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Decision

Matter of: National Forensic Science Technology Center, Inc.

File: B-409457.2; B-409457.3

Date: July 29, 2014

Jeffery M. Chiow, Esq., and Oliya S. Zamaray, Esq., Rogers Joseph O'Donnell, for the protester.

Paul F. Khoury, Esq., Tracey Winfrey Howard, Esq., and Laura E. Sherman, Esq., Wiley Rein LLP, for NEK Services, Inc., an intervenor.

Erika L. Whelan Retta, Esq., Department of the Air Force, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated awardee's proposal is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

2. Protest that awardee's Federal Supply Schedule (FSS) contract does not include labor categories that encompass the services being acquired is denied where record shows--and General Services Administration twice confirms--that awardee's FSS contract includes labor categories that encompass the services being acquired.

DECISION

National Forensic Science Technology Center, Inc. (NFSTC), of Largo, Florida, protests the issuance of a task order to NEK Services, Inc., of San Diego, California, under request for quotations (RFQ) No. GSA832871, issued by the U.S. Army Special Operations Command¹ for instructors and role players to teach courses at the U.S. Army John F. Kennedy Special Warfare Training Center and

¹ Although the acquisition was conducted by the Department of the Army, the Department of the Air Force has represented the agency during the protest.

School, Fort Bragg, North Carolina. NFSTC maintains that the agency misevaluated NEK's quotation in connection with issuing the task order.²

We deny the protest.

BACKGROUND.

The RFQ contemplates the issuance of a fixed-price task order under the successful firm's General Services Administration (GSA) Federal Supply Schedule (FSS) contract for a base year and up to four 1-year options to provide instructors and role players to teach three different courses: the exploitation analysis course (EAC), the operator advanced course (OAC) and the technical exploitation course (TEC). RFQ at 2. The RFQ contemplates that each course will be taught approximately 10 times per year, and requires the successful offeror to provide 14 full time equivalent instructors, along with supporting role players. Id. at 16. The 14 instructors were designated as key personnel, and firms were required to provide resumes for each. Id. at 57. The RFQ included detailed requirements relating to the qualifications of the proposed instructors. Id. at 17-20.

For evaluation and award purposes, the RFQ stated that the agency would issue a task order to the firm submitting the quotation deemed to offer the agency the best value, considering technical/management, past performance and price. RFQ at 56. The technical/management and past performance factors were deemed significantly more important than price. Id. Within the technical/management factor, the RFQ identified three subfactors listed in descending order of importance: management plan, technical approach and documented corporate experience.³ Id.

In response to the solicitation, the agency received quotations from NFSTC and NEK. The agency evaluated the quotations, engaged in discussions, and solicited, obtained and evaluated final quotation revisions. The agency's evaluation resulted in the following ratings:

² In its original protest, NFSTC also argued that the acquisition was tainted by a Procurement Integrity Act violation, and that the agency improperly failed to conduct a cost/technical tradeoff in connection with its issuance of the task order. NFSTC subsequently withdrew these allegations. Protester's Comments, June 2, 2014, at 2 n.2.

³ The RFQ stated that the agency would assign color/adjectival ratings at the subfactor and factor levels of the technical/management factor of blue/outstanding, purple/good, green/acceptable, yellow/marginal or red/unacceptable. RFQ at 58. For past performance, the RFQ provided that the agency would assign confidence ratings of substantial, satisfactory, limited or no confidence. Id. at 59.

	NFSTC	NEK
Management/Technical	Yellow/Marginal	Green/Acceptable
Management Plan	Purple/Good	Purple/Good
Technical Approach	Yellow/Marginal	Green/Acceptable
Corporate Experience	Purple/Good	Purple/Good
Past Performance	Satisfactory	Satisfactory
Price	\$8,102,722.78	\$8,232,079.60

Agency Report (AR), exh. 16, Business Clearance Memorandum, at 11.

On the basis of these evaluation results, the agency made award to NEK, finding that its quotation represented the best value to the government. AR, exh. 15, Agency Best Value Determination. The agency advised NFSTC of its selection decision by letter dated January 21, 2014. AR, exh. 17, Agency Letter to NFSTC. Shortly thereafter, NFSTC filed a protest in our Office alleging that the agency misevaluated proposals and made an unreasonable source selection; that the procurement suffered from a possible Procurement Integrity Act violation; and that the award was improper because the instructors proposed by NEK were not available under its FSS contract.

In response to that protest, the agency advised our Office by letter dated February 4 that it intended to take corrective action and investigate whether there was a Procurement Integrity Act violation. AR, exh. 22, Agency Corrective Action Letter. Based on the agency's proposed corrective action, we dismissed NFSTC's protest as academic on February 12.

The record shows that the agency performed an investigation into NFSTC's Procurement Integrity Act allegation and concluded there was no Procurement Integrity Act violation. AR, exh. 26, Report of Agency Investigation. The record also shows that the agency asked GSA whether the services being acquired were covered under NEK's FSS contract. AR, exh. 24, Letter to GSA, Feb. 26, 2014. GSA responded to the agency advising that the services in question appeared to be included under NEK's FSS contract. AR, exh. 25, Response from GSA's Contract Specialist, March 3, 2014. Finally, the record shows that the agency supplemented its evaluation record by preparing a post-protest consensus evaluation statement affirming the award to NEK. AR, exh. 27, Post Protest Consensus Evaluation Report. Based on the outcome of these corrective action efforts, the agency affirmed its award to NEK. After being advised of the agency's selection decision, NFSTC filed the current protest in our Office.

DISCUSSION

NFSTC raises numerous protest allegations and we have carefully considered all of its arguments. On the basis of our review, we deny all of the firm's protest allegations and discuss its principal arguments below. We note at the outset that, in

reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and 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.

Proposed Key Personnel

NFSTC argues that one of NEK's proposed key personnel, its proposed exploitation analysis center technician/instructor, does not meet the RFQ's minimum requirements.⁴ According to the protester, the resume for the individual proposed for this position does not demonstrate that she has the requisite experience with an enumerated list of "field-expedient" gear identified in the solicitation. In this connection, the RFQ requires, among other things, that this individual have 10 years experience with a list of equipment in the agency's exploitation analysis center. RFQ at 19. According to the protester, the agency erred in finding this individual qualified in light of the requirements of the RFQ.

We find no merit to this aspect of NFSTC's protest. Although the protester is correct that the RFQ identifies certain equipment with which the exploitation analysis center technician/instructor is required to have experience, nothing in the solicitation's instructions required firms to specifically enumerate each piece of equipment identified in the RFQ in the resume of its proposed key employee. In fact, the list in the RFQ itself is merely representative of the types of equipment the individual is required to have experience with; the RFQ specifically states that the list is "[t]o include, but [is] not limited to" the enumerated equipment. RFQ at 19.

While the resume of the awardee's exploitation analysis center technician/instructor does not specifically represent that she has experience with each of the enumerated pieces of equipment, the agency's evaluators nonetheless concluded that she had the requisite experience. An examination of her resume, AR, exh. 7, NEK Proposal, at 75-79, shows that she has extensive experience in crime laboratory analysis in a variety of disciplines. The record shows that the evaluators specifically described NEK's proposed candidate as having a solid resume and background with over 12 years experience, which was in excess of the 10 years of experience required by the RFQ. AR, exh. 27,⁵ Post-Protest Consensus Evaluation Report, at 7; exh. 16, Business Clearance Memorandum, at 18.

⁴ The agency assigned NFSTC's proposal a marginal rating under the technical approach subfactor because two of its proposed key personnel did not meet the RFQ's minimum requirements. AR, exh. 16, Business Clearance Memorandum, at 11-12. NFSTC does not challenge the agency's evaluation conclusion.

⁵ The protester suggests that our Office should give less weight to this evaluation report because, according to the protester, it was produced "in the heat of an (continued...)

The record shows as well that the resume of NFSTC's proposed candidate for the same position likewise does not include any information relating to his experience with the enumerated list of equipment included in the RFQ. AR, exh. 5, NFSTC Proposal, at 117-119. The agency evaluators nonetheless were able to conclude that he, too, met the requirements of the RFQ, even though the equipment called out in the RFQ was not expressly detailed in his resume.

In view of the foregoing discussion, we have no basis to object to the agency's evaluation of NEK's proposed candidate for exploitation analysis center technician/instructor. As noted, NFSTC's only argument relating to the qualifications of this individual--the absence of specific information in the candidate's resume relating to the list of equipment included in the RFQ--is one that applies with equal force to its own proposed candidate. We therefore deny this aspect of the protest.

NFSTC also contends that the agency's overall evaluation assigned exaggerated importance to the firms' proposed key personnel resumes and that this was inconsistent with the weighting of the RFQ's evaluation scheme. However, the simple fact of the matter is that all of NEK's proposed candidates met the RFQ's detailed qualification requirements, while two of NFSTC's candidates did not. In the final analysis, while the qualifications of the proposed candidates was not identified as the sole, or most important, evaluation consideration, it nonetheless became the discriminator among the two firms' quotes because NFSTC failed to propose qualified candidates, a point the protester concedes.

(...continued)

adversarial process." In support of its position, the protester cites our decision in Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-CPD ¶ 91 at 15. The protester also suggests that one of the evaluators that contributed to the report may have been biased because he was the subject of the agency's Procurement Integrity Act investigation.

The protester misunderstands our decision in Boeing Sikorsky Aircraft Support, supra. The document here was not prepared during the heat of an adversarial process, but, rather, in connection with the agency's implementation of corrective action in response to NFSTC's earlier protest. The cited case therefore has no application here. In addition, the protester's suggestion of bias on the part of one of the agency's evaluators is supported by absolutely no evidence. It therefore amounts to no more than innuendo and suspicion on the part of the protester which is inadequate to demonstrate bias on the part of agency officials, who are presumed to act in good faith. Newsun, Inc. d/b/a Internal Computer Servs., B-409582, June 17, 2014, 2014 CPD ¶ 183 at 6.

In any event, there is a flaw in the protester's underlying premise that identifying some quotation feature or element as a discriminator--even a significant discriminator--necessarily shows that the agency has changed the relative weighting of the evaluation factors. The mere fact that an agency's source selection decision turns on an evaluation consideration that is designated as less important is unobjectionable since there is no requirement that the key award discriminator also be the most heavily weighted evaluation consideration. SGT, Inc., B-405736, B-405736.2, Dec. 27, 2011, 2012 CPD ¶ 149 at 10. We therefore deny this aspect of the protest.

Compliance with NEK's FSS Contract

NFSTC contends that NEK's FSS contract does not include all of the labor categories necessary for performance of the requirement. According to the protester, the RFQ's scope of work is outside of NEK's FSS contract and the agency therefore erred in issuing the firm a task order. In connection with this allegation, the protester urges our Office to consider not just the labor categories included under NEK's FSS contract, but also the course offerings included under its FSS contract. According to the protester, an examination of just the labor categories alone is inadequate to determine whether or not NEK's FSS contract includes labor categories that encompass the RFQ's requirements.

We find no merit to this aspect of NFSTC's protest. When a concern arises that a vendor is offering services outside the scope of its FSS contract, the relevant inquiry is whether the services offered actually are included on the vendor's FSS contract, as reasonably interpreted. American Sec. Programs, Inc., B-402069, B-402069.2, Jan. 15, 2010, 2010 CPD ¶ 2 at 3.

As an initial matter, and as the agency correctly notes, the requirements here are not for the provision of any particular courses, but, rather, for instructors to teach courses designed and owned by the government. Thus, there is no basis to make any reference to the courses offered by NEK on its FSS contract, since that is not what the agency is procuring.

More importantly, the record shows that the agency specifically asked GSA whether the labor categories included under NEK's FSS contract reasonably encompassed the types of instructors being furnished here. AR, exh. 24, Letter to GSA from the Army. In response, GSA advised the agency that the labor categories included under NEK's FSS contract appeared to encompass the types of instructors being furnished here. AR, exh. 25, Response from GSA's Contract Specialist, March 3, 2014.

In addition, during the course of the protest, our Office specifically asked GSA yet again whether the labor categories included under NEK's FSS contract

encompassed the types of instructors being furnished here. In response, GSA's contracting officer for NEK's FSS contract advised as follows:

The general scope of the MOBIS contract, SINs 874-4 is to procure Training Services: Instructor Led Training, Web Based Training and Education Courses, Course Development and Test Administration Learning Management, Internships. My understanding from reviewing the RFQ is that the procuring agency was seeking instructors and role players in various areas and with various qualifications. While I did not evaluate the proposals against the specific criteria contained in the RFQ, the four labor categories offered on NEK's proposal of Program Manager II, Instructor II, SOF Instructor II, and Role Player II, are within scope and are labor categories awarded to the above mentioned MAS contract. Based on my review, it is my opinion that the requirements of the RFQ could appropriately be procured under the labor categories listed above.

Statement of the GSA Contracting Officer, July 18, 2014. The record therefore shows that GSA considered the question after reviewing NEK's quote, the RFQ, and NEK's FSS contract, and answered--not just once, but twice--in the affirmative, finding that NEK's FSS contract encompassed the types of instructors being acquired here. Simply stated, we have no basis on this record to question GSA's opinion, and NFSTC's contentions amount to no more than disagreement with the agency and GSA. In view of the foregoing, we deny this aspect of the protest.

Alleged Change in the Agency's Requirements

Finally, NFSTC contends that the agency has made a material change in its requirements. According to the protester, while the RFQ sought instructors to teach three different courses--the OAC, EAC and TEC courses--the agency has merged the TEC and EAC courses. This allegation is based entirely on a statement from one of the protester's employees regarding a representation allegedly made to him by an agency employee.

In response to this bare allegation, the agency submitted an affidavit executed by the executive officer of the cognizant command, stating that the agency has not made any final decision concerning whether or not to merge the two courses. Agency Supplemental Report, June 26, 2014, exh. 1, at 1. He further states that, even if the agency were to merge the two courses, it still would have a requirement for 14 instructors, the same number solicited under the RFQ. Under the

circumstances, we find no merit to this aspect of NFSTC's protest, since it is based entirely on a statement from one of its employees that is directly contradicted by the sworn statement of the agency's executive officer.

The protest is denied.

Susan A. Poling
General Counsel