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Decision

Matter of: Pond Constructors, Inc.

File: B-418403

Date: March 23, 2020

David A. Rose, Esq., Law Offices of Rose Consulting, LLC, for the protester. Scott Arnold, Esq., Justin A. Chiarodo, Esq., Adam Proujansky, Esq., Michael Montalbano, Esq., Tjasse L. Fritz, Esq., and David M. Nadler, Esq., Blank Rome LLP, for Louis Berger Hawthorne Services, Inc., the intervenor. Jennifer Bowmar, Esq., and Michael Graves, Esq., Department of the Army, for the agency. Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the protester's quotation and best-value tradeoff decision is denied where the record shows the agency's evaluation was reasonable and in accordance with the stated evaluation criteria.

DECISION

Pond Constructors, Inc., of Peachtree Corners, Georgia, protests the issuance of a task order to Louis Berger Hawthorne Services, Inc. (LBHS), of Greenville, South Carolina, under request for quotations (RFQ) No. W912DY-19-R-0040 issued by the Department of the Army, U.S. Army Corps of Engineers (Corps), for maintenance and repair services of overseas petroleum facilities. Pond challenges the agency's evaluation of its quotation and the best-value tradeoff decision.

We deny the protest.

BACKGROUND

The RFQ, issued on August 23, 2019 using the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4, sought quotations from vendors holding General Services Administration Federal Supply Schedule (FSS) 03FAC (facilities maintenance and management) contracts to obtain recurring maintenance and minor repair services for petroleum facilities on government installations in the South Pacific.

Agency Report (AR), Tab 1, RFQ, at 2. The resulting task order was to be issued on a best-value tradeoff basis, considering the following factors, listed in descending order of importance: technical approach and experience (technical approach), past performance, price, and small business participation. Id. at 2, 14.

Four quotations were received by the agency in response to the solicitation, including those from Pond and LBHS. AR, Tab 5, Contracting Officer Decision Document (CODD), at 1-2. After an evaluation of quotations, the relevant results were as follows:¹

	LBHS	Pond
Technical Approach	Good	Acceptable
Past Performance	Satisfactory Confidence	Substantial Confidence ²
Small Business Participation	Outstanding	Acceptable
Price	\$32,984,468	\$33,108,686

Id. at 12.

The contracting officer, who was also the SSA for this procurement, conducted a tradeoff analysis between the various quotations, and concluded that LBHS’s quotation represented the overall best value to the government. Id. at 14-15. The SSA found that while Pond received the highest rating under the past performance factor, this did not outweigh LBHS’s higher ratings under the technical approach and small business participation factors. Id. at 14. Pond was notified of the agency’s award decision by correspondence dated December 23, 2019, and provided a brief explanation of the basis for award on December 30. Protest, exhs. 2 and 3. This protest followed.

DISCUSSION

¹ Quotations were assigned one of the following adjectival ratings under the technical approach and small business participation factors: outstanding, good, acceptable, marginal, or unacceptable. RFQ at 9, 13-14. Quotations were assigned one of the following past performance confidence ratings under the past performance factor: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 10-11.

² While the table found on page 12 of the CODD indicates that Pond received a satisfactory confidence rating under the past performance factor, it is evident from the evaluation record that the rating found in the chart was a typographical error, and that Pond was, in fact, given a rating of substantial confidence for this factor. This is confirmed not only in the narrative portion of the CODD but also in the source selection authority’s (SSA) tradeoff decision, where she found that “Pond has a past performance [rating] of Substantial Confidence.” See AR, Tab 5, CODD, at 14; accord Contracting Officer’s Statement at 12. Pond does not challenge its past performance evaluation.

Pond challenges the Corps' evaluation of its quotation under the technical approach factor and the small business participation factor, as well the resulting tradeoff decision. We have considered all of the protester's allegations and find that they afford no basis on which to sustain the protest.

Small Business Participation Factor

As a preliminary matter, we dismiss Pond's challenge to the evaluation of its quotation under the small business participation factor. The protester argues that its quotation should have received a higher rating because its proposed small business participation rate "far exceed[s]" the goals set forth in the solicitation. Protest at 11. Specifically, in its initial protest, Pond argued that it proposed a [DELETED] percent rate of small business participation, far exceeding the agency's proposed 20 percent goal, which should have resulted in the assignment of a rating of "outstanding" under this factor. Id. at 11. This challenge, however, results from a clear misreading of the evaluation criteria, and, as such, we dismiss this allegation as failing to state a valid basis of protest.

The agency asserts, and a review of Pond's quotation confirms, that the [DELETED] percent number represents the percentage rate of the total proposed subcontracted value the firm proposes to award to small businesses, whereas the agency's small business participation goal is based on percentage of total contract value. AR, Tab 2, Pond Quotation, Vol. III, Factor 4, at 1; RFP at 12-14. Moreover, Pond's own quotation states that its total percentage rate planned for small business subcontracts is [DELETED] percent of total contract value, which corresponds to the "acceptable" rating that Pond received under the small business participation evaluation factor.³ AR, Tab 2, Pond Quotation, Small Business Participation Commitment Plan, at 1. As Pond's argument finds no basis in the terms of the solicitation, we dismiss the allegation as factually and legally insufficient to form a valid basis of protest.⁴ 4 C.F.R. §§ 21.1(c)(4)

³ Under the small business participation factor, the agency evaluated the extent to which a contractor met or exceeded various small business contracting goals, including proposing 20 percent of total contract value for small businesses. RFQ at 13. The solicitation's evaluation scheme stated that a rating of "acceptable" was assigned when a firm committed to meet the 20 percent small business participation goal. Id. at 14. The next higher rating of "good" was to be assigned where the quotation satisfied various requirements, including a commitment to a small business participation rate of 25 percent or greater. Id. As Pond offered a small business participation rate of 20.44 percent, under the terms of the RFQ, a rating of "acceptable" was appropriate.

⁴ Once the agency pointed out Pond's misreading of the evaluation scheme, Pond then argues in its comments to the agency report that while it did not meet the small business participation rate that correlated to a higher adjectival rating, Pond "far exceeded" the other qualifications listed in the adjectival rating definition to qualify for rating of "outstanding" under for the small business participation factor. Protester's Comments at 4. According to the protester, "to base their evaluation on only one of the

and 21.5(f); see Access Interpreting, Inc., B-413990, Jan. 17, 2017, 2017 CPD ¶ 24 at 4 (dismissing allegation for failing to state a legally sufficient basis of protest where plain terms of the solicitation did not require what protester argued).

Technical Approach Factor

The gravamen of Pond's protest is that the agency unreasonably assessed a significant weakness to the firm's quotation under the technical approach factor, specifically the assessment that Pond's quotation failed to include any discussion of the government stakeholder group in the service order (SO) process or how the priority assigned to each SO affects its completion time. Protest at 6-7; AR, Tab 6, Technical Evaluation Team (TET) Board Report, at 2. The protester argues, in essence, that the evaluation criteria did not require vendors to include the government stakeholder group or how service orders would be prioritized in their approach. Protest at 6-7. Additionally, Pond contends that its experience managing hundreds of simultaneous work orders shows that completion time would not be impacted in a significant manner. Id. at 6.

The agency responds that vendors were expected to include the government stakeholder group in their technical approach, as the group is the end user of the fuel systems to be maintained under this contract. Memorandum of Law (MOL) at 8. Moreover, the agency asserts that it was critically important that vendors demonstrate an effective approach to prioritizing service orders, including mechanisms to be employed for prioritization, and their approach to how service orders would be addressed within the same prioritization category, as defined in the solicitation. Id. The agency concludes that Pond's "failure to provide a plan to deal with these occurrences is a significant flaw in [the firm's] technical approach to the completion of work under the [c]ontract." Id.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4.

criteria does not seem like much of an evaluation, rather than looking for a discriminator to rate to the lowest common denominator." Id. However, the stated evaluation scheme is written in the conjunctive, and, as such, it was reasonable for the agency to require quotations to meet each criterion set forth in the evaluation factor for the assigned adjectival rating. RFQ at 14. To the extent that the protester now disagrees with the stated evaluation scheme, this challenge amounts to an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.2(a)(1); CI Filing Sys., LLC, B-411012, Apr. 17, 2015, 2015 CPD ¶ 131 at 4-5.

A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, supra.

The record shows that the agency assigned a significant weakness to Pond's quotation under the technical approach factor for the firm's service order approach. AR, Tab 5, CODD, at 5, 12. Specifically, the weakness was assessed because Pond's quotation, "does not discuss the government stakeholder group, nor the prioritization of service orders and how the priority assigned to each service order affects its completion time." Id. at 5. This significant weakness, along with two strengths, supported the adjectival rating of acceptable assigned to the protester's quotation under the technical approach factor. Id.

In arguing that the evaluation criteria did not require vendors to include the government stakeholder group or how service orders would be prioritized in their approach, Pond is essentially asserting that the agency improperly applied an unstated evaluation criterion to its evaluation of the protester's quotation. Protest at 6. Agencies may properly evaluate a proposal based on considerations not expressly stated in the RFP where those considerations are reasonably and logically encompassed within the stated evaluation criteria and where there is a clear nexus between the stated and unstated criteria. Exelis Sys. Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 18.

The technical approach factor states that the agency will "evaluate the effectiveness of the proposed technical approach to accomplish the requirements as identified in the PWS [performance work statement]," including with respect to a vendor's approach to identifying and performing service orders. RFQ at 8-9. The PWS defines a service order as "a document, which is initiated and approved by the government, requesting the contractor to perform minor repair work," and sets forth detailed criteria for the identification, processing and resolution of various types of service orders.⁵ See RFQ, PWS, appendix A, at 5-7. Thus, the technical approach factor, on its face, required vendors to describe how they were to perform the work stated in the PWS, including its approach to identifying and performing service orders.

While Pond argues that the evaluation criteria did not require vendors to include the government stakeholder group in its approach, we conclude that such consideration is reasonably and logically encompassed within the stated evaluation criteria. As the agency explains, the government stakeholder group is the end user of the fuel systems to be maintained under the resulting contract. MOL at 8. In fact, the PWS details various instances where the government stakeholder group is involved in the service order process, such as reviewing maintenance reports, making final determinations of order priority, changing prioritization assignments, and submission of work items. RFQ,

⁵ Service orders are divided into routine service orders for non-emergency minor repairs, emergency service orders for emergency repairs, and not-to-exceed (NTE) service orders when a "site visit is required for troubleshooting in order to define the scope and price of a routine service order, or if the contractor is already on site and a repair is requested" by the agency. RFQ, PWS, appendix A, at 5.

PWS, appendix A, at 5-10. Given the government stakeholder group's involvement in the service order process, how the protester's approach was to be conducted vis-à-vis the government stakeholder group is logically encompassed within the stated evaluation criteria. Exilis Sys. Corp., supra.

Pond additionally argues that the evaluator's criticism, that the firm's approach did not describe how service orders would be prioritized, was unreasonable because it was not the responsibility of the contractor to prioritize work orders. Protest at 7; Protester's Comments at 3-4. According to the protester, such an approach "would have been in direct contravention of the PWS and the contract." Protester's Comments at 4.

The agency disputes Pond's characterization of the solicitation's requirements, arguing that while the PWS provided for prioritization of service orders, the contractor "must identify the mechanisms it will employ to ensure" that the orders are prioritized during performance of the contract. MOL at 8. The agency also argues, for example, that Pond's quotation failed to identify how it would prioritize service orders within the same category of service. Id. The agency asserts that it was reasonable for the evaluators to conclude that Pond's failure to include government stakeholders in the service order process, or to provide a plan for prioritization of service orders, did not demonstrate a thorough approach and understanding of the requirements of the contract. Id. at 8-9.

Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. Desbuild Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. If the solicitation language is unambiguous, our inquiry ceases. Id.

As discussed above, the technical approach factor required the agency to evaluate the effectiveness of the proposed technical approach to accomplish the requirements as identified in the PWS, including identifying and performing service orders. RFQ at 8-9. Also as discussed, the PWS set forth detailed criteria for the identification, processing and resolution of various types of service orders, including prioritization of those orders. RFQ, PWS, appendix A, at 5-7. Pond is correct that prioritization of service orders into one of the three order categories delineated in the PWS was the responsibility of the government, however, how the contractor was to identify and perform the service orders was a matter of the contractor's approach. Protest at 7; Protester's Comments at 3-4; RFQ, PWS, appendix A, at 5-7.

As discussed by the agency, it was Pond's failure to describe how it would perform the service order scope of work within the regime established by the solicitation that formed the basis of the significant weakness. See MOL at 8-9. We conclude that the agency's concern, in this regard, was reasonable under the terms of the solicitation. As such, we deny Pond's challenge to the agency's assignment of a significant weakness to the firm's quotation under the technical approach factor. DEI Consulting, supra. Finally,

Pond's argument that its experience managing hundreds of simultaneous work orders shows that completion time would not be impacted in a significant manner, even if true, does not negate the concern of the agency had with the protester's approach. Protest at 6. In this regard, approach and experience were two separate considerations under the evaluation criteria, and the government's concern about how Pond would perform this aspect of the PWS was reasonable. RFQ at 8-9.

Having resolved Pond's challenges to the evaluation of its quotation, and finding no merits to its protest, we conclude that the firm's challenge to the agency's best-value tradeoff decision is also without merit. In this regard, Pond bases its claim that the best-value tradeoff was improper on the assertion that the tradeoff was based on the flawed technical evaluation. Since the protester has not shown that the evaluation was defective, and the source selection decision sets forth a reasoned basis for the selection of the awardees, we deny this ground of protest. Bannum Inc., B-412045, Nov. 25, 2015, 2015 CPD ¶ 372 at 6.

The protest is denied.

Thomas H. Armstrong
General Counsel