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Decision

Matter of: Team People LLC

File: B-414434; B-414434.2

Date: June 14, 2017

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Christopher M. Johnson, Esq., Department of Health and Human Services, for the agency.
Young S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of awardee's proposal and source selection decision is denied where record supports the agency's evaluation and award decision.
2. Protest that award decision was influenced by bias is dismissed where allegations are untimely.

DECISION

Team People, LLC, a small business of Falls Church, Virginia, protests the award of a contract to International Development & Resources, Inc. (IDR), a small business of Centreville, Virginia, under Request for Proposals (RFP) No. NIHOD2016243, issued by the Department of Health and Human Services, National Institutes of Health (NIH), for a wide range of event management and video production services. The protester challenges the agency's evaluation of its proposal, contends that NIH's award decision is flawed, and alleges that the agency was motivated by improper influence and bias.

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

BACKGROUND

On December 6, 2017, the agency issued the RFP as a total small business set-aside for event management and other related technical services. RFP at 10-11. The competition was conducted pursuant to the procedures of Federal Acquisition

Regulation (FAR) part 15, and the solicitation contemplated the award of a fixed-price, indefinite-delivery requirements contract with a 1-year base period and four 1-year options. Id. at 143, 145, 150.

The RFP notified offerors that award would be made on a best-value basis, considering the following three factors: (1) technical; (2) price; and (3) past performance. Id. at 188. Pursuant to the solicitation, the evaluation factors were listed in descending order of importance. Id. The RFP also advised that the non-price evaluation factors, when combined, were significantly more important than price. Id.

The RFP identified four subfactors¹ under the technical evaluation factor. These subfactors were to be scored, and were worth a total of 100 points. Id. at 188-190. These subfactors were: (1) personnel; (2) management plan; (3) technical approach; and (4) work sample. Id. (As discussed further below, up to plus or minus two additional points were available for past performance.) Id. at 192.

Under the first technical subfactor, personnel, a maximum of forty points could be assigned under one of the following four elements: (1) staffing and productivity approach; (2) work schedules; (3) position descriptions; and (4) key personnel selection and resumes, along with written consent of proposed key staff. Id. at 188-89. To address the RFP, offerors were required to fill out forms identifying staff they intended to propose to meet contract requirements, identify productivity assumptions associated with those staff members, and specify proposed staff work schedules. Id. at 164, 166-167. The work schedule proposed by an offeror also had to demonstrate that it understood NIH's stated hours of operation, while meeting the agency's need to minimize disruptions to mission requirements. Id. at 168. Furthermore, the solicitation notified offerors that NIH would evaluate their proposals under the personnel subfactor for compliance with the RFP's requirements. Id. at 189.

A maximum of twenty-five points could be assigned to a proposal under the second technical subfactor, management plan, which was comprised of the following three elements: (1) corporate experience; (2) personnel management and management plan, along with an offeror's ability to comply with Homeland Security Presidential Directive 12; and (3) quality control plan and information related to potential conflicts of interest. Id. The management plan was to be evaluated to determine whether an offeror's proposal met or exceeded solicitation requirements. Id. at 189. Moreover, the onsite employee remuneration, benefit, and incentive plans proposed by each offeror were to be evaluated to determine whether the plans would result in the recruitment and retention of well qualified and high performing employees. Id.

¹ The RFP referred to each subfactor as either a criterion or a factor. RFP at 188-189. For the sake of consistency and clarity, this decision adopts the term "subfactor" for the first tier of considerations under an evaluation factor, and the term "elements" for the second tier of considerations identified under the subfactors.

A maximum of twenty-five points could be assigned to a proposal under the third technical subfactor, technical approach, which was comprised of the following five elements: (1) organization chart, introduction to the offeror's technical approach and its methods; (2) events management; (3) technical support services; (4) video production services; and (5) phase-in plan. Id. The RFP explained that the most important assessment under this subfactor was whether an offeror's proposal demonstrated the ability to achieve the agency's desired level of customer service and satisfaction. Id. at 189-190.

A maximum of ten points could be assigned to a proposal under the fourth technical subfactor, work sample, which was comprised of the following four elements: (1) video production; (2) broadcast; (3) post-production; and (4) events management. Id. To address this subfactor, offerors were required to submit a work sample portfolio with their proposal for evaluation. Id. at 175. As relevant here, offerors were also required to submit sample work folders to show that they had experience managing various events. Id. at 177.

With regard to past performance, offerors were instructed to provide pertinent past performance information related to contracts either completed within the last three years, or currently being performed. Id. at 178. Past performance was to be evaluated based on the information that was provided by offerors, in addition to any other relevant past performance information obtained from other government sources. Id. at 191. Each offeror's past performance was to be assessed to identify performance risks associated with an offeror's ability to successfully perform the contract. Id.

The solicitation provided that proposals would be assigned a rating of excellent, good, none, marginal, or poor, under the past performance factor. Id. at 192. Two extra points were to be added to an offeror's overall non-price rating for an excellent past performance rating; one point for a good rating, and no points for a rating of none. Id. One point was to be subtracted from an offeror's overall point score for a marginal rating, and two points subtracted for an overall rating of poor. Id.

With regard to the price proposals, the solicitation instructed offerors that their business proposals had to contain enough information to allow the government to perform a basic analysis of the proposed price of the work being offered. Id. at 182. Price proposals were to be evaluated for reasonableness rather than on a point score basis. Id. at 190. For award evaluation purposes, the total price for all option years was to be added to the price for the basic requirement. Id. at 192.

The agency received six offers in response to the solicitation, including those submitted by Team People and IDR.² AR, Tab 18, Technical Evaluation Panel Chair Report, at 5. As relevant here, the agency noted that Team People failed to include option year

² One of the six offerors withdrew its proposal. Agency Report (AR), Tab 18, TEP Chair Report, at 5.

pricing with its initial proposal and requested that the company provide that information. AR, Tab 25, Option Year Pricing Request, at 1. Team People responded that the pricing under all four option years would not change from the company's base year prices.³ AR, Tab 26, Option Year Pricing Response, at 1.

Proposals were evaluated by a technical evaluation panel (TEP). AR, Tab 18, TEP Chair Report, at 5. After individual TEP members evaluated and rated proposals, the point score ratings were averaged together to establish an overall rating for each offeror. AR, Tab 19, Source Selection Decision (SSD), at 1. The overall ratings for IDR and Team People were as follows:⁴

	IDR	Team People
Non-Price Evaluation Score	91.4	86.7
Past Performance	2	1.6
Total Price	\$26,123,388.67	\$22,240,462.06

Id. at 2.

The source selection authority (SSA) reiterated many of the same findings identified by the TEP. AR, Tab 19, SSD, at 2-3. With regard to Team People's proposal, the SSA also expressed concerns about the overall ratio of full time employees (FTE) being offered and the proposal's overall evaluated price. Id. at 3. Moreover, the SSA concluded that Team People's decision to forgo any increases in option year pricing presented potential risk to the company's ability to retain qualified personnel. The SSA also noted that foregoing any price increase in the option years could require Team People to reduce pay, and concluded that this approach created a risk that the company might not maintain adequate coverage. Id. After consideration of all the factors involved, the SSA ultimately determined that the proposal submitted by IDR represented the best value to the government, as it was the most highly-rated overall with the second lowest overall price. Id. at 3-4.

On February 27, 2017, NIH awarded the contract to IDR. Id. at 4. Team People timely filed the instant protest on March 5.⁵ Protest at 1.

³ Both the agency and the protester characterize this exchange as a clarification. No party to this protest raised any concerns with regard to whether this exchange constituted discussions. Accordingly, for the purposes of this decision we need not address whether this exchange constituted a clarification or discussions.

⁴ Team People did not challenge of any aspect the agency's evaluation of IDR's proposal.

⁵ On March 10, the contracting officer (CO) notified IDR via e-mail of the protest, and included an unredacted copy of Team People's filing. AR, Tab 31, Inadvertent Disclosure Memo, at 1. On March 13, agency counsel contacted Team People to

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DISCUSSION

Team People challenges every weakness assigned to its proposal. In this regard, the protester argues that NIH failed to properly consider information in the proposal, or that the agency's underlying rationale behind the assessment for the weakness was flawed, or both. In addition, the protester also contends that the agency was biased in favor of the awardee. Although we do not address every argument raised, we have reviewed all of the protester's arguments and find that none provides a basis to sustain the protest.⁶

RFP's Evaluation Factors

First, the protester contends that the agency unreasonably evaluated its proposal under all of the RFP's evaluation factors. In reviewing protests of an agency's evaluation of an offeror's technical proposal, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6. A protester's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation unreasonable. Glacier Tech. Solutions, LLC, B-412990.3, Mar. 15, 2017, 2017 CPD ¶ 91 at 7.

Personnel

Team People contends that it was improperly assigned a weakness under the personnel subfactor of the technical factor for failing to provide a rationale for the staffing and productivity information submitted with its offer. The protester argues that it

(...continued)

inform it that the CO notified IDR about the protest and that the CO had furnished an unredacted copy of Team People's protest to IDR. AR, Tab 34, Notification E-mail at 1.

⁶ For instance, the protester alleged that its protest should be sustained because the solicitation contained a latent ambiguity. We dismiss the allegation because Team People does not identify, with any specificity, what solicitation term, it believes to be ambiguous. Rather the protester generally contends that the solicitation contained a latent ambiguity because the agency assessed weaknesses for the number of the protester's proposed FTE's, despite the fact that the protester, itself, acknowledges that the RFP gave "leeway to propose staffing specific to the unique proposed approach to meet performance requirements." Comments at 3. Without identifying a specific term or specification, the protester cannot establish an ambiguity. See DynCorp Int'l. LLC, B-289863; B-289863.2, May 13, 2002, 2002 CPD ¶ 83 at 3. Accordingly, we dismiss this allegation because it fails to state a legally sufficient ground of protest. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

provided the information and therefore was improperly assigned a weakness. Here, the solicitation made offerors responsible for explaining how their personnel would meet or exceed the RFP's requirements for all positions being proposed, and for demonstrating that their personnel had the relevant skills, abilities, competencies, and educational background required by the solicitation. RFP at 165. In this regard, offerors were to be evaluated to determine whether they complied with the requirements of the RFP. Id. at 189.

Although the personnel section of the proposal submitted by Team People identified various positions, position titles, proposed hours, workloads, units, and productivity factors, it did not explain how this information would be applied to the work under the solicitation. AR, Tab 15, Team People Proposal Vol. 1, at 1-50. Thus, our examination of the record confirms that the agency's evaluation was consistent with the terms of the solicitation, and reasonable in light of the RFP's stated evaluation methodology. While the protester disputes the agency's conclusion, and contends that it submitted a rationale for the staffing and productivity information, our review of the staffing approach section of its proposal confirms that no such rationale was submitted in that section of its proposal. See AR, Tab 15, Team People Proposal, at 1-50.

Management Plan

With regard to the management plan subfactor, Team People argues that the TEP unreasonably found that its proposal did not provide examples of its ability to manage multiple operations similar to NIH. In support of this allegation, Team People contends that its experience with the World Bank and United Nations should have been enough to establish such experience. Here, the RFP required offerors to describe their corporate experience. RFP at 172. An offeror's management plan was to be evaluated to determine whether it met or exceeded solicitation requirements. Id. at 189.

While Team People's proposal was credited with strengths for the corporate experience demonstrated by the size and scope of the contracts the protester had with the United Nations and World Bank, AR, Tab 18, TEP Chair Report, at 49, the TEP raised concerns related to the absence of examples to demonstrate Team People's ability to manage multiple operations, as required by the RFP. Id. at 50. Again, our review of the record confirms that while Team People may disagree with the agency's assessment of the examples provided by the protester, that disagreement, without more, is not sufficient to render the agency's evaluation unreasonable. AR, Tab 15, Team People Proposal, at 61-88; Glacier Tech. Solutions, LLC, supra.

Technical Approach

The protester also asserts that it was improperly downgraded for its proposed plan to offer a reduced FTE headcount to compensate for 20 percent higher staff pay. The agency expressed concerns with this plan because of its potential for staffing coverage issues. The protester argues that it was improper for the agency to express such a concern, and that the FTE workforce proposed by Team People was adequate to

handle the workload requirements of the RFP, and appropriate for a performance-based contract.

Here, the RFP required offerors to provide an organizational chart detailing their proposed staffing structure, and a narrative statement to explain the methodologies that they intended to use to perform the requirements of the RFP. RFP at 174. Our review of the record confirms that while the protester submitted a detailed plan explaining why it believed it could perform well under a proposal that provided for higher pay rates and reduced staff hours, we find nothing unreasonable with the agency's decision to express a concern about this approach.⁷ See AR, Tab 15, Team People Proposal, at 89-123. Again, while the protester may disagree with the agency's assessment, such disagreement does not establish a basis for our Office to sustain its protest. Glacier Tech. Solutions, LLC, supra.

Work Sample

Team People contends that the agency improperly assessed a weakness to its proposal for submitting a confusing job matrix. The protester alleges that because nothing in the solicitation specifically required "job matrices submitted to be simple in nature," the weakness assigned was unreasonable. Protest at 36. Here, the protester "acknowledge[s] that the job matrix [it] provided was difficult to understand." Protest at 36. Accordingly, although the RFP did not expressly require the submission of a job matrix that was simple in nature or easy to understand, we find reasonable the agency's decision to assign a weakness to the protester's proposal for a job matrix that Team People concedes is confusing.

Past Performance

In challenging the agency's evaluation of its proposal under the past performance factor, Team People argues that it was unreasonably assigned a weakness for failing to demonstrate that it had performed on contracts with a similar volume of work. The protester asserts that this weakness lacks a reasonable basis because the dollar values of the contracts Team People submitted were similar to the dollar value of the work to be performed under the proposed solicitation.

For past performance, offerors had to identify contracts that had been previously performed, and include information such as the contract dollar value, and a description of the work. RFP at 178. The agency intended to evaluate past performance based on information provided by offerors, and other relevant past performance information obtained from other government sources. Id. at 191. Furthermore, the solicitation noted that the assessment of performance risk was not intended to be the product of a

⁷ We note that Team People was assigned an average overall score of 24.1 out of 25 total available points under the technical approach subfactor, so any concern did not have a significant impact on the evaluation here. AR, Tab 18, TEP Chair Report, at 51.

mechanical or mathematical analysis of an offeror's performance on a list of contracts, but rather the product of subjective judgement by NIH, after consideration of all available and relevant information. Id.

The record reflects that the agency gave credit to the protester for submitting "outstanding contracts with similar size, scope and requirements." AR, Tab 18, TEP Chair Report, at 55. Here, the weakness identified by the TEP did not relate to considerations regarding the overall dollar values of the contracts being evaluated, but was instead premised on differences the TEP identified between the size of the events performed under the contracts submitted by the protester and the size of the events anticipated here.⁸ Id. Accordingly, while the protester may disagree with the agency's assessment, we find nothing objectionable with the TEP's evaluation. Glacier Tech. Solutions, LLC, supra.

Option Prices

The protester also objects to the concern identified by the SSA with regard to the potential risks associated with the protester's option year pricing. As discussed above, the SSA concluded that Team People's decision to forgo any increases in option year pricing presented potential risk to the company's ability to retain qualified personnel. AR, Tab 19, SSD, at 3. Team People contends that there would be no risk to its ability to retain qualified personnel because of its strong employee retention programs, its total compensation plans, and its positive retention record, all of which were relayed to the agency.

We find nothing unreasonable about the SSA's decision to consider the possible risks that static option year pricing could have on the future performance of the contract when deciding which proposal represented the best value to the agency. Again, while the protester may disagree with the agency's assessment in this regard, such disagreement does not establish a basis to sustain its protest. Glacier Tech. Solutions, LLC, supra.

Best-Value Decision

Next, the protester contends that the agency's best-value decision was flawed because it was based on an unreasonable evaluation and because it did not account for Team People's lower price. Based on our review of the record, and as discussed above, we find no merit to this argument. First, the solicitation indicated that all other non-price evaluation factors, when combined, were more important than price. RFP at 188. Moreover, the SSA recognized that IDR's proposal was not the lowest-priced offer, but decided to make award to IDR because it submitted the most highly rated proposal.

⁸ For example, the agency noted that facilities at the United Nations and World Bank are located in close proximity to one another, in a single building or a building complex, while NIH facilities are spread across various campuses located in different counties, districts, and states. CO statement at 32.

AR, Tab 19, SSD, at 1-4. Furthermore, and as discussed above, we find nothing unreasonable with the various weaknesses that the agency assigned to Team People's proposal. Because we deny the protester's underlying arguments upon which it challenges the agency's best-value award decision, this protest allegation is also denied. Glacier Tech. Solutions, LLC, supra at 9 (denying challenge to agency's best value tradeoff decision where protester's argument was premised entirely on allegations that had been discussed earlier and denied).

Allegations of Bias

Finally, the protester contends that the CO was biased in favor of IDR. The protester asserts that evidence of this alleged bias is demonstrated by the action taken by the CO to notify the awardee of Team People's protest, and to provide an unredacted version of Team People's protest to IDR.

We dismiss the protest allegation as untimely because it was filed more than 10 calendar days after the protester knew, or should have known, the basis for its protest.⁹ Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present

⁹ Even assuming, for the sake of discussion, that the protester's allegations had been filed in a timely manner, this allegation would be denied. As a general matter, government officials are presumed to act in good faith, and a protester's contention that procurement officials were motivated by bias or bad faith must be supported by clear and convincing evidence. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-9. Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. Global Integrated Sec. (USA) Inc., B-408916.3 et al., Dec. 18, 2014, 2014 CPD ¶ 375 at 14. See also Marinette Marine Corp., B-400697 et al., Jan. 12, 2009, 2009 CPD ¶ 16 at 28-29. Although Team People repeatedly alleges that it was "wrong (and possibly illegal) for the [a]gency to contact IDR that a [p]rotest was filed," and asserts that this demonstrates evidence of the CO's bias, we note that the Federal Acquisition Regulation (FAR) requires agencies to provide notice of protests to contract awardees if an award has been made, and to furnish awardees with a copy of the protest submission. Supplemental Comments at 1; FAR § 33.104(a)(2). In this regard, we find that the agency's actions here do not provide credible evidence of bias in favor of the awardee since the actions that were taken by the CO are required by the FAR. We do note however that the FAR directs the CO to obtain a redacted copy of the protest from the protester when the protest identifies sensitive information and has requested a protective order from our Office. FAR § 33.104(a)(2). Though the inadvertent release of an unredacted copy of Team People's protest does not provide our Office with a basis to find agency bias, we recognize that the agency's actions here are not consistent with the guidance in the FAR about protecting a contractor's sensitive business information. Id.

their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2); Optical Energy Tech. Inc., B-401520, July 13, 2009, 2009 CPD ¶ 153 at 3.

Here, the protester's allegations are based on the agency's actions to notify IDR of the protest and to provide the awardee with an unredacted copy of the protest filing. On March 13, 2017, upon realizing the CO had inadvertently provided the awardee with an unredacted copy of the Team People's protest, the agency immediately notified the protester of these actions. AR, Tab 34, Notification E-mail, at 1. Consequently, in order to be timely, the protester's bias allegations would have had to be filed by March 23. 4 C.F.R. § 21.2(a)(2). The protester, instead, waited to raise the bias allegations in its comments to the agency report, filed on April 14, which was well beyond 10 days after the protester knew of the basis for its challenge. Comments at 1, 11-12. Therefore, this protest allegation is dismissed as untimely. 4 C.F.R. § 21.2(a)(2).

In sum, we find nothing objectionable about the agency's evaluation of Team People's proposal under all of the solicitation's evaluation factors that were protested, no merit to its best value award decision challenge, and no basis to sustain any of its other protest allegations.

The protest is denied.

Susan A. Poling
General Counsel