



United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

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: University of Dayton Research Institute

File: B-412973

Date: July 12, 2016

Daniel A. Bellman, Esq., Daniel A. Bellman Law Office, for the protester.
LtC Aaron G. Lake, LtC Mark E. Allen, Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and Cherie J. Owen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly declined to award protester a contract under broad agency announcement for research and development related to electromagnetic materials is denied where the record shows that the evaluation was conducted in accordance with the stated evaluation criteria and the agency reasonably concluded that the protester's proposal, while acceptable, required further development.

DECISION

University of Dayton Research Institute (UDRI) of Dayton, Ohio, protests the decision by the Department of Air Force, Air Force Research Laboratory (AFRL), not to award it a contract under Broad Agency Announcement (BAA) No. BAA-AFRL-RQKM-2015-0008, for the research and development (R&D) of a broad range of electromagnetic materials under the nanoelectronic materials optimization (NEMO) program. UDRI argues that the agency unreasonably evaluated its proposal.

We deny the protest.

BACKGROUND

The BAA, issued on September 23, 2015, sought proposals for electronic and optical applications for the AFRL. Advances made in the program are expected to lead to improved nanomaterials, material processes, and devices for digital, radio frequency, microwave, infrared detector, opti-electronic, secure communication, power generation, sensing, and control applications. Agency Report (AR), Tab 4.1,

Basic Program Statement of Objectives, at 1. The agency anticipated issuing two basic indefinite-delivery, indefinite-quantity (ID/IQ) contracts and two task orders--one for nanoscale transport electronic materials and processes, and one for quantum semiconductor and magnetic materials and processes. AR, Tab 4, BAA, at 4 and 12. The solicitation noted, however, that the agency could make more or fewer awards. Id. Offerors were required to submit their proposals in three parts: a proposal for the basic contract, and a proposal for each of the two task orders. Id. at 14-15, 17.

The BAA provided that the basic contract proposal and the task order proposals would be evaluated as follows:

The basic contract proposal will be evaluated on Technical and Risk factors (equal order of importance), with the evaluation of the Basic Contract (Part A) to be of greater importance than all the Task Orders combined. Task Order proposals will be evaluated on Technical, Cost, and Risk factors (descending order of importance), with the evaluation of each Task Order proposal (Part B) determined to be of equal importance to each other. Offerors must submit proposals for the basic ID/IQ effort, as well as Task Order 0001 and 0002, in order to be considered for an ID/IQ award.

AR, Tab 4, BAA, at 18.

In evaluating Part B proposals (task order proposals), the agency would consider the following six technical evaluation subfactors: (1) unique and innovative approach proposed to accomplish the technical objectives; new and creative solutions and/or advances in knowledge, understanding, technology, or state of the art; (2) the offeror's understanding of the scope of the technical effort; (3) soundness of the offeror's technical approach; (4) availability of qualified technical personnel and their experience with the applicable technologies; (5) availability from any source, of necessary research, test, laboratory, or shop facilities; and (6) the potential of the AFRL to transition the research and development deliverables to future government needs. AR, Tab 4, BAA, at 18; Tab 4.9, BAA Amend. 2, at 1. Technical proposals for the basic contract would be evaluated under seven technical subfactors--the six listed above, and a seventh subfactor: soundness of the offeror's method to track financial execution and report technical information in a thorough and timely manner at the task order and project level.¹ AR, Tab 4, BAA, at 18.

¹ For the basic contract proposals the technical subfactors were equally weighted. For the task order proposals the technical subfactors were in descending order of importance. AR, Tab 4, BAA, at 18, Tab 4.9, BAA Amend. 2, at 1.

The BAA instructed Offerors to include a discussion of the nature and scope of the research and technical approach, as well as a detailed statement of work detailing the technical tasks proposed to be accomplished under the proposed effort and suitable for contract incorporation. AR, Tab 4, BAA, at 16. The BAA provided that award decisions would be based on an evaluation of the technical and cost aspects of each proposal to determine its overall merit in response to the announcement, agency need, and funding availability.² Id.

The agency received nine proposals, which were evaluated by a technical evaluation board (TEB). The TEB assigned ratings of exceeds the technical criteria ("exceeds"), meets the technical criteria ("meets"), or does not meet the technical criteria ("does not meet") to each technical evaluation subfactor for the basic contract and task order proposals. The TEB also identified the various strengths, weaknesses, and deficiencies it found in support of its ratings. Based on the evaluation ratings, the TEB then assigned proposals to one of the following categories:

Category I--Demonstrates technical merit. Is important to agency programs. The offeror presents relevant experience and access to adequate resources. Risk is acceptable. The cost/price is reasonable and realistic. Proposals in Category I are recommended for acceptance (subject to availability of funds) and normally are displaced only by other Category 1 proposals.

Category II--Demonstrates technical merit; is important to agency programs; and presents relevant experience and access to adequate resources; but requires further development. Risk is acceptable. The cost/price is reasonable and realistic. Category II proposals are recommended for acceptance, but at a lower priority than Category I.

Category III--Does not demonstrate technical merit; does not meet agency needs.

AR, Tab 4, BAA, at 20.

After evaluating UDRI's basic contract and task order proposals, the evaluators assigned the following technical subfactor ratings:

² While not relevant here, the solicitation also provided that the agency would consider awarding small cost-plus-fixed-fee contracts based on the statement of objectives for task orders 1 and 2. BAA at 2, BAA; Amend. 2 at 2.

UDRI's Rating			
	Basic Contract Proposal	Task Order 1 Proposal	Task Order 2 Proposal
Overall Rating	Category II	Category II	Category II
1. Unique & innovative approach; new & creative solutions and/or advances in knowledge, understanding, technology, or state of the art.	Meets	Meets	Meets
2. Understanding of the scope of the technical effort.	Meets	Meets	Meets
3. Soundness of the offeror's technical approach.	Meets	Meets	Does Not Meet
4. Availability of qualified technical personnel and their experience with the applicable technologies.	Meets	Exceeds	Meets
5. Availability from any source, of necessary research, test, laboratory, or shop facilities	Meets	Meets	Meets
6. Potential of the AFRL to transition the research and development deliverables to future government needs.	Meets	Does Not Meet	Does Not Meet
7. Soundness of method to track financial execution & report technical information in a thorough and timely manner at the task order and project level.	Meets		

AR, Tab 7, TEB Report, at 3-12.

Further, the TEB Report reflects that, while the TEB evaluated UDRI's proposal for the basic contract as "meets" under each of the seven evaluation factors, the TEB found that for five of the subfactors, UDRI's proposal did not provide sufficient detail. *Id.* at 3-5. One offeror was awarded a basic contract and task order 2. Following a debriefing UDRI submitted this protest.

DISCUSSION

UDRI protests the agency's conclusions that its basic contract proposal and task order proposals should be placed in Category II. With regard to the basic contract proposal, UDRI argues that its proposal for the basic contract was evaluated as "meets" under each of the seven technical subfactors and, according to UDRI, since

its proposal met all the requirements, it should have been placed in Category I.³ UDRI acknowledges that the evaluators included certain comments indicating that its proposal required further detail with respect to some of the evaluation factors, but notes that nowhere in the evaluation document do the evaluators use the term “requires further development,” which the protester contends distinguishes a Category I proposal from a Category II proposal. UDRI asserts in this regard that since it met the criterion for the technical subfactors, nothing further was, or could be, required.⁴

In reviewing a protest of an agency’s proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. Gamut Elecs., LLC, B-292347, B-292347.2, Aug. 7, 2003, 2003 CPD ¶ 150 at 4; HMX, Inc., B-291102, Nov. 4, 2002, 2003 CPD ¶ 52 at 7. An offeror’s disagreement with an agency’s judgment is not sufficient to establish that the agency acted unreasonably. Id.

Here, the agency explains that a proposal may meet all requirements but still require further development, and thus, merit a rating of Category II. The agency also explains that while the evaluators did not specifically state that UDRI’s proposal “required further development,” the technical comments made during the evaluation demonstrate that this was the case. For example, under the second technical subfactor--offeror’s understanding of the scope of the technical effort--the evaluators found that while UDRI demonstrated its understanding of the effort through a discussion of previous contracts it worked on, its proposal simply reiterated or paraphrased portions of the statement of objectives (SOO). AR, Tab 7, TEB Report, at 3. Thus, the agency concluded that while UDRI had a general awareness of the scope of the technical effort required, “[i]t would have been desirable if [UDRI] had provided additional specific details on its understanding of the Scope.” Id. Similarly, for evaluation subfactor 3--soundness of the offeror’s technical approach--the evaluators again found that while they could generally

³ In its initial protest, UDRI challenged some of the evaluation ratings assigned to its proposals. However, after receiving the agency report and supplemental documents from the agency, UDRI withdrew these challenges. UDRI Partial Withdrawal at 1 (“we accept the final rating for each evaluation criteria of “Meets the Technical Criteria” or “Does Not Meet the Technical Criteria”).

⁴ UDRI also asserts that at the debriefing it was told that its proposal would have to exceed the requirements to be evaluated as a Category I proposal. The agency reports that the project manager’s statement in this regard was in error, Contracting Officer’s Statement at 9, Agency Report at 11-13, and the record does not indicate that the agency applied this standard.

ascertain UDRI's approach to specific program objectives, the protester's proposal largely repeated the SOO set out in the solicitation, instead of providing information on innovative strategies, capabilities and approaches that could be considered to accomplish the agency's research objectives. Id. at 4.

As a preliminary matter, we reject UDRI's position that a proposal that "meets" requirements by definition does not require any further development. In our view, further development in the context of this procurement means that the proposal, while meeting all requirements, requires further elaboration. Otherwise there would be no reason for the agency to distinguish between Category I and II as proposals in both categories are acceptable for award, but Category II proposals are given less priority because they require further development.

We further find no basis to conclude that UDRI's proposal should have been placed in Category I. In this regard, with respect to evaluation subfactor 2 for the basic contract, UDRI asserts it repeated or paraphrased the SOO for the basic contract because it appreciated the effort and thought that went into writing it, and that it concurs with the stated objectives. Protest, Att. D at 4. It argues, however, that its past record of achievement on the program demonstrates its mastery of the subject that goes beyond basic understanding of the relevant scientific issues. Therefore, UDRI disagrees with the agency's conclusion that the proposal should have provided a more detailed discussion. Id. With respect to evaluation subfactor 3, UDRI similarly asserts that it followed the SOO to make it easier for the reviewers to see its compliance with the agency's requirements. Id.

The solicitation here made clear that the agency was seeking proposals to advance the state of the art with respect to electromagnetic materials and instructed offerors to provide "a discussion of the nature and scope of the research and the technical approach" and a statement of work "detailing the technical tasks proposed." AR, Tab 4, BAA, at 16. We find that the agency reasonably concluded that UDRI's discussion of its past efforts and reiteration of the solicitation's SOO, in the absence of additional details regarding its technical approach and innovative strategies, merited placement of UDRI's proposal in Category II.

In its comments responding to the agency report UDRI, for the first time, asserts that in not assigning its proposal an overall rating of Category I the agency failed to properly weigh the evaluation criteria. Comments at 8-9. Specifically, UDRI notes that there were seven evaluation criteria for the basic contract, and six evaluation criteria for each of the task order proposals. UDRI also notes that the solicitation, in describing the evaluation process, states that the evaluation of the basic contract is of greater importance than the task orders combined, which were equal to each other. UDRI notes that the subfactors for the task order proposals were listed in descending order of importance and that its ratings of "does not meet" were for subfactors that were relatively unimportant. Id. In this regard, UDRI notes that it received "does not meet" ratings in the 6th lowest weighted factor for its task order 1

proposal and the 3rd and 6th lowest weighted factors for its task order 2 proposal. Id. UDRI argues that if the agency had properly weighed the evaluation factors and considered that overall UDRI earned 15 meets, 1 exceeds, and 3 does not meet, as well as the fact that the “does not meet” ratings were in less important factors, its proposal would have been placed in Category I. Id. at 8-9.

This basis of protest is untimely. Under our Bid Protest Regulations to be timely a protest that does not concern a solicitation impropriety must be filed within 10 days after the protester knows or should know the basis of protest. 4 C.F.R. 21.2(a) (2016). Here, it is clear that UDRI was aware of the rating scheme it describes, as well as the ratings it received for each of the 19 evaluation factors, when it filed its protest on April 14. Since UDRI did not raise this issue until it submitted its comments on May 26, it is untimely.⁵

The protest is denied.

Susan A. Poling
General Counsel

⁵ In any case there is no merit to UDRI’s allegation that the agency failed to properly weigh the evaluation criteria. It is well-settled that a single evaluation factor—even a lower-weighted factor—may properly be relied upon as a key discriminator for the purposes of a source selection decision. Smiths Detection, Inc.; Am. Sci. and Eng’g, Inc., B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 16; see Keane Fed. Sys., Inc., B-280595, Oct. 23, 1998, 98-2 CPD ¶ 132 at 16. The fact that UDRI’s “does not meet” ratings were in lower-weighted subfactors did not require the evaluators to ignore UDRI’s failure to meet these requirements, nor does this fact render the evaluators’ rating of UDRI’s proposal as Category II unreasonable.