



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: National O&M, Inc.

File: B-411745

Date: October 8, 2015

Jennifer S. Zucker, Esq. and John R. Prairie, Esq., Wiley Rein LLP, for the protester.

Christopher S. Cole, Esq., Department of the Air Force, 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 that the agency improperly evaluated the awardee's proposal as technically acceptable is denied where the record shows that the agency's evaluation was reasonable and consistent with the solicitation's terms.

DECISION

National O&M, Inc., of Roanoke, Virginia, protests the award of a contract to Project Solutions, Inc. (PSI), of Rapid City, South Dakota, by the Department of the Air Force under request for proposals (RFP) No. FA4855-15-R-0002 for wastewater treatment plant services. National argues that the agency unreasonably found PSI's proposal to be technically acceptable.

We deny the protest.

BACKGROUND

The RFP, issued on April 22, 2015, sought proposals for operation, inspection, maintenance, and repair services at a wastewater treatment plant located on Cannon Air Force Base, New Mexico. RFP at 3. The RFP contemplated the award of a fixed-price contract for one nine-month base period and four 1-year options. Id. at 3-7. Proposals were to be evaluated on a lowest-priced, technically acceptable basis, considering price and technical capability. Id. at 15. Technical capability included two subfactors: technical proficiency and mission essential contractor services plan. Id. at 16. Ratings of acceptable or unacceptable were to be assigned to each subfactor and to the technical capability factor. A rating of

acceptable was to indicate that the proposal clearly met the minimum requirements of the solicitation, whereas a rating of unacceptable was to indicate the proposal did not. Id. at 17.

Under the technical proficiency subfactor, the agency was to evaluate the following:

This requirement is met when the offeror provides all required information showing technical proficiency/experience to operate and maintain an aeration activated sludge treatment plant working at a minimum 1.0 million gallons per day (MGD) design capability . . . and adheres to the instructions provided 52.212-1, Instructions to Offerors-Commercial Items (Addendum).

Id. at 17.

As relevant here, the instructions to offerors required offerors to submit at least one contract that showed performance as either the primary contractor or subcontractor responsible for contract performance and that the offeror operated or complied with U.S. Environmental Protection Agency (EPA) rules and regulations. Id. at 12.

Five proposals were received by the agency, including those from National and PSI. Agency Report (AR), exh. 13, Source Selection Decision Document (SSDD), at 1. PSI submitted the lowest evaluated price of \$2,030,139.72 and, in accordance with the terms of the RFP, was evaluated for technical acceptability under the non-price factor.¹ Id. at 2-3. The evaluators found PSI's proposal to be technical acceptable under both technical capability subfactors and the factor overall, and the proposal was found to be the lowest-priced, technically acceptable offer. Id. at 3-4.

National received notice that it was an unsuccessful offeror on July 2, and that notice provided the firm with a required debriefing. Protest at 1. This protest followed.

DISCUSSION

National argued in its original protest that PSI should have been found to be technically unacceptable for its lack of proficiency and experience operating an aeration activated sludge treatment plant. Protest at 3. Upon review of the agency report, the protester appears to acknowledge that PSI's proposal evidenced operations and maintenance work, but argues that the record does not support the agency's conclusion that PSI has the requisite capability and experience to operate and maintain the facility here. Comments at 3. In fashioning this argument, National argues that the agency was required to ask how PSI performed during the

¹ National submitted the second-lowest price of \$2,372,387.85. Id. at 2.

prior contract, including whether PSI had operated and complied with EPA rules and regulations, as required by the terms of the RFP. Comments at 2; RFP at 12. Our review of the record provides us no basis to sustain the protest.

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. SRA Int'l, Inc., B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 4. 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.

Under the technical proficiency subfactor, the stated standard for acceptability was met where the offeror shows "technical proficiency/experience to operate and maintain an aeration activated sludge treatment plant working at a minimum 1.0 million gallons per day (MGD) design capability," and adherence to the instructions to offerors, discussed above. RFP at 12. The instructions to offerors states that the offeror must show "capability/experience" with the same requirement. Id. at 12. Finally, these instructions required the offeror to provide at least one contract to show this capability. Id. Thus, it appears from the record that the RFP to one degree or another utilized technical proficiency, capability and experience interchangeably. Likewise, National's protest does not differentiate between these terms, so it is not readily apparent whether the protester is arguing that PSI lacks experience, capability, or both.²

Moreover, it does not appear from its filings that National is challenging PSI's experience, as experience looks to whether an offeror has performed similar work before, and the protester has made no colorable argument that PSI's reference was not similar work. See Great Lakes Towing Company dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 4. Instead, by arguing that the agency was required to look at how PSI performed the prior contract, National appears to be challenging PSI's capability to perform the work. However, while experience and capability are two distinct concepts, we have concluded that it is reasonable to consider a firm's experience in determining whether it has the capability to meet the requirements of the RFP. DMS Int'l, B-409933, Sept. 19, 2014, 2014 CPD ¶ 278 at 4 n.2 ; see also Corps Solutions, LLC, B-409298.2, Aug. 21, 2014, 2014 CPD ¶ 244 at 6. Thus, the agency here could reasonably consider experience with similar work to determine whether an offeror was capable of performing the instant requirement.

² The protester's arguments do not even mention the technical proficiency requirement set forth in the evaluation criteria itself, instead basing its argument on the capability/experience language found in the instructions to offerors.

The record shows that the agency evaluated PSI's proposal to be acceptable under the technical capability factor based on assessments by two evaluators who prepared detailed narratives, including specific findings that PSI's past contract was subject to EPA compliance, and that the firm showed capability through its prior work. AR, exh. 10, Individual Technical Evaluation Worksheet, at 5. The record also shows that the agency contacted PSI's reference and validated the information proffered in the firm's proposal. Id. at 3. The protester has given us no basis to question the agency's evaluation in this regard. Consequently, on this record we have no basis to conclude that the agency unreasonably found PSI's proposal to be technically acceptable.

The protest is denied.

Susan A. Poling
General Counsel