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Decision

Matter of: SRA International, Inc.

File: B-408624; B-408624.2

Date: November 25, 2013

Patricia H. Wittie, Esq., Karla J. Letsche, Esq., and Daniel J. Strouse, Esq., Wittie, Letsche & Waldo, LLP, for the protester.

Alexander T. Bakos, Esq., and Marla Harrington, Esq., National Aeronautics and Space Administration, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's technical evaluation is sustained where (1) the record fails to demonstrate a reasonable basis for several of the agency's evaluation findings, and (2) the record fails to demonstrate that the agency assigned ratings in an even-handed manner.

DECISION

SRA International, Inc. (SRA), of Fairfax, Virginia, protests the decision by the National Aeronautics and Space Administration (NASA) not to award it a contract under request for proposals (RFP) No. NNH12360015R, for coaching and organizational development services. The protester argues that the agency's evaluation of proposals was unreasonable and that its best value tradeoff decision was flawed.

We sustain the protest.

BACKGROUND

The RFP, which was issued on June 29, 2012, contemplated the award of two or more indefinite-delivery/indefinite-quantity (ID/IQ) contracts with fixed-price/time and materials task orders for a 5-year period of performance. The solicitation provided for award to the offerors whose proposals represented the best value to the government based on the following three factors in descending order of importance: technical merit, price, and past performance.

The RFP advised offerors that their technical proposals would be evaluated to assess the thoroughness, adequacy, and effectiveness of their approaches to satisfying the requirements of the statement of work (SOW) pertaining to organization development (OD) services, coaching, and engagement/activity tracking; in addition, the solicitation provided for evaluation of the thoroughness and effectiveness of offerors' proposed approaches to accomplishing two representative task orders (RTOs).¹ The solicitation further provided for the evaluation of offerors' ability to meet the requirements of SOW section 11.0, which (1) identified more than a dozen NASA centers/installations across the country and provided that the agency would have the right to request the services of OD professionals, coaches, and mediators located within 2 hours of each center/installation, and (2) specified the minimum education and experience requirements for the key labor categories. In connection with the former provision, the RFP stated that the "availability of professionals within each geographic area . . . is critical to the success and affordability of this contract." SOW at 8.

Under the technical factor, the RFP also provided for evaluation of offerors' small business subcontracting and quality assurance plans. Of relevance to this protest, the solicitation required all offerors (except small businesses) to submit small business subcontracting plans identifying their goals for subcontracting with various categories of small businesses (e.g., small disadvantaged business concerns) and including other information required by Federal Acquisition Regulation (FAR) § 52.219-9. In connection with the requirement for subcontracting goals, offerors were to complete a chart (RFP Exhibit 5) providing a breakdown of their proposed subcontracting goals by small business category, expressed both as a percent of the ID/IQ maximum ordering value and as a percent of total planned subcontracts; offerors were also to furnish the dollar amounts corresponding to the percentages. Additionally, the solicitation required offerors to furnish brief descriptions of the work to be performed by the small business subcontractors; to describe their plans for participation in the NASA mentor-protégé program; and, "if the subcontractor(s) [were] known," to "connect the work to the subcontractor and specify the extent of commitment to use the subcontractor(s) (enforceable vs. non-enforceable commitments)." RFP, amend. 000001, at 42.

¹ RTO No. 1 required the contractor "to plan, design, and deliver an organization development & coaching assessment and intervention for the senior management team at Ames Research Center around the topics of strategic planning and team cohesion/alignment." RFP, Exh. 2. RTO No. 2 required the contractor to provide coaching for participants in the NASA FIRST program, a leadership development program for GS 11-12 engineers, scientists, and administrative professionals. RFP, Exh. 3.

The RFP advised that in evaluating an offeror's small business subcontracting plan and commitment to small businesses, the agency would consider the offeror's proposed subcontracting goals, the extent of the plan's compliance with the subcontracting plan requirements of the FAR, the extent to which the proposal identified the offeror's small business subcontractors, "the extent of commitment to use the subcontractor(s) (enforceable vs. non-enforceable commitments)," and the offeror's participation in the mentor-protégé program. RFP at 51.

The RFP provided that the agency would evaluate the technical proposals for strengths, weaknesses, significant strengths, significant weaknesses, and deficiencies. The solicitation defined a weakness as "a flaw in the proposal that increases the risk of unsuccessful contract performance," a significant weakness as "a proposal flaw that appreciably increases the risk of unsuccessful contract performance," and a deficiency as "a material failure to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." Id. at 52. The RFP also provided for proposals to be assigned overall technical ratings of excellent, very good, good, fair, or poor. As relevant to this protest, a rating of good was to be assigned if a proposal had no deficiencies, "show[ed] a reasonably sound response," and if "[a]s a whole, weaknesses not off-set by strengths [did] not significantly detract from the offeror's response." Id. A rating of fair was to be assigned to a proposal with no deficiencies, but one or more weaknesses, where the weaknesses outbalanced the strengths.

With regard to price, the solicitation instructed offerors that they should provide a price for each of the RTOs, which would be evaluated for reasonableness. Offerors were also to furnish loaded labor rates for the labor categories to be used in performance, which were also to be assessed for reasonableness.²

The agency received ten proposals by the RFP's August 12, 2012 closing date. The agency eliminated one proposal for failing to provide all required information and evaluated the other nine. The results of the evaluation were as follows:

² Under the past performance factor, which is not at issue in this protest, offerors were to be assigned performance confidence ratings of very high, high, moderate, low, very low, or neutral.

Offeror	Technical Merit Rating	# of Significant Strengths, Strengths, Weaknesses, Sign. Weaknesses	Performance Confidence Rating	Price (for RTOs)
Cambria	Very Good	2 Significant Strengths, 3 Strengths, 1 Weakness	High	[deleted]
ICF	Good	3 Strengths, 2 Weaknesses	Very High	[deleted]
Booz Allen	Good	4 Strengths, 3 Weaknesses	High	[deleted]
SRA	Fair	3 Strengths, 2 Weaknesses, 1 Significant Weakness	High	[deleted]
Offeror A	Fair	2 Strengths, 4 Weaknesses	Very High	[deleted]
Offeror B	Fair	1 Strength, 4 Weaknesses	Neutral	[deleted]
Offeror C	Fair	3 Strengths, 3 Weaknesses, 1 Significant Weakness	Neutral	[deleted]
Offeror D	Poor	1 Strength, 2 Weaknesses, 1 Significant Weakness	Neutral	[deleted]
Offeror E	Poor	6 Weaknesses, 1 Significant Weakness	Neutral	[deleted]

Source Selection Decision (SSD), July 11, 2013, at 3-13; Source Selection Presentation, June 26, 2013, at 148.

As discussed in greater detail below, the evaluators identified a significant weakness in the protester’s proposal based on its failure to adequately address the organizational strategic planning portion of RTO No. 1. The evaluators also found the following weaknesses: (1) the protester proposed labor categories in support of RTO No. 2 that were not appropriate to the task, and (2) the protester’s small business subcontracting plan failed to “address the extent of commitment to use subcontractors to include enforceable vs. non-enforceable agreements” and did not include a copy of exhibit 5. SSD at 11.

After reviewing the evaluation results, the source selection authority (SSA) selected the proposals of Cambria, Booz Allen, and ICF for award, noting that they were the only proposals rated very good or good for technical merit, that all three offerors received performance confidence ratings of very high or high, and that the three offerors submitted prices that were among the five lowest prices received. The SSA noted that while the protester offered “very competitive pricing, which was lower than that of Cambria and Booz Allen,” its price advantage “was more than offset by the technical merit advantages from Cambria and Booz Allen.” SSD at 14.

On July 17, NASA notified the protester that it had not been selected for award. SRA timely requested a debriefing, which the agency provided on July 26. SRA protested to our Office on July 31.

DISCUSSION

SRA raises a number of arguments, and we have considered all of them. As discussed below, we sustain the protest based on the following arguments: (1) the evaluators unreasonably assigned a weakness to the protester's proposal for failing to include a copy of exhibit 5, and failing to specify the extent of SRA's commitment to use its small business subcontractors, and (2) the agency treated the protester unequally in assigning its proposal a significant weakness for failing to adequately address the organizational strategic planning portion of RTO No. 1. We deny the remaining allegations.³

Small Business Subcontracting Plan Weakness

As noted above, the evaluators identified as a weakness in SRA's proposal the protester's omission of a copy of exhibit 5 from its small business subcontracting plan, and the failure of the plan to specify the extent of the protester's commitment to use subcontractors through enforceable (vs. nonenforceable) agreements.⁴ SRA disputes both of these findings.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. Visual Connections, LLC, B-407625, Dec. 31, 2012, 2013 CPD ¶ 18 at 3. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. at 4.

In connection with the first finding, the protester argues that it was unreasonable for

³ As explained in footnote 10, we do not address the protester's objections to the SSA's cost-technical tradeoff in this decision.

⁴ The specific finding was as follows:

The RFP . . . requires the Offeror to submit a Small Business Subcontracting Plan. The Offeror's plan does not address the extent of commitment to use subcontractors to include enforceable vs. non-enforceable agreements. In addition, the Offeror failed to provide Exhibit 5. Based on the lack of information identified above, the Offeror's Small Business Subcontracting Plan increases the risk of unsuccessful contract performance.

Source Selection Presentation, June 26, 2013, at 72.

the evaluators to fault it for failing to furnish a copy of exhibit 5 with its proposal given that it provided all of the required information in a proposal chart. The agency argues that SRA omitted required information from its proposal by failing “to provide 25% . . . of the information required by Exhibit 5 . . . where they were to provide the dollar amount of total planned subcontracts.” Agency Memorandum of Law, Aug. 30, 2013, at 11. We are not persuaded by the agency’s argument, as it unreasonably reflects an elevation of form over substance.

The RFP instructed offerors to provide a breakdown of their proposed small business subcontracting goals by small business category. In this regard, the RFP included the following chart as an example for a contract with a maximum ordering value of \$100 million and estimated subcontracts of \$50 million:

	Column A	Column B	Column C
Category	Percent of ID/IQ Maximum Ordering Value	Dollar Value	Percent of Subcontracting Value
Small Business Concerns	25 percent	\$25,000,000	50 percent
The following subcategories are inclusive of the above Small Business percentage			
Small Disadvantaged Business Concerns	5.5 percent	\$5,500,000	11 percent
Women Owned Small Business Concerns	9 percent	\$9,000,000	18 percent
Historically Black Colleges and Universities	1.5 percent	\$1,500,000	3 percent
HUBZone Small Business Concerns	1.5 percent	\$1,500,000	3 percent
Veteran Owned Small Business Concerns	2.5 percent	\$2,500,000	2.5 percent
Service-Disabled Veteran-Owned Small Business Concerns	1.5 percent	\$1,500,000	3 percent

RFP, amend. 000001, at 41. Based on the instructions accompanying the chart, offerors were to propose small business subcontracting goals as a percentage of the ID/IQ maximum ordering value in column A; the proposed dollars subcontracted for the category in column B; and calculate the percentage goals expressed as a percent of total subcontract dollars in column C.

The solicitation instructed offerors to complete a separate chart entitled Small Business Subcontracting Plan Goals at exhibit 5. The exhibit 5 chart requested the same information pertaining to small business subcontracting goals as the sample chart on page 41 of the RFP, as set forth above. The only difference was that exhibit 5 repeated the dollar value column (Column B above) under the proposed

goals as a percentage of the value of the contract and under the proposed goals as a percentage of subcontracts. The exhibit 5 chart had the following headings:

BUSINESS CATEGORY	Proposed Goals Based on ID/IQ Maximum Ordering Value of \$26M		Proposed Goals Based on Total Planned Subcontracts of \$TBP	
	Dollar Amount*	Percentage	Dollar Amount*	Percentage

The repetition of the dollar amount in the exhibit 5 chart did not require offerors to provide any additional information as compared to the chart on page 41. Rather, exhibit 5 simply required offerors to include their proposed dollar amounts for the various small business subcontracting categories twice. In this regard, the asterisk in both dollar amount columns specifically established that the dollar amounts in the two columns “should be the same.” RFP, exhibit 5.

The record reflects that the protester furnished a breakdown of its proposed small business subcontracting goals in a chart using the format of the sample chart on page 41 of the solicitation, but did not submit a separate exhibit 5 chart. That is, it furnished its goals for subcontracting with the various categories of small businesses in a chart that contained a single dollar value column, rather than two dollar value columns as contemplated by exhibit 5.

As detailed above, however, the chart used by the protester (page 41 from the solicitation) and the chart on Exhibit 5 conveyed identical information, just in slightly different formats, with the result being that SRA’s proposed dollar amounts for the subcontracting categories appeared once, rather than twice. Thus, we fail to see how the protester’s failure to furnish the same dollar amounts twice may reasonably be characterized as an omission of required information, as the agency has argued. Accordingly, we conclude that this finding of weakness lacks a reasonable basis.

SRA further argues that its failure to furnish copies of agreements demonstrating its commitment to use particular subcontractors in several of the small business categories should not have been considered a weakness because the solicitation required offerors to connect work to particular subcontractors and to specify the extent of the commitment to use those subcontractors (enforceable vs. nonenforceable agreements) only to the extent the subcontractors were known. According to the protester, it complied with the requirement by furnishing copies of enforceable agreements for the subcontractors whom it identified in its proposal, and thus should not have been assigned a weakness. In response, the agency argued that the finding was reasonable because RFP section 4.2 provided for evaluation of the extent of the offeror’s commitment to use small business subcontractors.

We find unpersuasive the agency’s explanation regarding SRA’s purported failure to address the extent of subcontractor commitments. We will read a solicitation as a

whole and in a manner that gives effect to all its provisions, ArmorWorks Enters. LLC, B-405450, Oct. 28, 2011, 2011 CPD ¶ 242 at 3. Here, in addition to the language cited by the agency, the RFP contained language (at section 3.6) that required offerors to “connect the work to the subcontractor and specify the extent of commitment to use the subcontractor(s)” only if the subcontractor(s) were known. Consistent with these provisions, the protester furnished copies of enforceable agreements for its known subcontractors; thus, we fail to see a reasonable basis for finding that SRA failed to provide information as contemplated by the RFP.

Significant Weakness Pertaining to RTO No. 1

Next, the protester contends that the evaluators lacked a reasonable basis for labeling its proposed approach to addressing the strategic planning component of RTO No. 1 as a significant weakness.⁵ In this regard, SRA argues that the evaluators treated it unequally by labeling its approach to strategic planning under RTO No. 1 as a significant weakness, while failing to label equally serious weaknesses in other offerors’ proposals (including the awardees’ proposals) as significant. As set forth below, we agree.

The weakness identified for SRA was as follows:

The Offeror’s proposal does not adequately address the organizational strategic planning portion of RTO [No.] 1. Because the Offeror did not adequately address how they would respond to this portion of the request, it is unclear whether this was an oversight or a misunderstanding of the task. Either way, this can lead to ineffective interventions and cost to organizational trust if the intervention is not successful. The proposal lacks sufficient details to permit the Agency

⁵ The protester also challenged the evaluators’ finding of weakness pertaining to RTO No. 2. In this regard, the protester proposed “using Executive level (C-level) coaches for a program targeted at aspiring leaders in the GS-11 and GS-12 range” to perform RTO No. 2. The evaluators concluded that SRA was offering a “level of individual” considered to be “higher than necessary and not an effective use of resources.” Id. at 71. SRA maintained that its offering of coaches with credentials exceeding the agency’s requirements should not have been considered a weakness. In response, the agency explained that because the RFP described the duties of executive level (C-level) coaches as providing coaching to NASA officials at the most senior level, the evaluators did not regard the use of personnel in this category as appropriate for the coaching of GS-11s and 12s. We conclude that this explanation provides a reasonable basis for the finding of weakness.

to determine if the Offeror can meet technical requirement of the task. As such, a flaw in the proposal exists which appreciably increases the risk of unsuccessful contract performance.

Source Selection Presentation, June 26, 2013, at 73.

SRA identifies several instances of similar weaknesses assessed in the proposals of other offerors that were, inexplicably, not characterized as “significant weaknesses.” For example, SRA points out that while the agency’s stated rationale for finding the weakness in its proposal to be significant was that it could potentially lead to ineffective interventions, the evaluators identified a weakness in ICF’s proposal as potentially leading to ineffective interventions, but nonetheless failed to categorize the weakness as significant.⁶ Additionally, the protester noted that the evaluators found that both Cambria and Booz Allen had failed to demonstrate compliance with an RFP requirement, but in both instances, had labeled the noncompliance a weakness, as opposed to a significant weakness or deficiency.⁷

⁶ The finding of weakness in question was as follows:

Though highly educated and credentialed, most of the senior OD professionals presented within the proposal had experience that leans toward measurement and assessment, not active organizational interventions. . . . The representative resumes for the OD professionals leaned more toward human resources and training. . . . We recognize that these are “representative” resumes, but the limited presence of substantial organizational intervention experiences, like that presented in RTO [No.] 1, is of concern to the Agency. The potential impact could be ineffective interventions. As such, a flaw in the proposal exists which increases the risk of unsuccessful contract performance.

Id. at 32.

⁷ The findings in question were as follows:

Cambria’s Proposal: The RFP requires that the Offeror satisfies the requirement outlined in Section 11.0 in the [SOW] related to minimum position qualifications and requirements. The Offeror does not provide complete coverage to all NASA locations, as required by the RFP. For example, there are no C Suite (highest level Executives) Executive Coaches within two hours of [three of the specified NASA centers/installations]. Similarly, there are no mediators available for the above cited location as well as [another of the specified centers]. They do not explain how they will mitigate this discrepancy. As a result, the Agency has a lack of confidence about the Offeror’s ability to provide qualified support under this contract to all of NASA’s

(continued...)

We find that the record indicates there is merit to the protester's complaint of unequal treatment. In this connection, it is fundamental that agencies must treat offerors equally, which means, among other things, that they must evaluate offers in an even-handed manner. See Tidewater Homes Realty, Inc., B-274689, Dec. 26, 1996, 96-2 CPD ¶ 241 at 3. Here, the record contains no reasonable explanation for why the protester's approach to RTO No. 1--which, according to the evaluators, could result in ineffective interventions--was considered a significant weakness, whereas ICF's approach to staffing--which, according to the evaluators, could result in ineffective interventions--was not. In addition, the agency provided our Office with no reasonable explanation for why the failure of Cambria and Booz Allen⁸ to demonstrate compliance with a solicitation requirement was considered a less serious matter than the protester's failure to lay out an adequate approach to one element of RTO No. 1.⁹

(...continued)

organizational components. As such, a flaw in the proposal exists which increases the risk of unsuccessful contract performance.

Booz Allen's Proposal: The RFP requires that the Offeror satisfies the requirement outlined in Section 11.0 in the [SOW] related in minimum position qualifications and requirements. Though the offeror generally asserts that they meet the requirements of having resources available within two hours of each NASA location, there is little supporting documentation that this is the case. There is a map that notes the NASA locations, however the map does not indicate the Offeror's resources in each geographic area. The proposed partners are all companies on the east coast of the United States, and the proposed consultant and coach bios do not indicate geographic location. As a result, the Agency has a lack of confidence about the Offeror's ability to provide qualified support under this contract to all of NASA's organizational components. As such, a flaw in the proposal exists which increases the risk of unsuccessful contract performance.

Id. at 66 and 81.

⁸ The protester also raised arguments that the agency should have assigned Booz Allen's proposal a deficiency for failing to include a sufficiently detailed small business subcontracting plan and that the agency failed to conduct an adequate price reasonableness analysis. We considered these arguments and find that they lack merit.

⁹ SRA identified a third example of unequal treatment involving Offeror B, which, like the protester, failed to receive an award. SRA points out that the evaluators identified a defect in Offeror B's proposal very similar to the above weakness in the protester's proposal--i.e., "[Offeror B's] proposed approach to RTO [No.] 1 is very general and does not adequately address the strategic planning requirement," SSD
(continued...)

With regard to the evaluation of Cambria and Booz Allen, the only response proffered by the agency was that the RFP did not require offerors to have professionals available within two hours of each of the specified centers/locations. In this regard, the agency asserted that the solicitation merely stated that the government would have the right to request professionals within two hours of each location. The agency's response ignores the solicitation language providing that "availability of professionals within each geographic area below is critical to the success and affordability of this contract." SOW at 8. It also ignores the fact that the evaluators themselves referred to complete coverage to all NASA locations as a solicitation requirement, and that the agency, in responding to offeror questions regarding the RFP, stated that "[t]he offeror's network of qualified OD consultants or coaches need[s] to include those whose office or residence is within two hours of every NASA installation via ground transportation." Protest, Exh. 5 (Solicitation Questions and Answers--Answer 69). In sum, we conclude that the record here supports the protester's allegation that the agency treated it unequally by assigning its proposal a significant weakness for failing to adequately address the organizational strategic planning portion of RTO No. 1, while failing to assign significant weaknesses or deficiencies to other offerors' proposals for equally substantial shortcomings.¹⁰

(...continued)

at 11--yet, the agency categorized the defect as a weakness, rather than a significant weakness. The agency also failed to provide a reasonable explanation for why Offeror B's failure to adequately address the organizational strategic planning portion of RTO [No.] 1 was considered to be merely a weakness, whereas the protester's failure to address the same work element rose to the level of a significant weakness.

¹⁰ SRA further challenges the SSA's cost-technical tradeoff decision. Because we are sustaining the agency's underlying technical evaluation, which would necessarily lead to a new tradeoff selection decision, we need not address SRA's issues in this regard. We note, however, that there appears to be a disconnect between the SSA's statement identifying the technical advantages associated with the proposal of Booz Allen, and the actual strengths identified in connection with its technical proposal. In this regard, the SSA indicated that Booz Allen received strengths for "demonstrating an exceptional and detailed understanding of all of the areas of the Statement of Work through their capability and knowledge with regards to the technical requirements related to Coaching and OD Services;" however, the four specific strengths identified for Booz Allen do not correspond to this statement by the SSA. SSD at 14.

RECOMMENDATION

We recommend that the agency reevaluate the protester's proposal and make a new price/technical tradeoff decision. We also recommend that the agency reimburse the protester for the reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1)(2013). The protester's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling
General Counsel