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Decision

Matter of: 2H&V Construction Services

File: B-411959

Date: November 23, 2015

Laurence J. Zielke, Esq., and Janice M. Theriot, Esq., Zielke Law Firm PLLC, for the protester.

Thomas L. McGovern III, Esq., and Brendan M. Lill, Esq., Hogan Lovells US LLP, for Stone & Lime Imports, Inc., an intervenor.

Sherry Kinland Kaswell, Esq., Department of the Interior, for the agency.

Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging an agency's evaluation of technical proposals is denied where the record shows that the evaluation was reasonable and consistent with the solicitation.
 2. Protest challenging an agency's best-value tradeoff determination because it did not include any consideration of the protester's lower price is denied where the record demonstrates that the source selection authority reasonably selected a higher-priced proposal based on a comparative assessment of the proposals in accordance with the solicitation's stated evaluation factors.
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DECISION

2H&V Construction Services (2H&V), of Bonifay, Florida, protests the award of a contract to Stone & Lime Imports, Inc. (Stone & Lime), of Brookfield, Massachusetts, by the Department of Interior, National Park Service (NPS) under request for proposals (RFP) No. P15PS00382, for the restoration of masonry bastions at Fort Jefferson, Dry Tortugas National Park, Florida. The protester challenges various aspects of the agency's evaluation of the proposals and the source selection decision.

We deny the protest.

BACKGROUND

This procurement is for the final construction phase to restore the masonry bastions at Fort Jefferson, Dry Tortugas National Park (Dry Tortugas), Florida. Contracting Officer Statement of Facts (CO Statement) at 1. Dry Tortugas is a small island off the coast of Key West, Florida and is accessible only by boat or seaplane. RFP at 10.¹ Fort Jefferson is listed on the National Register of Historic Places and managed as a cultural resource asset. Id.

The RFP, issued on June 1, 2015, was set aside for small businesses. The RFP contemplated the award of a single fixed-price contract. The base work under the contract is to be completed by June 1, 2016. Id. at 7. The solicitation included five options for additional work, which, if exercised, would extend the contract completion date to June 1, 2018. Id.

The solicitation provided that award would be made on a best-value basis considering the following evaluation factors: technical, past performance and cost/price. Id. at 116. The solicitation provided weights for the technical factor's subfactors that, combined, represented 90 percent of the non-price factors' weight, and assigned a weight of 10 percent to the past performance factor.² Id. at 115. All non-price factors, when combined, would be equal to cost/price. Id. at 116. The solicitation stated that the source selection decision would be based on a comparative assessment of proposals against all source selection factors specified in the solicitation and that the government "may elect to accept other than the lowest priced proposal when the perceived benefits of a higher priced proposal merit the price differential." Id. at 132.

For the technical approach subfactor, the RFP required offerors to provide a narrative describing their approach to five enumerated aspects of the work, including the following three aspects:

- c. The approach for preparation for disruption of work due to severe storms, hurricanes or other emergencies. Include how the project site, work and equipment will be secured or protected,

¹ All cites to the RFP are to the final version, as amended on June 1, 2015. See Agency Report (AR), Tab 7a, RFP.

² In addition to the statement above--that the combined weight of the technical factors would comprise 90 percent, and the past performance factor 10 percent, of the weight for all non-price factors--the RFP also stated that the technical factor was "moderately more important than the past performance factor." RFP at 116. This apparent ambiguity has not been challenged.

logistical planning for personnel and resumption of work once the event is over.

d. The approach and method of demolition, salvaging of historic brick, rebuilding brick walls, and replacing historic iron components with nonferrous reproductions. The process of removal and repair of scarp walls, embrasures, etc. are inherently dangerous. Describe your approach to safely executing the work and provisions for care in case of emergency.

e. The approach for Preservation of the natural environment: describe cleaning of equipment to prevent contamination and introduction of exotic species, moat protection, noise, protecting grounds and surrounding water/marine environment, and air and water pollution control.

Id. at 117.

The RFP advised offerors that for this subfactor, “[p]roject specific approaches that demonstrate a clear understanding of the requirement and a highly effective approach to the following items may be rated more favorably: (a) logistical challenges, (b) staffing challenges, (c) working in an environment subject to severe storms, (d) working with historic brick and iron and (e) protection of the natural environment.” Id. at 133. The solicitation also advised that “[a]ll proposed work and modifications to historic features shall be in accordance with the Secretary of the Interior’s ‘Standards for the Treatment of Historic Properties with Guidelines for Preserving, Restoring and Reconstructing Historic Buildings.’” Id. at 10.

The agency received five timely proposals, including those from 2H&V and Stone & Lime. CO Statement at 1. The technical evaluation panel (TEP) members individually evaluated the proposals and then submitted a consensus report to the contracting officer, who served as the source selection authority (SSA). Legal Memo. at 1; AR, Tab 11, Technical Evaluation Report (TER). As relevant here, 2H&V’s and Stone & Lime’s proposals were evaluated as follows:

	2H&V	Stone & Lime
Technical Factor³		
Experience Subfactor ⁴	Acceptable	Outstanding
Management Approach Subfactor	Acceptable	Acceptable
Technical Approach Subfactor ⁵	Marginal	Good
Past Performance Factor⁶	Somewhat Relevant Satisfactory Confidence	Very Relevant Substantial Confidence
Overall Non-price Rating	Acceptable	Outstanding
Price	\$9,942,685	\$9,966,316

AR, Tab 11, TER at 3-4; Tab 12, Source Selection Decision Document (SSDD) at 2.

The SSA performed a tradeoff analysis between Stone & Lime’s and 2H&V’s proposals, based on the findings of the TEP documented in the TER.⁷ AR, Tab 12, SSDD at 3-4. As between 2H&V, the lowest-priced offeror, and Stone & Lime, the offeror with the second-lowest price, the SSA noted that the “cost difference between the two is \$23,631 (0.24%), so for an additional \$23,631[,] the Government will receive an Outstanding offeror over an Acceptable offeror.” *Id.* at 3. The SSA further identified specific benefits offered by Stone & Lime’s proposal under the experience and technical approach subfactors, and the past performance factor,

³ The adjectival ratings available for the technical factor’s subfactors and overall nonprice factors were outstanding, good, acceptable, marginal, and unacceptable. AR, Tab 6, Source Selection Plan (SSP) at 7-9. The TEP did not assign an overall rating for the technical factor.

⁴ This subfactor rating reflects an assessment of two underlying elements, for which 2H&V’s proposal received two acceptable ratings, while Stone & Lime’s proposal received an outstanding rating for the more heavily-weighted element and a good rating for the other. AR, Tab 12, SSDD at 2.

⁵ The technical approach subfactor did not identify any underlying elements; however, the TEP assigned adjectival ratings to the five enumerated areas of work. AR, Tab 11b, Evaluation Spreadsheet.

⁶ The ratings available for the past performance factor were very relevant, relevant, somewhat relevant, and not relevant; substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. AR, Tab 6, SSP at 9-11.

⁷ The other three offerors were determined not to offer the best value, based on their higher prices and lower overall technical ratings. AR, Tab 12, SSDD at 2.

and determined that Stone & Lime's proposal provided the best value overall to the government. Accordingly, the SSA selected Stone & Lime for award. Id. at 3-4. On August 12, 2015, the agency notified the offerors, including 2H&V, of the award decision. AR, Tab 2d, Protest, Exhibit B, Non-Award Letter. The protester was debriefed on August 13, 2015. This protest followed.

DISCUSSION

The protester challenges the agency's evaluation of the offerors' technical proposals and the agency's conclusion that Stone & Lime's proposal represented the best value to the agency. Although we do not specifically address all of 2H&V's arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

2H&V's Technical Evaluation

2H&V challenges the agency's evaluation of its proposal under the technical approach subfactor as unreasonable and inconsistent with the RFP's stated evaluation factors. Protest at 5-6. Specifically, 2H&V contends that 2H&V provided all of the information in its proposal that the solicitation required, but alleges that the agency improperly downgraded its proposal for not providing additional detail that the solicitation did not require, based on a comparison with Stone & Lime's proposal.

We review challenges to an agency's evaluation only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. PharmChem, Inc., B-291725.3 et al., July 22, 2003, 2003 CPD ¶ 148 at 3. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3. The protester has not shown, nor does the record show, that the agency downgraded 2H&V based on a comparison with Stone & Lime. Further, based on our review of the record, we find the agency's evaluation of 2H&V's proposal to be reasonable.

Here, the solicitation required offerors to provide a narrative description of their technical approaches to five enumerated aspects of the work. RFP at 117. The solicitation put offerors on notice that proposals that demonstrated a clear understanding of the requirement and highly effective approach to those aspects of the work would be rated more favorably. Id. at 133.

2H&V's technical approach was rated as marginal--a rating that the RFP defined as: "[p]roposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements." AR, Tab 11, TER at 4; Tab 6, SSP at 9. The agency explains that the marginal rating reflects the TEP's conclusion that 2H&V's proposal was lacking in detail as to how it would address

three out of the five enumerated areas of work (working in an environment subject to severe storms, working with historic brick and iron, and protection of the environment), which were rated, respectively, as marginal, unacceptable,⁸ and marginal. CO Statement at 9; Legal Memo. at 5.

In response to the agency report, 2H&V argues that it was “completely arbitrary to rate 2H&V [unacceptable under the technical approach subfactor] simply because 2H&V did not list the Standards and Guidelines it was already obligated to meet.” Comments at 4.

It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. An offeror runs the risk that a procuring agency will evaluate its proposal unfavorably where it fails to do so. Int’l Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. Here, the solicitation clearly contemplated that offerors would submit narratives detailing technical approaches to five areas of work--not mere statements that the offerors would comply with any applicable standards, guidelines, or terms and conditions of the solicitation or the recitation of such requirements. Further, as discussed below, the record shows that protester was not assigned a marginal rating based on its mere failure to repeat or list standards or guidelines contained in the solicitation.

The TEP noted that the technical approach narrative in 2H&V’s proposal consisted of only 2 pages, and was considered “minimal.” AR, Tab 11, TER at 4. For example, the agency assigned an unacceptable rating to 2H&V’s technical approach to working with historic brick and iron, which the agency identifies as the principal purpose of this project. Id.; see also AR, Tab 11b, Evaluation Spreadsheet. The entire narrative describing 2H&V’s technical approach for this aspect of the work consisted of the following:

Working with historic brick and iron

Protecting exiting structure from further damage: Areas that are not in scope of project in no way will be altered in any form. Work areas will be identified and marked to indicate work.

Matching existing material color and texture: During submittal process products will be presented that match existing material and mockups will be made to insure compatibility. Creating the

⁸ Unacceptable was defined as “[p]roposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable.” AR, Tab 6, SSP at 9.

appearance that no new work has been performed but historic structure is as it was when built.

AR, Tab 9a, 2H&V's Proposal Vol. I at 27 (bold and italics in original). The TEP observes in this regard that 2H&V's proposal contained "no discussion of demolition and salvaging and executing the work at all." AR, Tab 11, TER at 4; AR, Tab 11b, Evaluation Spreadsheet. Similarly, the agency found that 2H&V's proposal provided minimal discussion of its technical approach to working in an environment subject to severe storms and protection of the natural environment. AR, Tab 11, TER at 4; CO Statement at 9. Further, the TEP noted, "[o]verall there is not much discussion of [working with historic brick and iron] and [protection of the natural environment]." AR, Tab 11, TER at 4.

On this record, we find the agency's assignment of an overall marginal rating to 2H&V's technical approach to be reasonable and consistent with the terms of the solicitation. While 2H&V was assigned a good rating for its approach to logistical challenges and an acceptable rating⁹ for its approach to staffing challenges, the shortcomings discussed above indicate that overall, the agency reasonably determined that the proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements.

Stone & Lime's Technical Evaluation

2H&V also challenges the agency's rating of Stone & Lime's proposal as outstanding, rather than acceptable, under the experience subfactor. For the two underlying elements under the experience subfactor--prime contractor experience and key personnel experience--Stone & Lime's proposal received one good and one outstanding rating, and was rated overall outstanding for the experience subfactor. The protester contends that Stone & Lime was "inexplicably rated 'outstanding' overall" even though Stone & Lime received "a 'good' rating on one of the two subfactors"; and argues, based on its flawed understanding of the method utilized by the TEP to assign adjectival ratings, that "at most Stone & Lime should have received an 'adequate' [rating for the subfactor]." Comments at 3. This argument is without merit and unsupported by the record. The protester suggests that the TEP could not assign any adjectival rating for a subfactor that was better than the lowest adjectival rating assigned to any underlying element. Such a mechanical or formulaic approach was not contemplated by the solicitation or the source selection plan, nor did the TEP perform the evaluation in such a manner.

⁹ A good rating was defined as "[p]roposal meets requirements and indicates an exceptional approach an understanding of the requirements" and an acceptable rating was defined as "proposal meets requirements and indicates an adequate approach and understanding of the requirements." Id.

Further, it is well-established that adjectival ratings are merely guides for intelligent decision-making in the procurement process. Envtl. Restoration, LLC, B-406917, Sept. 28, 2012, 2012 CPD ¶ 266 at 5. The essence of an agency's evaluation is reflected in the evaluation record--the underlying merits of particular strengths and the proposal as a whole--rather than a comparison of the adjectival ratings. URS Fed. Servs., Inc., B-408893, B-408893.2, Dec. 23, 2013, 2014 CPD ¶ 14 at 4. Here, the record demonstrates that the SSA did not merely rely on the adjectival ratings. Instead, the SSA found that under the experience subfactor, Stone & Lime's proposal offered a greater level of corporate experience, and offered key personnel with greater experience on very similar projects. AR, Tab 12, SSDD at 3. Accordingly, the protester's arguments are without merit.

Selection Decision

2H&V also argues that the agency's best-value tradeoff was inconsistent with the solicitation because the RFP stated that all non-price factors, when combined, would be equal to cost/price. In the protester's view, since there were several non-price factors, price was the single most important factor. Protest at 3-4; Comments at 1-2. In essence, the protester insists that because its price was 0.24 percent lower than Stone & Lime's, it is entitled to the award.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results; price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the evaluation criteria. Atteloir, Inc., B-290601, B-290602, Aug. 12, 2002, 2002 CPD ¶ 160 at 5.

Here, the RFP stated that the source selection would be based on a comparative assessment of proposals against all source selection factors--and not a comparison of price against individual non-price factors. The RFP also expressly provided that the government could elect to accept other than the lowest-priced proposal when justified by the perceived benefits that proposal offered. RFP at 132. The mechanical or formulaic approach to source selection that 2H&V would require the agency to use is not only generally disfavored, see Lifecycle Constr. Servs., LLC, B-406907, Sept. 27, 2012, 2012 CPD ¶ 269 at 8 n.15; Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 (mechanical tradeoff as sole basis for source selection not reasonable), but also inconsistent with the terms of the RFP.

The record shows that the SSA considered the respective merits of the individual proposals in accordance with the RFP and thoroughly documented the rationale for

paying the slight price premium for Stone & Lime's technically-superior proposal.¹⁰ AR, Tab 12, SSDD at 3-4. While 2H&V's proposal offered the lowest price, Stone & Lime's proposal offered the second-lowest price that was only slightly higher--a difference of approximately 0.24 percent or \$23,631. Id. at 3. Contrary to the protester's arguments, the SSA recognized the significance of price relative to the other evaluation factors, but concluded that Stone & Lime's higher-rated proposal offered benefits in the experience and technical approach subfactors, and the past performance factor, that justified selection of its proposal for award. Id. at 3-4. We see nothing unreasonable in the SSA's conclusion.

The protest is denied.

Susan A. Poling
General Counsel

¹⁰ For the record, we note that Stone & Lime's technical proposal received higher ratings than 2H&V's proposal under every factor, subfactor, and element considered by this evaluation with the exception of the management approach subfactor, where both offerors received adequate ratings. AR, Tab 12, SSDD at 2.