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Decision

Matter of: Bannum Inc.

File: B-411586.2

Date: January 6, 2016

Joseph A. Camardo Jr., Esq., Nancy M. Camardo, Esq., and Justin T. Huffman, Esq., Camardo Law Firm, PC, for the protester.
Alex Tomaszczuk, Esq., and Meghan D. Doherty, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Dismas Charities, Inc., an intervenor.
William Robinson, Esq., and Sarah Bloom, Esq., Department of Justice, 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

1. Protest challenging agency's technical evaluation of proposals and source selection decision is dismissed where protester abandoned its substantive challenges to the agency's evaluation of technical proposals.
 2. Protest that an agency did not properly consider the protester's small business status when evaluating its proposal in a full and open competition is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation and with applicable procurement statutes and regulations.
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DECISION

Bannum, Inc., of Odessa, Florida, protests the award of a contract to Dismas Charities, Inc., of Louisville, Kentucky, under request for proposals (RFP) No. 200-1248-ES, issued by the Department of Justice, Bureau of Prisons, for residential re-entry center and home confinement services in Charleston, West Virginia. Bannum maintains that the agency miscalculated its proposal and made an unreasonable source selection decision.

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

BACKGROUND

The RFP, issued on April 7, 2014, contemplates award, on a best-value basis, of a fixed-price indefinite delivery/indefinite quantity contract to provide residential re-entry center and home confinement services in Charleston, West Virginia for certain federal offenders serving the final months of their sentences, for a 2-year base period and 3 option years. RFP at 3, 226-27.

Prior to issuing the RFP, the contracting officer (CO) conducted market research and determined that the agency was unlikely to receive responses from two or more small businesses. CO Statement at 9; Agency Report (AR), Tab 3, Small Business Set-Aside Memorandum. The CO therefore did not issue the RFP as a small business set-aside, but sought full and open competition.

The RFP provided that proposals would be evaluated considering price and the following non-price factors: past performance and technical/management, with past performance deemed more important than technical/management. RFP at 226. The technical/management factor was comprised of six subfactors, which, when combined, were considered to be significantly more important than price.¹ Id.

In response to the RFP, the agency received proposals from Bannum and Dismas. CO Statement at 2. The agency engaged in discussions and accepted final proposal revisions (FPRs). After evaluating the FPRs, the agency made award to Dismas, finding that its proposal offered the best value to the government.

After being advised of the source selection decision, and following a debriefing, Bannum filed a protest with our Office. In response to the protest, the agency proposed to take corrective action by re-evaluating the proposals and making a new source selection decision. CO Statement at 2. Because the agency's proposed corrective action rendered the protest academic, we dismissed the protest on July 2, 2015.

The agency subsequently re-evaluated proposals and prepared a new source selection decision. The agency evaluated the proposals as follows:

¹ The RFP advised that the agency would evaluate each subfactor under the technical/management factor and would assign adjectival ratings of exceptional, very good, satisfactory, marginal, or unsatisfactory. RFP at 227. The RFP also advised that the agency would perform a risk assessment, reflecting the agency's degree of confidence in the offeror's ability to perform the effort described in their technical/management proposal. Id. at 229.

	Bannum	Dismas
Past Performance	Very Good	Exceptional
Technical/Management	Satisfactory	Exceptional
Risk	Moderate	Low
Price	\$8,003,016.00	\$7,840,087.20

CO Statement at 3-6.

Once again, the agency concluded that Dismas should be awarded the contract. After notification of award and a debriefing, Bannum filed the instant protest.

DISCUSSION

Abandoned Issues

Bannum initially makes several arguments in connection with the agency's re-evaluation of both its own proposal and the awardee's proposal. Specifically, the protester argues that the agency acted in bad faith, and failed to address specific issues raised in Bannum's initial protest. Protest at 3. Bannum also asserts that Dismas's past performance proposal contained weaknesses that the agency failed to consider, and that the past performance proposal should have been rated lower than Bannum's proposal. Id. The protester further contends that the agency improperly evaluated its technical/management proposal, both as to its adjectival rating and the risk assessment. Id. at 3-4. Finally, Bannum alleges that the agency improperly failed to take into consideration Bannum's status as a small business. Id. at 4.

In response to these allegations, the agency submitted a detailed discussion of its re-evaluation of both proposals under each of the RFP's evaluation factors and subfactors, in order to rebut Bannum's allegations. CO Statement at 3-8. In its comments responding to the agency's report, Bannum does not discuss the merits of the agency's response, or in any way substantively rebut the agency's position, with the exception of comments related to its status as a small business. Rather, Bannum simply states as follows:

In regard to Bannum's protest allegations that the [Bureau of Prisons] failed to properly assess its risk and Technical/Management factor which were both in violation of the stated evaluation factors, these allegations are reiterated herein as detailed in the protest and are incorporated herein. No further comments are presented.

Protester's Comments at 1.

Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original protest allegation without substantively rebutting the agency's position, we deem the initially-raised arguments abandoned. Israel Aircraft Industries, Ltd.--TAMAM Division, B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7; Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. We therefore conclude that these assertions have been abandoned, and do not consider them further.²

Bannum's Small Business Status

Bannum argues that the agency erred in its evaluation by failing to "credit" Bannum for being a small business. Protest at 4. The protester's argument in this regard relies on the fact that the RFP incorporates by reference Federal Acquisition Regulation (FAR) § 52.219.8 "Utilization of Small Business Concerns." Bannum contends that the inclusion of this clause required the agency to consider Bannum's small business status as part of its evaluation. Id. Bannum's assertion is premised on a general statement in FAR clause 52.219-8(a) that recognizes that it is the government's policy to provide small businesses with the "maximum practicable opportunity to participate in performing contracts [awarded] by any Federal agency." Id.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. We have reviewed the record and find no basis to object to the agency's evaluation conclusions here.

Bannum's reliance on FAR clause 52.219-8 is misplaced. Under FAR subpart 19.7, The Small Business Subcontracting Program, agencies are required by FAR § 19.708(a) to insert the clause at issue here, 52.219-8, in solicitations and contracts where the contract amount is expected to exceed the simplified acquisition threshold (unless exceptions not present here exist). FAR clause 52.219-8 sets out the federal policy of providing small business concerns with the maximum practicable opportunity to participate in performing contracts, but requires only that the ultimate contractor agree to award subcontracts consistent with that

² In addition to the issues on which Bannum stated it would not comment, Bannum's comments also fail to address the protester's allegations that the agency acted in bad faith and did not properly evaluate Dismas's past performance. We also consider these allegations abandoned.

federal policy. It does not state that any firm will receive an evaluation preference based on its small business status. FAR § 52.219-8; see Essence Designs, B-234916, Apr. 11, 1989, 89-1 CPD ¶ 373 at 1.

Here, in accordance with FAR subpart 19.5, the contracting officer conducted market research to determine whether the acquisition should be set aside for small businesses. See AR, Tab 3, Small Business Set-Aside Memorandum. Based on this research, the contracting officer determined that there was not a reasonable expectation that offers would be obtained from at least two small business concerns, and therefore concluded that the procurement should not be set aside for small businesses. Id. at 3, citing FAR § 19.502-2(b). Nonetheless, in accordance with FAR § 19.708, the agency incorporated by reference FAR clause 52.219-8 in the RFP. The agency also included in the RFP an attachment related to an offeror's subcontracting plan that instructed the awarded contractor to carry out the policy of maximizing small business opportunity to perform on the contract by subcontracting with small businesses to the fullest extent possible. RFP at 157, 210.

The protester's contention that inclusion of FAR clause 52.219-8 in the RFP required the agency to give Bannum an evaluation preference because it is a small business is incorrect, and does not provide any basis for us to sustain the protest.

Moreover, there is nothing in the RFP's evaluation scheme that requires--or would permit--consideration of an offeror's size status, or the application of a preference for small business concerns. Bannum argues that, as part of the evaluation of technical/management proposals, the RFP required consideration of an offeror's "background," and that the agency was therefore required to consider Bannum's background as that of a small business. Protester's Comments at 3. We disagree. The protester takes this reference out of context; it relates to evidence of an offeror's proposed methodology and techniques for performance, and has nothing to do with an offeror's size status.³ Bannum has provided no basis to conclude that the agency's evaluation was not reasonable or was inconsistent with the RFP's

³ The pertinent part of the RFP provides:

The Technical/Management Proposal should evidence the offeror's proposed methodology and techniques for performance. Technical/Management resources, experience, and background, as well as unique or specialized skills and expertise of the offeror's organization and personnel to be utilized in accomplishing contractual requirements.

RFP at 223.

stated evaluation criteria, and with applicable procurement statutes and regulations.
We deny this basis of protest.

The protest is dismissed in part and denied in part.

Susan A. Poling
General Counsel