Protest Regulations. 4 C.F.R. § 21.10. We granted the request. As a result, the parties submitted their filings under an accelerated schedule, and this decision has been issued before the 65-day deadline under our express option procedures. See *id.*

Reconnaissance and Training Command Community in various roles that include parachute safety officer, high risk instructor, and paraloft chief. Decl. of Technical Evaluator at 1. He attests that he has “one of the highest levels of expertise and experience in the Marine Corps conducting high risk parachute operations within both the military and civilian sector,” and provides a list of his considerable technical expertise and experience. *Id.* at 1-2.

On this record, we see no basis to question the agency’s judgment that the awardee’s quoted aircraft met the technical requirements. In our view, agency technical personnel, who are most familiar with the government’s requirements, are in the best position to make judgments as to whether a particular item meets a solicitation’s technical requirements, and this Office will not question those determinations absent a showing that they are unreasonable. *Airbus Helicopters, Inc.*, B-418444, B-418444.2, May 12, 2020, 2020 CPD ¶ 168 at 16. Further, we will afford particular deference to the technical expertise of agency personnel regarding judgments that involve matters of human life and safety, as is the case here. *Id.*; *Airborne Tactical Advantage Co., LLC*, B-414929.2, B-414929.3, Sept. 28, 2018, 2018 CPD ¶ 342 at 9-10. Ultimately, a contracting agency has the primary responsibility for determining its legitimate needs and for determining whether an offered item will satisfy those needs, since it is the agency that is most familiar with the conditions under which the supplies or services will be used and because the agency must bear the burden of difficulties incurred by reason of a defective evaluation. *Airbus Helicopters, Inc., supra*; *Airborne Tactical Advantage Co., LLC, supra*. Here, we find no basis to disturb the agency’s reasonable judgment and therefore no basis to sustain the protest allegations.

Finally, the protester asserts that the agency’s source selection decision was flawed because it was based on the unreasonable evaluation of the awardee’s technical quotation. Protest at 5. Because we deny the protester’s challenge to the agency’s technical evaluation, the protester’s challenge to the agency’s best-value decision, which is based on the same alleged technical evaluation arguments, is also denied. *See NetCentrics Corp.*, B-421172.2, B-421172.3, Oct. 23, 2023, 2023 CPD ¶ 247 at 22 (explaining that where other challenges to an agency’s evaluation have been denied or otherwise dismissed, a derivative challenge to the best-value determination does not afford a basis to sustain the protest).

The protest is denied.

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General Counsel